

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**ROGER K. WESTE, M.D., RESPONDENT**

**FILE No. 02-06-791**

.....

**FINAL ORDER**

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Date: May 29, 2008.

1. On June 28, 1996, Respondent was issued Iowa medical license No. 31318.

Respondent's Iowa license is expired on December 1, 2006, due to non-renewal.

2. Respondent formerly practiced family medicine for the Department of Veterans Affairs in Tomah, Wisconsin.

3. On January 18, 2005, the Department of Veterans Affairs summarily suspended Respondent after it determined that he failed to meet generally accepted standards of clinical practice, raising concerns for the safety of patients. The Department of Veterans Affairs concluded that Respondent, on several occasions, failed to properly document patient histories and complaints, diagnoses, assessments and follow-up of clinically significant symptoms, abnormal test results, such as x-rays or laboratory results, and bases for questionable treatment decisions or actions in light of the evidence available to Respondent.

4. On January 17, 2008, the Board charged Respondent pursuant to Iowa Code section 148.6(2)(d) with being disciplined by another licensing authority.

5. On February 19, 2008, the State filed a Motion for Leave to Amend Statement of Charges. The motion was granted and the Amended Statement of Charges added a second count; failure to report disciplinary action taken against Respondent by the Department of Veteran Affairs, an agency of the United States Government, in violation of 653 IAC 23.1(22).

6. On March 26, 2008, a hearing was held before a panel of three members of the Board.

7. On April 28, 2008, the Board issued a Proposed Decision of the Panel. The Panel concluded that the preponderance of the evidence failed to establish that Respondent violated Iowa Code section 148.6(2)(d) when his clinical privileges were summarily suspended by the VA on January 18, 2005. The Panel concluded that the VA's summary suspension of Respondent's clinical privileges never became a final action and therefore, there was no final disciplinary action and the Iowa reporting requirement was not triggered. The Board noted that Respondent failed to provide the Board the documentation which demonstrated that there was no final action until the hearing before the Panel. The Panel voted to dismiss the charges in this matter.

8. On April 28, 2008, a copy of the Proposed Decision was delivered to counsel for the State of Iowa, Heather Palmer, Assistant Attorney General.

9. On May 1, 2008, a true copy of the Proposed Decision was delivered to counsel for Respondent.

10. Neither party filed an Appeal of the Proposed Decision within thirty (30) days of issuance of the Proposed Decision of the Panel pursuant to 653 IAC 12.50(29).

11. That pursuant to the pertinent provisions of Iowa Code sections 148.6 and 148.7 (2007) the undersigned, acting on the behalf of the Board, is authorized to enter an Order herein.

**THEREFORE IT IS HEREBY ORDERED** that the Proposed Decision of the Panel, a copy of which is attached as Exhibit A, is a **FINAL DECISION** of the Board and the Decision and Order outlined therein is a **FINAL ORDER OF THE BOARD**. Therefore, the charges in this matter are hereby **DISMISSED**.

  
\_\_\_\_\_  
Yash Lee, M.D. Chairperson  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, IA 50309-4686

May 29, 2008  
Date

BEFORE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE	)	FILE NO. 02-06-791
STATEMENT OF CHARGES AGAINST	)	DIA NO. 08DPHMB003
	)	
ROGER K. WESTE, M.D.	)	PROPOSED DECISION OF
Respondent	)	THE PANEL

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TO: ROGER K. WESTE, M.D.

Date: April 28, 2008.

On January 17, 2008, the Iowa Board of Medicine (Board) filed a Statement of Charges against Roger K. Weste, M.D. (Respondent), charging him with being disciplined by another licensing authority, in violation of Iowa Code section 148.6(2)(d). On February 19, 2008, the state filed a Motion For Leave To Amend. The motion was granted and an Amended Statement of Charges was filed on March 4, 2008. The Amended Statement of Charges added a second count: failure to report disciplinary action taken against Respondent by the Department of Veteran Affairs, an agency of the United States Government, in violation of 653 IAC 23.1(22).

The hearing was held on March 26, 2008 at 8:30 a.m. before the following panel of the Board: Yasyn Lee, M.D., Board Chairperson; Dana Shaffer, D.O.; and Janece Valentine, public member. Respondent appeared and was represented by attorney David Pillers. Assistant Attorney General Heather Palmer represented the state. The hearing was closed to the public, 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 panel in conducting the hearing and was instructed to prepare a written decision, in accordance with their deliberations.

