

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

THOMAS W. FAGG, D.O., RESPONDENT

FILE Nos. 03-03-581 & 03-09-234

\*\*\*\*\*

TERMINATION ORDER

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Date: January 13, 2015.

1. Respondent was issued Iowa medical license no. 02388 on October 16, 1989.
2. Respondent's Iowa medical license is active and will next expire on August 1, 2016.
3. **Practice Setting:** Respondent currently practices emergency medicine in Jefferson, Iowa.
4. **Statement of Charges:** On April 8, 2011, the Board filed formal disciplinary charges against Respondent alleging that he failed provide appropriate treatment to a teenage patient who presented to the emergency department at Greene County Medical Center in Jefferson, Iowa, in 2006, and failed to respond to emergency department pages in a timely manner when he was on call on numerous occasions and failed to dictate hospital notes in a timely manner.

5. **Settlement Agreement:** On January 13, 2012, Respondent entered into a Settlement Agreement with the Board to resolve the pending disciplinary charges. The Board issued Respondent a Citation and Warning and ordered him to pay a \$2,500 civil penalty. The Board also placed Respondent on probation for a period of three (3) years subject to remediation and Board monitoring.

6. **Completion of Probation:** On January 13, 2015, Respondent successfully completed the terms of his probation.

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

This Order is effective on January 13, 2015.



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Hamed H. Tewfik, M.D., Chairman  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**THOMAS W. FAGG, D.O., RESPONDENT**

**FILE Nos. 03-03-581 & 03-09-234**

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**SETTLEMENT AGREEMENT**

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COMES NOW the Iowa Board of Medicine (Board), and Thomas W. Fagg, D.O., (Respondent), and on January 13, 2011<sup>2</sup>, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this Settlement Agreement to resolve the contested case currently on file.

1. Respondent was issued Iowa medical license No. 02388 on October 16, 1989.
2. Respondent's Iowa medical license is active and will next expire on August 1, 2012.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.

**STATEMENT OF MATTERS ASSERTED**

4. Respondent formerly practiced family medicine in Jefferson, Iowa.

5. The Board received information which raised concerns that Respondent failed to conform to the minimal standard of acceptable and prevailing practice of medicine in Iowa, including, but not limited to, the following:

- A. Respondent failed to respond to emergency department pages in a timely manner when on call on numerous occasions and failed to dictate hospital notes in a timely manner; and
- B. Respondent failed to provide appropriate treatment to a sixteen year-old patient who presented to the emergency department at Greene County Medical Center in Jefferson, Iowa, in 2006, with complaints of nausea, vomiting and a sore throat.

6. On February 4, 2010, the Board ordered Respondent to complete a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP), a nationally recognized physician assessment program. On May 6-7, 2010, Respondent completed a comprehensive clinical competency evaluation and CPEP concluded that Respondent demonstrated medical knowledge needs and recommended that he participate in a supervised Education Intervention which includes an educational preceptor, continuing medical education, self-study and a documentation program.

7. On April 8, 2011, the Board filed formal disciplinary charges against Respondent alleging that he engaged in professional incompetency and practice harmful and/or detrimental to the public and that he may suffer from a physical,

neurological or mental condition which may impair his ability to practice medicine with reasonable skill and safety.

8. On November 9, 2011, Respondent completed a Board-approved assessment to determine whether he may suffer from a physical, neurological or mental condition which may impair his ability to practice medicine with reasonable skill and safety. After careful review of the results of the assessment, the Board concluded that there is currently no evidence that Respondent suffers from a physical, neurological or mental condition which may impair his ability to practice medicine with reasonable skill and safety.

#### **SETTLEMENT AGREEMENT**

9. **CITATION AND WARNING:** Respondent is hereby **CITED** for engaging in professional incompetency and practice harmful and/or detrimental to the public in violation of the laws and rules governing the practice of medicine in Iowa. Respondent is hereby **WARNED** that engaging in such practice in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

10. **CIVIL PENALTY:** Respondent shall pay a **\$2,500 civil penalty**. The civil penalty shall be paid within twenty days of the date of this Order and shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

11. **THREE YEARS PROBATION:** Respondent shall be placed on **probation for a period of three years** subject to the following conditions:

- A. **Board Monitoring Program:** Within thirty days of the date of this Order, Respondent shall establish a Board 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.#515-281-3654. Respondent shall fully comply with all requirements of the monitoring program. If Respondent fails to establish a Board monitoring program within thirty days of the date of this Order or fails to fully comply with the Board monitoring plan, the Board will issue a notice to Respondent that the license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.
- B. **CPEP Recommendations:** Respondent shall fully and promptly comply with all recommendations made by CPEP.
- C. **CPEP Education Intervention:** Within sixty (60) days of the date of this Order, Respondent shall enter into an Educational Plan with CPEP. Respondent shall successfully complete the Educational Plan under the supervision of CPEP, including the following:

