

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE)	FILE NOS. 02-01-1137 & 02-01-1442
STATEMENT OF CHARGES)	DIA NO. 106DPHMB004
AGAINST:)	
)	
PETER V. BOESEN, M.D.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

To: Peter V. Boesen, M.D.:

Date: August 14, 2012.

On May 17, 2012, the Iowa Board of Medicine (Board) filed an Amended Statement of Charges charging Peter V. Boesen, M.D. (Respondent) under Iowa Code sections 147.55(5) and 148.6(2)(b) and 653 IAC 23.1(9) with having been convicted of a felony offense. The hearing was held on June 22, 2012 before the following Board members: Colleen Stockdale, M.D., M.S., Chairwoman; Michael Thompson, D.O.; Allen Zagoren, D.O.; Joyce Vista-Wayne, M.D.; and Paul Thurlow and Diane Clark; public members. Respondent was present and was self-represented. Assistant Attorney General Theresa Weeg represented the state. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(l) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge Kerry Anderson assisted the Board in conducting the hearing and was instructed to prepare a written decision in accordance with its deliberations.

THE RECORD

The record includes the Amended Statement of Charges, State's Exhibits 1 - 16, Respondent's Exhibits 1 - 6, and the testimony of Peter Boesen.

FINDINGS OF FACT

1. Respondent was issued Iowa medical license number 26113 on July 1, 1987. That license became inactive due to nonrenewal on August 1, 2008. (State Exhibits 2, 4-7)
2. On February 15, 2005, a federal grand jury indicted Respondent on one count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. section 371 and eighty-two counts of Health Care Fraud in violation of 18 U.S.C. section 1347. The indictment alleged that Respondent billed multiple health insurance providers for procedures and tests that were either not actually performed or were not medically necessary. In August 2006, after trial before the United States District Court for the Southern District of Iowa, a jury convicted Respondent on all counts. Subsequently, the court granted Respondent's motion for acquittal on the conspiracy charge. Judgment was entered on May 7, 2007. (State Exhibits 5, 11, 12, 16; Testimony of Peter Boesen) (State's Exhibits 5, 16)

3. Respondent appealed his convictions to the United States Court of Appeals for the Eighth Circuit and the government cross-appealed seeking reversal of the judgment of acquittal on the conspiracy charge. On September 17, 2008, the Eighth Circuit rejected all of the arguments offered by Respondent and affirmed his fraud convictions. The court further reversed the district court's judgment of acquittal on the conspiracy charge. The case was remanded to the district court. (State Exhibit 16)

4. On November 26, 2008, the district court entered an amended judgment finding defendant guilty of one count of Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. section 371 and seventy-nine counts of Health Care Fraud in violation of 18 U.S.C. section 1347. Three counts of fraud were dismissed on the government's motion. (State Exhibit 12)

5. Respondent was sentenced to 51 months in prison and was ordered to pay restitution in the amount of \$931,526.86. Respondent was released from prison in February 2011 and, as of the time of hearing remained on Supervised Release. Respondent testified he had paid a great amount toward his restitution obligation but still owed approximately \$290,000. (State Exhibits 12, 15; Testimony of Peter Boesen)

6. At hearing, Respondent testified at length regarding his belief that the charges against him were wrongly filed, his trial was conducted unfairly and his appeal was wrongly decided. Respondent maintained that he performed all of the procedures for which he billed and submitted videos he produced after his indictment showing him conducting each of the three procedures which formed the basis of his fraud convictions. Respondent testified that his only remorse was that his patients could not receive care from him any longer. (Respondent's Exhibits 3 - 5)

7. Respondent further testified that he did not participate in continuing education while incarcerated. He stated he feared punishment from prison authorities had he requested the opportunity to obtain continuing medical education. Respondent testified that he now cannot afford continuing education and has done little to prepare for re-entry into the profession other than research the internet in an attempt to stay current. Respondent noted that he wants to obtain training on new procedures. He stated he would welcome a period of probation during which he could work to show his skills are up-to-date.

