

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

AMJAD BUTT, M.D., RESPONDENT

FILE No. 02-08-154

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AMENDED BOARD ORDER FOLLOWING REMAND

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Date: March 22, 2016

*Procedural History*

The Iowa Board of Medicine (Board) issued its Findings of Fact, Conclusions of Law, Decision and Order in this contested case on August 25, 2011, following a contested case hearing. The Board concluded that Amjad Butt, M.D. (Respondent) engaged in unprofessional conduct, in violation of Iowa Code sections 147.55(3), 272C.10(3) and 653 IAC 23.1(4) when he:

- made numerous unwanted telephone calls to Nurse #1's cell phone and asked another physician to contact Nurse #1 on his behalf;
- insisted on meeting alone with Nurse #2, made several offensive comments to her, threatened to "crush" her, and threatened her with loss of her job; and
- asked Employee #1, in a joking manner, to leave her husband and have his child.

The Board imposed the following sanctions on Respondent for his unprofessional conduct:

- A Citation and Warning;
- A \$5,000 Civil Penalty;
- Successful completion of a Board-approved Professional Boundaries Program within sixty (60) days of the Board's Order;
- A 5 year Probation with quarterly reports, board appearances, and payment of a quarterly monitoring fee of \$100.

Respondent filed a petition for judicial review with the Polk County District Court and the district court issued a ruling affirming the Board's Decision and Order. Respondent appealed the district court's ruling. On June 12, 2013, the Iowa Court of Appeals issued its decision (No. 3-360/12-1118) on Respondent's appeal. The Court of Appeals decision affirmed in part, reversed in part, and remanded the case back to the district court with direction to remand the case to the Board to determine the propriety of the disciplinary sanctions it imposed in light of the Court of Appeals' conclusions.

The Iowa Court of Appeals affirmed the Board's findings that Respondent engaged in unethical and/or unprofessional conduct when he insisted on meeting alone with Nurse #2, made several offensive comments to her, threatened to "crush" her, and threatened her with loss of her job, and when he asked Employee #1, in a joking manner, to leave her husband and have his child. The Court of Appeals reversed the Board's findings that Respondent engaged in unprofessional or unethical conduct by making numerous unwanted phone calls to Nurse #1 and by asking another physician to contact Nurse #1 on his behalf.

### *Hearing on Remand*

On September 25, 2013, the District Court remanded this case back to the Board "to determine the propriety of the discipline imposed" in light of the Court of Appeal's decision. Attorneys for Respondent and the State filed Briefs on Remand. On December 20, 2013, the Board heard oral arguments from the parties. Respondent was represented on appeal by attorneys David L. Brown, Jay Grimes, and R. Ronald Pogge. The state was represented by Assistant Attorney General Meghan Gavin. The following members of the Board presided at the hearing on remand: Greg Hoversten, D.O., Chair; Hamed Tewfik, M.D.; Michael Thompson, D.O.; Julie Carmody, M.D.; Julie Perkins, M.D.; Allison Schoenfelder, M.D.; and Monsignor Frank Bognanno, Public Member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the remand hearing and was asked to draft this Order for their review, consistent with the Board's deliberations.

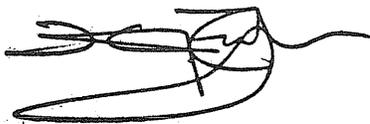
The Board has reviewed the entire record, including the August 25, 2011, Findings of Fact, Conclusions of Law, Decision and Order, the Court of Appeals decision on appeal, and the parties' briefs and oral arguments. The Court of Appeals determined that the record does not support the Board's findings that Respondent engaged in unprofessional or unethical conduct by making numerous unwanted phone calls to

Nurse #1 and by asking another physician to contact Nurse #1 on his behalf. The Court of Appeals affirmed the Board's findings that Respondent engaged in unethical and/or unprofessional conduct when he insisted on meeting alone with Nurse #2, made several offensive comments to her, threatened to "crush" her, and threatened her with loss of her job, and when he asked Employee #1, in a joking manner, to leave her husband and have his child. The Board continues to have serious concerns that Respondent engaged in offensive, threatening and intimidating conduct toward clinic staff. The Board is concerned that Respondent's threatening and offensive statements undermined effective communication with clinic staff. Given the nature and seriousness of these violations, the Board believes that its original sanctions are still appropriate and are necessary for the protection of the public. The Board believes that these violations are best remediated by requiring Respondent to complete of a Board-approved Professional Boundaries course and a five year probationary period, subject to Board monitoring. The Board was not persuaded by Respondent's argument that the Board should modify its prior sanctions in this case.

In addition, the Board will not withdraw its report to the National Practitioner Data Bank (NPDB), as urged by Respondent in the brief and oral arguments. This issue was already addressed by the Board in its Final Ruling on Respondent's Request for Rehearing, issued on October 6, 2011. In that Ruling, the Board affirmed that Respondent's violations related to his professional conduct and that it was required by 42 U.S.C.A. §1132(a)(a)(A) and by 45 CFR 60.9(a) to report its disciplinary action to the NPDB within 30 days of issuing its final decision.

*Order*

**IT IS THEREFORE ORDERED** that the sanctions imposed in the August 25, 2011, Findings of Fact, Conclusions of Law, Decision and Order are hereby **AFFIRMED** in their entirety.



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Hamed H. Tewfik, M.D., Chairman

Iowa Board of Medicine

March 22, 2016

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The Board shall file a report with the National Practitioner Data Bank (NPDB) amending the answer to “No” for the question concerning patient care, based on the evidentiary record made in Case No. 02-08-154.

cc: David Brown and Jay Grimes, Hanson, McClintock & Riley and  
R. Ronald Pogge, Hopkins and Huebner, Respondent’s Attorneys  
Meghan Gavin, Assistant Attorney General

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

AMJAD BUTT, M.D., RESPONDENT

FILE No. 02-08-154

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BOARD'S ORDER FOLLOWING REMAND

\*\*\*\*\*

Date: January 23, 2014.

*Procedural History*

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The Iowa Court of Appeals affirmed the Board's findings that Respondent engaged in unethical and/or unprofessional conduct when he insisted on meeting alone with Nurse #2, made several offensive comments to her, threatened to "crush" her, and threatened her with loss of her job, and when he asked Employee #1, in a joking manner, to leave her husband and have his child. The Court of Appeals reversed the Board's findings that Respondent engaged in unprofessional or unethical conduct by making numerous unwanted phone calls to Nurse #1 and by asking another physician to contact Nurse #1 on his behalf.

### *Hearing on Remand*

On September 25, 2013, the District Court remanded this case back to the Board "to determine the propriety of the discipline imposed" in light of the Court of Appeal's decision. Attorneys for Respondent and the State filed Briefs on Remand. On December 20, 2013, the Board heard oral arguments from the parties. Respondent was represented on appeal by attorneys David L. Brown, Jay Grimes, and R. Ronald Pogge. The state was represented by Assistant Attorney General Meghan Gavin. The following members of the Board presided at the hearing on remand: Greg Hoversten, D.O., Chair; Hamed Tewfik, M.D.; Michael Thompson, D.O.; Julie Carmody, M.D.; Julie Perkins, M.D.; Allison Schoenfelder, M.D.; and Monsignor Frank Bognanno, Public Member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the remand hearing and was asked to draft this Order for their review, consistent with the Board's deliberations.

The Board has reviewed the entire record, including the August 25, 2011, Findings of Fact, Conclusions of Law, Decision and Order, the Court of Appeals decision on appeal, and the parties' briefs and oral arguments. The Court of Appeals determined that the record does not support the Board's findings that Respondent engaged in unprofessional or unethical conduct by making numerous unwanted phone calls to

Nurse #1 and by asking another physician to contact Nurse #1 on his behalf. The Court of Appeals affirmed the Board's findings that Respondent engaged in unethical and/or unprofessional conduct when he insisted on meeting alone with Nurse #2, made several offensive comments to her, threatened to "crush" her, and threatened her with loss of her job, and when he asked Employee #1, in a joking manner, to leave her husband and have his child. The Board continues to have serious concerns that Respondent engaged in offensive, threatening and intimidating conduct toward clinic staff. The Board is concerned that Respondent's threatening and offensive statements undermined effective communication with clinic staff. The Board believes that such conduct interferes with, or has the potential to interfere with, patient care and/or the effective functioning of health care staff. Given the nature and seriousness of these violations, the Board believes that its original sanctions are still appropriate and are necessary for the protection of the public. The Board believes that these violations are best remediated by requiring Respondent to complete of a Board-approved Professional Boundaries course and a five year probationary period, subject to Board monitoring. The Board was not persuaded by Respondent's argument that the Board should modify its prior sanctions in this case.

In addition, the Board will not withdraw its report to the National Practitioner Data Bank (NPDB), as urged by Respondent in the brief and oral arguments. This issue was already addressed by the Board in its Final Ruling on Respondent's Request for Rehearing, issued on October 6, 2011. In that Ruling, the Board affirmed that Respondent's violations related to his professional conduct and that it was required by 42 U.S.C.A. §1132(a)(A) and by 45 CFR 60.9(a) to report its disciplinary action to the NPDB within 30 days of issuing its final decision.

*Order*

**IT IS THEREFORE ORDERED** that the sanctions imposed in the August 25, 2011, Findings of Fact, Conclusions of Law, Decision and Order are hereby **AFFIRMED** in their entirety.

  
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Greg Hoversten, D.O., Chairman  
Iowa Board of Medicine

January 23, 2014

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cc: David Brown and Jay Grimes, Hanson, McClintock & Riley and  
R. Ronald Pogge, Hopkins and Huebner, Respondent's Attorneys  
Meghan Gavin, Assistant Attorney General

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

**AMJAD BUTT,**

**Plaintiff,**

**vs.**

**IOWA BOARD OF MEDICINE,**

**Defendant.**

**Case No. CVCV008881**

**REMAND ORDER TO AGENCY  
AFTER APPELLATE DECISION**

Now on this 25<sup>th</sup> day of September, 2013, this matter comes to the attention of the court pursuant to the decision of the Court of Appeals of Iowa entered on June 12, 2013. Procedendo issued on August 30, 2013, and was filed with the Polk County Clerk of Court on September 4, 2013. The Court of Appeals remanded this matter to the district court with directions to “remand these proceedings to the agency to determine the propriety of the discipline imposed in light of [the Court of Appeals] conclusions.”

IT IS ORDERED that, pursuant to the ruling of the Court of Appeals, this matter is REMANDED to the agency to determine the propriety of the discipline imposed in light of the Court of Appeals decision.



Karen A. Romano, Judge  
Fifth Judicial District of Iowa

Copies to:  
R. Ronald Pogge  
David R. Brown  
Meghan Gavin

**IN THE COURT OF APPEALS OF IOWA**

No. 3-360 / 12-1118  
Filed June 12, 2013

**AMJAD BUTT, M.D.,**  
Petitioner-Appellant,

**vs.**

**IOWA BOARD OF MEDICINE,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Glen E. Pille, Judge.

Amjad Butt, M.D., appeals the district court's ruling on judicial review upholding the Iowa Board of Medicine's findings of unethical or unprofessional conduct in the practice of medicine. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

David L. Brown and Jay D. Grimes of Hansen, McClintock & Riley, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Meghan Gavin, Assistant Attorney General, for appellee.

Heard by Doyle, P.J., and Danilson and Mullins, JJ.

**DANILSON, J.**

Amjad Butt, M.D., appeals the district court's ruling on judicial review upholding the Iowa Board of Medicine's findings of unethical or unprofessional conduct in the practice of medicine. We affirm the board's conclusion that Dr. Butt engaged in unethical and/or unprofessional conduct in violation of Iowa Code sections 147.55(3) and 272C.10(3) (2007) and Iowa Administrative Code rule 653-23.1(4) in that he acted unprofessionally when he made offensive and threatening statements to Portz and when he made unprofessional comments to Peska, portions of the allegations in Count I. We otherwise reverse and remand for the board to consider the propriety of the discipline imposed upon Dr. Butt in light of our conclusions.

