

SUPREME COURT OF ARIZONA

In the Matter of a Member of the ) Arizona Supreme Court  
State Bar of Arizona ) No. SB-15-0034-AP  
)  
JOHN A. SHANNON, JR., ) Office of the Presiding  
Attorney No. 5033 ) Disciplinary Judge  
) No. PDJ20149051  
Respondent. )  
)  
) **FILED 12/15/2015**

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**DECISION ORDER**

Pursuant to Rule 59, Rules of the Supreme Court, Respondent John A. Shannon, Jr. appealed the Disciplinary Hearing Panel's "Amended Decision and Order Imposing Sanctions." The Court has considered the parties' briefs and the record in this matter. The Court agrees with the Hearing Panel that the record establishes by clear and convincing evidence that Respondent committed the ethical violations charged in the complaint. However, contrary to the decision of the Hearing Panel, the Court concludes that suspension rather than disbarment is the appropriate discipline.

In determining appropriate sanctions, the Court and the Hearing Panel look to the American Bar Association's Standards for Imposing Lawyer Sanctions. We consider the duty violated, the lawyer's mental state, the presence or absence of actual or potential injury, and the existence of aggravating and mitigating circumstances. Standard 3.0. The Standards instruct that the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct. Multiple or repeated instances of misconduct should be

considered as aggravating factors.

The violations here stem from one count related to Respondent's handling of client funds in the face of claims by medical lien holders. The Hearing Panel found that the Respondent violated his duty to his client by failing to observe the rules governing the treatment of client funds by attorneys. See ER 1.3 (Diligence), ER 1.15 (Safekeeping Property). In addition, Respondent violated his duties to the public by making certain statements to medical lien holders regarding payment of their claims. Respondent's mental state was knowing, as he knew or should have known his obligations under the rules to deal properly with his client's property and he acted knowingly in making his statements to the medical lien holders.

Because the most serious conduct involves the Respondent's primary obligations to his client, Standard 4.0 applies. Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Respondent's violation of ER 1.3 makes Standard 4.4 also relevant. Under Standard 4.42 (Lack of Diligence), suspension is generally appropriate when a lawyer knowingly fails to perform client services and causes injury or potential injury to a client. Respondent's other violations support a presumptive sanction of censure.

After misconduct has been proven, aggravating and mitigating circumstances are considered in determining the appropriate sanction.

The record supports the existence of the following aggravating circumstances: Standards 9.22(a) (prior disciplinary offense); 9.22(i) (substantial experience in the practice of law). The record also reflects these mitigating circumstances: Standard 9.32 (m) (remoteness of prior offenses) and, although not a listed factor under the Standards, the Respondent's good faith belief in the invalidity of the medical liens. Respondent has maintained that the medical liens involved in these proceedings are preempted by federal law. Without deciding that issue here, we note that the court of appeals' recent decision in *Abbott v. Banner Health Network*, 246 Ariz. 436, 341 P.3d 478 (App. 2014), which held that federal law preempts certain medical liens, issued after Respondent's conduct and is now pending review before this Court.

Considering the aggravating and mitigating circumstances, the Court finds that an appropriate term of suspension is ten months.

Finally, the Court rejects the Respondent's argument that the Hearing Panel decision should be set aside due to the denial of his motion to disqualify the Presiding Disciplinary Judge from participating in these disciplinary proceedings.

Therefore, upon due consideration,

**IT IS ORDERED** that the appeal of Respondent John A. Shannon, Jr. is GRANTED.

**IT IS FURTHER ORDERED** that Respondent John A. Shannon, Jr. is

suspended from the practice of law in Arizona for a period of ten months, retroactive to April 10, 2015.

**IT IS FURTHER ORDERED** that, pursuant to the "Consensual Order re: Missing Check for Funds" dated June 2, 2015, the State Bar may continue to facilitate the interpleader of the client's settlement funds that were transferred by Respondent to the State Bar, using an Arizona licensed attorney identified by the client to manage and complete the interpleader proceedings.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent John A. Shannon, Jr. may be placed on probation, if appropriate, with the length and any terms and conditions to be determined as a part of those proceedings.

**IT IS FURTHER ORDERED** that the Hearing Panel's assessment of costs and expenses of the disciplinary proceeding is AFFIRMED.

DATED this 15th day of December, 2015.

\_\_\_\_\_/s/  
SCOTT BALES  
Chief Justice

TO:

John A Shannon Jr  
Hunter F Perlmeter  
Michele Smith  
Maret Vessella  
Sandra Montoya  
Perry Thompson  
Don Lewis  
Beth Stephenson  
Mary Pieper  
Netz Tuvera  
Lexis Nexis

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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IN THE MATTER OF A MEMBER OF THE  
STATE BAR OF ARIZONA,

**JOHN A. SHANNON, JR.,**  
**Bar No. 005033**

Respondent.

**No. PDJ-2014-9051**

**AMENDED  
DECISION AND ORDER  
IMPOSING SANCTIONS**

[State Bar No. 13-2510]

**FILED APRIL 10, 2015**

On February 23, 2015, the Hearing Panel ("Panel"), composed of Brett Eisele, a public member, Sandra E. Hunter, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a one day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Hunter F. Perlmeter appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. Shannon appeared *pro per*.

The Panel carefully considered the Complaint, Answer, the State Bar's Individual Pre-hearing Statement, Mr. Shannon's Individual Prehearing Statement, the State Bar's Pre-Hearing Memorandum, Mr. Shannon's Hearing Memorandum, testimony of Mr. Shannon, and admitted exhibits.<sup>1</sup> The Panel now issues the following "Decision and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

**I. SANCTION IMPOSED:**

**DISBARMENT AND COSTS OF THESE DISCIPLINARY PROCEEDINGS**

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<sup>1</sup> Consideration was also given to sworn testimony of Dr. Scott Stratmann, George Griffeth, Esq., Wilbur Hudson, Esq., and James Hancock.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

This single count complaint arose out of Mr. Shannon's representation of James Hancock. Count One alleged: (1) Mr. Shannon failed to deposit a settlement check from an insurance company for more than six months; (2) Mr. Shannon failed to notify the medical providers, who Mr. Shannon knew to be lien holders, of his receipt of the settlement check for more than six months and did not pay the funds to the lienholders under their agreement; (3) Mr. Shannon, after receiving an email from one of the lienholders directing Mr. Shannon to deal in the future with the named lawyer for that lienholder, communicated directly with the lienholder; (4) Mr. Shannon was dishonest in his communications with the lienholders telling them he had their checks ready to be sent to them, did not send the checks, ignored their follow up attempts and made misrepresentations about the original settlement terms; (5) Mr. Shannon's failure to timely take action regarding the lienholders caused prejudice and potentially subjected his client to additional litigation and liability; (6) Mr. Shannon paid his client in cash rather than by a check or electronic transfer.

A Probable Cause Order was issued on June 12, 2014 and the State Bar filed its Complaint on June 16, 2014, alleging violations of six different Ethical Rules (ERs): 1.3 (diligence), 1.15 (failure to notify and deliver funds), 4.2 (communication with person represented by counsel), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice), and Rule 43(b)(5) (method of disbursement of trust account). Mr. Shannon filed his Answer on July 8, 2014, entered no admission, and under paragraph VI of his answer denied "all allegations not heretofore expressly admitted."

An initial case management conference was held on July 14, 2014, resulting in the setting of a hearing to commence October 2, 2014. Standard written scheduling orders were issued controlling the subsequent course of the action by the PDJ. Included within those was an order that the parties "immediately schedule a time for the settlement conference with the settlement officer."

The State Bar filed a Motion for Sanctions on July 29, 2014, alleging Mr. Shannon had failed to respond to multiple emails from the settlement officer and bar counsel regarding setting a date for the settlement conference. Mr. Shannon did not respond to the motion. By Order of the PDJ on August 26, 2014, Mr. Shannon was directed to contact and schedule with the settlement officer a settlement conference not later than noon, September 5, 2014, or a sanction would issue. No notice of compliance was filed or given by Mr. Shannon to the court or clerk until October 21, 2014. No sanction issued.

The State Bar filed a Second Motion for Sanctions on August 28, 2014, for Mr. Shannon's failure to provide an initial disclosure statement, which was due on August 7, 2014. On September 15, 2014, Mr. Shannon responded to the second motion for sanctions acknowledging his disclosure statement was due on August 7, 2014, but arguing his initial disclosure statement had been sent on September 11, 2014. He submitted the motion should be denied as there was no surprise regarding the information contained within his belated disclosure statement.

On September 12, 2014, the deadline for the filing of a joint prehearing statement, Bar Counsel and Mr. Shannon each filed a separate "pre-hearing statement." Mr. Shannon stated in his filing why they were separately filed:

Respondent takes the position that he was engaged in the preparation of a Joint Statement which was due at noon today. At 10:45 Respondent

emailed changes in the proposed Joint Statement whereupon the emailed revisions were not able to be reviewed by state bar staff.

[Respondent's Pre-Hearing Statement, p. 1.]

Mr. Shannon in his statement listed as contested all facts deemed material except that: he was a lawyer licensed to practice law in Arizona and the date of his admission; he settled the client's case for \$15,000; the insurance company issued a check for \$10,500 and that the complainant agreed to reduce the lien of both lienholders. [Respondent's Pre-Hearing Statement.] This last stipulated fact was in fact contested.

On September 23, 2014, the parties filed a Notice of Settlement. On September 25, 2014, the PDJ issued an order directing the agreement be filed not later than October 17, 2014, vacating all outstanding initial case management conference dates, including the hearing date and informing the parties the second motion for sanctions remained under advisement pending a ruling on any agreement for discipline by consent.

On October 16, 2014, an agreement for discipline by consent was filed. It was rejected by order of the PDJ on October 17, 2014, which explained the agreement failed to state what standard was applied under the American Bar Association's *Standards for Imposing Lawyer Sanctions* to achieve the stated presumptive sanction of suspension See Rule 57(a)(3)(E), Ariz. R. S. Ct. The consent gave no explanation of what had been done with \$4,500 of settlement funds. The order rejecting the agreement stated "the conditional admissions are deemed withdrawn pursuant to Rule 57(a)(4)(C)." The PDJ, during the telephonic final prehearing conference on February 3, 2015, reminded the parties they were not precluded from submitting

another agreement for discipline by consent and encouraged them to attempt to settle the matter. No other agreement for discipline by consent was submitted.

On October 17, 2014, an Order issued granting the second motion for sanctions and set a telephonic hearing to determine if Mr. Shannon's failure to timely serve his disclosure statement was wilful or non-wilful. Mr. Shannon filed a Notice of Compliance Re: Settlement Conference and a separate Motion to Strike Discovery Sanctions and Motion to Disqualify the PDJ on October 21, 2014. Under Supreme Court Rule 51(d), the Disciplinary Clerk designated a volunteer attorney member from the hearing panel pool to rule on the motion to disqualify. On December 31, 2014, by order of the designated volunteer attorney member, Mr. Shannon's Motion to Disqualify was denied. The case was reassigned to the PDJ by the Disciplinary Clerk on January 5, 2015.

On January 6, 2015, the PDJ issued an order imposing sanctions. That ruling noted under Rule 58(e) Mr. Shannon was required to serve his initial disclosure statement not later than August 7, 2014. He made no request to extend that time. The ruling pointed out that by order of the PDJ filed July 14, 2014, Mr. Shannon was reminded of his obligation to serve his disclosure statement. As stated above, Mr. Shannon sent his disclosure statement to the State Bar on September 11, 2014 for the scheduled October 2, 2014 hearing.

The ruling noted Mr. Shannon had previously failed to obey the initial case management conference order requiring him to "immediately schedule a time for the settlement conference with the settlement officer." The sanction entered under Rule 58(f)(C) was that the actions of Mr. Shannon were construed to be a violation of Supreme Court Rule 54(d). The following day, January 7, 2015, a Motion for

Reconsideration of the denial of the removal of the PDJ was filed by Mr. Shannon. On January 8, 2015, the Motion for Reconsideration was stricken by the same earlier designated volunteer attorney member.

Mr. Shannon was aware of the initial case management conference order requiring each party to "make arrangements with the Disciplinary Clerk's office to pre-mark all hearing exhibits." The order was clear "ALL exhibits shall be listed numerically commencing with the exhibits of the party with the burden of proof." It also mandated, "The parties are required to bates stamp ALL exhibits for reference by the panel in sequential order." (Capitalization included in the original order.) We find Mr. Shannon did not follow those orders. Instead he listed his exhibits beginning with exhibit 1, the same as the State Bar exhibits.<sup>2</sup> The exhibits were not bates stamped.

The State Bar asserts disbarment is the appropriate sanction in this matter or a minimum of a multi-year long-term suspension for Mr. Shannon's perceived unethical actions as well as his lack of acknowledgement of his wrongful behavior.

### **III. FINDINGS OF FACT**

Mr. Shannon was licensed to practice of law in the State of Arizona on October 8, 1977. [Answer, p. 1.]

James Hancock ("client") was injured in a vehicular accident on or about September 19, 2011. He sought legal representation and was referred by a friend to attorney Wilbur Hudson who represented him under a signed fee agreement. Mr. Hudson referred Mr. Hancock to Dr. Stratmann. During his course of treatment Mr.

