

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE)	FILE NO. 02-12-420
STATEMENT OF CHARGES AGAINST:)	DIA NO. 12IMB012
)	
AMJAD BUTT, M.D.)	FINDINGS OF FACT,
Respondent)	CONCLUSIONS OF LAW,
)	DECISION AND ORDER

Date: January 31, 2013.

On July 26, 2012, the Iowa Board of Medicine (Board) filed a Statement of Charges against Amjad Butt, M.D. (Respondent) charging him with willful or repeated violation of a lawful order of the board, in violation of Iowa Code sections 148.6(2)(i) and 653 IAC 23.1(11).

The hearing was held on December 6, 2012, before the following quorum of the Board: Colleen Stockdale, M.D., M.S., Chairwoman; Jeff Snyder, M.D., Vice Chair; Julie Perkins, M.D.; Michael Thompson, D.O.; Allen Zagoren, D.O.; and Diane Clark, public member. Respondent appeared by telephone and was represented by attorneys David L. Brown and Jay Grimes. 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.

On December 6, 2012, Respondent filed a Motion to Dismiss the Statement of Charges for lack of subject matter jurisdiction. The parties were heard orally on the motion prior to hearing. Following closed session deliberations, pursuant to Iowa Code section 21.5(1)(f), the Board unanimously approved a motion denying the Motion to Dismiss. The Board's written ruling on the Motion to Dismiss is included in the Conclusions of Law section of this Decision and Order.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges; Initial Prehearing Conference Scheduling Order; Amended Hearing Order; Respondent's Motion to Continue Or In The Alternative Motion to Stay; State's Resistance to Motion to Continue or Motion to Stay; ALJ Ruling Denying Motion to Continue or Motion to Stay; Respondent's Interlocutory Appeal of ALJ Ruling; Respondent's Motion to Appear Telephonically; Answer; Motion to Dismiss; Board's Order Re: Respondent's Interlocutory Appeal; testimony of the witnesses and State Exhibits 1-23 (see Exhibit Index for Description).

FINDINGS OF FACT

1. Since 1989, Respondent has practiced medicine in eight states, including Iowa. 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. Since October 2008, Respondent has been working at the Vaughn Regional Medical Center in Selma, Alabama, in a solo medical practice. (Exhibits 2, 81, 82)

2. Respondent practiced medicine in Clinton, Iowa, from August 2007 until March 2008. On September 17, 2008, the Board filed a Statement of Charges charging Respondent with engaging in unethical or unprofessional conduct in the practice of medicine and engaging in a pattern of sexual harassment in the practice of medicine. (Exhibits 1, 2)

The Board issued its Findings of Fact, Conclusions of Law, Decision and Order on August 25, 2011, following an evidentiary hearing. In summary, the Board's Order concluded that Respondent engaged in unprofessional conduct, in violation of Iowa Code section 147.55(3), 272C.10(3), and 653 IAC 23.1(4) when he:

- made repeated unwanted telephone calls to Nurse #1 and asked another physician to call Nurse #1 on his behalf after she filed a written complaint against him;
- made offensive and threatening statements to Nurse #2; and
- made unprofessional comments to Employee #1.

Based on the evidence presented, the Board was unable to conclude that Respondent engaged in a pattern of sexual harassment in the practice of medicine. In its August 25, 2011, Decision and Order, the Board issued Respondent a Citation and Warning for engaging in unprofessional conduct.

Respondent was also required to:

- Pay a civil penalty of \$5,000 within twenty (20) days of the Decision and Order;
- Successfully complete a Board-approved professional boundaries program within sixty(60) days of the date of the order; and
- Pay a \$75 hearing fee within thirty days.

Respondent was also placed on probation for a period of five (5) years, subject to the following terms and conditions:

- A. **Monitoring Program:** Respondent was required to establish a monitoring program with the Board's Compliance Monitor and to fully comply with all requirements of the monitoring program.
- B. **Quarterly Reports:** Respondent was required to file sworn quarterly reports with the Board that attested to his compliance with all the terms and conditions of this Decision and Order. The reports were to be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of his probation.
- C. **Board Appearances:** Respondent was required to make appearances before the Board or a Board committee annually or upon request. Respondent was to be given reasonable notice of the date, time and location for the appearances.
- D. **Monitoring Fee.** Respondent was required to pay a \$100 monitoring fee each quarter for the duration of his probation to cover the Board's monitoring expenses in this matter. The monitoring was to be received by the Board with the quarterly report required under this Order.

