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8 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3029

12 FALLBROOK PHARMACY, INC.  
dba FALLBROOK PHARMACY  
13 TIP CLEMENTS, President  
Sandra Clements, Vice-President  
14 Richard Clements, Secretary  
343 E Alvarado  
15 Fallbrook, CA 92028

OAH No. L-2007020384

**STIPULATED REVOCATION OF  
LICENSE AND PHARMACY  
PERMITS AND ORDER**

16 Original Pharmacy Permit No. PHY 38260

17 and

18 FALLBROOK PHARMACY, INC.  
dba FALLBROOK PHARMACY #2  
19 TIP CLEMENTS, President  
Sandra Clements, Vice-President  
20 Richard Clements, Secretary  
343 E. Alvarado, Ste. C  
21 Fallbrook, CA 92028

22 Original Pharmacy Permit No. PHY 39905

23 and

24 TIP CLEMENTS, RPH  
343 E Alvarado #A  
25 Fallbrook, CA 92028

26 Original Pharmacist License No. RPH 21503

27 Respondents.

28

1 In the interest of a prompt and speedy resolution of this matter, consistent with the public  
2 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs  
3 the parties hereby agree to the following Stipulated Revocation of License and Pharmacy Permits  
4 and Order, which will be submitted to the Board for approval and adoption as the final  
5 disposition of the Second Amended Accusation.

6 PARTIES

7 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
8 She brought this action solely in her official capacity and is represented in this matter by Edmund  
9 G. Brown, Jr., Attorney General of the State of California, by Susan Fitzgerald, Deputy Attorney  
10 General.

11 2. Tip Clements, individually and as President of Fallbrook, Inc., doing business as  
12 Fallbrook Pharmacy and also as Fallbrook Pharmacy #2 is represented in this proceeding by  
13 attorney Byron Gross, whose address is Hooper, Lundy & Bookman, Inc., 1875 Century Park  
14 East, Suite 1600, Los Angeles, CA 90067.

15 3. On or about December 11, 1992, the Board of Pharmacy issued Original  
16 Pharmacy Permit Number PHY 38260 to Fallbrook Pharmacy, Inc., dba Fallbrook Pharmacy, Tip  
17 Clements, President, Sandra Clements, Vice-President, and Richard Clements, Secretary  
18 (Respondent Pharmacy). The Original Pharmacy permit was in full force and effect at all times  
19 relevant to the charges brought herein.

20 4. On or about January 30, 1960, the Board of Pharmacy issued Original Pharmacist  
21 License Number RPH 21503 to Tip Clements, RPH (Clements). The original pharmacist license  
22 was in full force and effect at all times relevant to the charges brought herein. Respondent  
23 Clements has been the Pharmacist-in-Charge (PIC) for Respondent Pharmacy throughout its  
24 licensure.

25 5. On or about May 9, 1994, the Board of Pharmacy issued Original Pharmacy  
26 Permit Number PHY 39905 to Fallbrook Pharmacy, Inc., dba. Fallbrook Pharmacy #2, Tip  
27 Clements, President, Sandra Clements, Vice President, and Richard Clements, Secretary

28 ///

1 (Respondent Pharmacy #2). The Original Pharmacy permit was in full force and effect at all  
2 times relevant to the charges brought herein.

3 JURISDICTION

4 6. Accusation No. 3029 was filed before the Board of Pharmacy (Board),  
5 Department of Consumer Affairs, and is currently pending against all Respondents. The  
6 Accusation and all other statutorily required documents were properly served on Respondents  
7 and they timely filed a Notice of Defense contesting the Accusation. The current pending  
8 pleading is the Second Amended Accusation (Accusation), a copy of which is attached as exhibit  
9 A and incorporated herein by reference.

10 CULPABILITY

11 7. Respondents admit, in both their individual capacities and those as officers of the  
12 corporation, the truth of all of the charges and allegations in Accusation No. 3029 except the  
13 charge in the Sixth Cause for Discipline, paragraph 30. With regard to paragraph 30,  
14 Respondents admit that were this case to proceed to hearing, Complainant could establish a  
15 *prima facie* case; however, Respondents choose not to contest this charge. Respondents agree  
16 that Clements' pharmacist license and the original pharmacy permits are subject to discipline by  
17 their admissions and "no contest" statement and agree to be bound by the Board's imposition of  
18 discipline as set forth in the Disciplinary Order below.

