SJC-12850

IN THE MATTER OF DOREEN M. ZANKOWSKI.

Suffolk. October 7, 2020. - March 25, 2021.

Present: Budd, C.J., Lowy, Cypher, & Kafker, JJ.

Attorney at Law, Disciplinary proceeding, Suspension, Deceit.

Information filed in the Supreme Judicial Court for the county of Suffolk on January 7, 2019.

The case was heard by Gaziano, J.

Pamela A. Harbeson, Assistant Bar Counsel.
Thomas A. Mullen for the respondent.
Elizabeth N. Mulvey, for former members of the Board of Bar Overseers, amici curiae, submitted a brief.

LOWY, J. In a disciplinary case involving intentional overbilling of multiple clients, bar counsel appeals from the order of a single justice of this court suspending the respondent attorney, Doreen M. Zankowski, from the practice of

law for six months.[1,2] The single justice acknowledged the respondent's "admittedly cavalier attitude toward client billing," but concluded that "the large number of hours she reported in 2015 is not substantial evidence that all or even most of the 450 hours at issue in this case were fraudulently billed." Our focus, however, is not on the quantum of excessive fees that were billed, but on the fundamental dishonesty inherent in the respondent's client billings themselves. It is not the sheer number of unworked hours that establishes the misconduct but, rather, the dishonesty manifested by billing for them at all.

The evidence establishes unequivocally that the respondent intentionally billed for services that were not rendered. It supports the hearing committee's conclusion, adopted by the Board of Bar Overseers (board), that the respondent's conduct involves "dishonesty, fraud, deceit or misrepresentation," in violation of Mass. R. Prof. C. 8.4 (c), as appearing in 471 Mass. 1483 (2015), and adversely reflects on her fitness to practice law, in violation of Mass. R. Prof. C. 8.4 (h). The

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[1] This bar discipline appeal is subject to S.J.C. Rule 2:23, 471 Mass. 1303 (2015). After review of the preliminary memorandum and record appendix filed pursuant to the rule, we directed the appeal to proceed in the regular course.

[2] We acknowledge the amicus brief filed by former members of the Board of Bar Overseers.

evidence also establishes violation of Mass. R. Prof. C. 1.5 (a), as appearing in 463 Mass. 1320 (2012). In the circumstances, we accept the board's recommendation that a two-year term suspension is both appropriate and consistent with sanctions imposed in comparable cases.

1. Prior proceedings. On February 27, 2017, bar counsel filed a one-count petition for discipline against the respondent alleging that, during 2015, she intentionally inflated the amount of attorney time billed to her four largest clients by approximately 450 hours, falsely ascribing to herself and other attorneys work that was not actually performed. By adding these hours to her bills, the petition alleged, the respondent caused her firm to charge and collect more than $200,000 in fees that were not earned, in violation of Mass. R. Prof. C. 1.5 (a) (charging and collecting clearly excessive fees); Mass R. Prof. C. 8.4 (c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and Mass R. Prof. C. 8.4 (h) (conduct that reflects adversely on fitness to practice law).

After four days of hearing, at which the respondent and eight other witnesses testified, on May 29, 2018, the hearing committee issued a report detailing its findings of fact, conclusions of law, and recommended disciplinary sanction. A majority of the committee concluded that bar counsel proved that the respondent "intentionally added to her bills time for work

that was not performed," and recommended that she be suspended from the practice of law for one year and a day.[3] Both bar counsel and the respondent appealed to the board.

After review, the board denied the respondent's request for a new evidentiary hearing and adopted most of the hearing committee's factual findings and conclusions of law.[4] It concluded, however, that based on the established misconduct, a one-year suspension was too lenient. The board voted to file an information in the county court recommending a two-year suspension from the practice of law.

