

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

KIMBERLY A. NEUHARTH, M.D., RESPONDENT

FILE Nos. 02-09-187, 02-09-599 & 02-10-212

**STATEMENT OF CHARGES AND SETTLEMENT AGREEMENT
(Combined)**

COMES NOW the Iowa Board of Medicine (Board), and Kimberly A. Neuharth, M.D., (Respondent), on September 23 2011, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this combined Statement of Charges and Settlement Agreement.

STATEMENT OF CHARGES

1. Respondent was issued Iowa medical license no. 28764 on July 7, 1992.
2. Respondent's Iowa medical license is active and will next expire on January 1, 2013.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.

COUNT I

4. Respondent is charged pursuant to Iowa Code sections 147.55(2), 148.6(2)(g) and 272C.10(2) and 653 IAC 23.1(2)(f) for failing to conform to the minimal standard of acceptable and prevailing practice of medicine in Iowa.

STATEMENT OF MATTERS ASSERTED

5. Respondent is an Iowa-licensed physician who practices family medicine in Panora, Iowa.

6. The Board alleges that Respondent failed to conform to the minimal standard of acceptable and prevailing practice of medicine in violation of the laws and rules governing the practice of medicine in Iowa, including, but not limited to the following:

- A. In 2006 Respondent failed to provide appropriate supervision to a physician assistant who inappropriately prescribed large quantities of benzodiazepines to a patient without performing proper patient examinations; without establishing a proper treatment plan; without periodic review of the course of the drug therapy; without properly considering consultation or referral to a pain specialist; without proper documentation of her care; without proper consideration of the use of a pain contract and without considering termination of patient care.
- B. In 2009 Respondent repeatedly violated the standard of care for the treatment of chronic pain when she inappropriately prescribed controlled substances to patients without performing proper patient examinations; without establishing proper treatment plans; without proper periodic review of the course of the drug therapy; without properly considering consultation or referral to a pain specialist; without proper documentation of her care; without proper consideration of the use of a pain contract and without considering termination of patient care.
- C. In 2009 Respondent violated the standard of care when she treated patients with complex sleep and psychiatric disorders without making appropriate referrals.

D. Respondent failed to provide appropriate care to a child who presented to Guthrie County Hospital in 2010 with complaints of ear pain and lower right abdominal pain. Respondent failed to properly address the child's abnormal vital signs and abdominal pain and failed to perform appropriate evaluation and testing given the child's multiple visits to the clinic and the hospital and apparent lack of response to antibiotics.

E. Respondent failed to maintain appropriate medical records.

7. On March 10, 2011, the Board ordered Respondent to complete a comprehensive competency evaluation at the Center for Personalized Education for Physicians (CPEP) a Board-approved, nationally-recognized, physician competency assessment program. Respondent completed the evaluation on June 2, 2011, and CPEP identified deficiencies in the following areas of Respondent's medical practice: clinical judgment and reasoning, communication and documentation. CPEP had particular concerns about Respondent's prenatal care, chronic pain management and inpatient care. CPEP recommended that Respondent complete intense supervised education in family medicine to address the identified deficiencies, including a point-of-care experience. CPEP had serious concerns about Respondent's documentation and recommended that she complete a medical record keeping program. After careful consideration, the Board concluded that Respondent may practice medicine subject to the terms and conditions established in this order.

SETTLEMENT AGREEMENT

8. **CITATION AND WARNING:** Respondent is hereby **CITED** for failing to conform to the prevailing standard of care in the practice of medicine in Iowa in violation of the laws and rules governing the practice of medicine in Iowa. Respondent is hereby **WARNED** that failure to conform to the prevailing standard of care or violating the laws and rules governing the practice of medicine in Iowa in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

9. **CHRONIC PAIN MANAGEMENT:** Respondent shall not engage in the practice of chronic pain management until she demonstrates that she is safe to return to the practice and she receives written approval from the Board.

10. **PRENATAL CARE:** Respondent shall not provide prenatal care until she demonstrates that she is safe to return to the practice and she receives written approval from the Board.

11. **INPATIENT CARE:** Respondent shall only provide inpatient care to patients if her practice is subject to 100% supervision in-person and on-sight by a Board-approved, Iowa-licensed, board-certified physician until she demonstrates that she is safe to practice with less supervision and she receives written approval from the Board.

12. **OUTPATIENT CARE:** Respondent shall only provide outpatient care to patients if her practice is subject to 100% end-of-the-day review and oversight by a Board-approved, Iowa-licensed, board-certified physician until she demonstrates that she is safe to practice with less oversight and she receives written approval from the Board.

13. **PHYSICIAN ASSISTANT SUPERVISION:** Respondent shall not supervise a physician assistant until and unless she demonstrates that she is safe to do so and she receives written approval from the Board.

