

BEFORE THE COLORADO MEDICAL BOARD  
STATE OF COLORADO

CASE NOS. 2013-2400-B; 2013-2499-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 ANDREW J.  
ROSS, M.D., LICENSE NUMBER DR-38983,

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 Andrew J. Ross, 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 August 11, 2000 and was issued license number DR-38983, 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 September 18, 2014, the Panel reviewed case numbers 2013-2400-B and 2013-2499-B, and determined that further proceedings by formal complaint were warranted pursuant to Section 12-36-118(4)(c)(IV), C.R.S. The Panel thereupon referred these matters to the Attorney General 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 numbers 2013-2400-B and 2013-2499-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 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 12-36-118(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's medical specialty is obstetrics and gynecology.
- Patient A**
- b. Patient A presented to Respondent with a medical history that included abnormal pap smears and mild dysplasia which had been treated previously with a loop electrosurgical excision procedure (LEEP).
  - c. On May 7, 2012, Respondent performed a total laparoscopic hysterectomy, bilateral salpingectomy, right oophorectomy and lysis of adhesions on Patient A using the da Vinci robotic surgical system.
  - d. During the course of the surgical procedure, Respondent inadvertently placed sutures in Patient A's bladder. These sutured the dome (top) of the bladder to the bottom of the bladder and to the vaginal cuff.
  - e. Due to the significant amount of scar tissue, the bladder was difficult to visualize.
  - f. During the surgery that Respondent performed, Patient A also suffered a thermal injury to her left ureter.
  - g. Respondent may not have recognized how close he was to Patient A's ureter while performing cautery during the operation.

- h. On May 20, 2012, Patient A was seen in a hospital emergency department due to leaking of urine from her bladder.
- i. Due to the surgical complications, Patient A subsequently underwent corrective surgery by another surgeon to repair her bladder and left ureter.

### Patient B

- j. Patient B presented to Respondent with pelvic pain, dyspareunia and a right ovarian cyst.
- k. On September 27, 2012, Respondent performed a diagnostic laparoscopy to look for causes of pelvic pain including, but not limited to, ruling out endometriosis. Respondent also performed a right ovarian cystectomy, and peritoneal biopsy on Patient B.
- l. Respondent dissected Patient B's posterior cul-de-sac, instead of performing a simple 2-4 mm biopsy as intended.
- m. Patient B suffered "full thickness" lacerations in two areas of her bowel.
- n. Respondent's technical performance of the dissection of the posterior cul-de-sac resulted in a bowel injury for Patient B.
- o. Due to the surgical complications, another surgeon was called for an intra-operative consultation and then performed a laparotomy, a low anterior resection of a portion of Patient B's rectum and a loop colostomy.

7. Respondent admits and the Panel finds that the acts and/or omissions described in the factual basis above constitute unprofessional conduct pursuant to Section 12-36-117(1)(p), 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.

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 to practice medicine is hereby placed on probation, 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. The Panel and Respondent acknowledge that the CPEP requirements are contingent and will only be commenced if required by the terms of paragraphs 23-33.

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

### **FUNDAMENTALS OF LAPAROSCOPIC SURGERY PROGRAM**

13. As of the effective date of this Order, Respondent has submitted written proof of his successful completion of the Fundamentals of Laparoscopic Surgery ("FLS") program provided through the Society of American Gastrointestinal and Endoscopic Surgeons. Thus, Respondent has completed this term of the Order.

### **SURGICAL MONITORING**

14. Within 30 days of the effective date of this Order, Respondent shall nominate, in writing, a proposed surgical 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 and experienced in the surgical procedures Respondent performs, including use of the da Vinci Surgical System and general laparoscopic techniques. 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.

15. Respondent's nomination for a proposed surgical 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 Respondent's surgical practice.

16. For the purpose of this Stipulation and Final Agency Order, "surgical procedure" includes any surgical procedure commonly performed by an OB/GYN through use of general laparoscopic techniques or the use of the da Vinci Surgical System, whether that procedure is performed in a hospital, in an ambulatory surgical center or in any other setting.

