PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed September 14, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-21-O-30142
	)	
JACOB ARASH SHAHBAZ,	)	OPINION AND ORDER
	)	
State Bar No. 204669.	)	
	)	

Honesty and proper handling of client funds are the two most important requirements attorneys must possess. This case reflects serious deficiencies in both traits, and clearly exhibits the consequences of an attorney's failure to comply with these fundamental obligations.

In his first disciplinary case, Jacob Arash Shahbaz was charged with 29 counts of misconduct, including misappropriating over $160,000 in four separate client matters. He was also charged with making misrepresentations to the Office of Chief Trial Counsel of the State Bar (OCTC), failing to maintain funds in a client trust account (CTA), failing to distribute client funds promptly, failing to render accounts, and failing to maintain complete records of client funds held in trust. The hearing judge found Shahbaz culpable of 22 counts and recommended disbarment.

Shahbaz appeals, claiming that a six-month suspension, not disbarment, is appropriate; he cites facts that show only negligence or gross negligence and factors which should weigh far heavier in mitigation. OCTC does not appeal and supports the hearing judge's recommendation. Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the judge's culpability, discipline, and most aggravating and mitigating findings. Shahbaz committed serious misconduct, such as making misrepresentations and misappropriating client funds, and

did not prove compelling mitigation. Therefore, we affirm the hearing judge's disbarment recommendation as necessary to protect the public, the courts, and the legal profession.

I. PROCEDURAL BACKGROUND

On March 12, 2021, OCTC filed a 29-count Notice of Disciplinary Charges (NDC) charging Shahbaz with the following misconduct in four separate client matters: (1) failure to maintain funds in trust account (eight counts); (2) moral turpitude—misappropriation of client funds (four counts); (3) failure to distribute funds promptly (two counts); (4) failure to render accounts of client funds (two counts); (5) failure to maintain complete records of client funds held in trust (five counts); (6) moral turpitude—misrepresentation to OCTC (three counts); (7) moral turpitude—presenting a fabricated document to OCTC (three counts); and (8) moral turpitude—misrepresentation and presenting a fabricated document to OCTC (two counts). The parties entered into two pretrial stipulations. On June 22, 2021, the parties filed the first Stipulation as to Facts and Admission of Documents (Stipulation). And then on June 28, 2021, the parties filed a Supplemental Stipulation. A three-day trial was held between June 29 and July 1, 2021. Posttrial closing briefs followed, and the hearing judge issued his decision on September 28, 2021.

II. FACTUAL BACKGROUND[1] AND CULPABILITY FINDINGS[2]

Jacob Arash Shahbaz was admitted to practice law in California on December 7, 1999, and has no prior discipline. Shahbaz spent the first two decades of his career in commercial litigation and then transitioned into personal injury in 2017.

[1] The facts are based on the Stipulation, Supplemental Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[2] We have independently reviewed all of Shahbaz's arguments. Any arguments not specifically addressed have been considered and rejected as without merit.

A. The Sanchez Matter

1. Factual Background

On April 10, 2017, Carolina Sanchez Gutierrez (Sanchez) hired Shahbaz to represent her in a personal injury claim arising out of an automobile accident. Under the parties' contingency fee agreement, Shahbaz was entitled to 33⅓ percent of the gross amount of any recovery obtained before the filing of a lawsuit. Shahbaz settled Sanchez's case with Dairyland and Foremost Insurance Group (Foremost) prior to litigation. Dairyland settled for $15,000, and Foremost settled for $17,000. Shahbaz was entitled to $10,333.33 in total fees for both cases ($5,000 plus $5,333.33).

On January 30, 2019, Dairyland issued a settlement check in the amount of $15,000, payable to Sanchez and Shahbaz. Shahbaz deposited the check into his CTA on February 4. Sanchez had three lienholders—Back in Motion, Sports Orthopedic & Spine Care, and Glendale Diagnostic Imaging. Collectively, the lienholders were entitled to $8,000, and Sanchez was entitled to $2,000. On February 5, Shahbaz transferred $7,500 into his business account, leaving a balance of $8,386.09 in his CTA, less than the $10,000 he was required to hold in his CTA for Sanchez and the lienholders. The CTA balance continued to drop, and by February 13, it was $1,471.09. The CTA balance remained under $10,000 until February 26, when unrelated deposits were made. Between February 4 and June 13, 2019, Shahbaz did not issue any payment to Sanchez or the lienholders.

On March 19, 2019, Foremost issued a settlement check in the amount of $17,000, payable to Sanchez and Shahbaz. Sanchez was entitled to $11,666.67, with the remaining

$5,333.33 for Shahbaz's attorney fees.[3] Shahbaz deposited the check into his CTA on March 25, leaving an ending balance of $53,463.42. At that point, Shahbaz was required to maintain $21,666.67 in his CTA on behalf of Sanchez and the lienholders; however, the CTA balance fell to $15,660.42 by March 27 and as low as $2,345.38 on April 23.

On June 14, 2019, Shahbaz issued three checks from his CTA: two to Sanchez in the amounts of $1,000 and $12,666.67, and a $1,043.60 payment to Back in Motion. Shahbaz later placed a stop payment on the $12,666.67 check to Sanchez. On July 18, Shahbaz issued a replacement check to Sanchez for $12,667.67, and his CTA balance dropped to $1,274.50. By July 30, the CTA balance was only $174.50. Shahbaz did not issue payment to lienholders Glendale Diagnostic Imaging and Sports Orthopedic & Spine Care until June 30, 2020, after OCTC notified him of its investigation.

2. Culpability Findings

Counts One and Two—Failure to Maintain Client Funds in Trust (Rules Prof. Conduct, rule 1.15(a))[4]

In count one of the NDC, OCTC alleged Shahbaz violated rule 1.15(a)[5] by failing to maintain in his CTA $10,000 in settlement funds received from Dairyland on February 4, 2019, on behalf of Sanchez and her lienholders. Similarly, in count two, OCTC charged Shahbaz with violating rule 1.15(a) for failing to maintain $11,666.67 in his CTA after settlement funds from

[3] The parties stipulated to this amount and based on the settlement breakdown sheets and bank records, $1,000 was to cover Sanchez's property damage and the remaining $16,000 was for Sanchez's bodily injury claim. Shahbaz calculated his fees based upon the $16,000 amount. Shahbaz issued a check from the CTA to Sanchez for the $1,000 property damage claim, which posted on July 15, 2019.

[4] All further references to rules are to the current California Rules of Professional Conduct unless otherwise noted.

[5] Rule 1.15(a) provides "All funds received or held by a lawyer or law firm for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled 'Trust Account' or words of similar import . . . ."

Foremost were deposited on March 25, 2019. The hearing judge found Shahbaz culpable as charged in both counts. We agree.

Client funds held by an attorney must be deposited in a CTA and maintained until the amount owed to the client is settled. (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 277-278.) The stipulated facts and bank records show that after Shahbaz received deposits from Dairyland and Foremost, he failed to maintain $21,666.67, which was owed to Shahbaz and the lienholders, in the CTA. Therefore, he violated rule 1.15(a) as charged. (See *Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 976 [rule is violated when attorney fails to deposit and maintain funds in manner designated by rule].) We affirm culpability under counts one and two and, like the hearing judge, assign no additional weight in discipline as culpability is based on the same facts underlying the established misappropriation charge in count three. (See *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional disciplinary weight for former rule 4-100(A) violation[6]—the predecessor of rule 1.15(a)—when duplicative of moral turpitude violation].)