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<sup>2</sup> Due to the duplicative numbering, State Bar Exhibits will be cited as "SB Ex. #, Bates #" and Mr. Shannon's exhibits will be cited as "R. Ex. #".

Hancock and Mr. Hudson, as attorney for Mr. Hancock, agreed to health provider liens under Ariz. Rev. Stat. § 33-931 *et al.* It was undisputed these liens were perfected under those statutes. Section 33-934, A.R.S., allows an action to enforce a health care provider lien only against those liable to an injured person, not against the injured person. When Mr. Shannon undertook representation of Mr. Hancock he was personally aware the proceeds of any settlement were encumbered by liens from Dr. Stratmann a.k.a. Total Care Chiropractic & Injury Services, ("TC") and Injury Assistance L.L.C. ("IA"), a limited liability company. [Testimony of John Shannon, 11:36:30; SB Ex. 25; SBA000380, lines 10-13, SB Ex. 9, SBA000036; Mr. Shannon Answer to Complaint, page 2, lines 5-14; Testimony of James Hancock and Wilbur Hudson.]

Precisely how Mr. Shannon became the sole lawyer for Mr. Hancock is not entirely clear to us. In an email to the claims representative for the insurance company representing the driver who injured Mr. Hancock, Mr. Shannon stated, "I've been retained to assist Hudson & Associates in connection with the [Hancock] above referenced matter." Mr. Shannon later proclaimed in capitalized letters, regarding Mr. Hudson "HE STILL REPRESENTS HANCOCK. THE CLIENT HAS TWO LAWYERS...." [SB Ex. 17, SBA000129-130.] In his answer, Mr. Shannon certified, "Respondent had been asked by the client's original lawyer to settle the case and disburse funds to the client, and if necessary, to client's medical providers." [Answer, page 2, lines 8-10.] In his November 12, 2013, response to the State Bar letter of inquiry, Mr. Shannon stated, "Mr. Hudson had previously asked me to conclude the negotiation with the insurance carrier and the chiropractors. Previously, Mr. Hudson's office,

without my input or knowledge, secured liens with TC and IA.” [SB Ex. 9, SBA000036.]

In his deposition, Mr. Shannon swore he obtained the case from Mr. Hudson, “before he applied to the bench, actually and it was just one of those cases that he-he ran into an impasse with the insurance company and asked me to handle it.” [SB Ex. 25, SBA 000378, Page 9, lines 17-20.] In his opening statement Mr. Shannon stated he had a business relationship with Wilbur Hudson and the Hancock case was part of that business relationship. In his testimony Mr. Shannon swore he “took on” the case from Mr. Hudson. He then swore Mr. Hudson had wanted to “offload” the case to him and he was willing to take it; “I took it over.” He then retreated and stated his memory was “fuzzy” regarding his receipt of the case. [Testimony of John Shannon.]

Mr. Hudson was clear in his memory and testimony when asked if he continued to associate on the case with Mr. Shannon after he transferred to case to him. He swore he was handling the case initially and then gave the case to Mr. Shannon. “I was not associated with him from that point forward.” Mr. Hudson testified he probably referred the case to Mr. Shannon, but had little other memory of the case and none of its settlement. [Testimony of Hudson, 1:50:07.] This directly contradicted on multiple occasions the statements and testimony of Mr. Shannon.

Mr. Shannon, in a January 4, 2013 email to Mr. Hudson, stated, “When you Emailed me the Hancock file, I didn’t receive the retainer agreement.” [SB Ex. 17, SBA 000096-97.] We conclude from the email that at some prior date Mr. Hudson forwarded the file to Mr. Shannon. That email was attached as part of a March 17, 2014 letter from Mr. Shannon to the State Bar stating his entire case file was

included. [Id.] It is unclear whether the email Mr. Shannon received from Mr. Hudson with the Hancock file was not made part of the record by the parties or not provided to the State Bar. We note there was a CD apparently provided by Mr. Shannon to the State Bar. A paper image of that CD was filed with the disciplinary clerk, but not a copy of the CD. [SB Ex. 17, SBA000222.] Regardless, it is likely that email would be more dispositive of when Mr. Shannon received the case and what the terms were.

On December 28, 2012, Mr. Shannon emailed the client stating, "Attached is the letter of representation about which we talked." He asked Mr. Hancock to sign and return three copies of that letter. We assume from that statement Mr. Shannon spoke with Mr. Hancock prior to this email. This is consistent with the testimony of Mr. Hancock who swore he informed Mr. Shannon he continued to have pain in his shoulder and that Dr. Strattman, who had been treating him, "... didn't do anything to my shoulder." [Testimony of James Hancock, 2:07:28.] Mr. Shannon testified Mr. Hancock told him in their first meeting he was on Medicare, Medicaid, AHCCS and United Healthcare. Mr. Shannon's early knowledge of this was acknowledged in his answer to the complaint, but his testimony was contradictory. [Answer to the Complaint, page 3, lines 17-19.]

On December 30, 2012, Mr. Shannon again wrote Mr. Hancock stating, "BTW, I haven't yet received the letters of representation." To that email he attached a police report of the accident. He told his client, "I have a 'homework assignment' for you." He directed his client to go to the home of the driver who injured Mr. Hancock and see if the vehicle that struck him was there. [SB Ex. 18, SBA000204.]

On December 31, 2012, Mr. Hancock emailed Mr. Shannon informing him the address he was instructed to go to was not inhabited but that on the same lot, behind the main house, was a house that appeared to be inhabited. [SB Ex. 18, SBA000194.] We found no effort by Mr. Shannon in this record to locate the driver or to determine whether the driver was married or had other assets, including asking the insurance company for information regarding the driver or even inquiring what the policy limits were. We conclude that is why in his answer to the complaint, Mr. Shannon conditioned his statement that he settled the claim for \$15,000 “which, to Respondent’s understanding, was the policy limits on the adverse driver’s policy of automobile insurance.” [Answer to Complaint, p. 2, lines 3-5.] Regardless of when Mr. Shannon received the Hancock file, we find not later than December 31, 2012, Mr. Shannon became the sole lawyer representing Mr. Hancock as pertains to these matters.

We conclude on January 4, 2013, Mr. Shannon wrote the insurance carrier for the driver, American Access Casualty Company, demanding the policy limits of \$15,000. While the letter of Mr. Shannon is not in the record, it was referenced in the responsive letter of Noel Loseau, Claim Representative for American Access Casualty Company emailed to Mr. Shannon on Monday, January 14, 2013. Mr. Loseau responded by offering policy limits of \$15,000. [SB Ex. 1, SBA000013; SB Ex. 17, 000117.]

On that same day, by email dated Monday, January 14, 2013 and copied to Mr. Hudson, Mr. Shannon informed his client, “Good news. The insurance company agreed to settle for \$15,000. Any medical bills that are covered by a lien have to be paid from your share of the recovery.” At that time he informed his client, “If you

accept the offer to settle for Ms. Cerna's policy limits, you'll be foreclosed from any further claim of relief against Ms. Cerna. It's certainly possible that Ms. Cerna has assets that are in excess of the policy limits." He concluded that paragraph stating "...it may be difficult to track her down, even if you obtain a judgment in excess of the policy limits. My advice: accept the policy limits of \$15,000 and be done with it." [SB Ex. 17, SBA000118.]

Later on that same Monday, Mr. Loseau again emailed Mr. Shannon stating, "Please find attached corrected release." Attached to that email was a document entitled "BI Release of All Claims.doc". At 8:40 PM, Mr. Shannon forwarded to his client that email stating, "Dear Jim; Attached is a message from the adjuster. It should be self-explanatory. Please keep in mind that you need to have your signature notarized and the witness' signatures notarized too." [SB Ex. 17, SBA000104.]

We note nothing within the testimony or the exhibits demonstrates Mr. Shannon explained to his client the legal ramifications of the release. We do find Mr. Shannon was aware the release stated neither Mr. Hancock nor Mr. Shannon as his attorney "relied upon any statement or representation made by any person, firm or corporation hereby released." Mr. Hancock testified no one, including John Shannon, had told him he might be liable to any medical providers. [R. Ex. 33 and Testimony of James Hancock, 2:11:47.]

On Friday, January 18, 2013 at 10:26 AM, Mr. Shannon emailed Mr. Loseau, stating, "Attached is the copy of the release which is signed and notarized. I'll snail this to you today. I assume that you can send the check made out to me and Mr. Hancock today?" [SB Ex. 17, SBA000104-5.] Within minutes Mr. Loseau reminded Mr. Shannon that he had "explained" the medical provider lien of TC. He stated he

required the final lien forms and that he could make a separate check to Mr. Shannon and his client and a separate check to the medical provider. [Id.]

It is apparent to us, either Mr. Loseau was not provided with the lien of IA by Mr. Shannon or Mr. Loseau made an error in referring only to TC. Mr. Shannon knew of both liens. Notwithstanding, in less than two weeks the insurance company's file review, required before authorization to print the check, would reveal that second lien and Mr. Shannon would be reminded of the second lien by Mr. Loseau. As mentioned above, the testimony was unrefuted, Mr. Shannon knew there were two medical lien claimants. He knew those liens were statutory liens agreed to by his client and his client's prior attorney Mr. Hudson. He knew those liens were validly perfected under Arizona law. Based on the events that then followed, we find Mr. Shannon took advantage of this oversight. We find his actions were intentionally deceitful in order to perpetuate his later dishonest and fraudulent actions.

Shortly thereafter, Mr. Shannon by email dated Friday, January 18, 2013, at 12:37 PM, requested a lien reduction from Complainant, Dr. Stratman of TC, from \$5,530 to \$2,996.61. [SB Ex. 1, SBA00007.] In that same email, Mr. Shannon acknowledged there were "other medical bills from other providers in the sum of \$3,697.00." [Id.] Mr. Shannon also asserted in that email to Dr. Stratman that he had "calculated the proportional difference between the two providers as to the amount that exceeded Mr. Hancock's recovery...." Mr. Shannon calculated, "Of the total medical billing, Dr. Stratman's bills equaled 59% and Injury Assistance 41%." Mr. Shannon summarized his proposal, "Thus, the totals owing to the medical providers are" \$2996.61 (Stratman) and \$2003.71 (Injury Assistance) with all proposed lien reductions accounted for." [Id.]

The record reflects Mr. Shannon did not discuss his proposed reductions with his client prior to the offer to TC. Instead, after sending the proposed reduction in the first email, Mr. Shannon two minutes later by email at 12:39 PM informed his client of the offer he had made by a two sentence email: "If I don't hear from you. I'll assume the attached is O.K. with you. If you have objections please inform me immediately..." and gave his client a phone number to reach him. [SB Ex. 17 SBA000206.]

Ten minutes later, on January 18, 2013 at 12:49 PM, Mr. Shannon emailed Brandi Taylor, the agent listed on the lien of the second medical provider, IA. He forwarded to her the earlier email he sent to Dr. Stratman and stated to Ms. Taylor, "Attached is a copy of my proposed reduction to another medical provider. Please let me know if my proposed reductions have your approval. I also attach my letter of representation." [SB 17, Ex. SBA000207.]

Four days later, on Tuesday, January 22, 2013, in response to Mr. Shannon's request, Ben Sevier, the office manager of TC, sent Mr. Shannon a letter on TC letterhead by email. Mr. Sevier confirmed the debt owed TC was \$5,530. He then acknowledged the reduction request by Mr. Shannon. The email confirms a discussion occurred between Dr. Stratmann and Mr. Shannon whereby TC, and we find only TC, agreed to accept \$4,500 as full and final payment of its lien. Mr. Sevier stated Mr. Shannon had fourteen (14) business days from the date of January 22, 2013, to accept the reduced lien amount. Mr. Shannon received this letter on January 22, 2013 as he would soon forward it by email to Mr. Loseau that same day. [SB Ex. 1, SBA00009.] We find Mr. Shannon received the letter, read it, and never disputed its contents by any means until sometime in August, 2013.

On January 22, 2013, Amanda Barry for the second medical provider, IA, confirmed by letter emailed to Mr. Shannon the lien balance owed to IA of \$3,697.00 and "agreed to accept \$3,250 as full and final payment on this case. This agreement is valid for 30 days from the date of this letter." [SB Ex. 17, SBA000205.]

Notwithstanding his knowledge of these separate liens, Mr. Shannon emailed Mr. Loseau on January 22, 2013, at 3:41 PM. He told him:

"Attached is the lien reduction letter from Dr. Stratmann (Total Care). It should be self-explanatory. Obviously, you can make a check out to Total Care for \$4,500 leaving a balance of \$10,500 to be paid."

[SB Ex. 17, SBA000105.]

We find Mr. Shannon read this email, knew of its contents, and knew there were two separate providers not related to one another. At the hearing Mr. Shannon testified he did not request a check for TC in the amount of \$4,500. Instead he swore, "I don't think it was necessarily my requesting a particular check for a particular provider. I think that was a dictate of the insurance company." [Testimony of John Shannon, 11:37:12.]

