BEFORE THE IOWA BOARD OF MEDICINE

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

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.

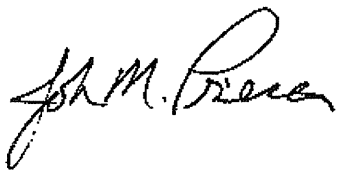
The above-captioned disciplinary matter is currently scheduled for hearing on August 12-13, 2009. On June 26, 2009, the Respondent filed a Motion for Continuance. The request for Continuance was based upon the amendments to the Statement of Charges the Respondent needs more time to prepare; health problems 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
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 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 ~~10:00~~ 8:30 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, Metaproplol-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.

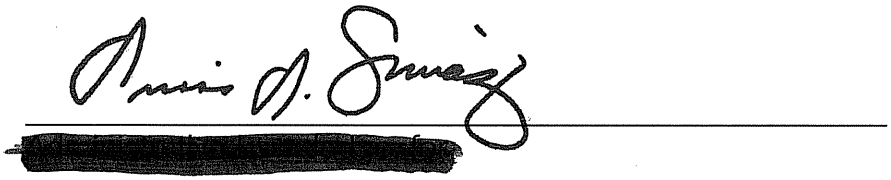
22. Respondent wrote an antibiotic prescription to this adult female acquaintance for her to give to a two year old nephew for a cold. Respondent did not ever see this child in his medical office, did not conduct a physical examination of this child, and did not maintain a patient record for this child.

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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ATTORNEY FOR RESPONDENT

BEFORE THE IOWA BOARD OF MEDICINE

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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

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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 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.

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

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F. SETTLEMENT

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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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ATTORNEY FOR RESPONDENT

BEFORE THE IOWA BOARD OF MEDICINE

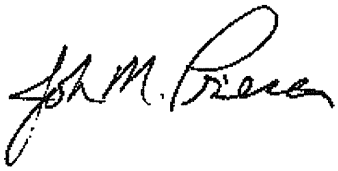
IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST:	) DIA NO. 08DPHMB021) FILE NO. 02-08-478
NARINDER KUMAR, M.D. Respondent	) ORDER GRANTING MOTION TO AMEND STATEMENT OF CHARGES

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
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BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

NARINDER KUMAR, M.D., RESPONDENT

FILE No. 02-08-478

****

FIRST AMENDED STATEMENT OF CHARGES

****

COMES NOW the Iowa Board of Medicine on ~~January~~ February 16, 2009, and files this First 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 ~~February 10~~ April 10, 2009, before the Board. The hearing shall begin at ~~10:00~~ 8:30 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 First Amended Statement of Charges.

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G. PROBABLE CAUSE FINDING

20. **On this** the 12 day of ~~January~~ February, 2009, the Iowa Board of Medicine finds there is probable cause to file this First Amended Statement of Charges.

Administrative Law Judge, for

Yasyn Lee, 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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Connie L. Diekema
Equitable Building
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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. 02-08-478

****

ORDER RE:

STATE'S MOTION TO AMEND STATEMENT OF CHARGES

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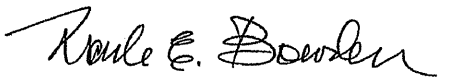
1. On September 19, 2008, the Iowa Board of Medicine filed formal disciplinary charges against Respondent alleging that he violated a lawful order of the Board.

2. On January 9, 2009, the State filed a Motion to Amend Statement of Charges and First Amended Statement of Charges.

3. Respondent did not file an objection to the State's Motion to Amend Statement of Charges.

THEREFORE IT IS HEREBY ORDERED: that the State's Motion to Amend Statement of Charges is granted.

IOWA BOARD OF MEDICINE



February 16, 2009
Date

Mark Bowdin
Executive Director
400 S.W. 8th Street, Suite C
Des Moines, Iowa, 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

In the Matter of the Statement of Charges Against:	)	File No. 02-08-478 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.

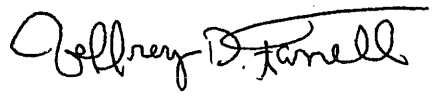
I note that respondent did not object to the motion to amend. This makes sense – the new allegations are similar and should be considered at the same time as the original charges. It is more efficient for both parties and the board to hear all violations at one time. However, the State's decision to 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)

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.

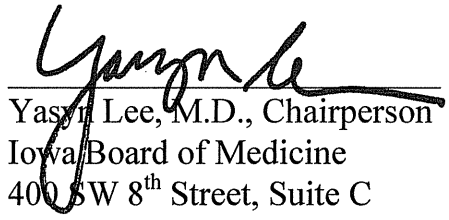
C. Failed to provide urine samples for the Board's drug screening program on two occasions on May 9 and 19, 2008.

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.



Yasyn Lee, M.D., Chairperson
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