

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE)	FILE NO. 02-13-140
STATEMENT OF CHARGES AGAINST:)	DIA NO. 14IMB002
)	
ODUAH D. OSARO, M.D.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

Date: July 10, 2014.

On January 24, 2014, the Iowa Board of Medicine (Board) filed a Statement of Charges against Oduah D. Osaro, M.D. (Respondent) that charged him with two counts:

Count I: Violating a statute or law of this state, another state, or the United States without regard to its designation as a felony or misdemeanor, which statute or law relates to the practice of medicine, in violation of Iowa Code sections 148.6(2)(c) and 653 IAC 23.1(10).

Count II: Engaging in unethical or unprofessional conduct, in violation of Iowa Code section 147.55(3), 272C.10(3) and 653 IAC 23.1(4). 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.

A hearing was held on June 25, 2014, before the following quorum of the Board: Michael Thompson, D.O., Acting Chairperson; Allison Schoenfelder, M.D.; Joyce Vista-Wayne, M.D.; Jeff Snyder, M.D.; Monsignor Frank Bognanno, Janece Valentine, and Diane Clark, public members. Respondent appeared and was represented by attorney Heather Campbell. Assistant Attorney General Julie Bussanmas represented the state. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare a written decision for their review, in accordance with their deliberations.

THE RECORD

The record includes the Statement of Charges; Prehearing Conference Order; Amended Hearing Order and Second Amended Hearing Order; the testimony of the witnesses; State Exhibits 1-6, and Respondent Exhibits A-N (see Exhibit Indexes for Description).

FINDINGS OF FACT

1. On July 11, 1996, Respondent was issued Iowa medical license no. 31351, which is active and next expires on February 1, 2016. Respondent is the sole physician practicing at the Clinton Urgent Care Clinic in Clinton, Iowa, which was established by him in 1999. Respondent employs several nurses to assist him in the clinic. Respondent's practice is approximately 60% urgent care and 40% family medicine. (State Exhibit 2; Testimony of Respondent)

2. Respondent's practice includes many indigent patients, and he was an approved Medicaid provider in Iowa for a number of years. In Iowa, the Medicaid program is administered by Iowa Medicaid Enterprise (IME), on behalf of the Iowa Department of Human Services.¹ Medicaid pays providers of health care services for qualified individuals who are low income and/or disabled. All approved Medicaid providers are required to sign an Iowa Medicaid Provider Agreement. Providers agree to adhere to professional standards and levels of service as set forth in all applicable local, state and federal laws, statutes, rules and regulations as well as the administrative policies and procedures set forth by the Iowa Department of Human Services. (Testimony of Respondent; Rocco Russo, Jr.; Department Exhibit 2d; Appellant Exhibit K)

Section 2 of the Iowa Medicaid Provider Agreement pertains to provider reimbursement. It provides, in relevant part:

2.2 The Provider agrees to pursue the member's other health coverage prior to submitting a claim for goods and/or services to the IME. This includes but is not limited to Medicare, private insurance, medical benefits provided by employers and unions, worker compensation and any other third party insurance.

¹ See 441 IAC 79.2(1).

2.3 The Provider receiving payment shall accept payment from the Department (and any applicable co-pay) as payment in full on behalf of the member, and agrees not to bill, retain or accept payments for any additional amounts except as provided in paragraph 2.2 above;

(Testimony of Rocco Russo, Jr.; Appellant Exhibit K)

3. For several years, Respondent has been approved by the federal Drug Enforcement Agency (DEA) to prescribe the narcotic drug Suboxone, which eases the withdrawal symptoms associated with heroin and other opiate addictions. Respondent was required to obtain special training prior to obtaining DEA approval to prescribe Suboxone. At the time relevant to this Decision and Order, there were fewer than 25 Iowa physicians approved to prescribe Suboxone. Respondent was the only approved prescriber of Suboxone in Clinton County. (Testimony of Respondent; Rocco Russo, Jr.; Alicia Price, LPN; State Exhibits 2d, 2c)

After receiving his DEA approval, Respondent established a Suboxone program at the Clinton Urgent Care Clinic. Respondent had authorization to provide treatment for up to 100 Suboxone patients, but he initially chose to limit his Suboxone program to 30 patients. Respondent developed special forms and procedures to ensure proper assessment of the patients, to establish appropriate Suboxone dosages, and to prevent diversion. Respondent saw every patient before authorizing a new prescription or renewing a prescription. Every patient had drug screening at each office visit. Respondent would write Suboxone prescriptions to cover 7, 14, or 28 days of treatment depending on the patient's individual circumstances. Patients received a 7-day prescription at their first visit, but they could later move up to longer duration prescriptions if they responded appropriately to the drug treatment and had acceptable drug screens. (Testimony of Respondent; Alicia Price, LPN; Appellant Exhibits I, J; State Exhibit 2d)

Respondent established his Suboxone program as "private pay only", which meant that patients paid him in full for his services at the time service was rendered, and he did not submit claims to any insurance company, Medicaid, or Medicare for reimbursement. One of the consent forms that Suboxone patients were required to sign before receiving services from Respondent stated, in relevant part:

PLEASE READ CAREFULLY AND UNDERSTAND WHAT YOU ARE SIGNING.

