

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

SCOTT J. FASSE, M.D., RESPONDENT

FILE No. 02-11-648

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board) and Scott J. Fasse, M.D., (Respondent), and on February 6, 2014⁵, 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.

STATEMENT OF THE MATTERS ASSERTED

1. Respondent was issued Iowa medical license no. 34146 on June 7, 2001.
2. Respondent's Iowa medical license went inactive due to nonrenewal on January 1, 2003.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.
4. **PRACTICE SETTING:** Respondent currently practices family medicine in Omaha, Nebraska.

5. **NEBRASKA DISCIPLINARY ACTION:** On or about July 13, 2011, the Nebraska Department of Health and Human Services, Division of Public Health (Nebraska Board) issued a Findings of Fact, Conclusions of Law, and Order. The Nebraska Board concluded that Respondent engaged in a pattern of negligent practice in his treatment of three patients between December 2004 and November 2005, including the following:

- A. Respondent ordered repeated, unnecessary sinus and chest x-rays;
- B. Respondent prescribed excessive and improper antibiotic therapy; and
- C. Respondent failed to refer patients to an otolaryngologist for specialty care.

The Nebraska Board issued Respondent a public censure; ordered him to obtain a Board-approved practice monitor for a period of one year; successfully complete a Board-approved comprehensive review course and pay a \$5,000 civil penalty.

6. **STATEMENT OF CHARGES:** On October 3, 2014, the Board filed formal disciplinary charges against Respondent charging him with being disciplined by the Nebraska Board in violation of the laws and rules governing the practice of medicine in Iowa.

SETTLEMENT AGREEMENT

7. **CITATION AND WARNING:** Respondent is hereby **CITED** for being disciplined by the Nebraska Board for engaging in a pattern of negligent practice in his treatment of three patients between December 2004 and November 2005. Respondent is hereby **WARNED** that being disciplined by another state licensing board and/or violating the laws and rules governing the practice of medicine in Iowa in the future may result in further disciplinary action against his Iowa medical license.

8. **COMPLIANCE WITH NEBRASKA ORDER:** Respondent has demonstrated that he has fully complied with the terms established by the Nebraska Board.

9. **NOTICE TO THE IOWA BOARD:** Respondent's medical license has been inactive since January 1, 2003. Respondent shall provide the Iowa Board written notice at least ninety (90) days prior to seeking reinstatement of his Iowa medical license at which time he agrees to comply with any additional conditions ordered by the Board which are necessary to protect the public and ensure that Respondent practices medicine with reasonable skill and safety.

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

11. Respondent agrees that the State's counsel may present this Order to the Board for consideration.

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

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

14. In the event Respondent fails to comply with any of the terms of this Order, the Board may initiate action to suspend or revoke Respondent's license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272 and 653 IAC 25.

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

16. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank.

17. The Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

18. This Order is subject to approval of 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.



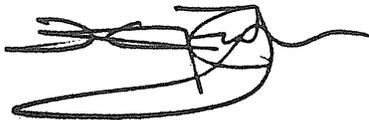
Scott J. Fasse, M.D., Respondent

Witness Connie Dikema Attorney for
Scott J. Fasse, M.D.

Subscribed and sworn to before me on _____, 2014.

Notary Public, State of _____.

This Order is approved by the Board on February 6, 2014⁵.



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

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

SCOTT J. FASSE, M.D., RESPONDENT

FILE No. 02-11-648

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on October 3, 2014, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 34146 on June 7, 2001. Respondent's Iowa medical license went inactive due to nonrenewal on January 1, 2003.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on December 18, 2014, 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 October 29, 2014, at 9:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 Iowa Administrative Code 25.15.

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

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

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Julie Bussanmas at 515-281-5637.

B. LEGAL AUTHORITY AND JURISDICTION

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

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

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

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the order of disciplinary action is prima facie evidence.

STATEMENT OF THE MATTERS ASSERTED

12. Respondent is an Iowa-licensed physician who currently practices family medicine in Omaha, Nebraska.

13. **Nebraska Disciplinary Action:** On July 13, 2011, the Nebraska Department of Health and Human Services, Division of Public Health (Nebraska Board) issued a Findings of Fact, Conclusions of Law, and Order. The Nebraska Board concluded that Respondent engaged in a pattern of negligent practice in his treatment of three patients between December 2004 and November 2005, when he: ordered repeated, unnecessary sinus and chest x-rays; prescribed excessive and improper antibiotic therapy; and failed to refer patients to an otolaryngologist for specialty care. The Nebraska Board issued Respondent a public censure; ordered him to obtain a Board-approved practice monitor for a period of one year; successfully complete a Board-approved comprehensive review course and pay a \$5,000 civil penalty. See Attachment A.

