

BEFORE THE COLORADO MEDICAL BOARD

STATE OF COLORADO

CASE NOS. 2018-8140-A, 2019-6772-A, and 2019-7906-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 WILLIAM STARKEY, Jr., M.D., LICENSE NUMBER DR.46543,

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel A (“Panel”) of the Colorado Medical Board (“Board”) and Thomas William Starkey, Jr., 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 April 11, 2008 and was issued license number DR-46543, 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 or about July 19, 2020, the Parties entered into an Interim Cessation of Practice Agreement (“Interim Agreement”) in lieu of summary suspension pursuant to Section 24-4-104(4), C.R.S. This Interim Agreement remains in effect until such time as a Final Board Order becomes effective in this case.
4. On November 18, 2020, the Panel reviewed case numbers 2018-8140-A, 2019-6772-A, and 2019-7906-A and determined that further proceedings by formal complaint were warranted pursuant to Section 12-240-125(4)(c)(V), C.R.S. The Parties have agreed to resolution of this matter prior to referral to the Attorney General.
5. 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 2018-8140-A, 2019-6772-A, and 2019-7906-A, 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.

6. Respondent understands that:
 - a. Respondent has the right to be represented by an attorney of the 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 12-240-125(4)(c)(V) and 12-240-125(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

7. Respondent specifically admits and the Panel finds that:
 - a. 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;
 - b. Respondent habitually or excessively used or abused alcohol, a habit-forming drug, or a controlled substance; and
 - c. On or about January 23, 2019, Respondent pled guilty to Driving under the Influence in Jefferson County, Colorado.
 - d. On or about July 12, 2019, the Board received a report from the Colorado Physician Health Program ("CPHP") regarding Respondent. CPHP opined that Respondent was unable to practice medicine with reasonable skill and safety to patients.
 - e. On or about July 19, 2019, Respondent entered into a non-disciplinary Interim Cessation of Practice Agreement ("ICPA") wherein he voluntarily agreed to cease practicing medicine.
 - f. Between and including July 20, 2019 and October 1, 2019, Respondent authorized his office staff to continue distributing pre-written prescriptions for medications to patients, in violation of the ICPA.

8. Respondent admits and the Panel finds that the conduct set forth above constitutes unprofessional conduct as defined in Sections 12-240-121(1)(i) and (n), C.R.S., which state:

(1) Unprofessional conduct" as used in this article 240 means:

(i) Failing to notify the board, as required by section 12-30-108(1), of a physical illness, physical condition or behavioral, mental health, or substance use disorder that impacts the licensee's ability to perform a medical service with reasonable skill and safety to patients; failing to act within the limitations created by a physical illness, physical condition or behavioral, mental health, or substance use disorder that renders the licensee unable to perform a medical service with reasonable skill and safety to the patient; or failing to comply with the limitations agreed to under a confidential agreement entered into pursuant to section 12-30-108 and 12-240-126.

(n) - Violation of any valid board order or any rule promulgated by the board in conformance with the law.

9. Based upon the above, the parties agree and stipulate that the terms of this Order are authorized by Section 12-240-125(5)(c)(III), C.R.S.

PROBATIONARY TERMS

10. 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.

11. During the probationary period, Respondent agrees to be bound by the terms and conditions 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, as that term is defined *infra*. 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 treatment as is determined to be appropriate by the Colorado Physician Health Program (“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.

16. 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.

17. 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.

18. CPHP's treatment monitoring activities shall constitute ongoing examinations of Respondent for the purpose of Section 12-240-125(8)(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 12-240-125(8)(a), C.R.S. and subject Respondent to action pursuant to Sections 12-240-125(5)(c)(IV) and 12-240-125(8)(a), C.R.S.

19. CPHP shall monitor Respondent's compliance with this Order in the following manner:

a. CPHP shall perform tissue testing of Respondent, in the manner CPHP deems appropriate, to ensure compliance with this Order. CPHP's testing may include urine screening or other tissue testing, including but not limited to hair, skin, blood, sweat or breath testing, at CPHP's discretion. If CPHP tests Respondent through urine testing, CPHP shall require Respondent to submit to urine tests on randomly selected days on a frequency of approximately 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, and in accordance with CPHP's direction. Within these guidelines, CPHP shall make reasonable effort to ensure 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 a urine sample and ordering testing to detect the presence of EtG on all dilute urine samples, to ensure that the urine testing is effective. CPHP shall schedule any other tissue testing at the appropriate frequency that will ensure compliance with this Order. Tissue testing by means other than urine testing shall require Respondent to produce a sample as soon as possible after notification and at any time of the day CPHP determines reasonable and appropriate.

20. 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 12-240-121(1), C.R.S., CPHP shall immediately inform the Panel.

21. 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 or other tissue testing. Further, Respondent shall not use alcohol-based soaps and/or hand sanitizers or any other alcohol-based products. Any false positive caused by the consumption of alcohol-containing food or products, poppy seeds, cough syrup, mouthwash, alcohol-based food products and/or the use of alcohol-

based soaps and/or hand sanitizers or any other alcohol-based products shall constitute a violation of this Order. Additionally, any consumption and/or use of any other substance Respondent has reason to believe will cause a false positive shall also constitute a violation of this Order.

22. 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 monitoring of Respondent. Any of CPHP's treatment monitoring recommendations shall constitute terms of this Order for so long as this Order remains in effect.

23. 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.

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

25. 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.

TERMINATION OF TREATMENT MONITORING

26. After successful completion of five (5) years of monitoring by CPHP, including 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.

TOLLING OF THE PROBATIONARY PERIOD

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

OUT OF STATE PRACTICE

29. 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 12-240-141, 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.

30. Respondent may resume the active practice of medicine at any time pursuant to written request and as set forth in Section 12-240-141(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

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

43. 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 12-240-125(11), C.R.S., Respondent presently holds privileges at or is employed by the following hospitals and facilities:

38. 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 12-240-125(5)(c)(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 12-240-125(5)(c)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of section 12-240-121(1)(n), C.R.S.

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

40. 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.

41. 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.

42. Respondent acknowledges that the Panel may choose not to accept the terms of this Agreement and that if the Agreement is not approved by the Panel and signed by a Panel member or other authorized person, it is void.

43. 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.

44. 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.

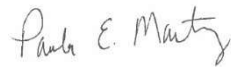
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TS MD

Thomas William Starkey, Jr., M.D.

THE FOREGOING Stipulation and Final Agency Order is approved this 27th day
of January, 2021.

FOR THE COLORADO MEDICAL BOARD INQUIRY
PANEL A



Paula E. Martinez
Program Director
Delegated Authority to Sign by Inquiry Panel

THE FOREGOING Stipulation and Final Agency Order is effective upon service to
Respondent, on January 27th, 2021.



APPROVED AS TO FORM

FOR RESPONDENT

A handwritten signature in blue ink, appearing to read "Sheryl K Bridges". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sheryl K Bridges

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