(Exhibit 2; Mary Knapp testimony)

3. On September 19, 2011, the Board's Compliance Monitor, Shantel Billington, sent Respondent an email notifying him that his \$5,000 civil penalty and \$75 hearing fee were overdue. Respondent was instructed to submit a check or money order in the amount of \$5,075 within ten days or to notify Ms. Billington if he was unable to pay the full amount. Respondent did not reply to this email. (Exhibit 9; Exhibit 22, p. 83; Exhibit 23, p. 87)

4. In November 2011, Mary Knapp became a new Compliance Monitor for the Board. On November 15, 2011, Ms. Knapp sent a letter introducing herself to Respondent as his new contact with the Board. The letter was sent to Respondent's address of record in Havertown, Pennsylvania. Although Respondent was practicing medicine in Alabama, he had asked the Board to use the Pennsylvania address for all written correspondence. Ms. Knapp reminded Respondent that he still had not paid the \$5,000 civil penalty or \$75 hearing fee. She also reminded Respondent that he had been required to attend a Professional Boundaries program within sixty days of the Board's Decision and Order and to file quarterly reports, make Board appearances, and pay a monitoring fee. Ms. Knapp asked Respondent to reply to her by November 30, 2011, but he failed to reply to this letter. (Exhibit 10; Knapp testimony)

On December 2, 2011, Mary Knapp sent Respondent a follow-up email asking him to contact her to discuss the Board's Order. (Exhibit 11) Respondent left a voice mail message for Ms. Knapp on December 2, 2011 and told her that he was not complying with the Board's Order because he was appealing it. Respondent referred Ms. Knapp to his attorney, David Brown. David Brown also sent a letter to Ms. Knapp, in which he advised that they were appealing the Board's Order and asked her to visit with him to discuss how they should proceed. (Exhibit 12; Knapp testimony)

After receiving Respondent's email and Mr. Brown's letter, Ms. Knapp consulted Kent Nebel, the Board's Director of Legal Affairs. Mr. Nebel advised Ms. Knapp that she may want to meet with Mr. Brown but that Respondent was still required to fully comply with the terms of the Board's order even if he had filed an appeal. Mr. Nebel further advised Ms. Knapp that she should establish firm written deadlines for Respondent's compliance and refer his case to the Board if he did not timely comply. (Knapp testimony; Exhibit 8, p. 54; Exhibit 13)

On December 14, 2011, Ms. Knapp wrote to Respondent and notified him that he was required to comply with the terms of the Board's Order even if he had filed an appeal. Ms. Knapp further advised Respondent that if he did not comply the

Board could file charges against him. Ms. Knapp extended the deadline established in her prior letter to January 3, 2012. Ms. Knapp also informed Respondent that he would be appearing before the Board on either January 12, 2012, or January 13, 2012, although the date and time of his appearance had not yet been confirmed. Respondent's attorney, David Brown, was sent a copy of this letter. (Exhibit 14; Knapp testimony)

5. On December 16, 2011, Ms. Knapp sent Respondent a certified letter notifying him that he was required to appear before the Board on Friday, January 13, 2012, at 9:15 a.m. The letter was sent to Respondent's address of record in Havertown, Pennsylvania. The post office later returned this letter to the Board marked "attempted-not known, unable to forward." (Exhibit 8, p. 54; Exhibit 15; Knapp testimony)

On January 5, 2012, Ms. Knapp received a letter from Mr. Brown asking to meet with her at her earliest convenience to discuss her letter to his client. (State Exhibit 16). Ms. Knapp left Mr. Brown a voice mail message that included her office hours and a request that he call her. (Exhibit 8, p. 55; Knapp testimony)

On January 6, 2012, Ms. Knapp sent Respondent an email reminding him that he had not complied with the January 3, 2012, deadline that was set in her December 14, 2011, letter. Ms. Knapp informed Respondent that she would be referring him to the Board for further charges based on his violation of the Board order. She also informed Respondent that he should be ready to explain his failure to comply with the Board's order at his Board appearance on January 13, 2012. Ms. Knapp sent a copy of this email to attorney David Brown. (Exhibit 17; Knapp testimony)

David Brown left a voice mail message for Ms. Knapp on Saturday evening, January 7, 2012, and asked her to call him. (Exhibit 8, p. 55; Knapp testimony) Ms. Knapp left a return message for Mr. Brown on Monday morning, January 9, 2012. (Knapp testimony; Exhibit 8, p. 55)

