BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF STATEMENT OF CHARGES AGAINST

RICHARD M. FLEMING, M.D., RESPONDENT

File No. 02-12-312

****

ORDER RE: RESPONDENT'S APPLICATION FOR REHEARING AND FOR STAY

****

Date: October 18, 2012.

1. Respondent is an Iowa-licensed physician from Reno, Nevada.

2. On January 18, 2007, Respondent was indicted in the United States District Court for the District of Nebraska on ten (10) counts of health care fraud, two (2) counts of wire fraud and one (1) count of mail fraud. On August 21, 2009, Respondent pleaded guilty to one (1) count of health care fraud and one (1) count of mail fraud. All other counts of the Indictment were dismissed as part of the guilty plea. Under the terms of the plea agreement, Respondent was placed on probation for a period of five (5) years, placed under home confinement under electronic monitoring for a period of six (6) months, ordered to complete 150 hours of community service and ordered to pay $107, 244.24 in restitution. Effective May 11, 2009, Respondent was also permanently excluded from participation in Medicare, Medicaid and all other Federal health care programs.

3. On February 4, 2010, the Iowa Board of Medicine (Board) filed formal disciplinary charges against Respondent for:

A. Being convicted of a felony related to the profession of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession;

B. Violating a statute or law of this state, another state or the United States without regard to its designation as a felony or misdemeanor, which statute or law relates to the practice of medicine;

C. Being convicted of a felony in the courts of this state or another state, territory, or country; and

D. Engaging in unethical or unprofessional conduct and/or practice harmful or detrimental to the public. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere.

4. On October 22, 2010, Respondent entered into an Agreement Not to Practice Medicine under his Iowa medical license with the Board pending the appeal of his guilty plea in the criminal matter.

5. A contested case hearing was held before the Board on August 26, 2011.

6. On February 9, 2012, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent:

A. Violated Iowa law when he was convicted of crimes that were related to and arose out of his medical practice:

B. Violated Iowa law when he violated two federal statutes when he committed Health Care Fraud and Mail Fraud.

C. Violated Iowa law when he was convicted of two felony offenses.

D. Violated Iowa law when he engaged in unethical or unprofessional conduct in the practice of medicine.

7. The Board issued Respondent a Citation and Warning for having been convicted of federal crimes related to the practice of medicine and for engaging in unethical or unprofessional conduct in the practice of medicine. The Board placed Respondent on probation subject to Board monitoring for a period of five years. The Board also ordered Respondent to:

A. Pay a $10,000 civil penalty within twenty (20) days of the date of the Order:

B. Complete the Professional/Problem Based Ethics (PROBE) program within sixty (60) days of the date of the Order;

C. Complete a Board-approved course for appropriate billing practices within ninety (90) days of the date of the Order; and

D. Pay a $75 disciplinary hearing fee.

8. On June 8, 2012, the Board filed formal disciplinary charges alleging that Respondent violated the terms of February 9, 2012, Findings of Fact, Conclusions of Law, Decision and Order when he:

A. Failed to pay the $10,000 civil penalty within twenty (20) days of the date of the Order:

B. Failed to complete the Professional/Problem Based Ethics (PROBE) program within sixty (60) days of the date of the Order;

C. Failed to complete a Board-approved course for appropriate billing practices within ninety (90) days of the date of the Order; and

D. Failed to pay the $75 disciplinary hearing fee.

9. A contested case hearing was held before the Board on August 16, 2012.

10. On September 17, 2012, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent:

A. Failed to pay the $10,000 civil penalty within twenty (20) days of the date of the Order:

B. Failed to complete the Professional/Problem Based Ethics (PROBE) program within sixty (60) days of the date of the Order;

C. Failed to complete a Board-approved course for appropriate billing practices within ninety (90) days of the date of the Order; and

D. Failed to pay the $75 disciplinary hearing fee.

11. The Board indefinitely suspended Respondent's Iowa medical license and Respondent may not seek reinstatement of his Iowa medical license until he completes the following requirements established in the February 9, 2012, Decision and Order:

- Payment of the $10,000 penalty and the $75.00 hearing fee for the August 26, 2011, evidentiary hearing;
- Completion of the PROBE medical ethics course; and
- Completion of a Board-approved billing course.

12. On October 5, 2012, Respondent filed a Request for Rehearing and for Stay of the September 17, 2012, Decision and Order.

13. On October 17, 2012, the State filed a Resistance to Respondent's Request for Rehearing and for Stay of the September 17, 2012, Decision and Order.

