

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ANGEL S. MARTIN, M.D., RESPONDENT

FILE Nos. 02-99-248, 02-00-604, 02-05-362,

02-05-628, 02-06-718, 02-06-736 & 02-06-748

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (the Board), and
Angel S. Martin, M.D., (Respondent), on August 6, 2009, and pursuant to Iowa Code
sections 17A.10(2) and 272C.3(4) and enter into this Settlement Agreement to resolve the
contested case currently on file.

1. Respondent was issued Iowa medical license no. 20656 on July 1, 1977.
2. Respondent's Iowa medical license is active and will next expire on January 1,
2010.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147,
148 and 272C.

STATEMENT OF MATTERS ASSERTED

4. Respondent practices general surgery in Newton, Iowa.

5. On November 8, 2007, the Board filed formal disciplinary charges against Respondent for professional incompetency and practice harmful or detrimental to the public in his surgical practice.

6. **CITATION AND WARNING:** Respondent is hereby **CITED** for engaging in professional incompetency and practice harmful or detrimental to the public in the practice of medicine. Respondent is hereby **WARNED** that such practice in the future may result in further formal disciplinary action, including suspension or revocation of his Iowa medical license.

7. **CIVIL PENALTY:** Respondent shall be assessed a civil penalty in the amount of **\$7,500**. The civil penalty shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

8. **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 administrative director with all Board Orders relating to matter.

9. **PROFESSIONAL MALPRACTICE INSURANCE:** Respondent shall maintain professional malpractice insurance with a minimum of \$1,000,000.00 in coverage at all times while practicing medicine. Respondent shall provide the proof of insurance within thirty days of the date of this Order and upon request anytime thereafter.

10. **COMPREHENSIVE COMPETENCY EVALUATION:** At the direction of the Board, Respondent completed a comprehensive competency evaluation at a nationally recognized assessment program on April 10, 2009. The assessment program expressed concerns about Respondent's patient selection. Respondent shall fully comply with all recommendations made by the assessment program.

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

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

B. **Practice Monitor:** Prior to the Board's approval of this Order, Respondent shall submit a written practice monitoring plan for Board approval. Respondent shall provide a copy of the written practice monitoring plan to all employers. The practice monitor shall be a board-certified general surgeon approved by the Board. In order to address the concerns identified in paragraph 13A-J of the November 8, 2007, Statement of Charges filed by the Board, the practice monitor shall conduct a preoperative review of all elective surgical procedures Respondent plans to perform. The practice monitor shall determine the necessity of the surgical procedures and the appropriateness of the facility in which the surgery is to be performed, with special concern for

obese and elderly patients, patients with a prior surgical history, and laparoscopic procedures. The practice monitor shall also review the outcomes of all surgeries performed by Respondent, and shall review the post-operative management of all surgeries performed by Respondent. The practice monitor shall review cases, discuss Respondent's decisions related to those cases and engage in a quality improvement process to address the concerns identified in paragraph 13A-J of the Statement of Charges filed on November 8, 2007. The practice monitor shall agree to immediately inform the Board if there is evidence that Respondent has violated the standard of care in his treatment of patients or has violated the terms of this Order. The practice monitor shall submit written quarterly reports regarding Respondent's progress no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

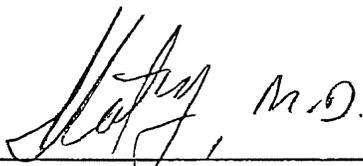
- C. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with all the terms of this Settlement Agreement. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year for the duration of the period of probation.
- D. **Board Appearances:** Respondent shall appear before the Board annually or upon request of the Board for the duration of the period of this Order. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(2).

- E. **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 all quarterly reports required under this Order. The monitoring fee shall be sent to: Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.
12. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.
13. This Order is voluntarily submitted by Respondent to the Board for consideration.
14. In the event Respondent fails to comply with any of the terms of this Order, the Board may initiate action to suspend or revoke Respondent's license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272 and 653 IAC 25.
15. Periods of residence or practice outside the state of Iowa will not apply to the duration of this Order.
16. This Order constitutes the resolution of a contested case proceeding.
17. By entering into this Order, Respondent voluntarily waives any rights to a contested case hearing on the allegations in the Statement of Charges, and waives any objections to the terms of this Settlement Agreement.

case hearing on the allegations in the Statement of Charges, and waives any objections to the terms of this Settlement Agreement.

18. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

19. The Board's approval of this Order shall constitute a **Final Order** of the Board.

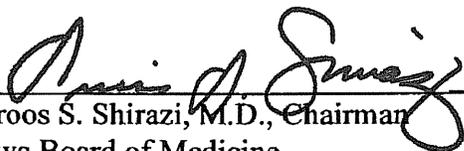


Angel S. Martin, M.D., Respondent

Subscribed and sworn to before me on _____, 2009.

Notary Public, State of _____.

This Order is approved by the Board on August 6, 2009.



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

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE) DIA NO. 07DPHMB021
STATEMENT OF CHARGES AGAINST:) CASE NOS. 02-99-248,
) 02-00-604,02-05-362,
) 02-05-628,02-06-718,
ANGEL S. MARTIN, M.D.) 02-06-736, 02-06-748
)
) RULING DENYING MOTION
Respondent) IN LIMINE 07-22-09P03:47 RCVD

On November 8, 2007, the Iowa Board of Medicine (Board) found probable cause to file a Statement of Charges against Respondent. The hearing is currently scheduled for July 29 and July 30, 2009. On June 19, 2009, Respondent filed a Motion in Limine Regarding Peer Review Report. The state filed a Resistance on July 13, 2009. The Board delegated the Motion in Limine to the undersigned administrative law judge for a ruling, and it was set for telephone oral argument on July 21, 2009 at 10:00 a.m. Attorney Michael Sellers appeared for Respondent. Assistant Attorney General Jordan Esbrook appeared for the state.

In October 2007, a peer review report was prepared by Dr. Neal Sokol, Dr. Isaac Samuel, and a third physician. The peer review committee reviewed records from approximately 17 surgeries performed by Respondent. Respondent and Dr. Sokol are both general surgeons in central Iowa. Both have practiced as general surgeons at Knoxville Hospital in Marion County in the past.

Dr. Samuel is a surgeon practicing at the University of Iowa Hospitals and Clinics. He accepts transfer patients who have had surgery complications that their original surgeon cannot handle. On December 11, 2003, Dr. Samuel repaired a bile leak for one of Respondent's surgical patients. Respondent had performed a cholecystectomy on the patient, and this is one of the surgeries at issue before the Board.

Respondent asserts that the Board should be prohibited from utilizing any opinions of either Dr. Sokol or Dr. Samuel because both physicians are biased against Respondent and should have declined assignment as peer reviewers. Respondent asserts that Dr. Sokol is and always has been

his direct competitor. Respondent further claims that Dr. Sokol has made negative remarks about him from time to time in the Knoxville Community for the purpose of increasing his own business and decreasing Respondent's presence as a general surgeon. Respondent asserts that due to the "direct and vociferous nature" of their competitive positions in central Iowa, Dr. Sokol cannot be a fair and reasonable reviewer of his cases. Respondent attached his own affidavit and the affidavits of a general practice physician and a certified registered nurse anesthetist who practice in Knoxville. All three affidavits state that Respondent and Dr. Sokol have been direct competitors as general surgeons in Knoxville.

Dr. Sokol's affidavit is attached to the State's Resistance. Dr. Sokol states that he is a surgeon practicing in Chariton, Iowa. He further states that he has not practiced in Knoxville for the past three or four years and was not working in Knoxville when he served as chair of the peer review committee. Dr. Sokol does not consider himself to be Respondent's competitor. He denies that he ever made disparaging or negative statements about Respondent to other physicians or staff at the Knoxville Hospital. He asserts that he was objective and fair when he reviewed Respondent's cases and denies that he is biased against Respondent.