6. Respondent filed a Request for a Stay of the Board's order on January 10, 2012. (State Exhibit 3).

7. Respondent failed to appear for his scheduled appearance before the Board on January 13, 2012. (Knapp testimony; Exhibit 8, p. 55) Mr. Brown left another voice mail message for Ms. Knapp on Saturday, January 21, 2012, and

again asked her to call him. On Monday, January 23, 2012, Ms. Knapp emailed Mr. Brown and reminded him of her regular office hours. She advised Mr. Brown to let her know when he wanted to visit with her. (Exhibit 8, p. 55; Exhibit 18; Knapp testimony)

8. On January 24, 2012, the state filed its Resistance to Respondent's request for a Stay of the Board's Order. The Board delegated ruling on the Respondent's stay request to an ALJ. On January 26, 2012, an ALJ issued a Proposed Ruling, which denied Respondent's Request for Stay. (Exhibit 4) Respondent filed a Motion to Reconsider Proposed Ruling on Stay, which was denied by the Board on March 8, 2012. (Exhibit 5).

9. As of July 11, 2012, Respondent still had not paid the \$5,000 civil penalty and \$75 hearing fee as required by the Board's Decision and Order. Respondent also had not attended a Board-approved Professional Boundaries course. Respondent had not submitted any quarterly reports and had not paid any quarterly monitoring fees. (Knapp testimony)

On July 11, 2012, Ms. Knapp sent a certified letter to Respondent, with a copy to attorney David Brown. The letter reminded Respondent that his \$5,000 civil penalty had been due by September 13, 2011. Ms. Knapp told Respondent that the Board would be considering the issue of his unpaid civil penalty at its meeting on July 26, 2012. (Exhibit 19; Knapp testimony)

On July 26, 2012, the Board found probable cause to file the current Statement of Charges against Respondent for his failure to comply with the Board's Order. (Knapp testimony; Exhibit 8, p. 58; Exhibit 39)

Respondent paid the \$5,000 civil penalty on July 31, 2012. (Exhibits 20, 21)

CONCLUSIONS OF LAW

I. Ruling Denying Motion to Dismiss

Respondent's Iowa medical license has been inactive due to non-renewal since April 1, 2008. In his Motion to Dismiss, Respondent asserts that the Board lacks subject matter jurisdiction to discipline him because his Iowa medical license has expired and he has not practiced or lived in Iowa since 2008.

The Iowa Supreme Court has long recognized that a professional license is a property right that cannot be taken away without due process and “the mere failure to renew annually does not lessen the value of that license.”¹ In a series of unpublished decisions, the Iowa Court of Appeals has repeatedly recognized that licensing boards have jurisdiction to discipline licensees whose licenses have lapsed or expired. In *Imber v. Iowa Board of Medical Examiners*,² the Court of Appeals discussed the authority of licensing boards under various provisions of Iowa Code chapter 272C, including board authority to initiate and prosecute disciplinary proceedings against licensees (§272C.3) and to define the process of “inactive licensee re-entry” (§272C.1(3) and §272C.2(2)(f)). The Court found that these code sections illustrated that a licensee could be either “active” or “inactive” and that the legislature gave the Board authority to discipline all licensees, not only those who are actively licensed.³

In *Doe v. Iowa Board of Medical Examiners*,⁴ the Court of Appeals rejected the argument that the Board lacked jurisdiction or authority to pursue disciplinary action against a physician because the physician’s license was lapsed and therefore invalid. Once again, the Court cited to the licensing board’s authority under Iowa Code chapter 272C, as well as Iowa Code section 147.10, and found that the legislature gave the Board authority over all licensees, whether their licenses were active or inactive.⁵

In *Lyons v. Iowa Board of Medicine*,⁶ the Court of Appeals again cited to provisions of Iowa Code Chapter 272C and Iowa Code section 147.10, as well as to the Board’s rules and to the Iowa Supreme Court’s 1944 decision in *State v. Otterholt* and found that the Board had authority to discipline Lyons, notwithstanding the fact that his license lapsed and he did not affirmatively seek reinstatement.⁷

¹ *State v. Otterholt*, 234 Iowa 1286, 1291, 15 N.W.2d 529, 532 (1944); Accord, *Gilchrist v. Bierring*, 234 Iowa 899, 915, 14 N.W.2d 724, 732 (Iowa 1944).

² 730 N.W.2d 209, 2007 WL 601544 (Table, Text in Westlaw), Unpublished Disposition, February 28, 2007.

³ *Id.* at *3, *4.

⁴ 764 N.W.2d 783, 2009 WL 249972 (Table, Text in Westlaw), Unpublished Disposition, Iowa App. February 4, 2009.

⁵ *Id.* at *5, *6.