Count Three—Misappropriation (Bus. & Prof. Code, § 6106)[7]

Shahbaz is charged in count three with misappropriating $20,492.17 in client funds in violation of section 6106, which provides that the commission of an act involving moral turpitude constitutes cause for suspension or disbarment. Misappropriation occurs when an attorney fails to use entrusted funds for the purpose for which they were entrusted. (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.) The hearing judge determined that Shahbaz misappropriated funds due to his gross negligence and found culpability under count three.

[6] All further references to former rules are to the former California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

[7] All further references to sections are to the Business and Professions Code unless otherwise noted.

When an account balance drops below the amount the attorney is required to hold for a client, a presumption of misappropriation arises. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37.) The burden then shifts to the attorney to show that misappropriation did not occur and that he was entitled to withdraw the funds. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.) As of March 25, 2019, Shahbaz was required to hold a total of $21,666.67 in settlement funds in his CTA—$10,000 from the Dairyland settlement and $11,666.76 from the Foremost settlement. He stipulated that his CTA balance fluctuated between February 4 and July 30, 2019, and dropped below the amount he was required to hold prior to issuance of any payments to Sanchez and the lienholders. On review, he admits he did not handle the CTA properly but asserts that the misappropriation occurred due to negligence. The evidence shows Shahbaz's CTA account dropped below the amount he was required to hold on at least nine occasions. For instance, beginning on February 5, 2019, Shahbaz transferred $7,500 into his business account, leaving an ending balance of $8,386.09 in his CTA, less than the $10,000 he was required to hold for Sanchez and the lienholders. Where an attorney's fiduciary obligations are involved, particularly CTA responsibilities, a finding of gross negligence supports misappropriation. (*Giovanazzi v. State Bar*, (1980) 28 Cal.3d 465, 475.) And Shahbaz has failed to rebut the presumption of misappropriation. His carelessness in failing to maintain the funds for Sanchez and the lienholders in this CTA establishes that he committed an act of moral turpitude by his grossly negligent misappropriation, as charged in violation of section 6106. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

B. The Kambiz, Shamuel, and Soloki Matters

1. Factual Background

Kambiz Yadegaran (Kambiz), his father Shamuel Yadegaran (Shamuel),[8] and his mother Rowshan Soloki (Soloki), were injured in an automobile accident on January 28, 2017. The attorney initially hired to represent them in their personal injury and property damage claims withdrew from the representation and transferred the clients to Shahbaz, whose law office was in the same building. Pursuant to the fee agreements signed by Kambiz and his parents, Shahbaz was entitled to 25 percent of the gross amount of any recovery obtained prior to the filing of a lawsuit. The fee agreements also contained a power of attorney provision allowing Shahbaz to affix his clients' names on any legal document related to the case, including checks, drafts, or releases. Shahbaz worked on the three cases between 2018 and 2021 and obtained settlements on behalf of each client against the Hartford Casualty Insurance Company (The Hartford) and Interinsurance Exchange of the Automobile Club of America (AAA). Each matter was negotiated and settled independently, as discussed below.

The Kambiz Settlement

Shahbaz settled Kambiz's claims with The Hartford and AAA for a total of $100,000. On June 29, 2018, The Hartford issued a settlement check for $15,000; Kambiz and his lienholders were entitled to $11,250, and the remaining $3,750 belonged to Shahbaz for attorney fees. On July 9, Shahbaz deposited the check into his CTA. At that time, he did not inform Kambiz that he received or deposited the settlement funds. Between July 9 and September 13, Shahbaz did not issue any payments to Kambiz or his lienholders, and his CTA balance dropped below the $11,250 he was required to hold.

[8] We refer to Kambiz and Shamuel by their first names only to avoid confusion; no disrespect is intended by the informal references.

On August 21, 2018, AAA issued a settlement check payable to Shahbaz and Kambiz for $85,000. Shahbaz was entitled to $21,250 for his attorney fees and the remaining $63,750 was owed to Kambiz and the lienholders. Again, Kambiz was not informed that Shahbaz had received or deposited the funds. Shahbaz deposited the check into his CTA on August 24. His CTA balance dropped to $31,760.45 by September 13, when he was required to maintain $75,000. Kambiz did not learn about the settlement until after he was contacted by AAA sometime between August and September. On September 24, Shahbaz issued a $25,000 check to Kambiz from his CTA. On January 29, 2019, Shahbaz issued a second check to Kambiz for $24,000, and a third and final check for $2,666.67 on February 5. In sum, Kambiz received $51,666.67.

In the fall of 2018, Shahbaz began negotiating with Kambiz's lienholders. The amounts due to the lienholders were as follows:

Lienholder	**Billed**
Advanced Chiropractic Rehab Center	$5,235
Pro Health Advanced Imaging (Pro Health)	$2,876
Spine Care and Orthopedic Physicians (SCOP)	$25,636
Westside Anesthesia Services	$3,850
Specialty Surgical Center	$32,355
Total:	$69,952

On October 25, 2018, Shahbaz requested that SCOP reduce its lien from $25,636 to $11,536.20, and SCOP accepted the offer on November 2. Shahbaz testified that Kambiz did not agree to the 50 percent reduction and Kambiz began negotiating with SCOP on his own.[9] The hearing judge did not find Shahbaz's testimony credible considering the numerous subsequent demands from SCOP directed to Shahbaz. Kambiz testified that he never knew of the reduction and denied telling Shahbaz that he objected to it.

[9] Shahbaz's letter for SCOP contained a handwritten notation stating, "11/03/2018 client does not agree to pay this amt."

On October 26, 2018, Shahbaz sent Advanced Chiropractic Rehab Center a request to reduce its lien from $5,235 to $2,355.65. In early November, he sent a letter to Pro Health seeking an agreement for a total reduced lien payment of $626. He reached an agreement with C&C Factoring Solutions (C&C) to settle the liens by Westside Anesthesia Services and Specialty Surgical Center for a payment of $18,000, reduced from the initial combined total of $36,205. On November 2, Shahbaz's CTA ending balance was $1,126.69, and the account dropped to negative $1,348.52 by November 20. Despite these negotiations, Shahbaz did not issue payment to any of the lienholders until 2020 after OCTC informed him of its investigation.

On May 13, 2020, Shahbaz satisfied the Westside Anesthesia Services and Specialty Surgical Center by issuing a check payable to C&C for $18,000. Between January 2019 and August 2020, SCOP sent written demands to Shahbaz on 15 separate occasions requesting payment for the lien. Shahbaz received the requests. On August 19, 2020, he issued a check from his CTA to SCOP for $11,536.20. Pro Health also repeatedly sent Shahbaz written requests in an attempt to satisfy its lien. Shahbaz did not pay off the $700 lien until March 4, 2021, nearly two years after the settlement funds were received. Shahbaz's paralegal, Heather Pak, testified that the Advanced Chiropractic lien was satisfied through payment made with other clients. In total, Shahbaz disbursed $81,902.87 of the settlement to Kambiz and his lienholders; however, he never provided Kambiz with a full accounting of the settlement funds.