**I. Background Facts and Proceedings.**

On March 7, 2008, Medical Associates in Clinton, Iowa, reported to the Iowa Board of Medicine that it had terminated the services of interventional cardiologist Dr. Amjad Butt. The board conducted an investigation, subpoenaing records from Medical Associates regarding Dr. Butt's behavior and termination. The board received complaints that Dr. Butt asked a female subordinate co-worker to enter into a romantic relationship with him and he subsequently made numerous harassing telephone calls and threatened to cause serious bodily harm to her; made inappropriate sexual comments to female coworkers on numerous occasions; made inappropriate comments to at least three patients about their sex lives; and made threatening statements to, and harassed, another female subordinate. Ultimately the board levied three charges against Dr. Butt.

On September 17, 2008, in a statement of matters asserted, the board set out these factual allegations against Dr. Butt:

A. [Dr. Butt] asked a female subordinate co-worker to enter into a romantic relationship with him[.] [H]e subsequently made numerous harassing telephone calls and threatened to cause serious bodily harm to the female subordinate co-worker;

B. [Dr. Butt] allegedly made inappropriate sexual comments to female co-workers on numerous occasions;

C. [Dr. Butt] allegedly made inappropriate comments to at least three patients about their sex lives; and

D. [Dr. Butt] made threatening statements to, and harassed, another female subordinate.

The statement of charges asserted Dr. Butt had thus engaged in unethical or unprofessional conduct in the practice of medicine (in violation of Iowa Code sections 147.55(3) and 272C.10(3) and Iowa Administrative code rule 653-23.1(4)) and inappropriately engaged in a pattern of sexual harassment in the workplace (in violation of Iowa Code sections 147.55(8) and 272C.10(8) and Iowa Administrative code rules 653-23.1(4) and 653-13.7(6)).

During the board's investigation prior to filing charges, Dr. Butt wrote a letter on May 23, 2008, to the board's investigator, which reads in part:

On February 23rd, Ms. Smith [referred to as Nurse #1 by board] was scheduled to work in the hospital, apparently as part of a second job. However, she was called that morning and told not to come to work due to a low census. As I was making rounds that day, she showed, up in the CCU and started helping me. Later, she stated that she expected to be paid for the work she did on that day. I told her that I had not called her and asked her to come into work and that she should not expect or demand payment for voluntary help. This discussion ended with an argument at the conclusion of which I told her that I could not continue working with her. Afterwards, I felt sorry that I *had threatened to fire her*, so *I called her on the phone to apologize for the argument and to tell her that I was not in a position to fire her. This occurred during several phone calls with her.* During these phone calls I thought

she was attempting to threaten me, physically, so I was attempting to defuse the situation to protect myself.

After several phone calls, she eventually stated that she would return to work, but she did not want to continue working with me. She also told me she could not come in on Monday or Tuesday, because she was babysitting her niece. I left for a CTA course in New Jersey on February 25th. On February 27th I received a call from the Clinic advising me that a complaint had been filed. Supposedly I had been accused by Ms. Smith that I threatened to cut her carotid, that I wanted to bury her, that I wanted a baby from her and that I have done something with a patient when he/she was under sedation. Each and every one of these allegations is false.

.....  
Concerning the second person to whom I allegedly spoke in a derogatory and demeaning manner [referred to as Nurse #2], the only incident that this may refer to was when my nurse, Ms. Smith, told me that "there was a rumor in the hospital that her schedule revolved around my schedule". Ms. Smith told me that a friend of hers had told her this with the implication that there was something going on between Ms. Smith and myself. I told Ms. Smith I wanted to talk to this other nurse.

A meeting was set up for her to come to my office at 3:30 p.m. and when she arrived, she arrived with Michele from administration. I told Michele that this was a personal matter and I wanted to talk to the nurse alone. I spoke to this nurse and told her that saying and spreading such gossip was very dangerous. She denied that she was the source of the gossip and I told her that I accepted her denial, but please do not engage in such gossip in the future. I then spoke with Michele and explained to her that I did not want her present when I talked to the nurse, because I didn't want any disciplinary action taken against the nurse.

(Emphasis added.)

The board sent a proposed settlement agreement to Butt's counsel on November 24, 2008, calling for payment of a \$10,000 fine, undergoing and complying with the recommendation of an evaluation by the Behavioral Medicine Institute (BMI), a board-approved polygraph examination, and allowing a worksite monitor. Dr. Butt did not accept the proposed settlement. However, he did voluntarily agree to submit to an evaluation and polygraph examination by BMI.

The results of Dr. Butt's evaluation and polygraph were provided in a report by BMI to the board on April 3, 2009. In this report, BMI Medical Director, Gene Able, M.D., sets out the tests administered and Dr. Butt's test results. Dr. Able reported that Dr. Butt's test profile on one test was "marginally valid because Dr. Butt attempted to place himself in an overly positive light."<sup>1</sup> The report suggested no psychological diagnosis.

Dr. Able reported Dr. Butt underwent a polygraph examination performed by Von Jennings of Northeast Georgia Polygraph Services and was asked the following questions, and answered as indicated: "(1) Did you threaten to kill [Smith]? Answer: No. (2) Did you ask [Smith] to have your baby? Answer: No. (3) Did you comment on the breast cleavage of a woman in her 80s? Answer: No." Dr. Able wrote, "Global analysis of the physiological data from three tests, each containing the previously listed pertinent questions, disclosed No Significant Responses. The examiner is of the opinion that Dr. Butt was truthful during testing." The report concluded, "We believe that there is a low probability that Dr. Butt had threatened to kill [Smith] or that he wanted to have a child with her."

The board filed a witness and exhibit list in December 2010. Dr. Butt objected on hearsay grounds to proposed exhibits 2-11, which included

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<sup>1</sup> The narrative generated for Dr. Butt's Minnesota Multiphasic Personality Inventory-2 indicates:

This profile has marginal validity because the client attempted to place himself in an overly positive light by minimizing faults and denying psychological problems. This defensive stance is characteristic of individuals who are trying to maintain the appearance of adequacy and self-control. The client tends to deny problems and is not very introspective or insightful about his own behavior. Individuals with this level of defensiveness, as reflected in his high K score, tend to admit few psychological problems.

investigative reports, statements, and letters—he also asserted such evidence violated his rights of confrontation.

Citing *McConnell v. Iowa Department of Job Service*, 111 N.W.2d 234, 237 (Iowa 1982), and Iowa Code section 17A.14(1) (2009), an Administrative Law Judge (ALJ) ruled hearsay is admissible in administrative hearings. As for Dr. Butt's confrontation-rights claim, the ALJ noted the right to cross-examination extends to witnesses who appear at an administrative hearing or whose testimony is submitted in written form. See Iowa Code § 17A.14(3).

However, if an administrative record is composed solely of hearsay evidence, a reviewing court will examine the evidence closely in light of the entire record to see whether it rises to the necessary levels of trustworthiness, credibility and accuracy required by reasonably prudent persons in the conduct of their serious affairs. *Schmitz v. Iowa Dep't of Human Servs.*, 461 N.W. 2d 603, 607-08 (Iowa Ct. App. 1990).

The fact that Exhibits 2-11 contain hearsay statements does not make them inadmissible in this proceeding. In making its fact findings, the Board will have to review all of the relevant evidence in the context of the entire record, determine the credibility of the evidence, and determine whether it constitutes the type of evidence upon which reasonably prudent persons rely in conducting their serious affairs. If it does not meet this standard, upon review of the entire record, it may not be relied on to make a fact finding. Exhibits 2-11 are all relevant to the Statement of Charges and are the types of documents typically reviewed by the Board in making its decisions.

After additional issues dealing with the availability of witnesses and continuances, the matter was heard before a panel of medical examiners on July 7, 2011. Dr. Butt again raised objection to exhibits 2-11, complaining they "are hearsay upon hearsay upon hearsay."

**Board of Medicine hearing.**

Eight witnesses testified, including Dr. Butt. However, Nurse #1 (Smith), the person referenced in paragraph A of the board's factual allegations, did not appear or testify at the hearing. Nurse #2 (Portz), the person referenced in paragraph D, did appear and testify.

Exhibit 6 was Smith's internal sexual harassment/sex discrimination complaint form. In her complaint she asserted that on February 23, 2008, Dr. Butt "asked if we could be in a relationship. When response was no, He got angry and stated that if we could not have that kind of relationship then we could not have a working relationship and I was fired." Where the form asks for written documentation, Smith wrote: "38 missed calls on cell phone---many messages on home and cell phone stating he was sorry." She relayed other conversations she had with Dr. Butt on Friday, February 22, Saturday the 23rd, Sunday the 24th, and Tuesday the 26th.

During the testimony of Laura Aldis, counsel for Dr. Butt objected to any testimony as to what Smith "did or didn't say" because it was hearsay. He was granted a standing hearsay objection, "but it's overruled."

Michelle Waltz, the director of human resources for Medical Associates, testified that the first time any issue of significance concerning Dr. Butt came to her attention was when float nurse Portz asked her to attend a meeting Portz had been summoned to by Dr. Butt on February 11, 2008. Portz assumed she was going to be reprimanded by Dr. Butt. Waltz testified she generally participated in meetings of physicians and nurses "as a representative or a neutral party as well

as to document any incident that had occurred.” Dr. Butt did not want Waltz present and insisted she leave. This concerned Waltz because Dr. Butt stated something about “if Medical Associates is going to employ people like this that there would be a lawsuit in the future.” She also stated, “he did not supervise [Portz], and she had actually never even worked with him so there—there really was no reason on a professional level that the two of them would be having a discussion together.”

Waltz and her immediate supervisor, Abe Chacko, later obtained statements from Dr. Butt and Portz about the meeting. Dr. Butt reported that the meeting “was something related to the hospital and that it was resolved.” Portz gave a statement by letter dated February 11, 2008, in which she wrote that Smith approached her at about noon that day and announced that Dr. Butt would like to have a meeting with her at 3:30 and said, “You’ve been summoned.” Portz “assumed the meeting was regarding so-called rumors that [Smith] and I discussed over the weekend.” Portz asked Waltz to attend the meeting with her. According to Portz, after insisting Waltz leave, Dr. Butt told Portz she was “barking” outside the clinic and he was going to “crush” her. She relayed several other statements made by Dr. Butt. She wrote that Waltz and Chacko “gave me the option to file a formal complaint that would go before the other physicians,” but she decided not to because they “could not say if I would be terminated or not, due to the fact that it would be a ‘he said, she said’”; Portz was a probationary employee; the community was in desperate need of a cardiologist

when Dr. Butt came; and “I believed that I would be terminated if I pursued this issue.” Portz concluded her statement,

I do, however, believe that I was threatened and harassed by Dr. Butt on Medical Associates time. I am hoping this behavior will not be tolerated from physicians in the future. I am also hoping for a long life ahead of me. If something does happen to me; I hope that Medical Associates will enlighten investigators of the preceding event that has occurred with Dr. Butt.

Waltz testified the next issue that arose concerning Dr. Butt was when Smith approached her on February 26, 2008. Smith was “very upset” and “discussed a sequence of events that had gone on the prior weekend.” Waltz further described Smith’s statements. Waltz provided Smith with a sexual harassment complaint form and “indicated that for us to take action further we needed her information.” Waltz testified about her investigation and the management committee’s actions. Waltz further testified that later on in the week she received a phone message from Smith saying she wanted everything dropped. Waltz met with Smith on February 29 and was told Smith was being contacted by others “asking her to drop it” and “she was being offered money to stop talking about anything.” Waltz testified that the management committee met with Dr. Butt on March 3. After that meeting, a motion was approved to proceed with Dr. Butt’s termination.

