

**BEFORE THE COLORADO MEDICAL BOARD**

**STATE OF COLORADO**

**CASE NO. 2017-83-B**

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**STIPULATION AND FINAL AGENCY ORDER**

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**IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF DAVID K. ROSENTHAL, M.D., LICENSE NUMBER DR-32226,**

**Respondent.**

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**IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado Medical Board ("Board") and David K. Rosenthal, M.D. ("Respondent") (collectively, the "Parties") as follows:**

**JURISDICTION AND CASE HISTORY**

**1. Respondent was licensed to practice medicine in the state of Colorado on October 8, 1992, and was issued license number DR-32226, 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 October 19, 2017, the Panel reviewed case number 2017-83-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 2017-83-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 has voluntarily chosen to proceed without representation;**

**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 provided psychiatric treatment to patient D.K. from approximately March through December 2014.

b. Respondent failed to adjust and/or document that he adjusted his diagnoses as new information was gathered.

c. Respondent allowed several appointments with D.K. to occur via telephone in lieu of in-person meetings due to the patient's difficulty in finding transportation to Respondent's office. The substitution of telephone calls for in-office assessments was inadequate given the severity of D.K.'s psychiatric symptoms and condition.

d. Respondent failed to meet with D.K. regularly to ensure safe prescribing.

e. Respondent failed to communicate with D.K.'s other treating providers.

f. Respondent's documentation was poor.

7. Respondent admits and the Panel finds that the acts and/or omissions described in the factual basis above constitutes unprofessional conduct pursuant to 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 essential entries or repeatedly failing to make essential entries on patient records.

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

### **LETTER OF ADMONITION**

9. This provision shall constitute a Letter of Admonition as set forth in Sections 12-36-118(4)(c)(III)(A) and 12-36-118(5)(g)(III), C.R.S. Respondent is hereby admonished for the acts and omissions described in the factual basis above.

10. By entering this Order, Respondent agrees to waive the rights provided by Section 12-36-118(4)(c)(III)(B), C.R.S., to contest this Letter of Admonition.

### **PROBATIONARY TERMS**

11. Respondent's License is hereby placed on probation for five (5) 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.

### **PRACTICE MONITORING**

13. During the probationary period, a "practice monitor" shall monitor Respondent's medical practice. Within thirty (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.

14. 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.

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

a. Each month, the practice monitor shall visit all of the offices at which Respondent practices medicine and shall review at least five (5) 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 (5) 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 (5) 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.

16. 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.

17. Respondent shall ensure that all reports by the practice monitor are complete and timely submitted to the Board. Respondent understands that the Board may accept a report, reject a report, refer the matter for additional disciplinary proceedings, or take any further action authorized by law.

18. 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 thirty (30) days of such notice. Failure to nominate a new monitor within thirty (30) days of such notification shall constitute a violation of this Order.

#### **CPEP DOCUMENTATION SEMINAR INCLUDING PRE-PROGRAM AND POST-PROGRAM**

19. Respondent shall enroll in and successfully complete the CPEP Patient Care Documentation Seminar, including the pre-program and the six-month post-program ("CPEP Documentation Seminar"), within one (1) year of the effective date of this Order.

20. The Panel acknowledges that, on August 30, 2017, Respondent successfully completed the CPEP Documentation Seminar, including the six-month Personalized Implementation Program. Proof of successful completion of the CPEP Documentation Seminar has been provided to the Panel. As of the effective date of this Order, the Panel deems that Respondent has satisfied the requirements of this provision.

#### **PRESCRIBING COURSE**

21. Respondent shall enroll in and successfully complete the continuing medical education course titled *Prescribing Controlled Drugs* at Vanderbilt University School of Medicine or the course titled *Prescribing Controlled Drugs: Critical Issues and Common Pitfalls* offered by the Center for Personalized Education for Professionals in conjunction with the Vanderbilt Center for Professional Health ("Prescribing Course"). Respondent shall be solely responsible to enroll in and pay for the Prescribing Course.

22. Respondent shall sign any and all releases necessary to allow the course instructors to communicate with the Panel directly. Respondent shall not revoke such releases. Any failure to execute such a release or any revocation of such a release shall constitute a violation of this Order.

23. In order to successfully complete the Prescribing Course, Respondent's participation in the course must be rated as successful, without condition or qualification. The Board in its discretion may impose further remedial coursework if Respondent receives a conditional pass or negative assessment.

24. Within one (1) year of the effective date of this Order, Respondent shall provide the Panel with written proof of Respondent's successful completion of the pre-approved Prescribing Course.

#### **TOLLING OF THE PROBATIONARY PERIOD**

25. 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 (5) 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.

26. 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 that Respondent is not in compliance with any term of this Order.

#### **OUT OF STATE PRACTICE**

27. 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 his 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.

28. 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 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 and the Panel.

#### **TERMINATION OF PROBATION**

29. 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**

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

31. 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.

32. 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.

33. If Respondent is licensed by any other jurisdiction, Respondent shall report this Order to all other jurisdictions in which Respondent is licensed.

34. 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.

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

36. So that the Board may notify hospitals of this Order pursuant to Section 12-36-118(13), C.R.S., Respondent presently holds privileges at or is employed by the following hospitals and facilities:

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37. 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.

38. This Order shall be admissible as evidence at any proceeding or 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 terms of this Order shall be deemed to be in full force and effect and shall not be tolled.

41. 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. 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.

43. 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 the Federation of State Medical Boards, the National Practitioner Data Bank, and as otherwise required by law.

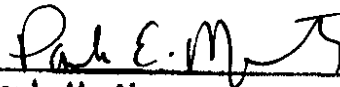


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DAVID K. ROSENTHAL, M.D.

Dated: \_\_\_\_\_ 7/23/18 \_\_\_\_\_

THE FOREGOING Stipulation and Final Agency Order is approved this 24 day  
of July, 2018.

FOR THE COLORADO MEDICAL BOARD INQUIRY  
PANEL B



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Paula Martinez  
Program Director  
Delegated Authority to Sign by Inquiry Panel

THE FOREGOING Stipulation and Final Agency Order is effective upon service to  
Respondent, on July 24, 2018.

