

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

JOSHUA PAYER, M.D., RESPONDENT

FILE NO. 02-10-362

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board) and Joshua Payer, M.D., (Respondent), and on April 8, 2011, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this Settlement Agreement to resolve the contested case currently on file.

STATEMENT OF CHARGES

1. Respondent was issued Iowa medical license no. 37406 on July 31, 2007.
2. Respondent's Iowa medical license is active and will next expire on October 1, 2012.
3. The Board has jurisdiction pursuant to Iowa Code Chapters 147, 148 and 272C.

STATEMENT OF THE MATTERS ASSERTED

4. Respondent is an Iowa-licensed physician who formerly practiced emergency medicine in Spirit Lake, Iowa.

5. On August 3, 2010, an Indictment was filed against Respondent in the United States District Court, District of South Dakota, Southern Division, alleging that Respondent:

- A. Unlawfully distributed and dispensed Oxycontin in violation of 21 U.S.C. §§ 841(a)(1) and 846; and
- B. Unlawfully conspired with another individual to commit sex trafficking of a female under eighteen years of age in violation of 18 U.S.C. §§ 2(a), 2(b), 1591(a)(1), 1591(b)(2), and 1591(c).

6. On August 10, 2010, Respondent entered into a Voluntary Surrender of Medical License and Cancellation Thereof with the South Dakota Board of Medical and Osteopathic Examiners. Respondent voluntarily surrendered his South Dakota medical license and agreed to immediately cease the practice of medicine in South Dakota.

7. On September 9, 2010, the Board filed a Statement of Charges against Respondent alleging that he: engaged in unethical or unprofessional conduct; indiscriminately or promiscuously prescribed, administered or dispensed drugs for other than a lawful purpose; entered into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country; and engaged in practice harmful or detrimental to the public.

8. On September 9, 2010, Respondent entered into an Agreement Not to Practice Medicine with the Board. Respondent agreed that he would not engage in any aspect of the practice of medicine until the charges in this matter are resolved.

9. On November 1, 2010, Respondent entered into a Plea Agreement to resolve the pending criminal charges. Under the terms of the Plea Agreement Respondent pleaded guilty to unlawful Dispensation and Distribution of a Controlled Substance (21 U.S.C. §841(a)(1) and 18 U.S.C. § 2(a)) and Conspiracy to Commit Sex Trafficking (18 U.S.C. § 1594(c)).

10. On March 1, 2011, a Judgment in a Criminal Case was entered in the United States District Court, District of South Dakota, Southern Division, and Respondent was sentenced to twenty-two (22) months in prison.

SETTLEMENT AGREEMENT

11. **VOLUNTARY SURRENDER:** Respondent voluntarily surrenders his Iowa medical license to resolve this disciplinary matter

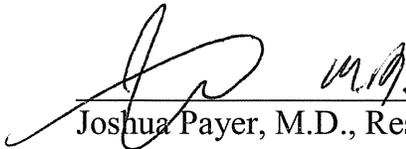
12. Respondent voluntarily submits this Order to the Board for consideration.

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

14. 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.

15. 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.

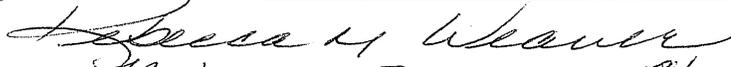
16. The Board's approval of this Order shall constitute a **Final Order** of the Board.

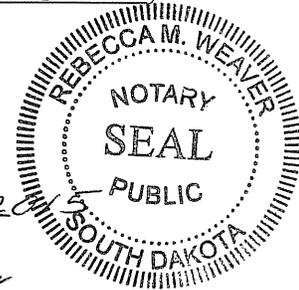

Joshua Payer, M.D., Respondent

3/28/11
Date

Date Subscribed and sworn to before me on March 28, 2011.

Notary Public, State of SD


Notary Expires 9/25/2015



This Order is approved by the Board on April 8, 2011.



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

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

JOSHUA PAYER, M.D., RESPONDENT

FILE NO. 02-10-362

AGREEMENT NOT TO PRACTICE MEDICINE

COMES NOW the Iowa Board of Medicine (Board) and Joshua Payer, M.D. (Respondent) on September 9, 2010, and pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into this Agreement Not to Practice Medicine.

1. Respondent was issued Iowa medical license no. 37406 on July 31, 2007.
2. Respondent's Iowa medical license is active and will next expire on next expire on October 1, 2010.
3. On September 9, 2010, the Board filed a Statement of Charges against Respondent alleging that he: engaged in unethical or unprofessional conduct; indiscriminately or promiscuously prescribed, administered or dispensed drugs for other than a lawful purpose; entered into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country; and engaged in practice harmful or detrimental to the public. A hearing has been scheduled on October 27, 2010.

AGREEMENT NOT TO PRACTICE MEDICINE

4. Respondent hereby agrees that he shall not engage in any aspect of the practice of medicine under his Iowa medical license until this matter has been resolved.

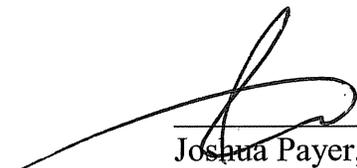
5. Respondent acknowledges that this Agreement is a public record.

6. Respondent voluntarily submits this Agreement to the Board for consideration.

7. In the event Respondent violates or fails to comply with any of the terms of this Agreement, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline authorized in Iowa Code Chapters 148 and 272 and 653 IAC 12.2.

8. 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.

