

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PAUL D. PETERSON, D.O., RESPONDENT

FILE Nos. 03-2012-224 & 03-2012-424

06-24-16P02:57 RCVD

ANSWER TO STATEMENT OF CHARGES

COMES NOW Paul D. Peterson, D.O., Respondent, by and through his counsel, Cynthia C. Moser of Heidman Law Firm, L.L.P., and in answer to the above-captioned Statement of Charges and Settlement Agreement (Combined), states:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. Count I, Paragraph 4 is denied.
5. Count II, Paragraph 5 is denied.
6. Paragraph 6 is denied. It is admitted that Paul D. Peterson, D.O. is an Iowa-licensed physician who practices family medicine in Sioux City, Iowa.
7. Paragraph 7 is denied.
8. Paragraph 8 is denied.
9. Paragraph 9 is admitted.

HEIDMAN LAW FIRM, L.L.P.

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ATTORNEY FOR RESPONDENT

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

PAUL D. PETERSON, D.O., RESPONDENT

FILE Nos. 03-2012-224 & 03-2012-424

STATEMENT OF CHARGES AND SETTLEMENT AGREEMENT
(Combined)

COMES NOW the Iowa Board of Medicine (Board) and Paul D. Peterson, D.O., (Respondent), on July 29, 2016, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) enter into this combined Statement of Charges and Settlement Agreement to resolve this matter.

STATEMENT OF CHARGES

1. Respondent was issued Iowa medical license no. 03181 on September 11, 1998.
2. Respondent's Iowa medical license is active and will next expire on May 1, 2017.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.

COUNT I

4. **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

5. **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 MATTERS ASSERTED

6. **Practice Setting:** Respondent is an Iowa-licensed physician who practices family medicine in Sioux City, Iowa.

Standards of Practice for Appropriate Pain Management:

653 IAC 13.2(5) Effective management of chronic pain. Prescribing controlled substances for the treatment of chronic pain should only be accomplished within an established physician-patient relationship and should be based on clearly diagnosed and documented unrelieved pain. To ensure that chronic pain is properly assessed and treated, a physician who prescribes or administers controlled substances to a patient for the treatment of chronic pain shall exercise sound clinical judgment and establish an effective pain management plan in accordance with the following:

a. Patient evaluation. A patient evaluation that includes a physical examination and a comprehensive medical history shall be conducted prior to the initiation of treatment. The evaluation shall also include an assessment of the pain, physical and psychological function, diagnostic studies, previous interventions, including medication history, substance abuse history and any underlying or coexisting conditions. Consultation/referral 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 may be warranted depending upon the expertise of the physician and the complexity of the presenting patient. Interdisciplinary evaluation is strongly encouraged.

b. Treatment plan. The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any other treatment modalities and rehabilitation programs utilized. The patient's short- and long-term needs for pain relief shall be considered when drug therapy is prescribed. The patient's ability to request pain relief as well as the patient setting shall be considered. For example, nursing home patients are unlikely to have their pain control needs assessed on a regular basis, making prn (on an as-needed basis) drugs less effective than drug therapy prescribed for routine administration that can be supplemented if pain is found to be worse. The patient should receive

prescriptions for controlled substances from a single physician and a single pharmacy whenever possible.

c. Informed consent. The physician shall document discussion of the risks and benefits of controlled substances with the patient or person representing the patient.

d. Periodic review. The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. The physician should adjust drug therapy to the individual needs of each patient. Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of other treatment modalities if periodic reviews indicate that the objectives of the treatment plan are not being met or that there is evidence of diversion or a pattern of substance abuse. Long-term opioid treatment is associated with the development of tolerance to its analgesic effects. There is also evidence that opioid treatment may paradoxically induce abnormal pain sensitivity, including hyperalgesia and allodynia. Thus, increasing opioid doses may not improve pain control and function.

e. Consultation/referral. A specialty consultation may be considered at any time if there is evidence of significant adverse effects or lack of response to the medication. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, or other consultation may be appropriate. The physician 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. The board encourages a multidisciplinary approach to chronic pain management, including the use of adjunct therapies such as acupuncture, physical therapy and massage.

f. Documentation. The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including 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. A physician who treats patients for chronic pain with controlled substances shall consider using a pain management agreement with each patient being treated that specifies 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 reason(s) why a pain management agreement was not used. Use of pain management agreements is not necessary for hospice or nursing home patients. A sample pain management agreement and prescription drug risk assessment tools may be found on the board's Web site at www.medicalboard.iowa.gov.

h. Substance abuse history or comorbid psychiatric disorder. A patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management. However, 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. The board strongly encourages a multidisciplinary approach for pain management of such patients that incorporates the expertise of other health care professionals.

i. Drug testing. 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. Termination of care. The 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.

653 IAC 13.2(7) Prescription monitoring program. 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 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. A link to the prescription monitoring program may be found at the board's Web site at www.medicalboard.iowa.gov.

7. **Improper Pain Management:** The Board alleges that Respondent violated the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate pain management to multiple patients in Sioux City, Iowa, in 2013 and 2014. The Board alleges that Respondent failed to assess and/or document appropriate assessment of the etiology of the patients' pain, functional status, need for opioids, and risk of abusing or diverting drugs. The Board alleges that Respondent failed to order and/or document appropriate imaging studies to determine the etiology of the patients' pain. The Board alleges that Respondent prescribed chronic opioids without documenting why they were prescribed and what benefit they provided in terms of functional improvement. The Board alleges that Respondent failed to require and/or document appropriate urine drug screening and failed to appropriately address drug screening results that were positive for marijuana. The Board alleges that Respondent failed to appropriately address evidence of dependence on opioids and/or alcohol. The Board alleges that Respondent failed to make and/or document timely specialty referrals. The Board alleges that Respondent inappropriately prescribed daily narcotics for the management of migraine headaches. The Board alleges that Respondent's documentation for the treatment of chronic pain with opioids was inadequate and failed to include detailed personal observations to support the continued use and/or changes in the medications utilized.

8. **Improper Medical Care:** The Board alleges that Respondent failed to provide appropriate medical care to multiple patients in Sioux City, Iowa, including the following:

A. **Treatment of a Newborn Child with Group B Streptococcal Meningitis:**

The Board alleges that Respondent failed to provide and/or document appropriate evaluation and treatment to a newborn child who was diagnosed with Group B Streptococcal Meningitis in Sioux City, Iowa, in 2010. The Board alleges that Respondent failed to recognize the seriousness of the condition, failed to provide aggressive evaluation and treatment and failed to utilize appropriate specialty consultations and/or referrals. The Board alleges that Respondent failed to order a sufficient period of IV antibiotics.

B. **Phentermine Prescribing:** The Board alleges that Respondent inappropriately prescribed phentermine to two female patients for weight loss when the patients did not meet the established criteria for the use of phentermine for weight loss in Sioux City, Iowa, in 2013 and 2014.

9. **Respondent's Answer:** Respondent filed an Answer contemporaneously with this order denying the allegations. However, Respondent enters into this Settlement Agreement to resolve the charges.

SETTLEMENT AGREEMENT

10. **CITATION AND WARNING:** Respondent is hereby **CITED** for violating the standards of practice for appropriate pain management and/or demonstrating professional incompetence when he failed to provide appropriate medical care to multiple patients in Sioux City, Iowa, between 2010 and 2014. Respondent is hereby **WARNED** that such practice in the future may result in further formal disciplinary action, including suspension or revocation of his Iowa medical license.

11. **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.

12. **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 or the provision of comfort or palliative care to patients in a nursing home or hospice setting.

13. **RECORD KEEPING COURSE:** Respondent shall complete a Board-approved medical record keeping course within ninety (90) days of the date of this Order. Respondent is responsible for all costs associated with the course.

14. **BOARD-APPROVED CONTINUING MEDICAL EDUCATION:** Respondent shall successfully complete Board-approved continuing medical education in the following areas and submit a paper to the Board for approval describing what he has learned from the required continuing medical education within 90 days of the date of this order.

- A. **Group B Streptococcal Meningitis:** The appropriate diagnosis and treatment of Group B Streptococcal Meningitis in newborn children.
- B. **Prescribing Phentermine for Weight Loss:** The established criteria and appropriate use of phentermine for weight loss.

15. **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 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)(e)(3).
- E. **Monitoring Fee:** Respondent shall make a payment of \$300 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, 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.

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

17. Respondent agrees that the State's counsel may present this Order to the Board for consideration.

18. Respondent shall submit a written statement to the Board which demonstrates that he has shared a copy of this order with all medical licensing boards where Respondent holds a license, whether active or not, within thirty (30) days of the date of this order.

19. Respondent shall submit a written statement to the Board which demonstrates that he has shared a copy of this order with all hospitals and clinics where Respondent practices medicine within thirty (30) days of the date of this order.

20. Respondent understands that by entering into this Order, he has a right to legal counsel in this matter, 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.

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

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. 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

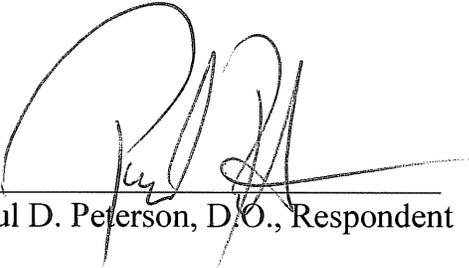
duration of this Order unless Respondent obtains prior written approval from the Board.

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

25. 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.

26. 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.

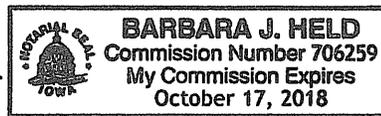
27. The Board's approval of this Order shall constitute a **Final Order** of the Board.



Paul D. Peterson, D.O., Respondent

Subscribed and sworn to before me on June 22nd, 2016.

Notary Public, State of Iowa
Barbara J. Held



This Order is approved by the Board on July 29, 2016.



Diane L. Clark, R.N., M.A., Chair
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686