

BEFORE THE COLORADO MEDICAL BOARD
STATE OF COLORADO

CASE NO. 2010-000137-A

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF THOMAS W. STARKEY, JR., M.D., LICENSE NUMBER 46543,

Respondent.

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

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the state of Colorado on April 11, 2008, and was issued license number 46543, 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 July 15, 2009, the Panel reviewed case number 2010-000137-A and found that based upon the information reviewed, the Panel had reasonable grounds to believe that Respondent deliberately and willfully violated the Colorado Medical Practice Act and/or the public health, safety, or welfare imperatively required emergency action. Accordingly the Panel voted to summarily suspend Respondent's license pursuant to section 24-4-104(4), C.R.S.
4. In lieu of summary suspension pursuant to section 24-4-104(4), C.R.S, the parties entered into an Interim Cessation of Practice Agreement ("Interim Agreement") pending further evaluation and investigation of Respondent's practice to determine what further actions, if any, were warranted.
5. On August 18, 2010, the Panel reviewed additional information related to case number 2010-000137-A, and 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 purpose of this Stipulation and Final Agency Order ("Order") to provide for a settlement of all matters set forth in case number 2010-000137-A, without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, and there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order. The Interim

Agreement is hereby vacated.

7. Respondent understands that:

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

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.

8. Respondent specifically admits and the Panel finds that:

a. Until approximately June 11, 2009, Respondent was a psychiatry resident. Respondent treated patient H.D. from April 8, 2009 through May 28, 2009. Patient H.D. requested to terminate the physician-patient relationship on May 28, 2009.

b. The next evening, on or about May 29, 2009, Respondent and H.D. exchanged messages and met at a restaurant-bar. During the course of their interaction that evening, Respondent engaged in affectionate behavior with H.D., including dancing and embracing. The Respondent was attracted to the patient on May 28, 2009 and developed an inappropriate emotional attachment when treating her as a professional, therefore diminishing his judgment. Respondent met his former-patient one day after the physician-patient relationship was terminated and socialized with her both in a public and in a one-on-one setting, demonstrated affection, and shared details of his personal life and feelings for her. Respondent's actions both on May 28, 2009 and May 29, 2009 crossed the boundaries of professional conduct.

9. Respondent admits and the Panel finds that the conduct set forth above constitutes unprofessional conduct as defined in Section 12-36-117(1)(p), 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.

10. 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

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

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

TREATMENT MONITORING

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

14. Within 30 days of the effective date of this Order, Respondent shall sign any and all releases necessary to allow CPHP 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 update any and all releases as often as may reasonably be required to allow the Panel access to Respondent's privileged or confidential information. 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. In the event Respondent revokes such release, CPHP may, because of confidentiality concerns, 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 Order.

15. 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. Respondent authorizes the Panel to re-disclose and make public, consistent with Board Policy 10-18, information obtained from CPHP necessary for the limited purposes of enforcing this Order, seeking sanctions for noncompliance with this Order, or other purposes authorized in the Medical Practice Act. Medical records shall not become public records by virtue of such use. Any revocation of any release or authorization by Respondent shall constitute a violation of this Order.

16. Respondent shall ensure that CPHP submits quarterly written reports to the Panel. The reports shall briefly describe Respondent's treatment monitoring with CPHP. The reports shall also state whether Respondent is in compliance with this Order. If at any time CPHP has

21. 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.

20. During the probationary period, a "practice monitor" shall monitor Respondent's medical practice. Within 30 days of the effective date of this 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. The nominee may be Respondent's Residency Director so long as the nominee fulfills all other requirements of a practice monitor as provided in this paragraph.

PRACTICE MONITORING

19. It is the responsibility of the Respondent to provide information to CPHP in a timely and complete manner and to assure that all CPHP written reports are timely transmitted to the Panel.

18. 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 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 Order as set forth above in accordance with the Panel's directions.

17. Nothing in this agreement shall limit the ability of CPHP to impose any other condition as part of its treatment monitoring of Respondent. Any of CPHP's treatment or monitoring recommendations shall constitute terms of this Order for so long as this Order remains in effect.

reasonable cause to believe that Respondent has violated the terms of this Order, is unable to practice with skill and with safety to patients or has committed unprofessional conduct as defined in Section 12-36-117(1), C.R.S., CPHP shall immediately inform the Panel.

22. 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 shall review at least five patient charts maintained by Respondent. 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. 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 ensure 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:
 - (1) a description of each of the cases reviewed; and
 - (2) as to each case reviewed, the practice monitor's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice.

23. If at any time the practice monitor 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(1), C.R.S., the practice monitor shall immediately inform the Panel.

24. 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 30 days of such notice. Failure to nominate a new monitor within 30 days of such notification shall constitute a violation of this Order.

EARLY TERMINATION FROM PRACTICE MONITORING

25. Eighteen months after the commencement of the probationary period, Respondent may petition the Panel, in writing, for early termination of practice monitoring. The parties agree that the Panel's decision regarding such a petition shall be made at the sole discretion of the Panel. Respondent hereby waives any right to appeal the Panel decision on this issue.

TOLLING OF THE PROBATIONARY PERIOD

26. 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.

27. 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.

28. 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.

OUT OF STATE PRACTICE

29. 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 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.

30. 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 written request, Respondent shall nominate a practice monitor as provided above and Respondent shall cause CPHP to perform an updated evaluation of Respondent. Respondent shall be permitted to resume the active practice of medicine only after approval of the practice monitor and only after submission of and approval of an updated evaluation from CPHP.

TERMINATION OF PROBATION

31. 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

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

33. 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.

34. 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.

35. Respondent shall obey all state and federal laws while the terms of this Order are in effect and during the probationary period.

36. 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:

N/A

37. 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.

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

39. 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

40. 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.

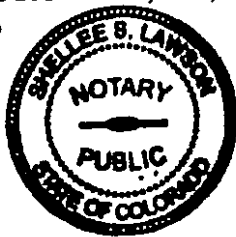
41. This Order shall be effective upon approval by the Panel and signature by a Panel member or other authorized person. Respondent acknowledges that the Panel may choose not to accept the terms of this Order and that if the Order is not approved by the Panel and signed by a Panel member or other authorized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

42. 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.

Tom Starkey MD
THOMAS W. STARKEY, JR., M.D.

THE FOREGOING was acknowledged before me this 10th day of September 2010
by THOMAS W. STARKEY, JR., M.D., in the County of Denver State of Colorado



My Commission Expires Nov. 22, 2010

Shellee S. Lawson
NOTARY PUBLIC
11/22/10
Commission expiration date

THE FOREGOING Stipulation and Final Agency Order is approved and effective
this 14th day of October, 2010.

FOR THE COLORADO MEDICAL BOARD
INQUIRY PANEL A

J. Suthers MD

APPROVED AS TO FORM:

FOR THE COLORADO MEDICAL BOARD
JOHN W. SUTHERS
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