A single justice of this court held a hearing and, after receiving additional briefing, issued a decision concluding that a six-month suspension was appropriate. The single justice reasoned that while the evidence established that the respondent increased the hours attributed to other attorneys on her bills, her testimony was that she had worked those hours herself. In the single justice's view, although the bills were false and

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[3] A dissenting member agreed that the respondent's bills were inaccurate but concluded that the respondent "lacked the intent to deceive or to defraud her clients." The member would have imposed a public reprimand for her "billing protocols."

[4] As discussed infra, the board rejected two factors the hearing committee found in aggravation. It determined that restitution was not due, because the respondent did not herself receive the wrongfully billed amounts, and the firm returned those amounts to the clients. Also, the board determined that it did not need to reach the issue whether the respondent was motivated by "greed and self-interest."

misleading -- to the extent they did not accurately identify the attorney who had rendered services -- the high number of billable hours that she reported did not constitute substantial evidence that the services were not rendered at all. The single justice declined to weigh the respondent's failure to express remorse in aggravation, and he concluded that her clients' satisfaction with her services should be weighed in mitigation. In the circumstances, the single justice concluded that a six-month suspension was warranted. Bar counsel appeals.

2. Factual background. We summarize the background facts found by the hearing committee and adopted by the board, concluding that they are supported by substantial evidence. See S.J.C. Rule 4:01, § 8 (6), as appearing in 453 Mass. 1310 (2009). We reserve certain details concerning the respondent's billing practices for later discussion.

The respondent was admitted to the bar of the Commonwealth in 1991. After working in the legal department of an international engineering firm, and after more than a decade in the construction practice of one law firm, on October 1, 2011, she began her employment at a different law firm (firm) as an "income/salaried partner in the commercial litigation department." In late 2014 or early 2015, the respondent became an equity partner of the firm, effective January 1, 2015. Unlike associate attorneys and income or salaried partners, the

firm's equity partners were paid based on their placement each January in a compensation "tier" for the coming year. Equity partners also received a percentage of the firm's profits for the prior year, and merit bonuses based on their prior year's performance. Decisions about tier placement and merit bonuses were based, in part, on fee receipts generated or anticipated by each partner.

Before her January 1, 2015, transition to equity partner, the respondent earned approximately $700,000 as an income or salaried partner, exclusive of merit bonuses. As an equity partner, however, she was placed in a lower base salary tier of $575,000. Although she was eligible for a share of the firm's profits and a bonus, and had the potential to earn more than she had as an income or salaried partner, her salary tier as an equity partner was $125,000 less than she had been receiving as an income or salaried partner.

During 2015, the respondent generally did not enter or maintain contemporaneous billing records of her time. Instead, she directed her assistant to draft time entries for her review. The assistant, who often had no knowledge of the time the respondent spent on tasks, attempted to reconstruct the respondent's daily activities using handwritten notes that did not, for the most part, attribute specific amounts of time to the described tasks. She also used e-mail messages,

correspondence, pleadings, and calendar entries. The assistant "guess[ed]" at the amount of time spent on tasks, creating daily time reports on a weekly basis for the prior week's work.

Each week, the respondent reviewed the daily time reports created by her assistant, adjusted the time charged for each task, and submitted the reports to the firm's accounting department. On a monthly basis, the accounting department provided the respondent with draft bills for the matters on which she was the billing partner. In addition to her own time entries, the draft bills included the time entries for the other attorneys who had worked on the matter. The respondent edited the draft bills by adding, subtracting, or consolidating time entries for herself and the other attorneys who worked on her clients' matters.

Between March 2015 and November 2015, the respondent added more than 450 hours of time to the hours reflected on her clients' draft bills, primarily with respect to two complex litigation matters, amounting to approximately eight to ten hours per week added to time previously entered. She added approximately one hundred hours to her own time, 110 hours to one senior associate attorney's time, and 240 hours to the entries of five other associate attorneys. Although the respondent testified that the additional hours reflected her own time spent working on those matters, the hearing committee

declined to credit the testimony, finding instead that the clients were intentionally, dishonestly, and excessively billed for the time.

