

BEFORE THE COLORADO MEDICAL BOARD

STATE OF COLORADO

Case No. ME 2015-0007

FINAL BOARD ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS REGARDING THOMAS MARTIN HORIAGON, M.D.,
LICENSE #DR 39465

Respondent.

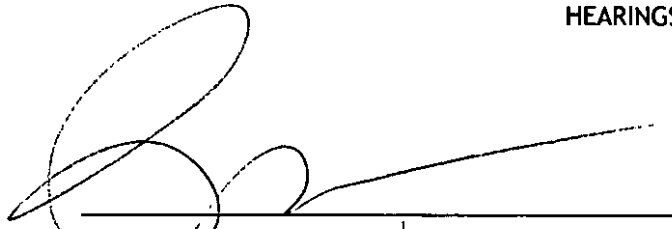
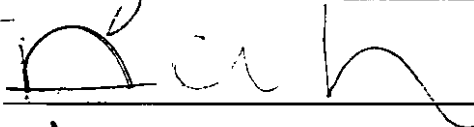

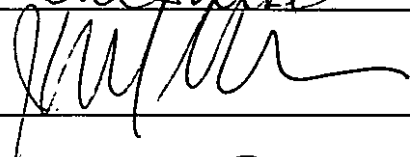

The Colorado Medical Board, pursuant to and after formal proceedings before a duly qualified Administrative Law Judge ("ALJ") in accordance with the provisions of 12-36-101, et al, of the Colorado Revised Statutes ("Act") and the Administrative Procedures Act ("APA"), and having reviewed the ALJ's Initial Decision, hereby enters the following findings and order:

1. Respondent Thomas Martin Horiagon, ("Respondent") was served with an Order of Suspension on September 4, 2015 and a Corrected Notice of Charges on October 6, 2015.
2. The Initial Decision of the ALJ was rendered on December 9, 2015, and received by the Board on December 10, 2015. A copy of the Initial Decision is attached to this Order. The Initial Decision, as modified by this Order, is incorporated herein by reference.
3. The Initial Decision was served on Respondent and the Board's prosecuting attorney on December 11, 2015, via first class mail and electronic mail.
4. Respondent filed Exceptions and what the Hearings Panel considers a Designation of Record on January 5, 2016 and Inquiry Panel B filed a Response to Respondent's Exceptions.
5. On March 10, 2016, the Hearings Panel considered the Initial Decision and the subsequent pleadings filed by the parties as noted above. Oral Argument was presented by the parties. Conflicts Counsel from the Office of the Attorney General was present during deliberations to advise the Hearings Panel.
6. Upon review of the Initial Decision and the pleadings filed by the parties, the Hearings Panel hereby:
 - a. Accepts Findings of Fact as set forth in their entirety.
 - b. Adopts Conclusions of Law as set forth in their entirety.
 - c. Adopts the ALJ's recommended sanction of Revocation.

IT IS THEREFORE ORDERED by the Board that Respondent's license to practice medicine in the state of Colorado is hereby REVOKED from the effective date of this Final Board Order. The Final Board Order is hereby effective upon signature. Any party adversely affected or aggrieved by any agency action may commence an action for judicial review before the court of Appeals within forty-nine (49) days after such action becomes effective. Reference Sections 24-4-106(11) and 12-36-119, C.R.S.

SO ORDERED this 10th day of March, 2016.

FOR THE COLORADO MEDICAL BOARD
HEARINGS PANEL A

	MEMBER
	MEMBER
	MEMBER
	MEMBER
	MEMBER
_____	MEMBER

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 1525 Sherman Street, 4th Floor, Denver, CO 80203	
COLORADO MEDICAL BOARD, INQUIRY PANEL B, Petitioner, vs. THOMAS M. HORIAGON, M.D., Respondent.	▲ COURT USE ONLY ▲ CASE NUMBER: ME 20150007
INITIAL DECISION	

This case is a disciplinary action against a physician per Section 12-36-118, C.R.S. A hearing was held and recorded November 23, 2015 at the Office of Administrative Courts, courtroom 2. Administrative Law Judge ("ALJ") Matthew E. Norwood presided. Eric Maxfield, First Assistant Attorney General, appeared on behalf of the Petitioner ("Panel"). The Inquiry and Hearings Panels of the Medical Board ("Board") are described at Section 12-36-118(1)(b), C.R.S. The Respondent spoke for himself.

