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Attorneys for Complainant

2004 NOV 10 P 12:12

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

In the Matter of the Accusation Against: WILLIAM G. MCFADDEN DBA CLARK'S DRUG STORE PHARMACY, INC. 2126 Solano Street Corning, CA 96021 Pharmacy Permit No. PHY 36175 Pharmacist License No. RPH 29744 Respondent.	Case No. 2752 OAH No. N2004070506 **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 Kent D. Harris, Deputy Attorney General.

2. Respondent William G. McFadden (Respondent) is represented in this proceeding by attorney John W. Berger, Esq., whose address is 521 Park Avenue, Laguna Beach, California 92651.

3. On or about February 23, 1990, the Board of Pharmacy issued Pharmacy Permit No. PHY 36175 to William G. McFadden, dba Clark's Drug Store Pharmacy, Inc. (Respondent). The Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 2752 and will expire on February 1, 2005, unless renewed.

4. On or about August 4, 1975, the Board of Pharmacy issued Pharmacist License No. RPH 29744 to William G. McFadden, dba Clark's Drug Store Pharmacy, Inc. (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2752 and will expire on March 31, 2005, unless renewed.

JURISDICTION

5. Accusation No. 2752 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 28, 2004. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2752 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2752. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. 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.

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 2752.

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. 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.

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

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 36175 issued to Clark's Drug Store Pharmacy, Inc., and Pharmacist License No. RPH 29744 issued to Respondent William G. McFadden are revoked. However, the revocations are stayed and Respondents are placed on probation as follows: Clark's Drug Store Pharmacy, Inc. PHY 36175 for three (3) years and William G. McFadden , Pharmacist License No. RPH 29744 for five (5) years on the following terms and conditions.

(BOTH RESPONDENTS)

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 case number 2752 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 case number 2752.

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 2752 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. **Notice to Employees.** Respondent shall, upon or before the effective date of this decision, ensure that all employees involved in permit operations are made aware of all the terms and conditions of probation, either by posting a notice of the terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout the probation

period. Respondent shall ensure that any employees hired or used after the effective date of this decision are made aware of the terms and conditions by posting a notice, circulating a notice, or both.

"Employees" as used in this provision includes all full time, part time, temporary and relief employees and independent contractors employed or hired at any time during probation.

8. **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, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order. After one (1) year the Board may reevaluate this provision with respect to respondent McFadden being PIC for respondent Clarks' Drug Store and consider allowing respondent McFadden to be PIC with a quarterly revioew by a board approved consulting pharmacist.

9. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $14,000.00. Respondent shall make payments as follows: Quarterly.

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

10. **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.

11. **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 canceled 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.

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12. **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.

13. **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.

14. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy in California, 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.

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15. **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.

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

17. **Report of Controlled Substances.** Respondents shall submit quarterly reports to the Board the total acquisition and disposition of such controlled substances as the Board may direct. Respondents shall specify the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer, etc.) of such controlled substances. Respondents shall report on a quarterly basis or as directed by the Board. The report shall be delivered or mailed to the Board no later than 10 days following the end of the reporting period.

(Respondent McFadden only)

18. **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.

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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.

19. **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.

20. **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.

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21. **Supervised Practice.** Respondent shall practice only under the supervision of a pharmacist not on probation with the Board. Respondent shall not practice until the supervisor is approved by the Board. The supervision shall be, as required by the Board, either:

Continuous - 75% to 100% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

Daily Review - Supervisor's review of probationer's daily activities within 24 hours

Within 30 days of the effective date of this decision, Respondent shall have his supervisor submit notification to the Board in writing stating the supervisor has read the decision in case number 2752 and is familiar with the level of supervision as determined by the Board.

If Respondent changes employment, Respondent shall have his new supervisor, within 15 days after employment commences, submit notification to the Board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number 2752 and is familiar with the level of supervision as determined by the Board.

Within 10, days of leaving employment, Respondent shall notify the Board in writing.

