

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO



STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE APPLICATION FOR A LICENSE TO PRACTICE
MEDICINE IN THE STATE OF COLORADO OF JOHN SMOLLEY, JR., M.D.,
Applicant.

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

JURISDICTION AND CASE HISTORY

1. On September 11, 1997, the Board considered an
application made by the Applicant for a license to practice
medicine.

2. By virtue of this application, the Board has
jurisdiction over Applicant and over the subject matter of this
proceeding.

3. With his application, Applicant disclosed that he has
suffered from alcoholism as recently as January of 1994.
Applicant also provided information that showed he had resisted
efforts to monitor his drinking. In particular, Applicant had
baked his Antabuse medication so as to prevent its effectiveness
and to allow him to continue drinking.

4. It is the intent of the parties and the purpose of this
Stipulation and Final Agency Order (hereinafter, "the Order") to
provide for a settlement of all facts disclosed in Applicant's
application 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 hearing
pursuant to §§ 12-36-116 and 24-4-104(9), C.R.S.

c. By entering into this Order, Applicant is knowingly and voluntarily giving up the right to a hearing and admits the facts contained in this Order; and

d. Applicant is knowingly and voluntarily giving up the right to present oral and documentary evidence, and to cross-examine witnesses who would testify on behalf of the Board.

6. Applicant admits that the conduct set forth above establishes that Applicant has been habitually intemperate: unprofessional conduct as defined in § 12-36-117(1)(i), C.R.S.

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

8. Upon approval of this Order by the Board, or the Licensing Subcommittee of the Board, this case shall be delegated to an Inquiry Panel ("Panel") of the Board for monitoring of Applicant's compliance with the provisions of this Order. The parties agree that the Panel shall be authorized to act for the Board in all respects relevant to the enforcement of this Order.

PROBATIONARY TERMS

9. Applicant is hereby granted a license to practice medicine in the state of Colorado subject to a ten year period of probation. During the probationary period, Applicant agrees to be bound by the terms and restrictions set forth in the paragraphs below. Applicant may not perform any act authorized by a license issued by the Board until:

a. the Board has approved a practice monitor as set forth below; and

b. Applicant furnishes a letter from CPHP indicating that CPHP agrees to monitor Applicant and that Applicant has completed a release as 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.

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 and 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.

13. Applicant shall not knowingly consume any substance such as poppy seeds, cough syrup or mouthwash which Applicant may have a reason to know will cause a "false positive" for urine testing.

TREATMENT MONITORING

14. Applicant shall receive such medical treatment as is determined to be appropriate by the Colorado Physician Health Program ("CPHP"). All treatment recommendations by CPHP shall constitute terms of this Order. CPHP shall also function as the "treatment monitor" as that term is used in this Order and 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.

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. Applicant shall complete a 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.

17. If at any time, CPHP feels that any of the above requirements are no longer necessary to Applicant's recovery or to insure Applicant can practice with skill and with safety to Applicant's patients, 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. Applicant's medical practice at all office and hospital locations in Colorado shall be monitored by a "practice monitor." The practice monitor shall be a physician licensed and currently practicing medicine in Colorado. The practice monitor must be knowledgeable in Applicant's area of practice. Most importantly, the practice monitor must function as the eyes of the Board and must not feel an allegiance to Applicant that would prevent a fair and impartial review of Applicant's practice to insure that Applicant is practicing within the standard of care and in compliance with this Order. The practice monitor shall have no financial interest in Applicant's practice of medicine. The practice monitor may be selected by Applicant but must be approved by the Panel. Prior to the Panel's approval, the practice monitor shall submit to the Panel a current curriculum vitae and letter to the Panel. In the letter, the practice monitor shall state that the practice monitor has read this Order, and understands and agrees to perform the obligations as set forth herein.

19. The practice monitor shall perform the following:

a. At least once 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. At least once 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 to the hospital in the previous month, 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:

- (1) a description of each of the cases reviewed;
- (2) a description of the condition of Applicant's office facilities.
- (3) the practice monitor's opinion whether Applicant is practicing medicine in accordance with generally accepted standards of medical practice; and
- (4) any indication that Applicant has violated a term of this Order.

20. 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 committed unprofessional conduct as defined in § 12-36-117(1), C.R.S., the practice monitor shall immediately inform the Panel.

21. Applicant shall insure that all reports by the practice monitor are complete and are submitted to the Panel on time. If, in the Panel's judgment, the practice monitor fails to perform the functions contemplated by this Order, the Panel may require that a new practice monitor assume the responsibilities specified herein. If Applicant becomes aware that the practice monitor has ceased to perform the functions contemplated by this Order, Applicant shall nominate a new monitor within 30 days.

EARLY TERMINATION FROM PRACTICE MONITORING

22. Eighteen months after the effective date of this Order, Applicant may petition the Panel for elimination of the practice monitoring requirements set forth above. 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.

OTHER TERMS

23. 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.

24. Applicant shall obey all state and federal laws during the probationary period ordered herein.

25. At the completion of the probationary term ordered herein, including any extension required by this paragraph, Applicant may make a written request to the Panel to place Applicant's license in unrestricted status. With such request, Applicant shall supply any outstanding reports from practice or treatment monitors. If Applicant has complied with the terms of probation, such release shall be granted by the Panel in the form of written notice. Absent such notice from the Panel, Applicant shall continue to comply with the probationary terms. The period of probation shall be tolled by any period of time during which:

a. Applicant is not engaged in the clinical practice of medicine in Colorado;

b. Applicant is not being monitored as required by the terms of this Order; or

c. Applicant is not in compliance with any other term of this Order.

26. Applicant shall report to the Board when gaining hospital privileges so that the Board may notify the hospital pursuant to § 12-36-118(13), C.R.S. Applicant presently holds privileges at the following hospitals:

Colo State Mental Institute at Pueblo

27. This Order and all its terms shall have the same force and effect as an order entered after a formal disciplinary hearing pursuant to § 12-36-118(5)(g)(III), C.R.S. Failure to comply with the terms of this Order may be sanctioned by the Board or by an Inquiry Panel of the Board 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.

