STATE OF WASHINGTON

DEPARTMENT OF HEALTH

Olympia, Washington 98504

RE: Patrick K. Chau, MD
Master Case No.: M2010-628
Document: Agreed Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice as a Physician and Surgeon of: **PATRICK K. CHAU, MD** License No. MD00030053 Respondent	**No. M2010-628** **STIPULATED FINDINGS OF FACT, CONCLUSIONS OF LAW AND AGREED ORDER**

The Medical Quality Assurance Commission (Commission), through Teresa Landreau, Department of Health Staff Attorney, and Respondent, represented by counsel, if any, stipulate and agree to the following.

1. PROCEDURAL STIPULATIONS

1.1 On December 28, 2011, the Commission issued a Statement of Charges against Respondent.

1.2 In the Statement of Charges, the Commission alleges that Respondent violated RCW 18.130.180(4).

1.3 The Commission is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 The Commission has the authority to impose sanctions pursuant to RCW 18.130.160 if the allegations are proven at a hearing.

1.6 The parties agree to resolve this matter by means of this Stipulated Findings of Fact, Conclusions of Law and Agreed Order (Agreed Order).

1.7 Respondent waives the opportunity for a hearing on the Statement of Charges if the Commission accepts this Agreed Order.

1.8 This Agreed Order is not binding unless it is accepted and signed by the Commission.

1.9 If the Commission accepts this Agreed Order, it will be reported to the Health Integrity and Protection Databank (HIPDB)(45 CFR Part 61), the Federation of State

Medical Boards' Physician Data Center and elsewhere as required by law. HIPDB will report this Agreed Order to the National Practitioner Data Bank (45 CFR Part 60).

1.10 This Agreed Order is a public document. It will be placed on the Department of Health's website, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). It may be disclosed to the public upon request pursuant to the Public Records Act (Chapter 42.56 RCW). It will remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.11 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Commission acknowledge that the evidence is sufficient to justify the following findings, and the Commission makes the following findings of fact.

2.1 On August 13, 1992, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent is on probation and his license is restricted under the Commission's orders in case numbers M2006-61927 (2006 Order - 06-04-A-1014MD) and M2008-117887 (2009 Order) as modified March 17, 2011. Respondent's board-certification in psychiatry lapsed in 2006 so he is not currently board-certified. Respondent's Department of Justice Drug Enforcement Administration Certificate of Registration was revoked on June 5, 2012, effective July 16, 2012.

2.2 The 2009 Order required Respondent to suspend his prescribing practices for controlled substances within thirty (30) days of October 15, 2009, and to refer patients as necessary to other practitioners so that Respondent can complete the evaluation process with the Center for Personalized Education for Physicians in Denver, Colorado (CPEP). Respondent signed the proposed Agreed Order on October 1, 2009 and was aware of its terms. Respondent completed the CPEP evaluation process on June 30, 2011. He remains under restriction from prescribing controlled substances until he successfully completes all aspects of a CPEP Education Intervention plan and until CPEP determines he can prescribe safely and with reasonable skill and without posing an unreasonable risk of harm to the public.

2.3 Respondent's psychiatrist-patient relationship with Patient A began on June 10, 2009. Respondent's treatment records for Patient A that month are limited to a treatment contract, a treatment agreement, and an intake note on June 10, 2009 detailing the patient's self-reported history of panic attacks which concludes that her mental status was normal and not remarkable. Respondent failed to record any details of a mental status exam. There is no medical record of physical examination, vital signs, lab tests, blood work, or request to contact collateral sources. Respondent did not review or request prior medical records, despite the patient's reported treatment for the condition beginning three years earlier, including medication regimens, which ceased one and one-half years later. Except for a cursory self-report by the patient on July 6, 2009 that she felt "normal" again and was functioning well; Respondent's only subsequent medical records for Patient A are the details of Xanax prescriptions Respondent issued to Patient A, and notes he made after her death. Xanax is a brand name for alprazolam, a benzodiazepine categorized as a Schedule IV controlled substance. The prescription records show the following were issued by Respondent to Patient A:

2.3.1 On June 10, 2009: 70 Xanax, 2mg, to be taken in quantities and frequencies that increased weekly for a thirty (30) day period.

