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Order (public reprimand) entered by the Board June 19, 2003.

SUMMARY¹

In March 2000, a client retained the respondent to represent him in connection with a dispute regarding the applicability of health insurance coverage for medical services rendered. The client was a Medicare enrollee in a health insurance plan. The health insurer denied coverage on the basis that the client had not obtained a referral for the services from his primary care physician, or if he had obtained a referral, the referral was not in writing as required by Medicare law. The client alleged that he had reasonably relied upon an oral referral.

The client's claim ultimately resulted in a hearing before the Office of Hearings and Appeals of the Social Security Administration. On June 22, 2001, after hearing, the Office ruled that the client's services were not covered services under Medicare law and denied his claim. The Office notified the respondent in writing that the client had sixty days to appeal to the Appeals Council and that an appeal to the Appeals Council is necessary to preserve any right to appeal to the Federal District Court.

The respondent notified the client of the Office's decision and of his right to appeal. He also explained that the appeal would be on the record, and that any credibility findings, including a finding that there was, in fact, no oral referral from his primary care physician, would not be subject to review.

On July 11, 2001, the client requested that the respondent appeal the Office's decision. On July 12, 2001, the respondent informed the client that he would be filing an appeal before the August 22, 2001 sixty-day deadline. However, between July 12, 2001, and August 22, 2001, the respondent made no effort to contact his client and did not file any appeal before the expiration of the appeal period.

The respondent's neglect of the legal matter entrusted to him and his failure to represent his client with reasonable diligence was in violation of Mass. R. Prof. C. 1.3.

In a second matter, the respondent represented three unrelated clients in connection with automobile bodily injury claims. Beginning in March 2000, the three bodily injury claims settled. In each case, with the permission of the client, the respondent withheld sums payable to a certain chiropractor in order pay the chiropractor or negotiate a reduction of the amounts due. At all times the funds withheld by the respondent were held intact in his IOLTA account.

Between March 2000 and August 2002, the respondent neither paid the chiropractor any of the sums that the chiropractor was entitled to receive nor made any effort to reduce the amount due to the chiropractor.

In August 2002, after a complaint had been filed with Bar Counsel, the chiropractor and the

respondent resolved the matter to the satisfaction of the chiropractor.

The respondent's failure to promptly pay, negotiate or otherwise resolve the liens, thereby causing his clients to be subject to potential personal liability, constituted neglect of a legal matter entrusted to him in violation of Mass. R. Prof. C. 1.3. The respondent's failure to notify the chiropractor of receipt of the funds and his failure to pay funds to the chiropractor that the chiropractor was entitled to receive were in violation of Mass. R. Prof. C. 1.15(b).

In addition, from January 1999 to October 2002 the respondent maintained an IOLTA account but generally failed to reconcile his account, failed to promptly withdraw earned fees from the account and did not maintain an acceptable check register or individual client ledgers. The respondent's conduct constituted commingling of earned fees and client funds and inadequate record keeping, in violation of Mass. R. Prof. C. 1.15(a).

Finally, between January 8, 2002, and May 28, 2002, the respondent failed to respond to numerous letters from Bar Counsel requesting information regarding two pending investigations. As a result, on May 28, 2002, the respondent received a subpoena to appear before Bar Counsel, but did not appear as directed or otherwise notify Bar Counsel of his inability to appear. On July 23, 2002, Bar Counsel received notification from an attorney of his appearance on behalf of the respondent. From that time forward, the respondent cooperated with Bar Counsel's investigations. The respondent's failure to cooperate with Bar Counsel was in violation of Mass. R. Prof. C. 8.4(g) and S.J.C. Rule 4:01, § 3.

In aggravation, the respondent has a prior private reprimand for neglect of two cases. In mitigation, in August 2000, the respondent had spinal fusion surgery that involved the implant of two titanium cages between two vertebrae. For over one year before and one year after the operation, the respondent was in substantial pain.

This matter came before the Board on a stipulation of facts and disciplinary violations and a joint recommendation that the appropriate sanction was a public reprimand. The Board of Bar Overseers voted to adopt the parties' stipulation and approved a public reprimand.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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