We find his testimony to be false, contradictory to the documentary evidence and intentionally misleading. We also find his omission of the lienholder to be intentional. Mr. Shannon knew there were two medical lien claimants and we find he sought to take advantage of the prior oversight. We find this action further perpetrated his intended fraudulent and dishonest action that followed.

Subsequent to the above email, Mr. Shannon then asked Mr. Loseau to send two checks for \$5,250 rather than the one check for \$10,500. He reminded him he already had the release of Mr. Hancock. [SB Ex. 17, SBA000105.]

That same evening, Friday, January 22, 2013, at 7:07 PM, well after his discussion with Dr. Stratman and having received the emails from the two providers declining his reduction amounts and making counteroffers, Mr. Shannon emailed his client stating:

We have a problem in terms of persuading the medical providers to reduce their liens. The letters from the two medical lien holders are attached. You have a total of \$7,750 of medical expenses to pay. That leaves \$7250 to pay you and the attorneys fees and costs. By contract you're liable for 1/3 of the gross recovery as attorneys fees plus costs. That result would leave you with only \$2250. I would be willing to take a reduction of attorneys fees of \$750 which would result in attorneys fees of \$4,250 and a payment to you of \$3,000. Believe me, I tried to have the medical people reduce their fees by a lot more, but I was only successful to the extent indicated on the attached letters. If you don't like the result I'm afraid the medical lienors could assert their liens in the full amount and in that event, you could end up with next to nothing. I assume that the arrangement I was able to negotiate is O.K. with you. I think you should be getting payment in about a week. Please let me know if you have any objections. John Shannon

[R. Ex. 3.]

We find no exhibit in the record reflecting any disagreement by Mr. Hancock to that arrangement. However, Mr. Hancock testified he received this email from Mr. Shannon and sent an email to Mr. Shannon accepting this settlement. [Testimony of Hancock, 2:18:56.] Why the email of Mr. Hancock is not in the record is of concern to us. As stated above, we note there was a CD apparently provided by Mr. Shannon to the State Bar. A paper image of that CD was filed with the disciplinary clerk, but not a copy of the CD. [SB Ex. 17, SBA000222.] We believe the testimony of Mr. Hancock that he agreed to receive \$3,000 and he understood the agreement to be the doctors and Mr. Shannon would be paid in accordance with the above referenced email sent to him by Mr. Shannon. We find this email is the agreement accepted by Mr. Shannon, Mr. Hancock, TC and IA. We find there was no other agreement

between Mr. Shannon, Mr. hancock, TC and IA. Mr. Shannon knew this was the agreement.

Still unaware of the two lien holders, on Thursday, January 24, 2013 at 1:54 PM, Mr. Loseau responded to the request of Mr. Shannon and sought to verify Mr. Shannon wanted one check for TC and two equal checks for Mr. Shannon and his client. He also reminded Mr. Shannon he would need permission for such a request. At 4:41 PM, Mr. Loseau sent another email asking Mr. Shannon to fax him his W9 tax form. [SB Ex. 17, SBA000106.]

Mr. Shannon emailed back at 2:15 PM, "Please send the checks to the address in my letter of representation." Two minutes later Mr. Loseau reminded him he was waiting for permission to issue three separate checks and he still had not received the W9 of Mr. Shannon. [SB Ex. 17, SBA000107.] At 2:24 PM Mr. Shannon sent Mr. Loseau his tax ID number rather than the W9 form. Mr. Loseau responded "I will forward it to accounting and see." [Id.]

We find Mr. Shannon was fully aware of the error of Mr. Loseau. We further find Mr. Shannon was intentionally deceitful and dishonest in his dealings with the claim representative and the medical providers in order to gain an advantage when on Thursday, January 24, 2013 at 3:57 PM, Mr. Shannon emailed Mr. Loseau, sending the W9 form and stating, "I've sent you a release; I've sent you a letter confirming the medical lien. I've confirmed the settlement. Please send the money immediately." [SB Ex. 17, SBA000108.] He told Mr. Loseau it was taking too long to get the multiple checks and closed stating, "Please confirm that you're sending the money tomorrow to the following address listed in my letter of representation." [Id.]

Mr. Loseau responded the following morning, Friday, January 25, 2013 at 7:43 AM, "I will issue the checks no problem. I was trying to help you. As soon as they print they will be mailed. Have a nice day." [SB Ex. 17, SBA000109.] Three days later, January 28, 2013 at 12:15 PM, Mr. Shannon asked for confirmation the checks had been sent "to the address in my letter of representation." Twenty three minutes later Mr. Loseau stated the first check had to be approved and then he would send the second check. He explained they would be mailed together. Mr. Shannon responded at 12:49 PM, "I need the checks in my hands before the end of the month." [SB Ex. 17, SBA000108-10.]

We have considered the sudden urgency of the demand of Mr. Shannon for these checks. In his January 22, 2015 deposition, Mr. Shannon admitted he was in financial distress, personally, during the time that he was handling the Hancock matter. "I've always-for lack of a better word, I've always been in financial distress so... I've-I've never had a large bank account." When asked if at the time of the events in the underlying matter he had serious problems, he testified, "I've been having a long run of serious financial problems." [SB Ex. 25, SBA000380, page 13, line 19 to 24.] In his testimony before us he acknowledged he filed for bankruptcy at the beginning of 2014. He testified throughout his practice of law he has had financial problems stating, "I've been having a long run of serious financial problems." [Testimony of John Shannon, 1:05:00.]

In that same deposition, Mr. Shannon testified his bankruptcy was concluded. He was asked if the Court in the bankruptcy matter had found he had defrauded creditors. He stated, "I don't think that's what the decision says." This was followed by the following exchange:

Question: We might as well mark this as an exhibit. There was an order in that case granting the secured creditors' request for a finding that the present case was filed as a scheme to delay, hinder, and defraud secured creditors. Do you believe that was a just order?

Answer: I'm not going to get into the business of making judgments on courts, so I'm not going to do that. I-I will tell you that I disagree with it.

[SB Ex. 25, SBA000381, page 14, line 8 to 25.]

Mr. Shannon later swore he still had not paid a court reporter, "Because I don't have the money." [SB Ex. 25, SBA000381, page 15, line 19 to 24.] We note the financial stress of Mr. Shannon, while not excusing his conduct, might have been a factor for his actions.

Three days after declaring to Mr. Loseau that he needed the checks by the end of the month, beginning on Monday, January 28, 2013, a series of emails followed with Mr. Shannon asking the checks be sent by overnight mail. [SB Ex. 17, SBA000111-114.] Mr. Loseau at 2:10 PM wrote Mr. Shannon, "If they have to go out the 30<sup>th</sup> you will have them by the end of the month." At 3:25 PM, Mr. Shannon stated "You're wrong. Having the checks by the 31<sup>st</sup> doesn't mean that the client has access to the funds by the 31<sup>st</sup>." Two minutes later, Mr. Loseau reminded Mr. Shannon of the delays caused by his request for three checks, and the absence of a lien release and stated "I am doing the best I can." [Id. at SBA000115.]

The next day, Tuesday, January 29, 2013 at 1:12 PM, Mr. Loseau informed Mr. Shannon additional liens were located in the file for IA and Mr. Hudson. Mr. Loseau informed Mr. Shannon he had called IA to get an "okay to pay you." [SB Ex. 17, SBA000115.] During the hearing Mr. Shannon said: "The insurance company told me that IA had agreed to take its name off the company check for the payment on the file." [Testimony of John Shannon, 9:28:43.]

At the hearing attorney George Griffeth, at the time General Counsel for IA, testified permission was given to streamline the process of funds to Mr. Shannon with the understanding Mr. Shannon would cut a check to IA after that. In his August 12, 2013 email to Mr. Griffeth we find Mr. Shannon acknowledged he knew the lien was always existent. Mr. Shannon knew it was not released by the agreement to permit Mr. Shannon to be paid directly. To the contrary, Mr. Shannon threatened to "seek to legally dissolve the lien." [SB Ex. 17, SBA000153.]

It is revealing to us Mr. Shannon made no inquiry of Mr. Loseau regarding the IA lien. Mr. Shannon was familiar with such lien law. Section 33-934 A.R.S., states any release of such a claim is not valid or effectual against the lien unless the lienholder "executes a release of the lien." We conclude Mr. Shannon knew this law and ignored it to further his deception. We find such lack of inquiry to be further compelling evidence of the dishonest and deceitful intentions of Mr. Shannon. In his testimony at the hearing Mr. Shannon asked Dr. Stratmann whether the name of IA on the check would have been a form of security. [Testimony of John Shannon, 10:56:00.] While the answer was not allowed, as it called for a legal conclusion, we draw a negative inference from that question. The absence of the name on the check permitted Mr. Shannon to act dishonestly toward IA.

By return email on January 29, 2013, Mr. Shannon argued to Mr. Loseau: "It's hard for me to understand all of the delays. I talked to Wil Hudson this morning, and he said that his firm had no lien on the Hancock file and he told me he advised you of that fact. Where did you get the idea of a "lien" on the Hancock file from Hudson's office? The checks should be issued to me and Mr. Hancock immediately." [SB Ex. 17, SBA000132.]

Within the hour Mr. Loseau emailed a copy of that lien to Mr. Shannon. He stated he had called Mr. Hudson's office and left a message as well. He informed Mr. Shannon he had no problem issuing a check with Mr. Hudson's name on it as well. The email of Mr. Shannon sent at 12:28 PM states, "The November 3, 2011 letter is NOT" and nothing else. Mr. Loseau quickly responded "I'm assuming I did not receive your whole email message. Can you please elaborate?" [SB Ex. 17, SBA000128.] Multiple emails followed into January 31, 2013.

Mr. Shannon argued: "The November 3, 2011 is NOT a lien. I've been retained to assist Hudson and Associates in connection with the above referenced matter." This was followed with: "What's the problem?" After additional paragraphs Mr. Shannon threatened to file a bad faith claim. Mr. Loseau responded, "All he has to do is agree that he does not hold a lien against this claim and I can accept that." Mr. Shannon responded, "There is no lien. Why do [you] continue to see communists in your pea soup?" Mr. Shannon stated he talked to Mr. Hudson and "THERE IS NO LIEN!" He concluded "We don't need three signatories on the checks. Get on with your job of adjusting the loss and making payment or be prepared for a bad faith claim." [SB Ex. 17, SBA000129-130.]

It is troubling Mr. Shannon then stated in great detail the personal tragedy the family of Mr. Hudson had struggled through. He stated what hospital had been used, the procedure, described the relative involved and that person's age, the result and when these unfortunate events occurred in an attempt to coerce Mr. Loseau ignore any lien of Mr. Hudson. We find this further evidence of the urgency of Mr. Shannon to expedite his receipt of the checks not to further the interests of his client, but to prejudice IA. [SB Ex. 17, SBA000129-130.]

Mr. Loseau responded stating, "If you can submit a hold harmless for Hudson & Associates or get him to contact me to release his representation then I can issue the payment without him on the check." Mr. Shannon refused. The response of Mr. Shannon was entirely in capitalized letters. He refused the request of Mr. Loseau including the statement "SEND THE MONEY, OR PREPARE FOR A BAD FAITH CLAIM." Mr. Loseau replied at 11:04 AM, "As I explained in my prior email if I did not receive a hold harmless or release of representation by 11:30, I would issue the check listing both of his lawyers. That has been issued with both of you listed. Thank you and have a nice day." Mr. Shannon argued back and among other things stated, "You are doing something that I specifically asked you not to do." [SB Ex. 17, SBA000130-131.] As a result of Mr. Shannon's actions the \$10,500 check was written to Mr. Hudson, Mr. Shannon and his client. [SB Ex. 18, SBA000238.]

Mr. Shannon testified he had an oral conversation with Dr. Stratmann settling both medical liens for a total of \$4,500.00. In his February 20, 2015, prehearing memorandum, Mr. Shannon stated, "This agreement was confirmed in writing...." [Respondent's Hearing Memorandum, page 2, lines 2-3.] Mr. Shannon presented no such writing. We find his testimony to be false. As often was the case with the statements of Mr. Shannon, his statements were conditional or conflicting. In an August 5, 2013, email to Dr. Stratmann, he fell far short of saying Dr. Stratmann informed him he was representing both entities. Instead he stated, "I was under the *impression* that you were speaking on behalf of both IA and TC since I told you the liens on the file." (emphasis added). [SB Ex. 17, SBA000136.]

Dr. Stratmann denied ever negotiating or suggesting he had the ability to negotiate the lien of IA. We believe him. We find Dr. Stratman never told Mr.

Shannon he represented TC and IA. To the contrary, even in his answer to the complaint Mr. Shannon conditionally stated, "Upon information and belief Respondent believed that the complainant [Dr. Stratmann] was negotiating on behalf of both TC and IA." [Answer to Complaint, page 2, lines 18-19.] Mr. Shannon stated in the hearing he only "thought" Dr. Stratmann was negotiating for both." Later he stated he only "assumed" Dr. Stratmann was acting on behalf of both entities. [Testimony of John Shannon, 9:27:02; 9:28:43.]

From the letter of Mr. Siever we conclude Mr. Shannon did have a conversation with Dr. Stratmann, but it only resulted in the reduction of the TC claim as confirmed in the letter of Mr. Siever. As pointed out above, this was also confirmed in the email of Mr. Shannon to his client Mr. Hancock. We find there was no oral conversation with Dr. Stratmann resulting in a global settlement of both these medical provider claims for \$4,500.

