

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF STATEMENT OF CHARGES AGAINST

WENDY R. K. SMOKER, M.D., RESPONDENT

File Nos. 02-09-623 & 02-12-431

ORDER RE: RESPONDENT'S MOTION

FOR REIMBURSEMENT OF EXPENSES

COMES NOW the Iowa Board of Medicine (Board) on March 14, 2014, and issues this Order Re: Respondent's Motion for Reimbursement of Expenses.

1. Respondent was issued Iowa medical license No. 21274 on August 17, 1978.
2. Respondent's Iowa medical license is active and will next expire on April 1, 2014.
3. Respondent is an Iowa-licensed physician who practiced diagnostic radiology in Iowa City, Iowa.

4. **First Disciplinary Action:** On September 17, 2008, the Board filed formal disciplinary charges against Respondent alleging that she engaged in the excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety in violation of the laws and rules governing the practice of medicine in Iowa. A hearing was held on December 26, 2010. On January 24, 2011, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent engaged in the excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety. The Board issued Respondent a Citation and Warning, ordered her to pay a \$5,000 civil penalty and placed her on probation for a period of five (5) years subject to Board monitoring.

5. **Second Disciplinary Action:** On July 26, 2012, the Board filed new charges against Respondent alleging that she willfully or repeatedly violated a lawful order of the Board. The Board alleged that Respondent consumed alcohol while vacationing in another country and failed to pay the \$5,000 civil penalty in a timely manner in violation of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order. On February 14, 2013, Respondent entered into a Settlement Agreement with the Board to resolve the pending charges. Under the terms of the February 14, 2013, Settlement Agreement, the Board issued Respondent a Citation and Warning, ordered her to pay an additional \$5,000 civil penalty and placed her on probation for a period of five (5) years subject to Board monitoring.

6. **Iowa Court of Appeals:** On April 24, 2013, the Iowa Court of Appeals issued an Order remanding the matter to the Board for entry of an order dismissing the disciplinary action taken by the Board against Respondent on January 24, 2011.

7. **Iowa Supreme Court:** On June 19, 2013, the Iowa Supreme Court denied the Board's Application for Further Review. Procedendo issued on June 24, 2013.

8. **Withdrawal of Findings of Fact, Conclusions of Law, Decision and Order, Statement of Charges and Settlement Agreement:** On June 28, 2013, the Board voted to withdraw the Findings of Fact, Conclusions of Law, Decision and Order, filed on January 24, 2011, the Statement of Charges filed on July 26, 2012, and Settlement Agreement filed on February 14, 2013. The Board refunded all civil penalties and disciplinary fees paid to the Board.

9. **Motion for Reimbursement of Expenses:** On January 8, 2014, Respondent filed a Motion for Reimbursement of Expenses. Respondent requested that the Board reimburse Respondent for the drug screening fees and transportation costs incurred as a result of the Board's January 24, 2011, the Findings of Fact, Conclusions of Law, Decision and Order, and the February 14, 2013, Settlement Agreement. On March 6, 2014, the Board considered Respondent's Motion for Reimbursement of Expenses. After careful consideration, the Board voted to deny Respondent's Motion for Reimbursement of Expenses for the following reasons:

- A. **Fees Not Paid to the State of Iowa:** All of the fees that Respondent paid for drug screening services were paid to independent contractors and were not paid to the Board or the State of Iowa.
- B. **No Motion to Stay:** Respondent failed to file a motion to stay enforcement of the sanctions established by the Board including, but not limited to, the drug screening fees, established in the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order, and the February 14, 2013, Settlement Agreement. Without a motion to stay enforcement of the sanctions, the Board was required to implement the discipline imposed.
- C. **No Court Order:** The Iowa Supreme Court did not order the Board to reimburse Respondent for any of the expenses incurred as a result of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order, and the February 14, 2013, Settlement Agreement.
- D. **Reimbursement Not Permitted Pursuant to Iowa Law:** Respondent failed to identify any Iowa law or rule that would obligate or allow the Board to reimburse Respondent for the expenses paid to a third party.
- E. **Iowa Appeal Board:** Respondent may be able to file a claim with the Iowa Appeal Board within the Iowa Department of Management if she believes she is entitled to reimbursement.

THEREFORE IT IS HEREBY ORDERED that for the reasons stated above

Respondent's Motion for Reimbursement of Expenses is **DENIED**.

A handwritten signature in black ink, appearing to read "G. Hoversten". The signature is written in a cursive style with a large initial "G".

March 14, 2014

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

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF STATEMENT OF CHARGES AGAINST

WENDY R. K. SMOKER, M.D., RESPONDENT

File Nos. 02-09-623 & 02-12-431

ORDER WITHDRAWING THE FINDINGS OF FACT,

CONCLUSIONS OF LAW, DECISION AND ORDER,

STATEMENT OF CHARGES, AND SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board) on June 28, 2013, and issues this Order Withdrawing the Findings of Fact, Conclusions of Law, Decision and Order, filed on January 24, 2011, the Statement of Charges filed on July 26, 2012, and Settlement Agreement filed on February 14, 2013.

1. Respondent was issued Iowa medical license No. 21274 on August 17, 1978.
2. Respondent's Iowa medical license is active and will next expire on February 1, 2014.
3. Respondent is an Iowa-licensed physician who practices diagnostic radiology in Iowa City, Iowa.

4. **First Disciplinary Action:** On September 17, 2008, the Board filed formal disciplinary charges against Respondent alleging that she engaged in the excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety in violation of the laws and rules governing the practice of medicine in Iowa. A hearing was held on December 26, 2010. On January 24, 2011, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent engaged in the excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety. The Board issued Respondent a Citation and Warning, ordered her to pay a \$5,000 civil penalty and placed her on probation subject to Board monitoring for a period of five years.

5. **Second Disciplinary Action:** On July 26, 2012, the Board filed new charges against Respondent alleging that she willfully or repeatedly violated a lawful order of the Board. The Board alleged that Respondent consumed alcohol while vacationing in another country and failed to pay the \$5,000 civil penalty in a timely manner in violation of the January 24, 2011, Findings of Fact, Conclusions of Law, Decision and Order. On February 14, 2013, Respondent entered into a Settlement Agreement with the Board to resolve the pending charges. Under the terms of the February 14, 2013, Settlement Agreement, the Board issued Respondent a Citation and Warning, ordered her to pay an additional \$5,000 civil penalty and placed her on probation subject to Board monitoring for a period of five years.

6. **Iowa Court of Appeals:** On April 24, 2013, the Iowa Court of Appeals issued an Order remanding the matter to the Board for entry of an order dismissing the disciplinary action against Respondent.

7. **Iowa Supreme Court:** On June 19, 2013, the Iowa Supreme Court denied the Board's Application for Further Review. Procedendo issued on June 24, 2013.

8. **Withdrawal of Findings of Fact, Conclusions of Law, Decision and Order, Statement of Charges and Settlement Agreement:** On June 28, 2013, the Board voted to withdraw the Findings of Fact, Conclusions of Law, Decision and Order, filed on January 24, 2011, the Statement of Charges filed on July 26, 2012, and Settlement Agreement filed on February 14, 2013.

THEREFORE IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, Decision and Order, filed on January 24, 2011, the Statement of Charges filed on July 26, 2012, and Settlement Agreement filed on February 14, 2013, are **WITHDRAWN**.

This Order is approved by the Board on June 28, 2013.



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

IN THE COURT OF APPEALS OF IOWA

No. 3-222 / 12-1216
Filed April 24, 2013

WENDY R. SMOKER, M.D.,
Plaintiff-Appellant,

vs.

IOWA BOARD OF MEDICINE,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Wendy Smoker, M.D., appeals from the district court ruling on judicial review affirming the disciplinary action of the Iowa Board of Medicine.

REVERSED AND REMANDED.

David L. Brown and Jay D. Grimes of Hansen, McClintock & Riley, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Theresa O'Connell Weeg, Assistant Attorney General, Des Moines, for appellee.

Heard by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

Wendy Smoker, M.D., appeals from the district court ruling on judicial review that affirmed the disciplinary action of the Iowa Board of Medicine. We reverse the decision of the district court and remand to the Board for entry of an order dismissing the disciplinary action against her.

I. Background Facts and Proceedings

Dr. Wendy Smoker is an internationally renowned physician and full professor in the field of neuroradiology. She is the recipient of numerous awards and honors for her extensive work and expertise in her field, and is praised by colleagues for her excellence in the profession and devotion to her work. As a prelude to our review of Dr. Smoker's history of alcohol dependence, we find it important to note there is no dispute her condition has never affected her medical practice.

