BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

KELLY D. ROSS, M.D., RESPONDENT

FILE No. 02-12-257

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STATEMENT OF CHARGES AND SETTLEMENT AGREEMENT
(Combined)

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COMES NOW the Iowa Board of Medicine (Board) and Kelly D. Ross, M.D., (Respondent), on March 6, 2014, 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. 23076 on July 8, 1982.

2. Respondent's Iowa medical license is active and will next expire on May 1, 2015. Respondent has not been disciplined by the Board previously.

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.

STATEMENT OF MATTERS ASSERTED

5. Respondent is an Iowa-licensed physician who currently practices family medicine St. Ansgar, Iowa.

6. 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 St. Ansgar, Iowa, between 2006 and 2013, including, but not limited to, the following:

A. **Patient Evaluation:** Respondent failed to perform and/or document appropriate patient evaluations for multiple patients prior to initiation of treatment. Respondent failed to perform and/or document a thorough physical examination and comprehensive medical history including the risk of abuse and/or comorbid illness. Respondent failed to perform and/or document appropriate diagnostic studies to help confirm a diagnosis. Respondent failed to perform and/or document a thorough assessment of the nature, cause, severity and location of the patient's pain; current and past treatment modalities; the effect of the pain on physical and psychological function; history of substance abuse; or the presence of one or more recognized medical indications for the use of controlled substances.

B. **Treatment Plan:** Respondent failed to establish and/or document a comprehensive treatment plan for multiple patients prior to initiation of treatment. Respondent failed to establish and/or document a comprehensive treatment plan which included clear treatment objectives to be used to determine success of the treatment, such as pain relief and/or improved physical and psychological function, and which tailored drug therapy to the individual needs of the patient. Respondent failed to identify and/or document

any further diagnostic testing and/or other treatment modalities and rehabilitation programs to be utilized. Respondent failed to ensure that patients received controlled substances prescriptions from a single physician and a single pharmacy when possible. Respondent frequently prescribed excessive doses of narcotics for the diagnosed problem and failed to document efforts to taper the medication.

C. **Informed Consent:** Respondent failed to discuss and/or document discussion of the risks and benefits of controlled substances with multiple patients. The Board's rules state that a physician shall document discussion of the risks and benefits of controlled substances with the patient or person representing the patient. Respondent failed to provide and/or document education to patients regarding the possible adverse effects of narcotic medication and/or warnings not to drive or operate equipment while taking the medication.

D. **Periodic review:** Respondent failed to perform and/or document appropriate periodic review for multiple patients. Respondent failed to periodically review and/or document the periodic review of the course of the pain treatment and any new information about the etiology of the patient's pain and/or the state of the patient's health. Respondent failed to see patients frequently enough for review of the clinical problem and to document the continuing need for narcotic medication. Respondent failed to document his decision making process regarding the continuation or modification of the pain treatment, including the use of other therapeutic modalities, based on his evaluation of the patient's progress toward the treatment objectives, including functional improvement. The Board noted that 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:** Respondent failed to obtain and/or document appropriate consultation and/or referral to specialists for multiple patients. Respondent failed to determine and/or document whether consultation and/or 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 was warranted. The Board noted that a specialty consultation should 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:** Respondent failed to maintain accurate, timely, and complete records that detail the 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:** Respondent failed to appropriately utilize pain management agreements that specified the rules for medication use and the consequences for misuse. The Board noted that 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 reasons why a pain management agreement was not used. On at least two occasions when Respondent did utilize pain management agreements, Respondent failed to enforce the agreements after the patients immediately violated the terms of the agreements.

H. **Substance Abuse History or Comorbid Psychiatric Disorder:** Respondent failed to address and/or document how he addressed substance abuse and/or comorbid psychiatric disorders for patients. The Board's rules state that 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:** Respondent failed to perform and/or document appropriate drug testing for patients with histories of substance abuse or clinical presentations suggestive of abuse. The Board's rules state that 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. **Early Refills:** Respondent provided early refills to multiple patients despite evidence of drug seeking behavior.

K. **Termination of Care:** Respondent failed to consider and/or document appropriate consideration of termination of care of patients. The Board's rules state that 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.

L. **Prescription Monitoring Program:** Respondent failed to utilize and/or document appropriate use of the Iowa Prescription Monitoring Program for multiple patients. 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's rules state that the board recommends that physicians utilize the Iowa 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.

SETTLEMENT AGREEMENT

7. **CITATION AND WARNING**: Respondent is hereby **CITED** for violating the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate pain management to multiple patients in St. Ansgar, Iowa, between 2006 and 2013. Respondent is hereby **WARNED** that such practice in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

8. **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, payable to the Treasurer of Iowa, to the executive director of the

Board. The civil penalty shall be deposited into the State General Fund.

9. **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. If pain persists beyond the anticipated healing period of a few weeks, patients should be thoroughly evaluated for the presence of chronic pain." This prohibition does not prohibit Respondent from prescribing, administering or dispensing controlled substances for the treatment of acute pain, the treatment of terminally ill patients, or the provision of comfort or palliative care to patients in a nursing home setting under his Iowa medical license.

10. **PROFESSIONAL ETHICS PROGRAM:** Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Blvd., Suite 100, Denver, CO 80230, 303-577-3232, within ninety (90) days of the date of this order. Respondent shall ensure that a report is sent directly to the Board. Respondent is responsible for all costs associated with the program.

11. **MEDICAL RECORD KEEPING COURSE:** Respondent shall complete a Board-approved medical record keeping course within ninety (90) days of the date of this Order.

12. **FIVE YEARS PROBATION**: Respondent shall be placed on **probation for a period of five (5) years** subject to the following terms and conditions:

A. **Board Monitoring Program**: Within thirty days of the date of this Order, Respondent shall establish a Board 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. 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 shall file sworn quarterly reports attesting to his compliance with all the terms of this Order no later than 1/10, 4/10, 7/10 and 10/10 of each year for the duration of the period of this Order.

D. **Board Appearances**: Respondent shall appear before the Board annually or upon request of the Board during the period of this order. Respondent shall be given notice of the date, time and location of the appearances. The 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 his probation to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with all quarterly reports required during his probation. The monitoring fee shall be sent to: Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine. The monitoring fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

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

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

15. 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.

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

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

18. By entering into this Order, Respondent understands that 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.

19. 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.

20. Periods of residence or practice outside the state of Iowa shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board. Periods in which Respondent does not practice medicine or fails to comply with the terms established in this Order shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board.

21. 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.

22. The 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.

23. 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.

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

Kelly Ross, MD

Kelly D. Ross, M.D., Respondent

Subscribed and sworn to before me on February 10th, 2014.

Susan L. Henaman

Notary Public, State of Iowa.

NOTARIAL SEAL IOWA

SUSAN L. HENAMAN
Commission Number 750007
My Commmission Expires
11-19-16

This Order is approved by the Board on March 6, 2014.

G Hoversten DO

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