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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>DISBARMENT</b>		
<b>Counsel For The State Bar</b>  <b>Scott D. Karpf</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa Ave.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1161</b>  <b>Bar # 274682</b>	<b>Case Number(s):</b> <b>17-C-04655-DFM;</b> <b>18-O-13148 (Inv)</b>	For Court use only  <b>PUBLIC MATTER</b>  <b>FILED</b> ✓ <b>JUN 27 2018</b>  STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<b>In Pro Per Respondent</b>  <b>Barlow Smith</b> <b>605 Camino Cielo</b> <b>Marble Falls, TX 78654</b> <b>(830) 265-0892</b>  <b>Bar # 80680</b>	<b>Submitted to: Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT  <b>DISBARMENT</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
<b>In the Matter of:</b> <b>BARLOW SMITH</b>  <b>Bar # 80680</b>  A Member of the State Bar of California (Respondent)		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 23, 1978.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (13) pages, not including the order.
- (4) A statement of acts or omissions acknowledged by respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(Effective November 1, 2015)



- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Costs to be awarded to the State Bar.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:  
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  Prior record of discipline
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If respondent has two or more incidents of prior discipline, use space provided below:
- (2)  Intentional/Bad Faith/Dishonesty: Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  Misrepresentation: Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4)  Concealment: Respondent's misconduct was surrounded by, or followed by concealment.
- (5)  Overreaching: Respondent's misconduct was surrounded by, or followed by overreaching.
- (6)  Uncharged Violations: Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.
- (7)  Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. See page 10.
- (10)  **Lack of Candor/Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 10.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

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- (9)  **Severe Financial Stress:** At the time of the misconduct, respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline, see pages 10 and 11.**

**Pretrial Stipulation, see page 11**



**D. Discipline:        Disbarment.**

**E. Additional Requirements:**

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
  
- (2)  **Restitution:** Respondent must make restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_. If the Client Security Fund has reimbursed \_\_\_\_\_ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than \_\_\_\_\_ days from the effective date of the Supreme Court order in this case.
  
- (3)  **Other:**

**ATTACHMENT TO**

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                      BARLOW SMITH

CASE NUMBER:                          17-C-04655-DFM; 18-O-13148 (inv)

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct, and that the facts and circumstances surrounding the offense for which he was convicted involved moral turpitude.

**Case No. 17-C-04655-DFM (Conviction Proceedings)**

**PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING:**

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On January 7, 2014, the Grand Jury for 424<sup>th</sup> Judicial District Court of Burnet County, State of Texas, filed an indictment against respondent in case no. 42272, alleging three counts for violations of Texas Health and Safety Code § 481.129(c)(1) [Knowingly or Intentionally Delivering a Prescription or Prescription Form for Other Than a Valid Medical Purpose in the Course of Professional Practice], all felonies. Respondent pled not guilty and set the case for trial.

3. On August 12, 2015, prior to beginning the second day of trial, respondent withdrew his plea of not guilty and entered a guilty plea to Count 1, a violation of Texas Health and Safety Code § 481.129(c)(1) [Knowingly or Intentionally Delivering a Prescription or Prescription Form for Other Than a Valid Medical Purpose in the Course of Professional Practice], a felony, for prescribing Phentermine to undercover Drug Enforcement Agency ("DEA") Agent R. Harrell. Pursuant to the plea, the State dismissed Counts 2 and 3.

4. On September 22, 2015, after respondent unsuccessfully made a motion to withdraw his guilty plea, the court ordered that respondent serve five years in the Texas Department of Corrections, but suspended respondent's sentence of confinement and placed respondent on formal probation for 10 years pursuant to conditions that he serve 15 days in the Burnet County Jail, complete 750 hours of community service, pay a fine of \$1,000 and all court costs, and not write prescriptions in any state while on probation. As a condition of entering his plea, respondent waived his right to file an appeal.

5. On March 15, 2018, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense(s) for which respondent was convicted involved moral turpitude or other misconduct warranting discipline. Additionally, effective April 9, 2018, the Review Department, pursuant to Business and Professions Code, section 6102, ordered that respondent be suspended from the practice of law pending final disposition of this matter.

