BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST:	)	FILE NO. 03-11-024 DIA NO. 106DPHMB004
ANDREW J. STEFANI, D.O.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER
RESPONDENT	)	

To: Andrew J. Stefani

Date: August 14, 2012.

On March 29, 2012, the Iowa Board of Medicine (Board) filed a Statement of Charges charging Andrew J. Stefani, D.O., (Respondent) under Iowa Code sections 147.55(1) and 272C.10(1) and 653 IAC 23.1(15) with fraud in procuring an Iowa resident physician license. The hearing was held on June 21, 2012 before the following Board members: Colleen Stockdale, M.D., M.S., Chairwoman; Michael Thompson, D.O.; Jeff Snyder, M.D.; Joyce Vista-Wayne, M.D.; and Paul Thurlow and Diane Clark, public members. Respondent was present and was represented by his attorney, James E. Shipman. Assistant Attorney General Theresa Weeg represented the state. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(l) and 653 IAC 25.18(12). The hearing was recorded by a certified court reporter. Administrative Law Judge Kerry Anderson assisted the Board in conducting the hearing and was instructed to prepare a written decision in accordance with its deliberations.

THE RECORD

The record includes the Amended Statement of Charges, State's Exhibits 1 – 23, Respondent's Exhibits A - RR, and the testimony of the witnesses.

FINDINGS OF FACT

1. Respondent was issued Iowa resident physician license No. R-9030 on July 6, 2010. Respondent's Iowa resident physician license is active and will expire on June 30, 2013. (State Exhibit 1)

2. Respondent submitted an Application for an Iowa resident physician license which he signed on April 13, 2010. By virtue of his signature, Respondent certified in part, that;

> I certify that I have carefully read the questions on this application and have answered them completely and truthfully. I declare under penalty of perjury that my answers, and all other statements or information submitted by me in this application process, are true and correct. If it is determined at any time that I have provided misleading or false information on or in support of this

application, I understand that my application may be denied or that I may be subject to disciplinary action and criminal prosecution if I am already licensed.

Section 12 of the application signed by Respondent contained various questions and definitions relating to those questions. Respondent answered the following questions by checking the "No" response:

1. Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety?

3. Does your field of practice, or the setting or the manner in which you have chosen to practice medicine, reduce or eliminate the limitations or impairments caused by your medical condition or use of alcohol, drugs, or other chemical substances?

4. Are you currently engaged in the illegal or improper use of drugs or other chemical substances?

5. Does your current use of alcohol, drugs or other chemical substances in any way impair or limit your ability to practice medicine with reasonable skill and safety?

6. Have you ever been convicted of, or entered a plea of guilty, nolo contendere, or no contest to a crime other than a minor traffic offense, in any jurisdiction? You must include all misdemeanors and felonies, even if adjudication was withheld by the court so that you would not have a record of conviction. (For example, you must report if your conviction was expunged, you received a deferred judgment, or you received an executive pardon.) Driving while impaired is not a minor traffic offense.

The application provided the following definitions:

"Medical condition" means any physiological, mental or psychological condition, impairment or disorder, including drug addiction and alcoholism.

"Chemical substances" means alcohol, legal and illegal drugs or medications, including those taken pursuant to a valid prescription for legitimate medical purposes and in accordance with the prescriber's direction, as well as those used illegally.

"Currently" The medical condition has had an ongoing or adverse impact on the ability to function and practice.

"Improper use of drugs or other chemical substances" means all of the following: The use of any controlled drug, legend drug or other chemical substance for any purpose other than as directed by a licensed health care practitioner; and the use of any substance, including, but not limited to,

petroleum products, adhesive products, nitrous oxide and other chemical substances for mood enhancement.

"Illegal use of drugs or other chemical substances" means the manufacture, possession, distribution or use of any chemical substances prohibited by law (e.g. heroin).

