

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**LEONARD D. LOMAX, M.D., RESPONDENT**

**File No. 02-04-652**

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**TERMINATION ORDER**

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**Date: November 29, 2011.**

1. Respondent was issued Iowa medical license no. 34932 on December 11, 2002.
2. Respondent's Iowa medical license expired on November 1, 2011, and is currently inactive.
3. Respondent is an Iowa-licensed physician who formerly practiced orthopedic surgery in Des Moines, Iowa.
4. On February 11, 2008, the Board filed formal disciplinary charges against Respondent.
5. On December 3, 2009, following a formal disciplinary hearing, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board issued Respondent a Citation and Warning, ordered him to complete a Board-approved professional ethics program, and placed him on probation.

6. On February 26-27, 2010, Respondent successfully completed the Board-approved professional ethics program and demonstrated that he understands the seriousness of his conduct from 2002-2004 which led to the disciplinary charges in this matter.

7. Respondent successfully completed a clinical competency evaluation at CPEP, the Center for Personalized Education for Physicians, in 2008; and passed his orthopedic board exam in July of 2009.

8. On November 18, 2011, the Board voted to terminate Respondent's probation.

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

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

November 29, 2011  
Date

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>In the Matter of the Statement of Charges Against:</b>	)	<b>Case Nos. 02-04-652</b>
	)	<b>DIA No: 08DPHMB010</b>
	)	
	)	
<b>Leonard D. Lomax, M.D.</b>	)	<b>ORDER ON THE STATE'S</b>
	)	<b>MOTION TO WITHDRAW</b>
<b>RESPONDENT,</b>	)	<b>APPLICATION FOR</b>
		<b>REHEARING</b>

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1. On February 11, 2008, the Board filed formal disciplinary charges against Respondent alleging that he committed fraud in procuring an Iowa medical license; knowingly made misleading, deceptive, untrue or fraudulent representations in the practice of a profession; engaging in a pattern of unethical or unprofessional conduct; engaged in substance abuse; engaged in a pattern of disruptive behavior; engaged in sexual misconduct; and engaged in sexual harassment.

2. On October 21, 2009, the case came for hearing before the Board.

3. On December 3, 2009, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent violated the laws and rules governing the practice of evidence when he committed fraud in procuring his Iowa medical license; knowingly made misleading, deceptive, untrue or fraudulent representations in the practice of a profession; engaged in a pattern of unethical or unprofessional conduct and engaged in substance abuse. The Board concluded that there was insufficient evidence to meet a preponderance of the evidence that Respondent engaged in a pattern of disruptive behavior; sexual misconduct or sexual harassment.

4. The Board cited Respondent for committing fraud in procuring an Iowa medical license, knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of medicine, engaging in unethical conduct, and substance abuse in violation of the laws and rules governing the practice of medicine in Iowa. The Board warned Respondent that such conduct in the future may result in further formal disciplinary action, including suspension or revocation of his Iowa medical license. The Board ordered that all hospitals, clinics and other healthcare facilities where Respondent practices medicine be notified of the Board's disciplinary action. The Board placed Respondent on probation for a period of five year subject to Board monitoring for alcohol abuse and unprofessional conduct. The Board also ordered Respondent to complete the professional ethics program within ninety (90) days.

5. On December 28, 2009, the State filed an Application for Rehearing. The State argued that the Board should have required Respondent to complete a residency-supported intensive treatment program for professionals to determine Respondent's fitness for duty and ability to practice medicine with reasonable skill and safety as recommended by a Board-approved and nationally recognized professional assessment program that Respondent attended.

6. On January 5, 2010, Respondent filed a Resistance to Application for Rehearing. Respondent argued that there was no need to reconsider the Board's findings because the issues were thoroughly discussed and analyzed at hearing.

7. On January 14, 2010, the Board considered the State's Application for Rehearing and Respondent's Resistance to Application for Rehearing. The Board voted to grant the State's Application for Rehearing and a Rehearing date was scheduled on April 9, 2010.

8. On April 8, 2010, the State filed a Motion to Withdraw Application for Rehearing.

**IT HEREBY ORDERED** that the State's Motion to Withdraw Application for Rehearing is **GRANTED** and the Rehearing in this matter is cancelled.

Dated this 9th day of April 2010.

  
Siroos S. Shirazi, M.D., Chairman

cc: Theresa O'Connell Weeg  
Assistant Attorney General

David Brown  
Attorney for Respondent

BEFORE THE IOWA BOARD OF MEDICINE

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In the Matter of the Statement ) Case Nos. 02-04-652  
of Charges Against: ) DIA No: 08DPHMB010  
)  
)  
Leonard D. Lomax, M.D. )  
) **ORDER ON PENDING MOTIONS**  
Respondent, )

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**STATEMENT OF THE CASE**

This case is approaching the stage in which the post-hearing motions have surpassed the effort and work put into the contested case hearing. On December 3, 2009, the Iowa Board of Medicine (the Board) issued its Findings of Facts, Conclusions of Law, Decision, and Order concerning a statement of charges against respondent Leonard Lomax. The Board found some violations and imposed some sanctions, but did not find all violations claimed by the State, and did not impose the full extent of sanctions requested.

On December 28, 2009, the State filed an application for rehearing. The State argued that the Board should order respondent to comply with the treatment recommendations made by Elmhurst before returning to practice. Respondent resisted, and the matter went before the Board. On January 14, 2010, the Board met by telephone conference call to consider the application. The Board went into closed session pursuant to Iowa Code section 21.5(1)(f). The Board returned to open session and voted to grant the application for purposes of taking oral argument. The matter was initially set for hearing on the State's application for February 5, 2010, but the Board agreed to continue the hearing per the request of respondent's attorney. The Board set the hearing for April 9, 2010.

On January 22, 2010, respondent filed a request for production of documents and information, and a stay of the hearing. The request for production alleged that the Board met on January 11 and January 14, 2010, to consider the application for rehearing. The request alleged he was not given notice of the Board's meetings, and further raised questions of ex parte communications and separation of functions. He requested information regarding communication between the Attorney General's Office and the Board regarding the decision to seek reconsideration and the decision to set the matter for hearing. The State resisted the motion for several reasons as set forth in the resulting order.

The Board referred the request to me to make a decision pursuant to 653 IAC 25.6. On February 12, 2010, I issued an order denying respondent's request. I restated in that order that the hearing on the application for rehearing had been set for April 9, 2010. Respondent did not appeal my decision to the Board within the 14 day time period required by 653 IAC 25.23.

On March 10, 2010, respondent filed a motion for Board to address constitutional and statutory issues. The motion cited due process provisions of the United States and Iowa constitutions, as well as (for the first time in my professional career) the life, liberty, and pursuit of happiness provision of the Declaration of Independence. The motion cited statutory provisions of the open meetings law and the administrative procedures act. The argument portion of the motion consisted of an attack on the February 12, 2010 order denying respondent's request for production. The argument does not substantively differ from the argument raised in the earlier motion that was denied by the February 12, 2010 order.

On March 24, 2010, the State filed a resistance. On March 31, 2010, respondent filed a reply and a motion to vacate. The motion to vacate consisted of a summary request to vacate the January 14, 2010 decision to grant a hearing on the application for rehearing.

On March 31, 2010, the State served a motion to continue the April 9, 2010 hearing. The State's attorney stated that she had recently been assigned to try a case before the podiatry board on the date. She suggested a new hearing date in June.

Respondent filed a resistance to the motion to continue on the same date. Respondent's attorney first pointed out that he had objected to the April 9 date because he was scheduled to be out-of-state on that date. The State resisted his objection and the hearing was scheduled for April 9. Respondent's attorney cancelled his out-of-state plans based on the Board's decision. Respondent further argued that two assistant attorneys general prosecuted the case, but only one claimed a conflict. Respondent finally argued that this matter has been pending for some time, and he deserves the opportunity to get on with his life.

The State filed a reply, stating that the other attorney who prosecuted the case has been assigned to another area of the Attorney General's office and is not available. A third attorney who has been assigned cases with this Board has a conflict with the April 9 date. The State also argued that respondent is continuing to file motions, which will require additional response by the State. The State argued that it would be unreasonable for the podiatry board to continue a "long-scheduled competency hearing" for the rehearing in this case.

## DISCUSSION

**Motion for Board to address constitutional and statutory issues:** This motion is a complete rehash of Respondent's request for production of documents and information that was ruled on and denied by my order of February 12, 2010. The same arguments are made in both motions. Respondent could have appealed my order to the Board. He failed to do so within the 14 day time period. Respondent did not avail himself of an administrative remedy allowed by law, and thus, failed to exhaust his remedies. *Parks v. Iowa State Patrol* 715 N.W.2d 768 (Iowa App. 2006); *Iowa Dep't of Revenue v. Schekel*, 715 N.W.2d 771 (Iowa App. 2006). He is bound by the February 12, 2010 order.

