THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
HEARING COMMITTEE FIVE

In the Matter of:	:	
	:	
BRANDI S. NAVE,	:	
	:	
Respondent.	:	Board Docket No. 12-BD-091
	:	Bar Docket Nos. 2010-D234, *et al.*
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 490964)	:	

REPORT AND RECOMMENDATION OF
HEARING COMMITTEE NUMBER FIVE

I. INTRODUCTION

This matter came on for a hearing before Hearing Committee Number Five (the "Hearing Committee") pursuant to Rule XI of the District of Columbia Court of Appeals. Having heard the testimony of the witnesses at the hearing, reviewed the exhibits admitted into evidence, and considered the briefs and arguments of the parties, the Hearing Committee issues its Findings of Fact, Conclusions of Law, and recommended sanction as set forth below.

II. PROCEDURAL BACKGROUND

A. Specification of Charges

On March 13, 2014, Bar Counsel filed a 38 count superseding Specification of Charges against Respondent Brandi S. Nave, alleging that Respondent violated multiple D.C. Rules of Professional Conduct (including intentional or reckless misappropriation) during her representation of 37 personal injury plaintiffs by settling their claims, but failing to make timely payments to two medical providers -- Dr. Mohammed Yousefi ("Dr. Yousefi") and Medical Support Services, Inc. ("MSS"). In the first 37 counts, Bar Counsel alleged that each of

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

Respondent's clients executed an Assignment and Authorization ("A&A") in favor of Dr. Yousefi and/or MSS, authorizing Respondent to pay outstanding medical bills arising from their personal injuries from any settlement recovery, and that Respondent (or someone on her behalf) also signed each client's A&A, promising to pay the third-party providers from any settlement recovery. Bar Counsel alleges that in each of the 37 cases, Respondent prepared Client Distribution Sheets that included disbursements due to Dr. Yousefi and/or MSS, but then failed to make timely payments to the providers. Bar Counsel also alleges that Dr. Yousefi and MSS contest the validity of many of the alleged medical provider fee reductions included on the Client Distribution Sheets, and claim that they are owed more than the amounts reflected. Bar Counsel charges that Respondent's conduct in each of the 37 client cases violated one or more of the following Rules of Professional Conduct: 1.15(a) (failure to hold third-party providers' funds in a trust account); 1.15(b) (failure to promptly pay third-party providers); 1.15(c) (promptly deliver funds); 1.15(d) (segregate disputed funds and distribute undisputed portion); and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). In Count XXXVIII, Bar Counsel alleges that on various dates Respondent's trust or escrow account balance fell below the amount that was due to, or was disputed by, Dr. Yousefi and/or MSS, in violation of Rule 1.15(a) (intentional or reckless misappropriation).

On March 14, 2014, Bar Counsel served Respondent by delivering a copy of the Petition and Specification of Charges to Respondent's counsel, Daniel Schumack, Esquire, who was authorized to accept service on Respondent's behalf.

B. Respondent's Motion for Deferral

On April 1, 2014, Respondent's counsel filed a motion requesting that these disciplinary proceedings be deferred until related civil litigation with Dr. Yousefi and MSS was resolved and

that Respondent be allowed to defer the filing of her answer until further order, subject to 90-day status reporting.[1] Bar Counsel filed an opposition brief on April 4, 2014, arguing that this matter involves serious charges of misappropriation and that deferral would allow Respondent to continue engaging in similar misconduct while maintaining her personal injury practice. On April 10, 2014, the Ad Hoc Hearing Committee Chair (the "Chair") issued a Report and Recommendation, concluding that Respondent failed to establish that there is a substantial likelihood that the civil actions filed by Dr. Yousefi and MSS would assist in the resolution of the pending disciplinary charges and recommending that Respondent's motion for deferral be denied. On April 18, 2014, the Chair of the Board on Professional Responsibility adopted the April 10, 2014 Ad Hoc Hearing Committee Report and Recommendation, issuing an order denying Respondent's motion for deferral on the grounds that Respondent had not shown that there was a substantial likelihood that resolution of the civil litigation would help resolve the material issues in this disciplinary proceeding.

C. Respondent's Answer

On May 2, 2014, Respondent's counsel filed a motion, on Bar Counsel's consent, requesting that the due date for Respondent's answer be extended until May 21, 2014. On May 6, 2014, the Chair granted Respondent's motion and ordered that Respondent's answer be filed on or before May 21, 2014. Respondent's counsel filed an answer on May 21, 2014, and included additional defenses A through D, as follows: A (Respondent's trust fund would not

[1] This was the second time Respondent sought deferral of disciplinary proceedings. On March 4, 2013, the Board deferred proceedings on the original Specification of Charges because related civil proceedings were pending in an action brought by Dr. Yousefi to collect disputed medical provider fees. Bar Counsel filed a motion to withdraw the prior Specification of Charges on March 1, 2014, and the Chair referred the motion to the Executive Attorney for review by a Contact Member. On April 10, 2014, a Contact Member granted Bar Counsel's motion, considering the motion to withdraw the previously filed Specification of Charges as a motion to dismiss pursuant to Board Rule 7.16(b) in light the filing of the superseding Specification of Charges on March 13, 2014.

have existed, but-for her clients' willingness to accept settlement conditioned upon write-down of the complainant's billing); B (Respondent avers that in instances when a complainant refused to honor its write-down, the entire case specific sum held for the complainant became disputed funds within the meaning of Rule 1.15(f)); C (when certain invoicing by MSS or MSS-related parties was adjusted by treating doctors based upon Respondent's clients' dispute that the charges were inaccurate and/or fraudulent, Respondent reasonably relied on the adjustments when making disbursements); and D (certain MSS receipt payment dates listed in the Specification of Charges are inaccurate, appearing to be the date MSS deposited payment and not the date Respondent tendered payment).

D. Pre-Hearing Conference

A pre-hearing conference was held on July 11, 2014, and the Chair issued an order on that date, requiring that Bar Counsel file an Amended Specification of Charges and that the parties file briefs describing the legal issues related to the Rule 1.15 charges. On July 11, 2014, Bar Counsel filed an Amended Specification of Charges.

E. Pre-Hearing Briefing on Legal Issues Related to Rule 1.15

On July 24, 2014, Bar Counsel filed its pre-hearing brief on the Rule 1.15 issues, arguing that while Comment [6] to Rule 1.15 is written in terms of a dispute between a lawyer and a client, the Rule and the rationale also apply to a dispute between a lawyer and a third-party whose funds the lawyer holds. Bar Counsel argued in its brief that evidence about the merits of the medical providers' charges are irrelevant, since the Specification of Charges only includes those amounts that were not in dispute that Respondent listed on the Disbursement Sheets, thus any testimony or other evidence about disputed portions of the providers' bills should be

excluded unless relevant to prove that Respondent owed none of the amounts listed on her Client Disbursement sheets.

Respondent's counsel filed its Rule 1.15 brief on August 6, 2014, arguing that Bar Counsel was effectively seeking summary judgment on Respondent's defenses asserted in her answer by seeking to bar potential evidence and that Bar Counsel's theory of relevant evidence misstated Respondent's factual defenses and would require the Committee to adopt new law regarding the disbursement of funds under Rule 1.15(d) and in the interpretation of Rule 1.15 cmt. [6]. Respondent's counsel argued that the fraudulent billing defense would be relevant to the veracity of the testimony and exhibits, relevant as a counter to the aggravating factor Bar Counsel hoped to prove, and would be relevant to a determination of whether any restitution is owed to any complainant. Respondent further argued that the Court of Appeals has not held that Respondent has disbursement authority under Rule 1.15(d) when a third-party medical provider agrees to accept a reduced amount in full discharge of claims against a client, but subsequently refuses to accept payment under the accepted terms. Respondent argued that Bar Counsel's citations to other jurisdictions' decisions were inapposite.[2]

Bar Counsel filed a reply to Respondent's brief on August 13, 2014. On the issue of fraudulent billing, Bar Counsel argued that Respondent's counsel proffered no evidence that Respondent learned that the medical provider's bills were fraudulent shortly after she was supposed to disburse the entrusted funds, and that waiting nine to ten days to disburse violates the prompt payment requirements of Rules 1.15(c) and (d). On the issue of rejected write-downs, Bar Counsel argued that Respondent's argument was circular – that she was justified in continuing not to pay the medical providers because the medical providers refused to honor previously granted discounts, where the discounts were discontinued based on Respondent's

[2] *See* Bar Counsel's Pre-Hearing Brief on Rule 1.15 at 4-5.

failure to make the payments in a timely manner. Bar Counsel also argued that the fraudulent billing was irrelevant to the credibility of the MSS witness because Respondent did not challenge the bills until long afterwards, the charges are based on the failure to promptly pay the agreed upon amount and the MSS witness will not be subject to impeachment regarding the amount MSS agreed to pay, Respondent's failure to pay, and any amount Respondent has paid since. Bar Counsel argued that the fraudulent billing was irrelevant to determining restitution because Bar Counsel agrees that Respondent should not be required to make restitution in excess of the amount she agreed to pay on the Client Disbursement sheets, and any evidence of fraud could be argued in the mitigation proceeding. On the issue of Rule 1.15(d) and the interpretation of Comment [6], Bar Counsel argued that although the unfair coercive effect of withholding payments to induce settlement was written in terms of clients, the same logic should be applied to third parties.

F. Pre-Hearing Filings

On August 13, 2014, Bar Counsel filed its witness list, stating its intention to call Dr. Yousefi, Rayna Moise (an employee of MSS), Tiffany T. Quarles (a client alleging that Respondent failed to pay her outstanding MSS bill), and Kevin O'Connell (a forensic investigator with the Office of Bar Counsel). On the same date, Bar Counsel filed an exhibit list, listing Bar Counsel Exhibits A through D and 1 through 41.

On August 15, 2014, Respondent's counsel filed a witness list, stating Respondent's intent to call herself, V'Hesspa Glenn (her employee), Waylin Nave (her bookkeeper), George R. Clark, Esquire (opinion witness on Rule 1.15), Marvin Parker (friend and consultant), Erik Tyrone, Esquire (counsel to two doctors who formerly worked for MSS), Drs. Henry Jenkins and Austin (MSS billing irregularities), seven MSS patients (Anthony Pearcy, Tony Jones, Ishara

Cormack, Leroy Stroy, Dajuan Gant, Tiffany Walker, Shelaya Wright, and Getryce Grasty), Gina Walton (friend and office management consultant), Steven Stine, Esquire (Respondent's counsel of record in the MSS 2014 civil collection case), Patrick Christmas, Esquire (Dr. Yousefi's counsel of record in 2013 civil collection case), and two of Respondent's lawyer friends to serve as character witnesses (Rasheda Sanders and Derrick Thomas, Esquires). Respondent's counsel also reserved the right to call any witness from Bar Counsel's list, call any person for purposes of impeachment or rebuttal, and to supplement the list as permitted by the Board Rules and/or order of the Hearing Committee.

On September 30, 2014, Bar Counsel filed stipulations, in which the parties' agreed on the procedural background regarding the initial Specification of Charges, deferral of the matter because of pending civil litigation, the dates complaints by Yousefi and MSS were filed and forwarded to Respondent, and dates of approval and service of the superseding Specification of Charges.

G. Hearing

The Hearing was held on October 1 and 2, and November 7 and 10, 2014, before Michael J. Zoeller, Esquire, Chair; Darryl Lesesne, Public Member; and John J. Soroka, Esquire, Attorney Member. Assistant Bar Counsel, Hamilton P. Fox, III, was present on behalf of the Office of Bar Counsel. Respondent was present and represented by counsel, Joe R. Caldwell, Jr., Esquire.

III. STANDARD OF REVIEW

Bar Counsel bears the burden of establishing by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. *See In re Anderson*, 778 A.2d 330, 335 (D.C. 2001) ("*Anderson I*"); *see also In re Anderson*, 979 A.2d 1206, 1213 (D.C. 2009)

(applying clear and convincing evidence standard to charge of misappropriation of funds) ("*Anderson II*"); Board Rule 11.6. As the Court has explained, "[t]his more stringent standard expresses a preference for the attorney's interests by allocating more of the risk of error to Bar Counsel, who bears the burden of proof." *In re Allen*, 27 A.3d 1178, 1184 (D.C. 2011) (citation and internal quotations omitted). Clear and convincing evidence is more than a preponderance of the evidence, it is "evidence that will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Cater*, 887 A.2d 1, 24 (D.C. 2005) (citation omitted).

On the basis of the record as a whole, the Hearing Committee makes the following findings of fact and conclusions of law set forth below, which are supported by clear and convincing evidence.

IV. FINDINGS OF FACT

1. Respondent Brandi S. Nave is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by motion on January 10, 2005 and assigned Bar number 490964. BX A; BX B. ¶ 1; BX D. ¶ 1.[3]

A. Respondent's Personal Injury Practice

2. Upon graduation from law school in 2002, Respondent began practicing law as an associate in the law firm of J.E. Wingfield & Associates. 10/2 Tr. 163 (Respondent). The firm

[3] References to Bar Counsel's Exhibits shall be "BX, references to Respondent's exhibits shall be "RX". Respondent used letters (A-I) and numbers to refer to her exhibits. She did not number the pages. Hereinafter, her exhibits are referred to by letter, number, and page number based on counting the pages (*e.g.,*"RX E2, 3" refers to the third page of Respondent's exhibit E2). The transcripts of the four days of hearing are referred to as "Tr." Because only the last three days of hearing transcripts are consecutively numbered, the date appears before the citation (*e.g.*, "10/1 Tr." refers to the first day of the hearing, October 1, 2014). "PFF" refers to Bar Counsel's Proposed Findings of Fact. "COL" refers to Bar Counsel's Conclusions of Law. "Stipulation" refers to the document with that title. There is another document called "Respondent's Stipulations."

had an exclusively personal injury practice. *Id.* In about 2004, Respondent began developing her own practice and served the firm in an 'of counsel' role until opening her own solo practice in 2008. *Id.* at 163-64. A large part of Respondent's practice has always involved representing plaintiffs in personal injury cases. BX B, ¶ 2; BX D, ¶ 2.

3. Respondent's personal injury practice follows a fairly consistent formula:

a. An individual, who already is being seen by a chiropractor or asks to be referred to a chiropractor, seeks representation from Respondent. 10/2 Tr. 165-66 (Respondent).

b. Respondent's client will see the chiropractor and sign an Authorization and Assignment Agreement ("A&A") form prepared by the chiropractor. *Id*. at 168-69. The A&A serves as a lien on the proceeds of any settlement received by the client and the attorney agrees "to withhold such sums from any settlement . . . as may be necessary to adequately protect" the medical provider. BX 1; *Id.* at 169. *See also In re Mitchell*, 822 A.2d 1106, 1107 (D.C. 2003) (A&A authorizes the attorney to pay the medical provider "from any monies received in satisfaction of [the] personal injury claims, and [the attorney] agreed 'to withhold such sums from any settlement, judgment, or verdict as may be necessary to adequately protect'" the medical provider.).

c. While the client is being treated, Respondent or her staff will conduct an investigation into the case and gather evidence to support the client's case. 10/2 Tr. 166 (Respondent).

d. When the chiropractor has finished treating the client, Respondent gathers all of the medical records and medical expenses and puts together a demand package that is sent to the insurance company. 10/2 Tr. 166 (Respondent).

e. The insurance company typically offers to settle the claim in an amount that is sufficient to pay some, but not all, of the chiropractor's bills. 10/2 Tr. 106 (Ford). Some amount of negotiation may occur between Respondent and a representative for the insurance company, but typically does not result in full payment of all medical bills. As a result, it is standard practice between personal injury attorneys and chiropractors that medical bills are reduced to reach a settlement. 10/2 Tr. 200 (Respondent); 10/1 Tr. 52-55 (Yousefi); 11/7 Tr. 283-84 (Moise).

4. Since starting her own practice, Respondent has employed paralegals and others whom she supervised to assist her with her caseload. 10/2 Tr. 164, 166-67 (Respondent). On occasion, Respondent will work with another attorney when needed to handle her caseload, but did not partner with any other lawyer. *Id.* at 164-65.

5. Over the time period at issue in this matter, Respondent referred her personal injury clients to two different chiropractors or chiropractic clinics: Dr. Mohammad Yousefi and Medical Support Services ("MSS"). The 37 clients that make up the Specification of Charges in this matter were all seen by either Dr. Yousefi or a clinic owned by him or by MSS.

B. <u>Respondent's Clients Seen by Dr. Yousefi</u>

6. Dr. Yousefi is a licensed chiropractor who has owned several chiropractic clinics in the Washington, D.C. metropolitan area. 10/1 Tr. 47-50 (Yousefi). He moved to the D.C. area in 1990 and opened an office in Silver Spring, Maryland, which remains his principal office. *Id.* at 48. In addition to the Yousefi Chiropractic Clinic in Silver Spring, he currently owns chiropractic clinics in Arlington, Ashburn and Woodbridge, Virginia, and in Gaithersburg and a separate clinic in Silver Spring, Maryland. *Id.* at 49. He employs 16 or 17 people in these six clinics. *Id.* at 50.

7. Dr. Yousefi previously owned three other chiropractic clinics: Prime Care Health Center in Oxon Hill, Maryland; Riggs Chiropractic in Adelphi, Maryland; and Central Avenue Chiropractic in Capital Heights, Maryland. 10/1 Tr. 49-50 (Yousefi). The record is not clear as to when Dr. Yousefi sold or closed these three clinics, except for the Capital Heights office that he sold some time in 2013. *Id.* at 50.

8. More than half of Dr. Yousefi's patients were clients of lawyers with whom he regularly worked. 10/1 Tr. 51, 137-138 (Yousefi). His practice was to have his patient sign an A&A form that his office had prepared and fax it to the attorney for signature. *Id.* at 51-53. Upon completion of treatment, he would send a "super bill" containing the reports and billing statements to the attorney who represented the patient. *Id.* at 51. The attorney would very often negotiate a reduction in the chiropractic bill and enter into a settlement with the insurance company. *Id.* at 53. Once the reduced amount is paid, the remainder of the bill is written off and the patient is not obligated to pay anything further. *Id.* at 99.

9. Dr. Yousefi began seeing patients who were Respondent's clients when she was with the law office of Mr. Wingfield. 10/1 Tr. 54 (Yousefi); 10/2 Tr. 168 (Respondent). Respondent's clients comprised a significant percentage of Dr. Yousefi's practice; an estimated 200 patients in total. *Id.* at 138, 146.[4] Dr. Yousefi did not recall having any problem getting his bills paid by Respondent until around 2008 or early 2009. *Id.* at 146-147; 10/2 Tr. 178 (Respondent).

10. Respondent stopped referring any clients to Dr. Yousefi by mid-2009 and refused to accept any referrals from Dr. Yousefi. 10/2 Tr. 180.

[4] Respondent estimated that she had 300 or 350 clients who were seen by Dr. Yousefi, some of whom were clients of Mr. Wingfield.

11. Dr. Yousefi estimated that he had some difficulty in getting paid for approximately half of Respondent's clients that he saw. 10/1 Tr. 146 (Yousefi). Dr. Yousefi relied on a friend, Mansour Tajick, to handle his accounting and resolve any disagreements over payment for past services. *Id.* at 94-97.

12. Several efforts were made by both Respondent and Dr. Yousefi, or Mr. Tajick acting on his behalf, to resolve disagreements with payments. 10/1 Tr. 125 (Yousefi); 11/7 Tr. 186-89 (Respondent). Some of these efforts appear to have been successful in resolving some patients' bills, but others remained outstanding. There is a substantial amount of testimony and corroborating evidence that Dr. Yousefi's billing records were incomplete or disorganized. 10/1 Tr. 94 (Yousefi) (making corrections on the stand to his own records); 10/2 Tr. 137-138 (Parker) (Yousefi's bookkeeper has no bookkeeping background).

13. Marvin Parker is a long-time patient of Dr. Yousefi's and a friend of Respondent. 10/2 Tr. 128-129. In May of 2010, Mr. Parker arranged a meeting between Respondent, Dr. Yousefi and Mr. Tajick. *Id.* at 131-133. The meeting was unsuccessful, with Mr. Tajick calling Respondent names and refusing to engage in any substantive discussion of specific accounts. *Id.* at 134-140.

14. In May 2010, Dr. Yousefi filed a complaint with Bar Counsel. In 2013, Dr. Yousefi filed an action in Superior Court to recover payments from Respondent. *See* RX C-3, 14.

15. On March 11, 2013, counsel for Respondent sent a letter to counsel for Dr. Yousefi attempting to negotiate a resolution of ten patient accounts that were believed to be "undisputed." RX C-3, 7.[5] The letter attaches a blank "Form of Disbursement Authorization"

[5] These ten accounts are the first ten counts of the Specification of Charges.

that leaves blank the patient, the settlement amount and the party to whom the settlement should be paid. Dr. Yousefi completed and signed these forms for the ten cases below in April 2014. RX C-3, 13; 10/2 Tr. 211 (Respondent).