2.3.2 On July 6, 2009: 120 tablets of Xanax, 2 mg, with two (2) retills for a ninety (90) day period.

2.3.3 On October 2, 2009: 120 tablets of Xanax, 2 mg, with two (2) refills.

2.3.4 On or about November 4, 2009: a "predated" prescription for Xanax for a time frame to begin January 1, 2010 and extend through March 2010.

2.4 Respondent signed the proposed 2009 Order on October 1, 2009 and was aware of the pending restriction on his prescribing of controlled substances and a thirty day window to refer patients to other practitioners. On October 2, 2009, Respondent issued a thirty day prescription for Xanax with 2 refills to Patient A, and offered Patient A the opportunity to come back and pick up a predated Xanax prescription (mentioned above at paragraph 1.3.4) to start in January 2010 with refills through March of 2010. On November 4, 2009 Respondent issued this predated prescription to Patient A, without making any arrangements for future medical oversight. Patient A died of a methadone and alprazolam overdose on November 11, 2009.

2.5 Respondent 's psychiatrist-patient relationship with Patient B began on or about October 13, 2008, when Respondent issued alprazolam (a Schedule IV controlled substance) and promethazine (an unscheduled antihistamine legend drug) prescriptions to Patient B, which were filled on the following dates:

2.5.1 11/06/2008 Alprazolam 2 mg #45 for 45 days with 0 refills,

2.5.2 11/07/2008 Promethazine 50 mg #90 for 30 days with 0 retills,

2.5.3 11/22/2008 Alprazolam 2 mg #45 for 45 days with 1 refill,

2.5.4 12/07/2008 Alprazolam 2 mg #45 for 15 days with 2 refills,

2.5.5 12/09/2008 Promethazine 50 mg #14 for 4 days with 1 retill;

2.5.6 12/24/2008 Alprazolam 2 mg #45 for 15 days with 3 retills.

2.6 Respondent's treatment records for Patient B between October 13, 2008 and December 28, 2008 are limited to an initial treatment contract, a treatment agreement, and an intake note covering the patient's self-reported history which concludes that the patient's mental status was normal and not remarkable. The records fail to record any details of a mental status exam. There is no medical record of physical examination, vital signs, lab tests, or blood work. Respondent did not review or request prior medical records, although the patient described experiencing several intensive panic attacks that resulted in emergency room visits. Respondent did not attempt to interview collateral sources such as the mother and aunt who Patient B mentioned as having shared medications and urged him to get medical help to assist with his panic attacks. No follow up treatment or consultations between Respondent and Patient B were scheduled or conducted between October 13, 2008 and December 29, 2008. On or about December 29, 2008 Respondent discharged Patient B based upon a report from a detoxification center that the patient had sought methadone treatment for heroin abuse.

2.7 Respondent resumed prescribing for Patient B on or about April 27, 2009; based upon Patient B's representation that he was a different patient with no chemical dependence history, despite having the same name and date of birth. The patient claimed to have a twin brother. Again Patient B mentioned his mother had shared her medications to calm him. Respondent failed to attempt to consult with collateral sources such as

Patient B's mother, although she could have clarified her son had no twin brother and had admitted his heroin abuse. Respondent's treatment records for Patient B between April 27, 2009 and May 29, 2009 do not include any details of a mental status exam, physical examination, vital signs, lab tests, blood work, review or request for prior medical records, or request to contact collateral sources. Respondent resumed issuing prescriptions for promethazine and alprazolam to Patient B, which were filled the same day as written, as follows:

2.7.1 4/27/2009 Alprazolam 2 mg #70 for 30 days with 0 refills.