I provide this request and Consent to protect my future access to private medical care based on payments using Medical Savings Accounts or other private payment methods. I request and consent that the medical office of Dr. Oduah D. Osaro MD ("This private physician")/Clinton Urgent Care, Inc. provides medical services to me outside of my insurance company, which is: _____ (*Fill with your insurance company name on blank space*). **I acknowledge and consent that no documentation will be provided for such services to enable reimbursement from my Insurance Company.**

Neither I, nor my heirs, executors, administrators, successors, beneficiaries, or assigns will submit a claim (or request a claim be submitted) for services provided by this private physician. I acknowledge that such services may fall within the scope of my insurance company, and I have a right to seek such services from other providers if I wish to obtain reimbursement by my insurance. I consent that the fee charges by this private physician for such services may be greater or less than the limiting charges established by my Insurance Company.

...

(Appellant Exhibit J, p. 00106) This private pay policy was applied to patients without insurance, to patients with private insurance, and to Medicaid and Medicare patients. All of Respondent's Suboxone patients were charged \$190 per office visit. The office accepted payment in cash, by check, or by credit card. (Testimony of Respondent, Alicia Price, LPN; State Exhibit 2c)

As one way to prevent diversion, Respondent required all of his patients to use the same pharmacy (an Osco Pharmacy located in Clinton) for their Suboxone prescriptions. Respondent had no ownership interest in the pharmacy. Respondent's office staff called in the patients' prescriptions directly to the pharmacy. Patients were allowed to submit claims for their Suboxone prescriptions to their insurers and to Medicaid. Upon request, Respondent and his staff would provide the pharmacy with any information necessary to obtain

prior authorization for the prescriptions from the patients' insurers or from the Medicaid program. (Testimony of Respondent; Alicia Price, LPN)

4. In January 2013, the IME initiated an investigation into Respondent's billing practices after learning that he was charging Medicaid patients in his Suboxone program \$190 for each office visit. Connie Benton, who is a Medicaid fraud investigator with the Iowa Department of Inspections and Appeals, called Respondent's office posing as a Medicaid patient seeking a Suboxone prescription. The person who answered the phone informed Ms. Benton that the cost of Suboxone was covered by Medicaid but that it was Respondent's policy to charge Suboxone patients \$190 for each office visit and not submit the costs of the visits to Medicaid for payment. Ms. Benton recognized that this was not a typical fraud case where a provider was billing Medicaid for services that were not provided to the patient. She referred Respondent's case to the IME's Director of Program Integrity, Rocco Russo, Jr., because she was concerned that Respondent's private pay treatment program constituted financial exploitation of Medicaid patients. (Testimony of Connie Benton; State Exhibit 2d)

Medicaid requires prior authorization for all Suboxone prescriptions. After receiving the case from Connie Benton, Mr. Russo obtained data showing that in 2012, sixteen Medicaid patients had received prior authorization for Suboxone prescriptions written by Respondent. (Department Exhibit 5) Additional investigation discovered that for the time period from January 1, 2010, to January 31, 2013, Respondent wrote a total of 221 Suboxone prescriptions for 30 Medicaid patients with no corresponding office visits submitted to Medicaid for payment. (Testimony of Rocco Russo, Jr.; Respondent ; State Exhibits 2d, 4)

If the Medicaid patients had been permitted to use their Medicaid benefits to pay for their office visits with Respondent, their out-of-pocket cost would have been a co-payment of no more than \$3 per visit, rather than \$190. In addition, the maximum amount that Medicaid would have paid Respondent for each office visit was approximately \$100, which he would have been required to accept as payment in full, along with the patient's \$3 co-pay for his services. (Testimony of Rocco Russo, Jr.; State Exhibit 2d)

5. On February 28, 2013, IME notified Respondent that he was terminated from participating as a provider in the Medicaid program, effective 30 days from the date of the Notice of Termination. The termination was based on Respondent's alleged violation of the following state and federal laws governing

the Medicaid program: 441 IAC 79.2(2)(f), 79.2(2)(l), 79.2(2)(p), 42 U.S.C. § 1320a-7b(b)(1) and 7b(d)(1), and the administrative rules promulgated thereto. Respondent appealed the termination, and a contested case hearing was held before an administrative law judge on May 8, 2013. (Testimony of Rocco Russo, Jr.; State Exhibits 2d, 3; Appellant Exhibits A, B)

