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Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES THOMAS MC COY 720 W. Crescent Ave. Redlands, CA 92373-6751 Pharmacist License No. RPH 35826 Respondent.	Case No. 2833 OAH No. L-2005100115 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Gillian E. Friedman, Deputy Attorney General.

2. Respondent James Thomas Mc Coy (Respondent) is represented in this proceeding by attorney Mark A. Levin, whose address is Trident Center, 11377 Olympic Boulevard, 5th Floor Los Angeles, California 90064-1683.

3. On or about August 28, 1980, the Board of Pharmacy issued Pharmacist License No. RPH 35826 to James Thomas Mc Coy. The License was in full force and effect at

all times relevant to the charges brought in Accusation No. 2833 and will expire on December 31, 2005, unless renewed.

JURISDICTION

4. Accusation No. 2833 was filed before the Board of Pharmacy, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 6, 2005. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2833 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2833. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 2833, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist License.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could

establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board of Pharmacy's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board of Pharmacy may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 35826 issued to Respondent James Thomas Mc Coy is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state and federal agency which involves Respondent's license or which is related to the practice

of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.

2. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

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

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

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

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in Accusation No. 2833 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in Accusation No. 2833.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number Accusation No. 2833 in advance of the Respondent commencing work at each pharmacy.

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

7. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor. Respondent shall not be the pharmacist-in-charge of any entity licensed by the Board, except as set forth in paragraph 19 below.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $8,000. Said payments shall be made on a quarterly basis, with all payments to be completed prior to the completion of the probation period.

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

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

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

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

11. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his license to the Board for surrender. The Board shall have the discretion whether to grant

the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish his pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

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

13. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of 40 hours in each calendar month as a pharmacist and at least an average of 80 hours per month in any six consecutive months in California. Failure to do so will be a violation of probation. Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

> "Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code.

14. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke

probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

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

15. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

16. **Rehabilitation Program - Pharmacists Recovery Program (PRP).** Within 30 days of the effective date of this decision, Respondent shall contact the Pharmacists Recovery Program for evaluation and shall successfully participate in and complete the treatment contract and any subsequent addendums as recommended and provided by the PRP and as approved by the Board. The costs for PRP participation shall be borne by the Respondent.

If Respondent is currently enrolled in the PRP, said participation is now mandatory and is no longer considered a self-referral under Business and Professions Code section 4363, as of the effective date of this decision. Respondent shall successfully participate in and complete his current contract and any subsequent addendums with the PRP. Probation shall be automatically extended until Respondent successfully completes his treatment contract. Any person terminated from the program shall be automatically suspended upon notice by the Board. Respondent may not resume the practice of pharmacy until notified by the Board in writing. The Board shall retain jurisdiction to institute action to terminate probation for any violation of this term.

17. **Random Drug Screening.** Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.

The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

18. **Abstain from Drugs and Alcohol Use.** Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the Respondent.

19. **Consultant for Pharmacist-in-Charge.**

Respondent shall not supervise any intern pharmacist, perform the duties of a preceptor or serve as a consultant to any entity licensed by the Board. In the event that the Respondent is currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an independent consultant at its own expense who shall be responsible for reviewing pharmacy operations on a monthly basis for compliance by Respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by Respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the Board and whose name shall be submitted to the Board for its prior approval within 30 days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at any pharmacy of which he is not the current PIC. The Board may, in case of an employment change by Respondent or for other reasons as deemed appropriate by the Board, preclude the Respondent from acting as a pharmacist-in-charge.

20. **Tolling of Suspension.** If Respondent leaves California to reside or practice outside this state, for any period exceeding 10 days (including vacation), Respondent

must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state - or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period.

Respondent shall not practice pharmacy upon returning to this state until notified by the Board that the period of suspension has been completed.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Mark A. Levin. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: May 12th, 2006.

James T. McCoy
JAMES THOMAS MC COY
Respondent

I have read and fully discussed with Respondent James Thomas Mc Coy the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: May 12, 2006.

Mark A. Levin
MARK A. LEVIN
Attorney for Respondent

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ENDORSEMENT

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

DATED: 5/16/06.

