FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against WILLIAM KYLE SUTOR, III, a Minnesota Attorney, Registration No. 0390734.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of the Chair of the Lawyers Professional Responsibility Board, the Director of the Office of Lawyers Professional Responsibility (Director) files this petition pursuant to Rules 10(c) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney (respondent) was admitted to practice law in Minnesota on May 7, 2010. Respondent currently practices law in St. Louis Park, Minnesota.

As more particularly alleged below, on February 3, 2020, respondent pleaded guilty to a felony-conspiracy to commit healthcare fraud, in violation of 18 U.S.C. § 1349, a necessary element of which is conspiracy to commit fraud within the meaning of Rule 10(c), RLPR.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On June 28, 2018, respondent was admonished for soliciting employment from an individual known to be in need of legal services without ensuring the materials were clearly and conspicuously marked "Advertising Material" in violation of Rule 7.3(c), Minnesota Rules of Professional Conduct (MRPC).

B. On April 19, 2017, respondent was admonished for knowingly revealing confidential client information in violation of Rule 1.6(a), MRPC.

FIRST COUNT

1. On February 3, 2020, respondent pleaded guilty to a felony- conspiracy to commit healthcare fraud in violation of 18 U.S.C. § 1349. Respondent's criminal conduct implicated the practice of law and is summarized within the plea agreement and sentencing stipulation. *See* attached Exhibit 1.

2. The sentencing hearing is currently scheduled for November 4, 2020. Conviction of conspiracy to commit healthcare fraud under 18 U.S.C. § 1349 is a felony offense punishable with a term of imprisonment up to 10 years. *See* paragraph 5 of Exhibit 1.

3. Respondent's conduct in committing felony conspiracy to commit healthcare fraud violated Rule 8.4(b) and (c), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Susan M. Humiston

Humiston, Susan
Aug 26 2020 10:11 AM

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Pursuant to Rules 10(c) and 12(a), RLPR, this petition for disciplinary action is hereby approved.

Dated: 9-9-20, 2020. Robin Wolpert

ROBIN M. WOLPERT
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-343 (NEB)

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM KYLE SUTOR III, Defendant.	)	PLEA AGREEMENT AND SENTENCING STIPULATIONS

The United States of America and William Kyle Sutor III (hereinafter referred to as the "defendant") agree to resolve the above-captioned case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges**. The defendant agrees to plead guilty to Count 1 of the Information, charging him with conspiracy to commit health care fraud, in violation of 18 U.S.C. § 1349.

2. **Factual Basis**. From in or about 2015 and continuing thereafter through in or about 2016, in the State and District of Minnesota and elsewhere, the defendant willfully and knowingly conspired with other persons to execute a scheme and artifice to defraud providers of automobile insurance policies, and to obtain by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts,

money and property owned by and under the custody and control of providers of automobile insurance policies, in connection with the delivery of and payment for health care benefits, items, and services.

At relevant times, the defendant was an attorney residing in Minnesota and licensed by the Minnesota Supreme Court. The defendant was involved in a legal practice that focused primarily on pursuing personal injury claims on behalf of individuals who had been in car accidents. In the course of representing three separate individuals, the defendant began working with two chiropractors (the "Chiropractors") and patient recruiters, referred to as "runners." The arrangement was that the Chiropractors would pay the runner a fee, typically between $1,000 and $1,500, for every individual that the runner brought to the Chiropractors' clinic to become a patient. In addition, the defendant would pay the runner a fee, typically $300, for every individual that the runner brought to the defendant to become a client of the defendant. Thus, the runner would receive payment from both the Chiropractors and the defendant for every individual who became a patient of the Chiropractors and a client of the defendant.

The three insurance policies that were the target of the scheme were subject to Minnesota's No-Fault Automobile Insurance Act, which mandates that the policies provide minimum coverage of $20,000.00 in medical expense benefits, including expenses for chiropractic services, without regard to which party was at fault for the car accident. These no-fault insurance policies are health-care benefit programs under 18 U.S.C. § 24(b). In addition, under certain circumstances, the act permits an individual involved in a car

accident to make a claim for pain and suffering—referred to as a bodily injury or "BI" claim—against the insurance policy for the party that was at fault in the car accident. One such circumstance was when the individual incurred more than $4,000 in out-of-pocket medical expenses as a result of the car accident. Under the arrangement that the defendant entered into with Chiropractors and runners, the goal was to get the patients to incur at least $4,000 in chiropractor expenses so that the defendant could pursue the "no-fault" portion of the claim—that is, the claim for full payment of the chiropractic expenses—as well as the "at-fault" or BI portion of the claim for pain and suffering.

The payments by the defendant and the Chiropractors to the runners are a material fact to car insurance companies because they raise concerns about whether patients are submitting to chiropractic treatments and pursuing bodily injury claims because they need the treatments or because they are being paid to treat. The defendant, the Chiropractors, and the runners took steps to conceal their arrangement from the car insurance companies. For example, the Chiropractors often paid the runners in cash rather than check or in checks that were written out to business entities. Similarly, the defendant often paid the runners in cash or in checks written out to business entities that bore names designed to give the false impression that the payments were for legitimate services such as interpretation, investigation, or legal services. In reality, as the defendant knew, the payments were not for those legitimate purposes but instead were simply in exchange for the client referral. In a further effort to conceal the arrangement between himself and the runners, the

defendant began in April 2016 taking the additional step of paying half of the fee to the runner in cash and half in a check written out to a business entity.

The defendant pursued claims against insurance companies on behalf of three individuals whom he knew had become his clients (and the Chiropractors' patients) as a result of payments to runners. For example, in June 2015, the defendant paid $300 to a runner for the referral of an undercover agent posing as a prospective client. The defendant believed and had reason to believe that the involved Chiropractor had paid that runner for having referred that same undercover agent to become a patient of that Chiropractor. In addition, the defendant believed that the Chiropractor billed the insurance company for services that had not actually been provided to the undercover patient. Despite his belief that the Chiropractor had billed for services not actually provided, the defendant submitted a letter to the insurance company on April 19, 2016, falsely representing that the undercover agent had received all of the treatment billed by the chiropractor and demanding $24,000 to settle the BI claim.

3. **Waiver of Indictment.** The defendant agrees to waive indictment by a grand jury on this charge and to consent to the filing of a criminal information. The defendant further agrees to execute a written waiver of his right to be indicted by a grand jury on this offense.

4. **Waiver of Pretrial Motions.** The defendant understands and agrees that he has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the

defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

5. **Statutory Penalties**. The defendant understands that the maximum statutory penalties for conspiracy to commit health care fraud, as charged in Count 1 of the Information, are as follows:

a. a term of imprisonment of up to 10 years;

b. a fine of up to $250,000 or twice the gross gain or loss;

c. a term of supervised release of up to three years;

d. a special assessment of $100.00, which is payable to the Clerk of Court prior to sentencing;

e. payment of mandatory restitution in an amount to be determined by the Court; and

f. assessment to the defendant of the costs of prosecution (as defined in 28 U.S.C. § 1918(b) and 1920).