Dr. Smoker received her undergraduate and medical education at the University of Iowa. In 1978, she was issued an Iowa medical license. In 1982, she began working as an assistant professor at the University of Iowa. In 1986, she took a position as an associate professor at the University of Utah. From 1990 to 2001, Dr. Smoker was a full professor and director of neuroradiology at the University of Virginia.

While she lived in Virginia, Dr. Smoker developed an alcohol dependency. In 2000, she self-reported to the Virginia Board of Medicine and completed a ninety-day inpatient treatment program. She was sober for one year before she had an isolated relapse in September 2001. Dr. Smoker immediately completed a six-week relapse program at the direction of the Virginia Board of Medicine.

In November 2001, Dr. Smoker moved to Iowa to begin her present position as a full professor at the University of Iowa Hospitals and Clinics (UIHC), where she is also the director of neuroradiology. Because she was on the diversion program in Virginia, the Board required her to participate in Iowa's version of the program, the Iowa Physician Health Program (IPHP). Dr. Smoker self-reported to IPHP and entered into a confidential physician health contract for alcohol dependence, which required urine analysis, a worksite monitor, and a psychiatrist.

Dr. Smoker did "very well" with her sobriety but for an isolated relapse in October 2003. She immediately completed a ninety-day treatment program. In light of her relapse, IPHP extended her contract to December 2008.¹ She successfully maintained her sobriety² and the Board released her from her contract in December 2008.³ Upon her release from IPHP, Dr. Smoker continued to attend four Alcoholics Anonymous (AA) meetings each week, had an active AA sponsor, and spoke with her life coach approximately two times each month.

¹ Prior to the relapse, the contract was set to expire in October 2006.

² Dr. Smoker registered a false-positive reading for alcohol metabolites in 2007, after which she was required to do an evaluation at Resurrection in Oak Park, Illinois. The evaluation indicated she was "maintaining her sobriety and was in recovery." The standards for metabolite readings used by the Board were subsequently changed as the result of Smoker's false-positive readings.

³ Paragraph 25 of the IPHP contract specified that if Dr. Smoker experienced a relapse or the recurrence or worsening of her condition anytime after she was released from the IPHP contract, IPHP could refer the contract and all documents related to her impairment and recovery to the Board to be maintained as part of a confidential investigative file. In addition, by signing the contract, Dr. Smoker acknowledged that although the material in the investigative file was confidential, information from those files could be incorporated into a public document in the event the Board filed a statement of charges.

In February or March 2009, one of Dr. Smoker's junior colleagues, staff professor Dr. Jack Kademian,⁴ reported to Dr. Smoker's supervisor and former workplace mentor under her IPHP contract, Dr. Joan Maley, that he had observed Dr. Smoker intoxicated at a national medical conference in Florida in February 2009.⁵ Dr. Maley informed Dr. Kademian that Dr. Smoker was "no longer under contract with the IPHP," and took no action on his report.

In September 2009, Dr. Kademian again reported to Dr. Maley that he had observed Dr. Smoker intoxicated, this time at a professional dinner following the UIHC's annual Dolan lecture hosted by the neuroradiology department.⁶ Again, Dr. Maley did not act on Dr. Kademian's report. One other physician observed Dr. Smoker consuming alcohol at the Dolan event, but did not believe she was intoxicated. The following morning, Dr. Smoker told her department chair Dr. Laurie Fajardo that she had "slipped" and she attended an AA meeting a few hours later. There are no allegations or evidence to suggest Dr. Smoker consumed alcohol after September 2009.

In October 2009, Dr. Kademian reported his observations to the Board. When questioned by IPHP coordinator Deb Anglin,⁷ Dr. Smoker admitted she had "slipped" a few times, but reported there had been no recent incidents and that she was still working on her program. She declined Anglin's recommendation that she self-report to the Board.

⁴ The evidence suggests Dr. Smoker and Dr. Kademian have a strained relationship aggravated by Dr. Smoker's unfavorable evaluations of Dr. Kademian's medical performance.

⁵ This allegation was never substantiated.

⁶ As head of the neuroradiology department, Dr. Smoker was in charge of organizing and orchestrating the entire Dolan event.

⁷ It is apparent Dr. Smoker has a strained relationship with IPHP and Deb Anglin.

In January 2010, the Board's chief investigator submitted an investigative report in response to Dr. Kademian's complaint against Dr. Smoker. The report's synopsis states, "[t]here are new reports of continued drinking" by Dr. Smoker. The report's narrative states, "Dr. Smoker has been reported to be intoxicated at two social functions and has said she will not self-report." A case history, IPHP Executive Summary, and an IPHP cover email were attached to the report. In February 2010, the Board issued an order requiring Dr. Smoker to undergo a comprehensive physical, neuropsychological, and substance abuse evaluation at Resurrection Health Care in Illinois at her expense. She complied with the order.

During the evaluation, Dr. Smoker stated she had consumed alcohol on two occasions following her release from her IPHP contract in December 2008; namely, she bought a bottle of wine and consumed two glasses of wine at home on September 12, 2009, and she consumed three or four glasses of wine at the UIHC Dolan dinner on September 14, 2009. She had no explanation for why she did it and stated it was a "stupid thing to do." She denied drinking on any other occasion after her release from IPHP. From the evaluation, Resurrection released a comprehensive assessment in April 2010.⁸ The assessment adduced Dr. Smoker suffered from alcohol dependence in partial sustained remission that required monitoring.⁹ It also recommended that she have a therapist and a workplace mentor.

⁸ In conducting its evaluation, Resurrection relied on documents provided by the Board, which it "shredded" upon completion of Dr. Smoker's assessment. Neither Anglin nor Dr. John Larson, a Resurrection psychiatrist, could recall what information was provided to Resurrection for consideration.

⁹ Monitoring was recommended "to assure that [Dr. Smoker] is abstinent from alcohol." Additionally, monitoring was recommended by the Board "because of [Dr. Smoker's] acrimonious feelings toward the Iowa PHP."

In June 2010, the Board filed a statement of charges against Dr. Smoker alleging:

Count I: Excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety, in violation of Iowa Code sections 147.55(4), 148.6(2)(h), 272C.10(4), and 653 IAC 23.1(6).

Count II: Suffering from a physical, neuropsychological or mental condition which may impair her ability to practice medicine and surgery with reasonable skill and safety, in violation of Iowa Code sections 148.6(2)(h) and 653 IAC 23.1(8).

In January 2011, following a hearing, the Board issued a final decision on the charges against Dr. Smoker. The Board made no findings as to Count II alleging a mental condition and dismissed that charge. As to Count I alleging excessive use of alcohol, the Board found:

There is no evidence [Dr. Smoker] has consumed alcohol or been impaired while working[, but] she would become a danger to the public and her patients if she resumes actively drinking. . . . [Dr. Smoker] is an admitted and diagnosed alcoholic. . . . The preponderance of the evidence established that [Dr. Smoker] relapsed when she consumed alcohol on two occasions in September 2009. . . . The preponderance of the evidence established that [Dr. Smoker], a diagnosed alcoholic, has engaged in the excessive use of alcohol in a manner which may impair her ability to practice her profession with reasonable skill and safety This is true even though there is no evidence that [Dr. Smoker] has ever provided medical care while impaired by alcohol.

The Board cited and warned Dr. Smoker that such conduct in the future may result in further disciplinary action, fined her \$5000, and placed her on probation for five years, which included participation in a monitory program, drug screening,

substance abuse meetings, therapy, quarterly reports, Board appearances, and a monitoring fee.¹⁰

Dr. Smoker sought judicial review. In July 2012, following a hearing, the district court affirmed the Board's decision.¹¹ Dr. Smoker appeals.

II. Scope of Review

Judicial review of a contested proceeding both in the district court and the appellate courts is to correct errors at law. *Paulson v. Bd. of Med. Exam'rs*, 592 N.W.2d 677, 678 (Iowa 1999). Our review is governed by the Iowa Administrative Procedure Act. See Iowa Code § 17A.19(10) (2011). "We must determine whether the agency decision is supported by substantial evidence when reviewing the record as a whole." *Sahu v. Iowa Bd. of Med. Exam'rs*, 537 N.W.2d 674, 676 (Iowa 1995); see Iowa Code § 17A.19(10)(f) (2011).

