

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

CASE NOS. 2006-003859-B, 2008-001108-B, 2008-002791-B, 2009-003534-B, 2010-000416-B, and 2010-001267-B

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 F. ALSTON, M.D.**, LICENSE NUMBER 20548,

Respondent.

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

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the state of Colorado on January 11, 1977 and was issued license number 20548, 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 January 18, 2007, the Panel reviewed case number 2006-3859-B. On January 18, 2008, the Panel reviewed case number 2008-001108-B. On June 19, 2008, the panel reviewed case number 2008-002791-B. On June 18, 2009, the panel reviewed case number 2009-003534. On November 20, 2009, the Panel reviewed case numbers 2010-000416-B and 2010-001267-B. Following review of each case, the Panel referred the matter to the Attorney General pursuant to Section 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 numbers 2006-003859-B, 2008-001108-B, 2008-002791-B, 2009-003534-B, 2010-000416-B and 2010-001267-B 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, which 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 Respondent is so represented in this matter;

- b. Respondent has the right to a formal disciplinary hearing pursuant to Section 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;
 - 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; and
 - e. Respondent is knowingly and voluntarily waiving the right to seek judicial review of this Order.
6. Respondent specifically admits and the Panel finds that:
- a. Respondent practices as a psychiatrist in the State of Colorado.
 - b. On or about January 16, 2005, S.E. and her six year old child A.E., traveled to Colorado to begin an eight-week intensive program for the treatment of Reactive Attachment Disorder.
 - c. S.L., a four year old child, and her adoptive mother traveled to Colorado to participate in a two-week intensive therapy experience from May 13-30, 2003, to assist in overcoming significant aggression symptoms.
 - d. D.B., a ten year old boy, was referred for an intensive therapy program in Colorado from approximately September 19, 2005 to February 28, 2006. D.B. was a ward of his home state after his birth mother terminated her parental rights just prior to his arrival in Colorado.
 - e. From approximately April 11, 2007 through May 9, 2009, Respondent provided psychiatric treatment to B.F., a patient with a date of birth of October 15, 1995.
 - f. Respondent first evaluated and treated L.M., a patient with a date of birth May 3, 1997, from February to July of 2003. He also provided a one-time evaluation of L.M. on June 8, 2005, a telephone consultation with L.M.'s adoptive mother on July 26, 2005, and another evaluation on October 11, 2006. Respondent took over L.M.'s treatment on March 3, 2008 when her family moved to Colorado.

- g. As part of the treatment for S.E., A.E., S.L., D.B., B.F., L.M., J.A. and A.A., Respondent performed a psychiatric evaluation and medication management for each patient.
- h. Respondent failed to include standard and essential components of a psychiatric evaluation, including but not limited to failing to request and review prior psychiatric treatment records or other pertinent treatment records, failing to review prior medication records, and failing to review potential factors that could influence a patient's behavior.
- i. Respondent prescribed medications and/or made multiple medication changes and failed to document the following: adequate clinical indication or justification for the medications he prescribed; the target symptoms each medication was prescribed to treat; the patient's response to the medication; whether he reviewed potential side effects with the patient or guardian; and whether he obtained informed consent to change or prescribe new medications for the patient.
- j. Respondent did not perform or request the required baseline tests or laboratory testing before prescribing medications.
- k. Respondent did not examine potential reactions to medications, did not recommend that the potential complications be evaluated by another medical provider, and prescribed medications that may have caused previous complications without adequately evaluating the complications.
- l. Respondent prescribed medications without reviewing prior treatment records and without evaluating the patient. Respondent prescribed medications that had previously been shown to have no therapeutic effect, and without documenting adequate discussion of side effects with the patient or guardian.
- m. Respondent failed to evaluate the reasons for sudden changes in behaviors of patients, including but not limited to any environmental factors. Respondent also failed to document the target symptoms he was treating with medications.

