

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS  
STATE OF COLORADO

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**STIPULATION AND FINAL AGENCY ORDER**

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IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF SCOTT H. MCCLURE, M.D., LICENSE NUMBER 23495,

Respondent.

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IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel A ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Scott H. McClure, M.D. ("Respondent") as follows:

**JURISDICTION AND CASE HISTORY**

1. Respondent was licensed to practice medicine in the state of Colorado on October 9, 1980 and was issued license number 23495, which Respondent has held continuously since that date.
2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.
3. On August 13, 2004, the Panel reviewed case number 2004-001337-A. The Panel thereupon referred the matter to the Attorney General pursuant to § 12-36-118(4)(c)(IV), C.R.S.
4. It is the intent of the parties and the purpose of this Stipulation and Final Agency Order ("Order") to provide for a settlement of all matters set forth in case number 2004-001337-A without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, and there are no other agreements or promises, written or oral, that modify, interpret, construe or affect this Order.
5. Respondent understands that:
  - a. Respondent has the right to be represented by an attorney of the Respondent's choice, and the Respondent has been so represented in this matter;
  - b. Respondent has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.;
  - c. By entering into this Order, Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Order, and relieves the Panel of its burden of proving such facts; and
  - d. Respondent is knowingly and voluntarily giving up the right to present a defense by oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Panel.

6. Respondent specifically admits and agrees as follows:
  - a. Respondent is a Board-certified psychiatrist.
  - b. In April 1994, Patient A began therapy with Respondent. In the beginning of the therapeutic relationship, Patient A talked to Respondent about an experience with a prior psychiatrist. Patient A believed her prior psychiatrist was grooming her for a sexual boundary violation. Patient A also informed Respondent that she was sexually molested and physically abused as a child. As a result of these discussions, Respondent and Patient A addressed boundary issues from the beginning of their therapeutic relationship. During therapy, Patient A became angry with Respondent for not touching her. Respondent initially told Patient A that psychotherapy did not involve touching.
  - c. Respondent experienced a number of losses and stressors in his personal life in the early and mid 1990s. In 1995, Patient A gave Respondent an audiotape of music. Respondent found the audiotape moving, and made a decision to reciprocate and record his own audiotape for Patient A. Soon thereafter, Patient A and Respondent began to engage in a sexual and romantic relationship. Their sexual relationship began approximately sixteen months into Patient A's therapy with Respondent.
  - d. Respondent continued to engage in a sexual and romantic relationship with Patient A until 2001. For several of those years, Respondent and Patient A lived together.
  - e. During the period of time their sexual and romantic relationship was occurring, Respondent continued to write prescriptions for Patient A and to provide medication samples to Patient A. Patient A chose not to seek psychotherapy or medication from another provider.
  - f. Respondent has prescribed antidepressants for himself rather than seeking the assistance of an independent medical professional. In June and August 1996, Respondent prescribed Dexedrine for himself for a total of 120 tablets in a false name to a fictitious female patient. He asked Patient A to pick those up at the pharmacy for him. During his relationship with Patient A, Respondent felt Patient A was placing "tremendous pressure to drink" on him, and Respondent found this pressure difficult to resist. Respondent therefore prescribed Antabuse for himself.
  - g. After Respondent and Patient A ended their sexual and romantic relationship, Patient A began making repeated requests for financial assistance. In October 2003, Respondent consulted an attorney for legal advice, and Respondent provided Patient A with \$10,000 as a reasonable estimate of the treatment costs she accrued under his care. After that meeting, Respondent contacted a nationally recognized psychiatrist who evaluates and treats physicians who have been involved in boundary violations with a patient ("the evaluating psychiatrist"). The evaluating psychiatrist evaluated Respondent over a period of two days in December 2003. This evaluation included psychological testing and multiple psychiatric interviews.

h. The evaluating psychiatrist found that Respondent had a past history of substance abuse, minor depressive symptoms and narcissistic traits. The evaluating psychiatrist concluded that Respondent would be safe to practice medicine in the context of a variety of safeguards that are incorporated into this Order.

