

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

FRANK S. DOWNS, M.D., RESPONDENT

FILE No. 02-08-568

TERMINATION ORDER

Date: October 29, 2010.

1. Respondent was issued Iowa medical license no. 19752 on July 1, 1975.
2. Respondent's Iowa medical license is active and will next expire on June 1, 2011.
3. The Board has jurisdiction pursuant to Iowa Code Chapters 147, 148 and 272C.
4. Respondent practices family medicine in Boone, Iowa.
5. On November 13, 2008, the Board charged Respondent with violating the terms of an Initial Agreement that he entered into with the Iowa Physician Health Program and suffering from a health condition which may impair his ability to practice medicine with reasonable skill and safety.
6. A hearing was held before the Board on March 31, 2009, and the Board determined that Respondent required counseling and Board monitoring.
7. Respondent has successfully completed the terms and conditions of counseling and Board monitoring.

8. Recently, the Board voted to issue a termination order in this matter based on the following:

- A. Respondent's compliance with the terms and conditions of his Board order;
- B. Respondent's demonstration that he is safe to practice medicine in a competent manner; and
- C. Respondent's cooperation with the Board.

THEREFORE IT IS HEREBY ORDERED: that the terms and conditions placed on Respondent's Iowa medical license are terminated and his license is returned to its full privileges, free and clear of all restrictions.

This Order is approved by the Board on October 29, 2010.



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

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE)	FILE NO. 02-08-568
STATEMENT OF CHARGES AGAINST:)	DIA NO. 08DPHMB027
)	
FRANK S. DOWNS, M.D.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On November 13, 2008, the Iowa Board of Medicine (Board) filed a Statement of Charges against Frank S. Downs, M.D. (Respondent), charging him with three counts:

COUNT I: Violating an Initial Agreement that he entered with the Iowa Physician Health Program (IPHP), pursuant to 653 IAC 23.1(12);

COUNT II: Substance abuse, including but not limited to the excessive use of alcohol, drugs, narcotics, chemicals, or other substances in a manner which may impair his ability to practice medicine with reasonable skill and safety, pursuant to Iowa Code sections 147.55(4), 148.6(2)(h), 272C.10(4) and 653 IAC 23.1(8);

COUNT III: Suffering from a physical, neuropsychological, or mental condition which may impair his ability to practice medicine with reasonable skill and safety, pursuant to Iowa Code section 148.6(2)(h) and 653 IAC 23.1(8).

The hearing was initially scheduled for January 14, 2009 but was later continued. A hearing was held on March 31, 2009 before the following members of the Board: Yasyn Lee, M.D., Chairperson; Rodney Zeitler, M.D.; Janice Galli, D.O.; Jeff Snyder, M.D.; Dana Shaffer, D.O.; and Paul Thurlow, public member. Respondent was represented by attorney Connie Diekema. 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, in accordance with their deliberations.

THE RECORD

The record includes the testimony of the witnesses and State Exhibits 1-17 (See Exhibit Index for description, Exhibit 17 is Respondent's First Lab Testing History)

FINDINGS OF FACT

1. Respondent was issued Iowa medical license number 19752 on July 1, 1975. Respondent's license is active and will next expire on June 1, 2009. Respondent is a board-certified family practice physician and has practiced in Boone, Iowa, for over thirty years. (State Exhibit 3; Testimony of Respondent)
2. On Saturday, April 19, 2008 at 11:50 p.m., Respondent was arrested and charged with operating a motor vehicle while under the influence of alcohol (OWI), in violation of Iowa Code chapter 321J. (State Exhibit 6)
3. On Monday, April 21, 2008, Respondent self-reported his OWI arrest to the Board. Respondent raises and trains Pointer bird dogs. He reported that after attending bird dog trials on Saturday, April 19, 2008, he stopped for beers with his friends and he drank too much. Respondent also reported that he had been depressed for the last few months and that he felt depression was his bigger issue. Board staff directed Respondent to the Iowa Physicians Health Program (IPHP) website. (Testimony of Deb Anglin; Respondent; State Exhibits 4, 5)
4. The Iowa Physicians Health Committee (IPHC) evaluates, assists, and monitors the recovery, rehabilitation, or maintenance of licensees who self-report impairments and serves as both an advocate for licensee's health and a means to protect the health and safety of the public.¹ To be eligible for participation in the IPHP, a licensee must self-report an impairment or suspected impairment directly to the coordinator of the IPHP and be determined by the IPHC to be an appropriate candidate for participation in the IPHP. A licensee may also be referred to the IPHP by the Board.² A licensee's participation in the IPHP is confidential.³

¹ 653 IAC 14.3.

