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**State Bar Court of California
Hearing Department
San Francisco
STAYED SUSPENSION**

Counsel For The State Bar Heather E. Abelson Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 Bar # 243691	Case Number(s): 13-C-12807-LMA	For Court use only PUBLIC MATTER FILED <i>16</i> FEB - 6 2015 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Mary Grace Guzman Fishkin & Slatter, LLP 1575 Treat Blvd Ste 215 Walnut Creek, CA 94598 (925) 944-5600 Bar # 172695	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: PATRICK MICHAEL FAHEY Bar # 172695 A Member of the State Bar of California (Respondent)	STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 **December 8, 1994**.
- (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 **14** 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)

AA



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- (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 are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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 or a separate attachment entitled "Prior Discipline."
- (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. **See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 11.**
- (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. **See "Facts Supporting Aggravating Circumstances" in the attachment hereto at page 11.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (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.
- (8) **Restitution:** Respondent failed to make restitution.

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- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

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. **See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 11.**
- (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 subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

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No Prior Discipline - See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 11.

Pre-Trial Stipulation - See "Facts Supporting Mitigating Circumstances" in the attachment hereto at page 11.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law 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:

The above-referenced suspension is stayed.

(2) **Probation:**

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

E. Additional Conditions of Probation:

(1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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- (6) 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.
- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8) 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.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input checked="" 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 within one year. **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) **Other Conditions:**

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In the Matter of: PATRICK MICHAEL FAHEY	Case Number(s): 13-C-12807-LMA
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Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least (2) meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program See below

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

Respondent recognizes that the facts and circumstances underlying his conviction, including the fact that he blew a 0.18% blood alcohol content on the breathalyzer test, 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

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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 suspension, and during the period of suspension, 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 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.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PATRICK MICHAEL FAHEY

CASE NUMBER: 13-C-12807-LMA

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which he was convicted involved other misconduct warranting discipline.

Case No. 13-C-12807 (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 May 16, 2013, the San Mateo County District Attorney's Office filed a criminal complaint in San Mateo County Superior Court, case no. NM418942, charging respondent with one count of violation of Vehicle Code section 23153(a) [DUI and Causing Bodily Injury], a misdemeanor, and one count of violation of Vehicle Code section 23153(b) [Driving with a Blood Alcohol Content of 0.08% or Higher and Causing Bodily Injury], a misdemeanor. The complaint further alleged an enhancement for driving with a blood alcohol content of 0.15% or higher. On July 30, 2013, the District Attorney's Office amended the criminal complaint to add a violation of Vehicle Code section 23152(b) [DUI While Having a 0.08% or Higher Blood Alcohol Content], a misdemeanor, and a corresponding enhancement for driving with a blood alcohol content of 0.15% or higher.

3. On July 30, 2013, the court entered respondent's plea of nolo contendere to violation of Vehicle Code section 23152(b) [Driving While Having a 0.08% or Higher Blood Alcohol Content], a misdemeanor, and based thereon, the court found respondent guilty of this count. Respondent also admitted to the enhancement of driving with a blood alcohol content of 0.15% or higher. The court dismissed the remaining counts in the furtherance of justice.

4. On July 30, 2013, the court sentenced respondent to, amongst other conditions, 3-years probation, 4-days in jail with credit for time served, 15 days in jail in lieu of paying a fine which could be served in the Betty Ford program instead of jail, completion of the First-Time Offender's Program, and enrollment in the Southworth outpatient treatment program.

5. On January 8, 2015, 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.

FACTS:

6. On April 22, 2013, at approximately 7:00pm, South San Francisco Police responded to a reported vehicle accident at the intersection of Hickey Boulevard and Camaritas Avenue involving respondent making an improper turn into oncoming traffic and causing a low-speed head-on collision with another vehicle.

7. At the scene of the accident, the responding officer observed that respondent displayed signs of alcohol intoxication including bloodshot and watery eyes, horizontal gaze nystagmus, and a strong odor of alcohol about respondent's breath and body.

8. At the scene of the accident, the responding officer noted that the driver of the other vehicle complained of pain, had sustained visible injuries to her mouth and nose, and that her vehicle had moderate damage to the front end. The South San Francisco Fire Department responded to the scene and provided medical aid to the driver.

9. During an interview with the responding officer, respondent admitted that the accident was his fault and that he had accidentally made a left turn into oncoming traffic. Respondent refused to show the responding officer where the accident occurred, claiming that he was in shock and needed time to relax. When asked by the responding officer whether he had consumed any alcoholic beverages, respondent stated that he had not.

10. At the scene of the accident, while another police officer examined respondent's eyes, the responding officer noted that respondent had difficulty keeping his head still during the exam, and that his eyes displayed the onset of horizontal gaze nystagmus.

11. At the scene of the accident, when asked whether the results of a preliminary alcohol screen test would show respondent's blood alcohol content was 0.0%, respondent stated "it should be."

12. At the scene of the accident, respondent refused to submit to a preliminary alcohol screening test or a field sobriety test. Respondent was subsequently arrested for violation of Vehicle Code section 23153(a). After respondent was Mirandized and read the Implied Consent Advisement and Chemical Test Refusal rules, respondent agreed to be tested, and was subsequently transported to San Mateo County Jail.

13. At San Mateo County Jail, respondent completed a breathalyzer test. At approximately 8:58pm, respondent's blood alcohol content was measured at 0.18%, and at 9:01 pm, his blood alcohol content was measured at 0.17%.