Marjorie Barnes (COUNT I)

16. Marjorie Barnes was Dr. Yousefi's patient and Respondent's client. 10/1 Tr. 56 (Yousefi). On October 6, 2006, Ms. Barnes was involved in an accident.[6] BX 1; RX E1, 3. On October 16, 2006, both Respondent and Ms. Barnes signed and dated a one-page form titled "Assignment and Authorization (Doctor's Lien)." BX 1; RX E1, 1. Immediately below this title is the name "Prime Care Health Center" along with its address in Oxon Hill, Maryland, and its telephone and facsimile numbers. *Id.*

17. The A&A signed by Ms. Barnes and Respondent lists "Nave & Associates" as the Attorney. BX 1; RX E1, 1. Ms. Barnes signed that portion of the A&A that gave "a lien in my case to said doctor against any and all proceeds of any settlement . . . which may be paid to you, my attorney, or me as the result of the injuries for which I have been treated or injured to in connection thereof. Respondent or one of her staff signed the portion of the A&A that agreed "to observe all the terms of the above and agrees to withhold such sums from any settlement . . . as may be necessary to adequately protect said doctor named above. *Id.*

18. The total charges from Dr. Yousefi's office in Oxon Hill amounted to $5,633. BX 1a. Ms. Barnes had $2,500 in Personal Injury Protection ("PIP") that was paid directly to Dr. Yousefi at some point prior to the settlement with the insurance company.[7] 10/2 Hrng Tr.

---

[6] The A&A and Respondent's Request for Medical Reduction both list the date of loss as October 6, 2006, while Respondent's disbursement sheet lists the date of loss as October 10, 2006.

[7] PIP benefits are paid by the injured party's carrier to compensate for out-of-pocket expenses, including medical expenses. 10/2 Tr. 174 (Respondent); 10/1 Tr. 58 (Yousefi).

200. As a result, Dr. Yousefi was owed $3,133 at the time Respondent settled Ms. Barnes' claim.

19. On or about July 16, 2007, one of Respondent's staff faxed a one page document to Dr. Yousefi titled "Request for Medical Reduction." RX E1, 3. The request is for "Marjorie Barnes (Oxon Hill)" listing the current balance as $5,633.00 and the requested balance of $3,565.31 – a reduction of $1,976.69 or about 35% of the total.. Dr. Yousefi signed his approval for this reduction. Including the amount Dr. Yousefi received in the PIP payment, he was owed $1,156.31 from Ms. Barnes' settlement. 10/1 Tr. 55-67, 79-83 (Yousefi); RX, E1, 3.

20. On or about August 1, 2007, Ms. Barnes signed a Client Disbursement sheet prepared by Respondent or her staff.[8] BX 1a; RX E1, 2; Tr. 564-64 (Respondent). The sheet identifies a settlement of Ms. Barnes' bodily injury claim in the amount of $8,200. *Id.* In table format, the sheet then deducts $2,733.33 for "Attorney's Lien," two "Administrative Fees" totaling $225 and an "Advance" of $100.

21. The sheet lists a PIP payment of $2,500 "paid directly via pip Oxon Hill." The sheet also contains the following item:

Pre Paid Expenses:	$5,633.00
Dr. Yousefi (Oxon Hill)	$1,156.31 (balance per reduction Oxon Hill)

22. After deducting the amounts for the Attorney's Lien, the fees and advance, and $1,156.31 for Dr. Yousefi, the amount remaining from the $8,200 settlement was $3,985.36. This amount is listed on the sheet as the "Net Disbursement to client."

---

[8] This sheet, and every similar one at issue in the first ten Counts, is untitled. Bar Counsel and Respondent refer to such documents as "Client Disbursement sheets" or "disbursement sheets" respectively. The name is irrelevant other than to specify the document to which we refer. We will use the term "Client Disbursement Sheet" for the documents in these ten Counts to be consistent with how similar documents are captioned in the latter 27 Counts. In doing so, the Committee does not accept either parties' meaning behind this nomenclature.

23. The Client Disbursement sheet includes Ms. Barnes' signed approval of "the foregoing settlement and disbursements . . . in full and final settlement of my case resulting from damages sustained on or about October 10, 2006."

24. The Client Disbursement sheet concludes with the following statement: "I, Marjorie Barnes agree to save and hold harmless the law offices of **Nave & Associates** from any medical hospital, or other liens, known or unknown including subrogation by a private health insurance carrier unless we have been authorized to negotiate the same.

25. Respondent has never paid Dr. Yousefi any money for Ms. Barnes' bill for her treatment at Prime Care Health Center. 10/1Tr. 63-5 (Yousefi); BX 39, 1; 10/1 Tr. 155-58 (O'Connell).

26. Like all of the amounts outstanding, Respondent refuses to acknowledge that she owes Dr. Yousefi at least $1,156.31 for services rendered to Ms. Barnes. She refuses to pay Dr. Yousefi at least this amount because he continues to claim that he is owed $3,656.31 and has refused to sign a release indicating that he is only owed the lesser amount. 11/7 Tr. 630.

D. F. (COUNT II)

27. D.F., a minor child, was Dr. Yousefi's patient and Respondent's client. On September 21, 2006, D.F. was involved in an accident. BX2; RX E2, 2. On September 29, 2006, D.F.'s mother executed an A & A in favor of Prime Care Health Clinic of Oxon Hill in a form identical to the one signed by Ms. Barnes. BX2; BX2e. On October 16, 2006, Respondent's staff signed the A & A on her behalf. *Id*. Tr. 547-48 (Respondent).

28. Also on September 29, 2006, D.F.'s mother signed on behalf of D.F. an "Assignment of Benefits & Right to Sue for PIP/Med Pay." BX2c; RX E2, 1. Directly below the title is the name "Prime Care Health Center" with its Oxon Hill address, and telephone and

facsimile numbers. *Id.* This document authorized any insurance carrier to pay PIP benefits directly to Prime Care Health Center. The document is not signed by Respondent.

29. On October 29, 2007, someone from Respondent's office wrote D.F. to inform her that the office had received the final PIP draft and enclosed a form authorizing Respondent to endorse the settlement check and to pay the proceeds to medical providers. BX 2a.

30. The total balance of Dr. Yousefi's charges to Ms. Forman was $3,625. BX2b; RX E2, 3. On October 29, 2007, Respondent represented that a $2,500 PIP payment was "in process" and requested Dr. Yousefi to reduce the rest of the bill to zero. *Id.* Dr. Yousefi signed his approval on November 2, 2007. *Id.*

31. Also on October 29, 2007, Respondent prepared a Client Disbursement sheet for D.F.'s injury of September 21, 2006. BX2d; RX E2, 2. This sheet identifies a settlement of $4,000 with deductions for Respondent's fee ($1,333.33), a PIP administrative fee ($200), and medical expenses to other providers ($602.01), resulting in a disbursement to D.F. of $1,864.66. *Id.* The Client Disbursement sheet identifies Prime Care Chiropractic's balance as: "$1,125 (zero balance)." *Id.*

32. On October 30, 2007, D.F., through her agent, authorized Respondent to endorse and deposit a PIP check in the amount of $2,500 in order to pay her medical providers. BX 2e.

33. Despite having received the authority to do so, Respondent did not deposit the 2007 PIP check in her escrow account and did not pay Dr. Yousefi at that time. Respondent testified that her office received "confirmation from Prime Care that they had also received a check." Tr. 589 (Respondent). Respondent has no documentation that Prime Care received this check. *Id.*at 590.

34. Respondent testified that in 2010, Dr. Yousefi claimed that he had not received the PIP payment for D.F. 11/7 Tr. 590 (Respondent). Respondent stated that her office contacted the insurance company that indicated no PIP check for D.F.'s injury had been cashed. *Id.* On January 15, 2010, Respondent's office returned the PIP check to the insurance company and asked it to issue a new one. BX 2f. On April 20, 2010, the insurance company issued a new PIP check in the amount of $2,500. BX 2g.

35. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $2,500 in full settlement of the amount of D.F.'s bill. RX E2, 4. Dr. Yousefi signed, but did not date this document. *Id.* On April 11, 2014, Respondent paid Dr. Yousefi $2,500 for the PIP payment of D.F.. RX E2, 5; 10/1 Tr. 65-67 (Yousefi); 11/7 Tr. 594 (Respondent).

Markitta Robinson (COUNT III)

36. Markitta Robinson was Dr. Yousefi's patient and Respondent's client. On September 14, 2007, Ms. Robinson was involved in an accent. BX 3; RX E3, 1. On October 29, 2007, Ms. Robinson executed an A & A in favor of Dr. Yousefi, which Respondent signed the next day. *Id.*

37. The A&A signed by Ms. Robinson is different than the one signed by Ms. Barnes and D.F. BX 3; RX E3, 1. In the upper right corner of the page is handwritten "Central Avenue Chiro" and below the title of the document is a line that reads "FROM: YOUSEFI CLINICS." *Id.* The portion signed by Ms. Robinson, like the previous A&As, authorize the clinic to send reports directly to the attorney and authorizes the attorney to pay the clinic directly, but does not absolve the patient of the responsibility of paying "all medical bills." *Id.* This A&A directs payment to "Yousefi Clinics" at an address in Bladensburg, Maryland. *Id.* The portion signed

by Respondent is identical to the previous A&As. *Id.*

38. In a "Request for Medical Reduction" on Respondent's office stationery, dated January 15, 2009, a member of Respondent's staff requested that Dr. Yousefi reduce his bill for Ms. Robinson from $5,395 to $3,616 – a reduction of $1,779. RX E3, 3. The document also states that "Pip Paid" $1,116. *Id.* The reduction was approved by Dr. Wilson, one of the chiropractors in Dr. Yousefi's clinics. 10/1 Tr. 59.

39. On January 16, 2009, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Robinson's bodily injury as $17,500. BX 3a; RX E3, 2. This amount was reduced by $5,833.33 for Respondent's fee, and another $225 for administrative fees. *Id.* The sheet identifies a PIP payment of $2,500 that was "paid directly via office" to the DC Fire and EMS Department, in the amount of $268 and to Riggs Chiropractic Clinic and Providence Hospital in equal amounts of $1,116 each. *Id.*

40. The Client Disbursement sheet lists payment of $1,002.25 for hospital costs and medical records and $2,500 "per reduction" for payment of Riggs Chiropractic Clinic. *Id.* The sheet identifies the total charges of Riggs Chiropractic Clinic as $5,395, with a balance of $4,279 after the PIP payment of $1,116. *Id.* The reduction for Riggs Chiropractic Clinic from $4,279 to $2,500 is a reduction of $1,779 – the same amount as the reduction listed on the Request for Medical Reduction dated the same day. On January 26, 2009, Ms. Robinson signed this Client Disbursement sheet, accepting a net disbursement of $7,939.42. *Id.*

41. Respondent refused to acknowledge that she owes Dr. Yousefi at least $2,500. The following colloquy with Bar Counsel demonstrates the duplicitous characterization of her responsibility to Dr. Yousefi:

> Q. But because Dr. Yousefi was confused about whether he had gotten the [PIP payment], you didn't pay him the twenty-five hundred?

A. No, sir, because the entire amount was in dispute.
Q. Well, you did not dispute that you owed him at least twenty-five hundred, did you?
A. No, we did not dispute that we owed him twenty-five hundred. We disputed the entire amount.
Q. Okay, but you did not pay him the undisputed amount?
A. The entire amount was disputed.
Q. Correct. But a portion of that was not disputed?
A. It was – yeah, the entire amount was disputed. Because Dr. Yousefi disputed that we owed him twenty-five hundred. We disputed that we owed him thirty-five hundred. So it was a dispute. There was no amount that was not in dispute.
Q. So your understanding of your obligation under Rule 1.15 is if the health care provider says, "You owe me more than you say you owe me," that you are not required to pay him the amount that you agreed that you owe him?
A. That I agree?
Q. Yes.
A. The amount that our position is what we owe him?
Q. The amount that is on the settlement sheet.
Q. So if it's my position that we only owe him twenty-five hundred dollars, then, it's my understanding that it's in dispute and therefore, yeah, payment cannot be made, because it's in dispute.
Q. The whole amount, none of it can be made?
A. Yes, because it's in dispute.

11/7 Tr. 603-606 (Respondent).

42. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $2,500 in full settlement of the amount of Ms. Robinson's bill. RX E3, 4. Dr. Yousefi signed, but did not date this document. Id. On April 11, 2014, Respondent paid Dr. Yousefi $2,500. RX E3, 5; 10/1 Tr. 67 (Yousefi); 10/2 Tr. 211 (Respondent); 11/7 Tr. 618 (Respondent).

Charlene Pitts (COUNT IV)

43. Charlene Pitts, aka Charlene Holly-Pitts, was Dr. Yousefi's patient and Respondent's client. Ms. Pitts suffered an injury on September 6, 2009. BX 4; RX E4, 1. On September 11, 2009, Ms. Pitts signed an A&A in favor of "YOUSEFI CHIROPRACTIC CLINIC." The A&A has the same form and purpose as the A&As described above, except for the subject clinic being at a location in Silver Spring, Maryland. *Id*. Respondent signed the

document but did not date her signature. *Id.*

44. In a "Request for Medical Reduction" on Respondent's office stationery, dated February 8, 2010, a member of Respondent's staff requested that Dr. Yousefi reduce his bill for Ms. Pitts from $5,395 to $2,100 – a reduction of $3,295. RX E4, 3. The request states that the reason for the reduction is "Treatment not consistent with injuries or impact." *Id.* The reduction was approved by Dr. Yousefi. *Id.;* 10/1 Tr. 59.

45. On December 28, 2010, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Pitts' bodily injury as $4,890.67. BX 4a; RX E4, 2. This amount was reduced by $1,630.22 for Respondent's fee, $62.32 for medical records and patient billings, and $2,100 for Yousefi Chiropractic Clinic, reduced from the original balance of $5,395. *Id.*

46. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $2,100 in full settlement of the amount of Ms. Pitts' bill. RX E4, 4. Dr. Yousefi signed, but did not date this document. *Id.* On April 11, 2014, Respondent paid Dr. Yousefi $2,100. RX E4, 5; 10/1 Tr. 67 (Yousefi); 10/2 Tr. 213-15 (Respondent); 11/7 Tr. 611 (Respondent).

Bryant Jones (COUNT V)

47. Bryant Jones was Dr. Yousefi's patient and Respondent's client. Mr. Jones suffered an injury on December 1, 2007. BX 5, 5c; RX E5, 1 & 2. On December 7, 2007, Mr. Jones executed an A&A in favor of Yousefi Clinics on a form identical to the one used by Ms. Robinson above.[9] *Id.* On April 4, 2008, an agent signed Respondent's name to the

[9] The date of the accident and the date of the patient's signature are both listed as "2004," but Respondent's signature and the subsequent A&A support a finding that the accident and the A&A occurred in 2007.

document. *Id*. On March 4, 2008, Mr. Jones executed another A&A in favor of Prime Care Health Center on a similar form except for the name and address of Prime Care Health Center. *Id.* On March 18, 2008, an agent signed Respondent's name to the document. *Id*.

48. In a "Request for Medical Reduction" on Respondent's office stationery, dated February 24, 2010, a member of Respondent's staff requested that Yousefi Chiropractic Clinic reduce Mr. Jones' bill in half from $2,755 to $1,377.50. RX E5, 5. The reduction was approved by Dr. Yousefi. *Id.* 10/1 Tr. 60 (Yousefi).

49. In a "Request for Medical Reduction" on Respondent's office stationery, dated on the same day (February 24, 2010), a member of Respondent's staff requested that Prime Care Chiropractic Health Center reduce Mr. Jones' bill in half from $2,300 to $1,150. BX 5e; RX E5, 6. The reduction was approved by Patrick Johnson, the office manager of the Prime Care facility in Oxon Hill. *Id.* 10/1 Tr. 141 (Yousefi).

50. On September 8, 2010, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Mr. Jones' bodily injury as $10,000. BX 5d; RX E5, 4. This amount was reduced by $3,333.33 for Respondent's fee, another $100 for an administrative fee and $132.80 for an emergency physician and medical records. The Client Disbursement sheet lists the original amounts for the Yousefi and Prime Care clinics as they are on the Requests for Medical Reductions -- $2,755 and $2,300 respectively. *Id.* But instead of a reduction of half of those amounts, the Client Disbursement sheet shows a reduction of only one-third with resulting remaining balances of $1,836.67 and $1,533.34 respectively. On September 8, 2010, Mr. Jones signed the Client Disbursement sheet prepared by Respondent, accepting a total disbursement of $3,063.83. BX 5d; RX E5, 4.

51. In March 2013, counsel for Respondent prepared a "Form of Disbursement

Authorization" asking Dr. Yousefi to accept $1,377.50 and $1,150 in full settlement of the amounts of Mr. Jones' bills from the Yousefi Clinic and Prime Care, respectively. RX E5, 7 & 8. Dr. Yousefi signed, but did not date these documents. *Id.* On April 11, 2014, Respondent paid two checks to Yousefi Chiropractic Clinic in these amounts. RX E5, 9&10; 10/1 Tr. 68-69 (Yousefi); 11/7 Tr. 619 (Respondent).

Barbara Way (COUNT VI)

52. Barbara Way was Dr. Yousefi's patient and Respondent's client. Ms. Way suffered an injury on November 14, 2008. BX 6; RX E6, 1. On December 16, 2008, Ms. Way executed an A&A in favor of Prime Care Health Center on a form identical to the one used by Mr. Jones' Prime Care A&A. *Id.* On December 17, 2008, an agent signed Respondent's name to the document. *Id.*

53. In a "Request for Medical Reduction" on Respondent's office stationery, dated May 7, 2010, a member of Respondent's staff requested that Prime Care reduce Ms. Way's bill from $4,360 to $2,700 – a reduction of $1,660. RX E6, 3. The reduction was approved by the Prime Care office manager. *Id.* 10/1 Tr. 60-61 (Yousefi).

54. On June 9, 2010, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Way's bodily injury as $9,500. BX 6a; RX E6, 2. This amount was reduced by $3,166.66 for Respondent's fee, another $100 for an administrative fee and $268 for Kaiser Permanente and medical records. The Client Disbursement sheet lists the original amount and the reduced amount for the Prime Care clinic as listed on the Request for Medical Reduction. *Id.* On June 15, 2010, Ms. Way signed the Client Disbursement sheet prepared by Respondent, accepting a total disbursement of $3,265.34. *Id.*

55. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $2,700 in full settlement of the amount of Ms. Way's bill from Prime Care. RX E6, 4. Dr. Yousefi signed, but did not date this document. *Id.* On April 11, 2014, Respondent paid this amount to Yousefi Chiropractic Clinic. RX E6, 5; 10/1 Tr. 70 (Yousefi); 11/7 Tr. 619 (Respondent).

Minnie Ward-Haston (COUNT VII)

56. Minnie Ward-Haston was Dr. Yousefi's patient and Respondent's client. Ms. Ward-Haston suffered an injury on December 17, 2009. BX 7; RX E7, 1. On January 8, 2010, Ms. Ward-Haston executed an A&A in favor of Yousefi Chiropractic Clinic in Silver Spring on a form identical to the one used by Ms. Pitts. *Id.* On January 20, 2010, Quinton Randolph signed the A & A on behalf of Respondent. *Id.* Mr. Randolph was a paralegal employed by Respondent. 11/7 Tr. 487 (Respondent).

57. In a "Request for Medical Reduction" on Respondent's office stationery, dated May 19, 2010, Mr. Randolph requested that the Yousefi Chiropractic Clinic reduce Ms. Ward-Haston's bill from $5,230 to $3,000 – a reduction of $2,230. RX E7, 2. The reduction was approved by Dr. Yousefi. *Id.* 10/1 Tr. 61 (Yousefi).

58. On July 25, 2010, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Ward-Haston's bodily injury as $12,000. BX 7a; RX E7, 3. This amount was reduced by $3,750 for Respondent's fee, another $100 for an administrative fee, a lien of $1,500, and $58.22 for medical records. The Client Disbursement sheet lists the original amount and the reduced amount for the Yousefi Chiropractic Clinic as listed on the Request for Medical Reduction. *Id.* Ms. Ward-Haston signed the Client Disbursement sheet prepared by Respondent, accepting a total disbursement of $3,591.78. *Id.*

59. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $3,000 in full settlement of the amount of Ms. Ward-Haston's bill from Yousefi Chiropractic Clinic. RX E7, 4. Dr. Yousefi signed, but did not date this document. *Id.* On April 11, 2014, Respondent paid this amount to Yousefi Chiropractic Clinic. RX E7, 5; 10/1 Tr. 71 (Yousefi); 11/7 Tr. 620 (Respondent).

Sherlita Boyd (COUNT VIII)

60. Sherlita Boyd was Dr. Yousefi's patient and Respondent's client. Ms. Boyd suffered an injury on April 4, 2010. BX 8; RX E8, 1. On April 7, 2010, Ms. Boyd executed an A&A in favor of Yousefi Chiropractic Clinic in Silver Spring on a form identical to the one used by Ms. Pitts. *Id.* On April 15, 2010, Respondent signed the A & A. *Id.*

61. On August 10, 2010, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Boyd's bodily injury as $8,000.[10] BX 8a; RX E8, 2. This amount was reduced by $2,666.67 for Respondent's fee, another $100 for an administrative fee, and $66 for medical records. The Client Disbursement sheet lists an original balance from Yousefi Chiropractic Clinic of $5,020 and a "Balance per reduction" of $2,566.67.[11] *Id.* Ms. Ward-Haston signed the Client Disbursement sheet prepared by Respondent, accepting a total disbursement of $3,591.78. *Id.*

62. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $2,566.67 in full settlement of the amount of Ms. Boyd's bill from Yousefi Chiropractic Clinic. RX E8, 3. Dr. Yousefi signed, but did not

[10] The Client Disbursement sheet is dated August 10, 2009, but considering that the date of injury is April 3, 2010, Respondent acknowledged that the sheet should be dated in 2010. 10/2 Tr. 223.