19 RESERVATION

20 8. The admissions made by Respondents herein are only for the purposes of this  
21 proceeding, or any other proceedings in which the Board or other professional licensing agency is  
22 involved, and shall not be admissible in any other criminal or civil proceeding.

23 ADVISEMENT AND WAIVERS

24 9. Respondents have carefully read, fully discussed with counsel, and understand the  
25 charges and allegations in Accusation No. 3029. Respondents also have carefully read, fully  
26 discussed with counsel, and understand the effects of this Stipulated Revocation of License and  
27 Pharmacy Permits and Order.

28 10. Respondents are fully aware of their legal rights in this matter, including the right

1 to a hearing on the charges and allegations in the Accusation; the right to be represented by  
2 counsel, at their own expense; the right to confront and cross-examine the witnesses against  
3 them; the right to present evidence and to testify on their own behalf; the right to the issuance of  
4 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
5 reconsideration and court review of an adverse decision; and all other rights accorded by the  
6 California Administrative Procedure Act and other applicable laws.

7 11. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
8 every right set forth above.

9 12. Costs of investigation and enforcement in this matter, though January 10, 2008 are  
10 \$38,256.75. In consideration for the stipulations herein, Complainant agrees to defer cost  
11 recovery unless and until any member of the Clements family applies to the Board for any type of  
12 license or permit and it is granted.

13 13. Respondents understand that by signing this stipulation they enable the Board to  
14 issue an order accepting the revocation of Clements' pharmacist license and the two original  
15 pharmacy permits previously issued to Fallbrook Pharmacy, Inc. without further process.

16 CONTINGENCY

17 14. This stipulation shall be subject to approval by the Board of Pharmacy.  
18 Respondents understand and agree that counsel for Complainant and the staff of the Board of  
19 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,  
20 without notice to or participation by Respondents or their counsel. Once this stipulation is  
21 signed, Respondents understand and agree that they may not withdraw their agreement or seek to  
22 rescind the stipulation, in whole or part, prior to the time the Board considers and acts upon it. If  
23 the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Revocation of  
24 License and Pharmacy Permits and Order shall be of no force or effect, except for this paragraph;  
25 it shall be inadmissible in any legal action between the parties; and the Board shall not be  
26 disqualified from further action by having considered this matter.

27 15. The parties understand and agree that facsimile copies of this Stipulated  
28 Revocation of License and Pharmacy Permits and Order, including facsimile signatures thereto,

1 shall have the same force and effect as the originals.

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

5 **ORDER**

6 IT IS HEREBY ORDERED that Pharmacist License No. RPH 21503, issued to Tip  
7 Clements, is revoked.

8 IT IS HEREBY FURTHER ORDERED that Original Pharmacy Permit No. PHY 38260,  
9 issued to Fallbrook Pharmacy, Inc. dba Fallbrook Pharmacy, is revoked.

10 IT IS HEREBY FURTHER ORDERED that Original Pharmacy Permit No. PHY 39905,  
11 issued to Fallbrook Pharmacy, Inc. dba Fallbrook Pharmacy #2, is revoked.

12 A. Pursuant to Business & Professions Code section 4309, no Respondent may apply  
13 for reinstatement of license until three (3) years from the effective date of the decision in this  
14 case.

15 B. If any new or reinstated license for Tip Clements or new or reinstated license  
16 for Fallbrook Pharmacy, Inc. or any successor entity, or any sole proprietorship, partnership or  
17 corporation of the Clements family is granted by the Board, Respondents shall pay in full the cost  
18 recovery amount of \$38,256.75 before the effective date of the new or reinstated license(s) and/or  
19 permit(s).

