

BEFORE THE COLORADO MEDICAL BOARD  
STATE OF COLORADO

CASE NO. 2012-001513-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 THOMAS M. HORIAGON, M.D., LICENSE NO. DR-39465

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 Thomas M. Horiagon, 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 20, 2001 and was issued license number DR-39465, 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 August 13, 2009, the Colorado Medical Board issued to Respondent a Letter of Admonition relating to Respondent's failure to respond to a complaint made to the Board.
4. On July 19, 2012, the Panel reviewed materials from case number 2012-001513-B. The Panel reviewed information based upon which the Panel determined it had reasonable grounds to believe that the public health, safety, or welfare imperatively required emergency action. Information reviewed by the Panel supported concerns of substandard care during Respondent's treatment of three patients and concerns that Respondent did not work within a team environment to provide patient care that adequately met appropriate standards of care. The Panel found grounds for summary suspension, but authorized the parties to enter an agreement for Respondent not to practice.
5. In lieu of summary suspension pursuant to section 24-4-104(4), C.R.S., the parties entered an Interim Cessation of Practice Agreement dated July 23, 2012, pending further evaluation and investigation of Respondent's practice, to determine what further actions, if any, were warranted. In the Interim Cessation of Practice Agreement, Respondent agreed that he would not perform any act requiring a license issued by the Board while the Interim Cessation of Practice Agreement was in effect.

6. On September 13, 2012, the Panel reviewed a request from Respondent that he be permitted to perform certain non-clinical practice work as a physician advisor to an insurance company, which work required a medical license, but which practice was limited to retrospective analysis of Medicare compliance and advising case managers with respect to compliance of Medicare rules. The Parties entered a Second Interim Practice Agreement, to remain in effect so long as Respondent remained in compliance with the Second Interim Practice Agreement and until the Parties reach a final disposition of this case or, in the event additional summary suspension proceedings are initiated, until such time as an order for summary suspension enters.

7. On July 19, 2012, the Panel reviewed case number 2012-001513-B and determined that further proceedings by formal complaint were warranted pursuant to Section 12-36-118(4)(c)(IV), C.R.S.

8. 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 2012-0001513-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.

9. 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;

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 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**

10. Respondent specifically admits and the Panel finds that:

a. Respondent is a licensed physician in the State of Colorado who has practiced as a critical care and pulmonary intensivist at a hospital in Grand Junction ("Hospital");

b. Respondent has a medical condition for which he currently is receiving treatment and monitoring, which render him unable to perform medical services with reasonable skill and safety to patients without treatment and monitoring;

c. Respondent treated Patient A, who was admitted to the Hospital in February 2011 with shortness of breath, hypoxemia, and progressive bilateral interstitial lung infiltrates. Respondent performed a diagnostic bronchoscopy, a broncho-alveolar lavage in Patient A's right middle lobe and a trans-bronchial biopsy in the left lower lobe. Patient A developed respiratory decompensation after the procedure and, as an iatrogenic pneumothorax was suspected, Respondent ordered a STAT portable chest radiograph. The radiographic image was unavailable for transmission to the bronchoscopy suite and the radiologist's reading station. Respondent left Patient A in the care of a respiratory therapist and nurse, ran to another floor where the plate reader was located and hastily reviewed the 90 degree rotated image. Respondent misread the side of the pneumothorax displayed on the chest radiograph and as a result incorrectly placed a chest tube on the left side. Patient A did not improve with the insertion of the chest tube and another portable chest radiograph was requested. The second radiograph image was loaded onto the hospital network and the radiologist called to report that the chest tube was on the side away from the pneumothorax. Respondent placed a right-sided chest tube and the patient stabilized. Respondent did not request assistance from a radiologist to read the radiograph initially, but left the patient to read the image himself at a time when Patient A was unstable. A delay in correctly placing the chest tube resulted.

d. Respondent treated Patient B, who was admitted to the Hospital in May 2010 with pneumonia and an empyema, and a significant history of cardiac and pulmonary conditions. Respondent used a larger bore chest tube than appropriate, encountered difficulty in placing the chest tube, and injured Patient B's lung. Respondent did not fully evaluate Patient B's coagulation status prior to the procedure, and Patient B suffered large blood loss. Respondent did not timely consult with a surgical subspecialist concerning Patient B's condition.

e. Respondent treated Patient C during her admission to the Hospital in July 2010 for tracheal stenosis, and a history of treatment for instability of the trachea and airway. Respondent was called for Patient C's respiratory distress as he was covering for the consulting Pulmonary group caring for the patient, and he intubated Patient C. Although this was a temporary solution, Respondent remained with the patient evaluating a ventilator circuit leak that was interfering with effective respiratory support. Respondent failed to contact Patient C's ENT surgeon or thoracic surgeon to assess the next treatment steps for Patient C.

f. Respondent was not receiving treatment while working at the Hospital, and his temper and demeanor with other staff members at the Hospital may have at times created a negative work environment that affected the safe care of patients.

g. Respondent failed to attend a mandatory meeting of the Hospital's Medical Executive Committee concerning Respondent's conduct and patient care. Respondent did not understand that this meeting was mandatory. When he did not attend the meeting, his Hospital privileges were terminated.