According to the firm's records for 2015, the actual amount of the respondent's final bills to clients exceeded the original amount reflected on the draft bills by approximately $216,000. Concluding that the bills apparently had been inflated beyond the work actually performed, the firm reported the matter to the board. The firm either refunded to the clients the amounts it considered to have been overbilled or credited them that amount.

3. Standard of review. On appeal, bar counsel contends that the single justice erred in determining that certain of the hearing committee's findings (as adopted by the board) were not supported by substantial evidence. Bar counsel also contends that the sanction imposed was markedly disparate from the discipline imposed in comparable cases. See Matter of Segal, 430 Mass. 359, 367 (1999). We "review the record to determine whether the single justice's decision is supported by sufficient evidence, free from errors of law, and free from any abuse of discretion." Matter of Tobin, 417 Mass. 92, 99 (1994), citing Matter of Kenney, 399 Mass. 431, 434 (1987).

The subsidiary facts found by the board must be upheld "if supported by substantial evidence, upon consideration of the record, or such portions as may be cited by the parties."

S.J.C. Rule 4:01, § 8 (6). See Matter of Abbott, 437 Mass. 384, 393-394 (2002). It is error to do otherwise. In addition, "[o]ur rules concerning bar discipline . . . accord to the hearing committee the position of 'the sole judge of the credibility of the testimony presented at the hearing.'" Matter of Saab, 406 Mass. 315, 328 (1989), quoting S.J.C. Rule 4:01, § 8 (3), as appearing in 381 Mass. 784 (1980). In short, "[w]hile we review the entire record and consider whatever detracts from the weight of the board's conclusion, as long as there is substantial evidence, we do not disturb the board's finding, even if we would have come to a different conclusion if considering the matter do novo." Matter of Segal, 430 Mass. at 364.

In this case, the evidence is such "as a reasonable mind might accept as adequate to support" the board's conclusion that the respondent's conduct violated the rules of professional discipline. Matter of Segal, 430 Mass. at 364, quoting G. L. c. 30A, § 1. We determine that the board's findings are supported by substantial evidence, conclude that the misconduct charged in the petition has been established, and accept the board's recommendation as to sanction.

4. Evidence of misconduct. Although we summarized the respondent's billing practices above, we describe them in

greater detail here as they relate to the misconduct charged and the evidence that establishes it.

There is no dispute that the respondent did not keep a contemporaneous log of her work.[5] Although she made notes concerning her work on one of several notepads, the notations rarely reflected the time she devoted to any particular task. In her answer to the petition for discipline, the respondent explained that "it was her practice to satisfy the firm's requirement of weekly submission of her time by having her [assistant] prepare preliminary draft time sheets based on [the respondent's e-mail system] calendar, email in-box, correspondence [file], pleadings and notes." She was aware that the assistant "usually had no idea how much time [the respondent] spent on each matter." The product of the assistant's efforts "was not intended to be comprehensive with respect to the work it described (as it was based on fragmentary data) and more importantly it was never intended to be accurate as to the amount of time spent (since most of the time entries

[5] The record indicates that some of the firm's lawyers kept contemporaneous electronic time entries. Others kept manual time records, and their assistants input that information into the firm's timekeeping software.

were meant as generic place holders to be replaced later by [the respondent] with specific periods of time)."[6]

At the end of each week, the respondent's assistant printed a copy of the time entries she had drafted, which the respondent regarded as "tentative drafts intended to be heavily edited" particularly as to "the attribution of specific periods of time for individual items of work." The respondent made handwritten notes on the printed weekly reports, most of which adjusted the amount of time associated with each recorded task to "substitute solid numbers for the place holders with respect to time spent . . . based on her specific recollections and her general knowledge of how long particular tasks typically took her." Less frequently, she edited the narrative description of the work performed. At the hearing, the respondent testified that, during this weekly phase, she "was only looking at the information on the time entry report [rather than] looking for what was missing[,] because [she] didn't have the time to do it."

