

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NARINDER KUMAR, M.D., RESPONDENT

FILE Nos. 02-05-830, 02-08-478 & 02-09-082

ORDER DENYING RESPONDENT'S REQUEST FOR REINSTATEMENT

Date: March 21, 2012.

1. Respondent was issued Iowa medical license number 29998 on June 28, 1994.
2. Respondent's Iowa medical license is active and will next expire on December 1, 2012.
3. The Board has jurisdiction pursuant to Iowa Code Chapters 147, 148 and 272C.
4. **Unprofessional Conduct:** In late 2005 the Board received information which indicated that Respondent engaged in a pattern of inappropriate and unprofessional conduct in the practice of medicine, including the following:
 - A. **Alcohol on Breath:** The Board received information from a healthcare professional which indicated that Respondent had alcohol on his breath while treating patients.

- B. **Alcohol on Breath:** The Board received information from a pediatric patient's mother which indicated that Respondent had alcohol on his breath while treating her child.
- C. **Drinking While on Call:** The Board received information which indicated that Respondent owned a restaurant and that he frequently drank heavily while at the restaurant late into the evening, even when he was on call and could be called to treat patients.
- D. **Sexual Harassment Charges:** The Board received information which indicated that a former staff person filed charges against Respondent alleging sexual harassment.
- E. **Inappropriate Sexual Touching:** The Board received information which indicated that Respondent touched a teenage female patient in an inappropriate sexual manner during a physical examination for complaints of stomach pain and dizziness.
- F. **Substance Abuse and Professional Misconduct Evaluation:** On January 13, 2006, at the direction of the Board, Respondent completed a comprehensive substance abuse and professional misconduct evaluation at a Board-approved assessment program. The assessment program was unable to substantiate the allegations but recommended that Respondent implement quality improvement initiatives in his workplace to avoid future problems, including, abstinence from the use of alcohol and drugs, urine drug screening, a chaperone for all female patients, individual counseling and other quality improvement initiatives.

5. **May 31, 2006, Notice of Hearing, Settlement Agreement and Final Order:** On May 31, 2006, Respondent entered into a combined Notice of Hearing, Settlement Agreement and Final Order with the Board to address the concerns above. The Board charged Respondent with engaging in unprofessional conduct. Under the terms of the Settlement Agreement, Respondent agreed to fully comply with the following terms and conditions:

- A. **Chaperone Requirement:** Respondent shall have a Board-approved female healthcare professional chaperone continually present when performing any physical examination of female patients. The Board-approved healthcare professional chaperone shall be continually present when the Respondent is providing healthcare services, including but not limited to, patient evaluation, treatment and post-evaluation treatment directions. The chaperone shall clearly document her continued presence in each female patient's chart. Respondent shall provide the Board with the names of all persons providing chaperone services for him at all facilities where Respondent practices medicine under his Iowa medical license within 48 hours of their joining the staff. The Board will provide all chaperones with a copy of all Board Orders in this matter. All chaperones shall provide a written statement to the Board indicating that they have read the Board Orders and agree to inform the Board immediately if there is any evidence of inappropriate behavior or professional misconduct.
- B. **Prescribing Course:** Respondent shall complete a Board-approved course for appropriate prescribing practices as recommended by the assessment program.

6. **Five Year Probation:** Respondent was also placed on probation for a period of five (5) years subject to the following terms and conditions:

- A. **Board Monitoring Program:** Respondent shall contact Deb Anglin, Coordinator, Monitoring Programs, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph. #515-281-6491, to establish a monitoring program.
- B. **Full Compliance with All Recommendations:** Respondent shall fully comply with all recommendations made by the Board and all Board-approved treatment professionals, including but not limited to the quality improvement initiatives recommended by the assessment program.
- C. **Alcohol Prohibition:** Respondent shall not consume alcohol.
- D. **Controlled or Prescription Drug Restriction:** Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug 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. Respondent shall inform any treating physician or other treating health care provider of his history of substance abuse prior to receiving any prescription drug.
- E. **Drug Screening Program:** Respondent shall submit to the Board's drug screening program. Respondent shall provide random blood or urine specimens when required. Respondent agrees to comply with all requirements of the drug-

screening program. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. All costs of the drug screen program shall be paid by Respondent.

F. **Counseling:** Respondent shall participate in Board-approved counseling.

- (1) Respondent shall submit the name and CV of a counselor for Board approval.
- (2) The counselor shall submit written quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
- (3) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
- (4) Respondent shall meet with his Board-approved counselor as frequently as recommended by the counselor and approved by the Board. All costs of the counseling shall be the responsibility of Respondent.

G. **Worksite Monitor:** Respondent shall submit for Board approval the name of a physician who regularly observes Respondent in the practice of medicine to serve as worksite monitor. The Board shall share a copy of all Board orders relating to this matter with the worksite monitor. The worksite monitor shall provide a written statement indicating that they have read and understand all Board orders in this matter and agrees to act as the worksite monitor under the terms of this Order.

The worksite monitor shall agree to inform the Board immediately if there is evidence of substance abuse, professional misconduct, or a violation of the terms of this Order. The monitor shall agree to submit 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 probation.

- H. **Staff Surveillance Forms:** Respondent shall ensure that all nursing staff who work with him in the future complete the staff surveillance form provided by the Board at the end of each month. The staff surveillance forms shall be mailed directly to the Board's Monitoring Coordinator and must be received by the 15th of each month.
- I. **Patient Satisfaction Survey:** Respondent shall utilize patient satisfaction surveys in his medical practice. The staff at each location where Respondent practices medicine shall provide the surveys to all patients for one week beginning January 1, April 1, July 1, and October 1, of each year of Respondent's probation. Staff shall mail a copy of the surveys directly to the Board's Monitoring Coordinator.
- J. **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Settlement Agreement, including attendance at meetings with his counselor. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of Respondent's probation.
- K. **Board Appearances:** Respondent shall make an appearance before the Board annually or upon request. Respondent 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 12.6(6)(d).

- L. **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 no later than the 15th of the month three months after the date of this order and every quarter thereafter. The Monitoring Fee shall be sent to: Coordinator of Monitoring Programs, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medical Examiners. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

7. **April 26, 2007, Emergency Adjudicative Order and Statement of Charges:**

On April 26, 2007, the Board issued an Emergency Adjudicative Order and Statement of Charges immediately suspending Respondent's Iowa medical license. The Board charged Respondent with violating a lawful order of the Board and engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public including, but not limited to, the following:

- A. **Inappropriate Physical Examination:** The Board received information which indicates that Respondent inappropriately touched the breasts of a woman during an examination. The woman had brought a male child to Respondent with complaints of a sore throat and persistent cough. During the child's exam the woman told Respondent that she was concerned that she may have been the source

of the child's sore throat. Respondent examined the child and then, allegedly without warning, he placed his hands and a stethoscope under the woman's blouse against each of her breasts. The woman felt that Respondent's actions were clearly inappropriate. No chaperone was present during the unwelcome examination of the woman in violation of the requirements established in the May 31, 2006, Settlement Agreement that he entered into with the Board.

- B. **Violation of Chaperone Requirement:** The Board received information which indicates that Respondent treated at least two female patients in January 2007, without a Board-approved female chaperone present, in violation of the chaperone requirement established in the Settlement Agreement that he entered into with the Board on May 31, 2006.
- C. **Violation of Staff Surveillance Form Requirement:** The Board received information which indicates that Respondent improperly intercepted a surveillance form in violation of staff surveillance form requirement established in the Settlement Agreement that he entered into with the Board on May 31, 2006. The surveillance form had been completed by a member of Respondent's office staff and the form indicated that Respondent had treated at least one female patient without a chaperone in violation of his Board order.
- D. **Violation of Worksite Monitor Requirement:** The Board received information which indicates that Respondent failed to notify the Board that his Board-approved worksite monitor left the country for an extended leave of absence. Respondent inappropriately practiced medicine under his Iowa medical license for

an extended period of time without a worksite monitor in violation of the worksite monitor requirement established in the Settlement Agreement that he entered into with the Board on May 31, 2006.

- E. **Inadequate Staff Supervision:** The Board received information which indicates that Respondent failed to properly supervise his medical staff. The information indicates that a nurse in his office improperly prescribed Baclofen to a patient without Respondent's knowledge. Respondent admitted that his nurse wrote the prescription without his knowledge.

8. **August 9, 2007, Findings of Fact, Conclusions of Law, Decision and Order:** A contested case hearing was held before the Board on July 19, 2007. On August 9, 2007, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent failed to fully comply with the reporting requirements established in the May 31, 2006, combined Notice of Hearing, Settlement Agreement and Final Order. The Board reinstated Respondent's Iowa medical license and issued him a Citation and Warning for violating a Board order. The Board voted to delete paragraphs 9(C), (D), (E) and (G) of the combined Notice of Hearing, Settlement Agreement and Final Order. A Rehearing was held before the Board on November 8, 2007. On December 17, 2007, the Board issued an Order which required Respondent to fully comply with all of the terms and conditions established in the May 31, 2006, Settlement Agreement.

9. **September 17, 2008, Statement of Charges:** On September 17, 2008, the Board filed a new Statement of Charges against Respondent charging him with violating the terms of a lawful order of the Board, in violation of the laws and rules governing the practice of medicine.

The Board charged Respondent with violating subparagraphs 9(C) and (E) of the May 31, 2006, Order, when he: tested positive for alcohol on July 8, 2008; failed to call into the Board's drug screening program when required to; and failed to provide urine samples for the Board's drug screening program on two occasions on May 9 and 19, 2008. On February 12, 2009, the Board, on a motion of the State, issued a First Amended Statement of Charges which added allegations that Respondent: tested positive for alcohol on April 24, 2008; failed to provide urine samples for the Board's drug screening program on January 28, July 2, July 22, August 18, October 20, November 10, November 12, December 2, and December 22, 2008; failed to provide a random urine specimen on demand by an agent of the Board, when he did not provide a urine sample on request of a Board investigator on November 12, 2008; used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singular, when those drugs were not prescribed to Respondent for his use by another treating physician; and used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singular, without providing the Board written notice within 72 hours of the use of those drugs. On July 13, 2009, the Board, on a motion by the State, issued a Second Amended Statement of Charges which added allegations that Respondent; consumed alcohol; wrote prescriptions for numerous medications, including controlled substances, to an adult female acquaintance without seeing the female acquaintance in his medical office, without conducting a physical examination and without maintaining a patient record; had nonconsensual sexual contact with, and made inappropriate sexual comments to the female acquaintance; and wrote and antibiotic prescription to the female acquaintance for her to give to a two year-old nephew for a cold without seeing the child in his medical office, without conducting a physical

examination and without maintaining a patient record. The State's Motion was not resisted and the Motion was granted on July 13, 2009. The Second Amended Statement of Charges added Counts II, III, IV and V.

10. **Findings of Fact, Conclusions of Law and Decision:** A contested case hearing was held before the Board on August 12-13, 2009. On October 1, 2009, the Board issued a Findings of Fact, Conclusions of Law and Decision. The Board concluded that Respondent violated the terms and conditions established in the May 31, 2006, combined Notice of Hearing, Settlement Agreement and Final Order when he consumed alcohol on multiple occasions, failed to fully comply with the Board's drug screening program, and used prescription medication which was not prescribed for him. The Board also concluded that Respondent was guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine when he prescribed medications to an individual without establishing an appropriate physician-patient relationship and without performing an appropriate history and physical. Finally, the Board concluded that Respondent was guilty of committing an act contrary to honesty, justice, or good morals when he offered hand-written notes during his testimony at hearing that were not produced prior to hearing and appear to have been altered by Respondent. The Board ordered Respondent to pay a \$10,000 Civil Penalty and indefinitely suspended his Iowa medical license. Respondent was ordered not to engage in any aspect of the practice of medicine during the period of suspension. Respondent was ordered not to reapply for reinstatement for at least one year from the date of the Order. The board also ordered that Respondent's Iowa medical license not be reinstated except upon a showing by Respondent that the basis for suspension of the license no longer exists, and that it is in the public interest for

the license to be reinstated. The reinstatement proceedings shall be governed by 653 IAC 26.1. The Board ordered that should the Board choose to reinstate Respondent's Iowa medical license, he shall be placed on indefinite probation subject to the terms and conditions placed upon him in the May 31, 2006, combined Notice of Hearing, Settlement Agreement, and Final Order.

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:

i. ...violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

653 IAC 23.1 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, 148E, 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(11) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

653—25.25(272C) Disciplinary sanctions.

25.25(1) If the board concludes following a contested case hearing that discipline is warranted, the board has authority to impose any of the following disciplinary sanctions:

- a.* Revocation.
- b.* Suspension.
- c.* Restriction.
- d.* Probation.
- e.* Additional education or training.
- f.* Reexamination.
- g.* Physical or mental evaluation or substance abuse evaluation, or alcohol or drug screening or clinical competency evaluation.
- h.* Civil penalties not to exceed \$10,000.
- i.* Citation and warning.
- j.* Imposition of such other sanctions allowed by law as may be appropriate.

25.25(2) At the discretion of the board, the following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- a.* The relative seriousness of the violation.
- b.* The facts of the particular violation.
- c.* Any extenuating circumstances or other countervailing considerations.
- d.* Number of prior complaints, informal letters or disciplinary charges.
- e.* Seriousness of prior complaints, informal letters or disciplinary charges.
- f.* Whether the licensee has taken remedial action.
- g.* Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

11. **Application for Reinstatement:** On November 12, 2010, Respondent filed an Application for Reinstatement of his Iowa medical license.

