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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ALEXANDER F. SUN, Defendant and Appellant.	B222420 (Los Angeles County Super. Ct. No. BA320341)

APPEAL from a judgment of the Superior Court of Los Angeles County, David S. Wesley, Judge. Affirmed.

Law Offices of Mark J. Werksman, Mark J. Werksman and Kelly C. Quinn for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec, Supervising Deputy Attorney General, and Lance E. Winters, Deputy Attorney General, for Plaintiff and Respondent.

Alexander F. Sun appeals from his conviction for insurance fraud and the unauthorized practice of law. Sun contends (1) he was improperly convicted for the unauthorized practice of law because he was prosecuted under a legally insufficient theory and the jury was improperly instructed; (2) the trial court erred in admitting protected attorney work product into evidence; (3) his right to confront adverse witnesses was improperly restricted; (4) the trial court improperly permitted the admission of (a) incomplete records from which improper inferences were drawn and (b) unauthenticated double hearsay; and (5) trial of the insurance fraud counts should have been severed from trial of the count for unauthorized practice of law. We affirm.

BACKGROUND

Procedural background

A grand jury indictment charged appellant Alexander Sun with two counts of insurance fraud, in violation of Penal Code section 550, subdivisions (a)(1), (a)(5) (counts 1 & 2), and the unauthorized practice of law, in violation of Business and Professions Code section 6126, subdivision (b) (count 3). Sun pleaded not guilty.

Before trial Sun moved to sever the counts for insurance fraud from trial on the charge of unauthorized practice of law, and moved in limine to exclude certain evidence pursuant to the attorney work product privilege. Both motions were denied.

A jury returned guilty verdicts against Sun on all counts.

Sun was sentenced to state prison for three years plus eight months. Execution of the sentence was suspended, and Sun was placed on three years' probation.

Factual background

The Changs' car accident and retention of Sun

On July 24, 2004, Larry and Jenny Chang suffered neck and shoulder injuries when their car was struck from behind by another vehicle. Sun, an attorney who witnessed the accident, approached the Changs, gave them his business card and offered to drive them home. Sun offered to represent the Changs, who subsequently retained him. Sun gave the Changs an address and phone number for Dr. Jyh Jye Shoung, and told them to see her for treatment of their injuries.

Dr. Shoung assists the district attorney's undercover investigation

Dr. Shoung is a chiropractor. In 2004, Dr. Shoung approached the district attorney's office about becoming an informant; she later became an informant. The district attorney conducted an undercover operation out of Dr. Shoung's medical facility for approximately two years.

Paula Fong, a senior investigator for the district attorney's office worked undercover as an office administrator in Dr. Shoung's office to handle the fraudulent claims and marketing. Fong contacted attorneys' offices to market Dr. Shoung's practice. Upon instruction from an attorney who said a client's bill was too low, Fong falsified bills by increasing an existing bill to an amount specified by the attorney or by creating a new one. Fong then gave the falsified records to the attorney's office that had requested them. The medical bills were fabricated by adding extra treatments a patient had not received at the beginning or end of a patient's actual course of treatment, and by filling in gaps in the patient's actual medical history to make it appear as though the patient was treated more frequently and consistently, and tapering off toward the end of a course of treatment to reduce insurance companies' suspicions. Upon instruction from their attorney, the clients would then schedule a meeting with Fong at Dr. Shoung's clinic to perform multiple "sign-ins" of the fabricated bills.

Dr. Shoung treated both of the Changs for injuries suffered from the car accident. The Changs each received 18 treatments and signed in every time they arrived for a treatment at Dr. Shoung's clinic. Dr. Shoung generated medical reports and billings for each of the Changs. The final bill for Mrs. Chang was $2,370; Mr. Chang's final billing was $2,375. In October 2004, the Changs "felt better" and stopped seeing Dr. Shoung for treatments. In early November 2004, Sun contacted the Changs and instructed them to return to Dr. Shoung for more treatments because theirs was a "very major case." On November 6, 2004, the Changs returned to Dr. Shoung's office for a final treatment. Mrs. Chang knew she had been sent to Dr. Shoung's office to receive a treatment she did not believe was necessary. Dr. Shoung submitted the Changs' bill to Sun.

Sun's suspension and falsification of the Changs' medical records

Sun was suspended from the practice of law from January 13, 2005 until July 13, 2005.

On June 13, 2005 Sun contacted the Changs and learned they each had been treated about 20 times by Dr. Shoung. Sun said the Changs needed to return to Dr. Shoung for "'at least double of that'" number of treatments. Mr. Chang said he and his wife did not wish to return to Dr. Shoung because they were too busy, felt fine and the accident had happened a long time ago. But Sun was insistent that the Changs had "'such a big case'" and had not received enough treatments. He said he would speak with Dr. Shoung. Sun did not tell the Changs then, or ever, that he had been suspended from practicing law.

On June 15, 2005, Sun contacted Dr. Shoung. He said he wanted to discuss the Changs' billings. A meeting was scheduled for the next day.

On June 16, 2005, Fong and Dr. Shoung went to Sun's law firm in Arcadia to discuss the Changs' medical billings. In the lobby area or in a conference room, Fong picked up a business card which read, "Law Offices of Alexander F. Sun." Copies of Dr. Shoung's medical billings for Mrs. and Mr. Chang, reflecting the totals of $2,370 and $2,375, respectively, lay on the table stamped "void." The meeting between Sun, Fong and Dr. Shoung was recorded. During the meeting, Sun never mentioned his law license had been suspended.