The Shamuel Settlement

Prior to filing a lawsuit, Shahbaz settled Shamuel's case against The Hartford and AAA for $100,000. On June 29, 2018, The Hartford issued a settlement check for $25,000 payable to Shahbaz and Shamuel.[10] Shahbaz deposited the check into his CTA on July 9. Shamuel and his lienholders were entitled to $18,750, and Shahbaz was entitled to $6,250 for his fees. On

[10] Shamuel's name was spelled incorrectly as "Shamoul" on the check.

July 10, the day after depositing the check, Shahbaz's CTA balance was $11,612.33. The CTA balance continued to drop, and by August 8 it reached a low of $1,915.57.[11] No payments had been issued to Shamuel or the lienholders.

On August 21, 2018, AAA issued a settlement check for $75,000 payable to Shahbaz, Shamuel, Soloki, and Medicare. On August 24, Shahbaz deposited the check into his CTA. Shahbaz was entitled to $18,750 for his attorney fees and the remaining $56,250 was owed to Shamuel and his lienholders. At this point, Shahbaz was required to maintain a total of $75,000 ($18,750 plus $56,250) in his CTA. Shahbaz never informed Shamuel that he received the settlement checks and he was not authorized to use Shamuel's portion of the settlement for his personal use, but by September 13, 2018, the CTA balance dropped to $31,760.45. From August 2019 through April 2020, Shahbaz issued a series of small checks to Shamuel that totaled $24,985.97.[12]

Pursuant to the settlement, Shamuel had the following outstanding medical liens:

Lienholder	**Billed**
Medicare	$1,579.58
Advanced Chiropractic	$5,090
Pro Health	$2,864
SCOP	$26,935
Westside Anesthesia Services	$4,375
Specialty Surgical Center (Dr. Schiffman, MD)	$25,945
Total:	$66,788.58

In 2019, Shahbaz sent multiple letters to a benefits coordinator for Medicare, disputing Shamuel's lien, but his negotiations were unsuccessful. On June 22, 2020, Shamuel received a

[11] Shahbaz's CTA balance dropped to $6,310.57 on July 13; $5,415.57 on July 31; $3,915.57 on August 1; and $2,915.57 on August 3.

[12] The following checks were issued to Shamuel from Shahbaz's CTA: $5,000 on August 26, 2019; $5,001.33 on March 10, 2020; $4,900 on March 20, 2020; $5,097 on March 27, 2020; and $4,987.64 on April 28, 2020.

collection notice from CBE Group, Inc. seeking $1,819.82 for the unpaid Medicare lien.[13] On August 19, 2020, Shamuel received a collection letter from Pro Health, which indicated they had been unable to reach Shahbaz regarding the outstanding lien.

On December 24, 2020, Shahbaz issued a check for $12,536.86 from his CTA to C&C to satisfy the Westside Anesthesia Services and Specialty Surgical Center liens. SCOP accepted a reduction of its lien from $26,935 to $12,959 and Shahbaz issued SCOP a check on December 21. However, on February 2, 2021, a stop payment was placed on the check, and Shahbaz sent SCOP a wire transfer for $12,959 on February 5. On March 4, Shahbaz issued a $700 check to Pro Health to satisfy the lien. In total, Shahbaz disbursed $51,177.83 to Shamuel and his lienholders. The record does not show that either Medicare or Advanced Chiropractic were paid for their liens.

The Soloki Settlement

Shahbaz also settled Soloki's claim prior to filing a lawsuit. He settled her claims with The Hartford and AAA for a total of $20,000. On June 29, 2018, The Hartford issued a settlement check for $10,000 payable to Soloki and Shahbaz. Shahbaz deposited the check into his CTA on July 9. Soloki and her lienholders were entitled to $7,500 and the remaining $2,500 was for Shahbaz's attorney fees. Although Shahbaz was required to hold $7,500 in his CTA, the balance decreased to $6,310.57 on July 13, and $1,915.57 on August 8.

On October 8, 2018, AAA issued a $10,000 settlement check, made payable to Soloki, Medicare, and Shahbaz. Shahbaz deposited the check into his CTA on October 10. By October 26, Shahbaz's CTA's balance was $1,866.69. The CTA balance reached negative $1,348.52 by November 20.

[13] The Center for Medicare and Medicaid Services (CMS) sent the debt to the United States Treasury Department, and the Treasury Department forwarded the debt to CBE Group, Inc. for collection.

Between March and May 2019, Shahbaz paid Soloki $20,000. He issued her a check for $10,000 on March 29, a check for $5,000 on May 2, and a check for $5,000 on May 31.

In 2019, Shahbaz also began negotiating with Soloki's lienholders, which included the following liens:

Lienholder	**Billed**
Medicare	$3,617.38
Advanced Chiropractic	$5,380
Pro Health	$2,876
SCOP	$1,170
Total:	$13,043.38

As with Shamuel's claim, Shahbaz sent several letters to a Medicare benefits coordinator, disputing Soloki's Medicare lien. However, on June 22, 2020, Soloki received a letter from CBE Group, Inc. seeking to collect the $4,167.54 unpaid Medicare lien. On August 19, Pro Health sent Soloki a collection letter stating they had been unable to reach Shahbaz regarding the outstanding lien. Shahbaz finally started issuing payments to the lienholders in 2020. On December 21, 2020, Shahbaz issued a check from his CTA for $1,115 to SCOP to satisfy the lien. And on March 4, 2021, he issued a $700 check from his CTA to Pro Health. No evidence presented during the disciplinary trial indicated that the liens owed to Advanced Chiropractic and Medicare were paid. In sum, Shahbaz paid $21,815 to Soloki and her lienholders.

OCTC's Investigation

In November 2019, Kambiz complained to the State Bar regarding Shahbaz's handling of his case.[14] OCTC investigator Emily Hutchings sent Shahbaz a letter regarding Kambiz's allegations. During the investigation, Shahbaz's attorney, Behrouz Shafie, communicated with OCTC but Shahbaz never directly communicated with Investigator Hutchings.

[14] Kambiz also submitted complaints on behalf of his parents, Shamuel and Soloki, regarding Shahbaz's handling of their cases, discussed in the facts below.

On April 28, 2020, Shafie responded to an OCTC investigative letter and attached several documents related to the Kambiz matter, including the signed attorney fee agreement, correspondence with C&C and SCOP regarding the medical liens, correspondence with AAA and The Hartford, a spreadsheet entitled PI Account Journal (Kambiz ledger), settlement breakdown sheets, and four months of incomplete CTA bank statements.

The Kambiz ledger was prepared by Shahbaz's office and noted the settlement distribution for Kambiz. It incorrectly reflected that the settlement check from The Hartford was deposited the same day as the AAA settlement check, August 24, 2018. Shafie also provided OCTC with a series of checks purportedly issued to and negotiated by medical providers. Copies of the corresponding checks appeared to be from a Wells Fargo bank printout and contained the check number, date check posted, check amount, and a copy of the front and the back of the check. The backs of the checks made it appear as if the purported check had been presented, negotiated, and paid because of the markings, including an apparent bank processing stamp.