12. **Order Denying Respondent's Application for Reinstatement:** On December 16, 2010, the Board voted to deny Respondent's Application for Reinstatement of his Iowa medical license after concluding that Respondent failed to demonstrate that the basis for suspension of the license no longer exists, and that it is in the public interest for the license to be reinstated including, but not limited to, the following:

- A. Respondent repeatedly violated the laws and rules governing the practice of medicine in Iowa between 2005 and 2009;
- B. Respondent repeatedly violated the terms and conditions established by the Board to protect his patients and the public between May 31, 2006 and 2009;
- C. Respondent repeatedly engaged in unprofessional or unethical conduct and/or practice harmful or detrimental to the public between 2005 and 2009;
- D. Respondent is guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine when he prescribed medications to an individual without establishing an appropriate physician-patient relationship and without performing an appropriate history and physical;
- E. Respondent is guilty of committing an act contrary to honesty, justice, or good morals when he offered hand-written notes during his testimony at hearing that were not produced prior to hearing and appear to have been altered by Respondent; and
- F. Respondent has failed to demonstrate that he has been rehabilitated and that he is safe to return to the practice of medicine.

13. **Request for Reconsideration:** Respondent filed a Request for Reconsideration and a reinstatement hearing was held on February 10, 2011.

14. **Findings of Fact, Conclusions of Law, Decision and Order:** On April 8, 2011, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order, which states in pertinent part,

Pursuant to Board rule, any person whose license has not been permanently suspended or revoked by the board may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent. 653 IAC 26.1.

Respondent has not practiced medicine for over 16 months. He has paid the \$10,000 civil penalty and the \$75.00 hearing fee required by the Board's October 1, 2009, Decision and Order. Respondent has taken appropriate steps to address some of the issues underlying the Board's decision to suspend his license. For example, Respondent no longer owns businesses that sell alcohol, and he has stopped associating with people that he believes were poor influences on him in the past. Respondent has voluntarily continued in counseling with a Board-approved therapist.

In addition, Respondent has voluntarily continued his participation in the Board-approved First Lab drug screening program. However, Respondent has continued to have some lapses in his compliance with the rules of the First Lab program. For example, despite repeated reminders concerning the program's requirements, Respondent failed to provide adequate notice of his travel schedule in March 2010. Respondent missed a call in when his status was on hold due to non-payment on his credit card. Respondent used a cell phone to call in on December 4, 2010 and then did not remain on the line long enough for the call to register.

Respondent has not provided satisfactory explanations for some of these compliance issues. At best, Respondent's explanation for his recent positive UA indicates that despite numerous warnings, Respondent is not diligent in avoiding products containing alcohol. If Respondent is ever to successfully complete probation, he must assume full responsibility for his own compliance. Respondent must consistently follow the rules of the First Lab program, including calling in daily from a landline or through the website, providing UA drops whenever requested, providing two weeks notice prior to any vacations, keeping his financial account up-to-date, and refraining from using or consuming products containing alcohol. Moreover, Respondent must be completely honest and forthcoming in all of his interactions with the Board and its staff.

Respondent has completed continuing medical education courses in pediatrics since his medical license was suspended and is prepared to take his board recertification examination. However, Respondent's medical license was indefinitely suspended for violations of the Board's Order and for dishonesty and unethical conduct. Respondent has not completed any educational programs that focus on these key areas. Therefore, the Board has determined that prior to reinstatement Respondent must successfully complete Board approved programs in ethics, professional boundaries, and medical recordkeeping. Respondent's successful completion of these three educational programs, along with his continued participation and full compliance with the First Lab screening program and his continued participation in Board approved counseling, will constitute sufficient proof that the reasons for the indefinite suspension of his license no longer exist and that it is in the public interest to reinstate his license, subject to terms and conditions of probation. (Emphasis added).

ORDER

IT IS THEREFORE ORDERED that prior to reinstatement of his medical license, Respondent must successfully complete the following Board-approved educational programs:

- A. ETHICS PROGRAM:** Respondent shall complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), 7531 Lowry Blvd., Suite 100, Denver, CO 80230, 303-577-3232 within 60 days of the date of this Order. Respondent shall ensure that a final report is sent directly to the Board. Respondent is responsible for all costs associated with the program.
- B. PROFESSIONAL BOUNDARY PROGRAM:** Respondent shall complete a professional boundary program under the direction of John Hung, Ph.D., Health Psychology Consultants, 7300 France Avenue, Suite 201, Edina, Minnesota, within 60 days of the date of this Order. Respondent shall fully comply with all recommendations made by Dr. Hung. Respondent shall ensure that proof of completion of the program is forwarded directly to the Board. Respondent is responsible for all costs associated with the program.
- C. RECORDKEEPING PROGRAM:** Respondent shall complete the medical recordkeeping program sponsored by the Center for Personalized Education for Physicians (CPEP), 7531 Lowry Blvd., Suite 100, Denver, CO 80230, 303-577-3232, within 60 days of the date of this Order. Respondent shall ensure that a final report is sent directly to the Board. Respondent is responsible for all costs associated with the program.
- D. PERSONAL APPEARANCE BEFORE MONITORING COMMITTEE:** Respondent shall personally appear before the Board's Monitoring Committee to report on his ongoing participation in the First Lab program, his progress in counseling, and his plans for a worksite monitor, chaperones, staff surveillance forms, and patient satisfaction surveys.

15. **Request for Reinstatement:** On March 1, 2012, Respondent appeared before the Board's Monitoring Committee to satisfy the requirement in Paragraph D above and request reinstatement of his Iowa medical license. The Board concluded that Respondent has successfully completed a Board-approved ethics program, a Board-approved professional boundaries program and a Board-approved recordkeeping program. However, the Board concluded that Respondent failed to fully comply with the First Lab drug screening program including the following:

- A. Respondent failed to call into the First Lab drug screening program on July 14, 2011.
- B. Respondent failed to provide a urine specimen for testing with the First Lab drug screening program when required to do so on April 25, and July 15, 2011.
- C. Respondent's urine specimen on September 13, 2011, was dilute. The Board noted that dilute urine specimens may be evidence of an attempt to avoid detection of alcohol use. The Board also noted that dilute urine specimens prevent appropriate drug testing and should be treated as a positive result.
- D. Respondent's urine specimens had low creatinine levels on September 19, October 17, and November 28, 2011, and January 16, 2012. The Board noted that low creatinine levels may be evidence of an attempt to avoid detection of alcohol use. The Board also noted that urine specimens with low creatine levels prevent appropriate drug testing and should be treated as a positive result.
- E. Respondent's First Lab drug screen was positive for alcohol on November 14, 2011.

16. **Denial of Reinstatement:** After careful consideration, the Board concluded that Respondent failed to demonstrate that the basis for the indefinite suspension of his Iowa medical license no longer exists and that it will be in the public interest for the license to be reinstated. The Board voted to deny Respondent's request for reinstatement of his Iowa medical license.

THEREFORE IT IS HEREBY ORDERED: that Respondent's request for reinstatement of his Iowa medical license is **DENIED**.



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

March 21, 2011
Date

BEFORE THE IOWA BOARD OF MEDICINE

**IN THE MATTER OF THE
REINSTATEMENT APPLICATION
FILED BY:**

**DIA NO. 11IBM001
FILE NOS. 02-05-830, 02-08-478,
02-09-082**

NARINDER KUMAR, M.D.

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

Date April 8, 2011.

On October 1, 2009, the Iowa Board of Medicine (Board) issued a Decision and Order indefinitely suspending Iowa medical license number 29998, issued to Narinder Kumar, M.D. (Respondent). On November 12, 2010, Respondent filed an Application for Reinstatement. The Board voted to deny the application on December 16, 2010, and Respondent filed a Request for Reconsideration. A reinstatement hearing was held on February 10, 2011 at 3:00 p.m. before the following Board members: Siroos S. Shirazi, M.D., Chairman; Rod Zeitler, M.D., Vice Chairman; Janice Galli, D.O., Secretary; Colleen Stockdale, M.D.; Analisa Haberman, D.O.; Jeff Snyder, M.D.; Joyce Vista-Wayne, M.D., Thomas Drew, J.D.; Paul Thurlow; and Amber Mian. Respondent appeared and was represented by attorney Connie Diekema. Assistant Attorney General Theresa O'Connell Weeg represented the state of Iowa. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 653 IAC 25.18(12), and was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare a written decision for their review, in accordance with their deliberations.

THE RECORD

The record includes the Application for Reinstatement with attachments; Request for Reconsideration; Board Order issued January 13, 2011; Notice of Reinstatement Hearing; testimony of Respondent and Shantel Billington; Respondent Exhibits A and B; and State Exhibits 1-29 (see Exhibit Index for description).

FINDINGS OF FACT

Respondent's Licensure, Practice, and Disciplinary History

1. Respondent was issued Iowa medical license number 29998 to practice medicine in the state of Iowa on June 28, 1994. (State Exhibit 12) Respondent practiced pediatrics in Bettendorf, Iowa from 1994 until his license was suspended on October 1, 2009. Respondent is board certified by the American Board of Pediatrics and will be taking the board recertification examination later this year. Respondent has subspecialties in asthma and pulmonology, ADHD, and childhood obesity. (Respondent testimony; Application for Reinstatement; State Exhibits 14, 24)

2. The Board has taken three disciplinary actions against Respondent's medical license within the past five years.

a. On May 31, 2006, Respondent and the Board entered into a Combined Notice of Hearing, Statement of Charges, Settlement Agreement, and Final Order. Respondent was charged with engaging in unprofessional conduct. Pursuant to the terms of the Order, Respondent was required to:

- Have a Board-approved female healthcare professional chaperone continually present when performing any physical examination of female patients;
- Complete a Board-approved course for appropriate prescribing practices;
- Complete a five year period of probation. The terms of probation included, in part, abstaining from the use of alcohol and from the use of any controlled or prescription drugs unless duly prescribed. Respondent was also required to submit to the Board's drug screening program.

(State Exhibits 1-8)

b. On April 26, 2007, the Board filed an Emergency Adjudicative Order suspending Respondent's medical license. Respondent was charged with violating the terms of the May 31, 2006, Order and with engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public. Following an evidentiary hearing, the Board concluded that Respondent had violated the terms of the May 31, 2006, Order by failing to file required reports. The Board's final Decision and Order issued on December 17, 2007, reinstated Respondent's license and placed him on probation, subject to the

same terms and conditions as those imposed in the May 31, 2006 Order. (State Exhibits 9-15).

c. The Board filed charges against Respondent on September 17, 2008, February 12, 2009, and July 13, 2009. Following an evidentiary hearing in August 2009, the Board found that Respondent:

- Violated the terms of the May 31, 2006, Order when he consumed alcohol on multiple occasions, when he failed to fully comply with the Board's drug screening program, and when he used prescription medication that was not prescribed for him;
- Was guilty of a willful or repeated departure from, or failure to conform to the minimum standard of acceptable and prevailing practice of medicine when he prescribed medications to an individual without establishing an appropriate physician-patient relationship and without performing an appropriate history and physical; and
- Committed an act contrary to honesty, justice, or good morals when he offered handwritten notes during the Board's hearing which he claimed as a contemporaneously created patient record. Respondent did not produce these notes prior to hearing even though all medical records were subpoenaed. The notes appeared to be altered by Respondent.

The Board's Decision and Order indefinitely suspended Respondent's medical license and ordered him to pay a \$10,000 civil penalty. Respondent was prohibited from applying for reinstatement for at least one year. The Board's Decision and Order further stated that if the Board should choose to reinstate Respondent's license, he would be placed on indefinite probation subject to the terms and conditions established in the May 31, 2006, combined Notice of Hearing, Settlement Agreement, and Final Order. (State Exhibits 16-24)

Respondent's Actions Following the Indefinite Suspension of His Medical License

3. After his license was suspended, Respondent chose to continue his participation in the Board's drug and alcohol screening program through First Lab. On October 7, 2009, the Board's Compliance Monitor (Shantel Billington) told Respondent that if he was going to continue his participation in the program he would have to call in to First

Lab every day and provide a urine specimen (UA) every time that he was selected. (Testimony of Respondent; Shantel Billington; State Exhibit 28, p. 2).

On December 17, 2009, and again on December 15, 2010, Ms. Billington sent an email to all of the Board's First Lab participants, including Respondent, with the following reminders:

- to call First Lab on a daily basis and to complete the UA drops on the day selected;
- to call on a land line or through the First Lab website because cell phones do not fully connect and will get marked as a missed call;
- to provide First Lab and the Compliance Monitor a minimum 2 week notice of any time they are away from their normal drop site to allow sufficient time to find a [UA drop] location and to mail supplies to the other lab.
- to inform the drop site that all UA drops had to be directly observed; and
- to watch what they ate and drank to be sure they were not consuming any food or beverages containing alcohol.

(Testimony of Shantel Billington; State Exhibit 28, pp. 3, 10-11).