III. Analysis

The Board's jurisdiction is set by Iowa Code section 147.55, which provides in relevant part: "A licensee's license to practice a profession shall be revoked or suspended, or the licensee otherwise disciplined by the board for that profession, when the licensee is guilty of . . . [h]abitual intoxication or addiction to the use of drugs." Iowa Code § 147.55(4). Further, section 148.6 explains, "The board . . . may issue an order to discipline a licensee for any of the grounds set forth in section 147.55," including an "[i]nability to practice medicine and surgery or osteopathic medicine and surgery with reasonable skill and safety by reason of . . . drunkenness . . . or as a result of a mental or physical condition." *Id.*

¹⁰ Other ramifications of these proceedings included multiple press releases issued by the Board and media coverage detailing the charges and findings against Dr. Smoker.

¹¹ The district court's affirmance spawned another press release from the Board.

§ 148.6(2)(h); see also Iowa Code § 272C.10(4) (requiring the Board to define provisions for the revocation or suspension of a license for “[h]abitual intoxication”). Pursuant to the authority granted by these provisions, the Board promulgated Iowa Administrative Code rule 653-23.1, providing for the discipline of a licensee found guilty of “substance abuse,” which is defined as “excessive use of alcohol . . . in a manner which may impair a licensee’s ability to practice the profession with reasonable skill and safety.” Iowa Admin. Code r. 653-23.1(6).

As an initial matter, Dr. Smoker contends the Board has no authority to discipline licensees where no violation of the law has occurred,¹² and claims “the excessive use of alcohol must actually exist and it must be of such an extent that it may impair a licensee’s ability to practice.” She contends in this case, “[t]he Board improperly interpreted this statute to justify disciplining for potential future violations if they believe the licensee may, potentially, utilize alcohol excessively in the future and that future use may impair the licensee’s ability to practice.”

Our supreme court has recognized that section 147.55 does not require that proof of actual injury be established. See *Paulson*, 592 N.W.2d at 681.

Indeed, in discussing the section, the court observed:

We think the [Board] proceeded in this case within the proper parameters of these jurisdictional phrases in Iowa Code section 147.55. [The Board] should not be required to wait until the habitual intoxication becomes so debilitating that there is immediate danger of harm to patients. The section should be liberally applied so as to protect the public by allowing the [Board] to interfere when harm is imminent, and before it occurs.

¹² Contrary to the Board’s contention, we find this issue was properly preserved for our review.

Burns v. Bd. of Nursing, 495 N.W.2d 698, 701 (Iowa 1993). Considering the facts and circumstances in this case, we find the Board proceeded “within the proper parameters of these jurisdictional phrases in Iowa Code section 147.55,” and “acquired jurisdiction to adjudicate the charge against [Dr. Smoker].” See *Paulson*, 592 N.W.2d at 681.

We proceed to the crux of Dr. Smoker’s appeal—that the Board’s finding her guilty of “[e]xcessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety” is not supported by substantial evidence. Because Iowa Code chapter 17A delegates fact finding to agencies, “we defer to an agency’s fact finding if supported by substantial evidence.” *Glowacki v. Bd. of Med. Exam’rs*, 516 N.W.2d 881, 884 (Iowa 1994). “The question is whether there is substantial evidence to support the finding actually made, not whether evidence might support a different finding.” *Sahu*, 537 N.W.2d at 676-77. The burden of proof is a preponderance of the evidence. *Id.* at 677. “Evidence is not substantial when a reasonable mind would find the evidence inadequate to reach the conclusion reached by the agency.” *Id.* (internal quotations omitted). “We are bound by the agency’s factual findings unless a contrary result is demanded as a matter of law.” *Id.* (internal quotations omitted).

At the outset, the parties agree there is no evidence Dr. Smoker “has consumed alcohol or been impaired while working” nor are there any reports of behavior by her “that negatively impacted patient care, her teaching responsibilities, or public safety.” However, as mentioned above, “proof of actual injury need not be established” in order for the Board to impose disciplinary

action under section 147.55. *Paulson*, 592 N.W.2d at 681; see *Burns*, 495 N.W.2d at 701. We fully observe “[o]bvious public policy considerations are implicated . . . in the crucial and exacting matter of health care,” see *Burns*, 495 N.W.2d at 700, and the Board should not have to wait until habitual intoxication becomes so debilitating that there is immediate danger of harm to patients.

Still, there must be substantial evidence supporting the finding made by the Board. Here, as the Board noted, Dr. Smoker voluntarily participated in the IPHP beginning in November 2001. Following a few isolated relapses, she was successfully discharged from the program in December 2008. The Board recognized that upon her discharge, Dr. Smoker continued to attend four AA meetings each week, had an active AA sponsor, and spoke with her life coach approximately two times each month.

The Board found Dr. Smoker “subsequently relapsed when she consumed alcohol on two occasions in September 2009”: Dr. Smoker admitted that on September 12, 2009, she purchased a bottle of wine and consumed two glasses of wine at home, and on September 14, 2009, she consumed three to four glasses of wine at a professional dinner. The Board ordered Dr. Smoker to undergo a comprehensive evaluation at Resurrection Health Care. The Resurrection report opined Dr. Smoker suffered from alcohol dependence “in partial sustained remission,” and recommended she (1) return to a monitoring program through the Board to assure she is abstinent from alcohol; (2) meet with a therapist to help her identify and alleviate sources of stress and emotional pain in her life; and (3) obtain a workplace mentor, noting “[t]he role of the mentor is

not to monitor her clinical work, about which [Resurrection] found no concerns, but to act as a coach and advocate.”

The Board found Dr. Smoker “admits she is an alcoholic and acknowledges that she is unable to safely drink alcohol on a social basis without returning to her past pattern of alcohol abuse.” As the Board noted, “It was the conclusion of the evaluators at Resurrection that with [Dr. Smoker’s] history of relapse, she would become a danger to the public and her patients if she resumes actively drinking.” The Board found the preponderance of the evidence established that Dr. Smoker relapsed when she consumed alcohol on two occasions in September 2009, and noted her consumption of alcohol at a professional dinner in particular “demonstrated extremely poor judgment as well as her inability to control the impulse to drink.”

The Board cites *Paulson* and *Burns* as support for its conclusion. In *Paulson*, 592 N.W.2d at 680-81, the supreme court reviewed the Board’s disciplinary action against Paulson, a physician. In that case, an investigation was prompted following reports raising concerns about Paulson’s medical condition. *Id.* at 678. Following an evaluation and during treatment for alcohol abuse, Paulson “agreed to a board-approved combined statement of charges and informal settlement.” *Id.* The informal settlement placed Paulson’s license on probation for five years with various conditions including continued treatment. *Id.* The settlement indicated the Board’s approval of the settlement would constitute a final order of the Board regarding a disciplinary action. *Id.* On appeal, in addition to finding Paulson’s petition for judicial review time-barred, the court observed Paulson “voluntarily entered” into the settlement, which set forth

the charges against him, and the Board properly asserted its jurisdiction even though no patient health concerns were involved. *Id.* at 680. *Paulson* is not applicable to the issue at hand.

In *Burns*, 495 N.W.2d at 701, the supreme court reviewed the Board's disciplinary action under section 147.55 against Burns, a nurse. In that case, an investigation began after Burns' supervisor and other hospital personnel noticed Burns smelled of alcohol while at work. *Id.* at 699-700. Hospital personnel also noticed she experienced increasing absenteeism from work and was seen eating lemon at work in order to hide the odor of alcohol. *Id.* As part of the investigation, the nursing director spoke to Burns by phone and noted her speech "was so slurred she could scarcely be understood." *Id.* at 700. However, "[d]irect evidence of extreme intoxication was limited to two incidents, both off duty." *Id.* Notwithstanding her previous reputation as highly competent, in light of her behavior at work, Burns was eventually demoted from her position as charge nurse. *Id.* The supreme court found substantial evidence supported the Board's finding the nurse "was habitually intoxicated when her repeated ingestion of alcohol compromised her professional capacity while on duty and thereby threatened the safety of hospital patients subject to her care." Although the court's finding in *Burns* offers guidance in the case at hand, the facts here are distinguishable.

Here, as set forth above, in reaching its decision the Board mainly relied on the Resurrection report and Dr. Smoker's admissions to drinking on two occasions in September 2009. Although assessment of the weight of the evidence is within the exclusive domain of the Board, see *id.* at 699, we find it

prudent to point out some aspects of this record that are particularly troubling to us.