BILL LOCKYER, Attorney General
of the State of California

GILLIAN E. FRIEDMAN
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2004602584
Stipulation.wpd

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES THOMAS MC COY 720 W. Crescent Ave. Redlands, CA 92373-6751 Pharmacist License No. RPH 35826 Respondent.	Case No. 2833 OAH No. L-2005100115

DECISION AND ORDER

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

This Decision shall become effective on August 24, 2006.

It is so ORDERED July 25, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

Exhibit A

Accusation No. 2833

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Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JAMES THOMAS MC COY 720 W. Crescent Ave. Redlands, CA 92373-6751 Original Pharmacist License No. RPH 35286 Respondent.	Case No. 2833 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about August 28, 1980, the Board of Pharmacy issued Original Pharmacist License No. RPH 35826 to James Thomas Mc Coy (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2005, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

5. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

. . . .

"(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board."

6. Section 4060 of the Code states, in pertinent part, that:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian."

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7. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section."

8. Health and Safety Code section 11158, subdivision (a), states:

"Except as provided in Section 11159 or in subdivision (b) of this section, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter."

9. Health and Safety Code section 11170 states: "No person shall prescribe, administer, or furnish a controlled substance for himself."

10. Health and Safety Code section 11171 states: "No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division."

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11. Health and Safety Code section 11173, subdivision (a), states:

"No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

12. California Code of Regulations, title 16, section 1718, states:

"Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332. The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

13. Section 118, subdivision (b), provides that the suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the license or to order suspension or revocation of the license, during the period within which the license may be renewed, restored, reissued or reinstated.

14. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

15. CONTROLLED SUBSTANCE

"Sublimaze," is brand name for Fentanyl. It is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(8) and is categorized as a "dangerous drug," pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Current Inventory)

16. Respondent is subject to disciplinary action under sections 4300 and 4301(j) and (o) of the Business and Professions Code, for unprofessional conduct, for violating Business and Professions Code section 4081, subdivisions (a) and (b), in conjunction with

California Code of Regulations, title 16, section 1718, in that between March 17, 2003 and December 11, 2003, while employed as the pharmacist-in-charge at Loma Linda University Community Hospital, Loma Linda, California (LLUCH), Respondent failed to ensure that complete and accurate records were maintained for the current inventory of Fentanyl, a Schedule II Controlled Substance. The poor record keeping of the hospital and lack of supervision of technicians while performing inventory duties over controlled substances, allowed irregularities and discrepancies in the inventory to go unnoticed for at least 9 months.

SECOND CAUSE FOR DISCIPLINE

(Obtaining a Controlled Substance by Fraud or Deceit)

17. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivision (f) of the Business and Professions Code, for unprofessional conduct, for violating Health and Safety Code section 11173, subdivision (a)(1) and (2), while employed as the pharmacist-in-charge at LLUCH, Respondent obtained Fentanyl by fraud, deceit, or concealment, for his personal use, without a prescription from an authorized prescriber. Respondent took Fentanyl from LLUCH by concealment, for his personal use, without authorization or permission.

THIRD CAUSE FOR DISCIPLINE

(Furnishing or Self Administration of a Controlled Substance Without a Prescription)

18. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivisions (j) and (o) of the Business and Professions Code, for unprofessional conduct, for violating Business and Professions code section 4060 and Health and Safety Code sections 11350, subdivision (a), 11170, and 11171, in that on or about October 7, 2003, Respondent tested positive for Fentanyl on October 7, 2003, which indicated self-administration of Fentanyl by Respondent.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing a Controlled Substance Without a Prescription)

19. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivisions (j) and (o) of the Business and Professions Code, for unprofessional conduct, for

violating Business and Professions code section 4060 and Health and Safety Code sections 11350, subdivision (a), 11158(a), in that on or about October 7, 2003, Respondent tested positive for Fentanyl, when he did not have a prescription from an authorized prescriber for this drug.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Original Pharmacist License No. RPH 35826 to James Thomas Mc Coy;

2. Ordering James Thomas Mc Coy to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 5/2/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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