4. Respondent stayed in contact with Ms. Billington while his license has been suspended. Ms. Billington acknowledged that this was an improvement. During his probation, Respondent often had his office manager call or contact Ms. Billington for him. (Testimony of Shantel Billington; State Exhibit 28)

5. In the past year, Respondent has travelled out of state for five family weddings, including three trips outside the United States. There have been occasions when Respondent missed a call-in or a scheduled UA drop because of his travel schedule, financial issues, reported confusion over First Lab procedures, or health problems.

a. First Lab selected Respondent for a UA drop on December 28, 2009. Respondent called Ms. Billington to report that he was in Cedar Rapids for an all day mediation session and asked if he could provide the UA drop in Cedar Rapids. Ms. Billington gave Respondent two possible locations in Cedar Rapids but Respondent felt both locations were too far away. Respondent told Ms. Billington that he would provide the UA drop the following morning.

b. On Tuesday, March 9, 2010, Respondent called Ms. Billington and First Lab to report that he would be attending a wedding in Mississippi on the

upcoming Saturday and would return to Iowa the following Wednesday or Thursday. This was insufficient notice for First Lab to arrange for a drug screening site in Mississippi. Respondent claimed that he did not know that First Lab needed a two week notice of his travel schedule.

Respondent told Ms. Billington that he would be in Toronto, Canada, from May 28 through June 4th or 5th for a niece's wedding. He further reported that his daughter would be having two wedding ceremonies, one in Rockport, Illinois, on July 3rd and one in Toronto, Canada, on July 10, 2010. Ms. Billington told Respondent to be sure to give First Lab two weeks notice of his trips in May and July so they could get the supplies set up. However, First Lab later agreed that Respondent would not have to provide UA drops while he was out of the country and could provide them upon his return.

c. When Respondent returned from Mississippi on March 18, 2010, he called Ms. Billington to report he was unable to call into First Lab because his status had been placed on hold after his credit card had been declined. Respondent reported that it would take 24 hours to get off hold. On May 19, 2010, Respondent again reported that his First Lab credit account was on hold because he owed them \$250.

d. On March 24, 2010 Respondent was hospitalized for cardiac problems. Respondent was selected for a UA drop on March 25, 2010, but was unable to comply because he was on bed rest at home and had driving restrictions.

e. On May 3, 2010, Respondent called Ms. Billington to report that he missed calling into First Lab the day before (Sunday) because he was attending his daughter's wedding shower. Respondent had left his cell phone at home and mistakenly thought he had until 4:00 p.m. to call. When he got home at 3:00 p.m. he discovered it was too late to call.

f. Respondent travelled to Canada for another family wedding on October 30, 2010, and was scheduled to return to Iowa on November 2, 2010. On Friday, November 5, 2010, Respondent left a message for Ms. Billington stating that he was still in Canada due to a family emergency, but First Lab had asked him for a UA drop that day. First Lab agreed that Respondent could provide the UA drop on Monday, November 9, 2010, after his return to Iowa.

g. First Lab reported that Respondent missed his call in on Saturday, December 4, 2010. Ms. Billington sent Respondent a letter requesting an explanation. On December 9, 2010, Respondent called Ms. Billington and initially told her that he did call in on December 4th and he would check his records. Respondent then told Ms. Billington that he did not think he had to call in on weekends. After Ms. Billington reminded Respondent that he must call in everyday, not just work days, Respondent told her that he was not sure what happened because he calls in every day.

On December 15, 2010, Respondent provided a cell phone record to Ms. Billington that listed a call placed to First Lab on December 4, 2010 at 9:18 a.m. Respondent told Ms. Billington that when he called First Lab he was informed that he had not been selected for a UA drop. Respondent then switched over to an incoming call. First Lab confirmed that they received a 15 second call at 9:18 a.m. on December 4th, but they were unable to confirm that Respondent was the caller because the call was too brief to register in their system.

(State Exhibit 28, Testimony of Shantel Billington; Respondent)

6. Respondent asked the Board for additional time to pay the \$10,000 civil penalty. Respondent eventually paid the \$10,000 civil penalty on August 30, 2010. (Testimony of Shantel Billington; State Exhibit 28, pp. 2, 6).

7. Respondent filed an Application for Reinstatement on November 12, 2010, 13 months after his license was suspended. The Board voted to deny Respondent's Application at its meeting on December 16, 2010. Respondent filed a Request for Reconsideration, and a hearing was scheduled for February 10, 2011. (Application for Reinstatement; Request for Reconsideration)

8. Respondent was in India for another niece's wedding from December 16, 2010, to January 4, 2011. When Respondent returned to Iowa, First Lab required him to provide a UA drop, which was negative. Respondent was asked to provide additional UA drops on Monday, January 10 and Tuesday, January 11, 2011. The First Lab website originally reported that Respondent missed the January 10th UA drop. However this was an error that First Lab later corrected. Respondent provided UA drops on both days; however the drop on January 10th was incorrectly reported with a collection date of January 11th. On January 18, 2011, the Board received a report that Respondent's UA on January 11, 2011, (which was actually collected on January 10th) tested positive for Ethyl Glucuronide (EtG) and Ethyl Sulfate (EtS). EtG and EtS are indicators of alcohol consumption. The EtG cutoff value used by the laboratory to confirm a positive result

is 250 ng/ml. Respondent's urine tested at 736 ng/ml EtG. The EtS cutoff value is 50 ng/ml, and Respondent's urine tested at 180 ng/ml EtS. Ms. Billington sent Respondent a letter asking him to explain the positive test, in writing, by January 25, 2011. (Testimony of Shantel Billington; Respondent; State Exhibit 28, pp. 11-12)

Ms. Billington also asked First Lab to have a Medical Review Officer (MRO) examine Respondent's positive UA result. However, Respondent's First Lab account was \$272 in arrears, so he had to pay the \$272 plus the \$50 MRO charge before the MRO would be processed. After Respondent paid these fees, the MRO (Natalie Hartenbaum, M.D.) reviewed the test results and interviewed Respondent about his activities during the weekend prior to January 10, 2011. The MRO submitted a written report on January 18, 2011, which noted:

Denies alcoholic beverages. Has not been reading labels carefully-was in Starbucks, was not aware their vanilla syrup contains alcohol. Has been using nph alcohol based hand sanitizers. Avoided cough syrup. Does use albuterol inhaler.

(State Exhibit 29, p. 3) The MRO also wrote "EtG/EtS-used alcohol based hand sanitizers. Cannot rule out incidental/accidental exposure." (State Exhibit 29, p. 4)

On January 24, 2011, Respondent called Ms. Billington to respond to her letter regarding his positive test result. Respondent reported telling the MRO about a vanilla shake he drank at Starbucks when he was visiting family the weekend before the UA drop. Respondent also reported telling the MRO that he had been washing dishes by hand for a week because their dishwasher was broken. Respondent told Ms. Billington that both he and the MRO thought the vanilla shake was the reason for the positive test result. (Testimony of Shantel Billington; Respondent; State Exhibits 28, 29)

Ms. Billington emailed Starbucks concerning the ingredients used in Starbucks' vanilla shakes. The email response from "Thomas B" indicated that Starbucks does not use vanilla extract in the vanilla powder or vanilla syrups that they use in their shakes and that the vanilla they use should not contain alcohol because it was not an extract. (Testimony of Shantel Billington; State Exhibit 28, p. 13-14)

At hearing, Respondent denied drinking any alcohol at any time while participating in the First Lab program. Respondent testified that he has been warned about using hand sanitizers and tries to avoid them but implied he may have used them during his trip to India. However, this would not have been the cause of the positive result because the

UA taken upon Respondent's return from India was negative. Respondent testified that both he and the MRO believed that the Starbucks vanilla shake was the most likely cause of his positive test result. (Testimony of Respondent)

9. Respondent testified that he no longer owns a bar or restaurant and no longer spends time with the "wrong people" that he associated with when he owned these types of businesses. (Testimony of Respondent)

10. Respondent continued in counseling with a Board-approved therapist after his medical license was suspended. Respondent's Board approved therapist retired at the end of October 2010, and Respondent obtained approval for his new therapist, Elizabeth Lonning, PsyD, MSCP. Dr. Lonning has provided the Board with a written progress report. (Testimony of Respondent; Shantel Billington; State Exhibit 28; Respondent Exhibit A)

11. Respondent provided a letter of support from Dr. Joseph E. Bergstrom, who is the Director of Medical Education at Trinity Regional Health System. Dr. Bergstrom wrote that he is supportive of Respondent's reinstatement request for the following reasons:

- Respondent has assured him that he has been completely compliant with the Board's requirements;
- there is a need for a pediatrician in Trinity's family practice clinic and efforts to recruit other pediatricians have not been successful; and
- Respondent has previously provided valuable training to medical students and residents in Trinity's education program.

(Respondent Exhibit B)

12. Respondent has completed over 120 hours of continuing medical education since 2008 as part of the board recertification process. However, Respondent has not reported completing any educational programs focused on ethical issues. (Testimony of Respondent)

CONCLUSIONS OF LAW

Iowa Code section 148.9 (2011) provides:

148.9 Reinstatement

Any person whose license has been suspended may apply to the board for reinstatement at any time and the board may hold a hearing on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement.

Pursuant to Board rule, any person whose license has not been permanently suspended or revoked by the board may apply to the board for reinstatement in accordance with the terms and conditions of the order of revocation or suspension. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent. 653 IAC 26.1.

Respondent has not practiced medicine for over 16 months. He has paid the \$10,000 civil penalty and the \$75.00 hearing fee required by the Board's October 1, 2009, Decision and Order. Respondent has taken appropriate steps to address some of the issues underlying the Board's decision to suspend his license. For example, Respondent no longer owns businesses that sell alcohol, and he has stopped associating with people that he believes were poor influences on him in the past. Respondent has voluntarily continued in counseling with a Board-approved therapist.

In addition, Respondent has voluntarily continued his participation in the Board-approved First Lab drug screening program. However, Respondent has continued to have some lapses in his compliance with the rules of the First Lab program. For example, despite repeated reminders concerning the program's requirements, Respondent failed to provide adequate notice of his travel schedule in March 2010. Respondent missed a call in when his status was on hold due to non-payment on his credit card. Respondent used a cell phone to call in on December 4, 2010 and then did not remain on the line long enough for the call to register.

Respondent has not provided satisfactory explanations for some of these compliance issues. At best, Respondent's explanation for his recent positive UA indicates that despite numerous warnings, Respondent is not diligent in avoiding products containing alcohol. If Respondent is ever to successfully complete probation, he must assume full responsibility for his own compliance. Respondent must consistently follow the rules of the First Lab program, including calling in daily from a landline or through the website, providing UA drops whenever requested, providing two weeks notice prior to any vacations, keeping his financial account up-to-date, and refraining from using or consuming products containing alcohol. Moreover, Respondent must be completely honest and forthcoming in all of his interactions with the Board and its staff.

Respondent has completed continuing medical education courses in pediatrics since his medical license was suspended and is prepared to take his board recertification examination. However, Respondent's medical license was indefinitely suspended for violations of the Board's Order and for dishonesty and unethical conduct. Respondent has not completed any educational programs that focus on these key areas. Therefore, the Board has determined that prior to reinstatement Respondent must successfully complete Board approved programs in ethics, professional boundaries, and medical recordkeeping. Respondent's successful completion of these three educational programs, along with his continued participation and full compliance with the First Lab screening program and his continued participation in Board approved counseling, will constitute sufficient proof that the reasons for the indefinite suspension of his license no longer exist and that it is in the public interest to reinstate his license, subject to terms and conditions of probation.

ORDER

IT IS THEREFORE ORDERED that prior to reinstatement of his medical license, Respondent must successfully complete the following Board-approved educational programs:

- A. **ETHICS PROGRAM:** Respondent shall complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), 7531 Lowry Blvd., Suite 100, Denver, CO 80230, 303-577-3232 within 60 days of the date of this Order. Respondent shall ensure that a final report is sent directly to the Board. Respondent is responsible for all costs associated with the program.

- B. **PROFESSIONAL BOUNDARY PROGRAM:** Respondent shall complete a professional boundary program under the direction of John Hung, Ph.D., Health Psychology Consultants, 7300 France Avenue, Suite 201, Edina, Minnesota, within 60 days of the date of this Order. Respondent shall fully comply with all recommendations made by Dr. Hung. Respondent shall ensure that proof of completion of the program is forwarded directly to the Board. Respondent is responsible for all costs associated with the program.

- C. **RECORDKEEPING PROGRAM:** Respondent shall complete the medical recordkeeping program sponsored by the Center for Personalized Education for Physicians (CPEP), 7531 Lowry Blvd., Suite 100, Denver, CO 80230, 303-577-3232, within 60 days of the date of this Order. Respondent shall ensure that a final report is sent directly to the Board. Respondent is responsible for all costs associated with the program.

- D. **PERSONAL APPEARANCE BEFORE MONITORING COMMITTEE:** Respondent shall personally appear before the Board's Monitoring Committee to report on his ongoing participation in the First Lab program, his progress in counseling, and his plans for a worksite monitor, chaperones, staff surveillance forms, and patient satisfaction surveys.

Upon full compliance with the requirements outlined in **sections A-D** of this Order, Respondent's medical license will be **REINSTATED** subject to the following terms and conditions:

- 1. **CHAPERONE REQUIREMENT:** Respondent shall have a Board-approved female healthcare professional chaperone continually present when performing any physical examination of a female patient. The Board-approved healthcare professional chaperone shall be continuously present when the Respondent is providing healthcare services, including but not limited to, patient evaluation, treatment and post-evaluation treatment directions. The chaperone shall clearly document her continued presence in each female patient's chart. Respondent shall provide the Board with the names of all persons providing chaperone services for him at all facilities where Respondent practices medicine under his Iowa medical license within 48 hours of joining the staff. The Board will provide all chaperones with a copy of all Board Orders in this matter. All chaperones shall provide a written statement to the Board indicating that

they have read the Board Orders and agree to inform the Board immediately if there is any evidence of inappropriate behavior or professional misconduct.