Portz testified at the hearing that during the February 11, 2008 meeting with Dr. Butt, he told her she “was never going to work as a nurse again, that he was going to crush” her. She testified further that he stated:

He was going to file a lawsuit for defamation, of character, that I was barking outside of the clinic and spreading rumors. And then he just kind of attacked me verbally with, you know, what if I

accused you of this, would you like that. I was only allowed to answer yes or no.

....

... He brought my mom and dad into this too.

Q. And what did he say about that? A. He asked me if I would like it if he told people that my mom was a whore and if I would like it if he told people that my dad was a dirty, filthy pig. And I'm like no, of course I wouldn't like that because it's not true.

Q. And is your mother in fact an employee at Medical Associates? A. Yes, she is.

....

Q. So he would have actually even known your mother? A. Absolutely.

....

Q. So how did the meeting conclude? A. It essentially concluded with him telling me that I was not allowed to speak about him and that I was going to respect him at all times and that I would never be late to a meeting again because that was unacceptable.

Dr. Butt testified before the board. He stated that he met with Portz after his nurse, Smith,

came to me that she heard from another nurse in CCU in the hospital that why there was something going on between Dr. Butt and [Smith] because his schedule revolves around [Smith].

I said [Smith], are you sure of this. She said yes. And then she said that nurse said this is nothing new, don't get alarmed. [Portz] has this habit. So I said okay. [Smith], let's sit down with [Portz] because it's a small town. I'm a middle-aged man. I'm a professional.

Here people can know in no time what's going on, and how are these ladies—they're young, we're old, so let's talk with her. So she made an appointment. She said she will come at three o'clock.

She didn't come at three o'clock. I think half an hour late she comes with Michelle [Waltz]. . . .

So I said to Michelle, if you please, I said I don't—this matter that I just want to settle it, talk to [Portz] one time, and see what actually has been said.

... There's only one option. I can either let the matter go and file a complaint or I just talk with her, bury the matter so I can go on because I'm new here in this town. I'm new in the practice. I'm developing.

....

Q. And in the meeting, tell me the general nature of what was discussed. A. I asked her this is what I have been told. . . .

That my schedule revolves around [Smith's] schedule and there's something going on between me and [Smith].

Q. And what was [Portz's] response to that? A. She said this is a lie. I did not say it.

Q. What else did she say? A. then I said if you didn't say it, then the matter is buried, this will stay in these four walls, and I have nothing against you then personally. If you haven't said it, I believe you.

As for Smith's allegations, Dr. Butt denied them all. When asked if he had ever telephoned Smith to "patch things up," Dr. Butt stated "I did make a call." When asked how many calls, he responded, "I really don't know." He denied asking others to call Smith, though he noted the

pizza guy has a lady whose son was very sick. When he heard that this happened, that Dr. Butt will not be here, the lady told Mr. Moe that I heard so many good things, I wanted my son to come to Dr. Butt, why is he leaving. And that might have prompted him. I never asked him to call.

Dr. Butt was asked if Dr. Rasheed was lying when he told the board that Rasheed contacted Smith once in person and twice by telephone at the request of Dr. Butt. Dr. Butt responded, "I don't know." Dr. Butt stated he talked with Dr. Rasheed, who asked him what happened concerning Smith. "I said this is what happened, so I did not ask anybody, No."

#### **Board's findings of fact and conclusions of law.**

The board issued its findings of fact and conclusions of law on August 25, 2011. The board found that Dr. Butt:

Made offensive comments to Nurse #2 [Portz] during their meeting on February 11, 2008, and threatened to "crush" her. The testimony and contemporaneous written statement of [Portz] was more credible than Respondent's characterization of their meeting;

Told Nurse #1 [Smith] that he would hunt her down and find her if she ever left him. Although [Smith] did not testify, Nurse #3

[Naeve] did testify and she was present when Respondent made the comment to [Smith] and when he pointed out a piece of property to them on the internet. The testimony of [Naeve], as corroborated by [Smith's] written statement, was more credible than Respondent's testimony denying that he ever made this comment [Naeve]<sup>[2]</sup> also credibly testified that the comment was made in a joking manner, and she took it as a joke; and

Asked Employee #1 [Peska],<sup>[3]</sup> in a joking manner, if she would leave her husband and have his baby; and

Made a large number of unwanted telephone calls to [Smith] on her personal cell phone and asked at least one other person to call [Smith] on his behalf in an attempt to resolve whatever disagreement they were having.

The board concluded that Dr. Butt engaged in unethical and/or unprofessional conduct in violation of Iowa Code sections 147.55(3) and 272C.10(3) and Iowa Administrative Code rule 653-23.1(4) as charged in Count I, in that he acted unprofessionally when he "made repeated unwanted telephone calls to [Smith], when he asked another physician to call [Smith] to resolve their dispute, when he made offensive and threatening statements to [Portz], and when he made unprofessional comments to [Peska]."

The board, however, was "unable to conclude" Dr. Butt threatened to kill Smith; asked Smith to have a personal relationship or have his baby; told Smith he had driven past her house during the night; offered to pay off Smith's car if

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<sup>2</sup> Nurse #3 (Naeve) testified at the hearing she is a nurse at Medical Associates, and worked with Dr. Butt training the nurse he hired—Smith. Naeve stated she did not have any problems with Dr. Butt, but related,

There was just one instance I had, and it was in a joking manner, that he, you know was joking around with [Smith] and had said on the aspect of, you know, if you ever leave me, you know, I'll come find you and hunt you down.

And later, you know, he had went on the Internet and had shown some properties of like trees and stuff and said there's the place.

<sup>3</sup> Employee #1 (Peska) testified Dr. Butt jokingly asked her to leave her husband and have his baby.

she dropped her complaint; or made inappropriate sexual comments to patients. The board did not find Dr. Butt engaged in sexual harassment as alleged in Count II.

The board cited Dr. Butt for engaging in a pattern of unethical or unprofessional conduct in the practice of medicine, and warned him that such conduct in the future may result in further disciplinary action. Among other things, Dr. Butt was ordered to pay a civil fine of \$5000, complete a professional boundaries program, and was placed on five years' probation. Notice of Dr. Butt's discipline was reported to a national database.

**Rehearing request.**

Dr. Butt filed a request for rehearing in which he asserted Iowa Administrative Code rule 653-23.1(4) violated the Due Process Clauses of the Iowa and United States Constitutions in that it was overbroad and so vague as not to provide fair warning of what conduct is prohibited. He also complained he was not able to cross-examine Nurse #1 and there was not substantial evidence to support the findings of the board. He further objected to the board having made a report to the National Practitioner Database before the matter was final. The State resisted the motion for rehearing.

The board observed: "An issue not raised in the initial pleading before the agency may be preserved for appeal by inclusion in a motion for rehearing if the party could not have raised the issue earlier. Respondent did not raise this constitutional issue at the hearing, although he clearly had the opportunity to do so." (Footnote omitted) The board ruled that "even if the constitutional issue was

properly preserved, a reviewing Court, not the Board, must decide it.” The board also rejected Dr. Butt’s claim that it had improperly considered hearsay evidence and failed to properly weigh the evidence presented. Finally, it ruled that it was required to report to the NPDB within thirty days of a final decision, which it had.

**Judicial review.**

Dr. Butt filed a petition for judicial review in the district court. In his petition, Dr. Butt contended the board’s findings were not supported by substantial evidence. He also contended that the board’s findings that he acted unprofessionally were not based upon incidents included in the original charges and thus he received no notice of the allegations on which he was disciplined, which violated his right to due process. He also argued the board’s decision was “not in accord with past practice and precedent and is unreasonable, arbitrary, and capricious.” Finally, Dr. Butt contended administrative rule 654-23.1(4) as applied, is unconstitutionally vague.

The board argued Dr. Butt had failed to preserve three of the four issues by not raising them at the earliest possible time. The board noted that the due process claim—that the decision was based on conduct not included in the statement of charges and he thus lacked notice of the charges against him—and the claim that the decision was not in accord with past practices, were not raised in Dr. Butt’s request for rehearing and therefore were not preserved for review. As for the rule 653-23.1(4) vagueness claim, though raised in his request for rehearing, the board contended the issue should have been raised prior to the contested hearing.

On June 5, 2012, the district court filed its judicial review ruling. The district court concluded there was substantial evidence to support the board's findings and Dr. Butt failed to preserve error on his vagueness, due process, and past precedent claims.

Dr. Butt now appeals, raising the same issues as he did before the district court. He also argues the board improperly accepted "volumes of improper hearsay and double hearsay" and he had a constitutional right to confront his accusers.

## **II. Scope and Standard of Review.**

Judicial review of a contested proceeding both in the district court and the appellate courts is to correct errors at law. *Paulson v. Bd. of Med. Exam'rs*, 592 N.W.2d 677, 678 (Iowa 1999). Our review is governed by the Iowa Administrative Procedure Act. See Iowa Code § 17A.19(10). "We must determine whether the agency decision is supported by substantial evidence when reviewing the record as a whole." *Sahu v. Iowa Bd. of Med. Exam'rs*, 537 N.W.2d 674, 676 (Iowa 1995); see Iowa Code § 17A.19(10)(f). In respect to constitutional issues, our supreme court recently stated:

We can grant relief from administrative proceedings if the agency's action is "[u]nconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied." *Id.* § 17A.19(10)(a). The court gives the agency no deference regarding the constitutionality of the statute or administrative rule. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 44 (Iowa 2012). Determining whether a statute or administrative rule offends the state or federal constitution is a task "entirely within the province of the judiciary." *Id.* Thus, we review agency action involving constitutional issues de novo. *Id.*

*Gartner v. Iowa Dep't of Pub. Health*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2013 WL 1856789 (Iowa May 3, 2013).

### III. Analysis.

#### A. *Relevant statutory provisions and rules*

It was alleged Dr. Butt engaged in unethical or unprofessional conduct in the practice of medicine, in violation of Iowa Code sections 147.55(3) and 272C.10(3) and Iowa Administrative code rule 653-23.1(4), and inappropriately engaged in a pattern of sexual harassment in the workplace, in violation of Iowa Code sections 147.55(8) and 272C.10(8) and Iowa Administrative Code rules 653-23.1(4) and 653-13.7(6).

Iowa Code section 147.55 provides in relevant part:

A licensee's license to practice a profession shall be revoked or suspended, or the licensee otherwise disciplined by the board for that profession, when the licensee is guilty of any of the following acts or offenses:

3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

8. Willful or repeated violations of the provisions of this chapter, chapter 272C, or a board's enabling statute.

Iowa Code section 272C.10 states that the medical board "shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to" "(3) . . . engaging in unethical conduct or practice harmful or detrimental to the public" and "(8) [w]illful or repeated violations of the provisions of this chapter."

Iowa Administrative Code Rule 653-13.7 provides standards for the practice of medicine. Subparagraph (6)<sup>4</sup> provides, “A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker’s performance or creates an intimidating, hostile or offensive work environment.”

Finally, Iowa Administrative Code rule 653-23.1 defines various grounds for the discipline of a physician. The rule authorizes the board to discipline “for any violation of” Iowa Code chapter 147 or 272C, or the rules promulgated thereunder. Subparagraph (4) reads: “A physician shall not engage in disruptive behavior. Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.”

***B. Due process***

As a preliminary matter, we conclude the record does not support Dr. Butt’s claim he was denied a “fair trial before a fair tribunal” because the board considered statements made by persons who did not appear or testify.

Under the United States and Iowa Constitutions, “no person shall be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV; Iowa Const. art. I, § 9. “Basic due process requires a fair trial in a fair tribunal.” See *State v. Voelkers*, 547 N.W.2d 625, 631 (Iowa Ct. App. 1996).

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<sup>4</sup> Subparagraph (5) states, “A physician shall not engage in disruptive behavior. Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.”