2.7.2 5/29/2009 Alprazolam 2 mg #120 for 30 days with 0 refills.

2.8 On or about June 3, 2009, Patient B committed suicide.

3. CONCLUSIONS OF LAW

The Commission and Respondent agree to the entry of the following Conclusions of Law.

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(4).

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order.

4.1 **License Status: Probation.** The Commission continues Respondent's license on **PROBATION**. Respondent's license will remain on probation unfil he successfully completes all requirements of this Agreed Order, successfully completes any modifications resulting from the evaluation referenced in Paragraph 4.7 below, and until the Commission enters an order in its discretion releasing Respondent from probation.

4.2 **Restrictions on Prescribing.** Respondent is absolutely restricted from prescribing any controlled substance or thyroid medication (including Armour Thyroid) to anyone.

4.3 **Practice Restriction.** Respondent shall not practice forensic medicine or provide evaluations for court-related proceedings.

4.4 **Preceptor Requirement.** Respondent shall not practice medicine in Washington State except under the active supervision of a preceptor physician in compliance with the following requirements:

4.4.1 Respondent shall arrange for a qualified preceptor who is pre-approved by the Commission to monitor Respondent's practice of medicine and to consult with Respondent for a period of at least tive (5) years from the effective date of this Agreed Order. This preceptor program is in addition to the preceptor requirement that the Center for Personalized Education for Physicians (CPEP) located in Denver, Colorado has recommended, or may recommend, except to the extent two such programs may overlap. The preceptor shall report in writing to the Commission's Medical Consultant every three months regarding Respondent's medical skills. The Preceptor shall immediately report to the Medical Consultant any concerns the preceptor has regarding Respondent's ability to practice with reasonable skill and safety, or if Respondent is not compliant with requirements of the CPEP program or this order.

4.4.2 Respondent shall ensure that his preceptor has timely reviewed the following documents, as well as any other information the Preceptor requests:

4.4.2.1 Orders from the Commission to Respondent issued November 8, 2006; October 15, 2009; March 17, 2011, and this Agreed Order.

4.4.2.2 All written reports from Respondent's prior preceptors.

4.4.2.3 The March 2010 CPEP program evaluation of Respondent, and all subsequent written CPEP progress reports for Respondent.

4.4.3 The Commission's medical consultant will approve the preceptor, who must be board certified in psychiatry, licensed to practice medicine for at least ten years, and actively licensed and in clinical practice for at least the past five years. Geographic proximity shall be taken into account in determining whether a preceptor is appropriate. The preceptor must have experience training and consulting with other psychiatrists with respect to patient care. The preceptor must

not have any prior significant personal or business relationship with Respondent before entering into the approved preceptor relationship.

4.4.4 The preceptor will provide oversight with respect to Respondent's treatment of patients and his prescribing practices, if any. The preceptor will randomly attend at least two of Respondent's office visits with patients per week, and will review the charts regarding those patients and the progress note entries relating to those visits. The preceptor will also review the charting for a random selection of ten percent of Respondent's patients per week. To facilitate this oversight, Respondent will provide the preceptor with a patient list at the beginning of every month along with a copy of Respondent's appointment schedule for that month. Respondent will notify the preceptor of any changes to the list and the schedule on a weekly basis. The preceptor will decide which office visits to attend and notify Respondent of the decision before each visit. Respondent will allow the preceptor full access to his charts to facilitate the required chart reviews. Respondent and the preceptor shall meet at least twice every month to discuss and consult on the cases which the preceptor observed and reviewed. Adjustments to these preceptor requirements may be pre-approved by the Commission's Medical Consultant in writing.

4.4.5 Respondent began a preceptor program approved by the Commission in July 2011, and is currently in compliance. The preceptor program now in place may be continued so long as requirements are met to the satisfaction of the Commission.