At the outset, we question the propriety of the “investigation” conducted by the Board’s chief investigator in response to Dr. Kademian’s complaint against Dr. Smoker that ultimately culminated in the Board’s order that she undergo an assessment at Resurrection. Normally, the Board investigates claims brought against physicians by interviewing the accused physician, witnesses, colleagues, and the complainant in order to determine whether the allegations are founded. In this case, however, *no* interviews were conducted in regard to Dr. Kademian’s allegation. Instead, the investigative report submitted to the Board was comprised of an “executive summary” authored by Anglin, which the chief investigator stated he did not review. Moreover, on direct examination by Dr. Smoker’s attorney, the Board’s chief investigator testified:

Q. And in terms of evidence, is it fair to say, . . . that you have no evidence supporting the charges that were made against Dr. Smoker? A. Correct.

Q. She was charged with excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety. Do you remember I asked you that question before? A. Yes.

Q. And you indicated [you] have no evidence. A. Correct.

. . .

Q. And you’re the chief investigator. A. Yes.

Q. And in terms of how this process works here, did you make any kind of recommendation to the [Board] when this report was completed? A. No.

In its decision, the Board did not acknowledge the blatantly sub-par investigation other than to observe it was the investigator’s “first case involving a licensee who had been in the IPHP.”

We also question whether the Resurrection report relied on by the Board substantiates the Board's findings. It seems our concerns regarding the strength of the report are not alone—three months after the statement of charges was filed against Dr. Smoker (in preparation for hearing), Anglin emailed Resurrection requesting “to know specifically which of the 7 criteria . . . for substance dependence applied to Wendy Smoker during her last eval.” Resurrection responded with a two-page letter that added no new information but for some notes of Dr. Smoker's recovery treatment a decade prior.

We further observe the testimony of Dr. John Larson, the evaluating psychiatrist and addiction specialist at Resurrection, does little to strengthen the Board's findings. On cross-examination of Dr. Larson, the following colloquy occurred:

Q. Would you agree with me, Dr. Larson, that you have no evidence supporting a charge that Wendy Smoker's excessive use of alcohol which may impair her ability to practice medicine with a reasonable degree of skill and safety? No evidence; right? A. No.

Q. And would you further agree with me that you have no evidence she suffers from a condition which may impair her ability to practice medicine and surgery with reasonable skill and safety; correct? A. That is currently active?

Q. That's right. A. I would say active alcoholism could potentially interfere but she does not, not present with those symptoms.

Q. And you have no evidence of any kind that would indicate she's a danger to the public. And I think you testified and told me you weren't saying that; is that right? A. That's correct.

Dr. Craig Rypma conducted an independent evaluation of Dr. Smoker that contradicted the Resurrection report. Specifically, Dr. Rypma's report opined Dr. Smoker met the criteria for alcohol dependence “in full remission” and that she did need to return to monitoring. Dr. Rypma testified to the extensive information

and documents he reviewed, in addition to his interview with Dr. Smoker, during the course of his assessment. This can be contrasted with Dr. Larson's testimony that he could not recall the documents sent by the Board for purposes of the Resurrection assessment and stated the documents were shredded immediately after the evaluation was complete. The Board's ruling dismissed Dr. Rypma's evaluation, noting the evidence from Resurrection was "more persuasive."

The question before us is not whether evidence might support a different finding, but whether there is substantial evidence to support the finding actually made by the Board. Upon our review of the record as a whole, there is no substantial evidence of Dr. Smoker's excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety. We conclude a reasonable mind would find the facts and circumstances presented in this proceeding to be inadequate to reach the conclusion reached by the Board.

Dr. Smoker also raises constitutional challenges of due process and equal protection. In this regard, Dr. Smoker points out she sought the documents the Board provided to Resurrection for purposes of its evaluation through a motion to produce several months before trial, but it was not until four days before trial that the state produced the 1500 pages of documents that had been provided to Resurrection. Clearly, this substantially impeded Dr. Smoker's ability to cross-examine the state's witnesses at trial and potentially violated her right to due process. However, in light of our resolution of this case on other grounds, we need not reach this issue. *See Sahu*, 537 N.W.2d at 678.

We reverse the decision of the district court and remand to the Board for entry of an order dismissing the disciplinary action against Dr. Smoker.

REVERSED AND REMANDED.

BEFORE THE IOWA BOARD OF MEDICINE

	)	FILE NO. 02-09-623
IN THE MATTER OF THE	)	DIA NO. 10DPHMB008
STATEMENT OF CHARGES AGAINST))	
)	
WENDY R. SMOKER, M.D.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

Date: January 24, 2011.

On June 21, 2010, the Iowa Board of Medicine (Board) filed a Statement of Charges against Wendy R. Smoker, M.D. (Respondent), charging her with:

Count I: Excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety, in violation of Iowa Code sections 147.55(4), 148.6(2)(h), 272C.10(4), and 653 IAC 23.1(6).

Count II: Suffering from a physical, neuropsychological or mental condition which may impair her ability to practice medicine and surgery with reasonable skill and safety, in violation of Iowa Code sections 148.6(2)(h) and 653 IAC 23.1(8).

A hearing was initially scheduled on August 26, 2010. Two continuances were granted, and the hearing was held on December 21, 2010 before the following Board members: Janice K. Galli, D.O.; Analisa Haberman, M.D.; Blaine Houmes, M.D.; Dana Shaffer, D.O.; Tom Drew and Paul Thurlow, public members. Respondent was represented by attorney David L. Brown. Assistant Attorney General Theresa O'Connell Weeg represented the state. The hearing was open to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1) and 653 IAC 25.18(12). 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; Respondent's Motion to Continue, State's Resistance, Order Granting Continuance and Setting Discovery Deadlines; Respondent Motion for Additional Time to Designate Expert, Resistance, Order Granting Additional Time; State's Motion to Strike, Respondent Motion to Continue and Resistance to Motion to Strike, Board Order Continuing Hearing; Respondent Motion to Compel & Resistance to State's Designation of Expert, State's Resistance and Reply, Order Denying Motion to Compel and Granting Motion to Exclude State's Expert; testimony of the John Larson, M.D.; Russell Bardin; Craig Rypma, Ph.D.; and Respondent; deposition testimony of the following witnesses: Cynthia Geyer, Deb Anglin, Jack Kademian, Joan Maley, John Larson, Laurie Fajardo Contempt; Laurie Fajardo; Mark Wilson; Matthew Howard; and Russell Bardin; State Exhibits 1-11 and Respondent Exhibits 1-19 (See Exhibit Indexes for exhibit descriptions; State Exhibit 10 is the Addendum to Respondent's IPHP Recovery Contract; State Exhibit 11 is a computer disc of all written materials provided by the Board to Resurrection Health Care prior to Respondent's evaluation.)

FINDINGS OF FACT

1. Respondent received her undergraduate and medical education at the University of Iowa. Respondent was issued Iowa medical license number 21274 on August 17, 1978. Respondent's Iowa medical license is active and will next expire on February 1, 2012.

Respondent has practiced radiology at the University of Iowa Hospitals and Clinics (UIHC) since December 2001. Respondent is a Professor of Radiology and Director of the UIHC Divisions of Neuroradiology and Head and Neck Radiology. Respondent also serves as director of the UIHC Neuroradiology and Head and Neck Radiology Fellowship Programs. Respondent is an internationally recognized expert and frequent speaker in her field. (Testimony of Respondent; Depositions of Joan Maley, M.D.; Matthew Howard, M.D.; Laurie Fajardo, M.D.; Jack Kademian, M.D.; Respondent Exhibit 1)

2. Prior to returning to Iowa in 2001, Respondent was a professor and director of neuroradiology at the Medical College of Virginia. Respondent's alcohol use increased and became problematic while she was living in Virginia. Although Respondent never drank while working, she admitted drinking Grand

Marnier in her morning coffee when she was not working and also admitted that she was unable to stop drinking. After suffering a blackout, Respondent completed a three month inpatient treatment program at the Farley Center in Virginia. Respondent entered the Virginia Physician Health Program for alcohol dependence counseling and monitoring in 2000. In 2001, Respondent suffered a brief relapse and returned to the Farley Center for a six-week relapse program. (Testimony of Respondent; State Exhibit 6)

3. After returning to Iowa in 2001, Respondent self-reported to the Iowa Physician Health Program (IPHP)¹ for alcohol dependence. On November 30, 2001, Respondent entered into a confidential Physician Health Contract with the IPHP. Respondent's Physician Health Contract initially had an expiration date of October 25, 2006. Respondent relapsed in 2003 and returned to in-patient treatment and the IPHP extended her Physician Health Contract to December 23, 2008. On December 23, 2008, Respondent's IPHP contract expired, and she was discharged from the IPHP. (Deposition of Deb Anglin; State Exhibit 3)

Paragraph 25 of Respondent's IPHP contract specified that if Respondent experienced a relapse or the recurrence or worsening of her condition anytime after she was released from the IPHP contract, the IPHP may refer the contract and all documents related to Respondent's impairment and recovery to the Board to be maintained as part of a confidential investigative file. In addition, by signing the contract, Respondent acknowledged that although the material in the investigative file is confidential, information from those files may be incorporated into a public document in the event the Board filed a Statement of Charges. (State Exhibit 10)

4. Respondent admits that she is an alcoholic and acknowledges that she is unable to safely drink alcohol on a social basis without returning to her past pattern of alcohol abuse. Based on the record, it appears that Respondent's relapses have been triggered by stressful events in her personal life. There is no evidence that Respondent has consumed alcohol or been impaired while working. (Testimony of Respondent; Dr. John Larson; Dr. Craig Rypma; State Exhibit 6)

¹ The IPHP assists and monitors the recovery, rehabilitation, and maintenance of licensees who self-report impairments or are referred by the Board and, as necessary, notifies the Board in the event of noncompliance with contract provisions. 653 IAC 14.3.

