

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE APPLICATION TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF JOSEPH M. PASTOR, M.D.

Applicant

IT IS HEREBY STIPULATED and agreed by and between the Colorado State Board of Medical Examiners ("Board") and Joseph M. Pastor, M.D. ("Applicant") as follows:

JURISDICTION AND CASE HISTORY

1. The Board has jurisdiction over Applicant and over the subject matter of this proceeding.
2. In November 2000 Panel B ("Panel"), acting as the Licensing Subcommittee, initially considered Applicant's application to practice medicine in Colorado pursuant to § 12-36-104(3), C.R.S. Pursuant to § 12-36-116(1)(b), and (1)(c), C.R.S., the Panel denied the application. Applicant then provided significant additional information from a number of sources, which resulted in the Panel reconsidering Applicant's application and authorizing licensure under probationary conditions.
3. 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 currently known to the Panel involving Applicant's alcohol abuse and the resulting discipline of his license in Ohio and in Massachusetts, without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order.
5. Applicant understands that:
 - a. Applicant has the right to be represented by an attorney of the Applicant's choice;
 - b. Applicant has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.
 - c. By entering into this Order, Applicant 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. Applicant 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. Applicant specifically admits and agrees that:

For four months in 1997 Applicant used alcohol excessively in response to a traumatic personal event. Applicant voluntarily sought substance counseling and was diagnosed with alcohol dependence. As a result of the alcohol dependence, Applicant's medical license was suspended in Ohio for five weeks in 1997. In January 1998, his Ohio license was reinstated on probation. Further, in June 1998, Applicant's license to practice medicine in Massachusetts became subject to probation and a suspension, which was stayed upon Applicant's compliance with his probationary conditions in Massachusetts. The discipline to Applicant's license in Massachusetts was also based upon his 1997 excessive use of alcohol.

7. Applicant admits that the conduct set forth above constitutes unprofessional conduct as defined in § 12-36-117(1)(i), C.R.S. and in §12-36-117(2), C.R.S.

8. Based upon the above, the Panel is authorized by § 12-36-118(5)(g)(III), C.R.S. to order probation and such conditions upon Applicant's practice that it deems appropriate.

PROBATIONARY TERMS

9. Applicant's license to practice medicine is hereby placed on probation for five years. During the probationary period, Applicant agrees to be bound by the terms and restrictions set forth below.

ABSTINENCE FROM ADDICTIVE SUBSTANCES

10. Applicant shall totally abstain from the use of alcohol and the use of any habit-forming drug or controlled substance, other than as administered, dispensed or prescribed by an authorized person other than Applicant. Applicant shall use such habit-forming drug or controlled substance only as directed by such authorized person and only for the condition identified by such authorized person.

AUTHORIZED USE OF ADDICTIVE SUBSTANCES

11. Except in the case of a bona fide medical emergency, the Applicant shall not use a habit-forming drug or controlled substance given by an authorized person unless Applicant has received **prior written approval** of the use from the treatment monitor. In the case of a bona fide medical emergency, Applicant may use the habit-forming drug or controlled substance as prescribed by the authorized person, but must notify the treatment monitor within 24 hours of the use. Also within 24 hours of the use, Applicant must obtain written approval from the treatment monitor for continued use of the habit-forming drug or controlled substance.

12. Approvals for the use of habit-forming drugs or controlled substances made by the treatment monitor shall go only to the particular medication, indication, dosage and amount of refills understood and acknowledged by the treatment monitor. The burden shall be on the Applicant to assure that the treatment monitor understands fully the drug regimen the treatment monitor is approving.

TREATMENT MONITORING

13. During the probationary period, Applicant shall receive such medical treatment as is determined to be appropriate by the Colorado Physician Health Program ("CPHP"). All instructions to Applicant by CPHP shall constitute terms of this Order, and must be complied with. Failure to comply with such instructions shall constitute a violation of this Order. CPHP shall also function as the "treatment monitor" as that term is used in this Order. CPHP shall monitor Applicant's compliance with this Order in the following manner:

a. CPHP shall test Applicant's urine to insure compliance with this Order. CPHP shall require Applicant to submit to urine tests on randomly selected days on a frequency of twelve times per month. Upon notice to Applicant by CPHP that a urine sample must be given, Applicant must provide a urine sample as soon as possible, but in no event later than 6:00 p.m. that same day. Within these guidelines, CPHP shall make reasonable effort to insure that the Applicant will not be able to predict which days Applicant will be tested. CPHP shall take all reasonable measures, including observation of the giving of the urine sample, to insure that the urine testing is effective.

b. CPHP shall submit quarterly written reports to the Panel. The reports shall briefly describe Applicant's treatment with CPHP. The reports shall also state whether Applicant is in compliance with this Order. If at any time CPHP has reasonable cause to believe that Applicant 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), CPHP shall immediately inform the Panel.

14. Applicant shall not consume any substance such as poppy seeds, cough syrup or mouthwash that results in a "false positive" for urine testing. Any false positive caused by the consumption of poppy seeds, cough syrup or mouthwash shall constitute a violation of this Order. Any consumption of any other substance Applicant has reason to believe will cause a false positive shall also constitute a violation of this Order.