⁶ 772 N.W.2d 16, 2009 WL 1677149 (Table, Text in Westlaw)

⁷ *Id.* at *3.

Respondent's Motion to Dismiss essentially claims that the legislature's 2008 amendment to Iowa Code section 147.10 reverses the long standing and well-established principle that Boards have authority to discipline licensees who have allowed their licenses to lapse or expire. The Board disagrees.

The 2008 amendment to §147.10, in part, deleted the sentence that stated:

Failure to renew the license within a reasonable amount of time after the expiration shall not invalidate the license, but a reasonable penalty may be assessed by the board.

The 2008 amendment added the following new provision:

2. Each board may by rule establish a grace period following expiration of a license in which the license is not invalidated. Each board may assess a reasonable penalty for renewal of a license during the grace period. Failure of a licensee to renew a license within the grace period shall cause the license to become inactive or lapsed. A licensee whose license is inactive or lapsed shall not engage in the practice of the profession until the license is reactivated or reinstated.

2008 Acts, ch. 1088, §9.⁸

Respondent claims that after this amendment was adopted, a licensee who fails to renew a license in accordance with the Board's rules (653 IAC 9.13(6) and 653 IAC 9.15(2)) *no longer has a license* as it is invalid. Respondent contends that the Board's authority to discipline under Iowa Code section 147.55 and Iowa Code chapters 148 and 272C is entirely predicated upon the existence of a valid license. Respondent asserts that because his license is now invalid, the Board lacks statutory authority, personal jurisdiction, and subject matter jurisdiction to file charges against him. (Motion to Dismiss, pp. 1-2)

The Board rejects Respondent's arguments. The Board derives its authority over expired and lapsed licenses from Iowa Code chapters 147, 148, 277C and the Board's rules. This authority is not predicated on the presumption of an active, valid license. A lapsed or expired license has always been "invalid" for purposes

⁸ This amendment went into effect on July 1, 2008, which was several months after Respondent allowed his license to lapse.

of practicing medicine in this state. This does not mean that the person no longer has a license or that the Board loses its authority to discipline the licensee. It only means that that the person cannot practice medicine in Iowa until the license has been reactivated or reinstated by the Board.

Respondent also asserts that the Board substantively changed its rules to comply with the 2008 amendments to Iowa Code section 147.10 and that these rule changes support Respondent's arguments. The portions of the Board rules cited by Respondent, however, have been substantively the same for years prior to the 2008 statutory amendment to Iowa Code section 147.10.⁹ Only the numbering of the rules has changed. 653 IAC 9.13(6) was previously 9.11(6). 653 IAC 9.15(2) was previously 9.13(2).

Finally, Respondent argues that because Respondent no longer lives or works in Iowa, the Board's action against him has no relation to the purpose of the Board's statutory licensing scheme, which is to protect Iowans. The Board strongly disagrees. Respondent continues to have the legal right to seek reinstatement of his expired Iowa medical license. The Board has disciplined Respondent's Iowa license based on his actions as a physician practicing medicine in this state. Respondent has not complied with the Board's disciplinary order. Iowans will not be protected if this Board and other state Boards allow licensees to ignore one board's disciplinary orders simply because they choose to practice medicine in another state.

IT IS THEREFORE ORDERED that Respondent's Motion to Dismiss is hereby **DENIED**.

II. Failure to Comply

Iowa Code section 148.6(2)(i)(2011) authorizes the Board to discipline a licensee for willful or repeated violation of a lawful rule or regulation adopted by the board or violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing.

653 IAC 23.1(11) provides in relevant part:

653-23.1(272C) The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148,... or 272C..., or the rules promulgated thereunder ...The board may impose any of the

⁹ See, e.g. Iowa Administrative Bulletins, February 28, 2007, January 17, 2007, January 19, 2005.

disciplinary sanctions set forth in 653-subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses...

23.1(11) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing,...

The preponderance of the evidence established that Respondent has violated Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11) by failing to comply with the requirements of the Board's August 25, 2011, Findings of Fact, Conclusions of Law, Decision and Order. Respondent's failure to comply is both willful and repeated. As of the date of the hearing, Respondent had not attended the Board-approved Professional Boundaries course, which was required by the Board's Decision and Order. Respondent also has not filed any quarterly monitoring reports and has not paid any of the quarterly monitoring fees required by the Board's Order. Respondent failed to appear before the Board when requested to do so on January 13, 2012. Respondent has not paid the \$75 hearing fee.

Respondent has had numerous reminders concerning the requirements of the Board's Order and his failure to comply. Board staff has made extraordinary efforts to secure his compliance. Respondent was repeatedly warned that failure to comply could lead to further disciplinary action. Respondent did not present any testimony at hearing to explain his failure to comply with the Board's Order.