7. Respondent admits and the Panel finds that the conduct set forth above constitutes unprofessional conduct as defined in Section 12-36-117(1)(p) and (cc), C.R.S., which states:

(1) "Unprofessional conduct" as used in this article means:

(p) Any act or omission which fails to meet generally accepted standards of medical practice.

(cc) Falsifying or repeatedly making incorrect entries or repeatedly failing to make essential entries on patient records.

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

PROBATIONARY TERMS

9. Respondent's license to practice medicine is hereby placed on probation for a period of five years commencing on the effective day of the Order. All terms of probation shall be effective throughout the probationary period and shall constitute terms of this Order.

10. During the probationary period, Respondent agrees to be bound by the terms and conditions set forth below.

AMI PRACTICE MONITORING

11. Within 30 days of the effective date of this Order, Respondent shall enter into a contract with Affiliated Monitors, Inc. ("AMI") for the development and implementation of an Assessment and a Monitoring Program. AMI shall monitor Respondent's medical practice for a period of 5 years. Respondent shall provide the Board with a copy of such contract within ten (10) business days of the effective date of said contract.

12. Respondent shall sign any and all releases necessary to facilitate unrestricted communications between AMI and the Panel. Respondent shall execute the first of these releases within 30 days of the effective date of this Order and Respondent shall not revoke such releases prior to successful completion of the probationary period as set forth in this Order. Within 60 days of the effective date of this Order, Respondent shall provide the Panel with a copy of such releases. Any failure to execute such a release or any premature revocation of such a release shall constitute a violation of this Order.

13. AMI will select a monitor ("the Monitor") to assess and monitor Respondent's medical practice. AMI shall nominate, in writing, the Monitor for the Panel's approval. The Monitor selected by AMI shall have expertise in the Respondent's field of practice. AMI may, in its discretion, select a different Monitor who meets the criteria set forth in this paragraph at any time during the probationary period. In addition, the Panel, in its discretion, may at any time during the probationary period request that AMI select a different Monitor.

14. Within 30 days of the effective date of this Order, Respondent shall contact AMI to schedule a comprehensive assessment ("AMI Assessment"). The AMI Assessment shall include, but need not be limited to, a review by the Monitor. The Monitor shall review a minimum of 25 randomly selected cases. For each case, the Monitor shall review the patient charts and discuss the care with Respondent. Respondent shall complete the AMI Assessment and sign the written AMI Assessment report within 90 days of the effective date of this Order.

15. Respondent shall cause AMI to send to the Panel a copy of the AMI Assessment report, Monitoring Program, and all monitoring reports.

16. Following the completion of the AMI Assessment and development of the Monitoring Program and continuing for 5 years, the Monitor shall perform the following:

a. Each month, the Monitor shall visit all of the offices at which Respondent practices medicine and shall review at least five charts maintained by Respondent. At AMI's discretion and upon approval by the Panel, the frequency of visits by the Monitor can be decreased. The practice monitor shall make reasonable efforts to ensure 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. At each visit, 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. When performing such a review, the Monitor shall pay particular attention to any concerns identified during the AMI Assessment. The Monitor's review shall not be limited to such concerns. In addition to the patient chart review as set forth in paragraphs 26.a and 26.b above, the Monitor activities may include, but not be limited to, review and comparison of patient medical records with prescriptive orders, review of appointment logs, and/or interviews with staff and any parties necessary to evaluate Respondent's medical practice.

d. At each visit, the Monitor shall discuss with Respondent, his care and treatment of the patients reviewed as evaluated in the review of the patient's charts, review and comparison of patient medical records with prescriptive orders, review of other medical records, appointment logs, interviews and/or any other methods utilized for the evaluation of Respondent's medical practice.

e. AMI shall submit quarterly written reports to the Panel which 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.

17. Respondent shall cooperate fully in all of his contracts with AMI, comply with any and all requests for records, documentation, and inspection, and make any and all requested information available to AMI. All recommendations and instructions issued by AMI shall

constitute terms of this Order. Respondent shall comply with all AMI recommendations and instructions. Respondent's timely compliance with the AMI Assessment, Monitoring Program and with any of AMI's orders, recommendations, instructions and contract terms shall constitute terms of this Order.

