

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

KENT D. MILLER, D.O., RESPONDENT

FILE No. 03-13-441

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board), and Kent D. Miller, D.O., (Respondent), on *December 16*, 2016, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this Settlement Agreement to resolve this matter.

STATEMENT OF MATTERS ASSERTED

1. **Iowa Medical License:** Respondent was issued Iowa medical license No. 01915 on February 24, 1982. Respondent's Iowa medical license is active and will next expire on December 1, 2017.
2. **Jurisdiction:** The Board has jurisdiction pursuant to Iowa Code Chapters 147, 148 and 272C.
3. **Practice Setting:** Respondent is an Iowa-licensed physician who practices internal medicine in Waterloo, Iowa.

4. **Statement of Charges:** On April 8, 2016, the Board filed a Statement of Charges alleging that Respondent demonstrated professional incompetency and violated the laws and rules governing the practice medicine in Iowa when he failed to provide appropriate pain management and failed to provide appropriate medical care to multiple patients in Waterloo, Iowa, between 2008 and 2014.

SETTLEMENT AGREEMENT

5. **CITATION AND WARNING:** Respondent is hereby **CITED** for demonstrating professional incompetency and violating the laws and rules governing the practice medicine in Iowa when he failed to provide appropriate pain management and failed to provide appropriate medical care to multiple patients in Waterloo, Iowa, between 2008 and 2014. Respondent is hereby **WARNED** that engaging in such practice in the future may result in further disciplinary action against his Iowa medical license.

6. **CIVIL PENALTY:** Respondent shall pay a **\$5,000 civil penalty** within twenty (20) days of the date of this order. The civil penalty shall be paid by delivery of a check or money order, to the executive director of the Board, payable to the Treasurer of Iowa. The civil penalty shall be deposited into the State General Fund.

7. **PROHIBITION - CHRONIC PAIN MANAGEMENT:** Respondent is prohibited from prescribing, administering or dispensing controlled substances for the treatment of chronic pain under his Iowa medical license. Pursuant to 653 IAC 13.2(1), "*Chronic pain* means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief

or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient.” This prohibition does not prohibit Respondent from prescribing, administering or dispensing controlled substances for the treatment of acute pain.

8. **RECORD KEEPING COURSE:** Respondent shall complete a Board-approved medical record keeping course within sixty (60) days of the date of this Order. Respondent is responsible for all costs associated with the course.

9. **FIVE YEARS PROBATION:** Respondent is placed on **probation for a period of five (5) years** subject to the following terms and conditions:

- A. **Monitoring Program:** Respondent shall establish a monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525 within thirty (30) days of the date of this order. Respondent shall fully comply with all requirements of the monitoring program.
- B. **Prescribing Audits:** Respondent shall fully comply with Board-approved audits of his controlled substance prescribing during the period of this Order. Respondent shall submit the names of all patients he has prescribed controlled substances for each quarter. From that list, the Board shall select 10 patients quarterly. Respondent shall provide the Board copies of the medical records for each patient selected for review. The Board shall compare this information with information obtained from the Iowa Prescription Monitoring Program.

- C. **Quarterly Reports:** Respondent agrees to file sworn quarterly reports attesting to his compliance with the terms and conditions of this Order not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
 - D. **Board Appearances:** Respondent shall appear before the Board annually or upon request during the period of probation. 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)(e)(3).
 - E. **Monitoring Fee:** Respondent shall make a payment of \$200 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 under this Order. The monitoring fee shall be sent to: Shantel Billington, 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.
- 10. Respondent voluntarily submits this Order to the Board for consideration.
 - 11. Respondent agrees that the State's counsel may present this Order to the Board for consideration.
 - 12. This Order constitutes the resolution of a contested case proceeding.

13. Respondent understands that by entering into this Order, he has the right to legal counsel, 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 Order.

14. Periods in which Respondent does not practice medicine, practices medicine in another state 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.

15. 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.

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

17. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank.

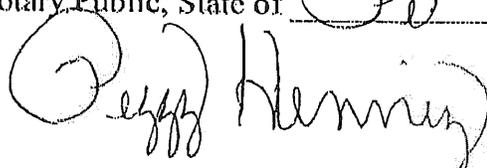
18. This Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

19. 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.

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


Kent D. Miller, D.O., Respondent

Subscribed and sworn to before me on July 29, 2016.

