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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2336

12 CAREMARK PHYSICIAN SERVICES, INC.
13 dba FRIENDLY HILLS HEALTHCARE
NETWORK PHARMACY, WEST COVINA
1300 S. Sunset Ave.
14 West Covina, CA 91791
C.A. Lance Piccolo, Director
15 James G. Connelly III, President
Thomas W. Holson, Chief Financial
16 Officer/Vice President
Thomas R. Shoman, Secretary
17 Dennis R. Owczarski, Treasurer

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER,
AS TO CLARENCE ELLIS STELTE
aka CLIFF STELTE, ONLY**

18 Original Pharmacy Permit No. PHY 41352

19 and

20 CLARENCE ELLIS STELTE, aka CLIFF
STELTE
21 1357 N. 2nd Ave.
Upland, CA 91786
22 Pharmacist-in-Charge

23 Original Pharmacist License No. RPH 29335

24 Respondents.

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26 In the interest of a prompt and speedy settlement of this matter, consistent with
27 the public interest and the responsibility of the Board of Pharmacy of the Department of
28 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and

1 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
2 disposition of the Accusation solely with respect to Clarence Ellis Stelte, aka Cliff Stelte. It does
3 not apply to Caremark Physician Services, Inc., dba Friendly Hills Healthcare Network
4 Pharmacy, West Covina, C.A. Lance Piccolo, Director; James G. Connelly II, President; Thomas
5 W. Holson, Chief Financial Officer/Vice President; Thomas R. Shoman, Secretary; Dennis R.
6 Owczarski, Treasurer.

7 PARTIES

8 1. Patricia F. Harris ("Complainant") is the Executive Officer of the Board of
9 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
10 by Bill Lockyer, Attorney General of the State of California, by Christina M. Thomas, Deputy
11 Attorney General.

12 2. Clarence Ellis Stelte, aka Cliff Stelte ("Respondent") is represented in this
13 proceeding by attorney Claudia H. Myles, whose address is P.O. Box 572891, Tarzana, CA
14 91357.

15 3. On or about January 9, 1975, the Board of Pharmacy issued Pharmacist
16 License No. RPH 29335 to Respondent. The License will expire on February 29, 2004, unless
17 renewed.

18 JURISDICTION

19 4. Accusation No. 2336 was filed before the Board of Pharmacy ("Board"),
20 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
21 and all other statutorily required documents were properly served on Respondent on September
22 5, 2001. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
23 Accusation No. 2336 are is attached as exhibit A and incorporated herein by reference.

24 ADVISEMENT AND WAIVERS

25 5. Respondent has carefully read, and understands the charges and
26 allegations in Accusation No. 2336. Respondent has also carefully read, and understands the
27 effects of this-Stipulated Settlement and Disciplinary Order.

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1 probation. If the final probation report is not made as directed, probation shall be extended
2 automatically until such time as the final report is made and accepted by the Board.

3 **3. Interview with the Board.** Upon receipt of reasonable notice,
4 Respondent shall appear in person for interviews with the Board upon request at various intervals
5 at a location to be determined by the Board. Failure to appear for a scheduled interview without
6 prior notification to Board staff shall be considered a violation of probation.

7 **4. Cooperation with Board Staff.** Respondent shall cooperate with the
8 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
9 compliance with the terms and conditions of his probation. Failure to comply shall be
10 considered a violation of probation.

11 **5. Continuing Education.** Respondent shall provide evidence of efforts to
12 maintain skill and knowledge as a pharmacist as directed by the Board.

13 **6. Notice to Employers.** Respondent shall notify all present and prospective
14 employers of the decision in case No. 2336 and the terms, conditions and restrictions imposed on
15 Respondent by the decision. Within 30 days of the effective date of this decision, and within 15
16 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor,
17 pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer
18 has read the decision in case No. 2336.

19 If Respondent works for or is employed by or through a pharmacy employment
20 service, Respondent must notify the direct supervisor, pharmacist-in-charge and/or owner at
21 every pharmacy of the terms and conditions of the decision in case number 2336 in advance of
22 Respondent commencing work at each pharmacy.

23 "Employment" within the meaning of this provision shall include any full-time,
24 part-time, temporary or relief or pharmacy management service as a pharmacist, whether the
25 Respondent is considered an employee or independent contractor.

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1 7. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
2 **Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
3 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-
4 in-charge of any entity licensed by the Board unless otherwise specified in this Order.

5 8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its
6 costs of investigation and prosecution in the amount of \$1,000. Respondent shall make said
7 payments as follows: Payment in full to be completed within the one-year period of probation.

8 The filing of bankruptcy by Respondent shall not relieve Respondent of his
9 responsibility to reimburse the Board its costs of investigation and prosecution.