² 653 IAC 14.5.

³ 653 IAC 14.9.

5. On April 22, 2008, the IPHP offered Respondent an Initial Agreement to facilitate evaluation of his case and provide for his cursory participation in the program until a decision was made about his need to participate in the program. Respondent signed the Confidential Initial Agreement on April 30, 2008. Respondent agreed to comply with the terms and conditions of the Initial Agreement until the IPHP determined whether he was eligible to participate in the program and he executed a confidential contract or the IPHP determines that he is not eligible to participate and his case is closed. The Initial Agreement stated, in pertinent part, that Respondent:

- agreed that his ability to properly practice medicine "was/may become impaired by reason of depression and substance abuse."
- agreed to comply with the recommendations of his current treating physician, other health care providers, and all recommendations of the IPHP.
- agreed to undergo evaluation at an IPHP approved facility at the earliest available appointment.
- was not currently practicing medicine and may not resume practice without IPHP approval.
- (State Exhibits 7, 8)

6. On May 8, 2008, Respondent submitted to a multidisciplinary assessment at Resurrection Health Care in Oak Park, Illinois. On June 4, 2008, Resurrection issued its Summary Evaluation Report based on testing and interviews of Respondent and collateral sources. The CEO of the hospital where Respondent worked has known him for fifteen years and reported that he is well respected by nursing staff, patients, and peers and is judged to be one of the top physicians on staff. There have been no patient complaints.

Respondent reported a stable 30-year drinking pattern of 2-3 beers at home after work and sometimes four beers on a Saturday. He does not drink when on-call. Respondent further reported several recent losses including the deaths of his parents, several close friends, and the loss of several dogs. Respondent reported that his practice partner had been prescribing an anti-depressant medication for Respondent since November 2007.

Following the evaluation, the facility diagnosed Respondent on Axis I with Depressive Disorder, Not Otherwise Specified; Major Depression, Recurrent, Severe, Without Psychotic Features; and Hazardous Drinking.

The report concluded that there was no evidence in the test results to suggest the presence of alcohol abuse or dependence. It further concluded that while Respondent's test findings revealed symptoms of a clinical level of depression, the negative effects of the symptoms may be ameliorated with a combination of well-titrated psychiatric and psychotherapy treatment in collaboration with a primary care physician.

The assessment report recommended, in part, that Respondent:

- participate fully and comply with IPHP advocacy and monitoring protocols for the next 12 months, approved Respondent's return to practice while being monitored by the IPHP;
- abstain from alcohol and other mood-altering substances for the next 12 months;
- desist from medical self-treatment or treatment by colleagues in his medical practice;
- receive a comprehensive physical examination (including vision and hearing) and labs to rule out possible co-existing conditions;
- if physical conditions are ruled out, evaluation and ongoing treatment by an adult psychiatrist who specializes in addictions toward the goal of stabilizing his mood;
- should a psychiatrist recommend a regimen of psycho pharmaceuticals, Respondent should demonstrate a capacity to comply with psychiatric treatment over the next 12 months;
- a combined treatment approach by both a psychiatrist and a therapist, both approved by the IPHP, for weekly individual psychotherapy. Cognitive behavioral therapy was recommended due to his strong family history for clinical depression and his sustained clinical level of depressive symptomatology;
- family therapy with his wife;
- continue meaningful social ties within his dog community because social networks and relationships

foster a sense of meaning, offer social support, an increase an individual's ability to cope with stress.

(Testimony of Deb Anglin; State Exhibit 9)

7. Respondent started participating in the FirstLab chemical screening program on June 5, 2008. (State Exhibit 14) On June 18, 2008, the IPHP offered Respondent a Physician Health Contract, to be effective from the date signed until April 21, 2013. The proposed contract provided, in part, that Respondent:

- would be treated by a psychiatrist and therapist, mutually agreed upon by Respondent and the IPHP. Respondent could submit names and curriculum vitas of three candidates for Recovery Program Monitor, psychiatrists, therapists/aftercare counselors, and worksite monitors. The Recovery Program Description attached to the contract listed Dr. Hauser in Coralville, Iowa as the designated Recovery Program Monitor and Dr. Rios in Ames as the therapist.
- would participate in the chemical screening program through FirstLab. During the first year of the contract, Respondent could not travel to a location where UA monitoring is unavailable.

