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**State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p>Sue Hong Deputy Trial Counsel Office of the Chief Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1161</p> <p>Bar # 285852</p>	<p>Case Number(s): 11-C-10975</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>SEP 23 2014 <i>B</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>David S. Fredricksen, Esq. McShane & Pugh, LLP 10474 Santa Monica Blvd., Suite 401 Los Angeles, CA 90025 (310) 966-6000</p> <p>Bar # 140365</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: SHAWN MICHAEL MCSHANE</p> <p>Bar # 141236</p> <p>A Member of the State Bar of California (Respondent)</p>		

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 6, 1989**.
- (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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **12** 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."

(Effective January 1, 2014)

Actual Suspension

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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **2 years following the effective date of the Supreme Court Order.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 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) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **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.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **See Attachment at Page 8.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

See Attachment at Page 8.

C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating 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 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.
- (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 convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See Attachment at Page 8.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of **two years**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of **one year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without**

further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

- (2) **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.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she 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 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: **June 3, 2011.**
- (5) **Other Conditions:**

Section F. OTHER CONDITIONS: Additional Probation Conditions:

Respondent recognizes that a repeat conviction for DUI suggests an alcohol and/or drug problem that needs to be addressed before it affects Respondent's legal practice. Respondent agrees to take the steps necessary to control the use of alcohol and/or drugs such that it will not affect Respondent's law practice in the future. Respondent's agreement to participate in an abstinence-based self-help group (as defined herein), as a condition of discipline, is part of Respondent's efforts to address such concerns.

As a condition of probation, and during the period of probation, Respondent must attend a minimum of two (2) meetings per month of any abstinence-based self-help group of Respondent's choosing, including without limitation Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T., S.O.S., etc. Other self-help maintenance programs are acceptable if they include a subculture to support recovery, including abstinence-based group meetings. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [no First Amendment violation where probationer given choice between AA and secular program.]) Respondent is encouraged, but not required, to obtain a "sponsor" during the term of participation in these meetings.

The program called "Moderation Management" is not acceptable because it is not abstinence-based and allows the participant to continue consuming alcohol.

Respondent must contact the Office of Probation and obtain written approval for the program Respondent has selected prior to attending the first self-help group meeting. If Respondent wants to change groups, Respondent must first obtain the Office of Probation's written approval prior to attending a meeting with the new self-help group.

Respondent must provide to the Office of Probation satisfactory proof of attendance of the meetings set forth herein with each Quarterly Report submitted to the Office of Probation. Respondent may not sign as the verifier of his or her own attendance.

Respondent is encouraged, but is not required, to participate in the Lawyers' Assistance Program, to abstain from alcohol and illegal drugs, and to undergo random urinalysis testing to complement abstinence.

Respondent must comply with all conditions of parole and/or probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

FACTS:

9. On October 25, 2009, Respondent ran a red light, colliding into the vehicle driven by an 82-year old victim, causing her severe traumatic injuries (fractured ribs, collapsed lung).

10. Respondent left the scene of the accident, entered a freeway, and ultimately crashed his car into a center divider.

11. Respondent was transferred to Simi Valley Hospital and ultimately arrested for driving while intoxicated while due to the ingestion of Soma, a pain medication (confirmed in blood test), and Meprobamate, an anti-anxiety medication (confirmed in blood test).

12. At the time of accident, Respondent was taking prescription medication, including Soma (pain medication), and Meprobamate (anti-depression medication).

13. According to the Respondent, he had also ingested Lunesta, an anti-insomnia medication that had been prescribed to him by his treating psychiatrist, the night before the incident.

14. The blood sample was tested for various drugs, except for Lunesta.

15. The results confirmed the presence of Soma and Meprobamate.

16. Although the Respondent requested his blood sample to be tested for Lunesta, the laboratory could not perform the test due to an insufficient amount of the blood sample remaining.

17. After Respondent's treating physician evaluated Respondent and assessed the event and circumstances of the accident that occurred on October 25, 2009, he reported that he believed that the events were "remarkably similar and consistent with the side effects" of Lunesta.

18. Respondent's treating physician further opined that while Respondent was under the effects of Lunesta, he "did not undertake the activity in question knowingly or voluntarily."

19. At the time of his arrest, Respondent was on probation for a prior 2006 conviction of Vehicle Code section 23153(a) DUI, a misdemeanor. Respondent also had another prior misdemeanor DUI conviction in 2000.