5. Since her release from the IPHP, Respondent has continued to attend four Alcoholics Anonymous (AA) meetings each week and has had an active AA sponsor. Respondent also has a life coach, who lives in Sioux City who helps her deal with the stresses of life. Respondent speaks to her life coach by telephone approximately twice a month. (Testimony of Respondent)

6. Dr. Joan Maley, who is a colleague of Respondent in the UIHC head and neck radiology department, was assigned as Respondent's workplace mentor while Respondent was under the IPHP contract. In late February or early March 2009, Dr. Jack Kademian told Dr. Maley that he had observed Respondent intoxicated at a national medical conference in Orlando, Florida, in February 2009. Dr. Kademian is also a faculty and staff member in the UIHC head and neck radiology department. Dr. Maley informed Dr. Kademian that Respondent was no longer under contract with the IPHP, and Dr. Maley took no action based on Dr. Kademian's report. (Deposition testimony of Joan Maley, M.D.; Jack Kademian, M.D.)

In September 2009, Dr. Kademian reported to Dr. Maley that he had seen Respondent impaired at a dinner following a professional conference (the Dolan lecture) in Iowa City. Dr. Kademian asked whether he had an ethical obligation to report Respondent's drinking to the Board. Dr. Maley advised Dr. Kademian that he could talk to the "ethics people" at the hospital about his reporting obligations.

Dr. Maley contacted two other UIHC faculty members, Dr. Matthew Howard and Dr. Sato, who were also present at the same dinner with Respondent. Dr. Howard called Dr. Maley to report that he saw Respondent drinking alcohol at the Dolan dinner. Dr. Howard expressed concern because he thought that Respondent was "still on her program." Dr. Sato told Dr. Maley that Respondent "did not seem impaired to him." (Deposition testimony of Jack Kademian, M.D.; Joan Maley, M.D., pp. 50-51; and Matthew Howard, M.D.)

Dr. Maley spoke to Respondent after speaking to Dr. Kademian, Dr. Sato, and Dr. Howard. Respondent admitted to Dr. Maley that she was drinking wine at the Dolan dinner. (Deposition testimony of Joan Maley, M.D.)

7. On October 27, 2009, Dr. Kademian called the Board to report that he had observed Respondent drinking wine at two professional social events and that he believed that she was intoxicated at both of these events. Dr. Kademian also

reported second-hand information that Respondent had been drinking at a national meeting in October 2009. (Respondent Exhibit 4; Depositions of Deb Anglin and Jack C. Kademian, M.D.)

Dr. Kademian's complaint was referred to Deb Anglin, Coordinator for the IPHP. Respondent was out of town (in Mexico) at the time the complaint was made. Deb Anglin left a message on Respondent's voice mail telling Respondent that she needed to speak to her. When Respondent returned Deb Anglin's call on Friday, October 30, 2009, Ms. Anglin told Respondent that the Board had received a report that she had relapsed. Respondent admitted that she had "slipped" a few times but told Ms. Anglin that there had been no recent incidents, and she was working her program.

Deb Anglin urged Respondent to self report her relapse to the IPHP. Respondent was reluctant to self-report and requested additional time. Ms. Anglin told her that if she did not self-report by Monday (November 2) Respondent would have to "take her chances with the Board." Respondent told Ms. Anglin that she would be returning to Iowa on Saturday night and would do a urinalysis (UA) on Monday. (Respondent Exhibit 4; Deposition of Deb Anglin)

On Monday, November 2, 2009, Deb Anglin left a message for Respondent stating that she would need Respondent's self-report by fax or email by the end of the day. Respondent returned Ms. Anglin's call on November 3, 2009, and asked for additional time to consult with others before self-reporting. Ms. Anglin called and left additional urgent messages for Respondent on November 4, 2009. When Respondent called back, Ms. Anglin informed her that they would be turning her case over to the Board if she did not submit her self-report by 4:30 p.m. that day. (Respondent Exhibit 4; Deposition of Deb Anglin)

Respondent did not self-report her relapse by November 9, 2009, so Ms. Anglin referred the complaint to the Board's chief investigator, Russell Bardin. Mr. Bardin submitted his Investigative Report on January 15, 2010. Mr. Bardin reviewed and attached Deb Anglin's IPHP Executive Summary but did not interview Respondent, Dr. Kademian, or any other witnesses. This was Mr. Bardin's first case involving a licensee who had been in the IPHP. Since Respondent had admitted drinking and there were no allegations of any work problems, Mr. Bardin felt he should wait for direction from the Board before conducting interviews. (Depositions of Deb Anglin and Russell Bardin; Testimony of Russell Bardin; State Exhibit 4).

8. On February 4, 2010, the Board issued a Confidential Evaluation Order requiring Respondent to undergo a comprehensive physical, neuropsychological and substance abuse evaluation, as authorized by Iowa Code section 272C.9(1). (State Exhibit 5) Respondent complied and was evaluated at Resurrection Health Care from March 31, 2010 through April 2, 2010. (State Exhibit 6)

Resurrection Health Care is a multidisciplinary assessment program that evaluates professionals from all over the country for issues related to addiction, behavior, and mental illness. The program obtains documentation from the referring source (e.g. hospitals, licensing boards, physician health programs) and gathers background information, including family history. Professionals are evaluated by a psychiatrist, a psychologist, an addiction specialist, and an internist. The professional is also asked to provide collateral contacts for the program to call to collect additional information. John Larson, M.D. is the staff psychiatrist at Resurrection who evaluated Respondent. Dr. Larson is board certified in adult psychiatry and is also certified by the American Society of Addiction Medicine. (Testimony of John Larson, M.D.; State Exhibit 7)

Resurrection issued its Comprehensive Assessment Report following the evaluation. During her evaluation, Respondent admitted consuming alcohol on the following two occasions after her release from her IPHP contract on December 23, 2008:

- Respondent admitted buying a bottle of wine on September 12, 2009 and drinking two glasses of wine at home. Respondent described it as a “stupid thing to do” but had no explanation for why she did it.
- Respondent admitted drinking 3 or 4 glasses of wine on September 14, 2009 at the annual Dolan dinner hosted by the UIHC Neuro-Radiology Department.² Respondent explained that someone handed her a glass of wine at the dinner, and she drank it. As the dinner progressed, Respondent admits that she drank 3 or 4 glasses of wine. Respondent

² Dr. Dolan was a former member of UIHC faculty who trained Respondent and served as her mentor. The University has an endowed annual Dolan lectureship in head and neck radiology. Each year, a guest lecturer presents a conference and then is honored at a dinner attended by University faculty and staff and by Dr. Dolan’s widow, his children, and his grandchildren. As the head of neuroradiology, Respondent is in charge of the entire event, including selection of the guest lecturer, choosing the restaurant for the dinner, and serving as master of ceremonies at the dinner. (Testimony of Respondent; Deposition of Laurie Fajardo, M.D.)

could not explain why she would choose to drink at a dinner in front of a number of her colleagues who knew that she should not be drinking.

Respondent denied drinking on any other occasion after her release from the IPHP. (State Exhibit 6; Testimony of John Larson, M.D.)