At the beginning of each month, the respondent received a draft or "pre-bill" from the firm's accounting department for

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[6] At the hearing, the assistant testified that the timekeeping software required a user to enter some amount of time greater than zero in order to log a time entry. Unless a specific amount of time was blocked out on the respondent's calendar for a specific task, she typically entered two tenths of an hour for this purpose, or sometimes guessed.

each client matter on which she was the designated billing partner. These prebills chronologically listed all the work performed by attorneys who worked on the client matter during the prior month. According to the respondent, her billing practice anticipated that her review of a prebill would be the first time that she "looked at what was there in the context of what [she] missed for [her] own time." The respondent explained that when she made additions to her prebills, she "drew on materials that her secretary did not utilize, including text messages, outbound emails, records of telephone calls, miscellaneous notes, and her own memory."

At the hearing, the respondent testified that she added 450 hours to the draft or prebills, allocating that time to time her associates billed even though she performed the work. She testified that she did this for two reasons: (1) it would have been administratively burdensome to create new time entries for herself; and (2) it gave the clients the benefit of her work, but at a lower hourly rate billed by associate attorneys. The hearing committee declined to credit those explanations and concluded that the evidence established that the respondent billed for services that were not provided.

We recognize, as the single justice also observed, that the respondent worked exceedingly hard, and her clients testified that they were satisfied with her work. The single justice

concluded that while there was "substantial evidence to support at least some subsidiary findings underpinning the board's decision that the respondent intentionally billed clients for time she did not work," the evidence did not support the finding that "the respondent necessarily over-billed clients intentionally for all or substantially all of the hours for which the firm refunded fees or credited to clients."

Regardless of the precise number of the hours overbilled, however, the evidence amply established that the respondent added fictional hours to her clients' bills. The hearing committee concluded, and the board accepted, that the respondent's client bills were intentionally false and fraudulent in two aspects. With respect to the first aspect, there is no dispute that the respondent's client bills failed accurately to reflect work performed by the identified attorney. We agree with the single justice that the bills were false and fraudulent to that extent. Even if the work was done, it was not done by the attorney identified on the bill.

With respect to the second aspect, the petition for discipline charged that the respondent intentionally charged multiple clients for legal services that were not rendered. To be sure, as the single justice recognized, the respondent testified that she added time to her associates' hours for services she rendered that were "not captured on my calendar,

not on my notepad and not in my inbox and not in my correspondence file," but that she nonetheless worked each of those 450 added hours.

Other than the respondent's own testimony, however, there is nothing to support her claim. The hours were not reflected on the respondent's records and somehow "missed" by her assistant when she entered the respondent's time in the firm's timekeeping system. There were no documents or other work product that substantiated the claim. On twelve different dates, if the hours the respondent claimed she worked but attributed to associate attorneys were added to the hours the respondent billed under her own name (which the respondent testified would have been the correct allocation of time), she would have worked more than twenty-four hours.

In declining to credit the respondent's testimony, the hearing committee relied on the respondent's billing records and the testimony of other attorneys. It observed:

> "We note that, in 2015, the respondent made three non-business trips to Hawaii and took a vacation in Europe from September 11-25. In 2015, she also went to San Diego, Denver, Chicago, New York, and several cities in Texas. Generating 3,600 billable hours in a year would require working over 9.86 billable hours a day, seven days a week, for 365 days. Between the respondent's vacations and her nonbillable client activities [totaling over 700 non-billable hours], we do not credit that she worked a total of 3,600 billable hours in 2015." (Citation omitted.)

When the more than 700 additional nonbillable hours that the respondent reported working are added to her billable hours, the respondent would have had to work an average of 11.78 hours every day for the entire year. Because the hearing committee's decision not to credit the respondent's testimony is not "wholly inconsistent with another implicit finding" (quotation and citation omitted), Matter of Murray, 455 Mass. 872, 880 (2010), it should not have been rejected.