8. Respondent stated that he has been excluded from participating in Medicare and Medicaid and therefore has been investigating employment by the United States Army and other government positions that do not involve federal health care funds. He stated that he has great capabilities to help people and would like to use his talent in the future.

CONCLUSIONS OF LAW

Iowa Code section 147.55(5) provides that a license may be subject to discipline when the licensee has been convicted "of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession." Similarly, the Board is authorized under Iowa Code section 148.6(2)(b) to discipline a licensee who is guilty of:

Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication of guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state shall be conclusive evidence.

The Board has also adopted rules which allows the imposition of disciplinary sanctions when it determines a licensee has been "convicted of a felony in the courts of this state, another state, the United States, or any country, territory or other jurisdiction ...". 653 IAC 23.1(9).

The undisputed evidence establishes that Respondent has been convicted of Conspiracy to Commit Health Care Fraud and Health Care Fraud under 18 U.S.C. sections 371 and 1347. Violations of section 1347 are considered felonies. See *United States v. Abdelshafi*, 592 F.3d 602, 607 (4th Cir.2010) ("[C]onvictions for health care fraud qualif[y] as predicate felony offenses under 18 U.S.C. § 1028A(c)(1)."). Additionally, the convictions under both sections are clearly related to Respondent's profession as a physician; he was convicted of billing health care insurers for procedures he either did not perform or which were medically unnecessary.

Respondent argues that the investigation into his billing practices, his trial and his appeal were all unfair and that he is innocent. However, it is not the province of the Board to question the actions of the jury and the courts.

Even though Respondent's Iowa license has been inactive for more than one year and he cannot practice medicine under it, the Board's rules provide that Respondent continues to hold the privilege of licensure in this state. 653 IAC 9.14(1)(c). Respondent asks that his license be placed on probation for a period of time sufficient for him to show he is competent to practice medicine.

The Board's primary concern in this matter is for the safety of the public. Given the magnitude of Respondent's crimes, his lack of remorse and his lack of efforts toward staying current or reentering the medical profession, the Board finds that Respondent's license should be suspended and certain conditions should be met before the Board will consider any application for reinstatement.

DECISION AND ORDER

1. **CITATION AND WARNING:** Respondent is hereby **CITED** for having been convicted of felony and for having been convicted of a crime related to his profession. Respondent is hereby **WARNED** that such practice in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.
2. **SUSPENSION:** License No. 26113 issued to Respondent is hereby **SUSPENDED INDEFINITELY**. No application for reinstatement of License No. 2613 will be considered by the Board before Respondent complies with the remaining provisions of this Decision and Order.
3. **COMPETENCY EVALUATION:** Respondent shall complete a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Blvd., Suite 100, Denver, CO, 80230, #303-577-3232. Respondent shall ensure that all reports from the evaluation program are provided directly to the Board. Respondent shall comply with any recommendations for education or remediation made by CPEP as a result of its evaluation. Respondent is responsible for all costs associated with the CPEP evaluation.
4. **PROFESSIONAL ETHICS PROGRAM:** Respondent shall complete the Professional Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Blvd., Suite 100, Denver, CO, 80230, #303-577-3232. Respondent shall ensure that all reports from the program are provided directly to the Board. Respondent shall comply with any recommendations made by CPEP following completion of the program. Respondent is responsible for all costs associated with the PROBE program.
5. **CONTINUED COMPLIANCE WITH HIS CRIMINAL PROBATION:** Respondent shall obey all conditions attached to his sentence and Supervised Release, including but not limited to the payment of restitution, and shall provide the Board with verification from his probation officer of such compliance upon request.
6. **CONTINUING COMPLIANCE WITH THE LAW:** Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa. 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 the Respondent's Iowa medical license or to impose other license discipline as authorized by Iowa law.
7. **APPLICATION FOR REINSTATEMENT:** Not until Respondent has completed the provisions of this Decision and Order and provided the Board with all information required will the Board consider any application for reinstatement. The Board reserves the right to implement additional conditions should reinstatement be granted in the future to ensure that Respondent is competent to practice medicine with reasonable skill and safety.