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

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

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

John Smolley Jr, MD
Applicant

Address

The foregoing was acknowledged before me this 14th day of
December by John Smolley, Jr., M.D.

Rose Ann Bell
NOTARY PUBLIC

My Commission expires:

12-12-97

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 8 day of January, 1997.

FOR THE COLORADO STATE BOARD OF
MEDICAL EXAMINERS

Lrene Aguilar MD

APPROVED AS TO FORM:

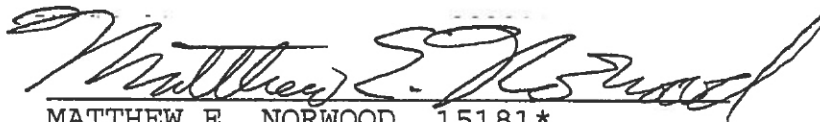
FOR THE BOARD OF MEDICAL EXAMINERS

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BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

ORDER OF SUSPENSION PURSUANT 12-36-118(5)(g)(IV), C.R.S.

IN THE MATTER OF THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF
COLORADO OF JOHN SMOLLEY, Jr., M.D., LICENSE NO. 36742,

Respondent.

TO: John Smolley, Jr., M.D.
4901 West 93rd, #214
Westminster, CO 80031

Inquiry Panel A ("Panel") of the Colorado State Board of Medical Examiners ("Board"), on May 15, 2002, reviewed all available information concerning Respondent's failure to fully comply with the terms and conditions of the January 8, 1998, Stipulation and Final Agency Order ("Order"), and found that:

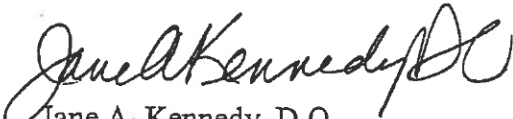
1. Panel A granted Respondent a medical license on January 8, 1998, subject to terms and conditions contained in the Order. The Order is attached hereto as Exhibit A. Respondent's medical license was placed on a ten-year probationary period with treatment monitoring through the Colorado Physician Health Program ("CPHP").
 2. As a condition of Respondent's Order, Respondent must totally abstain from the use of alcohol and the use of any habit-forming drug or controlled substance, except as authorized. Respondent is required to receive medical treatment as determined to be appropriate by the CPHP, that includes but is not limited to, random urine drug screens and treatment counseling.
 3. On May 1, 2002, the Panel received information from CPHP that Respondent provided a urine drug screen sample on April 25, 2002 that tested positive for alcohol. CPHP informed the Panel that Respondent admitted to consuming alcohol on April 24, 2002.
 4. It is the opinion of CPHP that Respondent is not able to practice medicine with reasonable skill and safety to his patients because of his inadequately treated alcohol relapse. See letter from CPHP, dated May 1, 2002, attached as Exhibit B.
 5. Respondent has failed to fully comply with paragraph ten of the Order. Respondent is in violation of the Order.
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6. On April 30, 2002, Respondent's medical privileges were suspended by Centennial Peaks Hospital as a result of Respondent's relapse. Letter informing Respondent of his suspension is attached as Exhibit C.
7. Subsequently, Respondent signed a written document acknowledging that he voluntarily ceased practicing medicine effective April 29, 2002. See Exhibit D.
8. Panel A, therefore, finds reasonable cause to believe that Respondent has failed to comply with the Order and that his failure is not due to conditions that are beyond Respondent's control.

THEREFORE IT IS ORDERED, in accordance with section 12-36-118(5)(g)(IV), C.R.S., that the license to practice medicine of John Smolley, Jr., M.D., is **suspended effective 5:00 p.m., Wednesday, May 15, 2002**. Such suspension shall remain in effect until such time as CPHP has determined Respondent safe to return to the practice of medicine and such time Respondent has provided adequate confirmation to the Panel of full compliance with the Order, including but not limited to, compliance and participation with CPHP, abstinence from addictive substances and all treatment monitoring recommendations as deemed appropriate by CPHP.

DATED AND SIGNED this 15th day of May 2002

FOR THE COLORADO STATE BOARD OF MEDICAL EXAMINERS
INQUIRY PANEL A


Jane A. Kennedy, D.O.
Chair

BEFORE THE COLORADO STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

SECOND STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF APPLICATION REGARDING THE LICENSE TO PRACTICE
MEDICINE IN THE STATE OF COLORADO OF JOHN SMOLLEY, JR., M.D., LICENSE
NO. 36742,

Respondent.

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

JURISDICTION AND CASE HISTORY

1. Respondent was originally licensed to practice medicine in the State of Colorado on September 11, 1997, being issued license number 36742, 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. Respondent was granted a license under the terms of a Stipulation and Final Agency Order on September 11, 1997 ("First Order," attached as Exhibit A). The First Order was based upon a violation of § 12-36-117(1)(i), C.R.S. involving habitual alcohol intemperance and Respondent's resistance to efforts to monitor his alcohol consumption. Under the September 11, 1997 First Order, Respondent's license was placed on a ten-year probationary period. Some of the probationary conditions required abstinence from the use of alcohol, habit-forming drugs and controlled substances, treatment monitoring through the Colorado Physician Health Program ("CPHP"), including but not limited to random urine drug screens and treatment counseling, and practice monitoring of his medical practice. Respondent further agreed to not knowingly consume poppy seeds.