20 C. Respondents shall cause to be delivered to the Board both Clement's pharmacist  
21 wall and pocket license certificate and both original pharmacy permits on or before the effective  
22 date of the Board's Decision and Order.

23 **ACCEPTANCE**

24 I have carefully read the above Stipulated Revocation of License and Pharmacy Permits  
25 and Order and have fully discussed it with my attorney, Byron Gross. I understand the  
26 stipulation and the effect it will have on my pharmacist license and the original pharmacy permits  
27 of Fallbrook Pharmacy, Inc. I enter into this Stipulated Revocation of License and Pharmacy  
28 Permits and Order voluntarily, knowingly, and intelligently, and agree to be bound by the



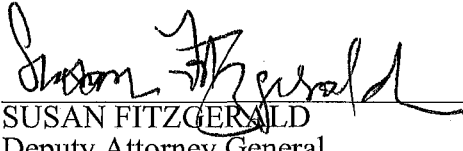
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ENDORSEMENT

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

DATED: January 22, 2008.

EDMUND G. BROWN, JR., Attorney General  
of the State of California



SUSAN FITZGERALD

Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against:

FALLBROOK PHARMACY, INC.  
dba FALLBROOK PHARMACY  
TIP CLEMENTS, President  
Sandra Clements, Vice-President  
Richard Clements, Secretary  
343 E Alvarado  
Fallbrook, CA 92028

Original Pharmacy Permit No. PHY 38260

and

FALLBROOK PHARMACY, INC.  
dba FALLBROOK PHARMACY #2  
TIP CLEMENTS, President  
Sandra Clements, Vice-President  
Richard Clements, Secretary  
343 E. Alvarado, Ste. C  
Fallbrook, CA 92028

Original Pharmacy Permit No. PHY 39905

and

TIP CLEMENTS, RPH  
343 E Alvarado #A  
Fallbrook, CA 92028

Original Pharmacist License No. RPH 21503

Respondents.

Case No. 3029

OAH No. L-2007020384

**DECISION AND ORDER**

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

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This Decision shall become effective on April 9, 2008.

It is so ORDERED March 10, 2008.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



WILLIAM POWERS  
Board President

**Exhibit A**  
**Second Amended Accusation No. 3029**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 STEVEN V. ADLER,  
Supervising Deputy Attorney General  
3 SUSAN FITZGERALD,  
Deputy Attorney General  
4 (BAR # 112278)  
110 W. A St., 11th Floor  
5 P.O. Box 85266  
San Diego, California 92186-5266  
6 Telephone: (619) 645-2066  
Facsimile: (619) 645-2061

7 Attorneys for Complainant  
8

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

12 In the Matter of the Accusation Against:

Case No. 3029

13 FALLBROOK PHARMACY, INC.  
dba FALLBROOK PHARMACY  
14 TIP CLEMENTS, President  
343 E Alvarado  
15 Fallbrook, CA 92028

OAH No. L2007020384

SECOND AMENDED ACCUSATION

16 Original Pharmacy Permit No. PHY 38260

17 and

18 FALLBROOK PHARMACY, INC.  
aka FALLBROOK PHARMACY #2  
19 TIP CLEMENTS, President  
Sandra Clements, Vice-President  
20 Richard Clements, Secretary  
343 E. Alvarado, Ste. C  
21 Fallbrook, CA 92028

22 and

23 TIP CLEMENTS, RPH  
343 E Alvarado #A  
24 Fallbrook, CA 92028

25 Original Pharmacist License No. RPH 21503

26 Respondents.  
27

1 Complainant alleges:

2 **PARTIES**

3 1. Virginia Herold (Complainant) brings this Second Amended Accusation solely in  
4 her official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of  
5 Consumer Affairs and only to correct certain pleading mistakes in the First Amended Accusation.  
6 This Second Amended Accusation supersedes all preceding versions of the Accusation in this  
7 matter.

8 2. On or about December 11, 1992, the Board of Pharmacy issued Original  
9 Pharmacy Permit Number PHY 38260 to Fallbrook Pharmacy, Inc., dba Fallbrook Pharmacy, Tip  
10 Clements, President (Respondent Pharmacy). The Original Pharmacy permit was in full force  
11 and effect at all times relevant to the charges brought herein and will expire on December 1,  
12 2007, unless renewed.