**THE RECORD**

The record includes the Statement of Charges, Notice of Hearing, Continuance Order, Answer, Motion For Leave to Amend; Order Granting Motion To Amend; Amended Statement of Charges; the testimony of the witnesses; State Exhibits 1-35 (see exhibit index for description) and Respondent Exhibits A-E. (Exhibits A-C are VA Proficiency Reports; Exhibit D is a VA Memorandum to Respondent dated 1/18/05; and Exhibit E is a Settlement Agreement dated 9/29/05)

### FINDINGS OF FACT

1. Respondent was issued Iowa medical license number 31318 on June 28, 1996. Respondent's Iowa medical license has been inactive since February 1, 2007. Respondent now resides in Florida and is not currently practicing medicine. Respondent is receiving disability retirement from the Veterans Administration (VA) and has no plans to return to the practice of medicine or patient care. (Testimony of Respondent; State Exhibits 2, 10)

2. In August 2000, Respondent began working as a locum tenens family practice physician for the Department of Veterans Affairs (VA) in Tomah, Wisconsin. In January 2001, the VA in Tomah hired Respondent as a full-time physician. In 2001, 2002, and 2003, Respondent received satisfactory proficiency reports from the VA. (Testimony of Respondent; Respondent Exhibits A-C)

3. On January 18, 2005, the Department of Veteran Affairs notified Respondent in writing that his clinical privileges at the Tomah VA Medical Center were summarily suspended, effective immediately, pending a comprehensive review and due process. The notice also stated that:

- A recent review of patient records suggested that there may have been substandard care;
- The summary suspension is not considered an adverse action and is not reportable to the National Practitioner Data Bank (NPDB);
- Further review of the evidence would be completed and if disciplinary or major adverse action is recommended, Respondent would be afforded due process rights in accordance with the VA Handbook;
- If the VA's final action after all appeals was to deny, limit, or revoke clinical privileges, or terminate staff appointment, then that fact must be reported to the states of licensure and the NPDB.

(Respondent Exhibit D) Neither the VA nor Respondent notified the Iowa Board of the summary suspension of Respondent's clinical privileges. Respondent did not return to the active practice of medicine with the VA or elsewhere. (Testimony of Respondent)

4. On April 11, 2005, the VA proposed to terminate Respondent's employment based on its charges that Respondent failed to meet acceptable standards of patient

care in his treatment of 17 patients between April 8, 2004 and September 17, 2004.<sup>1</sup> Respondent provided the VA with a detailed written response to the charges. (State Exhibits 14; 16-33)

5. Respondent filed a retaliation complaint against the VA with the United States Equal Employment Opportunity Commission (EEOC).<sup>2</sup> On September 29, 2005, Respondent and the VA entered into a Settlement and Compromise Agreement to settle any and all issues and related issues raised in the Disciplinary Appeals Board (DAB) and all pending EEO Complaints. The terms of the agreement included, in part, that:

- The VA would accept Respondent's resignation, effective June 17, 2005, in lieu of his removal;
- The VA would pay Respondent a lump sum to cover attorney's fees and compensatory damages;
- The VA would provide Respondent a retroactive backpay adjustment, effective from January 22, 2005 through June 17, 2005;
- The VA would revise Respondent's Proficiency Report covering the time period from January 22, 2004 to January 22, 2005 to reflect an overall evaluation of "satisfactory."
- The VA would assist Respondent in processing his Disability Retirement Application.

In part, Respondent agreed to forever waive and release any and all claims against the VA and to voluntarily resign effective June 17, 2005. The parties agreed that nothing in the agreement would limit the VA's ability to forward information concerning Respondent to either the State Licensing Board or the NPDB. (Respondent Exhibit E; Testimony of Respondent)

6. On October 17, 2006, the VA in Tomah, Wisconsin, sent the Board a letter stating that "...there is substantial evidence that [Respondent] so significantly failed to meet

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<sup>1</sup> Respondent maintains that the charges of substandard patient care were not valid and were motivated by various disputes/conflicts that he had with the VA's Chief of Staff. (Testimony of Respondent)

<sup>2</sup> Respondent and two other VA physicians had filed earlier complaints with the EEOC. Respondent's original complaint alleged discrimination on the basis of national origin and disability. (Testimony of Respondent)

generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients, in that [Respondent] on several occasions failed to document in the patients' medical records such essential matters as patients' histories and complaints, diagnoses, assessment and follow-up of clinically significant symptoms, abnormal test results, such as x-rays or laboratory results, and bases for questionable treatment decisions or actions in light of the evidence available to [Respondent]." (Testimony of Mary Nelson; State Exhibit 4)

