

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

MICHAEL S. MCCLEARY, M.D., RESPONDENT

File No. 02-08-292

TERMINATION ORDER

COMES NOW the Iowa Board of Medicine (Board) on June 28, 2013, and issues this Termination Order.

1. Respondent was issued Iowa medical license no. 32043 on August 28, 1997.
2. Respondent's Iowa medical license is active and will expire on June 1, 2014.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.
4. Respondent currently practices internal medicine in Guthrie Center, Iowa.
5. On October 12, 2007, Respondent entered into a Physician Health Contract with the Iowa Physician Health Program (IPHP) for substance abuse and mental health monitoring. Respondent agreed to fully comply with the terms of the IPHP contract.

6. On June 6, 2008, the IPHP voted to refer Respondent to the Board after the IPHP concluded that Respondent violated the terms of his Physician Health Contract when he failed to comply with the IPHP drug screening program and repeatedly used Ultram, an abusable drug, without IPHP approval.

7. On June 29, 2008, Respondent was arrested and charged with Driving Under the Influence of alcohol or drugs (DUI).

8. On July 10, 2008, the Board filed formal disciplinary charges against Respondent for violating the terms of his IPHP Physician Health Contract.

9. Respondent practiced medicine after he had agreed not to.

10. Respondent completed Board-approved substance abuse treatment and the treatment program concluded that Respondent may return to the practice of medicine subject appropriate counseling and monitoring requirements.

11. On September 17, 2008, Respondent entered into a Settlement Agreement with the Board to resolve the pending disciplinary charges. Under the terms of the Settlement Agreement, the Board issued Respondent a Citation and Warning and ordered him to pay a \$5,000 civil penalty. The Board also ordered Respondent to successfully complete a Board-approved professional ethics program. Finally, the Board placed Respondent on probation for a period of five years subject to counseling and Board monitoring.

12. Recently, Respondent asked the Board to terminate the terms of his probation.

13. On June 28, 2013, after careful consideration, the Board voted to terminate the terms of 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.



Gregory B. Hoversten, D.O., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

June 28, 2013
Date

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

MICHAEL S. McCLEARY, M.D., RESPONDENT

File No. 02-08-292

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board), and Michael S. McCleary, M.D., (Respondent), and on September 17, 2008, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4)(2007), enter into this Settlement Agreement to resolve the contested case currently on file.

1. Respondent was issued Iowa medical license no. 32043 on August 28, 1997.
2. Respondent's Iowa medical license is active and will expire on June 1, 2010.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.

STATEMENT OF THE MATTERS ASSERTED

4. Respondent practices internal medicine in Des Moines, Iowa.
5. On October 12, 2007, Respondent entered into a Physician Health Contract with the Iowa Physician Health Program (IPHP) for substance abuse and mental health monitoring. Respondent agreed to fully comply with the terms of the IPHP contract.

6. On June 6, 2008, the IPHP voted to refer Respondent to the Board after the IPHP concluded that Respondent violated the terms of his Physician Health Contract when he failed to comply with the IPHP drug screening program and when he repeatedly used Ultram, an abusable drug, without IPHP approval.

7. On June 29, 2008, Respondent was arrested and charged with Driving Under the Influence of alcohol or drugs (DUI).

8. On July 10, 2008, the Board filed formal disciplinary charges against Respondent for violating the terms of his IPHP Physician Health Contract.

9. The Board received information which indicates that Respondent practiced medicine after he had agreed not to.

10. Recently, at the direction of the Board, Respondent completed Board-approved substance abuse treatment and the treatment program concluded that Respondent may return to the practice of medicine subject appropriate counseling and monitoring requirements.

SETTLEMENT AGREEMENT

11. **CITATION AND WARNING:** Respondent is hereby **CITED** for failing to comply with the IPHP drug screening program and for repeatedly using Ultram, an abusable drug, without IPHP approval in violation of his IPHP Physician Health Contract. Respondent is also **CITED** for being arrested and charged with Driving Under the Influence of alcohol or drugs (DUI). Finally, Respondent is **CITED** for practicing medicine after he had agreed not to. Respondent is hereby **WARNED** that such conduct in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

12. **CIVIL PENALTY:** Respondent shall pay a civil penalty in the amount of **\$5,000** within twenty (20) days of the date of this Order. The civil penalty shall be made payable to the Treasurer of Iowa and mailed to the Executive Director of the Board. The civil penalty shall be deposited into the State General Fund.

13. **ETHICS PROGRAM:** Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Ethics Group, LLC, of Summit, New Jersey, no later than October 31, 2008. Respondent shall cause a report to be sent the Board directly from PROBE at the conclusion of the program. Respondent is responsible for all costs associated with the ethics program.

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

- A. **Board Monitoring Program:** Respondent shall contact Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph. #515-281-3654, to establish a monitoring program. Respondent shall fully comply with all requirements of the monitoring program.
- B. **Work Hours:** Respondent shall not work more than sixty (60) hours a week in any employment setting.
- C. **Alcohol Prohibition:** Respondent shall not consume alcohol.

