

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

In the Matter of the Accusation Against:

**CLARK'S DRUG STORE PHARMACY,
INC.
2126 Solano Street
Corning, CA 96021**

Original Permit No. PHY 36175,

and

**WILLIAM G. MCFADDEN
CLARK'S DRUG STORE PHARMACY,
INC.
2126 Solano Street
Corning, CA 96021**

Original Pharmacist License No. RPH 29744

Case No. 5038

OAH No. 2014050468

**STIPULATED SETTLEMENT TO
REVOKE AND DISCIPLINARY ORDER
(CLARK'S DRUG STORE PHARMACY,
INC. ONLY)**

Respondents.

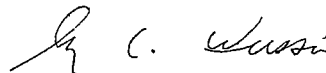
DECISION AND ORDER

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

This decision shall become effective on February 25, 2015.

It is so ORDERED on February 18, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER, Board President

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8

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

11 In the Matter of the Accusation Against:
12 **CLARK'S DRUG STORE PHARMACY,**
13 **INC.**
14 **2126 Solano Street**
Corning, CA 96021
15 **Original Permit No. PHY 36175,**
16 **and**
17 **WILLIAM G. MCFADDEN**
18 **CLARK'S DRUG STORE PHARMACY,**
19 **INC.**
2126 Solano Street
20 **Corning, CA 96021**
21 **Original Pharmacist License No. RPH 29744**
22 Respondents.

Case No. 5038

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**STIPULATED SETTLEMENT TO
REVOKE AND DISCIPLINARY ORDER
(CLARK'S DRUG STORE PHARMACY,
INC. ONLY)**

23
24
25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
26 entitled proceedings that the following matters are true:

27 ///
28 ///

1 PARTIES

2 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
3 She brought this action solely in her official capacity and is represented in this matter by Kamala
4 D. Harris, Attorney General of the State of California, by Phillip L. Arthur, Deputy Attorney
5 General.

6 2. Respondents Clark's Drug Store Pharmacy, Inc. ("Respondent Clark's") and William
7 G. McFadden ("Respondent McFadden") are represented in this proceeding by attorney Paul
8 Chan, Esq., whose address is: Law Offices of Paul Chan, 2311 Capitol Avenue, Sacramento, CA
9 95816.

10 3. On or about February 23, 1990, the Board of Pharmacy issued Original Permit
11 Number PHY 36175 to Respondent Clark's. The Original Permit was in full force and effect at
12 all times relevant to the charges brought herein, was canceled on February 1, 2014, and has not
13 been renewed. While the license has now expired, this lapse in licensure, pursuant to Business
14 and Professions Code section 118(b), does not deprive the Board of its authority to institute or
15 continue this disciplinary proceeding.

16 4. On or about August 4, 1975, the Board of Pharmacy issued Original Pharmacist
17 License Number RPH 29744 to Respondent McFadden. The Original Pharmacist License was in
18 full force and effect at all times relevant to the charges brought herein and will expire on March
19 31, 2015, unless renewed.

20 5. Respondent McFadden was the Pharmacist-in-Charge at Respondent Clark's from
21 July 26, 2010 through February 1, 2014.

22 JURISDICTION

23 6. Accusation No. 5038 was filed before the Board of Pharmacy (Board), Department of
24 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other
25 statutorily required documents were properly served on Respondents on April 17, 2014.

26 Respondents timely filed their Notices of Defense contesting the Accusation.

27 7. A copy of Accusation No. 5038 is attached as exhibit A and incorporated herein by
28 reference.

1 ADVISEMENT AND WAIVERS

2 8. Respondent Clark's has carefully read, fully discussed with counsel, and understands
3 the charges and allegations in Accusation No. 5038. Respondent Clark's has also carefully read,
4 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
5 Disciplinary Order.

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

13 10. Respondent Clark's voluntarily, knowingly, and intelligently waives and gives up
14 each and every right set forth above.

15 CULPABILITY

16 11. Respondent Clark's admits the truth of each and every charge and allegation in
17 Accusation No. 5038.

18 12. Respondent Clark's agrees that its Original Permit is subject to discipline and agrees
19 to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

20 CONTINGENCY

21 13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
22 Clark's understands and agrees that counsel for Complainant and the staff of the Board of
23 Pharmacy may communicate directly with the Board regarding this stipulation and settlement,
24 without notice to or participation by Respondent Clark's or its counsel. By signing the
25 stipulation, Respondent Clark's understands and agrees that it may not withdraw its agreement or
26 seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board
27 fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
28 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal

1 action between the parties, and the Board shall not be disqualified from further action by having
2 considered this matter.