We further note there is no email or other written documentation of any kind to Mr. Shannon's client of such a reduction. We also note the deposition testimony of Mr. Shannon demonstrates the implausibility of his position, especially in light of the January 22, 2013, 7:07 PM email to his client. [SB 28, SBA000384-5, pages 26-32; R. Ex. 3.] There were two separate recorded liens and Mr. Shannon testified he knew they were separate, valid and perfected under law. One specifically listed Dr. Stratmann D.C./aka Total Care. [SB Ex. 1, SBA000016; R. Ex. 3.] The other did not list Dr. Stratmann at all. It listed the name of the claimant as Injury Assistance LLC, a limited liability company whose listed agent was Brandi Taylor who also signed the document. [Id. at SBA 000039-40.]

We also note Mr. Shannon knew Mr. Hudson had been instructed by letter faxed June 22, 2012, from IA that "all lien reduction requests should come directly through this office, NOT the providers directly." [SB Ex. 1, SBA000015, also R. Ex. 31.] That document was part of the file given to Mr. Shannon by Mr. Hudson. Mr. Shannon testified he reviewed the file he received from Mr. Hudson and specifically referred to this document in his prehearing memorandum. We find Mr. Shannon knew lien reduction requests were only handled by the IA agent. As cited above we also conclude Mr. Shannon knew A.R.S. § 33-934 requires any release of such a claim is not valid or effectual against the lien unless the lienholder "executes a release of the lien." There was no such executed release of lien and Mr. Shannon knew this. [Respondent's Hearing Memorandum, page 1, lines 20-24.] We find this further proof he was untruthful in his testimony of a global agreement.

American Access Casualty Company issued checks for \$4,500.00 and \$10,500.00. The \$4,500.00 check was made out to Mr. Hancock, John Shannon and TC. The \$10,500.00 check was made out to Mr. Hancock, John Shannon and Mr. Hudson. [SB Ex. 18, SBA000240 and 238.] The checks were shipped to Mr. Shannon by overnight mail on January 31, 2013. Mr. Shannon deposited the \$10,500 check in a branch store of Wells Fargo on February 4, 2013. [Id. at SBA000230.]

At the hearing Mr. Shannon first testified the \$10,500 check was made out solely to him. The ledger of Mr. Shannon and bank records show after its deposit, Mr. Shannon dispersed \$5,000.00 in the following manner: on February 20, 2013, Mr. Shannon wrote himself check 1193, which he cashed for \$1,000.00; on February 22, 2013, Mr. Shannon wrote himself check 1194 which he cashed for \$1,000.00; on February 25, 2013, Mr. Shannon withdrew \$3,000.00 from his trust account. [SB

18, SBA000226 and 229-234.] In his September 12, 2014, Pre-Hearing Statement, Mr. Shannon listed the facts of these distributions as “contested facts.” [Respondent’s Pre-Hearing Statement, pg. 2-3.] In his testimony he admitted all these distributions. The exhibits are conclusive.

Mr. Shannon swore he paid his client \$3,000 on February 25, 2013. The \$3,000 is consistent with the terms of the email agreement quoted above. [R. Ex. 3.] Mr. Shannon stated he paid Mr. Hancock in cash because the client did not have a bank account. The testimony of his client leads us to conclude his client received \$3,000, but we are unaware of when those monies were received by him.

Mr. Shannon admitted this distribution in cash was in violation of the Ethical Rules. In his testimony, his only defense was he is “blissfully unaware” of the Ethical Rules. [Testimony of John Shannon, 3:20:35.] We find such testimony not credible. Mr. Shannon, to be reinstated from a prior discipline, was required to “fulfill a number of rigorous conditions for reinstatement relating to ethical behavior and professionalism.” [SB Ex. 26, SBA000372, lines 20-26.] More importantly, we have noted the record in this matter of the manner by which Mr. Shannon dealt with his client. We noted his disinclination to personally review the terms of the retainer agreement with his client. The record reflects he did not personally explain the terms of the release he sent his client, or to personally discuss the settlements he proposed. There is nothing in the record of any research by Mr. Shannon of any assets of the driver, even when Mr. Hancock pointed out the results of the “homework” given him by Mr. Shannon. We find it reasonable to conclude Mr. Shannon was not inclined to expend the time necessary to assist Mr. Hancock in negotiating the check. We are

disinclined to believe he was unaware of the rule. Instead he assumed his improper action would not be found out.

On February 28, 2013, Mr. Shannon wrote himself check 1195 which he cashed for \$2,500.00. [SB Ex. 18, SBA000226 and 233.] We find his receipt at that point of a total of \$4,500 was improper. As pointed out above, under the agreement Mr. Shannon had with his client he was to receive \$4,250. [R. Ex. 3.] On April 11, 2013, Mr. Shannon wrote himself check 1199, which he cashed for \$500. [SB Ex. 18, SBA000226 and 236.] With this last check, Mr. Shannon paid himself a total of \$5,000. In profiting himself beyond what he agreed to, Mr. Shannon assured there were not funds sufficient to pay the agreed \$7,750 to the medical providers as directed by his client. We find no exhibit in the record reflecting any modification of the terms of the settlement negotiated with his client and the medical providers.

We are also troubled that in the answer to the complaint, Mr. Shannon certified, regarding this \$10,500 check, "he disbursed funds from the second insurance check on the grounds that he believed the funds belonged to him and the client with the exception of a possible Medicare/AHCCS claim in the future." [Respondent's Answer, p. 3, lines 8-11.] Mr. Hancock testified no one, including Mr. Shannon, ever told him he might be liable to any medical providers. [Testimony of James Hancock, 2:11:47.] We find Mr. Shannon never counseled his client regarding any Medicare, Medicaid or AHCCS lien and never notified any of those entities of their potential lien. If Mr. Shannon believed there may have been an "exception" of a possible Medicare/AHCCS claim in the future, to protect his client he should have resolved that issue. If he had concerns regarding Medicare/AHCCS he ignored them in his apparent haste to obtain his fee.

For more than six months Mr. Shannon made no effort to notify TC or IA of his receipt of the check for \$4,500.00. Mr. Hancock and Mr. Hudson endorsed the check. [SB Ex. 18, SBA000240-241.] The only remaining signatory required was Dr. Stratmann. His client, James Hancock testified Mr. Shannon first told him he had chosen not to pay the medical providers sometime after Mr. Hancock's September 24, 2013 shoulder surgery. [Testimony of James Hancock, 2:19:43.]

Mr. Shannon knew he was acting in the nature of a fiduciary for both his client and the medical lienholders. The comments to ER 1.15 specifically state that "A lawyer should hold property of others with the care required of a professional fiduciary." Mr. Shannon was personally aware of this comment from his prior discipline and the finding of the Supreme Court regarding his prior conduct. [SB Ex. 23, SBA000313-314.] In the hearing Mr. Shannon acknowledged he had no agreement to pay himself and his client without paying the medical lienholders. He then stated regarding that agreement: "Didn't forbid it, didn't allow it." [Testimony of John Shannon, 10:22:01.] We find Mr. Shannon intentionally violated his fiduciary duty to the lienholders.

In his deposition Mr. Shannon was asked, "Why did you delay in distributing the funds?" He answered, "Well, I don't know if there is an answer to the delay. I had a workload. And I reviewed the file before coming here, and I just-it was just a matter of a delay that-in terms of making the payment..." [SB Ex. 28, p. 11, lines 9-13.]

At the hearing Mr. Shannon acknowledged receipt of the check in January 2013. He was asked what he did with the check and immediately became evasive. His answer was nonresponsive to the question. He was asked again what he did with the

check. He answered, "I, uh, I'm trying to remember if I immediately put it in the bank but eventually it ended up through the banking system." He then recanted and stated there was "one caveat to that is there was a check made out to several providers and it was impossible to handle that with, like, I think there was me, Hudson, TC, and IA all on one check so I mean with the controversy with the payment on it, it was practically impossible to cash it." [Testimony of John Shannon, 11:37:53-11:39:54.] In his answer to the complaint on page 4, lines 17-20, Mr. Shannon certified, "Respondent affirmatively alleges that he was unable to deposit the insurance company check in the sum of \$4,500 inasmuch as there were four payees, and none of the payees could agree to the distribution of the proceeds." [Id.]

His testimony varied widely and was consistently conflicting. In his response to the State Bar he stated, "The second check for \$4,500 was never deposited into the trust account since it had, as payees, Dr Stratman's company and Injury Assistance." In that same response he later stated, "Because of the dispute involving payment to Stratman and to Injury Assistance, the check was never deposited because I couldn't secure the signatures." He later stated, "I thought it was prudent to withhold funds for Medicare/Medicaid payments, in as much as Mr. Hancock's shoulder problems were unresolved." [SB Ex. 18, SBA000224-25.]

In his answer to the complaint Mr. Shannon also certified, "Respondent affirmatively alleges that because the bar complainant reneged on the agreement to accept \$4,500 as payment on the medical liens, which the respondent later learned were invalid, Respondent was unable to negotiate the check and held the check until resolution of the dispute involving the \$4,500 liens." [Answer, page 3, lines 3-6.] We find these statements dishonest. We find nothing in the record demonstrating any

communication from Dr. Stratmann to Mr. Shannon where Dr. Stratmann even knew of the “global settlement” and certainly no evidence of its rejection. The testimony of Mr. Shannon was not plausible nor credible.

We find Mr. Shannon made no effort to obtain the signature of Dr. Stratmann for the \$4,500.00 check to enable him to be compliant with the Ethical Rules because he made a conscious decision and refused to. We find it reasonable to conclude he refused to act because of his ill will towards TC and IA. During the hearing, in his answer, and in his prehearing memorandum, Mr. Shannon swore he had a “global” settlement of all claims for \$4,500.00. We reemphasize the inconsistency in the testimony of Mr. Shannon that he had such an agreement in light of the evidence that he took no steps to notify the lien holders of his receipt of the check in order to obtain the single additional signature necessary to deliver the funds.

The exhibits demonstrate Mr. Shannon was fully aware of the check and intentionally deceived the medical providers. On February 26, 2013, Amanda Barry with IA emailed Mr. Shannon. “Hi John, Just checking on the status of payment for James Hancock. Thank you.” [SB Ex. 17, SBA000122-23.] Mr. Shannon wrote back to Injury Assistance, “I have the checks for everybody. I just have to send them. Can’t do it today.” [Id.] We note he never informed them the check required their signatures. We also note he stated in the plural, “checks.” We find this further proof he knew of his obligation to separately pay IA and TC.

After not receiving payment by April 1, Injury Assistance e-mailed, “Back in February you stated you had the checks on James Hancock. To date we still have no received payment. Can you please let me know when you will be getting the check out for Injury Assistance?” [SB Ex. 17, SBA000122-23.]

On May 22, 2013, after receiving no response, Injury Assistance emailed, "I have yet to receive payment on James Hancock and it appears you had the checks back in February. Can you please let me know what is going on with this?" [SB Ex. 17, SBA000124.] Mr. Shannon was again intentionally deceitful in writing back, "It's my bad for forgetting about this. I'm going out of town, but I should be back tonight. Yes, I'll send you the check." [SB Ex. 17, SBA000122-23.]

After not receiving payment, Injury Assistance again inquired about the check on July 22, 2013. Mr. Shannon refused to respond. Injury Assistance again inquired about the check on July 30, 2013. [Id.] Mr. Shannon again refused to respond.

In his deposition, Mr. Shannon was again contradictory in his sworn statements. He was asked regarding these multiple inquires, "And you ignored all the communications from Injury Assistance?" "Well I didn't ignore them. I mean, I saw them. But I didn't think they were particularly relevant in light of what Stratmann told me." He was later asked, "And you continually told her "I'll send the check. I'll send the check'?" Mr. Shannon answered, "And that was delay on my part. And that was in connection with the previous agreement." He was asked, "Okay. Why did that-why did that cause delay as far as sending a check to Injury Assistance?" He answered, "It didn't." He was then asked, "Okay, Explain to me what you mean. What caused the delay?" He testified, "You asked that before; and I said, you know, I just-I was taken up with other cases and I just delayed in sending the check." [SB 28, page 32, line 5 through page 33, line 13.]

In his prehearing memorandum, Mr. Shannon stated he first "learned that Dr. Stratmann asserted that the IA lien was separate from the TC lien" from the last July 30, 2013 email from Amanda Barry. [Respondent's Hearing Memorandum, page 2,

lines 7-11.] The email from Amanda Barry of IA stated, "I have not heard back from you nor have I received this check from you. What is the status? Can you get it in the mail today? Thank you." [SB Ex. 17, SBA000124.] In his prehearing memorandum, Mr. Shannon stated it was at that point, July 30, 2013, "Respondent learned that Dr. Stratmann asserted that the IA lien was separate from the TC Lien...." [Respondent's Hearing Memorandum, page 2, lines 7-9.]