Following the hearing, the administrative law judge issued a proposed decision upholding the IME's termination action. The proposed decision concluded that Respondent violated 42 U.S.C. § 1320a-7b(d),² 42 CFR §447.15,³ and 441 IAC 79.2(2)"f" and "p"⁴ when he charged Medicaid patients directly for each visit, rather than submit the charge of the visits to IME and require only the copayment from the Medicaid recipients. (State Exhibit 2d; Appellant Exhibit B). The proposed decision did not find that Respondent had violated 42 U.S.C. §§ 1320a-7b(b)(1), which was construed to require proof that the provider accepted remuneration in return for a *quid pro quo*. (State Exhibit 2d; Appellant Exhibit B; Testimony of Rocco Russo, Jr.)

The proposed decision rejected Respondent's arguments that he was justified in charging Medicaid patients the full cost of his services because (1) it was more equitable to charge all Suboxone patients the same amount regardless of their Medicaid or insured status; (2) he was respecting the Suboxone patients' privacy interests by not submitting claims to the Medicaid program; (3) the cost of each visit included a urinalysis screen for 13 different drugs; and (4) his \$190 charge

² 42 USC §1320a-7b(d)(1) authorizes criminal penalties when a Medicaid provider knowingly and willfully charges for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State... (State Exhibit 6c)

³ 42 CFR §447.15 provides that participation in the Medicaid program must be limited to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual. The provider may only deny services to any eligible individual on account of the individual's inability to pay the cost sharing amount imposed by the plan in accordance with §447.52(e). The previous sentence does not apply to an individual who is able to pay. An individual's inability to pay does not eliminate his or her liability for the cost sharing charge. (State Exhibit 6b)

⁴ At the time relevant to the proposed decision, 441 IAC 79.2(2)"f" authorized the Department of Human Services to impose sanctions against any provider who engages in a course of conduct or performs an act which is in violation of any federal, state, or local statute, rule, regulation, or ordinance, or an applicable contractual provision, that relates to, or arises out of, any publicly or privately funded health care program. (State Exhibit 6a; Respondent Exhibit M)

441 IAC 79.2(2)"p" authorized the Department to impose sanctions for a documented practice of charging recipients for covered services over and about that paid for by the department, except as authorized by law. (State Exhibit 6a; Respondent Exhibit M)

was “extremely discounted” and was less than what he would receive in Medicaid reimbursement. (State Exhibit 2d, pp. 3, 5-6)

Respondent did not appeal the proposed decision, and it became final agency action. As a result of this action, Respondent has also been excluded from the Medicare program. Respondent may treat Medicaid and Medicare patients but must inform the patients that he is no longer an approved provider and that neither his services nor the prescriptions that he authorizes will be paid for by either program. Respondent has recently reapplied for approval as a Medicaid provider and is awaiting a decision on the application. (Testimony of Rocco Russo, Jr.; Respondent; State Exhibit 2c; Appellant Exhibits C-F)

6. In this disciplinary proceeding, Respondent provided the following reasons for his decision to institute a private pay program for all of his Suboxone patients:

- It is a “common set-up” for Suboxone treatment programs to be private pay due to the variability of insurance coverage for this service;
- All patients would be treated the same regardless of insurance status;
- Under state and federal confidentiality laws, patients were able to elect not to have their claims submitted to their insurance provider; and
- Patients were more compliant and did better when they were required to pay in full for their medical services instead of only paying a co-pay.

Respondent was unable to identify any other physician who has a private pay Suboxone treatment program. Respondent did not identify any patient who specifically asked him not to have claims submitted to the Medicaid program for payment due to the patient’s privacy concerns. (Testimony of Respondent; State Exhibit 2c)

CONCLUSIONS OF LAW

I. Violation of a Law Related to the Practice of Medicine

Iowa Code section 148.6(2)(c)(2011, 2013) authorizes the Board to discipline a licensee for violating a statute or law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which statute or law relates to the practice of medicine.

653 IAC 23.1(10) provides in relevant part:

653-23.1(272C) The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148,... or 272C..., or the rules promulgated thereunder ...The board may impose any of the disciplinary sanctions set forth in 653-subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses...

...

23.1(10) Violation of the laws or rules governing the practice of medicine... in this state, another state, or the United States, or any country, territory or other jurisdiction. Violation of the laws or rules governing the practice of medicine includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148, 148E or 272C or other state or federal laws or rules governing the practice of medicine.

