

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>IN THE MATTER OF THE</b>	)	<b>FILE NO. 02-2016-498</b>
<b>STATEMENT OF CHARGES AGAINST:</b>	)	<b>DIA NO. 17IMB007</b>
	)	
<b>JOSEPH P. SHADER, M.D.</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
<b>Respondent</b>	)	<b>DECISION AND ORDER</b>

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Date: June 30, 2017.

On April 14, 2017, the Iowa Board of Medicine (Board) filed a Notice of Hearing and Statement of Charges against Joseph P. Shader, M.D. (Respondent) that charged him with two counts:

**Count I:** Violation of a Physician Health Contract that he entered into with the Iowa Physician Health Program (IPHP), in violation of Iowa Code sections 147.55(8), 272C.3(k), 272C.10(8), and 653 IAC 23.1(12).

**Count II:** Violation of a Confidential Evaluation Order by failing to submit to a Board-ordered comprehensive physical, neuropsychological, mental health, unprofessional conduct, professional boundaries and sexual misconduct evaluation, in violation of Iowa Code sections 147.55(8), 148.6(2)(h), 272C.9(1) and 272C.10(8) and 653 IAC 23.1(13 and 24.4(7).

The hearing was held on June 2, 2017, before the following members of the Board: Kyle Ulveling, M.D., Chairperson; KellyAnn Light-McGroary, M.D.; Nicole Gilg Gachiani, M.D.; Warren Gall, M.D.; Charles Wadle, D.O.; Brian Wilson, D.O.; Diane Cortese, Secretary; Teresa Garman, and Mary Jo Romanco, public members. Respondent appeared by telephone and was self-represented. Assistant Attorney General Julie Bussanmas represented the state. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 653 IAC 25.18(12), at Respondent's election. The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to prepare a written decision for their review, in accordance with their deliberations.

## THE RECORD

The record includes the Notice of Hearing and Statement of Charges; Prehearing Conference Scheduling Order; the testimony of Emily Zalasky and Respondent; and State Exhibits 1-12 (see Exhibit Index for Description).

## FINDINGS OF FACT

1. Respondent's Iowa medical license (MD-42131) was initially issued by the Board on October 15, 2014. The license expired on March 1, 2017, and became inactive on May 1, 2017. While he was in Iowa, Respondent was a resident in psychiatry at the University of Iowa Hospitals and Clinics. Since March 2017, Respondent has been employed at the Caro State Psychiatric Hospital in Caro, Michigan. (State Exhibits 1, 3, 6; Respondent testimony)

### *Non-Compliance with Iowa Physician Health Program (IPHP) Contract*

2. On November 7, 2013, Respondent self-reported to the Iowa Physician Health Program (IPHP) while he was undergoing an evaluation and participating in a treatment program at Hazelden. Respondent was discharged from Hazelden with the following diagnoses: Alcohol Dependence, with Physiological Dependence; Bipolar I Disorder, most recent episode hypomanic; and Social Phobia. On November 13, 2013, Respondent signed an initial agreement with the IPHP. Respondent acknowledged his impairment and diagnosis of substance abuse disorder, and he agreed to obtain approval from the Iowa Physician Health Committee (IPHC)<sup>1</sup> before returning to the practice of medicine. (State Exhibit 6; Testimony of Emily Zalasky)

3. Respondent signed his IPHP recovery contract on December 19, 2013. Respondent has had three case managers with the IPHP, and his final case manager was Emily Zalasky. Pursuant to the terms of the IPHP recovery contract, Respondent was required to have a Recovery Program Monitor, a Monitoring Psychiatrist, a Therapist/Aftercare Counselor, and a Worksite Monitor. Respondent was required to file quarterly reports, to abstain from alcohol and controlled substances not properly prescribed, to attend

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<sup>1</sup> As authorized by statute and Board rule, the Board's Iowa Physician Health Committee (IPHC) assists and monitors the recovery, rehabilitation, or maintenance of licensees who self-report impairments or are referred by the board, pursuant to 653 IAC 14.11. The IPHC is both an advocate for licensee's health and a means to protect the health and safety of the public. Iowa Code section 272C.3(1)"k," and 653 IAC 14.3.

Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), to obtain an AA/NA sponsor, and to participate in FirstLab, the IPHP's chemical screening program.

The chemical screening program required Respondent to check in on a daily basis, either by phone or online, in order to find out if he had been randomly selected to provide a urinalysis (UA) that day. The IPHC determined how frequently UAs would be required. Respondent was required to pay the costs of the chemical screening program. If he did not timely pay those costs, his account with the screening program was suspended, and he was unable to find out if he had been selected for a UA. (State Exhibits 6, 7; Testimony of Emily Zalasky, Respondent)

4. On December 15, 2014, the IPHP sent Respondent a cautionary letter concerning his failure to check in with FirstLab on multiple occasions. (State Exhibit 10)

On March 1, 2016, the IPHP sent Respondent a second cautionary letter concerning his missed UA on February 11, 2016 while his FirstLab account was suspended. (State Exhibit 11)

5. On October 23, 2016, the IPHP reported Respondent (by case number only) to the Board for his failure to comply with the contract's requirements to meet with his aftercare counselor, to attend AA/NA meetings, and to participate in the chemical screening program.

- Respondent was required to attend individual aftercare once a month and aftercare group on a weekly basis. He did not attend any individual aftercare in May 2016. He only attended one aftercare group in April and June, and did not attend any aftercare group in May 2016.
- Respondent was required to attend 10 AA/NA meetings per month and to provide verification of his attendance. He attended sporadic meetings in January and February 2016 but provided no verification of his attendance and did not attend any meetings after February 2016.
- Respondent missed four scheduled drug screens through FirstLab (5/27/16; 6/30/16; 7/11/16; and 7/25/16) while his account was on suspension due to his failure to pay for FirstLab's services.

The IPHC recommended to the Board that Respondent be allowed to remain in the IPHP program. The IPHC noted that Respondent had been addressing extraordinary personal and financial issues and that he had received positive reports from his treatment team and from his residency director. The IPHC was optimistic that Respondent's compliance

would improve with increased stability in his personal life. The Board allowed Respondent to remain in the IPHP program following this first report of non-compliance. (Testimony of Emily Zalasky; State Exhibits 7, 8, 12)

6. On March 1, 2017, the IPHC made a second report to the Board concerning Respondent's failure to comply with the following terms of his IPHP contract: the chemical screening program, quarterly reports, and required notifications to the IPHP.

- On February 15, 2017, Respondent missed a scheduled drug screen because he had not enrolled in RecoveryTrek, the IPHP's new chemical screening program. Respondent had not been able to log in to the system to check his selection status since February 6, 2017, because he had not completed his enrollment process with RecoveryTrek by signing the Participant Agreement and by providing his credit card information.
- Respondent was required to submit quarterly reports, but he failed to submit the report for the 4<sup>th</sup> quarter of 2016, which was due on January 20, 2017. IPHP staff was therefore unable to determine if Respondent had been compliant with his contract requirements, including attendance at AA, during this time period.
- Respondent failed to notify the IPHP of his non-compliance with his contract requirements. He was required to meet with his aftercare provider twice per month for individual sessions, but his provider reported that Respondent had not attended since December 22, 2016, and had not responded to her attempts to contact him.

The IPHC referred Respondent's case to the Board to determine whether to initiate formal disciplinary action for violating the terms of his IPHP physician health contract or take other appropriate action. Respondent had failed to communicate with program staff and had not responded to staff's attempts to reach him by phone, email, and letter. The IPHC also noted that Respondent had obtained a permanent Iowa medical license and had completed his residency training, but the IPHC did not know if he was currently practicing medicine. The IPHC expressed concerns that Respondent's sobriety could not be assured because he was not participating in the chemical screening program. (State Exhibits 7, 9; Testimony of Emily Zalasky)