2. **INDEFINITE PROBATION:** Respondent's Iowa medical license shall be placed on indefinite probation subject to the following terms and conditions:
 - A. **Monitoring Program:** Respondent shall contact Shantel Billington, Compliance Monitor, 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. **Full Compliance With All Recommendations:** Respondent shall fully comply with all recommendations made by the Board and all Board-approved educational programs and treatment professionals.
 - C. **Alcohol Prohibition:** Respondent shall not consume alcohol. Respondent shall take appropriate steps to avoid contact with consumer products that contain alcohol.
 - D. **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 qualified treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug. Respondent shall inform any treating physician or other treating health care provider of his medical history prior to receiving any controlled or prescription drug.
 - E. **Drug Screening Program:** Respondent shall submit to the Board's drug screening program. Respondent shall fully comply with all requirements of the drug-screening program. 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.

- F. **Counseling:** Respondent shall participate in Board-approved counseling. Respondent shall submit the name and CV of a counselor for Board approval. The counselor shall submit written quarterly reports to the Board no later than 1/20, 4/20, 7/20, and 10/20 of each year of Respondent's probation. Respondent shall continue in counseling until termination of treatment is recommended by his counselor and approved by the Board.

- G. **Worksite Monitor:** Respondent shall submit for Board approval the name of a physician or other healthcare professional who regularly observes Respondent in the practice of medicine to serve as a worksite monitor. The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor. The worksite monitor shall provide a written statement indicating that they have read and understand all Board orders in this matter and agrees to act as the worksite monitor under the terms of this Order. The worksite monitor shall agree to inform the Board immediately if there is evidence of professional misconduct, or a violation of the terms of this Order. The worksite monitor shall agree to 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 probation.

- H. **Staff Surveillance Forms:** Respondent shall ensure that all nursing staff who work with him in the future complete the staff surveillance form provided by the Board at the end of each month. The staff surveillance forms shall be mailed directly to the Board's Monitoring Coordinator and must be received by the 15th of each month.

- I. **Patient Satisfaction Surveys:** Respondent shall utilize patient satisfaction surveys in his medical practice. The staff at each location where Respondent practices medicine shall provide the surveys to all patients for one week beginning January 1, April 1, July 1, and October 1 of each year of Respondent's probation. Staff shall mail a copy of the surveys directly to the Board's Monitoring Coordinator.

- J. **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Order. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of probation.
- K. **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. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(d).
- L. **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: Shantel Billington, Compliance Monitor, 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.C.
- M. **Obey All Laws:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Iowa.
- N. **Residence or Practice Outside of Iowa:** 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.
- O. **Failure to Comply With This Order:** If Respondent violates or fails to comply with any of the terms or conditions of this Decision and 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, 272C, and 653 IAC 25.

IT IS FURTHER ORDERED, in accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, Respondent shall pay any costs certified by the Executive Director and reimbursable pursuant to subrule 25.33. 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 8th day of April, 2011.



Siroos Shirazi, M.D.

Chairperson

Iowa Board of Medicine

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 order.

cc: Theresa O'Connell Weeg, Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

Connie Diekema, Attorney for Respondent
FINLEY, ALT, SMITH SCHARNBERG,
CRAIG, HILMES & GAFNEY, P.C.
1900 Hub Tower
699 Walnut Street
Des Moines, IA 50309

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NARINDER KUMAR, M.D., RESPONDENT

FILE Nos. 02-05-830, 02-08-478 & 02-09-082

ORDER

Date: January 13, 2011.

1. Respondent was issued Iowa medical license number 29998 on June 28, 1994.
2. Respondent's Iowa medical license is active and will next expire on December 1, 2012.
3. The Board has jurisdiction pursuant to Iowa Code Chapters 147, 148 and 272C.
4. **Unprofessional Conduct:** In late 2005 the Board received information which indicated that Respondent engaged in a pattern of inappropriate and unprofessional conduct in the practice of medicine, including the following:
 - A. **Alcohol on Breath:** The Board received information from a healthcare professional which indicated that Respondent had alcohol on his breath while treating patients.

- B. **Alcohol on Breath:** The Board received information from a pediatric patient's mother which indicated that Respondent had alcohol on his breath while treating her child.
- C. **Drinking While on Call:** The Board received information which indicated that Respondent owned a restaurant and that he frequently drank heavily while at the restaurant late into the evening, even when he was on call and could be called to treat patients.
- D. **Sexual Harassment Charges:** The Board received information which indicated that a former staff person filed charges against Respondent alleging sexual harassment.
- E. **Inappropriate Sexual Touching:** The Board received information which indicated that Respondent touched a teenage female patient in an inappropriate sexual manner during a physical examination for complaints of stomach pain and dizziness.
- F. **Substance Abuse and Professional Misconduct Evaluation:** On January 13, 2006, at the direction of the Board, Respondent completed a comprehensive substance abuse and professional misconduct evaluation at a Board-approved assessment program. The assessment program was unable to substantiate the allegations but recommended that Respondent implement quality improvement initiatives in his workplace to avoid future problems, including, abstinence from the use of alcohol and drugs, urine drug screening, a chaperone for all female patients, individual counseling and other quality improvement initiatives.

5. **May 31, 2006, Notice of Hearing, Settlement Agreement and Final Order:** On May 31, 2006, Respondent entered into a combined Notice of Hearing, Settlement Agreement and Final Order with the Board to address the concerns above. The Board charged Respondent with engaging in unprofessional conduct. Under the terms of the Settlement Agreement, Respondent agreed to fully comply with the following terms and conditions:

- A. **Chaperone Requirement:** Respondent shall have a Board-approved female healthcare professional chaperone continually present when performing any physical examination of female patients. The Board-approved healthcare professional chaperone shall be continually present when the Respondent is providing healthcare services, including but not limited to, patient evaluation, treatment and post-evaluation treatment directions. The chaperone shall clearly document her continued presence in each female patient's chart. Respondent shall provide the Board with the names of all persons providing chaperone services for him at all facilities where Respondent practices medicine under his Iowa medical license within 48 hours of their joining the staff. The Board will provide all chaperones with a copy of all Board Orders in this matter. All chaperones shall provide a written statement to the Board indicating that they have read the Board Orders and agree to inform the Board immediately if there is any evidence of inappropriate behavior or professional misconduct.
- B. **Prescribing Course:** Respondent shall complete a Board-approved course for appropriate prescribing practices as recommended by the assessment program.

6. **Five Year Probation:** Respondent was also placed on probation for a period of five (5) years subject to the following terms and conditions:

- A. **Board Monitoring Program:** Respondent shall contact Deb Anglin, Coordinator, Monitoring Programs, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph. #515-281-6491, to establish a monitoring program.
- B. **Full Compliance with All Recommendations:** Respondent shall fully comply with all recommendations made by the Board and all Board-approved treatment professionals, including but not limited to the quality improvement initiatives recommended by the assessment program.
- C. **Alcohol Prohibition:** Respondent shall not consume alcohol.
- D. **Controlled or Prescription Drug Restriction:** Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug 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. Respondent shall inform any treating physician or other treating health care provider of his history of substance abuse prior to receiving any prescription drug.
- E. **Drug Screening Program:** Respondent shall submit to the Board's drug screening program. Respondent shall provide random blood or urine specimens when required. Respondent agrees to comply with all requirements of the drug-

screening program. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. All costs of the drug screen program shall be paid by Respondent.

F. **Counseling:** Respondent shall participate in Board-approved counseling.

- (1) Respondent shall submit the name and CV of a counselor for Board approval.
- (2) The counselor shall submit written quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
- (3) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
- (4) Respondent shall meet with his Board-approved counselor as frequently as recommended by the counselor and approved by the Board. All costs of the counseling shall be the responsibility of Respondent.

G. **Worksite Monitor:** Respondent shall submit for Board approval the name of a physician who regularly observes Respondent in the practice of medicine to serve as worksite monitor. The Board shall share a copy of all Board orders relating to this matter with the worksite monitor. The worksite monitor shall provide a written statement indicating that they have read and understand all Board orders in this matter and agrees to act as the worksite monitor under the terms of this Order.

The worksite monitor shall agree to inform the Board immediately if there is evidence of substance abuse, professional misconduct, or a violation of the terms of this Order. The monitor shall agree to submit 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 probation.

- H. **Staff Surveillance Forms:** Respondent shall ensure that all nursing staff who work with him in the future complete the staff surveillance form provided by the Board at the end of each month. The staff surveillance forms shall be mailed directly to the Board's Monitoring Coordinator and must be received by the 15th of each month.
- I. **Patient Satisfaction Survey:** Respondent shall utilize patient satisfaction surveys in his medical practice. The staff at each location where Respondent practices medicine shall provide the surveys to all patients for one week beginning January 1, April 1, July 1, and October 1, of each year of Respondent's probation. Staff shall mail a copy of the surveys directly to the Board's Monitoring Coordinator.
- J. **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Settlement Agreement, including attendance at meetings with his counselor. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of Respondent's probation.
- K. **Board Appearances:** Respondent shall make an appearance before the Board annually or upon request. Respondent 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 12.6(6)(d).

- L. **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 no later than the 15th of the month three months after the date of this order and every quarter thereafter. The Monitoring Fee shall be sent to: Coordinator of Monitoring Programs, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medical Examiners. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

7. **April 26, 2007, Emergency Adjudicative Order and Statement of Charges:**

On April 26, 2007, the Board issued an Emergency Adjudicative Order and Statement of Charges immediately suspending Respondent's Iowa medical license. The Board charged Respondent with violating a lawful order of the Board and engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public including, but not limited to, the following:

- A. **Inappropriate Physical Examination:** The Board received information which indicates that Respondent inappropriately touched the breasts of a woman during an examination. The woman had brought a male child to Respondent with complaints of a sore throat and persistent cough. During the child's exam the woman told Respondent that she was concerned that she may have been the source

of the child's sore throat. Respondent examined the child and then, allegedly without warning, he placed his hands and a stethoscope under the woman's blouse against each of her breasts. The woman felt that Respondent's actions were clearly inappropriate. No chaperone was present during the unwelcome examination of the woman in violation of the requirements established in the May 31, 2006, Settlement Agreement that he entered into with the Board.

- B. **Violation of Chaperone Requirement:** The Board received information which indicates that Respondent treated at least two female patients in January 2007, without a Board-approved female chaperone present, in violation of the chaperone requirement established in the Settlement Agreement that he entered into with the Board on May 31, 2006.
- C. **Violation of Staff Surveillance Form Requirement:** The Board received information which indicates that Respondent improperly intercepted a surveillance form in violation of staff surveillance form requirement established in the Settlement Agreement that he entered into with the Board on May 31, 2006. The surveillance form had been completed by a member of Respondent's office staff and the form indicated that Respondent had treated at least one female patient without a chaperone in violation of his Board order.
- D. **Violation of Worksite Monitor Requirement:** The Board received information which indicates that Respondent failed to notify the Board that his Board-approved worksite monitor left the country for an extended leave of absence. Respondent inappropriately practiced medicine under his Iowa medical license for

an extended period of time without a worksite monitor in violation of the worksite monitor requirement established in the Settlement Agreement that he entered into with the Board on May 31, 2006.

- E. **Inadequate Staff Supervision:** The Board received information which indicates that Respondent failed to properly supervise his medical staff. The information indicates that a nurse in his office improperly prescribed Baclofen to a patient without Respondent's knowledge. Respondent admitted that his nurse wrote the prescription without his knowledge.

8. **August 9, 2007, Findings of Fact, Conclusions of Law, Decision and Order:** A contested case hearing was held before the Board on July 19, 2007. On August 9, 2007, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent failed to fully comply with the reporting requirements established in the May 31, 2006, combined Notice of Hearing, Settlement Agreement and Final Order. The Board reinstated Respondent's Iowa medical license and issued him a Citation and Warning for violating a Board order. The Board voted to delete paragraphs 9(C), (D), (E) and (G) of the combined Notice of Hearing, Settlement Agreement and Final Order. A Rehearing was held before the Board on November 8, 2007. On December 17, 2007, the Board issued an Order which required Respondent to fully comply with all of the terms and conditions established in the May 31, 2006, Settlement Agreement.

9. **September 17, 2008, Statement of Charges:** On September 17, 2008, the Board filed a new Statement of Charges against Respondent charging him with violating the terms of a lawful order of the Board, in violation of the laws and rules governing the practice of medicine.