i. From 1998 to 1999, during which time the above-described violations were ongoing, Respondent served as president of the Colorado Psychiatric Society. From 1986 to 1998, Respondent was also the Medical Director of the Cedar Springs Hospital Chemical Dependency Treatment Programs.

j. From 1994 through 2003, Respondent was an Associate Medical Director for the Colorado Physician Health Program ("CPHP"). Respondent's own boundary violations were ongoing for many of those years. In the role of Associate Medical Director, Respondent was responsible for evaluating and monitoring many physicians, including physicians who have had boundary violations.

k. In 2000, CPHP's staff members, who knew Patient A as Respondent's girlfriend, queried Respondent about whether he had a past physician-patient relationship with Patient A. Respondent lied to the CPHP staff during this lengthy conversation. Respondent answered that he knew Patient A socially, that Patient A needed a new psychiatrist, and that he simply met with Patient A to provide a referral to another psychiatrist. He said they began a romantic and sexual relationship one year after the consult. Respondent's statements were not true. The true nature of Respondent's relationship with Patient A was reported to CPHP in late 2003, and soon thereafter, on December 8, 2003, Respondent resigned from CPHP.

7. Respondent admits that the conduct set forth above constitutes unprofessional conduct as defined in § 12-36-117(1)(g), 117(1)(i), 117(1)(p), 117(1)(r), and 117(1)(cc), C.R.S.

8. Based upon the above, the Panel is authorized by § 12-36-118(5)(g)(III), C.R.S. to order the terms and conditions contained in this Order.

#### **STAYED SUSPENSION AND FINE**

9. The parties agree that, commencing on the effective date of this Order, Respondent's license to practice medicine issued by the Board shall be suspended for a period of six months. This period of suspension will be stayed on the condition that Respondent strictly adheres to all terms and conditions of this Order.

10. If during the term of this Order the Panel finds that Respondent has violated any term or condition of this Order, the Panel may automatically and immediately impose the stayed six-month suspension. Such suspension shall be effective ten days from the date of mailing of a Notice of Suspension to Respondent by first-class mail to his last address of record with the Board. Respondent has the responsibility to keep the Board informed of any change of address. Such Notice of Suspension shall set forth the grounds for the Panel's action.

11. Within 30 days of the date of such mailing, Respondent may request a formal hearing as provided by the Administrative Procedure Act and § 12-36-118, C.R.S. The sole issues at such hearing shall be limited to the issues identified in the Notice of Suspension as set

forth in above. The parties agree that this procedure shall satisfy all entitlements the Respondent has to due process of law with respect to the imposition of the stayed suspension.

12. The terms of this Order shall continue regardless of whether a suspension is imposed unless this Order is explicitly superceded.

13. In addition to the suspension, if Respondent violates any terms or conditions of this Order or engages in unprofessional conduct as defined by the Medical Practice Act, the Panel may seek additional disciplinary action and impose additional sanctions pursuant to the procedures set forth in the Administrative Procedure Act and § 12-36-118, C.R.S.

14. Should the stayed suspension be imposed pursuant to the above provisions, Respondent shall not perform any act defined as the practice of medicine in § 12-36-106, C.R.S. during the period of suspension. This prohibition from practicing medicine shall apply irrespective of where Respondent practices. Respondent may not practice medicine under the authority of a license issued by any other medical licensing board during the period of suspension.

15. In lieu of imposing the suspension at this time, Respondent shall pay a fine of \$10,000 in one lump sum payable by check to the State of Colorado. The funds shall be paid to the state general fund. The payment shall be paid in full to the Board within 20 days of the effective date of this Order.

#### **PROBATIONARY TERMS**

16. Respondent's license to practice medicine is hereby placed on probation for five years commencing on the effective date of this Order. During the probationary period, Respondent agrees to be bound by the terms and restrictions set forth below.