14. On October 18, 2012, the Board considered Respondent's Request for Rehearing and for Stay of the September 17, 2012, Decision and Order.

15. After careful consideration, the Board voted to deny Respondent's Request for Rehearing and for Stay of the September 17, 2012, Decision and Order for the following reasons:

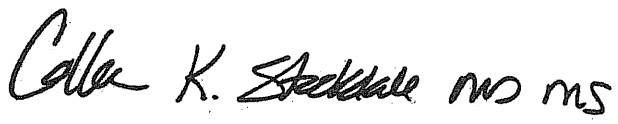
A. Rehearing: The issues raised by Respondent in his Request for Rehearing are not relevant to the issues before the Board. Respondent attempts to re-litigate the matters related to his criminal conviction and such matters are not relevant to this case. The only issue pending before the Board is whether Respondent violated the terms of the February 9, 2012, Decision and Order.

B. Stay: The Board's rules at 653 IAC 25.27 govern the issuance of a stay of a Board decision. 653 IAC 25.27(2) specifically states:

"The board shall not grant a stay in any case in which the district court would be expressly prohibited by statute from granting a stay."

Iowa Code Section 148.7(10) states a Board order revoking, suspending, or otherwise disciplining a physician's license, "shall remain in force and effect until the appeal is finally determined and disposed of upon its merit." Because Respondent cannot obtain a stay of the Board's decision in district court, he is not entitled to a stay from the Board pursuant to 653 IAC 25.27(2).

THERFORE IT IS HEREBY ORDERED that Respondent's Request for Rehearing and for Stay of the September 17, 2012, Decision and Order is hereby **DENIED**.



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

October 18, 2012
Date

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST	)	FILE NO. 02-12-312 DIA NO. 12IMB009
RICHARD M. FLEMING, M.D.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER
Respondent	)	

Date: September 17, 2012.

On June 8, 2012, the Iowa Board of Medicine (Board) filed a Statement of Charges against Richard M. Fleming, M.D. (Respondent), charging him with willful or repeated violation of a lawful order of the Board, previously entered by the Board in a disciplinary hearing, in violation of Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11). The hearing was held on August 16, 2012 before the following Board members: Joyce Vista-Wayne, M.D.; Michael Thompson, D.O.; Dana Shaffer, D.O.; Allen Zagoren, D.O.; Frank Bognanno and Diane Clark, public members. Respondent elected to appear by video conference and was self-represented. Assistant Attorney General Theresa O'Connell Weeg represented the state. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(l) 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 Notice of Hearing and Statement of Charges; Ruling on Motion to Continue and Initial Prehearing Conference Order; Testimony of Shantel Billington, Respondent, and Gordon Harrington, Ph.D.; State Exhibits 1-12; and Respondent Exhibits A-M (See Exhibit Indexes for description)

FINDINGS OF FACT

1. Respondent was initially issued Iowa medical license number 26135 on July 1, 1987. Respondent's license is current and will expire on February 1, 2014. Respondent has also been licensed in Nebraska, Texas, Illinois, Oklahoma, and

Missouri. However, at this time, his only active medical license is in Iowa. Respondent is currently residing in Reno, Nevada. (Testimony of Respondent; State Exhibits 1, 3, 12)

2. Respondent most recently practiced medicine with the Fleming Heart and Health Institute, P.C. in Omaha, Nebraska. On January 18, 2007, Respondent was indicted in the United States District Court of Nebraska on ten (10) counts of Health Care Fraud, two (2) counts of Wire Fraud, and one (1) count of Mail Fraud. On August 21, 2009, Respondent pled guilty to one (1) count of Health Care Fraud and one (1) count of Mail Fraud. The remaining counts were dismissed as part of the plea agreement.

Under the terms of the plea agreement, Respondent was sentenced to probation for a period of 5 years, placed under home confinement under electronic monitoring for 6 months, ordered to complete 150 hours of community service, and ordered to pay $107,244.24 in restitution. Respondent was also permanently excluded from participation in Medicare, Medicaid, and all other Federal health care programs. (State Exhibit 3)

3. Although Respondent pled guilty to two federal felony level counts, he maintains that he has not committed any crime. (Testimony of Respondent) However, Respondent's repeated attempts to appeal or vacate his guilty plea and sentence have been unsuccessful. (State Exhibit 3)

4. On February 4, 2010, the Board filed a Statement of Charges against Respondent, charging him with the following four counts:

Count I: Conviction of a felony related to the profession of the licensee or conviction of any felony that would affect the licensee's ability to practice within a profession;

Count II: Violation of a statute or law of this state, another state, or the United States without regard to its designation as a felony or misdemeanor, which statute relates to the practice of medicine;

Count III: Conviction of a felony in the courts of this state, or another state, territory or country; and

Count IV: Engaging in unethical conduct or unprofessional conduct and/or practice harmful or detrimental to the public.