(State Exhibit 5)

3. Respondent graduated from medical school with honors over the Memorial Day weekend of 2010. He had been recruited by and matched into the University of Iowa-Des Moines Internal Medicine Residency Program and was scheduled to begin training on July 1, 2010. On June 15, 2010, prior to beginning the program, Respondent was voluntarily hospitalized at Mercy Medical Center in Cedar Rapids, Iowa, for evaluation of methamphetamine use. He was discharged on June 20, 2010, with diagnoses of poly-substance abuse, methamphetamine dependence and substance-induced mood disorder. It was recommended Respondent enter a 30-day in-patient treatment program. (State Exhibit 8, 11, 17; Testimony of Andrew Stefani, William Yost)

4. The day after his discharge, June 21, 2010, Respondent met with Dr. William J. Yost, Director of the residency program, to disclose his substance abuse problem and request a leave of absence to undergo treatment. Dr. Yost agreed to hold Respondent's position in the program open for him. (State Exhibit 9, 10 , 11; Testimony of Andrew Stefani, William Yost)

5. Also on June 21, 2012, the Board received Respondent's background check showing a 2009 arrest for operating while intoxicated – first offense. The background check information also showed that Respondent entered a plea of guilty to a reduced charge of reckless driving on July 9, 2009. Board staff contacted Respondent inquiring why he did not disclose the matter on his application. (State Exhibit 6, 18)

6. On June 22, 2010, the day after meeting with Dr. Yost, Respondent contacted the Iowa Physician Health Program (IPHP) and stated he wanted to self-report his mental health and substance abuse issues. He submitted an Iowa Physician Health Program (IPHP) Confidential Physician Self-Report Form disclosing those issues. On June 23, 2012, Respondent responded to the Board staff's inquiry regarding his failure to report his OWI arrest and reckless driving conviction, stating that he had been advised by legal counsel that he did not have to report the incident because it was not necessary to disclose the minor traffic offense. (State Exhibit 8, 9 18, 19; Testimony Andrew Stefani)

7. On June 24, 2010, the IPHP emailed an Initial Agreement to Respondent for his signature. The purpose of the agreement was to facilitate IPHP's evaluation of Respondent's case and to allow cursory participation in the IPHP until a decision was made about his need for full participation. Respondent returned the signature page only which he executed on June 28, 2010. IPHP requested the full document be returned with initials on all pages. Respondent resigned and initialed the agreement on June 30, 2010, and returned it. The agreement provided, in part, that Respondent would abstain from the use

of all mood-altering chemicals, including alcohol, unless prescribed by another physician for legitimate purposes and would participate in a drug-screening program designed by IPHP. (Respondent Exhibit H; State Exhibit 12)

8. On June 29, 2010, Board staff reviewed Respondent's response to the inquiry regarding the reckless driving conviction and requested that IPHP review the matter. On June 30, 2010, the IPHP responded to Board staff and stated Respondent had already self-reported to the program. (State Exhibit 18, 19)

9. On July 6, 2010, the Board issued Respondent's Iowa resident physician license. On that same day Respondent entered in-patient treatment at Resurrection Behavioral Health Care in Chicago, Illinois. He appeared to do well in treatment and was noted to be active and thoughtful in small group and attentive in large group seminars. He completed his homework on a timely basis and attended all required AA meetings. He signed a Caduceus Aftercare Agreement and agreed to enroll in the IPHP for a period of 24 months. He also agreed to weekly drug screens, to follow up with his personal physician, to see an individual therapist, Susan Guenther, to attend at least three AA meetings each week, to work closely with a sponsor and to abstain from all mood-altering chemicals other than those prescribed for his use. Respondent was discharged from Resurrection on August 27, 2010, and he was diagnosed with methamphetamine dependence and major depression, in remission. (State Exhibit 13, 14, 18)

10. Subsequently, Respondent relapsed. He failed to provide a urine sample for drug testing when selected on September 13, 2010, and missed his aftercare group. Again, on September 14, 2010, he failed to provide a urine sample. He missed calls to First Lab from September 16 through September 19, 2010, and admitted consuming alcohol at his brother's wedding on September 18, 2010. On September 20, 2010, Respondent signed his Physician Health Contract with IPHP and agreed, among other conditions, that he would abstain from the use of mood-altering chemicals and would notify the IPHP of any instance of noncompliance with the terms of the agreement. On September 25, 2010, Respondent relapsed with methamphetamines. He self-reported his return to methamphetamine use on September 26, 2010. His September 27, 2010, urine test was positive for methamphetamines. Respondent re-entered treatment at Resurrection on September 29, 2010, where he remained until November 24, 2010. (Respondent Exhibit M, II, JJ, OO; State Exhibit 15; Testimony of Andrew Stefani)

