

BEFORE THE COLORADO MEDICAL BOARD

STATE OF COLORADO

CASE NO. 2013-1522-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 **DONNA MARIE DESIMONE, D.O.**, LICENSE NUMBER **DR-25621**,

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B (“Panel”) of the Colorado Medical Board (“Board”) and Donna Marie DeSimone, D.O. (“Respondent”) (collectively, the “Parties”) as follows:

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the state of Colorado on October 20, 1983, and was issued license number DR-25621, which Respondent has held continuously since that date (“License”).
2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.
3. On May 22, 2014, the Panel reviewed case number 2013-1522-B and determined that further proceedings by formal complaint were warranted 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 number 2013-1522-B, without the necessity of conducting 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 Respondent’s choice, and Respondent is represented by counsel in this matter;
 - b. Respondent has the right to a formal complaint and disciplinary hearing pursuant to Sections 12-36-118(4)(c)(IV) and 12-36-118(5), C.R.S.;

c. By entering into this Order, Respondent is knowingly and voluntarily giving up the right to a formal complaint and disciplinary 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.

FACTUAL BASIS

6. Respondent specifically admits and the Panel finds that:

a. Respondent is a psychiatrist, specializing in child, adolescent, and adult psychiatry.

b. Respondent prescribed two (2) different prescriptions for herself, approximately monthly, but in family member's names, from 2008 through 2013.

c. Respondent prescribed two (2) different prescriptions for herself, in her own name, from August 2008 through April 2013.

d. Respondent prescribed different prescriptions for herself, sometimes using her maiden name, sometimes using her married name, or sometimes using different first names, in order to avoid detection.

e. Some of the prescriptions prescribed by the Respondent were for her family members, but the majority of the prescriptions were for herself.

f. On or about April 25, 2013, Respondent voluntarily surrendered her DEA registration, as a result of her prescribing irregularities.

g. Respondent was dishonest in her initial communications with the Board and with Colorado Physician Health Program ("CPHP") regarding her self-prescribing.

h. Respondent failed to maintain adequate medical records regarding her prescribing practices for herself and her family.

i. Respondent was initially referred/ordered to CPHP by the Board on May 8, 2013.

j. On March 21, 2014, CPHP opined that Respondent suffers from a physical or mental illness or condition but is safe to practice medicine with reasonable safety to patients with treatment and monitoring.

k. Respondent has a physical or mental illness or condition that renders Respondent unable to perform a medical service with reasonable skill and with safety to patients in the absence of treatment monitoring.

l. Respondent habitually administered, dispensed, or prescribed habit-forming drugs or controlled substances other than in the course of legitimate professional practice.

m. Respondent failed to respond in an honest, materially responsive, and timely manner to a complaint.

n. Respondent's conduct failed to meet generally accepted standards of medical practice.

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

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

(g) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance as defined in section 18-18-102(5), C.R.S., other than in the course of legitimate professional practice;

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

(gg) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-36-118(4).

8. Based upon the above, the Parties agree and stipulate that the terms of this Order are authorized by Section 12-36-118(5)(g)(III), C.R.S.

PROBATIONARY TERMS

9. Respondent's License 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.

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

TREATMENT MONITORING

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

12. 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. This information may include alcohol and drug abuse treatment program records

that may be confidential under federal or state law. 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.

13. 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 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.

14. CPHP's treatment monitoring activities shall constitute ongoing examinations of Respondent for the purpose of Section 12-36-118(9)(a), C.R.S. Respondent's failure to comply with CPHP's instructions and recommendations shall have the full force and effect of a violation of an order pursuant to Section 12-36-118(9)(a), C.R.S., and subject Respondent to action pursuant to Sections 12-36-118(5)(g)(IV) and 12-36-118(9)(a), C.R.S.

15. Respondent shall ensure that CPHP submits quarterly written reports to the Panel. The reports shall briefly describe CPHP's ongoing examinations and treatment monitoring of Respondent. The reports shall also state whether Respondent is in compliance with this Order. If at any time CPHP has reasonable cause to believe that Respondent has violated the terms of this Order, is unable to practice with reasonable 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.

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

17. If at any time, CPHP believes that any of the above terms are no longer necessary, CPHP may relax the terms as it deems appropriate and, at CPHP's direction, Respondent may comply with this Order as determined by CPHP. CPHP shall inform the Panel of any such action relaxing the above terms 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 terms. If the Panel nullifies CPHP's decision regarding the relaxing of any of the above terms, Respondent

specifically agrees to comply with the Order as set forth above in accordance with the Panel's directions.

18. It is the responsibility of 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.

TERMINATION OF TREATMENT MONITORING

19. After successful completion of five (5) years of monitoring by CPHP, excluding any time CPHP has monitored Respondent prior to the effective date of this Order, Respondent may petition the panel to terminate the Treatment Monitoring terms set forth in this Order. With any request, Respondent must provide the Panel with a report from CPHP finding Respondent safe to practice with skill and safety to patients. 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's decision on this issue. The Parties agree that any decision the Panel may make to terminate treatment monitoring will not also terminate the probationary period.

PRESCRIBING COURSE

20. 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.

21. 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.