The preponderance of the evidence established that Respondent has violated Iowa Code section 148.6(2)(c) and 653 IAC 23.1(10) by violating state and federal statutes and regulations relating to the practice of medicine. This violation was established by the final agency action taken by the Iowa Department of Human Services to terminate Respondent's participation as a provider in the Medicaid program. Through this final action, it has been conclusively determined that Respondent violated 42 U.S.C. § 1320a-7b(d), 42 CFR §447.15, and 441 IAC 79.2(2)"f" and "p" when he charged his Suboxone patients \$190 per office visit, rather than submitting the charges for his services to the Medicaid program for reimbursement. The Medicaid program's statutes and rules govern the practice of approved Medicaid providers with respect to billing, submitting claims, and receiving payments from or on behalf of Medicaid patients. As an approved Medicaid provider, Respondent was required to comply with the statutes and regulations governing reimbursement for the medical services that he provided to Medicaid patients, and he failed to do so.

II. Unprofessional or Unethical Conduct

Iowa Code section 147.55(3) and 272C.10(3) authorize the Board to discipline a licensee for engaging in unethical conduct. 653 IAC 23.1(4) authorizes the Board to discipline a licensee for unprofessional conduct and provides that 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 in this state or elsewhere; or a violation of the standards and principles of medical ethics or 653 IAC 13.7 or 653 IAC 13.20, as interpreted by the Board.

The preponderance of the evidence established that Respondent required all of his Suboxone patients, including those patients entitled to benefits under the Medicaid program, to pay \$190 for each office visit associated with their Suboxone prescriptions. If these office visits had been submitted to the Medicaid program for payment, the Medicaid patients would have been required to pay a maximum co-payment of \$3, rather than the \$190 that they paid. If the charges had been submitted to Medicaid, Respondent would likely have been reimbursed a maximum of \$100 per office visit, rather than the \$190 that he collected directly from the patients. Pursuant to the rules governing the Medicaid program, Respondent would have been required to accept the Medicaid reimbursement plus the patient's co-pay as payment in full.

Respondent's billing practices with respect to these Medicaid patients violated Iowa Code sections 147.55(3), 272C.10(3) and 653 IAC 23.1(4) because they were unprofessional and constituted acts contrary to justice. Respondent clearly knew that a number of his Suboxone patients were entitled to medical benefits through the Medicaid program. In order to receive services from Respondent, patients were required to sign a form disclosing the name of their insurer and waive their right to have the claims submitted for reimbursement by the Medicaid program. In addition, Respondent completed pre-authorization forms for Medicaid to pay for his patients' Suboxone prescriptions.

Moreover, Respondent knew that patients with Medicaid benefits have very limited income. As an approved Medicaid provider, he knew or should have known that the patients' out-of-pocket costs for their Suboxone treatment would be minimal if his services were submitted to Medicaid for reimbursement, as compared to the \$190 that he required them to pay. Respondent argues that his private pay treatment program was voluntary and that the patients could have declined to accept his terms and could have elected to go elsewhere to receive their Suboxone treatment. Although this is true, Respondent was well aware that there were few physicians in Iowa with the special DEA approval to prescribe Suboxone. Patients on limited incomes are less likely to be able to

afford to travel to obtain needed medical services. In addition, there is no evidence in the record to indicate that any of the Medicaid patients asked Respondent not to submit claims to Medicaid on their behalf due to privacy or confidentiality concerns. Based on all of these circumstances, it was unprofessional and unjust for Respondent to require his Medicaid patients to pay him \$190 per office visit in order to receive Suboxone treatment at his clinic, when he knew that the services he was providing to these patients were covered by Medicaid.

DECISION AND ORDER

IT IS HEREBY ORDERED THAT:

CITATION AND WARNING: Respondent is hereby **CITED** for violating laws related to the practice of medicine and for engaging in unprofessional conduct. Respondent is hereby **WARNED** that such conduct in the future may result in further disciplinary action, including revocation of his Iowa medical license.

COMPLIANCE AND BILLING COURSE: Respondent shall successfully complete a Board-approved Compliance and Billing Course within ninety (90) days of the date of this Order.

CIVIL PENALTY: Respondent shall pay a **\$2,500** 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, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

HEARING FEE: In accordance with 653 IAC 25.33, Respondent shall pay a disciplinary hearing fee in the amount of \$75.00. In addition, Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 25.33(3). All 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 department of public health, within thirty days of the issuance of a final decision.



Michael Thompson, D.O.
Acting Chairperson
Iowa Board of Medicine

July 10, 2014

Date

cc: Heather Campbell, 666 Walnut Street, Suite 2000, Des Moines, Iowa
50309-3989 (CERTIFIED)
Julie Bussanmas, Department of Justice, Hoover Bldg, 2nd Fl. (LOCAL)

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this Decision and Order. 653 IAC 25.31.

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ODUAH D. OSARO, M.D., RESPONDENT

FILE No. 02-13-140

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on January 24, 2014, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2). Respondent was issued Iowa medical license no. 31351 on July 11, 1996. Respondent's Iowa medical license is active and will next expire on February 1, 2016.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A contested case hearing shall be held on March 20, 2014, 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 pre-hearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on February 12, 2014, 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 IAC 25.15.

