

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

CASE NUMBER 2004-003627-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 TRACI D. SIMMS M.D., LICENSE NUMBER 33124,

Respondent.

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IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Traci D. Simms, M.D., ("Respondent") as follows:

**JURISDICTION AND CASE HISTORY**

1. Respondent was licensed to practice medicine in the state of Colorado on October 19, 1993 and was issued license number 33124, 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 November 19, 2004, the Panel reviewed case number 2004-003627-B. The Panel thereupon referred the matter to the Attorney General pursuant to § 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 2004-003627-B without the necessity of holding 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 the Respondent's choice, and Respondent is so represented in this matter;
  - b. Respondent has the right to a formal disciplinary hearing pursuant to § 12-36-118(5), C.R.S.;

c. By entering into this Order, Respondent is knowingly and voluntarily giving up the right to a hearing, admits the facts contained in this Order, and relieves the Panel of its burden of proving such facts; and

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.

6. Respondent specifically admits and agrees that:

a. Respondent is a physician specializing in obstetrics and gynecology who followed patient S.O. for prenatal care from the 26<sup>th</sup> week of S.O.'s pregnancy.

b. S.O. was admitted for induction and delivery at 41 2/7 weeks.

c. S.O. had slow but adequate progress to complete dilation with a delivery lasting approximately 2 1/2 hours to include silastic vacuum extraction.

d. During the early part of labor, the fetal heart rate tracing supported fetal well being.

e. During the later part of the labor, the fetal heart tracing showed repetitive variable decelerations with pushing.

f. The infant required resuscitation after delivery and developed multiple organ failure.

g. The infant died four days after birth following the withdrawal of life support.

7. It is alleged that during the later part of delivery, the fetal heart tracings were non-reassuring, and that Respondent did not document an adequate assessment of the condition of the fetus. This allegation is one of unprofessional conduct as defined in § 12-36-117(1)(p), C.R.S.

8. Based upon the above, and with the consent of the Respondent, the Panel is authorized by § 12-36-118(5)(g)(III), C.R.S. to order probation and such conditions upon Respondent's practice that it deems appropriate.

#### **PROBATIONARY TERMS**

9. Respondent's license to practice medicine is hereby placed on probation for a period of five 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.

10. The probationary period may be tolled and extended beyond five years in the event that a practice monitor is not providing timely monitoring of Respondent's practice as set forth below in this Order.

## CPEP EDUCATION PROGRAM

11. Within 30 days of the effective date of this Order, Respondent shall contact the Center for Personalized Education for Physicians ("CPEP") to schedule an assessment ("CPEP Assessment"). Respondent shall complete the CPEP Assessment and sign the written assessment within 120 days of the effective date of this Order.
12. The CPEP Assessment will determine whether CPEP recommends that Respondent undergo any education plan or other remedial education or training program. Hereinafter, the term "Education Program" shall refer to any education plan or other remedial education or training program recommended by CPEP.
13. If the CPEP Assessment indicates Respondent should undergo an Education Program, Respondent shall enroll in the recommended Education Program within 180 days of the effective date of this Order. If the CPEP Assessment indicates that Respondent need not undergo any Education Program, then Respondent shall be deemed to have satisfied fully this condition, and shall have no further responsibilities with regard to CPEP.
14. Respondent shall timely and successfully complete any recommended Education Program, including any post-education evaluation recommended by CPEP ("Post-Education Evaluation"), within the time set out by CPEP unless the Panel determines in its discretion that a different time frame is appropriate.
15. Respondent shall cause CPEP to send a copy of the assessment and any recommended Education Program to the Panel. Respondent shall sign any and all releases necessary to allow CPEP to communicate with the Panel, and Respondent shall not revoke such releases prior to successful completion of any recommended Education Program, including successful completion of the Post-Education Evaluation. Any failure to execute such a release or any premature revocation of such a release shall constitute a violation of this Order.
16. All instructions issued by CPEP shall constitute terms of this Order. Respondent shall comply with all CPEP instructions within the time periods set out by CPEP and/or the Panel.
17. Respondent shall complete successfully a Post-Education Evaluation within six months of successful completion of the activities recommended within the Education Program.
18. In order to complete successfully the Post-Education Evaluation, Respondent's performance on the above-referenced Post-Education Evaluation must, in the opinion of CPEP, demonstrate that Respondent has successfully completed the objectives of the Education Program and has integrated this learning into Respondent's medical practice and into Respondent's clinical thinking.
19. 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. The CPEP Assessment, Education Program, Post-Education Evaluation and all associated CPEP documents are confidential pursuant to the provisions of C.R.S. § 12-36-118(10).