**Motion to vacate:** Respondent made no compelling argument for the motion to vacate. The Board has already made the decision to hear the arguments for and against the application for rehearing. There are no grounds to vacate that order.

**Motion to continue:** The motion to continue is concerning. When respondent asked for and received a continuance of the February hearing, the Board set the hearing for April 9, 2010. Respondent's attorney asked for a different date because he had an out-of-state conflict. The State's attorney objected, and respondent's attorney changed his conflict to accommodate the Board.

Now, less than ten days before the hearing, the State's attorney has asked for a continuance due to a conflict. She stated that she was recently assigned the case with the podiatry board, but stated that that case cannot be continued because it has been long-scheduled. It is not clear whether the State's attorney was assigned the podiatry board case prior to the date this hearing was set for April 9. However, if she knew about the podiatry board case at the time this case was scheduled for April 9, she should not have objected to respondent's request to reschedule. If she was assigned the podiatry case after this case was set, her office should have assigned an attorney that had no conflict on that date. I understand that state resources are tight, but the State could have made assignments without jeopardizing this hearing date.

It is also unclear that the case cannot be covered by another attorney. Ms. Esbrook tried the case and continues to work with the Attorney General's Office, albeit in a different division. It is not unusual for attorneys in other divisions to collaborate on cases. There is no statement that Ms. Esbrook is unavailable for the hearing on April 9. The application for rehearing only seeks out the application of an additional sanction, so there is no indication that the hearing will consist of anything other than oral argument. There might be other attorneys who could perform the oral argument on April 9.

Respondent makes a valid point that he has a right to have this case decided. The Board's entered its decision on the contested case hearing December 9, 2009. The State

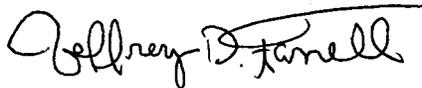
extended the time needed to draw this matter to a conclusion through its application for rehearing, and now seeks to have the matter scheduled for June, which is seven months after the contested case hearing. Absent true good cause, that is too long. The State made the decision to file an application for rehearing. The State has the responsibility to appear before the Board in a timely manner so the application can be heard and decided.

**ORDER**

Respondent's motions for Board to address constitutional and statutory issues and to vacate the application for rehearing are denied.

The State's motion to continue is denied. This matter shall be heard as scheduled on April 9, 2010.

Dated this 6th day of April, 2010.



Jeffrey D. Farrell  
Administrative Law Judge

cc: AGO – Theresa O'Connell Weeg (by email)  
Attorney – David Brown (by email)  
Iowa Board of Medical Examiners (by email)

BEFORE THE IOWA BOARD OF MEDICINE

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In the Matter of the Statement of Charges Against:	)	Case Nos. 02-04-652
	)	DIA No: 08DPHMB010
	)	
	)	
Leonard D. Lomax, M.D.	)	<b>ORDER ON REQUEST FOR</b>
	)	<b>PRODUCTION AND STAY</b>
Respondent,	)	

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**INTRODUCTION**

On December 3, 2009, the Iowa Board of Medicine (the Board) issued its Findings of Facts, Conclusions of Law, Decision, and Order concerning a statement of charges against respondent Leonard Lomax. On December 28, 2009, the State filed an application for rehearing. The State argued that the Board should order respondent to comply with the treatment recommendations made by Elmhurst before returning to practice. On January 5, 2010, respondent filed a resistance. Respondent argued that the Board previously considered the Elmhurst recommendation, and there are no justifiable grounds to reconsider that option.

On January 14, 2010, the Board met by telephone conference call to consider the application. The Board went into closed session pursuant to Iowa Code section 21.5(1)(f). The Board returned to open session and voted to grant the application for purposes of taking oral argument. The argument was originally set for February 5, 2010, but has been continued to April 9, 2010, per the request of respondent's attorney.

On January 22, 2010, respondent filed a request for production of documents and information, and a stay of the hearing. The request for production alleged that the Board met on January 11 and January 14, 2010, to consider the application for rehearing. The request alleged he was not given notice of the Board's meetings, and further raised questions of ex parte communications and separation of functions. He requests information regarding communication between the Attorney General's Office and the Board regarding the decision to seek reconsideration and the decision to set the matter for hearing. Specifically, he requests items including:

- a) a list of all persons participating in the conference call on January 11, 2010,
- b) a list of issues discussed,
- c) detailed summary of the discussion,
- d) all recordings made,
- e) all notes or minutes made,

- f) a list of persons participating in the open session held on January 14, 2010,
- g) a detailed summary of the discussion,
- h) all recordings made,
- i) all notes or minutes made,
- j) any other dictation, documentation, or other commemoration of the telephone conference held on January 11, 2010, or the open session held on January 14, 2010.

The State filed a resistance. The State agreed to provide all public information regarding the Board's decision, such as the agenda of the any meetings and the minutes of those meetings. The State objected to production of any documents relative to the Board's closed session. The State cited to the confidentiality provision in Iowa Code section 21.5(4). The State also cited *Botsko v. Davenport Civil Rights Com'n*, 774 N.W.2d 841 (Iowa 2009) as holding that closed session deliberations are necessarily confidential to protect the "candid and uninhibited discussion which produces the give-and-take that is the hallmark of effective collective decision making."

The State's attorney made a professional statement that she was not present during the deliberations and did not provide any advice to the Board on issues that have arisen during this contested case proceeding.

On February 10, 2010, the Board referred respondent's request for production and the State's resistance to the undersigned administrative law judge (ALJ) to enter a decision on the request. An ALJ may rule on prehearing matters on the Board's behalf. 653 IAC 25.6.

### DISCUSSION

A party may file an application for rehearing from a decision in a contested case proceeding. Iowa Code section 17A.16(2). The party must file the application within twenty days. The agency is then required to make a decision on the application within twenty days after it is filed. If the agency does not act within twenty days, the application is deemed denied. There is no requirement that the Board grant oral argument before deciding an application for rehearing.

In this case, the Board met on January 14, 2010, to consider the application for rehearing. The Board had three basic options at that point: deny the application without oral argument, grant the application on the merits without oral argument, or grant the application for purposes of taking oral argument. The Board elected to grant the application for purposes of taking argument. This action preserved the right of the Board to hear from the parties prior to making a decision on the merits. It was important for the

Board to take some action at this time, due to the twenty day decision-making requirement in section 17A.16(2).

The Board may go into closed session to discuss the decision to be rendered in a contested case proceeding. Iowa Code section 21.5(1)(f). The State's application for rehearing asked the Board to amend the decision it reached after the contested case hearing on the statement of charges against respondent. The Board's decision on the application for rehearing necessarily required it to consider aspects of its decision in the contested case. Thereafter, the Board moved into open session to vote on the application. The public vote is required by Iowa Code section 21.5(3). The Board confirmed its action by two orders, both of which were provided to respondent's attorney.

The process is no more complex than that. By analogy, if the final agency decision-maker was a department director, the director would make the same decision whether to rule on the application based on the documents, or set the case for oral argument. The decision whether to take oral argument is made without a hearing – obviously it is not necessary to have a hearing to decide whether to set the matter for hearing. The only difference here is that this case involves a multiple-person board as the final decision-maker. A board can only take action by meeting, discussing the application and resistance, and taking a vote. The board otherwise has the same options as the director, that is, decide the application on the documents or set the matter for argument. The board is not required to notify the parties that it will meet to decide whether it wants to take oral argument, other than providing notice of public meetings as required by chapter 21.

Respondent's request to obtain any documents relating to the Board's deliberative process must be denied. The State's citation to *Botsko v. Davenport Civil Rights Com'n* is exactly correct. The Iowa Supreme Court compared executive agency boards to appellate courts and juries when discussing the need to protect the deliberative process. *Botsko*, 774 N.W.2d at 847. The court noted the "strong public policy reasons to avoid inquiry into mental processes of administrative decisionmakers." (citing *Kholeif v. Iowa Board of Medical Examiners*, 497 N.W.2d 804 (Iowa 1993)).

With regard to respondent's other requests, the State has agreed to provide the meeting agenda and minutes from the January 14, 2010 meeting. These are public records. Respondent has already received the Board's orders regarding its decision to set the application for hearing. The request for production is otherwise denied.