Evidence is admissible at hearings before the medical board in accordance Iowa Code section 17A.14(1), which provides that a “finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.” Section 17A.14(1) “conforms with the general rule that administrative agencies are not bound by technical rules of evidence, and that generally hearsay evidence is admissible at administrative hearings.” *McConnell*, 327 N.W.2d at 236-37; *accord IBP Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000).

The fact finder “may base a decision upon evidence, as long as the evidence is not immaterial or irrelevant.” *Clark v. Iowa Dep’t of Revenue & Fin.*, 644 N.W.2d 310, 320 (Iowa 2002). The testimony and materials upon which the board based its decision here were neither immaterial nor irrelevant. Moreover, we observe that the board ruled against the allegations and charges in a number of respects. The record indicates the board seriously and fairly considered the matters before it.

Dr. Butt has provided no Iowa authority that establishes he has a “constitutional right to confront his accusers” in this administrative proceeding. The confrontation right under the United States Constitution attaches in “all criminal proceedings.” U.S. Const., amend. VI. Section 10 of Article I of the Iowa Constitution similarly provides, “In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall have a right . . . to be confronted with the witnesses against him . . . .” The confrontation right

generally attaches when one's physical liberty is at stake. See, e.g., *Otteson v. Iowa Dist. Ct.*, 443 N.W.2d 726, 728 (Iowa 1989) (rejecting claim that right of confrontation was abridged at discovery deposition because it is not a "stage of trial" and stating, "His argument that even a discovery deposition raises a right of confrontation because it is a part of the criminal prosecution is unpersuasive. It is no more a part of that process than is the grand jury, as to which the Supreme Court has held there is no right of confrontation."); *In re Delanay*, 185 N.W.2d 726, 729 (Iowa 1971) (discussing *In re application of Gault*, 387 U.S. 1, 42-57 (1967), which ruled that confrontation, self-incrimination, and cross-examination rights exist in juvenile delinquency proceedings, and noting "*Gault* is limited by its specific language to cases in which a juvenile might be committed to a state institution").

We acknowledge that *In re Ruffalo*, 390 U.S. 544, 551 (1968), the United States Supreme Court found that because attorney discipline proceedings are "quasi-criminal" in nature, an attorney is entitled *by due process* to reasonable notice of the charges against him before the proceedings commence. The Iowa Supreme Court, however, has held the confrontation right does not apply in an attorney disciplinary proceeding. See *State v. Mosher*, 103 N.W. 106, 107 (Iowa 1905) (rejecting objection to use of depositions in disbarment proceeding: "Were this a criminal action, the point might be well taken. But the proceeding is civil, and within the class designated special proceedings in the Code.").

"Procedural due process requires that before there can be a deprivation of a protected interest, there must be notice and opportunity to be heard in a

proceeding that is 'adequate to safeguard the right for which the constitutional protection is invoked.'" *Bowers v. Polk Cnty. Bd. of Supervisors*, 638 N.W.2d 682, 690-91 (Iowa 2002) (citation omitted). Dr. Butt has provided no authority that the confrontation right attaches in this medical board proceeding beyond the right to cross-examination set forth in Iowa Code section 17A.14 (3).

**C. Substantial evidence**

Dr. Butt also complains there is not substantial evidence to support the board's findings that (1) he made repeated unwanted telephone calls to Smith, (2) another doctor contacted Smith on Dr. Butt's behalf, or (3) Dr. Butt made offensive and inappropriate statements to Peska.<sup>5</sup>

Because Iowa Code chapter 17A delegates fact finding to agencies, "we defer to an agency's fact finding if supported by substantial evidence." *Glowacki v. Bd. of Med. Exam'rs*, 516 N.W.2d 881, 884 (Iowa 1994). "The question is whether there is substantial evidence to support the finding actually made, not whether evidence might support a different finding." *Sahu*, 537 N.W.2d at 676-77. The burden of proof is a preponderance of the evidence. *Id.* at 677. "We are bound by the agency's factual findings unless a contrary result is demanded as a matter of law." *Id.* (internal quotation marks and citation omitted). We turn to address each charge.

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<sup>5</sup> We note that with respect to allegations concerning his conduct in relation to Portz, Dr. Butt does not challenge the sufficiency of the evidence to support the board's factual findings—only the board's conclusion that his statements were threatening or inappropriate. He argues his statements to Portz were made "during a personal dispute."

**1. Repeated harassing calls.** Dr. Butt was charged with making numerous harassing telephone calls. Ultimately, the Board found that he was unprofessional in making “numerous unwanted calls.” Dr. Butt complains that he was never charged with making unwanted telephone calls. During arguments on appeal, it became clear that the agency views unwanted calls as a lesser-included offense to “harassing telephone calls.”

In respect to the contention that “numerous” telephone calls were made, Dr. Butt wrote a letter in response to the Board’s inquiry, in which he acknowledged calling Smith several times. In his letter to the board, which was introduced as exhibit 15 (and, we note, to which Dr. Butt did not object) Dr. Butt states,

*“I felt sorry that I had threatened to fire her, so I called her on the phone to apologize for the argument and to tell her that I was not in a position to fire her. This occurred during several phone calls with her. . . . After several phone calls, she eventually stated that she would return to work . . . .”*

Dr. Butt’s testimony at the hearing did not contradict that he made a number of calls to Smith, it was equivocal—“I really don’t know. Truthfully, I don’t know how many, but I did call.”

We agree based upon Dr. Butt’s letter and his own testimony that there is substantial evidence to support the conclusion that Dr. Butt made numerous telephone calls to Smith.

However, the board apparently concluded, and we agree, that there is not substantial evidence to support the conclusion that Dr. Butt made numerous “harassing telephone calls” to Smith as charged against him. We are also

troubled by the board's conclusion that somehow making an unwanted call is a lesser-included offense to the charge of making a harassing telephone call. Unwanted calls may not be the same as harassing calls. Logically speaking, we conclude that it is fair to say that every harassing call is unwanted; however, the obverse may not be true. For example, a telephone call from a law enforcement officer may be viewed as an unwanted call but not a harassing call. Similarly, any telephone call at home or on a personal cell phone from an employer or a superior at work may be perceived as unwanted but may not be harassing in nature. Moreover, an unwanted telephone call received at home or on a personal cell phone from an employer or superior may not be unprofessional or unethical. Without the benefit of Smith's testimony, we decline to infer the telephone calls from Dr. Butt were harassing in nature. By all indications, Dr. Butt was calling to apologize to Smith.

The hearsay evidence presented by the Board also reflects that Smith acknowledged she accepted some of Dr. Butt's calls and conversed with him. She also acknowledged that when she told him to not call again, she did not receive any other calls from Dr. Butt.

We agree with Dr. Butt that he was not charged with unprofessional or unethical acts by committing "unwanted telephone calls." Moreover, we do not subscribe to the board's theory that an unwanted call is a lesser offense to a harassing call.

We conclude there is not substantial evidence in the record to support the board's charge that Dr. Butt made numerous harassing telephone calls to Smith,

and the board's attempt to consider an unwanted telephone call as a lesser offense is not warranted under these circumstances.

**2. Dr. Butt acted unprofessionally in asking another physician to contact Smith on his behalf.**<sup>6</sup> The board found, Dr. Butt “asked at least one other person to call [Smith] on his behalf in an attempt to resolve whatever disagreement they were having.” Dr. Butt argues this finding is without adequate support in the record and we agree. This allegation is completely reliant upon evidence *not* of the kind “on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.” Iowa Code § 17A.14(1). The board relied solely on hearsay statements of Smith and the report of its own investigator, which was admitted into evidence at the hearing. The report states the investigator followed up on Smith's statement that “one doctor who called her had indicated that Butt was willing to help her with her bills if she would drop her complaint.” The board found the investigator “interviewed one of the physicians who allegedly called Nurse #1 [Smith] on Respondent's behalf in late March” and then, in essence, reiterated what that unnamed physician told the investigator.

We acknowledge that the Iowa Administrative Procedure Act authorizes less formal hearings and that agencies are not bound by the technical rules of evidence. *See id.*; *see also IBP Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). Nonetheless, section 17A.14(1) recognizes that evidence may be objected to, and that evidence may be “submitted in verified written form” when a hearing “will be expedited *and the interests of the parties will not be prejudiced*”

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<sup>6</sup> We would disagree with a premise that it is necessarily unprofessional to ask another to help attempt to resolve a disagreement with another employee.

*substantially.*” (Emphasis added.) And even if evidence is submitted in written form, section 17A.14(3) provides that those witnesses “shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.”

Here, Dr. Butt was unable to question the complainant, the investigator, or the doctor who supposedly provided the investigator with corroboration of the complainant’s claims. When an agency relies solely on hearsay evidence, we must examine the evidence closely in light of the entire record to see “whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by reasonably prudent persons in the conduct of their serious affairs.” *Schmitz v. Iowa Dep’t of Human Servs.*, 461 N.W. 2d 603, 607-08 (Iowa Ct. App. 1990). We are unwilling to conclude that the evidence relied upon here with respect to allegations and findings concerning Smith suffices to impose professional discipline.<sup>7</sup>

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<sup>7</sup> In reaching our conclusion we are mindful of the criteria to consider when faced with a substantial evidence review of an agency record composed solely of hearsay evidence noted in *Schmitz*, 461 N.W.2d at 607-08, and cited with approval in *Christiansen v. Iowa Board of Educational Examiners*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2013 WL 2278022, at \*11 (Iowa May 24, 2013) (page 21). In *Schmitz* our court stated,

If the record is composed solely of hearsay evidence, we must examine the evidence closely in light of the entire record. Again, we believe we must evaluate the quantity and quality of the evidence, see *Gifford v. Iowa Mfg. Co.*, Iowa 145, 170, 51 N.W.2d 119, 132 (1952); see also McCormick § 354, at 1016, to see whether it rises to necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See Iowa Code § 17A.14(1) (1989). In making this evaluation, we will conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. See generally McCormick [on Evidence] § 353, at 1013–15. None of these criteria, however, should be dispositive, and in each case these criteria must be given appropriate weight.

461 N.W.2d at 607-08.

**3. Dr. Butt made offensive and inappropriate statements to Peska.** The board “believed the testimony of [Peska] that [Dr. Butt] asked her, in a joking manner, to leave her husband and have his child. [Dr. Butt’s] complete denial of this comment was not credible.”<sup>8</sup> The board found the comments unprofessional and noted that Dr. Butt’s comments caused Peska to become nervous.

Throughout its ruling, the board repeatedly found others’ statements and testimony more credible than Dr. Butt’s testimony. The credibility of witnesses is for the fact finder to determine. *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995); see also *Cedar Rapids Cmty. Sch. Dist.*, 807 N.W.2d 839, 845 (Iowa 2011). Courts are not allowed to reassess the weight of the evidence upon judicial review. See *Pease*, 807 N.W.2d at 849.

We adopt the district court reasoning when it wrote:

With regard to Dr. Butt’s assertion that any or all of the comments found by the Board to be unprofessional were merely jokes or made in jest, the Court finds nothing in the statute or rules that prohibits the Board from concluding a comment was *both* unprofessional *and* made in jest. The Court agrees with the Board that this type of comment is clearly unprofessional in a work setting, even if both parties understand it is only meant to be a joke. What may be funny to some people may be deeply offensive to others and in general sets a bad example and precedent in work setting. Further, Peska did testify she became more nervous about the

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Here, the nature of the hearsay substantially involves “he said-she said” and better evidence could have easily been obtained by procuring testimony via subpoenas. There was no substantial cost involved to procure the live testimony. There was also a need for precision as Dr. Butt’s license to practice medicine was in jeopardy. We acknowledge, however, that the board is jeopardized in disciplining a physician who may commit harassment towards a nurse who later becomes a reluctant witness.