CONCLUSIONS OF LAW:

20. The facts and circumstances surrounding the above-described violation(s) did not involve moral turpitude but did involve other misconduct warranting discipline.

AGGRAVATING CIRCUMSTANCES.

Pattern of Misconduct (Std. 1.5(c)): Respondent has three DUI convictions over a nine year period all involving the use of prescribed or illicit drugs, while driving under the influence of the drug, and leaving the scene of an accident. The first DUI resulted in no reported injuries. The second DUI resulted in minor injuries to a victim, including neck pain and whiplash. The third DUI resulted in great bodily injury to a victim, consisting of a collapsed lung and broken ribs. Pattern requires a common

thread to the misconduct. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 93.)

MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Respondent was admitted to the State Bar on June 6, 1989. In 2000, Respondent was arrested for his first DUI, which led to a misdemeanor DUI conviction. In 2006, Respondent was arrested for his second DUI, which led to a misdemeanor DUI conviction with a prior. In 2009, Respondent was arrested for the present misconduct which led to his felony conviction of DUI causing great bodily injury. Although Respondent had 11 years of practice prior to his first misconduct and is entitled to significant mitigation, the present misconduct is deemed serious. Ten years of practice without discipline is significant. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [10 years is given “significant weight”].)

Additional Mitigating Circumstances:

Pretrial Stipulation: Respondent is entitled to mitigation because he entered into a stipulation of facts and conclusions of law prior to trial, thereby preserving State Bar Court time and resources. (*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].)

Emotional/Physical Problems: Respondent had been prescribed medication to treat his diagnosed major depressive disorder, kidney disease, and insomnia. At the time of accident, Respondent was taking prescription medication, including Soma (pain medication), and Meprobamate (anti-anxiety medication). According to Respondent, he had ingested an anti-insomnia prescribed medication, Lunesta, the night before the accident. After Respondent’s treating psychiatrist evaluated Respondent and assessed the event and circumstances of the accident that occurred on October 25, 2009, he reported that he believed that the events were “remarkably similar and consistent with the side effects” of Lunesta. Further, his psychiatrist stated that at the time that he prescribed Lunesta, he “was not aware of the extreme side effects that the manufacturer has only recently began reporting...” Further, he stated that “[t]hese side effects include ‘sleep driving’ where by patients have reported frightening episodes in which they reported going to bed, but woke up to find they had been arrested roadside in their underwear or nightclothes.” Respondent’s treating physician further opined that while Respondent was under the effects of Lunesta, he “did not undertake the activity in question knowingly or voluntarily.” (*In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561 [corroborating testimony from expert-like witness].)

On September 2, 2014, Respondent’s treating psychiatrist provided an opinion letter that after a recent evaluation of Respondent, he believes that the Respondent “is currently stable and asymptomatic in regards to any psychiatric condition, including depression.” Further, the psychiatrist stated that he believes Respondent’s future prognosis is “excellent and his ability to practice law in the future should be unaffected.”

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 Silvertown* (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 2.12(a) provides that “[a]ctual suspension is appropriate for final conviction of a felony not involving moral turpitude but involving other misconduct warranting discipline.” Respondent’s conviction does not involve moral turpitude, however, the facts and circumstances surrounding Respondent’s misconduct warrant discipline.

In the present case, although Respondent’s misconduct does not involve the practice of law it is nonetheless serious because it demonstrates a threat to the safety of others. Respondent has been convicted of three DUI’s, one of which resulted in great bodily injury to an elderly victim. Respondent poses a significant threat to the safety of others and the likelihood of recurrence is uncertain at this point considering he has only been released from prison for 8 months.

In this matter, although the misconduct did not relate to Respondent’s practice of law, the magnitude of Respondent’s misconduct is large and the extent of Respondent’s harm is serious as the victim suffered great bodily harm. Here, Respondent’s conviction for the felony DUI itself does not involve moral turpitude. Although he left the scene of the accident, there is no evidence to show that he knowingly left the scene of an accident. Respondent was taking prescribed medication for insomnia, kidney disease, and major depressive disorder. After Respondent’s treating psychiatrist evaluated Respondent and assessed the event and circumstances of the accident that occurred on October 25, 2009, he reported that he believed that the events were “remarkably similar and consistent with the side effects” of Lunesta. Further, his psychiatrist stated that at the time that he prescribed Lunesta, he “was not aware of the extreme side effects that the manufacturer has only recently begun reporting...” Further, he stated that “[t]hese side effects include ‘sleep driving’ where by patients have reported frightening episodes in which they reported going to bed, but woke up to find they had been arrested roadside in their underwear or nightclothes.” Respondent’s treating physician further opined that while Respondent was under the effects of Lunesta, he “did not undertake the activity in question knowingly or voluntarily.” Considering all of the facts and circumstances of Respondent’s conviction, the DUI does not involve moral turpitude.