[11] The parties did not submit any evidence of a formal request for reduction, as with the prior matters.

date this document. *Id.* On April 11, 2014, Respondent paid this amount to Yousefi Chiropractic Clinic. RX E8, 4; 10/1 Tr. 71 (Yousefi); 11/7 Tr. 620 (Respondent).

Kendra Whitaker (COUNT IX)

63. Kendra Whitaker was Dr. Yousefi's patient and Respondent's client. Ms. Whitaker suffered an injury on March 4, 2010. BX 9; RX E9, 1. On March 9, 2010, Ms. Whitaker executed an A&A in favor of Yousefi Chiropractic Clinic in Silver Spring on a form identical to the one used by Ms. Pitts. *Id.* On March 15, 2010, Respondent signed the A&A. *Id.*

64. On August 16, 2010, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Whitaker's bodily injury as $7,100. BX 9a; RX E9, 2. This amount was reduced by $2,366.66 for Respondent's fee, another $250 for administrative fees, and $35 for medical records. The settlement amount was further reduced by $1,240.70 for the Yousefi Chiropractic Center, leaving a total disbursement of $3,207.64 to the client. *Id.* Ms. Whitaker signed the Client Disbursement sheet prepared by Respondent, accepting a total disbursement of $3,207.64. *Id.*

65. The parties did not submit any evidence of a formal request for reduction, as with most of the prior matters. The Client Disbursement sheet lists the original balance from the Yousefi Chiropractic Center as $5,255. BX 9a; RX E9, 2. This amount is reduced by a PIP payment of $2,130.30 with a remaining balance of $3,124.70. *Id.* The Client Disbursement sheet then lists a balance for Yousefi Chiropractic Center of $1,240.70 – a reduction of $1,884.[12]

66. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $3,371 in full settlement of the amount of

[12] Confusingly, this final balance is described as the "Balance per $1,500.00 reduction."

Ms. Whitaker's bill from Yousefi Chiropractic Clinic. RX E9, 3. This amount includes both the PIP payment of $2,130.30 and the reduced fee of $1,240.70. *Id.* Dr. Yousefi signed, but did not date this document. *Id.* On April 11, 2014, Respondent paid this amount to Yousefi Chiropractic Clinic. RX E9, 4; 10/1 Tr. 72 (Yousefi); 11/7 Tr. 621 (Respondent).

Claudia Ortiz (COUNT X)

67. Claudia Ortiz was Dr. Yousefi's patient and Respondent's client. Ms. Ortiz suffered an injury on November 19, 2007. BX 10; RX E10, 1. On December 5, 2007, Ms. Ortiz executed an A&A in favor of Yousefi Clinics on a form identical to the one used by Ms. Robinson. *Id.* On April 4, 2008, an agent for Respondent signed the A&A on her behalf. *Id*.

68. In a "Request for Medical Reduction" on Respondent's office stationery, dated March 11, 2009, a member of Respondent's office requested that the Yousefi Chiropractic Clinic reduce Ms. Ortiz's bill from $2,523 to $1,523 after a PIP payment of $2,007 – a reduction of $1,000. RX E10, 3. The reason for the reduction is listed only as "Equitable distribution." *Id.* The reduction was approved by Dr. Yousefi. *Id.* 10/1 Tr. 61-62 (Yousefi).

69. On October 25, 2010, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Ortiz's bodily injury as $11,000. BX 10h; RX E10, 2. This amount was reduced by $3,666.66 for Respondent's fee, another $400 for administrative fees, and $727.31 for radiology, an ER physician and medical records. *Id.* The Client Disbursement sheet lists the original amount and the reduced amount for the Yousefi Chiropractic Clinic as listed on the Request for Medical Reduction. *Id.* Ms. Whitaker signed the Client Disbursement sheet prepared by Respondent, accepting a total disbursement of $4,683.03. *Id.* The Client Disbursement sheet also lists a PIP payment of $2,500, of which $2,007.69 was

paid to Yousefi Chiropractic Clinic and the remainder ($492.31) to Ms. Ortiz.

70. On December 5, 2007, Ms. Ortiz executed a separate assignment of any PIP payment to Dr. Yousefi. BX 10a.

71. On July 11, 2008, Allstate Insurance Company forwarded two PIP payments to Respondent in the amounts of $512.69 and $1,495 to pay Ms. Ortiz's medical bills. BX 10b; BX 10c. Neither draft was negotiated. Respondent requested that Allstate re-issue them, which it did on August 17, 2009. BX 10d; BX 10e. The 2009 drafts were also not negotiated. On June 15, 2010, Allstate issued two new PIP payments. BX 10f; BX 10g.

72. In March 2013, counsel for Respondent prepared a "Form of Disbursement Authorization" asking Dr. Yousefi to accept $1,523 in full settlement of the amount of Ms. Ortiz's bill from Yousefi Chiropractic Clinic. RX E10, 4. Dr. Yousefi signed, but did not date this document. *Id.* On April 11, 2014, Respondent paid this amount to Yousefi Chiropractic Clinic. RX E10, 5; 10/1 Tr. 74 (Yousefi); 11/7 Tr. 621 (Respondent).

C. <u>Respondent's Clients Seen by Medical Support Services</u>

73. Medical Support Services, Inc. (MSS) provides chiropractic services to patients referred to it by lawyers. Rayna Moise is the Director of MSS. She has no ownership interest in the company, nor does she receive remuneration based upon revenue or income. 11/7 Tr. 280 (Moise).

74. Henry Jenkins, Jr. and Lorenzo Austin are chiropractors. They provided services to MSS patients. Dr. Jenkins's relationship with MSS ended in September, and Dr. Austin's in October 2012. 10/2 Tr. 20-21 (Jenkins); 11/7 Tr. 397 (Moise). MSS paid both doctors fixed salaries; their compensation was not tied to billing or collections. 11/7 Tr. 300 (Moise).

75. Neither Dr. Jenkins nor Dr. Austin prepared patients' bills. When they examined patients, they circled the treatment provided on a form. This form was forwarded to a clerical employee who prepared the bill based on what was shown. 11/7 Tr. 281-83 (Moise).

76. Ms. Moise had no role in preparing the bills and did not review them. She did, however, approve reductions in medical bills. 11/7 Tr. 283-84 (Moise).

77. MSS began to do business with Respondent in 2007 or 2008. Respondent's payment of MSS's bills began to slow in 2009 or 2010. 11/7 Tr. 295 (Moise).

78. In August 2012, MSS complained to Bar Counsel, and the complaint was sent to Respondent on August 30, 2012. Stipulation 3.

79. In October 2012, Respondent told Dr. Jenkins and Dr. Austin that some of MSS's bills to her clients included charges for services that were never performed. 10/2 Tr. 23-26, 35 (Jenkins). She suggested that, as a result, their professional licenses were at risk. *Id.* at 61-62; 11/7 Tr. 355-56 (Moise).

80. Dr. Jenkins and Dr. Austin contacted Ms. Moise. She told them that she was unaware of any problem with the bills and that she saw no risk to their licenses, since it was MSS, and not the individual doctors, who prepared bills. 10/2 Tr. 29-30 (Jenkins). She further told them that they had no authority to compromise MSS's bills. 11/7 Tr. 300-301 (Moise).

81. Ms. Moise asked Respondent on several occasions to provide specific information about the billing inaccuracies. RX D5, 6-7, 9-10. Respondent never provided the information. 11/7 Tr. 304-311, 398-99 (Moise).

82. Respondent did not offer any exhibits to corroborate her claim that she had informed Ms. Moise of specific inaccuracies in MSS's bills. The first document in Respondent's exhibits that relates to alleged billing irregularities was an unsigned October 8, 2012 affidavit,

which was written after MSS had complained to Bar Counsel. 11/10 Tr. 684-85 (Respondent); Stipulation 3. The first reference in MSS's records to a claim of billing inaccuracies were made on October 18, 2012, in an email from Respondent. 11/7 Tr. 297 (Moise); 11/10 Tr. 689 (Respondent).

83. Respondent also informed Ms. Moise that certain MSS bills were being audited or investigated by special units of insurance companies. Ms. Moise never saw any evidence that this was so. 11/7 Tr. 292-93, 304, 306, 377-78, 401 (Moise).

84. Dr. Jenkins and Dr. Austin, concerned because Respondent was threatening their licenses, retained Eric Tyrone, a Maryland lawyer. 10/2 Tr. 27 (Jenkins).

85. Mr. Tyrone met with Respondent and agreed to reduce a number of MSS's bills. 10/2 Tr. 27-28, 30-32 (Jenkins).

86. This process of reducing MSS's bills began in late November 2012. 10/2 Tr. 35 (Jenkins). Mr. Tyrone did not review all the bills with his clients, and in some instances made the determination to reduce them without consulting them. 10/2 Tr. 36-37, 41 (Jenkins). In some instances, Mr. Tyrone agreed to reduce MSS's bills after settlements had occurred to reflect the previously-reduced amounts shown on the Client Disbursement sheets. 10/2 Tr. 45-48 (Jenkins), 694-701; *compare* BX 12a, RX E12, 2, RX E12, 6 (Quarles); BX 16a, RX E16, 2, RX E16, 4 (Ramsey); BX 18a, RX E18, 3, RX E18, 2 (Proctor); BX 19a, BX 19b; RX E19, 3 (Wooten); BX 20a, BX 20b; RX E20, 4 (Allen); BX 23a, BX 23b; RX E23, 6 (Gant).

87. Dr. Jenkins and Dr. Austin did not inform Ms. Moise, and she did not learn until May 2013, that their lawyer was reducing MSS's bills. 10/2 Tr. 37-8 (Jenkins); RX D3; 11/7 Tr. 301-302 (Moise).

88. In the latter part of 2011, Respondent instructed her staff not to refer any new clients to MSS. 11/7 Tr. 486-87 (Respondent). One of Respondent's staff, Mr. Randolph, continued to refer clients to MSS. When Respondent discovered that Mr. Randolph was continuing to refer clients to MSS and purporting to negotiate agreements to reduce charges, Respondent fired him in mid-August, 2012. *Id.* at 487-88.

89. Respondent was out of town between February and April 2012 caring for her grandmother in East St. Louis, Illinois. 10/2 Tr. 175-176 (Respondent).

90. Respondent testified that when she returned to her office in the Spring of 2012, following the death of her grandmother, "I saw lots of letters from the different insurance companies either asking for recorded statements in regards to treatment or letting us know that the cases were sent to Special Investigative Units . . . ." All of these notifications, she said, related to MSS. 11/7 Tr. 486 (Respondent). Respondent did not produce any documents to support this claim or other standard correspondence from insurance company claims offices that expressly challenged MSS's bills. *See, e.g.*, BX D6, 7, & 8. Although Bar Counsel subpoenaed her files for all clients named in the Specification of Charges (11/10 Tr. 571-72 (Respondent)), the files that she produced contained no evidence that insurance companies were auditing MSS's bills or that special investigative units were investigating MSS. 11/10 Tr. 766-67 (O'Connell).

91. Around April or May of 2012, Respondent approached a long-time friend, Derek Ford, to help her conduct an audit of the invoices from the medical providers and "establish what was true, what was outstanding amounts" using his accounting background. 10/2 Tr. 73 (Ford). Mr. Ford has an accounting degree and experience at a public accounting firm and as an auditor, but is not a certified public accountant. *Id*. at 72, 104, 107 (Ford).

92. Mr. Ford reviewed hundreds of Respondent's case files, but did not conduct an audit of outstanding account balances and did not look at actual cash disbursements. 10/2 Tr. 87, 107 (Ford). Mr. Ford did not prepare a formal accounting statement or audit report submitted to the Committee.

93. Respondent also asked another friend, Gina Walton, to help Mr. Ford review her case files. 10/2 Tr. 115-16 (Walton).

Renotada Bailey (COUNT XI)

94. Bar Counsel has not pursued the Renotada Baily charges. 11/10 Tr. 725.

Tiffany Quarles (COUNT XII)

95. Tiffany Quarles was MSS's patient and Respondent's client. On September 15, 2011, Ms. Quarles was involved in an accident. BX 12; RX E12, 1. On September 29, 2011, Ms. Quarles and a witness signed and dated a one-page form titled "Authorization and Assignment." *Id*. Respondent signed this form five days later. *Id.*

96. The A&A signed by Ms. Quarles authorizes MSS, Inder Chawla, M.D. and Gamma Technologies, Inc. to furnish her attorney, "Quinton Randolph" with all medical information, bills and records related to her injuries. BX 12; RX E12, 1. Mr. Randolph was a paralegal in Respondent's office at this time. 10/2 Tr. 93 (Respondent). The A&A "irrevocably assign[s]" to MSS, Dr. Chawla and Gamma Technologies and directs "said attorneys" to pay from the proceeds of any recoveries "all doctor fees and diagnostic and physical therapy charges for services and products provided at MSS . . .. These sums are to be paid at the time the compensatory monies are received." BX 12; RX E12, 1. The A&A also notes that the patient remains personally liable for payment of the total bill "if favorable legal settlement does not occur." *Id.* Respondent or one of her staff signed the bottom portion of the A&A that agreed "to

comply fully with the foregoing 'Authorization and Assignment.'"[13] *Id*.

97. The total charges from MSS amounted to $7,982.90, and another $500 from Dr. Chawla. BX 12b; RX E12, 2. On January 18, 2012, Mr. Randolph faxed a one page document to Inder Chawla titled "Request for Medical Reduction." RX E12, 7. The request seeks a reduction in Dr. Chawla's bill from $500 to $250 "[t]o facilitate settlement and avoid defense verdict. Minimal impact collision." *Id.* Dr. Chawla signed his approval for this reduction on January 25, 2012. In a letter written on MSS stationery dated January 24, 2012, Rayna Moise agreed to accept a total of $4,350 as full and final payment for Ms. Quarles. RX E12, 3. This amount includes $3,700 for MSS and $650 for Gamma Technologies. *Id.*

98. On January 26, 2012, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Ms. Quarles' claim as $14,000. RX E12, 2. In table format, the sheet then deducts $4,666.66 for "Attorney Fees," "Case Expenses" totaling $210.05 and payments due to Dr. Chawla of $250, Gamma Technologies of $650, and MSS of $3,700 – the same amounts listed in the approved reductions listed above.

99. On January 27, 2012, Ms. Quarles signed this Client Disbursement sheet, accepting a net disbursement of $4,523.29. RX E12, 2. This amount is listed on the sheet as the "Net Disbursement to Client." The Client Disbursement sheet includes Ms. Quarles' signed approval of "the foregoing settlement and disbursements . . . in full and final settlement of my case resulting from damages sustained on or about September 15, 2011." *Id.* The Client Disbursement sheet concludes with the following statement: "I, Tiffany Quarles agree to save and hold harmless the law offices of **Nave & Associates, PLLC** from any medical hospital, or other liens, known or unknown including subrogation by a private health insurance carrier unless

[13] The A&A form signed by Ms. Quarles is identical to the form signed by clients in Counts XIII through XXXVII.

we have been authorized to negotiate the same. *Id.*

100. One week after Ms. Quarles signed the Client Disbursement sheet, she received a check, written on the escrow account of Nave & Associates, for $4,523.29. RX E12, 4.

101. On July 20, 2012, a check written on the escrow account of Nave & Associates was made out to Inder Chawla, M.D. in the amount of $250. RX E12, 8.

102. In a "Request for Medical Reduction" addressed to Dr. Henry Jenkins, dated November 26, 2012, Erick Tyrone agreed to a reduction of MSS's balance from $7,982.90 to $3,700, and a complete write-off of Gamma Technology's bill of $650. RX E12, 6. The reason for the reduction is identified as: "To avoid defense verdict and effectuate final settlement; Client disputes X-Ray bill; X-Ray report was NEVER sent to attorney, despite several requests." *Id.* On January 4, 2013, Respondent paid Ms. Quarles an additional $650.

103. Respondent paid MSS $3,700 on February 6, 2013. BX 41; 11/10 Tr. 697-98 (Respondent).

K'Vonté Petty (COUNT XIII)

104. K'Vonté Petty was MSS's patient and Respondent's client. On October 19, 2011, Mr. Petty was involved in an accident. BX 13; RX E13, 1. On October 21, 2011, Mr. Petty's mother, Kimisa Petty, and a witness signed and dated an A&A on which the attorney listed is identified only as "Brandy."[14] *Id.* On November 7, 2011, Respondent signed this A&A form. *Id*.

105. On March 14, 2012, Respondent's office prepared a Client Disbursement sheet that identified the total settlement for Mr. Petty's claim as $7,088. RX E13, 2; BX 13b. In table format, the sheet then deducts $2,362.00 for "Attorney Fees," an "Administrative Fee" of $150,

[14] Respondent testified that K'Vonté Petty was the minor son of Kimisa Petty. 11/10 Tr. 712 (Respondent).

and payment due to MSS of $1,218.80 without reduction. *Id.* After deducting the amounts for the Attorney Fees, Administrative Fee and Medical Provider, the amount remaining from the $7,088 settlement was $3,357.20. *Id.* On March 14, 2012, Kimisa Petty signed this Client Disbursement sheet accepting a net disbursement of $3,357.20.

106. On March 23, 2012, Kimisa Petty signed for her receipt of a check, written on the escrow account of Nave & Associates, of $4,017. RX E13, 3.[15]

107. MSS did not learn of the settlement of K'Vonté Petty's case until August 9, 2012. BX 13a. On February 1, 2013, Respondent paid MSS $1,218.80. RX E13, 4; BX 41.

Tony Jones (COUNT XIV)

108. Tony Jones was MSS's patient and Respondent's client. On July 21, 2011, Mr. Jones was involved in an accident. BX 14; RX E14, 1. On August 3, 2011, Mr. Jones and a witness executed an A&A in favor of MSS, identifying the attorney as "Nave & Associates." *Id.* Respondent signed this A&A on September 19, 2011. *Id.*

109. In a letter written on MSS stationery dated May 18, 2012, Rayna Moise agreed to accept a total of $1,845 as full and final payment for Mr. Jones. RX E14, 3. This amount includes $800 for MSS, $650 for Gamma Technologies, and $395 for "Neuro." *Id.*

110. On May 21, 2012, Respondent's office prepared a Client Disbursement sheet that identified the settlement for Mr. Jones' claim as $4,500. RX E14, 2; BX 13b. In table format, the sheet then deducts $1,200 for "Attorney Fees," "Case Expenses" of $62.73, and payment due to Medical Providers of $2,245. *Id.* Specifically, the Client Disbursement sheet lists payment to: Dr. Alice Adams of $395, without a reduction; Dr. Inder Chawla of $400, after a reduction of

[15] K'Vonté and Kimisa Petty were handled as "companion cases" by MSS. The fact that the check made out to Kimisa Petty is different than the net disbursement to client listed on the Client Disbursement sheet suggests that this may have been the check for her settlement and not K'Vonté's, but supports a finding that payment was made to both on this date.

$100; Gamma Technology of $650, without a reduction; and MSS of $800, after a reduction of $7,149. *Id.* After deducting the amounts for the Attorney Fees, Case Expenses and Medical Providers, the amount remaining from the $4,500 settlement was $992.27. *Id.* On May 21, 2012, Mr. Jones signed this Client Disbursement sheet accepting $992.27 in full and final settlement of his case. *Id.*

111. On May 25, 2012, Mr. Jones received a check paid from the escrow account of Nave & Associates for $992.27. RX E14, 7.

112. MSS appears to have first been notified of the settlement on June 29, 2012. BX 14a.

113. On July 20, 2012, a check written on the escrow account of Nave & Associates was made out to Inder Chawla, M.D. in the amount of $400. RX E14, 8.

114. On August 24, 2012, a check written on the escrow account of Nave & Associates was made out to Medical Support Services in the amount of $800. RX E14, 5; BX 41.

115. Respondent did not pay MSS or the other two medical providers listed on the Client Disbursement sheet. Instead, her office prepared a new Client Disbursement sheet on December 3, 2012 in which these two medical providers are omitted and the resulting Net Disbursement to Client is listed as $2,037.27. BX 14c; RX E14, 4.

116. On January 11, 2013, Mr. Jones received a check paid from the escrow account of Nave & Associates for $1,045 – the amount originally identified as being owed to Dr. Alice Adams and Gamma Technologies. RX E14, 6.

Barbara Brown (COUNT XV)

117. Barbara Brown was MSS's patient and Respondent's client. On August 26, 2011, Ms. Brown was involved in an accident. BX 15; RX E15, 1. On August 30, 2011, Ms. Brown

and a witness executed an A&A in favor of MSS identifying the attorney as "Nave & Associates." *Id.* Respondent signed this A&A on September 21, 2011. *Id*.

118. On May 1, 2012, Respondent requested that MSS reduce its bill and the reduction was authorized. BX 15a. The parties did not produce a copy of any written request for medical reduction in Ms. Brown's case.