13 *On or about May 9, 1994, the Board of Pharmacy issued Original Pharmacy Permit*  
14 *Number PHY 39905 to Fallbrook Pharmacy, Inc., aka Fallbrook Pharmacy #2, Tip Clements,*  
15 *President, Sandra Clements, Vice President, and Richard Clements, Secretary (Respondent*  
16 *Pharmacy #2). The Original Pharmacy permit was in full force and effect at all times relevant to*  
17 *the charges brought herein and will expire on May 1, 2008 renewed.*

18 3. On or about January 30, 1960, the Board of Pharmacy issued Original Pharmacist  
19 License Number RPH 21503 to Tip Clements, RPH (Clements). The Original Pharmacist license  
20 was in full force and effect at all times relevant to the charges brought herein and will expire on  
21 September 30, 2008, unless renewed. At all times relevant herein, Clements has been the  
22 Pharmacist-in-Charge (PIC) for Respondent Pharmacy.

23 **JURISDICTION**

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

27 ///

1           A.     Section 4300 of the Code provides that every license issued by the Board may be  
2 suspended or revoked.

3           B.     Section 4301 of the Code states in pertinent part that:

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

7           “ . . . .

8           “(d) *The clearly excessive furnishing of controlled substances in violation of subdivision*  
9 *(a) of Section 11153 of the Health and Safety Code.*

10          “ . . . .

11          “(f) *The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or*  
12 *corruption. . .*

13          “ . . . .

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

16          “ . . . .

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

21          “ . . . .”

22          C.     Section 4081 of the Code states in pertinent part that:

23          “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs  
24 or dangerous devices shall be at all times during business hours open to inspection by authorized  
25 officers of the law, and shall be preserved for at least three years from the date of making. A  
26 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary  
27 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,

1 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,  
2 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and  
3 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and  
4 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

8 “....”

9 D. Section 4113 of the Code states that in pertinent part that:

10 “....”

11 “(b) The pharmacist-in-charge shall be responsible for a pharmacy’s compliance with  
12 all state and federal laws and regulations pertaining to the practice of pharmacy.

13 “....”

14 E. Section 4067 states in pertinent part that:

15 “(a) No person or entity shall dispense or furnish, or cause to be dispensed or furnished,  
16 dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to  
17 any person in this state without a prescription issued pursuant to a good faith prior examination  
18 of a human or animal for whom the prescription is meant if the person or entity either knew or  
19 reasonably should have known that the prescription was not issued pursuant to a good faith  
20 prior examination of a human or animal, or if the person or entity did not act in accordance with  
21 Section 1761 of Title 16 of the California Code of Regulations.

22 “....”

23 “(f) For the purposes of this section, ‘good faith prior examination’ includes the  
24 requirements for a physician and surgeon in Section 2242<sup>1/2</sup> . . .”

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26 1. At all times relevant herein, Business & Professions Code §2242 provided in pertinent part as  
27 follows:

“(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without a good faith prior  
examination and medical indication therefor, constitutes *unprofessional conduct*.”

1 F. Section 4313 states that in disciplinary actions the Board shall take evidence of  
2 rehabilitation into consideration but that public protection takes priority over rehabilitation and  
3 where evidence of rehabilitation and public protection conflict, public protection shall take  
4 precedence.

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

9 5. This Accusation also refers to *the following sections of Title 16 of the California*  
10 *Code of Regulations (CCR):*

11 A. CCR section 1718 states:

12 "Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions  
13 Code shall be considered to include complete accountability for all dangerous drugs handled by  
14 every licensee enumerated in Sections 4081 and 4332.

15 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall be  
16 available for inspection upon request for at least 3 years after the date of the inventory."

17 B. CCR section 1761 states:

18 ". . . .

19 "(b) Even after conferring with the prescriber, a pharmacist shall not compound or  
20 dispense a controlled substance prescription where the pharmacist knows or has objective  
21 reason to know that said prescription was not issued for a legitimate medical purpose."