At the outset, Sun said the Changs' case was a "good case, rear end," and observed the insurance company had already paid over $12,000 for property damage. He noted that sometimes, in "P.I." cases patients were uncooperative, but said the Changs were willing to "work together" and "do whatever attorneys or the doctors . . . tell them to do." Sun lamented to Dr. Shoung that it was "such a waste. We only have medical for $2,000" even though liability was uncontested and the property damage significant, "[s]o we have to do something." Sun said he had spoken to the Changs who were willing to see Dr. Shoung, but did not know the procedure. He mentioned that they had already returned to Dr. Shoung at his urging once after their treatments ended. He said he had

"put a stop, you know," was "still waiting for the . . . amended medical report," and had "[a]ctually, . . . never . . . submit[ted] it." Sun said that, "after consideration, [he] decided to contact Dr. Shoung to see if we can do something."

Reviewing the Changs' records, Sun noted that in 2004, they had only seen Dr. Shoung three times in late July, seven times in August, five times in September, and once each in October and November 2004. He said they should have gone at least 12 times per month. Fong agreed there was a "huge gap," and Sun asked her "[w]ell, maybe we can fill it in?" Fong said they could, and asked Sun the amount to which he wanted the billings to be increased. He replied "at least four or five thousand. . . . I don't care. Five or six thousand dollars, that's reasonable. Some doctor [sic], they make it seven or eight thousand dollars, but I think, under the situation, here . . . five thousand dollars is kind of reasonable."[1]

Sun observed that Fong had "experience," and said, "I don't need to, you know, to tell you how to prepare it." Sun observed that "based on [his] . . . experience, . . . with the insurance, they look at the medical bill . . . and at the property damage" in order to decide how much to pay. Fong agreed she knew what to do. But, she said, "before I do it. I don't like to talk to anyone unless . . . I know that we can trust them, especially the clients, ćause clients have a tendency to have a big mouth." Fong said she always talked to the attorney first to be sure she could trust the clients before they came in to sign the medical papers. That way, they understood they needed to keep quiet, because they knew if she got in trouble, they would too. Sun agreed, saying "[r]ight, we all gonna get in trouble." Fong told Sun she would not talk to his clients, that he had to do that and that if he failed to do so she would pretend she had no idea what they were talking about. Sun assured Fong "[t]hat's not gonna happen," and said he would speak to his clients. A meeting between Fong and the Changs was scheduled for the following day.

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[1] The higher the dollar amount of a medical billing, the more money to be received by an attorney, his clients and the chiropractor.

Sun contacted the Changs while Fong and Dr. Shoung were still in his office. He spoke with Mrs. Chang on speakerphone. He reminded her that she and her husband had a "major case" with property damage of $12,000, and said the medical treatments the Changs had received were inadequate. Sun told Mrs. Chang she needed to go to Dr. Shoung's office and sign her name for a "medical records adjustment" to sign for treatments she had not received, and said he had made the arrangements with Dr. Shoung who would "instruct [Mrs. Chang] on how to behave." Mrs. Chang told Sun she first needed to discuss the matter with her husband. Later, Sun contacted Mr. Chang. He told Mr. Chang that Dr. Shoung had agreed to adjust the Changs' medical records, and Sun wanted the Changs to go to the doctor's office the next day to sign papers and increase the number of treatments. Mr. Chang resisted at first, but agreed to go because Sun was insistent.

On June 17, 2005, the Changs met Fong at Dr. Shoung's office. Fong explained she had increased their bills to reflect 45 visits each rather than the 18 they actually attended, by filling in gaps with dates between the dates on which the Changs' began and ended treatment with Dr. Shoung. Fong said they could all get in a lot of trouble if anyone found out; Mr. Chang said he understood. Each of the Changs then signed 45 patient sign-in sheets, which Fong said she would give to Sun. The Changs understood they were signing for treatments they had not received, and that the documents would be submitted to an insurance company with the goal of extracting a larger financial settlement.[2] Using the new sign-in sheets, Fong created new fraudulent billings for the Changs for $5,235 and $5,075, which she delivered to Sun.

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[2] In January 2007, the Changs were arrested and charged with two counts each of insurance fraud in violation of section 550, subdivisions (a)(1) and (a)(5). Each of them pleaded guilty to one count, and reached a plea agreement with the district attorney which provided that, in exchange for their testimony against Sun, the criminal cases against them would be dismissed. In addition, the Changs received no recovery from any insurance company for the car accident.

An office manager for the firm hired by Zurich Insurance (Zurich) to investigate its insurance claims testified regarding documents received in the Changs' case. The company received a letter from Sun in August 2004, stating he represented the Changs. It also received a demand letter, dated June 27, 2005, signed by attorney Williams Owuor on the letterhead of "Law Offices of Alexander F. Sun, a Professional Law Corporation." The June 2005 letter was accompanied by substantiating documentation. There was no indication in the investigating company's files that Sun was suspended from the practice of law.

A claims supervisor from Zurich in charge of litigation files testified the investigating company had forwarded the representation and demand letters to Zurich. The demand letter, which was accompanied by billing statements from Dr. Shoung's clinic in the amounts of $5,235 and $5,075 for Mrs. And Mr. Chang, respectively, demanded settlements in excess of $25,000 for each of the Changs. Nothing in Zurich's files reflected that Sun had been suspended from practice.

Sun's other clients

(1) *Hong Yu Zhao*

After a workplace incident in March 2004 Hong Yu Zhao retained Sun to represent him. An application for adjudication of a claim was presented to the workers' compensation appeals board in Zhao's case in March 2004, but it was not signed by Sun. Zhao testified that Sun did not represent him during his case, nor did he defend his deposition; another attorney representing Sun's office did. Sun never told Zhao his license to practice law had been suspended.