#### **TREATMENT MONITORING AND SUBSTANCE ABUSE EVALUATION**

17. Within 30 days of the effective date of this Order, the Respondent shall nominate, in writing, a proposed treatment monitor for the Panel's approval. The nominee shall be a physician licensed by the Board and currently practicing medicine in Colorado. The nominee shall have no financial interest in Respondent's practice of medicine. The nominee must be knowledgeable in Respondent's area of practice. The Board shall not have disciplined the nominee. The nominee must have expertise in clinical psychiatry, boundary issues and substance abuse issues.

18. Respondent's nomination for treatment monitor shall set forth how the nominee meets the above criteria. With the written nomination, Respondent shall submit a letter signed by the nominee as well as a current *curriculum vitae* of the nominee. The letter from the nominee shall contain a statement from the nominee indicating that the nominee has read this Order and understands and agrees to perform the obligations set forth herein. The nominee must also state that the nominee can be fair and impartial in the performance of the treatment monitoring duties described in this Order.

19. Respondent shall provide the treatment monitor with a copy of the evaluation performed by the evaluating psychiatrist in December 2003.

20. Upon approval by the Panel, the treatment monitor shall perform the following:
- a. The treatment monitor shall order any evaluation or treatment the treatment monitor believes to be warranted to assure Respondent's mental health and safety to practice. Such evaluation and/or treatment may include but shall not be limited to medical or psychological testing and/or evaluations, and/or medical or psychological treatment.
  - b. In addition to any other evaluation ordered by the treatment monitor, Respondent shall undergo an extended evaluation for substance abuse within 90 days of the date on which the probationary period begins. The treatment monitor shall oversee this extended evaluation for substance abuse.
  - c. The treatment monitor shall recommend treatment and psychotherapy for Respondent as warranted in the areas of clinical psychology, boundaries, and substance abuse.
  - d. The treatment monitor shall review the quarterly reports of Respondent's practice monitor. The treatment monitor shall order any further evaluation or treatment as may be warranted by the contents of the quarterly reports.
  - e. Throughout the probationary period, all recommendations and/or orders by the treatment monitor shall constitute terms of this Order, and must be complied with. Failure to comply with such recommendations shall constitute a violation of this Order.
  - f. The treatment monitor shall submit quarterly written reports to the Panel. The reports shall describe Respondent's evaluation and/or treatment. The reports shall also state whether Respondent is in compliance with this Order. If at any time the treatment monitor has reasonable cause to believe that Respondent has violated the terms of this Order, is unable to practice with skill and with safety to patients or has committed unprofessional conduct as defined in § 12-36-117(1), the treatment monitor shall immediately inform the Panel.
  - g. Within 30 days of the effective date of this Order, Respondent shall complete an unrestricted release permitting the treatment monitor to disclose to the Panel all privileged information concerning Respondent in its possession, including information generated by other sources. Respondent shall also complete any releases necessary to allow the treatment monitor and/or the Panel to review otherwise privileged information prepared by or in the possession of outside evaluators or treatment providers. The sole exception shall be that Respondent need not sign a release to permit disclosure of the notes of Respondent's personal treating psychotherapist, but Respondent must sign a release permitting his personal treating psychotherapist to communicate with his treatment monitor regarding Respondent's treatment and safety to practice medicine. Any revocation of such releases by Respondent shall constitute a violation of this Order. In the event Respondent does revoke such release, the treatment monitor may, due to confidentiality concerns, feel compelled to refuse to acknowledge Respondent's participation with the treatment monitor. The treatment monitor's refusal to acknowledge Respondent's participation with the treatment monitor shall constitute a violation of this Order.

21. It is the responsibility of the Respondent to provide information and releases to the treatment monitor in a timely and complete manner and to take all reasonable measures to assure that the treatment monitor's reports are timely and complete. Failure of the treatment monitor to perform the duties set forth above may result in a notice from Board staff requiring the nomination of a new treatment monitor. Upon such notification, Respondent shall nominate a new treatment monitor according to the procedure set forth above. Respondent shall nominate the new treatment monitor within 30 days of such notice. Failure to nominate a new treatment monitor within 30 days of such notification shall constitute a violation of this Order.