4. On January 1, 2002 Respondent relapsed on alcohol. On January 15, 2002, Respondent's hospital privileges were suspended as a result of an incident on January 12, 2002 when Respondent reported to the hospital after drinking alcohol and was reported by hospital staff. Respondent then underwent intensive outpatient treatment. During the period of time between January and April 2002 Respondent had a positive drug screen for opiates, which Respondent states was based on eating a poppy seed bagel. Respondent states that the hospital menu confirmed that poppy seeds were available on that date. Respondent submitted a urine drug screen sample on April 25, 2002 to CPHP that tested positive for alcohol. Respondent admitted to consuming alcohol and his hospital privileges were again suspended. Following a request from CPHP that he enter inpatient treatment immediately, he indicated that he would admit himself the week of May 6, 2002. After that Respondent changed the date of admission

several times. On May 1, 2002, the Panel received information from CPHP regarding the positive urine screen sample and on May 15, 2002, the Panel suspended Respondent's license pursuant to § 12-36-118(5)(g)(IV), C.R.S. Respondent entered inpatient treatment on May 30, 2002 and was discharged August 23, 2002. Respondent states the delay in admitting himself was due to a number of personal and family issues.

5. On November 13, 2002, the Panel reviewed information in case numbers 5102012030 and 5102013000. The Panel thereupon referred the matter to the Attorney General pursuant to section 12-36-118(4)(c)(IV), C.R.S.

6. It is the intent of the parties and the purposes of this Stipulation and Final Agency Order ("Second Order") to provide for a settlement of all matters set forth in case numbers 5102012030 and 5102013000, without the necessity of holding a formal disciplinary hearing. This Second 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 Second Order.

7. Respondent understands that:

a. Respondent has the right to be represented by an attorney of the Respondent's choice;

b. Respondent has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.

c. By entering into this Second Order, Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Second 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.

8. Respondent specifically admits and agrees to the facts set forth in paragraph 3 and 4.

9. Respondent admits that the conduct set forth above constitutes unprofessional conduct as defined in § 12-36-117(1)(i), C.R.S. involving habitual intemperance and § 12-36-117(1)(o), C.R.S. involving a disability that renders a licensee unable to perform medical services with reasonable skill and with safety to the patient.

10. 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 Respondent's practice that it deems appropriate.

PROBATIONARY TERMS

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

ABSTINENCE FROM ADDICTIVE SUBSTANCES

12. Respondent 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 Respondent. Respondent 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

13. Except in the case of a bona fide medical emergency, the Respondent shall not use a habit-forming drug or controlled substance given by an authorized person unless Respondent has received **prior written approval** of the use from the treatment monitor. In the case of a bona fide medical emergency, Respondent 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, Respondent must obtain written approval from the treatment monitor for continued use of the habit-forming drug or controlled substance.

14. 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 Respondent to assure that the treatment monitor understands fully the drug regimen the treatment monitor is approving.

TREATMENT MONITORING

15. During the probationary period, Respondent shall receive such medical treatment as is determined to be appropriate by CPHP. All instructions to Respondent by CPHP shall constitute terms of this Second Order, and must be complied with. Failure to comply with such instructions shall constitute a violation of this Second Order.

16. **Failure to provide a urine sample or blood test on the date requested shall constitute a urine or blood test positive for prohibited substances and shall constitute a violation of this Second Order. A diluted urine sample shall constitute a urine test positive for prohibited substances and shall constitute a violation of this Second Order.**

17. CPHP shall also function as the "treatment monitor" as that term is used in this Second Order. CPHP shall monitor Respondent's compliance with this Second Order in the following manner:

a. CPHP shall test Respondent's urine to insure compliance with this Second Order. CPHP shall require Respondent to submit to urine tests on randomly selected days to commence on a frequency of **twelve times per month** for a minimum period of six-months. Upon notice to Respondent by CPHP that a urine sample must be given, Respondent 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 Respondent will not be able to predict which days Respondent 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 Board and shall submit a report at the time Respondent again applies for licensure. The reports shall briefly describe Respondent's treatment with CPHP. The reports shall also state whether Respondent is in compliance with this Second Order. If at any time CPHP has reasonable cause to believe that Respondent has violated the terms of this Second 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.

18. Respondent 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 Second Order. Any consumption of any other substance Respondent has reason to believe will cause a false positive shall also constitute a violation of this Second Order. Respondent has previously attempted to excuse a urine positive for opiates by stating he had ingested poppy seeds. **Use or ingestion of poppy seeds shall not excuse a positive urine test or blood test.**

19. 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 Respondent.

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

PRACTICE MONITORING

22. During the probationary period, a "practice monitor" shall monitor Respondent's medical practice. If Respondent is not currently receiving practice monitor under the First Order, within 45 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. If Respondent 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 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.

23. 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.

24. 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 Respondent practices medicine and review at least five charts maintained by Respondent. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other medical records maintained by Respondent, as the practice monitor deems appropriate.
- b. Each month, the practice monitor shall review at least five hospital charts of patients whom Respondent has admitted to hospitals. If Respondent 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 Respondent 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 Respondent is practicing medicine in accordance with generally accepted standards of medical practice.

25. If at any time the practice monitor believes Respondent is not in compliance with this Second 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.

26. It is the responsibility of the Respondent 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 45 days of such notice. Failure to nominate a new monitor within 45 days of such notification shall constitute a violation of this Second Order.

27. Failure to nominate any practice monitor in a timely manner shall toll the period of probation in this Second Order. Unless otherwise specified, all terms of the Second Order and all terms of probation shall remain in effect regardless of whether the probationary period has been tolled from the date on which this Second Order becomes effective until the date on which probation is terminated.

AUTOMATIC REVOCATION

28. If at any time during the duration of this Second Order, Respondent (a.) consumes any alcoholic beverage or uses any habit forming drug or controlled substance in any manner other than those expressly permitted in Paragraphs 12, 13 and 14 of this Second Order, (b.) fails to provide timely urine samples to CPHP (c.) fails to fully comply with any CPHP instruction or request, or (d.) violates C.R.S. §12-36-117(1)(g), C.R.S. §12-36-117(1)(h), C.R.S. §12-36-117(1)(i) or C.R.S. §12-36-117(1)(x), his license to practice medicine may be automatically and immediately revoked. Such revocation shall be effective from the date of mailing of notice of the revocation to Respondent by first class mail to his last registered or known post office address. Such notice shall set forth the grounds for the Board's action.