The attorney who represented the employer in Zhao's workers' compensation action testified at trial that Zhao was represented by Sun throughout the matter, but that other attorneys attended Zhao's two depositions. The employer's attorney never spoke with Sun about the case, but did talk to Owuor. The employer's attorney testified he was never informed that Sun's license to practice law had been suspended. However, after testifying, the employer's attorney contacted the prosecutor. He said he had gone back to review his file in the Zhao matter and discovered a note from his secretary indicating

Sun's license was suspended. Both sides stipulated that the secretary had obtained the information regarding Sun's suspension from a copy service, but had not communicated the information directly to the attorney, although his law firm was on notice of Sun's suspension by virtue of the secretary's receipt of the information.

(2) Kai-Hsiang Chou

Kai-Hsiang Chou was in a car accident in Fall 2004. He retained Sun to represent him. Mr. Chou had no direct contact with Sun, and was never notified that Sun's license was suspended by the State Bar. Mr. Chou received a settlement check in his case on July 25, 2005.

Leslie Thruax, a claims investigator for Automobile Club of Southern California (AAA) testified AAA received a claim from Mr. Chou for a loss on October 29, 2004 and a representation letter from Sun, dated November 30, 2004. The file reflected that AAA sent two letters, in February and in April 2005, to Sun's office requesting documentation in Mr. Chou's case, and had received a demand letter on May 23, 2005. The demand letter was on the letterhead of Williams O. Owuor,[3] and a June 30, 2005 response to that letter, addressed to Owuor, was sent to the Law Offices of Alexander Sun. Thruax also testified that a note in the file made by another AAA employee reflected the employee's conversation with Sun on March 2, 2005. Thruax testified that nothing in AAA's file regarding Mr. Chou's claim reflected that AAA had been notified Sun's law license was suspended.

(3) Wang Feng Chou

Wang Feng Chou testified she was involved in a car accident in January 2005. She retained Sun to represent her. In October 2005, Mrs. Chou received two settlement checks totaling just over $3,500. Mrs. Chang was never informed that Sun's license to practice law had been suspended.

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[3] A June 13, 2005 supplement to the May 23 demand letter was sent to AAA, signed by Owuor on Sun's letterhead.

A prosecution coordinator for Travelers Insurance testified Travelers's file reflected receipt of three letters on behalf of Mrs. Chou between January 20 and July 8, 2005. The letters, written on Sun's letterhead, were all signed by Owuor. Nothing in Travelers's file reflected it was informed that Sun's license to practice was suspended anytime during Mrs. Chou's case.

Expert witnesses

Prosecution expert witness

Ronald Magnuson, formerly the chief trial counsel for the State Bar, testified as the prosecution's expert on the unauthorized practice of law. He testified that an individual must be licensed to practice law in California. An attorney whose license has been suspended may not engage in the practice of law.

In addition to going to court, the "practice of law" encompasses includes such things as (1) applying legal knowledge and skill to a set of facts in order to render a legal opinion or make a recommendation to or on behalf of a client as to how to proceed, (2) acting as a representative to enforce, protect or defend a client's rights or to counsel a client regarding his, her or its rights, (3) negotiating on behalf of a client, (4) advising a client, (5) the analysis of circumstances and the decision to take on a client's representation, and (6) discussing the value or merit of a given case with a client or potential client.

The "unauthorized practice of law" is committed by "holding [one]self out" as being, or communicating in some fashion that one is, entitled to practice law when one is not. The communication may be verbal or written, and may be active or passive (such as the failure to correct another's comment or stated belief). One may improperly hold him or herself out as practicing law by using the term "attorney at law" or signing documents bearing the appearance of being in association with offices bearing such a term. A suspended attorney who has control over, but fails to stop, a communication would be considered to be improperly holding himself or herself out as a legal practitioner, whereas one's failure to recall an extant advertisement would not. Thus, for example, a suspended attorney's failure to remove movable letters forming his or her name from a directory in a

building lobby would be considered to be holding oneself out, whereas a suspended attorney's failure to recall an advertisement in a printed phone book would not. The standard for "holding out" is viewed from the standpoint of how a reasonable member of the public would interpret a given communication or failure to communicate. The State Bar does not notify attorneys what is meant by "holding out" or the "practice of law."

In all cases in which an attorney's license to practice is suspended for 90 days or more, the California Supreme Court requires the suspended attorney to notify, as to all pending matters, his or her clients, co- and opposing counsel and courts of the suspension. (Cal. Rules of Court, rule 9.20 (rule 9.20).) The suspended attorney must inform the State Bar once such notification is complete. Sun filed a certificate with the State Bar indicating he had notified all his clients of the suspension of his license to practice law.

If an attorney who has established himself or herself as a corporation is suspended from the practice of law, the corporation may not independently carry on the practice, nor may the incorporated attorney have another attorney practice law on behalf of his or her corporation or law office. Any other attorney who signs a demand letter or other communication using letterhead of the suspended legal corporation is deemed to be holding himself or herself out as entitled to practice law on behalf of that corporation, even if the signatory is himself or herself properly licensed counsel.

Defense expert witness

Kenneth Lee Kazan, a practicing attorney for 27 years, testified as an expert in personal injury law. He reviewed Changs' file, records and accident video and determined the accident had involved a "major" or "severe" impact. Kazan opined that an attorney had an obligation to review the accuracy of a client's medical reports. He also testified that it was acceptable for an attorney to counsel a client who continued to experience pain to seek additional medical treatment, but the decision was ultimately the client's to make.