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



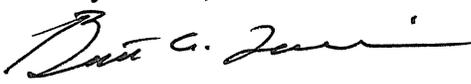
Joshua Payer, M.D., Respondent



Date

Date Subscribed and sworn to before me on September 9, 2010.

Notary Public, State of South Dakota


My Commission Expires: 03/31/2013

This Order is approved by the Board on September 9, 2010.

A handwritten signature in black ink, reading "Siroos S. Shirazi". The signature is written in a cursive style and is positioned above a horizontal line.

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

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

JOSHUA PAYER, M.D., RESPONDENT

FILE NO. 02-10-362

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on September 9, 2010, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 37406 on July 31, 2007. Respondent's Iowa medical license is active and will next expire on next expire on October 1, 2010.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on October 27, 2010, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the 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 October 6, 2010 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: Theresa O'Connell Weeg, 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 Theresa O'Connell Weeg at 515-281-6858.

B. LEGAL AUTHORITY AND JURISDICTION

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

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. 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 or 653 IAC 13.7 or 13.20 as interpreted by the board.

COUNT II

12. Respondent is charged pursuant to Iowa Code sections 147.55(8), 148.6(2)(i) and 272C.10(8) and 653 IAC 23.1(7) with indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than a lawful purpose.

COUNT III

13. Respondent is charged pursuant to Iowa Code section 148.6(2)(d) with entering into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country.

COUNT IV

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

STATEMENT OF THE MATTERS ASSERTED

15. Respondent is an Iowa-licensed physician who formerly practiced medicine in Spirit Lake, Iowa.

16. On August 3, 2010, an Indictment was filed against Respondent in the United States District Court, District of South Dakota, Southern Division, alleging the following:

- A. Between on or about October 1, 2009, and on or about October 31, 2009, in the District of South Dakota and elsewhere, the Defendant, Joshua Payer, and others known and unknown to the Grand Jury, did knowingly and intentionally combine, conspire, confederate, and agree together, with each other and with others known and unknown to the Grand Jury, to knowingly and intentionally possess with the intent to distribute Oxycodone, a Schedule II controlled substance, commonly referred to as OxyContin, in violation of 21 U.S.C. §§ 841(a)(1) and 846;
- B. On or about October 2, 2009, in the District of South Dakota and elsewhere, the Defendant, Joshua Payer, being a practitioner authorized to dispense and distribute controlled substances, knowingly, intentionally, and unlawfully distributed and dispensed a quantity of a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance, commonly referred to as OxyContin, not for a legitimate medical purpose in the usual course of professional medical practice and beyond the bounds of

professional medical practice to M.H., and did aid and abet the same, to-wit: on or about October 2, 2009, Defendant Payer prescribed M.H. a quantity of 90 tablets of OxyContin, each containing 5 mg of the active ingredient Oxycodone, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2(a);

- C. On or about October 2, 2009, in the District of South Dakota and elsewhere, the Defendant, Joshua Payer, being a practitioner authorized to dispense and distribute controlled substances, knowingly, intentionally, and unlawfully distributed and dispensed a quantity of a mixture and substance containing a detectable amount of Oxycodone, a Schedule II controlled substance, commonly referred to as OxyContin, not for a legitimate medical purpose in the usual course of professional medical practice and beyond the bounds of professional medical practice to T.C., and did aid and abet the same, to-wit: on or about October 2, 2009, Defendant Payer prescribed T.C. a quantity of 90 tablets of OxyContin, each containing 5 mg of the active ingredient Oxycodone, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2(a);
- D. Beginning on or about July 1, 2009, and continuing through on or about October 31, 2009, all dates being approximate and inclusive, in the District of South Dakota and elsewhere, in and affecting interstate and foreign commerce, Defendant Joshua Payer did knowingly and intentionally entice, harbor, obtain, and maintain, by any means, Child Victim #1, whose identity is known to the

Grand Jury and who, during the relevant time frame, had not yet attained the age of 18 years, knowing and recklessly disregarding that Child Victim #1 would be caused to engage in a commercial sex act, and during the relevant time frame, Defendant Joshua Payer had a reasonable opportunity to observe Child Victim #1, in violation of 18 U.S.C. §§ 1591(a)(1), 1591(b)(2), and 1591(c); and

- E. Beginning on or about July 1, 2009, and continuing through on or about October 31, 2009, all dates being approximate and inclusive, in the District of South Dakota and elsewhere, in and affecting interstate and foreign commerce, Defendant Joshua Payer did aid, abet, counsel, command, induce, procure, and willfully cause Child Victim #1, whose identity is known to the Grand Jury and who, during the relevant time frame, had not yet attained the age of 18 years, to be knowingly and intentionally recruited, enticed, harbored, transported, provided, obtained, and maintained, by any means, knowing and recklessly disregarding that Child Victim #1 would be caused to engage in a commercial sex act, and during the relevant time frame, Defendant Joshua Payer had a reasonable opportunity to observe Child Victim #1, in violation of 18 U.S.C. §§ 2(a), 2(b), 1591(a)(1), 1591(b)(2), and 1591(c).

17. On August 10, 2010, Respondent entered into a Voluntary Surrender of Medical License and Cancellation Thereof with the South Dakota Board of Medical and

Osteopathic Examiners. Respondent voluntarily surrendered his South Dakota medical license and agreed to immediately cease the practice of medicine in South Dakota.

E. SETTLEMENT

18. 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.

F. PROBABLE CAUSE FINDING

19. On September 9, 2010, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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