

BEFORE THE IOWA BOARD OF MEDICINE

**IN THE MATTER OF THE
REINSTATEMENT APPLICATION
FILED BY:**

**DIA NO. 11IBM016
FILE NOS. 02-08-606, 02-09-001,
& 02-09-677**

VERNON VARNER, M.D.

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

Date: January 31, 2012

Note: Portions of this order have been redacted because the information is confidential investigative information pursuant to Iowa Code Section 272C.6.4.

On September 3, 2010, the Iowa Board of Medicine (Board) and Vernon Varner, M.D. (Respondent) entered into a Combined Statement of Charges and Settlement Agreement that indefinitely suspended Respondent's medical license and set forth terms for reinstatement. On August 18, 2011, the Board denied Respondent's request to terminate the suspension of his license and restore his license to unrestricted status. Respondent requested a formal hearing. A reinstatement hearing was held on December 15, 2011, before the following Board members: Siroos S. Shirazi, M.D., Chairperson; Colleen Stockdale, M.D.; Analisa Haberman, D.O.; Blaine Houmes, M.D.; Dana Shaffer, D.O.; Diane Clark and Amber Mian. Respondent appeared and was represented by attorney James Shipman. Assistant Attorney General Theresa O'Connell Weeg represented the state of Iowa. [REDACTED]

[REDACTED] The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 653 IAC 24.2(4) and 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 Reinstatement Hearing Order; [REDACTED]; [REDACTED]; Respondent's Objections to State's Exhibits [REDACTED]; [REDACTED]; State's Prehearing Brief; Respondent's Brief and Argument In Support of Termination of Suspension; Ruling on Objections to State's Exhibits/Motions to Amend; testimony of Respondent and Kent Nebel; Respondent Exhibits 1-39, and State 1-110, 120-128.

FINDINGS OF FACT

I. Background Information/Licensing History

Respondent was issued Iowa medical license number 18577 on February 29, 1972. Respondent concurrently completed his residency in psychiatry and his law degree at the University of Iowa in 1976. Respondent has been certified by the American Board of Psychiatry and Neurology since 1979. (State Exhibits 3, 4; Respondent testimony)

Respondent has a prior history of discipline by the Board. On March 4, 1999, the Board filed a Statement of Charges against Respondent alleging incompetency. In April 2000, Respondent voluntarily submitted to a comprehensive competency evaluation at Colorado Physician's Education Program (CPEP) in Denver, CO. Pursuant to a Settlement Agreement and Final Order dated June 28, 2001, Respondent's medical license was placed on probation for a period of five (5) years. Respondent was required to comply with CPEP's educational plan for him and with a practice monitoring plan. (State Exhibits 3-7)

On July 8, 2004, Respondent and the Board entered into an Amended Settlement Agreement and Final Order. Pursuant to that Order, Respondent and the Board agreed to engage in mediation to resolve the apparent discrepancies between the conclusions of the CPEP educational plan, the CPEP re-evaluation report, and the Board-approved practice monitor. Respondent and the Board further agreed that a Competency Review Panel (CRP) consisting of Respondent's practice monitor and two mutually agreed upon psychiatrists would review Respondent's medical practice and determine if he was competent to continue the practice of psychiatry. On May 6, 2005, the CRP submitted its report that concluded Respondent was competent to practice psychiatry. On August 1, 2005, the Board terminated Respondent's probation and returned his medical license to unrestricted status. (State Exhibits 8-9)

Respondent was hospitalized in February 2006 following a near fatal myocardial infarction. Respondent underwent a neuropsychological evaluation by John Bayless, Ph.D., at the University of Iowa Hospitals and Clinics in April 2006, which revealed evidence of some cognitive dysfunction, likely related to his recent cardiac event. Respondent self-reported his condition to the Iowa Physician Health Program (IPHP). Dr. Bayless conducted a second neuropsychological evaluation in November 2006, which showed some mixed improvement without resolution of the cognitive impairment. In March 2007, the IPHP asked Respondent stop practicing until documentation was obtained indicating that he was safe to practice. After a favorable

re-evaluation of Respondent in September 2007, Respondent was approved to return to practice and discharged from the IPHP. (State Exhibits 10-11, 18; Respondent testimony)