DISCUSSION

1. Unauthorized practice of law

Sun contends his conviction as to count three was improper because the theories under which he was prosecuted were legally insufficient to sustain a conviction for violation of Business and Professions Code section 6126, subdivision (b) (section 6126), and the jury was improperly instructed. We conclude otherwise.

Section 6126, subdivision (b) provides that "[a]ny person who . . . has been suspended from membership from the State Bar, . . . and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail . . . ." According to the third count of the indictment, Sun is alleged to have violated this statute between January 13 and July 13, 2005, when he "practice[d] and attempt[ed] to practice law and . . . unlawfully advertise[d] and [held] himself out as practicing and otherwise entitled to practice law after having been suspended from membership in the State Bar of California."

Sun maintains his conviction on this count must be reversed because he was prosecuted based on two legally insufficient theories: (1) that another attorney's signature on Sun's professional letterhead constitutes "holding out," and (2) that Sun's failure to comply with rule 9.20, a violation for which he was not charged, also constitutes "holding out."[4] We conclude otherwise.

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[4] In pertinent part rule 9.20 provides:

"The Supreme Court may include in an order . . . suspending a member of the State Bar . . . a direction that the member must. . . .

"(1) Notify all clients being represented in pending matters and any co-counsel of his or her . . . suspension . . . and his or her consequent disqualification to act as an attorney after the effective date of the . . . suspension. . . and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys; [¶] . . . [¶]

"(4) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the . . . suspension, . . . and file a copy of the notice with the court,

a. Sun engaged in the unlawful practice of law

First, Sun's argument ignores the fact that, independent of the charge that he improperly held himself out as a legal practitioner, as a "person . . . suspended from membership from the State Bar," he may be found guilty of violation of section 6126 for the unlawful "practice[] or attempt[] to practice law." (§ 6126, subd. (b).) Both forms of conduct are unlawful under section 6126. As stated by the Supreme Court in *In re Johnson* (1992) 1 Cal.4th 689, "[p]racticing law, *or* holding oneself out as practicing or entitled to practice law, while under suspension . . . is . . . unlawful (Bus. & Prof. Code, § 6126) . . . ." (*Id*. at p. 696, fn. 2, italics added; *People v. Vigil* (2008) 169 Cal.App.4th 8, 14.) Here the prosecution proceeded on the theories that, while suspended, Sun both engaged in the unlawful practice of law and held himself out as a legal practitioner. The prosecution's expert witness so testified and the jury was instructed accordingly.

The practice of law encompasses activities such as rendering legal opinions to clients, or recommending how a client should proceed, counseling a client regarding his or her legal rights or acting as his or her representative, whether or not a matter is pending before a court. (*State Bar of California v. Superior Court* (1929) 207 Cal. 323, 335; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 68.) The practice of law also includes engaging in settlement negotiations on a client's behalf. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 604; *In re Cadwell* (1975) 15 Cal.3d 762, 770.)

Sun provided legal advice and counsel to the Changs when he contacted them in mid-June to advise them to seek further medical treatment in order to raise the settlement value of their "big case," and advised them to return to Dr. Shoung's office to falsify their

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agency, or tribunal before which the litigation is pending for inclusion in the respective file or files. [¶] . . . [¶]

"**(c) Filing proof of compliance**

"Within such time as the order may prescribe after the effective date of the member's . . . suspension, . . . the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule. . . ."

medical records in order to obtain a more lucrative financial settlement from the insurance company. He acted as the Changs' legal representative when he met with Fong and Dr. Shoung at his law office and told them he had spoken with his clients who were willing to "do whatever attorneys or doctors . . . tell them to do," and that he had "decided to contact Dr. Shoung to see if we can do something" to increase the amount of the Changs' medical bills. Sun also acted as Mr. Chou's legal representative during conversations in March and June 2005 wherein he tried to negotiate a settlement on Chou's behalf with representatives of AAA. Sun does not dispute that he engaged in any of these activities, each of which occurred while his law license was suspended. Thus, the record contains ample evidence to support the jury's determination that Sun violated section 6126, subdivision (b) by engaging in the unauthorized practice of law.

b. Sun unlawfully "held himself out" as an attorney

Sun asserts the prosecution's theory that letters sent on his firm's letterhead and signed by another attorney and his failure to provide notice of his suspension constitutes unlawful "holding [him]self out as practicing or entitled to practice law," was legally insufficient. He argues that, (1) in contrast with the situation of a disbarred attorney, no specific regulation requires that an attorney who is merely suspended remove his name from his firm's masthead. (Bus. & Prof. Code § 6132 requires removal of the attorney's name from the letterhead within 60 days of his or her disbarment.)

The Attorney General argues that Business and Professions Code section 6132 governs only disbarred attorneys, and is not applicable here. Further, to the extent the statute implies that a firm with numerous attorneys listed on its masthead need not remove a single attorney's name during that attorney's suspension, such cannot be the case for an attorney like Sun, whose letterhead refers solely to him. In Sun's case, *any* use of letterhead bearing his name during the period of suspension is an improper representation that he is a practicing attorney.

Sun counters that, if the Attorney General's theory obtains, conduct which would be illegal if a suspended attorney worked as a sole practitioner or the sole named partner of a firm, would be legal if the same attorney worked for a firm comprised of more than

one named partner. Such treatment would impermissibly violate principles of due process notice, as it would create two sets of rules, with no notice to suspended attorneys they will be treated differently. Thus, Sun contends that the prosecutor's theory that another attorney's use of Sun's letterhead during Sun's suspension constitutes "holding out" on Sun's part in violation of section 6126, subdivision (b) was legally insufficient, and reversal is required unless it can be shown the jury relied on another theory.