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

19. It is the responsibility of the Respondent to provide information to AMI in a timely and complete manner and to assure that all AMI written reports setting forth the findings of the Monitor are timely transmitted to the Panel on a quarterly basis.

TOLLING OF THE PROBATIONARY PERIOD

20. If a practice monitor nominated by Respondent and approved by the Panel does not commence practice monitoring within three months of the effective date of the Order, 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.

21. If at any time, Respondent ceases the active clinical practice of medicine, defined for the purposes of this Order as evaluating or treating a minimum of five patients per month, the probationary period shall be tolled for the time the Order is in effect and Respondent is not engaged in the active clinical practice of medicine.

22. Respondent must comply with all other terms of the Order and all other terms of probation. 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, from the effective date of this Order until probation is terminated.

CPEP EDUCATION PROGRAM

23. Within 30 days of the effective date of this Order, Respondent shall contact the Center for Personalized Education for Physicians ("CPEP") to schedule an assessment ("CPEP Assessment"). Respondent shall complete the CPEP Assessment and sign the written assessment within 120 days of the effective date of this Order. Respondent shall cause CPEP to send a copy of the assessment and any education or training plan or recommendation regarding other remedial education or training program to the Panel.

24. Within 30 days of the effective date of this Order, Respondent shall sign any and all releases necessary to allow CPEP to communicate with the Panel. Within 60 days of the effective date of this Order, Respondent shall provide the Panel with a copy of such releases. Respondent shall not revoke such releases prior to successful completion of the probationary period as set forth in this Order. Any failure to execute such a release, failure to provide copies to the Panel, or any premature revocation of such a release shall constitute a violation of this Order.

25. The CPEP Assessment will determine whether CPEP recommends that Respondent undergo any education plan or other remedial education or training program. Hereinafter, the term "Education Program" shall refer to any education plan or other remedial education or training program recommended by CPEP.

26. The parties recognize that most CPEP Assessments include a computer-based cognitive function screening test. If CPEP determines that Respondent's results on the cognitive function screen suggest the need for further neuropsychological testing, CPEP will notify the Panel of such. The Panel may, in its discretion, order Respondent to undergo a full neuropsychological examination.

27. All instructions issued by CPEP shall constitute terms of this Order. Respondent shall comply with all CPEP instructions within the time periods set out by CPEP and/or the Panel.

28. If the CPEP Assessment indicates Respondent should undergo an Education Program, Respondent shall enroll in the recommended Education Program within 180 days of the effective date of this Order. If the CPEP Assessment indicates that Respondent need not undergo any Education Program, then Respondent shall be deemed to have satisfied fully this condition, and shall have no further responsibilities with regard to CPEP.

29. Respondent shall timely and successfully complete any recommended Education Program, including any post-education evaluation recommended by CPEP ("Post-Education Evaluation"), within the time set out by CPEP but in no event, more than two years from the effective date of this Order unless the Panel determines in its discretion that more time is necessary.

30. Upon successful completion of the objectives documented in CPEP's Education Program including any addenda ("CPEP Objectives"), and upon CPEP's approval, Respondent shall immediately commence a Post-Education Evaluation. Respondent shall complete successfully a Post-Education Evaluation within six months of successful completion of the activities recommended within the Education Program

31. In order to complete successfully the Post-Education Evaluation, Respondent's performance on the above-referenced Post-Education Evaluation must, in the opinion of CPEP, demonstrate that Respondent has successfully completed the CPEP Objectives and has integrated this learning into Respondent's medical practice and into Respondent's clinical thinking.

32. Respondent shall provide the Panel with written proof from CPEP upon successful completion of the recommended Education Program, including successful completion of the Post-Education Evaluation as defined above.