7. The Board requested additional information from the VA. (State Exhibits 8-9; Testimony of Mary Nelson) The VA provided State Exhibits 11-33, which include the VA's records of its charges of substandard patient care, Respondent's written response, and patient records. The VA did not provide the notice of summary suspension. While the VA's index of documents provided to the Board references a Settlement and Compromise Agreement (Settlement Agreement) at tab E, the VA did not send the Settlement Agreement to the Board. When the Board's investigator contacted the VA to request a copy of the Settlement Agreement, she was advised that the VA was withholding the Settlement Agreement on advice of its counsel. The VA never provided the Settlement Agreement to the Board. (Testimony of Mary Nelson; State Exhibits 11; 34)

8. The Board opened a file and assigned an investigator. In letters dated November 1, 2006 and December 29, 2006, the Board asked Respondent to provide a written narrative outlining his response to the VA's allegations. (State Exhibits 4, 5, 6) Following a telephone conversation with Respondent on January 19, 2007, the Board's investigator sent Respondent a letter asking him to authorize his attorney to provide legal documentation relating to his EEOC retaliation claim to the Board. (State Exhibit 7). On February 1, 2007, Respondent sent a brief written response to the VA's allegations and also asked the Board for additional information about the allegations. Respondent mentioned his Settlement Agreement with the VA but did not provide a copy of the Settlement Agreement to the Board. (State Exhibit 10; Testimony of Mary Nelson)

The Board and the state did not have the Settlement Agreement until it was submitted as Respondent's Exhibit E at hearing. (Testimony of Mary Nelson) Respondent also

submitted a copy of the summary suspension notice, dated January 18, 2005, as his Exhibit D.

### CONCLUSIONS OF LAW

#### Count I

Iowa Code section 148.6(2)(d) (2005, 2007) provides in relevant part:

#### 148.6 Revocation.

1. The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

...

d. Having the license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence.

The preponderance of the evidence failed to establish that Respondent violated Iowa Code section 148.6(2)(d) when his clinical privileges were summarily suspended by the VA on January 18, 2005. The Amended Statement of Charges cites the summary suspension as the sole factual basis for Count I. However, the VA's summary suspension notice specifically stated that it was not adverse action, was not reportable to the National Practitioner Data Bank (NPDB), and would not be reportable until after Respondent was afforded his due process rights. The summary suspension notice further stated that if the final action after completion of all appeal procedures was to deny, limit or revoke Respondent's clinical privileges or terminate his staff appointment, that fact must be reported to the states of licensure and to the NPDB.

The VA's summary suspension never became a final action because Respondent and the VA entered into a Settlement and Compromise Agreement to settle both the pending disciplinary action and Respondent's EEOC complaint(s). Neither the VA nor Respondent provided the Settlement and Compromise Agreement to the Board, although requested to do so. As a result, the Board did not have the benefit of reviewing the Settlement and Compromise Agreement prior to filing the Statement of Charges, and the state did not have the benefit of reviewing the Settlement and Compromise Agreement prior to the hearing. Upon reviewing the Summary Suspension in conjunction with the subsequent Settlement and Compromise Agreement, the panel determined that the VA's summary suspension cannot fairly be characterized as "disciplinary action taken by a licensing authority of another state, territory, or country." While Respondent agreed to voluntarily resign his employment with the VA, the VA agreed to make significant monetary payments to Respondent for compensatory damages, attorney's fees, and retroactive back pay. The VA also agreed to revise Respondent's most recent Proficiency Report to reflect an overall evaluation of "satisfactory." These circumstances do not establish a violation of Iowa Code section 148.6(2)(d).

**Count II**

653 IAC 23.1(22) provides, in relevant part:

**653-23.1(272C) Grounds for discipline.** The board has authority to discipline for any violation of Iowa Code chapter 147, 148,...272C or the rules promulgated thereunder. The grounds for discipline apply to physicians...The board may impose any of the disciplinary sanctions set forth in rule 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(22)** Failure to report disciplinary action. Failure to report a license revocation, suspension, or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction within 30 days of the final action by such licensing authority...