Specifically, four checks purportedly issued from his CTA related to the Kambiz matter were submitted to OCTC on Shahbaz's behalf:

Check No.	**Fabricated Check Presented to OCTC**	**Actual Check from CTA Records**
4236	Purportedly issued on Oct. 9, 2018, for $1,416.18 payable to Pro Health.	Issued on Sept. 20, 2018, for $650 to another client.
4256	Purportedly issued on Oct. 26, 2018, for $11,536.20, payable to Michael Schiffman MD (SCOP). Kambiz ledger reflects check no. 4258 for this transaction.	Issued on Oct. 22, 2018, for $21,213 to another client. Check no. 4258 is not in the CTA records.
4264	Purportedly issued on Nov. 5, 2018, for $18,903, payable to C&C.	Issued on Nov. 5, 2018, for $28,108 for paralegal services.
4272	Purportedly issued on Dec. 3, 2018, for $2,655 payable to Horvet – Advanced Chiropractic.	Issued on Dec. 3, 2018, for $5,000 to another client.

Check no. 4236 was purportedly issued on October 9, 2018, for $1,416.18, and payable to Pro Health. However, records from Shahbaz's CTA revealed that check no. 4236 was issued on

behalf of another client on September 20 for $650. Check no. 4256,[15] purportedly issued on October 26, 2018, for $11,536.20 and payable to SCOP. However, Shahbaz's CTA records show no such check was issued on that date; check no. 4256 was issued on October 22, 2018, for $21,213 to a different client. Check no. 4264 was purportedly issued on November 5, 2018, for $18,903, payable to C&C. Yet Shahbaz's CTA records showed check no. 4264 was issued on November 5, 2018, for $28,108 for paralegal services. And lastly, check no. 4272 purportedly was issued on December 3, 2018, for $2,655 payable to Horvet – Advanced Chiropractic, which was issued to another client in the amount of $5,000.

Shafie also provided OCTC with several settlement breakdown sheets regarding the Shamuel's matter. One sheet inaccurately totaled the reduced liens and included a supposed $5,000 distribution to Soloki out of Shamuel's funds.

As it relates to the Soloki investigation, Shafie also provided OCTC with "PI Account Journal" (Soloki ledger) created by Shahbaz's office. Like the Kambiz ledger, the Soloki ledger referenced four checks that Shahbaz purportedly issued from his CTA to satisfy medical liens.

Check No.	Fabricated Check Presented to OCTC	Actual Check from CTA Records
4301	Purportedly issued on Feb. 19, 2019, for $1,792.24 to Horvet – Advanced Chiropractic.	Issued on Feb. 19, 2019, for $2,986 to another client.
4304	Purportedly issued on Feb. 19, 2019, for $3,617.38 payable to Medicare.	Issued on Feb. 21, 2019, for $2,786 on behalf of another client to Back in Motion.
4305	Purportedly issued on Feb. 19, 2019, for $389.76, payable to Michael Schiffman, MD (SCOP).	Issued on Feb. 21, 2019, for $200 on behalf of another client to Glendale Diagnostic Imaging.
4311	Purportedly issued on Nov. 5, 2018, for $958.08 payable to Pro Health.	Issued on Mar. 14, 2019, for $9,000, to another client.

[15] The Kambiz ledger indicates check no. 4258 for this transaction.

Copies of the checks containing alleged discrepancies were as follows: check no. 4301 purportedly was issued on February 19, 2019, for $1,792.24 payable to Horvet – Advanced Chiropractic. However, that same check was issued to another client in the amount of $2,986 on February 19. Check no. 4304 ostensibly was issued on February 19, 2019, for $3,617.38, payable to Medicare but was actually issued on February 21, for $2,786 to another client. Check no. 4305 supposedly was issued on February 19, for $389.76, payable to SCOP, but was in fact issued on February 21 for $200 on behalf of another client, to Glendale Diagnostic Imaging. And check no. 4311 purportedly was issued on November 5, 2018, for $958.08 payable to Pro Health; yet this check was also issued on March 14, 2019, for $9,000, in an unrelated client matter.

On April 28, 2020, Shafie emailed Investigator Hutchings and indicated that complainants Kambiz, Shamuel, and Soloki advised Shahbaz's office that they wished to withdraw their complaints against him. Shafie wrote, "I should also let you know that Kombiz yadegaran [*sic*] has called my clients [*sic*] office and told Mr. Shahbaz's assistant, Heather that they had made a mistake and wanted to dismiss their complaint with the state bar. Heather has directed Mr. Yadegaran to you [*sic*]." Investigator Hutchings contacted and interviewed Kambiz, who denied making the call to Shahbaz's office. OCTC informed Shafie about Kambiz's denial on April 29.

The next day, on April 30, 2020, Shafie emailed Investigator Hutchings with the subject line "Letters Terminating the Complaint to the State Bar." The email included three letter attachments. The three letters were dated April 27 and were purportedly prepared and signed by Kambiz, Shamuel, and Soloki, requesting withdrawal of their respective complaints against Shahbaz. The letters contained a misspelling of Shamuel's name, in the same manner that it appeared in Shahbaz's client file. Hutchings requested proof of the original email in which the

letters were received, but Shafie could not confirm how he received the letters, nor could he produce the original email or envelope. Hutchings followed up with Kambiz regarding the letters and he denied writing or sending them.

During the disciplinary trial, Kambiz testified that he never asked to dismiss the complaints against Shahbaz. The hearing judge found this testimony credible. Soloki also testified and indicated that she was not even aware that Shahbaz handled her personal injury settlement.

2. Culpability Findings

Counts Four, Five, Sixteen, Seventeen, Twenty-Four, and Twenty-Five—Failure to Maintain Client Funds in Trust (Former rule 4-100(A))

Counts four, five, sixteen, seventeen, twenty-four, and twenty-five alleged misconduct related to Shahbaz's handling of the settlement funds received in the Kambiz, Shamuel, and Soloki matters. Shahbaz was charged with failing to maintain in his CTA the following funds: $11,250 (count four) and $63,750 (count five)[16] for Kambiz; $18,750 (count sixteen) and $56,250 (count seventeen) for Shamuel; and $7,500 (count twenty-four) and $7,500 (count twenty-five) for Soloki, in violation of former rule 4-100(A).[17] The hearing judge found Shahbaz culpable of the six counts. We agree.

As detailed above, between July and November 2018, Shahbaz received settlement checks on behalf of Kambiz, Shamuel, and Soloki from The Hartford and AAA, in each client's respective personal injury claims. In July 2018, Shahbaz received at least one settlement check for each client from The Hartford. On July 9, 2018, he was required to maintain $11,250 for Kambiz, $18,750 for Shamuel, and $7,500 for Soloki yet his CTA balance was only $6,310.57 by July 13.

[16] The NDC incorrectly lists this amount as $65,665.57.

[17] Under former rule 4-100(A), "All funds received or held for the benefit of clients . . . shall be deposited [into the CTA] . . . . No funds belonging to the [licensee] or the law firm shall be deposited [into the CTA] or otherwise commingled therewith . . . ."

When Shahbaz was required to maintain at least $50,000 for Kambiz and his lienholders, his CTA balance had dropped to $1,866.69 on October 26, and $1,126.69 on November 2. By November 20, Shahbaz's CTA was depleted and contained a negative balance, although Shahbaz had not disbursed all settlement funds owed to Kambiz, Shamuel, Soloki, and their collective lienholders. Accordingly, we find that Shahbaz violated six counts of former rule 4-100(A) as charged. However, we assign no additional weight in discipline for counts four, five, sixteen, seventeen, twenty-four, and twenty-five as culpability is based on the same facts underlying the misappropriation discussed below in count six, eighteen, and twenty-six. (See *In the Matter of Sampson*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 127.)