6. **Revocation of Supervised Release**. The defendant understands that if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

7. **Guideline Calculations**. The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, *et seq*. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines to determine the appropriate sentence and stipulate to the following guideline calculations:

a. Use of Certain Information. Pursuant to U.S.S.G. § 1B1.8(a), the United States agrees that information provided by the defendant pursuant to his agreement to cooperate with law enforcement will not be used against the defendant in calculating his Guidelines range, except (1) as provided in the proffer letter dated July 11, 2019 or (2) pursuant to the provisions in U.S.S.G. § 1B1.8(b).

b. Base Offense Level. The parties agree that the base offense level is **6** pursuant to U.S.S.G. § 2B1.1(a)(1).

c. Specific Offense Characteristics. The parties agree that the offense level should be increased by **6 levels** because the intended loss amount exceeded $40,000 but was less than $95,000. U.S.S.G. § 2B1.1(b)(1)(D). The parties agree that no other specific offense characteristics apply.

d. Chapter Three Adjustments. The parties agree that the base offense level should be increased by **2 levels** because the defendant abused a position of trust or used a special skill in a manner that significantly facilitated the commission or concealment of the offense. U.S.S.G. § 3B1.3. Other than as provided for below concerning Acceptance of Responsibility, the parties agree that no other Chapter 3 adjustments apply.

e. Acceptance of Responsibility. The United States agrees to recommend that the defendant receive a **2-level** reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea and sentencing hearings, (ii) the defendant provides complete and truthful information to the Probation Office in the pre-sentence investigation, and (iii) the defendant commits no further acts inconsistent with acceptance of responsibility. U.S.S.G. § 3E1.1.

f. Criminal History Category. Based on information available at this time, the parties believe that the defendant's criminal history category is **I**. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. The defendant's actual criminal history and related status will be determined by the

Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.

g. Imprisonment Range. If the adjusted offense level is **12**, and the criminal history category is **I**, the Guidelines imprisonment range is **10 to 16 months**. (U.S.S.G. Ch. 5, Pt. A).

h. Fine Range. If the adjusted offense level is **12**, the fine range is **$5,500 to $55,000**. (U.S.S.G. § 5E1.2(c)(3)).

i. Supervised Release. The Guidelines advise a term of supervised release of **at least one but not more than three years.** (U.S.S.G. § 5D1.2).

j. Sentencing Recommendation and Departures. The parties reserve the right to make motions for departures from the applicable Sentencing Guidelines range and to oppose any such motions made by the opposing party. The parties reserve the right to argue for a sentence outside the applicable Sentencing Guidelines range.

8. **Discretion of the Court**. The foregoing stipulations are binding on the parties but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and that their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. The Court may also depart from the applicable guidelines. If the Court determines that the applicable guideline calculation or the defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

9. **Cooperation**. The defendant has agreed to cooperate with law enforcement authorities in the prosecution of defendant's co-defendants, and in the investigation and

prosecution of other suspects. This cooperation includes, but is not limited to, being interviewed by law enforcement agents, submitting to a polygraph examination if the government deems it appropriate, and testifying truthfully at any trial or other proceeding involving defendant's co-defendants and other suspects. If the defendant cooperates fully and truthfully as required by this agreement and thereby renders substantial assistance to the government, the government will, at the time of sentencing, move for a downward departure under U.S.S.G. § 5K1.1. The government also agrees to make the full extent of the defendant's cooperation known to the Court.

The defendant understands that the government, not the Court, will decide whether the defendant has rendered substantial assistance. The government will exercise its discretion in good faith. The defendant also understands that there is no guarantee the Court will grant any such motion for a downward departure and that the amount of any downward departure is within the Court's discretion. In the event the government does not make or the Court does not grant such a motion, the defendant may not withdraw this plea based on that ground.

Finally, the defendant understands that the government is not required to accept any tendered cooperation on the defendant's part. If the government, in its sole discretion, chooses not to accept tendered cooperation, the defendant will not receive a sentence reduction for such tendered cooperation and will not be allowed to withdraw from the plea agreement based upon that ground.

10. **Special Assessment**. The Guidelines require payment of a special assessment in the amount of $100.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The defendant agrees to pay the $100 special assessment prior to sentencing.

11. **Restitution**. The defendant understands and agrees that the Mandatory Restitution Act, 18 U.S.C. § 3663A, applies and that the Court is required to order the defendant to make restitution to the victims of his crime. The parties agree that the amount of restitution is $14,612.06.

The defendant represents that the defendant will fully and completely disclose to the United States Attorney's Office the existence and location of any assets in which the defendant has any right, title, or interest. The defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court. The defendant agrees to complete a financial statement fully and truthfully before the date of sentencing.

12. **Forfeiture**. The defendant understands and agrees that the United States reserves its right to seek a personal money judgment forfeiture against the defendant in these actions, and to proceed against any of the defendant's property, whether directly forfeitable or substitute property, in a civil, criminal, or administrative forfeiture action if said property is subject to forfeiture under federal law. The defendant agrees not to contest any such forfeiture proceedings, so long as the government meets the required legal standards.

13. **Waivers of Appeal and Collateral Attack**. The defendant understands that 18 U.S.C. § 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this plea agreement, the defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal the defendant's sentence, unless the sentence exceeds 16 months of imprisonment. In addition, the defendant expressly waives the right to petition under 28 U.S.C. § 2255. The United States also waives its right to seek appellate review of any sentence imposed by the Count on any ground set forth in 18 U.S.C. § 3742 unless the sentence is less than 10 months of imprisonment. However, the waivers by the defendant noted above shall not apply to a direct appeal or post-conviction collateral attack based on a claim of ineffective assistance of counsel. The defendant has discussed these rights with his attorney. The defendant understands the rights being waived, and he waives these rights knowingly, intelligently, and voluntarily.

14. **Freedom of Information Act Waiver**. The defendant waives all rights to obtain, directly or through others, information about the investigation and prosecution of this case under the Freedom of Information Act and the Privacy Act of 1974, 5 U.S.C. §§ 552, 552A.

15. **Complete Agreement**. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises,

representations, or understandings.

Date: February 3, 2020

ERICA H. MACDONALD
United States Attorney

By: David J. MacLaughlin
DAVID MACLAUGHLIN
Assistant U.S. Attorney

Date: February 3, 2020

WILLIAM KYLE SUTOR III
Defendant

Date: February 3, 2020

JOHN MARTI, Esq.
IAN BLODGER
Attorneys for Defendant

FILE NO. A20-1240

STATE OF MINNESOTA

IN SUPREME COURT

- -

In re Petition for Disciplinary Action against William Kyle Sutor, III, a Minnesota Attorney, Registration No. 0390734.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION FOR DISCIPLINE

- -

The above-captioned matter was presented to the undersigned acting as referee by appointment of the Minnesota Supreme Court. Cassie B. Hanson, Esq., Senior Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director); and Eric T. Cooperstein, Esq. appeared on behalf of Respondent, who was also present.

The Petition for Disciplinary Action (Petition) alleges, among other things, that Respondent pleaded guilty to conspiracy to commit healthcare fraud in violation of 18 U.S.C. Section 1349, which is a felony punishable with a term of imprisonment of up to 10 years, that Respondent's criminal conduct implicated the practice of law and that his conduct violated Rule 8.4(b) and (c) of the Minnesota Rules of Professional Conduct (MRPC). Respondent's Answer admitted the allegations of the Petition, and alleged as affirmative defenses: (1) Respondent is remorseful; (2) No client was harmed by Respondent's misconduct; and (3) Respondent has cooperated fully with the criminal and discipline processes.

An evidentiary hearing was conducted via Webex Video Conference on January 28, 2021. The Director offered Exhibits 3 through 34 which were received. Respondent offered no exhibits. The Director presented the testimony of Respondent and Jonathan Ferris, Supervisory Special Agent for the Minnesota Commerce Fraud Bureau. Respondent presented the testimony of himself, Russell Fierst, Jaquelyn Hingeveld, and Teng Xiong.