II. *Confidential Evaluation Order Issued May 6, 2010*

On May 6, 2010, the Board issued Respondent a Confidential Evaluation Order, which required Respondent to undergo:

[REDACTED]

B. A Board-approved confidential physical, neuropsychological, mental health, disruptive behavior and professional boundary evaluation under the direction of Glenn Siegel, M.D., Elmhurst Memorial Health Center in Elmhurst, Illinois.

(State Exhibit 12)¹ The Board's Evaluation Order was issued pursuant to Iowa Code section 272C.9(1) and 653 IAC 24.4, which allow the Board to issue various types of evaluation orders upon probable cause. [REDACTED]

[REDACTED]

On July 22-23, 2010, Respondent voluntarily completed the Board ordered comprehensive physical, neuropsychological, mental health, disruptive behavior and professional boundary evaluation at the Professionals Program at Elmhurst Memorial

¹ The Confidential Evaluation Order was also submitted as Respondent Exhibit 7. Respondent and the state submitted many of the same exhibits but assigned different numbers to them. To avoid duplication and confusion, this decision will only cite to the state's exhibit number when both parties submitted the same exhibit.

[REDACTED]

Hospital. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

III. *Combined Statement of Charges and Settlement Agreement Approved September 3, 2010*

On September 3, 2010, the Board approved the Statement of Charges and Settlement Agreement (Combined) that was signed by Respondent on August 25, 2010.³ (State Exhibit 26) Paragraph 14 of this public document states:

14. After careful consideration of the Board's investigative file and assessment report, the Board determined that Respondent may suffer from a physical, neuropsychological or mental health condition which impairs his ability to practice medicine with reasonable skill and safety.

³ Pursuant to Board rule, a combined statement of charges and settlement agreement is an open record. 653 IAC 25.3(5).

The Board determined that Respondent was not safe to practice medicine at this time.

Paragraph 15 of the Settlement Agreement provided, in relevant part:

15. **INDEFINITE SUSPENSION:** Respondent agrees his license will be temporarily suspended. Prior to seeking reinstatement, Respondent shall fully comply with the following requirements and demonstrate that he is safe to return to the practice of medicine:

A. **Board-Approved Neuropsychological Testing:** Respondent shall complete comprehensive neuropsychological testing under the direction of a Board-approved neuropsychologist and submit a written assessment report which indicates that Respondent is safe to return to the practice of medicine. Respondent is responsible for all costs associated with neuropsychological testing;

B. **Board-Approved Psychiatrist:** Respondent shall submit the name and CV of a psychiatrist for approval. The Board-approved psychiatrist shall review and monitor Respondent's use of psychotropic medications and submit a written report which indicates that Respondent is safe to return to the practice of medicine. Respondent shall fully comply with all recommendations of the Board-approved psychiatrist. Respondent is responsible for all costs associated with treatment;

C. **Board-Approved Physician.** Respondent shall submit the name and CV of a physician for Board approval. Respondent shall establish a relationship with a Board-approved physician who shall provide Respondent's health care. The Board-approved physician shall submit a written report which indicates that Respondent is safe to return to the practice of medicine. Respondent shall fully comply with all recommendations of the Board-approved physician...

(State Exhibit 26)

The Board has scheduled business meetings every 8-9 weeks and also meets for disciplinary hearings and brief teleconference meetings. The Board routinely delegates its authority to approve evaluation and treatment providers to its staff. In past cases, the Board has consistently approved specialized multi-disciplinary programs that are

experienced in assessing physicians and other high-level professionals. All of these programs are located outside the state of Iowa. One of the advantages of these programs is that they provide more thorough reports than those prepared by individual providers who are not experienced in evaluating physicians. In this case, the Board delegated authority to approve Respondent's neuropsychologist, psychiatrist, and physician to Kent Nebel, who is the Board's Director of Legal Compliance. (Kent Nebel testimony)