**FACTS:**

6. Between February 1, 1981 and August 28, 2015, respondent was a board licensed psychiatrist in Texas, license no. F-9026.

7. In 2010, the DEA, while monitoring the prescription writing habits of numerous doctors statewide, focused on respondent based on complaints by local pharmacies that respondent was writing an inordinate number of prescriptions for pain-treatment narcotics and other controlled substances that were not related to his medical specialty as a psychiatrist.

8. On June 21, 2011, DEA Investigator M. Schili met with respondent and his office manager in respondent's office in Marble Falls, Texas to discuss respondent's prescription writing habits. At that meeting, respondent stated that he would cease prescribing narcotics or other medications not reasonably related to his practice.

9. In February 2013, the DEA received information that respondent was again writing prescriptions unassociated with his medical practice. In order to investigate, the DEA assigned two undercover agents as new patients to see respondent and determine if he would write prescriptions for controlled substances, including Hydrocodone, a Schedule III controlled substance, and Phentermine, a Schedule IV controlled substance, when there was no medical need for such prescriptions.

10. On April 1, 2013, undercover DEA Agent Harrell attended a pre-scheduled doctor's appointment with respondent. After checking-in, paying a \$295 visit fee, and having the nurse measure her weight, height, blood pressure, and pulse, Agent Harrell met with respondent in his office and asked him to write her prescriptions for Hydrocodone and Phentermine. Respondent replied that he did not write narcotics prescriptions for patients without a pain-management plan, and suggested she find a primary care physician. Respondent did, however, write Agent Harrell a prescription for 30 tablets of Phentermine with one refill. When respondent wrote the prescription, there was no medical need for the prescription.

11. On April 29, 2013, undercover DEA Agent M. Cochrane attended a pre-scheduled doctor's appointment with respondent. After checking-in, paying a \$295 visit fee, and having the nurse measure her weight, height, blood pressure, and pulse, Agent Cochrane met with respondent in his office and asked him to write her prescriptions for Hydrocodone and Phentermine. Respondent stated that he could not prescribe Hydrocodone because he would be in trouble with the Texas Medical Board. However, respondent did write Agent Cochrane a prescription for 30 tablets of Phentermine with one refill and 40 tablets of Tramadol, a non-controlled pain relief medicine, when there was no legitimate medical need for the prescription. Respondent further told Agent Cochrane that if the Tramadol did not work, he would develop a pain management plan for her so he could then prescribe Hydrocodone. When respondent wrote the prescription for Phentermine, there was no medical need for the prescription.

12. On May 1, 2013, Agent Harrell, made a second visit to respondent's office. After checking-in, paying a \$100 follow-up visit fee, and having the nurse measure her weight, height, blood pressure, and pulse, she met with respondent in his office. Agent Harrell asked respondent to write her prescriptions for Hydrocodone, and Soma, a Schedule IV controlled substance. Respondent stated that he could not prescribe Hydrocodone or Soma because they were controlled substances and he would be in trouble with the Texas Medical Board. Instead, respondent prescribed 240 tablets of Tramadol for

Agent Harrell, and further told her that if the Tramadol did not work, he would he would develop a pain management plan for her so he could then prescribe Hydrocodone.

13. On May 8, 2013, Agent Cochrane attended a pre-scheduled follow-up appointment with respondent. Respondent was not present in the office, so Agent Cochrane asked respondent's receptionist for a Hydrocodone prescription. The receptionist informed Agent Cochrane that she would call in a Hydrocodone prescription to a local pharmacy. The receptionist also related that a few years earlier, DEA agents scrutinized respondent and his office for prescribing pain management controlled substances to patients.

14. On May 15, 2013, Agent Cochrane visited respondent's office for a third time. After checking-in, paying a \$25 visit fee, and having the nurse measure her weight, height, blood pressure, and pulse, Agent Cochrane met with respondent. Agent Cochrane thanked respondent for having his receptionist call in May 8, 2013 prescription of Hydrocodone. Respondent advised Agent Cochrane that it would be difficult for him to continuously prescribe Hydrocodone for her due to an issue with the Texas Medical Board. When respondent wrote the prescription for Hydrocodone, there was no medical need for the prescription.