Counts Six, Eighteen, and Twenty-Six—Moral Turpitude – Misappropriation (§ 6106)

OCTC charged Shahbaz with misappropriating $51,915.57 of Kambiz's settlement funds (count six), $75,000 of Shamuel's settlement funds (count eighteen), and $15,000 of Soloki's settlement funds (count twenty-six). The hearing judge found Shahbaz culpable of intentionally misappropriating the settlement funds in the three client matters as charged.

The stipulated facts and bank records show that Shahbaz's CTA balance fell below the amounts he was required to hold on behalf of his clients, which gives rise to the presumption of misappropriation. (See *Edwards v. State Bar*, *supra*, 52 Cal.3d at p. 37.) Shahbaz argues he did not intend to deprive his clients of their funds and that the misappropriation was a result of his improper management of his CTA. Like the hearing judge, we reject this argument. We agree there is clear and convincing evidence that Shahbaz intentionally misappropriated client funds for his own purposes and attempted to conceal his misconduct.[18]

[18] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

Willful misappropriation of a client's funds involves moral turpitude. (*In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 278.) An attorney who knowingly converts client funds for his or her own purpose violates section 6106. (*Ibid*.) Shahbaz was not authorized by any of his three clients to use their settlement funds for his own purposes. He offered no credible explanation or evidence to support his claim that the misappropriation was the result of carelessness. He also offered no plausible explanation for failing to pay his clients and their lienholders while transferring entrusted funds from his CTA to his business account. We find that he acted intentionally and dishonestly when he failed to notify his clients of receipt of their settlement funds and transferred portions of those funds from his CTA into his business checking account. Shahbaz then attempted to conceal his misconduct by producing falsified checks and client ledgers to OCTC reflecting payments to lienholders that had not actually been made.

On review, Shahbaz attempts to blame the misappropriation on his poor recordkeeping. He also asserts he did not conceal his misconduct by fabricating the documents presented to OCTC. Instead, he blames a "confusing" check printing system that printed and prepared checks for lienholders before the liens were fully negotiated and resulted in "aspirational" checks in the client files. The hearing judge did not find Shahbaz's or Pak's testimony credible. Neither of them could explain why the "aspirational checks" showed endorsement stamps when they were never cashed or why those same check numbers were actually issued for unrelated payments. Based on our independent review of the record, we adopt the judge's credibility determination as supported by the record and conclude that Shahbaz and Pak did not testify truthfully regarding these documents. Shahbaz failed to provide a coherent explanation for the fabricated checks and client ledgers. At oral argument, he attempted to shift blame to his paralegal for the misappropriation and production of fraudulent documents by claiming he relied on Pak. We reject this argument because "an attorney is responsible for the work product of his employees

which is performed pursuant to his direction and authority." (*Crane v. State Bar* (1981) 30 Cal.3d 117, 123.)

An attorney's dishonesty about mishandling entrusted funds or attempts to conceal their misconduct is evidence of intentional misappropriation. (*In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 517-518.) Shahbaz was dishonest and has no reasonable explanation for his mishandling and misappropriation of the settlement funds belonging to Kambiz, Shamuel, and Soloki. The evidence clearly and convincingly establishes that Shahbaz intentionally misappropriated his client funds and therefore we affirm culpability under counts six, eighteen, and twenty-six.

Counts Seven and Eight—Failure to Distribute Funds Promptly (Rule 1.15(d)(7))

Count seven alleges that Shahbaz failed to promptly distribute $1,416.18 to Pro Health and count eight alleges that he failed to promptly distribute $11,536.00 to SCOP in order to satisfy liens owed to Kambiz's medical providers. The hearing judge found that Shahbaz violated rule 1.15(d)(7) as charged by failing to promptly distribute funds to the lienholders despite numerous written demands for payments. We agree.

Rule 1.15(d)(7) requires an attorney to promptly distribute, as requested by the client or other person, any undisputed funds in the attorney's possession that the client or other person is entitled to receive. Shahbaz received Kambiz's settlement funds in July and August 2018, which he deposited into his CTA. Pro Health sent Shahbaz seven written demands for payment between February 4, 2019, and August 12, 2020. Despite receiving these demands, Shahbaz did not pay Pro Health until March 2021. Similarly, after Shahbaz reached a lien reduction agreement with SCOP in November 2018, he failed to promptly issue payment. Starting in January 2019, Shahbaz received 15 written demands from SCOP requesting payment, yet he did

not satisfy the lien until August 2020. We find Shahbaz culpable of violating rule 1.15(d)(7) and affirm culpability under counts seven and eight.

Counts Nine and Nineteen—Failure to Render Accounts of Client Funds (Former Rule 4-100(B)(3))

Former rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client about such property. OCTC charged Shahbaz with failing to provide an accounting of the $100,000 settlement to Kambiz in count nine and failing to provide an accounting to Shamuel in count nineteen. The hearing judge found Shahbaz culpable of violating former rule 4-100(B)(3) as charged in count nine. The judge determined that OCTC did not establish culpability under count nineteen and dismissed that count with prejudice.

Shahbaz received a total of $100,000 in settlement funds on behalf of Kambiz. The hearing judge found Kambiz credibly testified that he did not receive an accounting of the settlement funds. This finding is entitled to great weight. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241 [great weight given to hearing judge's credibility findings].) On review, Shahbaz claims that Kambiz's testimony is biased and should not be relied upon to support culpability.[19] We reject his arguments. In fact, the hearing judge found that the majority of Shahbaz's testimony lacked credibility, but he did not make any adverse credibility findings as it relates to Kambiz. We rely on the judge because he is in the best position to assess the credibility of witnesses. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions, having observed and assessed witnesses' demeanor and veracity firsthand].) We also note the documentary evidence

[19] We further note that Shahbaz's claim of any bias from Kambiz's testimony is irrelevant because Shahbaz's misconduct is established through the CTA records, stipulations, and other documentary evidence.

indicates some incongruities regarding Shahbaz's assertion that he provided an accounting to Kambiz. The Kambiz ledger that Shahbaz's attorney presented to OCTC during its investigation did not accurately reflect the status of Kambiz's funds or the payments made to him and his lienholders. Based on our review of the record, we adopt the judge's finding that Kambiz testified credibly. Shahbaz did not present any convincing evidence to prove that he rendered an appropriate accounting to Kambiz as required under former rule 4-100(B)(3). Accordingly, we find Shahbaz culpable under count nine.