10 9. **Probation Monitoring Costs.** Respondent shall pay the costs associated
11 with probation monitoring as determined by the Board each and every year of probation. Such
12 costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs
13 shall be considered a violation of probation.

14 10. **Status of License.** Respondent shall, at all times while on probation,
15 maintain an active current license with the Board, including any period during which suspension
16 or probation is tolled.

17 If Respondent's license expires or is cancelled by operation of law or otherwise,
18 upon renewal or reapplication, Respondent's license shall be subject to all terms of this probation
19 not previously satisfied.

20 11. **License Surrender while on Probation/Suspension.** Following the
21 effective date of this Decision, should Respondent cease practice due to retirement or health, or
22 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his
23 license to the Board for surrender. The Board shall have the discretion whether to grant the
24 request for surrender or take any other action it deems appropriate and reasonable. Upon formal
25 acceptance of the surrender of the license, Respondent will no longer be subject to the terms and
26 conditions of probation.

27 Upon acceptance of the surrender, Respondent shall relinquish his pocket license
28 to the Board within 10 days of notification by the Board that the surrender is accepted.

1 Respondent may not reapply for any license from the Board for three years from the effective
2 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
3 of the date the application for that license is submitted to the Board.

4 12. **Notification of Employment/Mailing Address Change.** Respondent
5 shall notify the Board in writing within 10 days of any change of employment. Said notification
6 shall include the reasons for leaving and/or the address of the new employer, supervisor or owner
7 and work schedule if known. Respondent shall notify the Board in writing within 10 days of a
8 change in name, mailing address or phone number.

9 13. **Tolling of Probation.** Respondent shall work at least 40 hours in each
10 calendar month as a pharmacist and at least an average of 80 hours per month in any six
11 consecutive months. Failure to do so will be a violation of probation. If Respondent has not
12 complied with this condition during the probationary term, and Respondent has presented
13 sufficient documentation of his good faith efforts to comply with this condition, and if no other
14 conditions have been violated, the Board, in its discretion, may grant an extension of
15 Respondent's probation period up to one year without further hearing in order to comply with
16 this condition.

17 14. **Violation of Probation.** If Respondent violates probation in any respect,
18 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation
19 and carry out the disciplinary order which was stayed. If a petition to revoke probation or an
20 accusation is filed against Respondent during probation, the Board shall have continuing
21 jurisdiction and the period of probation shall be extended, until the petition to revoke probation
22 or accusation is heard and decided.

23 If Respondent has not complied with any term or condition of probation, the
24 Board shall have continuing jurisdiction over Respondent, and probation shall automatically be
25 extended until all terms and conditions have been satisfied or the Board has taken other action as
26 deemed appropriate to treat the failure to comply as a violation of probation, to terminate
27 probation, and to impose the penalty which was stayed.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 5/24/02

BILL LOCKYER, Attorney General
of the State of California



CHRISTINA M. THOMAS
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

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CAREMARK PHYSICIAN SERVICES, INC.
dba FRIENDLY HILLS HEALTHCARE
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1300 S. Sunset Ave.

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Thomas R. Shoman, Secretary

Dennis R. Owczarski, Treasurer

Original Pharmacy Permit No. PHY 41352

and

CLARENCE ELLIS STELTE, aka CLIFF
STELTE

1357 N. 2nd Ave.

Upland, CA 91786

Pharmacist-in-Charge

Original Pharmacist License No. RPH 29335

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 27, 2002.

It is so ORDERED June 27, 2002.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By: _____

JOHN D. JONES
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 CHRISTINA M. NEBELING, State Bar No. 171168
Deputy Attorney General
3 California Department of Justice
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11 In the Matter of the Accusation Against:	Case No. 2336
12 CAREMARK PHYSICIAN SERVICES, INC.,	A C C U S A T I O N
13 dba FRIENDLY HILLS HEALTHCARE	
14 NETWORK PHARMACY, WEST COVINA	
15 1300 S. Sunset Ave.	
16 West Covina, CA 91791	
17 C.A. Lance Piccolo, Director	
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21 Thomas R. Shoman, Secretary	
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23 Original Pharmacy Permit No. PHY 41352	
24 and	
25 Clarence Ellis Stelte, aka Cliff Stelte	
26 1357 N. 2nd Ave.	
27 Upland, CA 91786	
Pharmacist-in-Charge	
Original Pharmacist License No. RPH	
29335	
Respondents.	

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26 ≡

1 Complainant alleges:

2 PARTIES

3 1. Patricia F. Harris ("Complainant") brings this Accusation solely in
4 her official capacity as the Executive Officer of the Board of Pharmacy, Department of
5 Consumer Affairs.