22. **No Ownership of New Premises.**

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the Board. If Respondent currently owns or has any legal or beneficial interest in, or serves as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board, Respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective of this decision.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John W. Berger, Esq.. I understand the stipulation and the effect it will have on my Pharmacy Permit, and 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: 10/21/04

WILLIAM G. MCFADDEN
Respondent

I have read and fully discussed with Respondent William G. McFadden the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/21/04

JOHN W. BERGER, ESQ.
Attorney for Respondent

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: _____

BILL LOCKYER, Attorney General
of the State of California

KENT D. HARRIS
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: 03SR1110-SA2004100397
McFadden stipulation.wpd

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John W. Berger, Esq.. I understand the stipulation and the effect it will have on my Pharmacy Permit, and 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: _____.

_____
WILLIAM G. MCFADDEN
Respondent

I have read and fully discussed with Respondent William G. McFadden the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____.

_____
JOHN W. BERGER, ESQ.
Attorney for Respondent

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: 11/8/04.

BILL LOCKYER, Attorney General
of the State of California

_____
KENT D. HARRIS
Deputy Attorney General

Attorneys for Complainant

DOJ Docket/Matter ID Number: 03583110-SA2004100597
McFadden stipulation.wpd

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

In the Matter of the Accusation Against: DBA CLARK'S DRUG STORE PHARMACY, INC. WILLIAM G. MCFADDEN 2126 Solano Street Corning, CA 96021 Pharmacy Permit No. PHY 36175 Pharmacist License No. RPH 29744 Respondent.	Case No. 2752 OAH No. N2004070506

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 January 17, 2005.

It is so ORDERED December 17, 2004.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2752

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Attorneys for Complainant

2004 NOV 10 P1:12

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

In the Matter of the Accusation Against: WILLIAM G. MCFADDEN P.O. Box 560 Corning, CA 96021 Pharmacist License No. RPH 29744 and CLARK'S DRUG STORE PHARMACY, INC. 2126 Solano Street Corning, CA 96021 William G. McFadden, owner, Pharmacist-in-Charge Pharmacy Permit No. PHY 36175 Respondent.	Case No. 2152 **ACCUSATION**

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 February 23, 1990, the Board of Pharmacy issued Pharmacy

Permit Number PHY 36175 to William G. McFadden, dba Clark's Drug Store Pharmacy, Inc. (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on February 1, 2005, unless renewed.

3. On or about August 4, 1975, the Board of Pharmacy issued Pharmacist License Number RPH 29744 to William G. McFadden, Inc. (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2005, unless renewed. At all times relevant herein Respondent William G. McFadden has also been Pharmacist-in-Charge of Clark's Drug Store Pharmacy, Inc.

JURISDICTION

4. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws:

BUSINESS AND PROFESSIONS CODE

5. Section 4301 of the Code states in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct ... Unprofessional conduct shall include, but is not limited to, any of the following:

...

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

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

...

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter... the record of conviction shall be conclusive evidence

only of the fact that the conviction occurred... A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision.

"(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 4081 of the Code states in pertinent part:

"(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 ... pharmacy... who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of any pharmacy...shall be jointly responsible, with the pharmacist-in-charge ... for maintaining the records and inventory described in this section.

7. Section 4327 of the Code states in pertinent part:

"Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

8. Section 125.3 of the Code provides, 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.

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CALIFORNIA CODE OF REGULATIONS

9. California Code of Regulations, title 16, section 1714 states in pertinent part:

"(e) The pharmacy owner, the building owner or manager, or a family owner of a pharmacist owner(but not more than one of the aforementioned) may possess a key to the pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key to a pharmacist or 2) providing access in case of emergency. An emergency would include fire, flood, or earthquake. The signature of the pharmacist-in-charge shall be present in such a way that the pharmacist may readily determine whether the key has been removed from the container."