This is not a case in which the hearing committee's findings rested on mere disbelief of the respondent's testimony. Rather, the evidence adduced at the hearing amply supports the conclusion that the respondent intentionally inflated the hours billed well beyond those that were worked. On thirteen occasions, for example, the respondent added an hour or more to a senior associate attorney's hours, without changing the billing narrative or providing an explanation for modifying the associate's hours. This amounted to twenty-seven hours. The hearing committee credited the testimony of the senior associate attorney that his time entries were made contemporaneously, and that the entries were accurate when he entered them. The respondent either provided no explanation or the hearing committee determined that the explanation she did provide lacked candor.

In addition, the hearing committee found that the respondent added a total of 143.1 hours to three other associate attorneys' time because, she said, reviewing those entries weeks later "jogged her memory" of work she herself performed even though she had not recollected the time during her weekly review of her own bills. The hearing committee declined to credit that explanation. That determination is not inconsistent with the hearing committee's other findings.

In addition to adding time to her associate attorneys' entries, on at least seven different days, the respondent billed her clients for her attendance at depositions that she did not attend. This accounted for an additional 51.40 hours. Although the respondent testified that she worked on items related to the depositions during that time, the senior associate attorney who took the depositions testified that, apart from minor edits and brief discussions, he received nothing substantive from the respondent. While the respondent testified that she listened to the depositions by telephone, not only did the hearing committee credit the associate's testimony that that did not occur, but there was evidence that the respondent was involved in other depositions or hearings at the relevant times. In the circumstances, the hearing committee was warranted in drawing an "adverse inference from the respondent's failure to offer

materials, readily available to her, that would presumably support her version of the facts if true."

In short, the substantial evidence supports the hearing committee's findings, adopted by the board, that the respondent intentionally billed her clients for legal services that were not rendered by adding hundreds of hours to the bills. To establish the misconduct, bar counsel was not required to prove that each of the 450 hours intentionally added to the draft bills was fraudulent. It suffices to say that fraudulent billing was established and supported by the substantial evidence. See Matter of Goldstone, 445 Mass. 551, 564-565 (2005) (fraudulent billing established based on sample of attorney's files). As the board concluded, the "conclusion that the respondent intentionally overbilled her clients finds ample support in the overall record."

5. Appropriate sanction. Turning to the question of sanction, we review "the sanction ordered by the single justice [to ensure that it] is not markedly disparate from what has been ordered in comparable cases," mindful that the board's recommendation is entitled to substantial deference. Matter of Sharif, 459 Mass. 558, 563 (2011), quoting Matter of Doyle, 429 Mass. 1013, 1013 (1999). See Matter of Anderson, 416 Mass. 521, 526 (1993). Each bar discipline case is decided on its own merits, see Matter of Strauss, 479 Mass. 294, 300-301 (2018),

and each attorney receives the disposition that is "most appropriate in the circumstances," Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984). In making that determination, we "consider what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior." Matter of Concemi, 422 Mass. 326, 329 (1996). See Matter of Foley, 439 Mass. 324, 333 (2003); Matter of Kerlinsky, 428 Mass. 656, 664, cert. denied, 526 U.S. 1160 (1999), quoting Matter of Finnerty, 418 Mass. 821, 829 (1994) ("primary factor" is "the effect upon, and perception of, the public and the bar").

We agree with the board and the single justice that the admitted facts concerning the respondent's billing procedures as intentionally practiced, particularly respecting her intentional inflation of the time accurately ascribed to tasks performed by her associates, are, in and of themselves, enough to demonstrate that a clearly excessive fee was charged. See Mass. R. Prof. C. 1.5 (a). The bills dishonestly misrepresented the legal work described and who performed it, and this dishonesty reflects poorly on the respondent's fitness to practice as a member of the legal profession. Mass. R. Prof. C. 8.4 (c), (h).