In his testimony Mr. Shannon swore he just stuck the check in his file, leaving the false impression he simply forgot it. He later testified he did not approach multiple payees but did not know why. His testimony changed and he swore there was a missing payee on the check and he did not take action because Injury Assistance was not on the check. His testimony reverted to admitting he was "dilatatory" in his actions regarding the check. However, he later testified he remembered the check after six to seven months and was concerned it was stale. He swore he then contacted the insurance company and asked them to reissue it. Mr. Shannon told Dr. Stratmann the check had gone stale and said he would be turning it over if they could work it out. Dr. Stratmann expressed his opinion why Mr. Shannon had not paid the lienholders. He believed it was because Mr. Shannon had no funds with which to pay the bills. [Testimony of Dr. Stratmann, 9:39:21 and 9:42:30.] That testimony and his opinion were not contradicted.

We note the March 31, 2014 letter Mr. Shannon wrote to the State Bar significantly contradicts his testimony. He stated, "Because of the dispute involving payment to Stratman and to Injury Assistance, the check was never deposited because I couldn't secure the signatures." We find he made no effort to "secure" the signatures. He later stated in that letter, "I thought it was prudent to withhold funds

for Medicare/Medicaid payments, in as much as Mr. Hancock's shoulder problems were unresolved." [SB Ex. 18 SBA000224-25.]

In August, 2013, Mr. Shannon changed his position to unilaterally declared the liens invalid due to Medicare laws. During the hearing, Mr. Shannon first stated, "Frankly I didn't hear anything about him (Hancock) being insured until very late in the game." He then detailed he didn't hear about his client having any type of coverage until just before Mr. Hancock's surgery in September 2013. [Testimony of John Shannon, 9:24:06 and 9:24:38.] When Mr. Shannon was questioned by the hearing panel and asked, in light of his belief in the validity of the liens and the agreement, to explain his delay he contradicted this prior testimony. Mr. Shannon's testimony before us became the liens were invalid because of "potential" Medicare liens. He swore "I was troubled from the very beginning" regarding Medicare. [Testimony of John Shannon, 10:05:00.]

Mr. Shannon was asked multiple questions in the hearing regarding this shift in testimony that he was researching for six months the Medicare concern. He was asked if he had any duty at all to tell the lienholders about these concerns that the liens might not be valid. He testified, "No until I have completed the legal research, I was not under an obligation to give people my preliminary legal opinions." He later changed that position and swore, "I don't know if I have a legal obligation to tell non-clients of my concerns." [Testimony of John Shannon, 10:23:30.]

By email on August 9, 2013, Mr. Shannon asked Dr. Stratham for the first time if TC was an eligible AHCCS provider during the time of the client's treatment. Dr. Stratmann responded "No. No AHCCCS." Dr. Stratmann then asked multiple questions such as: whether it was true Mr. Shannon had received the settlement

check; whether the check was returned by Mr. Shannon as stale; whether it was true the client had received funds without the liens being addressed; and whether there were only two medical provider liens. [SB Ex. 18, SBA000143.]

Mr. Shannon did not answer the questions but instead sent an email on August 10, 2013, stating, "I believe this will be the last question I have for you before I give you my comprehensive report on the Hancock case." He then asked if TC accepted Medicare. He further assured, "BTW, the questions you posed in your Email yesterday will be answered." Dr. Stratham promptly responded with an answering email stating "Total Care is not a Medicare provider." [SB Ex. 18, SBA000144.]

Mr. Shannon did not answer the questions posed but instead declared the questions "moot" and unenforceable, claiming the lien was in violation of federal and state Law. Mr. Shannon acknowledged he knew at the time the liens were first negotiated Mr. Hancock was eligible for both Medicare and AHCCCS. He then stated, "At the same time, I also discovered the problems with Mr. Hancock's chiropractic treatment." [SB Ex. 18 SBA000145.] Yet by afternoon of the hearing, Mr. Shannon reversed back to his earlier testimony and stated it was approximately July or August 2013 when he was talking to Mr. Hancock "that it came to my belief that Hancock was definitely a QMB." [Testimony of John Shannon, 2:30:09.] We find this to be further proof of the intentionally deceitful comments of Mr. Shannon to the medical providers and to the insurance carrier.

Even if Mr. Shannon had a plausible argument, it does not change the fact he knew he had a fiduciary duty to the lienholders and intentionally ignored that duty despite believing at the time the liens were valid, all after reaching an agreement to reduce his fee and pay the medical providers. We discuss this in our review of the

only cases he cited us to. We note in his letter Mr. Shannon assured the State Bar, "...it is my intention to eventually file an interpleader claim on Mr. Hancock's behalf and obtain a judicial ruling that Dr. Stratmann and Injury Assistance are not entitled to any payments, and then negotiate with AHCCCS as to the final accounting which would include the check for \$4,500." [SB Ex. 18, SBA000224-25.]

Regarding the potential for Medicare liens, Mr. Shannon was asked if he had given any notice to Medicare or AHCCCS of their potential liens. He answered, "No, that doesn't mean that there isn't a potential for it." [Testimony of John Shannon, 11:41:00.] Multiple questions and answers followed where he admitted he had an obligation to inform Medicare/AHCCCS. He swore Medicare/AHCCCS had "valid" liens. But then stated he still had not given any notification to them. When it was pointed out the year is 2015, he stated Mr. Hancock had surgery only six months prior. Mr. Hancock had his surgery in September 2013. He was asked, "And yet you have not made any attempt up until today's date to go out and notify these people that you are telling us today could be entitled to that money?" He answered, "No, because they are making the claim for the same money. How could I do that and *possibly injure myself* if they are making a claim for the same funds." [Testimony of John Shannon, 11:01:59 (emphasis added).]

On August 2, 2013, Mr. Shannon informed Ben Sevier of Total Care Chiropractic that if no one wanted to settle that he would interplead the funds. [SB Ex. 17, SBA000135.] On August 12, 2013, at 1:56 PM, Complainant informed Mr. Shannon in an email clearly copied to Complainant's attorney, David Farney:

Please put the questioned funds in trust and file an inter pleader (sic). David Farney; Please file suit immediately against the patient and attorney on this. If you feel there is any point in discussing the aspects of this case with John, go ahead and talk to him. John

obviously I disagree with your conclusions. Your threats from the beginning are duly noted. You can deal with the legal issues with my counsel.

[SB Ex. 17, SBA000150.]

On the same day, at 5:12 PM, Mr. Shannon responded to Complainant, but did not copy David Farney:

If you have legal counsel, I don't think there is much more I can say; I haven't acted unethically. You know the "accounting"-there is a \$4,500.00 check from the insurance company which is being replaced. If you don't accept Medicare, that's something you should have told your patient; instead you "gave" him a lien after you treated him, which Federal law prohibits you from doing. "You know that." You can't simply wish Federal law away. Please reread my Email, especially my last Email which has an attachment-a website written by a consultant to chiropractors about Medicare. You weren't entitled to a lien before I participated in the case, and you aren't entitled to a lien now. I would recommend that you consult closely with your legal counsel. You asked me to forward this to your counsel, but since you didn't supply me with the address, I can't do that. In any event, I will give you until Friday to consult with your lawyer, a thing, that, obviously, you probably need to do.

[SB Ex. 17, SBA000151.]

In his deposition, Mr. Shannon admitted, "Yes. Of Course." he knew of the Ethical Rule precluding his further communication with a represented individual. [SB Ex. 28, SBA000383, pages 22-23, lines 24-2.] In the hearing he testified he knew he responded out of anger towards Dr. Stratmann. He swore he was "hot under the collar." [Testimony of John Shannon, 9:18:15.]

We note on August 12, 2013, Mr. Shannon emailed Dr. Stratmann stating, "Because of the one year limitation on presenting Medicare claims, I don't know if this situation can be resolved by any payments to IA and TC." [SB Ex. 9, SBA000045.]. From this we conclude Mr. Shannon delayed matters believing the liens would be negated by any such limitation.

Mr. Shannon concluded that same letter stating “If the TC lien is not dismissed or dissolved by Friday, then Mr. Hancock will undertake legal steps to have the TC removed with an attendant claim for attorney fees.” [SB Ex. 9, SBA000045.] Mr. Shannon took no steps on behalf of Mr. Hancock towards that litigation. The record reflects this was another ploy by Mr. Shannon. It is reasonable for us to conclude on the record before us that the deceitfulness of Mr. Shannon was part of a scheme to mislead and defraud the medical providers.

We also find Mr. Shannon stated, in a September 4, 2013 email to Mr. Hudson, “If the matter is still hanging fire in January, we can take advantage of the new ER 1.15, and put an end to the matter.” [SB Ex. 18, SBA000168.] We find Mr. Shannon was aware of and knew the requirements of ER 1.15 in 2013 and intentionally ignored those requirements. He was also aware of the requirements of the pending amendments to that Ethical Rule and intentionally refused to adhere those requirements. We note for multiple non-ethical reasons Mr. Shannon sought to delay the resolution of the provider lien issues to the detriment of his client.

On August 22, 2013, Mr. Shannon emailed Mr. Hudson stating, “I forewarned Hancock about a possible lawsuits against him filed by Stratmann and Injury Assistance. He was not concerned given what I told him about what I thought of the viability of Stratmann’s and IA’s claims.” [SB Ex. 18, SBA000163.] We find this untrue. The testimony of the client was clear, “No one has talked to me at all about liability.” [Testimony of Hancock.] The client testified he was even unaware there were two medical provider claims. We find nothing in the record to support any reasonable notification to the client except self-serving testimony of Mr. Shannon which, considering his multiple inconsistent statements, we find implausible.

## **CONCLUSIONS OF LAW AND DISCUSSION OF DECISION**

Mr. Shannon cited two United States District Court cases from Arizona to support his positions that the liens were invalid and that he had a reasonable, good faith belief, after properly informing himself of the law, that the claims of TC and IA were without substantial merit. In his prehearing memorandum and during the hearing he stated these cases “make it abundantly clear that both medical providers were entitled to no payment at all.” [Respondent’s Prehearing Memorandum, page 2, lines 16-19, and Testimony of John Shannon.]

He argued the first case *Derrick Lizer and Natasha Kirk, v. Eagle Air Med Corporation*, 308 F. Supp. 2d 1006 (D. Ariz. 2004), unequivocally established the medical lien of TC and IA were invalid. That case involved an air ambulance service which had filed state liens in an effort to receive, from third-party settlement proceeds, the balance of its customary payment for the services it had provided. In his answer Mr. Shannon went further. He certified because “bar complainant was not entitled to any settlement proceeds under Federal law; thus, there was no conduct involving dishonesty or conduct prejudicial to the administration of justice.” [Mr. Shannon Answer to Complaint, page 5, lines 16-18.]

As explained in that decision, “balance billing” is the billing of the difference between the amount paid by the state and the provider's customary charge. The ruling noted Arizona law permitted such balance billing. Mr. Shannon swore TC and IA were balance billing.

But the court clearly distinguished the facts before it from the facts before us. Eagle Air had received Medicaid payments. The Court ruled the pertinent Medicaid regulations mandated providers who accept Medicaid payments are required to

accept those funds as payment in full. Under those facts and only those facts, the court ruled Arizona law was preempted by federal law. The District Court Order made this clear:

The Seventh Circuit, in particular, emphasized the fact that providers may choose to not accept funds from Medicaid if they wish to preserve their right to seek their entire customary charge.

*Lizer*, 308 F. Supp. 2d at 1010 (citing *Evanston Hospital v. Hauck*,<sup>2</sup> (7th Cir. 1993)).

Mr. Shannon argued this case conclusively proved the invalidity of the medical lien. However, the reference to the Seventh Circuit ruling made clear the court was making no finding regarding a medical provider who had *not* received Medicare payments. To the contrary, the Court emphasized providers such as TC and IA “may choose to not accept funds from Medicaid if they wish to preserve their right to seek their customary charge.” *Id.* Regardless of what the law is, we find it unreasonable for any lawyer, based on this case, to argue the liens in the underlying matter were invalid.

Mr. Shannon knew TC had never billed nor received Medicare payments. We found nothing in the medical records to suggest TC or IA had ever billed Medicare or any other such entity. Despite the absence of any such evidence, Mr. Shannon stated in an August 12, 2013 email to Mr. Stratmann, “From my review of the file, TC appears to be a Medicare provider, and, as such was prohibited from balance billing even under state law.” [SB Ex. 17, SBA 000146.] It was undisputed neither medical provider received any monies from Medicare or any other source for their services to Mr. Hancock. It was unrefuted TC had not been a Medicare provider for over ten years. There was no attempt at “balance billing” in the record. Dr. Stratmann was

clear in his responsive email of August 12, 2013, "We don't accept Medicare and haven't in over a decade. We cannot balance bill. And we don't. We don't bill Medicare under any circumstances." [SB Ex. 17, Bates SBA000149.]

Mr. Shannon knew this. Mr. Shannon knew there was no "balance billing" in the underlying case. As stated in *Lizer*, (citation omitted) "balance billing" is the billing of "the difference between the amount paid by the state and the provider's customary charge." Neither TC nor IA received payments from anyone. It is clear to us Mr. Shannon read the *Lizer* case. He testified he cited it to the Attorney Regulation Probable Cause Committee. It is clear to us he understood the case. It is also clear to us he intentionally sought to mislead us in his argument and testimony by arguing *Lizer* was dispositive. [Testimony of John Shannon, 3:19:13-3:20:09.] Even if he actually relied on the case for his position of the liens being invalid, he did so unreasonably.