The Board charged Respondent with violating subparagraphs 9(C) and (E) of the May 31, 2006, Order, when he: tested positive for alcohol on July 8, 2008; failed to call into the Board's drug screening program when required to; and failed to provide urine samples for the Board's drug screening program on two occasions on May 9 and 19, 2008. On February 12, 2009, the Board, on a motion of the State, issued a First Amended Statement of Charges which added allegations that Respondent: tested positive for alcohol on April 24, 2008; failed to provide urine samples for the Board's drug screening program on January 28, July 2, July 22, August 18, October 20, November 10, November 12, December 2, and December 22, 2008; failed to provide a random urine specimen on demand by an agent of the Board, when he did not provide a urine sample on request of a Board investigator on November 12, 2008; used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singular, when those drugs were not prescribed to Respondent for his use by another treating physician; and used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singular, without providing the Board written notice within 72 hours of the use of those drugs. On July 13, 2009, the Board, on a motion by the State, issued a Second Amended Statement of Charges which added allegations that Respondent; consumed alcohol; wrote prescriptions for numerous medications, including controlled substances, to an adult female acquaintance without seeing the female acquaintance in his medical office, without conducting a physical examination and without maintaining a patient record; had nonconsensual sexual contact with, and made inappropriate sexual comments to the female acquaintance; and wrote an antibiotic prescription to the female acquaintance for her to give to a two year-old nephew for a cold without seeing the child in his medical office, without conducting a physical

examination and without maintaining a patient record. The State's Motion was not resisted and the Motion was granted on July 13, 2009. The Second Amended Statement of Charges added Counts II, III, IV and V.

10. **Findings of Fact, Conclusions of Law and Decision:** A contested case hearing was held before the Board on August 12-13, 2009. On October 1, 2009, the Board issued a Findings of Fact, Conclusions of Law and Decision. The Board concluded that Respondent violated the terms and conditions established in the May 31, 2006, combined Notice of Hearing, Settlement Agreement and Final Order when he consumed alcohol on multiple occasions, failed to fully comply with the Board's drug screening program, and used prescription medication which was not prescribed for him. The Board also concluded that Respondent was guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine when he prescribed medications to an individual without establishing an appropriate physician-patient relationship and without performing an appropriate history and physical. Finally, the Board concluded that Respondent was guilty of committing an act contrary to honesty, justice, or good morals when he offered hand-written notes during his testimony at hearing that were not produced prior to hearing and appear to have been altered by Respondent. The Board ordered Respondent to pay a \$10,000 Civil Penalty and indefinitely suspended his Iowa medical license. Respondent was ordered not to engage in any aspect of the practice of medicine during the period of suspension. Respondent was ordered not to reapply for reinstatement for at least one year from the date of the Order. The board also ordered that Respondent's Iowa medical license not be reinstated except upon a showing by Respondent that the basis for suspension of the license no longer exists, and that it is in the public interest for

the license to be reinstated. The reinstatement proceedings shall be governed by 653 IAC 26.1. The Board ordered that should the Board choose to reinstate Respondent's Iowa medical license, he shall be placed on indefinite probation subject to the terms and conditions placed upon him in the May 31, 2006, combined Notice of Hearing, Settlement Agreement, and Final Order.

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:

i. ...violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

653 IAC 23.1 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, 148E, 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(11) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

653—25.25(272C) Disciplinary sanctions.

25.25(1) If the board concludes following a contested case hearing that discipline is warranted, the board has authority to impose any of the following disciplinary sanctions:

- a.* Revocation.
- b.* Suspension.
- c.* Restriction.
- d.* Probation.
- e.* Additional education or training.
- f.* Reexamination.
- g.* Physical or mental evaluation or substance abuse evaluation, or alcohol or drug screening or clinical competency evaluation.
- h.* Civil penalties not to exceed \$10,000.
- i.* Citation and warning.
- j.* Imposition of such other sanctions allowed by law as may be appropriate.

25.25(2) At the discretion of the board, the following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

- a.* The relative seriousness of the violation.
- b.* The facts of the particular violation.
- c.* Any extenuating circumstances or other countervailing considerations.
- d.* Number of prior complaints, informal letters or disciplinary charges.
- e.* Seriousness of prior complaints, informal letters or disciplinary charges.
- f.* Whether the licensee has taken remedial action.
- g.* Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

11. **Application for Reinstatement:** On November 12, 2010, Respondent filed an Application for Reinstatement of his Iowa medical license.

12. On December 16, 2010, the Board voted to deny Respondent's Application for Reinstatement of his Iowa medical license after concluding that Respondent failed to demonstrate that the basis for suspension of the license no longer exists, and that it is in the public interest for the license to be reinstated including, but not limited to, the following:

- A. Respondent repeatedly violated the laws and rules governing the practice of medicine in Iowa between 2005 and 2009;
- B. Respondent repeatedly violated the terms and conditions established by the Board to protect his patients and the public between May 31, 2006 and 2009;
- C. Respondent repeatedly engaged in unprofessional or unethical conduct and/or practice harmful or detrimental to the public between 2005 and 2009;
- D. Respondent is guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine when he prescribed medications to an individual without establishing an appropriate physician-patient relationship and without performing an appropriate history and physical;
- E. Respondent is guilty of committing an act contrary to honesty, justice, or good morals when he offered hand-written notes during his testimony at hearing that were not produced prior to hearing and appear to have been altered by Respondent; and
- F. Respondent has failed to demonstrate that he has been rehabilitated and that he is safe to return to the practice of medicine.

THEREFORE IT IS HEREBY ORDERED: that Respondent's Application for Reinstatement of his Iowa medical license is **DENIED**.



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

January 13, 2011.
Date

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE)	DIA NO. 08DPHMB021
STATEMENT OF CHARGES)	
AGAINST:)	FILE NO. 02-08-478, 02-09-082 & 02-05-830
)	
NARINDER KUMAR, M.D.)	FINDINGS OF FACT,
Respondent.)	CONCLUSIONS OF LAW
)	AND DECISION

TO: Narinder Kumar, M.D.

DATE: October 1, 2009.

STATEMENT OF THE CASE

On September 17, 2008, the Iowa Board of Medicine (Board) filed a Statement of Charges against Narinder Kumar, M.D. (Respondent), charging him with violating the terms of a lawful order of the Board, in violation of Iowa Code section 148.6(2)(i)(2007) and 653 IAC 23.1(11). A hearing was initially scheduled on December 1, 2008, but was later continued.

On January 9, 2009, the State filed a First Motion to Amend Statement of Charges, alleging more violations of a lawful order of the Board. The Motion was granted on February 16, 2009, and after a Motion to Continue by Respondent, the hearing was continued until April 10, 2009. The State filed a Motion to Continue hearing and the hearing was again continued until August 12-13, 2009. The State filed a Second Motion to Amend Statement of Charges on June 15, 2009. This was not resisted and the Motion was granted on July 13, 2009. The Second Amended Statement of Charges added Counts II, III, IV and V to the Statement of Charges.

The hearing was held on August 12th and 13th 2009, before the following members of the Board: Siroos Shirazi, M.D., Chairman; Yasyn Lee, M.D.; Dana Schafer, D.O.; Colleen Stockdale, M.D.; Ambreen Mian and Tom Drew, public members. Respondent appeared and was represented by Attorney Connie Diekema. Assistant Attorneys General Theresa O'Connell Weeg and Jordan Esbrook represented the State of Iowa. 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 John M. Priester assisted the panel 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 Matters Asserted; Orders for Continuance; Hearing Orders; the testimony of the witnesses; State Exhibits 1-65 and Respondent's Exhibits A-AA.

FINDINGS OF FACT

1. Respondent was issued Iowa medical license number 29998 to practice medicine in the state of Iowa on June 28, 1994.

2. On May 31, 2006, Respondent and the Board entered into a Combined Notice of Hearing, Statement of Charges, Settlement Agreement, and Final Order to resolve a pending disciplinary investigation. The Board charged Respondent with engaging in unprofessional conduct. Under the terms of the Settlement Agreement, Respondent was required to have a Board-approved female chaperone present when performing any physical examination of female patients and complete a Board-approved course for appropriate prescribing practices. Respondent was also placed on probation for a period of five years, subject to the following requirements:

- Establish a Board monitoring program.
- Comply with all recommendations made by the Board and all Board-approved treatment professionals.
- Not consume alcohol.
- Not use any controlled or prescription drugs in any form unless the controlled or prescription drug has been prescribed for Respondent's use by another duly licensed treating physician or other qualified treating health care provider. The Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug.
- Submit to the Board's drug screening program by providing random blood or urine specimens when required and fully comply with all requirements of the drug-screening.

(State Exhibit 16; Testimony of Shantel Billington)

3. The Board assigned staff member Shantel Billington to monitor Respondent's probation. Respondent was required to set up an account with FirstLab for the Board's drug random screening program. Respondent was required to call every day to FirstLab and he would be informed whether he had been selected to provide a urine

sample at one of the FirstLab-approved testing sites. (State Exhibits 1, 19, 20; Testimony of Shantel Billington; Respondent)

4. On April 26, 2007, the Board filed new charges against Respondent and suspended his Iowa medical license. The Board charged Respondent with violating the terms of the May 31, 2006, Order and engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public. On August 9, 2007, after a hearing, the Board concluded that the Respondent violated the terms of the May 31, 2006, Order. The Board issued Respondent a Citation and Warning, terminated the suspension of his license and placed him on probation. On December 17, 2007, the Board issued a new Order amending the August 9, 2007, Order, reinstating the terms and conditions established in the May 31, 2006, Order. (State Ex. 16).

5. On September 17, 2008, the Board filed new charges against Respondent, charging him with willful violations of a lawful order of the Board. The Board alleged that Respondent violated terms and conditions of his probation when he: tested positive for alcohol on July 8, 2008; failed to call into the Board's drug screening program when required to; and failed to provide urine samples for the Board's drug screening program on May 9 and 19, 2008. (State Exhibit 1).

6. On February 12, 2009, the Board, on a motion of the State, issued a First Amended Statement of Charges which added allegations that Respondent: tested positive for alcohol on April 24, 2008; failed to provide urine samples for the Board's drug screening program on January 28, July 2, July 22, August 18, October 20, November 10, November 12, December 2, and December 22, 2008; failed to provide a random urine specimen on demand by an agent of the Board, when he did not provide a urine sample on request of a Board investigator on November 12, 2008; used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singular, when those drugs were not prescribed to Respondent for his use by another treating physician; and used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singular, without providing the Board written notice within 72 hours of the use of those drugs. (State Exhibit 1).

7. On July 13, 2009, the Board, on a motion by the State, issued a Second Amended Statement of Charges which added allegations that Respondent; consumed alcohol; wrote prescriptions for numerous medications, including controlled substances, to an adult female acquaintance [REDACTED] without seeing the female acquaintance in his medical office, without conducting a physical examination and without maintaining a patient record; had nonconsensual

sexual contact with, and made inappropriate sexual comments to the female acquaintance; and wrote and antibiotic prescription to the female acquaintance for her to give to a two year-old nephew for a cold without seeing the child in his medical office, without conducting a physical examination and without maintaining a patient record. (State Exhibit 1).

8. Ms. Billington testified that Respondent had positive tests for alcohol on April 24, 2008, and July 8, 2008; he failed to call into the Board's drug screening program when required; he failed to provide urine samples for the Board's drug screening program on numerous occasions when he was selected for testing (January 28, May 9, May 19, July 2, July 22, August 18, October 20, November 10, November 12, December 2, December 22, 2008; January 29, April 21, June 8, July 7, 2009). (State Ex. 17, 19-21, Testimony of Shantel Billington).

9. Ms. Billington testified at hearing that while Respondent's drug test results were positive for ethanol on April 24, 2008, and July 8, 2008, the low levels could have resulted from Respondent's use of hand sanitizer or mouth wash and not Respondent's consumption alcohol. (State Ex. 21, Testimony of Shantel Billington).

10. As a result of Respondent's failure to provide urine samples for the Board's drug screening program on numerous occasions, Board Investigator David Smith went to Respondent's residence on November 12, 2008, to collect a urine specimen. Respondent had not gone to work that day because he was ill.

Investigator Smith arrived at 3:11 p.m. and after ringing the doorbell repeated times was finally able to enter when Respondent answered the door. Respondent indicated that he had just finished showering and he had recently urinated, so he would not be able to give a sample for "a few hours."

While waiting, the Investigator and Respondent discussed Respondent's health issues. Respondent indicated that he thought he may have pneumonia or bronchitis. He showed the Investigator the medications he was taking: Amox-Clav (also known as Augmentin), Metoprolol-BP/Toprol, Hydrochlorahyazide, and Singulair, along with numerous over the counter medications. Respondent's wife, Pomilla Kumar, was listed as the patient and prescribing physician on the Amox-Clav. Respondent indicated that both he and his wife used the prescription. The other two medications were reported to be for controlling his blood pressure.

Justine Henke, the Sous Chef at Echelon, testified that he knew Respondent from a prior restaurant, but had never seen him drinking there. Once Echelon opened he saw the Respondent drinking from a rocks glass. As sous chef, Mr. Henke indicates that he knew what drinks were available in the bar's dispenser and he testified that there was no tea button on the dispenser and the business did not have a tea machine.

FOR THE RESPONDENT:

David Mike Bruce, the general manager of the Amsterdam Gentlemen's Club in Davenport, testified that he saw Respondent at the club once or twice and he never saw Respondent consume alcohol when he was at the club.

Danielle Samuelson, who works during the weekly fights at the Amsterdam Gentlemen's Club, testified that she observed Mr. Hameed intoxicated often, but she never saw Respondent consume alcohol. Respondent is the pediatrician for Ms. Samuelson's children and she thinks he is a great doctor.

Joey Valle worked with Mr. Hameed to open the new restaurant and he was the Executive Chef for Echelon. Mr. Valle testified that he observed Respondent at the new restaurant 5-6 times when it was being remodeled and he never saw Respondent consume alcohol. On one occasion the employees went to a nearby establishment, Shenanigans, and everyone drank alcohol except Respondent, who drank non-alcoholic Sharps beer. Mr. Valle testified that tea was in the dispenser at the bar.