This argument misses its mark. First, as discussed above, the jury could clearly have relied on the theory that Sun engaged in the unauthorized practice of law to find he violated section 6126, subdivision (b). Second, Magnuson's unrebutted testimony was that a suspended attorney unlawfully holds himself out as a legal practitioner if he communicates to another that he is entitled to practice law, whether by a writing or verbally, or actively or passively (e.g., by failing to correct another person's comment or stated belief). In addition, a suspended attorney's use of the term "attorney at law" is unlawful, as is a suspended attorney's failure to intercede and stop or correct a communication over which he has control. (See *In re Naney* (1990) 51 Cal.3d 186, 195 [suspended attorney impliedly "held himself out as a person entitled to practice law" when he submitted resume for position as in-house counsel; resume stated attorney was admitted to State Bar but failed to reflect he was suspended from practice and attorney did not mention his suspension during job interview]; *In re Cadwell*, *supra*, 15 Cal.3d at pp. 769–770 [suspended attorney employed by attorney as law clerk impliedly held himself out to both client and opposing counsel as a practicing attorney by: (1) meeting with a client on behalf of the law firm; (2) engaging in settlement negotiations with opposing counsel on that client's behalf; (3) signing letter to opposing counsel in employer attorney's name "by" suspended attorney; and (4) failing to clarify his status as legal assistant].)

Sun engaged in improper activities similar to those undertaken in *In re Naney* and *In re Cadwell.* In meetings or discussions with his clients the Changs and with Dr. Shoung and Fong, Sun impliedly held himself out as a practicing attorney and failed to correct the belief on the part of any of these individuals that he was entitled to practice

law. When he met with Dr. Shoung and Fong, Sun both implicitly and explicitly held himself out as a practicing attorney by inviting them to his office for the meeting where he provided a business card stating, "Law Offices of Alexander F. Sun." (Cf., *Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [Crawford & Crawford on legal stationary and window improperly implied law partnership where one attorney was disbarred].) In addition, Sun permitted numerous communications to be sent on his letterhead regarding matters concerning other clients who had retained him and whom Sun had not told about his suspension. One letter on Sun's letterhead, sent to an insurer on the Changs' behalf in an attempt to settle their claims and signed by another attorney, included as an attachment the aforementioned fabricated medical bills.

While suspended, Sun impliedly represented that he was entitled to practice law in communications with AAA. As of November 2004, Sun represented to AAA that Sun was Mr. Chou's attorney, representing Chou on a claim stemming from a Fall 2004 accident; AAA was never told of Sun's suspension. At least one letter to AAA on Mr. Chou's behalf was on Sun's letterhead (but signed by another attorney), and Sun also engaged in claims discussions on Mr. Chou's behalf. As to both of these instances, the jury could find Sun impliedly represented he was entitled to practice law by failing to correct the insurer's misapprehension that it was engaged in ongoing communications with "attorney Sun." (*In re Cadwell*, *supra*, 15 Cal.3d at pp. 769–770.)

Sun further held himself out as entitled to practice law when he retained attorneys to appear on his behalf in Zhao's case and to represent Zhao at his deposition during his period of suspension.[5] Neither the client nor opposing counsel in that case were notified of his suspension; both continued to believe Sun was Zhao's attorney. Similarly, the jury could find Sun was involved in sending the various letters—on his letterhead, pertaining to his clients and the specific matters for which those particular clients had retained his

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[5] Magnuson opined that a suspended attorney may not hire a contract attorney to represent his interests because it assumes the suspended lawyer is still entitled to practice law.

services—and infer that, by his involvement, Sun represented he remained entitled to practice law. Indeed, even if attorney Owuor prepared and sent the letters, it is not unreasonable for the jury to conclude he did so under Sun's direction or with Sun's consent, since Sun presumably retained control of his own letterhead and office files. Magnuson's unrebutted testimony was that an attorney who can but fails to stop or correct a communication that expresses his ability to practice law "holds himself out" as entitled to practice law. "Holding out" also occurs when a letter is sent on a suspended attorney's letterhead, even if the letter is signed by licensed counsel.

Viewing the evidentiary record in the light most favorable to the judgment, we find the jury could reasonably conclude Sun violated section 6126, subdivision (b) by engaging in the unauthorized practice of law and/or by holding himself out as a practicing attorney or as being entitled to practice law during the time he was suspended.

c. Jury instructions

On the count for the unauthorized practice of law, the trial court proposed to—and ultimately did—instruct the jury that, "'Holding [o]ut' includes conduct that gives a reasonable impression that [a] suspended attorney is practicing or entitled to practice law." Sun's counsel objected to this definition of "holding out," because the instruction's reference to a "reasonable impression" might confuse the jury as to the State's burden of proof of guilt beyond a reasonable doubt. On appeal, and without any reasoned argument or citation to supporting authority, Sun contends the trial court's instruction failed to "set forth the proper standard and did not adequately instruct the jury on the proper elements of the offense." He is mistaken.

To assess whether an instruction correctly conveys controlling law, we do not review it in artificial isolation, but consider all the jury instructions and trial record as a whole to determine whether there is a reasonable likelihood jurors understood the questioned instruction in the way appellant claims they did. (*Estelle v. McGuire* (1991) 502 U.S. 62, 72 [112 S.Ct. 475, 116 L.Ed.2d 385]; *People v. Holt* (1997) 15 Cal.4th 619, 677 ["Whether instructions are correct and adequate is determined by consideration of the entire charge to the jury."].) Specifically, we determine how the jury likely reasonably

understood the instruction, and whether the instruction, so understood, accurately reflects applicable law. (*People v. Warren* (1988) 45 Cal.3d 471, 487; see also *People v. Kelly* (1992) 1 Cal.4th 495, 525–526.)