3 14. The parties understand and agree that Portable Document Format (PDF), electronic,
4 and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable
5 Document Format (PDF), electronic, and facsimile signatures thereto, shall have the same force
6 and effect as the originals.

7 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
8 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
9 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
10 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
11 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
12 writing executed by an authorized representative of each of the parties.

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

16 **DISCIPLINARY ORDER**

17 IT IS HEREBY ORDERED that Original Permit No. PHY 36175 issued to Clark's Drug
18 Store Pharmacy, Inc. (Respondent Clark's) is revoked.

19 1. The revocation of Respondent Clark's Original Permit and the acceptance of the
20 revoked license by the Board shall constitute the imposition of discipline against Respondent
21 Clark's. This stipulation constitutes a record of the discipline and shall become a part of
22 Respondent Clark's license history with the Board of Pharmacy.

23 2. Respondent Clark's shall lose all rights and privileges as a pharmacy in California as
24 of the effective date of the Board's Decision and Order.

25 3. Respondent Clark's shall cause to be delivered to the Board its pocket license and, if
26 one was issued, its wall certificate on or before the effective date of the Decision and Order.

27 4. If Respondent Clark's ever applies for licensure or petitions for reinstatement in the
28 State of California, the Board shall treat it as a new application for licensure. Respondent Clark's

1 must comply with all the laws, regulations, and procedures for licensure in effect at the time the
2 application is filed, and all of the charges and allegations contained in Accusation No. 5038 shall
3 be deemed to be true, correct, and admitted by Respondent Clark's when the Board determines
4 whether to grant or deny the application.

5 5. If Respondent Clark's should ever apply or reapply for a new license or certification,
6 or petition for reinstatement of a license, by any other health care licensing agency in the State of
7 California, all of the charges and allegations contained in Accusation No. 5038 shall be deemed to
8 be true, correct, and admitted by Respondent Clark's for the purpose of any Statement of Issues
9 or any other proceeding seeking to deny or restrict licensure.

10 6. Respondent Clark's shall not re-apply or petition for reinstatement for a period of
11 three (3) years after the effective date of this order.

12 ACCEPTANCE

13 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
14 discussed it with my attorney, Paul Chan, Esq. I understand the stipulation and the effect it will
15 have on my Original Permit. I enter into this Stipulated Settlement and Disciplinary Order
16 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
17 Board of Pharmacy.

18
19 DATED: 1-13-2015 William G. McFadden
20 CLARK'S DRUG STORE PHARMACY, INC.
21 By Its Pharmacist-In-Charge William G. McFadden

22 ///
23 I have read and fully discussed with Respondent Clark's the terms and conditions and other
24 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
25 and content.

26 DATED: 1-21-15 [Signature]
27 Paul Chan, Esq.
28 Attorney for Respondent Clark's Drug Store Pharmacy,
Inc.

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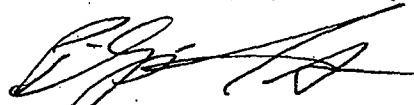
ENDORSEMENT

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

Dated: 1/22/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General



PHILLIP L. ARTHUR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5038

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Attorneys for Complainant
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5038

12 **CLARK'S DRUG STORE PHARMACY,**
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2126 Solano Street
14 Corning, CA 96021

A C C U S A T I O N

15 Original Permit No. PHY 36175,

16 and

17 **WILLIAM G. MCFADDEN**
2126 Solano Street
18 Corning, CA 96021

19 Original Pharmacist License No. RPH 29744

20 Respondents.
21

22
23 Complainant alleges:

24 **PARTIES**

25 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
26 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

27 2. On or about February 23, 1990, the Board of Pharmacy issued Original Permit
28 Number PHY 36175 to Clark's Drug Store Pharmacy, Inc. (Respondent Clark's). The Original

1 Permit was in full force and effect at all times relevant to the charges brought herein and will
2 expire on February 1, 2014, unless renewed.

3 3. On or about August 4, 1975, the Board of Pharmacy issued Original Pharmacist
4 License Number RPH 29744 to William G. McFadden (Respondent McFadden). The Original
5 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
6 and will expire on March 31, 2015, unless renewed.

7 4. Respondent McFadden is and has been the Pharmacist-in-Charge at Respondent
8 Clark's since July 26, 2010.