Pursuant to the direction of the referee the parties submitted proposed findings of fact, conclusions of law and a recommendation for disposition, and a memorandum of authorities outlining their respective positions. The referee's findings of fact, conclusions of law and recommendation are due to the Supreme Court not later than April 6, 2021.

In this proceeding the Director bears the burden of proving professional misconduct by clear and convincing evidence. *In Re Severson*, 860 NW2d 658, 665 (2015). This standard "requires a high probability that the facts are true." *In Re Lyons*, 780 NW2d 629, 635 (2010). Put differently, the Director must prove the allegations by "cogent and compelling evidence. *In Re Strid*, 551 NW2d 212, 215 (Minn. 1996). The Director also has the burden of proving aggravating factors by clear and convincing evidence. When the Director has proven misconduct the burden shifts to the Respondent to prove any mitigating factors that have been alleged. *In Re Strunk*, 945 NW2d 379, 383 (Minn. 2020); *In Re Farley*, 771 NW2d 857, 861 (Minn. 2009).

The findings, conclusions and recommendation of the referee herein are based upon Respondent's admissions, the documentary evidence submitted by the parties, the demeanor and credibility of the witnesses as determined by the undersigned giving due regard to whether the Director has sustained her burden of proof with respect to the

allegations in the Petition and whether the Respondent has sustained his burden of proof with respect to the affirmative defenses. The determinations are also based upon the objective review of the exhibits received and the reasonable inferences to be drawn from them. I have carefully considered each of the contentions and arguments raised by counsel for each party.

Based upon the evidence presented, the burden of proof of the parties, the relevant law as set forth in the attached memorandum, and upon the files, records and proceedings herein, the referee makes the following:

FINDINGS OF FACT

1. Respondent graduated from Hamline School of Law and later was admitted to practice law on May 7, 2010. While attending Hamline he worked as an intern for M.L. After he was admitted to practice he continued working for M.L. as an attorney specializing in personal injury law. Sometime in 2011 Respondent worked for attorney L.T. for a few weeks doing criminal law. In late 2011 he was hired as a paralegal by attorney B.G. and was soon promoted to an attorney practicing in the area of personal injury law. By 2015 Respondent was an equity partner in the law firm of Goldstein & Sutor (GS).

2. In the Fall of 2016 Respondent's relationship in GS deteriorated and Respondent began planning a solo practice. Sometime in December 2016 Respondent moved into his own office space. Sutor has continued to practice as a solo practitioner in the area plaintiff's personal injury law to the current date. His personal injury practice has been

lucrative: he reported income in excess of $300,000 in 2015, 2017 and 2018. No figures were given for 2016.

3. Sutor divorced his first wife in 2016 and remarried in March 2017. He and his current wife have two young children.

LAW ENFORCEMENT INVESTIGATION

4. Special Agent Jonathan Ferris is a supervisory agent with the Minnesota Fraud Bureau (CFB). Between 2012 and 2017 the CFB conducted an investigation into no-fault insurance fraud, which occurred among certain chiropractors and personal injury attorneys. This investigation involved coordination with state and federal law enforcement; involved the use of undercover agents; involved targeting offenders for use as cooperating informants (CI); and involved the use of undercover surveillance. The investigation resulted in about 30 federal indictments, and six to seven criminal charges in state court. Respondent was a knowledgeable player in the field of no-fault insurance fraud and a primary target of the investigation.

5. Minnesota law requires that no-fault insurers pay up to $20,000 in medical coverage and $20,000 in lost wages for anyone injured in an accident regardless of fault. Mn. Stat. 65B.44, subd. 1(a). The investigation focused on certain lawyers and chiropractors who use "runners" to recruit accident victims as patients/clients in exchange for the payment of illegal referral fees. Mn.Stat. 609.612. *Id.* subd. 1(c). Certain personal injury lawyers also process no-fault claims for chiropractic services that were never provided or were not medically necessary. Further, accidents are sometimes staged.

6. The investigation continued over several years. In the Summer 2016 law enforcement began executing search warrants on various chiropractic clinics that became public information. The investigation wound-down in April 2017 and ended in about September 2017.

CRIMINAL PROCEEDING

7. Respondent was charged with a felony in U.S. District Court on December 30, 2019. On February 3, 2020 Respondent entered a guilty plea to conspiracy to commit healthcare fraud, a felony, in violation of 18 U.S.C. 1349. At that time Respondent entered into a Plea Agreement and Sentencing Stipulations (Plea Agreement) with the U.S Attorney. Exhibit 31.

8. The Plea Agreement sets forth the factual basis for the charge. In the agreement Respondent admits that between 2015 and 2016 he willfully and knowing conspired with other persons to execute a scheme and artifice to defraud providers of automobile insurance policies, and to obtain through materially false and fraudulent pretenses, representations, and promise, and concealment of material facts, money and property owned by automobile insurance policies in connection with the delivery of and payment for health care benefits, items and services.

9. Respondent admits that while representing three separate individuals he began working with two chiropractors and patient recruiters, who are commonly referred to as "runners." The chiropractors would pay the runner a fee, typically between $1,000–$1,500 for each client brought to the clinic; and the Respondent would pay the runner a fee,

typically $300 for each individual brought to the Respondent to become a client. Exh. 31. Thus, the runner would receive payment from both chiropractors and the Respondent for every individual who became a patient of the chiropractors and a client of the Respondent.

10. Under the arrangement that Respondent entered into with the chiropractors and runner the goal was to get the patients to incur at least $4,000 in chiropractic expenses so that the Respondent could pursue the no-fault portion of the claim—that is, the claim for full payment of the chiropractic expenses—as well as the "at-fault" or bodily injury portion of the claim for pain and suffering. Exh. 31, pg. 3.

11. The payments by Respondent and the chiropractors to the runners are a material fact to automobile insurance companies because they raise concerns about whether the patients are submitting to chiropractic treatment and pursuing bodily injury claims that are legitimate or fraudulent. The Respondent, the chiropractors and the runners took steps to conceal their arrangement from automobile insurance companies. Exh. 31, pg. 3. For example, Respondent often paid the runners in cash or by check to an entity with a name designed to give the false impression that the payments were for legitimate service. In reality Respondent knew the payments were not for legitimate purposes; rather they were simply a referral fee.

12. Respondent pursued claims against automobile insurance companies for three individuals he knew had become his clients as a result of payment to runners. For example, in June 2015 Respondent paid $300 to a runner for the referral of an undercover agent posing as a prospective client. Respondent knew or should have known that the chiropractor involved had also paid for the runner to be a patient of the chiropractor.

Further Respondent believed that the chiropractor billed the insurance company for services that had not actually been provided to the undercover patient. Despite his belief that the chiropractor had billed for services not provided, Respondent submitted a demand letter to the insurance company on April 16, 2016 falsely representing that the undercover agent had received all of the treatment billed by the chiropractor and demanding $24,000 to settle the bodily injury claim. Exh. 31, pg. 4.

13. On November 4, 2020 the sentencing hearing was held. Pursuant to the Plea Agreement the base level of the offense was 6, subject to the following: The base level should be increased 6- levels because the intended loss exceeded $40,000 but was less than $95,000; the base should be also increased 2- levels because Respondent abused a position of trust or special skill in a manner that significantly facilitated the commission or concealment of the offense; and further that the U.S. would recommend that Respondent should receive a 2-level reduction for acceptance of responsibility for his timely guilty plea.