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

"Unprofessional conduct" as used in this article means:

**§ 12-36-117. Unprofessional conduct.**

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

(o) failing to notify the board, as required by section 12-36-118.5(1), of a physical or mental illness or condition that impacts the licensee's ability to perform a medical service with reasonable skill and with safety to patients, failing to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to perform a medical service with reasonable skill and with safety to the patient, or failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-36-118.5;

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

12. 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**

13. Respondent's license to practice is hereby placed on probation for a period of 5 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.

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

#### **TREATMENT MONITORING**

15. 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.

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. 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 will submit its 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 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.

19. 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.

20. 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.

21. It is the responsibility of the Respondent to provide information to CPHP in a timely and complete manner in order to assure that all CPHP written reports, including its quarterly reports, are timely transmitted to the Panel.

22. Respondent has not worked in a clinical practice setting since November, 2011. CPHP shall govern Respondent's return to clinical practice including, but not limited to, work place settings and hourly restrictions.

### **CPEP EDUCATION PROGRAM**

23. Respondent has undergone CPEP assessment. Respondent shall timely commence and successfully complete the Center for Personalized Education for Physicians ("CPEP") recommended Education Program including the Post-Education Evaluation component, within the time required by CPEP. However, the Respondent shall have no more

than two years from the effective date of this Order to complete the entire CPEP Education Program unless the Panel determines, in its discretion, that more time is necessary. Any delay in Respondent's completion of the recommended Education Program, including the post-education evaluation, will delay the Respondent's successful completion of the probationary period.

24. Respondent understands and acknowledges that in order to complete the Education Program successfully, the Respondent must demonstrate to CPEP and the Panel's satisfaction that the Respondent has satisfactorily accomplished all CPEP Education Program objectives and has integrated this learning into Respondent's medical practice.

25. 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.

26. Respondent shall provide or cause CPEP to provide a copy of the Assessment Report, Education Plan and any other reports regarding the Respondent's participation in the Education Program to the Panel within 30 days of the report's completion.

27. 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.

28. The Parties acknowledge that most CPEP Assessments include a computer-based cognitive function screening test. If CPEP determines that Respondent's results on the cognitive function screening suggest the need for further neuropsychological testing, the Respondent shall directly notify or ensure that CPEP notifies, the Panel of such a determination. The Panel may, in its discretion, order Respondent to undergo a full neuropsychological examination. The Parties further acknowledge that this cognitive function screening component of the CPEP Assessment was completed with Respondent in November, 2012 with no suggestion of a need for further neuropsychological evaluation.

29. All CPEP recommendations and instructions shall constitute terms of this Order. Respondent shall comply with all CPEP recommendations and instructions within the time periods set out by CPEP and the Panel. Respondent's failure to comply with CPEP recommendations and instructions shall constitute a violation of this Order.

### **CPEP QUALITY REVIEW**

30. A CPEP "quality reviewer" shall monitor Respondent's practice for a consecutive eighteen month period, commencing within three months after Respondent's successful completion of the CPEP Education Program ("Quality Review Period"). CPEP shall nominate, in writing, a proposed quality reviewer for the Panel's approval. The nominee shall be a physician licensed by the Board and currently practicing in Colorado in Respondent's same practice area. The nominee shall have no financial interest in Respondent's medical practice.

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.

31. CPEP shall submit information regarding the nominee, including a current *curriculum vitae*. The Panel shall review and determine, in its discretion, whether to approve the nominee. If the Panel approves the nominee, CPEP shall determine the date that the quality reviewer will begin monitoring Respondent's medical practice.