Mr. Shannon also cited *Employers Reinsurance Corporation v. GMAC Insurance*, 308 F. Supp. 2d 1010 (D. Ariz. 2004). Mr. Shannon repeatedly avowed he had done substantial research before declaring the liens of TC and IA invalid. He argued his actions were entirely in line with the *Employers* case. In order to mislead us into believing he always had doubts about the validity of the liens, much of the testimony of Mr. Shannon centered on his avowals he was always troubled from his receipt of the case with the Medicare aspect. We find this not merely implausible but intentionally untruthful.

In a September 4, 2013 email to Mr. Hudson, Mr. Shannon explained what really occurred:

As for the Hancock matter, it was dumb luck that a 'problem' with the lien arose, and I was 'forced' to look at the lien situation, rather than

assuming that everything in the file was done properly (that's my mistake of course).

[SB Ex. 17, SBA 000168.] *Employers* does not aid Mr. Shannon's actions. Instead it helps explain why his actions were improper.

The underlying facts in *Employers* involved a non-party, Ms. Gear, who was injured in an accident. The medical benefit plan of which Ms. Gear was a beneficiary had paid her medical expenses arising from that accident. After her injury Ms. Gear retained a lawyer to recover compensation from the third party that caused the accident. That plan's assignee ("Plan") claimed she was obligated to subrogate or reimburse the plan if Ms. Gear recovered compensation from the third party that injured her. *Employers, supra*.

The Plan based its subrogation/reimbursement claim from Plan documents that "purportedly created the subrogation/reimbursement rights." Unlike in the underlying matter before us, the court found it notable Ms. Gear had testified she had never seen a copy of the insurance plan nor signed any documents to which the Plan was a party. Her testimony was uncontroverted. Here is it uncontroverted, both Mr. Hancock and his attorney Mr. Hudson were aware of the liens, acknowledged they were proper and perfected under the law. Mr. Shannon knew of the liens and acknowledged they were proper and perfected.

In *Employers*, during the course of settlement, the lawyer for Ms. Gear offered a settlement which was rejected. Her attorney outlined his position that under ERISA Plaintiff had no subrogation or reimbursement rights. Two weeks after sending the Plan a Ninth Circuit decision supporting his position, the attorney for Ms. Gear distributed all the settlement money to himself and Ms. Gear. After the Plan filed suit, the attorney for Ms. Gear continued to argue ERISA preempted the Plan's state

law claims. The court ruled in favor of the Plan and found no preemption. The court also ruled there was a binding contract between the Plan and Ms. Gear. However, the court noted the unrefuted testimony of Ms. Gear, there was a genuine dispute whether Gear had binding subrogation or reimbursement obligations. Importantly the court found, based on her uncontroverted testimony, “[T]here is no evidence to support the existence of a contract.” *Employers*, 308 F. Supp. 2d at 1018.

The Court noted the evidence was uncontroverted that her attorney had a good faith belief, communicated from the beginning, that Gear had no enforceable obligations regarding the settlement money. The court concluded because Plaintiff had failed to establish Ms. Gear had binding subrogation or reimbursement obligations, Plaintiff could not demonstrate causation or damages.

The court noted liability for the intentional interference with contractual relations claim “will be found only where the interference is somehow improper ‘as to motive or means.’” The Plan also submitted the interference was improper because it violated Arizona Rule of Professional Conduct ER 1.15. The attorney countered he complied with ER 1.15, “that he harbored no malice towards Plaintiff, and that his conduct was not improper under the standards set forth by the *Restatement (Second) of Torts* (1979).” As a result the court went beyond the allegations and to the evidence. It examined the evidence for “improper” behavior in accordance with the *Restatement* cited. The court noted under a cited case (citation omitted) “that a reasonable, good faith belief in the legality of the conduct weighs against a finding of “improper” conduct.” *Employers*, 308 F. Supp. 2d at 1016.

The court noted the Plan argued the attorney had violated E.R. 1.15, “which provides that a lawyer should segregate and hold disputed property, and file an

interpleader where the dispute cannot be resolve amicably.” *Id.* Mr. Shannon in his answer admitted he had this obligation. He knew of it and refused to adhere to it. Mr. Shannon swore he refused to adhere to E.R. 1.15 because he knew the rule was being changed the following year.

In *Employers* the court stated:

We conclude that E.R. 1.15 is not violated where the lawyer actually has a reasonable, good faith belief that the third party's claim is without substantial merit.<sup>FN2</sup> While the lawyer must “properly inform himself of the law” before acting, Ariz. Ethics Op. 98-06, distribution would not be unethical where the appropriate research indicates that the third party's claim is meritless. While any “good faith doubt” would implicate E.R. 1.15, a researched, reasonable and good faith belief in the propriety of disbursal is sufficient to render it permissible under the rule.

*Employers*, 308 F. Supp. 2d at 1016.

By footnote the court quotes Arizona Ethical Opinion 98-06:

Our previous opinions have intimated an **actual knowledge standard**...if, in the circumstances (including the factual background and the attorney's assessment of the applicable law), the attorney is satisfied that either the client or the health care provider is entitled to receive the funds, the attorney should, pay the funds accordingly.

*Id.* at FN2, 1019 (emboldened type included in original).

It is only the analysis, not the facts of *Employers* that has any similarity to this matter and the issues before us. We find *Employers* holds no safe harbor for the actions of Mr. Shannon.

Unlike the *Employers* case, Mr. Shannon had no good faith belief that the liens of TC and IA were without merit. Also, unlike the *Employers* case, Mr. Shannon made no attempt whatsoever to timely convey any concerns or explanations as to his months-long withholding of funds from TC and IA. Mr. Shannon intentionally gave no notice to the lienholders of even having received the funds, all the while distributing the monies to himself and his client. We find the above quoted

September 14, 2013 email of Mr. Shannon to Mr. Hudson dispositive. The actual knowledge Mr. Shannon had at the time of the receipt of the settlement checks was that the liens of TC and IA were valid.

There is more than ample evidence that Mr. Shannon not only knew the liens were valid, he told his client they were valid, he presented them as valid to the insurance carrier and he distributed the money to himself and his client believing the liens were valid. He repeatedly testified the only reason he didn't tell TC and IA of his receipts of the checks was he was "dilatory." He swore the same reason for his failure to mail the checks to them. His potential Medicare legal theory was discovered only after seven months of being intentionally dilatory. When asked whether he had a duty to notify the lienholders of any concerns he had, Mr. Shannon took a position entirely opposite of the attorney in *Lizer*: "I don't know if I have a legal obligation to tell non-clients of my concerns." [Testimony of John Shannon, 10:25:00.]

The purported seven months of research by Mr. Shannon led him to substantially rely on the *Lizer* case. His reliance is not reasonable. As pointed out above, the facts in that case are substantially distinguishable from the underlying matter in this case. We make no finding regarding the present validity of these liens. Some of Mr. Shannon's proposed exhibits were regarding the validity of the liens and because we have no jurisdiction to determine their validity, those exhibits were not admitted. However, we note that even if we had jurisdiction to make a determination of the validity of the liens, which we do not, these exhibits would have offered little assistance. Instead, they demonstrate the dearth of reasonable research done by Mr. Shannon.

Mr. Shannon attached in an August 23, 2013 email to Mr. Farney, a document consisting of two pages from an uncited website under the title *Starting into Practice* purportedly by Mario Fucinari DC, MCS-P. The title was "NEW mandatory ABN Form is effective November 1, 2011." [SB Ex. 9, SBA000059-60.] It appears of the \$5,530 of the TC treatment charges, nearly half of them occurred prior to November 1, 2011. [SB Ex. 18, SBA000018-21.] More importantly the second paragraph of the article stated: "The ABN form is required to be used for a service that is covered. In the Medicare program chiropractic coverage is limited to coverage for spinal manipulation by means of the hands or hand-held device." [SB Ex. 9, SBA000059.] Mr. Shannon swore he based his legal opinion on this article. We assume Mr. Shannon knew, as we do from reviewing the bills, that it appears most if not all of the billing was uncovered. He argued the article was legally authoritative because the legal opinions in the article were written by a chiropractor for chiropractors. [Testimony of John Shannon, 10:06:00.]

Mr. Shannon's 287 page Exhibit 44 was a manual which became effective on May 10, 2013, well after all of the underlying services by IA and TC were complete and the checks at issue had been received by Mr. Shannon.

Mr. Shannon emailed Mr. Hudson on August 27, 2013 and told him he had spoken by phone with Alan M. Immerman, D.C., who was allegedly President and Executive Director of the Arizona Chiropractic Society. Mr. Shannon told Mr. Hudson:

Immerman said he was surprised at Stratmann's lack of knowledge in the Medicare area. Immerman told me that he told Stratmann EXACTLY what I told Stratmann-that it's his decision to not accept Medicare, patients but if he DOES treat, he must submit his bills to Medicare and as a consequence can't balance bill. Immerman also suggested that Stratmann talk to Gerry Gaffney, a Medicare lawyer at Mariscal, Weeks.

[SB Ex 17, SBA000166.]

However, on September 23, 2013, Mr. Immerman contradicted that statement by an email written to Mr. Shannon and Mr. Farney:

Thank you both for copying me on the correspondence regarding this matter. For the record, I do not consider myself an expert on Medicare law and have provided no legal advice to either side. When I have read the arguments from each side, they have seemed compelling until I have read the arguments from the other side. I stand neutral in this dispute

[SB Ex. 17, SBA 000187.]

In similar fashion, on August 23, 2013, Mr. Shannon emailed Mr. Farney stating, "I gather that you and Dr. Stratmann are blissfully unaware of federal regulations concerning the treatment of Medicare/Medicaid patients. I heartily recommend that you do some rudimentary investigation into Dr. Stratman's position which (is) untenable." [SB Ex. 9, SBA000057.] Mr. Shannon attached a May 2012, publication from the Department of Health and Human Services entitled, *Advance Beneficiary Notice of Noncoverage*. While we make no determination of the applicability or inapplicability of the medical provider liens as alleged by Mr. Shannon, we did review this admitted document to determine if the documents were as inconsistent as his testimony.

We note, the first page following the table of contents in that document states "Medicare does not require you to issue an ABN in order to bill a beneficiary for an item or service that is not a Medicare benefit and never covered." [SB Ex. 9, SBA000072.] Because it was a "rudimentary" part of the document Mr. Shannon utilized to bolster his argument, we conclude he read this and was aware of it. Page 6 of the booklet re-emphasizes, "Medicare does not require ABNs for statutorily excluded care or for services Medicare never covers." [Id.]

That statement is followed on the same page with an emboldened section **“Examples of Medicare Program exclusions include:”**. The first item on the page following that section states “X-rays and physical therapy provided by chiropractors” are included in those exclusion. [SB Ex. 9, SBA000074-75.] We conclude Mr. Shannon also was aware of this exclusions. We make no finding that any of the charges of Mr. Stratmann fell within the exclusion. We do, however, conclude Mr. Shannon had no expertise to factually conclude they were not excluded. We view this as a further reason why Mr. Shannon should have interpleaded as well as why he threatened to sue or interplead but never did. We cite to the above offered exhibits to demonstrate the unreasonableness of the “research” done by Mr. Shannon.

Regardless, we find the evidence proves Mr. Shannon knew he had an obligation to interplead this issue. His March 31, 2014, response to the State Bar confirms that knowledge:

...it is my intention to eventually file an interpleader claim on Mr. Hancock’s behalf and obtain a judicial ruling that Dr. Stratmann and Injury Assistance are not entitled to any payments and then negotiate with AHCCCS as to the final accounting which would include the check for \$4,500 which was never deposited.”

[R. Ex. 34, page 2.]

Likewise Mr. Shannon in his answer to paragraph IX of the complaint stated, “As to the interpleader of the settlement funds, Respondent affirmatively alleges that he is under obligation to commence an interpleader lawsuit.” [Answer to Complaint p. 4, lines 12-13.]

The Panel finds clear and convincing evidence Mr. Shannon violated ERs 1.3, 1.15, 4.2, 8.4(c), 8.4(d), and Rule 43(b)(5).

**Count One File No. 13-2510**

**ER 1.3 (diligence)**

Supreme Court Rule 42, specifically, ER 1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." Additionally, 2013 Comment 3<sup>3</sup> to ER 1.3 states, "Perhaps no professional shortcoming is more widely resented than procrastination." It does not matter which of Mr. Shannon's stories one chooses to read. He intentionally procrastinated for personal gain. Mr. Shannon violated ER 1.3 for failing to deposit a check from an insurance company in the amount of \$4,500.00 into his trust account for more than six months. He took no action except to falsely promise he would immediately take action and convey checks to TC and IA.

He then failed to mail the checks despite notifying the lien holders that he would do so, emailing: "I just have to send them." [R. Ex. 7; SB Ex. 17, SBA000123-124.] The checks were never sent. The liens remain unsatisfied and the client is open to additional future harm because of his failure to satisfy the outstanding liens. Mr. Shannon admits there was a delay between receipt of the insurance checks and disbursement, but asserted the Complainant suffered no material harm. We find actual harm by his intentional delaying and misleading actions. He distributed the monies, knew he no longer had funds sufficient to pay the lienholders and took bankruptcy. We find multiple levels of harm.