The hearing committee also determined, and the board accepted, that by billing her clients and causing her firm to collect fees for hours not actually worked, the respondent

violated Mass. R. Prof. C. 1.5 (a). See Matter of Rickles, 30 Mass. Att'y Discipline Rep. 340, 345 (2014); Matter of Barach, 22 Mass. Att'y Discipline Rep. 36, 48 (2006) (two-year suspension for excessive billing); Matter of Broderick, 20 Mass. Att'y Discipline Rep. 53, 54 (2004) (two-year suspension for charging excessive fees, failing to returned unearned portion of fee, and other misconduct). A majority of the committee also found, and the board accepted, that by submitting bills that were inaccurate, inflated, or false, and by billing and collecting fees to which she and the firm were not entitled, the respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Mass. R. Prof. C. 8.4 (c), and conduct adversely reflecting on her fitness to practice law, in violation of Mass. R. Prof. C. 8.4 (h). See Matter of Beaulieu, 29 Mass. Att'y Discipline Rep. 33, 34 (2013). We agree.

Bar counsel contends that the six-month term suspension from the practice of law imposed by the single justice fails to recognize the gravity of the respondent's intentional, dishonest misconduct. More specifically, bar counsel contends that the six-month suspension (1) is markedly disparate from the penalties imposed in comparable cases; (2) was premised upon the single justice's improper substitution of his own de novo credibility findings for those of the committee, and his

insufficiently deferential review of the sufficiency of evidence to support the board's findings; and (3) reflected irrelevant and unproved mitigating factors, particularly the satisfaction of the respondent's clients with the representation they received and their belief that the fees charged were fair and reasonable.

In our assessment, it is the established dishonest nature of the respondent's billing that differentiates this case from cases involving charging "excessive" fees. See Matter of Fordham, 423 Mass. 481 (1996), cert. denied sub nom. Fordham v. Massachusetts Bar Counsel, 519 U.S. 1149 (1997). In Matter of Fordham, supra at 486, a sophisticated corporate client agreed "with open eyes after interviewing other lawyers with more experience in such matters" to hire an attorney, knowing that he would be learning a new area of law. The parties stipulated that the lawyer "acted conscientiously, diligently, and in good faith in representing [the client] and in his billing in this case." Id. at 484. He achieved an acquittal in the case. In the circumstances, the attorney received a public reprimand for charging, but not collecting, an excessive fee. Id. at 495.

Knowing submission of false or fraudulent bills, however, is not equivalent to charging an excessive fee. In Matter of Goldstone, 445 Mass. at 552, for example, an attorney was disbarred for conduct including overbilling and collecting from

a corporate client "hundreds of thousands of dollars in fees and costs to which he was not entitled." In that case, we concluded that "[w]here an attorney lacks a good faith belief that he [or she] has earned and is entitled to the monies, such conduct constitutes conversion and misappropriation of client funds." Id. at 566. Where the attorney's misconduct was aggravated by his "threat[s] to retain more funds to which he was not entitled unless [the client] paid," id., and where the attorney failed to make restitution to the client until bar counsel filed a petition for discipline, and then only repaid a portion of what was due, the court concluded that disbarment was warranted. Id. at 566-567. See Matter of Schoepfer, 426 Mass. 183 (1997) (indefinite suspension of attorney who temporarily converted estate's funds for his own use).

Other cases involving intentional overbilling, but less egregious misconduct than in Matter of Goldstone, have warranted to two-year suspension. See Matter of Burghardt, 29 Mass. Att'y Discipline Rep. 70 (2013) (stipulation to one year and a day suspension for submitting $6,300 in false invoices to firm for reimbursement of personal expenses; lawyer reimbursed firm); Matter of Beaulieu, 29 Mass. Att'y Discipline Rep. at 34 (four-year suspension where attorney made restitution); Matter of Broderick, 20 Mass. Att'y Discipline Rep. at 54-56 (two-year suspension for refusing to return unearned portion of advance

fee and generating false billing records to justify total fee, in violation of Mass. R. Prof. 1.5 [a], and 8.4 [c], [d], and [h]; and other misconduct). In Matter of Burghardt, not only was the amount considerably less than is involved in this case, but it did not involve a pattern of billing for services not rendered. Although Matter of Broderick, 20 Mass. Att'y Discipline Rep. at 54-55, included some additional misconduct that might have warranted an admonition or public reprimand by itself, the respondent's billing misconduct in this case is more egregious than that in Matter of Broderick because of its repetitive nature, involving multiple clients, over a period of months.