In an August 4, 2010, email to Assistant Attorney General Theresa Weeg, Respondent's attorney, James Shipman, expressed concerns about whether some of the University of Iowa neuropsychologists would be impartial in evaluating Respondent. Mr. Shipman also expressed concern that programs that "cater to state boards" are often negatively biased. (State Exhibit 19) In a follow-up letter, Mr. Shipman proposed Respondent's current primary care physician for Board approval as his health care provider, his former practice monitor for Board approval as his psychiatrist, and the names of two neuropsychologists, one from Milwaukee and one from Utah, for the Board-approved neuropsychological testing. (State Exhibit 24) The Milwaukee neuropsychologist had previously evaluated Respondent and recommended his return to practice in 2007. (State Exhibit 10; Kent Nebel testimony)

Mr. Nebel responded to Mr. Shipman's proposals in a September 2, 2010, email. Mr. Nebel wrote: "We recommend that [Respondent] undergo neuropsychological testing at Acumen Assessments LLC, 730 New Hampshire, Suite 22, Lawrence, KS." In addition, Mr. Nebel noted his concerns about Respondent's proposed physician and psychiatrist. Mr. Nebel wrote: "We recommend that [Respondent] find a new treating physician and submit his name and CV to the Board for approval." He further wrote: "We recommend that [Respondent] find another psychiatrist and submit his name and CV to the Board for approval. (State Exhibit 25; Kent Nebel testimony)

On October 6, 2010, Mr. Shipman sent a letter to Ms. Weeg and Mr. Nebel proposing Erin Bigler, Ph.D., from Brigham Young University in Provo, Utah, as the evaluating neuropsychologist. Mr. Shipman included a copy of Dr. Bigler's curriculum vitae. Mr. Shipman also proposed Dr. James Gallagher, M.D., of West Des Moines as Respondent's psychiatrist and enclosed a copy of Dr. Gallagher's curriculum vitae. Mr. Shipman submitted two additional names, Dr. Scott Wilson, D.O., general internist at the University of Iowa, and Dr. Daniel Trautman, M.D., primary care physician at Iowa Health Physicians Clinic in Cedar Rapids, to provide Respondent's physical evaluation. (State Exhibit 27)

On October 8, 2010, Mr. Shipman sent a follow-up letter asking if the Board would consider allowing Respondent to be evaluated by a neuropsychiatrist in Richmond, VA, rather than requiring him to have separate neuropsychological and psychiatric evaluations. (State Exhibit 28) In an October 13, 2010, letter, Mr. Nebel responded to Mr. Shipman and told him that the Board would not approve the neuropsychiatrist. Mr. Nebel wrote:

...The Board believes [Respondent] needs to complete this testing at a facility which has a national reputation and is utilized by other state licensing boards to perform such testing on physicians. The Board recommends that [Respondent] complete the required neuropsychological testing at Acumen Assessments, 901 Kentucky, Suite 301, Lawrence KS, 66044, 785-856-8218.

(State Exhibit 29; Kent Nebel testimony) In this same letter, Mr. Nebel communicated the Board's approval of James L. Gallagher, M.D., to assess Respondent and to provide continuing psychiatric care and management. Finally, Mr. Nebel informed Mr. Shipman that "[t]he Board continues to believe that [Respondent] must find a new primary care physician to assess him and provide future care to [him]." The Board advised Respondent to submit the name and CV of a new primary care physician for their consideration. (Id.)

In a letter dated November 5, 2010, Mr. Shipman notified Mr. Nebel and Ms. Weeg that Dr. Gallagher was requesting all raw test data from the neuropsychological testing performed on Respondent at Elmhurst. Mr. Shipman further wrote:

I do not know who Dr. Gallagher will select as his consulting neuropsychologist to interpret the Elmhurst raw data and to perform any additional neuropsychological testing. Given your skepticism of all I have recommended to you to date, I don't want to know who he selects. Knowing Dr. Gallagher, I'm sure it will be a competent, well-qualified neuropsychologist.