32. Upon approval by the Panel, the quality reviewer shall perform the following:

a. Each month, for the first three months of the Quality Review Period, the quality reviewer shall review at least ten patient charts maintained by Respondent. The quality reviewer shall make reasonable efforts to review charts from all offices, hospitals, and other settings in which Respondent practices. Additionally, the quality reviewer shall make reasonable efforts to ensure randomized review such that Respondent has no notice of which charts will be selected for review. The quality reviewer is authorized to review, and Respondent shall make available, such other medical records maintained by Respondent as the quality reviewer deems appropriate.

b. After the first three months of the Quality Review Period, the quality reviewer will review charts on a quarterly basis. Each quarter, the quality reviewer shall review at least ten charts maintained by Respondent. The quality reviewer shall make reasonable efforts to review charts from all offices, hospitals and other settings in which Respondent practices. Additionally, the quality reviewer shall make reasonable efforts to ensure randomized review such that Respondent has no notice of which charts will be selected for review. The quality reviewer is authorized to review, and Respondent shall make available, such other medical records maintained by Respondent as the quality reviewer deems appropriate.

c. The quality reviewer shall submit such reviews to CPEP and, in turn, CPEP shall submit quarterly written reports to the Panel that shall include the following:

- i. a description of each of the cases reviewed; and
- ii. as to each case reviewed, CPEP's opinion whether Respondent is practicing medicine in accordance with generally accepted standards of medical practice.

33. If at any time CPEP or the quality reviewer 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., CPEP and/or the quality reviewer shall inform the Panel in a timely manner.

34. If the quality review is interrupted for any reason, the Panel has the discretion to allow CPEP to arrange for a new quality reviewer.

35. It is the responsibility of Respondent to fully cooperate with CPEP and the quality reviewer. Failure of the quality reviewer to perform the duties set forth above may result in a notice from Board staff requiring the nomination of a new quality reviewer. Upon such notification, CPEP shall nominate a new quality reviewer according to the procedure set forth above. CPEP shall nominate the new quality reviewer within 30 days of such notice.

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

36. If a quality reviewer nominated by CPEP and approved by the Panel does not commence quality review 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 reviewed by the quality reviewer. Additionally, if CPEP is required to nominate a new quality reviewer, the period of probation shall be tolled for any period of time during which a quality reviewer is not reviewing Respondent's practice.

37. If at any time, Respondent ceases the active practice 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 practice medicine.

38. 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**

39. 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.

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



## TERMINATION OF PROBATION

41. The Respondent may submit a written request for release from this Order's probationary status upon the Respondent's successful completion of all of the probationary terms of this Order. Applicable tolling periods or delay in Respondent's commencement and completion of the practice monitoring requirements or the CPEP Education Program, including the Post-Education Evaluation, will delay the Respondent's successful completion of the probationary period. The Panel will grant termination of the probationary period in the form of written notice to the Respondent's address of record.

## OTHER TERMS

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

43. 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.

44. 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.

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

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

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47. 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.

48. This Order shall be admissible as evidence at any proceedings and future hearing before the Board.

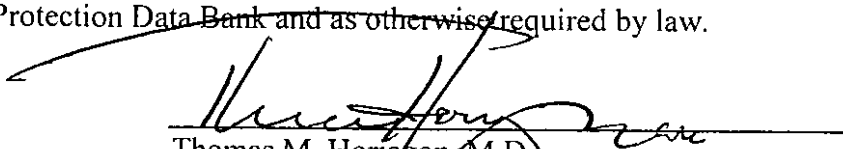
49. Invalidation of any portion of this Order by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

50. 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.

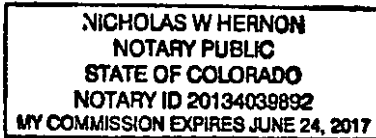
51. This Order shall be effective upon approval by the Panel and signature by a Panel member or other authorized person. Respondent acknowledges that the Panel may choose not to

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.

52. 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 Stipulation and Final Agency 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/Healthcare Integrity and Protection Data Bank and as otherwise required by law.

  
Thomas M. Horiagon, M.D.

THE FOREGOING was acknowledged before me this 28<sup>th</sup> day of January, 2014 by Thomas M. Horiagon, M.D. in the County of Douglas, State of Colorado.



  
NOTARY PUBLIC

June 24, 2017  
Commission expiration date

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 21<sup>st</sup> day of February, 2014.

FOR THE COLORADO MEDICAL BOARD  
INQUIRY PANEL B

  
Eric R. Groce, D.O., Panel Chair

Eric R. Groce, D.O., Panel Chair

APPROVED AS TO FORM:

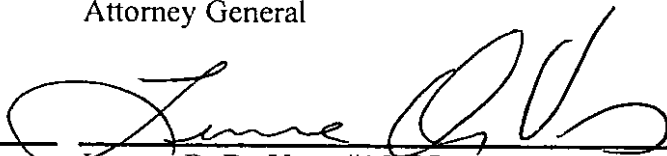
FOR THE RESPONDENT

FOR THE COLORADO MEDICAL BOARD



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