As it relates to count nineteen, neither party challenges the hearing judge's dismissal. Since Shamuel did not testify and OCTC failed to establish sufficient evidence to support culpability, we dismiss count nineteen with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

Counts Ten, Fourteen, Fifteen, Twenty-Two, and Twenty-Three—Failure to Maintain Complete Records of Client Funds Held in Trust (Former rule 4-100(B)(3) and Rule 1.15(d)(3))[20]

The hearing judge found Shahbaz violated former rule 4-100(B)(3) and rule 1.15(d)(3) by failing to maintain a client ledger, a written journal for his CTA, and monthly reconciliations in the Kambiz, Shamuel, and Soloki matters, as charged in counts ten, fourteen, fifteen, twenty-two, and twenty-three. Former rule 4-100 includes Trust Account Record Keeping Standards adopted by the then-Board of Governors of the State Bar, effective January 1, 1993 (Trust Account Standards), which provide detailed guidance on required recordkeeping. The Trust Account Standards require attorneys to maintain the following records for their CTAs: (1) a written ledger for each client; (2) a written journal for each bank account; (3) all bank statements and canceled

[20] Rule 1.15(d)(3), the successor to former rule 4-100(B)(3), provides that an attorney must maintain complete records of all funds, securities, and other property of a client or other person coming into the possession of the lawyer or law firm.

checks; and (4) monthly reconciliations of each account. (See Handbook, § II, p. 3.)[21] Based on the stipulated facts and our review of the records, the evidence shows that Shahbaz did not maintain accurate journals, ledgers, or monthly reconciliations for his CTA. The client ledgers Shahbaz produced to OCTC in the Kambiz and Soloki matters contained inaccurate dates as to when the AAA settlement was issued, and the checks supposedly issued to lienholders. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758 [scope of rule requires adequate records].) Also, Shahbaz did not produce a client ledger for the Shamuel matter. Thus, we affirm the judge's culpability findings under these counts.

Counts Thirteen and Twenty-Nine—Moral Turpitude – Misrepresentation and Presenting Fabricated Documents to the State Bar (§ 6106)

Counts thirteen and twenty-nine allege Shahbaz committed acts of moral turpitude when he made misrepresentations to OCTC and submitted altered checks purportedly issued from his CTA in response to OCTC's investigation in the Kambiz and Soloki matters, respectively. The hearing judge found Shahbaz's conduct involved moral turpitude and found culpability under counts thirteen and twenty-nine. We agree and reject Shahbaz's arguments on review that OCTC failed to establish that he presented false documents.

As discussed above, Kambiz filed complaints with the State Bar against Shahbaz on behalf of himself and his parents Shamuel and Soloki. In response to an OCTC investigative letter, Shahbaz provided OCTC, through his counsel Shafie, with client ledgers, spreadsheets, bank records, and check copies that appeared to have been issued to and negotiated by the lienholders in the Kambiz and Soloki matters. Shahbaz presented eight altered checks to OCTC, four related to Kambiz and four related to Soloki. The Kambiz ledger falsely stated that Shahbaz

[21] The Handbook is available online at the following Web site: https://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/Portals0documentsethicsPublicationsCTA-Handbook.pdf.

issued check nos. 4236, 4258, 4264, and 4272 to Kambiz's lienholders. The Soloki ledger falsely stated that Shahbaz issued check nos. 4301, 4304, 4305, and 4311 to Soloki's lienholders. Shahbaz included supposed copies of the checks that appeared to show payments issued—each check contained endorsements and markings to indicate that they had been negotiated by the payee. After OCTC subpoenaed Shahbaz's CTA records, the documents revealed that the true checks issued did not correspond to the descriptions and amounts Shahbaz represented to OCTC. In fact, all of the eight checks were issued in unrelated client matters.

Shahbaz initially denied knowing how the fraudulent checks were generated, as discussed *ante*, but he later explained that the checks were pre-printed "aspirational" payments. The hearing judge concluded his testimony was inconsistent and lacked credibility. At trial, Shahbaz could not explain why the backs of the checks showed an endorsement stamp when they were never cashed, why the documents showed the checks posted when they did not, and why the documents appeared to be an official printout from his CTA online banking account with Wells Fargo. The judge determined that the evidence convincingly supports the conclusion that the client ledgers and associated fraudulent checks were created to deceive OCTC and misrepresent that the settlement funds in the Kambiz and Soloki matters were timely disbursed when in fact they were not. (See *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes affirmative misrepresentations].)

On review, Shahbaz maintains that OCTC failed to meet its burden in establishing that Shahbaz knew fabricated documents were provided to OCTC. We reject his argument as lacking merit. Shahbaz was the sole signatory on his CTA, and he personally handled the Kambiz and Soloki settlements. The stipulation and bank records showed that Shahbaz misappropriated funds belonging to his clients. After OCTC began its investigation, Shahbaz and his office produced and prepared false and misleading documents to conceal his misappropriation from

OCTC. (*Grove v. State* Bar (1965) 63 Cal.2d 312, 315 [moral turpitude includes concealment as well as affirmative misrepresentations with no distinction drawn between "concealment, half-truth, and false statement of fact"].) Shahbaz's testimony does not offer any credible explanation regarding the fabricated documents and checks. We find the record supports a finding that Shahbaz intentionally misled OCTC in an attempt to hide that he misappropriated settlement funds belonging to Kambiz, Soloki, and their respective lienholders in violation of section 6106. We affirm the hearing judge's culpability as to counts thirteen and twenty-nine.

Counts Eleven, Twenty, and Twenty-Seven—Moral Turpitude – Misrepresentation to the State Bar (§ 6106)

Counts eleven, twenty, and twenty-seven alleged Shahbaz made misrepresentations related to his attorney Shafie's written statements to OCTC indicating that Kambiz, Shamuel, and Soloki wanted to withdraw their State Bar complaints. The hearing judge found a lack of clear and convincing evidence under these counts because the evidence does not show that Shahbaz directed Shafie to make the misrepresentations or was aware that they were made to OCTC. Therefore, the judge dismissed these counts. We agree and dismiss counts eleven, twenty, and twenty-seven with prejudice.[22] (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

Counts Twelve, Twenty-One, and Twenty-Eight—Moral Turpitude – Presenting Fabricated Documents to the State Bar (§ 6106)

Similar to the allegations above, counts twelve, twenty-one, and twenty-eight alleged that Shahbaz committed acts of moral turpitude based on his attorney Shafie's submission of letters that were purportedly signed by Kambiz, Shamuel, and Soloki, respectively, which requested withdrawal of their respective State Bar complaints. Although the hearing judge determined that the letters were fabricated and neither prepared nor signed by Kambiz, Shamuel, or Soloki, he

[22] Neither party challenges the dismissal on review.

dismissed counts twelve, twenty-one, and twenty-eight. The judge concluded the evidence did not establish that Shahbaz committed moral turpitude by creating or directing the fraudulent letters to be prepared.[23] Neither Shafie nor Shahbaz could explain how the letters were received and our review of the record does not reveal a plausible explanation. Based on the lack of evidence, we find that OCTC did not establish Shahbaz's culpability for knowingly presenting false documents under these counts. (*Galardi v. State Bar* (1987) 43 Cal.3d 683, 689 [all reasonable doubts are resolved in attorney's favor].) Thus, we affirm the judge's dismissal of counts twelve, twenty-one, and twenty-eight with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

III. AGGRAVATION AND MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[24] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Shahbaz to meet the same burden to prove mitigation.

A. Aggravation

1. Multiple Acts of Wrongdoing (Std. 1.5(b))

The hearing judge found Shahbaz culpable of 22 counts of misconduct, which the judge determined warranted significant weight in aggravation for multiple acts under standard 1.5(b). Shahbaz challenges this finding by arguing that his misconduct was not intentional. We disagree. Like the judge, we find Shahbaz culpable of 22 counts of misconduct involving numerous bad acts involving CTA violations and moral turpitude based on his intentional misappropriations and misrepresentations to OCTC. Therefore, we conclude that Shahbaz

[23] Neither party challenges this dismissal on review.