4.5 **Ethics Course**. Respondent will attend a two-day ethics course approved by the Commission Medical Consultant. The ProBE course offered by the Center for Personalized Education for Physicians (CPEP) in Denver, Colorado is pre-approved. Respondent will complete the course within six months of the effective date of this Agreed Order unless otherwise allowed in writing by the Commission Medical Consultant. Respondent will provide the course instructors with a copy of this Agreed Order prior to the course. Respondent will sign all necessary waivers to allow the Department staff to communicate with the course instructors as needed. Respondent will submit proof of the satisfactory completion of the course to the Commission. If the course requires

Respondent to complete a written report, Respondent will assure that the Commission receives a copy of Respondent's written report. If the course instructors inform the Commission that Respondent did not receive an "unconditional pass" or otherwise satisfactorily complete the course, the Commission may require Respondent to re-take the course.

4.6 **Physician Education Course.** Respondent is currently in compliance with a Center for Personalized Education for Physicians (CPEP) Educational Intervention Plan developed for Respondent in June 2011. Respondent shall follow the recommendations and requirements of CPEP for this plan and for any revisions to the plan. Respondent shall successfully complete all aspects of the June 2011 CPEP Educational Interventional Plan.

4.7 **CPEP Re-Evaluation.** In the event Respondent completes the CPEP Educational Intervention Plan, he shall then schedule within four (4) months a follow-up clinical assessment at CPEP to re-evaluate his medical knowledge, patient care, clinical judgment, medical record keeping, reasoning ability, and communication skills. Respondent's awareness of the larger context and system of health care and his ability to effectively call on system resources to provide optimum care shall also be addressed. Respondent shall fully cooperate with this re-evaluation, and shall provide CPEP with any charts, documents, and releases that CPEP requests for this reassessment. The Commission's Medical Consultant will provide CPEP with pertinent documents, including records relating to Respondent's compliance with Commission Orders. The Medical Consultant will notify Respondent of any additional materials provided to CPEP. Respondent may provide additional materials to CPEP, and will notify the Medical Consultant if he does so. By signing this Agreed Order, Respondent releases CPEP representatives to discuss with representatives of the Commission any matters relating to Respondent's evaluation and CPEP's conclusions and recommendations. Respondent waives any priviieges or privacy rights he might otherwise have regarding such matters under federal and state law. Respondent understands that CPEP will provide a copy of its re-evaluation to the Commission's representatives and will communicate with those representatives as needed.

4.8 **Modification Consideration after CPEP Re-Evaluation.** Respondent will appear before the Commission at the next regularly scheduled meeting after CPEP issues its re-evaluation report. The parties may continue the matter to the following meeting if the circumstances so warrant. The purpose of this appearance will be to consider modifications to Respondent's license status under paragraph 4.1 of this Agreed Order in light of CPEP's re-evaluation findings and any other relevant evidence. The Commission will have full discretion in modifying paragraph 4.1, ranging from removal of probation status to suspension or revocation of licensure.

4.9 **Practice Reviews.** In order to monitor compliance with this Agreed Order, Respondent will submit to semi-annual practice reviews at Respondent's office for the duration of probation. The Commission's representative will inspect office records, review patient records, interview Respondent and interview any professional staff, partners, and employees and preceptors associated with Respondent's practice. The representative will contact Respondent's office to give advance notice before each practice review.

4.10 **Compliance appearances**. Respondent shall appear before the Commission on an annual basis and present proof of full compliance with this Agreed Order. Respondent shall continue to appear annually unless otherwise instructed in writing by the Commission or its representative.

4.11 **Obey laws**. Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the medical profession in Washington.

4.12 **Termination.** Respondent may file a petition for termination of this Agreed Order after five (5) years if Respondent has been in full compliance during that period. Respondent shall appear in person at a hearing on the petition. At the hearing, evidence in opposition may be considered by the Commission. After considering the petition and the evidence presented, the Commission will have sole discretion to grant or deny Respondent's petition.