119. On May 2, 2012, Ms. Brown signed a Client Disbursement sheet, prepared by Respondent's office, that identified a settlement amount of $11,225. BX 15b; RX E15, 2. The sheet shows a deduction of $3,741 for "Attorney Fees," "Case Expenses" of $208.48, and payment due to Medical Providers of $4,026. *Id.* Specifically, the Client Disbursement sheet lists payment to: Dr. Inder Chawla of $500, without any reduction; Howard University Hospital of $932, after a reduction of $233; and MSS of $2,594, after a reduction of $1,500. *Id.* After deducting the amounts for the Attorney Fees, Case Expenses and Medical Providers, the amount remaining from the $11,225 settlement was $3,249.52. *Id*. On May 2, 2012, Ms. Brown signed this Client Disbursement sheet accepting $3,249.52 in full and final settlement of her case. *Id.*

120. On May 11, 2012, Ms. Brown signed for her receipt of a check from the escrow account of Nave & Associates in the amount of $3,249.52. RX E15, 3.

121. MSS appears to have first learned of the settlement of Ms. Brown's case on June 29, 2012. BX 15a. In August 2012, MSS began attempts to collect directly from Ms. Brown. *Id*.

122. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Brown's case. RX E15, 4. The document, signed by Erick Tyrone, purports to reduce the current balance for MSS from $4,094 to $2,594 – the same amount that appears on the Client Disbursement sheet signed by Ms. Brown more than six months earlier. *Id.*

123. On February 1, 2013, Respondent paid MSS $2,594 for services rendered to Ms. Brown. BX 15c; BX 41.[16] On October 9, 2013, Respondent paid Dr. Chawla $500 for services rendered to Ms. Brown. RX E15, 5.

Bernadine Ramsey (COUNT XVI)

124. Bernadine Ramsey was MSS's patient and Respondent's client. On December 22, 2011, Ms. Ramsey was involved in an accident. BX 16; RX E16, 1. On December 27, 2011, Ms. Ramsey and a witness signed an A&A in favor of MSS, identifying the attorney as "Nave & Assoc." *Id.* Respondent signed the A&A on January 30, 2012. *Id.*

125. In a letter written on MSS stationery dated April 6, 2012, Rayna Moise agreed to accept a total of $2,200 as full and final payment for Ms. Ramsey. RX E16, 3. MSS learned that Ms. Ramsey's case was settled on May 21, 2012. BX 16a.

126. In an undated and unsigned Client Disbursement sheet prepared on Respondent's stationery, the total recovery in Ms. Ramsey's case is listed as $13,000. BX 16b; RX E16, 2. From this amount are deducted $4,333 in attorney fees, $175 for medical records and an administrative fee, and $2,350 for medical providers, leaving a net disbursement to Ms. Ramsey of $6,142. *Id.* The Client Disbursement sheet lists the medical providers as Dr. Chawla, who is owed $350, without any reduction, and MSS, which is owed $2,000, after a reduction of $2,086.95. *Id.*

127. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Ramsey's case. RX E16, 4. The document, signed by Erick Tyrone, purports to reduce the current balance for MSS from $4,086.95 to $2,000 – the

[16] The record contains a cover letter to MSS on Respondent's letterhead, dated January 18, 2013, that purports to enclose, among other checks, one for Ms. Brown in the above-mentioned amount. BX 15c. The office records of MSS indicate that this payment was made on February 1, 2013. RX 41.

same amount that appears on the Client Disbursement sheet for Ms. Ramsey. *Id.*

128. On February 22, 2013, MSS deposited a check for $2,000 made on Respondent's escrow account for services to Ms. Ramsey. RX E16, 5; BX 41.[17]

XVII Ishara Cormack (COUNT XVII)

129. Ishara Cormack was MSS's patient and Respondent's client. On August 3, 2010, Ms. Cormack was involved in an accident. BX 17; RX E17, 1. On September 9, 2010, Ms. Cormack and a witness signed an A&A in favor of MSS, identifying the attorney as "Brandy Nave." *Id.* Respondent signed the A&A, but her signature is undated. *Id.*

130. In a letter written on MSS stationery dated June 8, 2012, Rayna Moise agreed to accept a total of $2,015 as full and final payment for Ms. Cormack. RX E17, 3. This amount represented a payment of $1,800 to MSS and $215 to Gamma Technologies. *Id.*

131. On June 13, 2012, Ms. Cormack signed a Client Disbursement sheet, prepared by Respondent, which accepted a net disbursement of $3,858.95 in full and final settlement of her case. BX 17b; RX E17, 2. The Client Disbursement sheet lists the total recovery as $9,500. From this, $3,316.66 is deducted to pay attorney fees and an administrative fee; $59.39 is deducted to pay case expenses; and $2,324.39 is deducted to pay medical expenses. *Id.* The medical expenses are comprised of $250 for Dr. Chawla, $215 for Gamma Technology, and $1,800 for MSS, the latter two being the same amounts listed in the MSS letter documenting a reduction dated five days earlier. *Id.*

132. On June 22, 2012, Ms. Cormack signed for her receipt of a check for $3,858.95 written on Respondent's escrow account. RX E17, 4.

---

[17] The record contains a cover letter to MSS on Respondent's letterhead, dated January 25, 2013, that purports to enclose, among other checks, one for Ms. Ramsey in the above-mentioned amount. BX 16c. It is unclear why it took an additional month after this letter was written to get the check to MSS.

133. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Cormack's case. RX E17, 5. The document, signed by Erick Tyrone, purports to reduce the current balance for MSS from $9,612.95 to $1,800 – the same amount that appears on the Client Disbursement sheet for Ms. Cormack. *Id.*

134. On February 1, 2013, MSS deposited a check for $1,800 made on Respondent's escrow account for services to Ms. Cormack. RX E17, 6; BX 41.

Latia Proctor (COUNT XVIII)

135. Latia Proctor was MSS's patient and Respondent's client. On March 22, 2011, Ms. Proctor was involved in an accident. BX 18; RX E18, 1. On April 13, 2011, Ms. Proctor and a witness signed an A&A in favor of MSS, identifying her attorney as "Quinten/Nave." *Id.* Respondent, or someone on her behalf, signed the A&A on April 27, 2011. *Id.*

136. MSS's records indicate that it approved a reduction of its bill on June 11, 2012, but does not identify the amount of the reduction. BX 18a.

137. On June 13, 2012, Ms. Proctor signed a Client Disbursement sheet prepared by Respondent, which listed a total recovery for her claim of $7,000. RX E18, 3. This amount was reduced by $2,333 for payment of Respondent's attorney fees, $184.19 for payment of medical records and an administrative fee, and $2,725 for medical bills. *Id.* This latter amount was comprised of a payment of $400 to Dr. Chawla, after a reduction of $75, $325 to Gamma Technology, with any reduction, and $2,000 to MSS, after a reduction of $2,380.90. Ms. Proctor signed her agreement to accept the remaining net disbursement of $1,757.81 in full and final settlement of her claim. *Id.*

138. The record does not identify when Ms. Proctor received her settlement check. On June 29, 2012, MSS learned that Ms. Proctor's claim had been settled during the week of June

17, 2012. BX 18a.

139. On September 21, 2012, MSS withdrew its reduction. BX 18a.

140. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Proctor's case. RX E18, 2. The document, signed by Erick Tyrone, purports to reduce the current balance for MSS from $4,380.90 to $2,000 – the same amount that appears on the Client Disbursement sheet for Ms. Proctor. *Id.* It also purports to reduce the current balance for Gamma Technology from $325 to zero. *Id.* The reason for the reduction is to "avoid defense verdict and effectuate final settlement; Reduction was rescinded before client signed release; Client disputes X-Ray bill." *Id.*

141. On February 20, 2013, Dr. Inder Chawla deposited a check for $400 made on Respondent's escrow account for Ms. Proctor. RX E18, 5. On February 22, 2013, MSS deposited a check for $2,000 made on Respondent's escrow account for services to Ms. Proctor. RX E18, 4; BX 41.

Deangelo Wooten (COUNT XIX)

142. Deangelo Wooten was MSS's patient and Respondent's client. On March 22, 2011, Mr. Wooten was involved in an accident. BX 19; RX E19, 1. On April 13, 2011, Mr. Wooten and a witness signed an A&A in favor of MSS, identifying his attorney as "Quentin/Nave." Respondent, or someone on her behalf, signed the A&A on April 27, 2011. *Id.*

143. MSS's records indicate that it approved a reduction of its bill on June 11, 2012, but does not identify the amount of the reduction. BX 19a.

144. On June 19, 2012, Mr. Wooten signed a Client Disbursement sheet, prepared by Respondent, that listed the total recovery of his claim as $6,800. RX E19, 2. This amount was reduced by $2,267 for attorney fees, $185.17 for medical records and an administrative fee, and

$3,020 in medical providers. *Id.* This latter amount was comprised of $400 for Dr. Chawla, after a $100 reduction, $620 for Gamma Technology with no reduction, and $2,000 for MSS after a reduction of $2,685.90. *Id.* Mr. Wooten accepted the resulting net disbursement of $1,327.83 in full and final settlement of his claim. *Id.*

145. The record does not identify when Mr. Wooten received his settlement check. On June 29, 2012, MSS learned that Mr. Wooten's claim had been settled during the week of June 17, 2012. BX 19a. On September 21, 2012, MSS withdrew its reduction for Mr. Wooten. BX 19a.

146. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Mr. Wooten's case. RX E19, 3. The document, signed by Erick Tyrone, purports to reduce the current balance for MSS from $4,685.90 to $2,000 – the same amount that appears on the Client Disbursement sheet for Mr. Wooten. *Id.* It also purports to reduce the current balance for Gamma Technology from $620 to zero. *Id.* The reason for the reduction is to "avoid defense verdict and effectuate final settlement; Client disputes X-Ray bill; X-Ray report never sent to attorney despite several requests." *Id.*

147. On February 26, 2013, Dr. Inder Chawla deposited a check for $400 made on Respondent's escrow account for Mr. Wooten. RX E19, 5. On February 22, 2013, MSS deposited a check for $2,000 made on Respondent's escrow account for services to Mr. Wooten. RX E19, 4; BX 41.

Ayonia Allen (COUNT XX)

148. Ayonia Allen was MSS's patient and Respondent's client. On January 10, 2012, Ms. Allen was involved in an accident. BX 20; RX E20, 1. On January 17, 2012, Ms. Allen and a witness signed an A&A in favor of MSS, identifying her attorney as "Quinten Randolph." *Id.*

Respondent, or someone on her behalf, signed the A&A on January 26, 2012. *Id.*

149. In a letter written on MSS stationery dated June 26, 2012, Rayna Moise agreed to accept a total of $1,000 as full and final payment for Ayonia Allen. RX E20, 3; BX 20a.

150. On July 3, 2012, Ms. Allen signed a Client Disbursement sheet, prepared by Respondent, that lists the total recovery of her claim against WMATA as $16,500. BX 20b; RX E20, 2. Deducted from this amount are attorney fees of $5,499.99, fees for medical records and an administrative fee totaling $208.50, and fees owed medical providers of $3,200. *Id.* This final amount is comprised of $1,000 for MSS, after a reduction of $124.95, and $2,200 for Slade Healthcare Inc. after a reduction of $2,270. *Id.* Ms. Allen accepted the remaining net disbursement of $7,591.51 in full and final settlement of her claim. *Id.*

151. The record does not identify when Ms. Allen received her settlement check. On August 9, 2012, MSS learned that Ms. Allen's claim had been settled on July 3, 2012. BX 20a. On September 21, 2012, MSS withdrew its reduction for Ms. Allen. BX 20a.

152. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Allen's case. RX E20, 4. The document, signed by Erick Tyrone, purports to reduce the current balance for MSS from $1,124.95 to $1,000 – the same amount that appears on the June 26, 2012 letter from MSS documenting a reduction in medical expenses and the Client Disbursement sheet for Ms. Allen. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate final settlement." *Id.*

153. On January 16, 2013, MSS deposited a check for $1,000 made on Respondent's escrow account for services to Ms. Allen. RX E20, 5; BX 41.

Kwaku Ansah-Twum (COUNT XXI)

154. Kawaku Ansah-Twum was MSS's patient and Respondent's client. On April 7, 2012, Mr. Ansah-Twum was involved in an accident. BX 21; RX E21, 1. On April 9, 2012, Mr. Ansah-Twum and a witness signed an A&A in favor of MSS identifying his attorney as "Nave & Associates." *Id.* Respondent signed the A&A on April 11, 2012. *Id*.

155. On November 28, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Lorenzo Austin for Mr. Ansah-Twum's case. RX E21, 3. The document, signed by Erick Tyrone, purports to reduce the current balance for MSS from $5,273.90 to $1,757.97. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate final settlement." *Id.*

156. On December 10, 2012, Mr. Ansah-Twum signed a Client Disbursement sheet, prepared by Respondent, stating that his claim had settled for $7,800. BX 21b; RX E21, 2. From this settlement amount was deducted $2,600 in attorney fees, $150 in administrative fees and $2,432.97 for medical providers. *Id.* Of this latter amount, MSS was to be paid $1,757.97, after a reduction of $3,515.93 – the same amount as listed in the reduction signed by Mr. Tyrone. In addition, the Client Disbursement shows payments for Dr. Chawla and Gamma Technology of $350 and $325 respectively, without any reduction. *Id.* Mr. Ansah-Twum accepted a net disbursement of $2,617.03 in full and final settlement of his claim. *Id*.

157. The record does not indicate when Mr. Ansah-Twum received his settlement check. Dr. Chawla was paid $350 by a check written on Respondent's escrow account on April 30, 2013. RX E21, 4.

158. MSS's records indicate that it did not agree to any reduction in its medical bills for Mr. Ansah-Twum. BX 21a. Respondent and MSS were engaged in negotiations over

payment of several medical bills prior to the settlement of Mr. Ansah-Twum's case in December 2012. On February 26, 2013, MSS learned of the settlement in December 2012 from Mr. Ansah-Twum. *Id.* MSS refused to honor the reduction signed by Mr. Tyrone. 11/10 Tr. 725-26 (Respondent). Respondent has not paid MSS anything on behalf of Mr. Ansah-Twum. *Id.*; BX 41.

Leroy Stroy (COUNT XXII)

159. Leroy Stroy was MSS's patient and Respondent's client. On January 15, 2012, Mr. Stroy was involved in an accident. BX 22; RX E22, 1.[18] On January 25, 2012, Mr. Stroy and a witness signed an A & A in favor of MSS, identifying his attorney as "Quentin Randolph." *Id.* Respondent, or someone on her behalf, signed the A&A on January 26, 2012. *Id.*

160. In a letter written on MSS stationery dated July 25, 2012, Rayna Moise agreed to accept a total of $2,070 – $1,985 for MSS and $85 for Gamma Technology – as full and final payment for Leroy Stroy. RX E22, 3; BX 22a.

161. On August 20, 2012, Mr. Stroy signed a Client Disbursement sheet prepared by Respondent, listing his total recovery from Farmers Insurance of $4,700. BX 22c; RX E22, 2. Deducted from this settlement amount is $1,566.66 in attorney fees, $150 in administrative fees, and $2,070 for medical providers, listing the same amounts for MSS and Gamma Technology as listed on the medical reduction of July 25. *Id.* Mr. Stroy signed his acceptance of $500 in full and final settlement of his claim.[19] *Id.*

---

[18] The date of the accident written into the appropriate blank on the A&A form appears to be 1/15/2S. The other documents related to Mr. Stroy's case support that the accident occurred on January 15, 2012.

[19] According to the Client Disbursement sheet, Mr. Stroy had received an earlier disbursement of $413.34 on July 19, 2012.

162. On August 27, 2012, MSS learned that the case had settled. BX 22a. On September 21, 2012, MSS withdrew its reduction. *Id.*

163. On February 6, 2013, MSS received a check written on Respondent's escrow account in the amount of $1,985 on behalf of Mr. Stroy. RX E22, 4; BX 41.

Dujuan Gant (COUNT XXIII)

164. Dujuan Gant was MSS's patient and Respondent's client. On April 20, 2011, Mr. Gant was involved in an accident. BX 23; RX E23, 1. On May 4, 2011, Mr. Gan's mother and a witness signed an A&A on his behalf in favor of MSS, identifying his attorney as "Brandi Nave." *Id.* Respondent, or someone on her behalf, signed the A&A on May 9, 2011. *Id.*

165. On August 1, 1012, MSS approved a reduction of its bill, but the record does not document the amount of the reduction approved by MSS. BX 23a.

166. On August 1, 2012, Mr. Gant's mother, on his behalf, signed a Client Disbursement sheet prepared by Respondent, listing a total recovery of $17,500 from Zurich Insurance Company and a PIP payment to MSS on July 1, 2011 of $2,500. RX E23, 2; BX 23b. The Client Disbursement sheet lists reductions of $5,833.33 in attorney fees, $450 in PIP processing and administrative fees, and $2,115.50 for medical providers. *Id.* This final deduction includes bills of $855 for Gamma Technology, $55.50 for Healthport, and $355 for Dr. Lawrence Manning, none of which list reductions, and $850 for MSS after a reduction of $2,925.90.[20] *Id.* Mr. Gant's mother accepted $9,101.17 in full and final settlement of her son's claim. *Id.* The record does not document when Mr. Gant received his settlement check.

167. On August 22, 2012, MSS was notified by Mr. Gant's mother that her son had received his settlement. BX 23a.

[20] The reduction listed for MSS is only $425.90, but the original amount is $3,775.90. *Id.*

168. On September 21, 2012, MSS withdrew its reduction. BX 23a.

169. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Mr. Gant's case. RX E23, 5. The document, signed by Erick Tyrone and Mr. Gant's mother, purports to reduce the current balance for MSS from $3,775.90 to $850 after a $2,500 PIP payment. *Id.* The document also purports to reduce the balance for Gamma Technology and Orthopedics from $855 and $355 respectively to zero. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate final settlement; Client disputes X-Ray bill and Ortho bill; X-Ray bill NEVER sent to attorney despite several requests." *Id.*

170. On January 8, 2013, MSS received a check for $850 written on Respondent's escrow account on behalf of Mr. Gant. RX E23, 4.

171. On January 10, 2012, Mr. Gant's mother, on his behalf, signed a Client Disbursement sheet prepared by Respondent that is identical to the sheet she signed on August 1, 2012, but omitting the charges for Gamma Technology and Dr. Lawrence Manning, resulting in a net disbursement to Mr. Gant of $10,311.17.[21] RX E23, 3; BX 23c.

Michael Blakeney (COUNT XXIV)

172. Michael Blakeney was MSS's patient and Respondent's client. On February 4, 2012, Mr. Blakeney was involved in an accident. BX 24; RX E24, 1. On February 14, 2012, Mr. Blakeney and a witness signed an A&A in favor of MSS identifying his attorney as "Brandi Nave." *Id.* Respondent, or someone on her behalf, signed the A&A on February 17, 2012. *Id.*

173. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Mr. Blakeney's case. RX E24, 4. The document, signed by

[21] The January 2013 Client Disbursement sheet also changes the date of the PIP payment to MSS from July 1, 2011 to July 19, 2012.

Erick Tyrone and Mr. Blakeney, purports to reduce the current balance for MSS from $5,286.90 to $1,797.54. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; PIP was exhausted and $1,797.54 was pursuant to audit by adjuster." *Id.*

174. On December 12, 2012, Mr. Blakeney signed a Client Disbursement sheet, prepared by Respondent, stating that his claim had settled for $9,000. BX 24b; RX E24, 2-3. From this settlement amount was deducted $3,000 in attorney fees, $450 in PIP processing and administrative fees, $129.76 in case expenses, and $2,114.99 for medical providers. *Id.* Of this latter amount, George Washington University Hospital was to be paid $317.45, with no reduction, and MSS was to be paid $1,797.54 after a reduction of $3,489.36 from $5,286.90 – the same amount as listed in the reduction signed by Mr. Tyrone.[22] *Id.* Mr. Ansah-Twum accepted a net disbursement of $2,617.03 in full and final settlement of his claim. *Id.*

175. The record does not indicate when Mr. Blakeney received his settlement check.

176. MSS's records indicate that it did not agree to any reduction in its medical bills for Mr. Blakeney. BX 24a. Respondent and MSS were engaged in negotiations over payment of several medical bills prior to the settlement of Mr. Blakeney's case in December 2012. MSS refused to honor the reduction signed by Mr. Tyrone with respect to Mr. Blakeney. 11/10 Tr. 726 (Respondent). Respondent has not paid MSS anything on behalf of Mr. Blakeney. *Id.*; BX 41.

Kimberly Kenner (COUNT XXV)

177. Kimberly Kenner was MSS's patient and Respondent's client. On March 24, 2012, Ms. Kenner was involved in an accident. BX 25; RX E25, 1. On March 30, 2012, Ms.

[22] In addition, the Client Disbursement shows payments to Dr. Chawla of $350 and three medical providers unrelated to MSS, totaling $2,500 as "PIP Disbursements." *Id.*

Kenner and a witness signed an A&A in favor of MSS, identifying her attorney as "Brandi Nave." *Id.* Respondent, or someone on her behalf, signed the A&A on April 12, 2012. *Id*.

178. On July 25, 2012, MSS approved a reduction of its medical bill, but its records do not document the amount of the reduction. BX 25a.