6 2. On or about January 6, 1996, the Board of Pharmacy issued
7 Original Pharmacy Permit Number PHY 41352 to Caremark Physician Services, Inc., a
8 corporation, doing business as Friendly Hills Healthcare Network Pharmacy, West
9 Covina ("Respondent Friendly Hills"). The address of record being 1300 South Sunset
10 Avenue, West Covina, CA 91791. The corporate officers, since January 6, 1996, are
11 shown as C.A. Lance Piccolo, Director of the Board; James G. Connelly III, President;
12 Thomas W. Holson, Chief Financial Officer and Vice-President; Thomas R. Shoman,
13 Secretary; and Dennis R. Owczarski, Treasurer. The Original Pharmacy Permit
14 Number was in full force and effect at all times relevant to the charges brought herein
15 until June 7, 2000, at which time said permit was canceled due to a change of
16 ownership and new permit number PHY44675 was issued.

17 On or about June 7, 2000 the Board of Pharmacy issued Original
18 Pharmacy Permit Number PHY 44675 to Familymeds, Inc., a corporation, doing
19 business as Familymeds Pharmacy. The address of record being 1300 South Sunset
20 Avenue, West Covina, CA 91791. The corporate officers, since June 7, 2000, are
21 shown as Edgardo Mercadante, President; Peter Evans, Vice-President; Gregg W.
22 Montgomery, Vice President; and Chester L. Latin, Vice President/Treasurer. Said
23 permit is in full force and effect until June 7, 2001.

24 On or about January 9, 1975, the Board of Pharmacy issued Original
25 Pharmacist License Number RPH 29335 to Clarence Ellis Stelte, also known as Cliff
26 Stelte (Respondent "Stelte") to practice pharmacy. Between January 6, 1996 through
27 June 23, 2000, Respondent Stelte was the Pharmacist-in-Charge. The original

1 Pharmacist License Number was in full force and effect at all times relevant to the
2 charges brought herein and will expire on February 28, 2002, unless renewed.

3 Further, as of June 7, 2000, Robert Terasawa, RPH 37268, has been the
4 Pharmacist-in-Charge.

5 STATUTES AND REGULATIONS

6 3. Business and Professions Code^{1/} section 118(b) provides that the
7 suspension, expiration, or forfeiture by operation of law of a license does not deprive
8 the Board of authority or jurisdiction to institute or continue with disciplinary action
9 against the license or to order suspension or revocation of the license, during the period
10 within which the license may be renewed, restored, reissued or reinstated.

11 4. Section 4300^{2/} of the Code (formerly section 4350) permits the
12 Board to take disciplinary action to suspend or revoke a license.

13 5. Pursuant to section 4301 of the Code (formerly section 4350.5) the
14 Board shall take action against any holder of a license who is guilty of unprofessional
15 conduct. Unprofessional conduct includes, but is not limited to:

16 (j) The violation of any of the statutes of California or of the United
17 States regulating controlled substances and dangerous drugs.

18 (n) Violating or attempting to violate, directly or indirectly, or assisting
19 in or abetting the violation of or conspiring to violate any provision or term of this
20 chapter or of the applicable federal and state laws and regulations governing pharmacy,
21 including the regulations established by the Board.

22
23 1. All further statutory references will be to the Business and Professions Code
24 unless otherwise specified.

25 2. The Pharmacy Act was reenacted and recodified effective January 1, 1997
26 (C.890, Stats. 1996). Sections 4350 and 4350.5 of the Business and Professions
27 Code were recodified as sections 4300 and 4301. All references are to the new
Code sections. Section 4 of Chapter 890 provides that the recodification of the
Pharmacy Law is to be construed as a continuation of the previous version of
Chapter 9 of the Code.

1 (o) Actions or conduct that would have warranted denial of a license.

2 6. Section 125.3 provides, in part, that the Board may request the
3 administrative law judge to direct any licentiate found to have committed a violation or
4 violations of the Licensing Act, to pay the Board a sum not to exceed the reasonable
5 costs of the investigation and enforcement of the case.

6 **CONTROLLED SUBSTANCE**

7 7. "Vicodin" is a brand name combination of Hydrocodone 5 mg. with
8 Acetaminophen 500 mg. It is a Schedule III narcotic controlled substance as defined by
9 Health and Safety Code section 11056(e)(4) and is categorized as a "dangerous drug"
10 pursuant to section 4022 of the Code.

11 8. "Vicodin ES" is a brand name combination of Hydrocodone 7.5 mg.
12 with Acetaminophen 750 mg. It is a Schedule III narcotic controlled substance as
13 defined by Health and Safety Code section 11056(e)(4) and is categorized as a
14 "dangerous drug" pursuant to section 4022 of the Code.