8. **CIVIL PENALTY:** Should the Board choose to reinstate Respondent's Iowa medical license in the future, Respondent shall pay a civil penalty of **\$10,000**. The civil penalty shall be paid within thirty (30) days of the date of reinstatement and shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited in the State General Fund.

9. **HEARING FEE:** Respondent shall pay a disciplinary hearing fee of \$75.00. Iowa Code section 272C.6(6); 653 IAC section 25.33(2). Respondent shall also pay any costs certified by the executive director. See 653 IAC 25.33(3). All sanctions, fees and costs shall be paid in the form of a check or money order payable to the State of Iowa and delivered to the Board within thirty days of the issuance of the final decision.

Dated this 14th day of August, 2012.



Colleen Stockdale, M.D., M.S., Chairwoman
Iowa Board of Medicine
400 S.W. 8th Street, Suite C
Des Moines, IA 50309-4686

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this Decision and Order. 653 IAC 25.31.

cc: Theresa O'Connell Weeg, Assistant Attorney General

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PETER V. BOESEN, M.D., RESPONDENT

FILE Nos. 02-01-1137 & 02-01-1442

ORDER RE: AMENDED STATEMENT OF CHARGES

Date: May 17, 2012.

1. Respondent was issued Iowa medical license number 26113 on July 1, 1987.
2. Respondent's Iowa medical license went inactive due to nonrenewal on August 1, 2008.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.
4. On January 25, 2006, the Board filed an Amended Notice of Hearing and Confidential Circumstances against Respondent charging him with the following violations of the laws and rules governing the practice of medicine in Iowa:

COUNT I

“4. Respondent is charged under Iowa Code sections 147.55(3) and 272C.10(3) (2005) and 653 IAC sections 12.4(3) and (36) with engaging in

unprofessional or unethical conduct and/or practice harmful or detrimental to the public when he engaged in healthcare fraud.”

COUNT II

“5. Respondent is charged pursuant to Iowa Code sections 147.55(2), 148.6(2)(g) and 272C.10(2) (2005), and 653 IAC section 12.4(2)(d) with failing to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery in Iowa when he engaged in healthcare fraud.”

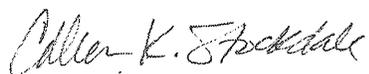
5. On or about August 9, 2006, Respondent was convicted of healthcare fraud in the U.S. District Court for the Southern District of Iowa. Respondent was incarcerated following the conviction and this matter was indefinitely continued due to his incarceration. Respondent has subsequently been released from prison.

6. On March 23, 2012, the State filed a Motion to Amend Statement of Charges. The State argued that the criminal conviction resulted from the same conduct that prompted the Board’s charges and the charges relating to professional incompetency and unprofessional or unethical conduct are no longer necessary given Respondent’s conviction. The State argued that the charges should be amended removing the pending charges and substituting them with the charge of conviction of a felony offense. The State filed an Amended Statement of Charges with its Motion to Amend Statement of Charges.

7. Respondent did not file a resistance to the State's Motion to Amend Statement of Charges.

8. On May 17, 2012, the Board voted to grant the State's Motion to Amend Statement of Charges.

THEREFORE IT IS HERBEY ORDERED that the State's Motion to Amend Statement of Charges is GRANTED and the Board herby approves the Amended Statement of Charges. See attached.



Colleen Stockdale, M.D., M.S.
Chairperson
Iowa Board of Medicine

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PETER V. BOESEN, M.D., RESPONDENT

File No. 02-05-837

AMENDED STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on May 17, 2012, and files this Amended Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license number 26113 on July 1, 1987. Respondent's Iowa medical license is inactive, having expired on August 1, 2008.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on June 22, 2012, 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 8th 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 May 23, 2012 at 9:30 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, 2nd 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 (2011).

