

(Do not write above this line.)

<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>STAYED SUSPENSION</b>		
Counsel For The State Bar  <b>Timothy G. Byer</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa Street</b> <b>Los Angeles, CA 90017-2515</b> <b>(213) 765-1325</b>  Bar # 172472	Case Number(s): <b>15-O-12605</b>	For Court use only  <div style="text-align: center;"> <b>FILED</b>   <b>APR 21 2016</b> <i>YJC</i>          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>
In Pro Per Respondent  <b>Kyle S. Hackett</b> <b>2355 Westwood Blvd., Ste #1105</b> <b>Los Angeles, CA 90064</b> <b>(310) 985-7302</b>  Bar # 194658	<b>PUBLIC MATTER</b>	
In the Matter of: <b>KYLE SHELDON HACKETT</b>  Bar # 194658  A Member of the State Bar of California (Respondent)	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

#### A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **March 30, 1998**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective July 1, 2015)

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*AKG*



- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ Costs are added to membership fee for calendar year following effective date of discipline.
  - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline**
- (a) ☒ State Bar Court case # of prior case **05-O-04651**
  - (b) ☒ Date prior discipline effective **April 19, 2007**
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rules 3-100(A) and 3-700(A)(2), and Business and Professions Code, sections 6068(m) and 6068(i)**
  - (d) ☒ Degree of prior discipline **public reproof**
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property..
- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.

- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
- (12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) ☐ **Restitution:** Respondent failed to make restitution.
- (14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) ☒ **No Harm:** Respondent did not harm the client, the public, or the administration of justice. **See Attachment, p. 7: "Mitigating Circumstances"**
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

**See Attachment, p. 7: "Additional Facts Re Mitigating Circumstances"**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **one year**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

- (2) ☒ **Probation:**

Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

**E. Additional Conditions of Probation:**

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

- (4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) ☐ The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☐ **Other Conditions:**

**ATTACHMENT TO**

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:

KYLE SHELDON HACKETT

CASE NUMBER:

15-O-12605

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 15-O-12605 (Complainant: Armen Aghajanian)

**FACTS:**

1. Business and Professions Code section 6146 prohibits attorneys from contracting for a contingency fee in a medical malpractice matter in excess of 40% of the first \$50,000 recovered, 33 1/3% of the next \$50,000 recovered, 25% of the next \$500,000 recovered and 15% of any amount recovered in excess of \$600,000.
2. On October 24, 2013, Respondent entered into an agreement for a contingency fee to perform legal services for Armen Aghajanian in a medical malpractice matter. The agreement provided for either a 34% or 40% contingency fee of the gross recovery depending on when the case settled or judgment was reached.
3. For any settlement or judgment in excess of \$50,000, the agreement permitted respondent to receive a contingency fee in excess of the limits provided in Business and Professions Code section 6146.
4. The fee agreement entered into between Respondent and Aghajanian was the first medical malpractice matter Respondent had represented and the first such fee agreement he had prepared. Respondent had not researched the limits to such a fee in Business and Professions Code section 6146.

**CONCLUSIONS OF LAW:**

5. By entering into an agreement that allowed for a contingency fee in a medical malpractice matter in excess of the limits provided in Business and Professions Code section 6146, Respondent entered into an agreement for an illegal fee in willful violation of Rules of Professional Conduct, rule 4-200(A).

**AGGRAVATING CIRCUMSTANCES.**

**Prior Record of Discipline (Std. 1.5(a)):** Respondent received a public reproof in Case No. 05-O-04651 for violations of rules 3-100(A) and 3-700(A)(2), and sections 6068(m) and 6068(i). The failures to perform and communicate, and his constructive withdrawal complained of by the client was committed from 2003 to November 2006; his failure to cooperate with the State Bar investigation was

committed between October and December 2005. The misconduct was not aggravated, and was mitigated by Respondent's lack of a prior record of discipline.

### MITIGATING CIRCUMSTANCES.

**No Harm (Std. 1.6(c)):** Respondent's misconduct has not harmed his client, as he has not collected a fee under the non-compliant fee agreement, and in October 2015 he presented Aghajanian with a compliant fee agreement, and representation is ongoing.

### ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**Pretrial Stipulation:** Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving State Bar Court time and resources; it also evidences Respondent's recognition of wrongdoing. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

The most severe sanction applicable to Respondent's misconduct is found in Standard 1.8(a) for the aggravating effect of his prior discipline (a public reproof), since the Standard addressing the underlying misconduct is 2.3(b), which calls for suspension or reproof for entering into an agreement for an illegal fee. Progressive discipline would require suspension in this case.

The imposition of stayed suspension is also supported by case law. In *In the Matter of Harney* (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266. In *Harney*, the attorney was an extremely knowledgeable medical malpractice lawyer (who had even testified as an expert witness before the California legislature as it debated passage of section 6146) whose oral fee agreement with his client was found not to be in violation of section 6146 (overruling the Hearing Dept. on that issue) but who *collected* a contingent medical malpractice fee over \$266,000 above the section 6146 limitations. Harney, like Respondent here, had a single prior imposition of discipline, also (as here) a public reproof. The Review Department found that Harney was culpable of collecting an illegal fee under section 6146. The Hearing Department had recommended a 30 day actual suspension; the Review Department imposed a six month actual suspension.

*Harney* is distinguishable given that the Review Department analyzed the level of discipline by reference to the Standard for unconscionable fees (which calls for a minimum six month actual suspension), while acknowledging that it was “not an unconscionable fee case.” It is also distinguishable in that in *Harney* the attorney’s public reproof was imposed only five years earlier and for identical misconduct, increasing the aggravation level of his prior discipline. Also distinguishable from *Harney* is the fact that, far from being an expert in the requirements of section 6146, Respondent had not previously represented a client in a medical malpractice case. Respondent is not likely to repeat this misconduct.

Respondent has here contracted for but not collected a contingency fee, has corrected the non-compliant fee agreement in a still-ongoing matter, and no harm has therefore been suffered by Aghajanian. For that reason, in addition to the mitigation credit provided by Respondent’s willingness to enter into a full pre-trial stipulation, the stayed suspension herein provided is both within the range required by the applicable Standard and furthers the purposes of discipline.

#### **DISMISSALS.**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
15-O-12605	Two	6068(a)

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of March 31, 2016, the prosecution costs in this matter are \$3,584. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### **EXCLUSION FROM MCLE CREDIT**

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)



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In the Matter of: <b>KYLE SHELDON HACKETT</b>	Case number(s): <b>15-O-12605</b>
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>6 April 2016</u> Date	<u>[Signature]</u> Respondent's Signature	<u>Kyle S. Hackett</u> Print Name
<u>4.7.16</u> Date	<u>[Signature]</u> Respondent's Counsel Signature	<u>N/A</u> Print Name
	<u>[Signature]</u> Deputy Trial Counsel's Signature	<u>Timothy G. Byer</u> Print Name

(Do not write above this line.)

In the Matter of: KYLE SHELDON HACKETT	Case Number(s): 15-O-12605
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### STAYED SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

April 21, 2016  
Date

  
\_\_\_\_\_  
YVETTE D. ROLAND  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 21, 2016, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION**

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KYLE S. HACKETT  
LAW OFFICES OF KYLE S. HACKETT  
2355 WESTWOOD BLVD # 1105  
LOS ANGELES, CA 90064**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**TIMOTHY BYER, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 21, 2016.



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Tammy Cleaver  
Case Administrator  
State Bar Court