E. SETTLEMENT

14. 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 or kent.nebel@iowa.gov.

F. PROBABLE CAUSE FINDING

15. On October 3, 2014, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

STATE OF NEBRASKA ex rel.,)
JON BRUNING, Attorney General,)
)
Plaintiff,)
)
vs.)
)
SCOTT FASSE, M.D.,)
)
Defendant.)

H10-1373

FINDING OF FACT
CONCLUSIONS OF LAW
AND ORDER

A Petition for Disciplinary Action was filed against Dr. Fasse on April 22, 2010. After a number of pre-hearing continuances and a change in counsel for Dr. Fasse and a change in Hearing Officer, a hearing was held before Hearing Officer Terry Schaaf on February 9, 2011. At that hearing the State was represented by Assistant Attorney General Susan Ugai and Dr. Fasse by Steven H. Howard, Attorney at Law. At the conclusion of the hearing on the record, both parties were authorized to present their closing arguments in writing. After several interruptions the process was completed on April 27, 2011.

SUMMARY OF THE HEARING

At the hearing testimony was taken from Department investigator Patricia Lemke R.N. and from Scott Fasse M.D. In addition to the testimony 44 exhibits were offered and received at the time of the trial. Exhibits 45 and 46 were received as late exhibits. For a complete index of the exhibits see pages 2-7 of the transcription of the proceedings.

DEFENDANT'S MOTION TO DISMISS

At the close of the State's presentation, the Defendant moved to dismiss both Cause of Action number 1 and number 2. The motion was noted on the record by the Hearing Officer and referred to the Chief Medical Officer. After consideration of the motion and the reasons given in support and in opposition, the Chief Medical Officer finds the motion should be and hereby is denied.

POST HEARING MOTIONS

After the hearing was completed, counsel for the State filed a motion to authorize the receipt of two late exhibits (Exhibits 45 and 46). That motion was granted without objection.

A second motion was filed to supplement the record on March 31, 2011 by counsel for Dr. Fasse. This motion sought an order reopening the hearing and compelling the attendance of

Dr. Gerald Luckey, the state's expert, to testify as to the basis of his opinion set out in Exhibit 5 and to be subject to cross examination. Counsel for the state objected. The motion was denied by the Hearing Officer in an order dated April 15, 2011. This action of the Hearing Officer is affirmed.

FINDINGS OF FACT

1. The facts set out in paragraphs 2, 3 and 4 of the Petition and admitted by the Defendant are taken as true and incorporated herein by reference as Findings of Fact.

2. Dr. Fasse treated patient R.K., a 29-year-old male. During a 12-month period in 2004 and 2005, Defendant ordered 13 sinus x-rays, 28 injections of Ceftriaxone (Rocephin) (2 gm each) and prolonged courses of antibiotic therapy, including Avelox (21 days), Biaxin (30 days), Levaquin (extended period of time), Ceftin (30 days) for treatment of R.K.'s sinusitis. Multiple x-ray studies of the sinuses are currently found to have limited or no value, and multiple and prolonged doses of antibiotic therapy for sinusitis have not been shown to be beneficial and are associated with the development of resistant organisms.

3. Dr. Fasse treated R.K. for a low testosterone level with ten injections of testosterone. The current standard of care is to treat this disorder with additional evaluation, such as a search for a pituitary problem or use of topical testosterone products such as Androderm. No additional evaluation was performed, and topical testosterone products were not prescribed.

4. Dr. Fasse diagnosed R.K. with multiple cases of pneumonia, and ordered 15 chest x-rays within a one-year period. R.K. at no time had an elevated temperature. X-rays were not referred out for a specialist's evaluation or reading. No guidelines recommend the use of intramuscular Rocephin and a quinolone together for treatment of bronchopneumonia.