Once the reports of Dr. Gallagher and the neuropsychologist are provided to you, please let me know if the Board then intends to order [Respondent] to undergo further neuropsychological testing at the Kansas program you have suggested. As you know, I have similar skepticism about any program dedicated to state board referrals. They are inherently

negatively biased against the physicians. However, if [Respondent] is ordered to undergo evaluation at the Kansas program, he will do so....

Mr. Shipman further informed Mr. Nebel that Respondent does not intend to terminate his physician-patient relationship with his long time internist and disputes the Board's statutory authority to require him to do so. However, Mr. Shipman indicated that Respondent was willing to undergo a general health evaluation by anyone that the Board directs. (State Exhibit 30)

In a letter dated November 22, 2010, Mr. Nebel asked Mr. Shipman to "contact me at least fourteen days before [Respondent] is scheduled to complete any Board required assessment so that the Board can provide the assessor a copy of the Board's investigative file in this matter to ensure that the assessor has a copy of all Board material prior to the assessment. (State Exhibit 31) In a letter dated December 1, 2010, Mr. Shipman notified Mr. Nebel that Respondent had scheduled his initial conference with Dr. Gallagher for December 30, 2010. Mr. Shipman further wrote "Dr. Gallagher had not advised him of the neuropsychologist he planned to consult and have test [Respondent] if, after review of the Elmhurst raw data, further testing is deemed necessary...By copy of this letter to Dr. Gallagher, I am requesting that he indicate to you and to me the identity of the neuropsychologist he plans to consult." (State Exhibit 32)

On December 9, 2010, Mr. Nebel sent Dr. Gallagher a CD containing a copy of the Board's investigative file. He also asked Dr. Gallagher to provide the Board a copy of his evaluation order as well as any other necessary records relating to his evaluation. (State Exhibit 33; Kent Nebel testimony).

At some point Kent Nebel was made aware that Dr. Gallagher planned to consult neuropsychologist Derek Campbell, Ph.D. Mr. Nebel called Dr. Gallagher the morning of Respondent's examination and told him that the Board would not approve his selection of Dr. Campbell as neuropsychologist. Dr. Gallagher mentions Mr. Nebel's telephone call in his evaluation report. In his December 30, 2010, report, Dr. Gallagher wrote, in relevant part:

...However, Mr. Nebel of the Iowa Board of Medicine called me the morning of the examination to say that Dr. Campbell had worked with the Board before but they would not approve him in this particular instance. I assume this to mean that whatever information might be produced from Dr. Campbell would not be considered. The preference is that

[Respondent] attend a physician's program in Kansas and, in fact, that is the official position of the Board, according to Mr. Nebel...

Dr. Gallagher also described his conversation with Mr. Nebel in his deposition that was taken nearly a year after his evaluation of Respondent. (State Exhibit 34, p. 7; Respondent Exhibit 26, pp. 12-13) At his deposition, Dr. Gallagher reported that he spent several hours evaluating Respondent on December 30, 2010, before preparing the written evaluation report for the Board. Dr. Gallagher had also evaluated Respondent in 2005 as one of three physicians on Respondent's Competency Review Panel. (Respondent Exhibit 26)

Dr. Gallagher's December 30, 2010, evaluation report indicates that he:

- Conducted a records review of Respondent's Board involvement dating back to the mid-1990's;
- Reviewed the CD containing the Board's investigative file;
- Reviewed the Elmhurst evaluation report;
- Reviewed patient information and health history forms completed by Respondent;
- Conducted a mental status examination and found no evidence of significant emotional or cognitive dysfunction;
- Administered one psychological test- the Zung Self-Rating Depression Scale- which suggested the presence of minimal to mild depressive symptoms;
- Observed that "according to history," Respondent warrants his long term diagnosis of ADHD. Dr. Gallagher noted that Respondent feels that Dexedrine had been very helpful in controlling the symptoms. Dr. Gallagher further noted that Respondent felt that Klonopin had been helpful for his Restless Leg Syndrome but that Respondent tapered his Klonopin dose out of concern for any possibility of cognitive impairment. Dr. Gallagher also noted that Respondent takes Requip for Restless Leg Syndrome. Dr. Gallagher did not observe any evidence of sedation or impeded memory during the evaluation;
- Concluded that Respondent probably has some narcissistic personality features but did not find sufficient evidence to assign a diagnosis of Personality Disorder;
- Noted that it was remarkable that there were many allegations made against Respondent in the Board's investigative file. Dr. Gallagher further noted that Respondent refutes the allegations and adamantly denies any sexual or behavioral improprieties. Respondent admitted that some of his diagnostic efforts may be seen as eccentric because of the time he spends with his patients.