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 (2011) 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. **FELONY CRIMINAL CONVICTION:** Respondent is charged pursuant to Iowa Code sections 147.55(5) and 148.6(2)(b) and 653 IAC 23.1(9) with conviction of a felony offense. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state shall be conclusive evidence.

STATEMENT OF MATTERS ASSERTED

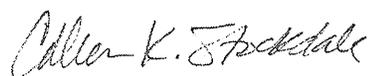
12. On May 7, 2007, a Judgment in a Criminal Case was entered against Respondent, finding him guilty of 79 counts of Health Care Fraud, in violation of 18 U.S.C. § 1347. Respondent was sentenced to 51 months in federal prison and ordered to pay \$931,526.86 in restitution.

E. SETTLEMENT

13. 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.

F. PROBABLE CAUSE FINDING

14. On May 17, 2012, the Iowa Board of Medicine found probable cause to file this Statement of Charges.

A handwritten signature in black ink, reading "Colleen K. Stockdale". The signature is written in a cursive, flowing style.

Colleen Stockdale, M.D., M.S.

Chairperson

Iowa Board of Medicine

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA**

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

PETER V. BOESEN, M.D.,

RESPONDENT.

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)
)
)
)
)
)

NO. 02-01-1137 & 02-02-1441

STIPULATED ORDER FOR ✓
CONTINUANCE OF HEARING DATE

COME NOW Respondent and the State of Iowa and enter into the following Stipulated Order:

1. The Board of Medicine (Board) filed a Notice of Hearing against Respondent on January 25, 2006, and that matter is currently pending hearing.
2. Respondent is currently incarcerated following his conviction for health care fraud and conspiracy to commit health care fraud in the U.S. District Court for the Southern District of Iowa. His appeal of that conviction is currently pending.
3. Respondent and the State submit this Stipulated Order for Board approval.
4. In order to allow Respondent to personally appear before the Board to defend the disciplinary charges pending against him, and to meet the Board's interest in protecting the public while the Notice of Hearing against Respondent is pending, the parties agree to the following:
 - a. The hearing in this matter will be indefinitely continued until Respondent is released from prison.
 - b. Respondent will not practice any aspect of medicine until the Board's Statement of Charges against him is resolved, either by

Board approval of a settlement agreement or issuance of a final public Board order following a formal contested case hearing.

c. This Stipulated Order is a public record.

5) In the event Respondent practices medicine in violation of this Stipulated Order, the Board may initiate appropriate action to revoke or suspend Respondent's license or to impose other licensee discipline as authorized in Iowa Code Section 272C.3(2)(a) (2007).

6) This Stipulated Order is voluntarily submitted by Respondent and the State to the Board for its consideration.

7) This Stipulated Order must be approved by the Board. If the Board fails to approve this Stipulated Order it shall be of no force or effect to either party.



Peter V. Boesen, MD, Respondent



Guy R. Cook, Counsel for Respondent



Heather Palmer, Counsel for State of Iowa

This Stipulated Order is approved by the Board on March 12, 2008.



Yashn Lee, MD, Chairperson
Iowa Board of Medicine

Copies to:

Guy R. Cook
GREFE & SIDNEY, P.L.C.
2222 Grand Avenue
P.O. Box 10434
Des Moines, IA 50306
ATTORNEY FOR RESPONDENT

Heather Palmer
Assistant Attorney General
Iowa Attorney General's Office
Hoover Building, 2nd Floor
LOCAL

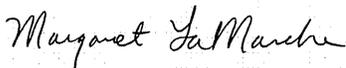
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IOWA ATTORNEY GENERAL'S OFFICE
DES MOINES, IOWA
MAY 10 2007

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE) DIA NO: 06DPHMB004
STATEMENT OF CHARGES AGAINST) FILE NOS. 02-01-1137,
) 02-02-1441
)
)
PETER V. BOESEN, M.D.)
) ORDER DENYING MOTION
Respondent) TO RECONSIDER
)