DECISION AND ORDER

IT IS THEREFORE ORDERED that for his failure to comply with the Board's August 25, 2011, Decision and Order, Respondent's Iowa medical license is hereby **INDEFINITELY SUSPENDED**, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that Respondent shall pay a \$5,000 civil penalty 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.

IT IS FURTHER ORDERED, in accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of \$75. 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.

IT IS FURTHER ORDERED that Respondent may not apply for reinstatement of his Iowa medical license until he has:

- A. Paid the \$5,000 civil penalty imposed in this Decision and Order;
- B. Paid the \$75 hearing fees for the July 7, 2011 hearing and for the December 7, 2012 hearing (a total of \$150);
- C. Successfully completed a Board-approved Professional Boundaries course;
- D. Paid the five (5) past due quarterly monitoring fees (\$500);
- E. Filed a first quarterly report; and
- F. Made a personal appearance before the Board or a Committee of the Board.

IT IS FURTHER ORDERED that in any reinstatement proceeding, the burden will be on Respondent to establish that the basis for the indefinite suspension of his license no longer exists and that it is in the public interest for his license to be reinstated. See 653 IAC chapter 26. If Respondent's license is reinstated, Respondent shall be placed on probation for a period of five (5) years, subject to monitoring.

Dated this ^{5th} day of January, 2013.

Colleen K. Stockdale MD MS

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

cc: David L. Brown, Hansen, McClintock & Riley, 218 6th Avenue, 8th Floor,
Des Moines, IA Des Moines, Iowa 50309-4092 (CERTIFIED)
Theresa O'Connell Weeg, Department of Justice, Hoover Bldg, 2nd Fl.
(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 STATEMENT OF CHARGES AGAINST

AMJAD BUTT, M.D., RESPONDENT

File No. 02-12-420

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on July 26, 2012, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 35342 on September 22, 2003. Respondent's license went inactive due to non-renewal on June 1, 2008.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on November 1, 2012, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medicine office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

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

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

4. Prehearing Conference. A prehearing conference will be held by telephone on August 22, 2012, at 9:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 IAC 25.15.

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

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

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Theresa O’Connell Weeg at 515-281-6858.

B. LEGAL AUTHORITY AND JURISDICTION

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

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

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

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. Respondent is charged pursuant to Iowa Code sections 148.6(2)(i) and 653 IAC 23.1(11) with willful or repeated violation of lawful order of the board, previously entered by the board in a disciplinary hearing.

D. STATEMENT OF MATTERS ASSERTED

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

13. On September 17, 2008, the Board filed formal disciplinary charges against Respondent alleging that he engaged in unethical or unprofessional conduct and sexual harassment in the practice of medicine in violation of the laws and rules governing the practice of medicine in Iowa.

14. On March 20, 2009, Respondent completed a comprehensive professional sexual misconduct evaluation under direction of Gene G. Abel, M.D., at the Behavioral Medicine Institute of Atlanta (BMI), 1401 Peachtree Street, Suite 140, Atlanta, Georgia.

15. On July 7, 2011, a hearing was held before the Board.

16. On August 25, 2011, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent engaged in unprofessional conduct in the practice of medicine in violation of the laws and rules governing the practice of medicine. However, the Board was unable to conclude that Respondent engaged in a pattern of sexual harassment in the practice of medicine. The Findings of Fact, Conclusions of Law, Decision and Order established the following sanctions:

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 8th 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 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

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.

17. The Board alleges that Respondent failed to pay the \$5,000 civil penalty in a timely manner in violation of paragraph 2 of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order.

18. The Board alleges that Respondent failed to complete a Board-approved professional boundaries program and cause a report to be sent to the Board directly from the professional boundaries program in violation of paragraph 3 of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order.

19. The Board alleges that Respondent failed to file sworn quarterly reports with the Board in violation of paragraph 4(B) of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order.

20. The Board alleges that Respondent failed to make appearances before the Board or a Board committee in violation of paragraph 4(C) of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order.

21. The Board alleges that Respondent failed to make payment of his \$100 quarterly monitoring fees in violation of paragraph 4(D) of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order.

22. The Board alleges that Respondent failed to pay the \$75 disciplinary hearing fee in violation of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order.

E. SETTLEMENT

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

F. PROBABLE CAUSE FINDING

24. On July 26, 2012, the Iowa Board of Medicine found probable cause to file this Statement of Charges.

Colleen K. Stockdale MD MS

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