#### CONCLUSIONS OF LAW:

15. The facts and circumstances surrounding the above-described violations involved moral turpitude.

#### Case No. 18-O-13148 (Inv.)

#### FACTS:

1. Between February 1, 1981 and August 28, 2015, respondent was a board licensed psychiatrist in Texas, license no. F-9026.

2. On June 29, 2009, respondent was disciplined by the Texas Medical Board for violating federal or state law [Texas Medical Board Rules ("TMBR"), rule 190.8(2)(R)] and failing to maintain the confidentiality of a patient [TMBR, rule 190.8(2)(N)], consisting of a public reprimand with conditions, including that respondent enroll in and successfully complete a sexual boundaries course within one year and pay an administrative penalty of \$3,000. Pursuant to California Business and Professions Code, section 6068(o)(6), respondent was required to self-report said discipline to the State Bar of California by September 27, 2009. As of the date of this stipulation, respondent has never self-reported said discipline to the State Bar of California.

3. On April 6, 2010, respondent was indicted in *The State of Texas vs. Barlow Smith*, case no. 37488, in the 33<sup>rd</sup> Judicial District Court of Burnet County, for an alleged violation of Texas Penal Code, section 22.011(a)(1)(B) and (b)(9) [Sexual Assault by a Healthcare Service Provider], a felony. The indictment was personally served upon respondent on April 15, 2010. Pursuant to California Business and Professions Code, section 6068(o)(4), respondent was required to self-report the indictment to the State Bar of California by May 16, 2010. As of the date of this stipulation, respondent has never self-reported said felony indictment to the State Bar of California.

4. On May 3, 2011, respondent was indicted in *The State of Texas vs. Barlow Smith*, case no. 38877, in the 33<sup>rd</sup> Judicial District Court of Burnet County, for an alleged violation of Texas Penal Code, section 22.011(a)(1)(C) and (b)(9) [Sexual Assault by a Healthcare Service Provider], a felony. The indictment was served by mail on respondent's criminal attorney on May 11, 2011. Respondent was aware of the indictment. Pursuant to California Business and Professions Code, section 6068(o)(4), respondent was required to self-report the indictment to the State Bar of California within 30 days of becoming aware of the indictment. As of the date of this stipulation, respondent has never self-reported said felony indictment to the State Bar of California.

5. On August 26, 2011, respondent was disciplined by the Texas Medical Board for failing to maintain an adequate medical record for a patient that was complete, contemporaneous, and legible [TMBR, rule 165.1]; consisting of an agreed order with conditions that respondent enroll in and successfully complete at least eight hours of continuing medical education on the topic of medical recordkeeping within one year. Pursuant to California Business and Professions Code, section 6068(o)(6), respondent was required to self-report said discipline to the State Bar of California by September 26, 2011. As of the date of this stipulation, respondent has never self-reported said discipline to the State Bar of California.

6. On January 7, 2014, respondent was indicted in *The State of Texas vs. Barlow Smith*, case no. 42272, in the 33<sup>rd</sup> Judicial District Court of Burnet County, for three alleged violations of Texas Health and Safety Code, section 481.129(c)(1) [Fraudulent Delivery of a Controlled Substance / Prescription Schedule III,IV/IV], all felonies. The indictment was personally served upon respondent on January 14, 2014. Pursuant to California Business and Professions Code, section 6068(o)(4), respondent was required to self-report the indictment to the State Bar of California by February 13, 2014. As of the date of this stipulation, respondent has never self-reported said felony indictment to the State Bar of California.

