

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

FRANK BUTERA, D.O., RESPONDENT

File No. 03-09-300

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board), and Frank Butera, D.O., (Respondent), on September 21, 2012, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this Settlement Agreement to resolve this matter.

STATEMENT OF MATTERS ASSERTED

1. Respondent was issued license medical license no. 3684 on January 1, 2006.
2. Respondent's Iowa medical license is currently active and will next expire on December 1, 2013.
3. The Board has jurisdiction pursuant to Iowa Code chapters 147, 148 and 272C.
4. Respondent is an Iowa-licensed physician who formerly practiced orthopedic surgery in Newton, Iowa, and currently practices in Des Moines, Iowa.

5. On November 22, 2001, the New York State Board for Medicine charged Respondent for failing to provide appropriate care to a patient with necrotizing fasciitis of the lower extremity. On December 1, 2004, Respondent entered into a Consent Order and certain terms and conditions were placed on his New York medical license.

6. On January 12, 2006, Respondent entered into a Consent Agreement with the Iowa Board due to the New York disciplinary action. Respondent was issued a permanent Iowa medical license and placed on probation for a period of three years subject to Board monitoring. The terms of probation were terminated by the Board on June 21, 2007.

7. On September 23, 2011, the Board issued a Confidential Evaluation Order requiring Respondent to complete a comprehensive professional sexual misconduct evaluation at BMI of Atlanta. Respondent completed the evaluation on November 9, 2011, and the recommendations made by BMI are incorporated in this order. The recommendations made by BMI are incorporated in this order.

8. On March 1, 2012, the Board filed formal disciplinary charges against Respondent alleging that he engaged in sexual misconduct, unethical or unprofessional conduct and professional incompetency when he performed inappropriate physical examinations on four female patients in Des Moines, Iowa, between September 2008 and March 2010. Respondent filed an Answer denying the charges.

SETTLEMENT AGREEMENT

9. **CITATION AND WARNING:** Respondent is hereby **CITED** for with

engaging in sexual misconduct and/or unethical or unprofessional conduct when he performed inappropriate physical examinations on four female patients in violation of the laws and rules governing the practice of medicine in Iowa. Respondent is hereby **WARNED** that engaging in such conduct in the future may result in further disciplinary action, including revocation of his Iowa medical license.

10. **CIVIL PENALTY:** Respondent shall pay a **\$10,000 civil penalty**. The civil penalty shall be made payable to the Treasurer of Iowa, and mailed to the executive director of the Board. The civil penalty shall be deposited into the State General Fund. If Respondent fails to timely pay the civil penalty, the Board will issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

11. **PROFESSIONAL BOUNDARIES PROGRAM:** Respondent voluntarily attended PBI, a professional boundaries program through the University of California, Irvine School of Medicine on July 20-22, 2012. Respondent agrees to complete any remaining requirements of the PBI professional boundaries program.

12. **PROFESSIONAL SEXUAL MISCONDUCT TREATMENT:** Respondent shall complete professional sexual misconduct treatment at a Board-approved treatment program within ninety (90) days of the date of this order, unless otherwise approved by the

Board. Respondent shall fully comply with all recommendations of the treatment program. If Respondent fails to fully complete the professional sexual misconduct treatment within ninety (90) days of the date of this order, the Board will issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

13. **NEUROPSYCHOLOGICAL EVALUATION:** Respondent shall complete a comprehensive neuropsychological evaluation under the direction of a Board-approved provider within ninety (90) days of the date of this order. Respondent shall fully comply with all recommendations of the Board-approved provider. If Respondent fails to fully complete the neuropsychological evaluation within ninety (90) days of the date of this order, the Board will issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

14. **CHAPERONE REQUIREMENT:** Respondent shall have a Board-approved female healthcare professional chaperone continually present at all times while treating female patients. The Board-approved chaperone shall be continually present when Respondent is providing healthcare services, including but not limited to, patient evaluation,

treatment and post-evaluation treatment directions. The chaperone shall clearly document her continued presence in each patient's chart. Respondent shall provide the Board with the names of all persons providing chaperone services for him at all facilities where Respondent practices medicine under his Iowa medical license. The Board will provide all chaperones with a copy of this Order. All chaperones shall provide a written statement to the Board indicating that they have read this Order and agree to inform the Board immediately if there is any evidence of professional misconduct, sexual misconduct or a violation of the terms of this Order.