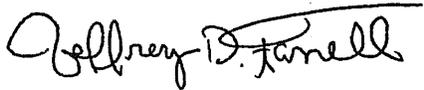
There are two other points that must be clarified. It is unclear why respondent believes there was a meeting on January 11, 2010. The Board met on January 14, 2010, went into closed session to deliberate before returning to open session to vote. There is no record of a meeting on January 11. Second, the State's attorney made a professional statement that she was not present at the closed session, and to her knowledge, no attorney from her

office was present during the closed session. I can confirm that no attorney from the Attorney General's Office was present during the closed session.

**ORDER**

Respondent's request for production of documents and information is denied. The request for stay of hearing is denied as moot, because the February 5, 2010 hearing has been continued to April 9, 2010, based on respondent's request.

Dated this 12th day of February, 2010.



Jeffrey D. Farrell  
Administrative Law Judge

cc: AGO – Theresa O'Connell Weeg  
Attorney – David Brown  
Iowa Board of Medical Examiners

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>In the Matter of the Statement</b>	)	<b>Case Nos. 02-04-652</b>
<b>of Charges Against:</b>	)	<b>DIA No: 08DPHMB010</b>
	)	
	)	<b>AMENDED</b>
<b>Leonard D. Lomax, M.D.</b>	)	<b>ORDER ON THE STATE'S</b>
	)	<b>APPLICATION FOR</b>
<b>RESPONDENT,</b>	)	<b>REHEARING</b>

---

1. On February 11, 2008, the Board filed formal disciplinary charges against Respondent alleging that he committed fraud in procuring an Iowa medical license; knowingly made misleading, deceptive, untrue or fraudulent representations in the practice of a profession; engaging in a pattern of unethical or unprofessional conduct; engaged in substance abuse; engaged in a pattern of disruptive behavior; engaged in sexual misconduct; and engaged in sexual harassment.

2. On October 21, 2009, the case came for hearing before the Board.

3. On December 3, 2009, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent violated the laws and rules governing the practice of evidence when he committed fraud in procuring his Iowa medical license; knowingly made misleading, deceptive, untrue or fraudulent representations in the practice of a profession; engaged in a pattern of unethical or unprofessional conduct and engaged in substance abuse. The Board concluded that there was insufficient evidence to meet a preponderance of the evidence that Respondent engaged in a pattern of disruptive behavior; sexual misconduct or sexual harassment.

4. The Board cited Respondent for committing fraud in procuring an Iowa medical license, knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of medicine, engaging in unethical conduct, and substance abuse in violation of the laws and rules governing the practice of medicine in Iowa. The Board warned Respondent that such conduct in the future may result in further formal disciplinary action, including suspension or revocation of his Iowa medical license. The Board ordered that all hospitals, clinics and other healthcare facilities where Respondent practices medicine be notified of the Board's disciplinary action. The Board placed Respondent on probation for a period of five year subject to Board monitoring for alcohol abuse and unprofessional conduct. The Board also ordered Respondent to complete the professional ethics program within ninety (90) days.

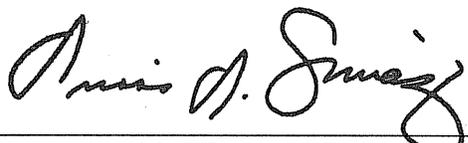
5. On December 28, 2009, the State filed an Application for Rehearing. The State argued that the Board should have required Respondent to complete a residency-supported intensive treatment program for professionals to determine Respondent's fitness for duty and ability to practice medicine with reasonable skill and safety as recommended by a Board-approved and nationally recognized professional assessment program that Respondent attended.

6. On January 5, 2010, Respondent filed a Resistance to Application for Rehearing. Respondent argued that there was no need to reconsider the Board's findings because the issues were thoroughly discussed and analyzed at hearing.

7. On January 14, 2010, the Board considered the State's Application for Rehearing and Respondent's Resistance to Application for Rehearing. The Board voted to grant the State's Application for Rehearing.

**THEREFORE IT IS FURTHER ORDERED** that a Rehearing shall be held before the Board on April 9, 2010, at 1:00 p.m. The State and Respondent shall have fifteen (15) minutes each for oral argument. The appeal hearing shall be held in a conference room at the Board office, located at 400 S.W. 8<sup>th</sup> Street, Suite C, Des Moines, Iowa, 50309-4686.

Dated this 21<sup>st</sup> day of January 2010.



Siroos S. Shirazi, M.D., Chairman

cc: Theresa O'Connell Weeg  
Assistant Attorney General

David Brown  
Attorney for Respondent

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>In the Matter of the Statement of Charges Against:</b>	)	<b>Case Nos. 02-04-652</b>
	)	<b>DIA No: 08DPHMB010</b>
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<b>Leonard D. Lomax, M.D.</b>	)	<b>ORDER ON THE STATE'S</b>
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7. On January 14, 2010, the Board considered the State's Application for Rehearing and Respondent's Resistance to Application for Rehearing. The Board voted to grant the State's Application for Rehearing.

**THEREFORE IT IS FURTHER ORDERED** that a Rehearing shall be held before the Board on February 5, 2010, at 1:30 p.m. The State and Respondent shall have fifteen (15) minutes each for oral argument. The appeal hearing shall be held in a conference room at the Board office, located at 400 S.W. 8<sup>th</sup> Street, Suite C, Des Moines, Iowa, 50309-4686.

Dated this 14<sup>th</sup> day of January 2010.



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Siroos S. Shirazi, M.D., Chairman

cc: Theresa O'Connell Weeg  
Assistant Attorney General

David Brown  
Attorney for Respondent



### APPEAL OF AUTOMATIC STAY FINDING

On September 19, 2009, Respondent filed a notice of automatic bankruptcy stay and motion to continue hearing. The Board referred the matter to the administrative law judge (ALJ) for a ruling. The parties concluded briefing on October 14, 2009.

On October 19, 2009, the ALJ issued an order denying the motion to continue and finding the automatic stay did not prevent the case from proceeding to hearing. The ALJ cited *In re National Cattle Congress*, 179 B.R. 588 (N.D. Iowa 1995) as instructive. In *National Cattle Congress*, the bankruptcy court held that the Iowa Racing and Gaming Commission (the Commission) did not violate the automatic stay by holding a hearing to consider revoking the license of a greyhound track operator that was in bankruptcy. The federal court ruled that 11 U.S.C. section 362(b)(4) created an exception to the automatic stay to enforce a governmental unit's regulatory power. The Court held that the Commission had the power to hold the hearing and make a decision without needing to seek relief from the automatic stay.

Respondent appealed the ALJ's decision to the Board, and both parties made arguments. Respondent asked the Board to consider the matter outside the presence of the ALJ. The Board consulted legal counsel at the Attorney General's Office to consider whether the ALJ should be present during the deliberation of the appeal. The ALJ was not present at the time the Board consulted with legal counsel. The Board decided, with the advice of counsel, to exclude the ALJ from its deliberations. The Board then considered the appeal on the merits. The Board did not seek advice from legal counsel when considering the application of the automatic stay.

The Board affirmed the ALJ's decision for reasons set out in his ruling. Both parties cited *National Cattle Congress* as authority in its briefs. Respondent was not able to distinguish *National Cattle Congress* from this case. This is a regulatory action against a licensee, just like the action in *National Cattle Congress*. The Board filed its action for the purpose of protecting the public welfare, just as the Commission did in its case. The cases are analogous.

Respondent argued that the case must be presented to the bankruptcy court first, and that the Board did not have authority to decide the bankruptcy issue. Respondent's argument misses the point. The Commission had held the hearing and made its decision at the time the bankruptcy court considered the case. The Court found that the action by the Commission did not violate the automatic stay. The Court only limited the Commission from enforcing its decision, because enforcement would have an impact on the property of the bankruptcy estate. *National Cattle Congress* makes clear that the Board does not need to first seek relief from the automatic stay to hold the contested case hearing and enter a decision. The decision of the ALJ was correct.

## FINDINGS OF FACT

**Initial application and resulting Board action:** Respondent is an Iowa-licensed orthopedic surgeon who began practicing in the greater Des Moines community in 2002. He is originally from New Jersey. He graduated from Temple University and UMDNJ Robert Wood Johnson Medical School. He performed his residency at Thomas Jefferson University Hospital in Philadelphia. (Exhibits 5, 17, A).

On September 23, 2002, Respondent filed an application for a permanent Iowa medical license. Section 12 of the application asked Respondent to answer a number of background questions relevant to potential eligibility issues. Question 4 asked if Respondent had ever been charged with a felony or misdemeanor crime. Question 7 asked Respondent whether he had received a warning, reprimand or been placed on probation during any internship, residency or fellowship program. Respondent answered “no” to both questions. (Exhibit 17).