<sup>8</sup> We note that Naeve testified that Dr. Butt made “joking” statements to Smith that if she left him he would hunt her down and find her. We agree with the board and the district court that a statement is no less unprofessional because it is said in a joking manner.

comments when they continued and after hearing all the allegations made by other employees.

There is substantial support for the board's findings as relating to Dr. Butt's conduct toward Peska.

**D. Notice.**

Dr. Butt asserts that the board violated his constitutional due process rights by basing its decision on alleged conduct not included in the statement of charges and for which no notice was provided before publication of the decision. The district court ruled, and we agree, that this issue was not properly preserved except as to the distinction we noted between "harassing" and "unwanted" telephone calls.

"Generally, our review is limited to questions considered by the agency. Even issues of constitutional magnitude may be deemed waived on appeal if not raised before the administrative tribunal." *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 465 N.W.2d 280, 283 (Iowa 1991) (citations omitted). The *Consumer Advocate* court noted an exception, "an issue not raised in the initial pleading before the agency may be preserved for appeal if raised for the agency's consideration in a motion for rehearing." *Id.* The *Consumer Advocate* court ruled that the "exception" applied because the Office of Consumer Advocate "raised its claim of procedural unfairness at the earliest possible opportunity" and the opposing parties "were given the opportunity to address the issue in response." *Id.*

Dr. Butt should have raised this issue in his request for rehearing but did not. His failure to raise the issue at the earliest opportunity left nothing for the district court and this court to review.

***E. Claim that board's ruling was not in accord with its past practice.***

Dr. Butt did not raise this claim in his request for rehearing and it is therefore not properly preserved for our review.<sup>9</sup> *See id.*

***F. Constitutional challenge to Iowa Administrative Code rule 653-23.1(4).***

Dr. Butt argues Iowa Administrative Code rule 653-23.1(4), “creates an open-ended, imprecise definition of ‘unprofessional conduct’ for application in a quasi-criminal proceeding” and it is thus “unconstitutionally vague under both the Fourteenth Amendment of the United States Constitution and Article I, section 9 of the Iowa Constitution.” However, he did not raise this claim until his request for rehearing. The claim could have—and should have—been raised earlier except as it related to the interpretation that an unwanted telephone call was unprofessional or unethical. *See Wettach v. Iowa Bd. of Dental Exam'rs*, 524 N.W.2d 168, 170-71 (Iowa 1994) (rejecting similar claim concerning “dishonorable conduct” where claimant raised the issue in a motion to dismiss made during the hearing).

Dr. Butt did preserve error by his request for rehearing on the issue of whether Iowa Administrative Code rule 653-23.1(4) is unconstitutionally vague as

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<sup>9</sup> The district court found the matter not preserved, but rejected it on the merits nonetheless.

applied by the board's interpretation that making numerous unwanted telephone calls is unprofessional and unethical conduct. This claim could not have been raised any earlier because it pertained to the board's ultimate conclusions, not the charges.<sup>10</sup>

Dr. Butt's claim is that the board's application of the rule does not give a person of ordinary intelligence reasonable opportunity to know what is prohibited.

Concerning vagueness claims our supreme court has noted:

The Due Process Clause of the United States Constitution provides that "[n]o state shall . . . deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. "Among other things, the Due Process Clause prohibits enforcement of vague statutes under the void-for-vagueness doctrine." *State v. Nail*, 743 N.W.2d 535, 539 (Iowa 2007). A similar prohibition has been recognized under the Iowa Due Process Clause found in article I, section 9 of the Iowa Constitution. *State v. Todd*, 468 N.W.2d 462, 465 (Iowa 1991). As our supreme court recently noted,

There are three generally cited underpinnings of the void-for-vagueness doctrine. First, a statute cannot be so vague that it does not give persons of ordinary understanding fair notice that certain conduct is prohibited. Second, due process requires that statutes provide those clothed with authority sufficient guidance to prevent the exercise of power in an arbitrary or discriminatory fashion. Third, a statute cannot sweep so broadly as to prohibit substantial amounts of constitutionally-protected activities, such as speech protected under the First Amendment.

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<sup>10</sup> Although we have determined that there was insufficient evidence for the board's conclusions in respect to the telephone calls, we choose to address the vagueness claim as it may affect future board proceedings.

*Nail*, 743 N.W.2d at 539. In assessing whether a statute is void-for-vagueness this court employs a presumption of constitutionality and will give the statute “any reasonable” construction to uphold it. *State v. Millsap*, 704 N.W.2d 426, 436 (Iowa 2005) (citation omitted).

Our supreme court has applied such principles to administrative interpretations. *Devault v. City of Council Bluffs*, 671 N.W. 2d 448, 451 (Iowa 2003). We conclude the board’s interpretation of Iowa Administrative Code rule 653-23.1(4), prohibiting “unwanted telephone calls,” is a violation of due process because, as applied, the administrative rule is vague. We suspect every physician would understand that committing a harassing telephone call would be unprofessional or unethical. However, the definition of an “unwanted telephone call” is only determined by the ears of the recipient. Moreover, there is simply no reasonable or feasible interpretation of an “unwanted telephone call” that gives fair warning that such conduct is prohibited and does not impinge on the speech protected by the First Amendment. Accordingly, the administrative rule prohibiting unprofessional and unethical conduct is unconstitutionally vague as applied by the board.

#### **IV. Conclusion.**

There is substantial evidence in the record to support the board’s findings that Dr. Butt “[m]ade offensive comments to Nurse #2 [Portz] during their meeting on February 11, 2008, and threatened to ‘crush’ her,” and that he “[a]sked Employee #1 [Peska], in a joking manner, if she would leave her husband and have his baby.” We therefore affirm the board’s conclusion that Dr. Butt engaged

in unethical and/or unprofessional conduct in violation of Iowa Code sections 147.55(3) and 272C.10(3) and Iowa Administrative Code rule 653-23.1(4) as charged in Count I in that he acted unprofessionally when he made offensive and threatening statements to Portz and when he made unprofessional comments to Peska. We otherwise reverse the findings and conclusions as to that count. We further remand these proceedings and direct the district court to remand these proceedings to the agency to determine the propriety of the discipline imposed in light of our conclusions.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Doyle, P.J., concurs specially.

**DOYLE, P.J.** (concurring specially)

I concur with the majority's opinion, but I write separately to simply add a comment. The Iowa Board of Medicine filed its decision on August 25, 2011. The board asserted it was required to report adverse actions against physicians to the National Practitioner Data Bank (NPDB) within thirty days from the date an adverse licensure action is taken. Nevertheless, the board filed its adverse action report with the NPDB on September 8, 2011, only fourteen days after its decision and well before the asserted thirty-day deadline. The report was filed six days before expiration of the twenty-day time period for Dr. Butt to file an application for rehearing. See Iowa Code § 17A.16(2). Dr. Butt timely filed his request for a rehearing on September 14, 2011. Although I think it would have been more prudent for the board to have waited until after the time for rehearing had expired before filing its adverse action report with the NPDB, that is not the most troubling aspect of the filing.

The following question appears on the report form: "Is the Adverse Action Specified in This Report Based on the Subject's Professional Competence or Conduct, Which Adversely Affected, or Could Have Adversely Affected, the Health or Welfare of the Patient?" To this question, the board answered, "Yes." However, none of the unprofessional conduct found by the board related to Dr. Butt's care, treatment, or safety of his patients. Since the board's own findings do not support its statement to the NPDB that Dr. Butt's unprofessional conduct "adversely affected, or could have adversely affected, the health or welfare of [his patients]," the statement was unjustified—and misleading at the very best. I

would hope that in the future the board, in exercising its considerable power affecting the livelihood of medical professionals, would exercise more restraint than has been shown here.

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**AMJAD BUTT, M.D., RESPONDENT**

**FILE No. 02-08-154**

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**PROPOSED RULING ON RESPONDENT'S REQUEST FOR STAY**

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The Board issued its final decision in this contested case on September 30, 2011. The Board's final decision required Respondent Amjad Butt, M.D. to pay a \$5000 civil penalty within twenty days and to complete a professional boundaries program within sixty days. The final decision also placed Respondent's Iowa medical license on probation for five years, subject to conditions that included monitoring and quarterly reports. Respondent filed a petition for judicial review in Polk County District Court on October 27, 2012.

Respondent has not yet complied with the terms of the Board's final decision. On January 10, 2012, Respondent filed a request for stay of the final decision with the Board. The state filed a Resistance to Request for Stay on January 24, 2012. The Board delegated ruling on the Request for Stay to the undersigned administrative law judge.

653 IAC 25.27(1) provides, in relevant part, that any party to a contested case may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying the stay or other temporary remedies. In determining whether to grant a stay, the board is required to consider the following factors listed in Iowa Code section 17A.19(5)(c):

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is

not granted.

(3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's actions in the circumstances.

The Board has found that Respondent engaged in unprofessional conduct in the practice of medicine. This finding was based on multiple incidents. The Board imposed specific sanctions to address the concerns raised by those findings. The arguments made by Respondent in his Request for Stay were fully considered by the Board in making their findings and imposing sanctions. Based on the record, it cannot be concluded that Respondent is likely to prevail on judicial review.

Respondent continues to practice medicine. There is a significant public interest in requiring his timely compliance with the terms of the Board's final decision. The sanctions were imposed to address and remediate the practice issues identified in the Board's final decision. The public interest is sufficient to justify the sanctions imposed by the Board. In addition, any monetary loss due to the payment of the \$5000 civil penalty or the cost of attending the professional boundaries course does not constitute an "irreparable injury." *Teleconnect Co. v. Iowa State Commerce Commission*, 366 N.W.2d 511, 514 (Iowa 1985). *See also Pro Farmer Grain V. Iowa Department of Agriculture*, 427 N.W. 2d 466, 468-69(Iowa 1988); *Salsbury Laboratories v. Iowa Dep't of Envtl. Quality*, 276 N.W. 2d 830, 837 (Iowa 1979); *Richards v. Iowa State Commerce Commission*, 270 N.W. 2d 616, 624 (Iowa 1978).

Order

None of the arguments raised by Respondent justify granting his request for stay in this case. IT IS THEREFORE ORDERED that the Request for Stay is DENIED.

DATED THIS 26th DAY OF JANUARY, 2012.



Margaret LaMarche  
Administrative Law Judge  
Department of Inspections and Appeals  
3rd Floor, Wallace State Office Building  
Des Moines, IA 50319  
[FOR THE IOWA BOARD OF MEDICINE]

cc: David Brown and Jay Grimes, Hanson, McClintock & Riley,  
R. Ronald Pogge, Hopkins and Huebner  
Theresa O'Connell Weeg, Assistant Attorney General  
Kent Nebel, Iowa Board of Medicine  
[all served by email attachment and first-class mail]

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>IN THE MATTER OF THE</b>	)	<b>FILE NO. 02-08-154</b>
<b>STATEMENT OF CHARGES AGAINST:</b>	)	<b>DIA NO. 08DPHMB020</b>
	)	
<b>AMJAD BUTT, M.D.</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
<b>Respondent</b>	)	<b>DECISION AND ORDER</b>

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Date: August 25, 2011.

On September 17, 2008, the Iowa Board of Medicine (Board) filed a Statement of Charges against Amjad Butt, M.D. (Respondent) charging him with two counts:

Count I: Engaging in unethical or unprofessional conduct in the practice of medicine, in violation of Iowa Code sections 147.55(3), 272C.10(3) and 653 IAC 23.1(4); and

Count II: Willfully and repeatedly violating the laws and rules governing the practice of medicine in Iowa by inappropriately engaging in a pattern of sexual harassment in the practice of medicine, in violation of Iowa Code sections 147.55(8), 272C.10(8) and 653 IAC 23.1(4) and 13.7(6).

