



Fields of Opportunities

STATE OF IOWA

TERRY BRANSTAD, GOVERNOR  
KIM REYNOLDS, LT. GOVERNOR

IOWA BOARD OF MEDICINE  
MARK BOWDEN, EXECUTIVE DIRECTOR

# PUBLIC NOTICE

In the matter of the Statement of Charges  
against David H. Marcowitz, D.O.,  
Respondent, File No. 03-2014-105

Thursday, June 25, 2015, 7:30 A.M.  
Iowa Board of Medicine  
400 SW Eighth Street, Suite C  
Des Moines, Iowa 50309

## AGENDA<sup>1,2</sup>

1. Roll call to establish the presence of all Board members and alternates who were present on May 28, 2015, in the Matter of the Statement of Charges against David H. Marcowitz, D.O., Respondent. File No. 03-2014-105. Panel members are: Hamed Tewfik, M.D., Chair; Allison Schoenfelder, M.D.; Diane Clark; Kyle Ulveling, M.D.; Carole Frier, D.O.; Janece Valentine; Allen Zagoren, D.O.
2. Vote to meet in closed session pursuant to **Iowa Code section 21.5(1)(f)** for the purpose of discussing the decision to be rendered in the Matter of the Statement of Charges against David H. Marcowitz, D.O., Respondent. File No. 03-2014-105.
3. Meet in open session to vote on Decision and Order in the Matter of the Statement of Charges against David H. Marcowitz, D.O., Respondent. File No. 03-2014-105.

<sup>1</sup> *Public agenda materials are available via e-mail. Public sessions are recorded and available via CD upon request. Contact [ibm@iowa.gov](mailto:ibm@iowa.gov) or (515) 281-5171.*

<sup>2</sup> *(4) The Iowa Board of Medicine may address agenda items out of sequence to accommodate persons appearing before the Board or to aid in the efficiency or effectiveness of the meeting.'*

**BEFORE THE IOWA BOARD OF MEDICINE**

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**IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST**

**DAVID H. MARCOWITZ, D.O., RESPONDENT**

**FILE No. 03-14-105**

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**STATEMENT OF CHARGES**

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COMES NOW the Iowa Board of Medicine (Board) on February 6, 2015, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 3281 on January 24, 2000. Respondent's Iowa medical license is active and will next expire on July 1, 2016.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing. A contested case hearing shall be held on April 16, 2015, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medicine office at 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 Iowa Administrative Code 25.10 to file an Answer. In that Answer, you should also state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on February 25, 2015, at 9:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 Iowa Administrative Code 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Julie Bussanmas at 515-281-5637.

## **B. LEGAL AUTHORITY AND JURISDICTION**

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C.

9. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 25.25.

10. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 25.20.

## C. SECTIONS OF STATUTES AND RULES INVOLVED

### COUNT I

11. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the order of disciplinary action is prima facie evidence.

### STATEMENT OF THE MATTERS ASSERTED

12. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced general medicine in Moline, Illinois, and currently practices in Chariton, Iowa.

13. **Illinois Disciplinary Action:** On January 30, 2014, Respondent was disciplined by the Illinois Division of Professional Regulation (Illinois Board). The Illinois Board alleged that:

- A. Respondent prescribed multiple controlled substances to a patient in Moline, Illinois, between 2008 and 2011, without properly assessing and/or monitoring the patient for drug abuse or dependence, despite learning that the patient and his pregnant girlfriend were injecting the drugs and that the patient was selling the drugs to local drug users, at least three of whom died.
- B. Respondent provided Phentermine, a weight loss drug, to members of his office staff without establishing an appropriate physician-patient relationship, including performing physical examinations and maintaining medical records.

- C. Respondent failed to produce medical records subpoenaed by the Illinois Board during its investigation.

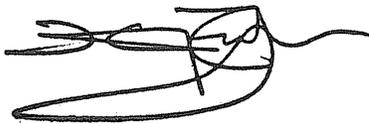
The Illinois Board suspended Respondent's Illinois medical license for a period of thirty days and Respondent agreed to place his Illinois medical license on permanent inactive status and his Illinois controlled substance license on inactive status. The Illinois Board also ordered Respondent to pay a \$3,000 fine. See Attachment A.

#### E. SETTLEMENT

14. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088 or [kent.nebel@iowa.gov](mailto:kent.nebel@iowa.gov).