22. Respondent has enrolled in and successfully completed the continuing education course titled "Physician Prescribing Course" offered by the University of California, San Diego School of Medicine (Prescribing Course) and has provided written proof of successful completion of the course as required. The course is hereby approved by the Panel and satisfies this term and condition of this Order.

ETHICS COURSE

23. Within one year of the effective date of this Order, Respondent shall successfully complete the ProBE – Professional/Problem Based Ethics Program conducted by the Center for Personalized Education for Physicians.

24. In order to successfully complete the course, Respondent's performance in the course must be rated as successful, without condition or qualification.

25. Respondent shall provide proof of successful completion of this course to the Panel within one year of the effective date of this Order.

TOLLING OF THE PROBATIONARY PERIOD

26. 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.

27. 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. The probationary period shall be tolled for any time Respondent is not in compliance with any term of this Order.

OUT OF STATE PRACTICE

28. Respondent may wish to leave Colorado and practice in another state. At any time other than during a period of suspension imposed by this Order, and whether to practice out of state or for any other reason, Respondent may request, in writing, that the Board place Respondent's license on inactive status as set forth in Section 12-36-137, C.R.S. Respondent's request to place her license on inactive status must include written evidence that Respondent has reported this Order to all other jurisdictions in which Respondent is licensed, as required by the "Other Terms" section of this Order. Upon the approval of such request, Respondent may cease to comply with the terms of this Order. Failure to comply with the terms of this Order while inactive shall not constitute a violation of this Order. While inactive, Respondent 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 jurisdiction 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 terms of this Order, irrespective of Respondent's location. The probationary period will be tolled for any period of time Respondent's license is inactive.

29. Respondent may resume the active practice of medicine at any time pursuant to written request and as set forth in Section 12-36-137(5), C.R.S. With such written request, Respondent shall cause CPHP to perform an updated evaluation of Respondent. Respondent shall be permitted to resume the active practice of medicine only after submission of and approval of an updated evaluation from CPHP.

TERMINATION OF PROBATION

30. 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

- 31. The terms of this Order were mutually negotiated and determined.
- 32. 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.
- 33. 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.
- 34. If Respondent is licensed by any other jurisdiction, Respondent shall report this Order to all other jurisdictions in which Respondent is licensed.
- 35. During the probationary period or any period in which a physician is subject to prescribing restrictions, no physician shall perform an assessment of a patient's medical history and current medical condition, including a personal physical examination, for the purpose of concluding that a patient may benefit from the use of medical marijuana, recommending the use of medical marijuana or certifying a debilitating medical condition for an applicant to the Colorado Medical Marijuana Program. Respondent hereby understands and agrees that he shall not certify to the state health agency that a patient has a debilitating medical condition or that the patient may benefit from the use of medical marijuana.
- 36. Respondent shall obey all state and federal laws while the terms of this Order are in effect.
- 37. 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 or is employed by the following hospitals and facilities:

- 38. This Order shall become an Order of the Board when accepted and signed by an authorized Panel member, the Program Director, or other authorized person.
- 39. This Order and all its terms shall have the same force and effect as an order entered after a formal disciplinary 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.

40. This Order shall be admissible as evidence at any proceeding or future hearing before the Board.

41. 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.

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

43. 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.

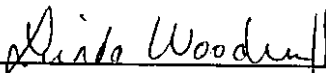
44. This Order shall be effective upon (a) mailing by first-class mail to Respondent at Respondent's address of record with the Board, or (b) service by electronic means on Respondent at Respondent's electronic address of record with the Board. Respondent hereby consents to service by electronic means if Respondent has an electronic address on file with the Board.

45. Upon becoming effective, this Order shall be open to public inspection and shall be publicized pursuant to the Board's standard policies and procedures. This Order constitutes discipline against Respondent's License. Additionally, this Order shall be reported to the Federation of State Medical Boards, the National Practitioner Data Bank, and as otherwise required by law.

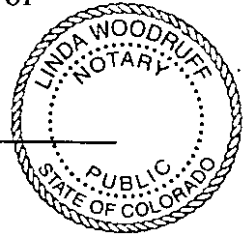


DONNA MARIE DESIMONE, D.O.

THE FOREGOING was acknowledged before me this 13th day of
November, 2014, by **Donna Marie DeSimone, D.O.**, in the County of
Arapahoe, State of Colorado.



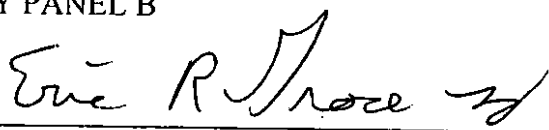
NOTARY PUBLIC



10-7-15
My commission expires

THE FOREGOING Stipulation and Final Agency Order is approved this 18th day of
December, 2014.

FOR THE COLORADO MEDICAL BOARD
INQUIRY PANEL B



ERIC RYAN GROCE, D.O.
Chair, Inquiry Panel B

THE FOREGOING Stipulation and Final Agency Order is effective upon service to
Respondent, on December 18, 2014.

APPROVED AS TO FORM

FOR RESPONDENT

Caplan and Earnest, LLC.

Linda L. Siderius #12931

LINDA L. SIDERIUS, ESQ.

1800 Broadway, Suite 200

Boulder, Colorado 80302-5289