14. Respondent argued for a two-level downward adjustment on the basis that he was a first-time, non-violent offender, that he had broken away from the business practices that he had experienced, learned, and adopted when he worked for M.L. and then at Goldstein. Transcript pg. 15–16. The U.S. Attorney countered that Respondent should receive 16 months on the grounds that Respondent was involved in cheating between 2010–17, that he had two runners when he was with M.L. and brought the runners with him to Goldstein and Sutor, that he was an experienced attorney when this happened in 2015–16, that his gross income at GS was $300,000 in 2017, $320,000 in 2018, and $400,000 for a

year not identified, that his claim that he cooperated extensively with the federal government is false-- his first interview with federal government in May 2019 was a false denial of any involvement in this offense, and that when he started his own firm he took one of the runners with him.

15. The district court accepted the adjustments proposed in the Plea Agreement and concluded that the total offense level was 12, the criminal history category was 1and the imprisonment range was 10–16 months. Based upon its analysis the court sentenced Respondent to 16 months in prison and to 3 years of probation. The court observed that Respondent's participation was in a widespread and coordinated scheme to defraud insurance providers in connection with the delivery and payment for health benefits. Sentencing transcript at pg. 36. The court concluded that the nature and the circumstances are particularly egregious. Specifically, Respondent abused his professional position for financial gain. When Respondent became aware of the investigation he took steps to conceal his conduct rather than coming forward; and when questioned by law enforcement he didn't tell the truth. *Id.* at pg. 37. Further, Respondent did not accept full responsibility in his acceptance of responsibility statement; but did accept responsibility at the sentencing hearing. *Id.* The court noted the most significant punishments in this scheme were to the chiropractors who received far greater punishments than that of Respondent. The court reasoned that Respondent's sentence was commensurate given his abuse of his professional position for financial gain. *Id.* at 39.

REFEREE EVIDENTIARY HEARING

16. Ferris testified regarding the criminal investigation of Respondent. He stated that he worked with three confidential informants during the investigation. CI317 and CI318 were runners, and CI319 was a chiropractor. For ease of reference, I will refer to them as runner 1 (CI317), runner 2 (CI318) and chiropractor 1 (CI319). Law enforcement used these CI's to conduct undercover surveillance of Respondent and to record his conversations. Ferris introduced the surveillance recordings involving Respondent for dates including July 26, 2016; December 29, 2016; January 31, 2017; March 23, 2017; September 29, 2017; and May 8, 2019, which were received into evidence.

17. In the Summer 2016 law enforcement began executing search warrants on various chiropractic clinics that became public information. Respondent became aware of law enforcement's investigation by July 16, 2016, and that several insurance companies were beginning to question his client's treatment at certain clinics, including chiropractor B.M.'s clinic.

18. By the Fall of 2016 Respondent's law partnership with B.G. ended and Respondent began the process of starting his own firm. In the Spring 2017 law enforcement wound-down its investigation of Respondent because it had enough evidence to criminally charge him. In the September 2017, however, Respondent was actively soliciting referrals from runner 2, and solicited a partnership with chiropractor B.M. A September 29, 2017 surveillance recording documents Respondent making a client referral to runner 2 so that he could continue to work with the runner and chiropractor B.M.

19. On May 8, 2019 Ferris interviewed Respondent at his home in anticipation of filing criminal charges against him. During the interview Respondent lied about his use of runners, payment of referral fees and lack of knowledge of fraudulent billing practices by chiropractors on his personal injury cases. Specifically, he denied that he had used and paid runners while employed at GS or in his solo practice; denied that he had a business relationship with runners 1 and 2 that predated his employment at GS; denied attending an examination under oath where his client stated he was offered cash and gifts by the runner; denied arranging a referral relationship between runners and chiropractors including runner 2 and chiropractor 1; denied being aware of fraudulent billing practices by chiropractors on his client matters; and denied that this misconduct led to the deterioration of his partnership with Goldstein & Sutor. As part of the interview Ferris showed Respondent screen shots from the surveillance recording document the use of the CI's in the undercover investigation.

DIRECTOR INVESTIGATION

20. The Director received notice that Respondent was convicted of a felony and began its investigation. Initially, the Director's office sent a request for information to Respondent. In correspondence from counsel Respondent asserted, among other things, that his use of runners was limited to when he was at GS, and that he was not aware at the time that chiropractors were paying fees to runners in his personal injury cases.

21. The referee finds that both statements are false. During the January 31, 2017 recording Respondent stated that runner 2 had brought him "a lot of referrals since 2009."

On March 23, 2017 Respondent stated to runner 2 that he didn't mind increasing the referral fee "…to try to get some more people over here." The referee finds that Respondent began the use of runners at M.L. in 2009.

22. Further the referee finds that Respondent was actively involved in facilitating paid referral relationships between runner 2 and chiropractor 1. After Respondent opened his law firm in December 2016 he continued to direct clients to chiropractor B.M. and accept referrals from his clinic despite being aware of B.M.'s fraudulent billing practices. Despite his awareness of law enforcement activities Respondent reengaged with the same runners and chiropractors and solicited client referrals from runner 2, paid client referrals to runner 2 and arranged for runner 2 to meet with chiropractor 1 to facilitate a referral relationship between them. *See* December 29, 2016 surveillance tapes/transcripts.

23. Respondent met with the Director's office on November 10, 2020. Respondent stated that he learned how to use runners from B.G., that he did not use runners until he was established at GS, and that he never used runners after he started his own law firm. When he was cautioned by the Director he admitted that he continued to use runners a few times after he opened his own law firm but stopped by April 2017.

24. At the referee hearing Respondent disputed that his partnership with GS deteriorated due to his misconduct and disputed the time-period he used runners. His testimony was impeached by surveillance tapes/transcripts. During a July 26, 2016 meeting Respondent informed runner 2 that he can't work with "you guys anymore. I can't…" (B.G.) doesn't want to be my partner anymore…" He noted that if law enforcement raids the clinic "they see communication with you (runner 2), then they see

communication with me." The referee finds Respondent falsely denied the deterioration of his partnership was caused by his misconduct.

25. His testimony that he began using runners while working at BS and stopped in April 2017 was impeached by the surveillance tapes/transcripts of January 31, 2017 and September 29, 2017 and was contrary to his attorney's statement at the sentencing hearing. Sentencing transcript at pg. 15–16. In the tapes/transcripts he stated that he began using runners in 2009 while working for M.L. and that he was using runners as of September 29, 2017. When confronted with the evidence he admitted using runners as of September 29, 2017, but denied without explanation using runners while working at M.L.

26. The referee finds that Respondent lied when he denied using runners at M.L, when he denied that he was not aware at the time that chiropractors were paying fees to runners in his personal injury cases, and when he denied, but then admitted after caution, that he used runners after he started his own law firm in December 2016, but stopped in April 2017. The referee finds that Respondent began using runners while working at M.L. in 2009 and continued using runners through September 2017. The referee is uncertain whether Respondent stopped at that date. Further, Respondent was aware during that time-period that chiropractors were paying fees to runners in his personal injury cases.

27. Respondent also testified that he didn't make much money from his no-fault fraudulent scheme. The referee finds his statement to be false and dishonest. His sole motivation for the fraudulent scheme was to make money. His participation in the scheme for 11 years belies his statement to the contrary.

28. During the hearing Respondent described his relationship with runners 1 and 2 as a "working relationship." It would have been better if he had described it as a "referral relationship." The referee finds Respondent's term "working relationship" is more careless than dishonest. But it does evidence an intent to conceal or minimize the dishonest nature of that relationship.

