SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-221
District Docket No. XIV-06-122E

IN THE MATTER OF	:
CHRISTOPHER FAUCI	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 19, 2006

Decided: December 5, 2006

Richard Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") pursuant to R. 1:20-14(a). The motion is based on respondent's eighteen-month suspension in New York for violating rules comparable to New Jersey's RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep a client reasonably informed about the

status of a matter and to comply with reasonable requests for information), RPC 3.3(a) (false statement of material fact or law to a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent's misconduct was summarized in the New York Appellate Division's opinion as giving false testimony involving his brother's bar application, neglect of a client matter and notarization of medical authorizations signed outside his presence. The opinion highlighted that, in addition to neglecting the client matter, respondent failed to reply to the client's inquiries, misrepresented its status to the Departmental Disciplinary Committee (Committee), and was ultimately responsible for the dismissal of the matter. We determine that an eighteen-month suspension is warranted.

Respondent was admitted to the New Jersey bar in 1996 and the New York bar in 1997. At the relevant time, he maintained a law office in New York City. He has no history of discipline in New Jersey.

Respondent failed to notify the OAE of his New York suspension, as required by R. 1:20-14(a)(1).

On March 14, 2006, the Supreme Court of New York, Appellate Division, First Judicial Department, suspended respondent for eighteen months, effective April 13, 2006. The New York matter

arose from an investigation involving respondent and his brother Anthony, who is not admitted in New Jersey. The investigation was precipitated by grievances filed by two of their father's clients and one of respondent's client's.

On July 9, 2003, a thirty-six count Statement of Charges was filed against respondent and his brother. On August 27, 2003, respondent filed an answer denying many of the charges against him. In October 2003, he entered into a pre-hearing stipulation of facts. Following a hearing, the special referee sustained four counts against respondent: repeated false testimony about the notarization of his brother's bar application, neglect of one client matter, and failure to supervise a non-lawyer employee (Anthony) by allowing him to sign checks on an IOLA account. A hearing panel dismissed the count dealing with the IOLA account, but sustained an additional count relating to respondent's notarization of a document not signed in his presence.

The Appellate Division "confirmed" the hearing panel's findings of fact and imposed an eighteen-month suspension. The relevant facts set out in that court's decision are as follows:

> At all times pertinent to this proceeding, respondents together maintained an office for the practice of law within the First Judicial Department.
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> Respondents were preceded into practice by their father, James R. Fauci, who maintained a law office under the professional name

James R. Fauci, Associates, in Manhattan until his sudden death in May 1995.

. . . .

As to Christopher, the Referee sustained four counts regarding his repeated false testimony concerning the notarization of Anthony's bar application (counts 18-19), the neglect of one client matter (count 36), and permitting a non-lawyer under his supervision (Anthony) to sign checks on an IOLA account (count 5).

The Referee held a sanction hearing at which respondents did not testify, but offered testimony on their behalf. Respondents argue that they were being held accountable for their father's actions. They maintained that their relationship with their father and his sudden death had a bearing on the charges alleged.

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A Hearing Panel sustained all but two charges which had been sustained by the Referee . . . . The Hearing panel also sustained one additional charge as to Christopher (count 26 — involving his notarization of a client's signature when she was not present). Despite the differences in the charges sustained, the Hearing Panel nonetheless concurred in the sanction recommendations on the ground that respondent's false testimony alone regarding the forged notarization on Anthony's bar application warranted the Referee's recommended suspensions.

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With respect to Anthony's application for admission to the bar, the Committee retained a handwriting expert who testified that after examining 12 known signatures of Christopher, and comparing them to the signature on the notarial jurat on Anthony's bar application, and after examining the known signature of Anthony, it was Anthony who had affixed Christopher's signature to his affidavit for admission to the bar. [Respondent falsely testified that he notarized Anthony's bar application.][1]

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In 1984, a client retained respondent's father, James Fauci, to prosecute a medical malpractice action.

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On November 15, 1996, Justice Sklar struck this medical malpractice action from the trial calendar, but it remained on the court's individual calendar. The Fauci office was notified that the case had been stricken from the calendar. Several months later, the client learned of James' death and tried to contact the firm. However, she received no response. Consequently, she filed a disciplinary complaint against Anthony, which was sent to Christopher, now an attorney.