5. 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.

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 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 should direct any questions to Kent M.

Nebel, J.D., the Board's 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 and 653 IAC 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 IAC 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. **Violation of a Law which Relates to the Practice of Medicine:** Respondent is charged pursuant to Iowa Code section 148.6(2)(c) and 653 IAC 23.1(10) with violating a statute or law of this state, another state or the United States without regard to its designation as a felony or misdemeanor, which statute or law relates to the practice of medicine.

COUNT II

12. **Unethical or Unprofessional Conduct:** 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.

STATEMENT OF THE MATTERS ASSERTED

13. Respondent is an Iowa-licensed physician who practices family medicine in Clinton, Iowa.

14. **Participation in the Medicaid Program:** The Board alleges that Respondent violated the laws and rules governing participation in the Medicaid Program and/or engaged in unethical or unprofessional conduct.

A. On or about March 29, 2013, the Iowa Department of Human Services (IDHS) terminated Respondent's participation as a provider in the Medicaid program. IDHS concluded that Respondent inappropriately charged multiple Medicaid recipients for office visits without submitting the covered services to Medicaid for payment and that the amount charged by Respondent was in excess of the amount paid by Medicaid. Respondent appealed the termination. A contested case hearing was held on May 8, 2013.

B. On June 3, 2013, IDHS issued a Final Decision. IDHS upheld Respondent's termination from participation in the Medicaid program. IDHS concluded that Respondent violated the laws and rules governing participation in the Medicaid program - 42 U.S.C. Section 3120a-7b(d), 42 CFR Section 447.15 and 441 IAC 79.2(2) "f" and "p" - when he charged multiple Medicaid recipients for office visits without submitting the covered services to Medicaid for payment, and the

amount charged by Respondent was in excess of the amount paid by Medicaid.

See Attachment A.

E. SETTLEMENT

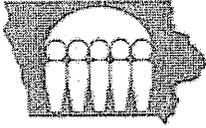
15. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 IAC 25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

16. On January 24, 2014, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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



Iowa Department of Human Services

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

Charles M. Palmer
Director

June 03, 2013

Oduah D Osaro
108 S 4th St
Clinton, IA 52732

RE: Appeal # MED 13005594 - Oduah D Osaro
Case # PROV

Dear Dr. Osaro:

FINAL DECISION

This is to advise you that the **PROPOSED DECISION** you received on your appeal hearing has become the **FINAL DECISION**.

No review was received within the time limits set forth in the notice of **PROPOSED DECISION**.

The local office is instructed to implement the directions contained in the decision, if any. Please call (515) 281-8438 collect if you have any questions in regard to this decision.

Charles M. Palmer
Director

CMP/tf

cc:
AAC IME
IME Policy
Pty - IME Appeals Mailbox
Attorney General - Timothy Vavricek

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
502 East 9th Street – Third Floor
Des Moines, Iowa 50319

ODUAH D. OSARO, M.D.)	Appeal No. 13005594
Clinton Urgent Care)	
108 S 4 th Street)	
Clinton, IA 52732)	
)	
Appellant,)	
)	
v.)	
)	
IOWA DEPARTMENT OF HUMAN SERVICES,)	PROPOSED DECISION
)	
Respondent.)	

STATEMENT OF THE CASE

A contested case telephone hearing was held before Administrative Law Judge Carol J. Greta on May 8, 2013. The Appellant, Oduah D. Osaro, M.D., appeared personally and was self-represented. Assistant Attorney General Timothy L. Vavricek appeared on behalf of the Respondent, Iowa Department of Human Services (Department). Rocco Russo, Jr. and Connie Benton, both with Iowa Medicaid Enterprises (IME) appeared and testified on behalf of the Department.

The following documents were admitted into the record:

From the Department, an Appeal Summary and the following pre-labeled exhibits:

- A, Letter of termination from IME to Dr. Osaro
- B, Suboxone scripts written by Dr. Osaro with no corresponding office visit
- C, Preauthorization requests from Dr. Osaro for Suboxone
- D, Transcript of Investigator Benton's phone call to Clinton Urgent Care office
- E, DVD of recorded conversations
- F, FDA information about Suboxone
- G, Manufacturer's package insert for Suboxone
- H, Dr. Osaro's MEDIPASS agreement
- I, Data pulls
- J, CD-Rom of Medicaid payments to physicians in Clinton Co. from Department

(Because they were pre-labeled, these exhibits will be referred to as Dept. Ex. A, Dept. Ex. B, etc.)