7. At hearing, Respondent provided some reasons for his non-compliance with the IPHP contract. Respondent testified that for the first 18 months that he was in the program, the IPHP would not allow him to take his prescribed ADHD medication. He believed that the inability to take his medication made it difficult for him to remember to call in to the chemical screening program. In addition, Respondent reported that his work

commitments and family commitments as a single father made it difficult for him to attend his AA meetings. Respondent also found it difficult to participate in big group meetings and had asked for permission to attend individual or group therapy instead of AA, but the IPHC denied this request. Finally, Respondent had periods of time when his account was suspended by the chemical screening program due to his failure to pay the program's service fees. When his account was suspended, Respondent was unable to find out if he had been selected for a UA. At some point, however, case manager Emily Zalasky agreed to let him know when he had been selected for a UA. (Respondent testimony)

### *Non-Compliance with Confidential Evaluation Order*

8. On January 19, 2017, the Board issued a Confidential Evaluation Order to Respondent, pursuant to Iowa Code section 272C.9(1). The Order required Respondent to complete a comprehensive evaluation within sixty (60) days, and it was served on Respondent by restricted certified mail on February 13, 2017. Respondent did not file an objection to the Confidential Evaluation Order nor did he comply with it. (State Exhibits 3, 4; Testimony of Respondent)

9. After he received the Confidential Evaluation Order, Respondent contacted the recommended evaluation facility and was told that the cost of the evaluation would be approximately \$10,000. Respondent realized that he would be unable to complete the evaluation as ordered because he did not have the money to pay for it. He contacted the Board's Director of Legal Affairs, Kent Nebel, to request an extension of the time to complete the evaluation but was told that an extension was not possible. When the Board filed its Statement of Charges, Respondent concluded that it was already too late, so he has not taken any steps to schedule the evaluation or comply with the Order. Respondent testified that he is willing to complete the evaluation if the Board still wants him to do it. (Testimony of Respondent)

## CONCLUSIONS OF LAW

### *I. Violation of a Physician Health Contract*

The Board is authorized to discipline a licensee who is guilty of... inability to practice medicine and surgery or osteopathic medicine and surgery with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or

other type of material or as a result of mental or physical condition.<sup>2</sup> The Board may also discipline a licensee for willful or repeated violations of Iowa Code chapters 147, 148, or 272C.<sup>3</sup>

The legislature has authorized the Board to establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any physical or mental disorder or disability, and who self-report the impairment to the committee, or who are referred by the Board to the committee. The legislature also authorized the Board to adopt rules for the establishment and administration of the committee, including grounds for disciplinary action for noncompliance with committee decisions.<sup>4</sup> The Board has adopted administrative rules implementing the Iowa Physicians Health Program (IPHP) and establishing the IPHP Committee at 653 IAC chapter 14.

The IPHP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the participant. The IPHC, in consultation with an IPHC-approved evaluator, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the participant's impairment. The IPHC shall prepare a contract, to be signed by the participant, which shall provide a detailed description of the goals of the program, the requirements for successful participation, and the participant's obligations therein.<sup>5</sup>

Participation in the program does not divest the Board of its authority or jurisdiction over the participant.<sup>6</sup> To be eligible for participation in the IPHP, an applicant or licensee must self-report an impairment or potential impairment directly to the IPHP or be referred by the board pursuant to subrule 14.11.<sup>7</sup> A participant shall agree to comply with the terms established in the IPHP initial agreement and contract.<sup>8</sup> A participant is responsible for promptly notifying the IPHC of all instances of noncompliance including a relapse.<sup>9</sup>

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<sup>2</sup> Iowa Code section 148.6(2)(h)(2017). This statute has been in effect at all times relevant to this decision.

<sup>3</sup> Iowa Code sections 147.55(8); 272C.10(8)(2017). This statute has been in effect at all times relevant to this decision.

<sup>4</sup> Iowa Code section 272C.3(1)(k)(2017).

<sup>5</sup> 653 IAC 14.6.

<sup>6</sup> 653 IAC 14.5(1).

<sup>7</sup> 653 IAC 14.5.

<sup>8</sup> 653 IAC 14.7.