(Testimony of Deb Anglin; State Exhibit 10)

8. On June 26, 2008, Respondent replied to the proposed Physician Health Contract in writing and asked to meet with the committee members. Respondent objected to being required to sign a five year contract, objected to Dr. Hauser as too far away, requiring a three hour drive, and objected to Dr. Rios because he has no relationship with her. He stated that he had an appointment scheduled with his psychiatrist, Dr. Jerome Greenfield, in early July and would be submitting other names to the committee based on Dr. Greenfield's recommendations. Respondent also had concerns that he would not be allowed to travel for week long dog trial trips already planned to remote areas of South Dakota and West Texas because he could not locate a drug testing site near the trials, even though Resurrection encouraged him to continue to work with his dogs. (State Exhibit 11)

9. Respondent's Physician Health Contract selected Dr. Hauser in Coralville, Iowa, to serve as Respondent's psychiatrist because he is both an addictionologist and a psychiatrist. Deb Anglin, Coordinator for the IPHP felt that the distance was not prohibitive for Respondent, particularly because Respondent was only required to see Dr. Hauser every three months and because Dr. Hauser was planning to open a Grinnell office, which would be a three hour round trip drive for Respondent. When she received Respondent's letter, she was concerned about his selection of Dr. Greenfield as his psychiatrist because Dr. Greenfield is a member of the Iowa Physician Health Committee (IPHC). She contacted Dr. Greenfield regarding this concern, and Dr. Greenfield decided to cancel Respondent's appointment for July 8, 2008. On July 23, 2008, Ms. Anglin sent Respondent an email telling him that the contract terms would remain the same and further informing him that Dr. Hauser had an office in Grinnell and Dr. Rios was in Ames. Respondent did not reply. (Testimony of Deb Anglin; State Exhibit 12)

10. Deb Anglin contacted Respondent on August 13, 2008. He continued to object to the contract, including the impairment language and the selection of Dr. Hauser and Dr. Rios as his psychiatrist and therapist. He objected to the travel time required to see Dr. Hauser and lacked confidence in Dr. Rios based on things that he had heard. He stated that he would provide alternative names but did not do so. Ms. Anglin told him that his case would be turned over to the Board if he did not sign the contract. (Testimony of Deb Anglin; State Exhibit 12)

11. On October 6, 2008, Respondent was notified by email that the IPHC met, reviewed his case, and voted to refer him to the Board unless a signed contract was received by October 20, 2008. Respondent was further advised that one of the committee members, Dr. Peter Wolfe, had offered to discuss the matter with him. Ms. Anglin documented a conversation with Dr. Wolfe in which he related to her that he had spoken to Respondent and had agreed that Respondent could see Dr. Wadle, a Des Moines psychiatrist, rather than Dr. Hauser. (Testimony of Deb Anglin; State Exhibits 4, 13, 15) However, Respondent maintains he was never told that an alternative psychiatrist would be approved. (Testimony of Respondent)

12. On October 21, 2008, Deb Anglin notified Respondent that his case was being referred to the Board due to his failure to return a signed contract, as required by the Initial Agreement that he signed on April 30, 2008. (State Exhibit 15) The Board filed charges on November 13, 2008. (State Exhibit 1)

13. Respondent reports that he has not consumed any alcohol since his OWI arrest. Respondent has continued to participate in the First Lab chemical screening program from June 5, 2008 to the present. All test results have been negative. However, Respondent did fail to call in to the system on 35 different days, including 2 days when he was scheduled for testing. Respondent testified that most of the missed calls occurred when he was out of town. (Testimony of Respondent; Deb Anglin; State Exhibit 17)

14. As of the date of hearing, Respondent was not being treated by either a psychiatrist or a therapist. He continued to be treated for depression by his practice partner, who is a family practitioner. Respondent has not had a comprehensive physical examination but reported feeling significantly better. Respondent does have a strong support system of family, friends, and co-workers. (Testimony of Respondent)

CONCLUSIONS OF LAW

COUNT I

The legislature has authorized the Board to establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any physical or mental disorder or disability, and who self-report the impairment to the committee, or who are referred by the Board to the committee. The legislature also authorized the Board to adopt rules for the establishment and administration of the committee, including grounds for disciplinary action for noncompliance with committee decisions. Iowa Code section 272C.3(1)(k)(2007).