Like both the hearing committee and the board, we have considered the facts asserted by the respondent in mitigation and agree that mitigation of sanction is not warranted. That said, we recognize that -- by all accounts -- the respondent performed an extraordinary volume of work in 2015. She testified that, to carry that workload, "[s]he neglected her physical health and was often sleep-deprived" due to "routinely work[ing] over 12 hours a day, and regularly . . . on holidays, weekends and even when nominally on vacation." By all accounts, her legal work was of high quality. Her clients, who were in constant contact with her and aware of the work she was doing for them, did not complain about the amount of time she billed

to their matters. In addition, the respondent's sister was diagnosed with a serious illness.

The hearing committee considered the respondent's testimony. It observed, as we do, that there was no medical testimony or other evidence connecting in any causal manner the respondent's testimony about the stress she suffered, and the misconduct in which she engaged. While her circumstances are troubling, the evidence does not demonstrate that these factors were a substantial contributing cause of the misconduct, and they cannot be weighed in mitigation. See Matter of Strauss, 479 Mass. at 302 n.11; Matter of Luongo, 416 Mass. 308, 311 (1993). See also Matter of Corbett, 478 Mass. 1004, 1006 (2017) (pattern of misconduct demonstrated respondent's psychological condition did not "have had a substantially contributing role . . . instead [the misconduct] demonstrates a relatively clear and calculating [attorney], aware of [her] misdeeds").

In addition, the respondent also asserted, and the single justice accepted, that her clients were sophisticated consumers of legal services and that their failure to object to the bills should be considered in mitigation. The hearing committee and the board correctly declined to weigh that factor in mitigation. Not only did the clients not testify that they were aware that time had been added to their bills, but advance consent to excessive fees is not mitigating. See Matter of Fordham, 423

Mass. 481. Likewise, "good work is to be expected of attorneys; it is not a factor ordinarily considered in mitigation." Matter of Corbett, 478 Mass. at 1006. Finally, while the respondent has no previous disciplinary record, and has provided pro bono services, neither mitigates misconduct. The absence of prior discipline is to be expected, see Matter of Alter, 389 Mass. 153, 157 (1983), and community service, a favorable reputation, and provision of pro bono services, while laudable, do not offset the effects of misconduct. See Matter of Kennedy, 428 Mass. 156, 159 (1998).

Although they found no special mitigating factors, the hearing committee and the board weighed in aggravation the respondent's substantial experience in the practice of law, see Matter of Moran, 479 Mass. 1016, 1022 (2018), and that she testified evasively and demonstrated a lack of candor in her testimony.[7] See Matter of Eisenhauer, 426 Mass. 448, 455-456, cert. denied, 524 U.S. 919 (1998). They also weighed in aggravation that the respondent had not acknowledged the nature, effects, or implications of her misconduct.[8] See Matter of

[7] The hearing committee also weighed in aggravation that the respondent was motivated by greed and self-interest. See Matter of Pike, 408 Mass. 740, 745 (1990). The board did not adopt that finding and did not weigh it in aggravation of sanction. We do not, either.

[8] Although the hearing committee also weighed in aggravation the respondent's failure to provide "restitution," the board

Bailey, 439 Mass. 134, 152 (2003). While an attorney is entitled to defend against allegations of a petition for discipline, the hearing committee may determine whether to credit the testimony and evidence, and it may consider in aggravation any lack of candor it finds. See Matter of Hoika, 442 Mass. 1004, 1006 (2004). See also Matter of Corbett, 478 Mass. at 1006. Like the board, we accept those factors in aggravation.

