

**BEFORE THE IOWA BOARD OF MEDICINE**

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**IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST**

**JOSH A. SMITH, D.O., RESPONDENT**

**FILE Nos. 03-12-429 & 03-13-538**

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**STATEMENT OF CHARGES AND SETTLEMENT AGREEMENT  
(Combined)**

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COMES NOW the Iowa Board of Medicine (Board), and Josh A. Smith, D.O., (Respondent), on February 5, 2016, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this combined Statement of Charges and Settlement Agreement.

**STATEMENT OF CHARGES**

1. Respondent was issued Iowa medical license no. 02944 on June 24, 1995.
2. Respondent's Iowa medical license is active and will next expire on November 1, 2017.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148, and 272C.

## COUNT I

4. **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)(d), (e), and (f) by demonstrating one or more of the following:

- 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 the state of Iowa.

### STATEMENT OF MATTERS ASSERTED

5. **Practice Setting:** Respondent is an Iowa-licensed physician who practices general surgery in Carroll, Manning, Ida Grove and Sac City, Iowa.

6. **Professional Incompetency:** The Board alleges that Respondent violated the laws and rules governing the practice of medicine when he failed to provide appropriate surgical care to multiple patients between 2008 and 2013, including the following:

- A. **Patient #1:** Respondent performed a laparoscopic appendectomy in Manning, Iowa, in 2011. Patient #1 experienced a significant aortic injury during the operation. Patient #1 experienced significant complications following the operation. Respondent failed to perform and/or document a timely investigation of the source of injury. Respondent failed to recognize and/or document the severity of the post-operative complications. Respondent failed to provide and/or document appropriate post-operative care. Respondent inappropriately delegated post-operative care to the patient's primary care provider. Respondent failed to timely re-operate and/or transfer the patient to a tertiary surgery center for further care. Patient #1 required several surgeries. Respondent failed to prepare his operative report in a timely manner.

- B. **Patient #2:** Respondent performed a laparoscopic appendectomy in Manning, Iowa, in 2013. Respondent failed to have and/or document an informed discussion with the patient regarding the planned procedure prior to the operation. Patient #2 experienced an abdominal wall hematoma during the operation. Respondent did not see the patient after the operation. Respondent failed to recognize and/or document the severity of the post-operative complications. Respondent failed to provide and/or document appropriate post-operative care. Respondent inappropriately delegated post-operative care to the patient's primary care provider. Respondent failed to have and/or document an informed discussion with the patient regarding the surgical findings, prognosis or treatment plan following the operation.
- C. **Patient #3:** Respondent performed a laparoscopic tubal ligation in Ida Grove, Iowa, in 2011. Patient #3 experienced an abdominal wall injury during the operation requiring re-exploration. Respondent failed to provide and/or document appropriate post-operative care. Respondent inappropriately delegated post-operative care to the patient's primary care provider. Respondent failed to have an informed discussion with the patient regarding the surgical findings, prognosis or treatment plan following the operation.
- D. **Patient #4:** Respondent performed a right hemicolectomy in Sac City, Iowa, in 2010. Patient #4 experienced an abscess or possible leak following the operation. Respondent failed to provide and/or document appropriate post-operative care. Respondent inappropriately delegated post-operative care to the patient's primary care provider. Respondent failed to timely recognize and/or timely treat the post-operative complications.
- E. **Patient #5:** Respondent performed a laparoscopic appendectomy in Sac City, Iowa, in 2010. Pathology showed that Respondent removed necrotic fat but not the appendix. Respondent failed to adequately identify the anatomy laparoscopically, and chose not to convert the procedure to an open technique. Patient #5 experienced significant complications following the operation. Respondent failed to perform and/or document further investigation when the patient's condition deteriorated. Respondent failed to recognize and/or document the severity of the post-operative complications. Respondent failed to provide and/or document appropriate post-operative care. Respondent inappropriately delegated post-operative care to the patient's primary care provider. Patient #5 underwent corrective surgery by another surgeon.

- F. **Patient #6:** Respondent performed a laparoscopy with planned lysis of adhesions for chronic abdominal pain in Carroll, Iowa, in 2012. Patient #6 experienced a bowel injury during the operation and Respondent converted to an open technique to repair the injury. Respondent chose not to proceed with the lysis of adhesions even though that was the indication for the procedure in the first place.
- G. **Patient #7:** Respondent performed a laparoscopic appendectomy with ovarian abscess removal in Ida Grove, Iowa, in 2008. Patient #7 experienced post-operative complications. Respondent failed to recognize and/or document the severity of the post-operative complications. Respondent failed to provide and/or document appropriate post-operative care. Respondent inappropriately delegated post-operative care to the patient's primary care provider.
- H. **Patient #8:** Respondent performed a laparoscopic cholecystectomy in Carroll, Iowa, in 2010. Patient #8 experienced significant post-operative complications and required re-operation. Respondent failed to recognize and/or document the severity of the post-operative complications. Respondent failed to provide and/or document appropriate post-operative care. Respondent inappropriately delegated post-operative care to the patient's primary care provider.
- I. **Patient #9:** Respondent performed a laparoscopic cholecystectomy in Carroll, Iowa, in 2011. Patient #9 experienced a possible bowel perforation during the operation. Patient #9 experienced significant post-operative complications. Respondent failed to timely perform a recommended re-exploration for evaluation of a possible small bowel injury. Respondent failed to recognize and/or document the severity of the post-operative complications. Respondent failed to provide and/or document appropriate post-operative care.

7. **Respondent's Answer:** Respondent files an Answer concurrent with this Order, denying the allegations of the Board.

### SETTLEMENT AGREEMENT

8. **CITATION AND WARNING:** Respondent is hereby **CITED** for violating the laws and rules governing the practice of medicine when he failed to provide appropriate surgical care to multiple patients in Iowa between 2008 and 2013. Respondent is hereby **WARNED** that engaging in professional incompetency in the future may result in further disciplinary action, including suspension or revocation of his Iowa medical license.

9. **CIVIL PENALTY:** Respondent shall pay a **\$5,000 civil penalty**. The civil penalty shall be paid within twenty days of the date of this Order and 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.

10. **COMPREHENSIVE CLINICAL COMPETENCY EVALUATION:** On June 26, 2015, Respondent completed a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP). CPEP concluded that Respondent demonstrated knowledge of general surgery-specific topics that was good, with a few gaps. His knowledge of the obstetrical/gynecological surgical procedures was marginally adequate. His clinical judgment and reasoning were variable and ranged from adequate to poor. While the overall quality of care in the patient charts reviewed was acceptable in the majority of cases, there were several cases in which the consultants disagreed with his decision-making, two of which were laparoscopic cases. Patterns emerged of data-gathering that was inadequate for treatment planning; offering relatively aggressive gynecological surgical solutions when there may have been opportunities for less aggressive surgical or medical treatments; and a tendency to make plans that were not as cautious as the consultants would have handled cases. His communication skills were good. His documentation in patient charts was adequate, with need for improvement and his documentation of the SP encounters was marginally adequate, with need for improvement. He passed the cognitive and manual skills sections of the Fundamentals of Laparoscopic Surgery Exam. Respondent shall fully comply with the recommendations made by CPEP including a structured individualized education plan which includes an educational preceptor, continuing medical education and self-study, and a clinical reassessment.

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

- A. **Monitoring Program:** Respondent shall contact 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 to establish a monitoring program. Respondent shall fully comply with all requirements of the monitoring program.
- B. **CPEP Recommendations:** Respondent shall fully comply with the recommendations made by CPEP including, but not limited to, the following:
- 1) **Individualized Education Intervention:** Participate in a structured, individualized education intervention to address identified areas of need.
  - 2) **Educational Preceptor:** Respondent shall establish a relationship with one or more experienced Educational Preceptors in general surgery and obstetrical/gynecological surgery. This involves regularly scheduled meetings to review cases and documentation, discuss decisions related to those cases, review specific topics, and make plans for future learning. The Preceptor(s) serve as educator and are not intended to function as a practice monitor. This should initially include preoperative review of surgical cases to review the preoperative evaluation and treatment options.
  - 3) **Continuing Medical Education (CME) and Self-Study:** Respondent shall engage in CME courses and self-study which include, but are not limited to, the topics indicated in the areas of demonstrated need.
  - 4) **Documentation:** Respondent shall obtain coaching from a Preceptor or experienced colleague and self-study; and complete a medical recordkeeping course.
  - 5) **Clinical Reassessment:** Complete a clinical reassessment at CPEP at the conclusion of the individualized education intervention

- C. **Practice Monitoring Plan:** Respondent shall fully comply with the Board-approved practice monitoring plan agreed upon by Respondent and the Board.
- 1) Respondent shall submit the name and CV of an Iowa-licensed, board-certified, surgeon, to serve as practice monitor.
  - 2) The Board shall provide the practice monitor a copy of this order, the practice monitoring plan, all CPEP reports and all other relevant Board material in this matter.
  - 3) The practice monitor shall provide a written statement indicating that the practice monitor has read and understands all material provided by the Board and agrees to serve as the practice monitor under the terms of the practice monitoring plan. The practice monitor shall meet with Respondent regularly, review selected patients records, ensure that Respondent provides appropriate care and treatment to patients and engage in a quality improvement process that addresses the areas of need identified by CPEP.
  - 4) The practice monitor shall contact the Board immediately if there is evidence that Respondent has provided substandard care to patients.
  - 5) The practice monitor shall agree to submit written quarterly reports to the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this order.
  - 6) The practice monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

- D. **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.
- E. **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).
- F. **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 8<sup>th</sup> Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine.

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

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

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

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

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

21. 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.

22. 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.

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



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Josh A. Smith, D.O., Respondent

Subscribed and sworn to before me on \_\_\_\_\_, 2016.

Notary Public, State of \_\_\_\_\_.

This Order is approved by the Board on February 5, 2016.



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