22 6. This Accusation also refers to the following sections of the California Health &  
23 Safety Code (H&S Code):

24 A. H&S Code section 11208 provides that proof that the amount of controlled  
25 substances possessed or received by a defendant at any time in a lesser or greater amount than is  
26 accounted for by the records required by law is prima facie evidence of guilt.

27 ///

1           B.       H&S Code section 11153 provides in pertinent part:

2           “(a) A prescription for a controlled substance shall only be issued for a legitimate  
3 medical purpose by an individual practitioner acting in the usual course of his or her  
4 professional practice. The responsibility for the proper prescribing and dispensing of controlled  
5 substances is upon the prescribing practitioner, but a corresponding responsibility rests with the  
6 pharmacist who fills the prescription. Except as authorized by this division, the following are  
7 not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the  
8 usual course of professional treatment or in legitimate and authorized research . . . .”

9           7.       This Accusation also refers to the following sections of Title 21 of the Code of  
10 Federal Regulations (CFR):

11           A.       21 CFR section 1304.11(c) requires that a registrant take a new inventory of all  
12 controlled substance stocks on hand at least every two years.

13           B.       21 CFR section 1306.04 provides in pertinent part:

14           “(a) A prescription for a controlled substance to be effective must be issued for a  
15 legitimate medical purpose by an individual practitioner acting in the usual course of his  
16 professional practice. The responsibility for the proper prescribing and dispensing of controlled  
17 substances is upon the practitioner, but a corresponding responsibility rests with the pharmacist  
18 who fills the prescription. An order purporting to be a prescription issued not in the usual  
19 course of professional treatment or in legitimate and authorized research is not a prescription  
20 within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly  
21 filling such a purported prescription, as well as the person issuing it, shall be subject to the  
22 penalties provided for violations of the provisions of law relating to controlled substances.

23           “. . . .”

24           8.       This Accusation also refers to 21 U.S.C. section 841(a)(1) which makes it  
25 unlawful, except as expressly authorized, for any person knowingly or intentionally to dispense a  
26 controlled substance.

27       ///



1 **DRUGS**

2 9. "Vicodin" is a brand name for hydrocodone with APAP 5/500, and is a Schedule  
3 III controlled substance, per H&S Code §11056.

4 10. "Vicodin ES" is a brand name for hydrocodone with APAP 7.5/750, and is a  
5 Schedule III controlled substance, per H&S Code §11056.

6 11. "Norco" is a brand name for hydrocodone with APAP 10/325, and is a  
7 Schedule III controlled substance, per H&S Code §11056.

8 12. "Xanax" is a brand name for alprazolam, and is a Schedule IV controlled  
9 substance under California Health & Safety Code section 11057.

10 **CHARGES AND ALLEGATIONS**

11 13. In or about June 2006, a Board inspector conducted a drug audit summary of  
12 Respondent Pharmacy for Vicodin, Vicodin ES and Norco. Respondent Pharmacy was short at  
13 least 343,223 tablets of Vicodin, at least 164,035 tablets of Vicodin ES and at least 271,153  
14 tablets of Norco 10/325.

15 14. Respondents did not comply with the federal requirement of CFR 1304.11(c) to  
16 maintain or conduct a DEA biennial inventory.

17 **FIRST CAUSE FOR DISCIPLINE - RE FALLBROOK PHARMACY**

18 (Unprofessional Conduct: Failure re Complete Accountability for Controlled Substances)

19 15. Respondent Fallbrook Pharmacy, Inc.'s original pharmacy permit is subject to  
20 disciplinary action under Code section 4301(o) in conjunction with CCR section 1718 and CFR  
21 section 1304.11(c) in that it failed to provide complete accountability for all dangerous drugs (of  
22 which controlled substances are a subset) and also failed to maintain or do the required DEA  
23 biennial inventory, as more particularly alleged in paragraphs 13 and 14 and incorporated herein  
24 by reference.