On September 3, 1997, Christopher responded to the complaint acknowledging that the Fauci firm failed to properly maintain contact with

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[1] The Statement of Charges alleged that respondent testified, at a deposition before the Committee, that he had affixed falsely the signature that appeared on the line calling for the signature of a "Notary Public" in the notarial jurat of his brother's bar admission affidavit when he had not, thereby engaging in misrepresentation and conduct prejudicial to the administration of justice (counts eighteen and nineteen).

the client and further advised that the case was currently active. However, at that time, Christopher was aware that the note of issue had been vacated, the action had been stricken from the trial calendar, and that he had only one year in which to move to have it restored. On April 1, 1998, in response to another inquiry about the status of the case, Christopher wrote to the Committee that the case 'was timely commenced and is currently pending' before Justice Sklar. At no time did Christopher make an application to restore the case to the calendar and by April 1, 1998, the time to do so had expired. Sometime in July 1999, a motion was made to dismiss the complaint. Although Christopher submitted an affirmation in opposition, his failure to submit a doctor's affidavit of merit led to dismissal of the complaint. Accordingly, respondent clearly neglected a legal matter entrusted to him in violation of DR 6-101[A][3] and count 36 was properly sustained.

Count 26 charged Christopher with violating DR 1-102(A)(4) for notarizing signatures on medical authorizations on dates when his client did not sign the forms in his presence. The Referee characterized this as merely 'slipshod practice' and concluded that respondent did not engage in deceitful conduct in violation of DR 1-102(A)(4). The Hearing Panel disagreed, finding that count 26 should have been sustained under Executive

Law § 135-a(2)[2]. Indeed, there is no doubt that respondent engaged in misconduct (citation omitted), and we, therefore, agree with the Hearing Panel's determination to sustain count 26.

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Turning to the issue of an appropriate sanction, we find that respondents' respective conduct warrants suspension, and not public censure as they urge.

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Christopher's misconduct, in addition to his false testimony involving his brother's bar application, included neglecting a client matter and notarizing a client's medical authorizations when the client was not present. Such misconduct warrants suspension (citation omitted). We have had occasion to observe that in cases where neglect is combined with misrepresentation of the status of a case to the client or lack of candor before the Committee, the suspension term is generally longer than one year (citation omitted). Here Christopher neglected the matter, failed to respond to the client's inquiry about its status, misrepresented its status to the Committee and was ultimately responsible for its dismissal. Accordingly, a higher sanction should be imposed (citation omitted).

[OAEbEx.A2-11.][3]

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[2] That section provides: 'A notary public or commission of deeds, who in the exercise of the powers, or in the performance of the duties of such office shall practice any fraud or deceit, the punishment for which is not otherwise provided by this act, shall be guilty of a misdemeanor.'

[3] OAEb refers to the OAE's brief.

The Appellate Division considered that, even though respondent did not have a disciplinary record, he had not shown remorse or taken responsibility for his misconduct. The Appellate Division remarked that, although respondent and his brother had tried to blame their father for their actions, the most serious misconduct occurred after their father's death. The Appellate Division concluded that respondent's "utter lack of acknowledgment of wrongdoing and lack of remorse" constituted aggravating factors that militated against imposing the lesser recommended sanctions. The Appellate Division noted the lack of mitigation – respondent's failure to submit evidence of any participation in community, professional, or pro bono services.

The OAE recommended the imposition of the same sanction imposed in New York, an eighteen-month suspension.

Upon a review of the full record, we determine to grant the OAE's motion for reciprocal discipline.

Pursuant to R. 1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of disciplinary proceedings), we find that respondent violated RPC 1.3 (lack of diligence), RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate with the client), RPC 3.3(a) (false statement of material fact or law to a tribunal), RPC 8.4(c) (misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
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> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the exceptions listed above.

The level of discipline in cases dealing with the improper execution of jurats, without more, is ordinarily an admonition or a reprimand. See In the Matter of Robert Simons, DRB 98-189 (July 28, 1998) (admonition imposed on attorney who signed a friend's name on an affidavit, notarized the "signature," and then submitted that document to a court) and In the Matter of Stephen H. Rosen, DRB 96-070 (1996) (admonition for attorney who witnessed and notarized the signature of an individual on closing documents

signed outside his presence; in addition, he failed to cooperate with disciplinary authorities).

If there are aggravating factors, such as the attorney's signing of the party's name or the attorney's knowledge that the party had not signed the document, then the appropriate discipline is a reprimand. See, e.g., In re Gensib, 185 N.J. 345 (2005) (reprimand for attorney who acknowledged the signatures of his clients in several documents when they did not personally appear before him; the attorney knew that the husband had signed his wife's signature; mitigating factors included the absence of pecuniary gain, other than a reasonable fee; the attorney's desire to help an elderly couple finalize a real estate transaction that had been pending for twenty-three months; the lack of financial harm to the client; the absence of a disciplinary history; and his full cooperation with the ethics committee's investigation); In re Uchendu, 177 N.J. 509 (2003) (reprimand for attorney who signed clients' names on documents filed with the Probate Division of the District of Columbia Superior Court and notarized some of his own signatures on these documents); In re D'Alessandro, 169 N.J. 470 (2001) (in a motion for discipline by consent, attorney received a reprimand for notarizing affidavits purportedly signed by four individuals who owned property; three of the four grantors had not signed the documents in the attorney's presence; their signatures had been forged and they were unaware that their property was being