The Resurrection Comprehensive Evaluation Report provided the following Axis I diagnoses for Respondent, based on the DSM-IV: Alcohol Dependence, In Partial Sustained Remission, and Major Depressive Disorder by History. The report noted that Respondent was treated for depression while she was in her 40's. In 2003, Respondent was restarted on medication for depression and has taken it continuously since that time. She has been advised not to discontinue the anti-depressant medication.

Resurrection recommended, in relevant part, that Respondent:

- Return to a monitoring program through the Board to assure that she is abstinent from alcohol and other mood-altering chemicals, except as prescribed;
- Obtain psychotherapy, from a Board-approved therapist, to help identify and alleviate the sources of stress and emotional pain in her life; and
- Obtain a workplace physician-mentor to act as her coach and advocate;

It was the conclusion of the evaluators at Resurrection that with Respondent's history of relapse, she would become a danger to the public and her patients if she resumes actively drinking. (Testimony and Deposition of John Larson, M.D.; State Exhibit 6)

9. Carl Malin is a substance abuse professional employed by Resurrection Health Care who participated in Respondent's evaluation. Carl Malin sent a letter dated September 8, 2010, in response to Deb Anglin's request for further information, which further explains the basis for Respondent's diagnosis as Alcohol Dependent, In Partial Sustained Remission. Mr. Malin noted:

- Respondent's prior diagnoses of Alcohol Dependence in the early 2000's by both Farley Center and Rogers Memorial Hospital, which she clearly accepted at the time;
- Respondent's unsuccessful efforts to control her substance use as seen in her becoming intoxicated at the Dolan Lecture, attended by many of her colleagues; DSM IV #4;

- Respondent's continued substance use despite knowledge of having a persistent or recurrent psychological problem (depression) that is likely to be exacerbated by the substance, DSM IV#7. (State Exhibit 9)

10. Licensed Psychologist Craig B. Rypma, Ph.D. has been in private practice since 1984. He primarily performs forensic evaluations for civil and criminal cases but also maintains a small clinical practice where he evaluates and treats nervous and mental disorders. Dr. Rypma performed a Civil Forensic Evaluation of Respondent on August 2, 2010, and submitted a written report dated September 14, 2010. Dr. Rypma administered psychological testing and conducted his own clinical interview of Respondent. Dr. Rypma also reviewed the evaluation reports completed at Resurrection Health Care in 2008 and 2010, the Statement of Charges, the Board's Investigative File, and discovery documents.

Following his evaluation, Dr. Rypma provided the following Axis I diagnoses for Respondent, based on the DSM-IV: Alcohol Dependence, In Full Remission, and Major Depressive Disorder by History. In his testimony, Dr. Rypma acknowledged that one of the DSM criteria for Alcohol Dependence in Full Remission is 12 months of sobriety. Even by her own report, Respondent had not yet had 12 months sobriety at the time of her August 2010 evaluation. In Dr. Rypma's opinion, there is no basis for Resurrection's recommendation that Respondent return to a Board monitoring program for her alcoholism. Dr. Rypma believes that Respondent is able to deal with her alcohol addiction in a responsible and effective manner through attendance at Alcoholics Anonymous (AA) and with the assistance of her AA sponsor and life coach. (Testimony of Dr. Craig B. Rypma, Ph.D.; Respondent Exhibit 10, 11)

11. Respondent's professional colleagues at UIHC have never observed her to be impaired by alcohol while working. (Deposition testimony of Laurie Fajardo, M.D.; Mark Wilson, M.D.; Matthew Howard, M.D.; Joan E. Maley, M.D.; Jack Kademian, M.D.)

CONCLUSIONS OF LAW

The Board is statutorily authorized to discipline physicians for habitual intoxication or addiction to the use of drugs or for inability to practice medicine with reasonable skill and safety by reason of illness, drunkenness, or excessive

use of drugs, narcotics, chemicals, or other type of material. Iowa Code sections 147.55(4), 272C.10(4), and 148.6(2)(h)(2009).

Iowa Code section 272C.4(6) requires the Board to define by rule acts or omissions that are grounds for revocation or suspension of a license under Iowa Code sections 147.55 and 148.6. Pursuant to this authority, the Board has adopted 653 IAC Chapter 23.

653 IAC 23.1 provides, in relevant part:

653-23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 252J, 261, or 272C or 2008 Iowa Acts, Senate File 2428, division II, 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(6) Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, ...in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

Respondent is an admitted and diagnosed alcoholic. She voluntarily participated in the Iowa Physician's Health Program, from which she was discharged on December 23, 2008. The preponderance of the evidence established that Respondent subsequently relapsed when she consumed alcohol on two occasions in September 2009. Respondent admits that on September 12, 2009, she purchased a bottle of wine and drank two glasses of wine at home. Respondent further admits that two days later she drank 3-4 glasses of wine while attending a public event with several of her colleagues. This second relapse demonstrated a significant escalation in the Respondent's risk taking with respect to both the amount of alcohol consumed and the very public manner in which she chose to drink. Respondent's consumption of 3-4 glasses of wine, in the presence of her colleagues at a public event where she had significant professional obligations, demonstrated extremely poor judgment as well as her inability to control the impulse to drink. These facts raise very significant concerns about the stability of Respondent's recovery and the adequacy of her current recovery program,

particularly in times of personal stress. The preponderance of the evidence established that Respondent, a diagnosed alcoholic, has engaged in the excessive use of alcohol in a manner which may impair her ability to practice her profession with reasonable skill and safety, in violation of Iowa Code sections 147.55(4), 272C.10(4), 148.6(2)(h) and 653 IAC 23.1(6).

This is true even though there is no evidence that Respondent has ever provided medical care while impaired by alcohol. The Iowa Supreme Court has recognized that in light of the public health and safety concerns associated with health care, the Board does not have to wait until habitual intoxication becomes so debilitating that there is immediate danger of harm to patients. *Paulson v. Board of Medical Examiners*, 592 N.W.2d 677, 680-681 (Iowa 1999); *Burns v. Iowa Board of Nursing*, 495 N.W. 2d 698, 701(Iowa 1993). Based on this record, the Board was persuaded that if Respondent continues to relapse and consume alcohol, her professional judgment and medical practice will be adversely affected.

As an admitted and diagnosed alcoholic, Respondent is unable to consume alcohol in a controlled manner without escalating her consumption. Based on this record, the Board is persuaded that Respondent's current self-guided recovery program is insufficient to maintain her sobriety. The opinions and recommendations from Resurrection were more persuasive than the contrary conclusions in Dr. Rypma's report. The Board was convinced that Respondent's alcoholism is not in full remission. She was not in full remission when the Statement of Charges was filed. Even when Dr. Rypma evaluated Respondent in August 2010, it had not been a full 12 months since Respondent's admitted relapse. In addition, Respondent has provided no urinalysis results or clinical evidence to confirm that she has abstained from alcohol since her admitted relapses.

The Board has not made any findings concerning Dr. Kademian's allegations, denied by Respondent, that Respondent also consumed alcohol at out-of-state conferences in February 2009 and October 2009. The Board concluded that it was unnecessary to resolve these additional allegations of drinking in light of Respondent's admission that she did relapse on September 12 and 14, 2009. For purposes of this decision, it is irrelevant to the Board whether Respondent relapsed on 2 or 4 occasions. Respondent's admitted relapses are significant enough to require Board intervention and monitoring.

Count II alleged that Respondent suffers from a physical, neurological or mental condition which may impair a physician's ability to practice the profession with reasonable skill and safety, in violation of Iowa Code section 148.6(2)(h) (2009) and 653 IAC 23.1(8). This count was based on Respondent's diagnosis of major depression by history. Respondent's depression appears to be adequately controlled by medication at this time, and the Board was not persuaded to make a separate finding of violation based on Count II. Nevertheless, the Board has serious concerns about the relationship between Respondent's two diagnoses. Respondent's alcohol relapses typically occur at times of stress in her personal life. Using alcohol, which is a known depressant, will likely exacerbate any depressive symptoms that Respondent may experience. The Board believes that this concern may be adequately addressed by requiring Respondent to obtain cognitive behavioral therapy as part of her alcohol recovery program.

DECISION AND ORDER

CITATION AND WARNING: Respondent is hereby **CITED** for excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety. Respondent is hereby **WARNED** that such conduct in the future may result in further disciplinary action, including suspension or revocation of her Iowa medical license.

CIVIL PENALTY: Respondent shall pay a **\$5,000 civil penalty**. The civil penalty shall be paid within twenty (20) days of the date of this Order and shall be made payable to the Treasurer of Iowa and mailed to the Executive Director of the Board. The civil penalty shall be deposited in the State General Fund.