15. Nothing in this agreement shall limit the ability of CPHP to test more frequently or for more substances than set forth above or to impose any other condition as part of its treatment of Applicant.

16. Within 30 days of the effective date of this Order, Applicant shall complete an unrestricted release permitting CPHP to disclose to the Panel all privileged information concerning Applicant in its possession, including information generated by other sources. Any revocation of such release by Applicant shall constitute a violation of this Order. In the event Applicant does revoke such release, CPHP may, due to confidentiality concerns, feel compelled to refuse to acknowledge Applicant's participation in CPHP. CPHP's refusal to acknowledge Applicant's participation with that organization shall constitute a violation of this Order.

17. If at any time, CPHP feels that any of the above requirements are no longer necessary CPHP may petition the Panel to relax the above requirements. If the Panel agrees to

such a relaxation, it shall so inform CPHP by written notice. Thereafter, Applicant may comply with this Order as set forth in that notice.

PRACTICE MONITORING

18. During the probationary period, a "practice monitor" shall monitor Applicant's medical practice. Within 30 days of the effective date of this Order, the Applicant 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 Applicant's practice of medicine. The nominee must be knowledgeable in Applicant's area of practice. If Applicant is board certified in an area of practice, it is preferred, but not required, that the nominee be board certified by that same board. If the Applicant 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.

19. Applicant's nomination for practice monitor shall set forth how the nominee meets the above criteria. With the written nomination, Applicant 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 Applicant's practice.

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

a. Each month, the practice monitor shall visit all the offices at which Applicant practices medicine and review at least five charts maintained by Applicant. The practice monitor shall make reasonable efforts to insure that Applicant has no notice of which charts will be selected for review. The practice monitor is authorized to review such other medical records maintained by Applicant as the practice monitor deems appropriate.

b. Each month, the practice monitor shall review at least five hospital charts of patients whom Applicant has admitted to hospitals. If Applicant has admitted fewer than five patients, the practice monitor shall review all the patients so admitted, if any. The practice monitor shall make reasonable efforts to insure that Applicant has no notice of which charts will be selected for review. The practice monitor is authorized to review such other hospital charts as the practice monitor deems appropriate.

c. The practice monitor shall submit quarterly written reports to the Panel.

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

i. a description of each of the cases reviewed; and

ii. as to each case reviewed, the practice monitor's opinion whether Applicant is practicing medicine in accordance with generally accepted standards of medical practice.

21. If at any time the practice monitor believes Applicant 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.

22. It is the responsibility of the Applicant 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, Applicant shall nominate a new practice monitor according to the procedure set forth above. Applicant 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.

EARLY TERMINATION FROM PRACTICE MONITORING

23. Eighteen months after the commencement of the probationary period, Applicant may petition the Panel for early termination of practice monitoring. The parties agree that the Panel's decision regarding such a petition shall be made in the sole discretion of the Panel and shall be unreviewable.

OUT OF STATE PRACTICE

24. Applicant may wish to leave Colorado and practice in another state. At any time, whether to practice out of state, or for any other reason, Applicant may request that the Board place Applicant's license on inactive status as set forth in § 12-36-137, C.R.S. Upon the approval of such request, Applicant may cease to comply with those provisions of this Order titled "Authorized Use of Addictive Substances," "Treatment Monitoring" and "Practice Monitoring." Failure to comply with any of these provisions, while inactive, shall not constitute a violation of this Order. While inactive, Applicant must comply with all other provisions of this Order, particularly the provision titled "Abstinence From Addictive Substances." Unless Applicant's license is inactive, Applicant must comply with all provisions of this Order, irrespective of Applicant's location. The probationary period will be tolled for any period of time Applicant's license is inactive.

25. Applicant may resume the active practice of medicine at any time as set forth in § 12-36-137(5), C.R.S. With such request, Applicant shall nominate a practice monitor as provided above. Applicant shall be permitted to resume the active practice of medicine only after approval of the practice monitor.

TERMINATION OF PROBATION

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

OTHER TERMS

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

28. 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.

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

30. Applicant shall obey all state and federal laws during the probationary period.

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

None in Colorado. Applicant has terminated his privileges in hospitals in Ohio, effective January 1, 2001 due to his beginning practice in Colorado.

32. 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.

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

34. 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.

35. This Order shall be effective upon approval by the Panel and signature by a Panel member. Applicant 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.

36. Upon becoming effective, this Order shall be open to public inspection and shall be reported as required by law.

Joseph M. Pastor MD
JOSEPH M. PASTOR, M.D.

The foregoing was acknowledged before me this 26th day of DECEMBER

by Joseph M. Pastor, M.D.

City of INDEPENDENCE and County of CUYAHOGA

Susan J. Talpas

NOTARY PUBLIC
SUSAN J. TALPAS
Notary Public, State of Ohio
Recorded in Cuyahoga Cty.
My Comm. Expires 03-13-2001

My commission expires

THE FOREGOING Stipulation and Final Agency Order is approved and effective this
18th day of January, 2000 2001. JTA

FOR THE COLORADO STATE BOARD OF
MEDICAL EXAMINERS
Panel B, Acting as Licensing Subcommittee

Jim Ammons, MD

APPROVED AS TO FORM:

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