From the Appellant, Dr. Osaro, the following pre-labeled exhibits:

- K, Classification of controlled substances
- L, Description of Iowa's heroin problem from commercial website
- M, Suboxone assisted treatment from organization website
- N, Suboxone providers in Iowa from commercial website

- O, Forms used for Suboxone treatment at Clinton Urgent Care
- P, Drug screen reimbursement article from commercial website
- Q, List of fees for services from AMA Fee Book
- R, Treatment decision tree from 2009 Current Procedural Terminology manual
- S, DEA notice of inspection of abused substances
- T, Joint statement on pain management from four Iowa licensing boards
- U, Medical advisory addressing safety by reducing misuse diversion and abuse
- V, Medical advisory, protecting future of buprenorphine treatment
- W, Letter from Tim Baxter, MD, supporting Suboxone programs
- X, Notice of Department Decision
- Y, Brochures from manufacturer of Suboxone
- Z, Discharge instructions for Suboxone program

(Because they were pre-labeled, these exhibits will be referred to as Osaro Ex. K, Osaro Ex. L, etc.)

Osaro Ex. AA was offered, but was not admitted into the record. This exhibit consisted of certain records, including prescription information, regarding several of Dr. Osaro's patients. The Department objected to admission of this exhibit on the grounds that the attempt to provide the information violates Iowa Code § 124.558. The Department's objection was sustained. The copies of Osaro Ex. AA provided to this administrative tribunal have been shredded.

ISSUE

The issue presented is whether the Department correctly sanctioned Dr. Osaro by terminating his participation as a Medicaid provider because Dr. Osaro directly charged Medicaid recipients for covered services.

DECISION

The Department's decision is AFFIRMED (found to be correct).

FINDINGS OF FACT

The Appellant, Oduah D. Osaro (Dr. Osaro), is a medical doctor who is the sole physician practicing at Clinton Urgent Care Clinic. (Osaro Testimony; Dept. Ex. D) He has been an approved Medicaid provider in Iowa for several years. (Osaro Testimony) As such, in 2004 Dr. Osaro signed a MediPASS Agreement with the Department. (Dept. Ex. H) MediPASS is the Department's terminology for its Medicaid Patient Access to Service System. All approved Medicaid providers in Iowa must sign such agreement, which specifies the rights and obligations of both the provider and the Department. (Russo Testimony; Dept. Ex. H)

For approximately four years, Dr. Osaro has been approved to prescribe the prescription drug, Suboxone, which is designed to ease withdrawal symptoms associated with heroin and other opiate addictions. (Osaro Ex. K) Suboxone contains a Schedule III narcotic (buprenorphine) and may only be prescribed by physicians "who meet certain qualifying requirements, and have notified the [U.S.] Secretary of Health and Human Services of their intent to prescribe this product for the treatment of opioid dependence." (Dept. Ex. F) There are fewer than 20 providers in Iowa who may prescribe Suboxone. (Osaro Ex. N)

On or about January 9, 2013, one of Dr. Osaro's patients called a Department representative regarding a misunderstanding about one of her prescriptions written by Dr. Osaro. During the

course of that communication, the Department learned that the patient, who is a Medicaid benefits recipient, was being charged directly \$190 per office visit by Dr. Osaro. (Dept. Ex. E) Investigator Connie Benton called Clinton Urgent Care on January 17, 2013, posing as a Medicaid recipient seeking a Suboxone prescription. She was told by the person answering the phone at the clinic that the cost of the drug itself is covered by Medicaid, but that Dr. Osaro's "policy" is to charge his Suboxone patients \$190 for each office visit and not to submit the cost of the visits to Medicaid. (Benton Testimony; Dept. Ex. D)

The Department then did a further investigation through data pulls requested by Mr. Russo, who is IME's Program Integrity Director. The investigation disclosed that, from January 1, 2010 to March 18, 2013, Dr. Osaro wrote a total of 221 Suboxone prescriptions for 30 Medicaid recipients with no corresponding office visit submitted for payment to Medicaid. (Dept. Ex. I) This exhibit also shows that Dr. Osaro would write the prescriptions to cover 7, 14, or 28 days. (*Id.*)

The cost of the Suboxone itself is covered by Medicaid; the pharmacy submits the claim to Medicaid and the pharmacy accepts payment from Medicaid. Dr. Osaro was aware that Medicaid was paying for the drug because he submitted the prior authorization requests to IME to ensure Medicaid coverage for the cost of the Suboxone. (Dept. Ex. C) However, Dr. Osaro refuses to submit to Medicaid the cost of office visits by patients who see him to obtain the Suboxone prescription. (Osaro Testimony; Dept. Ex. B; Dept. Ex. I) The patient pays a co-pay of \$1 or \$3 to the pharmacy, but pays \$190 to Dr. Osaro. (*Id.*)