The preponderance of the evidence failed to establish that Respondent violated 653 IAC 23.1(22) by failing to report the summary suspension of his clinical privileges by the United States Department of Veteran Affairs. 653 IAC 23.1(22) clearly provides that the reporting requirement is triggered by "final action" by a licensing authority. Upon review of the Settlement and Compromise Agreement, it is clear that the VA's summary suspension of Respondent's clinical privileges never became a final action, thereby triggering the reporting requirement.

**ORDER**

**IT IS THEREFORE ORDERED** that the Amended Statement of Charges issued on March 4, 2008 to Respondent Roger K. Weste is hereby **DISMISSED**.

Dated this 28<sup>th</sup> day of April, 2008.

THE PANEL:



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Yasyn Lee, M.D.  
Chairperson



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Dana Shaffer, D.O.



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Janece Valentine, Public Member

A proposed decision may be appealed to the board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party. 653 IAC 25.24(2).

cc: Heather Palmer  
Office of the Attorney General  
Hoover Building  
Des Moines, Iowa 50319

David Pillers  
PILLERS & RICHMOND  
615 10<sup>th</sup> Street  
DeWitt, IA 52742

BEFORE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE	)	FILE NO. 02-06-791
STATEMENT OF CHARGES AGAINST	)	DIA NO. 08DPHMB003
	)	
ROGER K. WESTE, M.D.	)	PROPOSED DECISION OF
Respondent	)	THE PANEL

---

TO: ROGER K. WESTE, M.D.

Date: April 28, 2008.

On January 17, 2008, the Iowa Board of Medicine (Board) filed a Statement of Charges against Roger K. Weste, M.D. (Respondent), charging him with being disciplined by another licensing authority, in violation of Iowa Code section 148.6(2)(d). On February 19, 2008, the state filed a Motion For Leave To Amend. The motion was granted and an Amended Statement of Charges was filed on March 4, 2008. The Amended Statement of Charges added a second count: failure to report disciplinary action taken against Respondent by the Department of Veteran Affairs, an agency of the United States Government, in violation of 653 IAC 23.1(22).

The hearing was held on March 26, 2008 at 8:30 a.m. before the following panel of the Board: Yasyn Lee, M.D., Board Chairperson; Dana Shaffer, D.O.; and Janece Valentine, public member. Respondent appeared and was represented by attorney David Pillers. Assistant Attorney General Heather Palmer represented the state. The hearing was closed to the public, 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 panel in conducting the hearing and was instructed to prepare a written decision, in accordance with their deliberations.

**THE RECORD**

The record includes the Statement of Charges, Notice of Hearing, Continuance Order, Answer, Motion For Leave to Amend; Order Granting Motion To Amend; Amended Statement of Charges; the testimony of the witnesses; State Exhibits 1-35 (see exhibit index for description) and Respondent Exhibits A-E. (Exhibits A-C are VA Proficiency Reports; Exhibit D is a VA Memorandum to Respondent dated 1/18/05; and Exhibit E is a Settlement Agreement dated 9/29/05)

### FINDINGS OF FACT

1. Respondent was issued Iowa medical license number 31318 on June 28, 1996. Respondent's Iowa medical license has been inactive since February 1, 2007. Respondent now resides in Florida and is not currently practicing medicine. Respondent is receiving disability retirement from the Veterans Administration (VA) and has no plans to return to the practice of medicine or patient care. (Testimony of Respondent; State Exhibits 2, 10)

2. In August 2000, Respondent began working as a locum tenens family practice physician for the Department of Veterans Affairs (VA) in Tomah, Wisconsin. In January 2001, the VA in Tomah hired Respondent as a full-time physician. In 2001, 2002, and 2003, Respondent received satisfactory proficiency reports from the VA. (Testimony of Respondent; Respondent Exhibits A-C)

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(Respondent Exhibit D) Neither the VA nor Respondent notified the Iowa Board of the summary suspension of Respondent's clinical privileges. Respondent did not return to the active practice of medicine with the VA or elsewhere. (Testimony of Respondent)

4. On April 11, 2005, the VA proposed to terminate Respondent's employment based on its charges that Respondent failed to meet acceptable standards of patient

care in his treatment of 17 patients between April 8, 2004 and September 17, 2004.<sup>1</sup> Respondent provided the VA with a detailed written response to the charges. (State Exhibits 14; 16-33)