7. On February 7, 2014, respondent was disciplined by the Texas Medical Board for failing to use proper diligence in his professional practice [TMBR, rule 190.8(1)(C)], failing to comply with reasonable Board requests to produce records, documents, or other information [TMBR, rule 187.15], failing to properly dispose of controlled substances [Texas Health and Safety Code, chapter 481], and based on respondent's being terminated by a professional medical association or licensed hospital [TMBR, rule 164.051(a)(7)], consisting of a public reprimand with conditions, including that respondent not maintain samples of controlled medications in his office, maintain a logbook of all medical samples received and distributed, take and pass the Texas Medical Jurisprudence Examination, enroll in and successfully complete at least 16 hours of continuing medical education for each year under this order, and pay an administrative penalty of \$2,000. Pursuant to California Business and Professions Code, section 6068(o)(6), respondent was required to self-report said discipline to the State Bar of California by March 8, 2014. As of the date of this stipulation, respondent has never self-reported said discipline to the State Bar of California.

8. On September 22, 2015, respondent was convicted in *The State of Texas vs. Barlow Smith*, case no. 42272, in the 33<sup>rd</sup> Judicial District Court of Burnet County, for a violation of Texas Health and Safety Code, section 481.129(c)(1) [Knowingly or Intentionally Delivering a Prescription or Prescription Form for Other Than a Valid Medical Purpose in the Course of Professional Practice], a felony. Pursuant to California Business and Professions Code, section 6068(o)(5), respondent was required to self-report the felony convictions to the State Bar of California by October 22, 2015. As of the date of this stipulation, respondent has never self-reported said felony conviction to the State Bar of California.



## CONCLUSIONS OF LAW:

9. By failing to report to State Bar, in writing, within 30 days of the time respondent had knowledge of his felony indictments in April 2010, May 2011, and January 2014 in Burnet County, Texas, respondent committed a willful violation of Business and Professions Code, section 6068(o)(4).

10. By failing to report to State Bar, in writing, within 30 days of the time respondent had knowledge of his felony conviction on September 22, 2015 in Burnet County, Texas, respondent committed a willful violation of Business and Professions Code, section 6068(o)(5).

11. By failing to report to State Bar, in writing, within 30 days of the time respondent had knowledge of the impositions of discipline against him by the Texas Medical Board in June 2009, August 2011, February 2014, respondent committed a willful violation of Business and Professions Code, section 6068(o)(6).

## AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent fraudulently issued prescriptions to Agent Rene Harrell for Phentermine on April 1, 2013, and Agent Michele Cochrane for Phentermine and Hydrocodone on April 29, 2013 and May 15, 2013, respectively, when there was no medical need for said prescriptions. In addition, respondent failed to timely report to the State Bar three felony indictments, one felony conviction, and three impositions of discipline against his medical license by the Texas Medical Board. Multiple acts of misconduct is an aggravating factor.

**Indifference (Std. 1.5(k)):** Investigators Mark Schilli and Mary Laferriere with the Drug Enforcement Agency met with respondent in June 2011 to discuss his practice of writing prescriptions for narcotics that were outside of the scope of his medical specialty. During the meeting, Investigators Schilli and Laferriere confronted respondent about his voluminous number of prescriptions written for controlled substances not related to the practice of psychiatry and advised respondent that they had been monitoring him, and would continue to monitor his prescribing habits. As a result of that meeting, respondent agreed to stop prescribing pain management narcotics to his patients. Nonetheless, during the investigation underpinning the criminal conviction, after stating to the undercover agents that he could not prescribe pain medication without doing a pain management plan, respondent did in fact prescribe pain management controlled substances to one of the undercover agents and prescribed a controlled substance weight loss medication, not related to his psychiatry specialty, to each of the undercover agents. Respondent's continued practice of prescribing controlled substances outside of the scope of his medical specialty when he was aware that the Drug Enforcement Agency was monitoring his prescribing habits shows indifference to rectification of or atonement for the consequences of his misconduct.