Dr. Osaro acknowledged that he requires an office visit for the renewal of each Suboxone prescription. He testified that he bases the number of days for which he writes a Suboxone prescription on the results of the patient's drug screen (urinalysis). Dr. Osaro stated that he currently has 55 patients in his Suboxone program, both Medicaid recipients and non-Medicaid recipients, whom he seeks weekly, biweekly, or monthly. (Osaro Testimony)

Dr. Osaro did not deny that he made a conscious decision to refuse to submit the office visits of his Suboxone patients to Medicaid for payment. The reasons offered by Dr. Osaro for his decision were as follows:

- It is more equitable to all of his patients in the Suboxone program that he demand the same amount of payment from each of them, regardless of the patient's Medicaid or other insured status.
- Not submitting to IME the charges for the office visits of his Suboxone patients is more respectful of the privacy interests of these patients.
- The cost of each office visit includes a urinalysis conducted by his nursing staff to screen for 13 different drugs.
- His charge of \$190 is "extremely discounted" and is less than what he would get in reimbursement from Medicaid (including drug screen cost reimbursement).

On February 28, 2012, IME notified Dr. Osaro that he was terminated from participation as a provider in the Medicaid program, effective 30 days from the date of the letter. (Dept. Ex. A) The letter explains the reason for the termination as follows:

The investigation shows that you have required a Medicaid member to pay you cash in exchange for an office visit in which you prescribed the member

controlled substances. The amount you charged for the office visit was in excess of the amount Medicaid pays for the visit.

The letter also cited Department rules 441—Iowa Administrative Code (IAC) 79.2(2)“f”, “l” and “p” as having been violated by Dr. Osaro. (*Id.*)

The Department showed that the average reimbursement for an office visit to physicians in Clinton County, where Dr. Osaro has his practice, ranges from \$31 to \$116. (Dept. Ex. J) Reimbursement for a drug screen ranges from \$19 to \$27.¹ (Russo Testimony) The average Medicaid reimbursement paid to another Iowa physician who prescribed Suboxone quite regularly was \$58 to \$75. Assuming that the \$58 to \$75 range did not include reimbursement for any in-office lab work, and assuming the high end for reimbursements for drug screens (\$27) and Suboxone office visits (\$75), the maximum amount of reimbursement Dr. Osaro could have reasonably expected from Medicaid would be \$102 per office visit.

Believing the Medicaid program violations to be serious and that a lesser sanction will not remedy the problem, the Department sought the ultimate sanction, termination of Dr. Osaro from the Iowa Medicaid program.

Dr. Osaro argued that if he acted in error, it was done in innocence and in the best interests of his patients.

CONCLUSIONS OF LAW

The Department is responsible for administration of the Medicaid program in Iowa, in accordance with Iowa Code chapter 249A, applicable federal law, the regulations and directives issued pursuant to federal law, applicable court orders, and the Iowa state plan approved in accordance with Title XIX of the federal Social Security Act. Iowa Code § 249A.4(9) specifically directs the Department to adopt administrative rules in compliance with federal law and regulations. The rules adopted by the Department appear in 441—IAC chapter 79.

The Department may review or audit any Medicaid provider at any time at the Department’s discretion. 441—IAC 79.4(2).

Grounds for the Department to sanction providers include the following:

f. Engaging in a course of conduct or performing an act which is in violation of state or federal regulations of the medical assistance program, ...

¹ There was sharp disagreement between Mr. Russo and Dr. Osaro, both of whom are certified professional coders under the Medicaid program, regarding how to code a single test that screens for more than one drug. It appears that Dr. Osaro may not be aware that, beginning in calendar year 2011, drug screens are to be billed per patient encounter and not per number of drugs tested. (Russo Testimony, referencing the 2012 edition of the AMA’s Current Procedural Technology Manual) Dr. Osaro testified he had been relying on the 2009 manual. (Osaro Testimony) Dr. Russo’s testimony is substantiated by an internet article relied on by Dr. Osaro, explaining that practices not using an outside laboratory “can only be assigned one billing code per patient encounter regardless of the number of drugs tested with the screening cup.” (Osaro Ex. P)

p. Documented practice of charging recipients for covered services over and above that paid for by the department, except as authorized by law.

441—IAC 79.2(2).

The federal laws implicated by Dr. Osaro's actions are 42 U.S.C. § 1320a–7b and 42 CFR § 447.15. The regulation states that each state plan “must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the plan to be paid by the individual. ...” 42 CFR § 447.15. In other words, as a condition of participation in Medicaid, a provider must accept reimbursement from Medicaid and may not charge the patient anything more than the Medicaid copayment. See also *Barry Harlem Corp. v. Wright*, 1996 WL 172141 (N.D. Ill. Apr. 10, 1996).

42 U.S.C. § 1320a–7b provides that certain acts involving federal health care programs, including Medicaid, are illegal. The Department asserts that subsections (b) and (d) of this statute were violated by Dr. Osaro.