### **DOCUMENTATION COURSE**

22. Within 30 days of the effective date of this Order, Respondent shall contact the Center for Personalized Education for Physicians ("CPEP") to enroll in a course entitled the Patient Care Documentation Seminar ("CPEP Documentation Seminar").

23. Respondent shall enroll in and successfully complete the "pre-program," the "seminar," and the six-month "post-program" of the CPEP Documentation Seminar.

24. In the alternative to completing all portions of the CPEP Documentation Seminar listed above, Respondent may select and complete a course relating to psychiatric patient recordkeeping ("an alternate documentation course"). Prior to enrolling in an alternate documentation course, Respondent must request that the Panel approve the course. If Respondent fails to obtain preapproval for the course, the Panel may not choose to accept the unapproved course in lieu of all portions of the CPEP Documentation Seminar.

25. Within one year of the effective date of this Order, Respondent shall provide the Panel with proof of successful completion of either (a) the CPEP Documentation Seminar including the pre-program, the seminar and the post-program, or (b) an alternate documentation course previously approved by the Panel.

### **DISCLOSURE REQUIREMENT**

26. Respondent shall create a document entitled "Information Regarding Practice Policies." This document shall inform patients that Respondent has been disciplined by the Board for sexual contact with a patient and shall contain the following paragraph:

Sexual relationships between a physician and a patient are never appropriate and are in fact prohibited by state law, (see Colorado Revised Statutes). Engaging in a social relationship with your physician is contrary to the promotion of the therapeutic and professional physician-patient relationship and is therefore inappropriate under any circumstances. The boundaries set forth above are necessary to ensure you the highest quality of care and are solely for your protection. If you have any concerns about the standards of my care please inform me of those concerns so that we can discuss them fully. In addition, you are invited to bring your concerns to the attention of the Colorado

Board of Medical Examiners. The Colorado Board of Medical Examiners may be contacted at the following address

Colorado State Board of Medical Examiners  
1560 Broadway, Suite 1300  
Denver, CO 80202  
FAX: 303-894-7692  
TELEPHONE: 303-894-7690  
Web site: [www.dora.state.co.us/medical/](http://www.dora.state.co.us/medical/)

27. Respondent must present a copy of his proposed disclosure document with the above-described information to the Panel for the Panel's approval within 30 days of the effective date of this Order.

28. The Respondent shall ensure that a copy of the above-described document is signed and dated by each of his current and future patients and placed in the respective medical chart of each of his current and future patients.

#### **PRACTICE MONITORING**

29. During the probationary period, a "practice monitor" shall monitor Respondent's medical practice. Within 30 days of the effective date of this Order, the Respondent shall nominate, in writing, a proposed practice monitor for the Panel's approval. The nominee shall be a physician licensed by the Board and currently practicing medicine in Colorado. The nominee shall have no financial interest in Respondent's practice of medicine. The nominee must be knowledgeable in Respondent's area of practice. The practice monitor must be a board certified psychiatrist. The practice monitor should have expertise in the areas of boundaries violations and countertransference. If the Respondent has privileges at hospitals, it is preferred, but not required, that the nominee have privileges at as many of those same hospitals as possible. The Board shall not have disciplined the nominee.

30. Respondent's nomination for practice monitor shall set forth how the nominee meets the above criteria. With the written nomination, Respondent shall submit a letter signed by the nominee as well as a current *curriculum vitae* of the nominee. The letter from the nominee shall contain a statement from the nominee indicating that the nominee has read this Order and understands and agrees to perform the obligations set forth herein. The nominee must also state that the nominee can be fair and impartial in the review of the Respondent's practice.

31. Respondent shall provide the practice monitor with a copy of the evaluation performed by the evaluating psychiatrist in December 2003. This evaluation is discussed in this Order, above.