The hearing was held on July 7, 2011 before the following quorum of the Board: Siroos Shirazi, M.D., Chairperson; Jeff Snyder, M.D.; Colleen Stockdale, M.D.; Greg Hoversten, D.O.; Bruce Hughes, M.D.; Tom Drew and Ambreen Mian, public members. Respondent was represented by attorneys David L. Brown and Ronald Pogge. Assistant Attorney General Theresa O'Connell Weeg represented the state. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare a written decision for their review, in accordance with their deliberations.

**THE RECORD**

The record includes the Notice of Hearing and Statement of Charges; first Continuance Order; State Request for Prehearing Conference and Prehearing

Conference Order issued 8/3/2010; Hearing Order; Ruling on Objections to State Exhibits 2-11 issued 1/6/2011; State Subpoena Request, Respondent Motion Quash Subpoena, Resistance to Witnesses by Telephone/Videoconference, and Motion to Dismiss; Respondent's Resistance to State's Amended Exhibits and Testimony of Investigator Machamer, Motion Exclude Evidence, Motion to Dismiss; ALJ Rulings on Respondent's Motions issued 1/12/2011; Respondent Motion for Interlocutory Appeal of ALJ Ruling and Request for Immediate Review and Decision Before Hearing (granted by Board in an oral ruling on 1/20/2011); Order For Scheduling Conference; State Interlocutory Appeal from ALJ Oral Ruling Denying Change of Venue; Respondent Resistance to State's Appeal and Renewed Motion to Dismiss; State Reply; Respondent's Reply to State's Reply, Motion to Produce, and Renewed Motion to Dismiss; Board's Written Order re: Interlocutory Appeal issued 3/16/2011; Hearing Order; Order Continuing Hearing; Order Setting Hearing; State Interlocutory Appeal of ALJ Oral Ruling Denying Request to Present Videotaped Depositions or Bifurcate Hearing; Respondent Renewed Motion to Dismiss; Board Ruling Denying State's Interlocutory Appeal and Respondent's Motion to Dismiss issued 6/30/2011; testimony of the witnesses; State Exhibits 1-17 and Respondent Exhibits A-F.

## FINDINGS OF FACT

### *Overview of Respondent's Educational, Licensing, and Practice History*

1. Respondent graduated from medical school in Lahore, Pakistan in 1980. From 1981-1984, Respondent served as a "house officer" (resident) at the University Hospital in Cardiovascular Medicine and Cardiovascular Diseases in Lahore. In 1984, Respondent and his wife moved to Brooklyn, New York. Respondent completed his foreign graduate exams in 1989 and then took a position as a house physician in orthopedic surgery in Long Island, New York.

In May 1990, Respondent started a residency in cardiology at Long Island College Hospital in Brooklyn, New York. Respondent later completed his cardiology residency at UPMC McKeesport Hospital in McKeesport, Pennsylvania in June 1994. From 1994-1996, Respondent worked on a cardiology research fellowship at White Memorial Medical Center in Los Angeles, California. Respondent was board certified in Internal Medicine in 1995.

From July 1997-December 1998, Respondent worked on a cardiology fellowship in Shreveport Louisiana. Respondent was unable to complete the fellowship in Louisiana due to problems with his immigration status. Respondent eventually completed a cardiology fellowship at Graduate Hospital in Philadelphia, Pennsylvania in June 2001. In June 2002, Respondent completed an interventional cardiology fellowship at Terrebonne General Medical Center in Houma, Louisiana.

In November 2002, Respondent started an interventional cardiology practice at Southwest Mississippi Regional Medical Center in McComb, Mississippi. However, Respondent left this practice in June 2003 and moved his family to Philadelphia, Pennsylvania because his wife had been diagnosed with breast cancer, and he wanted to be near Sloan-Kettering for her treatment. Respondent took care of their five children during his wife's surgery and treatments. From April-December 2004, Respondent completed an eight month assignment as an interventional cardiologist at Rush Hospital in Meridian, Mississippi. Respondent was board certified by the American Board of Internal Medicine in Cardiovascular Disease in 2004.

Respondent was in a private solo practice in Thibodaux, Louisiana from January 2005 through November 2005. Respondent reports that this practice was no longer viable after the community was hit by Hurricane Katrina. Respondent then joined Regional Cardiovascular Consultants in Jackson, Tennessee, but left that practice in 2007 when the practice owner filed for bankruptcy.

Respondent practiced interventional cardiology with Medical Associates in Clinton, Iowa from approximately August 2007 until his employment was terminated on March 4, 2008. Since October 2008, Respondent has been in a solo practice at the Cardiovascular Institute of Selma in Selma, Alabama. (Testimony of Respondent; Respondent Exhibits A (same as State Exhibit 16); F; State Exhibit 4)

2. Respondent currently has inactive medical licenses in the states of Indiana, California, Louisiana, Mississippi, Iowa, Missouri, and New Jersey. Respondent has active medical licenses in Pennsylvania, Tennessee, Wisconsin, and Alabama. Respondent reports that he has had no prior disciplinary action taken against his license in any state and has never been sued for malpractice.

Respondent was issued Iowa medical license number 35342 on September 22, 2003. Respondent's Iowa medical license has been inactive due to non-renewal since April 1, 2008. (Testimony of Respondent; Respondent Exhibits A, F; State Exhibit 2)

*Respondent's Practice at Medical Associates in Clinton, Iowa*

3. Medical Associates is a multi-specialty practice that employs approximately 38 physicians. In December 2006, Respondent signed a written agreement to join Medical Associates as an associate physician. Respondent started working as an interventional cardiologist at Medical Associates in or about August 2007 and continued in this position until March 4, 2008. Medical Associates recruited Respondent for this position because its two interventional cardiologists were overworked and needed help. Respondent was guaranteed a substantial annual salary for the first year of his contract. At the time of Respondent's employment, Michelle Waltz was Medical Associates' Director of Human Resources, Dr. Dale Weber was its co-medical director, and Dr. Donald Flory was a member of its Management Committee. (Testimony of Michelle Waltz; Dr. Dale Weber; Dr. Donald Flory; Respondent Exhibit E)

When he first joined Medical Associates, Respondent was assisted by several different nurses. Respondent eventually asked Medical Associates to hire Nurse #1, who had worked with him at the hospital, to be his permanent office nurse. Nurse #1 was hired as Respondent's full-time nurse on or about January 7, 2008. (Testimony of Respondent; Michelle Waltz; State Exhibit 8)

4. Nurse #2 was hired by Medical Associates as a float nurse in December 2007. Nurse #2 worked directly with Respondent only once, in December 2007, and she was never his assigned nurse. On February 9, 2008, Nurse #1 accused Nurse #2 of making statements that implied there was an inappropriate personal relationship between Nurse #1 and Respondent. Nurse #2 denied making such statements and assumed that a third nurse had misrepresented their conversation about flexible schedules.

On February 11, 2008, Nurse #1 told Nurse #2 that Respondent wanted to meet with her in his office at 3:30 p.m. Based on her previous conversation with Nurse #1, Nurse #2 assumed that Respondent was going to accuse her of starting rumors about him and Nurse #1. Nurse #2 asked the Director of Human Resources, Michelle Waltz, to attend the meeting with her. When Nurse #1 and

Michelle Waltz entered Respondent's office, Respondent demanded that Ms. Waltz leave. He told Ms. Waltz that it was a personal matter and that Administration could be involved if he filed a lawsuit for defamation of character. Ms. Waltz told Respondent that if he was making an accusation against an employee or if there was threat of a lawsuit then she should be present. When Respondent insisted that she leave, Ms. Waltz told Nurse #2 that she did not have to stay and could leave any time she wanted. However, Nurse #2 decided to stay and listen to Respondent.

When they were alone, Respondent accused Nurse #2 of "barking" outside the clinic. He told her that he was going to "crush" her and that her career would be over. Respondent did not tell Nurse #2 what she allegedly said about him, but he asked her how she would like it if he told people she was a prostitute, that her mother was a whore, or that her father was a dirty pig. Respondent told Nurse #2 that if she continued to "bark" about him he would make Medical Associates choose between them and they would not choose her. Nurse #2 was still a probationary employee at the time, and Respondent's comments about potentially losing her job concerned her. (Testimony of Michelle Waltz; Nurse #2; State Exhibits 7, 8)

Respondent met with Medical Associates CEO Abe Chacko and Michelle Waltz after his meeting with Nurse #2. Respondent apologized to Ms. Waltz and told her he did not mean to be disrespectful but that it was inappropriate for her to attend his meeting with Nurse #2. Michelle Waltz told Respondent that Nurse #2 denied making any defamatory statements about him and said she only had a conversation with another nurse about flexible schedules. Respondent told Waltz "we all know what her discussion of the schedule implied." Respondent told Ms. Waltz that he just wanted to give Nurse #2 an undocumented warning. (Testimony of Michelle Waltz; State Exhibit 8)

Abe Chacko and Michelle Waltz called in Nurse #2 to ask her about the meeting with Respondent. Nurse #2 reported Respondent's comments to her, including his threat to "crush" her. They asked Nurse #2 to document the meeting while it was fresh in her mind. State Exhibit 7 is Nurse #2's signed written statement. Michelle Waltz also kept contemporaneous written notes of her contacts with Respondent and others who complained about Respondent, including Nurse #2. State Exhibits 8, 10, and 11 are Ms. Waltz's written compilations of her notes. (Testimony of Michelle Waltz; Nurse #2; State Exhibits 7-8, 10-11)

5. On Tuesday, February 26, 2008, Nurse #1 reported to Michelle Waltz that she could no longer work for Respondent due to incidents that occurred over the previous weekend. At hearing, Ms. Waltz described Nurse #1 as very upset and frantic. The following is a summary of the allegations that Nurse #1 made to Michelle Waltz:

Nurse #1 worked with Respondent at the hospital on Saturday morning, February 23, 2008. After work, Nurse #1 gave Respondent a ride to pick up his vehicle from an auto mechanic. While waiting for his car, Respondent asked Nurse #1 if she was interested in having a relationship with him and having his babies. Respondent became verbally abusive when Nurse #1 refused and told her she was fired and could work for another physician. Respondent asked Nurse #1 which of her carotids she wanted cut, her right or her left. Respondent then made more than 30 phone calls to her cell phone between Saturday, February 23rd and Monday, February 25th. When Nurse #1 answered her phone on Sunday, February 24<sup>th</sup>, Respondent told her that he had driven to her home at 2:00 a.m. and she wasn't there. When Nurse #1 told Respondent that this scared her, he told her that he was just joking and she could come to work on Monday. Nurse #1 stayed home from work to care for a sick relative on Monday, February 25, 2008. On February 26, 2008, Respondent called Nurse #1 and told her that he deserved a second chance. Respondent asked her when she was going to get over it and she told him it scared her too much and she could not work for him. Nurse #1 told Respondent to stop calling her.