- 1) **Educational Preceptor:** Respondent shall submit the name and CV of an Iowa-licensed physician to serve as his educational preceptor as recommended by CPEP. Respondent shall meet regularly with the educational preceptor to review cases, discuss decisions, review specific areas of need and engage in a quality improvement processes.
- 2) **Continuing Medical Education and Self-Study:** Respondent shall complete continuing medical education and self-study as recommended by CPEP.
- 3) **Documentation Self-Study, Course, or Coaching:** Respondent shall complete self-study, a documentation course or coaching as recommended by CPEP.
- 4) **CPEP Reassessment:** Respondent shall complete a reassessment as recommended by CPEP.

D. **Worksite Monitoring Program:** Within thirty days of the date of this Order, Respondent shall establish a worksite monitoring program with the Board.

- 1) Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in the practice of medicine.
- 2) The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.

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

- E. **Quarterly Reports:** Respondent agrees to file sworn quarterly reports attesting to his compliance with the terms of this Order not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
- F. **Board Appearances:** Respondent agrees to appear before the Board annually or upon request for the duration of the period of probation. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
- G. **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. The monitoring fee shall be received by the Board with each quarterly report required under this Order. The monitoring fee shall be sent to: Shantel Billington, Compliance Monitor, 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.

12. Respondent voluntarily submits this Order to the Board for consideration.

13. This Order constitutes the resolution of a contested case proceeding.

14. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

15. 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 272 and 653 IAC 12.2.

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

17. By entering into this Order, Respondent voluntarily waives any rights to a contested case hearing on the allegations contained in the Statement of Charges and waives any objections to the terms of this Order.

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

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



Thomas W. Fagg, D.O., Respondent

Subscribed and sworn to before me on Dec 7, 2011.

Notary Public, State of Iowa.



*Lori L. Seley* Page -8-

This Order is approved by the Board on January 13, 201~~1~~<sup>2</sup>.



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

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**THOMAS W. FAGG, D.O., RESPONDENT**

**FILE Nos. 03-03-581 & 03-09-234**

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**STATEMENT OF CHARGES**

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**COMES NOW** the Iowa Board of Medicine (Board) on April 8, 2011, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2). Respondent was issued Iowa license no. 02388 on October 16, 1989. Respondent's Iowa medical license is active and will next expire on August 1, 2012.

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

1. Hearing. A disciplinary contested case hearing shall be held on July 7, 2011, 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 pre-hearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on May 4, 2011, at 10:00 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 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.

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, 2<sup>nd</sup> 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 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**

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

9. Legal Authority. If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148, and 272C and 653 IAC 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 IAC 25.20.

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

#### **COUNT I**

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

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

**COUNT II**

12. Respondent is charged pursuant to Iowa Code section 147.55(3) and 653 IAC 23.1(3) with engaging in practice harmful or detrimental to the public.

**COUNT III**

13. 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 suffering from a physical or mental impairment. A physical or mental impairment includes, but is not limited to, any physical, neurological or mental condition which may impair his ability to practice medicine with reasonable skill and safety.

## STATEMENT OF MATTERS ASSERTED

14. Respondent practices family medicine in Jefferson, Iowa.

15. The Board received information which raises serious concerns that Respondent failed to conform to the minimal standard of acceptable and prevailing practice of medicine in Iowa, including, but not limited to, the following:

- A. Respondent failed to respond to emergency department pages in a timely manner when on call on numerous occasions and he failed to dictate hospital notes in a timely manner; and
- B. Respondent failed to provide appropriate treatment to a sixteen year-old patient who presented to the emergency department at Greene County Medical Center in Jefferson, Iowa, in 2006, with complaints of nausea, vomiting and a sore throat.

16. On February 4, 2010, the Board ordered Respondent to complete a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP), a nationally recognized physician assessment program. On May 6-7, 2010, Respondent completed a comprehensive clinical competency evaluation and CPEP concluded that Respondent demonstrated medical knowledge needs and recommended that he participate in a supervised Education Intervention which includes an educational preceptor, continuing medical education, self-study and documentation program.

17. The Board received information which indicates that Respondent may suffer from a physical, neurological or mental condition which may impair his ability to practice medicine with reasonable skill and safety.

## 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 IAC 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 April 8, 2011 the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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