14. **INDEFINITE PROBATION:** Respondent shall be placed on **indefinite probation** subject to the following terms and conditions:

A. **Monitoring Program:** Respondent shall establish a Board monitoring program with Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654, prior to the Board's approval of this Order. Respondent shall fully comply with all requirements of the monitoring program. If Respondent fails to fully comply with all requirements of the Board monitoring program, 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 24.

B. **Recommendations of CPEP and the Board:** Respondent shall fully comply with all recommendations made by CPEP.

C. **CPEP Remediation Plan:** Respondent shall successfully complete a Board-approved educational program as recommended by CPEP including the following:

1) **Point-of-Care Experience:** Respondent shall complete a Board-approved point-of-care experience under the supervision of CPEP and the Board.

2) **Educational Preceptor:** Respondent shall submit the name and CV of an Iowa-licensed, board-approved physician to serve as her educational preceptor as recommended by CPEP. Respondent shall meet regularly with

the educational preceptor to review cases, discuss decisions, review specific areas of need and engage in a quality improvement processes.

- 3) **Continuing Medical Education and Self-Study:** Respondent shall complete continuing medical education and self-study as recommended by CPEP.
- 4) **Documentation Course:** Respondent shall complete a Board-approved documentation course within ninety (90) days of the date of this order.
- 5) **Communication Course:** Respondent shall complete a Board-approved communication course within ninety (90) days of the date of this order.
- 6) **CPEP Reassessment:** Respondent shall complete a reassessment as recommended by CPEP. In the event Respondent has not demonstrated she has successfully completed remediation, Respondent shall fully comply with any additional recommendations made by CPEP, and with any additional orders issued by the Board.

D. **Practice Monitoring Program:** Respondent shall establish a practice monitoring program with the Board prior to the Board's approval of this Order.

- 1) Respondent shall submit the name and CV of an Iowa-licensed, board-certified, family physician to serve as practice monitor and the Board shall provide the practice monitor a copy of the practice monitoring plan, all CPEP reports and all other Board material in this matter.
- 2) The practice monitor shall provide a written statement indicating that the practice monitor has read and understands all Board material provided by

the Board and agrees to serve as the practice monitor under the terms of the practice monitoring plan. The practice monitor shall meet with Respondent regularly, review selected patients records, ensure that Respondent provides appropriate care and treatment to patients and engage in a quality improvement process that addresses deficiencies identified by CPEP and through the monitoring process based on the prevailing standard of care for the practice of medicine in Iowa. The practice monitor shall contact the Board immediately if there is evidence that Respondent has provided substandard medical care to patients or violated the terms of this order. The practice monitor shall agree to 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. The practice monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. The practice monitor shall be given written notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(d).

- 3) If Respondent fails to fully comply with all requirements of the practice monitoring plan, 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 24.

E. **Worksite Monitoring Program:** Respondent shall establish a worksite monitoring program with the Board prior to the Board's approval of this Order.

- 1) Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in the practice of medicine to serve as worksite monitor and the Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
- 2) The worksite monitor shall provide a written statement indicating that they have read and understand this Order and agrees to serve under the terms of this Order. The worksite monitor shall agree to inform the Board immediately if there is evidence of professional misconduct, substandard medical care or a violation of the terms of this Order. The worksite monitor shall submit quarterly reports to the Board no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order. The worksite monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. The worksite monitor shall be given written notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(d).
- 3) If Respondent fails to fully comply with all requirements of the worksite monitoring program, 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 24.

- F. **Quarterly Reports:** Respondent agrees to file 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.
- G. **Board Appearances:** Respondent agrees to appear before the Board annually or upon request for the duration of 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)(d).
- H. **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. 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, 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.

15. Respondent voluntarily submits this Order to the Board for consideration.
16. This Order constitutes the resolution of a contested case proceeding.
17. Respondent shall fully comply with the terms and conditions established in the

Settlement Agreement that he entered into with the Board on February 11, 2008.

18. 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.

19. 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 12.2.

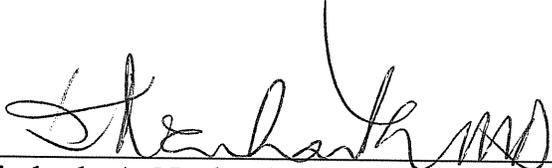
20. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

21. 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 Order.

22. Respondent understands that by entering into this combined Statement of Charges and Settlement Agreement, Respondent cannot obtain a copy of the investigative file. Pursuant to Iowa Code section 272C.6(4), a copy of the investigative file may only be provided to a licensee after a Statement of Charges is filed but before the final resolution of those charges.

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

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



Kimberly A. Neuharth, M.D., Respondent

Subscribed and sworn to before me on August 22nd, 2011.

Notary Public, State of Iowa.



This Order is approved by the Board on September 23, 2011.



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