The application included a certification and Respondent certified that he answered each question accurately. The certification also states that Respondent is “required to update [the] application with pertinent information to cover the time period between the date of application and date approved by the Board.” Respondent signed the certification. (Exhibit 17).

The Board granted the application and issued Respondent a permanent Iowa medical license on December 11, 2002. Subsequently, the Board became aware that Respondent did not answer question 7 accurately. The Board learned that Respondent received a suspension during his residency program and was placed on probation. On April 16, 2003, the Board sent Respondent an informal letter of warning finding unethical conduct. The Board warned Respondent that further similar conduct could be grounds for formal disciplinary action in the future. (Exhibit 18).

On May 14, 2003, Respondent filed a responsive letter. He did not ultimately dispute the Board’s finding, but stated that the residency program handled personnel matters in an inconsistent manner. He felt that he had a reasonable basis for answering the question the way he did, but acknowledged in hindsight that he should have contacted the Board’s office to ask for guidance. Respondent felt that he did not act unethically and asked the Board to remove the letter from his file. (Exhibit 18).

On August 11, 2003, the Board issued a letter stating that Respondent’s request was denied. The Board noted that it reserved the right to reconsider the matter should it be deemed appropriate. (Exhibit 18).

**Law enforcement contacts:** In 2004, the Board received a complaint from an attorney for a local hospital. The complaint alleged that Respondent had been charged with multiple criminal charges, including domestic assault, driving while under the influence (OWI), and threatening police. The Board assigned Bernard Jennisch to investigate the complaint. (Exhibits 5-6).

Mr. Jennisch obtained law enforcement and/or court records from three jurisdictions, which show the following interactions with police or arrests:

October 18, 2002 – Philadelphia, Pennsylvania:  
disorderly conduct,  
terroristic threats,  
bomb threats,  
false alarms, and  
false reports;

November 28, 2003 – Johnston, Iowa: interference with official acts;

December 8, 2003 – Johnston: police present while wife moved out of home;

March 27, 2004 – Urbandale: OWI;

September 24, 2004 – Johnston; aggravated assault.

The circumstances that led to the charges are outlined briefly below, as the arrests and police contact are relevant to the statement of charges in this case. Only one of the charges resulted in a conviction. (Exhibits 5, 7; Jennisch testimony).

**Philadelphia criminal charges:** On October 18, 2002, Respondent was arrested for disorderly conduct. The police report stated that Respondent refused to obey police commands, swore at police, and refused to provide identification. He was arrested and released. Shortly thereafter, the police department received two telephone calls from pay phones making bomb threats. Respondent was witnessed leaving telephone booths on both occasions. These charges were later dropped for lack of prosecution. (Exhibits 15-16).

Respondent testified that he had been out drinking with colleagues from his residency program. He was assaulted during the course of the evening, which led to the arrival of police officers. Respondent was upset and he became further upset through his interaction with law enforcement. He denied making any threats. He hired an attorney and all charges were later dismissed. (Respondent testimony; exhibits 5, E).

**Interference with official acts charges:** On November 28, 2003, Johnston police officers were called to Respondent's home regarding an alleged domestic argument with his wife. The officer's report indicated that he found Respondent's wife very upset and crying. When the officer met Respondent, Respondent directed abusive statements at his wife, calling her a "crazy bitch." The officer stated that Respondent appeared very intoxicated. The officer reported separating Respondent and his wife as they continued to argue while she prepared to leave the home. Respondent used vulgar language toward the officers as they remained present until Ms. Lomax left. The officer reported that Respondent pushed forward into the officer and he was arrested. Respondent resisted and fought with officers as they attempted to put him in handcuffs. (Exhibit 8).

Respondent admitted during his interview with Mr. Jennisch with that he had been arguing with his wife and emotions became heated. He denied assaulting anyone. (Exhibit 5).

**Police called to home:** On December 8, 2003, Respondent's wife again called Johnston police officers to the home so she could retrieve clothing and work-related items. The request was preceded by Ms. Lomax's petition for relief from domestic abuse, which was filed on December 1, 2003. The court entered a temporary protective order on the same date. Officers reported that Respondent arrived home while they were present, but the parties were kept separate and no problems resulted. (Exhibit 9).

**OWI charges:** In the early morning hours of March 27, 2004, an Urbandale police officer found Respondent's vehicle stopped in the middle of Douglas Avenue. Respondent had stopped his car on the roadway and was looking for something in his trunk. Respondent smelled of alcohol and his speech was slow and slurred. The officer asked Respondent for his driver's license; Respondent struggled to find his driver's license and dropped his cell phone twice. Respondent admitted he was drinking. (Exhibit 10).

The officer asked Respondent to take a preliminary breath test, and Respondent agreed. He tested approximately twice the legal limit. The officer tested the passenger, who was more than twice the legal limit. The officer directed Respondent to park the car at a grocery store across the street and call a cab. Respondent agreed. (Exhibit 10).

The officer remained in the area and observed a cab approach Respondent's car, but neither person entered the cab. The officer witnessed Respondent driving his car from the lot. The officer stopped Respondent's car, conducted field sobriety tests and Respondent was arrested for OWI. Respondent did not provide a specimen test at the police station, and his driver's license was revoked pursuant to the implied consent law. (Exhibit 10).

Respondent stated during his interview with Mr. Jennisch that he felt it unnecessary that the officer called a cab. He pled guilty to a lesser charge of public intoxication. As part of that agreement, he attended a two-day class for drunk drivers. He also received a work driver's permit. At hearing, Respondent was more contrite. He admitted that he was "stupid" to drive the car after agreeing to take a cab. (Exhibits 5, 12; Respondent testimony).

**Aggravated assault charges:** On September 24, 2004, at 4:40 a.m., MC entered the Johnston Police Department with two friends to report an assault by Respondent. MC stated that she was dating Respondent and had thrown a birthday party for him at his home that evening. She stated that she and Respondent had been drinking. At approximately 4:00 a.m., Respondent walked another woman to her car, and was seen kissing her. MC became upset and was crying. MC reported that Respondent re-entered the house, approached her, and began choking her. Friends split them apart, and MC left the home. MC's story was corroborated by a friend who provided a written statement. MC's statement was also corroborated by an emergency room report diagnosing overstretched muscles in her neck. The intake officer observed redness on her neck. Officers felt the witnesses to be credible and not impaired by alcohol. (Exhibit 11).

Officers proceeded to Respondent's home to arrest him for assault. Respondent answered the door and was generally cooperative with officers until they were leaving the home. Respondent made a statement to officers that "We'll meet again in the trauma room." One of the officers asked if that was a threat, and Respondent replied that he was just making a statement. On the way to jail, he apologized for making the statement and said he was a public servant, just as they were. Respondent told officers that MC was out of control and throwing things throughout the house because she was jealous of the other woman. He said his only contact with MC was trying to restrain her to prevent her from causing damage. He also made statements that women are psycho and he would make them pay for what occurred that night. The officer recorded the conversation in the car by in-car recording system. (Exhibit 11).

On September 25, 2004, MC's friend returned to the police station to amend her written statement. She essentially retracted her first statement. She said that she was drunk and did not remember all of the details of the evening. She stated that MC had been throwing things and Respondent was trying to calm her as MC fought him. Two days later, MC called the department and asked for the name of the assistant county attorney who would be prosecuting the case. She stated she was re-thinking what she was doing. She later asked the county attorney's office to dismiss the charges. On November 3, 2004, the county attorney's office filed a dismissal. (Exhibits 11, 13, 43).

**Summary of law enforcement contacts:** Respondent acknowledged a plethora of personal issues from 2002 through 2004. He agreed that he had problems with anger and alcohol. He sought out mental health counseling and feels he has put those problems in his past. (Respondent testimony).

**Original and subsequent license applications:** The charges in the Philadelphia case were filed after Respondent filed his initial Iowa license application, but before a license was granted. Respondent did not amend his license application after the charges were filed. The Board first learned about the charges during the course of Mr. Jennisch's investigation.

On July 23, 2003, Respondent filed a license renewal application with the Board. That application asked Respondent whether he had been charged with a felony or misdemeanor crime within the past five years. He answered "no." (Exhibit 19).

On August 12, 2005, Respondent filed another license renewal application. On this occasion, he answered "yes" to the question about criminal charges. On the following page, he stated:

"In March of 2004 I was charged with a public intox. I paid a fine and the judgement was deferred. In Sept. 2004 I was falsely accused of assault by a female whom I was intimately involved with at the time. She apologized, immediately recanted and the charges were dropped." (Exhibit 20).

On August 19, 2007, Respondent filed another license renewal application. On the question whether he had been charged with a felony or misdemeanor in the last five years, he answered "no." (Exhibit 21).