We find no reasonable likelihood the jury was confused by the trial court's instruction. The prosecution's expert on the unauthorized practice of law testified that whether a suspended attorney is holding himself or herself out as a legal practitioner or one who is entitled to practice law must be viewed from the standpoint of a reasonable member of the lay public. Cases cited by the Attorney General, which address "holding out," in contexts other than an attorney's violation of section 6126, subdivision (b), also support the trial court's instruction that the issue is viewed from the perspective of how a layperson would "reasonably" view the conduct at issue. In *Cal. Water & Tel. Co. v. Public Util. Com.* (1959) 51 Cal.2d 478, the issue was whether a utility company had dedicated its service to a particular territory. The court stated: "Dedication is normally evidenced by some act which is reasonably interpreted and relied upon by the public as a 'holding out' or indication of willingness to provide services on equal terms to all who might apply." (*Id*. at p. 494.) In a similar vein, in *Vigli v. Davis* (1947) 79 Cal.App.2d 237, at issue was whether the defendant represented or "held out" some employees as its agents. The court held that a person reviewing one of the alleged agent's business cards would "reasonably get the impression" the purported agent was more than a tenant. (*Id*. at p. 248.)

"Although trial courts, generally, have a duty to define technical terms that have meanings peculiar to the law, there is no duty to clarify, amplify, or otherwise instruct on commonly understood words or terms used in statutes or jury instructions." (*People v. Griffin* (2004) 33 Cal.4th 1015, 1022.) If a phrase is commonly understood and is not used in a technical sense peculiar to the law, the trial court has no duty to instruct the jury on the meaning of the phrase in the absence of a request. (*People v. Estrada* (1995) 11 Cal.4th 568, 574; *People v. Rowland* (1992) 4 Cal.4th 238, 270–271 [no sua sponte duty to instruct on meaning of "'while engaged in'"].) "A word or phrase having a technical, legal meaning requiring clarification by the court is one that has a definition that *differs*

from its nonlegal meaning." (*Estrada*, at p. 574.) As Magnuson explained, "holding out" lacks a technical meaning.

There is no reasonable likelihood the jury was misled regarding the standard of proof. The prosecutor's argument stressed evidence that Sun held himself out as authorized to practice, as viewed from a layperson's perspective: "A suspended attorney also cannot hold himself or herself out as [a] practicing or entitled to practice law which is communicating the idea to a member of the public that they are entitled to practice law. You have to view it from the perspective of a member of the public, what would a reasonable person believe is going on based on the actions of the defendant or the inactions of the defendant? [¶] So in this case, we have the defendant representing several clients, none of them being aware that he's in fact suspended. But we know the defendant is not just holding himself out to these individuals as entitled to practice law, but he's actually working on their cases." The prosecutor described in detail Sun's actions and involvement as his clients' "cases are actually proceeding through the system, the claims are being processed." He gave legal advice, strategized regarding his clients' claims and orchestrated those claims through the negotiation process with insurance company representatives, met with Dr. Shoung and Fong to convince them to increase the monetary value of the Changs' case, and permitted letters regarding client matters to be sent on his letterhead while at no time disclosing that he could not then practice law. In addition to the instruction regarding the unauthorized practice of law, the trial court gave a separate instruction regarding reasonable doubt. Under these circumstances, we find no reasonable likelihood the jury could have misunderstood the instruction as Sun claims.

Our task is to determine whether the phrase "holding out" was used in a technical sense that would require different or clarifying instructions, "i.e., whether the jury would have difficulty in understanding the [instruction] without guidance." (*People v. Rodriguez* (2002) 28 Cal.4th 543, 547.) We conclude the phrase "holding out" is one that is commonly understood by English speakers and was not used in any technical sense. As a consequence, the court had no obligation to define the phrase further for the jury.

2. Admission of work product was harmless error

Sun maintains he was convicted on counts 1 and 2 based on evidence protected by the work product privilege.

Before trial, Sun's counsel moved in limine to exclude certain evidence from trial on the ground it was privileged work product. Specifically, his motion sought exclusion of the "audio taped and transcribed evidence of a meeting" among Sun, Dr. Shoung and Fong. Sun's attorney noted that, during that meeting, references were made to the Changs' "medical bills," and to that "report and the gaps between doctor visits documented in the report vs. the amount of visits the clients informed [Sun] they had made." He argued this evidence was protected attorney work product and the privilege, which attached to Sun, had not been waived. During the hearing on the motion, Sun's counsel acknowledged the crime/fraud exception for protection of work product, but argued it applies only when the attorney's services are sought to perpetrate a fraud, and there was no evidence the Changs retained Sun for that reason.[6]

Since 2005, the crime/fraud exception has provided that when an attorney is suspected of knowingly participating in a crime or fraud, the work product privilege does

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[6] We reject Sun's claim that his written statements were improperly admitted. The motion was specifically directed at verbal references, made during the June 16, 2005 meeting among Sun, Fong and Dr. Shoung to the Changs' medical reports and the gaps in services within that report. Sun's counsel clarified that fact when, at the hearing on the motion, the court asked what he specifically sought to exclude, and he responded it was "not documents," but the recorded conversation and that he was talking only about Sun's "verbal statements," not his writings.