15. **FIVE YEARS PROBATION:** Respondent shall be placed on **probation for a period of five (5) years** subject to the following terms and conditions:

A. **Board Monitoring Program:** Prior to returning to the practice of medicine, Respondent shall establish a Board monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525. Respondent shall fully comply with all requirements of the monitoring program. If Respondent fails to fully comply with the Board monitoring plan, the Board will issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date

the notice is served.

- B. **Compliance with BMI Recommendations:** Respondent shall fully comply with all recommendations made by BMI and shall fully comply with all recommendations made by the Board-approved treatment program.
- C. **Polygraph Examinations:** Respondent shall submit to Board-approved polygraph examinations every six months.
- D. **Principles of Medical Ethics, Staff Forms and Patient Surveys:**
 - 1) Respondent shall post the Principles of Medical Ethics in his medical practice as directed by the Board.
 - 2) Respondent shall utilize Staff Surveillance Forms in his medical practice as directed by the Board.
 - 3) Respondent shall utilize Patient Satisfaction Surveys in his medical practice as directed by the Board.
- E. **Counseling:** Within 30 days of the date of completion of the Board-approved professional sexual misconduct treatment required in paragraph 12 of this order, Respondent shall submit the name and CV of an Iowa-licensed counselor for Board-approval and submit to Board-approved counseling under the following conditions:
 - 1) Respondent shall meet with his Board-approved counselor as frequently

as recommended by the counselor and approved by the Board.

- 2) Respondent shall continue counseling until his discharge is approved by the Board. All costs associated with the counseling shall be Respondent's responsibility.
- 3) The counselor shall agree to submit written quarterly reports to the Board concerning Respondent's progress no later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
- 4) If Respondent fails to submit the name and CV of an Iowa-licensed counselor for Board-approval or fails to submit to Board-approved counseling, the Board will issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within 10 days of the date the notice is served.

F. Worksite Monitoring Program: Respondent shall establish a worksite monitoring program with the Board within thirty (30) days of the date of this order, subject to the following terms and conditions:

- 1) Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in the practice of medicine.

- 2) The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
- 3) The worksite monitor shall provide a written statement indicating that they have read and understand this Order and agree to serve under the terms of this Order. The worksite monitor shall agree to inform the Board immediately if there is evidence of sexual misconduct or a violation of the terms of this Order. The worksite monitor shall submit quarterly reports to the Board no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order. The worksite monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. The worksite monitor shall be given written notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
- 4) If Respondent fails to establish a worksite monitoring program with the Board within thirty (30) days of the date of this order, the Board will issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

- G. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with all the terms and conditions of this Order, including attendance at meetings with his counselor. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of Respondent's probation.
- H. **Board Appearances:** Respondent shall make an appearance before the Board annually or upon request. Respondent shall be given written notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(d).
- I. **Monitoring Fee:** Respondent shall make a payment of \$100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required under this Order. The monitoring fee shall be sent to: Coordinator of Monitoring Programs, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The monitoring fee shall be considered repayment receipts as defined in Iowa Code section 8.2.
16. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.
17. Respondent voluntarily submits this Order to the Board for consideration.
18. This Order constitutes the resolution of a contested case proceeding.

19. Pursuant to 653 IAC 21.6, 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.

20. In the event Respondent violates or fails to comply with the terms of this Order, the Board may initiate action to suspend or revoke Respondent's Iowa license or impose other license discipline as authorized in Iowa Code Chapters 148 and 272 and 653 IAC 24.

21. Periods of residence or practice outside the state of Iowa shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board. Periods in which Respondent does not practice medicine or fails to comply with the terms established in this Order shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board.

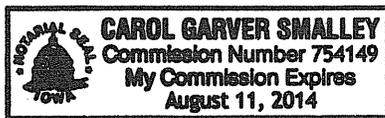
22. This Order is subject to approval by the Board. If the Board fails to approve this Order, it shall be of no force or effect to either party.

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



Frank Butera, D.O., Respondent

Subscribed and sworn to before me on August 15, 2012.





Notary Public, State of Iowa.

This Order is approved by the Board on September 21, 2012.

Colleen K. Stockdale MD MS

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

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

FRANK BUTERA, D.O., RESPONDENT

File No. 03-09-300

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on March 1, 2012, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 3684 on January 1, 2006. Respondent's Iowa medical license is active and will next expire on next expire on December 1, 2013.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on May 9, 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 March 21, 2012, 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, 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.