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<sup>3</sup> Mr. Shannon was retained in 2011. The misconduct in this matter occurred in 2013, therefore, the former rules apply.

### **ER 1.15 (safekeeping property)**

Mr. Shannon asserted in our proceedings that ER 1.15 was amended in January 2014 and now allows an injured victim to serve a notice of disbursement on a lien claimant. He also informed his client regarding the 2014 amendment to ER 1.15 and advised of the Medicare liens and the possible indemnity against liability. He stated, "there is a new law about holding back funds that I believe applies to your case." [SB Ex. 17, SBA000098.]

Mr. Shannon failed to notify Complainant he had obtained the settlement funds. Mr. Shannon was obligated to hold the property of third persons in his possession separate from his own property. He also refused to do any accounting despite being asked by both Mr. Griffiths for IA and Dr. Stratmann with TC. "You must provide accounting, yet you haven't done so." [Ex. 9, SBA000050.] Mr. Shannon could not tell the Panel with any certainty where he kept the \$4,500.00 check. Mr. Shannon intentionally violated ER 1.15 by failing to keep that check in a separate account and took affirmative steps to assure it would not be deposited by refusing to notify the lien holders he had received those funds from the insurer for more than six months and did not pay funds to Complainant, or a second lienholder, that were due as a result of the settlement of his client's case.

### **ER 4.2 (communication with person represented by counsel)**

Mr. Shannon violated ER 4.2 by communicating with Complainant directly regarding the legal dispute at issue after receiving an e-mail from Complainant directing Mr. Shannon to communicate with Complainant's counsel.

**ER 8.4(c) (engage in conduct involving dishonesty, deceit, fraud or misrepresentation)**

Mr. Shannon violated ER 8.4(c) by indicating to Complainant, "I have the checks for everybody. I just have to send them. Can't do it today" and then ignored attempts by Complainant, over a period of several months, to obtain payment and never sent payment to Complainant. Mr. Shannon failed to follow-up with the lienholder Injury Assistance and further misrepresented to lienholder Total Care by indicating that all medical lienholders would share in the \$4,500.00; the amount he agreed to pay Total Care.

We do not ignore the record we were given. It is apparent to us Mr. Shannon also acted deceitfully regarding the settlement agreement. We find the evidence more than clear and convincing that he intentionally violated that agreement and acted deceitfully.

**ER 8.4(d) conduct prejudicial to the administration of justice**

Mr. Shannon violated ER 8.4(d) by failing to timely take action in either depositing or distributing settlement funds, or timely determining whether chiropractic liens in the case were invalid, causing prejudice to lienholders. Mr. Shannon subjected his client to potential future liability by failing to deposit and distribute all of the settlement funds. He further failed to advise his client of the potential liability, at a minimum for attorney fees, by not paying the medical liens.

**Supreme Rule 43(b)(5) (Methods of Disbursements)**

Pursuant to former Rule 43(b)(5), all trust account disbursements were required to be made by pre-numbered checks or by electronic transfer. After

withdrawing settlement funds from his client trust account, Mr. Shannon paid his client's portion of the settlement funds in cash in violation of that rule.

### **Discussion**

Having considered the testimony and exhibits in this matter, we find the State Bar has shown, by clear and convincing evidence, a pattern of knowing if not intentionally dishonest misconduct by Mr. Shannon. The Panel was not persuaded by Mr. Shannon's self-serving testimony.

Mr. Shannon received a check in the amount of \$4,500.00 from the insurance company and did not put it into a trust account, letting it sit for over six months. He provided no valid defense for not depositing the check into a trust account and not informing Complainant of receiving the check. Mr. Shannon argued he was unable to deposit the check because there were four payees, and none of the payees could agree on how to distribute the proceeds. [Respondent's Pre-Hearing Statement; SB. Ex. 18, SBA000224-225.] Mr. Shannon claims he believed the agreement was that "the chiropractors, the claimant (my client), and Mr. Hancock's lawyer would share equally in the \$15,000 recovery" and only when he received the \$4,500.00 check did he understand that Complainant wanted his lien recovery separately from Complainant's other business entity, Injury Assistance. [SB Ex. 9, SBA000036.]

Evidence shows that the lien amounts were clear and Mr. Shannon clearly understood how to distribute the proceeds. Mr. Shannon's argument that there is no difference of whether a check sits in the file or in a trust account is not a valid defense. Mr. Shannon has been practicing law for over thirty years and his actions, or inactions, fell far below the standard of a licensed attorney.

Mr. Shannon also claims that although there was a passage of time between the first insurance company check that went stale and the correspondence with Complainant, the result would be the same in that Complainant was not entitled to any liens. [SB Ex. 9, SBA000037.] However, we find Mr. Shannon did not come to the conclusion that the lienholders were not entitled to the lien amounts until many months after receiving the initial check for \$4,500.00. Mr. Shannon's argument that lienholders were not entitled to liens is irrelevant for these proceedings except as they may have offered a "good faith" belief at the time of what have found to be intentional delay, dishonesty and deceit.

In his testimony, Mr. Shannon summarized his position. He stated the State Bar in its complaint accused him of stealing money. He asserted he believed that was a central issue in the case from the complaint. He submitted there can be no ethical violations, despite his belief the medical provider liens were valid for over six months, despite having kept funds that were not his and, despite having distributed money to himself that he believed at the time he was not entitled to take. He concluded he has no ethical liability because nothing was stolen, due to his belief, formed several months later, the lien was invalid. He took possession of the funds. He kept the funds believing they belonged to TC and IA. He refused to turn those funds over to them and controlled them while believing they were owed to TC and IA and, distributed money to himself that he believed was owed to the lien holders. He argued that is of no consequence because he later believed the liens were invalid. He testified he believes his legal opinion regarding the invalidity of the liens negates any unethical actions on his part. [Testimony of John Shannon, 9:59:33.] We disagree.

We noted no allegation within the complaint, in the prehearing statement nor in the prehearing memorandum of the State Bar regarding alleging theft, stealing or misappropriating. It was an issue Mr. Shannon rose. Mr. Shannon later reiterated this issue was before us because he was charged with wrongfully taking money. [Testimony of John Shannon, 10:27:00.]

We drew no conclusions from the repeated statements of Mr. Shannon that he was prepared to defend that issue he read into the complaint. However, it did cause us to carefully review and detail the record in this case. Theft was not an issue in the case. The motives of Mr. Shannon were. We believe Mr. Shannon correctly identified with his repeated statements his motives in this matter. Even if his client testified he had reached a different "agreement" with Mr. Shannon, it would not impact our decision. We observed the interaction between Mr. Shannon and his client. We noted how on occasion a full minute would pass between his questions to his client, while he alternatively stared at his client or at the paper in front of him. We did not draw favorable conclusions from those actions either.

Many of Mr. Shannon's ethical violations occurred far before he had done research on the validity of the liens. This misconduct caused actual injury to lienholders, regardless of whether they were entitled to the liens. Mr. Shannon provided no other reason for not informing Complainant of the receipt of the \$4,500.00, and he admits he was dilatory in failing to inform them.

Mr. Shannon's misconduct is compounded by his deception to lienholders in response to their requests for payment. Complainant sent multiple e-mails to Mr. Shannon asking for payment. On both February 16, 2013 and May 22, 2013, Mr. Shannon e-mailed Complainant that he would make payment. The February 16, 2013

email states, "I have the checks for everybody. I just have to send them. Can't do it today." From this statement, it can be inferred that Mr. Shannon knew that multiple checks would have to be sent out. However, on August 2, 2013, Mr. Shannon informed Complainant that after disbursing funds to himself and his client, the remaining \$4,500 would have to be shared by all lienholders. Also, on the same day, Mr. Shannon informed Complainant that if no one wanted to settle that he would interplead the funds. Mr. Shannon never dispersed or interplead the funds. Further, there were insufficient funds to interplead. His deceitful promises to pay the lienholders were multiple and intentional. When Mr. Shannon was not lying to the lienholders, it was often because he was ignoring emails and not communicating with them for months at a time.

Mr. Shannon gave no explanation at the disciplinary hearing why he did not clarify with the lienholders the amounts of the liens. Mr. Shannon ignored multiple emails from Complainant asking for payment. August 2, 2013 was the first time he communicated problems about the lien, almost six months after his February 16, 2013 email asserting he would make payment.

Further, Mr. Shannon's email to Dr. Stratmann on August 12, 2013, provides a clear motive for why Mr. Shannon was dilatory in communicating to lienholders about the liens. [SB Ex. 9, SBA000045.] Mr. Shannon was aware there was a one year limitation on representing Medicare claims, which would explain Mr. Shannon not communicating with lienholders for such a long period of time and delaying payment. Mr. Shannon's conduct and explanations were inconsistent and not credible.

Mr. Shannon contends the previous attorney did not conduct research about the validity of the liens and the case was substantially concluded when the matter

was referred to him. However, this does not excuse the fact that Mr. Shannon intentionally made false promises to lienholders and did not timely determine the validity of the liens. Mr. Shannon testified he was troubled by the liens from the very beginning, yet he did not conduct research in a timely fashion. This was contradicted multiple times by his own statements. As another example, in his August 12, 2013 email of Mr. Shannon to Dr. Stratmann he stated, "Only upon the lien amounts coming into controversy did I realize that you improperly imposed a "lien" on the proceeds of Mr. Hancock's personal injury settlement." [SB Ex. 9, SBA000042.]

Mr. Shannon also communicated with Complainant directly regarding the legal dispute after Complainant directed Mr. Shannon to communicate with Complainant's counsel. Mr. Shannon argues he did not know the contact information of the attorney. However, the email of August 12, 2013, from Complainant copied David Farney, Complainant's attorney, giving Mr. Shannon the email address. [SB Ex. 17, SBA000150.] Further, Mr. Shannon easily could have checked a bar directory online for Mr. Farney's email address. Despite the directive to Mr. Shannon from Dr. Stratmann we also note there was also a second email sent by Mr. Shannon to Dr. Stratmann. [SB 17, SBA000152.]

Mr. Shannon did not express remorse or fault for any of the charges against him. His only defense was that the lienholders were not entitled to liens under federal law, and thus there was neither conduct involving dishonesty nor harm. His actions reflect a pattern of fraudulent and dishonest behavior, which Mr. Shannon defended with irrelevant explanations on whether the liens were valid. Mr. Shannon's defense is irrelevant to these proceedings and his lack of remorse is troubling.

When asked in his deposition if he had learned anything from his prior disciplinary action, Mr. Shannon answered, "Did I learn anything? Yes." He was asked "What's that?" He swore, "A client can turn on you at a moment's notice." The similarities of his ethical violations in that prior disciplinary matter and this one trouble us greatly. We are convinced Mr. Shannon is a significant risk to the public.

## **VI. SANCTIONS**

In consideration of an appropriate sanction, the Panel considered the following factors set forth in the American Bar Association *Standards for Imposing Lawyer Discipline (Standards)*:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors. *Standard 3.0.*

In determining the nature of the ethical duty violated, the *Standards* assume that the most important ethical duties are those obligations which a lawyer owes to his clients, including preserving the client's property. Theoretical Framework. P.5. The *Standards*, however, do not account for multiple ethical rule violations. The ultimate sanction should at minimum be consisted with the most serious instance of misconduct and generally should be greater than the sanction for the most serious misconduct. *Id.*, p.6.

*Standard 4.1, Failure to Preserve the Client's Property*, is applicable to Mr. Shannon's misconduct involving the safekeeping of client property in violation of ER 1.15. *Standard 4.11* provides:

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

*Standard 4.12* provides suspension is generally appropriate when:

a lawyer knows or should know that he is dealing improperly with client property and cause injury or potential injury to a client.

Mr. Shannon knew or should have known that he was dealing improperly with the client's settlement funds which caused injury to the lienholders. Mr. Shannon should have notified Complainant when he received the check from the insurance company, he should have put all of the settlement funds in his trust account, and he should have timely dispersed the funds to lienholders. Instead, Mr. Shannon repeatedly dispersed funds to himself and his client, leaving insufficient funds to satisfy all lienholders. To the detriment of his client, and in direct contradiction to his written avowals to his client that he would take a lower fee, Mr. Shannon paid himself a total of \$5,000.

Further, *Standards 5.1, Failure to Maintain Personal Integrity*, is applicable to Mr. Shannon's violation of ER 8.4(c).

*Standard 5.11* provides disbarment is appropriate when:

- (a) a lawyer in engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

*Standard 5.12* provides suspension is appropriate when:

a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that

seriously adversely reflects on the lawyer's fitness to practice.

Mr. Shannon knowingly, if not intentionally, misrepresented that he would disperse funds to lienholders but never dispersed the funds and subsequently ignored multiple emails from the lienholders causing injury.