653 IAC 23.1(12) provides, in relevant part:

653-23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 252J,

261, or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder... The board may impose any of the 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(12) Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

The preponderance of the evidence established that Respondent violated the Initial Agreement he entered into with the IPHP by failing to sign a recovery contract after the IPHP determined he was eligible to participate in the program. Respondent has violated 653 IAC 23.1(12).

COUNT II

The Board is authorized to discipline physicians for habitual intoxication or addiction to the use of drugs. Iowa Code sections 147.55(4), 272C.10(4)(2007).

Iowa Code section 148.6(2)(h)(2007) provides, in relevant part:

148.6 Revocation.

...

2. Pursuant to this section, the board may discipline a licensee who is guilty of any of the following acts or offenses:

...

h. Inability to practice medicine...with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material...

The state failed to establish by a preponderance of the evidence that Respondent is unable to practice medicine with reasonable skill and safety due to substance abuse as alleged in Count II. The facility that evaluated Respondent was unable to identify any evidence that he suffers from alcohol abuse or alcohol dependence. Respondent's single OWI does not provide a sufficient basis upon which to conclude that

Respondent's ability to safely practice medicine is impaired due to substance abuse.

COUNT III

The Board is authorized to discipline licensees for physical or mental impairments, including but not limited to any physical, neurological or mental condition which may impair a physician's ability to practice the profession with reasonable skill and safety. Iowa Code section 148.6(2)(h) and 653 IAC 23.1(8) (2007).

148.6 Revocation.

...

2. Pursuant to this section, the board may discipline a licensee who is guilty of any of the following acts or offenses:

...

h. Inability to practice medicine...with reasonable skill and safety by reason... or as a result of a mental or physical condition...

The state established by a preponderance of the evidence that Respondent suffers from a mental condition which may impair his ability to practice medicine with reasonable skill and safety, as alleged in Count III. This conclusion is supported by the evaluating facility's written report, which diagnosed Respondent with depressive disorder, NOS, and major depression, recurrent and severe. The evaluating facility and IPHP both determined that Respondent's present condition requires ongoing and monitored mental health treatment in order to ensure that he continues to be able to practice medicine with reasonable skill and safety. The Board noted that Respondent has not initiated psychiatric care and therapy on his own and that he continues to be treated by his practice partner, contrary to the recommendations of the evaluating facility.

Although this Decision and Order does not conclude that Respondent suffers from substance abuse or dependence, the evaluation report recommended that Respondent abstain from alcohol and other mood altering substances for 12 months. The Board agrees that abstention from alcohol will assist Respondent in addressing and treating his depression.

SANCTION

The Board believes that the evaluating facility outlined a reasonable and appropriate approach to managing and monitoring Respondent's mental health conditions. Since it is no longer possible for Respondent to participate in IPHP, the Board is establishing a monitoring program for Respondent through this Decision and Order. The Board was not persuaded that it is necessary for Respondent to continue participation in the First Lab chemical screening program. Attendance at AA/NA meetings was not recommended by the evaluating facility. At this time it appears that Respondent's compliance with the requirement that he abstain from alcohol and medications not duly prescribed can be effectively monitored through random drug and alcohol screening. The monitoring program outlined in this Decision and Order shall continue until the Board is persuaded that Respondent has obtained maximum benefits. The Board elected not to impose a separate sanction for Respondent's failure to comply with the IPHP Initial Agreement.

ORDER

IT IS THEREFORE ORDERED that Iowa medical license number 19752, issued to Frank S. Downs, M.D., is hereby subject to the following monitoring terms and conditions:

- A. **Monitoring Program:** Respondent shall contact Shantel Billington, Monitoring Programs, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654 to establish a monitoring program. Respondent shall fully comply with all requirements of the monitoring program.
- B. **Alcohol Prohibition:** Respondent shall not consume alcohol.
- C. **Controlled or Prescription Drug Use:** Respondent shall not use any controlled or prescription drug in any form unless it has been prescribed for Respondent's use by another duly licensed treating physician or other qualified treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug.