Respondent asserts that Dr. Samuel had a conflict of interest because he treated one of Respondent's patients for complications. Respondent asserts that Dr. Samuel should have disclosed this conflict of interest to the Board and should have refused to serve in the capacity of a peer reviewer. In its Resistance, the state concedes that the patient treated by Dr. Samuel was also one of the patients whose care was reviewed by the peer review (case #7). Dr. Samuel signed an affidavit in which he states that he was aware he had treated one of Respondent's patients when he conducted the peer review but believed that he was able to review the care that Respondent provided objectively and fairly.

Respondent has conceded that there are no statutory or regulatory provisions requiring peer reviewers to disclose and refuse peer review assignments because they are or have been in competition with the licensee under investigation or because they have subsequently treated the same patient whose treatment is at issue. Both peer reviewers assert in

affidavits that they were able to be fair and objective in their review of the cases. Based on this record, Respondent has failed to establish a sufficient legal basis to prohibit the Board from considering the peer review and opinions of Dr. Sokol and Dr. Samuel. Respondent's objections and assertions of bias go more to the weight to be given to the physicians' opinions rather than the admissibility of the opinions. The Board should be allowed to hear and evaluate the testimony and opinions of the peer reviewers. Respondent may raise his claims of bias and lack of objectivity at hearing through testimony, cross examination, and argument. After hearing the evidence, the Board will be able to determine the appropriate weight to be given to the opinions of Dr. Samuel and Dr. Sokol.

IT IS THEREFORE ORDERED that Respondent's Motion in Limine is hereby DENIED.

Dated this 21st day of July, 2009.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

cc: Jordan Esbrook
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319 (LOCAL)

Michael Sellers
Sellers, Haraldson & Binford
400 Locust Street, Suite 170
Des Moines, Iowa 50309-2351

Kent Nebel, Director of Legal Affairs
Iowa Board of Medical Examiners
400 SW 8th St., Suite C
Des Moines, Iowa (LOCAL)

(All persons on the copy list were also served by email)

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ANGEL S. MARTIN, M.D., RESPONDENT

FILE Nos. 02-99-248, 02-00-604, 02-05-362,

02-05-628, 02-06-718, 02-06-736 & 02-06-748

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine on November 8, 2007, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 20656 on July 1, 1977. Respondent's Iowa medical license is active and will next expire on January 1, 2008.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on January 7, 2008, before the Board. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Board office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

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

3. Presiding Officer. The Board shall serve as presiding officer, but the Board

may request an Administrative Law Judge make initial rulings on 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 or closed to the public at the discretion of the Respondent.

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

6. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this matter. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Kent M. Nebel, J.D., Legal Director at 515-281-7088 or to 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 with professional incompetency pursuant to Iowa Code sections 147.55(2), 148.6(2)(g) and (i), and 272C.10(2), and 653 IAC 23.1(2)(c), (d), (e), and (f) by demonstrating one or more of the following:

- A. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
- B. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

- C. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances; and
- D. A willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery in the state of Iowa.

COUNT II

11. Respondent is charged under Iowa Code section 147.55(3) and 653 IAC 23.1(3) with engaging in practice harmful or detrimental to the public.

D. STATEMENT OF MATTERS ASSERTED

- 12. Respondent practices general surgery in Newton, Iowa.
- 13. The Board alleges that Respondent has demonstrated a pattern of professional incompetency and practice harmful or detrimental to the public in the practice of medicine and surgery by:
 - A. Failing to demonstrate necessary skill in the practice of general surgery;
 - B. Failing to demonstrate necessary surgical judgement in the practice of general surgery;
 - C. Failing to provide proper surgical treatment to patients;
 - D. Inappropriately performing surgical procedures that are beyond his technical abilities;
 - E. Failing to maintain appropriate medical records;

- F. Failing to demonstrate necessary skill and judgement when performing laparoscopic surgery;
- G. Failing to transfer patients to an appropriate urban surgical facility in a timely manner when indicated;
- H. Failing to transfer patients to an appropriate specialist in a timely manner when indicated;
- I. Failing to perform appropriate preoperative evaluation and investigation of patients' symptoms; and
- J. Failing to provide appropriate postoperative follow-up with patients.

E. SETTLEMENT

14. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 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

15. On this 8th day of November 2007, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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