15 **FAILURE TO MAINTAIN RECORDS**

16 9. Section 4081(a) (formerly section 4232) of the Code, provides in
17 pertinent part, that all records or manufacture and of sale, purchase or disposition of
18 dangerous drugs or devices shall be at all times, during business hours, open to
19 inspection by authorized officers of the law, and shall be preserved for at least three
20 years from the date of making. Section 4081(a) provides that a pharmacy which
21 maintains a stock of dangerous drugs must maintain a current inventory. Section
22 4081(b) further provides that the owner or officer of any pharmacy shall be jointly
23 responsible for maintaining the records and inventory required under Section 4081.

24 10. Section 4332 of the Code provides, in pertinent part:

25 "Any person who fails, neglects, or refuses to maintain the records
26 required by Section 4081 or who, when called upon by an authorized officer or a
27 member of the Board, fails, neglects, or refuses to produce or provide the records within

1 a reasonable time, or who willfully produces or furnishes records that are false, is guilty
2 of a misdemeanor.”

3 11. Section 1718 of Title 16, California Code of Regulations, provides
4 that “current inventory” within the meaning of Code section 4081 includes the complete
5 accountability for all the pharmacy’s acquisitions and dispositions. Board regulation
6 1718 further provides that the controlled substance inventories required by Title 21,
7 Code of Federal Regulations, section 1304 shall be available for inspection upon
8 request for at least three (3) years after the date of the inventory.

9 12. Respondents and each of them, are subject to discipline pursuant to
10 Business and Professions Code sections 4300, 4301, and 4332 for unprofessional
11 conduct within the meaning of Code sections 4301 (j), 4301 (n), and 4301 (o), by
12 reasons of violations of Code section 4081(a) and Board Regulation 1718, for failing to
13 maintain a complete accountability of inventory in the following manner:

14 A. On or about June 30, 2000, the Board requested that an audit be
15 conducted to determine the actual amounts of missing controlled substances during the
16 period of May 1, 1999, to October 21, 1999.

17 B. On or about July 18, 2000, a copy of DEA inventory taken on
18 October 21, 1999, was provided to the Board by Pharmacy District Manager, C.S. along
19 with a diskette containing information that was reformatted and reprinted. Only the
20 format of the information was changed and none of the values or numbers were altered.
21 However, the names of the prescribers were omitted from the prescription list of Vicodin
22 usage.

23 C. The DEA inventory taken May 1, 1999 to October 21, 1999
24 showed the total purchases of generic and brand-name Vicodin products (attached as
25 Exhibit “A” (Board’s Exhibit “12”)) and the complete list of prescriptions filled for generic
26 and brand-name Vicodin products. (Attached as Exhibit “B” (Board’s Exhibit “13”)). In
27 addition, the DEA inventory revealed the purchases and amounts dispensed on

1 prescription and the amounts of missing generic and brand-name Vicodin. (Attached
2 as Exhibit "C" (Board's Exhibit "14")). Additionally, the DEA inventory showed that
3 18,776 tablets of generic Hydrocodone 5 mg./Acetaminophen 500 mg. were
4 unaccounted for. Furthermore, 1,849 tablets of generic Vicodin ES (Hydrocodone 7.5
5 mg./Acetaminophen 750 mg.) were also unaccounted for.

6 D. On July 21, 2000, a Violation Notice was issued to Respondents
7 for violations found during the investigation.

8 E. On October 13, 2000, a new DEA-106 Loss Report Form from
9 Respondent Friendly Hills was submitted with a date of August 10, 2000. The drugs on
10 the form did not match the audit results.

11 F. On October 16, 2000, an explanation was requested to clarify why
12 the losses on the second DEA-106 Loss Report were different than those submitted for
13 the investigation. District Manager O.S. responded with an explanation that the drugs
14 were "rounded" to the nearest 500-count bottle.

15 **FAILURE TO MAINTAIN ADEQUATE SUPERVISION**

16 13. Respondents and each of them, are subject to discipline pursuant
17 to Business and Professions Code sections 4300 and 4301, for unprofessional conduct
18 within the meaning of Code sections 4113(b), 4115(a), 4115(f) and 4116(a), in that
19 Respondents failed to maintain adequate visual supervision of former Pharmacy
20 Technician Julian Rubi, III, thereby resulting in losses of controlled substances as
21 follows:

22 A. From on or about October 10, 1999, to on or about October 16,
23 1999, former Pharmacy Technician, Julian Rubi, III, stole approximately 4 x 1000
24 generic Vicodin tablets (Hydrocodone 5 mg./Acetaminophen 500 mg.).

25 B. On or about June 29, 2000, the DEA loss report estimated an
26 amount of losses for generic Vicodin (5mg.) (6 x 500 - tablet size bottles = 3,000
27 tablets).