179. On September 21, 2012, MSS withdrew its reduction. BX 25a; 11/7 Tr. 290-291 (Moise).

180. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Kenner's case. RX E25, 2. The document, signed by Erick Tyrone and Ms. Kenner, purports to reduce the current balance for MSS from $4,764.95 to $1,219.50. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; Client states that she did not participate in any exercises as noted in the records and bills." *Id.*

181. On December 11, 2012, Ms. Kenner signed a Client Disbursement sheet, prepared by Respondent, listing the total recovery from GEICO Insurance as $6,900. BX 25b. This amount is reduced by $2,300 for attorney fees, $185.41 for case expenses and an administrative fee, and $1,219.50 for MSS, reduced from $4,764.95. *Id.* Ms. Kenner accepted a net disbursement of $3,195.09 in full and final settlement of her claim. *Id*. The record does not indicate when Ms. Kenner was paid this settlement amount for her injury of March 24, 2012.[23]

182. Respondent has not paid MSS anything on behalf of Ms. Kenner. BX41; 10/11 Tr. 726 (Respondent).

[23] Respondent's exhibits include a Client Disbursement sheet and settlement check for Ms. Kenner's injury of February 5, 2012, that is not at issue in this case.

Ashanti Tita (COUNT XXVI)

183. Ashanti Tita was MSS's patient and Respondent's client.[24] On April 7, 2012, Ms. Tita was involved in an accident. BX 26; RX E26, 1. On April 9, 2012, Ms. Tita and a witness signed an A&A in favor of MSS, identifying as her attorney "Nave & Associates, PLLC." Respondent, or someone on her behalf, signed the A&A on April 11, 2012. *Id*.

184. On November 28, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Lorenzo Austin for Ms. Tita's case. RX E26, 4. The document, signed by Erick Tyrone and Ms. Tati, purports to reduce the current balance for MSS from $7,161 to $1,432.20. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate final settlement." *Id.*

185. On February 15, 2013, Ms. Tati signed a Client Disbursement sheet, prepared by Respondent, stating the total recovery from GEICO Insurance as $30,000. BX 26b; RX E26, 2. From this settlement amount was deducted $8,500 for attorney fees, $150 for administrative fees, 176.91 for medical records, and $14,363.20 for medical providers. *Id.* Of this latter amount, MSS was to be paid $1,432.20, after a reduction of $5,728.80 – the same amount as listed in the reduction signed by Mr. Tyrone. Ms. Tita accepted a net disbursement of $6,809.89 in full and final settlement of her claim. *Id*.

186. On February 15, 2013, Ms. Tita received a check drawn on Respondent's escrow account for $6,809.89. RX E26, 3.

187. MSS's records indicate that it did not agree to any reduction in its medical bills for Ms. Tita. BX 26a. Respondent and MSS were engaged in negotiations over payment of several medical bills prior to the settlement of Ms. Tita's case in February 2013. On February

[24] Ms. Tati is Mr. Ansah-Twum's husband, both of whom were injured in the accident of April 7, 2012. BX 21a; BX 26a.

26, 2013, MSS learned of the settlement on February 15 from Ms. Tita. *Id.* MSS refused to honor the reduction signed by Mr. Tyrone. 11/10 Tr. 725-26 (Respondent). Respondent has not paid MSS anything on behalf of Ms. Tita. *Id.*; BX 41.

Anthony Pearcy (COUNT XXVII)

188. Anthony Pearcy was MSS's patient and Respondent's client. On May 18, 2011, Mr. Pearcy was involved in an accident. BX 27. On May 25, 2011, Mr. Pearcy and a witness signed an A&A in favor of MSS, identifying his attorney as "Brandi Nave." *Id.* The line for Respondent's signature is blank. *Id*. *See* PFF 10.

189. MSS did not approve a reduction of its bill for Mr. Pearcy. BX 27a.

190. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Mr. Pearcy's case. BX 27c; RX E27, 2. The document, signed by Erick Tyrone and Mr. Pearcy, purports to reduce the current balance for MSS from $3,993.90 to zero. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; Bill substantially audited by provide; Per medical reports, client could not complete exercises due to rib pain; No X-Ray report provided to substantiate rib fracture." *Id.*

191. On December 12, 2012, Mr. Pearcy signed a Client Disbursement sheet prepared by Respondent. BX 27b; RX E27, 1. The sheet lists the total recovery from USAA Insurance for Mr. Pearcy's claim as $13,000. *Id.* The Client Disbursement sheet lists deductions of $4,333.33 for attorney fees, $208.48 for case expenses, and $929 for medical providers, including $350 for Dr. Chawla and $579 for Howard University Hospital, without reduction. *Id.* The sheet shows no amount for MSS. *Id*. Mr. Pearcy accepted the net disbursement of

$7,529.19 in full and final settlement of his claim. *Id.* The record does not identify when Mr. Pearcy received his settlement check.

192. On March 11, 2013, Dr. Chawla received a check drawn on Respondent's escrow account for $200 on behalf of Mr. Pearcy. RX E27, 3.

193. Respondent has not paid MSS anything on behalf of Mr. Pearcy. BX 41; 11/10 Tr. 726 (Respondent).

Maria Seals (COUNT XXVIII)

194. Maria Seals was MSS's patient and Respondent's client. On March 22, 2012, Ms. Seals was involved in an accident. BX 28; RX E28, 1. On March 23, 2012, Ms. Seals and a witness signed an A&A in favor of MSS, identifying her attorney as "Nava-Brandi Nave." *Id.* Respondent, or someone on her behalf, signed the A&A on April 11, 2012. *Id.*

195. MSS did not approve a reduction of its bill for Ms. Seals. RX 28a.

196. On December 7, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Seal's case. RX E28, 2. The document, signed by Erick Tyrone and Ms. Seals, purports to reduce the current balance for MSS from $5,617.90 to $1,872.63. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; MSS bill substantially reduced by third party auditor." *Id.*

197. On December 18, 2012, Ms. Seals signed a Client Disbursement sheet prepared by Respondent, which listed the total recovery from GEICO Insurance for her claim as $24,250. BX 28b; RX E28, 3. The settlement amount is reduced by $8,083.33 for attorney fees, $622.03 for case expenses, and $1,872.63 for MSS, reduced from $5,617.90. *Id.* Ms. Seals accepted the net disbursement of $13,672.01 in full and final settlement of her claim. *Id.* The record does not identify when Ms. Seals received her settlement check.

198. On March 7, 2013, Respondent paid MSS $1,872.62 on behalf of Ms. Seals in a check drawn on Respondent's escrow account. RX E28, 5; BX 41. MSS accepted the payment that Respondent made on behalf of Ms. Seals, but was unwilling to treat it as a full payment because MSS had not reduced its bill and Mr. Tyrone had no authority to compromise MSS's bills. 11/7 Tr. 516-17 (Respondent); 11/10 Tr. 721-25 (Respondent).

Johnnette Tyree (COUNT XXIX)

199. Johnnette Tyree was MSS's patient and Respondent's client. On May 1, 2012, Ms. Tyree was involved in an accident. BX 29; RX E29, 1. On May 7, 2012, Ms. Tyree and a witness signed an A&A in favor of MSS, identifying her attorney as "Quinten Randolph." *Id.* Respondent, or someone on her behalf, signed the A&A on May 8, 2012. *Id.*

200. MSS did not approve a reduction of its medical bill. BX 29a.

201. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Tyree's case. RX E29, 3. The document, signed by Erick Tyrone and Ms. Tyree, purports to reduce the current balance for MSS from $2,664.95 to $1,000, and to reduce the current balance for Gamma Technology from $325 to zero. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; Exercises were discounted; X-Ray was not allowed – No X-Ray report was submitted by provider." *Id.*

202. On December 14, 2012, Ms. Tyree signed a Client Disbursement sheet prepared by Respondent, which listed a total recovery from USAA Insurance of $6,000. BX 29b; RX E29, 2. Deducted from this amount is $2,000 for attorney fees, $221.29 for case expenses, and $1,050 for medical providers. *Id.* The medical providers include a $50 payment to George Washington University Hospital and a payment to MSS of $1,000, reduced from $2,664.95 – the

same amount listed in the reduction signed by Mr. Tyrone. *Id.* Ms. Tyree accepted a net disbursement of $2,728.71 in full and final settlement of her claim. *Id.*

203. Respondent has not paid MSS anything on behalf of Ms. Tyree. BX 41; 11/10 Tr. 726 (Respondent).

Tiffany Walker (COUNT XXX)

204. Tiffany Walker was MSS's patient and Respondent's client. On June 27, 2011, Ms. Walker was involved in an accident. BX 30. On August 5, 2011, Ms. Walker and a witness signed an A&A in favor of MSS, identifying as her attorney "Nave & Ass." *Id.* Respondent, or someone on her behalf, signed the A&A but did not date her signature. *Id.*

205. On July 25, 2012, MSS approved a reduction of its bill, but MSS's records do not identify the amount of the reduction. BX 30a. On September 21, 2012, MSS withdrew its reduction. *Id.*

206. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Walker's case. RX E30, 2. The document, signed by Erick Tyrone and Ms. Walker, purports to reduce the current balance for MSS from $7,492.90 to $2,500, and to reduce the current balance for Gamma Technology from $325 to zero. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; Per third party provider, bills are excessive and the highest bills they have ever reviewed; Not reasonable or customary billing." *Id.*

207. On December 11, 2012, Ms. Walker signed a Client Disbursement sheet, prepared by Respondent, which listed her total recovery from GEICO Insurance as $10,000. BX 30b; RX E30, 1. Deducted from this settlement amount is $3,000 for attorney fees, $25 for case expenses, and $3,000 for medical providers. *Id.* The medical providers included $500 for Dr. Chawla and

$2,500 for MSS. *Id.* Ms. Walker accepted a net disbursement of $3,975 in full and final settlement of her claim. *Id.*

208. Respondent has not paid MSS anything on behalf of Ms. Walker. BX 41; 11/10 Tr. 726-27 (Respondent).

Shelaya Wright (COUNT XXXI)

209. Shelaya Wright was MSS's patient and Respondent's client. On March 24, 2011, Ms. Wright was involved in an accident. BX 31; RX E31, 1. On March 31, 2011, Ms. Wright and a witness signed an A&A in favor of MSS, identifying her attorney as "Mr. Randolph/Nave." *Id.* Respondent, or someone on her behalf, signed the A&A on April 1 2011.[25]

210. On July 25, 2012, MSS approved a reduction of its medical bill, but the record does not identify the amount of the reduction. BX 31a. On September 21, 2012, before Respondent settled Ms. Wright's claim, MSS withdrew the reduction. *Id*.

211. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Wright's case. RX E31, 3. The document, signed by Erick Tyrone and Ms. Wright, purports to reduce the current balance for MSS from $6,557.90 to $560.33. *Id.* The reason for the reduction signed by Mr. Tyrone is that

> Client was interviewed and a recorded statement was taken Allstate found multiple issues with this case, including improper billing procedures. Allstate noted that there was double billing and excessive use of code 97039. Allstate reduced the PT bill to $1,667.50.

Id.

212. On December 14, 2012, Ms. Wright signed a Client Disbursement sheet, prepared

[25] Respondent's signature is dated "4/1/2010," but the accident occurred in late March 2011.

by Respondent, which listed her total recovery from GEICO Insurance as $5,132. BX 31b; RX E31, 2. Deducted from this settlement amount is $1,710.66 for attorney fees, $185.17 for case expenses, and $1,384.18 for medical providers. *Id.* The medical providers included $350 for Dr. Chawla, $473.85 for DC Fire and EMS Department, and $560.33 for MSS, reduced from $6,557.90. *Id.* Ms. Wright accepted a net disbursement of $1,851.99 in full and final settlement of her claim. *Id.*

213. On February 26, 2013, MSS learned from Ms. Wright that her claim had been settled by Respondent. BX 31a. On April 2, 2013, MSS received a check written on Respondent's escrow account in the amount of $560.33. BX 31c; RX E31, 4; BX 41.

Aaron Atkinson (COUNT XXXII)

214. Aaron Atkinson was MSS's patient and Respondent's client. On July 28, 2011, Mr. Atkinson was involved in an accident. BX 32; RX E32, 1. On August 8, 2011, Mr. Atkinson and a witness signed an A&A in favor of MSS, identifying his attorney as "Brandi Nave." *Id.* Respondent, or someone on her behalf, signed the A&A but did not date her signature. *Id.*

215. MSS did not authorize a reduction of its bill. BX 32a.

216. On October 31, 2011, MSS received a $4,500 PIP payment from Mr. Atkinson's insurer. BX 41; 11/7 Tr. 326-327 (Moise).

217. On December 12, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Mr. Atkinson's case. RX E32, 3. The document, signed by Erick Tyrone and Mr. Atkinson, purports to reduce the current balance for MSS from $5,351 to $1,850.55. *Id.* The request does not reference the $4,500 PIP payment received by MSS. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate

final settlement; Third party audit reduced bills by $3,500.45 based on services and necessity of chiropractic treatment." *Id.* The record does not contain any third-party audit of MSS's bills.

218. On January 17, 2013, Mr. Atkinson signed a Client Disbursement sheet, prepared by Respondent, which listed the total recovery from USAA Insurance as $12,365. BX 32c; RX E32, 2. Deducted from this settlement amount is $4,121.66 for attorney fees, $155.54 for case expenses, and $3,863.95 for medical providers. *Id.* The medical providers include $500 for Dr. Chawla, $1,850.55 for MSS, and $1,513.40 for bills unrelated to MSS. *Id.* Mr. Atkinson accepted a net disbursement of $4,223.85 in full and final payment of his claim. *Id.*

219. Respondent did not pay MSS anything further towards Mr. Atkinson's bill. BX 41; 11/7 Tr. 326-327 (Moise); 11/10 Tr. 727 (Respondent).

Daynica Randolph (COUNT XXXIII)

220. Daynica Randolph was MSS's patient and Respondent's client. On August 26, 2011, Ms. Randolph was involved in an accident. BX 33; RX E33, 1. On August 30, 2011, Ms. Randolph's mother, Barbara Brown, and a witness signed an A&A in favor of MSS, identifying her attorney as "Nave & Associates."[26] *Id.* Respondent, or someone on her behalf, signed the A&A, but did not date her signature. *Id.*

221. MSS did not approve a reduction of its bill for Ms. Randolph. BX 33a.

222. On November 28, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Randolph's case. RX E33, 2. The document, signed by Erick Tyrone and Ms. Brown for Ms. Randolph, purports to reduce the current balance for MSS from $2,117 to $705.70. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; Third party provider questioned PT such a young age;

[26] Barbara Brown, the mother of Daynica Randolph, was injured in this same accident. *See* Count XV.

Questioned the excessive use of ball exercises as noted in bills and records." *Id.*

223. On January 5, 2013, Ms. Randolph's mother signed a Client Disbursement sheet prepared by Respondent, on behalf of her daughter. BX 33c; RX E33, 3. The sheet lists the total recovery from GEICO Insurance as $9,700. *Id.* Deducted from this settlement is $3,233.33 in attorney fees, $175 in case expenses, and $1,503.35 for medical providers. *Id.* The medical providers include $350 for Dr. Chawla, $447.65 for DC Fire and EMS Department, and $705.70 for MSS. *Id.*

224. Respondent has not paid MSS anything on behalf of Ms. Randolph. BX 41; 11/10 Tr. 727-28 (Respondent).

Karen Rush (COUNT XXXIV)

225. Karen Rush was MSS's patient and Respondent's client. On April 3, 2012, Ms. Rush was involved in an accident.[27] BX 34; RX E34, 1. On April 5, 2012, Ms. Rush and a witness signed an A&A in favor of MSS, identifying her attorney as "Nave & Associates." *Id.* Respondent, or someone on her behalf, signed the A&A on April 12, 2012. *Id.*

226. MSS did not authorize a reduction of its bill. BX 34a.

227. On January 3, 2013, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Rush's case. RX E34, 3. The document, signed by Erick Tyrone and Ms. Rush, purports to reduce the current balance for MSS from $3,891.95 to $1,667.70. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate settlement; Exercises were discounted; Adjuster questioned the billing and records." *Id.*

[27] The A&A lists the date of the accident as "5-3-12," but other documents in the record and the signatures on the A&A support a finding that the accident occurred on April 3, 2012.

228. On January 28, 2013, Ms. Rush signed a Client Disbursement sheet, prepared by Respondent, which listed the total recovery from GEICO Insurance as $9,525. BX 34c; RX E34, 2. Deducted from this settlement amount is $3,175 in attorney fees, $200.41 in case expenses, and $2,102.26 for medical providers. *Id.* The medical providers included $1,667.70 for MSS, reduced from $3,891.95 – the same amount listed on Mr. Tyrone's reduction. Ms. Rush accepted a net disbursement of $4,047.33 in full and final settlement of her claim. *Id.*

229. Respondent has not paid anything to MSS on behalf of Ms. Rush. BX 41; 11/10 Tr. 727-28 (Respondent).

Antonio Kent (COUNT XXXV)

230. Antonio Kent was MSS's patient and Respondent's client. On May 28, 2012, Mr. Kent was involved in an accident. BX 35; RX E35, 1. On May 31, 2012, Mr. Kent and a witness signed an A&A in favor of MSS, identifying his attorney as "Quentin Randolph." *Id.* An agent of Respondent signed the A&A on her behalf on August 20. 2012. *Id.*

231. MSS did not authorize a reduction of its bill. BX 35a.

232. On January 9, 2013, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Mr. Kent's case. RX E35, 3. The document, signed by Erick Tyrone and Mr. Kent, purports to reduce the current balance for MSS from $3,111.90 to $1,000. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and effectuate final settlement. Claims adjuster reduced PT bills to $1,700.00, however, reduction will allow for an equitable distribution among all parties." *Id.*

233. On February 8, 2013, Mr. Kent signed a Client Disbursement sheet, prepared by Respondent, which listed his total recovery from Liberty Mutual Insurance as $11,248. BX 35b; RX E35, 2. Deducted from this settlement is $3,749.33 in attorney fees, $219.70 in case

expenses, and $1,350 in medical bills. *Id.* The medical bills include $350 for Dr. Chawla and $1,000, reduced from $3,111.90, for MSS. *Id.*

234. Respondent has not paid anything to MSS on behalf of Mr. Kent. BX 41; 11/10 Tr. 727-28 (Respondent).

Charles Noble (COUNT XXXVI)

235. Charles Noble, was MSS's patient and Respondent's client. On April 3, 2012, Mr. Noble was involved in an accident. BX 36; RX E36, 1. On April 5, 2012, Mr. Noble and a witness signed an A&A in favor of MSS, identifying his attorney as "Quentin Randolph." *Id.* Respondent, or someone on her behalf, signed the A&A on April 12, 2012. *Id.*

236. MSS did not authorize a reduction of its bill. BX 36a.

237. On November 26, 2012, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Mr. Noble's case. RX E36, 2. The document, signed by Erick Tyrone and Mr. Noble, purports to reduce the current balance for MSS from $5,607.95 to $1,377, and to eliminate any balance for Gamma Technology. *Id.* The reason for the reduction signed by Mr. Tyrone is

> MAIF reduced PT bills to $2,043.58, considering reasonable and customary charges. MAIF reported an unspecified modality of $59.00 a day and almost doubled fees for manipulation. The MAIF adjuster did not accept Dr. Chawla's bills because client was discharged from PT on May 10, 2012 and visited Dr. Chawla on May 22, 2012.

Id.

238. On February 11, 2013, Mr. Noble signed a Client Disbursement sheet, prepared by Respondent, which listed a total recovery from Maryland Automobile Insurance Fund of $5,400. BX 36c; RX E36, 3. Deducted from this settlement amount is $1,800 in attorney fees, $450 in PIP processing and administrative fees, and $68.35 in other case expenses. *Id.* The

sheet lists a PIP payment of $2,500, of which $350 is disbursed to Dr. Chawla and $1,377.08 to MSS. *Id.* Mr. Noble accepted a net disbursement of $3,081.65 in full and final settlement of his claim. *Id*.

239. Respondent has not paid anything to MSS on behalf of Mr. Nobel and received no PIP payment. BX 41; 11/10 Tr. 727-28 (Respondent).

Lavonya Lawrence (COUNT XXXVII)

240. Lavonya Lawrence was MSS's patient and Respondent's client. On April 19, 2012, Ms. Lawrence was involved in an accident. BX 37; RX E37, 1. On April 24, 2012, Ms. Lawrence and a witness signed an A&A in favor of MSS, identifying her attorney as "Brandi Nave." *Id.* Respondent, or someone on her behalf, signed the A&A on May 7, 2012. *Id*.

241. MSS did not approve a reduction of its bill. BX 37a.

242. On January 3, 2013, Respondent prepared a Request for Medical Reduction addressed to Dr. Henry Jenkins for Ms. Lawrence's case. RX E37, 2. The document, signed by Erick Tyrone and Ms. Lawrence, purports to reduce the current balance for MSS from $3,755 to zero, noting that MSS has already been paid $2,500 in PIP. *Id.* The document also purports to reduce the bill for Gamma Technology from $325 to zero. *Id.* The reason for the reduction signed by Mr. Tyrone is to "avoid defense verdict and facilitate settlement; no x-ray reports received." *Id.*

243. On February 13, 2013, Ms. Lawrence signed a Client Disbursement sheet, prepared by Respondent, listing a total recovery from Allstate Insurance of $8,309. BX 37b; RX E37, 3. Deducted from this amount is $2,769.66 in attorney fees, $450 in PIP processing and administrative fees, $23.43 in additional case expenses, and $690 for medical providers. *Id.* The

medical providers included $250 for Dr. Chawla, reduced from $350, and $440 for Fairfax County Fire & Rescue. *Id.* The sheet also lists a PIP payment of $2,500 paid to MSS on November 30, 2012.[28] *Id.* Ms. Lawrence accepted a net disbursement of $4,375.91 in full and final settlement of her claim. *Id.* The record does not document when Ms. Lawrence received her settlement check.