Dr. Gallagher concluded that he was in no position to sort out the veracity of the allegations and did not address them further;

- Reserved the right to amend his report pending his receipt of previous neuropsychological evaluations. Dr. Gallagher noted that he would like to see the raw data from the previous testing reviewed by an independent neuropsychologist.

(State Exhibit 34)

On April 15, 2011, Respondent was evaluated by neuropsychologist Jerry J. Sweet, Ph.D., of the North Shore University Health System Department of Psychiatry and Behavioral Sciences, which is a teaching affiliate of the University of Chicago Medical School. Dr. Sweet prepared an eleven-page Report of Neuropsychological Evaluation, which is dated April 29, 2011. The Board received no prior notification that Respondent would be tested or evaluated by Dr. Sweet. The Board did not approve Dr. Sweet, and the Board did not provide Dr. Sweet with its investigative file or any other information prior to the evaluation. The Board was not aware that Dr. Sweet had evaluated Respondent until Respondent submitted his request for termination of his suspension and attached Dr. Sweet's report. (Testimony of Respondent; Kent Nebel; State Exhibits 37, 38)

In his deposition, Dr. Gallagher explained that he selected Dr. Sweet from a list of four or five neuropsychologists that had been recommended by University of Iowa neuropsychologist Robert Jones, Ph.D. Dr. Gallagher had no prior knowledge of Dr. Sweet prior to selecting him. (Respondent Exhibit 26, pp. 14-15). At hearing, Respondent testified that he was told by Dr. Gallagher that an appointment had been scheduled with Dr. Sweet, and he just assumed that Dr. Sweet was Board-approved. (Respondent testimony)

Dr. Sweet's report included copies of Respondent's scores on the tests administered by Dr. Sweet. Dr. Sweet compared these results to Respondent's 2006, 2007, and 2010 neuropsychological test findings and concluded that Respondent's present results "demonstrated a largely similar profile with average to superior intelligence scores, intact language abilities, minimal psychological symptoms, and impaired sustained attention and some executive difficulties." Dr. Sweet concluded that "overall, there does not appear to be evidence of psychological or cognitive impairment that would preclude [Respondent's] ability to practice psychiatry." (State Exhibit 38; Respondent Exhibits 4, 27)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSIONS OF LAW

OPEN RECORD NOTE: This contested case hearing concerns two issues: Respondent's reinstatement request, which was made pursuant to Iowa Code section 148.9 and 653 IAC 26.1, and [REDACTED]

The Settlement Agreement explicitly required Respondent to complete comprehensive neuropsychological testing under the direction of a "Board-approved neuropsychologist" and to submit a written assessment report indicating that Respondent is safe to return to practice. Respondent has not completed the required comprehensive neuropsychological testing by a Board-approved neuropsychologist. The Board authorized Mr. Nebel to approve Respondent's psychiatrist, neuropsychologist, and physician. Mr. Nebel denied approval for several neuropsychologists suggested by Respondent and determined that Respondent should go to Acumen Assessments in Kansas for the neuropsychological testing. This decision was reasonable and was consistent with the Board's prior practice of using nationally recognized evaluation programs with special expertise in evaluating physicians.