9 JURISDICTION

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

13 6. Section 4300 of the Code states, in pertinent part:

14 "(a) Every license issued may be suspended or revoked. . . ."

15 STATUTORY PROVISIONS

16 7. Section 4022 of the Code states:

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self use in
18 humans or animals, and includes the following:

19 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
20 prescription," "Rx only," or words of similar import.

21 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
22 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
23 in with the designation of the practitioner licensed to use or order use of the device.

24 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
25 prescription or furnished pursuant to Section 4006."

26 8. Section 4081 of the Code states, in pertinent part:

27 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
28 or dangerous devices shall be at all times during business hours open to inspection by authorized

1 officers of the law, and shall be preserved for at least three years from the date of making. A
2 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food
3 animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
4 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
5 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
6 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
7 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

11 9. Section 4300.1 of the Code states:

12 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
13 operation of law or by order or decision of the board or a court of law, the placement of a license
14 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
15 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
16 proceeding against, the licensee or to render a decision suspending or revoking the license.”

17 10. Section 4301 of the Code states, in pertinent part:

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

21 “...
22 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable
24 federal and state laws and regulations governing pharmacy, including regulations established by
25 the board or by any other state or federal regulatory agency. . . .”

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1 **REGULATIONS**

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

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

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

8 12. Code of Federal Regulations, title 21, section 1301.11, states, in pertinent part:

9 "(a) Every person who manufactures, distributes, dispenses, imports, or exports any
10 controlled substance or who proposes to engage in the manufacture, distribution, dispensing,
11 importation or exportation of any controlled substance shall obtain a registration unless exempted
12 by law or pursuant to §§ 1301.22 through 1301.26. Except as provided in paragraph (b) of this
13 section, only persons actually engaged in such activities are required to obtain a registration;
14 related or affiliated persons who are not engaged in such activities are not required to be
15 registered. (For example, a stockholder or parent corporation of a corporation manufacturing
16 controlled substances is not required to obtain a registration.) . . ."

17 13. Code of Federal Regulations, title 21, section 1304.03, states, in pertinent part:

18 "(a) Each registrant shall maintain the records and inventories and shall file the reports
19 required by this part, except as exempted by this section. Any registrant who is authorized to
20 conduct other activities without being registered to conduct those activities, either pursuant to §
21 1301.22(b) of this chapter or pursuant to §§ 1307.11-1307.13 of this chapter, shall maintain the
22 records and inventories and shall file the reports required by this part for persons registered to
23 conduct such activities. This latter requirement should not be construed as requiring stocks of
24 controlled substances being used in various activities under one registration to be stored
25 separately, nor that separate records are required for each activity. The intent of the
26 Administration is to permit the registrant to keep one set of records which are adapted by the
27 registrant to account for controlled substances used in any activity. Also, the Administration does
28 not wish to require separate stocks of the same substance to be purchased and stored for separate

1 activities. Otherwise, there is no advantage gained by permitting several activities under one
2 registration. Thus, when a researcher manufactures a controlled item, he must keep a record of
3 the quantity manufactured; when he distributes a quantity of the item, he must use and keep
4 invoices or order forms to document the transfer; when he imports a substance, he keeps as part of
5 his records the documentation required of an importer; and when substances are used in chemical
6 analysis, he need not keep a record of this because such a record would not be required of him
7 under a registration to do chemical analysis. All of these records may be maintained in one
8 consolidated record system. Similarly, the researcher may store all of his controlled items in one
9 place, and every two years take inventory of all items on hand, regardless of whether the
10 substances were manufactured by him, imported by him, or purchased domestically by him, of
11 whether the substances will be administered to subjects, distributed to other researchers, or
12 destroyed during chemical analysis. . . .”

13 14. Code of Federal Regulations, title 21, section 1304.21, states:

14 “(a) Every registrant required to keep records pursuant to § 1304.03 shall maintain on a
15 current basis a complete and accurate record of each such substance manufactured, imported,
16 received, sold, delivered, exported, or otherwise disposed of by him/her, except that no registrant
17 shall be required to maintain a perpetual inventory.

18 “(b) Separate records shall be maintained by a registrant for each registered location except
19 as provided in § 1304.04 (a). In the event controlled substances are in the possession or under the
20 control of a registrant at a location for which he is not registered, the substances shall be included
21 in the records of the registered location to which they are subject to control or to which the person
22 possessing the substance is responsible.

23 “(c) Separate records shall be maintained by a registrant for each independent activity for
24 which he/she is registered, except as provided in § 1304.22(d).