244. On March 6, 2013, Dr. Chawla received a check for $250 drawn on Respondent's escrow account. RX E37, 4.

245. Respondent has not paid anything to MSS on behalf of Ms. Lawrence. BX 41; 11/7 Tr. 327-31 (Moise); 11/10 Tr. 727-28 (Respondent).

Respondent's Escrow Account Balance (COUNT XXXVIII)

246. Respondent's Client Disbursement sheets show that her escrow account should have contained at least the following amounts:

Client	A&A Signed	Disbursement or Settlement Date	Payment Date	Amount on Disbursement Sheet
Marjorie Barnes	10/16/06	08/01/07	N/A	$1,156.31
Markitta Robinson	10/29/07	01/26/09	04/11/14	$2,500.00
Barbara Way	12/16/08	06/15/10	04/11/14	$2,700.00
Minnie Ward-Huston	01/08/10	07/25/10	04/11/14	$3,000.00
Sherlita Boyd	04/07/10	08/10/10	04/11/14	$2,566.67
Kendra Whitaker	03/09/10	08/16/10	04/11/14	$3,371.00
Bryant Jones	12/07/07	09/08/10	04/11/14	$2,527.50
Claudia Ortiz	12/05/07	10/25/10	04/11/14	$1,523.00
Charlene Pitts	09/11/09	12/28/10	04/11/14	$2,100.00
Tiffany Quarles	09/25/11	01/27/12	02/06/13	$3,700.00
K'vante Petty	10/21/11	03/14/12	02/01/13	$1,218.80
Barbara Brown	08/30/11	05/02/12	02/01/13	$3,094.00
Bernadine Ramsey	12/27/11	05/21/12	02/22/13	$2,000.00
Ishara Cormack	09/09/10	06/13/12	02/01/13	$1,800.00
Latia Proctor	04/13/11	06/13/12	02/22/13	$2,400.00

[28] MSS's records state that it received this PIP payment on July 23, 2012. BX 41.

DeAngela Wooton	04/13/11	06/19/12	02/22/13	$2,400.00
Ayonia Allen	01/17/12	07/03/12	01/16/13	$1,000.00
Dajuan Gant	05/04/11	08/01/12	01/08/13	$850.00
Leroy Stroy	01/25/12	08/20/12	02/06/13	$1,985.00
Kwaku Ansah-Twum	04/09/12	12/10/12	N/A	$2,107.97
Tiffany Walker	08/05/11	12/11/12	N/A	$2,500.00
Kimberly Kenner	03/30/12	12/11/12	N/A	$1,219.50
Anthony Pearcy	05/25/11	12/12/12	N/A	$200.00
Michael Blakeney	02/14/12	12/12/12	N/A	$1,797.54
Shelaya Wright	03/31/11	12/14/12	04/02/13	$560.33
Johnette Tyree	05/07/12	12/14/12	N/A	$1,000.00
Daynica Randolph	08/30/11	01/05/13	N/A	$705.70
Aaron Atkinson	08/08/11	01/17/13	N/A	$1,850.55
Karen Rush	04/05/12	01/28/13	N/A	$1,667.70
Antonio Kent	05/31/12	02/08/13	N/A	$1,000.00
Ashanti Tita	04/09/12	02/15/13	N/A	$1,432.20

247. The daily balances listed on the Suntrust monthly statements for Respondent's escrow account accurately reflect the amount that Respondent had in her escrow account as of that day. 11/1 Tr. 480 (Sahedeo).

III. CONCLUSIONS OF LAW

Bar Counsel describes Respondent as "a lawyer who got into a financial bind; stopped paying third-party providers, despite her promises to the providers and her clients; and converted the money to her own use." Bar Counsel's Reply to Respondent's Sur-Reply, at 9. As such, Bar Counsel charges Respondent with violating:

- Rule 1.15(a) with respect to her representation of D.F. (Count II) by failing to hold third-party funds in trust;
- Rules 1.15(c) and 1.15(d) with respect to her representation of 36 separate clients between November 2006 and February 2013 by failing to promptly notify and pay third-parties funds in which they have an interest and, to the extent there is a dispute about such funds, to hold them in trust until an accounting can be made;[29]
- Rule 8.4(c) with respect to her representation of 23 clients by falsely telling clients that she had paid their medical providers and by falsely telling medical providers that she would pay their bills;[30] and
- Rule 1.15(a), reckless or intentional misappropriation, with respect to her handling of all funds that she was to hold in trust during specific times in 2012.

Respondent argues that she acted only in the best interests of her clients and did not violate any of the Rules charged.

---

[29] Bar Counsel has not pursued any charges with respect to Count XI due to the discovery during the hearing that the client never approved the settlement and, consequently, Respondent never received any settlement funds. We concur that there was no basis for the charge. However, even assuming we were to find misconduct it would not affect our recommended sanction.

[30] Bar Counsel has not pursued charges of Rule 8.4(c) with respect to five counts charged in the Specification of Charges (Counts XIV, XV, XVII, XXII and XXIII).

1. Violation of Rule 1.15(a) – Failure to Protect Property of Others

Rule 1.15 governs the safekeeping of property. Subsection (a) requires a lawyer to "hold property of clients or third parties" in an approved trust account separate from the lawyer's own property. This obligation arises only when the property is in the lawyer's possession in connection with a representation. Rule 1.15, comment [2]. "A lawyer should hold property of others with the care required of a professional fiduciary." *Id.*, comment [1].[31]

Bar Counsel asserts that Respondent violated Rule 1.15(a) with respect to Count II by failing to maintain a PIP payment in her trust account. We address this alleged violation below when discussing Respondent's representation of D.F. in Count II. We address the charge of misappropriation as a violation of Rule 1.15(a) under Count XXXVIII below.[32]

2. Violation of Rules 1.15(c) and 1.15(d)[33]

Rules 1.15(c) and 1.15(d) govern the delivery of funds held in trust for a client or third person. These provisions "recognize that lawyers often receive funds from third parties from which the lawyer's fee will be paid." Rule 1.15, comment [6]. Rule 1.15(c) requires a lawyer to "promptly notify the client or third person" "upon receiving funds . . . in which a client or third person has an interest" and to "promptly deliver to the client or third person any funds or other

[31] A fiduciary is a trustee, or someone holding "a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires." Black's Law Dictionary, 563 (5th ed. 1979).

[32] Rule 1.15(a) also requires attorneys to keep "complete records" of their trust account funds and other property "so that the documentary record itself tells the full story of how the attorney handled client or third party funds and whether the attorney complied with his fiduciary obligation that client or third-party funds not be misappropriated or commingled." *In re Clower*, 831 A.2d 1031, 1034 (D.C. 2003). Bar Counsel did not charge a violation of this aspect of Rule 1.15(a) and we do not consider it.

[33] Bar Counsel charged Respondent with violations of Rules 1.15(b) and 1.15(c) in four counts for actions taken prior to February 1, 2007, when the D.C. Rules of Professional Conduct were amended. There was no substantive change in these Rules relevant to Respondent, so the Hearing Committee will refer to these Rules using the current numbering exclusively.

property that the client or third person is entitled to receive." Rule 1.15(d), the import of which is mainly at issue in this case, reads as follows:

> When in the course of representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of Paragraph (a) and (b).

Lawyers do not have a duty with respect to every third party with an interest in a settlement received by a client. For example, a lawyer "is not obligated . . . to pay the client's dry cleaning bill or credit card debts even if on notice thereof." Ethics Op. 293, at 166 (quoting *Farmers Ins. Exch. v. Zerin*, 53 Cal. App.4th 445, 459, 61 Cal. Rptr. 2d 767 (Ct. App. 1997)). Comment [7] to Rule 1.15 explains that the Rule applies to third parties that "have ***just claims*** against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client" (emphasis added).

Respondent argues that Ethics Opinion No. 293 is inapplicable to this case "because it addresses conflicting claims between a third-party and a client." While Ethics Opinion No. 293 may not address the specific factual dispute here, it is valuable guidance on Respondent's ethical obligations with respect to her handling of funds for which medical providers had a "just claim." The purpose of the Assignment and Authorizations signed by Respondent and her clients was to create a "just claim" in funds received as the result of a settlement, judgment or verdict on behalf of the health care providers who treat

the patient/client. The A&A is a "contractual agreement made by the client and joined in or ratified by the lawyer to pay certain funds in the possession of the lawyer . . . to a third party . . .." *In re Bailey*, 883 A.2d 106, 117 (D.C. 2005) (quoting D.C. Legal Ethics Opinion No. 293, at 165). Each of the A&As at issue in this matter assign an interest in settlement proceeds to the treating provider and create a lien in favor of the doctor against such settlement funds. *See Bailey*, 883 A.2d at 118 (holding that even poorly drafted contract that did not use the term "assignment" and did not purport to assign or create a lien, established in physician a "just claim" with respect to settlement funds for purposes of Rule 1.15).

Bar Counsel does not allege that Respondent failed to promptly notify the chiropractors of settlements received by their patients, only that Respondent did not promptly pay the amounts they were entitled to receive. Rule 1.15(c) provides no bright-line test for what constitutes "prompt" payment. *In re Ross*, 658 A.2d 209, 211 (D.C. 1995). Instead, a case-specific inquiry is required. *In re Martin*, 67 A.3d 1032, 1046 (D.C. 2013). *See, e.g.*, *In re Moore*, 704 A.2d 1187 (D.C. 1997) (per curiam) ("no doubt" that six-month delay in paying medical providers is not "prompt"); *Ross*, 658 A.2d at 211 (11-month delay was not prompt). When the reason for the lawyer continuing to hold the funds is rendered moot—such as when there has been a settlement—the lawyer must pay "immediately." *In re Edwards*, 990 A.2d 501, 520-21 (D.C. 2010).

None of Respondent's many reasons for the lengthy delays in paying medical providers explain why her office did not pay the medical providers in accordance with the Client Disbursement sheets on the same day the client was paid. Once the client had signed his or her acceptance of the net disbursement in "full and final settlement," the

amounts listed on the Client Disbursement sheets for payment to medical providers became third-party property captive in Respondent's escrow account. Under the A&As signed by Respondent or her agents, she owed a duty to those medical providers to promptly pay those sums.

One possible standard for prompt payment under Rule 1.15(c) is the date on which the client received disbursement of the net settlement amount. We are reluctant, however, to assume there could be no reason to retain funds that have been withheld to pay third parties when the client (and the lawyer) have been paid. Here, the record provides little information regarding the factors that may be relevant in determining whether a payment is insufficiently prompt in violation of Rule 1.15(c). If Respondent's recordkeeping had been more comprehensive, such a determination may have been possible, but then if there had been better recordkeeping, Respondent would not likely have found herself in this situation. In the absence of evidence to conduct a case-specific inquiry into the promptness of Respondent's payments, we will view 90 days as the limit of promptness in this case in the absence of evidence that further delay was justified.[34]

Upon receipt of a settlement, the chiropractors had a lien on the settlement in the amount they were owed. If Respondent had, as she claims now, failed to reach a binding agreement with the chiropractor at the time her client accepted a settlement, then she was required to hold the entire amount of the chiropractor's bill in escrow. If some portion of the bill was undisputed, however, she was required to disburse that amount. Ethics Op.

[34] This limit is based upon the testimony of one of Respondent's witnesses, the Chair of the D.C. Board of Chiropractic, that it may take up to three months for a chiropractor to be paid after a settlement is reached. 10/2 Tr. 455-56 (Vanterpool). By applying this limit here, we do not suggest that 90 days is a standard that all attorneys must meet. Nor does the willingness of MSS to accept payment up to 120 days after settlement mean that such delay is prompt payment under Rule 1.15(c). 11/7 Tr. 285 (Moise).

293 at 165 ("if there is no legitimate dispute about who is entitled to part or all of the funds, the lawyer must disburse the undisputed portion accordingly.")

Respondent argues that she had no obligation to pay the chiropractors because there was a dispute as to the amount they were entitled to receive. Respondent uses Rule 1.15(d) as a defense, arguing that amounts in dispute must be kept separate by the lawyer until the dispute is resolved. In doing so, Respondent misreads Rule 1.15(d) because she fails to acknowledge the significance of the A&A as discussed by several Court decisions. An A&A "secures payment to the medical provider upon the conclusion of the matter or whenever client funds come into the hands of the attorney." *In re Smith*, 817 A.2d 196, 198 n.1 (D.C. 2003). "Courts view holding money in trust for clients as a nondelegable, fiduciary responsibility that cannot be transferred and is not excused by ignorance, inattention, incompetence or dishonesty." *In re Gregory*, 790 A.2d 573, 578 (D.C. 2002) (per curiam) (quoting Commentary to Annotated Model Rules of Professional Conduct).

Respondent argues that the chiropractors were not "entitled to receive" proceeds from the settlements until they signed a waiver and release form. It is the A&A, however, and not any subsequent writing that grants a "just claim" on behalf of the chiropractors such that they are "entitled to receive" payment. The precise amount that they are entitled to receive may be disputed, but they are still entitled to receive payment. Interpreting the Rule as Respondent would have it would virtually nullify the A&A and place extraordinary bargaining power in the hands of the lawyer. "[A] lawyer may not hold funds to coerce a client into accepting the lawyer's contention" regarding the amount of attorney fees owed. Rule 1.15, comment [6]. Although Comment [6] does not

expressly apply to disputed trust fund amounts owed to medical providers, its rationale is equally applicable because Rule 1.15 applies equally to all property held by an attorney that arguably belongs to a client or third persons.

Respondent argues that she was protecting her clients by withholding all funds from the chiropractors until she resolved the dispute over the amount owed. Because the A&A does not discharge a client's obligation to pay the chiropractor, by withholding the entire amount Respondent placed her clients in greater danger of a lawsuit by the chiropractors for the entire amount.

Respondent also argues that she identified a variety of billing irregularities that she needed to resolve before paying the medical providers. She suggests, based on the representations of Drs. Austin and Jenkins, that Gamma Technologies was a fabricated entity and that all charges for x-rays were fraudulent. *See* 11/10 Tr. 704-705 (Respondent). Respondent repeatedly claimed that the Special Investigative Unit ("SIU") of one or more insurance companies had written her about clients seen by MSS, but acknowledged under cross-examination that she had received no telephone calls from an SIU and was not "seriously concerned" about any such investigation. 11/7 Tr. 346 (Respondent). These arguments are contrary to her clients' interests. Respondent's practice depends, in part, on the size of medical bills to obtain a large settlement offer from the insurance company and on a reduction of those medical bills to achieve a settlement that is acceptable to the client.

Presumably, and there is no evidence to the contrary, the insurance companies that paid settlements to Respondent's clients did so in full and final settlement of the claims and without reserving any right to challenge the integrity of medical bills. As a

result, any investigation into the accuracy or integrity of medical bills after the insurance company had paid the claim was unnecessary to protect her clients. Admittedly, Respondent was able to bully or scare MSS into agreeing to some further reductions that inured to the benefit of a few of her clients, but this windfall for some clients was the result of the derogation of her duties to the medical providers.

This is not to say that Respondent did not have a right to investigate the accuracy and integrity of bills from medical providers that her clients often used. If insurance companies found evidence of fraud or overbilling, it could have a chilling effect on the settlement negotiations for future clients due to the litigation risk of proffering false evidence. But this concern is prospective only – the risk is only to those clients whose cases have not yet been settled. Once the insurance company has paid the settlement check, the negotiations are at an end. All that remains to do is the clerical duty of cutting checks to distribute the settlement amount to the client, the attorney and the medical providers.

Respondent's practice is high-volume and, based on the 37 matters reviewed here, many are of relatively low value. This puts a premium on good case management that would provide an audit trail to determine when and why checks are issued. To do this consistently, such a practice requires clear office procedures and an efficient and well-trained staff. The lack of adequate recordkeeping is demonstrated by Respondent's failure to know who and how much to pay medical providers. Taking leave of her practice for three months in early 2012 to attend to her dying grandmother was understandably complicating and stressful, but it should not have resulted in the need to review hundreds of case files.

More troubling is the fact that Respondent is not a new attorney, ignorant in the business practices of a high-volume law office. She had previously worked for an experienced attorney with a similar practice, but did not appear to seek his advice or others who could have helped her improve her law firm practice management. Instead, when she recognized that she needed help to get her files in order, she asked for help from two friends who were not trained in law firm case management. The testimony of Mr. Ford and Ms. Walton consisted largely of facts they had been told by Respondent and, therefore, were of limited value. Moreover, they did not act independently or in an effort to solve problems with individual matters, but only to identify the size of the problem and attack it globally. This approach exacerbated Respondent's failure to promptly pay medical providers.

Instead of paying or disputing bills on a case-by-case basis – paying all that were clearly due like the 36 identified herein – Respondent used further delay of payment as leverage to resolve all outstanding matters. When this did not work, she proceeded to threaten individual doctors. Respondent had sufficiently frightened Dr. Jenkins with her statements about fraudulent billing and investigations by insurance companies that he hired a lawyer to protect his license. *See* 10/2 Tr. 27-29, 62 (Jenkins); 11/7 Tr. 355-356 (Moise); RX D11.

Respondent used threats and bullying in her effort to clear her files of overdue payments. RX C1, 11 (letter from Nave & Associates to Dr. Yousefi threatening to seek "fines, penalties and prosecution by the Attorney General's office" under the Fair Debt Collection Practices Act if he does not stop calling a client regarding past-due medical bills); RX C2, 5-6 (letter from attorney representing Respondent to Dr. Yousefi claiming

that its files indicate "a plethora of wrongful and negligent activity" that will have to be reported to State authorities); RX D5, 3-4 (letter from Respondent to Rayna Moise calling her inept and repeatedly demeaning her intelligence). To be fair, Respondent was sometimes met with similarly unproductive communications. 10/2 Tr. 190-96 (Respondent). It is certainly possible that not all of this disagreement would have been prevented by prompt payment of outstanding medical bills, but that was Respondent's obligation nonetheless. To the extent that medical providers continued to dispute those payments, Respondent would have been free to make any challenge appropriate to protect herself and her clients after disgorging herself of her obligations to protect the third party property.

Much of Respondent's defense of her actions in this disciplinary matter attempts to argue what amounts were due (or not due) the medical providers. That is not the role of Bar Counsel or the responsibility of this Hearing Committee. *See In re Clower*, 831 A.2d 1031, 1032 n.1 (D.C. 2003) (unresolved factual dispute as to how much was owed medical provider immaterial to determine ethical violation). Such a legal determination by the Superior Court may have clarified some of the issues in this disciplinary matter, but Respondent's failure to carry out her fiduciary obligation to the medical providers remained the same. The manner in which and the extent to which Respondent failed to comply with her obligations to Dr. Yousefi and MSS, as set forth in Rules 1.15(c) and 1.15(d), are described below regarding each Count.

COUNT I (Barnes): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Marjorie Barnes by failing to pay Dr. Yousefi $1,156.31 for at least seven years after receipt of a settlement check in August 2007. Respondent argues that "she could not

proceed to pay" Dr. Yousefi after learning that he had already received a PIP payment of $2,500. Reducing his demand by $2,500 would result in a balance of $1,156.31 – the amount listed on the Client Disbursement sheet. This, at a minimum, is what Respondent owed Dr. Yousefi more than seven years ago.

Respondent argues that she continues to refuse to pay Dr. Yousefi for services rendered to Ms. Barnes because he has refused to sign a release accepting $1,156.31 as full and complete payment. She justifies this position to protect her client; "if I had paid him it would have left the client out to dry." 11/7 Tr. 606 (Respondent). By failing to pay Dr. Yousefi the amount she held aside from the settlement for payment of his bills, Respondent increased the risk that Dr. Yousefi would seek recovery from her client. Respondent's assertion that she does not understand this risk is not credible, particularly in light of the various clients who complained to her about having medical providers contact them directly. 11/7 Tr. 609 (Respondent).

COUNT II (D.F.): Respondent violated Rule 1.15(a) by failing to place in her trust account a PIP payment that she received in October 2007 on behalf of D.F. until at least January 15, 2010, when she returned the check to the insurance company with her request to have it re-issued. Respondent argues that her failure was due to Dr. Yousefi's bookkeeping errors. She claims that the insurance company simultaneously issued two PIP payment checks – one to Dr. Yousefi and the other to her office – and that she "retained the check simply for records." Respondent's Brief at 23. In doing so, Respondent seeks to shift the burden of safeguarding funds properly belonging to her client or Dr. Yousefi. Respondent had a fiduciary duty to Dr. Yousefi to assure that his bills were paid out of the proceeds of her client's claim. The evidence is undisputed that Respondent held an uncashed PIP payment for over two years in her client files. 11/7 Tr. 588-589 (Respondent). This failure to safeguard client property, by itself, is

sufficient to find a violation of Rule 1.15(a). *See In re Lenoir*, 585 A.2d 771, 779 (D.C. 1991) (per curiam) (finding violation of DR 9-103(B)(2) where attorney retained for several months uncashed checks belonging to the client). This does not, however, constitute misappropriation.

Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of D.F. by failing to pay Dr. Yousefi a PIP payment of $2,500, received in 2007, until April 2014. By signing the A&A, Respondent agreed to withhold such sums as may be necessary to pay the doctors. Although Respondent claims that she had "confirmation" and "verification" from Prime Health that it had already received the PIP payment, she had no documentary evidence to support that her contractual obligation had been fulfilled. Moreover, a simple telephone call to the insurance company two years later supported a contrary conclusion – that no PIP check for D.F. had been cashed. Nonetheless, after receiving a replacement check in 2010, Respondent did not pay Dr. Yousefi until after he signed a release accepting $2,500 in full and final settlement of the amounts due from D.F. Respondent had an ethical obligation to protect the property of Dr. Yousefi and to pay it over promptly. It was improper to fulfill this fiduciary duty only after obtaining a release from Dr. Yousefi.

COUNT III (Robinson): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Markita Robinson by failing to pay Dr. Yousefi the remainder of his bill of $2,500, reduced in January 2009, until April 2014. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2009 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting $2,500 in full and final settlement of the amounts due from Ms. Robinson.

Respondent argues that she did not pay Dr. Yousefi at the time of settlement because there was disagreement over whether the PIP payment had been received and who to send the

payment to. Specifically, Respondent argues that she "began to receive invoices from multiple Yousefi clinics for the same client, and sometimes received double-billing; and in addition, she sometimes received demands from Dr. Yousefi for payments she had already made to him or to one of his other clinics." Respondent's Brief, at 7. Respondent cites no documentary evidence to support this argument, but testified that "somewhere around the end of 2008-2009 in which the doctors were calling, Dr. Yousefi was calling, and we just really didn't know who to send the payment to, whether we should send it to Riggs, whether we should send it to Dr. Yousefi." 10/2 Tr. 210 (Respondent).[35] Even if her clients were double-billed by multiple or former Yousefi clinics, Respondent should have maintained those records in her client files. Dr. Yousefi appears to have had a practice of correcting errors when payments were made to the wrong clinic or not properly credited if the attorney produced a copy of the front and back of the cancelled check. RX C2, 6. If she did not know who to pay the bill to, Respondent had an obligation to the medical provider to obtain an accounting or otherwise reach a determination and make the payment. Instead, Respondent neglected her fiduciary duty with respect to $2,500 of Dr. Yousefi's funds for five years.

COUNT IV (Pitts): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Charlene Pitts by failing to pay Dr. Yousefi the remainder of his bill of $2,100, until April 2014, despite reaching a settlement with the insurance company in December 2010. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2010 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting $2,100 in full and final settlement of the amounts due from

[35] Dr. Yousefi testified that he no longer owns either Central Avenue Chiro (the name listed on the A&A) or Riggs Chiropractic Clinic (the name on the settlement distribution sheet), but there is no evidence as to when Dr. Yousefi sold these clinics. 10/1 Tr. 49-50.

Ms. Pitts. Respondent had an ethical obligation to protect the property of Dr. Yousefi and to pay it over promptly. It was improper to perform her duty only after obtaining a release from Dr. Yousefi.

Respondent testified that she stopped making payments on behalf of Dr. Yousefi's patients in May 2010 after he filed a complaint with Bar Counsel. 11/7 Tr. 612 (Respondent). The Pitts claim was settled in December 2010 after Dr. Yousefi filed his complaint with Bar Counsel. Respondent testified that it was her "understanding that once the issue with Yousefi and these cases were before Bar Counsel, that I was not sure to make payment at that time. I thought that the dispute was before Bar Counsel, and Bar Counsel would be the tribunal to determine who and when and where the payment should be made." 10/2 Tr. 215 (Respondent). Respondent restated this belief on cross-examination when the hearing resumed a month later. 10/7 Tr. 612 (Respondent) ("I thought, once the complaint gets before Bar Counsel, everything is supposed to stop. And I wait on Bar Counsel to tell me what's next."). Respondent acknowledged at the hearing that she later learned that Bar Counsel's role was not to adjudicate her payment disputes, *see* 11/7 Tr. 594, and she does not rely on this as a valid justification for delaying payment in her post-hearing briefing.[36]

Even before Ms. Pitts' claim was settled, relations between Respondent and Dr. Yousefi's office had deteriorated into a shouting match. At their meeting in May 2010, Mr. Tajick purported to rescind all prior reductions and would demand the full amount of the patients' bills. 10/2 Tr. 215 (Respondent); 10/2 Tr. 132-140 (Parker). Respondent argues that

[36] Attorneys licensed to practice in the District of Columbia are expected to know the Rules of Professional Conduct and the role of Bar Counsel. *See* Rule XI, § 2(a) (It is the duty of every attorney licensed to practice "at all times and in all conduct, both professional and personal, to conform to the standards imposed upon members of the Bar as conditions for the privilege to practice law."). Crediting this basis for delay would seriously interfere with Bar Counsel's responsibilities.

this created a dispute as to the amount owed to Dr. Yousefi on the Pitts matter. Respondent testified to her repeated efforts to resolve this dispute and Dr. Yousefi's failure to return her telephone calls. 10/2 Tr. 193-94 (Respondent). The issue was not resolved until Dr. Yousefi retained counsel who signed releases in April 2014. 10/2 Tr. 216 (Respondent); 11/7 Tr. 594 (Respondent) ("Then once he got counsel and signed off on the release, everything was paid.")

COUNT V (Jones): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Bryant Jones by failing to pay two of Dr. Yousefi's clinics that treated Mr. Jones, until April 2014, despite reaching a settlement with the insurance company in September 2010. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2010 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting a total of $2,527.50 in full and final settlement of the amounts due from Mr. Jones. Respondent had an ethical obligation to protect the property of Dr. Yousefi and to pay it over promptly. It was improper to perform her duty only after obtaining a release from Dr. Yousefi.

Respondent argues that the amount owed to the two chiropractic clinics was disputed because there was a PIP payment made in an uncertain amount. 10/2 Tr. 220-21 (Respondent). The Client Disbursement sheet lists PIP as "N/A" and there is no correspondence or other documentary evidence to support a finding that Mr. Jones had PIP coverage. Moreover, the amounts unrecovered on the Client Disbursement sheet do not sum to a round number of the kind that PIP payments are typically made. *See* 10/2 Tr. 58 (Yousefi); 10/2 Tr. 174 (Respondent). Even if such PIP payment was made, this is no excuse for holding up payment of the client's

medical bills for over three and a half years.[37]

COUNT VI (Way): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Barbara Way by failing to pay Dr. Yousefi the remainder of his bill of $2,700, until April 2014, despite reaching a settlement with the insurance company in September 2010. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2010 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting $2,700 in full and final settlement of the amounts due from Ms. Pitts. Respondent had an ethical obligation to protect the property of Dr. Yousefi and to pay it over promptly. It was improper to perform her duty only after obtaining a release from Dr. Yousefi.

Respondent raises no unique arguments with respect to her failure to pay the medical bill of Ms. Way. For the reasons described above, the Committee finds that the 43-month delay in paying Dr. Yousefi for his bills for medical services provided to Ms. Way violated Rules 1.15(c) and 1.15(d).

COUNT VII (Ward-Haston): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Minnie Ward-Haston by failing to pay Dr. Yousefi the remainder of his bill of $3,000, until April 2014, despite reaching a settlement with the insurance company in July 2010. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2010 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting $3,000 in full and final settlement of the

[37] There is a troubling silence regarding the disposition of the settlement proceeds deducted from Mr. Jones' disbursement, but not paid to the Yousefi Clinics. The Client Disbursement sheet deducted from the $10,000 settlement a total of $3,370.01 for payment to the Yousefi and Prime Care Chiropractic clinics, but Respondent only paid a total of $2,527.50 – a difference of $842.51. Bar Counsel has not brought a charge regarding this arguable failure to pay over client property and the Hearing Committee will make no determination on this record.

amounts due from Ms. Ward-Haston.

Respondent raises no unique arguments with respect to her failure to pay the medical bill of Ms. Ward-Haston. According to Respondent this was another case like Ms. Pitts, where the reduction pre-dated the complaint with Bar Counsel and the settlement post-dated the complaint. For the reasons described above, the Committee finds that the 44-month delay in paying Dr. Yousefi for his bills for medical services provided to Ms. Ward-Haston violated Rules 1.15(c) and 1.15(d).

COUNT VIII (Boyd): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Sherlita Boyd by failing to pay Dr. Yousefi the remainder of his bill of $2,566.67, until April 2014, despite reaching a settlement with the insurance company in August 2010. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2010 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting $2,566.67 in full and final settlement of the amounts due from Ms. Boyd.

Like the matter with Mr. Jones above, Respondent argues that the amount owed to the Yousefi Chiropractic Clinic was disputed because there was a PIP payment made in an uncertain amount. 10/2 Tr. 223-24 (Respondent). The Client Disbursement sheet lists PIP as "N/A" and there is no correspondence or other documentary evidence to support a finding that Ms. Boyd had PIP coverage. Even if such PIP payment was made, this is no excuse for holding up payment of the client's medical bills for over three and a half years. For the reasons described above, the Committee finds that the 45-month delay in paying Dr. Yousefi for his bills for medical services provided to Ms. Boyd violated Rules 1.15(c) and 1.15(d).

COUNT IX (Whitaker): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Kendra Whitaker by failing to pay Dr. Yousefi both a portion of the PIP payment and the remainder of his bill, totaling $3,371, until April 2014, despite reaching a settlement with the insurance company in August 2010. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2010 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting $3,371 in full and final settlement of the amounts due from Ms. Whitaker.

Respondent raises no unique arguments with respect to her failure to pay the medical bill of Ms. Whitaker. According to Respondent this was another case like Ms. Pitts, where the reduction pre-dated the complaint with Bar Counsel and the settlement post-dated the complaint. For the reasons described above, the Committee finds that the nearly 44-month delay in paying Dr. Yousefi for his bills for medical services provided to Ms. Whitaker violated Rules 1.15(c) and 1.15(d).

COUNT X (Ortiz): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Claudia Ortiz by failing to pay Dr. Yousefi the remainder of his bill of $1,523, until April 2014, despite reaching a settlement with the insurance company in October 2010. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in 2010 as may be necessary to pay her client's doctors. Respondent did not pay Dr. Yousefi until after he signed a release accepting $1,523 in full and final settlement of the amounts due from Ms. Ortiz.

According to Respondent this was another case like Ms. Pitts, where the reduction pre-dated the complaint with Bar Counsel and the settlement post-dated the complaint. In addition, Respondent argues that Dr. Yousefi received a PIP payment directly from the insurer that

reduced the amount owed. The Committee does not need to address the amount owed, or not, to Dr. Yousefi in finding that Respondent's 41-month delay in paying, or otherwise resolving, the amount held in trust for Dr. Yousefi for his medical services provided to Ms. Ortiz violated Rules 1.15(c) and 1.15(d).

COUNT XI (Bailey): Bar Counsel did not provide evidence to support finding that Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Renotada Bailey.

COUNT XII (Quarles): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Tiffany Quarles by paying Dr. Chawla more than five months and MSS one year after she paid Ms. Quarles. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in January 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of Dr. Chawla and MSS and to pay it over promptly.

Respondent argues that she did not pay MSS and Dr. Chawla immediately because she was out of town between February and April 2012 caring for her grandmother. 10/2 Tr. 175-176 (Respondent). This excuse does not explain why MSS and Dr. Chawla were not paid at the same time as Ms. Quarles, who received her settlement check on February 3, 2012. Respondent agreed to pay the medical providers "at the time the compensatory monies are received." BX 13. Respondent's post hoc rationale for delay does not excuse this duty.

COUNT XIII (Petty): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of K'Vonté Petty by paying MSS more than ten months after she paid Mr. Petty's mother. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in March 2012 as may be necessary to pay her client's doctors. Respondent

had an ethical obligation to protect the property of MSS and to pay it over promptly.

Respondent argues that she did not pay MSS immediately because, when she returned to her office full time after caring for her grandmother sometime in April 2012, she found "a lot of letters from different insurance companies" challenging MSS bills. 11/7 Tr. 486 (Respondent). As a result, she "pulled all of the MSS files and just started from there." *Id.* Her investigation took time, identified issues with MSS, and she was able to finally resolve all of the issues in February 2013 and paid MSS "as soon as practicable." 11/10 Tr. 709-711. Respondent does not identify any specific issues with respect to MSS's bill for Mr. Petty. Respondent does not allege that she requested a reduction in the bill, that there were any irregularities in the MSS bill, or that the insurance company challenged the amount. Rather, Respondent suggests that the MSS bill for Mr. Petty simply got caught up in a number of other clients' cases that had such issues.

The practical effect of Respondent's delay in paying MSS for services provided to Mr. Petty was to give her greater bargaining leverage against MSS over bills that were disputed. This is precisely why Rule 1.15(c) requires attorneys to "promptly notify" medical providers upon receiving funds and to "promptly deliver to the" medical provider those funds. Respondent's desire to review all client files involving MSS to resolve "issues" does not excuse her delay of ten months in Mr. Petty's case that involved no such issues.

COUNT XIV (Jones): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Tony Jones by paying Dr. Chawla two months and MSS more than three months after she paid Mr. Jones. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in May 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly.

Respondent argues that Mr. Jones disputed the bills for Gamma Technologies and Dr. Alice Adams. 11/7 Tr. 503-504 (Respondent). This does not explain why Respondent delayed payment to Dr. Chawla and MSS. Respondent asserts that the Jones matter was investigated by the insurance company's SIU because he had incurred over $8,000 in medical bills from what appeared to be a minimal impact accident. *Id.* But once MSS agreed to reduce its bill from $7,949 to just $800, and the settlement amount of $4,500 was paid to Respondent, she had a duty under Rule 1.15(c) to pay MSS.

COUNT XV (Brown): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Barbara Brown by paying Dr. Chawla almost 17 months, and MSS more than eight months, after she paid Ms. Brown. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in May 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly.

Respondent argues that she was obligated to investigate questionable billing by MSS and that she promptly paid the bills after she obtained a separate, but identical reduction from counsel for the chiropractors at MSS, Erick Tyrone. Respondent's obligation under the A&A was to MSS, not the chiropractors who worked for MSS. As counsel for the chiropractors and not MSS, Mr. Tyrone could not bind MSS. To add insult to injury, Respondent waited an additional two months after obtaining Mr. Tyrone's "reduction" to pay MSS because she wanted to get her client to sign the reduction "just to save the doctors." 11/10 Tr. 717-718 (Respondent). Respondent's purported justification for the eight-month delay in paying MSS is unacceptable. Under the A&A she signed, Respondent owed a duty to pay MSS as soon as practicable after May 11, 2012. That duty far outweighed her own interests in evaluating the accuracy and

integrity of medical bills for which she had already received a settlement check; far outweighed her duty to her client, who had already accepted a disbursement in "full and final settlement;" and far outweighed any duty she might owe to the chiropractors who had treated her clients. Respondent's excuses are nothing more than a diversion from the duty she owed MSS.

COUNT XVI (Ramsey): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Bernadine Ramsey by paying MSS more than nine months after she paid Ms. Ramsey. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in May 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the nine-month delay in paying MSS for medical services provided to Ms. Ramsey violated Rules 1.15(c) and 1.15(d).

COUNT XVII (Cormack): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Ishara Cormack by paying MSS more than seven months after she paid Ms. Cormack. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in June 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the seven-month delay in paying MSS for medical services provided to Ms. Cormack violated Rules 1.15(c) and 1.15(d).

COUNT XVIII (Proctor): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Latia Proctor by paying MSS and Dr. Chawla more than eight months after she settled Ms. Proctor's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in June 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly.

Respondent's efforts to excuse the excessive delay in paying Ms. Proctor's medical providers is exceptionally egregious. She apparently had not maintained a copy of the original reduction for medical expenses acquired from MSS at the time of the settlement. When the reduced bill was not paid after more than three months, MSS sought to increase its leverage in obtaining payment by withdrawing its reduction. In papering a new reduction through the attorney for Dr. Jenkins, Respondent asserted that MSS had rescinded the reduction before Ms. Proctor signed the release – which was false. This practice of using Mr. Tyrone to cover her own failings demonstrates an appalling callousness towards the duty she owed to the doctors. The Committee finds that the eight-month delay in paying MSS for medical services provided to Ms. Proctor violated Rules 1.15(c) and 1.15(d).

COUNT XIX (Wooten): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of DeAngelo Wooten by paying MSS more than eight months after she settled Mr. Wooten's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in June 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the eight-month delay in paying MSS for medical services provided to Mr. Wooten violated Rules 1.15(c) and 1.15(d).

COUNT XX (Allen): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Ayonia Allen by paying MSS more than six months after she settled Ms. Allen's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in July 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly.

Even if we were to accept Respondent's various arguments as to her delay in payment to MSS, these arguments fall flat with respect to Ms. Allen's case. First, the settlement with the insurance company was reached in July 2012 – nearly three months after she returned to her office after caring for her grandmother. Second, there were no charges from Gamma Technology or any other medical provider that Respondent claims may have been suspicious. The amount ultimately paid to MSS was the amount MSS agreed to in June and the client accepted on the Client Disbursement sheet signed in July. Finally, as with all of these matters, there is no evidence that any insurer or any other third party challenged the accuracy or validity of the charges on MSS's bills. The Committee finds that the six-month delay in paying MSS for medical services provided to Ms. Allen violated Rules 1.15(c) and 1.15(d).

COUNT XXI (Ansah-Twum): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Kwaku Ansah-Twum by paying Dr. Chawla more than four months after settling his claim and by not paying MSS at all. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in December 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly.

In representing Mr. Ansah-Twum, Respondent completely ignored her duty to MSS that she had agreed to on April 11, 2012 by signing the A&A. Respondent appears to have made no effort to negotiate a reduction with MSS, did not notify MSS of the settlement of Mr. Ansah-Twum's claim, and sought to use counsel for Mr. Ansah-Twum's chiropractor to obtain a lower settlement amount. The Committee finds that the four-month delay in paying Dr. Chawla and the continuing delay in paying MSS for medical services provided to Mr. Ansah-Twum violated Rules 1.15(c) and 1.15(d).

COUNT XXII (Stroy): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Leroy Stroy by paying MSS more than five months after she settled Mr. Stroy's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in August 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the five-month delay in paying MSS for medical services provided to Mr. Stroy violated Rules 1.15(c) and 1.15(d).

COUNT XXIII (Gant): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of DaJuan Gant by paying MSS approximately five months after she settled Mr. Gant's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in August 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the five-month delay in paying MSS for medical services provided to Mr. Gant violated Rules 1.15(c) and 1.15(d).

COUNT XXIV (Blakeney): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Michael Blakeney by failing to pay MSS for services it rendered to Mr. Blakeney. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in December 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 23 months in paying MSS for medical services provided to Mr. Blakeney violated Rules 1.15(c) and 1.15(d).

COUNT XXV (Kenner): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Kimberly Kenner by not paying MSS after settling Ms. Kenner's case over

two years ago. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in December 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the 24-month delay in paying MSS for medical services provided to Ms. Kenner violated Rules 1.15(c) and 1.15(d).

COUNT XXVI (Tita): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Ashanti Tita by not paying MSS more than two years after she paid Ms. Tita. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in February 2013 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 21 months in paying MSS for medical services provided to Ms. Tita violated Rules 1.15(c) and 1.15(d).

COUNT XXVII (Pearcy): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Anthony Pearcy by not paying MSS more than two years after she settled Mr. Pearcy's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in December 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 23 months in paying MSS for medical services provided to Mr. Pearcy violated Rules 1.15(c) and 1.15(d).

COUNT XXVIII (Seals): Respondent issued a check to MSS for at least partial payment of the amount of its bills less than three months after settling Ms. Seals' case. In doing so, Respondent appears to have disbursed all of the settlement amount obtained by her client. The Committee is unwilling to find that a three-month delay in cutting a check for medical

providers is necessarily not prompt payment under Rules 1.15(c) and 1.15(d).

COUNT XXIX (Tyree): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Johnnette Tyree by not paying MSS more than two years after she settled Ms. Tyree's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in December 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 23 months in paying MSS for medical services provided to Ms. Tyree violated Rules 1.15(c) and 1.15(d).

COUNT XXX (Walker): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Tiffany Walker by not paying MSS more than two years after she settled Ms. Walker's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in December 2012 as may be necessary to pay her client's doctors. Respondent argues that Ms. Walker was billed for treatment that she did not receive. RX D9, 1-2. Ms. Walker's affidavit does not, however, assert that she did not receive treatment from MSS or that she owed MSS payment. The Committee does not address the amount that Respondent properly owed MSS, but this alleged dispute does not allow Respondent to ignore her ethical obligation to protect the property of MSS and to pay it over promptly. Respondent's submission of a "Rescission of Authorization and Assignment of Benefits" signed by Ms. Walker on October 8, 2012, is similarly unavailing. RX D9, 3-4. Having received the benefits of treatment pursuant to the terms of the A&A, Respondent cannot avoid her fiduciary duty to the medical provider by having the client rescind the agreement that created that duty. Again, this is not a situation in which Respondent alleges that her client received no treatment or that the treatment was wholly fraudulent. Accordingly, the Committee finds that the delay of at least 23

months in paying MSS for medical services provided to Ms. Walker violated Rules 1.15(c) and 1.15(d).