In considering the appropriate sanction, "the board's recommendation is entitled to substantial deference." Matter of Tobin, 417 Mass. 81, 88 (1994). In the totality of the circumstances present here, see Matter of McInerney, 389 Mass. 528, 531 (1983), we conclude that a two-year suspension from the practice of law is warranted.

6. Attorney well-being. As stated, the evidence offered in mitigation in this case does not demonstrate a causal connection between the respondent's workload and familial pressures, and her misconduct. Although the evidence is dispositive here, we take the opportunity to acknowledge the role that lawyer well-being plays in the context of both fitness to practice and administration of justice.

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rejected the finding. The firm refunded the overcharged fees, and the respondent received no portion of them. Because the overcharged fees were not retained by the respondent or the firm, restitution is not at issue.

The troubled state of lawyer well-being, including "major issues negatively affecting well-being in the legal profession," has been well documented. See Supreme Judicial Court Steering Committee on Lawyer Well-Being: Report to the Justices, at 5 (July 15, 2019), https://www.mass.gov/doc/supreme-judicial-court-steering-committee-on-lawyer-well-being-report-to-the-justices [https://perma.cc/N63N-2KSX] (Well-Being Report). Among the issues identified in the report are the "relentless pace [that] makes it very difficult for lawyers to set boundaries between work and the rest of life"; the "pure volume of work expected." Id. at 8. Those issues appear amply illustrated in this case. The Well-Being Report also cites stigma associated with seeking help on a variety of well-being issues. Id. at 5-8.

It is not just lawyers' health and personal life that pay the price for this troubled state. As the Well-Being Report makes plain, lawyer well-being is connected to competence, ethical behavior, and professionalism. See Well-Being Report, Appendix 11, at 1. See also The Path to Lawyer Well-Being: The Report of the National Task Force on Lawyer Well-Being, at 8 (August 14, 2017), https://lawyerwellbeing.net/wp-content/uploads/2017/11/Lawyer-Wellbeing-Report.pdf [https://perma.cc/D2DG-KL7K] (National Well-Being Report) ("lawyer well-being influences ethics and professionalism").

Recognizing that connection, taking steps to promote lawyer well-being, and supporting the lawyers who avail themselves of those measures will surely enhance the physical and mental health of individual lawyers and improve the quality and ethical standing of the profession as a whole.

To be clear, the pressures faced by lawyers in practice, including those described in the well-being report, do not excuse professional misconduct. They may, however, help to "explain and put into perspective the underlying reasons" for some of it. Matter of Balliro, 453 Mass. 75, 88 (2009). We recognize that "[if] a disability caused a lawyer's conduct, the discipline should be moderated, and, if that disability can be treated, special terms and considerations may be appropriate." Matter of Schoepfer, 426 Mass. at 188. See Matter of Sharif, 459 Mass. at 562; Matter of Ring, 427 Mass. 186, 191 (1998) (attorney's depression causally related to misconduct).[9]

7. Conclusion. By all accounts, the respondent worked exceptionally hard, was one of the firm's highest revenue producers, and achieved excellent results for her clients. Some of her large, institutional clients testified to their

[9] We urge leaders of the bar, supervisors in the public sector, partners in law firms, private employers, and individual attorneys to be mindful that attorney well-being and competence are interconnected, and that "lawyer well-being influences ethics and professionalism." National Well-Being Report at 8.

satisfaction with her work and her availability to them. But intentionally billing for work that was not performed, or not performed by the person to whom it is ascribed, is professional misconduct. Like the board, "we would hesitate to censure the occasional, innocent mistake in timekeeping." The evidence in this case, however, establishes that the respondent intentionally engaged in billing practices so prone to error as to display "reckless indifference to whether . . . clients [a]re honestly charged for [an attorney's] services," and added hundreds of hours of time to client bills for services that were not rendered. Attorneys must adhere to honesty in their billing practices. In a relationship premised on trust, clients are entitled to nothing less.

The case shall be remanded to the county court, where an order suspending the respondent for a period of two years shall enter.

So ordered.