- D. **Random Alcohol and Drug Screening Program:** Respondent shall provide random blood or urine specimens when required. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening, all costs of which shall be paid by Respondent.

- E. **Comprehensive Physical Evaluation:** Respondent shall have a comprehensive physical evaluation, including vision and hearing, and labs to rule out possible coexisting conditions which could be contributing to or influencing his mental health condition. This examination may be not be provided by one of Respondent's practice partners or co-workers.

- F. **Psychiatric Treatment:** Respondent shall obtain psychiatric treatment and medication management from a psychiatrist with additional qualifications in addictions approved by the Board. The treating psychiatrist shall submit written quarterly reports to the Board no later than 1/20, 4/20, 7/20, and 10/20 of each year of this Order. Respondent shall continue in psychiatric treatment until termination of treatment is recommended by his psychiatrist and approved by the Board.

- G. **Therapy:** Respondent shall receive ongoing weekly individual therapy from a therapist approved by the Board. Respondent's therapist shall submit written quarterly reports to the Board no later than 1/20, 4/20, 7/20, and 10/20 of each year of this Order. Respondent shall continue in therapy until termination of treatment is recommended by his therapist and approved by the Board.

- H. **Worksite Monitor (WSM):** Respondent shall submit for Board approval the name of a physician or other Board-approved healthcare professional who regularly observes and/or supervises Respondent in Respondent's primary practice setting to serve as a worksite monitor. The Board shall provide the worksite monitor with a copy of all Board orders related to this matter. The worksite

monitor shall provide a written statement indicating that the monitor has read and understands the Board orders related to this matter and agrees to act as the worksite monitor under the terms of this agreement. The worksite monitor shall agree to inform the Board immediately if there is evidence of substance abuse or professional misconduct. The monitor shall submit written quarterly reports to the Board concerning Respondent's progress not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

- I. **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.
- J. **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.
- K. **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.

IT IS FURTHER ORDERED that these monitoring terms and conditions shall continue until the Board has determined that Respondent has obtained maximum benefit from the monitoring program.

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. 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 13th day of May, 2009.



Yasyn Lee M.D.
Iowa Board of Medicine

cc: Theresa O'Connell-Weeg, Assistant Attorney General
Connie Diekema, Respondent's Attorney

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

FRANK S. DOWNS, M.D., RESPONDENT

File No. 02-08-568

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine on November 13, 2008, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 19752 on July 1, 1975. Respondent's Iowa medical license is active and will next expire on June 1, 2009.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on January 14, 2009, 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 8th 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, 2nd 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 653 IAC 23.1(12) for violating an Initial Agreement that he entered into with the Iowa Physician Health Program (IPHP).

COUNT II

11. Respondent is charged pursuant to Iowa Code sections 147.55(4), 148.6(2)(h) and 272C.10(4) and 653 IAC 23.1(8) with substance abuse which includes, but is not limited to, the excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner which may impair his ability to practice medicine with reasonable skill and safety.

COUNT III

12. Respondent is charged pursuant to Iowa Code section 148.6(2)(h) and 653 IAC 23.1(8) with suffering from a physical, neuropsychological or mental condition which may impair his ability to practice medicine and surgery with reasonable skill and safety.

STATEMENT OF THE MATTERS ASSERTED

13. Respondent is an Iowa-licensed physician who practices family medicine in Boone, Iowa.

14. On April 19, 2008, Respondent was arrested and charged with operating a motor vehicle while under the influence of alcohol (OWI) in violation of Iowa Code chapter 321J.

15. The Board received information which indicates that Respondent suffers from a mental health condition.

16. On April 30, 2008, Respondent entered into an Initial Agreement with the Iowa Physician Health Program (IPHP) for substance abuse and mental health assessment and monitoring. Respondent agreed to fully comply with the requirements of the IPHP Initial Agreement.

17. Recently, the IPHP voted to refer Respondent to the Board for formal disciplinary action after Respondent violated the terms of the Initial Agreement that he entered into with the IPHP on April 30, 2008, when he subsequently refused to enter into an IPHP Physician Health Contract for further substance abuse and mental health monitoring.

E. SETTLEMENT

18. 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

19. On November 13, 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 8th Street, Suite C
Des Moines, Iowa 50309-4686