The initial hearing date was continued because Respondent agreed not to practice medicine under his Iowa medical license while he appealed his federal guilty plea. The Board conducted an evidentiary hearing on August 26, 2011. Respondent appeared by video conference and presented testimony and exhibits. (State Exhibits 1, 3, 7)

On February 9, 2012, the Board issued its Findings of Fact, Conclusions of Law, Decision and Order. The Board found violations on all four counts. The Board issued Respondent a Citation and Warning for having been convicted of federal crimes related to the practice of medicine and for engaging in unethical or unprofessional conduct in the practice of medicine. The Board placed Respondent's Iowa medical license on probation, subject to Board monitoring, for a period of five years. (State Exhibit 3)

The Board also ordered Respondent to comply with all of the following requirements:

- Payment of a $10,000 civil penalty within twenty (20) days of the date of the Order;
- Completion of the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP) in Denver, Colorado within sixty (60) days of the date of the Order;
- Completion of a Board-approved course for appropriate billing practices within ninety (90) days of the date of the Order; and
- Payment of a $75 disciplinary hearing fee within thirty (30) days of the date of the Order.

(State Exhibit 3)

5. Shantel Billington was the Board's Probation Monitor for Respondent. After the Board issues a disciplinary order, Ms. Billington contacts the physician and reviews the probationary terms. Ms. Billington then monitors the physician's compliance and maintains a contemporaneous narrative to document all of her contacts with the physician. (Testimony of Shantel Billington; State Exhibit 4)

a) On February 16, 2012, Ms. Billington sent an email to Respondent that summarized the requirements of the Board's order. Ms. Billington reminded Respondent that he had to pay the $10,000 fine and $75 hearing fee and had to complete the ethics and billing courses within the required timeframes. Ms. Billington asked Respondent to let her know when he planned to attend the (PROBE) ethics course at CPEP. Ms. Billington also reminded Respondent that he needed approval for the billing course. Ms. Billington provided Respondent with the mailing address for payment of the $10,000 penalty and the $75.00 hearing fee. Respondent was warned that failure to complete these four requirements could result in further disciplinary action, including suspension or revocation of his Iowa medical license. (State Exhibits 4, 5; Testimony of Shantel Billington)

b) In a letter dated February 21, 2012, Respondent acknowledged receiving Billington's February 16th email. Respondent sent his letter by email and also attached additional documents, arguing that he did not commit any crimes. Respondent wanted the Board to consider these documents, although he did not submit them at his disciplinary hearing on August 26, 2011. Respondent had submitted the documents to Kent Nebel, J.D., the Board's Director of Legal Affairs, after the hearing but before the Board issued its final order. Mr. Nebel told Respondent that the additional documents could not be considered by the Board because they had not been submitted at the time of hearing.

In his February 21st letter Respondent asserted that he was financially unable to pay the $10,000 fine and $75 hearing fee and offered to pay $200-250 instead. Respondent also asked the Board to accept his completion of a law school ethics course in lieu of the PROBE medical ethics course. Finally, Respondent asserted that he should not be required to attend a billing course because he no longer intended to bill, because his attached documentation demonstrated that he had billed correctly in the past, and because he had not committed any crime. (State Exhibit 7; Respondent Exhibit A; Testimony of Respondent and Shantel Billington)

c) In an email dated March 7, 2012, Ms. Billington acknowledged receipt of Respondent's February 21, 2012 letter, advised Respondent that his requests would go to the Board at their next meeting in April, and further advised Respondent that she would send him a letter with the Board's response within ten days. (State Exhibit 8)

d) On April 23, 2012, Ms. Billington mailed Respondent a letter notifying him that the Board had voted to deny his request to approve alternatives to the Board's order. Respondent was warned that his payment of the penalty and fee and his completion of the PROBE ethics course were already past due. Respondent was reminded that his due date to complete a Board approved billing course was May 9, 2012. (State Exhibit 9)

e) On May 3, 2012, Mr. Nebel emailed Respondent and informed him that the Board would review his case at their next meeting on June 7-8, 2012. Mr. Nebel warned Respondent that the Board would file new disciplinary charges against him if he had not demonstrated full compliance with the Board's order by that time. (State Exhibit 10)