Subsection “b,” contrary to the assertion of the Department, does not appear to apply unless remuneration is received by a provider in return for a *quid pro quo*. Certainly, the term “remuneration” is broad enough to cover payment for a service, but the facts of this case do not meet the statutory language that the remuneration be solicited or received

- (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or
- (B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, ...

42 U.S.C. § 1320a–7b(b)(1).

On the other hand, subsection “d” appears to be fully applicable. That subsection makes it a felony for a person to “knowingly and willfully [charge] for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State... .” 42 U.S.C. § 1320a–7b(d)(1).

The evidence presented in connection with this appeal shows that Dr. Osaro deliberately chose to demand full cash payment from all of his Suboxone patients and not to accept the Medicaid reimbursement amount as payment for his patients who are Medicaid recipients. His explanations are not believable, and in any event, his motivation is irrelevant. By signing his MediPASS agreement in 2004, Dr. Osaro agreed to treat Medicaid recipients. A Medicaid-approved provider does not have the discretion to equalize any perceived inequities in the financial playing field.

Additionally, it is not true that his charge of \$190 is less than what Dr. Osaro would get in reimbursement from Medicaid. His argument that the \$190 fee is “extremely discounted” is hollow. Discounted to whom? Surely not to the Medicaid recipient, from whom Dr. Osaro demands \$190 instead of a single digit copayment.

Finally, his argument that not submitting the office visits to IME is more respectful of the privacy interests of these patients is nonsensical. Medicaid recipients understand that their health care information must be provided to IME under the Medicaid program.

Based on the evidence presented, the Department correctly determined that Dr. Osaro violated the applicable laws and regulations – 42 U.S.C. § 3120a-7b(d), 42 CFR § 447.15, and paragraphs “f” and “p” of 441—IAC 79.2(2) – when he chose to charge Medicaid recipients directly for each office visit, rather than submit the charge of the visits to IME and require only the copayment from the Medicaid recipients.

Having agreed with the Department’s determination that Dr. Osaro is in violation of the Medicaid program, the question becomes whether termination from the program is the proper sanction.

Available sanctions include one or more of the following: probation, suspension of payments, referral to state licensing board of investigation, referral to appropriate legal authorities for investigation and prosecution, and/or termination from participation in the Medicaid program. 441—IAC 79.2(3). The factors that must be considered in determining the sanction(s) to be imposed include the following:

- (1) Seriousness of the offense.
- (2) Extent of violations.
- (3) History of prior violations.
- (4) Prior imposition of sanctions.
- (5) Prior provision of provider education.
- (6) Provider willingness to obey program rules.
- (7) Whether a lesser sanction will be sufficient to remedy the problem.
- (8) Actions taken or recommended by peer review groups or licensing boards.

441—IAC 79.2(4).

The Department is correct that a lesser sanction will not remedy the problem. It appears from the types of exhibits he submitted and from his testimony that Dr. Osaro fails to fully appreciate the gravity of his violation. Many of the exhibits submitted by Dr. Osaro justify the existence of the Suboxone program. That is beside the point. This matter is not about the value of the Suboxone program to persons with an opioid addiction.

Put simply, a licensed health care practitioner may not agree to be a Medicaid provider and then pick and choose for which covered services the provider will accept Medicaid reimbursement. In return for becoming a Medicaid provider, Dr. Osaro agreed to accept the patient management fee (\$2/patient/month up to a maximum of \$3000) from IME, plus the Medicaid reimbursement for all covered services. Subsection 7 of Iowa Code § 249A.4 assures Dr. Osaro and other licensed practitioners who are Medicaid providers that they shall have the “professional freedom [to] determine the need for or provide medical care and services.” But billing is a different matter. A Medicaid provider has no discretion to bill outside of Medicaid and demand cash from Medicaid recipients.

Contrary to his self-serving statements that he was putting his patients’ needs over his own, Dr. Osaro’s “policy” to not bill Medicaid for office visits of Suboxone patients *reduced* the availability of a covered service to Medicaid recipients. Medicaid recipients appropriately in need of Suboxone were turned away by Dr. Osaro unless they (or their family) could pay the \$190 cash per office visit. By flaunting the Medicaid laws, Dr. Osaro attempted to help only himself.

The Department correctly determined that Dr. Osaro's participation in Medicaid should be terminated.

ORDER

The Department's decision to terminate Dr. Oduah D. Osaro as a Medicaid provider is **affirmed**.
The Department shall take any steps necessary to implement this decision.

Issued this 23rd day of May, 2013.

A handwritten signature in black ink, appearing to read "Carol J. Greta". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Carol J. Greta
Administrative Law Judge

cc: AAC IME
IME Policy
Party – IME Appeals Mailbox
AAG – Timothy L. Vavricek