At hearing, Respondent was asked why he did not list all criminal charges on the application forms. He did not give a specific reason why he did not amend the initial application. He stated that his office manager completed the 2003 application and he did not review it. He acknowledged that he "screwed up" the 2005 application, but thought he was an "open book" before the Board by that point, inferring that there was little reason to report information the Board already knew. He admitted he made a mistake with the 2007 application and should have been more diligent, but repeated that he was an open book at that point. (Respondent testimony).

**Practice concerns:** The State introduced some documentary evidence regarding alleged practice concerns. Respondent originally came to Iowa after being recruited by the Iowa Clinic. Respondent resigned his position at the Iowa Clinic after some disputes arose between the parties. The Iowa Clinic agreed to pay Respondent \$90,000 as settlement of the disputes. Respondent testified that the disputes arose due to conflict with his practice

partner, and the failure of Iowa Clinic to follow through on commitments it had made. The State did not put on any witnesses to testify to any practice issues. (Respondent testimony; exhibits 22, H).

The State also produced records from Mercy Hospital, which had reviewed some of Respondent's work and professional conduct. The hospital's Medical Executive Committee reviewed surgical logs and conduct complaints. As part of its review of conduct complaints, the hospital received mental health and substance abuse evaluations. The hospital reinstated full privileges after a review of the evidence. The State did not produce any witnesses to testify to any concerns at Mercy. (Exhibits 26, J, K).

The State produced a documentary report from Broadlawns Hospital (Broadlawns), Des Moines, Iowa, involving an alleged sexual contact with a co-worker (and patient). The report indicated that Respondent went drinking and dancing with two female co-workers. They returned to his home, and he allegedly kissed and unbuttoned the bra of one of the women during a tour of his house. She left the room and then left the home with the other woman. On a second occasion, Respondent hugged and kissed the same woman on the cheek after giving her an injection at the hospital. (Exhibit 37).

Respondent testified that the incident was mutually resolved by the hospital and parties involved. There were no charges or complaints, other than the investigation conducted. The hospital took no action against him, and renewed his contract after the incident occurred. He continued to work at Broadlawns until the statement of charges was filed in this case. The sole basis for the termination at Broadlawns was the statement of charges. (Respondent testimony).

Respondent argued that there are no issues with his surgical or practice skills. Respondent sat for his orthopedic boards in July of 2009 and passed the exam. (Respondent testimony).

**Evaluations:** Respondent provided Mr. Jennisch evaluations from Dr. William Logan, Dr. Bing Wall, and Dr. Loren Olson. All are from the time period of March to June of 2005. All are favorable to Respondent. (Exhibits 42, 45).

The Board asked Respondent to attend two evaluations after the statement of charges was filed. The first was a comprehensive competency evaluation at CPEP regarding practice skills. The evaluation was largely positive, with some weaknesses and recommendations noted. (Exhibit 2).

The second was a psychiatric and substance abuse evaluation by Elmhurst Memorial Healthcare. The evaluation found a history of alcohol abuse, but did not confirm the presence of an active substance abuse or dependence disorder. The evaluation also

diagnosed Respondent with a personality disorder, based on a “history of serious interpersonal difficulties.” This finding was based on the conflicts leading to contact with law enforcement, his termination from Iowa Clinic, and the sexual harassment incident at Broadlawns. The evaluation cited as concerns Respondent’s failure to accept responsibility for these events, his portrayal of himself as a victim, and showing no self-awareness of his own misbehaviors. The evaluation recommended that Respondent enter a 10 to 12 week residentially-supported intensive treatment program for professionals. (Exhibit 3).

Respondent testified that he had significant concerns about the Elmhurst evaluation. He only spent one and a half hours with the director of the program. The remaining time, consisting of seven hours, was spent with a student who monitored standardized tests. Respondent subsequently obtained an evaluation from Dr. Craig Rypma. He spent three days with Dr. Rypma. Dr. Rypma did not find the presence of a personality disorder, based on criteria. He diagnosed Respondent with an adjustment disorder with disturbance of emotions and conduct. Dr. Rypma noted that there was no personality-related conduct of diagnostic significance prior to 2002 or since 2004. Dr. Rypma attributes Respondent’s problems from 2002 to 2004 to the stress of starting his medical practice, moving to Iowa, and the deterioration of his marriage. (Respondent testimony; exhibit B).

### CONCLUSIONS OF LAW

**Regulatory framework:** The Board is a professional licensing board created to review applications for licenses and regulate the profession. *See generally* Iowa Code chapters 147, 148. The Board may discipline licensees pursuant to the standards set forth in the code. *See* Iowa Code section 147.55. The Board has adopted rules pursuant to Iowa Code chapter 17A to help define the statutory standards. *See* 653 IAC 12.4, Ch. 13.

The statement of charges sets forth seven counts:

- I. engaging in fraud in procuring an Iowa medical license (citing Iowa Code sections 147.55(1) and 272C.10(1) and 653 IAC 23.1(15));
- II. knowingly making misleading, deceptive, untrue or fraudulent representations (citing Iowa Code sections 147.55(3), 148.6(2)(a), and 272C.10(3) and 653 IAC 23.1(14));
- III. engaging in unprofessional or unethical conduct and/or practice harmful or detrimental to the public (citing Iowa Code sections 147.55(3) and 272C.10(3), and 653 IAC 23.1(4)); and

- IV. substance abuse (citing Iowa Code section 148.6(2)(h) and 653 IAC 23.1(6));
- V. engaging in a pattern of disruptive behavior (citing Iowa Code section 148.6(2)(h) and 653 IAC 23.1(10));
- VI. engaging in sexual misconduct (citing Iowa Code section 148.6(2)(c) and 653 IAC 23.1(5) and 13.7(4)); and
- VII. engaging in sexual harassment (citing Iowa Code section 148.6(2)(c) and 653 IAC 23.1(5) and 13.7(6)).

Each count contains proper legal citations and is legitimate grounds for discipline, if proven by the State. The question is whether the State has satisfied its burden of proof by a preponderance of the evidence on each of the counts. *See Eaves v. Iowa Board of Medical Examiners*, 467 N.W.2d 234 (Iowa 1991). Some of the charges involve similar facts, and will be grouped together for discussion.

#### **False Statements on Application Forms**

Counts I, II, and III involve false statements on applications for a license or renewal of a license from the Board. The evidence clearly proves violations for the applications filed in 2002, 2003, 2005, and 2007.

The initial application stated that Respondent was required to update the application with any new information that arose between the time the application was filed and the time it was approved. Respondent's signature is just below the paragraph containing that statement. He signed the application on September 18, 2002. He had answered "no" to the question whether he had been charged with a felony or misdemeanor crime. On October 18, 2002, he was charged with several crimes in Philadelphia. At that time, he knew he had a pending application before the Board in which he reported he had not been charged with any crimes, and he knew he was obligated to update his application with any new information. He did not provide any information to the Board regarding these charges. His license application was not approved until December 11, 2002. "Fraud" is defined by the regulations to include the concealment of facts that should have been disclosed when making the application. 653 IAC 23.1(15). Respondent committed a violation of the regulation by concealing facts of the October 18, 2002, criminal charges.

The violations concerning the renewal applications are more obvious and egregious for three reasons. First, Respondent knew at the time he filed each application that he had been charged with crimes, yet he failed to report all crimes for which he had been charged. Second, by the time he filed each renewal application, he had received a letter of warning from the Board regarding his failure to report the suspension from his

residency program. He received the letter of warning from the Board on April 16, 2003. He filed his first renewal application on July 23, 2003. Third, the 2005 and 2007 renewal forms were filed after he had been interviewed by Mr. Jennisch twice, and clearly understood the Board's concerns. Even then, he made false statements on the applications.

Respondent's explanations for the violations are not acceptable. He cannot blame his office staff for his answers on his application. Each physician is responsible to review the form to make sure it is complete, accurate and truthful. Respondent seemed to claim that false statements on the 2005 and 2007 forms were minimized because the Board knew about his criminal history at that point, so he was not really hiding anything. This argument is actually unfavorable to Respondent – it is inexplicable why he would not accurately report his criminal charges on subsequent renewal applications when he knew the Board was investigating him for filing false applications.

### **Substance Abuse**

Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety. Iowa Code section 148.6(2)(h); 653 IAC 23.1(6). The evidence shows that most of the incidents involving law enforcement involved alcohol abuse. The arrest in Philadelphia occurred during a night of heavy drinking with his colleagues. The OWI charge, even as pled down to a public intoxication, involved the abuse of alcohol. Respondent attended a drunk-driving class as part of the resolution of that case. The interference with official acts charge was eventually dismissed, but officers reported that Respondent was intoxicated, and Respondent did not dispute that evidence. Respondent stated he drank little, if any, during the party that resulted in the assault charge, but the charges resulted from a party at his home that involved drinking and lasted until 4:00 a.m. The sexual contact incident while working at Mercy occurred after Respondent was out drinking and dancing with two work colleagues.