4.13 **Responsibility for costs of compliance.** Respondent is responsible for all costs he may incur in the course of complying with this Agreed Order.

4.14 **Consequences of Violation.** If Respondent violates any provision of this Agreed Order in any respect, the Commission may initiate further action against Respondent's license.

4.15 **Updated Address.** Respondent shall inform the Program and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.

4.16 **Sanctions Supercede Prior Sanction Orders**. The provisions of Section 4 of this Agreed Order shall replace and supercede the sanction provisions of prior orders.

4.17 **Effective Date**. The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

5. COMPLIANCE WITH SANCTION RULES

5.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. Tier B of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases where substandard practices caused moderate patient harm or risked moderate to severe patient harm. Although two unrelated patient deaths occurred in these cases, neither patient died directly from an overdose of medications prescribed by Respondent. Therefore, the evidence does not establish by clear and convincing evidence that Respondent's substandard practices actually caused either death. However, Respondent's care of each patient clearly risked moderate to severe patient harm, because Respondent limited treatment to prescribing of controlled substances, without providing meaningful psychiatric treatment of the patients. Schedule B therefore applies.

5.2 Tier B requires the imposition of sanctions ranging from two years of oversight to tive years of oversight, unless revocation. Under WAC 246-16-800(3)(d), the starting point for the duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

5.3 The aggravating and mitigating factors in this case, listed below, justify moving to the maximum end of the range. In the judgment of the Commission, the serious nature and magnitude of Respondent's prior disciplinary history, together with the tragic outcomes for Patients A and B, substantially outweigh the mitigating factors. The

sanctions in this case include probation, prescribing restrictions, practice restrictions, a preceptor requirement, ethics course, physician education course, re-evaluation of Respondent's clinical skills after completion of the education courses, practice reviews, and compliance appearances. Respondent has been on probation since October 2009 under case M2008-117887. The behavior in this case occurred before the effective date of the M2008-117887 order, and Respondent is in substantial compliance with the sanctions in that order which also address the standard of care issues raised in this case. While the license status of probation may be subject to modification in the future under paragraph 4.8, above, the oversight of the Commission and other provisions will not be subject to termination until five (5) years from the effective date of this Agreed Order under paragraph 4.12.

5.4 These sanctions are appropriate within the Tier B range given the facts of the case and the following aggravating and mitigating factors:

5.4.1. As an aggravating factor, Patient A died of a drug overdose during a time when she was relying on Respondent's inadequate psychiatric treatment.

5.4.2 As an aggravating factor, Patient B initiated a violent confrontation with police officers, resulting in his death, during a time when he was relying on Respondent's inadequate psychiatric treatment.

5.4.3 As an aggravating factor, Respondent has a significant history of prior disciplinary actions, described in paragraph 2.1.

5.4.4 As a mitigating factor, Respondent is in substantial compliance with the CPEP educational intervention program, and has received satisfactory reports from his preceptors.

6. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order may result in suspension of the license after a show cause hearing. If Respondent fails to comply with the terms and conditions of this order, the Commission may hold a hearing to require Respondent to show cause why the license should not be suspended. Alternatively, the Commission may bring additional charges of unprofessional conduct under

RCW 18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

7. RESPONDENT'S ACCEPTANCE

I, Patrick K. Chau, Respondent, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order.

P.K. Chau MD — Oct. 17th 2012

PATRICK K. CHAU, MD
RESPONDENT

DATE

_____, WSBA# _____
ATTORNEY FOR RESPONDENT

_____
DATE

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8. COMMISSION'S ACCEPTANCE AND ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

DATED: Nov 15, 2012.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION

Linda A. Ruiz
PANEL CHAIR

PRESENTED BY:

TERESA LANDREAU, WSBA#9591
DEPARTMENT OF HEALTH STAFF ATTORNEY

November 15, 2012
DATE