29. Within 30 days of the date of such mailing, Respondent may request a formal hearing, as provided by C.R.S. §24-4-105. The sole issues at such hearing shall be limited to any of the issues identified in the notice of the revocation and as set forth in paragraph 28. The parties agree that this procedure shall satisfy all entitlements Respondent may have to due process of law.

30. If, after the hearing provided above, the Inquiry Panel fails to meet its burden of proof in establishing Respondent has engaged in conduct set in paragraph 28, this Second Order shall continue in full force and effect. However, the provisions on automatic revocation do not prevent the Inquiry Panel from proceeding on any other violation of this Second Order or the Medical Practice Act § 12-36-101 et seq. C.R.S.

31. The final action of the Board relating to the revocation may be reviewed by the Court of Appeals by appropriate proceedings under C.R.S. §24-4-106(11).

OTHER TERMS

32. The terms of this Second Order were mutually negotiated and determined.

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

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

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

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

Mediplex Hospital

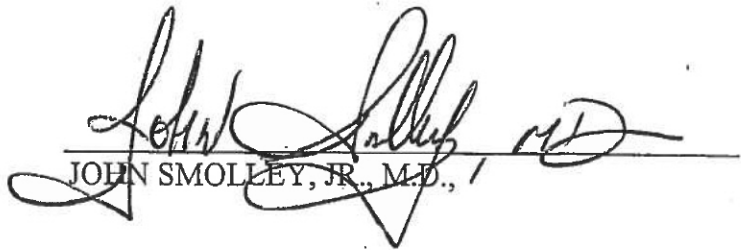
37. This Second Order and all its terms shall have the same force and effect as an order entered after a formal hearing pursuant to §12-36-116(1) and §24-4-104 (9), C.R.S. except that it may not be appealed. Failure to comply with the terms of this Second Order may be sanctioned by the Inquiry Panel as set forth in §12-36-118(5)(g)(IV), C.R.S. This Second Order and all its terms also constitute a valid board order for purposes of §12-36-117(1)(u), C.R.S.

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

39. Respondent acknowledges that he has read every word of this Second Order, understands it, and agrees to abide by all terms and conditions in the Second Order.

40. This Second 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 Second Order and that if the Second Order is not approved by the Panel and signed by a Panel member, it is void.

41. Upon becoming effective, this Second Order shall be open to public inspection and publicized pursuant to the Board's policies and procedures. Additionally, this Second Order shall be reported to the Federation of State Medical Boards, the National Practitioner Data Bank/Healthcare Integrity and Protection Data Bank and as otherwise required by law.


JOHN SMOLLEY, JR., M.D.,

The foregoing was acknowledged before me this 6th day of December, 2002,
by John Smolley, Jr., M.D. in the County of Denver State of Colorado.


NOTARY PUBLIC

5/26/04
My commission expires

THE FOREGOING Second Stipulation and Final Agency Order is approved and
effective this 12 day of DECEMBER, 2002.

FOR THE COLORADO STATE BOARD OF
MEDICAL EXAMINERS

INQUIRY PANEL A

Walter T. Johnson MD

APPROVED AS TO FORM:

COUNSEL FOR THE COLORADO
BOARD OF MEDICAL EXAMINERS
INQUIRY PANEL A

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*Counsel of Record

**BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO**

THIRD STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE
TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF JOHN SMOLLEY, JR.,
M.D., LICENSE NO. 36742

Respondent.

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

JURISDICTION AND CASE HISTORY

1. Respondent was originally licensed to practice medicine in the State of Colorado on September 11, 1997, being issued license number 36742, 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 or about January 20, 2005, the Panel reviewed case numbers 2005-000297-A, 5102012030 and 5102013000. 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 Third Stipulation and Final Agency Order ("Third Order") to provide for a settlement of all matters known to the Panel as of the effective date of this Third Order, including but not limited to those matters set forth in case numbers 2005-000297-A, 5102012030 and 5102013000 without the necessity of holding a formal disciplinary hearing. This Third Order constitutes the entire agreement between the parties, and there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Third Order.
5. Respondent understands that:
 - a. Respondent has the right to be represented by an attorney of the Respondent's choice, and Respondent is 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 Third Order, Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Third 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 that:

a. In December 1997, Respondent entered into a Stipulation and Final Agency Order with the Board ("First Order") in which he was granted a license to practice medicine in Colorado subject to a ten-year probationary period. The First Order was based on a violation of § 12-36-117(1)(i), C.R.S., (habitual alcohol intemperance) and Respondent's efforts to resist monitoring. During the probationary period, Respondent was to abstain from all addictive substances and undergo treatment monitoring through the Colorado Physicians Health Program ("CPHP").

b. On January 1, 2002, Respondent relapsed and his hospital privileges were suspended as a result of an incident on January 12, 2002. Between January and April 2002, Respondent had a positive drug screen for opiates. At that time, Respondent indicated the positive drug screen was from eating a poppy seed bagel. The First Order specifically required that Respondent refrain from eating poppy seeds as these would lead to a false positive drug screen. On April 25, 2002, Respondent tested positive for alcohol in violation the First Order. Respondent's license was suspended on May 15, 2002. Respondent then entered into a Second Stipulation and Final Agency Order ("Second Order"), through which he was allowed to return to practice subject to further monitoring.

c. On June 17, 2004, Respondent provided CPHP with a dilute urine sample that tested positive for trace amounts of a metabolite of ethanol on subsequent testing.

d. Respondent contends that his positive test for alcohol was due to his handling of ethanol for use in his hobby of model rocketry.

e. On September 7, 2004, Respondent provided CPHP with a dilute urine sample that did not test positive for alcohol.

f. On October 7, 2004, the Board issued a 30-day letter requesting Respondent's explanation for the dilute urine sample of September 7, 2004.

g. Respondent did not respond to the October 7, 2004 letter in a timely manner.