<sup>9</sup> 653 IAC 14.7(2).

Board rule 653 IAC 23.1(12) provides in relevant part:

**653-23.1(272C)** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148,... or 272C..., or the rules promulgated thereunder ...The board may impose any of the disciplinary sanctions set forth in 653-subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses...

...

**23.1(12)** Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

The preponderance of the evidence established that Respondent has violated Iowa Code sections 147.55(8), 148.6(2)(h), 272C.3(k), 272C.10(8), and 653 IAC 23.1(12) when he failed to comply with the terms of his IPHP contract. Respondent repeatedly failed to attend required therapy sessions and AA meetings, failed to call in to the chemical screening program, failed to file quarterly reports, and failed to submit UAs when required to do so by the chemical screening program. Although Respondent was experiencing some personal difficulties during this time, these personal issues did not diminish or negate his obligations to comply with the terms of his IPHP contract.

## ***II. Violation of a Confidential Evaluation Order***

Each licensee of a licensing board, as a condition of licensure, is under a duty to submit to a physical, mental, or clinical competency examination when directed in writing by the board for cause. All objections shall be waived as to the admissibility of the examining physician's testimony or reports on the grounds of privileged communications. The medical testimony or report shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board, or one commenced in district court for revocation of the licensee's privileges. The licensing board, upon probable cause, shall have the authority to order a physical, mental, or clinical competency examination, and upon refusal of the licensee to submit to the examination the licensing board may order the allegations pursuant to which the order of physical, mental, or clinical competency examination was made shall be taken to be established.<sup>10</sup>

The Board has adopted administrative rules pertaining to confidential evaluation orders at 653 IAC 24.4. Pursuant to these rules, a physical or mental evaluation may be ordered

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<sup>10</sup> Iowa Code section 272C.9(1)(2017).

upon a showing of probable cause that the licensee suffers from a mental, neuropsychological, physical, physiological, psychiatric, or psychological condition, including but not limited to, behavior which constitutes professional sexual misconduct as defined by rule 653 IAC 13.7(4), disruptive behavior as defined by 653 IAC 13.7(5), or substance abuse.<sup>11</sup> An evaluation order and any subsequent evaluation reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4).<sup>12</sup> Failure of a licensee to submit to a board-ordered mental, physical, clinical competence or substance abuse evaluation or drug or alcohol screening constitutes a violation of the rules of the Board and is grounds for disciplinary action.<sup>13</sup>

A licensee may file an objection to the confidential evaluation order within 14 days of its issuance. A licensee who fails to timely file a request for hearing to object to any evaluation order waives any future objection to the evaluation order in the event formal disciplinary charges are filed for failure to comply with the evaluation order or on any other grounds.<sup>14</sup>

The Board's rules at 653 IAC Chapter 23 establish grounds for discipline of licensees. 653 IAC 23.1(13) provides, in relevant part:

**653-23.1(272C) (Grounds for discipline).** ...The board may impose any of the disciplinary sanctions set forth in 653-subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

...

**23.1(13).** Failure to comply with an evaluation order. Failure to comply with an order of the board requiring a licensee to submit to an evaluation under Iowa Code section 148.6(2)(h) or 272C.9(1).

The preponderance of the evidence established that Respondent failed to comply with the Confidential Evaluation Order that was issued by the Board on January 19, 2017, and served on Respondent on February 3, 2017. Respondent did not file an objection to the order. The deadline for complying with the Confidential Evaluation Order was April 4, 2017. As of the date of the hearing, Respondent still had not scheduled the confidential evaluation. The Board continues to need the confidential evaluation of Respondent in order to complete the investigation that prompted its issuance.

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<sup>11</sup> 653 IAC 24.4.

<sup>12</sup> 653 IAC 24.4(5).

<sup>13</sup> 653 IAC 24.4(7).

<sup>14</sup> 653 IAC 24.4(3).