29. These acts of dishonesty referenced in the foregoing paragraphs are material because they are part of Respondent's continuing pattern of dishonesty and pattern of concealing his significant level of participation in the fraudulent scheme. Respondent was the key person who organized and implemented the fraudulent scheme.

30. Respondent stated that when the criminal charges became public in early 2020 he contacted roughly half of his 200 pending clients to inform them of the charges and to tell them he might be unable to represent them if their cases were still open when he had to close his practice. Respondent's disclosure to his clients occurred between the filing of the felony charge on December 30, 2019, and the date of his guilty plea on February 3, 2020. Respondent has referred some of his clients to other lawyers and three or four of his clients have terminated Respondent.

31. Currently, Respondent has around 35 active personal injury files and all but one of them are aware of his criminal conviction. Respondent plans to continue to practice law until he is forced to cease practicing law. Respondent has been ordered by the district court to turn himself into custody by April 1, 2020.

DISCIPLINARY FACTORS

32. Nature of the Misconduct. Respondent was convicted of one felony count of healthcare fraud for conspiring with chiropractors and runners between 2015 and 2016 to execute a scheme to defraud providers of automobile insurance and to obtain money from them through fraudulent means. The crime required the specific intent to defraud three automobile insurance companies to obtain money for false claims. The district court determined the total offense level was 12, the criminal history category is 1, and the imprisonment range is 10-16 months.

33. The district court sentenced Respondent to prison for 16 months which was the top of the imprisonment range. The district court concluded that Respondent's conduct was particularly egregious because he used his position as a lawyer for personal financial gain, that he lied to law enforcement to conceal his misconduct, and that he didn't accept responsibility until the sentencing hearing.

34. The criminal conduct described in the Plea Agreement clearly involves Respondent's personal injury law practice. Specifically, on three occasions he knowingly orchestrated and used chiropractors and runners to create false insurance claims, pursued false claims in excess of $40,000 but less than $95,000, sent demand letters to pursue those claims against insurance companies knowing that the claims were false in whole or in part, and collected monies on those claims. Thus, Respondent used his professional position to defraud automobile insurance providers for his own financial gain and for the benefit of

the chiropractors and runners. This level of criminal fraud and dishonesty to orchestrate and implement this fraudulent scheme is very serious.

35. Respondent admits that his conviction is "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects" in violation of Rule 8.4(b), and "is conduct involving dishonesty or fraud in violation of Rule 8.4(c), MRPC.

36. Cumulative Weight of the Violations. Respondent's criminal conduct is not isolated. The Plea Agreement describes several different types of misconduct occurring between 2015–16 which resulted in the conviction of conspiracy to commit no-fault insurance fraud. Respondent paid referral fees to runners, fabricated invoices to legitimatize check payments to runners, processed fraudulent no-fault claims on behalf of clients, and orchestrated illegal referral relationships between runners and chiropractors. The referee finds that Respondent organized runners and chiropractors to establish a widespread and coordinated scheme to defraud automobile insurance providers. His use of runners occurred between 2009 through September 2017.

37. Harm to the Public and the Legal Profession. Criminal fraudulent misconduct directly involving the practice of law by its very nature harms both the public and the legal profession. Such conduct seriously undermines the public's perception of the legal profession and confidence in the ability of lawyers to abide by the rule of law. Respondent organized relationships with chiropractors and runners to create fraudulent bills, and then he used those bills to support fraudulent demand letters to recover settlements from

insurance companies. Respondent's conduct caused harm to the health care benefit programs and the no-fault systems that were subject of these fraudulent claims.

38. Character Witnesses. Russell Fierst, a former client of Respondent, testified that he hired Respondent in March 2018 to represent him in a personal injury claim. In early 2020 Respondent meet with Fierst to explain the pending criminal charges and offered Fierst the opportunity to hire separate counsel. Fierst believed that Respondent was open and honest about the situation and so did not make a change. About one year later Fierst hired separate counsel because Respondent would soon start serving his prison sentence. Fierst stated that Respondent agreed to waive his attorney fees.

39. Jacqueline Hingeveld, Respondent's younger sister, testified to Respondent's character and values, and stated that he was a motivated and driven person who was committed to his young family. When she learned about his criminal conduct during a family event he was forthcoming about his conduct and took responsibility for it. Ms. Hingeveld believes that has learned from his mistakes in the past and that the consequences of his criminal conviction will positively shape his behavior in the future.

40. Teng Xiong stated he worked as a paralegal for Respondent from February 2018 until one week before this hearing. Xiong that Respondent is a good employer, a good personal injury lawyer and has learned from his mistakes. He learned of the criminal charges from a friend who saw in the media that was been criminally charged in December 2019. Respondent told Xiong that he decided to wait until after the holidays to tell Xiong about the charges. Respondent mentioned to Xiong that he had lied during the disciplinary investigation on the morning of the hearing.

41. Mitigating and Aggravating Factors. Respondent asserts the presence of three mitigating factors. First, he argues that he cooperated fully with the criminal and discipline processes. The referee finds that Respondent failed to cooperate with the federal authorities and the Director's office. Specifically, Respondent lied to Agent Ferris on May 8, 2019 when he denied any involvement in the health-care insurance fraud scheme and then attempted to conceal the level of his involvement in his signed acceptance of responsibility statement filed in the district court. Further he lied to the Director's office when he denied using runners while working for M.L., lied when he denied knowledge that chiropractors were paying fees to runners for his personal injury cases and lied when he stated that he didn't use runners at the new firm and then lied as to when he stopped using runners. Consequently, the referee finds that cooperation is not a mitigating factor. Second, Respondent argues that no client was harmed by his conduct. The referee finds that Respondent's legitimate clients not involved in his fraudulent scheme were negatively impacted. Respondent endangered the legitimacy of their personal injury claims and subjected his clients to additional investigation and scrutiny due to his misconduct. For example, his legitimate clients who treated with chiropractor B.M. were subjected to additional scrutiny from the insurers and were required to undergo examinations under oath.

42. Respondent next argues his remorse is a mitigating factor; conversely, the Director argues Respondent's lack of remorse is an aggravating factor. Generally, to determine the presence or lack of remorse the Court examines whether the attorney has

accepted responsibility for the misconduct, and whether the attorney has expressed genuine remorse for the harm the misconduct has caused the victims.

43. On the question of acceptance of responsibility, Respondent states that he has taken ownership of his misconduct and has tried to lessen the impact it has on others. He points to his efforts to help his clients by disclosing to a substantial number of them that he had been convicted of a serious crime and offered them the option of hiring a different attorney. But the disclosure to his clients didn't occur until after the criminal charges became public on December 30, 2019 and was near the time he pleaded guilty on February 3, 2020. Although his disclosure is some evidence of mitigation it is also what should reasonably be required of a lawyer under the circumstances. When the information became public it is likely that most of his clients would be calling him to find out whether they needed to find a new lawyer. In the case of Fierst he waived his attorney fees. The referee finds that his disclosure to a substantial number of his clients and waiver on attorney fees for Fierst was commendable, but that good conduct must be balanced against his other conduct.

44. When considering the totality of Respondent's conduct, both his words and his deeds, the referee finds that Respondent has not fully accepted responsibility. To accept responsibility requires that the person truly take responsibility for the wrongful conduct and the harm it caused to others. Respondent was given the opportunity to accept responsibility for his misconduct at the time of his interview with Agent Ferris, the signing of his acceptance of responsibility statement, his meetings with the Directors office, and at the referee hearing. On each occasion he chose to lie, conceal or minimize the nature and

extent of his participation in the fraudulent scheme. Respondent has consistently denied the full extent of his participation in the fraudulent scheme. His conduct during the Director's investigation and at the referee hearing clearly demonstrates that Respondent has not yet accepted responsibility for his misconduct.