PRESCRIBING COURSE

33. Respondent shall enroll in and complete a continuing medical education course in the area of prescribing. Respondent will remain solely responsible to find and to enroll in such a prescribing course. Prior to enrolling in the course, however, Respondent must submit any

information regarding the course to the Board for approval by the Panel. If the Panel does not approve the course, Respondent must select another course for the Panel's approval.

34. Within one year of the effective date of this Order, Respondent shall provide the Panel with written proof of Respondent's successful completion of a prescribing course approved in advance by the Panel.

DOCUMENTATION COURSE

35. Respondent shall enroll in and complete a continuing medical education course in the area of documentation. Respondent will remain solely responsible to find and to enroll in such a documentation course. Prior to enrolling in the course, however, Respondent must submit any information regarding the course to the Board for approval by the Panel. If the Panel does not approve the course, Respondent must select another course for the Panel's approval.

36. Within one year of the effective date of this Order, Respondent shall provide the Panel with written proof of Respondent's successful completion of a documentation course approved in advance by the Panel.

OUT OF STATE PRACTICE

37. 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 on inactive status as set forth in Section 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 this Order while inactive shall not constitute a violation of this Order. While inactive, Respondent shall not perform any act in the state of Colorado that constitutes the practice of medicine, nor shall Respondent perform any act in any other location pursuant to the authority of a license to practice medicine granted by the state of Colorado. Unless Respondent's license is inactive, Respondent must comply with all provisions of this Order, irrespective of Respondent's location. The probationary period will be tolled for any period of time Respondent's license is inactive.

38. Respondent may resume the active practice of medicine at any time as set forth in Section 12-36-137(5), C.R.S. With such request, Respondent shall nominate a practice monitor as provided above and, unless Respondent has already provided proof of successful completion of all CPEP requirements under this Order, Respondent must provide a report by CPEP regarding the status of Respondent's progress with CPEP. Respondent shall be permitted to resume the active practice of medicine only after approval of the practice monitor and review and, if applicable, approval of the CPEP report.

TERMINATION OF PROBATION

39. Upon the expiration of the probationary period, Respondent may submit a written request for 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

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

41. 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.

42. 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.

43. Respondent shall obey all state and federal laws while the terms of this Order are in effect.

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

45. This Order and all its terms shall have the same force and effect as an order entered after a formal hearing pursuant to Section 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 Section 12-36-118(5)(g)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of Section 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 any probationary period imposed by this Order.

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

47. Invalidation of any portion of this Order by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

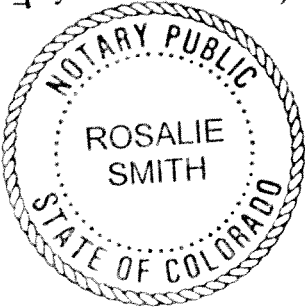
48. During the pendency of any action arising out of this Order, the obligations of the parties shall be deemed to be in full force and effect and shall not be tolled.

49. This Order shall be effective upon approval by the Panel and signature by a Panel member or other authorized person. 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 or other authorized person, it is void.

50. Upon becoming effective, this Order shall be open to public inspection and publicized pursuant to the Board's standard policies and procedures. Additionally, this 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 F Alston
John F. Alston, M.D.

THE FOREGOING was acknowledged before me this 8th day of December, 2009 by John F. Alston, M.D., in the County of Jefferson, State of Colorado



Rosalie Smith
NOTARY PUBLIC

My Commission Expires 08/24/2013
28145 Hwy 74, Evergreen, CO 80439

Commission expiration date

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 20th day of December, 2009.
21st January 2010

FOR THE COLORADO STATE BOARD OF
MEDICAL EXAMINERS


INQUIRY PANEL B

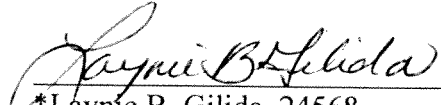
[Signature]

APPROVED AS TO FORM:

KENNEDY CHILDS & FOGG, P.C.

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