5. Dr. Fasse's treatment of R.K., set out above in paragraphs two, three and four, constituted substandard medical care.

6. Dr. Fasse treated patient A.S., a 7-year-old female, with a history of successfully treated leukemia. Patient A.S. returned repeatedly to Dr. Fasse's office with symptoms of upper respiratory congestion and occasional cough. On only one occasion did she have an elevated temperature. Dr. Fasse made diagnoses of sinusitis and pneumonia. Patient A.S. was treated with Rocephin, Biaxin and Clindamycin simultaneously, 10 sinus x-rays were ordered, 11 level-four office visits were charged, and six level-three office visits were charged. Patient was also treated with Zithromax, Augmentin, and Amoxicillin.

7. Dr. Fasse's treatment of patient A.S. based on the results of a nasal swab culture fell below the standard of medical care. Nasal swab cultures do not correlate with the offending pathogen. A sinus tap or obtaining material for culture at the time of an endoscopic surgery are necessary to determine sinusitis. Even if pseudomonas were the offending pathogen, the choice of antibiotic therapy did not correlate with the sensitivity pattern and fell below the standard of medical care.

8. Dr. Fasse's use of antibiotic therapy of problems presented by patient A.S. when not documented as bacterial and with at least an 85% chance of being viral, falls below the standard of medical care

9. Patient A.S. was seen in the emergency room, and the emergency room physician recommended an E.N.T. consultation. Dr. Fasse's failure to refer the patient to an E.N.T. physician when the patient presents with the same or similar complaints repeatedly in spite of aggressive therapy falls below the standard of medical care.

10. Dr. Fasse, by exposing A.S., a 7-year old child, to 10 sinus x-rays when sinus x-rays have questionable value in these circumstances, engaged in conduct which falls below the standard of medical care and exposed the child to unnecessary radiation.

11. Dr. Fasse, by failing to refer patient A.S. to an E.N.T physician when the patient presented with the same or similar complaints repeatedly in spite of aggressive therapy, fell below the standard of medical care.

12. Dr. Fasse's treatment of A.S. based on the results of a nasal swab; his choice of antibiotic therapy for patient A.S. under these circumstances; his use of antibiotic therapy for problems not documented as bacterial and with a strong chance of being viral, all constitute practice below the standard of medical care.

13. Dr. Fasse treated patient K.S.-U., a 32-year-old female, for approximately 10 years. K.S.-U. had a mechanical mitral valve and was on Coumadin therapy. Dr. Fasse diagnosed her with sinus infections and pneumonia repeatedly. Dr. Fasse ordered nine sinus x-rays, eight chest x-rays, and 29 prothrombin time tests, the majority of which were subtherapeutic, during a one-year period. K.S.-U. was a chronic smoker, and there was nothing in the chart to indicate smoking cessation counseling was tried. K.S.-U. was treated with Biaxin (from one to four weeks at a time), 13 Rocephin injections, Levaquin for three week, Bactrim for one month, Keflex for two days and 10 days and Diflucan, Levaquin and Rocephin treatments simultaneously.

14. Dr. Fasse's use of repeated sinus x-rays for patient K.S.-U. which have questionable medical value under these circumstances, constituted substandard medical care.

15. Dr. Fasse's excessive use of antibiotic therapy for patient K.S.-U., there being no evidence that such therapy has a recognized medical benefit under the circumstances, constitutes substandard medical care.

16. Dr. Fasse's failure to refer patient K.S.-U for E.N.T. for pulmonary evaluations, after repeated visits with the same symptoms, constituted substandard medical care.

17. Conduct falling below the standard of care is unprofessional conduct.

18. Each of the instances of findings of unprofessional conduct outside the normal standards of care, set out above in these Findings of Fact, are found by the Chief Medical Officer to be potentially harmful or dangerous to the health of the patient.

19. In addition to the expert opinion of Dr. Luckey, (Exhibit 5), the Chief Medical Officer, based on her medical training and experience, finds that Dr. Fasse's treatment of patients R.K., A.S. and K.S.-U. fell below the acceptable standard of medical care in the State of Nebraska and thus constituted unprofessional conduct.

20. The Chief Medical Officer finds that Dr. Fasse, by practicing below the normal and acceptable standard of care on several occasions, breached his duty to these patients and thus engaged in a pattern of negligent conduct.

CONCLUSIONS OF LAW

(Note: References to Neb. Rev. Stat. Chapter 71 cite applicable law prior to the enactment of the Uniform Credentialing Act codified in Chapter 38 in 2008.)