COUNT XXXI (Wright): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Shelaya Wright by paying MSS at least four months after she settled Ms. Wright's claim. Respondent asserts that her client rescinded the A&A based upon fraudulent billing by MSS. RX D9. 6. If effective, Respondent did not have her client's authority to see or pay her medical bills, which she purports to have done in April 2013. Respondent does not allege that Ms. Wright did not receive services from MSS. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in December 2012 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least four months in paying MSS for medical services provided to Ms. Wright violated Rules 1.15(c) and 1.15(d).

COUNT XXXII (Atkinson): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Aaron Atkinson by not paying MSS nearly two years after she settled Mr. Atkinson's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in January 2013 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 22 months in paying MSS for medical services provided to Mr. Atkinson violated Rules 1.15(c) and 1.15(d).

COUNT XXXIII (Randolph): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Daynica Randolph by not paying MSS for nearly two years after she settled Ms. Randolph's claim. By signing the A&A, Respondent agreed to withhold such

sums from the settlement reached in January 2013 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 22 months in paying MSS for medical services provided to Ms. Randolph violated Rules 1.15(c) and 1.15(d).

COUNT XXXIV (Rush): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Karen Rush by not paying MSS for nearly two years after she settled Ms. Rush's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in January 2013 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 22 months in paying MSS for medical services provided to Ms. Rush violated Rules 1.15(c) and 1.15(d).

COUNT XXXV (Kent): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Antonio Kent by failing to pay MSS for nearly two years after she settled Mr. Kent's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in February 2013 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly. The Committee finds that the delay of at least 21 months in paying MSS for medical services provided to Mr. Kent violated Rules 1.15(c) and 1.15(d).

COUNT XXXVI (Noble): Respondent violated Rules 1.15(c) and 1.15(d) with respect to her representation of Charles Noble, Jr. by not paying MSS's bill for at least 21 months after she settled Mr. Noble's claim. By signing the A&A, Respondent agreed to withhold such sums from the settlement reached in February 2013 as may be necessary to pay her client's doctors. Respondent had an ethical obligation to protect the property of MSS and to pay it over promptly.

The Committee finds that the delay of at least 21 months in paying MSS for medical services provided to Mr. Noble violated Rules 1.15(c) and 1.15(d).

COUNT XXXVII (Lawrence): Respondent paid Dr. Chawla three weeks after the date of the Client Disbursement sheet. In doing so, Respondent appears to have disbursed all of the settlement amount obtained by Ms. Lawrence. The Committee is unwilling to find that a delay of less than a month in cutting a check for medical providers is necessarily not prompt payment under Rules 1.15(c) and 1.15(d). As for any amount due to MSS, there is not clear and convincing evidence that any amount is owed, nor is it the Committee's responsibility to make such a determination.

3. Violation of Rule 8.4(c)

Rule 8.4(c) states that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." A lawyer violates Rule 8.4(c) where there is clear and convincing evidence that the lawyer has engaged in "conduct evincing a lack of honesty, probity, or integrity in principle . . . ." *In re Shorter*, 570 A.2d 760, 767-68 (D.C. 1990 (per curium). "Misrepresentation" is a "statement . . . that a thing is in fact a particular way, when it is not so." *Id*. at 767.

Bar Counsel argues that Respondent was dishonest with the health care providers by failing to make promised payments or by paying years later and only after being charged with disciplinary violations. Bar Counsel also argues that Respondent misrepresented to her clients on her Client Disbursement sheets that she had either "pre-paid" certain amounts to Dr. Yousefi or that she had deducted amounts from the settlement that she had either paid or would pay to MSS. Respondent argues that she satisfied the terms of the A&A agreements and that Bar Counsel misconstrues the meaning of the term "pre-paid" on the Client Disbursement sheets.

As discussed above, failure to comply with the promises made in the A&As is a violation of Rules 1.15(c) and 1.15(d), but Bar Counsel offers no evidence that Respondent knew that she would not keep her promises when she (or her staff) signed the A&As. On the contrary, the sheer volume of Respondent's business with Dr. Yousefi and MSS suggests that she signed A&As during this same period of time for which she kept the promises stated in the agreements. Without evidence that Respondent knew or should have known that she would not keep her A&A promises, there is no violation of Rule 8.4(c). *Cf. In re Kanu*, 5 A.3d 1, (D.C. 2010) (evidence of lawyer's dishonesty included "that she knew, or should have known, she could not keep" certain promises to her clients).

Nor do we find a violation of Rule 8.4(c) in the Client Disbursement sheets. Bar Counsel interprets the phrase "Pre-Paid Expenses" on the Client Disbursement sheet as an affirmative statement to her clients that the medical providers have been paid.[38] Bar Counsel's reading of the Client Disbursement sheet is a reasonable interpretation, but there are others and, more importantly, there is little evidence that any client interpreted it in this manner. Although Rule 8.4(c) is "given a broad interpretation" that does not require finding intent to deceive, there must still be clear and convincing evidence of some kind of "active deception or positive falsehood" or at least "a lack of fairness and straightforwardness." *In re Hager*, 812 A.2d 904, 916 (D.C. 2002) (quoting *In re Shorter*, 570 A.2d 760, 768 (D.C. 1990) (per curiam)). Where dishonest conduct is "obviously wrongful and intentionally done, the performing of the act itself is sufficient to show the requisite intent for a violation." *In re Romansky*, 825 A.2d 311, 315 (D.C. 2003). Conversely, "when the act itself is not of a kind that is clearly wrongful, or not intentional, Bar Counsel has the additional burden of showing the requisite dishonest intent." *Id.*

[38] This term is only used in the Client Disbursement sheets for the Yousefi clients (Counts I-X).

The Court found the facts of *Shorter* to be a close call, but the evidence was supported by signed financial statements from the respondent based on oral interviews and the testimony of IRS agents at respondent's criminal trial. In contrast, we have ten Client Disbursement sheets created primarily to calculate the amount of the net disbursement to the client. Without more, we cannot find clear and convincing evidence of dishonesty. *See In re Mitchell*, 822 A.2d 1106, 1109 (D.C. 2003) (finding violation of Rule 8.4(c) where lawyer told medical provider that personal injury suit was on appeal when it was not); *In re Moore*, 704 A.2d 1187 (D.C. 1997) (per curiam) (finding violation of Rule 8.4(c) where respondent told client that all medical providers had been paid when that was not true.).

4. Violation of Rule 1.15(a) – Misappropriation

Rule 1.15(a) prohibits misappropriation of entrusted funds. Misappropriation is "any unauthorized use of client's funds entrusted to [an attorney], including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not [the attorney] derives any personal gain or benefit therefrom." *In re Cloud*, 939 A.2d 653, 659 (D.C. 2007) (internal citation omitted). Misappropriation does not require proof of improper intent. *Anderson I*, 778 A.2d at 335. When the balance in an attorney's trust account falls below the amount due to a client or third party, unauthorized use has occurred. *In re Edwards*, 990 A.2d 501, 518 (D.C. 2010). Bar Counsel alleges that Respondent violated Rule 1.15(a) when the balance in her trust account fell below the amounts she was required to safeguard for medical providers. In making this argument, Bar Counsel relies on the amounts listed on the Client Disbursement sheets as the amounts that should have been held in trust for the medical providers.

At bottom, Bar Counsel's claim rests on simple accounting: did Respondent have enough in her trust account to pay the amounts listed on her Client Disbursement sheets as being due the

medical providers? In asserting this claim, Bar Counsel relies on the settlements obtained by 19 clients:

Client	A&A Signed	Disbursement or Settlement Date	Payment Date	Amount on Disbursement Sheet
Marjorie Barnes	10/16/06	08/01/07	N/A	$1,156.31
Markitta Robinson	10/29/07	01/26/09	04/11/14	$2,500.00
Barbara Way	12/16/08	06/15/10	04/11/14	$2,700.00
Minnie Ward-Huston	01/08/10	07/25/10	04/11/14	$3,000.00
Sherlita Boyd	04/07/10	08/10/10	04/11/14	$2,566.67
Kendra Whitaker	03/09/10	08/16/10	04/11/14	$3,371.00
Bryant Jones	12/07/07	09/08/10	04/11/14	$2,527.50
Claudia Ortiz	12/05/07	10/25/10	04/11/14	$1,523.00
Charlene Pitts	09/11/09	12/28/10	04/11/14	$2,100.00
Tiffany Quarles	09/25/11	01/27/12	02/06/13	$3,700.00
K'vante Petty	10/21/11	03/14/12	02/01/13	$1,218.80
Barbara Brown	08/30/11	05/02/12	02/01/13	$3,094.00
Bernadine Ramsey	12/27/11	05/21/12	02/22/13	$2,000.00
Ishara Cormack	09/09/10	06/13/12	02/01/13	$1,800.00
Latia Proctor	04/13/11	06/13/12	02/22/13	$2,400.00
DeAngela Wooton	04/13/11	06/19/12	02/22/13	$2,400.00
Ayonia Allen	01/17/12	07/03/12	01/16/13	$1,000.00
Dajuan Gant	05/04/11	08/01/12	01/08/13	$850.00
Leroy Stroy	01/25/12	08/20/12	02/06/13	$1,985.00
TOTAL				**$41,892.28**

Respondent argues that to prove misappropriation, Bar Counsel must identify the specific amount she should have had in her escrow account on any given day. Respondent's Sur-Reply at 6. This is not correct. Whether Respondent's trust account was insufficient by $5 or $5,000, it represents an unauthorized use of entrusted funds that is a violation of Rule 1.15(a). *See In re Thompson*, 579 A.2d 218, 220-21 (D.C. 1990) (adopting Board Report finding that Bar Counsel does not have to trace "virtually untraceable cash funds" to establish misappropriation). Nor do the changes made during the hearing to the factual support for Bar Counsel's claim of misappropriation alter our analysis. In seeking to prove misappropriation by clear and

convincing evidence, Bar Counsel withdrew arguably disputed amounts to rely on the facts most favorable to Respondent – and still found a lack of funds in the trust account.

Respondent correctly notes that the date listed above as the "Disbursement or Settlement Date" does not accurately reflect when settlement funds were deposited in Respondent's trust account.[39] The parties offer evidence of when Respondent's clients were paid in only five cases: Quarles, Petty, Brown, Tony Jones, and Cormack. These five clients received their settlement check between four and nine days after signing the Client Disbursement sheet. Respondent testified that the settlement check may not be received for up to two weeks after the client signs the Client Disbursement sheet and that the actual deposit can take a few more days. 11/10 Tr. 760-762 (Respondent). The 19 cases relied on by Bar Counsel as evidence of misappropriation were settled or had Client Disbursement sheets signed at least 46 days prior to October 5, 2012 – the first date that Bar Counsel alleges that Respondent's trust account fell below the amounts she was required to safeguard. Accordingly, the Committee finds that there is clear and convincing evidence that the settlement checks for these 19 clients were received and should have been deposited in Respondent's trust account prior to October 5, 2012.

Respondent raises questions about the amounts actually owed to Dr. Yousefi and MSS, and challenges the significance of the amounts listed on the Client Disbursement sheets. As we have repeatedly stated, it is not the purview of this Committee to make determinations about the amounts Respondent owed to which medical providers. Nonetheless, having already taken her fees and expenses, the amounts listed on the Client Disbursement sheets for medical providers

[39] These dates are the date that the Client Disbursement sheet was signed by the client, except for the case of Bernadine Ramsey. The record does not contain a signed and dated Client Disbursement sheet for Ms. Ramsey, but there is evidence that the settlement occurred on May 21, 2012. BX 16a.

belong to someone other than Respondent and, as such, she owes a duty to safeguard that property in a trust account separate from her personal funds.

Respondent offered the testimony of Ron Sahadeo, the vice president of SunTrust Bank who reviewed Respondent's accounts on a quarterly or annual basis. 11/7 Tr. 458-560. Mr. Sahadeo testified that Respondent "had been a very good client over those years, and she remains in [his] book of business with SunTrust over the last ten years." *Id.* According to Mr. Sahadeo, Respondent has not experienced any bounced checks or "things like that." *Id.* at 460. He also testified that Respondent's monthly escrow account statements accurately reflected the daily balances of Respondent's trust account. *Id.*; BX 38; RX F1.

On October 5-9 and October 16, 2012, Respondent's trust account balance was less than $41,892. BX 38d, 2; RX F1, 8. As such, Respondent misappropriated funds belonging to her clients or third persons who had a just claim in those funds. *Edwards*, 990 A.2d at 518; *In re Chang*, 694 A.2d 877, 880 (D.C. 1997) (per curiam). Bar Counsel argues that Respondent's escrow account contained insufficient funds on 25 days. Whether it contained insufficient funds for six days or 25 days, we see little point in defining the temporal scope of the misappropriation.

Bar Counsel argues that Respondent's misappropriation was intentional. Intentional misappropriation is most clearly demonstrated when a lawyer takes entrusted funds for personal use. *See, e.g.*, *In re Mooers*, 910 A.2d 1046, 1046 (D.C. 2009) (per curiam) (finding intentional misappropriation where trust account fell below amount owed to client's medical providers and lawyer adcknowledged using funds in the account for personal and business expenses). Bar Counsel alleges that Respondent used funds in her trust account to pay bills when she had to pay about $70,000-80,000 in legal fees in connection with a dispute with a boyfriend and later had to file for bankruptcy. As evidence of this, Bar Counsel relies on the testimony of Dr. Yousefi who

intimated that Respondent was unable to pay his bills from her escrow account because she had used those funds for her personal expenses. 10/1 Tr. 143-44 (Yousefi). While we found Dr. Yousefi's testimony credible, he did not purport to have such knowledge of Respondent's finances to make this statement based upon anything other than a logical assumption. Respondent disputes this allegation. Dr. Yousefi's assumption is not clear and convincing evidence sufficient to support a finding of intentional misappropriation.

Respondent does not address the level of intent, arguing only that no misappropriation occurred. Reckless misappropriation is found where there is evidence of acts that "reveal an unacceptable disregard for the safety and welfare of entrusted funds . . .." *Anderson I*, 778 A.2d at 338. One of the hallmarks of reckless misappropriation is a "complete failure to track settlement proceeds . . . and the disregard of inquiries concerning the status of funds." *Id.* In contrast, negligent misappropriation occurs where the unauthorized use was inadvertent or the result of simple negligence." *Id.* at 339. Cases finding negligent misappropriation generally involve "single, or discrete, inadvertent or negligent acts." *In re Carlson*, 802 A.2d 341, 351 n.12 (D.C. 2002).

Respondent's practice is high volume and, consequently, relies on an established routine. Such a practice demands good accounting of amounts due and owed. Having a signed, written agreement from a medical provider to accept a reduced payment of a client's bill prior to the client accepting a settlement offer protects all parties involved. Absent such a pre-settlement agreement, it is improper to only pay medical providers until they sign an agreement accepting a specified amount. Respondent does not assert that she thought that the medical providers had been paid. *See In re Choroszej*, 624 A.2d 434 (D.C. 1992) (per curiam) (negligent

misappropriation found where attorney held "honest, but erroneous, belief that the doctor had been paid").

In circumstances such as Respondent's, reckless misappropriation is found only where an attorney fails to keep track of client funds, commingles personal or business funds with client funds, *and* indiscriminately writes and bounces checks on the account in which the funds are being held. *In re Micheel*, 610 A.2d 231, 236 (D.C. 1992). Misappropriation based upon inadequate record-keeping alone does not prove recklessness. *Anderson I*, 778 A.2d at 340.

Although Bar Counsel adequately established that Respondent engaged in misappropriation, there is little evidence of how this occurred. The trust account statements and the few checks written on that account that are contained in the record do not support any specific conclusion by clear and convincing evidence. While *res ipsa loquitor* may establish that Respondent's record-keeping was deficient and her testimony regarding her disputes over amounts owed to the medical providers is worrisome, Respondent did not bounce checks and there is no evidence that she withdrew any money for her own use. Without more, we find that Respondent's misappropriation was negligent.

In summary, we find that Respondent violated Rule 1.15(a) with respect to the safeguarding of a PIP check for her client D.F., violated Rules 1.15(c) and 1.15(d) with respect to 34 clients, and engaged in negligent misappropriation in violation of Rule 1.15(a).

IV. RECOMMENDATION AS TO SANCTION

Bar Counsel asks for disbarment and Respondent asks that all charges be dismissed. We find neither extreme appropriate here. Instead, we must "review the respondent's violations in light of 'the nature of the violation, the mitigating and aggravating circumstances, [and] the need to protect the public, the courts, and the legal profession.'" *In re Austin*, 858 A.2d 969, 975

(D.C. 2004) (quoting *In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc)). As the Court has stated: "The purpose of imposing discipline is to serve the public and professional interests identified and to deter similar conduct in the future rather than to punish the attorney. . . What is the appropriate sanction necessarily turns on the nature of the respondent's misconduct." *Austin*, 858 A.2d at 975.

"A six-month suspension is the norm as a starting point for negligent misappropriation cases." *In re Robinson*, 74 A.2d 688, 697 (D.C. 2013). A greater sanction is warranted where the misconduct goes beyond the unauthorized use of client funds. *In re Kline*, 11 A.3d 261, 265 (D.C. 2011) (citing *In re Fair*, 780 A.2d 1106, 1115 (D.C. 2001)). A single case involving a violation of Rules 1.15(c) and 1.15(d) caused by negligent oversight or poor recordkeeping is often sanctioned with a public censure. *See In re Clower*, 831 A.2d 1030 (D.C. 2003) (collecting cases). When negligent misappropriation is added to violations of Rules 1.15(c) and 1.15(d), the sanction is much harsher. *See In re Boykins*, 999 A.2d 166 (D.C. 2010) (attorney suspended for two years with fitness requirement for negligent misappropriation of settlement proceeds due to medical provider and dishonesty in responding to Bar Counsel's investigation).

This Committee is well aware of the advisory nature of its recommendation concerning sanction. Meting out attorney discipline is the exclusive province of the Court of Appeals. *In re Edwards*, 990 A.2d 501, 507 (D.C. 2010). Our recommendation is hampered by the lack of briefing by either side on an appropriate sanction for the precise violations that we believe have been established. We expect that the parties will be able to address the appropriate sanction more completely in briefing before the Board and the Court of Appeals. Thus, we offer the Court our candid assessment of Respondent's misconduct.

As we discussed above, we find that respondent exhibited a consistently erroneous view of her ethical duties to her clients' medical providers. We find clear and convincing evidence of unauthorized use of third party funds entrusted to Respondent, but we find that the misappropriation was negligent and there is no evidence that Respondent benefited financially from the unauthorized use. No clients were harmed by Respondent's misconduct (yet) and at least one benefited financially from post-settlement negotiations with medical providers, although we believe that her clients were placed at greater risk of being sued by the medical providers as the result of her refusal to pay the amounts she had retained in her trust account. Finally, Respondent has had no prior discipline during her more than ten years of practice, but she has engaged in a wholesale abdication of her fiduciary duties to medical providers for nearly half of that time.

In light of the facts presented in the exhibits and in testimony during four days of hearing, facts that, like all cases, are unique unto themselves, we recommend that Respondent be suspended for one year. We believe a substantial sanction, over and above the typical six-month suspension for negligent misappropriation, is necessary to protect the public, the courts and the integrity of the legal profession with respect to Respondent's violations of Rules 1.15(c) and 1.15(d). Respondent's standard practice was to ignore the fiduciary duty she accepted by signing the A&As and to engage in post-settlement hard bargaining with third parties to whom she owed an ethical obligation.

Recognizing that we are also without the benefit of briefing by the parties on the *Roundtree* factors, we humbly opine that there is not a serious doubt as to Respondent's fitness to practice law and do not recommend that the Court impose a fitness requirement. *See Cater*, 887 A.2d at 24. Respondent does not appear to recognize the seriousness of her misconduct

because she so blindly defends her actions. Rather than acknowledge the delay in payments and take responsibility for rectifying those failures, Respondent doubled-down: blaming everyone but herself, creating post-hoc excuses for failing those to whom she owed a fiduciary duty, and (at least initially) expecting Bar Counsel to mediate the confusion she created. The record also reflects a pattern of bullying and strong-arming engaged in by Respondent that is not unfamiliar in the practice of law, nor necessarily unethical, but it is uncivil and unprofessional. We are inclined to view this not as evidence of a lack of fitness to practice, but a loss of what it means to practice law. Respondent's clients were characterized by witnesses as "difficult" and demanding (client characteristics with which many attorneys are familiar), but that does not justify ignoring the duties that attorneys have to third-parties – including those for whom the attorney is safeguarding property. If any additional sanction is warranted, we recommend that it be in the form of a practice monitor, CLE or referral to the D.C. Bar's Practice Management Advisory Service, to assist Respondent in tracking and accounting for entrusted funds in compliance with her ethical and fiduciary obligations.

HEARING COMMITTEE NUMBER FIVE

/MJZ/
Michael J. Zoeller, Chair

/DL/
Darryl Lesesne

/JJS/
John J. Soroka

Dated: May 29, 2015