45. The referee finds that Respondent's expression of remorse was not genuine or sincere. He stated that he was tremendously disappointed in himself and that he, and no one else, made the decisions that led to his conviction. His concern for his young family was commendable. What is absent, however, is a genuine acknowledgement of the harm his conduct caused to the victims--his other clients whose claims were jeopardized, the three insurance companies he defrauded, and more broadly the legal community and the public. Respondent expressed words of remorse. But those words are empty without deeds demonstrating the remorse is genuine. The referee is troubled that Respondent stated he really didn't make much money from the fraudulent scheme. That statement is false. In the end, Respondent notified most of his clients that he was convicted of a crime and may not be able to represent them, but failed to express remorse and make amends to those he harmed.

46. Prior Discipline. On June 28, 2018, Respondent was admonished for soliciting employment from an individual known to need legal services without ensuring that the materials provided were clearly and conspicuously marked as advertising material in violation of Rule 7.3(c), MRPR. On April 19, 2017, Respondent was admonished for knowingly revealing confidential client information in violation of Rule 1.6(a), MRPR. It is undisputed that these admonitions are an aggravating factor. The referee finds that

Respondent's healthcare fraud conviction has similarities to the June 28, 2018 admonition. Both involved the improper solicitation of employment for legal services.

47. The referee believes that if allowed to practice law there is a substantial risk Respondent will return to his same fraudulent healthcare insurance fraud scheme. He has not made amends to those he harmed and has not demonstrated a desire to turn away from the misconduct.

CONCLUSIONS OF LAW

1. Respondent was admitted to practice on May 7, 2010 and practiced in the area of Plaintiff's personal injury law from that date to the present. His practice has been lucrative. He divorced his first wife in 2016 and remarried in March 2017. He and his current wife have two young children. His concern for the well-being of his young family is commendable.

2. Special Agent Jonathan Ferris is a supervisory agent with the Minnesota Fraud Bureau, and between 2012 and 2017 participated in an investigation regarding no-fault insurance fraud which occurred among certain chiropractors and personal injury attorneys. Respondent was a knowledgeable player in the field of no-fault insurance fraud and a primary target of the investigation.

3. On May 8, 2019 Ferris interviewed Respondent at his home in anticipation of filing criminal charges against him. Despite being told that the investigation had him under surveillance Respondent denied having any involvement int the no-fault insurance fraud.

Respondent lied to Agent Ferris in an attempt to conceal his significant involvement in the scheme.

4. On December 30, 2019 Respondent was charged with a felony in U.S. District Court. On February 3, 2020 Respondent pleaded guilty to conspiracy to commit healthcare fraud, a felony, in violation of 18 U.S.C. Section 1349. At that time Respondent entered into a Plea Agreement with the U.S. Attorney which became the factual basis for the charge.

5. On November 4, 2020 Respondent was convicted of the crime charged and sentenced to 16 months in prison and to three years of probation. The District Court concluded that the total offense level was 12, the criminal history category was I and the imprisonment range was 10–16 months. The court concluded that the nature and circumstances of his crime was particularly egregious because he abused his professional position for financial gain, that when he became aware of the criminal investigation he took steps to conceal his conduct rather than coming forward, and when questioned by law enforcement he didn't tell the truth. He was sentenced to the maximum within the range.

6. Nature of Misconduct. Respondent's felony conviction for healthcare fraud is very serious. He was convicted for conspiring with chiropractors and runners to execute a scheme to defraud automobile insurance carriers and to obtain money from them through fraudulent means. The criminal conduct clearly involves Respondent's personal injury practice. He used his professional position to defraud others for his own financial gain. This level of criminal fraud and dishonesty is very serious.

7. Cumulative Weight of the Violations. Respondent's criminal conduct is not isolated. The Plea Agreement describes three different types of misconduct occurring between 2015–2016. He used runners from 2009 through September 2017. Thus Respondent's scheme of healthcare insurance fraud was widespread and coordinated.

8. Harm to Public and Legal Profession. Criminal fraudulent misconduct directly involving the practice of law by its very nature harms the public and the legal profession. Such conduct undermines the public's perception of the legal profession, and confidence in the ability of lawyers to abide by the rule of law. Misconduct involving dishonestly is particularly serious because honesty and integrity are among the most important attributes the public has a right to expect of lawyers.

9. Mitigating and Aggravating Factors. Respondent failed to cooperate fully with the criminal and discipline processes and caused harm to his legitimate clients. Respondent presented no evidence of pro bono or other charitable work; or evidence that he had a reputation for honesty and good character in the legal community. Respondent stated some words of remorse at the referee hearing, particularly the harm to himself and to his family, but those words do not rise to the level of a mitigating factor. Consequently, there are no mitigating factors present.

10. The referee finds that Respondent was not remorseful for his misconduct and that his lack of remorse is an aggravating factor. Respondent failed to fully accept responsibility for his misconduct. He chose to lie and conceal his fraud to Agent Ferris during the criminal investigation; and during the Director's investigation and referee hearing. These events demonstrate a lack of remorse. Further, Respondent's expression of

remorse at the referee hearing was not genuine or sincere. Specifically, he failed to acknowledge the harm he caused to his legitimate clients, the law profession and the public. Also, he has not made amends or produced objective evidence that he truly intends to change.

RECOMMENDED DISCIPLINE

1. When a lawyer has been convicted of a felony directly involving the practice of law the presumption is disbarment absent significant mitigation factors. Here, Respondent concedes, as he should, that his conduct violates Rule 8.4(b) and (c), MRPC.

2. The referee respectfully recommends that Respondent be disbarred. He was convicted of a very serious felony involving dishonesty; his criminal conduct was cumulative involving multiple acts of misconduct over a two-year period of time, the use of runners from 2009 through September 2017; and caused significant harm to his legitimate clients, the law profession, and the public.

3. His misconduct directly involved the practice of law in which he was a key person in orchestrating and implementing the fraudulent scheme. His misconduct is aggravated by his prior disciplinary history and his lack of remorse; and there are no mitigating factors.

4. His dishonesty, deception and concealment were motivated by greed and financial gain. The referee believes that if he is allowed to practice law in the future there is a substantial risk he will return to his fraudulent healthcare insurance fraud scheme. His modis operandi for the entirety of his legal career has been to orchestrate and implement

no-fault insurance fraud against insurance companies for personal financial gain. He has not made amends to those he harmed and not demonstrated a desire to permanently turn away from the misconduct.

5. Disbarment is most consistent was case precedent. The following cases are most similar: *In Re Brost*, 850 NW2d 689 (Minn. 2014). *In Re Andrade*, 736 NW2d 603 (Minn. 2007); and *In Re Perez*, 688 NW2d 562(2004).

Dated: April 1, 2021

BY THE COURT:

/s/ Christopher J. Dietzen
Justice Christopher J. Dietzen, Retired
Supreme Court Referee

MEMORANDUM

1. The purpose of discipline for professional misconduct is "not to punish the attorney but rather to protect the public, to protect the judicial system, and to deter future misconduct by the disciplined attorney as well as other attorneys." *In Re Rebeau*, 787 NW2d 168, 173 (Minn. 2010). The four factors that guide the determination are: (1) the nature of the misconduct; (2) the cumulative weight of the disciplinary violations; (3) the harm to the public; and (4) the harm to the legal profession. *In Re Nelson*, 733 NW2d 458, 463 (Minn. 2007). In that analysis I must also consider any aggravating and mitigating factors and the discipline imposed in similar cases. *In Re Albrecht*, 845 NW2d 184, 191 (Minn. 2014).