7. Respondent admits that the conduct set forth above constitutes unprofessional conduct as defined in § 12-36-117(1)(u) and (gg), 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 Respondent's practice that it deems appropriate.

9. Upon the effective date of this Third Order, the Second Order shall be deemed vacated and this Third Order shall supercede and replace the Second Order.

LETTER OF ADMONITION

10. This Third Order shall constitute a Letter of Admonition as set forth in § 12-36-118(5)(g)(III), C.R.S. Respondent is hereby admonished for the acts and omissions described in paragraphs 6 and 7 above.

11. By entering this Third Order, Respondent agrees to waive the right provided by § 12-36-118(4)(c)(III), C.R.S., to contest this Letter of Admonition.

PROBATIONARY TERMS

12. Commencing on the effective date of this Third Order, Respondent's license to practice medicine in the State of Colorado is hereby placed on probation until such time as Respondent's license to practice medicine is placed on permanent inactive status. During the probationary period, Respondent agrees to be bound by the terms and conditions set forth below.

13. It is the intent of the parties that Respondent's probationary period shall be for an indefinite period of time.

14. If at any time a practice monitor is not providing timely monitoring of Respondent's practice as set forth below in this Third Order, the remainder of the terms of this Third Order shall remain in effect.

15. If at any time Respondent places his license on inactive status, the probationary terms of this Third Order will not be in effect during the period of inactivation. When and if Respondent places his license on active status, after a period of inactivation, the probationary terms of this Third Order will again be in effect.

ABSTINENCE FROM ADDICTIVE SUBSTANCES

16. Respondent 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 Respondent. Respondent 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

17. Except in the case of a bona fide medical emergency, the Respondent shall not use a habit-forming drug or controlled substance given by an authorized person unless Respondent has received **prior written approval** of the use from the treatment monitor. In the case of a bona fide medical emergency, Respondent 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, Respondent must obtain written approval from the treatment monitor for continued use of the habit-forming drug or controlled substance.

18. 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 Respondent to assure that the treatment monitor understands fully the drug regimen the treatment monitor is approving.

TREATMENT MONITORING

19. During the probationary period, Respondent shall receive such medical treatment as is determined to be appropriate by CPHP. All instructions to Respondent by CPHP shall constitute terms of this Third Order, and Respondent must comply with any such instructions. Failure to comply with such instructions shall constitute a violation of this Third Order.

20. Failure to provide a urine sample or blood test on the date requested shall constitute a urine or blood test positive for prohibited substances and shall constitute a violation of this Third Order. A dilute urine sample which is subsequently found to contain even trace amounts of ethanol, any other prohibited substance, or their metabolites shall constitute a urine test positive and shall constitute a violation of this Third Order.

21. CPHP shall also function as the "treatment monitor" as that term is used in this Third Order. CPHP shall monitor Respondent's compliance with this Third Order in the following manner:

- a. CPHP shall test Respondent's urine to insure compliance with this Third Order. CPHP shall require Respondent to submit to urine tests on randomly selected days on a frequency of eight times per month. Upon notice to Respondent by CPHP that a urine sample must be given, Respondent 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 Respondent will not be able to predict which days Respondent 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 Respondent's treatment with CPHP. The reports shall also state whether Respondent is in compliance with this Third Order. If at any time CPHP has reasonable cause to believe that Respondent has violated the terms of this Third 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.

22. Respondent shall not consume any alcohol-containing food or products or any substances such as poppy seeds, cough syrup or mouthwash that result in a "false positive" for urine testing. Any false positive caused by the consumption of alcohol-containing food or products, poppy seeds, cough syrup or mouthwash shall constitute a violation of this Third Order. Any consumption of any other substance Respondent has reason to believe will cause a false positive shall also constitute a violation of this Third Order. Failure to provide a urine sample on the date requested shall constitute a urine test positive for prohibited substances and shall constitute a violation of this Third Order.

23. 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 Respondent.

24. Within 30 days of the effective date of this Third Order (and as often as may reasonably be required to allow the Panel access to Respondent's privileged information), Respondent shall complete an unrestricted release permitting CPHP to disclose to the Panel all privileged information concerning Respondent in its possession. Respondent shall also complete any and all unrestricted releases as are necessary to permit CPHP to disclose to the Panel information generated by other sources. Any revocation of such release by Respondent shall constitute a violation of this Third Order. In the event Respondent does revoke such release, CPHP may, due to confidentiality concerns, feel compelled to refuse to acknowledge Respondent's participation in CPHP. CPHP's refusal to acknowledge Respondent's participation with that organization shall constitute a violation of this Third Order.

25. If at any time, CPHP believes that any of the above requirements are no longer necessary, CPHP may relax the requirements as it deems appropriate, and at CPHP's direction, the Respondent may comply with this Third Order as determined by CPHP. CPHP shall inform the Panel of any such action relaxing the above requirements in its quarterly report. All such reports shall be reviewed by the Board's staff, and, at the staff's discretion, may be reviewed by the Panel. Following receipt and review of such a quarterly report, the Panel reserves the right to reject and nullify CPHP's decision regarding the relaxing of such requirements. If the Panel nullifies CPHP's decision regarding the relaxing of any of the above requirements, the Respondent specifically agrees to comply with the Third Order as set forth above in accordance with the Panel's directions.

PRACTICE MONITORING

26. During the probationary period, a "practice monitor" shall monitor Respondent's medical practice. Within 30 days of the effective date of this Third Order, 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. If Respondent 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 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.

27. 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 Third 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.

28. 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 Respondent practices medicine and review at least five charts maintained by Respondent. The practice monitor shall make reasonable efforts to insure that Respondent has no notice of which charts will be selected for review. The practice monitor is authorized to review such other medical records maintained by Respondent as the practice monitor deems appropriate.
- b. Each month, the practice monitor shall review at least five hospital charts of patients whom Respondent has admitted to, evaluated at, or treated at hospitals. If Respondent has admitted, evaluated, or treated fewer than five patients, the practice monitor shall review all the patients so admitted, evaluated, or treated, if any. The practice monitor shall make reasonable efforts to insure that Respondent 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 Respondent is practicing medicine in accordance with generally accepted standards of medical practice.