Ran Thutkar, a business acquaintance and personal friend of Respondent, testified that Respondent does not drink. He indicated that he went to Jumer's Casino in Rock Island, Illinois, with Mr. Hameed, [REDACTED] and Respondent. Mr. Thutkar indicated that Respondent did not consume alcohol while at the casino.

Pomilla Kumar, Respondent's wife, testified that Respondent does not drink alcohol.

Burton Fagan, an attorney acquaintance of Respondent's, testified that he socializes periodically with Respondent and he has never seen Respondent consume alcohol. Mr. Fagan indicated that he stopped by Echelon the night it opened to wish Respondent well and he did not see Respondent consume alcohol that evening.

Respondent testified that he does not drink alcohol. He indicated that he has not had an alcoholic drink since December 5, 2005, and he would not put his medical license at risk by drinking alcohol while on probation.

12. [REDACTED] testified she had recently been through a very difficult, abusive relationship and she was having trouble concentrating and sleeping after she came back from the Army Reserves boot camp. [REDACTED] testified that she believed that Respondent was interested in her romantically. She indicated that Respondent diagnosed her with Attention Deficit, Hyperactive Disorder (ADHD) and prescribed Adderall. Respondent also prescribed clonidine to help her sleep. [REDACTED] testified that Respondent wrote the prescriptions without examining her at his office, without reviewing her medical history and without maintaining a patient record. She also indicated that she had never been diagnosed with ADHD previously.

Respondent testified [REDACTED] and [REDACTED] came to the new restaurant at the end of October, 2008, and talked about [REDACTED] ADHD. According to Respondent, [REDACTED] confirmed that [REDACTED] was previously diagnosed with ADHD. Respondent indicated that he gave [REDACTED] a 30 day prescription of Adderall and instructed her to contact her psychologist or mental health provider.

In the course of the investigation of this case, Investigator Smith served a subpoena upon Respondent's office for any information concerning [REDACTED]. The office indicated that there was only an empty file that had been created, and then destroyed when [REDACTED] did not show up for her appointment.

At the hearing, Respondent produced telephone message reports that reported to document Respondent's interactions with [REDACTED] and [REDACTED]. The message reports were dated October 29, 2008, November 3, 2008, and November 6, 2008. These messages document Respondent's observations of [REDACTED], discussions with [REDACTED] about [REDACTED] and possible diagnoses along with documentation of the prescription.

These documents were not produced to the State during discovery. Nor were they made apart of Respondent's exhibits. Respondent explained that he remembered that they were in a slot for unfiled documents that is kept at his office. Since the file was destroyed, there was no place to put them, so they remained in the [REDACTED] slot [REDACTED] from November 2008 until August of 2009, just prior to the hearing.

A close examination of these documents shows that the year noted on the date line appears to have been altered. On the date 11/6/08, the 08 appears to have been written over either an 07 or an 09. Likewise, the 08 on the 11/3/08 appears to be written over. On the 10/29/08 at the bottom of the page, it appears that the 08 was written over also, but it is not as clear as the other two.

Respondent admitted writing one prescription for [REDACTED] for Adderall, but he denied calling in the refills. He believed that his diagnosis was correct because according to Respondent [REDACTED] told him later that the medication was working and [REDACTED] condition improved.

[REDACTED] testified that she was staying at Mr. Hameed's house, as Mr. Hameed was acting like a father and helping her out. She testified that she awoke early one morning and found Respondent on top of her sucking on her nipple. She indicated that she was very upset and she went to Mr. Hameed's room and told him what had happened. Mr. Hameed came out of his room and saw Respondent in the apartment. [REDACTED] indicated that Respondent had a key to Mr. Hameed's apartment and he had apparently entered the apartment in the middle of the night.

Respondent adamantly denied that this sexual encounter occurred. Respondent acknowledged that he had been to Mr. Hameed's apartment previously, but he denied that he had a key and that he sexually assaulted [REDACTED] (State Ex. 52, Respondent Ex. AA, Testimony of Respondent, [REDACTED], and [REDACTED]).

13. [REDACTED] testified that while she was babysitting her two-year old nephew Respondent prescribed an antibiotic for her nephew's cold symptoms without establishing a physician-patient relationship prior to writing the prescription. Respondent denied writing the prescription. (Testimony of [REDACTED] and Respondent).

14. Respondent testified that he did take prescription medications without first notifying the Board of Medicine as required by his probation. He also testified extensively concerning the requirements of calling in to FirstLab and providing urine samples when required. Respondent testified that he only missed two of his daily calls. The first was when there was a misunderstanding about his requirement to call in after the conditions were re-imposed upon him. The other call he missed was when his niece from Milwaukee was in town and he forgot to call in.

Respondent explained that almost all of the missed UAs occurred when he showed up to provide a urine sample and there was no male witness available. Respondent indicated that he usually waited until late in the afternoon to provide the samples so it would not interfere with his medical practice. On one occasion, Respondent showed up about 2 minutes too late and the door was shut in his face. The testimony was conflicting as to whether Respondent called before going to the lab sites. Ms. Billington's notes indicated that Respondent told her that he would show up at the facilities without calling ahead, but Respondent testified that he would call and be

assured a male witness was present only to be told when he arrived that there was no male witness.

CONCLUSIONS OF LAW

Count I

Respondent was charged with violating a lawful order of the Board. Iowa Code section 148.6(2)(i)(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:

...

i. ...violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

653 IAC 23.1 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, 148E, 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(11) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

...

The Board finds that the State established by a preponderance of the evidence that Respondent violated a lawful order of the Board, in violation of Iowa Code section 148.6(2)(i)(2009) and 653 IAC 23.1(11), by failing to comply with the terms and conditions established in the May 31, 2006, Notice of Hearing, Settlement Agreement, and Final Order. The Board concluded that there was considerable testimony

indicating that Respondent consumed alcohol on multiple occasions in violation of the terms of his probation. The Board relied most heavily on the testimony of State witnesses Jim Payne and [REDACTED]. Both witnesses appeared credible and consistent in their testimony and both testified that they observed Respondent consume alcohol. Several witnesses described Respondent's specific drink of choice as Crown Royal.

While several of Respondent's witnesses appeared credible, they were only with the Respondent for limited periods of time and had no way of knowing whether he drank alcohol occasions when they were not present. The Board noted that Mr. Payne was with the Respondent numerous times, he testified that he observed the Respondent drink alcohol and he has no obvious motive to lie.

The Board finds that the positive drug screen results on April 24, 2008, and July 8, 2008, do not establish by a preponderance of the evidence that Respondent consumed alcohol. While the drug screens were positive for ethanol, the Board determined that the ethanol levels were too low to establish that Respondent consumed alcohol on those occasions.

The Board finds that the State established by a preponderance of the evidence that Respondent failed to fully comply with the Board's drug screening program. Respondent failed to call in to the program on at least two occasions. Respondent also repeatedly failed to provide urine samples on days that he was selected for testing. Respondent's explanations of the missed drug screens were not credible. The Board concluded it was Respondent's responsibility to ensure that a male witness was available and that he presented to provide a urine sample before the lab sites closed.

The Board also finds that the Respondent failed to provide a urine sample when Board Investigator Smith came to his residence on November 12, 2008. The Board concluded that Respondent's actions amounted to a test refusal when he only provided a very small amount of urine after consuming copious amounts of water.

The Board finds that the preponderance of the evidence established that Respondent used prescription medication which was not prescribed for Respondent by another treating physician and that he failed to properly notify the Board of the prescriptions. Respondent admitted taking prescribed medications Amox-Clav (also known as Augmentin), Metoprolol-BP/Toprol, Hydrochlorazide, and Singular and that the medications were prescribed by his wife. Additionally, Respondent failed to give the Board written notice within 72 hours of the use of the medications.

Count II:

Respondent was charged with willful or repeated violations of the rules of the Board when he engaged in sexual conduct with, and made inappropriate sexual comments to a patient. The Board's rules at 653 IAC 13.7(4) provide that a physician shall not engage in sexual conduct with a patient.

The Board finds that the State failed to prove by a preponderance of the evidence that Respondent engaged in sexual misconduct with, and made inappropriate sexual comments to, [REDACTED]. The Board did not conclude that the incident of nonconsensual sexual contact did not occur. However, the Board determined that there is insufficient evidence to establish that Respondent committed a sexual act with [REDACTED].

Count III:

The Respondent was charged with willful or repeated violations of the rules of the Board when he engaged in unprofessional conduct in violation of 653 IAC 13.7(4). The Board determined that since the State was unable to prove by a preponderance of the evidence that Respondent engaged in sexual contact with, or made inappropriate sexual comments to [REDACTED], the State failed to carry its burden on this Count.

Count IV:

Respondent was charged with committing an act contrary to honesty, justice, or good morals in violation of Iowa Code section 148.6(2)(g)(2009). That code section provides that the Board may discipline a physician who is guilty of "a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine . . . ; or the committing by a physician of an act contrary to honest, justice, or good morals, . . ." *Id.*

The Board finds that the State established this Count by a preponderance of the evidence. The Board found that Respondent prescribed medications to [REDACTED] without conducting a physical examination, without reviewing [REDACTED] medical history to find out whether she had been diagnosed with ADHD previously, and without maintaining a patient record for [REDACTED]. The Board determined that writing prescriptions for [REDACTED] without establishing an appropriate physician-patient relationship was a willful and repeated departure from the minimal standard of acceptable and prevailing practice of medicine in Iowa.

Respondent offered hand-written notes during his cross examination at hearing to prove that he did in fact make contemporaneous notes that constituted a patient record. According to Respondent's testimony, under oath, these documents were created in October and November of 2008 and placed into a "to be filed" slot in his office. However, when the Board investigator presented a subpoena for all medical records for [REDACTED] Respondent failed to provide the notes in question.

The Board is very troubled by Exhibit AA. The Board is concerned that the dates on these notes appear to have been altered from either 2007 or 2009 to 2008. The Board is also concerned that Respondent failed to produce the notes prior to the hearing, even though the Board served a subpoena upon the Respondent to provide any documentation concerning [REDACTED] in Respondent's possession.

The Board determined that one of two scenarios explains Exhibit AA, and either scenario constitutes a violation of Iowa Code section 148.6(2). The first scenario is that Respondent created these notes after the Board filed the charges in this matter in an attempt to document a patient relationship with [REDACTED] that did not exist. He created the notes in 2009 and dated them incorrectly (with 2009 or 2007) and had to correct the dates and then he lied about the notes under oath at hearing.

The second scenario is that Respondent had the notes all along and failed to turn the documents over as required by the Board's subpoena. Either way, the fact that Exhibit AA exists and was not produced earlier is troubling to the Board and indicates Respondent does not possess the required honesty, justice or good morals.

The Board finds that the State did not prove by a preponderance of the evidence that Respondent wrote a prescription to [REDACTED] nephew.

Count V:

The Respondent was charged with engaging in unethical conduct and with engaging in practice harmful or detrimental to the public in violation of Iowa Code section 147.55(3)(2009). That section provides that a health-care provider's license shall be suspended or revoked upon a finding that the licensee knowingly made "misleading, deceptive, untrue, or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established." *Id.*

The Board finds that the State established this Count by a preponderance of the evidence. Respondent's representations regarding the prescriptions written to [REDACTED] is misleading, deceptive and untrue. The Board also finds that Respondent consumed alcohol in violation of the terms of his probation and his testimony to the contrary at hearing was deceptive and untrue.

Sanction

In determining a sanction for these violations, the Board considered Respondent's prior disciplinary history. Respondent was placed on probation on May 31, 2006. Within a year Respondent was facing new disciplinary charges. Those charges resulted in a Citation and Warning. This Citation and Warning was not heeded, and Respondent was soon before the Board again.

The Board also takes into account Respondent's repeated violations of his probationary requirements. Even after the State filed new charges, Respondent continued to fail to provide required UAs. The Board also finds that Respondent acted to disrupt and interfere with the investigation.

The Board finds that Respondent's Iowa medical license should be indefinitely suspended and he shall not be allowed to reapply for reinstatement of his license for at least one year from the date of this Order.

ORDER

IT IS THEREFORE ORDERED that Respondent's Iowa medical license is hereby **SUSPENDED** indefinitely. Respondent shall not engage in any aspect of the practice of medicine during the period of suspension. Respondent shall not reapply for reinstatement for at least one year from the date of this Order. Respondent's Iowa medical license shall not be reinstated except upon a showing by Respondent that the basis for suspension of the license no longer exists, and that it is in the public interest for the license to be reinstated. The reinstatement proceedings shall be governed by 653 IAC 26.1. Should the Board choose to reinstate Respondent's Iowa medical license, he shall be placed on indefinite probation subject to the terms and conditions placed upon him in the May 31, 2006, combined Notice of Hearing, Settlement Agreement, and Final Order.

state of Iowa and delivered to the department of public health, within thirty (30) days of the issuance of a final decision.

Dated this 1st day of October, 2009.



Siroos Shirazi, M.D.

Chairperson

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 order.

cc: Theresa O'Connell Weeg
Assistant Attorney General
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Des Moines, Iowa 50319

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Kent Nebel
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Iowa Board of Medicine
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Des Moines, Iowa

BEFORE THE BOARD OF MEDICINE
OF THE STATE OF IOWA

IN THE MATTER OF THE)
STATEMENT OF CHARGES)
AGAINST)

NO. 02-08-478

Narinder Kumar, M.D.,)

REQUEST FOR REDACTION

RESPONDENT.)