Respondent admitted that he had a problem with alcohol from 2002 to 2004. He has received counseling and has not had any problems since then. The Board recognizes that Respondent has conducted himself well over the past four to five years. However, his recent good behavior does not mean that he did not commit a violation of the regulatory standard from 2002 to 2004.

The Board finds a violation of Count IV. There is no evidence to demonstrate that Respondent was intoxicated while providing care to patients. However, Respondent was involved in a number of incidents during a short period of time that required investigation by law enforcement agencies and an employer. Respondent admittedly had problems

with alcohol and anger during this period. His inability to control his behavior with drinking led to several incidents that threatened to impact his license and livelihood.

### **Disruptive Behavior and Sexual Misconduct**

The Board does not find sufficient evidence to meet a preponderance of the evidence on counts V, VI, or VII. The State only provided hearsay documentary reports to support the charges on each of these counts. The evidence regarding disruptive behavior was not precise and unsupported by any direct testimony. The evidence of the sexual contact was more specific, but did not meet the burden of proof to show a violation of the regulations. The matter was resolved by the hospital during an internal investigation, and Respondent was not disciplined. The hospital continued to employ him and renewed his contract. Neither the victim, nor the friend who was with her during both alleged incidents, testified at hearing. The weight of the evidence does not support these charges.

### **SANCTION**

The Board considered a number of factors when considering sanctions. The false application violations cannot be considered lightly because they directly impact Respondent's credibility as a physician and the profession as a whole. The false statements were highly material, notwithstanding the fact that several of the charges did not ultimately result in convictions. As an example, if Respondent had honestly reported on his initial application that he had been suspended from his residency program, and updated his application to report that he had been charged with crimes including disorderly conduct, making false reports to law enforcement, and terrorist threats, the Board could have scrutinized the application more closely to consider those serious offenses/allegations. Respondent's failure to disclose all required information deprived the Board of material information needed to evaluate Respondent's fitness to practice medicine in this state.

The Board also notes that Respondent continues to have concerns with acceptance of responsibility for his behavior. This concern is noted in several portions of the record, including the police reports, Mr. Jennisch's report, and the evaluation report from Elmhurst. Even at hearing, as Respondent was taking some responsibility for his actions, there was often a "but . . ." attached. For example, Respondent admitted that he should have been more diligent in reviewing his license applications, but felt he was an "open book" because the Board knew about his criminal charges. This is no excuse for making false reports on his applications.

The Board also remains concerned about Respondent's abuse of alcohol. Respondent had an unusual number of contacts with law enforcement and conflicts with employers from 2002 to 2004, and most of those involved alcohol use. Respondent has not had material contacts with law enforcement since 2004, and it appears he is much more stable than he was in 2004. Still, the Board believes that some monitoring is necessary to assure the public that alcohol is not impacting his ability to practice medicine.

The Board finds that the recommendations from Elmhurst are not needed at this time. Elmhurst recommended a 10 or 12 week residentially-supported intensive treatment program. Respondent's good conduct over the past four years has alleviated the level of concern the Board would have had if considering a sanction in 2004 or 2005. There are less-restrictive requirements that are adequate to protect the public interest.

### **DECISION AND ORDER**

**1. DISMISSAL:** The Board dismisses the charges in Counts V (engaging in a pattern of disruptive behavior), VI (engaging in sexual misconduct), and VII (engaging in sexual harassment). The Board concluded that the State failed to prove Counts V, VI, and VII by a preponderance of the evidence.

**2. CITATION AND WARNING:** Respondent is hereby **CITED** for committing fraud in procuring an Iowa medical license, knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of medicine, engaging in unethical conduct, and substance abuse in violation of the laws and rules governing the practice of medicine in Iowa. Respondent is hereby **WARNED** that such conduct in the future may result in further formal disciplinary action, including suspension or revocation of his Iowa medical license.

**3. NOTICE TO HOSPITALS AND CLINICS:** Respondent shall provide the Board with the name, address and telephone number of the administrative director at all current and future hospitals, clinics and other healthcare facilities where Respondent practices medicine. The Board will provide the director with all Board Orders in this matter.

**4. FIVE YEARS PROBATION:** Respondent is placed on probation for a period of five years subject to the following terms and conditions:

A) **Monitoring Program:** Respondent shall establish a monitoring program with Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654. Respondent shall fully comply with all requirements of the monitoring program.

- B) Alcohol Prohibition:** Respondent shall not consume alcohol. Respondent shall not use foods containing alcohol or poppy seeds. Respondent shall not engage in any incidental use of products containing alcohol (such as mouthwash or hand-cleaning gel) that may cause a positive test for alcohol.
- C) Controlled or Prescription Drugs Prohibition:** Respondent shall not use any controlled or prescription drug unless prescribed for Respondent's use by another qualified treating health care provider. Respondent shall provide written notice to the Board within 72 hours of the use of any controlled or prescription drug. Respondent shall inform any treating health care provider of his substance abuse history before obtaining a prescription.
- D) Drug Screening Program:** Respondent shall fully comply with the Board's drug screening program. Respondent shall provide witnessed urine or blood 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.
- E) Written Physician Mentoring Plan:** Within thirty (30) days of the date of this Order, Respondent shall submit a written physician mentoring plan for Board approval with the name and CV of a physician who regularly works with and observes Respondent in the practice of medicine to serve as physician mentor. The Board shall share a copy of all Board orders and evaluation reports relating to this matter with the physician mentor. The physician mentor shall provide a written statement indicating that the mentor has read and understands all Board orders in this matter and agrees to act as the physician mentor under the terms of this Order. The physician mentor shall agree to inform the Board immediately if there is evidence of professional misconduct, substance abuse, a violation of this Order, or a violation of the laws and rules governing the practice of medicine in Iowa.
- (1) The physician mentor shall submit written quarterly reports to the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order;
  - (2) Respondent shall continue meeting with the physician mentor until discharge is approved by the Board.
  - (3) Respondent shall meet with the physician mentor as frequently as approved by the Board.

- F) Professional Ethics Program:** Respondent shall complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Ethics Group, LLC, of Summit, New Jersey, within ninety (90) days of the date of this order. Respondent is responsible for all costs associated with the program and he must ensure that the program sends a report directly to the Board at the conclusion of the program.
- G) Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all of the terms and conditions of this Order no later than 1/10, 4/10, 7/10, and 10/10 of each year of this Order.
- H) 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.
- I) 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 each quarterly report required by this Order. The monitoring fee shall be sent to: Shantel Billington, Monitoring Programs Coordinator, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.
- J) Costs:** Respondent is responsible for all costs relating to the terms and conditions established in this Order.

The Board will not consider any modification of the terms of probation for at least one year from the date of this Order.

5. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa. In the event Respondent violates or fails to comply with any of the terms or conditions of this Order the Board may initiate action to suspend or revoke the Respondent's Iowa medical license or to impose other license discipline as authorized by Iowa law.

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

7. 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.

8. Additionally, Respondent shall pay a disciplinary hearing fee of \$75.00. Iowa Code section 272C.6(6); 653 IAC section 25.33(2). Respondent shall also pay any costs certified by the executive director. *See* 653 IAC 25.33(3). All sanctions, 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 Board within thirty days of the issuance of the final decision.

Dated this 3 day of December, 2009.

  
Siroos Shirazi, M.D., Chairman

cc: Jordan Esbrook  
Assistant Attorney General

David Brown  
Attorney for Respondent

BEFORE THE IOWA BOARD OF MEDICINE

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In the Matter of the Statement of	)	File No. 02-04-652
Charges Against:	)	Case No. 08DPHMB010
	)	
	)	
Leonard D. Lomax, M.D.,	)	<b>ORDER REGARDING MOTION</b>
	)	<b>TO CONTINUE AND NOTICE OF</b>
Respondent.	)	<b>AUTOMATIC STAY</b>

---

**INTRODUCTION**

This case involves a statement of charges against respondent Leonard Lomax, M.D. The case is set for hearing before the Iowa Board of Medicine (the Board) on October 21, 2009.

On September 30, 2009, respondent filed a notice of automatic bankruptcy stay. The notice stated that respondent filed a petition in bankruptcy on September 17, 2009. Respondent claimed that the hearing before the Board was automatically stayed by the bankruptcy case. *See* 11 U.S.C. section 362. On October 8, 2009, respondent filed a motion to continue, requesting a hearing to decide the issue raised in the notice of automatic stay.