25 (d) In recording dates of receipt, importation, distribution, exportation, or other transfers,
26 the date on which the controlled substances are actually received, imported, distributed, exported,
27 or otherwise transferred shall be used as the date of receipt or distribution of any documents of
28 transfer (e.g., invoices or packing slips).”

1 **COST RECOVERY**

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

6 **DANGEROUS DRUGS/CONTROLLED SUBSTANCES**

7 16. *Alprazolam* is a Schedule IV controlled substance as designated by Health and Safety
8 Code section 11057, subdivision (d)(1).

9 17. *Carisoprodol* is a Schedule IV controlled substance as designated by Code of Federal
10 Regulations, title 21, section 1308.14, subdivision (c)(5).

11 18. *Clonazepam* is a Schedule IV controlled substance as designated by Health and
12 Safety Code section 11057, subdivision (d)(7).

13 19. *Hydrocodone/acetaminophen* is a Schedule III controlled substance as designated by
14 Health and Safety Code section 11056, subdivision (e)(4).

15 20. *Hydrocodone/homatropine* is a Schedule III controlled substance as designated by
16 Health and Safety Code section 11056, subdivision (e)(4).

17 21. *Modafinil* is a Schedule IV controlled substance as designated by Health and Safety
18 Code section 11057, subdivision (f)(3).

19 22. *Phenobarbital* is a Schedule IV controlled substance as designated by Health and
20 Safety Code section 11057, subdivision (d)(26).

21 23. *Phentermine* is a Schedule IV controlled substance as designated by Health and
22 Safety Code section 11057, subdivision (f)(4).

23 24. *Zolpidem* is a Schedule IV controlled substance as designated by Health and Safety
24 Code section 11057, subdivision (d)(32).

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1 RESPONDENT CLARK'S DRUG STORE PHARMACY, INC.

2 FIRST CAUSE FOR DISCIPLINE

3 (Failure to Account for all Controlled Substances)

4 25. Respondent Clark's Drug Store Pharmacy, Inc. is subject to disciplinary action under
5 section 4081, subdivision (b), of the Code in that Respondent failed to maintain records and a
6 current inventory of its sale, acquisition, or disposition of controlled substances. The
7 circumstances are as follows:

8 26. On or about June 7, 2013, the Board conducted an audit of the controlled substances
9 that Respondent had sold, acquired, or dispensed from May 1, 2011, through April 23, 2013. The
10 audit revealed the following variances¹:

- 11 a. -222 (1.2%) dosage unit variance for alprazolam 0.25 mg
12 b. -199 (0.62%) dosage unit variance for alprazolam 0.5 mg
13 c. -687 (2.07%) dosage unit variance for alprazolam 1 mg
14 d. +243 (4.58%) dosage unit variance for alprazolam 2 mg
15 e. -5 dosage unit variance for carisoprodol
16 f. -713 (4.81%) dosage unit variance for clonazepam 0.5 mg
17 g. +190 (1.15%) dosage unit variance for clonazepam 1 mg
18 h. +200 (1.24%) dosage unit variance for hydrocodone/acetaminophen 7.5/325 mg
19 i. +16,847 (2.83%) dosage unit variance for hydrocodone/acetaminophen 10/325 mg
20 j. -7 (2.3%) dosage unit variance for hydrocodone/acetaminophen 10/660 mg
21 k. -25,200 (81.96 %) ml variance for hydrocodone/homatropine 5/1.5 mg/5 ml
22 l. +83 (25.93%) dosage unit variance for modafinil 100 mg
23 m. +152 (10.78%) dosage unit variance for modafinil 200 mg
24 n. -251 (2.48%) dosage unit variance for phenobarbital ½ grain

25
26 ¹ The variances were calculated by comparing the total amount of each controlled
27 substance that Respondent acquired with the total amount of each controlled substance that
28 Respondent dispensed during the audit period. A negative variance indicates missing and
unaccounted for dosage units. A positive variance indicates that Respondent acquired more
dosage units than Respondent possesses records for.

- 1 o. -44 (22%) dosage unit variance for phentermine 15 mg
- 2 p. +8 (0.44%) dosage unit variance for phentermine 30 mg
- 3 q. -96 (8%) dosage unit variance for phentermine 37.5 mg
- 4 r. -450 (1.08%) dosage unit variance for zolpidem 10 mg
- 5 s. -246 (2.39%) dosage unit variance for zolpidem ER 12.5 mg

6 27. On or about July 2, 2013, the Board requested that Respondent provide a detailed
7 explanation of the variances identified in the audit.