[24] All further references to standards are to this source.

engaged in multiple improper acts and affirm the hearing judge's finding of substantial weight in aggravation under this circumstance. (*In the Matter of Song*, *supra*, 5 Cal. State Bar Ct. Rptr. at p. 279 [65 improper CTA withdrawals constitute significant aggravation]; *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 317 [significant weight in aggravation for 24 counts of misconduct involving harm to clients over four-year period].)

2. Indifference (Std. 1.5(k))

We agree with the hearing judge that Shahbaz's lack of insight into his misconduct warrants substantial aggravation. While the law does not require false penitence, it does require that an attorney accept responsibility for wrongful acts and show some understanding of his culpability. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Shahbaz challenges this aggravating circumstance and argues that he took responsibility for his errors by testifying that the mistakes were "entirely my fault." We reject his claims and find that the record amply supports substantial aggravation for indifference.

An attorney who does not accept responsibility for his actions and instead improperly seeks to shift it to others demonstrates indifference and lack of remorse. (*In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14.) Throughout the disciplinary proceedings, Shahbaz attempted to avoid responsibility and shift blame. He produced fabricated documents to conceal his misappropriation of his clients' settlement funds. His testimony was often self-serving and inconsistent. He minimized the seriousness of his actions by blaming lienholders for his CTA violations when he had failed to maintain client funds in his CTA and did not promptly render payments. Shahbaz's failure to accept responsibility is further established in the blame he attempts to place on Kambiz's testimony during these disciplinary proceedings as being "biased."

Shahbaz fails to comprehend that he is culpable of intentional misappropriation despite his CTA balance falling to a negative amount before he issued any payment to two of his clients and their lienholders. In his reply brief, he describes his actions as simply "negligent mistakes." Shahbaz also refuses to acknowledge any responsibility related to the fabricated documents presented in respond to OCTC's investigation. Shahbaz claims that he stopped practicing personal injury law and attended Trust Accounting School to ensure that he can properly manage his CTA obligations. The overwhelming evidence in the record of Shahbaz's dishonesty does not suggest that his actions were aberrational. His testimony and arguments on review show he lacks remorse for, or any insight into, his misconduct and shows his inability to conform to professional standards. These facts are troubling and cause concern that misconduct will recur. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.) For these reasons, we assign substantial aggravation under standard 1.5(k).

B. Mitigation

1. No Prior Record of Discipline (Std. 1.6(a))

Mitigation includes "absence of any prior record of discipline over many years coupled with present misconduct, which is not likely to recur." (Std. 1.6(a).) The hearing judge assigned moderate mitigation for Shahbaz's 18 years of discipline-free practice because of the gravity of his misconduct and Shahbaz's failure to establish that his misconduct was not likely to recur. (See *Cooper v. State Bar* (1987) 43 Cal. 3d 1016, 1029 [when misconduct is serious, long record without discipline is most relevant when misconduct is aberrational].) Given Shahbaz's complete lack of insight into his misconduct, we view his misconduct as likely to recur. Shahbaz failed to acknowledge any intentional wrongdoing. His misconduct was not the result of an isolated event but involved several bad acts in four separate client matters. Therefore, we reduce the judge's finding and assign limited weight in mitigation for this circumstance.

2. Cooperation (Std. 1.6(e))

The hearing judge assigned limited weight for Shahbaz's Stipulation and Supplemental Stipulation with OCTC. The judge stated that "most if not all of the admitted facts were easily proven and drawn directly from bank records." Shahbaz requests moderate mitigation without citing any authority. Shahbaz did not admit culpability and "more extensive weight in mitigation is afforded those who, where appropriate, willingly admit their culpability as well as the facts." (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.) Accordingly, we agree with the judge that Shahbaz is entitled to limited weight for his cooperation.

3. Restitution (Std. 1.6(j))

Restitution is a mitigating circumstance if it is "made without the threat or force of administrative, disciplinary, civil or criminal proceedings." (Std. 1.6(j).) The hearing judge did not assign mitigation for restitution, and we agree. On review, Shahbaz asserts he is entitled to mitigation for his cooperation because he "made his client Ms. Sanchez whole before she filed a Bar complaint." Standard 1.6(j) provides for mitigation where restitution is paid without the threat of disciplinary proceedings, not simply before disciplinary charges are filed. And as OCTC points out, Shahbaz did not pay two of Sanchez's lienholders until after OCTC got involved. Shahbaz is not entitled to mitigation credit for paying restitution. (*Hitchcock v. State Bar* (1989) 48 Cal.3d 690, 709 [restitution paid under threat or force of disciplinary proceedings does not have any mitigating effect].)

4. Extraordinary Good Character (Std. 1.6(f))

Shahbaz may obtain mitigation for "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." (Std. 1.6(f).) The hearing judge assigned moderate weight in mitigation for

Shahbaz's character evidence because the three witnesses and two declarants did not represent a wide range of references from the legal and general communities. Shahbaz's legal assistant, paralegal, and his psychiatrist testified on his behalf, and two attorneys submitted character declarations. Shahbaz challenges the judge's finding: he argues that testimony from attorneys and his physician should be afforded significant weight because of their "intimate knowledge."

We give serious consideration to the attorney declarations submitted in support of Shahbaz's character. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [attorneys and judges have "strong interest in maintaining the honest administration of justice"].) Both attorneys have known Shahbaz for over 20 years and described him as fair, professional, and ethical. However, this does not overcome his failure to establish all of the requirements for mitigation under standard 1.6(f). Four of Shahbaz's five character witnesses were from the legal community, which does not warrant full mitigating weight under the standard.[25] (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 [limited weight assigned for character evidence of three attorneys and three clients where not from wide range of references].) We find Shahbaz is entitled to moderate weight in mitigation for good character.

5. Pro Bono Work and Community Service

An attorney's pro bono work and community service can be a mitigating circumstance. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Shahbaz requests mitigation for pro bono work he did to assist elder abuse and disability rights clients. OCTC argues Shahbaz should not receive any mitigation for pro bono work since the evidence of his work is limited to his own uncorroborated testimony. Although Shahbaz's testimony did not detail the hours dedicated or

[25] We also note that Shahbaz's psychiatrist, Dr. Mohammad Shamie, did not read the NDC; however, the hearing judge concluded that he exhibited a general understanding of Shahbaz's misconduct.

the actual work he did for these clients, Shahbaz testified that he has assisted at least 500 elder abuse and disability rights clients over a 10-year period. Based on the lack of specific details, we conclude that Shahbaz is only entitled to limited weight for his charitable acts. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [diminished mitigating weight for community service established solely by attorney's own testimony].)

6. Extreme Emotional Difficulties and Physical and Mental Disabilities (Std. 1.6(d))

Standard 1.6(d) provides mitigation may be assigned for any extreme emotional difficulties or physical disabilities where (1) the attorney suffered from them at the time of the misconduct, (2) they are established by expert testimony as being directly responsible for the misconduct, and (3) they no longer pose a risk that the attorney will commit future misconduct. The judge afforded minimal weight in mitigation under this circumstance because he found that Shahbaz did not establish that the extreme emotional and mental difficulties he suffered due to family issues and his bipolar disorder were directly responsible for his misconduct and, even if they were, no evidence established that he would not commit future misconduct. OCTC agrees with the judge's finding.