On October 9, 2009, the State filed a response to notice of automatic stay. The State claimed that the hearing is not stayed. The State cited the exception to the automatic stay for the exercise of police or regulatory power by a governmental agency. 11 U.S.C. section 362(b)(4).

Both parties requested the opportunity to provide additional briefing. Respondent filed a brief on October 13, 2009. The State filed a brief on October 14, 2009. I conversed with the parties by email to attempt to set up an oral argument, but no agreement could be reached. I informed the parties I would decide the issue base on the written materials only.

**DISCUSSION**

The Board or presiding officer is authorized by regulation to continue contested case hearings. 653 IAC 25.16. An administrative law judge may rule on prehearing matters on the Board's behalf. 653 IAC 25.6.

The Bankruptcy Act contains a provision that establishes an automatic stay of many types of proceedings that could impact the bankruptcy process. *See* 11 U.S.C. section 362. The automatic stay includes actions defined within the following subsections:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

...

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

...

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

However, the automatic stay provision includes several exceptions, most particularly the following provision related to actions by governmental agencies:

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power[.]

11 U.S.C. section 362(b)(4).

The case law makes clear that the board may proceed with this action. The case of *In re National Cattle Congress*, 179 B.R. 588 (N.D.Iowa 1995), which was cited by both parties, is instructive. In *National Cattle Congress*, a state regulatory agency took action to revoke a race track license it had issued to a greyhound track operator. The court held that the section (b)(4) exception permitted the agency to commence a regulatory action, to hold a hearing, and make a decision regarding the license. *Id.* at 597.

The present action is the same type of regulatory action as *National Cattle Congress*. The statement of charges alleges that respondent committed fraud in obtaining a medical license, made fraudulent misrepresentations in the practice of medicine, engaged in unethical or unprofessional conduct, engaged in substance abuse, engaged in a pattern of disruptive behavior, and engaged in sexual misconduct and sexual harassment. This

action is clearly one to protect the public safety and welfare through regulation of the medical profession. This action fits within the exception to the automatic stay.

The one question remaining is whether the Board could revoke or take other action against the license. In *National Cattle Congress*, the court determined that the license fit the definition of property of the estate. The court then distinguished the regulatory proceeding from the imposition of the sanction, finding that the agency could not take the step of actually revoking the license, because would violate the bankruptcy provisions against taking property of the estate. The implementation of the revocation would constitute taking property of the estate, so that was prohibited. If *National Cattle Congress* applies to this case, the Board may not be able to apply a sanction unless it seeks relief from the stay.

In reviewing this issue, it may be notable that Congress has amended section (b)(4) since the *National Cattle Congress* decision. In 1995, section (b)(4) only excepted actions covered under (a)(1) of the automatic stay; the provision staying actions to take control of property of the estate under (a)(3) were not excepted. In 1998, Congress amended section (b)(4) to make it applicable to governmental actions under section (a)(3). Arguably, the statutory basis for the court's decision to stay enforcement decision in *National Cattle Congress* has been removed. However, the court in *National Cattle Congress* analyzed (a)(1) and (a)(3) together to require the same result. Assuming this analysis continues to hold true, the rule of law set forth in the decision may continue to have applicability to the sanction question.

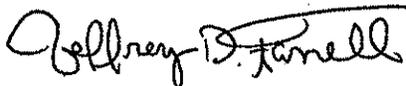
At this point in time, it is not necessary to finally decide the question whether the Board could impose a sanction. The Board may need to address this question if finds that the evidence supports the statement of charges.

The motion to continue was based solely on the question raised in the notice of automatic stay. Because there are no independent grounds for a continuance, that motion is likewise denied.

### **ORDER**

Respondent's motion to continue is denied. The bankruptcy automatic stay does not apply to this regulatory action. The October 21, 2009 hearing shall proceed as scheduled.

Dated this 19<sup>th</sup> day of October, 2009.

A handwritten signature in black ink that reads "Jeffrey D. Farrell". The signature is written in a cursive style with a horizontal line above the name.

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: Jordan Esbrook/Theresa O'Connell Weeg (by email)  
David Brown (by email)  
Kent Nebel/Kari Rolls (by email)

## BEFORE THE IOWA BOARD OF MEDICINE

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	)	FILE NO. 02-04-652
IN THE MATTER OF THE	)	DIA NO. 08DPHMB010
STATEMENT OF CHARGES AGAINST	)	
	)	
LEONARD D. LOMAX , M.D.	)	ORDER GRANTING MOTION
	)	TO CONTINUE AND SETTING
Respondent	)	DISCOVERY DEADLINES

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*Procedural Background*

The Iowa Board of Medicine (Board) filed a seven count Statement of Charges against Leonard D. Lomax, M.D. (Respondent) on February 11, 2008. A hearing was initially scheduled for April 2, 2008 but was continued at the request of Respondent's attorney. On May 8, 2008, the hearing was rescheduled for August 21, 2008 but that hearing date was later continued pending further order.

On August 4, 2009, the Board issued an order scheduling the hearing for September 10, 2009. On August 26, 2009, attorney David L. Brown filed his appearance on behalf of Respondent and also filed a Motion to Continue, stating that: he is unavailable on the date schedule due to prior professional commitments; he has not yet been provided a copy of the investigative report, and he was serving discovery requests on the state.

The state resisted the continuance request on September 1, 2009, stating that: the case has been pending for 18 months, the investigative file was provided to Respondent's former counsel on February 15, 2008, and the hearing was set following several attempts by Board staff to meet with Respondent while he was unrepresented.

The Board has referred the motion to the undersigned administrative law judge for ruling. A motion hearing and prehearing conference was held on September 4, 2009 at 9:30 a.m. with attorney David L. Brown and Assistant Attorney General Jordan Esbrook participating by telephone.

*Motion to Continue*

653 IAC 25.16, which provides that no continuances shall be granted within seven (7) days of the date set for the hearing, except for extraordinary, extenuating, or emergency circumstances, does prohibit a continuance in this case. This motion to continue was timely filed fifteen (15) days prior to the hearing.

653 IAC 25.16(2) provides a list of factors to consider in determining whether a continuance should be granted, including prior continuances, the interests of all parties, the public interest, the likelihood of informal settlement, the existence of an emergency, any objection, any applicable time requirements, scheduling conflicts, the timeliness of the request, and other relevant factors.

Respondent has recently obtained new counsel, and his counsel requests additional time to review the investigative file, obtain discovery, and prepare for hearing. The attorneys provided the following relevant information during the motion hearing:

- Respondent has not practiced orthopedic surgery (or medicine) since the Statement of Charges was filed, although there is no order prohibiting him from practicing at this time;
- The case was continued the second time because Respondent agreed to undergo evaluations. Respondent submitted to a competency evaluation at CPEP in Colorado in the fall of 2008 and to a behavioral evaluation at Elmhurst in Chicago in February 2009. The evaluators submitted written reports to the Board. Respondent's counsel has not yet been provided those reports;
- Board staff made attempts to contact Respondent through his former attorney in April through June 2009. In late June, Respondent's former attorney told Board staff that he believed Respondent had terminated his representation. Respondent's new attorney states that the former attorney has been seriously ill and hospitalized during some of this time;
- The Board subsequently sent a request for a meeting directly to Respondent. When Respondent did not reply to the Board's request for a meeting in July, Board staff scheduled the hearing without Respondent's input concerning the date. Board staff did contact the attorney general's office concerning the hearing date;

- Respondent's new attorney filed Requests for Production and Interrogatories on August 26, 2009, and the state plans to respond today (September 4, 2009).

At the time of the motion hearing, Respondent's new counsel still did not have a copy of the Board's investigative file. It is unclear what has become of the investigative file that was provided to Respondent's former counsel. The assistant attorney general believes that the investigative file, including the two evaluation reports, have been sent to Respondent's counsel by Board staff. The assistant attorney general agreed to both provide responses to Respondent's discovery requests and to file any state discovery requests today.

Respondent has been aware of these charges for eighteen months and has had more than adequate time to obtain counsel and prepare for hearing. Respondent must bear the consequences of changing legal representation at this late date. Nevertheless, the circumstances justify granting a limited continuance to allow the parties to complete discovery, to determine whether there is any possibility of informal settlement, and to provide stipulated exhibits to the Board in advance of the hearing. At this time the state is planning to present one witness, the Board investigator, and is estimating that its case in chief will take approximately 2-3 hours to present. Respondent's attorney doubts that one day will be sufficient for hearing in light of the number and scope of the charges. The parties were encouraged to discuss whether the scope of the issues could be narrowed.