10. California Code of Regulations, title 16, section 1717, states in pertinent part:

...

"(b) In addition to the requirements of Section 4036, Business and Professions Code, the following information shall be maintained for each prescription on file and shall be readily retrievable:

...

"(3) If a prescription for a drug or device is refilled, a record of each refill, quantity dispensed, if different, and the initials or name of the dispensing pharmacist.

...

"(g) The pharmacy must have written procedures that identify each individual pharmacist responsible for the filling of a prescription and a corresponding entry of information into an automated data processing system, or a manual record system, and the pharmacist shall create in his/her handwriting or through hand-initializing a record of such filling, not later than the beginning of the pharmacy's next operating day. Such record shall be maintained for at least three years."

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11. California Code of Regulations, title 16, section 1718, states in pertinent part:

"'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."

12. California Code of Regulations, title 16, section 1764, states:

"No pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient or his or her authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information."

HEALTH AND SAFETY CODE

13. Health and Safety Code section 11170 states in pertinent part that no person shall prescribe, administer, or furnish a controlled substance for himself.

CIVIL CODE

14. Civil Code section 56.10 provides in pertinent part that:

" No provider of ...health care...or contractor shall disclose medical information regarding a patient...without first obtaining an authorization..."

15. Civil Code section 56.101 provides in pertinent part that:

"Every provider of health care...pharmaceutical company, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records shall do so in a manner that preserves the confidentiality of the information contained therein..."

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DRUGS

16. **"Norco "** is the brand name for Hydrocodone/Acetaminophen, and is a dangerous drug pursuant to Business and Professions Code section 4022, and a schedule III controlled substance used for relief of pain.

17. **"Hycodan"** is the brand name for Hydrocodone/Homatropine (aka Hydromet), and is a dangerous drug pursuant to Business and Professions Code section 4022, and schedule III controlled substance used for cough relief.

18. **"Restoril"** is the brand name for Temazepam, and is a dangerous drug pursuant to Business and Professions Code section 4022, and a schedule IV controlled substance used as a sleep aid.

19. **"Xanax "** is the brand name for Alprazolam, and is a dangerous drug pursuant to Business and Professions Code section 4022, and a schedule IV controlled substance used as an anti-anxiety drug.

20. **"Lipitor"** is the brand name for Atorvastatin and is a dangerous drug pursuant to Business and Professions Code section 4022, used to lower cholesterol.

21. **"Avandamet"** is the brand name for Rosiglitazone with metformin and is a dangerous drug pursuant to Business and Professions Code section 4022, used for Glycemic control.

22. **"Aciphex"** is the brand name for ARabeprazole and is a dangerous drug pursuant to Business and Professions Code section 4022, used for ulcer/acid reflux.

23. **"Avapro"** is the brand name for Irbesartan and is a dangerous drug pursuant to Business and Professions Code section 4022, used for hypertension.

24. **"Avandia"** is the brand name for Rosiglitazone and is a dangerous drug pursuant to Business and Professions Code section 4022, used for glycemic control.

25. **"Prevacid"** is the brand name for Lansoprazole and is a dangerous drug pursuant to Business and Professions Code section 4022, used to for ulcer/acid reflux.

26. **"Soma"** is the brand name for Carisoprodol and is a dangerous drug pursuant to Business and Professions Code section 4022, used as a muscle relaxant.

FIRST CAUSE FOR DISCIPLINE

(Unauthorized disclosure of medical information)

27. Respondent is subject to disciplinary action under Business and Professions Code(B&P) section 4301 for general unprofessional conduct in that he violated Civil Code section 56.10 and California Code of Regulations (CCR) section 1764 as follows:

A. On or about 3/11/03 respondent was repeatedly observed engaging in drug consultations with clients in a non-confidential manner.

B. On or about 3/11/03 respondent disposed of confidential patient specific medical information in his dumpster where it was easily observable and retrievable by unauthorized persons.