To preserve an objection on appeal, a defendant must specify the grounds for objection at trial. (Evid. Code, § 353, subd. (a).) "'The reason for the requirement is manifest: a specifically grounded objection to a defined body of evidence serves to prevent error. It allows the trial judge to consider excluding the evidence or limiting its admission to avoid possible prejudice. It also allows the proponent of the evidence to lay additional foundation, modify the offer of proof, or take other steps designed to minimize the prospect of reversal. [Citation.]'" (*People v. Zapien* (1993) 4 Cal.4th 929, 979.) Sun objected solely to admission of verbal statements made during the meeting; any objection to his writings is forfeited by his failure to object to their admission below.

not apply in a criminal action "if the services of the lawyer were sought or obtained to enable . . . anyone to commit . . . a crime or fraud." (Code Civ. Proc., § 2018.050.) Sun asserts the trial court applied the wrong standard and expanded the statute to include not just instances in which an attorney's services are retained to commit fraud, but "also [to] include[] committing a fraud." As a result, he argues, the verbal statements made during his meeting with Fong and Dr. Shoung were improperly admitted.

We assume for purpose of discussion that Sun is correct; the error was harmless. Sun is not entitled to reversal unless the erroneous admission of evidence resulted in a miscarriage of justice. (Cal. Const., art. VI, § 13; Evid. Code, § 353; *People v. Breverman* (1998) 19 Cal.4th 142, 172–173.)

The specific verbal statements Sun contends were erroneously admitted are his (1) reference during the meeting to the fact that he "put a stop" on Dr. Shoung's medical report and was "still waiting for the amended medical report," and (2) observation that there were "several huge gaps" between the Changs' actual medical visits and his request that Fong "fill. . . in" those gaps to increase the bills. The Attorney General is correct, "these were extremely minor pieces of evidence that could not have had any discernable effect on the judgment."

The evidence in the record of Sun's guilt on the claims for insurance fraud related to the Changs is clear and substantial. He requested that Fong fabricate medical records to substantiate false claims he intended to submit to the insurance company on the Changs' behalf, and convinced the Changs to cooperate in that endeavor. Once the fabricated records were delivered to Sun, he orchestrated their submission to the insurer to substantiate his settlement demand. There is no reasonable probability Sun would have received a better result had the trial court excluded the identified work product. Accordingly, any error which occurred was harmless.

3. Sixth Amendment issues and evidentiary rulings

Sun asserts his Sixth Amendment right to confront witnesses was improperly restricted by the trial court's refusal to permit him to ask Dr. Shoung about her psychiatric commitment and by limitations the court imposed on questions he proposed to

ask Mrs. Chang. He also claims he was harmed by the trial court's rulings regarding the admission of certain documents. This argument fails.

a. Dr. Shoung's psychiatric commitment

After testifying before the grand jury, Dr. Shoung told a district attorney investigator she might harm herself. Dr. Shoung was involuntarily committed for 72 hours for a mental health evaluation. Before trial, the prosecutor moved in limine to exclude references to Dr. Shoung's psychiatric commitment arguing the evidence was inadmissible for purposes of impeachment. In opposing the motion, Sun's counsel conceded he did not intend to elicit psychiatric testimony and was "not trying to ask these questions to attack [Dr. Shoung's] credibility," but argued the evidence was relevant to Sun's defense of outrageous government conduct. Sun's counsel stated he wanted to ask Dr. Shoung "what happened, did you, in fact, as I understand it, it was 40, 50 Tylenol tablets that resulted in the District Attorney's Office putting her in there, and according to Dr. Shoung, trying to keep her in there longer than what was necessary, that's the real conduct. [¶] I don't intend on questioning her about what her symptoms are now, or anything, I just want the generic testimony that she tried to commit suicide, was hospitalized, . . . the District Attorney tried to keep her there longer, as well as some of the other things that have come out, that has occurred through the actions and conduct of the District Attorney . . . . , that's all." The court refused to admit the evidence stating: "you're not offering it for purposes of testing the credibility of the witness or her ability to tell the truth, I'm not going to permit it."

The court did not err. Sun argues the evidence regarding Dr. Shoung's psychiatric commitment was relevant to his defense that the government vastly overreached in this prosecution as evidenced by the district attorney's conduct toward Dr. Shoung and others. We agree with the trial court that no nexus was shown between mental health problems Dr. Shoung experienced after testifying before the grand jury, and the government's conduct toward Sun. The evidence was not relevant and was properly excluded. (*People v. Smithey* (1999) 20 Cal.4th 936, 973 [trial courts are vested with broad discretion to decide the relevance of evidence].)

b. The Changs' lifestyle

Sun's assertion of error in the exclusion of evidence he hoped to elicit from Mrs. Chang is similarly misplaced. During cross-examination, Sun attempted to ask Mrs. Chang if she was employed in June 2005. A relevance objection was sustained. Sun contends the court's ruling was erroneous. His counsel argued that, "[f]or purposes of cross-examination of the witness, given the plea agreement, as well as for purposes of establishing a motive that she may have had to participate in this, [he] believe[d] that evidence of her employment, income, family, lifestyle, is all going to be relevant on cross-examination." Sun's counsel also told the court that Mrs. Chang had been a real estate agent who did a lot of work in English. The prosecutor offered to stipulate that Mrs. Chang had been a real estate agent, and the court permitted Sun to inquire regarding Mrs. Chang's ability to read and speak English. The court excluded references to her family life or motive for entering into the plea agreement as irrelevant.

Sun argues the trial court's preclusion of questions as to why the Changs pleaded guilty was a violation of his right of confrontation and impermissibly restricted his right to cross-examine a witness concerning bias, interest or other motive. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673 [106 S.Ct. 1431, 89 L.Ed.2d 674]; Evid. Code, § 780, subd. (f).)