(Testimony of Michelle Waltz; State Exhibits 8, 11). Respondent travelled to New Jersey on February 25, 2008 to attend a medical conference and to spend time with his terminally ill brother. Respondent was not in Clinton when Nurse #1 made her complaint to Ms. Waltz. He did not return to Iowa until on or about March 4, 2008. (Testimony of Respondent; State Exhibit 15)

6. Medical Associates has a written policy that prohibits sexual harassment of any employee. All employees are given a copy of the policy at the time of hire. On February 27, 2008, Nurse #1 completed a written sexual harassment complaint form that described her allegations against Respondent. In addition to the allegations she had already made, Nurse #1 also alleged on the complaint that when she first started as his nurse, Respondent told her that if she ever left him he would hunt her down, catch her, kill her, and bury her. She also alleged

that many employees had witnessed Respondent make inappropriate statements to patients. (State Exhibits 6, 8; Testimony of Michelle Waltz)

Michelle Waltz conducted a follow up interview with Nurse #1 on February 27, 2008 and asked her additional questions. (Testimony of Michelle Waltz; State Exhibits 8, 11) Nurse #1 told Ms. Waltz that on one of the first days she worked for Respondent, he told her that if she ever left him he would hunt her down, find and kill her. She further alleged that Respondent pointed to a property he was viewing over the internet and told her "there you go, this is the place." On February 27, 2011, Nurse #3 told Ms. Waltz that she was present when Respondent made these comments to Nurse #1. (State Exhibit 11, p. 3)

The Medical Associates' Management Committee had an emergency meeting with their legal counsel on February 27, 2008. After the meeting, they called Respondent, notified him of the allegations against him, and informed him that he was being placed on a paid leave of absence during the investigation. (Testimony of Michelle Waltz; Dale Weber, M.D.; Donald Flory, M.D.; State Exhibits 8, 11)

7. On February 28, 2008, Nurse #1 left a voice mail message for Michelle Waltz stating that she no longer wanted to pursue her complaint. Ms. Waltz met with Nurse #1 the following day. At this meeting, Nurse #1 told Ms. Waltz that:

- she did not want to pursue the complaint because she was afraid of Respondent;
- Respondent had asked other physicians to convince her to drop her complaint, and that one of the physicians actually called her;
- she then called Respondent and told him he needed to stop giving her cell phone number to other people. Respondent told her that he never thought she would go to Human Resources and she should know he would never actually fire her. He told her he thought that it would all blow over and she would work for him when he came back. He said he may have been a bit harsh but it all happened because he was under too much stress; and
- Respondent offered to pay off her car, in installments, for her troubles.

At the end of the meeting, Michelle Waltz told Nurse #1 to let her know by March 3, 2008 if she wanted to rescind her written complaint. Nurse #1 did not

rescind her written complaint. (Testimony of Michelle Waltz; State Exhibits 8, 11)

8. On Monday, March 31, 2008, Nurse #1 told Michelle Waltz and Abe Chacko that she received two calls on her personal cell phone over the weekend. One call was from a local business owner who was a friend of Respondent's. The business owner told Nurse #1 that Respondent had given him her cell phone number and that he would like to meet with her to talk about getting the situation resolved. The second call was from a woman who stated that she got the cell phone number from the business owner and who told Nurse #1 that she wanted her to drop everything against Respondent because she wanted Respondent to return to practice in Clinton. Ms. Waltz documented this conversation with Nurse #1. (Testimony of Michelle Waltz; State Exhibit 11, p. 6)

On April 2, 2008, the Medical Associates' attorney sent a letter to Respondent's attorney and asked him to advise his client not to provide Nurse #1's cell phone number to anyone or to have any third parties contacting her. (State Exhibit 9)

On April 22, 2008, a Board investigator interviewed one of the physicians who allegedly called Nurse #1 on Respondent's behalf in late March. The physician told the investigator that Respondent asked him to try to set up a meeting with Nurse #1 so he could get things fixed between them. The physician admitted speaking to Nurse #1 once at the hospital and calling her twice at Respondent's request. The physician denied offering Nurse #1 any money. (State Exhibit 2, p. 3)

9. Between February 27 and March 4, 2008, several other Medical Associates' employees came forward with allegations that Respondent had made inappropriate comments to patients or staff. (Testimony of Michelle Waltz; State Exhibit 10). Three of the employees (Nurse #3, Nurse #4, and Employee #1) testified at hearing.

a. Nurse #3 trained Nurse #1 for several weeks in January 2008 after she was hired to be Respondent's nurse. On February 27, 2008, Nurse #3 told Michelle Waltz about comments that she had heard Respondent make to Nurse #1 and to three patients. Nurse #3 apparently made this report to Ms. Waltz after she was asked if she had any complaints or concerns

about Respondent. Nurse #3 could not recall exactly when any of the alleged comments were made.

Nurse #3 testified that she was present when Respondent said to Nurse #1, in a joking manner, "if you ever leave me I will hunt you down and find you." Nurse #3 was also present when Respondent pointed to a piece of property on an internet site and told Nurse #1 "this is where it will be." Nurse #3 did not report these comments to anyone because Respondent said them in a joking manner. Nurse #1 and Nurse #3 did not discuss the comment with each other.

Nurse #3 further testified that she was present when Respondent asked a 24 year old mentally disabled patient about his sex life and when he asked an 80 year old female patient if her urinary tract infection was caused by having sex. Nurse #3 also testified that when another patient asked Respondent for a medical release to return to work, Respondent replied "this is why your wife left you." Nurse #3 did not document or report any of these incidents at the time they occurred. (Testimony of Nurse #3; State Exhibit 10, p. 1)

b. Nurse #4 testified that an 80 year old female patient complained to her that Respondent had commented on the patient's cleavage and her beautiful legs. Nurse #4 did not hear the comments herself and did not know when they occurred. Nurse #4 did not document the patient's complaint and did not report it to anyone until February 29, 2008, when she made her report to Michelle Waltz. The patient was not identified and did not file a complaint. (Testimony of Nurse #4; State Exhibit 10, p. 3)

c. Employee #1 worked as a scheduler at Medical Associates. Employee #1 testified that initially she and Respondent got along great because both of them enjoyed "joking around." Employee #1 reported that several times Respondent asked her to leave her husband and have his child, which she took as a joke. On February 28, 2008, Nurse #1 told Employee #1 that she was "scared to death" and knew he was going to kill her. Employee #1 testified that several employees were talking about it and got a little nervous. Around March 4, 2008, Employee #1 and several other employees met with Dr. Weber and were told to write down their experiences with Respondent. Employee #1 submitted a written

statement on March 4, 2008. (Testimony of Employee #1; State Exhibit 10, p. 5)

10. On March 3, 2008, the Medical Associates' Management Committee met with Respondent to discuss the employees' complaints. It is unclear exactly what Respondent was told at this meeting. Respondent did not respond to the specific allegations but denied making any inappropriate comments. The committee asked Respondent for his resignation, but he declined. The committee told Respondent that it was likely that his employment would be terminated at the Special Membership Meeting that was scheduled for the following evening. (Testimony of Dr. Donald Flory; Dr. Dale Weber; Michelle Waltz; State Exhibit 8, p. 3; Respondent Exhibit B)

11. On March 4, 2008, Medical Associates held a Special Membership Meeting to discuss the complaints against Respondent. Michelle Waltz summarized the events leading up to the meeting. The attorney for Medical Associates' summarized the meeting between Respondent and the Management Committee. The Medical Associates' Membership voted unanimously to terminate Respondent's employment for cause due to his inappropriate conduct. Dr. Weber then notified the Iowa Board of Medicine, in writing, that Respondent's employment had been terminated. (Testimony of Michelle Waltz; Dr. Donald Flory; State Exhibits 4; 8; 10; Respondent Exhibit C)

12. On March 5, 2008, Medical Associates issued a memorandum to Respondent concerning his "separation from service to the clinic." The memorandum notified Respondent that his continuing liability coverage terminated at the close of business on March 4, 2008 and that Medical Associates had purchased tail insurance coverage for Respondent, at a cost of \$49,298.00. The memorandum informed Respondent that he was responsible for reimbursing Medical Associates for the cost of the tail insurance. The memorandum further notified Respondent that arrangements would be made for him to collect his personal belongings from the clinic building and that he should be prepared to return his clinic keys, pager, and cell phone at that time. Apparently Respondent was not provided any further written notice of termination or of the specific reasons for his termination. (Testimony of Respondent; Respondent Exhibit D)

13. On April 23, 2008, a Board investigator wrote to Respondent and asked for his point of view regarding the reasons for his termination by Medical

Associates. In a written reply, Respondent's attorney stated that Respondent was never given specific grounds for his termination. Respondent's attorney asked for additional information concerning the complaint. (State Exhibits 13, 15) In his response, the Board's investigator wrote that information provided to the Board indicated Respondent was terminated based on his behavior towards other employees, including threatening or making unwanted advances to one employee and speaking to another employee in a derogatory or demeaning manner. (State Exhibit 14)

14. Respondent replied to the Board's inquiry in a letter dated May 23, 2008. With respect to the allegations made by Nurse #1, Respondent wrote that:

- His relationship with Nurse #1 was difficult due to her erratic behavior, but he did not complain to administration because he did not want a reputation as a physician who could not get along with his nurse;
- Nurse #1 reacted in anger and used curse words when he tried to correct her behavior;
- Nurse #1 opened his mail, saw his paycheck, and asked for his assistance in paying her bills. Respondent declined but she continued to ask him for money;
- On February 23, 2008, Nurse #1 had been told that she did not need to report to her second job at the hospital due to a low census. However, Nurse #1 came to the hospital anyway and helped Respondent complete rounds. Afterward, Nurse #1 told Respondent that she expected him to pay her for the extra work she did for him. Respondent refused to pay her for voluntary work, they argued, and Respondent told her that he could not continue working with her;
- Afterward, Respondent felt sorry that he threatened to fire her and called her several times to apologize and to tell her he was in no position to fire her;
- After several phone calls, Nurse #1 told Respondent that she would return to work but did not want to continue working with him. Nurse #1 told him that she would not be at work on February 25<sup>th</sup> or 26<sup>th</sup> because she was babysitting her niece. Respondent left for a medical conference in New Jersey on February 25<sup>th</sup>;
- While he was in New Jersey, Respondent received the phone call from Medical Associates telling him that a complaint had been filed. Respondent understood that he had been accused, in part, of threatening

to cut the carotid of Nurse #1, of wanting to bury her, and wanting a baby with her;

- Respondent denied the allegations but was told that he had had been put on leave of absence and should resign immediately or criminal and disciplinary charges would be filed against him.

(State Exhibit 15) At hearing, Respondent also testified that on one occasion he gave Nurse #1 a \$500 check to pay for pizza for the office staff. Respondent claimed that Nurse #1 refused to return his change even though the cost of the pizza was only \$200. Respondent first reported this incident during his evaluation in March 2009. He did not report it to Medical Associates at the time of his termination. (Testimony of Respondent; Michelle Waltz; Dr. Donald Flory; State Exhibit 16; Respondent Exhibit A))

At hearing, Respondent denied that Nurse #1 gave him a ride to pick up his car on February 23, 2008. He also denied making any of the statements attributed to him by Nurse #1. Respondent denied ever telling Nurse #1 that he would hunt her down, find her and bury her if she left him. He denied asking Nurse #1 for a personal relationship or if she would have his baby. He denied asking her which carotid she wanted cut. He denied telling Nurse #1 that he had driven by her house at night and wondered why she was not home. Respondent admitted making calls to Nurse #1's cell phone to try to patch things up between them but denied asking anyone else to call her on his behalf. He denied offering to pay off her car to resolve her complaint. (Testimony of Respondent)

15. Respondent also addressed the allegations of Nurse #2 in his May 23, 2008 letter to the Board's investigator. Respondent wrote that:

- Nurse #1 told Respondent that a friend told her about a rumor in the hospital that her schedule revolved around his schedule, with the implication that there was "something going on" between them;
- Respondent told Nurse #1 that he wanted to speak to the other nurse;
- When Nurse #2 arrived for the meeting she had Michelle from Administration with her;
- Respondent told Michelle it was a personal matter and he wanted to speak to Nurse #2 alone;
- Respondent told Nurse #2 that spreading such gossip was very dangerous;
- Nurse #2 denied being the source of the gossip and he accepted her denial;

- Respondent then spoke to Michelle and told her that he did not want her present when he spoke to Nurse #2 because he did not want any disciplinary action taken against her.