SECOND CAUSE FOR DISCIPLINE

(Inappropriate disposal of medical records)

28. Respondent is subject to disciplinary action under B&P Code section 4301 for general unprofessional conduct in that he violated Civil Code section 56.101 as follows:

A. On or about 3/11/03 respondent failed to properly destroy or dispose of confidential medical information in such a way that the confidentiality was preserved in that patient specific information was found easily retrievable in the dumpster behind his pharmacy.

THIRD CAUSE FOR DISCIPLINE

(Failure to Identify Filing Pharmacist)

29. Respondent is subject to disciplinary action under CCR section 1717(b)(3) and 1717(g) for failing to provide for, and to actually identify the individual pharmacists refilling prescriptions at Clark's Drug store Pharmacy as follows:

A. On or about 3/11/03 a pharmacy inspection revealed that respondent had failed to maintain refill logs that identified each individual pharmacist responsible for the filling of a prescription and on which the filling pharmacist in his/her handwriting or through hand-initializing had created a record of such filing.

FOURTH CAUSE FOR DISCIPLINE

(Furnishing Controlled substances for self)

30. Respondent is subject to disciplinary action under B&P section 4301(j) and Health & Safety Code (H&S) section 11170, in that between 3/1/03 and 10/21/03 he furnished to himself his own prescriptions for controlled substances as follows:

A. Temazepam 15 mg (generic Restoril);

B. Alprazolam .25mg (generic Xanax);

C. Hydrocodone/acetaminophen 10/325mg (generic Norco).

FIFTH CAUSE FOR DISCIPLINE

(Dispensing while under the influence)

31. Respondent is subject to disciplinary action under B&P sections 4327 and 4301(h) in that by his own admission, while on duty, he sold, dispensed and/or compounded while under the influence of generic Norco, generic Hycodan and/or alcoholic beverages and possibly other dangerous drugs.

SIXTH CAUSE FOR DISCIPLINE

(Failure to maintain Pharmacy Security)

32. Respondent is subject to disciplinary action under CCR section 1714(e) in that on and before 3/11/03 respondent failed to maintain the pharmacy security by leaving the extra key to the pharmacy in the employee bathroom unsecured and accessible to anyone using the bathroom.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to maintain Complete accountability for Dangerous Drug inventory)

33. Respondent is subject to disciplinary action under CCR section 1718 and B&P section 4081 in that audits of his controlled substances and dangerous drug purchases and dispensing between the dates of 10/21/02 and 10/21/03 revealed the following:

A. Losses of generic Norco, generic Hycodan, generic Restoril, generic Xanax, generic Soma, and Prevacid;

B. Overages of Lipitor 20 mg, Lipitor 40 mg, Avandamet 4/500, Aciphex 20, Avapro 150mg, and Avandia 4mg;

34. Respondent is further subject to disciplinary action under CCR section 1718 and B&P section 4081 in that he failed to maintain and/or provide invoices requested for the audit, in that approximately 50 invoices were not provided regarding purchases and dispensing between the dates of 10/21/02 and 10/21/03.

EIGHTH CAUSE FOR DISCIPLINE

(Conviction of substantially related crime)

35. Respondent is subject to disciplinary action under B&P section 4301(I) in that on or about 12/14/1993 he pled Nolo Contendere to one count of Vehicle Code section 23152(b) (Driving with blood alcohol of .08% or greater) in the case of *People v. McFadden, William G.*; Tehema County Superior Court case no. SCR13972. Said crime is substantially related to the qualifications, functions, and duties of a licensed Pharmacist.

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:

A. Revoking or suspending Pharmacy Permit Number PHY 36175, issued to William G. McFadden, dba Clark's Drug Store Pharmacy, Inc.;

B. Revoking or suspending Pharmacist License Number RPH 29744, issued to William G. McFadden;

C. Ordering William G. McFadden 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;

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

DATED: 6/21/04

P. F. Harris

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

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McFadden accusation.wpd
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