We find no error. The trial court permitted him to ask the Changs why they pleaded guilty. Mrs. Chang testified she did so because she believed she made a mistake. Her husband said he did it because it was good for him and he realized he did something wrong. Sun has failed to carry his burden to demonstrate error on appeal. (*People v. Carpenter* (1999) 21 Cal.4th 1016, 1046.) Sun's claim that the trial court failed to permit him to make inquiries into Mrs. Chang's lifestyle, family or income is both factually incorrect and irrelevant. The trial court did permit Sun to elicit evidence regarding Mrs. Chang's work in real estate, her degree of proficiency in English, her lack of income in 2005 and her family. Sun identifies no additional areas of inquiry or questions the court should have permitted him to ask, which were precluded; he fails to state how such

testimony would have been relevant if permitted. Sun failed to show that the trial court abused its discretion by excluding relevant evidence.

c. Evidence in AAA files as unauthenticated double hearsay

At trial, Truax, an AAA claims investigator, read into evidence portions of AAA's file regarding Mr. Chou's claim. According to Truax, Sun called an unnamed AAA employee who recorded notes of that conversation in a log. Those notes reflect conversations between an AAA employee and "attorney Sun" in March 2005 and in June 2005 regarding Mr. Chou's claim. Sun's objection to the evidence as unauthenticated multi-level hearsay was overruled; the court found the evidence to be a business record.

If this ruling was error it was harmless. On this record, there is no reasonable probability Sun would not have been convicted of insurance fraud or the unauthorized practice of law but for the admission of statements in the file in Mr. Chou's case. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

d. The Changs' excerpted claim file

Sun argues that two witnesses who represented insurance companies were asked by the district attorney before trial only to bring to trial the "portion" of their file the witness "thought was relevant." Then, at trial the district attorney pointed to the absence of references to Sun's suspension in the excerpted files as proof Sun never disclosed his suspension. Sun argues that the trial court's decision to permit a portion of the insurer's files to be admitted, and then to allow an inference to be drawn from the absence of evidence in those excerpts to Sun's suspension, was error.

This claim of error is forfeited by Sun's failure to raise specific objections at trial, either to the testimony or to the district attorney's use of only portions of the files.[7] (Evid. Code, § 353; *People v. Zapien*, *supra*, 4 Cal.4th at p. 979.)

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[7] Sun's assertion on appeal that the Changs' file was inadmissible as incomplete under Evidence Code section 356 was not raised below.

4. Improper joinder of claims

Sun's final contention of error is that the trial court erred when it denied his motion to sever trial of the insurance fraud counts from the count for unauthorized practice of law. We find the trial court acted within its discretion. The evidence was cross-admissible, neither set of charges was either particularly inflammatory or weak, and substantial benefits would result by trying the counts together.

In his motion Sun argued the two sets of crimes were improperly joined for trial because they were not of the same class, not connected in their commission, and the evidence regarding insurance fraud was more extensive than that supporting the claim of unauthorized practice of law, and the former was highly inflammatory. Sun's counsel conceded, however, that one letter, sent in June 2005, was cross-admissible.

The court found the counts were "inextricably intertwined." The same acts constituted both the unlawful practice of law and insurance fraud, and that a single cross-admissible letter was "all it takes" to properly join the counts. Moreover, it found "no danger" the jury would be confused. On that basis, the motion was denied.

The two sets of counts were of a common class and properly joined in the accusatory pleading and at trial. Both the insurance fraud and the unauthorized practice of law are nonviolent crimes involving common characteristics of deceit and fraud, and properly joined. (*People v. Koontz* (2002) 27 Cal.4th 1041, 1075; *Aydelott v. Superior Court* (1970) 7 Cal.App.3d 718, 722 ["offenses are 'of the same class' if they possess common characteristics or attributes"].)

Joinder is also appropriate if "two or more different offenses [are] connected together in their commission . . . ." (Pen. Code, § 954.) Offenses arising out of the same acts, transactions or events are connected in their commission. (*People v. Molano* (1967) 253 Cal.App.2d 841, 845, overruled on another ground by *People v. Roberts* (1992) 2 Cal.4th 271, 314.) Sun's meeting with Fong and Dr. Shoung, and his advice to the Changs to seek additional treatments and to go to Dr. Shoung's office to sign fabricated invoices formed the basis of the insurance fraud counts as well as the claim that Sun

acted as the Changs' attorney in connection with these incidents. Accordingly, the two sets of crimes were properly joined.

To determine whether a court abused its discretion by denying a motion to sever, we look at "the cross-admissibility of the evidence in the hypothetical separate trials." (*People v. Soper* (2009) 45 Cal.4th 759, 774.) "If the evidence underlying the charges in question would be cross-admissible, that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges." (*Id*. at p. 761.) Complete, "two-way" cross-admissibility is not necessary. (*Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1221.)

Here, the evidence of the two sets of crimes was not merely cross-admissible, it was virtually the same. The evidence that Sun counseled the Changs regarding their need to increase their medical treatment, met and negotiated with Dr. Shoung and Fong to raise the dollar amount of the medical bills, and advised the Changs to go to Dr. Shoung's office to sign those fabricated invoices demonstrated Sun engaged in insurance fraud. The same evidence is relevant to show Sun acted as the Changs' attorney during these events, even though he was suspended from practicing law. Similarly, the June 2005 demand letter sent on the Changs' behalf was evidence both of the insurance fraud and of Sun's unauthorized practice of law. The evidence of the two crimes was part and parcel of one another; on this basis alone, the trial court properly denied the motion to sever.

DISPOSITION

The judgment is affirmed.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.