## DECISION AND ORDER

### IT IS HEREBY ORDERED:

**CITATION AND WARNING:** Respondent is hereby **CITED** for violating his IPHP physician health contract and for violating a confidential evaluation order. Respondent is hereby **WARNED** that such conduct in the future may result in further disciplinary action, including revocation of his Iowa medical license.

**LICENSE SUSPENSION:** Respondent's Iowa medical license, number MD-42131, is hereby **INDEFINITELY SUSPENDED**. The license suspension shall continue until:

- Respondent has completed the comprehensive evaluation required by the January 18, 2017, Confidential Evaluation Order and has ensured the Board's receipt of the evaluation report; and
- The Board's investigation underlying the issuance of the Confidential Evaluation Order has been resolved, either through the Board's closure of the investigation or by the filing of a Statement of Charges.

**PROBATION:** Should Respondent's Iowa medical license be reinstated, he shall be placed on probation for an indefinite period. Prior to practicing medicine under his Iowa medical license, Respondent shall fully comply with the following terms and conditions:

- A. **Sixty Days Notice:** Respondent shall provide the Board written notice at least sixty (60) days prior to practicing medicine under his Iowa medical license.
- B. **Monitoring Program:** Prior to practicing medicine under his Iowa medical license, Respondent shall establish a monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525. Respondent shall fully comply with all requirements of the monitoring program. Respondent is responsible for all costs associated with his monitoring program.
- C. **Treatment Providers and Counselors:** Respondent shall fully comply with all recommendations made by his mental health and substance abuse treatment providers and counselors.

- D. **Abstinence from Drugs and Alcohol:** Respondent shall not consume alcohol or use other products which contain alcohol. Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug has been prescribed for Respondent's use by another qualified treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug. Respondent shall inform any qualified treating health care provider of his medical history and substance abuse history prior to receiving any controlled or prescription drug.
  
- E. **One Pharmacy:** Respondent shall fill all prescriptions for medications at one pharmacy. Respondent shall notify the Board of the name and address of the pharmacy and, if requested, shall authorize the Board to obtain his pharmacy records.
  
- F. **Drug Screening Program:** Respondent shall participate in the Board-approved drug screening program. Respondent shall fully comply with the Board's drug screening program. Respondent shall also provide random blood or urine specimens when required and provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening. Respondent is responsible for all costs associated with the drug screening program.
  
- G. **Substance Abuse Meetings:** Respondent shall attend Alcoholics Anonymous (AA) or similar substance abuse meetings at the frequency recommended by his substance abuse counselor and approved by the Board. Respondent shall obtain a sponsor and have at least weekly contact with his AA sponsor. Respondent shall document his attendance through a log that includes the name, date, time and place of the meeting and the initials or signature of someone else attending the meeting. Respondent shall attach his written documentation of attendance to his quarterly reports to the Board.
  
- H. **Group Aftercare Meetings:** Respondent shall attend at least one group aftercare meeting each week. Respondent shall document his attendance through a log that includes the date and time of the meeting. Respondent shall attach his written documentation of attendance to his quarterly reports to the Board.

I. **Substance Abuse Counseling:** Prior to practicing medicine under his Iowa medical license, Respondent shall submit to the Board for approval the name and CV of a substance abuse counselor.

- (1) Respondent shall meet with his Board-approved substance abuse counselor as frequently as recommended by the counselor and approved by the Board.
- (2) The counselor shall submit written quarterly reports concerning Respondent's progress no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- (3) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
- (4) Respondent is responsible for all costs associated with counseling.

J. **Mental Health Counseling:** Prior to practicing medicine under his Iowa medical license, Respondent shall submit to the Board for approval the name and CV of a mental health counselor.

- (1) Respondent shall meet with his Board-approved mental health counselor as frequently as recommended by the counselor and approved by the Board.
- (2) The counselor shall submit written quarterly reports concerning Respondent's progress no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- (2) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
- (4) Respondent is responsible for all costs associated with the counseling.