Respondent replied to Mr. Nebel on May 7, 2012, and reported that he had not received any response from the Board concerning his proposals to change the terms of the order. On May 10, 2012, Ms. Billington emailed Respondent an electronic copy of the April 23rd letter that had previously been mailed to him. (State Exhibits 4; 10)

f) Respondent replied to Mr. Nebel by email on May 15, 2012. He stated that he did not have the money to pay the fine or to enroll in the required courses. Respondent did not understand why the Board would not accept the law school ethics course. He stated that he would be happy to "Skype" with the Board concerning these issues at their June meeting, but he would be making a presentation at the Society of Nuclear Medicine meeting in Miami Beach, Florida at that time. Respondent also included information concerning claims he had filed against his federal public defender for legal malpractice. (State Exhibits 4, 11)

6. At the Board's meeting on June 8, 2012, Ms. Billington submitted a report concerning Respondent's compliance with the terms of probation. At that meeting, the Board found probable cause to charge Respondent with failure to comply with the Board's February 9th Decision and Order. (State Exhibits 1, 4)

7. As of the date of the hearing, Respondent still had not paid any of the $10,000 penalty or the $75.00 hearing fee. Respondent had not completed the PROBE ethics course. Respondent had not completed a Board-approved billing course. Respondent had not registered for either course. (Testimony of Shantel Billington; Respondent)

8. Respondent continues to deny that he committed any crime or engaged in unethical conduct. Respondent claims financial inability to pay the fine, the hearing costs, or the costs of attending the required courses. Respondent testified that his only current source of income is "reviewing cases." (Testimony of Respondent; Respondent Exhibits A-M)

a) Respondent has been given leave to proceed on appeal "In Forma Pauperis"[1] in his federal court action. (Testimony of Respondent; Respondent Exhibit K)

b) Respondent is currently a third year student in an on-line law school. Respondent testified that the fees for the law school are $9000 per year and that he has obtained federal grants to pay the tuition. (Testimony of Respondent)

CONCLUSIONS OF LAW

Iowa Code section 148.6(2)(i)(2011) authorizes the Board to discipline a licensee for 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 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 February 9, 2012, Decision and Order. In his presentation at hearing, Respondent once again argues that he has not

---

[1] "In Forma Pauperis" permits a party to proceed on appeal without prepaying or giving security for fees and costs. 28 U.S.C.A. Federal Rule of Appellant Procedure 24.

committed any crime and should not have been disciplined by the Board. Respondent was in fact convicted of two federal felony level crimes related to the practice of medicine - Health Care Fraud and Wire Fraud. Respondent's convictions have not been overturned on appeal. The Board has not and will not allow licensees to relitigate criminal convictions through the Board's disciplinary hearing process. Respondent's record of convictions provides ample justification for the Board's February 9, 2012, Decision and Order.

It is undisputed that Respondent has not complied with any of the requirements of the Board's February 9, 2012, Decision and Order. The Board was not persuaded by Respondent's arguments that the requirements of the Order should be waived or modified because they are unreasonable or onerous.

Respondent has made no effort to pay or make payments on the $10,000 penalty and the $75 hearing fee. Respondent claims that his "In Forma Pauperis" standing with the federal court means that he is financially unable to "pay anything to anybody for any reason." Respondent's claim is overstated. The federal court has only waived Respondent's obligation to pay federal court costs and filing fees. The "In Forma Pauperis" standing does not affect or diminish Respondent's obligation to pay a civil penalty imposed by the Board in a state disciplinary proceeding nor does it relieve him of the obligation to pay disciplinary hearing fees imposed by a state board.

The Board was not persuaded to accept an on-line law school ethics course in satisfaction of its order that required Respondent to complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP). The PROBE course is specifically designed to address medical ethics and the ethical responsibilities of physicians. The course is in-depth, problem based, and presented by on-site instructors. The Board concluded that an on-line law school ethics course is not equivalent to the PROBE course and is not an adequate substitute.

The Board was not persuaded to waive the required Board-approved billing course. A billing course is a reasonable and necessary prerequisite to Respondent's retention of his Iowa medical license, given his criminal conviction for Health Care Fraud.

DECISION AND ORDER

IT IS THEREFORE ORDERED that for his failure to comply with the Board's February 9, 2012, Decision and Order, Respondent's Iowa medical license is hereby **INDEFINITELY SUSPENDED**, effective immediately upon service of this Decision and Order.