5. Respondent filed a retaliation complaint against the VA with the United States Equal Employment Opportunity Commission (EEOC).<sup>2</sup> On September 29, 2005, Respondent and the VA entered into a Settlement and Compromise Agreement to settle any and all issues and related issues raised in the Disciplinary Appeals Board (DAB) and all pending EEO Complaints. The terms of the agreement included, in part, that:

- The VA would accept Respondent's resignation, effective June 17, 2005, in lieu of his removal;
- The VA would pay Respondent a lump sum to cover attorney's fees and compensatory damages;
- The VA would provide Respondent a retroactive backpay adjustment, effective from January 22, 2005 through June 17, 2005;
- The VA would revise Respondent's Proficiency Report covering the time period from January 22, 2004 to January 22, 2005 to reflect an overall evaluation of "satisfactory."
- The VA would assist Respondent in processing his Disability Retirement Application.

In part, Respondent agreed to forever waive and release any and all claims against the VA and to voluntarily resign effective June 17, 2005. The parties agreed that nothing in the agreement would limit the VA's ability to forward information concerning Respondent to either the State Licensing Board or the NPDB. (Respondent Exhibit E; Testimony of Respondent)

6. On October 17, 2006, the VA in Tomah, Wisconsin, sent the Board a letter stating that "...there is substantial evidence that [Respondent] so significantly failed to meet

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<sup>1</sup> Respondent maintains that the charges of substandard patient care were not valid and were motivated by various disputes/conflicts that he had with the VA's Chief of Staff. (Testimony of Respondent)

<sup>2</sup> Respondent and two other VA physicians had filed earlier complaints with the EEOC. Respondent's original complaint alleged discrimination on the basis of national origin and disability. (Testimony of Respondent)

generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients, in that [Respondent] on several occasions failed to document in the patients' medical records such essential matters as patients' histories and complaints, diagnoses, assessment and follow-up of clinically significant symptoms, abnormal test results, such as x-rays or laboratory results, and bases for questionable treatment decisions or actions in light of the evidence available to [Respondent]." (Testimony of Mary Nelson; State Exhibit 4)

7. The Board requested additional information from the VA. (State Exhibits 8-9; Testimony of Mary Nelson) The VA provided State Exhibits 11-33, which include the VA's records of its charges of substandard patient care, Respondent's written response, and patient records. The VA did not provide the notice of summary suspension. While the VA's index of documents provided to the Board references a Settlement and Compromise Agreement (Settlement Agreement) at tab E, the VA did not send the Settlement Agreement to the Board. When the Board's investigator contacted the VA to request a copy of the Settlement Agreement, she was advised that the VA was withholding the Settlement Agreement on advice of its counsel. The VA never provided the Settlement Agreement to the Board. (Testimony of Mary Nelson; State Exhibits 11; 34)

8. The Board opened a file and assigned an investigator. In letters dated November 1, 2006 and December 29, 2006, the Board asked Respondent to provide a written narrative outlining his response to the VA's allegations. (State Exhibits 4, 5, 6) Following a telephone conversation with Respondent on January 19, 2007, the Board's investigator sent Respondent a letter asking him to authorize his attorney to provide legal documentation relating to his EEOC retaliation claim to the Board. (State Exhibit 7). On February 1, 2007, Respondent sent a brief written response to the VA's allegations and also asked the Board for additional information about the allegations. Respondent mentioned his Settlement Agreement with the VA but did not provide a copy of the Settlement Agreement to the Board. (State Exhibit 10; Testimony of Mary Nelson)

The Board and the state did not have the Settlement Agreement until it was submitted as Respondent's Exhibit E at hearing. (Testimony of Mary Nelson) Respondent also

submitted a copy of the summary suspension notice, dated January 18, 2005, as his Exhibit D.

### CONCLUSIONS OF LAW

#### Count I

Iowa Code section 148.6(2)(d) (2005, 2007) provides in relevant part:

#### **148.6 Revocation.**

1. The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

...

d. Having the license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence.

The preponderance of the evidence failed to establish that Respondent violated Iowa Code section 148.6(2)(d) when his clinical privileges were summarily suspended by the VA on January 18, 2005. The Amended Statement of Charges cites the summary suspension as the sole factual basis for Count I. However, the VA's summary suspension notice specifically stated that it was not adverse action, was not reportable to the National Practitioner Data Bank (NPDB), and would not be reportable until after Respondent was afforded his due process rights. The summary suspension notice further stated that if the final action after completion of all appeal procedures was to deny, limit or revoke Respondent's clinical privileges or terminate his staff appointment, that fact must be reported to the states of licensure and to the NPDB.