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1                                    SECOND CAUSE FOR DISCIPLINE- RE FALLBROOK PHARMACY

2                                    (Unprofessional Conduct: Failure to Keep Current Inventory)

3                    16.        Respondent Fallbrook Pharmacy, Inc.'s original pharmacy permit is subject to  
4 disciplinary action under Code sections 4081 and 4301(j) in conjunction within H&S Code  
5 section 11208 in that Respondent Pharmacy had in its possession a lesser amount of Vicodin,  
6 Vicodin ES and Norco 10/325 than is accounted for by any record required by law, as more  
7 particularly alleged in paragraph 13 above and incorporated herein by reference.

8                                    THIRD CAUSE FOR DISCIPLINE - RE RPH TIP CLEMENTS

9                                    (Unprofessional Conduct: Failure re Complete Accountability for Controlled Substances)

10                    17.        Respondent Clements' pharmacist license is subject to disciplinary action under  
11 Code section 4301(o) in conjunction with Code section 4113, CCR section 1718, and CFR  
12 section 1304.11(c) in that he, as PIC, failed to provide complete accountability for all dangerous  
13 drugs (of which controlled substances are a subset) and also failed to maintain or do the required  
14 DEA biennial inventory, as more particularly alleged in paragraphs 13 and 14 and incorporated  
15 herein by reference.

16                                    FOURTH CAUSE FOR DISCIPLINE - RE RPH TIP CLEMENTS

17                                    (Unprofessional Conduct: Failure to Keep Complete Inventory)

18                    18.        Respondent Clements' pharmacist license is subject to disciplinary action under  
19 Code section 4301(j) in conjunction within Code sections 4081 and 4113 and H&S Code section  
20 11208 in that he, as PIC, is also held responsible for the pharmacy having in its possession a  
21 lesser amount of Vicodin, Vicodin ES and Norco 10/325 than is accounted for by any record  
22 required by law, as more particularly alleged in paragraph 13 above and incorporated herein by  
23 reference.

24                                    RE INTERNET DISPENSING OF CONTROLLED SUBSTANCES

25                    19.        *At all time relevant herein, Phillip Mach, M.D. (Mach) was and is a physician*  
26 *licensed to practice medicine in New Jersey. At all times relevant herein, he practiced out of*  
27 *East Brunswick, New Jersey. Mach is not licensed to practice in California.*

1           20.     *At all times relevant herein, Mach's DEA provider number was BM1013058.*

2           21.     *At all times relevant herein, OnLine Payment Solutions, Inc. was a Minnesota*  
3 *corporation operating under various names, including "Xpress Pharmacy Direct" (Xpress*  
4 *Pharmacy) with which Respondents contracted to dispense certain prescriptions through the*  
5 *mail.*

6           22.     *Between approximately July 2004 and at least May 2005, Mach knowingly and*  
7 *intentionally conspired with, among others, Xpress Pharmacy, to distribute and dispense, and*  
8 *cause to be distributed and dispensed, prescription drugs, including controlled substances, other*  
9 *than for a legitimate medical purpose and not in the usual course of professional practice.*  
10 *This was done via Internet prescribing and dispensing.*

11           23.     *On or about September 15, 2006, in United States District Court, District of*  
12 *Minnesota, criminal case no. 05-282, "United States of America v. Christopher William Smith, et*  
13 *al., Mach entered a guilty plea to Count One of the Second Superceding Indictment (conspiracy*  
14 *to distribute and dispense controlled substances,) a violation of 21 U.S.C. 841(a)(1) and*  
15 *(b)(1)(D) and Title 21, Code of Federal Regulation section 1306.04.*

16           24.     *From approximately July 2004 until approximately May 2005, exact dates*  
17 *unknown, virtually all of Mach's controlled substances drug orders were filled for Xpress*  
18 *Pharmacy by either Respondent Fallbrook Pharmacy, Respondent Fallbrook Pharmacy #2, or*  
19 *another pharmacy in Oregon.*