17. Upon approval by the Panel, the surgical monitor shall personally observe and monitor ten (10) surgical procedures performed by Respondent in the State of Colorado or under the authority of his Colorado medical license. Five (5) of these surgical procedures shall be performed using the da Vinci Surgical System and five (5) of these surgical procedures shall be performed using general laparoscopic techniques. The surgical monitor shall directly observe and monitor each entire and complete surgical procedure.

18. Respondent must document the presence of the surgical monitor in the patient's medical record for each surgical procedure observed and monitored by the surgical monitor. Prior to and following the surgical procedure, the surgical monitor shall review Respondent's medical records for the patient undergoing the surgical procedure. The surgical monitor is authorized to review, and Respondent shall make available, any other records maintained by Respondent deemed appropriate by the surgical monitor.

19. The surgical monitor shall submit monthly written reports to the Panel which shall include the following:

- a. a description of each procedure personally observed and/or medical records reviewed;
- b. as to each procedure personally observed, a statement regarding whether the procedure was performed in accordance with the generally accepted standards of medical practice.

20. If at any time the Surgical Monitor believes Respondent is not in compliance with this Order, is unable to practice with skill and with safety to patients or has otherwise committed unprofessional conduct as defined in § 12-36-117(1), C.R.S., the Surgical Monitor shall immediately inform the Program Director of the Colorado Medical Board. Specifically, the Surgical Monitor shall immediately notify the Program Director of the Colorado Medical Board if the Surgical Monitor observes that Respondent's performance during any of the ten (10) surgical procedures observed includes an act or omission which fails to meet generally accepted standards of medical practice.

21. It is the responsibility of the Respondent to ensure that the surgical monitor's reports are timely and complete. Failure of the surgical monitor to perform the duties set forth above may result in a notice from Board staff requiring the nomination of a new surgical

monitor. Upon such notification, Respondent shall nominate a new surgical monitor according to the procedure set forth above. Respondent shall nominate the new surgical monitor within 30 days of such notice. Failure to nominate a new surgical monitor within 30 days of such notification shall constitute a violation of this Order.

22. Respondent agrees he is responsible to ensure the Surgical Monitor abides by the terms of this Order.

### **CONTINGENT TERM CPEP EDUCATION PROGRAM**

23. If the Surgical Monitor determines that Respondent's performance of any of the ten (10) personally observed and monitored surgical procedures described in paragraphs 14-22 fails to meet generally accepted standards of medical practice, Respondent, within 30 days of this determination, shall contact the Center for Personalized Education for Physicians ("CPEP") to schedule a competence assessment ("CPEP Assessment") for minimally invasive pelvic surgery. Respondent shall complete and review the CPEP Assessment within 120 days of receiving notice that he is required to complete a CPEP assessment.

24. The CPEP Assessment will determine whether CPEP recommends that Respondent undergo any education intervention plan or other remedial education or training program. Hereinafter, the term "Education Program" shall refer to any education intervention plan or other remedial education or training program recommended by CPEP, including the "Post-Education Evaluation" component.

25. If the CPEP Assessment indicates Respondent should undergo an Education Program, Respondent shall enroll in the recommended Education Program within 180 days after receiving notice that he is required to complete a CPEP assessment. If the CPEP Assessment indicates that Respondent need not undergo any Education Program, Respondent shall be deemed to have satisfied fully the CPEP Education Program requirement of this Order.

26. Respondent shall timely commence and successfully complete any 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 time he receives notice that he is required to complete a CPEP assessment 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.

27. 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.

28. Within 30 days of receiving notice that he is required to complete a CPEP assessment, Respondent shall sign any and all releases necessary to allow CPEP to communicate with the Panel. Within 60 days of receiving notice that he is required to complete a CPEP assessment, 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 revocation of such a release shall constitute a violation of this Order.

29. 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.

30. Respondent shall ensure that all reports from CPEP 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.

31. 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.

32. 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 screen 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 comprehensive neuropsychological examination with its peer assistance, or other delegated provider, pursuant to an Order or other written instruction of the Panel. The Respondent understands and agrees to undergo neuropsychological examination as directed by the Panel.

33. 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.