#### F. PROBABLE CAUSE FINDING

15. On February 6, 2015, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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Hamed H. Tewfik, M.D., Chairman  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

STATE OF ILLINOIS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION  
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois,	)	
v.	)	
Complainant,	)	
David H. Marcowitz, D.O.	)	No. 2010-04083
License No. 036-082773,	)	
CS License No. 336-045043	)	
Respondent.	)	

CONSENT ORDER

The Department of Financial and Professional Regulation, Division of Professional Regulation, of the State of Illinois, by Vladimir Lozovskiy, one of its attorneys, (hereinafter "Department") and David H. Marcowitz, D.O., (hereinafter "Respondent"), , hereby agree to the following:

STIPULATIONS

David H. Marcowitz, D.O. is licensed as a Physician and Surgeon in the State of Illinois, holding License No. 036-082773 and Illinois Controlled Substance License No. 336-045043. Said licenses are in Active status. At all times material to the matter(s) set forth in this Consent Order, the Department of Financial and Professional Regulation, Division of Professional Regulation, of the State of Illinois had jurisdiction over the subject matter and parties herein.

Information has come to the attention of the Department that Respondent prescribed Controlled Substances to patients in his Illinois practice as well as failed to produce medical records pursuant to the Department's Subpoena when requested. The allegation(s) as set forth herein, if proven to be true, could constitute grounds for suspending, revoking or other discipline of Respondent's Physician and Surgeon license on the authority 225 Illinois Compiled Statutes, Paragraph 60/22(A)(5) and (38).

The Department filed a Formal Complaint on August 2013. Subsequently, Respondent mailed his licenses to the Department indicating his desire to permanently leave the State of Illinois.

Respondent has been advised of the right to a hearing, the right to contest any charges brought forward in the Department's Complaint, and the right to administrative review of this Consent Order. Respondent knowingly waives each of these rights, as well as the right to administrative review of this Consent Order. Such waiver ceases if this Consent Order is rejected by either the Medical Disciplinary Board or the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation.

Respondent and the Department have agreed, in order to resolve this matter, that Respondent, David H. Marcowitz, D.O., be permitted to enter into a Consent Order with the Department, providing for the imposition of disciplinary measures which are fair and equitable under the circumstances and which are consistent with the best interests of the people of the State of Illinois.

#### CONDITIONS

WHEREFORE, the Department, through Vladimir Lozovski, its attorney, and David H. Marcowitz, D.O., Respondent, agree:

A. Illinois Physician and Surgeon license of David H. Marcowitz, D.O., License No. 036-082773 and Illinois Controlled Substance License No. 336-045043 are hereby Suspended for thirty (30) days. Thereafter, Respondent agrees to voluntarily have his Illinois Physician and Surgeon License No. 036-082773 and Illinois Controlled Substance License No. 336-045043 to be placed on permanent Inactive Status. Upon the final approval of this Consent Order, Respondent shall submit the necessary documentation required by the Medical Licensing Unit of

the Department to effectuate the change in license status within 30 days from the effective date of this Order.

B. All requests and documentation regarding Respondent's Illinois Physician and Surgeon License and Illinois Controlled Substance License shall be submitted to:

Medical Licensing Unit  
Illinois Department of Financial and Professional Regulation  
320 W. Washington Street  
Springfield, Illinois 62786

C. Respondent shall pay a Fine in the amount of \$3,000.00 dollars (three thousand dollars) being due within six (6) months of the effective date of this Consent Order Respondent shall submit a check payable to: the Illinois Department of Financial and Professional Regulation. Said fine shall be mailed to Illinois Dept. of Financial and Professional Regulation, Attention: CMU/Accounts Receivable - Fine Payments, 320 W. Washington St., 3<sup>rd</sup> Floor, Springfield, Illinois 62786. In the event that that Respondent shall fail to pay the fine, and the Department is forced to initiate a collection effort to retrieve the fine, Respondent will be responsible for all costs and fees incurred by the collection process;

D. If Respondent fails to have his Illinois Physician and Surgeon License No. 036-082773 and Illinois Controlled Substance No. 336-045043 placed on inactive status within thirty (30) days upon entry of this order, the Director of the Division of Professional Regulation is permitted to issue an Order forthwith mandating the automatic, indefinite and immediate suspension of Respondent's Illinois Physician and Surgeon License No. 036-082773 and Illinois Controlled Substance License No. 336-045043 for a minimum period of twelve (12) months. This suspension shall not preclude the Department from taking any other disciplinary or other actions it deems appropriate. In the event that Respondent contests in writing (by the filing of an appropriate Petition with the Department) the factual basis underlying said suspension within thirty (30) days of the imposition

thereof, then Respondent shall be afforded a hearing on the merits within thirty (30) days from filing of said Petition.

E. This Consent Order shall become effective immediately after it is approved by the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois Division of Professional Regulations

1/2/2014  
DATE

Vladimir Lozovskiy  
Vladimir Lozovskiy  
Attorney for the Department

1/2/2014  
DATE

David H. Marcowitz  
David H. Marcowitz, D.O.  
Respondent

15 Jan 2014  
DATE

Member  
Member, Medical Disciplinary Board

The foregoing Consent Order is approved in full.

DATED THIS 3/14 day of January, 2014

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois Division of Professional Regulations

JAY STEWART  
JAY STEWART  
DIRECTOR

REF: Case No. 2010-04083/ License No. 036-082773/336-045043