20           25.     *From approximately July 2004 to May 2005, exact dates unknown, Respondent*  
21 *Clements, through Respondent Fallbrook Pharmacy and Respondent Fallbrook Pharmacy #2*  
22 *dispensed drugs to fill more than 54,000 "Mach" prescriptions of which approximately 3,000*  
23 *are known to be for California residents/addresses. The vast majority of these Mach*  
24 *"prescriptions" were for hydrocodone compounds.*

25           26.     *Tip Clements, owner of Respondent Pharmacy and Respondent Fallbrook*  
26 *Pharmacy #2 and the PIC of Fallbrook Pharmacy, knew or should have known, and had the*  
27 *responsibility to know as the dispensing pharmacist and/or PIC of Respondent Pharmacy, that*

1 *the controlled substance prescriptions (as well as others) he was dispensing in such numbers*  
2 *from a New Jersey physician to California addressees (not to mention out-of-state addresses*  
3 *other than New Jersey) could not have been legitimately prescribed by Mach.*

4       27.     *On or about March 31, 2005, Respondent Clements and/or his pharmacy*  
5 *unlawfully dispensed 90 hydrocodone tablets to "Gregory Wall," an undercover agent who*  
6 *posed as a customer and who had no face-to-face, telephone, or electronic mail contact with*  
7 *Mach. The hydrocodone tablets were issued following a telephone order placed, and an online*  
8 *questionnaire completed, by the undercover agent with Xpress Pharmacy Direct. The purported*  
9 *prescription was authorized by and issued in the name of Mach and was filled by Fallbrook*  
10 *Pharmacy or Fallbrook Pharmacy #2.*

11       28.     *On or about April 29, 2005, Respondent Clements and/or his pharmacy*  
12 *unlawfully dispensed 80 hydrocodone tablets to "Ken Karlton," an undercover agent who posed*  
13 *as a customer and who had no face-to-face, telephone, or electronic mail contact with Mach.*  
14 *The hydrocodone tables were issued by Xpress Pharmacy Direct pursuant to an order placed,*  
15 *and an online questionnaire completed, by the undercover agent. The purported prescription*  
16 *was authorized by and issued in the name of Mach and was filled by Fallbrook Pharmacy or*  
17 *Fallbrook Pharmacy #2.*

18                    FIFTH CAUSE FOR DISCIPLINE - RE RPH TIP CLEMENTS

19                    *(Unprofessional Conduct: Clearly Excessive Furnishing of Controlled Substances)*

20       29.     *Respondent Clements' pharmacist license is subject to disciplinary action under*  
21 *Code section 4301(d) in conjunction within H&S Code sections 11153(a) in that he clearly*  
22 *excessively furnished controlled substances when he knew or should have known that the Mach*  
23 *prescriptions he dispensed were not issued in the usual course of professional treatment, to wit,*  
24 *after a good faith examination of the patients, as more particularly alleged in paragraphs 19 -*  
25 *28 above and incorporated herein by reference. Respondent Clements is responsible either as*  
26 *the actual dispensing pharmacist or as the PIC of Respondent Pharmacy.*

27 *///*

1 SIXTH CAUSE FOR DISCIPLINE - RE RPH TIP CLEMENTS

2 (Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

3 30. Respondent Clements' pharmacist license is subject to disciplinary action under  
4 Code section 4301(f) for repeated and on-going acts of moral turpitude, dishonesty, fraud,  
5 deceit and corruption, as more particularly alleged in paragraphs 19-28 above and incorporated  
6 herein by reference. Respondent Clements is responsible either as the actual dispensing  
7 pharmacist or as the PIC of Respondent Pharmacy.

8 SEVENTH CAUSE FOR DISCIPLINE - RE RPH TIP CLEMENTS

9 (Unprofessional Conduct: Violation of Code §4067(a))

10 31. Respondent Clements' pharmacist license is subject to disciplinary action under  
11 Code section 4301(j) in conjunction within Code section 4067(a) in that he dispensed or  
12 furnished, or cause to be dispensed or furnished, controlled substances and dangerous drugs on  
13 the Internet for delivery to persons in California when he either knew or reasonably should have  
14 known that the prescriptions were not issued pursuant to a good faith prior examination by  
15 Mach, as more particularly alleged in paragraphs 19 - 28 and 29 above and incorporated herein  
16 by reference. Respondent Clements is responsible as the actual dispensing pharmacist and/or as  
17 the PIC of Respondent Pharmacy.