The attorneys were advised that October 21-22, 2009 is the next scheduled Board meeting and that these are the preferred dates for rescheduling the hearing. Respondent's counsel indicated that he is currently scheduled to be out of town that week but stated he would try to make other arrangements so that he could be available. Board staff should seek input from both attorneys and make a reasonable attempt to accommodate their schedules and the Board's schedule in setting the new hearing date. However, the parties were warned that if the hearing could not be scheduled to coincide with the next Board meeting, it would be scheduled within that general timeframe.

IT IS THEREFORE ORDERED that the hearing scheduled for September 10, 2009 is hereby CONTINUED pending further order.

*Discovery Schedule*

IT IS FURTHER ORDERED:

The state shall file its responses to Respondent's discovery requests and shall also file any of its own discovery requests no later than 4:30 p.m. on September 4, 2009.

Respondent shall file answers to the state's discovery requests as soon as possible but no later than thirty (30) days following receipt of the requests.

The parties shall exchange witness lists, exhibit lists, and exhibits by September 30, 2009. If additional witnesses or exhibits are identified after that date they must be promptly disclosed.

The parties shall provide all stipulated exhibits to the Board and the administrative law judge by October 15, 2009.

Dated this 4th day of September, 2009.

*Margaret LaMarche*

Margaret LaMarche  
Administrative Law Judge  
Iowa Department of Inspections and Appeals  
Division of Administrative Hearings  
Wallace State Office Building-Third Floor  
Des Moines, Iowa 50319  
Voice: (515) 281-7177  
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cc: David L. Brown, 218 Sixth Ave., 8<sup>th</sup> Fl, Des Moines, Iowa 50309  
Jordan Esbrook, Department of Justice, Hoover Bldg, 2<sup>nd</sup> Fl. (LOCAL)  
Kent Nebel, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C (LOCAL)  
[all also served by email]

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**LEONARD D. LOMAX, M.D., RESPONDENT**

**File No. 02-04-652**

\*\*\*\*\*

**STATEMENT OF CHARGES**

\*\*\*\*\*

**COMES NOW** the Iowa Board of Medicine (Board) on February 11, 2008, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 34932 on December 11, 2002. Respondent's Iowa medical license is active and will next expire on September 1, 2009.

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

1. Hearing. A disciplinary contested case hearing shall be held on April 2, 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 8<sup>th</sup> Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Statement of Charges you are required by 653 IAC 24.2(5)(d) to file an Answer. In that Answer, you should state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing 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, 2<sup>nd</sup> 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 Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director at 515-281-7088 or 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 sections 147.55(1) and 272C.10(1) and 653 IAC 23.1(15) with fraud in procuring an Iowa medical license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice medicine, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

## **COUNT II**

11. Respondent is charged pursuant to Iowa Code sections 147.55(3), 148.6(2)(a) and 272C.10(3) and 653 IAC 23.1(14) with knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession.

## **COUNT III**

12. Respondent is charged pursuant to Iowa Code sections 147.55(3) and 272C.10(3) and 653 IAC 23.1(4) with engaging in unethical or unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653 IAC 13.7 or 13.20 as interpreted by the board.

## **COUNT IV**

13. Respondent is charged pursuant to Iowa Code section 148.6(2)(h) and 653 IAC 23.1(6) with substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner which may impair a licensee's ability to practice medicine with reasonable skill and safety.

## **COUNT V**

14. Respondent is charged pursuant to Iowa Code section 148.6(2)(c) and 653 IAC 23.1(10) with violating the laws and rules governing the practice of medicine in this state when he engaged in a pattern of disruptive behavior in violation of 653 IAC 13.7(5).

Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.

#### **COUNT VI**

15. Respondent is charged pursuant to Iowa Code section 148.6(2)(c) and 653 IAC 23.1(5) with engaging in sexual misconduct as defined by 653 IAC 13.7(4).

#### **COUNT VII**

16. Respondent is charged pursuant to Iowa Code section 148.6(2)(c) and 653 IAC 23.1(5) with engaging in sexual harassment as defined by 653 IAC 13.7(6).

#### **D. STATEMENT OF MATTERS ASSERTED**

17. Respondent is an orthopedic surgeon who practices in Des Moines, Iowa.

18. On September 18, 2002, Respondent submitted an application for a permanent Iowa medical license.

Question #4 of the application asked,

“Have you ever been charged, convicted, found guilty of or entered a plea of guilty or no contest to felony or misdemeanor crime (other than minor traffic violations with fines under \$100)?”

Question #7 of the application asked,

“Have you ever received a warning, reprimand or been placed on probation during an internship, residency or fellowship program?”

The Affidavit of Applicant on the application states,

“I hereby certify that I have fully read and understand all instructions sent in this application. I also certify that I have carefully read the questions in the foregoing application and have answered them completely, without reservation of any kind. I declare under penalty of perjury that my answers and all statements made by me on this application and accompanying attachments are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for denial, suspension or revocation of my license to practice medicine in Iowa. I understand that I am required to update my application with pertinent information to cover the time period between the date of application and the date approved by the Board. I also declare, under penalty of perjury, that if I did not personally complete the foregoing application that I have fully read and confirmed each question and accompanying answer and take full responsibility for all answers contained in this application.”

19. On October 7, 2002, the Board received information which indicates that on April 2, 2002, Respondent was suspended and placed on probation while participating in an orthopedic surgery residency program for taking unapproved time-off after he had been warned on numerous occasions. The Board sent Respondent a Letter of Warning expressing concerns that he failed to report this information on his application for an Iowa license.

20. On October 18, 2002, Respondent was arrested in Philadelphia, Pennsylvania, for disorderly conduct and being drunk on the highway (public intoxication). Upon his release from jail, Respondent made two bomb threat telephone calls to the police department and he was arrested and charged with two counts each of; terroristic threats, bomb threats, false alarms and false reports.

21. On December 11, 2002, the Board granted Respondent a permanent Iowa medical license.

22. Respondent failed to update his application for an Iowa medical license during the period between the of the date of application and the date of Board approval to report that he had been arrested in Philadelphia, Pennsylvania, and charged with disorderly conduct and two counts each of; terroristic threats, bomb threats, false alarms and false reports.

23. On July 14, 2003, Respondent submitted an application for the renewal of his Iowa medical license.

The signature on the renewal application states:

“I certify that all of the information entered in the above is true and correct.”

Again, Respondent failed to report that he had been arrested in Philadelphia, Pennsylvania, and charged with disorderly conduct and two counts each of; terroristic threats, bomb threats, false alarms and false reports.

24. On November 28, 2003, Respondent was arrested in Johnston, Iowa, for interference with official acts following a domestic dispute.

25. On March 27, 2004, Respondent was arrested in Urbandale, Iowa, for operating a motor vehicle while under the influence of alcohol or drugs (OWI).

26. On September 25, 2004, Respondent was arrested in Johnston, Iowa, for aggravated assault following a physical altercation with a female guest at a party at his home.

27. The Board received information that in May 2004, Respondent allegedly made unwanted sexual advances toward a patient who was also a co-worker and that he allegedly harassed the patient/co-worker following the unwanted sexual advances.

28. On August 12, 2005, Respondent submitted an application for the renewal of his Iowa medical license. Again, Respondent certified that all of the information provided on the renewal application was true and correct. Respondent failed to report that: (1) he had been arrested in Philadelphia, Pennsylvania, and charged with disorderly conduct and two counts each of; terroristic threats, bomb threats, false alarms and false reports; (2) he was arrested in Johnston, Iowa, on November 28, 2003, and charged with interference with official acts; (3) he was arrested in Urbandale, Iowa, on March 27, 2004, and charged with operating a motor vehicle while under the influence of alcohol or drugs; and (4) he was arrested in Johnston, Iowa, on September 25, 2004, and charged with aggravated assault.

29. On August 19, 2007, Respondent submitted an application for the renewal of his Iowa medical license. Again, Respondent certified that all of the information provided on the renewal application was true and correct. Once again, Respondent failed to report his previous criminal arrests and charges.

30. Additionally, the Board alleges that Respondent has engaged in a pattern of unprofessional conduct and/or disruptive behavior in the practice of medicine.

31. Additionally, the Board also alleges that Respondent has engaged in a pattern of professional incompetency, including but not limited to; practicing beyond the scope of his area of practice and beyond the level of his knowledge and/or training, inadequate technical skills and poor surgical judgement.

#### **E. SETTLEMENT**

32. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 IAC 25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

#### **F. PROBABLE CAUSE FINDING**

33. On February 11, 2008, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



Yasya Lee, M.D., Chairperson  
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