FIVE YEARS PROBATION: Respondent is hereby placed on **probation for a period of five (5) years**, subject to the following terms and conditions:

- A. **Monitoring Program:** Respondent shall contact Shantel Billington, Monitoring Programs, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654 to establish a monitoring program. Respondent shall fully comply with all requirements of the monitoring program.
- B. **Alcohol Prohibition:** Respondent shall not consume alcohol.

- C. **Controlled or Prescription Drug Use:** Respondent shall not use any controlled or prescription drug in any form unless it 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 treating physician or other treating health care provider of her medical history prior to receiving any controlled or prescription drug.

- D. **Drug Screening Program:** Respondent shall submit to the Board's drug screening program. Respondent shall fully comply with all requirements of the drug-screening program. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening, all costs of which shall be paid by Respondent.

- E. **Substance Abuse Meetings:** Respondent shall attend at least three Alcoholics Anonymous (AA) or similar substance abuse meetings each week. Respondent shall obtain documentation of attendance and include copies of this documentation with her quarterly reports. Respondent shall have at least one weekly contact with her AA sponsor.

- F. **Therapy:** Respondent shall receive ongoing cognitive behavioral therapy from Board-approved therapist. Respondent's therapist shall submit written quarterly reports to the Board no later than 1/20, 4/20, 7/20, and 10/20 of each year of this Order. Respondent shall continue in therapy until termination of treatment is recommended by her therapist and approved by the Board.

- G. **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to her compliance with all the terms and conditions of this Decision and Order. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.

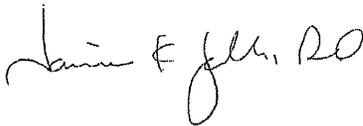
- H. **Board Appearances:** Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and

location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(d).

- I. **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 the quarterly report required under this Order. The monitoring fee shall be sent to: Shantel Billington, 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.C.

IT IS FURTHER ORDERED, 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. 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 24th day of January, 2011.



Janice K. Galli, Board Secretary
Iowa Board of Medicine

cc: David L. Brown
Theresa O'Connell Weeg

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

	)	FILE NO. 02-09-623
IN THE MATTER OF THE	)	DIA NO. 10DPHMB008
STATEMENT OF CHARGES AGAINST)	
)	
WENDY SMOKER, M.D.	)	ORDER DENYING MOTION
	)	TO COMPEL AND GRANTING
Respondent	)	MOTION TO EXCLUDE EXPERT

The Iowa Board of Medicine (Board) filed a Statement of Charges against Wendy Smoker, M.D. (Respondent) on June 21, 2010, charging her with excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety [Count I], and with suffering from a physical, neuropsychological or mental condition which may impair her ability to practice medicine and surgery with reasonable skill and safety. The hearing has been continued twice and is currently scheduled for December 21, 2010.

On December 2, 2010, Respondent filed two prehearing motions: A Motion to Compel and a Resistance to State's Expert Designation for Failure to Comply with Iowa R. Civ. P. 1.508 and 1.509. The state filed a Resistance and a Reply to these motions on December 7, 2010. Respondent filed a Combined Response on December 10, 2010. The Board delegated ruling on the motions to the undersigned ALJ, and the parties were heard on the motions on December 10, 2010 at 3:30 p.m. A prehearing conference was also conducted at that time.

The Board granted Respondent's second continuance request on September 20, 2010 at the time of the scheduled hearing. At that time, the Board told the parties that the hearing would be held within 60-90 days, that all discovery must be completed within 30 days (October 20, 2010), and that all prehearing motions must be filed within 35 days (October 25, 2010). On October 27, 2010, the Board issued a Hearing Order rescheduling the hearing for December 21, 2010. Based on this ruling, Respondent's Motion to Compel is untimely and the state's designation of a new witness is untimely. Respondent's Motion to Compel must be denied and Respondent's Resistance to the state's designation of an additional expert must be granted. The attorneys were so advised at the time of the motion hearing.

IT IS THEREFORE ORDERED that Respondent's Motion to Compel is DENIED. IT IS FURTHER ORDERED that Respondent's Resistance to State's Expert Designation is GRANTED. IT IS FURTHER ORDERED that the parties shall file all exhibits and testimonial depositions with the Board office in electronic format by December 16, 2010.

Dated this 13th day of December, 2010.



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

cc: David L. Brown, 218 Sixth Ave., 8th Fl, Des Moines, Iowa 50309 (and by email)
Theresa O'Connell Weeg, Department of Justice, Hoover Bldg, 2nd Fl.
(LOCAL) (and by email)
Kent Nebel, Iowa Board of Medicine, 400 SW 8th Street, Suite C (LOCAL)
(And by email)

BEFORE THE IOWA BOARD OF MEDICINE

	)	FILE NO. 02-09-623
IN THE MATTER OF THE	)	DIA NO. 10DPHMB008
STATEMENT OF CHARGES AGAINST)	
)	
WENDY SMOKER, M.D.	)	ORDER GRANTING MOTION
	)	FOR ADDITIONAL TIME TO
Respondent	)	DESIGNATE EXHIBITS AND
	)	WITNESSES

The Iowa Board of Medicine (Board) filed a Statement of Charges against Wendy Smoker, M.D. (Respondent) on June 21, 2010, charging her with excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety [Count I], and with suffering from a physical, neuropsychological or mental condition which may impair her ability to practice medicine and surgery with reasonable skill and safety. A hearing was initially scheduled for August 26, 2010. On July 14, 2010, Respondent's Motion to Continue was granted, over the state's objection. At that time, the hearing was continued to September 20, 2010, and the parties were ordered to exchange their exhibit books and witness lists by September 3, 2010.

The state has timely disclosed that it will call one witness at hearing (John Larson, M.D.) and will offer eight exhibits. On September 8, 2010, Respondent filed a Motion for Additional Time to Designate Exhibits and Witnesses based on "difficulty in obtaining responsive discovery as well as difficulty in completing depositions of witnesses identified in the Board of Medicine's investigative file..." This was five days after the deadline to exchange witness and exhibit lists. On September 14, 2010, the state filed a Resistance with attached Exhibits A-B. The Board delegated ruling on the motion to the undersigned administrative law judge.

Respondent's attorney deposed three people on August 30, 2010: Russell Bardin, Deb Anglin, and John Keith Larson, M.D., and four additional people on September 3, 2010: Mark C. Wilson, M.D.; Joan E. Maley, M.D.; Matthew Howard, M.D.; and Cynthia Geyer. Apparently, Respondent also had administrative subpoenas to depose Dr. Jack Kadamian and Dr. Laura Fajardo on August 30, 2010 but they did not make themselves available. Respondent is apparently attempting to reschedule these depositions.

In his motion, Respondent's attorney indicates that he plans to call an expert witness at hearing, Dr. Craig Rypma, Ph.D. This was not previously disclosed to the state. Respondent's attorney further indicates that he intends to call or present depositions of Respondent, Russell Bardin, Deb Anglin, Dr. Wilson, Dr. Maley, Dr. Howard, Cynthia Geyer, Dr. Kadamian, M.D. Respondent further indicates that he has already told counsel for the state that he intends to offer the exhibits that have already been marked as part of those depositions, as well as any additional documents produced by the attorney general's office.

The state asserts that Respondent's motion should be denied as untimely. In the alternative, that state asks that Respondent be required to designate witnesses and exhibits by the end of the business day on Wednesday, September 15th but that he should be barred from designating any expert witness, given the lateness of the designation and the prejudice to the state. The state also asks that Respondent be barred from naming as a witness any person not identified in the Board's investigative file or any person for whom there has not already been filed a notice of deposition.

Respondent's attorney does not explain why he waited until September 8, 2010 to file his motion to extend the deadlines. Respondent's attorney has also not provided any justification for waiting until September 8, 2010 to name an expert witness. Finally, it appears that most if not all of the issues cited by Respondent's attorney as a basis for his motion would have been avoided if notices of deposition had been issued promptly after the continuance order was issued. Under the circumstances, it is unfair to allow Respondent to designate witnesses or exhibits for which the state has had inadequate notice.

Order

IT IS THEREFORE ORDERED that the Motion to For Additional Time To Designate Exhibits and Witnesses is GRANTED, in part, and DENIED, in part. Respondent shall have until 4:30 p.m. on Wednesday, September 15, 2010 to designate witnesses and exhibits. However, Respondent's witness list shall be limited to those persons who have been deposed, who have had a notice of deposition, or whose name appears in the Board's investigative file. Respondent may not designate an expert witness at this late date. Respondent's exhibits shall be limited to documents that were identified as exhibits at the time of deposition or documents from the Board's investigative file.