sold; mitigating circumstances included the attorney's reliance on the misrepresentations made by a friend, who presented the deed and affidavits of title for the attorney's signature); In re Giusti, 147 N.J. 265 (1997) (reprimand for attorney who forged the signature of his client on a medical record release form; the attorney then forged the signature of a notary public to the jurat and used the notary's seal); and In re Reilly, 143 N.J. 34 (1995) (reprimand imposed on attorney who improperly witnessed a signature on a power of attorney and then forged a signature on a document).

Where the improper acknowledgment reveals a pattern of such practice or is accompanied by other unethical conduct, the discipline generally is more severe. See In re Lolio, 162 N.J. 496 (2000) (three-month suspension for attorney who had witnesses attest to being present during the testators' signatures of wills; the witnesses had not observed the testators' signing the wills; more than 200 wills were at stake); In re Just, 140 N.J. 319 (1995) (three-month suspension for attorney who facilitated a conveyance that was questionable because of the grantor's apparent lack of competence and affixed a jurat to a signature that he did not witness); In re Surgent, 79 N.J. 529 (1979) (six-month suspension for taking an improper jurat for various clients who had signed a verified complaint and affidavits filed with the court; the attorney also engaged in conflicts of interest by representing a buyer of real estate without revealing the full extent of his potential

profits from the transaction and potential dangers in the transaction, and acted as an attorney for a corporation in the same area of law as he later acted against it); and In re Friedman, 106 N.J. 1 (1987) (time-served (more than one year) for attorney who entered a guilty plea to three counts of falsifying records by improperly affixing his jurat to three affidavits subsequently submitted to an insurance company).

In addition to executing false jurats, respondent was guilty of misrepresenting to the Committee that he had notarized his brother's bar admission affidavit and also misrepresenting the true status of the medical malpractice case. Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a charge of driving while intoxicated intentionally left the courtroom before the case

was called, resulting in the dismissal of the charge); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Chasan, 154 N.J. 8 (1998) (three-month suspension for attorney who distributed a fee to himself after representing that he would maintain the fee in his trust account pending a dispute with another attorney over the division of the fee; the attorney then misled the court that he was retaining the fee in his trust account; the attorney also misled his adversary, failed to retain fees in a separate account, and violated the recordkeeping rules); In re Norton and Kress, 128 N.J. 520 (1992) (both the prosecutor and defense counsel were suspended for three months for permitting the dismissal of a charge of driving while intoxicated; although the attorneys represented to the municipal court that the arresting officer did not wish to proceed with the case, they did not disclose that the reason for the dismissal was the officer's desire to give a "break" to someone who supported law enforcement); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for failure to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who concealed

a judge's docket entry dismissing his client's divorce complaint and then obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney also denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been in an automobile accident and then misrepresented to the police, her lawyer, and a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; two members of the Court voted for disbarment).

In addition to the above infractions, respondent engaged in lack of diligence, gross neglect, and failure to communicate with a client. This conduct generally warrants the imposition of a reprimand. See, e.g., In re Oxfeld, 184 N.J. 431 (2005) (reprimand by consent for lack of diligence and failure to communicate with

the client in a pension plan matter; two prior admonitions); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); and In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand).

Altogether, respondent's ethics offenses included gross neglect and lack of diligence in the handling of a medical malpractice matter, misrepresentations to the Committee about the notarization of his brother's bar application, and about the status of the medical malpractice case, and the execution of improper jurats. His conduct violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d).

The totality of respondent's misconduct, particularly his repeated lies to the Committee about the client matter and his notarization, considered in the absence of mitigating circumstances, warrants the imposition of a significant term of suspension under established precedent. Furthermore, unless good reason to the contrary is shown, the discipline accorded in New Jersey will ordinarily correspond with that imposed in the other jurisdiction.

In re Kaufman, 81 N.J. 300, 302-303 (1979). No such good reason exists on this record.

We, therefore, determine to impose an eighteen-month prospective suspension. In making the suspension prospective, we have considered that respondent did not report his New York suspension to the OAE, as required by R. 1:20-14(a)(1).

Member Neuwirth did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

By: Isabel Frank
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher J. Fauci
Docket No. DRB 06-221

Argued: October 19, 2006

Decided: December 5, 2006

Disposition: Eighteen-month suspension

Members	Disbar	Eighteen-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan		X				
Frost		X				
Lolla		X				
Neuwirth						X
Stanton		X				
Wissinger		X				
Total:		8				1

By Isabel Frank
Julianne K. DeCore
Chief Counsel