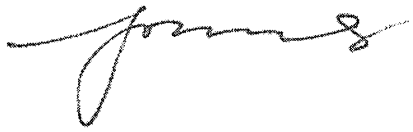
IT IS FURTHER ORDERED that Respondent may not apply for reinstatement of his Iowa medical license until he has fully complied with the following requirements of the February 9, 2012 Decision and Order:

- Payment of the $10,000 penalty and the $75.00 hearing fee for the August 26, 2011, evidentiary hearing;
- Completion of the PROBE medical ethics course; and
- Completion of a Board-approved billing course.

IT IS FURTHER ORDERED that in any reinstatement hearing, 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.

IT IS FURTHER ORDERED, in accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of $75.00. In addition, Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 25.33(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.

Dated this 17th day of September, 2012



Joyce Vista-Wayne, M.D.
Acting Chairperson
Iowa Board of Medicine

cc: Richard M. Fleming, M.D.
Theresa O'Connell Weeg, Assistant Attorney General

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.

BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF STATEMENT OF CHARGES AGAINST

RICHARD M. FLEMING, M.D., RESPONDENT

File No. 02-12-312

****

STATEMENT OF CHARGES

****

COMES NOW the Iowa Board of Medicine (Board) on June 8, 2012, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 26135 on July 1, 1987. Respondent's license is active and will next expire on February 1, 2014.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on August 16, 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 June 27, 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 physician from Reno, Nevada.

13. On January 18, 2007, Respondent was indicted in the United States District Court for the District of Nebraska on ten (10) counts of health care fraud, two (2) counts of wire fraud and one (1) count of mail fraud. On August 21, 2009, Respondent pleaded guilty to one (1) count of health care fraud and one (1) count of mail fraud. All other counts of the Indictment were dismissed as part of the guilty plea. Under the terms of the plea agreement, Respondent was placed on probation for a period of five (5) years, placed under home confinement under electronic monitoring for a period of six (6) months, ordered to complete 150 hours of community service and ordered to pay $107, 244.24 in restitution. Effective May 11, 2009, Respondent was also permanently excluded from participation in Medicare, Medicaid and all other Federal health care programs.

14. On February 4, 2010, the Board filed formal disciplinary charges against Respondent for:

A. Being convicted of a felony related to the profession of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession;

B. Violating a statute or law of this state, another state or the United States without regard to its designation as a felony or misdemeanor, which statute or law relates to the practice of medicine;

C. Being convicted of a felony in the courts of this state or another state, territory, or country; and

D. Engaging in unethical or unprofessional conduct and/or practice harmful or detrimental to the public. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere.

15. On October 22, 2010, Respondent entered into an Agreement Not to Practice Medicine under his Iowa medical license pending his appeal of the guilty plea in the criminal matter.

16 A hearing on the formal disciplinary charges was held before the Board on August 26, 2011.

17. On February 9, 2012, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent:

A. Violated Iowa law when he was convicted of crimes that were related to and arose out of his medical practice:

B. Violated Iowa law when he violated two federal statutes when he committed Health Care Fraud and Mail Fraud.

C. Violated Iowa law when he was convicted of two felony offenses.

D. Violated Iowa law when he engaged in unethical or unprofessional conduct in the practice of medicine.

18. The Board issued Respondent a Citation and Warning for having been convicted of federal crimes related to the practice of medicine and for engaging in unethical or unprofessional conduct in the practice of medicine. The Board placed Respondent on probation subject to Board monitoring for a period of five years. The Board also ordered Respondent to:

A. Pay a $10,000 civil penalty within twenty (20) days of the date of the Order:

B. Complete the Professional/Problem Based Ethics (PROBE) program within sixty (60) days of the date of the Order;

C. Complete a Board-approved course for appropriate billing practices within ninety (90) days of the date of the Order; and

D. Pay a $75 disciplinary hearing fee.

19. The Board alleges that Respondent violated the terms of February 9, 2012, Findings of Fact, Conclusions of Law, Decision and Order when he:

A. Failed to pay the $10,000 civil penalty within twenty (20) days of the date of the Order:

B. Failed to complete the Professional/Problem Based Ethics (PROBE) program within sixty (60) days of the date of the Order;

C. Failed to complete a Board-approved course for appropriate billing practices within ninety (90) days of the date of the Order; and

D. Failed to pay the $75 disciplinary hearing fee.

E. SETTLEMENT

20. 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

21. On June 8, 2012, the Iowa Board of Medicine found probable cause to file this Statement of Charges.

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