On January 4, 2008, Respondent's attorney filed a Motion to Reconsider Order Denying Motion to Stay Hearing, which was also issued on January 4, 2008. The State filed a Resistance incorporating the grounds previously asserted in its Resistance filed on January 3, 2008. In his Motion to Reconsider, Respondent's attorney asserts that his Motion for Stay was not untimely because he did not know until Wednesday, January 2, 2008 that the hearing was proceeding by telephone. This does not explain or excuse the delay in filing the motion. Respondent's attorney knew that the Board continued the July 18, 2007 hearing in order to explore the possibility of Respondent appearing for hearing either by videoconferencing to teleconferencing. [See Continuance Order, issued July 18, 2007]. The January 7, 2008 hearing date has been scheduled since October 15, 2007. [See Hearing Order issued October 15, 2007] Any concerns or questions about the manner in which the hearing was proceeding should have been raised promptly after the Order for Hearing was received, not two days before the hearing is scheduled to commence. IT IS THEREFORE ORDERED that the Motion To Reconsider is hereby DENIED.

Dated this 4th day of January, 2008.



Margaret LaMarche
Administrative Law Judge
For the Iowa Board of Medicine

DIA No. 06DPHMB004

Page 2

cc: Heather Palmer, Assistant Attorney General
By FAX: (515) 281-7551
By Email: hpalmer@ag.state.ia.us

Guy R. Cook, Attorney for Respondent
By FAX: (515)245-4452
By EMAIL: gcook@grefesidney.com

Kari Rolls, Administrative Assistant
Iowa Board of Medicine, By Email.

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE) DIA NO: 06DPHMB004
STATEMENT OF CHARGES AGAINST) FILE NOS. 02-01-1137,
) 02-02-1441
)
PETER V. BOESEN, M.D.)
) ORDER DENYING MOTION
Respondent) TO STAY HEARING
)

On January 25, 2006, the Iowa Board of Medicine (Board) filed a Statement of Charges against Peter V. Boesen, M.D. (Respondent) alleging one count of unprofessional or unethical conduct or practice harmful or detrimental to the public and one count of failing to conform to the minimal standard of acceptable and prevailing practice of medicine in Iowa. Both counts were based on the allegation that Respondent engaged in healthcare fraud. The initial hearing date of March 15, 2006 was continued at Respondent's request. On June 1, 2007, the state's Motion To Amend the Statement of Charges to add a third count, alleging that Respondent had been convicted of a felony related to the practice of medicine, was granted. On June 13, 2007, the Board issued an Order scheduling the hearing for July 18, 2007. On or about July 11, 2007, Respondent filed a Motion To Stay Revocation/Disciplinary Hearing and a Brief In Support Of Motion To Stay. The state filed a Resistance on July 13, 2007, and Respondent replied on July 17, 2007.

On July 18, 2007 the Board convened for hearing and heard the parties on the pending Motion To Stay, which was based on Respondent's inability to personally appear for the hearing due to his incarceration in a federal correctional institution for a period of fifty-one months. The Board considered the testimony of a Board investigator and arguments of the attorneys. A motion was approved granting a continuance of the hearing to allow an opportunity to determine whether arrangements could be made with the federal institution for Respondent to appear for the hearing, either through videoconferencing or teleconferencing.

On October 15, 2007, the Board issued a Hearing Order scheduling a hearing for January 7, 2008 at 8:30 a.m. Arrangements were made for Respondent to appear for the hearing by telephone conference call. On January 3, 2008, Respondent's attorney filed a second Motion to Stay Revocation Hearing, again asserting that proceeding to hearing when Respondent is unable to be physically present is fundamentally unfair and contrary to his rights to due process under the United States and Iowa Constitutions.

The State filed a Resistance on January 3, 2007 asserting that Respondent's motion is untimely and that Respondent does not have a constitutional right to be physically present during the disciplinary hearing. The Board has delegated ruling on the pending motion to the undersigned administrative law judge.