2. A lawyer's felony conviction for theft, fraud, or embezzlement has long been treated by the Court as serious misconduct that often warrants disbarment, particularly when the criminal conduct occurs within the practice of law. *In Re Brost*, 850 NW2d 699, 703 (Minn. 2014). But a felony conviction does result in automatic disbarment; instead, the Court will look at the circumstances surrounding the criminal act to see whether some discipline less than disbarment would be appropriate. *Id.* In that regard the Court will consider any aggravating and mitigating circumstances. *In Re Bonner*, 896 NW2d 98, 107 (Minn. 2017). The appropriate discipline is determined not only on a case-by-case basis, but also taking into consideration similar cases in order to impose consistent discipline. *Id.*
3. The Court will examine all of the surrounding circumstances. For example, in *Fairbairn*, 802 NW2d 734, 743 (Minn. 2011) the Court considered lack of harm as a factor that informs the determination of the appropriate discipline.
4. Nature of Misconduct. The conduct was intentional, occurred within the practice of law, and for selfish, financial and dishonest motives. *Fairbairn*, 802 NW2d at pg. 747.
5. Cumulative weight of the Violations. In assessing the cumulative weight of the violations the Court distinguishes between "a brief lapse of judgment" or "a single, isolated incident" of misconduct from multiple instances of misconduct occurring over a substantial amount of time or involving significant amounts of money. *See In Re Albrecht*, 845 NW2d 184, 191 (2014).

6. Harm to the Public and to the Legal Profession. We consider how many clients were harmed and the extent of the client's injuries. *Bonner* at pg. 108.

7. Mitigating factors. Respondent argues the presence of three mitigating factors. Initially, the referee must address Respondent's burden of proof with respect to mitigating factors. Although is undisputed the Director has the burden of proving aggravating factors by clear and convincing evidence there is some question as to Respondent's burden of proving mitigating factors. The Director relies on *Strunk* and *Farley* to argue that Respondent has the burden in proving mitigating factors by clear and convincing evidence. Respondent argues that *Strunk* and *Farley* only apply to a psychological condition, that the Court has been silent regarding other factors, and suggests the Minnesota Sentencing Guidelines are analogous.

8. Generally, the burden of proof is on the proponent to show that the presence of an affirmative defense. The question is whether Respondent has the burden of proving a mitigating factor by a preponderance of the evidence, clear and convincing evidence, or perhaps by substantial and compelling reasons for departure. *See* Minnesota Sentencing Guideline 2, subd. D.1. On this specific topic the Court has not yet spoken. The caselaw states Respondent must establish the existence of substantial mitigating factors to avoid disbarment for a felony conviction that occurs within the practice of law. *Andrade*, 736 NW2d at pg. 605; *Perez*, 688 NW2d at pg. 567. In this circumstance the relevant burden of proof may be the clear and convincing standard. For reasons that follow the referee concludes that

the burden of proof does not matter because Respondent has failed to establish his burden under any of the relevant standards.

9. Respondent argues the presence of three mitigating factors. First, he argues he has cooperated fully with the criminal and disciplinary processes. But Respondent now concedes that his lying to federal authorities and the Director's office undermines any argument of cooperation. *See* Respondents brief, FN 4 at pg. 9. The Director argues that mere compliance with the Rules of Professional Conduct is not a mitigating factor in attorney discipline cases. *In Re Moulton*, 721 NW2d 900, 906 (Minn. 2006); and that Respondent's lies and misrepresentations to law enforcement and the Director's office during the investigation are relevant to the issue of remorse. Director's brief at pg. 9. The referee agrees with the Director that mere compliance with the Rules is not a mitigating factor, that Respondent did no more than marginally cooperate, and that there is no evidence that Respondent fully cooperated. The referee concludes that his lies and misrepresentations are directly relevant to issue of his lack of remorse.

10. Second, Respondent argues no client was harmed by his misconduct. Recently, the Court has clarified that lack of harm to clients should not be considered as mitigation. *In Re Ulpin*, 904 NW2d 645, 645 (Minn. 2017). But lack of harm to clients does overlap with the Court's consideration of the harm the misconduct has caused to the public and the legal profession. *In Re Bonner*, 896 NW2d 98, 110 (Minn. 2017). Here, the referee finds that clients were harmed.

11. Remorse. Third, Respondent argues his remorse is a mitigating factor. The Director counters that Respondent's lack of remorse is an aggravating factor. Remorse can be a mitigating factor; conversely lack of remorse can be an aggravating factor. Remorse can be a mitigating factor; conversely lack of remorse can be an aggravating factor. *In Re Severson*, 860 NW2d 658, 670 (Minn. 2015). The Court will examine whether Respondent has accepted responsibility and expressed remorse for the harms his clients suffered due to his misconduct. *Id*. at pg. 671; and *In Re McCoy*, 447 NW2d 887, 891 (Minn. 1989). The issue of whether remorse was a mitigating or aggravating factor was hotly contested. The referee concludes that to be a mitigating factor Respondent must show that he accepted responsibility for his wrongful conduct and that he is genuinely remorseful for the effect that his conduct had on his clients, the legal community and the public. The referee finds by clear and convincing evidence that Respondent was not remorseful for his misconduct, and that his lack of remorse is an aggravating factor.

12. Prior Discipline. Both parties agree that Respondent's prior discipline is an aggravating factor. Prior discipline is given more weight if the prior misconduct was for similar misconduct. *In Re Quinn*, 946 NW2d 583, 592 (Minn. 2020).

13. Generally, the Court has held that the presumptive discipline for a felony conviction is disbarment. The Court, however, has determined that certain types of felony convictions warrant different punishment. Thus, possession of illegal drugs may result in a public reprimand or a stayed suspension. *In Re Keegan*, 936

NW2d 325 (Minn. 2019) (felony conviction for possession of opioid drugs); *In re Nolen*, 724 NW2d 14 (Minn. 2006) (public reprimand for felony conviction of possession of cocaine); *In re Davis*, 740 NW2d 568 (Minn. 2007) (stayed six-month suspension for felony driving while impaired). When the drug use is related to the practice of law the discipline can be limited to a brief suspension. *In re Ramsay*, 799 NW2d 604 (Minn. 2011) (imposing 90-day suspension for lawyer convicted of felony possession of cocaine when he was arrested during a trial representing a criminal defendant).

14. Here, Respondent was convicted of a felony that directly involved the practice of law. Specifically, he was convicted of healthcare fraud in which he played a leading role in orchestrating runners and chiropractors to prepare fraudulent medical bills that he used to prepare demand letters that were fraudulent to obtain automobile insurance proceeds for those claims. The referee notes that Respondent's criminal conviction is based upon a Plea Agreement that covers the time-period 2015–2016. The case submitted to the referee by the parties covered Respondent's misconduct between 2009 and September 2017. I believe this time period in consistent with our case law. Recently, in the case of *In Re Strunk*, 945 NW2d 379, 385 (Minn. 2020) we quoted with approval: "(W)e have repeatedly stated that an attorney may be disciplined for acts which are criminal but do not result in a criminal conviction." *In Re Gurstel*, 540 NW2d 838, 841 (Minn. 1995).