32. Upon approval by the Panel, the practice monitor shall perform the following:

a. The practice monitor shall remain familiar with all of Respondent's cases and Respondent's progress with all patients.

b. The practice monitor must maintain a heightened vigilance for those patients who might trigger vulnerabilities leading to boundary violations. Respondent and the practice monitor shall discuss whether such patients need to be referred to another provider or comanaged. Respondent shall refer patients to another practitioner or comanage patients as recommended by the practice monitor. Such recommendations shall constitute terms of this Order.

c. The practice monitor shall meet with Respondent on a weekly basis to discuss at least twenty five percent of Respondent's caseload for that week. The cases discussed should be selected by the practice monitor. The cases should focus primarily on patients Respondent is seeing for formal therapy, but may include a portion of patients Respondent is seeing for medication management. The cases reviewed must include the cases of any patients who might trigger vulnerabilities leading to boundary violations. Respondent and the practice monitor shall discuss Respondent's psychotherapeutic work, his grasp of countertransference, and his grasp of boundary issues among other issues. During the review, the practice monitor shall review Respondent's charts to assure proper documentation and to assure that Respondent has complied with the disclosure requirement as set forth above in this Order.

d. The practice monitor shall submit quarterly written reports to the Panel and shall provide copies of those quarterly reports to the treatment monitor.

e. The practice monitor's reports shall include the following:

i. a description of each of the cases reviewed;

ii. as to each case reviewed, a statement as to whether the charts reviewed demonstrate compliance with the disclosure requirement as set forth above in this Order; and

iii. as to each case reviewed, the practice monitor's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice and whether Respondent is maintaining appropriate boundaries.

33. If at any time the practice monitor believes Respondent is not in compliance with this Order, is unable to practice with skill and with safety to patients or has otherwise committed unprofessional conduct as defined in § 12-36-117(1), C.R.S., the practice monitor shall immediately inform the Panel.

34. It is the responsibility of the Respondent take all reasonable measures to assure that the practice monitor's reports are timely and complete. Failure of the practice monitor to perform the duties set forth above may result in a notice from Board staff requiring the nomination of a new practice monitor. Upon such notification, Respondent shall nominate a new practice monitor according to the procedure set forth above. Respondent shall nominate the new monitor within 30 days of such notice. Failure to nominate a new monitor within 30 days of such notification shall constitute a violation of this Order.



## **TOLLING OF THE PROBATIONARY PERIOD WHERE PRACTICE MONITORING OR TREATMENT MONITORING IS NOT IN EFFECT**

35. If a practice monitor recommended by Respondent and approved by the Panel does not commence practice monitoring within three months of the commencement of the probationary period, the period of probation shall be tolled for the time the Order is in effect and Respondent's practice is not being monitored by the practice monitor. Additionally if the Respondent is required to nominate a new practice monitor, the period of probation shall be tolled for any period of time during which a practice monitor is not monitoring Respondent's practice.

36. If a treatment monitor recommended by Respondent and approved by the Panel does not commence practice monitoring within three months of the effective date of this Order, the period of probation shall be tolled for the time the Order is in effect and Respondent is not being monitored by a treatment monitor. Additionally if the Respondent is required to nominate a new treatment monitor, the period of probation shall be tolled for any period of time during which a treatment monitor is not monitoring Respondent.

37. Unless otherwise specified, all terms of the Order and all terms of probation shall remain in effect regardless of whether the probationary period has been tolled.

## **OUT OF STATE PRACTICE**

38. Respondent may wish to leave Colorado and practice in another state. Except if the stayed suspension described above is imposed, Respondent may request that the Board place Respondent's license on inactive status as set forth in § 12-36-137, C.R.S. Upon the approval of such request, Respondent may cease to comply with the terms of this Order. Failure to comply with the terms of this Order while inactive shall not constitute a violation of this Order. While inactive, Respondent may not engage in any act requiring a license to practice medicine in the state of Colorado, and may not perform any act constituting the practice of medicine in the state of Colorado. Unless Respondent's license is inactive, Respondent must comply with all terms of this Order, irrespective of Respondent's location. The probationary period will be tolled for any period of time Respondent's license is inactive.