Here, the facts and circumstances surrounding Respondent's felony DUI conviction are serious as the accident caused great bodily harm to a victim. Moral turpitude has been defined as "everything done contrary to justice, honesty, modesty, or good moral" (*In re McAllister*, 14 Cal.2d 602, 603, 95 P.2d 932, 933, *In re Hatch*, 10 Cal.2d 147, 150, 73 P.2d 885) and as "(a)n act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man" (*In re Boyd*, 48 Cal.2d 69, 70, 307 P.2d 625; *In re Craig*, 12 Cal.2d 93, 97, 82 P.2d 442). Finally, although it is not dispositive, the California Court of Appeal held that a person seeking to evade criminal prosecution by leaving the scene of an accident commits crime of moral turpitude that could be used for impeachment purposes. *People v. Dewey*, 42 Cal.App.4th 216, 49 Cal.Rptr.2d 537, 541 (1996). Here, however, it cannot be shown that Respondent knowingly tried to evade criminal prosecution, or knowingly breached his duty owing to the victim. Therefore, the facts and circumstances do not rise to the level of moral turpitude.

In determining the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In mitigation, Respondent has no prior disciplinary history and is entitled to mitigation for voluntarily entering into this stipulation before trial. However, Respondent's acts constitute a pattern of misconduct all involving driving while under the influence of a drug, causing accidents, and leaving the scene of such accident. Further, Respondent was on probation for his previous DUI (2006) when we committed the DUI underlying this present matter.

In light of the facts and circumstances surrounding this matter, along with the mitigating and aggravating factors, discipline consisting of two years' stayed suspension, two years' probation, and one year of actual suspension is appropriate. The stipulation to resolve this matter would contain the standard conditions imposed for those imposed for serious misconduct involving alcohol or drugs. A lengthy suspension will fulfill the primary purposes of discipline by protecting the public, the courts and the legal profession; maintaining the highest professional standards; and preserving public confidence in the legal profession.

This disposition is consistent with case law. (See *In re Carr* (1988) 46 Cal.3d 1089 [two years' stayed suspension, five years' probation, and 60 days' actual suspension for 2 DUI convictions in 1983 and 1984].) Here, Respondent's misconduct is more serious as Respondent crashed into a victim causing great bodily harm, left the scene of the accident and collided into a center divider on the freeway. Therefore, a greater suspension in the present matter is warranted.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 25, 2014, the prosecution costs in this matter are \$2,392. 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.

EXCLUSION FROM MCLE CREDIT

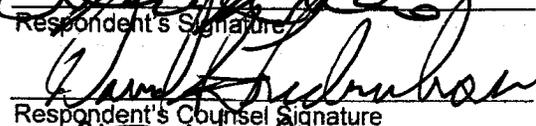
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of suspension. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: SHAWN MICHAEL MCSHANE	Case number(s): 11-C-10975
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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.

<u>9/4/14</u> Date	 Respondent's Signature	<u>SHAWN MICHAEL MCSHANE</u> Print Name
<u>9/4/14</u> Date	 Respondent's Counsel Signature	<u>DAVID S. FREDRICKSEN</u> Print Name
<u>9/5/14</u> Date	 Deputy Trial Counsel's Signature	<u>SUE HONG</u> Print Name

(Do not write above this line.)

In the Matter of: SHAWN MICHAEL MCSHANE	Case Number(s): 11-C-10975
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ACTUAL SUSPENSION 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.

- 1) On page 11 of the Stipulation, second paragraph, last line, delete “we” and insert “he”;
- 2) On page 11 of the Stipulation, third paragraph, second sentence, delete “to resolve this matter would contain” and insert “contains.”

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.)**

SEPTEMBER 22, 2014
Date



GEORGE E. SCOTT, JUDGE PRO TEM
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 Case Administrator 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 September 23, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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:

DAVID S. FREDRICKSEN
11931 DOROTHY ST APT 6
LOS ANGELES, CA 90049

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

SUE HONG, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 23, 2014.



Rose M. Luthi
Case Administrator
State Bar Court