The VA's summary suspension never became a final action because Respondent and the VA entered into a Settlement and Compromise Agreement to settle both the pending disciplinary action and Respondent's EEOC complaint(s). Neither the VA nor Respondent provided the Settlement and Compromise Agreement to the Board, although requested to do so. As a result, the Board did not have the benefit of reviewing the Settlement and Compromise Agreement prior to filing the Statement of Charges, and the state did not have the benefit of reviewing the Settlement and Compromise Agreement prior to the hearing. Upon reviewing the Summary Suspension in conjunction with the subsequent Settlement and Compromise Agreement, the panel determined that the VA's summary suspension cannot fairly be characterized as "disciplinary action taken by a licensing authority of another state, territory, or country." While Respondent agreed to voluntarily resign his employment with the VA, the VA agreed to make significant monetary payments to Respondent for compensatory damages, attorney's fees, and retroactive back pay. The VA also agreed to revise Respondent's most recent Proficiency Report to reflect an overall evaluation of "satisfactory." These circumstances do not establish a violation of Iowa Code section 148.6(2)(d).

## Count II

653 IAC 23.1(22) provides, in relevant part:

**653-23.1(272C) Grounds for discipline.** The board has authority to discipline for any violation of Iowa Code chapter 147, 148,...272C or the rules promulgated thereunder. The grounds for discipline apply to physicians...The board may impose any of the disciplinary sanctions set forth in rule 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(22)** Failure to report disciplinary action. Failure to report a license revocation, suspension, or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction within 30 days of the final action by such licensing authority...

The preponderance of the evidence failed to establish that Respondent violated 653 IAC 23.1(22) by failing to report the summary suspension of his clinical privileges by the United States Department of Veteran Affairs. 653 IAC 23.1(22) clearly provides that the reporting requirement is triggered by "final action" by a licensing authority. Upon review of the Settlement and Compromise Agreement, it is clear that the VA's summary suspension of Respondent's clinical privileges never became a final action, thereby triggering the reporting requirement.

**ORDER**

**IT IS THEREFORE ORDERED** that the Amended Statement of Charges issued on March 4, 2008 to Respondent Roger K. Weste is hereby **DISMISSED**.

Dated this 28<sup>th</sup> day of April, 2008.

THE PANEL:



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Yasyn Lee, M.D.  
Chairperson



---

Dana Shaffer, D.O.



---

Janece Valentine, Public Member

A proposed decision may be appealed to the board by either party by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision on the appealing party. 653 IAC 25.24(2).

DIA No. 08DPHMB003

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cc: Heather Palmer  
Office of the Attorney General  
Hoover Building  
Des Moines, Iowa 50319

David Pillers  
PILLERS & RICHMOND  
615 10<sup>th</sup> Street  
DeWitt, IA 52742

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**ROGER K. WESTE, M.D., RESPONDENT**

**FILE NO. 02-06-791**

\*\*\*\*\*

**AMENDED STATEMENT OF CHARGES**

\*\*\*\*\*

**COMES NOW** the Iowa Board of Medicine on March 4, 2008, and files this Amended Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 31318 on June 28, 1996. Respondent's Iowa medical license has been inactive since February 1, 2007.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing. A disciplinary contested case hearing shall be held on March 26, 2008, 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 8<sup>th</sup> 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 prehearing matters, and be present to assist and advise the board at hearing.

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 IAC 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 IAC 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

5. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

6. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Kent M. Nebel, J.D., the Board's Legal Director at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

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

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

8. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148, and 272C and 653 IAC 25.

9. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 653 IAC 25.20.

## **C. SECTIONS OF STATUTES AND RULES INVOLVED**

### **COUNT I**

10. Respondent is charged pursuant to Iowa Code section 148.6(2)(d) with being disciplined by another licensing authority.

### **COUNT II**

11. Respondent is charged pursuant to 653 IAC section 23.1(22) with failure to report disciplinary action taken against Respondent by the Department of Veterans Affairs, an agency of the United States Government.