29. If at any time the practice monitor believes Respondent is not in compliance with this Third Order, is unable to practice with skill and 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.

30. It is the responsibility of Respondent 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 Third Order.

OUT OF STATE PRACTICE

31. Respondent may wish to leave Colorado and practice in another state. At any time, whether to practice out of state or for any other reason, Respondent may request that the Board place Respondent's license to practice medicine on temporary inactive status as set forth in § 12-36-137, C.R.S. Upon the approval of such request, Respondent may cease to comply with those provisions of this Third 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 Third Order. While temporarily inactive, Respondent must comply with all other provisions of this Third Order, particularly the provision titled "Abstinence From Addictive Substances." Unless Respondent's license to practice medicine is temporarily inactive, Respondent must comply with all provisions of this Third Order, irrespective of Respondent's location.

32. After temporary inactivation of his license to practice medicine, 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 practice monitor as provided above. Respondent shall be permitted to resume the active practice of medicine only after approval of the practice monitor.

TERMINATION OF PROBATION

33. The probationary period is indefinite and remains in effect as long as and any time during which Respondent has an active license. Therefore, there will be no automatic termination of probation.

34. Respondent may petition the Panel for restoration of Respondent's license to non-probationary status no sooner than three years after the effective date of this Third Order. The parties agree that the Panel's decision regarding such a petition shall be made in the sole discretion of the Panel and shall not subject to review by or appeal to the Hearings Panel, any court or any other reviewing entity.

AUTOMATIC REVOCATION

35. Respondent's license to practice medicine may be automatically and immediately revoked if at any time during the duration of this Third Order, Respondent does any of the following:

- a. Consumes any alcoholic beverage or uses any habit forming drug or controlled substance in any manner other than those expressly permitted in this Third Order;
- b. Provides a dilute urine sample which is subsequently found to contain even trace amounts of ethanol, any other prohibited substance, or their metabolites;
- c. Fails to fully comply with any CPHP instruction or request; or
- d. Violates §12-36-117(1)(g), C.R.S.; §12-36-117(1)(h), C.R.S.; §12-36-117(1)(i), C.R.S.; or §12-36-117(1)(x), C.R.S.

36. Such revocation shall be effective from the date of mailing of notice of the revocation to Respondent by first class mail to his last registered or known post office address. Such notice shall set forth the grounds for the Panel's action.

37. Within 30 days of the date of such mailing, Respondent may request a formal hearing, as provided by §24-4-105, C.R.S. The sole issues at such hearing shall be limited to any of the issues identified in the notice of the revocation and as set forth in paragraph 35. The parties agree that this procedure shall satisfy all entitlements Respondent may have to due process of law.

38. If, after the hearing provided above, the Panel fails to meet its burden of proof in establishing that Respondent has engaged in conduct set forth in paragraph 35, this Third Order shall continue in full force and effect. However, the provisions on automatic revocation do not prevent the Panel from proceeding on any other violation of this Third Order or the Medical Practice Act § 12-36-101 et seq. C.R.S.

39. The final action of the Panel relating to the revocation may be reviewed by the Court of Appeals by appropriate proceedings under §24-4-106 (11), C.R.S.

OTHER TERMS

40. The terms of this Third Order were mutually negotiated and determined.

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

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

43. Respondent shall obey all State and federal laws during the probationary period.

44. 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:

45. This Third 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 Third Order may be sanctioned by the Inquiry Panel as set forth in § 12-36-118(5)(g)(IV), C.R.S. This Third 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 Third Order shall toll the probationary period.

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

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

48. This Third 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 Third Order and that if the Third Order is not approved by the Panel and signed by a Panel member, it is void.

John R. Smolley, Jr., MD
JOHN SMOLLEY, J.R., M.D.

JOHN SMOLLEY, JR., M.D., acknowledged the foregoing before me this 4 day of August, 2005.



Connie Ault
NOTARY PUBLIC

08/02/06
Commission expiration date

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 11th day of August, 2005.

FOR THE COLORADO STATE BOARD OF
MEDICAL EXAMINERS

INQUIRY PANEL A

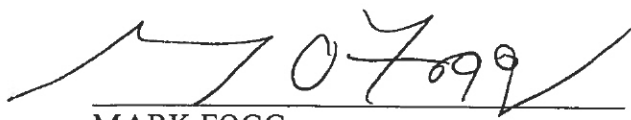
Administrative

APPROVED AS TO FORM:

KENNEDY CHRISTOPHER CHILDS &
FOGG, P.C.
Attorneys at Law

FOR THE BOARD OF MEDICAL EXAMINERS

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*Counsel of Record

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

ORDER OF SUSPENSION PURSUANT 12-36-118(5)(g)(IV), C.R.S.

IN THE MATTER OF THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF
COLORADO OF JOHN R. SMOLLEY, JR., M.D. LICENSE NUMBER 36742,

Respondent.

TO: JOHN R. SMOLLEY, JR., M.D.