Dated this 14th day of September, 2010.

Margaret LaMarche

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

cc: David L. Brown, 218 Sixth Ave., 8th Fl, Des Moines, Iowa 50309
Theresa O'Connell Weeg, Department of Justice, Hoover Bldg, 2nd Fl.
(LOCAL)
Kent Nebel, Iowa Board of Medicine, 400 SW 8th Street, Suite C (LOCAL)
(And by Email)

BEFORE THE IOWA BOARD OF MEDICINE

	)	FILE NO. 02-09-623
IN THE MATTER OF THE	)	DIA NO. 10DPHMB008
STATEMENT OF CHARGES AGAINST)	
)	
WENDY SMOKER, M.D.	)	ORDER GRANTING MOTION
	)	TO CONTINUE AND SETTING
Respondent	)	DISCOVERY DEADLINES

Procedural Background/Motion to Continue

The Iowa Board of Medicine (Board) filed a Statement of Charges against Wendy Smoker, M.D. (Respondent) on June 21, 2010, charging her with excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety [Count I], and with suffering from a physical, neuropsychological or mental condition which may impair her ability to practice medicine and surgery with reasonable skill and safety. A hearing was scheduled for August 26, 2010.

Respondent practices neuroradiology and is a department head at the University of Iowa Hospitals and Clinics. She has twice been treated for substance (alcohol) abuse and her medical practice has been subject to monitoring by two state medical boards due to her abuse of alcohol. (State's Resistance, Att. B) The pending Statement of Charges alleges Respondent was observed to be intoxicated at three social events in 2009. (Statement of Charges) Respondent submitted to a comprehensive assessment from March 31-April 2, 2010, and the evaluating facility diagnosed her with Alcohol Dependence, In Partial Sustained Remission and with Major Depressive Disorder By History. The evaluating program recommended that Respondent return to a Board monitoring program to assure that she is abstinent from alcohol and other mood-altering chemicals, except as prescribed by her physician. (State's Resistance, Att. B)

Respondent's attorney filed a Motion to Continue Hearing on July 2, 2010, citing a prior professional commitment on the day set for hearing. Respondent's attorney, David L. Brown, asked that the hearing be continued to a mutually convenient date and further asked that he be given additional time to appropriately respond to the charges.

A telephone prehearing conference was held on July 7, 2010. Attorney David L. Brown appeared for Respondent, and Assistant Attorney General Theresa O'Connell Weeg appeared for the state. The attorneys argued the continuance motion at the prehearing conference, although Ms. Weeg had not yet filed a written Resistance to the motion. Mr. Brown argued that in addition to his trial conflict for August 26th, he also needed additional time to prepare for hearing. In addition, other potential hearing dates and possible discovery deadlines were discussed. Mr. Brown and Ms. Weeg both indicated that they were available for hearing on September 20, 21, and 23.

Ms. Weeg filed a written Resistance to the continuance motion on July 12, 2010 and also filed answers to Respondent's interrogatories and requests for production. Ms. Weeg indicated that the entire investigative file was 43 pages long, and that only one additional document (Board minutes) was provided in response to the discovery that had not previously been provided to Mr. Brown as part of the investigative file. Ms. Weeg further indicated that she planned to present one witness and eight exhibits at hearing. Ms. Weeg strongly objected to a continuance, arguing that the case has essentially been pending since February, when Respondent was ordered to a comprehensive evaluation. Ms. Weeg argues that in light of the evaluation program's recommendation of monitoring, it is not in the public interest to continue the hearing unless Respondent agrees to participate in a Board monitoring program in the interim.

The Board has referred the motion to the undersigned administrative law judge for ruling.

Analysis

The motion to continue was promptly and timely filed approximately eight weeks prior to the hearing. See 653 IAC 25.16. 653 IAC 25.16(2) provides a list of factors to consider in determining whether a continuance should be granted, including prior continuances, the interests of all parties, the public interest, the likelihood of informal settlement, the existence of an emergency, any objection, any applicable time requirements, scheduling conflicts, the timeliness of the request, and other relevant factors.

This is Respondent's first continuance request. At prehearing conference, Mr. Brown explained that he has a two week jury trial that begins on August 17, 2010, and therefore is unable to attend the hearing on the date currently

scheduled. This constitutes good cause to grant a first continuance request. The state's arguments concerning the public interest do not justify denying a first continuance request when Respondent's attorney was not consulted prior to setting the hearing date. Nevertheless, the state makes a persuasive argument that the hearing should not be delayed past September. The case should not require extensive preparation time, and Respondent has been aware of the factual and legal issues since February. So long as the case proceeds to hearing in September, Respondent should not be required to comply with a monitoring requirement pending hearing.

Order

IT IS THEREFORE ORDERED that the Motion to Continue is GRANTED. IT IS FURTHER ORDERED that the hearing shall be held on **Monday, September 20, 2010 at 8:30 a.m.** in a conference room at the Board office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

IT IS FURTHER ORDERED that the attorneys shall exchange their exhibit books and witness lists by September 3, 2010 so that any objections can be resolved in a timely manner. The attorneys shall submit their exhibit books for distribution to the Board by September 10, 2010.

Dated this 14th day of July, 2010.

Margaret LaMarche

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

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(LOCAL)
Kent Nebel, Iowa Board of Medicine, 400 SW 8th Street, Suite C (LOCAL)
(And by Email)

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

WENDY R. SMOKER, M.D., RESPONDENT

File No. 02-09-623

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on June 21, 2010, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2). Respondent was issued Iowa medical license no. 21274 on August 17, 1978. Respondent's Iowa medical license is active and will next expire on February 1, 2012.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on August 26, 2010, 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. Prehearing Conference. A prehearing conference will be held by telephone on July 7, 2010, at 10:00 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 IAC 25.15.

5. 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.

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: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2nd 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 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

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 and 653 IAC 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 IAC 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. Respondent is charged pursuant to Iowa Code sections 147.55(4), 148.6(2)(h) and 272C.10(4) and 653 IAC 23.1(6) with excessive use of alcohol which may impair her ability to practice medicine with reasonable skill and safety.

COUNT II

12. Respondent is charged pursuant to Iowa Code section 148.6(2)(h) and 653 IAC 23.1(8) with suffering from a physical, neuropsychological or mental condition which may impair her ability to practice medicine and surgery with reasonable skill and safety.

STATEMENT OF THE MATTERS ASSERTED

13. Respondent practices radiology in Iowa City, Iowa.

14. In 2000, while practicing medicine in Virginia, Respondent participated in the Virginia Physician Health Program for alcohol dependence counseling and monitoring.

15. On October 25, 2001, Respondent self-reported to the Iowa Physician Health Program (IPHP) for alcohol dependence. On November 30, 2001, Respondent entered into a Physician Health Contract with the IPHP with an expiration date of October 25, 2006.

16. In March 2008, the IPHP directed Respondent to complete a substance abuse evaluation due to a series of urine drug tests which showed low level positives for alcohol (EtG).

17. The IPHP extended the duration of Respondent's Physician Health Contract until December 23, 2008, following her relapse with alcohol.

18. On December 23, 2008, Respondent's Physician Health Contract expired and she was discharged from the IPHP.

19. The Board received information which raises concerns that Respondent currently suffers from alcohol dependence and/or abuse which may impair her ability to practice medicine with reasonable skill and safety including the following:

- A. Respondent was observed to be intoxicated at a social event during a medical conference in February 2009;
- B. Respondent was observed to be intoxicated at a subsequent social event;
- C. Respondent was observed to be intoxicated at a social event during a national medical conference in September 2009; and
- D. On October 30, 2009, Respondent contacted the IPHP Coordinator and admitted that she had consumed alcohol on a couple of occasions.

20. Respondent was contacted and given the opportunity to participate in the IPHP monitoring program and she declined.

21. On February 4, 2010, the Board ordered Respondent to complete a comprehensive physical, neuropsychological and substance abuse evaluation at a Board-approved assessment program. Respondent completed the evaluation on March 31- April 2, 2010.

22. The Board alleges that Respondent suffers from alcohol dependence and a physical, neuropsychological or mental health condition which may impair her ability to practice medicine and surgery with reasonable skill and safety.

E. SETTLEMENT

23. 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

24. On June 21, 2010 the Iowa Board of Medicine found probable cause to file this Statement of Charges.



Janice Galli, D.O., Secretary
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686