On two occasions, Mr. Nebel provided written notification to Respondent's attorney that Respondent should go to Acumen Assessments in Kansas for the neuropsychological testing. (State Exhibits 25, 29) Mr. Nebel also told Respondent's approved psychiatrist that the official position of the Board was that Respondent should undergo the neuropsychological testing at the physician's program in Kansas. (State Exhibit 34, p. 7). Respondent's attorney was also specifically advised to contact Kent Nebel fourteen days before Respondent was scheduled to complete any Board required assessment so that the Board could provide the assessor with a copy of its investigative file. (State Exhibit 31)

Respondent never went to Acumen Assessments for the required neuropsychological testing, but instead went to Dr. Sweet. Respondent argues that the Board somehow acquiesced in allowing Dr. Gallagher select Respondent's neuropsychologist. This is clearly untrue. Mr. Nebel consistently told Respondent's attorney and Dr. Gallagher that the Board approved Acumen Assessments. The Board was not given any advance notice of Respondent's appointment with Dr. Sweet and thus no opportunity to once again reiterate its approval of Acumen Assessments for the neuropsychological testing. Dr. Sweet conducted his testing and prepared his evaluation without having any investigative information from the Board. Dr. Sweet did not address Respondent's reported unusual behaviors, his reported boundary violations in practice settings, or his use of medications. The Board not willing to accept Dr. Sweet's conclusions that Respondent is currently safe to return to practice.

Respondent was evaluated by a Board-approved psychiatrist who submitted a report to the Board. However, Dr. Gallagher's written report did not address Respondent's fitness to return to practice. (State Exhibit 34) In his report, Dr. Gallagher refers to the volumes of information and complaints against Respondent. He notes that Respondent

denies the serious allegations against him, especially those involving severe behavioral or sexual improprieties. (Exhibit 34, pp. 2, 5) Dr. Gallagher makes no further attempt to discuss or address the reported incidents of Respondent's inappropriate interactions with colleagues, patients, and their families, including but not limited to his swearing, yelling, potentially inappropriate touching, and physically aggressive behavior. In addition, Dr. Gallagher only discussed Respondent's psychotropic medications briefly, noting that Respondent found them helpful, but made no indication that he would be monitoring Respondent's medications as required by the Settlement Agreement. (State Exhibit 34, pp. 4-5, 7) Rather, Dr. Gallagher suggested that it would be a "good idea" if a suitable psychiatrist or psychotherapist could be found to work with Respondent regarding his medications and his "awareness." (State Exhibit 34, p. 8) Respondent has made no attempt to participate in obtain ongoing psychiatric care or psychotherapy, as recommended by Elmhurst and by Dr. Gallagher.

In his report, Dr. Gallagher also reserved the right to amend his opinions pending receipt of the "previous neuropsychological evaluations." He also indicated that he would like to see the raw data from the neuropsychological testing reviewed by an independent neuropsychologist. (State Exhibit 34, p. 8) In his later deposition on December 3, 2011, Dr. Gallagher indicated that he had reviewed Dr. Sweet's report and felt it was a comprehensive evaluation of Respondent's functional abilities, cognitive functioning, and emotional function. Dr. Gallagher provided his opinion, based on his evaluation, that Respondent is capable of practicing safe and effective psychiatry. (Respondent Exhibit 26, pp. 16-17) The Board is unwilling to rely on Dr. Gallagher's opinion that Respondent is fit to return to practice. Dr. Gallagher's opinion is based in part on testing and evaluation completed by non-approved neuropsychologist. Moreover, Dr. Gallagher's report fails to address, in any meaningful way, the specific concerns raised in the Board's investigative file.

In summary, Respondent failed to establish, by a preponderance of the evidence, that he has fully complied with the conditions for reinstatement established in the September 3, 2010, Settlement Agreement. In addition, Respondent failed to establish that the reasons for his indefinite suspension no longer exist and that it is in the public interest for his license to be reinstated. His request for reinstatement must be denied.

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(emphasis added)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ORDER

IT IS THEREFORE ORDERED that the request filed by Respondent Vernon P. Varner, M.D., to reinstate Iowa medical license number 18577 is hereby **DENIED**.