14. After the breathalyzer test, respondent was again questioned as to his alcohol consumption. Respondent admitted that he had consumed almost an entire bottle of vodka over a three hour period. Respondent was booked for violating Vehicle Code sections 23153(a) and 23153(b).

15. On April 31, 2013, Officer Lee contacted the driver of the other vehicle to determine the extent of her injuries. According to the driver, she had hit her nose against the airbag when it deployed at the time of impact. Her neck and right shoulder were forced forward due to the impact of the collision, causing her extreme pain. The driver also sustained a bruise on her upper left breast due to the force of impact from her seatbelt. The driver's right wrist was also injured because she was holding the steering wheel at the time of impact. The driver stated that originally her pain level was a 10 out of 10, and was now an 8 out of 10. The driver initially missed 3½ days of work due to the collision, but went

to the hospital on two occasions complaining of pain, and obtained a doctor's note stating that she should not return to work until June 3, 2013.

CONCLUSIONS OF LAW:

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

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Dishonesty (Std. 1.5(d)): Respondent repeatedly misrepresented to the police that he had not consumed any alcoholic beverages prior to the traffic accident. Respondent's dishonesty constitutes an aggravating factor pursuant to Standard 1.5(d).

Harm (Std. 1.5(f)): Respondent caused substantial physical injury to the driver of the other vehicle involved in the traffic accident, and also caused moderate damage to the driver's car. The property damage and bodily injury caused by respondent constitutes an aggravating factor pursuant to Standard 1.5(f).

FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Although respondent's misconduct is serious, he is entitled to substantial mitigation for having practiced law for approximately 20 years without discipline. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Remorse (Std. 1.6(g)): Following the traffic accident, and prior to criminal prosecution, respondent acknowledged his problem with alcohol and sought in-patient treatment. Following successful completion of in-patient treatment, respondent completed therapy appointments and AA meetings beyond what was recommended by the treatment facility or required by respondent's plea deal. Respondent's recognition of wrongdoing constitutes a mitigating circumstance pursuant to Standard 1.6(g).

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of Chief Trial Counsel prior to trial, thereby saving 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].)

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).)

Here, based on the facts and circumstances set forth above, respondent's single DUI conviction, with an enhancement for a blood alcohol content of 0.15% or above, does not involve moral turpitude. (*See e.g., In re Kelley* (1990) 52 Cal. 3d 487 (finding that a second and subsequent DUI conviction warranted discipline but did not involve moral turpitude).) Therefore, Standard 2.12(b) applies. Standard 2.12(b) provides that "[s]uspension or reproof is appropriate for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline." In a conviction referral proceeding, "discipline is imposed according to the gravity of the crime and the circumstances of the case." (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.)

Respondent's misconduct warrants a 1-year stayed suspension, as opposed to a reproof, because respondent's misconduct resulted in substantial physical injury to the other driver, and is further aggravated by respondent's repeated misrepresentations to the responding police officers regarding whether he had consumed any alcohol prior to the accident. A higher level of discipline is not warranted because respondent's misconduct is substantially mitigated by respondent's 20 years of discipline free practice, demonstrated recognition of wrongdoing, and entering into a pretrial stipulation.

A one-year stayed suspension is also supported by Supreme Court precedent. In *Kelley*, respondent was convicted of a second DUI, only 36 months after, and while still on probation for, her first DUI conviction. (52 Cal.3d at 491-492.) The second conviction triggered Kelley's first disciplinary proceeding with the State Bar. (*Id.* at 492.) The court found that her conduct did not involve moral turpitude, but that her "repeated criminal conduct calls into question her judgment and fitness to practice law in the absence of disciplinary conditions designed to prevent recurrence of such conduct." (*Id.* at 490-491.) The court also found substantial mitigation including no prior discipline, cooperation throughout the disciplinary proceeding and extensive involvement in community service. (*Id.* at 498.) The Supreme Court held that a public reproof, referral to the Alcohol Abuse Program, and three year probation was sufficient discipline to protect the public. (*Id.* at 499.)

Here, respondent's misconduct is slightly more egregious than attorney Kelley's misconduct. Although attorney Kelley was convicted of two misdemeanor DUIs, neither of her DUIs involved an accident which caused property damage or bodily injury. Respondent's misconduct is also subject to more aggravating factors than attorney Kelley's misconduct. Therefore, respondent's misconduct warrants a slightly higher level of discipline than the public reproof which attorney Kelley received.

Balancing all of the appropriate factors, a 1-year stayed suspension is consistent with Standard 2.12(b), applicable caselaw, and is appropriate taking into consideration the facts and circumstances of this case.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 29, 2015, 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. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: PATRICK MICHAEL FAHEY	Case number(s): 13-C-12807-LMA
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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>2/3/15</u> Date	 Respondent's Signature	<u>Patrick Michael Fahey</u> Print Name
<u>2/4/15</u> Date	 Respondent's Counsel Signature	<u>Mary Grace Guzman</u> Print Name
<u>2/5/15</u> Date	 Deputy Trial Counsel's Signature	<u>Heather E. Abelson</u> Print Name

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In the Matter of: PATRICK MICHAEL FAHEY	Case Number(s): 13-C-12807-LMA
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STAYED 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.

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.)

Date

Feb 6, 2015


LUCY ARMENDARIZ
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 San Francisco, on February 6, 2015, 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 San Francisco, California, addressed as follows:

MARY G. GUZMAN
FISHKIN & SLATTER, LLP
1575 TREAT BLVD STE 215
WALNUT CREEK, CA 94598

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

HEATHER ABELSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 6, 2015.



Mazie Yip
Case Administrator
State Bar Court