Shahbaz asserts that his misconduct was caused by marital difficulties that exacerbated his bipolar disorder. Shahbaz's psychiatrist, Mohammad Shamie, M.D., testified on his behalf and had been treating Shahbaz since around 2000. Dr. Shamie stated that Shahbaz's bipolar disorder could have contributed to his misconduct; however, during the relevant period, 2018 to 2020, he only treated Shahbaz over the phone and had not prescribed him medicine. We find that Dr. Shamie's testimony was generally summary in nature and did not prove that Shahbaz's mental difficulties caused his misconduct. Also, Dr. Shamie did not produce his client file, treatment notes, or a report regarding Shahbaz's treatment.

Shahbaz testified that he suffered extreme stress during the time the misconduct occurred due to his wife fleeing to Mexico with their three small children. He said he was not reunited with his children until two years later and his bipolar disorder was exacerbated during that very stressful period. He claims he had successfully managed his bipolar disorder for 18 years prior to the misconduct and that he has a contingency plan in place if he experiences a relapse. Shahbaz's lay testimony regarding emotional difficulties and his medical condition may establish some mitigation, but he is not entitled to more mitigating weight than the hearing judge assigned. (See *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 60 [some mitigation assigned to personal stress factors established by lay testimony].) While we recognize Shahbaz suffers from a bipolar disorder and experienced emotional difficulties, we must consider public protection and Shahbaz's ability to follow professional standards. (See *Grove v. State Bar* (1967) 66 Cal.2d 680, 684-685.) Thus, we affirm the judge's finding of limited weight in mitigation under standard 1.6(d).

IV. DISBARMENT IS THE APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 2.1(a) applies as it specifically deals with intentional misappropriation. It provides that disbarment is the presumed sanction for such misconduct "unless the amount

misappropriated is insignificantly small or sufficiently compelling mitigating circumstances clearly predominate, in which case actual suspension is appropriate." Standard 2.11 also applies and provides that disbarment or suspension is the presumed sanction for an act of moral turpitude, depending on, among other things, the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim. Since the most severe discipline is found in standard 2.1(a), we focus our analysis there. (See std. 1.7(a) [if attorney commits two or more acts of misconduct and standards specify different sanctions for each act, most severe sanction must be imposed].)

Shahbaz misappropriated a significant amount of money: a total of $160,492.17, of which $141,915.57 was intentionally misappropriated. (See *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1361, 1368 [$1,355.75 held to be significant]; *In the Matter of Spaith*, *supra*, 3 Cal. State Bar. Ct. Rptr. 511 [disbarment for intentional misappropriation of nearly $40,000 in single client matter].) The mitigation we assigned to his lack of prior record, cooperation, extreme emotional and mental difficulties, good character, and community service ranged in weight from limited to moderate. This mitigation is not compelling, nor does it clearly predominate over his serious misconduct in four client matters, and the substantial aggravating weight accorded to his multiple acts of misconduct and indifference. (See *Grim v. State Bar* (1991) 53 Cal.3d 21, 33, 35-36 [attorney disbarred for willful misappropriation of $5,500 in client funds, despite cooperation and good character evidence attested to by 10 witnesses].)

Shahbaz's misappropriation of client trust funds "breaches the high duty of loyalty owed to the client, violates basic notions of honesty, and endangers public confidence in the profession. [Citations.]" (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656.) It is grave misconduct for which disbarment is the usual discipline (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38), even for a first-time act of misappropriation. (See *Kelly v. State Bar*, *supra*, 45 Cal.3d at p. 657.)

The hearing judge properly relied on misappropriation cases for guidance, including *In the Matter of Song, supra*, 5 Cal. State Bar Ct. Rptr. 273 and *In the Matter of Spaith, supra*, 3 Cal. State Bar Ct. Rptr. 511.

In *Song*, the attorney was disbarred for misappropriating $112,293 over three years for his personal use. He was found culpable of failing to maintain funds in trust and misappropriation. He received substantial mitigation credit for his community service and pro bono work, cooperation with the State Bar, good character, 12 years of discipline-free practice, and payment of restitution. In aggravation, Song committed multiple acts of wrongdoing and lacked remorse.

In *Spaith*, the attorney was disbarred for misappropriating nearly $40,000 from a client and misleading his client for over a year regarding the status of the funds. He received mitigation for good character, community service, cooperation, and 15 years of discipline-free practice. In aggravation, Spaith committed multiple acts of wrongdoing.

Similar to *Song*, Shahbaz misappropriated over $100,000. In both *Song* and *Spaith*, we found that the mitigation did not predominate. Like the attorneys in these two cases, Shahbaz's mitigation is not compelling enough to justify a departure from the presumed discipline of disbarment. Also, the circumstances surrounding Shahbaz's intentional misappropriation involve dishonest misrepresentations. As discussed above, when OCTC investigated the complaints submitted by Kambiz, Shahbaz attempted to conceal his misconduct through misleading client ledgers and fabricated checks presented to OCTC. His misrepresentations to OCTC are of serious concern. (See *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 [misleading statements are troubling and oppose fundamental rules of ethics—common honesty—without which profession is "worse than valueless" in administration of justice].)

Shahbaz relies on several cases to support a period of suspension rather than disbarment. However, the cases cited by Shahbaz are not helpful because they do not involve intentional misappropriation or serious misconduct involving moral turpitude based on deceit and misrepresentations. The seriousness and totality of Shahbaz's misconduct along with his indifference demonstrate he is unfit to practice law. Accordingly, disbarment is appropriate and necessary to protect the public, the courts, and the legal profession.

V. RECOMMENDATIONS

We recommend that Jacob Arash Shahbaz, State Bar Number 204669, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

We further recommend that Jacob Arash Shahbaz make restitution in the amount of $17,007.17, plus 10 percent interest per year from November 20, 2018, to Shamuel Yadegaran, or such other recipient as may be designated by the Office of Probation or the State Bar Court (or reimburse the Client Security Fund, to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5). Reimbursement to the Fund is enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Shahbaz must furnish satisfactory proof of restitution to the State Bar's Office of Probation in Los Angeles.

VI. CALIFORNIA RULES OF COURT, RULE 9.20

We further recommend that Jacob Arash Shahbaz be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[26]

[26] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the

VII. MONETARY SANCTIONS

We further recommend that Jacob Arash Shahbaz be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of $5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. The guidelines suggest monetary sanctions of up to $5,000 for disbarment. Shahbaz engaged in serious misconduct, including intentional misappropriation, that was aggravated by his indifference. After considering the facts and circumstances of the case, we determine that a $5,000 sanction is appropriate. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law. Monetary sanctions must be paid in full as a condition of reinstatement or return to active status unless time for payment is extended pursuant to rule 5.137 of the Rules of Procedure of the State Bar.

VIII. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Shahbaz is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

IX. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

The order that Jacob Arash Shahbaz be involuntarily enrolled as an inactive attorney of the State Bar pursuant to section 6007, subdivision (c)(4), effective October 1, 2021, will remain in effect pending consideration and decision of the Supreme Court on this recommendation.

HONN, P. J.

WE CONCUR:

McGILL, J.

STOVITZ, J.*

* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.