*Standard 4.4, Lack of Diligence*, is applicable to Mr. Shannon's violation of ER 1.3. *Standard 4.41* provides:

- Disbarment is generally appropriate when:
- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
  - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
  - (c) lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

*Standard 4.42* provides suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Mr. Shannon failed to deposit a check from an insurance company in the amount of \$4,500 into his trust account for more than six months and failed to notify Complainant he had obtained the funds.

Finally, *Standard 8.0, Prior Discipline Orders*, is applicable to Mr. Shannon's violation of ER 8.4(c). *Standard 8.1* provides:

- Disbarment is generally appropriate when a lawyer:
- (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Mr. Shannon's prior misconduct closely resembles his current violations.

Mr. Shannon has also breached one of his most fundamental duties to the public, which is to maintain personal honesty and integrity. His misconduct caused harm to lienholders and their interests. Not only did lienholders suffer economic losses, but the breaching of these most fundamental responsibilities significantly harms the legal profession and general public. Such activities create public mistrust and a cynicism against the legal profession. As such, Mr. Shannon's misconduct caused a severe degree of harm to lienholders, the public, and the legal profession in general. The State Bar asserts that disbarment is the appropriate sanction; the Panel agrees disbarment is required to safeguard the public and the integrity of the legal profession.

#### **AGGRAVATION AND MITIGATION**

The Panel determined the following aggravating factors are supported by the record:

- 9.22(a) (prior disciplinary offense). Mr. Shannon received a one (1) year suspension effective June 21, 1994, for violating ERs 1.4(a), 1.4(b), 1.15, 1.7(b), 3.2, 3.3, 8.4(c), and 8.4(d). Mr. Shannon was found to have acted dishonestly by materially altering his client's handwritten answers to interrogatories without notifying the client or providing the client with a copy. He then submitted said interrogatories to the court along with the client's signed verification of the original unaltered interrogatories. Further, Mr. Shannon was found to fail to follow specific instructions from opposing counsel by cashing a check that opposing counsel sent in satisfaction of a judgment without first executing a satisfaction of judgment; ignoring opposing counsel's subsequent requests to sign the satisfaction forcing opposing counsel to file a motion to compel; and waiting a full

week after the court granted the motion to compel before signing the satisfaction of judgment. The Panel finds the remoteness of Mr. Shannon's prior misconduct does not serve as a mitigating factor because his prior misconduct is so similar to his current violations.

- 9.22(b) (dishonest or selfish motive). Mr. Shannon engaged in repeated acts of dishonest misconduct. Mr. Shannon dispersed funds to himself multiple times not leaving enough funds to satisfy the amounts owed to lienholders. Further, Mr. Shannon misrepresented to lienholders multiple times that he would disperse the funds and then refused to do so.
- 9.22(c) (pattern of misconduct). Mr. Shannon's prior misconduct involved similar conduct, specifically dishonesty.
- 9.22(i) (substantial experience in the practice of law). Mr. Shannon has been a member of the State Bar of Arizona since October 8, 1977.
- 9.22(g) (refusal to acknowledge wrongful nature of conduct). Mr. Shannon refused to acknowledge his wrongful behavior.

Mr. Shannon offered no mitigating factors other than his reliance on his good faith belief the liens were invalid, and thus the Panel finds none present.

## **VII. CONCLUSION**

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *In re Peasley*, 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Based on the facts, conclusions of law, and application of the *Standards*, including aggravating factors, the Panel determined that disbarment is the appropriate sanction. Accordingly,

**IT IS ORDERED:**

Mr. Shannon is disbarred from the practice of law effective thirty days from the date of this Decision and Order.

**IT IS FURTHER ORDERED** that Mr. Shannon shall interplead the funds from the \$4,500.00 and the monies in his trust account or deliver those funds to the State Bar for interpleading within ten (10) days of this order.

**IT IS FURTHER ORDERED** that Mr. Shannon shall pay costs and expenses in this matter.

A final judgment and order will follow.

**DATED** this 10th day of April, 2015.

*William J. O'Neil*

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**William J. O'Neil, Presiding Disciplinary Judge**

**CONCURRING:**

*Brett Eisele*

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**Brett Eisele, Volunteer Public Member**

*Sandra E. Hunter*

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**Sandra E. Hunter, Volunteer Attorney Member**

COPY of the foregoing e-mailed/mailed  
this 10th day of April, 2015, to:

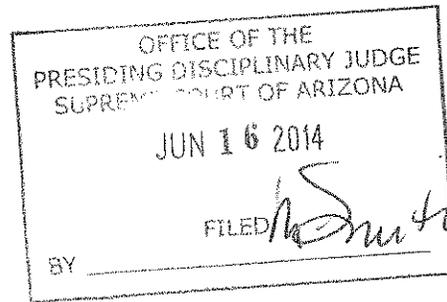
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**BEFORE THE PRESIDING DISCIPLINARY JUDGE  
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A CURRENT  
MEMBER OF THE STATE BAR OF  
ARIZONA,**

**JOHN A. SHANNON JR  
Bar No. 005033**

Respondent.

PDJ 2014-9051

**COMPLAINT**

[State Bar No. 13-2510]

**GENERAL ALLEGATIONS**

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 8, 1977.

**COUNT ONE**

2. In 2011, Respondent's client began treating at Complainant's chiropractic clinic, Total Care. Complainant recorded a lien with Maricopa County and sent a copy of the lien to Respondent.

3. In January of 2013, Respondent settled the client's personal injury case for the policy limits of \$15,000. Respondent then requested a reduction of Complainant's lien. He sent Complainant an email on January 18, 2013, acknowledging his company's lien of \$5,530 and total liens in the matter of \$9,500.

4. In response to Respondent's request, on January 22, 2013, Complainant's office agreed to reduce the lien to \$4,500 and indicated that the reduction agreement would be good for fourteen business days.

5. The insurance company issued a check in the amount of \$4,500 to Respondent and Complainant's company, jointly, on January 30, 2013. The check for \$4,500 remained un-cashed in Respondent's office for more than six months.

6. On the following day, the insurance company issued a check for an additional \$10,500 to Respondent and his client. Respondent disbursed \$8,000 of the funds in the following manner:

7. On February 20, 2013, Respondent wrote himself a check for \$1,000.

8. On February 22, 2013, Respondent wrote himself a check for \$1,000.

9. On February 25, 2013, Respondent paid his client \$3,000 in cash, because the client did not have a bank account. Respondent withdrew the amount from his trust account.

10. On March 11, 2013, Respondent wrote himself a check for \$2,500.

11. On April 11, 2013, Respondent wrote himself a check for \$500.

12. Respondent's position is that he withheld the remaining \$2,500 in order to negotiate with Medicare and Medicaid.

13. On February 26, 2013, Respondent indicated to a second lienholder, Injury Assistance: "I have the checks for everybody. I just have to send them. Can't do it today." The lien held by Injury Assistance was in the amount of \$3,225.

14. When Injury Assistance had not received payment by April 1, the company emailed, "[b]ack in February you stated you had the checks on James

Hancock (client). To date we still have not received payment. Can you please let me know when you will be getting the check out for Injury Assistance?"

15. On May 22, Injury Assistance again emailed Respondent: "I have yet to receive payment on James Hancock and it appears you had the checks back in February. Can you please let me know what is going on with this?"

16. Respondent responded on the same day, "It's my bad for forgetting about this. I'm going out of town, but I should be back tonight. Yes, I'll send you the check."

17. When Respondent failed to send the check, Injury Assistance emailed Respondent again on July 22, 2013, "I still have not received the check on James Hancock. Can you please get this in the mail promptly?"

18. When no response was received, Injury Assistance emailed again on July 30, 2013, "I have not heard back from you nor have I received this check from you. What is the status? Can you get it in the mail today?"

19. On August 2, 2013, Respondent called Total Care's office and explained that he was having the insurance company's check for \$4,500 reissued and that his recollection was that the reduced amount of \$4,500 was to be shared by all lien holders, including Total Care and Injury Assistance.

20. Later that day, Respondent communicated to Total Care's office that he had disbursed all remaining funds to himself and the client and that \$4,500 would have to be shared by all of the lien-holders.

21. Complainant indicated to Respondent that he would not accept less than his total lien of \$5,500, as Respondent had failed to act within the fourteen day time limit set on his initial offer to reduce the lien.

22. An email drafted by Respondent to the insurance adjuster on January 22, 2013, makes clear that Respondent was aware that the \$4,500 in funds was to be paid only to the chiropractic clinic in which Complainant owes a majority interest (Total Care). In the email, Respondent stated in part:

Attached is the lien reduction letter from Dr. Stratmann (Complainant). It should be self-explanatory. Obviously, you can make a check out to Total Care for \$4,500 leaving a balance of \$10,500 to be paid.

23. On August 12, 2013, at 1:56 p.m., Complainant informed Respondent in an email copied to Complainant's attorney, David Farney:

Please put the questioned funds in trust and file an inter pleading (sic).

Dave Farney; Please file suit immediately against the patient and attorney on this. If you feel there is any point in discussing the aspects of this case with John (Respondent), go ahead and talk to him. John obviously I disagree with your conclusions. Your threats from the beginning are duly noted. You can deal with the legal issues with my counsel.

24. At 5:12 p.m. on the same day, Respondent responded to Complainant, but did not copy Farney:

If you have legal counsel, I don't think there is much more I can say; I haven't acted unethically. You know the "accounting"—there is a \$4,500 check from the insurance company which is being replaced. If you don't accept Medicare, that's something you should have told your patient; instead you "gave" him a lien after you treated him, which Federal law prohibits you from doing. "You know that." You can't simply wish Federal law away. Please reread my Email, especially my last Email which has an attachment—a website written by a consultant to chiropractors about Medicare. You weren't entitled to a lien before I participated in the case, and you aren't entitled to a lien now. I would recommend that you consult closely with your legal counsel. You asked me to forward this to your counsel, but since you didn't supply

me with the address, I can't do that. In any event, I will give you until Friday to consult with your lawyer, a thing, that, obviously, you probably need to do.

25. Respondent has not interplead the \$4,500 in funds that was issued to him by the insurance company in early 2013.

**Rule Violations:**

1. E.R. 1.3 requires a lawyer to exercise reasonable diligence and promptness in representing a client. Respondent, in representing his client, failed to deposit a check from an insurance company of \$4,500 into his trust account for more than six months.
2. ER 1.15 requires a lawyer upon receiving funds or other property in which a client or third person has an interest, to promptly notify the client or third person. The rule also requires a lawyer to promptly deliver to the client or third person of any funds or other property that the client or third person is entitled to receive. Respondent failed to notify Complainant that he had received funds from the insurer for more than six months and did not pay funds to Complainant, or a second lien-holder, that were due as a result of the settlement of his client's case.
3. ER 4.2 prohibits a lawyer from communicating about the subject of the representation with a party the lawyer knows to be represented by another attorney in the matter. After receiving an email from Complainant directing Respondent to deal with Complainant's counsel, Respondent communicated with Complainant directly regarding the legal dispute at issue.
4. ER 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent, on February 26, 2013,

indicated to Injury assistance, "I have the checks for everybody. I just have to send them. Can't do it today." Respondent then ignored follow-up attempts by Injury Assistance over a period of several months and never sent payment to Injury Assistance. Respondent also made misrepresentations to Total Care by indicating to them that his understanding was that all medical lienholders were to share in the amount of \$4,500, when that amount had been issued by the insurer solely for Total Care and when Total Care was due more than \$4,500.

5. ER 8.4(d) prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Respondent's failure to timely take action in depositing and distributing settlement funds caused prejudice to lienholders and potentially subjected his client to additional litigation and liability.
6. Rule 43(b)(5) requires a lawyer to make all trust account disbursements by pre-numbered check or by electronic transfer, provided the lawyer maintains a record of such disbursements. Respondent paid his client \$3,000 in cash after withdrawing trust account funds.

**DATED** this 16<sup>th</sup> day of June, 2014

**STATE BAR OF ARIZONA**



---

Hunter F. Perlmeter  
Staff Bar Counsel

Original filed with the Disciplinary Clerk of  
The Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 16<sup>th</sup> day of June, 2014.

by:   
HFR/jao

**FILED**

JUN 12 2014

STATE BAR OF ARIZONA

BY 

**BEFORE THE ATTORNEY DISCIPLINE  
PROBABLE CAUSE COMMITTEE  
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA,**

**JOHN A. SHANNON, JR.  
Bar No. 005033**

Respondent.

No. 13-2510

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 6, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 6-0-3<sup>1</sup>, the Committee finds probable cause exists that Respondent violated the Rules of the Supreme Court of Arizona.

**IT IS THEREFORE ORDERED** pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

**DATED** this 11<sup>th</sup> day of June, 2014



Judge Lawrence F. Winthrop, Chair  
Attorney Discipline Probable Cause  
Committee of the Supreme Court of Arizona

<sup>1</sup> Committee members Ella Johnson, Daisy Flores and Bill Friedl did not participate in this matter.

Original filed this 12<sup>th</sup> day  
of June, 2014 with:

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Copy mailed this 13<sup>th</sup> day  
of June, 2014, to:

John A. Shannon, Jr  
*Law Office of John Shannon*  
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Phoenix, Arizona 85004-4436  
Respondent

Copy emailed this 13<sup>th</sup> day  
of June, 2014, to:

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by: 