I. Timeliness

653 IAC 25.16 provides that continuances shall be filed with the board at least seven days before the date scheduled for hearing and no continuance shall be granted within seven days of the date of hearing except for extraordinary, extenuating, or emergency circumstances. While Respondent captions his motion as a stay, the Board has not taken any substantive action against his license at this time other than filing a Notice of Hearing and Statement of Charges. Respondent is essentially asking the Board to continue his hearing until after he is released from prison. The motion is untimely. Respondent has known the hearing date since October but chose to file the motion two working days prior to hearing. He presents no emergency or extraordinary circumstances.

II. Due Process

The only case cited by Respondent in support of his assertion that he has a constitutional right to be personally and physically present for his disciplinary hearing is a 1940 decision from the Supreme Court of Florida. The cited case is not persuasive authority in Iowa. Indeed, the state cites a 1926 case from the Iowa Supreme Court that upheld the Board of Medical Examiners refusal to grant a continuance until the end of a physician's incarceration.¹ Moreover, both cases were decided at a time when modern teleconferencing was unavailable and before telephone administrative hearings

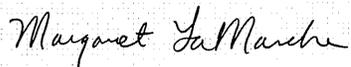
¹ State v. Hanson, 207 N.W. 769, 770-71(Iowa 1926).

were relatively common. See Arnett v. Office of Admin. Hearings, 56 Cal. Rptr. 2d 774, 778 (Ca.Ct.App. 1996) (holding that physicians incarcerated out of state do not have an absolute right to be present at administrative hearing against their license and that a hearing may go forward in a physician's absence.) Respondent is represented by counsel and there has been no showing that he will be unable to exercise his due process rights to present witnesses and exhibits, cross-examine witnesses against him, and present arguments to the Board.

III. Conclusion

When a professional licensee is convicted of a crime and incarcerated for a lengthy period of time, it is in the public interest for the disciplinary hearing on the professional license to go forward in a timely manner. Even if the licensee is unable to practice his or her profession while incarcerated, there is a public interest and a regulatory interest favoring prompt resolution of pending charges. Respondent has already been granted a lengthy continuances, including the most recent continuance of over five months. His current request is untimely and he is not entitled to have the hearing continued indefinitely pending his release from prison. IT IS THEREFORE ORDERED that the Motion To Stay is hereby DENIED.

Dated this 4th day of January, 2008.



Margaret LaMarche
Administrative Law Judge
For the Iowa Board of Medicine

cc: Heather Palmer, Assistant Attorney General
By FAX: (515) 281-7551
By Email: hpalmer@ag.state.ia.us

Guy R. Cook, Attorney for Respondent
By FAX: (515)245-4452
By EMAIL: gcook@grefesidney.com

Kari Rolls, Administrative Assistant
Iowa Board of Medicine, By Email.

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE) DIA NO: 06DPHMB004
STATEMENT OF CHARGES AGAINST) FILE NOS. 02-01-1137,
) 02-02-1441
)
) 06-04-07P03:28 RCVD
PETER V. BOESEN, M.D.)
)
Respondent) RULING ON MOTION TO AMEND
) NOTICE OF HEARING AND
) STATEMENT OF MATTERS ASSERTED

On January 25, 2006, the Iowa Board of Medical Examiners (Board) filed a Statement of Charges against Peter A. Boesen, M.D. (Respondent), charging him with two counts: unprofessional or unethical conduct and failing to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery in Iowa when he engaged in health care fraud. A hearing was initially scheduled for March 15, 2006 but was indefinitely continued.

On May 18, 2007, the state of Iowa filed a Motion to Amend the Notice of Hearing and Statement of Matters Asserted to add two new Counts (III and IV) and a new paragraph 5 to the Statement of Matters Asserted. As of June 1, 2007, Respondent had not resisted the Motion To Amend. The Board delegated ruling on the Motion to Amend to the undersigned administrative law judge.

The state of Iowa reasonably asserts that the Respondent will suffer no prejudice in the preparation of his defense due to the amendments because the new allegations arise from the same facts as the prior allegations.