THIS MATTER having been reviewed by Inquiry Panel A ("Panel") of the Colorado State Board of Medical Examiners during a regular meeting of the Panel on December 13, 2007, finds that after reviewing all available information concerning Respondent's failure to comply with the terms of the August 11, 2005 Third Stipulation and Final Agency Order that:

- 1) Respondent was licensed to practice medicine in the state of Colorado on January 8, 1998, and was issued license no. 36742.
- 2) Respondent entered into a Stipulation and Final Agency Order January 8, 1997, and a Second Stipulation and Final Agency Order December 12, 2002.
- 3) On or about January 20, 2005, the Panel reviewed cases numbered 2005-000297-A, 5102012030, and 5102013000. The Panel thereupon referred the matter to the Attorney General pursuant to § 12-36-118(4)(c)(IV), C.R.S.
- 4) On or about August 11, 2005, Respondent entered into a Third Stipulation and Final Agency Order ("Order") with the Board without the necessity of holding a formal disciplinary hearing. The conditions of the Order were imposed pursuant to the authority of § 12-36-118(5)(g)(III), C.R.S. Pursuant to the Order, Respondent agreed, *inter alia*, to probation, treatment monitoring with CPHP, and practice monitoring. Respondent agreed to obey all State and federal laws during the probationary period. The Order is incorporated herein as Attachment 1.
- 5) Respondent allowed his medical license to lapse on May 31, 2007. On November 8, 2007, Board staff obtained information that Respondent was practicing medicine on a lapsed license. On November 14, 2007, Board staff received a quarterly report from Respondent's practice monitor stating that Respondent practiced medicine and treated multiple patients during August, September and October 2007. Respondent's license was lapsed at those times.
- 6) Practicing medicine on a lapsed license is a violation of state law and the

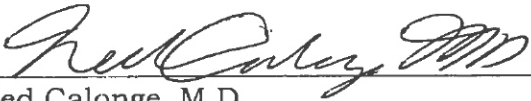
Medical Practice Act, § 12-36-129(1), C.R.S.

THEREFORE IT IS ORDERED, in accordance with Section **12-36-118(5)(g)(IV)**, C.R.S., that the license to practice medicine of John R. Smolley, Jr., M.D. is **suspended** effective 5:00 p.m., December 14, 2007. Such suspension shall remain in effect until such time as Respondent has provided adequate confirmation to the Panel of full compliance with the Third Stipulation and Final Agency Order.

Respondent may, within thirty (30) days of receipt of this Order, request a hearing before the Board for the limited purpose of showing that his failure to comply with the Stipulation and Final Agency Order was due to circumstances beyond his control, and that therefore his license should not be suspended.

DATED AND SIGNED this 13th day of December, 2007.

FOR THE COLORADO STATE BOARD OF MEDICAL EXAMINERS
INQUIRY PANEL A



Ned Calonge, M.D.
Acting Chair

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

CASE ME 2008-0009

FINAL BOARD ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS REGARD THE LICENSE TO
PRACTICE MEDICINE IN THE STATE OF COLORADO OF JOHN ROBERT SMOLLEY,
JR., M.D., LICENSE NO. 36742,

Respondent.

This matter came before Licensing Panel B of the Colorado State Board of Medical Examiners ("Board"), acting as Hearings Panel ("Hearings Panel"), for review of the Initial Decision of Administrative Law Judge, ("ALJ") Judith F. Schulman. The Initial Decision was issued in the above-referenced case on December 5, 2008. That decision is incorporated by reference in this Final Board Order and attached as Exhibit "1."

Petitioner Licensing Panel A did not file exceptions to the initial decision.

Respondent did not file Exceptions to the Initial Decision.

Pursuant to the Colorado State Board of Medical Examiners' rules and regulations regarding exceptions to initial decisions and related matters (Rule 230), the Hearings Panel preserved its option to initiate review of the initial decision pursuant to Section 24-4-105(14)(a)(II), C.R.S.

On February 20, 2009, the Hearings Panel considered the Initial Decision of the ALJ dated December 5, 2008. The Initial Decision states that Respondent did not respond to the ALJ's Entry of Default mailed to the last address furnished by Respondent to the Board. After reviewing the Initial Decision and otherwise being fully advised in the premises, the Hearings Panel unanimously entered its Final Board Order pursuant to Sections 12-36-118(5)(g)(III), and 24-4-105, C.R.S., as follows:

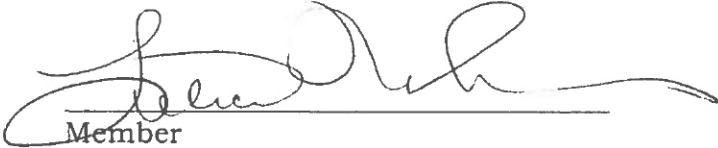
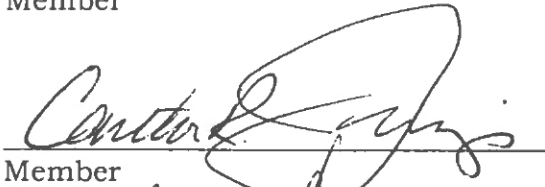
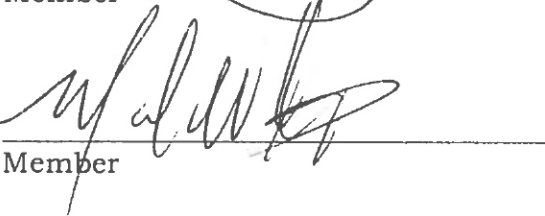
1. The ALJ's Findings of Fact are affirmed and adopted by the Hearings Panel.
2. The ALJ's Conclusions of Law are affirmed and adopted by the Hearings Panel.
3. The recommended denial of Respondent's application to reinstate of the ALJ is adopted by the Hearings Panel.

THEREFORE, IT IS ORDERED that the Respondent's application to reinstate the license to practice medicine in the state of Colorado of John Robert Smolley, Jr., M.D. is hereby denied.

This decision becomes effective upon approval and signature by a majority of the Hearings Panel and is final upon mailing. Any party adversely affected or aggrieved by any agency action may commence an action for judicial review before the Court of Appeals within forty-five (45) days after such action becomes effective. Reference Sections 24-4-106(11) and 12-36-119, C.R.S.

Dated and signed this 20th day of February, 2009.

