

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**LEE D. BIRCHANSKY, M.D., RESPONDENT**

**FILE No. 02-12-173**

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**STATEMENT OF CHARGES AND SETTLEMENT AGREEMENT  
(Combined)**

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COMES NOW the Iowa Board of Medicine (Board), and Lee D. Birchansky, M.D., (Respondent), on April 4, 2013, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this combined Statement of Charges and Settlement Agreement.

**STATEMENT OF CHARGES**

1. Respondent was issued Iowa medical license no. 26858 on October 24, 1988.
2. Respondent's Iowa medical license is active and will next expire on December 1, 2014.
3. The Board has jurisdiction pursuant to Iowa Code Chapters 147, 148 and 272C.

**COUNT I**

4. Respondent is charged pursuant to Iowa Code Section 148.6(2)(c) and 653 IAC 23.1(10) with willfully or repeatedly violating a law relating to the practice of medicine in Iowa.

## STATEMENT OF MATTERS ASSERTED

5. Respondent is an Iowa-licensed physician who practices ophthalmology in Cedar Rapids, Iowa.

6. On or about December 28, 2011, Respondent was sanctioned by the Iowa Department of Public Health (Department) for performing cataract surgery in an “outpatient surgical facility” in Cedar Rapids, Iowa, between 2009 and 2012 without obtaining a Certificate of Need in violation of Iowa Code section 135.61. Respondent was issued a Notice to Cease and Desist and ordered to pay a \$20,000 Civil Penalty. Respondent has appealed the Department’s order.

7. Respondent is filing an Answer concurrent with this Statement of Charges denying the charges. However, Respondent wishes to enter into a settlement with the Board rather than continue proceedings before the Board.

## SETTLEMENT AGREEMENT

8. **CITATION AND WARNING:** Respondent is hereby **CITED** for violating a law relating to the practice of medicine in Iowa when he operated an “outpatient surgical facility” without obtaining a Certificate of Need in violation of the Iowa Code section 135.61. Respondent is hereby **WARNED** that violating a law relating to the practice of medicine in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

9. **CIVIL PENALTY:** Respondent shall be assessed a **\$2,500 civil penalty**. The civil penalty shall be paid within twenty (20) days of the date of this Order. The civil penalty shall be

payable to the Treasurer of Iowa, shall be mailed to the executive director of the Board and shall be deposited into the State General Fund.

10. Respondent voluntarily submits this Order to the Board for consideration.

11. Respondent agrees to allow counsel for the Office of the Iowa Attorney General to present this Order to the Board for consideration.

12. This Order constitutes the resolution of a contested case proceeding.

13. By entering into this Order Respondent voluntarily waives any rights to a contested case hearing on the allegations contained in the Statement of Charges and waives any objections to the terms of this Settlement Agreement. However, if the courts should determine that Respondent did not violate Iowa's Certificate of Need statute, Respondent may petition the Board to vacate this Order.

14. In the event Respondent violates or fails to comply with any of the terms or conditions of this Order, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline as authorized in Iowa Code Chapters 148 and 272 and 653 IAC 12.2.

15. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

16. Respondent understands that by entering into this combined Statement of Charges and Settlement Agreement, Respondent cannot obtain a copy of the investigative file. Pursuant to Iowa Code section 272C.6(4), a copy of the investigative file may only be provided to a licensee after a Statement of Charges is filed but before the final resolution of those charges.

17. Pursuant to 653 IAC 21.6, if applicable, Respondent shall notify all physician assistant supervisees within one workday upon receiving disciplinary action from the Board or any other change in status that affects the physician's eligibility to supervise a physician assistant.

18. This Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

19. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank.

20. This Order is subject to approval by the Board. If the Board fails to approve this Order, it shall be of no force or effect to either party.

21. The Board's approval of this Order shall constitute a **Final Order** of the Board.



Lee D. Birchansky, M.D., Respondent

Subscribed and sworn to before me on 3/7, 2013.

Notary Public, State of Iowa Kevin M. Meehan

This Order is approved by the Board on April 4, 2013.



Colleen K. Stockdale, M.D., M.S., Chairwoman  
Iowa Board of Medicine  
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Des Moines, Iowa 50309-4686