## **STATEMENT OF THE MATTERS ASSERTED**

12. Respondent formerly practiced family medicine for the Department of Veterans Affairs in Tomah, Wisconsin.

13. On January 18, 2005, the Department of Veterans Affairs summarily suspended Respondent after it determined that he failed to meet generally accepted standards of clinical

practice, raising concerns for the safety of patients. The Department of Veterans Affairs concluded that Respondent, on several occasions, failed to properly document patient histories and complaints, diagnoses, assessments and follow-up of clinically significant symptoms, abnormal test results, such as x-rays or laboratory results, and bases for questionable treatment decisions or actions in light of the evidence available to Respondent.

14. When the Board contacted Respondent about these concerns, he indicated that he has retired from the practice of medicine.

#### **E. SETTLEMENT**

15. 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**

16. On March 4, 2008, the Iowa Board of Medicine found probable cause to file the Statement of Charges.



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Yasya Lee, M.D., Chairperson  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

## BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE	)	DIA NO. 08DPHMB003
STATEMENT OF CHARGES AGAINST:	)	CASE NO. 02-06-791
	)	
ROGER K. WESTE, M.D.	)	ORDER GRANTING MOTION TO
	)	AMEND STATEMENT OF CHARGES

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Respondent

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On January 17, 2008, the Iowa Board of Medicine (Board) found probable cause to file a Statement of Charges against Roger K. Weste, M.D. (Respondent). The original charge against Respondent was being disciplined by another licensing authority, in violation of Iowa Code section 148.6(2)(d). On or about February 19, 2008, the state filed a Motion for Leave to Amend Statement of Charges to add the following second count as paragraph 11:

11. Respondent is charged pursuant to 653 IAC section 23.1(22) with failure to report disciplinary action taken against Respondent by the Department of Veteran Affairs, an agency of the United States Government.

The hearing that had been scheduled for February 28, 2008 was continued. Respondent has not filed a Resistance to the Motion Leave To Amend Statement of Charges. The motion has been referred to the undersigned administrative law judge for ruling.

It is in the interests of justice and judicial economy to allow the amendment. The additional charge is factually and legally related to the initial charge, and Respondent has adequate time to prepare a defense. IT IS THEREFORE ORDERED that the Motion For Leave To Amend Statement of Charges is hereby GRANTED.

Dated this 4<sup>th</sup> day of March, 2008.



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

cc: Heather Palmer  
Assistant Attorney General  
Hoover State Office Building  
Des Moines, Iowa 50319 (LOCAL)

David Pillers  
PILLERS & RICHMOND  
615 10<sup>th</sup> Street  
DeWitt, IA 52742 (CERTIFIED)

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

**BEFORE THE IOWA BOARD OF MEDICINE**

\*\*\*\*\*

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

**ROGER K. WESTE, M.D., RESPONDENT**

**FILE NO. 02-06-791**

\*\*\*\*\*

**STATEMENT OF CHARGES**

\*\*\*\*\*

**COMES NOW** the Iowa Board of Medicine on January 17, 2008, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2)(2007). Respondent was issued Iowa medical license no. 31318 on June 28, 1996. Respondent's Iowa medical license has been inactive since February 1, 2007.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing. A disciplinary contested case hearing shall be held on February 28, 2008, 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 8<sup>th</sup> 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 prehearing matters, and be present to assist and advise the board at hearing.

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 IAC 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 IAC 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

5. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

6. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Kent M. Nebel, J.D., the Board's Legal Director at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

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

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

8. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148, and 272C and 653 IAC 25.

9. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 653 IAC 25.20.

## **C. SECTIONS OF STATUTES AND RULES INVOLVED**

### **COUNT I**

10. Respondent is charged pursuant to Iowa Code section 148.6(2)(d) with being disciplined by another licensing authority.

### **STATEMENT OF THE MATTERS ASSERTED**

11. Respondent formerly practiced family medicine for the Department of Veterans Affairs in Tomah, Wisconsin.

12. On January 18, 2005, the Department of Veterans Affairs summarily suspended Respondent after it determined that he failed to meet generally accepted standards of clinical practice, raising concerns for the safety of patients. The Department of Veterans Affairs concluded that Respondent, on several occasions, failed to properly document patient histories and complaints, diagnoses, assessments and follow-up of clinically significant symptoms,

abnormal test results, such as x-rays or laboratory results, and bases for questionable treatment decisions or actions in light of the evidence available to Respondent.

13. When the Board contacted Respondent about these concerns, he indicated that he has retired from the practice of medicine.

#### **E. SETTLEMENT**

14. 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**

15. On January 17, 2008, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



---

Yashyn Lee, M.D., Chairperson  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686