18 EIGHTH CAUSE FOR DISCIPLINE - RE RPH TIP CLEMENTS

19 (Unprofessional Conduct: Violation of State or Federal Controlled Substance Laws)

20 32. Respondent Clements' pharmacist license is subject to disciplinary action under  
21 Code section 4301(j) in that he violated both state and federal controlled substance laws as  
22 more particularly alleged in paragraphs 19-28 above and incorporated herein by reference and  
23 as further described below:

24 A. H&S Code section 11153(a), as charged in the Fifth Cause for Discipline;

25 B. 21 U.S.C. 841(a)(1) in conjunction with 21 CFR section 1306.04(a) in that he  
26 dispensed the Mach Internet prescriptions knowing they were not issued for a legitimate medical  
27 purpose in the usual course of his professional practice by Mach.

1 NINTH CAUSE FOR DISCIPLINE - RE RPH TIP CLEMENTS

2 *(Unprofessional Conduct: Violation of State or Federal Laws or Regulations re Pharmacy)*

3 33. Respondent Clements' pharmacist license is subject to disciplinary action under  
4 Code section 4301(o) in conjunction within 21 CFR 1306.04(a) in that he dispensed the Mach  
5 Internet prescriptions knowing they were not issued for a legitimate medical purpose in the usual  
6 course of his professional practice by Mach, as more particularly alleged in paragraphs 19-28  
7 above and incorporated herein by reference. Respondent Clements is responsible as the actual  
8 dispensing pharmacist.

9 TENTH CAUSE FOR DISCIPLINE

10 *(Unprofessional Conduct: Violation of State or Federal Laws or Regulations re Pharmacy)*

11 34. Respondent Clements' pharmacist license is subject to disciplinary action under  
12 Code section 4301(o) in conjunction within CCR section 1761(b) in that he dispensed the Mach  
13 Internet prescriptions both knowing, and having objective reason to know, that they were not  
14 issued for a legitimate medical purpose in the usual course of his professional practice by Mach,  
15 as more particularly alleged in paragraphs 19-28 above and incorporated herein by reference.  
16 Respondent Clements is responsible as the actual dispensing pharmacist.

17 ELEVENTH CAUSE FOR DISCIPLINE - RE PHARMACIES

18 *(Liability of Fallbrook Pharmacy and Fallbrook Pharmacy #2)*

19 35. Under Code section 4300 (a), which provides that "every license issued may be  
20 suspended or revoked," both Respondent pharmacies' licenses are subject to discipline because  
21 of the violations alleged and charged in paragraphs 19 through 34 above and incorporated  
22 herein by reference.

23 PRAYER

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

26 1. Revoking or suspending Original Pharmacy Permit Number PHY 38260, issued to  
27 Fallbrook Pharmacy, Inc., dba Fallbrook Pharmacy, Tip Clements, President;

1           2.       Revoking or suspending Original Pharmacy Permit Number PHY 39905, issued  
2 Fallbrook Pharmacy, Inc. aka Fallbrook Pharmacy #2, Tip Clements, President;

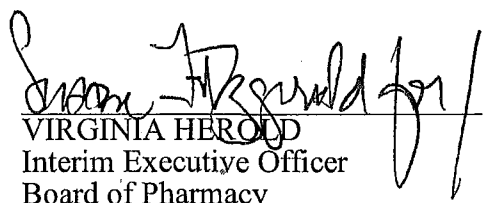
3           3        Revoking or suspending Original Pharmacist License Number RPH 21503, issued  
4 to Tip Clements, RPH;

5           4        Ordering Fallbrook Pharmacy, Inc. and Tip Clements, RPH to pay the Board of  
6 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
7 Business and Professions Code section 125.3;

8           5.       Taking such other and further action as deemed necessary and proper.

9 DATED: December 31, 2007

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VIRGINIA HEROLD  
Interim Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant