

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

LUTHER P. PHILAYA, M.D., RESPONDENT

FILE No. 02-14-007

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STATEMENT OF CHARGES and SETTLEMENT AGREEMENT  
(Combined)

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COMES NOW the Iowa Board of Medicine (Board) and Luther P. Philaya, M.D., (Respondent), on October 3, 2014, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) and 653 IAC 25.3, 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. 26675 on July 15, 1988.
2. Respondent's Iowa medical license went inactive due to nonrenewal on July 1, 1991.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.

## COUNT I

4. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery disciplined by a licensing authority of another state. A certified copy of the order of disciplinary action is prima facie evidence.

### STATEMENT OF THE MATTERS ASSERTED

5. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced family and emergency medicine in Milaca, Minnesota.

6. **Minnesota Disciplinary Action:** On November 9, 2013, Respondent was disciplined by the Minnesota Board of Medical Practice (Minnesota Board). The Minnesota Board alleged that Respondent prescribed large quantities of controlled substances to two personal friends and diverted most of the drugs for his own use between 2010 and 2012. On or about December 3, 2012, Respondent entered into a Participation Agreement and Monitoring Plan with the Health Professionals Services Program in St. Paul, Minnesota. In June 2013, Respondent underwent a neuropsychological assessment which indicated that he demonstrated a cognitive disorder which impaired his ability to practice medicine with reasonable skill and safety. The Minnesota Board issued Respondent a Reprimand and indefinitely suspended his Minnesota medical license indicating that he may petition the Board for reinstatement of his license upon successful completion of specified terms and conditions. See Attachment A.

## SETTLEMENT AGREEMENT

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

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

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

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

11. By entering into this Order, Respondent understands that he has a right to be represented by 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.

12. 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.

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

14. Respondent understands that the Board is required by Federal law (45 C.F.R. 60.8) to report this Order to the National Practitioner Data Bank.

15. 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.

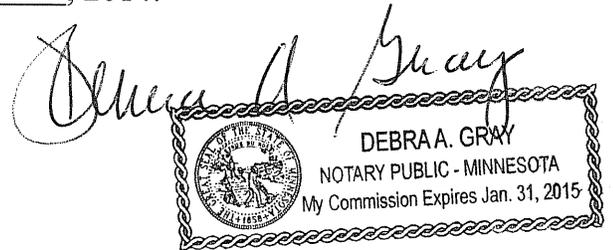
16. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

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

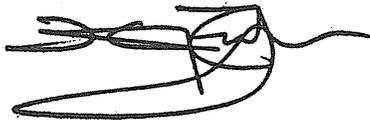
  
Luther P. Philaya, M.D., (Respondent)

Subscribed and sworn to before me on 7-8, 2014.

Notary Public, State of MN.



This Order is approved by the Board on October 3, 2014.



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

**BEFORE THE MINNESOTA  
BOARD OF MEDICAL PRACTICE**

In the Matter of the  
Medical License of  
Luther P. Philaya, M.D.  
Year of Birth: 1957  
License No.: 32,213

**STIPULATION  
AND ORDER FOR  
INDEFINITE SUSPENSION**

IT IS HEREBY STIPULATED AND AGREED, by and between Luther P. Philaya, M.D. ("Respondent"), and the Complaint Review Committee ("Committee") of the Minnesota Board of Medical Practice ("Board") as follows:

1. During all times herein, Respondent has been and now is subject to the jurisdiction of the Board from which he holds a license to practice medicine and surgery in the State of Minnesota.

2. Respondent has been advised by Board representatives that he may choose to be represented by legal counsel in this matter. Although aware of this opportunity, Respondent has elected not to be represented by counsel. The Committee was represented by Kermit N. Fruechte, Assistant Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, telephone (651) 296-7575.

**FACTS**

3. For the purpose of this Stipulation, the Board may consider the following facts as true:

a. Respondent was licensed by the Board to practice medicine and surgery in the State of Minnesota on September 12, 1988. Respondent is board-certified in family medicine.

b. In October and November 2012, the Board received reports alleging that Respondent had written multiple prescriptions for large quantities of controlled substances for an individual who was not his patient.

c. In October 2012, the Board initiated an investigation by the Attorney General's Office which revealed that, beginning in about 2010, Respondent authorized prescriptions for controlled substances for two personal friends, who were not his patients. Between 2010 and 2012, Respondent authorized a total of 8,010 tablets of controlled substances for his personal friends, including benzodiazepines and opiates, and diverted most of the tablets for his own use.

d. On or about December 3, 2012, Respondent signed a Participation Agreement and Monitoring Plan with the Health Professionals Services Program ("HPSP"), St. Paul, Minnesota, based upon his history of addiction to benzodiazepines, opioids, and alcohol. Under the terms of his HPSP monitoring plan, Respondent was required, in part, to abstain from alcohol and all mood-altering substances, identify a primary health care practitioner to coordinate his overall health care, meet with a therapist at least twice per month, meet with a psychiatrist at least once per quarter, attend self-help group meetings at least twice per week, and submit to unannounced biological fluid screens on a periodic basis as requested by HPSP.

e. In June 2013, Respondent underwent a neuropsychological assessment, which indicated that Respondent demonstrated a cognitive disorder with concerns regarding his visual and auditory memory skills, multi-tasking capabilities, and ability to maintain focus on goal-directed activities.

f. On October 16, 2013, Respondent met with the Complaint Review Committee and admitted diverting controlled substances for his own use. Respondent also

confirmed his participation with HPSP and his ongoing treatment to improve his cognitive functioning.

#### STATUTES

4. The Committee views Respondent's practice as inappropriate in such a way as to require Board action under Minn. Stat. § 147.091, subd. 1(f) (violated an order of the Board, a state, or federal law related to the practice of medicine), (g) (unethical conduct), (k) (unprofessional conduct), (l) (inability to practice medicine due to illness), and (r) (became addicted to a drug or intoxicant) (2012), and Respondent agrees that the conduct cited above constitutes a reasonable basis in law and fact to justify the disciplinary action under these statutes.

#### REMEDY

5. Upon this Stipulation and all of the files, records, and proceedings herein, and without any further notice or hearing herein, Respondent does hereby consent that until further Order of the Board, made after notice and hearing upon application by Respondent or upon the Board's own motion, the Board may make and enter an Order suspending Respondent's license to practice medicine and surgery in the State of Minnesota as follows:

- a. Respondent is **REPRIMANDED**.
- b. Respondent's license is **INDEFINITELY SUSPENDED**.
- c. During the period of suspension, Respondent shall not in any manner practice medicine and surgery in Minnesota.
- d. Respondent may petition for reinstatement of his license upon completion of a comprehensive skills assessment at the Center for Personalized Education for Physicians (CPEP), Denver, Colorado, concluding that Respondent is fit and competent to resume the

practice of medicine with reasonable skill and safety to patients; and upon submission of evidence, satisfactory to the Board, of a minimum of 18 months of documented, uninterrupted recovery.

e. Upon petitioning for reinstatement, the Complaint Review Committee may request that Respondent meet with the Committee to discuss his petition, the results of his CPEP comprehensive skills assessment, and his progress in recovery. Upon hearing the petition, the Committee may recommend that the Board continue, modify, or remove the suspension or impose conditions and restrictions as deemed necessary.

f. Respondent shall sign all necessary releases allowing the Board access to all medical, mental health, evaluation, therapy, chemical dependency, or other records from any treating or evaluating health professional or facility.

6. Within ten days of signing the Stipulation to this Order, Respondent shall provide the Board with a list of all hospitals and skilled nursing facilities at which Respondent currently has medical privileges, a list of all states in which Respondent is licensed or has applied for licensure, and the addresses and telephone numbers of Respondent's residences and all work sites. Within seven days of any change, Respondent shall provide the Board with the new address and telephone information. The information shall be sent to Robert A. Leach, Minnesota Board of Medical Practice, University Park Plaza, 2829 University Avenue S.E., Suite 500, Minneapolis, Minnesota 55414-3246.

7. In the event Respondent resides or practices outside the State of Minnesota, Respondent shall promptly notify the Board in writing of the location of his residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Respondent's suspended, limited, or conditioned license in Minnesota unless

Respondent demonstrates that practice in another state conforms completely with Respondent's Minnesota license to practice medicine.

8. If Respondent shall fail, neglect, or refuse to fully comply with each of the terms, provisions, and conditions herein, including timely submission of required reports, the Committee shall schedule a hearing before the Board. The Committee shall mail Respondent a notice of the violation alleged by the Committee and of the time and place of the hearing. Respondent shall submit a response to the allegations at least three days prior to the hearing. If Respondent does not submit a timely response to the Board, the allegations may be deemed admitted.

At the hearing before the Board, the Committee and Respondent may submit affidavits made on personal knowledge and argument based on the record in support of their positions. The evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Order. Respondent waives a hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

At the hearing, the Board will determine whether to impose additional disciplinary action, including additional conditions or limitations on Respondent's practice, or suspension or revocation of Respondent's license.

9. In the event the Board in its discretion does not approve this settlement, this stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any disciplinary action by either party hereto except that Respondent agrees that should the Board reject this Stipulation and if this case proceeds to hearing, Respondent will

assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or of any records relating hereto.

10. Respondent waives any further hearings on this matter before the Board to which Respondent may be entitled by Minnesota or United States constitutions, statutes, or rules and agrees that the Order to be entered pursuant to the Stipulation shall be the final Order herein.

11. Respondent hereby acknowledges that he has read and understands this Stipulation and has voluntarily entered into the Stipulation without threat or promise by the Board or any of its members, employees, or agents. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation.

Dated: 10/25/13

Luther P Philaya  
LUTHER P. PHILAYA, M.D.  
Respondent

Dated: November 9, 2013

Arnold T. Kaplan  
FOR THE COMMITTEE

**ORDER**

Upon consideration of this Stipulation and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the terms of this Stipulation are adopted and implemented by the Board this 9th day of November, 2013.

MINNESOTA BOARD OF  
MEDICAL PRACTICE

By: [Signature]