[REDACTED]

IT IS FURTHER ORDERED that before the Board will consider reinstatement of Respondent's medical license, Respondent must:

- A. Board-Approved Neuropsychological Testing:** Respondent shall complete a comprehensive neuropsychological assessment at Acumen Assessments, 901 Kentucky, Suite 301, Lawrence KS, 66044, (785)-856-8218. Respondent shall provide Acumen with all of the neuropsychological testing data that has been obtained thus far, including the data provided by Jerry Sweet, Ph.D. Acumen may use the existing testing data to perform its assessment if it concludes that the existing data

is adequate. Acumen may also conduct additional neuropsychological testing if it determines that additional testing is necessary. Respondent shall provide the Board with at least 14 days notice of any scheduled evaluation so that the Board can provide Acumen with the Board's complete investigative file, including the reports submitted by Elmhurst, Dr. James Gallagher, M.D., and Dr. Sweet. Respondent is responsible for all costs associated with the neuropsychological testing and the assessment. Respondent shall comply with any recommendations made by Acumen. Respondent must submit a written assessment report from Acumen Assessments which indicates that Respondent is safe to return to the practice of medicine.

B. Board-Approved Psychiatrist: Respondent shall maintain an ongoing physician-patient relationship with a Board-approved psychiatrist who shall monitor and manage his psychotropic medications. Respondent shall comply with all recommendations made by the Board-approved psychiatrist, including the recommendation already made by Elmhurst and by Dr. Gallagher that he participate in psychotherapy. Respondent is responsible for all costs associated with treatment. Prior to any reinstatement, Respondent's Board-approved psychiatrist and/or therapist must submit a report indicating that he is currently fit to return to the practice of medicine.

[REDACTED]

IT IS FURTHER ORDERED that prior to reinstatement Respondent must establish that the reason for his indefinite suspension no longer exists and that it is in the public interest for his license to be reinstated.⁷ Iowa Code section 148.9 and 653 IAC 26.1.

⁷ Iowa Code section 148.9 and 653 IAC 26.1.

Dated this 31st day of January, 2012.



Siroos Shirazi, M.D.

Chairperson

Iowa Board of Medicine

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 order.

cc: Theresa O'Connell Weeg, Assistant Attorney General
Hoover State Office Building
Des Moines, Iowa 50319

James E. Shipman
Simmons Perrine Moyer Bergman PLC
115 3rd Street SE, Suite 1200
Cedar Rapids, IA 52401

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

VERNON P. VARNER, M.D., RESPONDENT

FILE Nos. 02-08-606, 02-09-001 & 02-09-677

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

COMES NOW the Iowa Board of Medicine (Board), and Vernon P. Varner, M.D., (Respondent), on ~~August 19~~^{September 3}, 2010, 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. no. 18577 on February 29, 1972.
2. Respondent's Iowa medical license is active and will expire on September 1, 2010.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.

COUNT I

4. Respondent is charged pursuant to Iowa Code sections 147.55(4), 148.6(2)(h) and 272C.10(4) and 653 IAC 23.1(8) with a physical or mental impairment. A physical or mental impairment includes, but is not limited to, any physical, neurological or mental condition which may impair his ability to practice medicine with reasonable skill and safety.

STATEMENT OF MATTERS ASSERTED

6. Respondent is an Iowa-licensed psychiatrist from Iowa City, Iowa.
7. On March 4, 1999, the Board filed disciplinary charges against Respondent alleging that he failed to provide appropriate treatment to multiple psychiatric patients.
8. On April 28, 2000, Respondent completed a Board-approved comprehensive clinical competency evaluation and the assessment program concluded that Respondent demonstrated deficiencies in the following areas of his psychiatry practice, medical knowledge, clinical judgment, use of psychiatric medications, and medical record keeping.
9. On June 28, 2001, Respondent entered into a Settlement Agreement with the Board and Respondent was placed on probation for a period of five years and he was required to fully comply with the recommendations of the assessment program, including a practice monitoring plan. Under the Board-approved practice monitoring plan, 100% of Respondent's cases were reviewed by an Iowa licensed, board certified psychiatrist. The practice monitor concluded that Respondent's patient care complied with the standard of care.
10. At the conclusion of the education plan, Respondent submitted to re-evaluation. In July 2002, the assessment program concluded that serious practice deficiencies continued to exist despite Respondent's completion of the education plan.
11. The Board and Respondent agreed to establish a three member Practice Review Panel to determine whether Respondent's medical practice conformed to the prevailing standards of care and whether he was safe to practice psychiatry. On May 6, 2005, the Practice Review Panel concluded that Respondent was competent to practice psychiatry. On August 1, 2005, the Board terminated the terms of Respondent's probation.
12. The Board subsequently received information which raised concerns about his