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. **Sexual Misconduct:** Respondent is charged pursuant to Iowa Code section 148.6(2)(i) and 653 IAC 23.1(10), 23.1(5) and 13.7(4)(a)-(c) with engaging in sexual misconduct in violation of the laws and rules governing the practice of medicine in Iowa:
- A. In the course of providing medical care, a physician shall not engage in contact, touching, or comments of a sexual nature with a patient or with the patient's parent or guardian if the patient is a minor.
 - B. A physician shall not engage in any sexual conduct with a patient when that conduct occurs concurrent with the physician-patient relationship, regardless of whether the patient consents to that conduct.
 - C. A physician shall not engage in any sexual conduct with a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred. In considering whether that relationship was completely terminated, the board will consider the duration of the physician-patient relationship, the nature of the medical services provided, the lapse of time since the physician-patient relationship ended, the degree of dependence in the physician-patient relationship, and the extent to which the physician used or exploited the trust, knowledge, emotions, or influence derived from the physician-patient relationship.

COUNT II

12. **Unethical or Unprofessional Conduct:** Respondent is charged pursuant to Iowa Code sections 147.55(3) and 272C.10(3) and 653 IAC 23.1(4) with engaging in unethical or unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics.

COUNT III

13. **Professional Incompetency:** Respondent is charged with professional incompetency pursuant to Iowa Code sections 147.55(2), 148.6(2)(g) and (i), and 272C.10(2) and 653 IAC 23.1(2)(c), (d), (e), and (f), by demonstrating one or more of the following:

- A. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
- B. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;
- C. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances; or

- D. A willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine in Iowa.

STATEMENT OF THE MATTERS ASSERTED

14. Respondent is an Iowa-licensed physician who formerly practiced orthopedic surgery in Newton, Iowa and currently practices in Des Moines, Iowa.

15. On November 22, 2001, the New York State Board for Medicine charged Respondent for failing to provide appropriate care to a patient with necrotizing fasciitis of the lower extremity. On December 1, 2004, Respondent entered into a Consent Order and certain terms and conditions were placed on his New York medical license.

16. On January 12, 2006, Respondent entered into a Consent Agreement with the Iowa Board due to the New York disciplinary action. Respondent was issued a permanent Iowa medical license and placed on probation for a period of three years subject to Board monitoring. The terms of probation were terminated by the Board on June 21, 2007.

17. The Board received information which indicates that Respondent engaged in sexual misconduct and/or unethical or unprofessional conduct while treating four female patients in Des Moines, Iowa, between September 2008 and March 2010, including, but not limited to, the following:

- A. **Patient #1:** In May 2009, Respondent performed an inappropriate physical examination on Patient #1, a female patient in her mid-50's, who presented with complaints of right shoulder pain.

- B. **Patient #2:** In March 2010, Respondent performed an inappropriate physical examination on Patient #2, a female patient in her late 30's, who presented with complaints of knee pain.
- C. **Patient #3:** In September 2008, Respondent performed an inappropriate physical examination on Patient #3, a female patient in her mid-30's, who presented with complaints of a fractured tailbone.
- D. **Patient #4:** In February 2009, Respondent performed an inappropriate physical examination on Patient #4, a female patient in her early 20's, who presented with left shoulder pain.

18. On September 23, 2011, the Board issued a Confidential Evaluation Order requiring Respondent to complete a comprehensive professional sexual misconduct evaluation at a Board-approved assessment program. Respondent completed the evaluation on November 9, 2011.

19. The Board alleges that Respondent engaged in sexual misconduct while treating four female patients in Des Moines, Iowa, between September 2008 and March 2010.

20. The Board alleges that Respondent engaged in unethical or unprofessional conduct while treating four female patients in Des Moines, Iowa, between September 2008 and March 2010.

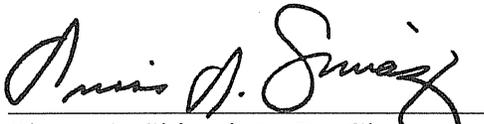
21. The Board alleges that Respondent engaged in professional incompetency in his treatment of four female patients in Des Moines, Iowa, between September 2008 and March 2010.

E. SETTLEMENT

22. 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

23. On March 1, 2012, the Iowa Board of Medicine found probable cause to file this Statement of Charges.


Siroos S. Shirazi, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686