- D. **Controlled or Prescription Drug Restriction:** Respondent shall not use any controlled or prescription medication unless the medication has been prescribed for Respondent by another duly licensed treating physician or other qualified health care provider. Respondent shall provide the Board written notice within 72 hours of use of any controlled or prescription medication. Respondent shall inform any treating physician or other health care provider of his history of alcohol abuse prior to receiving any prescription medication.
- E. **Drug Screening Program:** Respondent shall fully comply with the Board's drug screening program. Respondent shall provide random blood or urine specimens when required. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening, all costs of which shall be paid by Respondent.
- F. **Substance Abuse Counseling:** Respondent shall submit to the Board for approval the name and CV of a physician or counselor to provide substance abuse counseling.
- (1) The counselor shall submit written quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

- (2) Respondent shall continue with counseling until discharge is recommended by his counselor and approved by the Board.
- (3) Respondent shall meet with his Board-approved counselor as frequently as recommended by the counselor and approved by the Board. All costs associated with the counseling shall be the responsibility of Respondent.

G. **Mental Health Care:** Respondent shall continue mental health care with his Board-approved psychiatrist.

- (1) Respondent shall meet with his Board-approved psychiatrist on a monthly basis to monitor Respondent's medications.
- (2) The psychiatrist shall submit written quarterly reports to the Board no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- (3) Respondent shall continue counseling until discharge is recommended by his Board-approved psychiatrist and approved by the Board.

H. **Intense Psychotherapy:** Respondent shall submit to the Board for approval the name and CV of a therapist to provide ongoing mental health counseling.

- (1) The counselor shall submit written quarterly reports to the Board concerning Respondent's progress not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- (2) Respondent shall continue with counseling until discharge is recommended and until discharge is approved by the Board.

(3) Respondent shall meet with his counselor as frequently as recommended by the counselor and approved by the Board.

- I. **Worksite Monitor:** Respondent shall submit for Board approval the name of a physician who regularly observes Respondent in the practice of medicine to serve as worksite monitor. The Board shall share a copy of all Board orders relating to this matter with the worksite monitor. The worksite monitor shall provide a written statement indicating that the monitor has read and understands all Board orders in this matter and agrees to act as the worksite monitor under the terms of this agreement. The worksite monitor shall agree to inform the Board immediately if there is evidence of a mental health impairment, substance abuse or a violation of this Order. The monitor shall agree to submit quarterly reports to the Board concerning Respondent's progress not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- J. **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with the terms of this Order no later than 1/10, 4/10, 7/10 and 10/10 of each year of the Order.
- K. **Board Appearances:** Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5) (d).

L. **Monitoring Fee:** Respondent shall make a payment of \$100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report from Respondent required by this Order. The monitoring fee shall be sent to: Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.C.

15. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

16. Respondent voluntarily submits this Order to the Board for consideration.

17. This Order constitutes the resolution of a contested case proceeding.

18. By entering into this Order, Respondent voluntarily waives any rights to a contested case hearing on the allegations contained in the Statement of Charges and waives any objections to the terms of this Settlement Agreement.

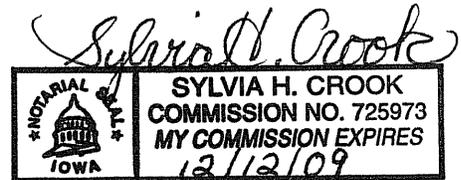
19. Periods of residence or practice outside the state of Iowa shall not apply to the duration of this Order unless Respondent receives prior written approval from the Board.

20. 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.

21. This Order is subject to approval by the Board. If the Board fails to approve this Settlement Agreement and Final Order, it shall be of no force or effect to either party.

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

Michael S. McCleary, M.D.
Michael S. McCleary, M.D., Respondent



Subscribed and sworn to before me on September 16, 2008.

Notary Public, State of Iowa.

This Order is approved by the Board on September 17, 2008.

Yayn Lee
Yayn Lee, M.D., Chair
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 STATEMENT OF CHARGES AGAINST

MICHAEL S. McCLEARY, M.D., RESPONDENT

File No. 02-08-292

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine on July 10, 2008, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 32043 on August 28, 1997. Respondent's Iowa medical license is active and will next expire on August 1, 2008.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on August 21, 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 to the public or closed to the public at the discretion of the Respondent.

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

6. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Kent M. Nebel, J.D., the Board's 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 pursuant to 653 IAC 23.1(12) for violating a health contract that he entered into with the Iowa Physician Health Program (IPHP).

COUNT II

11. Respondent is charged pursuant to Iowa Code sections 147.55(4), 148.6(2)(h) and 272C.10(4) and 653 IAC 23.1(6) with substance abuse which impairs his ability to practice medicine with reasonable skill and safety.

COUNT III

12. Respondent is charged under Iowa Code section 148.6(2)(h) (2007) and 653 IAC 23.1(8) with suffering from a mental condition which impairs his ability to practice medicine and surgery with reasonable skill and safety.

STATEMENT OF THE MATTERS ASSERTED

13. Respondent practices internal medicine in Des Moines, Iowa.

14. On October 12, 2007, Respondent entered into a Physician Health Contract with the IPHP after he tested positive for marijuana as part of an employer drug screening program. Respondent was also diagnosed with a mental health condition which may impair his ability to practice medicine in a safe manner. Respondent agreed to fully comply with the terms of the IPHP Physician Health Contract.

15. On June 6, 2008, the IPHP voted to refer Respondent to the Board after the IPHP concluded that Respondent violated the terms of his Physician Health Contract when he failed to comply with the IPHP drug screening program and when he repeatedly used Ultram, an abusable drug, without IPHP approval.

16. On June 29, 2008, Respondent was arrested and charged with Driving Under the Influence of alcohol or drugs (DUI).

E. SETTLEMENT

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

F. PROBABLE CAUSE FINDING

18. On this 10th day of July 2008, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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