Notary Public, State of Iowa



This Order is approved by the Board on December 16, 2016.


Diane L. Clark, R.N., M.A., 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

KENT D. MILLER, D.O., RESPONDENT

FILE No. 03-13-441

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on April 8, 2016, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 01915 on February 24, 1982. Respondent's Iowa medical license is active and will next expire on November 1, 2016.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A contested case hearing shall be held on June 16, 2016, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in a conference room at the Iowa Board of Medicine office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 Iowa Administrative Code 25.10 to file an Answer. In that Answer, you should also 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. Prehearing Conference. A prehearing conference will be held by telephone on May 4, 2016, at 9:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 Iowa Administrative Code 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 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 Iowa Administrative Code 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. 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: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. 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 may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Julie Bussanmas at 515-281-5637.

B. LEGAL AUTHORITY AND JURISDICTION

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

9. 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 (2005) and 653 Iowa Administrative Code Chapter 25.25.

10. 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 Iowa Administrative Code 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. **Improper Pain Management:** Respondent is charged pursuant to Iowa Code sections 148.6(2)(i) and 653 IAC 13.2 for willfully or repeatedly violating a lawful rule or regulation adopted by the Board when he violated the standards of practice for appropriate pain management.

COUNT II

12. **Professional Incompetency:** 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:

- c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
- d. 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;
- e. 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; or
- f. 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 Iowa.

STATEMENT OF THE MATTERS ASSERTED

13. **Practice Setting:** Respondent is an Iowa-licensed physician who practices internal medicine in Waterloo, Iowa.

14. **Pain Management:** The Board alleges that Respondent demonstrated professional incompetency and violated the laws and rules governing the practice medicine in Iowa when he failed to provide appropriate pain management to multiple patients in Waterloo, Iowa, between 2008 and 2014, including the following:

- A. **Patient Evaluation:** Respondent failed to perform and/or document appropriate patient evaluations for multiple patients. Respondent failed to perform and/or document a thorough physical examination and comprehensive medical history including the risk of abuse and/or comorbid illness. Respondent failed to perform and/or document appropriate diagnostic studies to help confirm the diagnoses. Respondent failed to perform and/or document a thorough assessment of the nature, cause, severity and location of patient's pain; current and past treatment modalities; the effect of the pain on physical and psychological function; history of substance abuse; or the presence of one or more recognized medical indications for the use of controlled substances.
- B. **Treatment Plan:** Respondent failed to establish and/or document a comprehensive treatment plan for multiple patients. Respondent failed to establish and/or document a comprehensive treatment plan which included clear treatment objectives to be used to determine the success of the treatment, such as pain relief and/or improved physical and psychological function, and tailored drug therapy to the individual needs of the patient. Respondent failed to identify and/or document diagnostic testing and/or other treatment modalities and rehabilitation programs that have been, or should be, attempted. Respondent failed to ensure that patients received controlled substances prescriptions from a single physician and a single pharmacy when possible. Respondent prescribed excessive doses of controlled substances for the conditions and failed to document efforts to taper the medications.
- C. **Informed Consent:** Respondent failed to discuss and/or document discussion of the risks and benefits of the use of controlled substances with multiple patients. Respondent failed to provide and/or document education to patients regarding the possible adverse effects of controlled substances.

- D. **Periodic review:** Respondent failed to perform and/or document appropriate periodic review for multiple patients. Respondent failed to periodically review and/or document the periodic review of the course of the pain treatment and any new information about the etiology of the patient's pain and/or the state of the patient's health. Respondent failed to see patients frequently enough for review of the clinical problem and to document the continuing need for controlled substances. Respondent failed to appropriately document his decision making process regarding the continuation or modification of the pain treatment, including the use of other therapeutic modalities, based on his evaluation of the patient's progress toward the treatment objectives, including functional improvement.
- E. **Consultation/Referral:** Respondent failed to obtain and/or document appropriate consultations and/or referrals to specialists for multiple patients. Respondent failed to determine and/or document whether consultations and/or referrals to a physician with expertise in pain medicine, addiction medicine or substance abuse counseling or a physician who specializes in the treatment of the area, system, or organ perceived to be the source of the pain was warranted. Specialty consultation should be considered at any time if there is evidence of significant adverse effects or lack of response to the medications. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, or other consultations or referrals may be appropriate. Physicians should also consider consultation with, or referral to, a physician with expertise in addiction medicine or substance abuse counseling, if there is evidence of diversion or a pattern of substance abuse.
- F. **Documentation:** Respondent failed to maintain accurate, timely, and complete medical records that detail the patient evaluation, diagnostic studies, treatment modalities, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.
- G. **Pain Management Agreements:** Respondent failed to appropriately utilize pain management agreements that specified the rules for medication use and the consequences for misuse. In determining whether to use a pain management agreement, a physician shall evaluate each patient, taking into account the risks to the patient and the potential benefits of long-term treatment with controlled substances. A physician who prescribes controlled substances to a patient for more than 90 days for treatment of chronic pain shall utilize a pain management agreement if the physician has reason to believe a patient is at risk of drug abuse or diversion. If a physician prescribes