10-30-09P03:03 RCVD

COMES NOW the State of Iowa, pursuant to Iowa Code 17A.3(1)(e), and requests that the names of the female patient and the female patient's mother, which are included in their entirety in the Board's Findings of Fact, Conclusions of Law and Decision, filed October 1, 2009, be redacted and replaced with non-identifying numbers, and in support of this request states:

1. It is the Board's common practice not to include the name of patients, or the names of victims of alleged sexual abuse, in final decisions. Instead, those persons are referred to by initials (which is not preferable, as circumstances may allow the identification of the individuals if their initials are used) or numbers, such as Patient #1 (which is preferable, as no identifiable information is provided).

2. This practice is consistent with Section 17A.3(1)(e), which provides that "in addition to other requirements imposed by Constitution or statute, each agency" shall:

e. Make available for public inspection and index by name and subject all final orders, decisions, and opinions: Provided that to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets, an agency shall delete identifying details when it makes available for public inspection any final order, decision, or opinion; however, in each case the justification for the deletion shall be explained fully in writing. (emphasis added)

3. This section ensures that persons who provide information to the Board are not subject to an unwarranted invasion of their privacy. It ensures that patients who provide testimony at Board hearings are not forced to waive their physician/patient privilege, and are not forced to have information about their physical or mental conditions released to the public.

4. A similar protection exists on judicial review to ensure the confidentiality of privileged information is maintained. See Section 272C.6(4) (when certifying administrative record on judicial review, and “a waiver of privilege has been involuntary and evidence has been received at a disciplinary hearing, the court shall order withheld the identity of the individual whose privilege was waived.”)

5. It would be detrimental to the Board’s mission of protecting the public by ensuring safe physician practice to disclose the names of patients who receive medical care from a physician who is disciplined by the Board, or to disclose the names of victims who allege they have been sexually abused by their physicians. Patients who have the bad fortune to be the victims of bad physician practice should not be punished by their names becoming public, along with information about their medical conditions, simply because they appear or are subpoenaed to testify at a Board hearing. Such a result is an involuntary waiver of their physician/patient privilege. Nor should patients who have the bad fortune to be target of professional sexual misconduct be punished by their names becoming public because they provide testimony to the Board, voluntarily or by subpoena.

6. Publicizing the names of patients and victims would greatly deter persons from filing complaints with the Board and testifying at Board hearings, which would in turn

chill the effectiveness of the Board in addressing bad practice or misconduct by physicians.

7. In this case, release of this patient's name invades her privacy by making public information about a number of issues, including mental health issues as to whether she suffered from ADHD and needed medication and whether she was depressed. Further, release of this patient's name as the alleged victim of sexual misconduct is also an invasion of her privacy. It should be noted that press coverage of this decision did not include the patient's name, even though it was included in the decision.

8. In this case, release of the patient's mother's name invades the privacy of the patient, as once the mother is identified by name the identity of her daughter is easily discerned.

9. Redacting the patient's name, and the name of her mother, does not impact the public's understanding of the Board's order. It is Dr. Kumar's conduct, not the conduct of this patient, that is the primary focus of the hearing and the basis for discipline. The identity of this patient is not a significant fact that impacts the decision.

10. It could be argued that the redaction of the names of the patient and her mother are unnecessary at this point given the fact the decision has already been made public. However, the Board has an obligation, especially given the easy availability of information electronically for the indefinite future, to minimize the damage that such publication could cause this young patient over her lifetime.

11. Finally, it has always been the practice of the Board to avoid disclosure of the names of patients whose care is the subject of Board hearings, to avoid disclosure of

their medical records even when a public hearing is held under Section 272C.6(1), and to avoid release of the names of persons who allege physician sexual misconduct.

Accordingly, when the State contacts such witnesses to prepare them for hearing, they are advised their names will not be made public. If the Board intends to change this practice, the State requests notice of this to ensure witnesses are provided accurate information about the Board's practice.

WHEREFORE, and in accordance with Iowa Code Section 17A.3(1)(E), the State requests the name of the patient and the patient's mother be redacted from its October 1, 2009, Findings of Fact, Conclusions of Law and Decision, and replaced with numbers.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



THERESA O'CONNELL WEEG
JORDAN ESBROOK
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ATTORNEYS FOR THE IOWA BOARD
OF MEDICINE

Copy to:

Connie L. Diekema
FINLEY, ALT, SMITH, SCHARNBERG,
CRAIG, HILMES & GAFFNEY, P.C.
1900 Hub Tower
699 Walnut Street
Des Moines, IA 50309
ATTORNEY FOR RESPONDENT

Proof of Service	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on <u>10/29</u> , 2009.	
<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input type="checkbox"/> Electronically	
Signature: _____	<u>R. Dales</u>

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE) DIA NO. 08DPHMB021
STATEMENT OF CHARGES AGAINST:) FILE NO. 02-08-478, 02-09-082 & 02-05-830
)
)
NARINDER KUMAR, M.D.) ORDER DENYING MOTION TO
) DISMISS CHARGE 8a
Respondent)

STATEMENT OF THE ISSUE

The matter is scheduled for hearing on August 12th and 13th 2009 before the Board of Medical Examiners of the State of Iowa. On July 31, 2009, the Respondent filed a Motion to Dismiss Charge 8a with the Board. The Board filed a Resistance to the Motion to Dismiss and the matter came on for oral argument on August 11, 2009.

FINDINGS OF FACT

The Board's statement of charges (as amended) provides that:

The Board alleges that Respondent violated subparagraphs 9(C),(D), and (E) of the May 31, 2006, Order when he:

- A. Tested positive for alcohol on April 24, 2008, and July 8, 2008.
- B. Failed to call into the Board's drug screening program when required.
- C. Failed to provide samples for the Board's drug screening program on eleven occasions when he was selected by the program for testing: January 28, May 9, May 19, July 2, July 22, August 18, October 20, November 10, November 12, December 2, and December 22, 2008.
- D. Failed to provide a random urine specimen on demand by and agent of the Board, when he did not provide a urine sample upon request of a Board investigator on November 12, 2008.
- E. Used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singulair, when those drugs were not prescribed to Respondent for his use by another treating physician.

- F. Used prescription drugs, including "Amox-Clav" or Augmentin, Metoprolol-BP/Toprol, Hydrochlorazide, and Singulair, without providing the Board written notice within 72 hours of the use of those drugs.

The Respondent's Motion to Dismiss states:

April 24, 2008

3. The test on April 24, 2008 was positive for ethanol only. First Lab, the testing entity approved by the Iowa Board of Medicine, states that they consider that to be a negative result. ...

July 11, 2008

4. The testing that was performed on July 8, 2008 tested positive for an EtG of 560. We are informed that while a 560 result is low, the actual cutoff is 250. However, we were not informed in time to have this sample retested to determine whether there was an error in the test. ...

THE SAMPLE IS INADMISSIBLE AS THERE WAS NO PROPER CHAIN OF CUSTODY MAINTAINED

5. In addition, the testing site that was utilized on July 8, 2008 (approved by the Board at the time) has since been disallowed by the Board given the problems that the Board has found with the handling of the specimens. ...

CONCLUSIONS OF LAW

A Motion to Dismiss is appropriate when there is no "state of facts conceivable under which a plaintiff might show a right of recovery." *George v. D.W. Zinser Co.*, 762 N.W.2d 865 (Iowa 2009). The Iowa Supreme Court has noted that "[w]e are mindful that motions to dismiss are not favored and, since the advent of motion pleadings, it is the rare case that will not survive a motion to dismiss." *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994).

The issues raised by the Respondent in his Motion to Dismiss are questions concerning the weight the evidence is to be given by the fact-finder. They are not properly the basis for a Motion to Dismiss, especially when the Iowa Supreme Court has indicated that motions to dismiss are not favored.

Appeal No. 09DIAHFS012

Page No. 3

The Board will be the fact-finder in this matter. The Board will be in the proper position to weigh the evidence to determine whether the State's evidence establishes a violation of its rules by a preponderance of the evidence. The Motion to Dismiss shall be denied.

ORDER

The Motion to Dismiss Charge 8a is hereby DENIED.

Dated this 12th day of August, 2009.



John M. Priester
Administrative Law Judge
For the Iowa Board of Medicine

cc: Theresa O'Connell Weeg
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319 (hand delivered 8/12/09)
And by email: tweeg@ag.state.ia.us

Connie Diekema, Attorney for Respondent
FINLEY, ALT, SMITH SCHARNBERG,
CRAIG, HILMES & GAFNEY, P.C.
1900 Hub Tower
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And by email: cdiekema@finleylaw.com

Kent Nebel
Director of Legal Affairs
Iowa Board of Medical Examiners
400 SW 8th St., Suite C
Des Moines, Iowa (hand delivered 8/12/09)
And by email: kent.nebel@iowa.gov

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE) DIA NO. 08DPHMB021
STATEMENT OF CHARGES AGAINST:) FILE NO. 02-08-478
) 07-15-09A11:06 RCVD
)
)
NARINDER KUMAR, M.D.) **ORDER DENYING MOTION TO**
) **CONTINUE HEARING**

Respondent

The Statement of Charges was filed on September 17, 2008. Initially the hearing was set for December 1, 2008 but was continued at the Respondent's request. The State filed its first Motion to Amend Statement of Charges and First Amended Statement of Charges on January 9, 2009 and the Respondent did not resist this Motion. The hearing was rescheduled to February 10, 2009 but was continued at the Respondent's request. The hearing was reset for April 10, 2009, but was continued at the State's request. The State filed a second Motion to Amend Statement of Charges and Second Amended Statement of Charges on June 16, 2009, the Respondent did not file a resistance to this Motion.

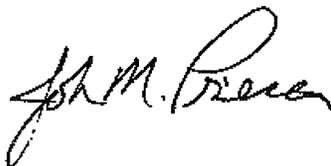
The above-captioned disciplinary matter is currently scheduled for hearing on August 12-13, 2009. On June 26, 2009, the Respondent filed a Motion for Continuance. The request for Continuance was based upon the amendments to the Statement of Charges the Respondent needs more time to prepare; health problems the Respondent is currently suffering from, his physician has written a letter indicated that the Respondent should not be subjected to the stress of a hearing for at least the next couple of months; there are other cases that have been pending longer than the Respondent's case; and that the Respondent claims there is no prejudice to the State because the Respondent remains under the supervision of the Board that requires him to provide random UAs and constant staff monitoring.

On July 9, 2009, the State filed a Resistance to Respondent's Request for Continuance. The Resistance was based upon the fact that the amendments add to the Statement of Charges add only one witnesses and limited facts; the stress of practicing as a pediatrician is more than that of a disciplinary hearing; the Respondent is not in fact being supervised by the Board as that is one of the allegations in the Statement of Charges-that the Respondent

is violating the terms of the monitoring; the fact that there may be older cases pending with the Board is wholly irrelevant to whether this case should proceed to hearing.

After reviewing the Motion to Continue, and the Resistance, the undersigned finds that the Motion shall be DENIED based upon the grounds laid out in the State's Resistance.

Dated this 13th day of July, 2009.



John M. Priester
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

For the Iowa Board of Medicine

cc: Theresa O'Connell Weeg
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319 (LOCAL)
And by email: tweeg@ag.state.ia.us

Connie Diekema, Attorney for Respondent
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Kent Nebel
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BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NARINDER KUMAR, M.D., RESPONDENT

FILE No. 02-08-478 *+* 02-09-082 *+* 02-05-836

SECOND AMENDED STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine on July 13, 2009, and files this Second Amended Statement of Charges pursuant to Iowa Code Section 17A.12 and 653 Iowa Administrative Code 25.10(3). Respondent was issued Iowa medical license number 29998 on June 28, 1994. Respondent's Iowa medical license is active and will next expire on December 1, 2008.

A. TIME, PLACE, AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held before the Board on August 12-13, 2009, before the Board. The hearing shall begin at ^{8:30}~~10:00~~ a.m. and shall be held in the conference room at the Board office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. You are not required to file an answer to this Second Amended Statement of Charges.

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. 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 matter. Board members may only receive information about the case when all parties have notice and 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., Legal Director at (515) 281-7088 or 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 the 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 Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11) with violating a lawful order of the Board.

COUNT II

11. Respondent is charged under Iowa Code Section 148.6(2)(i) (2009) with willful or repeated violations of the rules of the Board, when he engaged in sexual conduct with, and made inappropriate sexual comments to, a patient, in violation of 653 IAC 13.7(4).

COUNT III

12. Respondent is charged under Iowa Code Section 148.6(2)(i) (2009) with willful or repeated violations of the rules of the Board, when he engaged in unprofessional conduct, in violation of 653 IAC 13.7(4).

COUNT IV

13. Respondent is charged under Iowa Code Section 148.6(2)(g) (2009) with committing an act contrary to honesty, justice, or good morals.

COUNT V

14. Respondent is charged under Iowa Code Section 147.55(3) (2009) with engaging in unethical conduct and with engaging in practice harmful or detrimental to the public.

D. STATEMENT OF THE MATTERS ASSERTED

15. Respondent is an Iowa-licensed pediatrician who practices in Bettendorf, Iowa.

16. On May 31, 2006, Respondent entered into a combined Notice of Hearing, Settlement Agreement, and Final Order with the Board for engaging in unprofessional conduct. Respondent agreed to have a female chaperone present while treating female patients and he was placed on probation subject to certain terms and conditions, including substance abuse monitoring, for a period of five years.