(State Exhibit 15) At hearing, Respondent denied threatening to “crush” Nurse #2 or have her fired. He also denied making any of the other offensive comments attributed to him by Nurse #2. (Testimony of Respondent)

At hearing, Respondent also denied making any inappropriate comments to any patients. He also denied ever asking Employee #1 if she would leave her husband and have his baby. (Testimony of Respondent; State Exhibit 15)

16. After the Board filed charges, Respondent voluntarily agreed to submit to a comprehensive evaluation at the Behavioral Medicine Institute of Atlanta (BMI). Respondent was evaluated over three days in March 2009. The evaluation included six hours of psychiatric interviews by BMI’s Medical Director, Gene Abel, M.D. as well as extensive psychological testing. Dr. Abel reviewed the Board’s investigative file, and he spoke to a physician who had worked with Respondent over a period of approximately four years. Respondent submitted to a polygraph examination as part of the evaluation. The polygraph examiner concluded that Respondent was truthful during questioning, which included questions asking Respondent if he threatened to kill Nurse #1 or asked her to have his baby.

BMI issued a written evaluation report, which concluded in part that there was a low probability that Respondent threatened to kill Nurse #1 or wanted to have a child with her. However, the report did note that it is not BMI’s responsibility to make judgments on the truth of the allegations against a physician because that responsibility rests with the Iowa Board. BMI had no recommendations for Respondent. (Respondent Exhibit A; State Exhibit 16)

17. Based on its review of the entire record, including the testimony of the witnesses, the written complaints, and the BMI evaluation report, the Board finds that Respondent:

- Made offensive comments to Nurse #2 during their meeting on February 11, 2008, and threatened to “crush” her. The testimony and contemporaneous written statement of Nurse #2 was more credible than Respondent’s characterization of their meeting;

- Told Nurse #1 that he would hunt her down and find her if she ever left him. Although Nurse #1 did not testify, Nurse #3 did testify and she was present when Respondent made the comment to Nurse #1 and when he pointed out a piece of property to them on the internet. The testimony of Nurse #3, as corroborated by Nurse #1's written statement, was more credible than Respondent's testimony denying that he ever made this comment. Nurse #3 also credibly testified that the comment was made in a joking manner, and she took it as a joke; and
- Asked Employee #1, in a joking manner, if she would leave her husband and have his baby; and
- Made a large number of unwanted telephone calls to Nurse #1 on her personal cell phone and asked at least one other person to call Nurse #1 on his behalf in an attempt to resolve whatever disagreement they were having.

The Board was unable to conclude, by a preponderance of the evidence, that Respondent:

- threatened to kill or harm Nurse #1;
- asked Nurse #1 to have a personal relationship or to have his baby;
- told Nurse #1 that he had driven past her house during the night;
- offered to pay off Nurse #1's car if she dropped her complaint; or
- made inappropriate sexual comments to patients.

### CONCLUSIONS OF LAW

The Board is authorized to revoke, suspend, or otherwise discipline a licensee for engaging in unethical conduct or practice harmful or detrimental to the public.<sup>1</sup> The Board is also authorized to discipline a licensee for willfully or repeatedly violating the laws or rules governing the practice of medicine in Iowa.<sup>2</sup>

At all times relevant to this case, Board rule 653 IAC 23.1(4) provided:

**23.1(4)** Unprofessional conduct. Engaging in unethical or unprofessional conduct includes, **but is not limited to**, the committing by a licensee of an act contrary to justice or good

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<sup>1</sup> Iowa Code sections 147.55(3), 272C.10(3)(2007).

<sup>2</sup> Iowa Code sections 147.55(8), 272C.10(8)(2007).

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 or 653-13.7 (147,148,272C) or 653-13.20 (147, 148) as interpreted by the board.

(Emphasis added). In addition, at all times relevant to this case, Board rule 653 IAC 13.7(6) prohibited physicians from engaging in sexual harassment:

**13.7(6) *Sexual harassment.*** A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker's performance or creates an intimidating, hostile or offensive work environment.

Respondent has practiced medicine in eight different states since 1989. Based on this record, it appears that this is the first time a state licensing board has filed charges against him. The Board reviewed the available record, including BMI's evaluation, and was unable to conclude, by a preponderance of the evidence, that Respondent asked Nurse #1 to enter into a sexual relationship with him or threatened her with serious bodily harm. Respondent denies it, and the BMI evaluation concluded that he was being truthful. Although BMI's conclusions are not binding on the Board, the available evidence was insufficient to support a contrary conclusion.

It is likely that Respondent commented to Nurse #1 that he would hunt her down and find her if she ever left him. Nurse #3 was present with Respondent and Nurse #1 when Respondent made the comment and when Respondent showed Nurse #1 a property parcel on the internet. Nurse #3 credibly testified to this at hearing. However, Nurse #3 also testified that Respondent made the comment in a joking manner. She did not testify that Respondent told Nurse #1 that he would kill or bury her. Moreover, it appears that both nurses thought Respondent was joking since neither one reported the comment to anyone nor did they discuss the comment with each other.

The preponderance of the evidence supports the conclusion that Respondent made numerous unwanted telephone calls to Nurse #1's cell phone on February 23 and 24, 2008, and later asked at least one other person to contact Nurse #1 on his behalf. Respondent admits that he made many calls to the personal cell phone

of Nurse #1 in an attempt to resolve their dispute although he denies asking anyone else to call her. However, one physician admitted to the Board's investigator that he contacted Nurse #1 several times at Respondent's request after she filed her complaint. This constituted unprofessional conduct.

The preponderance of the evidence also established that Respondent behaved unprofessionally when he insisted on meeting alone with Nurse #2, when he made several offensive statements to Nurse #2, and when he threatened to "crush" Nurse #2 and threatened her with losing her job. Nurse #2's contemporaneous complaint, her written report, and her consistent testimony at hearing were more credible than Respondent's claim that he calmly accepted Nurse #2's explanation and made none of the statements she reported. If Respondent believed that Nurse #2 was spreading untrue rumors about him and Nurse #1 he should not have asked Michelle Waltz to leave their meeting.

The Board also believed the testimony of Employee #1 that Respondent asked her, in a joking manner, to leave her husband and have his child. Respondent's complete denial of this comment was not credible. This type of comment is clearly unprofessional and is inappropriate in a work setting, even if both parties to the conversation understand that it is only meant as a joke. Based on Employee #1's testimony describing their work relationship and the manner in which the comment was made, the Board did not believe that Respondent intended this comment to be taken seriously by Employee #1 or that she took it seriously at the time it was made. However, it appears that Employee #1 became nervous about the comment after hearing about the allegations made by other employees.

Based on the limited evidence in this record, the Board was unable to conclude that Respondent made inappropriate comments to patients. It has been more than three years since the comments were allegedly made. None of the patients filed a complaint against Respondent, and none of the nurses filed any complaint or incident report at the time the comments were allegedly made to the patients.

The preponderance of the evidence in this record supports a finding of unprofessional conduct, in violation of Iowa Code sections 147.55(3), 272C.10(3), and 653 IAC 23.1(4), as charged in Count I of the Statement of Charges. Respondent acted unprofessionally when he made repeated unwanted telephone calls to Nurse #1, when he asked another physician to call Nurse #1 to resolve their dispute, when he made offensive and threatening statements to Nurse #2,

and when he made unprofessional comments to Employee #1. However, the Board was unable to conclude that Respondent has engaged in "pattern of sexual harassment in the practice of medicine," as alleged in Count II.

## DECISION AND ORDER

### IT IS THEREFORE ORDERED:

1. **CITATION AND WARNING:** Respondent is hereby CITED for engaging in a pattern of unethical or unprofessional conduct in the practice of medicine. Respondent is hereby WARNED that engaging in such conduct in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

2. **CIVIL PENALTY:** Respondent shall pay a civil penalty in the amount of \$5,000 within twenty (20) days of the date of this Decision and Order. The civil penalty 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 into the State General Fund.

3. **PROFESSIONAL BOUNDARIES PROGRAM:** Respondent shall successfully complete a Board-approved professional boundaries program within sixty (60) days of the date of this order. Respondent shall cause a report to be sent to the Board directly from the professional boundaries program at the conclusion of the program. Respondent is responsible for all costs associated with the program.

4. **FIVE YEARS PROBATION.** Respondent's Iowa medical license, number 35342, shall be placed on probation for a period of five (5) years, subject to the following terms and conditions:

A. **Monitoring Program:** Respondent shall establish a monitoring program with Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686, Ph. #415-281-3654. Respondent shall fully comply with all requirements of the monitoring program.

- B. **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Decision and Order. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
  
- C. **Board Appearances:** Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Such appearance shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
  
- D. **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 the quarterly report required under this Order. The monitoring fee shall be sent to: Coordinator of Monitoring Programs, Iowa Board of Medicine, 400 SW 8<sup>th</sup> 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.
  
- 5. **Obey All Laws:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine.
  
- 6. 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 272C and 653 IAC 25.

**IT IS FURTHER ORDERED**, in accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 25.33(3). All 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 department of public health, within thirty days of the issuance of a final decision.

Dated this 25th day of August, 2011.

A handwritten signature in black ink, appearing to read "Siroos Shirazi". The signature is written in a cursive style and is positioned above a horizontal line.

Siroos Shirazi, M.D.

Chairperson

Iowa Board of Medicine

cc: David L. Brown, Hansen, McClintock & Riley, 218 6<sup>th</sup> Avenue, 8<sup>th</sup> Floor,  
Des Moines, IA Des Moines, Iowa 50309-4092 (CERTIFIED)  
R. Ronald Pogge, Hopkins and Huebner, P.C., 2700 Grand Avenue, Suite  
111, Des Moines, IA 50312  
Theresa O'Connell Weeg, Department of Justice, Hoover Bldg, 2<sup>nd</sup> Fl.  
Kent Nebel, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C (LOCAL)

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.

**BEFORE THE IOWA BOARD OF MEDICINE**

\*\*\*\*\*

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

**AMJAD BUTT, M.D., RESPONDENT**

**File No. 02-08-154**

\*\*\*\*\*

**STATEMENT OF CHARGES**

\*\*\*\*\*

**COMES NOW** the Iowa Board of Medicine on September 17, 2008, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 35342 on September 22, 2003. Respondent's Iowa medical license went inactive due to non-renewal on April 1, 2008.

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

1. Hearing. A disciplinary contested case hearing shall be held on December 1, 2008, before the Board. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Board 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 Statement of Charges you are required by 653 IAC 24.2(5)(d) to file an Answer. In that Answer, you should 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. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 IAC 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 IAC 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

5. 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: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

6. 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 should direct any questions to Kent M. Nebel, J.D., the Board's Legal Director at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

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

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

8. 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 and 653 IAC 25.

9. 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 IAC 25.20.

## **C. SECTIONS OF STATUTES AND RULES INVOLVED**

### **COUNT I**

10. 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 in the practice of medicine.

### **COUNT II**

11. Respondent is charged pursuant to Iowa Code sections 147.55(8) and 272C.10(8), and 653 IAC 23.1(4) and 13.7 (6) with willfully or repeatedly violating the laws and rules governing the practice of medicine in Iowa when he inappropriately engaged in a pattern of sexual harassment in the practice of medicine.

## **STATEMENT OF THE MATTERS ASSERTED**

12. Respondent is an Iowa-licensed physician who formerly practiced cardiology in Clinton, Iowa.

13. The Board received information which indicates that Respondent was terminated from his employment in Clinton, Iowa, following allegations that he inappropriately engaged in a pattern of sexual harassment in his medical practice.

14. The Board alleges that Respondent engaged in a pattern of unethical or unprofessional conduct and sexual harassment in the practice of medicine, including, but not limited to the following:

- A. Respondent asked a female subordinate co-worker to enter into a romantic relationship with him he subsequently made numerous harassing telephone calls and threatened to cause serious bodily harm to the female subordinate co-worker;
- B. Respondent allegedly made inappropriate sexual comments to female co-workers on numerous occasions;
- C. Respondent allegedly made inappropriate comments to at least three patients about their sex lives; and
- D. Respondent allegedly made threatening statements to, and harassed, another female subordinate.

## E. SETTLEMENT

15. 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 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

16. On this 17<sup>th</sup> day of September 2008, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



Yasyn Lee, M.D., Chairperson  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686