controlled substances to a patient for more than 90 days for treatment of chronic pain and chooses not to use a pain management agreement, then the physician shall document in the patient's medical records the reasons why a pain management agreement was not used.

- H. **Substance Abuse History or Comorbid Psychiatric Disorder:** Respondent failed to address and/or document how he addressed substance abuse and/or comorbid psychiatric disorders for multiple patients. While a patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management, treatment of patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care and communication with the patient, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.
- I. **Drug Testing:** Respondent failed to perform and/or document appropriate drug testing for multiple patients with histories of substance abuse or clinical presentations suggestive of abuse. A physician who prescribes controlled substances to a patient for more than 90 days for the treatment of chronic pain shall consider utilizing drug testing to ensure that the patient is receiving appropriate therapeutic levels of prescribed medications or if the physician has reason to believe that the patient is at risk of drug abuse or diversion.
- J. **Early Refills:** Respondent provided early refills to multiple patients despite evidence of drug seeking behavior, including multiple requests for early refills.
- K. **Termination of Care:** Respondent failed to consider and/or document appropriate consideration of termination of patient care for multiple patients. A physician shall consider termination of patient care if there is evidence of noncompliance with the rules for medication use, drug diversion, or a repeated pattern of substance abuse. Respondent continued to prescribe large quantities of controlled substances to multiple patients despite evidence of abuse, diversion, over medication, family concerns and frequent early refills.
- L. **Prescription Monitoring Program:** Respondent failed to utilize and/or document appropriate use of the Iowa Prescription Monitoring Program for multiple patients. The Iowa Board of Pharmacy has established a prescription monitoring program pursuant to Iowa Code sections 124.551 to 124.558 to assist prescribers and pharmacists in monitoring the prescription of controlled substances to patients. The Board recommends that physicians utilize the Iowa Prescription Monitoring Program when prescribing controlled substances to patients if the physician has reason to believe that a patient is at risk of drug abuse or diversion.

15. **Patient Care:** The Board alleges that Respondent demonstrated professional incompetency in violation of the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate medical care to multiple patients in Waterloo, Iowa, between 2008 and 2014, including the following:

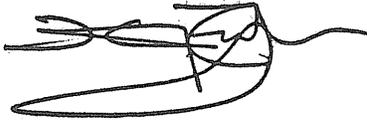
- A. **Chronic Myelomonocytic Leukemia:** Respondent failed to provide and/or document appropriate evaluation and treatment of a patient who was diagnosed with chronic myelomonocytic leukemia.
- B. **Fever:** Respondent failed to provide and/or document appropriate evaluation and treatment of a patient who presented with a history of a fever up to 104 degrees for five days.
- C. **Chronic Alcoholism:** Respondent failed to provide and/or document appropriate evaluation and treatment of two patients with chronic alcoholism who required hospitalization or rehabilitation and received opioids, zolpidem and benzodiazepines.
- D. **Chronic Health Conditions:** Respondent failed to perform and/or document appropriate evaluations, decisions for imaging studies and follow-up arrangements for multiple patients with chronic health conditions.
- E. **Derogatory and Unprofessional Criticisms:** Respondent inappropriately included derogatory and unprofessional criticisms of other physicians in his clinical notes.

E. SETTLEMENT

16. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088 or kent.nebel@iowa.gov.

F. PROBABLE CAUSE FINDING

17. On April 8, 2016, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



Hamed H. Tewfik, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686