

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE)	DIA NO. 09DPHMB003
STATEMENT OF CHARGES AGAINST:)	CASE NO. 03-06-452
)	03-07-781
KENNETH P. SCHULTHEIS, D.O.)	
)	RULING DENYING MOTION
Respondent)	TO DISMISS

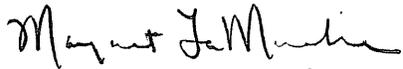
On February 12, 2009, the Iowa Board of Medicine found probable cause to file a five count Statement of Charges against Respondent. A hearing is currently scheduled for March 25, 2009. On or about February 20, 2009, Respondent filed a Motion to Dismiss. The state filed a Resistance on March 2, 2009. On March 12, 2009, the Board delegated the motion to the undersigned administrative law judge for ruling.

The Motion to Dismiss makes the very general and non-specific request that the Board dismiss each section of the Statement of Charges and the sections of the "Statement of Matters Asserted" to the extent that any of the accusations are not supported by readily available published statutory, administrative rule or policy guidelines that create a standard which could support any of said accusations or allegations. Respondent further asks the Board to furnish documentation and proof of the existence of any statutes, administrative regulations, or published policy guidelines that support any of the accusations in advance of a hearing on the motion in order to enable Respondent to support his motion to dismiss.

As pointed out by the state in its Resistance, the legal basis for the Statement of Charges is set forth in each count. 653 IAC 21.4 provides authority for the Board to discipline licensees for supervising a physician assistant in violation of the rules found at any violations of 653 IAC chapter 21 or 645 IAC chapters 326 and 327. 653 IAC 23.1 provides authority for the Board to discipline a licensee for professional incompetency.

IT IS THEREFORE ORDERED that the Motion to Dismiss is hereby DENIED.

Dated this 16th day of March, 2009.



Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

For the Iowa Board of Medicine

cc: Theresa O'Connell Weeg/Heather Palmer
Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319 (LOCAL)

Michael Sellers
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Kent Nebel
Director of Legal Affairs
Iowa Board of Medical Examiners
400 SW 8th St., Suite C
Des Moines, Iowa (LOCAL)

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

KENNETH P. SCHULTHEIS, D.O., RESPONDENT

FILE Nos. 03-06-452 & 03-07-781

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine on February 12, 2009, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 01443 on July 3, 1972. Respondent's Iowa medical license is active and will next expire on November 1, 2009.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on March 25, 2009, 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. 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.

5. 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.

6. 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 should direct any questions to Kent M. Nebel, J.D., the Board's Legal Director at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

B. LEGAL AUTHORITY AND JURISDICTION

7. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 148, and 272C.

8. 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.

9. 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

10. Respondent is charged pursuant to Iowa Code sections 147.55(8) and 272C.10(8), and 653 IAC 21.4(1) with willfully or repeatedly violating the laws and rules governing the practice of medicine in Iowa when he supervised physician assistants when he does not have sufficient training or experience to supervise the physician assistant in the area of medical practice in which the physician assistant is utilized.

COUNT II

11. Respondent is charged pursuant to Iowa Code sections 147.55(8), 272C.10(8), and 653 IAC 21.4 and 645 IAC 326.8(4)(d) with willfully or repeatedly violating the laws and rules governing the practice of medicine in Iowa when he inappropriately permitted physician assistants under his supervision to perform dermatologic skin care services without determining whether the physician assistants were competent to perform the services.

COUNT III

12. Respondent is charged pursuant to Iowa Code sections 147.55(8), 272C.10(8), and 653 IAC 21.4(3) and 645 IAC 327.4(1) with willfully or repeatedly violating the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate supervision to physician assistants who performed dermatologic services at remote sites.

COUNT IV

13. 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 sections 23.1(2)(c), (d), (e), (f) and (g), by demonstrating one or more of the following:

- A. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
- B. 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;
- C. 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;
- D. 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; or
- E. Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent,

associate, or employee of the physician responsible for the patient's care, whether or not injury results.

COUNT V

14. Respondent is charged pursuant to Iowa Code sections 147.55(3) and 272C.10(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 a board-certified emergency medicine physician from Des Moines, Iowa.

16. Respondent has served as supervising physician for three physician assistants who provide dermatologic skin care services in clinics located in central Iowa.

17. The Board alleges that Respondent has insufficient training or experience to supervise the physician assistants in the practice of dermatology, in violation of the laws and rules governing the practice of medicine in Iowa, including, but not limited to the following:

- A. Respondent failed to demonstrate appropriate training or experience in dermatology to supervise physician assistants who provide such services;
- B. Respondent failed to demonstrate appropriate training or experience with the dermatologic procedures or techniques performed by the physician assistants under his supervision;
- C. Respondent failed to demonstrate appropriate training or experience with the dermatologic devices utilized by the physician assistants under his supervision;
- D. Respondent failed to provide appropriate supervision of the physician assistants under his supervision;

- E. Respondent inappropriately permitted the physician assistants under his supervision to perform dermatologic skin care services without determining whether the physician assistants were competent to perform the services;
- F. Respondent failed to ensure the proper referral of a patient to a physician who performs Mohs surgery for a biopsy proven infiltrative basal cell carcinoma;
- G. Respondent failed to ensure the proper treatment and documentation for numerous patients suffering from acne;
- H. Respondent failed to provide appropriate supervision to physician assistants who performed dermatologic services at remote sites when he:
 - 1) Failed to practice at the same location as the physician assistants for at least three months;
 - 2) Failed to review the care provided by the physician assistants at least weekly;
 - 3) Failed to sign all of the charts or document that direct consultation occurred between Respondent and the physician assistants; and
 - 4) Failed to visit the remote sites at least every two weeks.

18. The Board alleges that Respondent engaged in professional incompetence while serving as the supervising physician for physician assistants who provided dermatologic skin care services, including, but not limited to the following:

- A. Failure to diagnose two “obvious” basal cell carcinomas in a patient;
- B. Failure to obtain appropriate biopsies;
- C. Failure to obtain and/or document appropriate medical histories;

- D. Failure to perform appropriate assessments of patients, including but not limited to a patient with a history of melanoma;
- E. Failure to provide appropriate counseling for medication use and skin care recommendations;
- F. Improper dermatologic medication prescribing;
- G. Failure to provide and/or document appropriate follow-up care and recommendations;
- H. Failure to ensure that appropriate medical records are maintained for all patients.

E. SETTLEMENT

19. 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

20. On February 12, 2009, the Iowa Board of Medicine found probable cause to file this Statement of Charges.


Yasn Lee, M.D., Chairperson
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686