## **TOLLING OF THE PROBATIONARY PERIOD**

34. 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.

35. 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**

36. 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.

37. 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 demonstrate engagement in CPEP activities as required by CPEP and shall nominate any necessary surgical monitor required by this Order or by CPEP as provided above. Respondent shall be permitted to resume the active practice of medicine only after approval of the required monitor(s).

## **TERMINATION OF PROBATION**

38. If the Surgical Monitor determines that the Respondent's performance of the ten (10) personally observed and monitored surgical procedures described in paragraphs 14-22 meets generally accepted standards of medical practice, and if Respondent has completed all



other terms or requirements of probation, Respondent may petition the Panel, in writing, for termination of 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.

39. If the Surgical Monitor determines that the Respondent's performance of any of the ten (10) personally observed and monitored surgical procedures described in paragraphs 14-22 fails to meet generally accepted standards of medical practice and after Respondent then successfully completes all requirements of the CPEP program, and if Respondent has completed all other terms or requirements of probation, Respondent may petition the Panel, in writing, for termination of 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.

#### **OTHER TERMS**

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

41. 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.

42. 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.

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

44. Respondent shall submit an update to his profile with the Healthcare Professions Profiling Program regarding this order within thirty (30) days of the effective date of this Order.

45. 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.

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

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

SWEDISH MEDICAL CENTER DWIGHT

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48. 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.

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

50. 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.

51. 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.

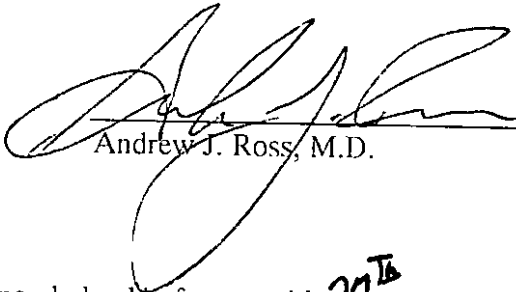
52. Respondent acknowledges that the Panel may choose not to accept the terms of this Agreement and that if the Agreement is not approved by the Panel and signed by a Panel member or other authorized person, it is void.

53. 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.

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

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Andrew J. Ross, M.D.

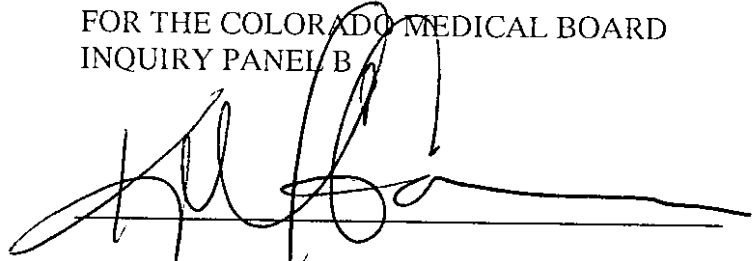
THE FOREGOING was acknowledged before me this 27<sup>th</sup> day of  
OCTOBER, 2015 by Andrew J. Ross, M.D., in the County of ARAPAHOE,  
State of COLORADO.

**ELIZABETH CORRINE KENT**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
NOTARY ID 20144001712  
My Commission Expires January 13, 2018

  
\_\_\_\_\_  
NOTARY PUBLIC  
1/13/2018  
My commission expires

THE FOREGOING Stipulation and Final Agency Order is approved this 2 day of November, 2015.

FOR THE COLORADO MEDICAL BOARD  
INQUIRY PANEL B



Karen M. McGovern  
Program Director  
*Delegated Authority to Sign by Inquiry Panel*

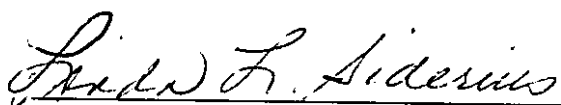
THE FOREGOING Stipulation and Final Agency Order is effective upon service to Respondent, on November 2, 2015.



APPROVED AS TO FORM

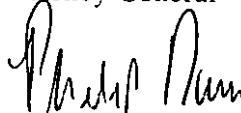
FOR RESPONDENT

FOR THE COLORADO MEDICAL  
BOARD



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