39. Respondent may resume the active practice of medicine at any time as set forth in § 12-36-137(5), C.R.S. With such request, Respondent shall nominate a treatment monitor and a practice monitor as provided above. Respondent shall be permitted to resume the active practice of medicine only after approval of the practice monitor and the treatment monitor, and only after the treatment monitor provides the Panel with an up-to-date psychiatric evaluation of Respondent.

## **EARLY MODIFICATION OF PROBATION**

40. After successful completion of 24 months of probation, the Respondent may request early modification of the terms of probation in this Order. Such a request must be accompanied by a statement from Respondent's treatment monitor and Respondent's practice monitor concerning the request. Respondent specifically acknowledges that the Panel's decision regarding a request to modify terms of probation shall be in the sole discretion of the Panel and shall be unreviewable.

## TERMINATION OF PROBATION

41. Upon the expiration of the probationary period, Respondent may request restoration of Respondent's license to unrestricted status. If Respondent has complied with the terms of probation, and if Respondent's probationary period has not been tolled, such release shall be granted by the Panel in the form of written notice.

## OTHER TERMS

42. The terms of this Order were mutually negotiated and determined.

43. Both parties acknowledge that they understand the legal consequences of this Order; both parties enter into this Order voluntarily; and both parties agree that no term or condition of this Order is unconscionable.

44. All costs and expenses incurred by Respondent to comply with this Order shall be the sole responsibility of Respondent, and shall in no way be the obligation of the Board or Panel.

45. Respondent shall obey all state and federal laws during the probationary period.

46. So that the Board may notify hospitals of this agreement pursuant to § 12-36-118(13), C.R.S., Respondent presently holds privileges at the following hospitals:

none

47. This Order and all its terms shall have the same force and effect as an order entered after a formal hearing pursuant to § 12-36-118(5)(g)(III), C.R.S. except that it may not be appealed. Failure to comply with the terms of this Order may be sanctioned by the Inquiry Panel as set forth in § 12-36-118(5)(g)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of § 12-36-117(1)(u), C.R.S. In addition to any other sanction that may be imposed, failure to comply with the terms of this Order shall toll the probationary period.

48. This Order shall be admissible as evidence at any future hearing before the Board.

49. During the pendency of any action arising out of this Order, the obligations of the parties shall be deemed to be in full force and effect and shall not be tolled.

50. This Order shall be effective upon approval by the Panel and signature by a Panel member. Respondent acknowledges that the Panel may choose not to accept the terms of this Order and that if the Order is not approved by the Panel and signed by a Panel member, it is void.

51. Upon becoming effective, this Order shall be open to public inspection and shall be reported the Federation of State Medical Boards, the National Practitioner Data Bank/Healthcare Integrity and Protection Data Bank and as otherwise required by law.

S. McClure  
Scott H. McClure, M.D.

The foregoing was acknowledged before me this 29 day of October, 2004  
by Scott H. McClure, M.D.



Sharon K. Griffith  
NOTARY PUBLIC

4-11-2007  
My commission expires

THE FOREGOING Stipulation and Final Agency Order is approved and effective this  
17 day of November, 2004.

FOR THE COLORADO STATE BOARD OF  
MEDICAL EXAMINERS

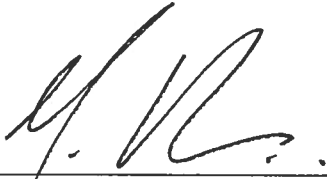
INQUIRY PANEL A

Paul Calvey MD

APPROVED AS TO FORM:

FOR THE RESPONDENT

SILVER & DEBOSKEY



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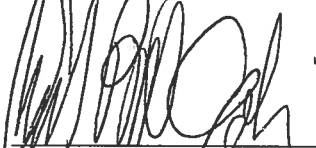
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FOR THE BOARD OF MEDICAL EXAMINERS

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