15. The referee has examined the cases the parties argue are similar on the question of the appropriate discipline. Based on that examination I believe the following cases

are the most relevant: *In Re Brost*, 850 NW2d 689 (Minn. 2014); *In Re Bonner*, 896 NW2d 98 (Minn. 2017); *In Re Andrade*, 736 NW2d (Minn. 2007); *In Re Oberhauser*, 679 NW2d 153 (2004); *In Re Perez*, 688 NW2d 562 (Minn. 2004); and *In Re Olkon*, 324 NW2d 192 (Minn. 1982).

16. *In Re Brost*. The petition alleged that Brost engaged in professional misconduct when she committed theft by swindle and identity theft stealing about $43,000 from a client; and that Brost failed to cooperate with the Director. Brost failed to respond and the allegations were deemed admitted. Based upon the substantial amount of money stolen, the fact that Brost stole the identity of a client, the failure to cooperate with the Director, and aggravating factors including Brost's selfish and dishonest motive and Brost's disciplinary history, the Court concluded that disbarment was appropriate.

17. *In Re Bonner*. The petition alleged that Bonner failed to remit withheld employee contributions into employee retirement accounts and instead used the funds to pay his law firm's and his own expenses. Count I involved conduct for which Bonner was convicted of felony theft by swindle in state court. Count II involved similar conduct but was for a different time period. The referee found that Bonner's conduct in Count I violated Rule 8.4(b) and (c), that the Director had failed to prove the allegations in Count II and recommended a 9-month suspension. On appeal, the Director argued that the referee had erred in finding the Count II allegations were not proven and argued for a two-year suspension. The Court agreed that the referee did not err by concluding the Director failed to prove the allegations of

Count II, that the referee erred with respect to his findings on several mitigating factors, but that a 9-month suspension was appropriate.

18. *In Re Andrade*. Andrade was convicted in state court of attempted theft by swindle of more that $2500. After a hearing, the referee recommended an indefinite suspension with leave to petition for reinstatement after two years. The referee found many mitigating factors, including his substantial service and pro bono work for the Hispanic community and his reputation with the judiciary and the legal community. In a 4-2 decision the Court ordered disbarment. The Court cited Olkon noting that mitigating factors can warrant a sanction less than disbarment. But the Court concluded that disbarment was warranted because The person Andrade attempted to swindle was a long-term client; the nature of the supervision pre previously imposed while the matter was pending is unlikely to detect this type of misconduct.; Andrande violated Rule 8.4€ for implying to the client that he had the ability to improperly influence a governmental agency or official. Justices Page and Anderson dissented. Page concluded that the discipline was unduly harsh and would have imposed a two-year suspension. Anderson argued for a 48-month suspension on the basis that Andrade impugned a high-ranking police officer.

19. *In Re Oberhauser*. Oberhauser was found guilty by a jury and convicted of two counts of money laundering relating to the transfer of $160,000 to ChildHelp because the transfer falsely made the money appear to be the proceeds of a successful deal. He was acquitted of 64 other counts relating to the K-7 scheme. Oberhauser was sentenced to two 15-month concurrent terms of imprisonment, two

concurrent terms of supervised release, 400 hours of community service and was ordered to pay $160,000 in restitution. Following a hearing the referee found that Oberhauser's conduct violated Rules 8.4(b) and (c); and the presence of three aggravating factors, which are prior disciplinary history, pecuniary motive and substantial experience in the practice of law. The referee concluded that his claim of mitigating factor of good character and his role in the K-7 scheme for which he was acquitted was not enough to outweigh the likelihood that he would engage in unethical conduct in the future. Consequently, the referee recommended disbarment. The Court affirmed the recommendation on the grounds that the misconduct was serious, and that his past disciplinary history is an aggravating factor. The Court concluded that the support of his family, many friends, and acquaintances does not outweigh the seriousness of his conduct, his history of failing to abide by the rules of professional conduct, the pecuniary motive underlying his involvement on the other portion of the fraudulent scheme for which he was acquitted and the fact that he was an experienced attorney.

20. *In Re Perez*. After failing the California bar exam several times, Perez applied for and was admitted in Minnesota. Perez was later admitted to practice in California. The FBI conducted a sting operation in California Perez was indicted in the U.S. District Court for Northern California for criminal mail fraud arising out of his participation in a personal injury insurance fraud scheme in which the defendants were charged with advancing personal injury claims based upon false representations about the nature and extent of their claims and medical treatment.

Perez was charged with settling personal injury claims based upon the false medical records. The referee recommended disbarment and the Court affirmed concluding that there were no mitigating factors and an aggravating factor was present—failure to truly accept responsibility for his behavior.

21. *In Re Olkon*. Olkon was convicted of two counts of attempted theft by swindle involving insurance fraud arising out of the Dalkon Shield litigation. He was sentenced to two five-year prison sentences, but those sentences were stayed and probation for five years and restitution of $10,000 was ordered. After a disciplinary hearing, the referee recommended a two-year suspension with credit for time he served during his temporary suspension. On appeal the Director requested disbarment. In a 4-3 decision the Court concluded that disbarment was not necessary because: (1) the sanctions recommended will deter such conduct by members of the bar and Olkon; (2) public interest best served by allowing Olkon to continue practicing in the personal injury area. He has done a great deal of pro bono work and many members of the bar testified as to his competence and integrity as an attorney; (3) there are many mitigating factors including that this was a single offense, and although Olkon continues to assert his innocence he was contrite and remorseful. Justice Todd, joined by Justices Peterson and Kelley, dissented arguing that the Court's caselaw requires disbarment in this situation. According to the Dissent the Court is embarking upon a new and dangerous precedent.

22. In my view, none of these cases are dispositive. *Olkon* is similar factually, but is easily distinguishable on the basis that Olkon had many mitigating factors in his favor and Sutor does not. More importantly, Olkon was contrite and remorseful and Sutor was not. Further, this referee finds that disbarment is necessary to deter Sutor from future misconduct. *Oberhauser* is more egregious in terms of the amount of money involved and that the conviction was the result of a jury trial. In the end, the referee believes that *Brost*, *Andrade* and *Perez* are the most similar.

STATE OF MINNESOTA

IN SUPREME COURT

A20-1240

In re Petition for Disciplinary Action against
William Kyle Sutor, III, a Minnesota Attorney,
Registration No. 0390734.

ORDER

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent William Kyle Sutor, III, has committed professional misconduct warranting public discipline—namely, a felony conviction for conspiracy to commit healthcare fraud. *See* Minn. R. Prof. Conduct 8.4(b), 8.4(c). Respondent's criminal conviction is for a serious crime of dishonesty and was directly related to his practice of personal injury law. The court referred the matter to a referee, which made findings of fact, conclusions of law, and a recommendation for discipline. The referee found that respondent committed the alleged misconduct, and that there were a number of aggravating factors and no mitigating factors.

Respondent and the Director have entered into a stipulation for discipline. In it, the parties stipulate that the referee's findings of fact and conclusions of law are conclusive, and that respondent waives his rights pursuant to Rule 14, Rules on Lawyers Professional Responsibility (RLPR). The parties jointly recommend that the appropriate discipline is disbarment.

This court has independently reviewed the file and approves the jointly recommended disposition.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Respondent William Kyle Sutor, III, is disbarred, effective as of the date of this order.

2. Respondent shall pay $900 in costs pursuant to Rule 24, RLPR.

Dated: June 2, 2021

BY THE COURT:

Natalie E. Hudson
Associate Justice