1. Jurisdiction is based on Neb. Rev. Stat. Sections 38-183, 184, 186 (Reissue 2008) and 71-150 (Reissue 2003).

2. Neb. Rev. Stat. Sections 38-178(23) (Reissue 2008) and 71-147(10) (2006 Cum. Supp) provide that a professional license may be disciplined for unprofessional conduct.

3. Neb Rev. Stat. Sections 38-178(15), 38179(15) (Reissue 2008) and 71-148(22) (Reissue 2003) defines unprofessional conduct as that set out in rules promulgated by the Board of Examiners of the licensee's profession.

4. Title 172 Chapter 88-013.21 of the Regulations Governing the Practice of Medicine and Surgery defines unprofessional conduct as any conduct outside the normal standard of care in the State of Nebraska which is or might be harmful or dangerous to the health of the patient or the public.

5. Neb. Rev. Stat. Sections 38-178(6) (Reissue 2008) and 71-147(5) (2006 Cum Supp.) provide a license may be disciplined for practice of a profession in a pattern of negligent conduct which is further defined to mean practice in a continued course of negligent conduct in performing the duties of the profession.

6. A licensed health care provider has a duty to adhere to the normal standards of practice of their profession.

7. The failure of a licensed health care provider to adhere to the normal standard of care, in violation of their duty to their patients, constitutes negligence.

8. Dr. Fasse's methodology of practice overall and the specific negligent acts of his practice set out herein, constituted multiple instances of negligence and established a pattern of negligent practice and thus constitute grounds for discipline.

DISCUSSION

Dr. Fasse seems to argue his specific methods of practice at issue here were utilized in an attempt to preserve some "lost art" of medicine of which he became aware and proficient while in medical school. The practice of medicine is not a static art form one masters and then strives to replicate over the duration of one's medical career. The practice of medicine is about being a life-long learner. It is about keeping up with current standards of care, new and better practices, procedures and protocols. It embraces new technologies which allow a practitioner to provide the best possible care. First and foremost a physician must be mindful of their oath wherein they have pledged to "First, do no harm". Dr. Fasse's philosophy and methods evidence a dangerous pattern of practice and reflect a serious neglect and disregard of the expected standards of care of his profession.

ORDER

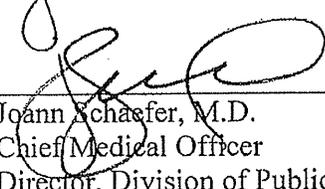
1. Dr. Fasse's license to practice Medicine and Surgery in the State of Nebraska is hereby censured.

2. Dr. Fasse shall suggest the name of a physician who has agreed to serve as a practice monitor for Dr. Fasse for approval by the board. The practice monitor will, for a period of one year review, on a quarterly basis, a random number of Dr. Fasse's patient charts. The selected charts shall relate to the types of presented symptoms and treatments discussed in the Findings of Fact set out herein. The practice monitor shall submit a summary of the chart reviews to the board on a quarterly basis. This one year period of review shall begin on the date a practice monitor is approved by the board. Any cost of this practice review will be the responsibility of Dr. Fasse.

3. Dr. Fasse shall, within one year from the date of this order, successfully complete a comprehensive review course or courses, approved in advance by the board, relating to the following subjects: Eye, Nose and Throat practice and referral, Endocrinology, Immunology and Immune Systems, indications for the need of Radiographs and the appropriate use of Radiology consultations. The cost of this course or courses shall be the responsibility of Dr. Fasse.

4. Dr. Fasse is hereby ordered to pay a civil penalty in the amount of \$5000.00 (Five thousand dollars) within six (6) months of the date of this order.

DATED this 13 day of July 2011



Joann Schaefer, M.D.
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

CERTIFICATE OF SERVICE

COMES NOW the undersigned and certifies that on the 13th day of July 2011, a copy of the foregoing **FINDING OF FACT CONCLUSIONS OF LAW AND ORDER** was sent by certified United States mail, postage prepaid, return receipt requested, to **Steven Howard, Dowd Howard & Corrigan, L.L.C., 1411 Harney Street, Suite 100, Omaha, NE 68102** and by interagency mail to **Susan M. Ugai, Assistant Attorney General, 2115 State Capitol Building, Lincoln, Nebraska.**



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