practice of psychiatry including concerns that he violated appropriate physician-patient boundaries and that he may suffer from a health condition which impairs his ability to practice medicine with reasonable skill and safety.

13. On May 6, 2010, the Board ordered Respondent to complete a Board-approved confidential comprehensive physical, neuropsychological, mental health, disruptive behavior and professional boundary evaluation at the Professionals Program, under the direction of Glenn Siegel, M.D., Elmhurst Memorial Healthcare pursuant to Iowa Code section 272C.9(1) and 653 IAC 24.4. On July 22-23, 2010, Respondent completed the evaluation at the Professionals Program at Elmhurst Memorial Healthcare in Elmhurst, Illinois.

14. After careful consideration of the Board's investigative file and assessment report, the Board determined that Respondent may suffer from a physical, neuropsychological or mental health condition which impairs his ability to practice medicine with reasonable skill and safety. The Board determined that Respondent is not safe to practice medicine at this time.

SETTLEMENT AGREEMENT

15. **INDEFINITE SUSPENSION:** Respondent agrees his license will be temporarily suspended. Prior to seeking to reinstatement, Respondent shall fully comply with the following requirements and demonstrate that he is safe to return to the practice of medicine:

- A. **Board-Approved Neuropsychological Testing:** Respondent shall complete comprehensive neuropsychological testing under the direction of a Board-approved neuropsychologist and submit a written assessment report which indicates that Respondent is safe to return to the practice of medicine. Respondent is responsible for all costs associated with the neuropsychological testing;
- B. **Board-Approved Psychiatrist:** Respondent shall submit the name and CV of a

psychiatrist for approval. The Board-approved psychiatrist shall review and monitor Respondent's use of psychotropic medications and submit a written report which indicates that Respondent is safe to return to the practice of medicine. Respondent shall fully comply with all recommendations of the Board-approved psychiatrist. Respondent is responsible for all costs associated with the treatment;

- C. **Board-Approved Physician:** Respondent shall submit the name and CV of a physician for Board approval. Respondent shall establish a relationship with a Board-approved physician who shall provide Respondent's health care. The Board-approved physician shall submit a written report which indicates that Respondent is safe to return to the practice of medicine. Respondent shall fully comply with all recommendations of the Board-approved physician. Respondent is responsible for all costs associated with the health care services; and

16. **REINSTATEMENT:** Respondent may seek reinstatement pursuant to Iowa Code section 148.9 and 653 IAC 26.1 by demonstrating that the basis for the suspension of Respondent's license no longer exists and that it is in the public interest for the license to be reinstated.

17. In the event Respondent violates or fails to comply with any of the terms or conditions of this Order, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline as authorized in Iowa Code Chapters 148 and 272 and 653 IAC 12.2.

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

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

20. Respondent shall obey all federal, state and local laws, and all rules governing the

practice of medicine in Iowa.

21. By entering into this Order, Respondent voluntarily waives any rights to a contested case hearing on the allegations contained in the Statement of Charges and waives any objections to the terms of this Order.

22. This Order is subject to approval by 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.

Vernon P. Varner
Vernon P. Varner, M.D., Respondent

Subscribed and sworn to before me on Aug 25th, 2010.

Notary Public, State of Iowa *Julie Agnew*



This Order is approved by the Board on ^{September 3}~~August 20~~, 2010.
KN

Siroos S. Shirazi

Siroos S. Shirazi, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686