BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF BENJAMIN TAYLOR JOHNSON, M D LICENSE NO 34609

Respondent

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Benjamin Taylor Johnson, M D ("Respondent") as follows·

JURISDICTION AND CASE HISTORY

1 Respondent was licensed to practice medicine in the state of Colorado on July 13, 1995 and was issued license no 34609 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 April 19, 2001the Panel reviewed case numbers 5199022500 and 5199021490 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 no 5199022500, without the necessity of holding a formal disciplinary hearing This Order constitutes the entire agreement between the parties, 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,

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 the following

Patient 1

a. Patient 1 began seeing Respondent in October 1997 after receiving an unsolicited brochure from Respondent advertising "virtually painless" and "permanent" laser hair removal Respondent's brochure also featured a two-year guarantee on the laser hair removal services offered by Respondent

b From October 1997 to February 1999 Patient 1 underwent laser hair removal procedures at Respondent's clinic During the course of these procedures Patient 1 suffered burns to his cheek and chin areas

c The laser hair removal procedures which resulted in the injuries to Patient 1 were not "virtually painless" as Respondent had advertised In fact the laser hair removal procedures performed by Respondent's staff caused Patient 1 extreme pain and required the administration of prescription pain medication for its control Respondent asserts that most of his patients found the procedure very tolerable and did not require the use of any pain medication

d The injuries incurred by Patient 1 during the course of laser hair removal procedures were directly attributable to Respondent's failure to adequately supervise his staff in the performance of those procedures Respondent asserts that all of his laser technicians were properly trained by himself or the laser manufacturer and the protocols used on Patient 1 were within the manufacturer's guidelines

e Respondent's advertised promise of permanent hair removal backed with a two-year guarantee was not honored The procedures performed at Respondent's clinic did not result in the permanent removal of Patient 1's hair Respondent also sought to withdraw the two year guarantee advertised in his brochure based upon his assertion that he was misled as to the laser hair removal machine's capabilities by its manufacturer

Patient 2

e On July 10, 1998 Patient 2 underwent a laser skin resurfacing procedure performed by Respondent

f Respondent did not sterilize Patient 2's face prior to performing the laser resurfacing procedure nor did he perform the procedure in a sterile fashion

g On July 13, 1998 Patient 2 presented at Respondent's office complaining of increasing facial pain, swelling and itching Respondent referred Patient 2 to the hospital

h At the hospital it was determined that Patient 2 had developed a beta hemolytic strep infection as a result of the procedure In the Board's consultant's opinion Respondent's failure to sterilize Patient 2's face prior to performing the procedure and failure to perform the procedure in sterile fashion was a violation of the standard of care Respondent asserts that laser resurfacing is not a sterile procedure and that Patient 2's infection fell within the 05 to 1 percent of laser skin resurfacing cases that incur infections Respondent further asserts that his preceptor training and current available literature supports his claim that extensive sterile technique is unwarranted

7. Respondent admits that the conduct set forth above constitutes unprofessional conduct as defined in § § 12-36-117(1)(p), 12-36-117(1)(hh)

8. Based upon the above, the Panel is authorized by § 12-36-118(5)(g)(III), C R S to order disciplinary action that it deems appropriate

SURRENDER OF LICENSE

9 Upon the effective date of this agreement, Respondent's license to practice medicine issued by the Board is deemed surrendered Following surrender of Respondent's license, Respondent shall perform no act requiring a license issued by the Board

10 Respondent may reapply for a license to practice medicine in Colorado, however he may not do so sooner than 90 days of the effective date of this order Respondent specifically understands and agrees that the Board may either grant or deny his application and that he is in no way guaranteed that his reapplication will be granted.

OTHER TERMS

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

12. 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

13. 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

Respondent does not presently hold admitting privileges at any Colorado hospital

14 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 This Order and all its terms also constitute a valid board order for purposes of § 12-36-117(1)(u), C R S

15 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

16 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

17 Upon becoming effective, this Order shall be open to public inspection and shall be reported as required by law

BENJAMIN TAYLOR JOHNSON, M D

The foregoing was acknowledged before me this 26 day of April

by Benjamin Taylor Johnson, M D

Cynda L. Knodel
NOTARY PUBLIC

March 30, 2003
My commission expires

THE FOREGOING Stipulation and Final Agency Order is approved and effective this 11th day of May, 2001

FOR THE COLORADO STATE BOARD OF MEDICAL EXAMINERS

INQUIRY PANEL B

Tim Ammons

APPROVED AS TO FORM

KEN SALAZAR
Attorney General

SEAN R DINGLE, 20776*
Assistant Attorney General
Medical Board Unit
Business and Licensing Section
Attorneys for Colorado Board of Medical Examiners

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone (303) 866-5287
*Counsel of Record