ORDER

IT IS THEREFORE ORDERED that the state's Motion to Amend the Notice of Hearing and Statement of Matters Asserted is hereby GRANTED. The Notice of Hearing is amended to add the following new Counts:

Count III: Respondent is charged under Iowa Code section 148.6(2)(h)(2007) with being convicted of a felony in the courts of this country.

Count IV: Respondent is charged under Iowa Code section 148.6(2)(c)(2007) with violating a statute or law of the United States which relates to the practice of medicine.

IT IS FURTHER ORDERED that the Statement of Matters asserted is amended to add paragraph 5:

5. Respondent was convicted in the United States District Court for the Southern District of Iowa of 77 counts of healthcare fraud and sentenced on May 4, 2007.

Dated this 1st day of June , 2007.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
Lucas State Office Building-Third Floor
Des Moines, Iowa 50319

cc: Theresa O'Connell Weeg
Assistant Attorney General
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Guy R. Cook
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Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, Iowa 50309 (LOCAL)

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PETER V. BOESEN, M.D., RESPONDENT

FILE Nos. 02-01-1137 & 02-01-1442

AMENDED NOTICE OF HEARING

COMES NOW the Iowa Board of Medical Examiners (the Board), on January 25, 2006 and files this Notice of Hearing pursuant to Iowa Code Section 17A.12(2). The Board finds probable cause to file disciplinary charges against Peter V. Boesen, M.D., (Respondent), a physician licensed pursuant to Iowa Code Chapter 147 (2005) and alleges:

1. Respondent was issued Iowa medical license number 26113 on July 1, 1987.
2. Respondent's Iowa medical license is active and will expire on August 1, 2006.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.

COUNT I

4. Respondent is charged under Iowa Code sections 147.55(3) and 272C.10(3) (2005) and 653 IAC sections 12.4(3) and (36) with engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public when he engaged in healthcare fraud.

COUNT II

5. Respondent is charged pursuant to Iowa Code sections 147.55(2), 148.6(2)(g) and 272C.10(2) (2005), and 653 IAC section 12.4(2)(d) with failing to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery in Iowa when he engaged in healthcare fraud.

6. The factual circumstances supporting the disciplinary charges are set forth in a confidential attachment which has been reviewed and approved by the Board.

7. If any of the allegations are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148, and 272C (2003), and 653 IAC Chapter 12.

8. **IT IS HEREBY ORDERED** that a disciplinary contested case hearing be held in this matter on March 15, 2006. The hearing shall begin at 8:30 a.m., and shall be held at the Board office located at 400 SW 8th Street, Suite C, Des Moines, Iowa. The Board shall serve as presiding officer, and the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the Board at hearing.

9. Within 20 days of the date you are served with the Statement of Charges and Notice of Hearing, you are required by 653 IAC 12.18(2) to file an answer to the charges. In that answer, you should also state whether you will require an adjustment of the date and time of the hearing.

10. At hearing you may appear personally or be represented by counsel at your own expense. You will be allowed the opportunity to respond to the charges against you. The

procedural rules governing the conduct of the hearing are found at 653 IAC chapter 12.

11. The office of the Attorney General is responsible for representation of the public interest (the State) in these proceedings. Copies of all pleadings filed with the Board should be provided to counsel for the State at the following address:

Theresa O'Connell Weeg, Esq.
Assistant Attorney General
Iowa Department of Justice
Hoover State Office Building
Des Moines, IA 50319
Phone 515-281-6858

12. If you fail to appear at 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 IAC 12.28.

13. The matter may be resolved by settlement agreement, the procedural rules governing the Board's settlement process are found at 653 IAC 12.25. If you are interested in pursuing settlement in this matter please contact Kent M. Nebel, J.D., Director of Legal Affairs, at 515-281-7088.

On this the 25th day of January, 2006, the Iowa Board of Medical Examiners finds probable cause to file this Statement of Charges.



Yasin Lee, M.D.
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PETER V. BOESEN, M.D., RESPONDENT

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On this the 25th day of January, 2006, the Iowa Board of Medical Examiners finds probable cause to file this Statement of Charges.



Carol Frier, D.O., Vice Chair
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686