## MITIGATING CIRCUMSTANCES.

**No Prior Record of Discipline:** Respondent had 34 years of discipline-free law practice (he was admitted June 23, 1978) without any discipline when he pled guilty to this felony. However, respondent, who was also a practicing psychiatrist, had been criminally indicted on two prior occasions in Texas in 2010 and 2011 for sexual assault, and he had been disciplined by the Texas Medical Board on several occasions, once in May 2009 for violating federal or state law [Texas Medical Board Rules

("TMBR"), rule 190.8(2)(R)] and failing to maintain the confidentiality of a patient [TMBR, rule 190.8(2)(N)]; a second time in August 2011 for failing to maintain an adequate medical record for a patient that was complete, contemporaneous, and legible [TMBR, rule 165.1]; and a third time in February 2014 for failing to use proper diligence in his professional practice [TMBR, rule 190.8(1)(C)], failing to comply with reasonable Board requests to produce records, documents, or other information [TMBR, rule 187.15], failing to properly dispose of controlled substances [Texas Health and Safety Code, chapter 481], and based on respondent's being terminated by a professional medical association or licensed hospital [TMBR, rule 164.051(a)(7)]. Accordingly, respondent's 34 years of discipline-free practice is a mitigating factor of "significant weight" but the weight is lessened by respondent's failures to self-report as required by Business and Professions Code, section 6068(o)(4) and (5). (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596.)

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.15(b) states that "[d]isbarment is the presumed sanction for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most

compelling mitigating circumstances clearly predominate, in which case actual suspension of at least two years is appropriate.”

The determination whether the facts and circumstances of an attorney's criminal conviction involved moral turpitude is a matter of law. The concept of moral turpitude does not fit a precise definition; it is a commonsense concept, designed to protect the public, and has been defined as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Callaway* (1974) 20 Cal.3d 165, 169-170 (citing *In re Fahey* (1973) 8 Cal.3d 842, 849.) “The concept of moral turpitude depends upon the state of public morals, and may vary according to the community or the times, (citation) as well as on the degree of public harm produced by the act in question. The paramount purpose of the ‘moral turpitude’ standard is not to punish practitioners but to protect the public, the courts and the profession against unsuitable practitioners.” (*Id.*; see also *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208; *In the Matter of Frascinella* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 543.)

In this matter, respondent, on two occasions, prescribed controlled substances for individuals (whom were undercover agents for the DEA) when those individuals had no medical need for such medications. Such practices of prescribing controlled substances without adequate assessment information and with no basis in fact is nothing short of dishonesty and an intentional misrepresentation. The fact that respondent is a licensed doctor, who like an attorney owes special duties to his patients and took an oath to protect them, makes his misconduct even more morally repugnant.

Though respondent has no prior records of discipline by the State Bar of California, a deviation from disbarment is only warranted where the most compelling mitigating circumstances clearly predominate. Such compelling mitigating circumstances do not exist here, so accordingly, respondent should be disbarred.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of June 6, 2018, the discipline costs in this matter are \$2,891. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

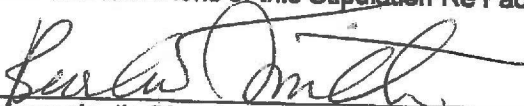


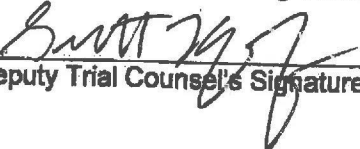
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In the Matter of: <b>BARLOW SMITH</b>	Case number(s): 17-C-04655-DFM; 18-O-13148 (inv)
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**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation-Re Facts, Conclusions of Law, and Disposition.

6/7/18                                            Barlow Smith  
Date                              Respondent's Signature                      Print Name

6-8-18                                            Scott D. Karpf  
Date                              Deputy Trial Counsel's Signature                      Print Name

In the Matter of:  
BARLOW SMITH

Case Number(s):  
17-C-04655-DFM.;  
18-O-13148 (inv)

### DISBARMENT ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)

Respondent Barlow Smith is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

6/27/18

  
DONALD F. MILES  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 27, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND  
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BARLOW SMITH  
605 CAMINO CIELO  
MARBLE FALLS, TX 78654 - 5926

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SCOTT D. KARPf, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 27, 2018.



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Mazie Yip  
Court Specialist  
State Bar Court