FOR THE COLORADO STATE BOARD OF MEDICAL EXAMINERS
HEARINGS PANEL B


Member
Member
Member
Member

Member

Member

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 TH Street, Suite 1300 Denver, Colorado 80202	▲ COURT USE ONLY ▲
STATE BOARD OF MEDICAL EXAMINERS, Petitioner, vs. JOHN ROBERT SMOLLEY, JR., M.D., License No. 36742, Applicant.	
CASE NO. ME 2008-0009	
INITIAL DECISION UPON DEFAULT	

This case is a proceeding before the Colorado State Board of Medical Examiners ("the Board"), Panel A ("Panel") acting as Licensing Subcommittee pursuant to Section 12-36-104(3), C.R.S., involving the application to reinstate the medical license of John Robert Smolley, Jr., M.D. ("Applicant"), pursuant to Section 24-4-104(9), C.R.S. The Board was represented by Steven R. Kabler, Assistant Attorney General, Business and Licensing Section. Applicant did not appear in this proceeding. Based upon Applicant's failure to file a timely answer, an Entry of Default was issued on October 17, 2008. Applicant then had ten days to show good cause why the default should be set aside. Section 24-4-105(2)(b), C.R.S. No motion to set aside the default was filed, and this matter became ready for the issuance of an initial decision upon default.

FINDINGS OF FACT

1. The last address furnished by Applicant to the Board is 5738 Olde Wadsworth Blvd., Arvada, Colorado 80002.
2. On July 22, 2008, notice of the nature of this proceeding, the legal authority and jurisdiction under which it was held and the matters of fact and law asserted was mailed to Applicant by first-class mail to Applicant's last address furnished to the Board.
3. The Panel's Motion for Entry of Default was mailed to Applicant by first-class mail to the above address on September 15, 2008.
4. The Administrative Law Judge's Entry of Default was mailed to Applicant by first class mail to the above address on October 17, 2008. Applicant did not respond or otherwise attempt to show good cause to set aside the Entry of Default.

5. The Board and Panel possess jurisdiction over Applicant and the subject matter of these proceedings as set forth in the Colorado Medical Practice Act, Sections 12-36-101 to 12-36-202, C.R.S. and the State Administrative Procedure Act, Sections 24-4-101 to 24-4-108, C.R.S.

6. On January 8, 1998, the Board issued Applicant medical license number 36742, subject to probation.

7. On January 8, 1998, Applicant entered into a Stipulation and Final Agency Order with the Board through which Applicant was placed on probation for a period of ten years ("1998 Order").

8. On May 15, 2002, Applicant was suspended from the practice of medicine for violation of the 1998 Order pursuant to Section 12-36-118(5)(g)(IV), C.R.S. ("2002 Suspension").

9. On December 12, 2002, Applicant entered into a Second Stipulation and Final Agency Order with the Board through which Applicant was placed on probation for a period of ten years ("2002 Order").

10. On August 4, 2005, Applicant entered into a Third Stipulation and Final Agency Order ("2005 Order") with the Board through which Applicant was placed on probation until such time as Applicant's license is placed on permanent inactive status.

11. On May 31, 2007, Applicant's Colorado medical license expired.

12. On approximately November 9, 2007, Applicant applied to the Board to reinstate his Colorado medical license. The Panel considered and denied Applicant's application on February 22, 2008. This fact was communicated to the Applicant by letter dated March 7, 2008.

13. The Applicant timely requested a hearing regarding the denial pursuant to Section 24-4-104(9), C.R.S., and the Panel referred the matter to the Attorney General for the drafting of the Notice of Grounds for Denial and the commencement of a hearing pursuant to Section 24-4-104(9), C.R.S.

14. The Board and the Panel possess jurisdiction over Applicant and the subject matter of these proceedings as set forth in the Colorado Medical Practice Act, Sections 12-36-101 to 202, C.R.S., the State Administrative Procedure Act, Sections 24-4-101 to 108, C.R.S., and Board Rule 130, 3 C.C.R. 713-28.

CONCLUSIONS OF LAW

1. Applicant has received timely notice of the time, place, and nature of this hearing; of all matters of fact and law asserted; and of all matters required by Section 24-4-105(2)(a), C.R.S. in the manner required by that section.

2. The Board has jurisdiction over Applicant and over his license to practice medicine in the state of Colorado.

3. Applicant did not apply to reinstate his Colorado medical license within the sixty-day grace period allowed pursuant to Section 24-34-102 (8)(c), C.R.S.

4. Following the expiration of his Colorado medical license, Applicant continued to engage in the active practice of medicine in the state of Colorado.

5. Applicant continued to engage in the active practice of medicine for more than sixty days after the expiration of his Colorado medical license.

6. The 2005 Order required that Applicant obey all state and federal laws during the probationary period.

7. Section 12-36-106, C.R.S. requires that a person have an active medical license to engage in the practice of medicine.

8. Applicant's conduct, as described herein, constituted the unlicensed practice of medicine and violated Section 12-36-106, C.R.S., thus, violating the 2005 Order.

9. Applicant's violation of the 2005 Order constitutes unprofessional conduct, pursuant to Section 12-36-117(1)(u), C.R.S., and therefore constitutes grounds for denial of Applicant's request for reinstatement of his Colorado medical license.

10. Applicant's engaging in the practice of medicine on an expired license violated Section 12-36-106, C.R.S. and constitutes unprofessional conduct, pursuant to Section 12-36-117(1)(n), C.R.S., and therefore constitutes grounds for denial of Applicant's request for reinstatement of his Colorado medical license.

INITIAL DECISION

Pursuant 3 CCR 713-28, Board Rule 130, Sec. 4 f, the Board may deny an application for reinstatement of licensure for the reasons set forth in Section 12-36-116, C.R.S., including engaging in unprofessional conduct as defined in Section 12-36-117, C.R.S. The Panel seeks denial of Applicant's application to reinstate his Colorado medical license. Applicant did not appear in this matter. No information is before the Administrative Law Judge indicating action other than denial of Applicant's application to

reinstate his license is appropriate. Applicant's failure to appear demonstrates a lack of interest in reinstating his Colorado license. It is therefore the Initial Decision of the Administrative Law Judge that Applicant's application to reinstate his license to practice medicine in the state of Colorado is denied.

DONE AND SIGNED this 5 day of December, 2008.


JUDITH F. SCHULMAN
Administrative Law Judge