8 28. On or about September 9, 2013, Respondent provided the Board with its response to
9 the audit, which consisted solely of a handwritten table indicating Respondent's calculation of the
10 variances identified in the audit. Respondent failed to provide an explanation of its calculations,
11 variances, or any supporting documentation used for its calculations such that the Board was
12 unable to verify Respondent's calculations.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Records and Inventories of all Controlled Substances)**

15 29. Respondent Clark's Drug Store Pharmacy, Inc. is subject to disciplinary action under
16 Code of Federal Regulations, title 21, sections 1304.03, subdivision (a), and 1304.21, subdivision
17 (a), by and through section 4301(o) of the Code in that Respondent failed to maintain records and
18 a current inventory of its controlled substances. The circumstances are set forth with more
19 particularity in paragraphs 26-28, and all of their subparts.

20 **RESPONDENT WILLIAM G. MCFADDEN**

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Failure to Account for all Dangerous Drugs)**

23 30. Respondent William G. McFadden (Respondent McFadden) is subject to disciplinary
24 action under section 4081, subdivision (b) of the Code in that as the pharmacist-in-charge for
25 Respondent Clark's Drug Store Pharmacy, Inc. (Respondent Clark's), Respondent McFadden
26 failed to maintain records and a current inventory of Respondent Clark's sale, acquisition, or
27 disposition of controlled substances. The circumstances are described with more particularity in
28 paragraphs 26-28, and all of their subparts.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Records and Inventories of all Controlled Substances)**

3 31. Respondent William G. McFadden (Respondent McFadden) is subject to disciplinary
4 action under Code of Federal Regulations, title 21, sections 1304.03, subdivision (a), and
5 1304.21, subdivision (a), by and through section 4301(o) of the Code in that as the pharmacist-in-
6 charge for Respondent Clark's Drug Store Pharmacy, Inc. (Respondent Clark's), Respondent
7 McFadden failed to maintain records and a current inventory of Respondent Clark's controlled
8 substances. The circumstances are described with more particularity in paragraphs 26-28, and all
9 of their subparts.

10 **MATTERS IN AGGRAVATION**

11 32. On or about January 17, 2005, In the Matter of the Accusation Against William G.
12 McFadden dba Clark's Drug Store Pharmacy, Case No. 2752, Respondents Clark's Pharmacy
13 Permit No. PHY 36175 was placed on three years probation, and Respondent McFadden's
14 Pharmacist License No. RPH 29744 was placed on five years probation, following the filing of an
15 accusation alleging that McFadden: (1) disclosed medical information without patients' prior
16 authorization; (2) failed to properly dispose of medical records; (3) failed to identify each
17 pharmacist responsible for filling patient prescriptions; (4) furnished controlled substances for
18 himself; (5) dispensed medication while under the influence; (6) failed to maintain pharmacy
19 security; (7) failed to maintain complete accountability for dangerous drug inventory; and (8) was
20 convicted in 1993 of driving with a blood alcohol of .08% or greater.

21 33. On or about December 22, 2009, Respondent Clark's was issued a citation for:
22 (1) failing to comply with California Code of Regulations, title 16, section 1716, which prohibits
23 a pharmacist from varying from the requirements of a prescription without prescriber
24 authorization; and (2) failing to comply with California Code of Regulations, title 16, section
25 1707.2(b)(1)(A), which requires a pharmacist to consult on a new, not previously dispensed
26 prescription.

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34. On or about December 22, 2009, Respondent McFadden was issued a citation for failing to comply with California Code of Regulations, title 16, section 1716, which prohibits a pharmacist from varying from the requirements of a prescription without prescriber authorization.

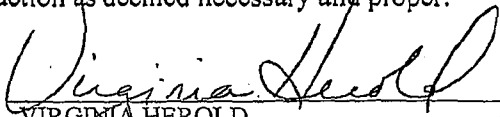
35. On or about March 16, 2010, Respondent McFadden was issued a citation for failing to comply with California Code of Regulations, title 16, section 1716, which prohibits a pharmacist from varying from the requirements of a prescription without prescriber authorization.

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 Permit Number PHY 36175, issued to Clark's Drug Store Pharmacy, Inc.;
2. Revoking or suspending Original Pharmacist License Number RPH 29744, issued to William G. McFadden, Clark's Drug Store Pharmacy, Inc.;
3. Ordering Clark's Drug Store Pharmacy, Inc. and 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; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/14


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

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