17. On April 26, 2007, the Board filed a new Statement of Charges against Respondent and an Emergency Adjudicative Order immediately suspending his medical license. The Board charged Respondent with violating the terms of the May 31, 2006, Order and engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public.

18. Following a hearing, in an order filed August 9, 2007, as amended in another order filed December 17, 2007, the Board concluded that Respondent violated the terms of the May 31, 2006, Order. The Board issued Respondent a Citation and Warning and terminated the suspension of his license. The Board further ordered Respondent continue on probation subject to all the terms and conditions established in the May 31,

2006, Order, including but not limited to the following requirements in subparagraphs 9(C), (D), and (E):

C. Alcohol prohibition: Respondent shall not consume alcohol.

D. Controlled or Prescription Drug Restriction: Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug 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. Respondent shall inform any treating physician or other treating health care provider of his history of substance abuse prior to receiving any prescription drug.

E. Drug Screening Program: Respondent shall submit to the Board's drug screening program. Respondent shall provide random blood or urine specimens when required. Respondent agrees to comply with all requirements of the drug screening program. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. All costs of the drug screening program shall be paid by Respondent.

19. The Board alleges that Respondent violated subparagraphs 9(C), (D), and (E) of the May 31, 2006, Order when he:

- A. Tested positive for alcohol on April 24, 2008, and July 8, 2008.
- B. Failed to call into the Board's drug screening program when required.
- C. Failed to provide samples for the Board's drug screening program on eleven occasions when he was selected by that program for testing: January 28, May 9, May 19, July 2, July 22, August 18, October 20, November 10, November 12, December 2, and December 22, 2008; and January 29 and April 21, 2009.
- D. Failed to provide a random urine specimen on demand by an agent of the Board, when he did not provide a urine sample upon request of a Board investigator on November 12, 2008.
- E. Used prescription drugs, including "Amox-Clav" or Augmentin, Metaproprlol-BP/Toprol, Hydrochlorahyazide, and Singulair, when those drugs were not prescribed to Respondent for his use by another treating physician.

F. Used prescription drugs, including “Amox-Clav” or Augmentin, Metaproplol-BP/Toprol, Hydrochlorahyazide, and Singulair, without providing the Board written notice within 72 hours of the use of those drugs.

G. Consumed alcohol.

20. Respondent wrote prescriptions for numerous medications, including controlled substances, to an adult female acquaintance who was an employee in a business owned by Respondent. Respondent did not ever see this adult female in his medical office, never conducted a physical examination of this patient, and did not maintain a patient record for this person.

21. Respondent had nonconsensual sexual contact with, and made inappropriate sexual comments to, this adult female acquaintance.

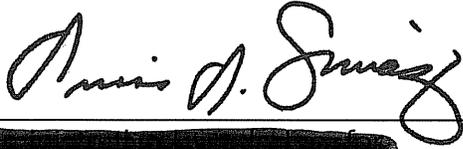
22. Respondent wrote an antibiotic prescription to this adult female acquaintance for her to give to a two year old nephew for a cold. Respondent did not ever see this child in his medical office, did not conduct a physical examination of this child, and did not maintain a patient record for this child.

F. SETTLEMENT

23. 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.

G. PROBABLE CAUSE FINDING

24. On this the 13 day of July, 2009, the Iowa Board of Medicine finds there is probable cause to file this First Amended Statement of Charges.



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

Copies to:

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CRAIG, HILMES & GAFFNEY, P.C.
1900 Hub Tower
699 Walnut Street
Des Moines, IA 50309
ATTORNEY FOR RESPONDENT

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NARINDER KUMAR, M.D., RESPONDENT

FILE No. 02-08-478 + 02-09-082 + 02-05-830

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2. Answer. You are not required to file an answer to this Second Amended Statement of Charges.

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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 the 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.

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COUNT II

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21. Respondent had nonconsensual sexual contact with, and made inappropriate sexual comments to, this adult female acquaintance.

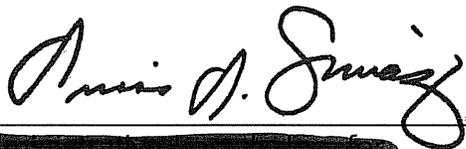
22. Respondent wrote an antibiotic prescription to this adult female acquaintance for her to give to a two year old nephew for a cold. Respondent did not ever see this child in his medical office, did not conduct a physical examination of this child, and did not maintain a patient record for this child.

F. SETTLEMENT

23. 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.

G. PROBABLE CAUSE FINDING

24. **On this** the 13 day of July, 2009, the Iowa Board of Medicine finds there is probable cause to file this First Amended Statement of Charges.



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

Copies to:

Jordan Esbrook
Theresa O'Connell Weeg
Iowa Attorney General's Office
2nd Floor Hoover Bldg.
Des Moines, IA 50319

Connie L. Diekema
FINLEY, ALT, SMITH, SCHARNBERG,
CRAIG, HILMES & GAFFNEY, P.C.
1900 Hub Tower
699 Walnut Street
Des Moines, IA 50309
ATTORNEY FOR RESPONDENT

BEFORE THE IOWA BOARD OF MEDICINE

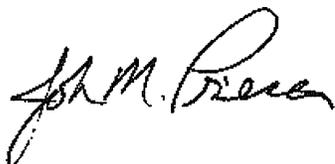
IN THE MATTER OF THE) DIA NO. 08DPHMB021
STATEMENT OF CHARGES AGAINST:) FILE NO. 02-08-478
)
)
NARINDER KUMAR, M.D.) ORDER GRANTING MOTION TO
) AMEND STATEMENT OF CHARGES
Respondent

The above-captioned disciplinary matter is currently scheduled for hearing on August 12-13, 2009. On or about June 16, 2009, the state of Iowa filed a Second Motion To Amend Statement of Charges. Respondent has not filed a Resistance to the Motion to Amend. The Board delegated ruling on the motion to the undersigned administrative law judge.

The Motion to Amend seeks to add Counts II, III, IV and V to the Statement of Charges and amend paragraph 19 of the Statement of Charges and add paragraphs 20-22.

Since there was no Resistance filed by the Respondent, IT IS THEREFORE ORDERED that the Motion For Leave To Amend Statement of Charges is hereby GRANTED.

Dated this 13th day of July, 2009.



John M. Priester
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

For the Iowa Board of Medicine

cc: Theresa O'Connell Weeg
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319 (LOCAL)
And by email: tweeg@ag.state.ia.us

Connie Diekema, Attorney for Respondent
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CRAIG, HILMES & GAFNEY, P.C.
1900 Hub Tower
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And by email: cdiekema@finleylaw.com

Kent Nebel
Director of Legal Affairs
Iowa Board of Medical Examiners
400 SW 8th St., Suite C
Des Moines, Iowa (LOCAL)
And by email: kent.nebel@iowa.gov

BEFORE THE IOWA BOARD OF MEDICINE

In the Matter of the Statement of)	File No. 02-08-478
Charges Against:)	Case No. 08DPHMB021
)	
)	
Narinder Kumar, M.D.,)	ORDER REGARDING MOTION
)	TO CONTINUE
Respondent.)	

INTRODUCTION

On September 17, 2008, the Iowa Board of Medicine filed a statement of charges against respondent Nurinder Kumar, M.D. The charges allege that respondent violated the terms of board-ordered probation by: 1) testing positive for alcohol on July 8, 2008, 2) failing to call the board's drug screening program, and 3) failing to provide urine samples on May 9 and 19, 2008. The case was originally set for December 1, 2008, but was continued to February 10, 2009, based on a motion filed by respondent.

On January 7, 2009, the State filed a motion to amend the statement of charges to include the following factual allegations: 1) add the following additional dates to the allegation that respondent failed to provide urine samples: January 28, July 2 and 22, August 18, October 20, November 10 and 12, and December 2 and 22, 2008, 2) failing to provide a random urine sample on the request of a Board investigator on November 18, 2008, 3) using certain prescription drugs not prescribed to respondent, and 4) using certain prescription drugs without providing notice to the board.

Respondent did not resist the motion to amend. On January 22, 2009, respondent filed a motion to continue. Respondent argued it would be impossible to gather information to adequately defend the new charges without additional time. Respondent's attorney also has a jury trial beginning on February 3, 2009, which would impact her ability to work on this case.

The State filed a resistance to the motion to continue. The State argued that some of the new factual allegations constitute continuing violations of charges previously cited. The State argued that the prescription drug allegation is straight-forward and not factually complex.

Respondent filed a reply on January 28, 2009. The reply states that the State has provided additional discovery which must also be completed prior to the hearing. The new discovery request was received on January 22.

On January 26, 2009, the Board provided copies of the motion, resistance, and response to the undersigned administrative law judge (ALJ) to enter a decision on the motion. The reply was forwarded in a separate transmission.

DISCUSSION

The Board or presiding officer is authorized by regulation to continue contested case hearings. 653 IAC 25.16. An ALJ may rule on prehearing matters on the Board's behalf. 653 IAC 25.6. The presiding officer may consider the following factors:

- a. prior continuances,
- b. the interests of all parties,
- c. the public interest,
- d. the likelihood of informal settlement,
- e. the existence of an emergency,
- f. any objection,
- g. any applicable time requirements,
- h. the existence of a scheduling conflict,
- i. the timeliness of the request,
- j. other relevant factors.

It is true that the some of the allegations in the motion to amend seek to simply add new dates to the same conduct raised in the original statement of charges. However, respondent must still review each new date and prepare a defense on each. Further, the motion to amend raises new factual allegations concerning the use of prescription drugs and the failure to provide notice of prescription use to the board. The original statement of charges did not raise any allegations of that type. These new charges may end up being straightforward, but respondent has had approximately one month to investigate those allegations, while also investigating the additional allegations concerning violation dates and otherwise preparing the case for hearing. Respondent's attorney's trial conflicts also impact his ability to prepare an adequate defense. Finally, the State has filed discovery requests as late as last week. There are factors favoring the State's position, but a balancing of the factors as a whole favors respondent.

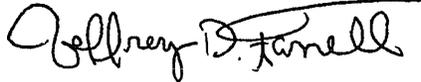
I note that respondent did not object to the motion to amend. This makes sense – the new allegations are similar and should be considered at the same time as the original charges. It is more efficient for both parties and the board to hear all violations at one time. However, the State's decision to seek to amend the statement of charges to add a number of new factual allegations runs the risk that the hearing might need to be continued. A continuance is often the remedy for a motion to amend filed later in the pre-hearing

process. If the State wanted to hold to the hearing date, it could have withheld filing the motion to amend, or reduced the scope of the new allegations.

ORDER

Respondent's motion to continue is granted. The hearing shall be rescheduled by the board. The board may consult counsel for both parties prior to set the new hearing date.

Dated this 28th day of January, 2009.



Jeffrey D. Farrell
Administrative Law Judge
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319
515-281-6870 (phone)
515-281-4477 (fax)

cc: Theresa O'Connell Weeg (by email)
Connie Diekema (by email)
Iowa Board of Medical Examiners (by email)

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NARINDER KUMAR, M.D., RESPONDENT

File Nos. 02-08-478

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine on September 17, 2008, and files this Statement of Charges pursuant to Iowa Code section 17A.12 (2)(2007). Respondent was issued Iowa medical license no. 29998 on June 28, 1994. Respondent's Iowa medical license is active and will next expire on December 1, 2008.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on December 1, 2008, 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 pre-hearing 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 matter. 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., Legal Director at 515-281-7088 or 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 Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11) with violating a lawful order of the Board.

STATEMENT OF THE MATTERS ASSERTED

11. Respondent is an Iowa-licensed pediatrician who practices in Bettendorf, Iowa.

12. On May 31, 2006, Respondent entered into a combined Notice of Hearing, Settlement Agreement and Final Order (Order) with the Board to resolve a pending disciplinary matter. The Board charged Respondent with engaging in unprofessional conduct in the practice of medicine. Respondent agreed to have a female chaperone present while treating female patients and he was placed on probation subject to certain terms and conditions, including substance abuse monitoring, for a period of five years.

13. On April 26, 2007, the Board filed new charges against Respondent and suspended his medical license. The Board charged Respondent with violating the terms of the May 31, 2006, Order and engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public.

14. On August 9, 2007, after a hearing, the Board concluded that Respondent violated the terms of the May 31, 2006, Order. The Board issued Respondent a Citation and Warning, terminated the suspension of his license and placed him on probation subject to the terms and conditions established in the May 31, 2006, Order, including but not limited to the following:

- A. **Alcohol Prohibition:** Respondent shall not consume alcohol.
- B. **Drug Screening Program:** Respondent shall submit to the Board's drug screening program. Respondent shall provide random blood or urine specimens when required. Respondent agrees to comply with all requirements of the drug-screening program. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. All costs of the drug screen program shall be paid by Respondent.

15. The Board alleges that Respondent violated subparagraphs 9(C) and (E) of the May 31, 2006, Order, when he:

- A. Tested positive for alcohol on July 8, 2008;
- B. Failed to call into the Board's drug screening program when required to.
- C. Failed to provide urine samples for the Board's drug screening program on two occasions on May 9 and 19, 2008.

E. SETTLEMENT

16. 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

17. On this 17th day of September 2008, the Iowa Board of Medicine found probable cause to file this Statement of Charges.


Yashin Lee, M.D., Chairperson
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686