



**RICHARD C. CUNHA**

**Public Reprimand No. 2015-5**

**Order (public reprimand) entered by the Board on July 13, 2015.**

**SUMMARY<sup>1</sup>**

On November 7, 2011, the respondent filed with the New Bedford District Court a civil complaint on behalf of his client alleging that the defendant attacked and injured him. The respondent and client expected that the respondent would be paid on a contingency basis, but the respondent failed to draft and have executed a written fee agreement.

In February 2012, in preparation for trial, the respondent requested his client's certified medical records from various providers. By October 24, 2013, the respondent had obtained these records. However, he did not provide a copy to defense counsel.

On the day of trial, defense counsel objected to the admission of the medical records on the grounds that the respondent had not served them pursuant to Massachusetts General Law Chapter 233, Section 79G. This statute provides, in part, that a party seeking to introduce medical records at trial must serve a copy of those records upon the opposing party ten days prior to the introduction of the evidence. The trial judge ruled that the medical records could not be introduced at trial and that in the absence of the medical records, the client would not be permitted to testify about his prognosis. The jury returned a verdict in favor of the client, but awarded no damages.

On November 22, 2013, the client requested a new trial and argued that he was not competently represented due to the respondent's failure to timely serve the medical records upon defense counsel and failure to advise him that he could request a continuance of the trial date in order to serve opposing counsel with those records. The trial judge allowed the client's request for a new trial.

The respondent's failure to execute and have the client execute a contingent fee agreement violated Mass. R. Prof. C. 1.5(c). The respondent's failure to take necessary steps to ensure that the client's medical records were provided to defendant's counsel in compliance with

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<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

the statute violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. The respondent's failure to advise his client that he could ask for a continuance of the trial date to serve opposing counsel and get the documents into evidence at a later date violated Mass. R. Prof. C. 1.4.

In mitigation, the respondent paid \$10,000 in damages to the client to rectify the consequences of his misconduct.

The respondent received a public reprimand in June 2004 for providing financial assistance to a client in connection with pending litigation in violation of Mass. R. Prof. C. 1.8(e), an admonition in 2001 for unauthorized communication with a represented party, and an admonition in 1994 for neglect. Because the prior discipline was over ten years old and mostly involved unrelated rule violations, the respondent received a public reprimand in this matter.

The matter came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation for a public reprimand. On June 8, 2015, the board voted to accept the stipulation and joint recommendations, and imposed a public reprimand.