### PRACTICE MONITORING

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

21. 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.

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

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

23. 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 § 12-36-117(1), C.R.S., the practice monitor shall immediately inform the Panel.

24. It is the responsibility of Respondent to assure that the practice monitor's reports are timely and complete. 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 30 days of such notice. Failure to nominate a new monitor within 30 days of such notification shall constitute a violation of this Order.

#### **TOLLING OF THE PROBATIONARY PERIOD WHEN PRACTICE MONITORING IS NOT IN EFFECT**

25. If a practice monitor nominated by Respondent and approved by the Panel does not commence practice monitoring 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 monitored by the practice monitor. Additionally if the Respondent is required to nominate a new practice monitor, the period of probation shall be tolled for any period of time during which a practice monitor is not monitoring Respondent's practice.

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 the date probation is terminated.

#### **EARLY TERMINATION FROM PRACTICE MONITORING and PROBATION**

27. After successful completion of the CPEP education plan or other remedial training or educational program, including any final evaluations, but no sooner than after successful completion of three years of probation, Respondent may petition the Panel for early termination of practice monitoring and probation. The parties agree that the Panel's decision regarding such a petition shall be made at the sole discretion of the Panel. Respondent is waiving the right to appeal the Panel decision on this issue.

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

28. 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 § 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.

29. Respondent may resume the active practice of medicine at any time as set forth in § 12-36-137(5), C.R.S. With such request, Respondent shall nominate a practice monitor as provided above and, unless Respondent has already provided proof of successful completion of all CPEP requirements under this Order, Respondent must provide a report by CPEP regarding the status of Respondent's progress with CPEP. Respondent shall be permitted to resume the active practice of medicine only after approval of the practice monitor and review and, if applicable, approval of CPEP's report.

#### **TERMINATION OF PROBATION**

30. Upon the expiration of the probationary period, Respondent may request 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.

#### **TERMS OF THE ORDER**

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. This Order shall be effective upon approval by the Panel and signature by a Panel member. 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, it is void.

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. Respondent shall obey all state and federal laws during the probationary period.

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

\_\_\_\_\_ St. Mary's Hospital, Grand Junction \_\_\_\_\_

\_\_\_\_\_ Community Hospital, Grand Junction \_\_\_\_\_


\_\_\_\_\_ Veteran's Hospital, Grand Junction \_\_\_\_\_

37. This Order and all its terms shall have the same force and effect as an order entered after a formal hearing pursuant to § 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 § 12-36-118(5)(g)(IV), C.R.S. This Order and all its terms also constitute a valid board order for purposes of § 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 the probationary period.

38. This Order shall be admissible as evidence at any future hearing before the Board.

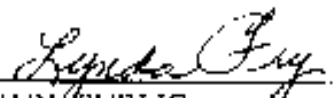
39. During the pendency of any action arising out of this Order, the obligations of the parties shall be deemed to be in full force and effect and shall not be tolled.

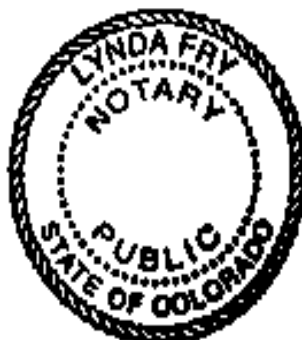
40. Upon becoming effective, this Order shall be open to public inspection and publicized pursuant to the Board's standard policies and procedures. Additionally, this Order shall be reported the Federation of State Medical Boards, the National Practitioner Data Bank/Healthcare Integrity and Protection Data Bank and as otherwise required by law.

  
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Traci D. Simms, M.D.

The foregoing was acknowledged before me this 15 day of

July, 2005 by Traci D. Simms, M.D.

  
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NOTARY PUBLIC



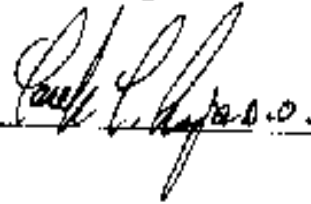
My Commission Expires 02/28/2009

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Commission expiration date

THE FORGOING Stipulation and Final Agency Order is approved and effective this  
18<sup>th</sup> day of August, 2005.

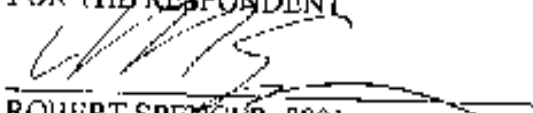
FOR THE COLORADO STATE BOARD OF  
MEDICAL EXAMINERS

INQUIRY PANEL B



APPROVED AS TO FORM:

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