- K. **Worksite Monitor:** Prior to practicing medicine under his Iowa medical license, Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in the practice of medicine to serve as worksite monitor.
- (1) The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
  - (2) The worksite monitor shall provide a written statement indicating that they have read and understand this Order and agrees to serve under the terms of this Order.
  - (3) The worksite monitor shall agree to inform the Board immediately if there is evidence of impairment; substance abuse; questionable medical practice; professional misconduct or a violation of the terms of this Order.
  - (4) The worksite monitor shall submit quarterly reports to the Board no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- L. **Quarterly Reports:** Respondent shall submit sworn quarterly reports to the Board no later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order. The quarterly reports shall attest to Respondent's compliance with the terms and conditions of this Order
- M. **Board Appearances:** Respondent shall make appearances before the Board annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(d).
- N. **Monitoring Fee:** Respondent shall make a payment of \$100 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: Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine.

**HEARING FEE:** In accordance with 653 IAC 25.33, that Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 25.33(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.

Dated this 30<sup>th</sup> day of June, 2017.

A handwritten signature in black ink, appearing to read "K. Ulveling". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Kyle Ulveling, M.D., Chairperson  
Iowa Board of Medicine  
400 S.W. 8<sup>th</sup> Street, Suite C  
Des Moines, IA 50309-4686

cc: Joseph P. Shader, M.D., 107 South Washington Avenue #221, Saginaw, MI 48607  
(CERTIFIED)  
Julie Bussanmas, Department of Justice, Hoover Bldg, 2<sup>nd</sup> Fl. (LOCAL)

Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this Decision and Order. 653 IAC 25.31.

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

JOSEPH P. SHADER, M.D., RESPONDENT

FILE No. 02-2016-498

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STATEMENT OF CHARGES

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COMES NOW the Iowa Board of Medicine (Board) on April 14, 2017, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. MD-42131 on October 15, 2014. Respondent's Iowa medical license is active and will go inactive on May 1, 2017.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A contested case hearing shall be held on June 2, 2017, before the Iowa Board of Medicine. The hearing shall begin at 8:00 a.m. and shall be located in a conference room at the Iowa Board of Medicine office at 400 SW 8<sup>th</sup> 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 May 3, 2017, 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: Julie Bussanmas, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> 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 Julie Bussanmas, Assistant Attorney General, at 515-281-5637.

## **B. LEGAL AUTHORITY AND JURISDICTION**

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

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. **VIOLATION OF A PHYSICIAN HEALTH CONTRACT:** Respondent is charged pursuant to Iowa Code sections 147.55(8), 272C.3(k) and 272C.10(8) and 653 IAC 23.1(12) with violating a physician health contract that he entered into with the Iowa Physician Health Program (IPHP).

### COUNT II

12. **VIOLATION OF A CONFIDENTIAL EVALUATION ORDER:** Respondent is charged pursuant to Iowa Code sections 147.55(8), 148.6(2)(h), 272C.9(1) and 272C.10(8) and 653 IAC 23.1(13) and 24.4(7) with failing to submit to a Board-ordered comprehensive physical, neuropsychological, mental health, unprofessional conduct, professional boundaries and sexual misconduct evaluation in violation of the laws and rules governing the practice of medicine in Iowa.

### STATEMENT OF THE MATTERS ASSERTED

13. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced psychiatry in Iowa City, Iowa.

14. **Violation of a Physician Health Contract:** On December 19, 2013, Respondent entered into a physician health contract with the Iowa Physician Health Program (IPHP) and the contract included provisions requiring drug screening; quarterly reports; an aftercare program and notification of non-compliance. The Board alleges that Respondent failed to comply with the requirements of the physician health contract on multiple occasions.

15. **Violation of a Confidential Evaluation Order:** On January 19, 2017, the Board issued a Confidential Evaluation Order pursuant to Iowa Code section 272C.9(1) requiring Respondent to successfully complete an evaluation within sixty (60) days. The Board alleges that Respondent failed to complete the Board-ordered evaluation.

#### E. SETTLEMENT

16. 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 or [kent.nebel@iowa.gov](mailto:kent.nebel@iowa.gov).

#### F. PROBABLE CAUSE FINDING

17. On April 14, 2017, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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