Summary

The Respondent and Inquiry Panel B entered into a "Stipulation and Final Agency Order" ("Stipulation"). The agreement required the Respondent to obtain "treatment monitoring" from the Colorado Physician Health Program ("CPHP"). The Panel alleges that the Respondent failed to comply with this aspect of the agreement. It asserts that this is "unprofessional conduct" as defined at Section 12-36-117(1)(u), C.R.S.: violation of a valid board order.

The ALJ finds and concludes that the Respondent did fail to comply with treatment monitoring and that this failure is the type of unprofessional conduct alleged. The ALJ orders that the Respondent's license be revoked.

Findings of Fact

Based on the evidence presented at hearing, the ALJ makes the following findings of fact:

1. The Respondent and the Panel entered into the Stipulation, which was approved by the Panel February 21, 2014. Exhibit 1. The Stipulation provides at paragraph 47 that it and all its terms constitute a valid board order for purposes of

Section 12-36-117(1)(u), C.R.S. Respondent was represented by an attorney in coming to this agreement.

2. The Stipulation does not describe the Respondent as suffering from any particular mental or physical disorder. It does describe his substandard care of three patients while he practiced as a critical care and pulmonary intensivist at a hospital in Grand Junction. Subsequently he lost his privileges at that hospital.

3. In the Stipulation, the Respondent agrees that he engaged in unprofessional conduct as defined at Section 12-36-117(1)(p) (substandard care) and as defined at Section 12-36-117(1)(o) (failing to notify the Board of a physical or mental illness).

4. Paragraph 15 of the Stipulation provides that CPHP shall function as the Respondent's treatment monitor and that he shall receive such medical treatment it determines appropriate. Paragraphs 16 and 17 require the Respondent to prepare releases so that CPHP may communicate with the Panel. Paragraph 18 requires CPHP to make quarterly written reports to the Panel describing treatment monitoring. Paragraph 21 requires the Respondent to provide information to CPHP in a timely and complete manner so that it can make its quarterly reports.

5. Mary Ellen Caiati, M.D., is a psychiatrist and the Associate Medical Director of CPHP. Sometime around September 3, 2015, Dr. Caiati met with the Respondent as part of treatment monitoring. The Respondent told Dr. Caiati that he would continue to show up to his meetings with CPHP, but that he would not answer her questions and that he would do crossword puzzles in the meetings.

6. The Respondent told Dr. Caiati that he would not allow her to talk to his treaters as she had formerly. The Respondent told her that the Board could talk to his treaters and would monitor him, not CPHP.

7. This conduct prevented CPHP from performing its role as treatment monitor and was a violation of the Stipulation. CPHP physicians must be able to have meaningful conversations with the subject of treatment monitoring and must be able to talk to other treaters.

8. Dr. Caiati wrote to the Panel and told it that CPHP was no longer able to function as treatment monitor. The Panel then suspended the Respondent's license.

Conclusions of Law

Based on the foregoing findings of fact, the ALJ makes the following conclusions of law:

1. Respondent's conduct as described above constitutes unprofessional conduct as proscribed by Section 12-36-117(1)(u), C.R.S.: violation of a valid board order.

2. The Panel seeks revocation of the Respondent's license. In considering this proposed sanction, the ALJ has questioned whether the Respondent's medical condition referenced in the Stipulation argues for mitigation. That condition may have


played a role in his oppositional conduct toward CPHP. Respondent did not make this argument, but he may lack the insight to do so.

3. In imposing sanction, it is the primary responsibility of the Hearings Panel to protect the public. Section 12-36-118(5)(g)(III), C.R.S. In light of the Respondent's past unprofessional conduct memorialized in the Stipulation, as well as his more recent violation of a valid board order, the ALJ recommends revocation of the license. The Respondent has not been able to abide by the safeguards set out in the Stipulation. If at some time in the future the Respondent is able to demonstrate the ability to comply with safeguards on his practice, he may always reapply for licensure.

4. Per Section 24-4-105(14)(a), C.R.S., this Initial Decision will be sent to the agency only for mailing to the parties.

DONE AND SIGNED

December 9, 2015



MATTHEW E. NORWOOD
Administrative Law Judge

Exhibits admitted:

For the Panel: exhibit 1.

For the Respondent: none.