11. On October 7, 2010, the Board issued a Confidential Letter of Warning to Respondent expressing concern with his failure to disclose his arrest for OWI and guilty plea to reckless driving. The letter of warning stated, in part:

> The Board has very serious concerns that you failed to disclose this information on your Iowa medical license application. The Board advises that you provide complete, accurate and truthful information on all such applications in the future. While the Board has chosen not to initiate formal disciplinary action in this matter at this time, please note that future evidence of such conduct may be grounds for taking formal disciplinary action against your Iowa medical license.

> Pursuant to Iowa Code chapter 272C this CONFIDENTIAL LETTER OF WARNING does not constitute a formal disciplinary action, nor is it a public record. Pursuant to Iowa code chapter 272C, this letter is a private communication between you and the Board that shall be maintained as part of a confidential investigative file.
>
> Pursuant to Iowa Code chapter 272C, this CONFIDENTIAL LETTER OF WARNING concludes the Boards review of this case. The Board reserves the right to review and reconsider this matter should it be deemed appropriate.

(State Exhibit 7)

12. Subsequent to Respondent's discharge from his second in-patient treatment in November 2010, he has been generally successful in complying with his IPHP contract. His quarterly reports have been favorable. Respondent finally entered the University of Iowa-Des Moines Internal Medicine Residency Program in January 2011 and was performing well. After the charges in this case were filed, Respondent was placed on a leave of absence from the program. During the pendency of these proceedings he has voluntarily taught second year medical students. (Respondent Exhibit N-V, OO, PP; Testimony of Andrew Stefani, Testimony of William Yost)

13. At hearing, Respondent testified that he had used methamphetamine on an infrequent basis previously, but in January 2010 he finished rotations early and his usage increased. In April 2010, Respondent noted he had a lot of "down time" and his usage became daily. Respondent stated that his methamphetamine use peaked in April and May 2010.

Respondent testified that, at the time he answered the questions on his licensure application, he was in denial. Respondent stated he did not believe he was addicted to methamphetamine at that time or that his drug usage affected his ability to practice. Respondent stated that he answered "no" to the question whether he was currently engaged in the illegal or improper use of drugs because he told himself he would simply quit using. Respondent explained that he received advice from counsel that he need not report his reckless driving conviction. He testified that at the time he signed the application, he believed his answers were true.

Respondent testified that he first believed he had an addiction to methamphetamines subsequent to filing his application in June 2010 after a friend discussed the issue with him. At that time he realized he could not quit using the drug without help. Afterwards, he and his parents sought advice from his family physician and then he underwent a detoxification program before he entered treatment. Respondent noted that both his family physician and a psychiatrist at Mercy in Cedar Rapids discussed the IPHP with him. He testified that he met with Dr. Yost the day after he was discharged from Mercy to inform the program director of his mental health and addiction issues and he self-reported those issues to the IPHP the following day.

Respondent admitted that he relapsed after his first course of in-patient treatment at Resurrection. He testified that he was out of town with his family for his brother's wedding and did not understand he needed to call in to FirstLab on September 13 and 14, 2010. While attending the wedding he consumed alcoholic beverages. A few days later, Respondent used methamphetamine again. Respondent stated there was an 8-day time span between the time he drank alcohol and when he used meth. He testified he self-reported his relapse to Dr. Yost and the IPHP the day after using meth.

Respondent stated that even during his relapse he was minimizing his condition. He testified that he has now taken ownership of his addiction and is focused on his recovery. Respondent shared that after he was asked to suspend the practice of medicine when these charges were filed he met with the other residents in his program and explained his situation to them.

Respondent testified that he believes he has a strong foundation in recovery thanks to the professionals who have treated him and his sponsors. He shared that he does not resent his obligations under his IPHP contract. Respondent expressed gratitude for the support he has received from his IPHP case managers. Respondent stated that he looks forward to his aftercare meetings and will not stray from the course of recovery. He testified that he wants to finish his residency and become a hospitalist. (Testimony of Andrew Stefani)

14. Dr. William J. Yost, Program Director for University of Iowa-Des Moines Internal Medicine Residency Program, testified that he recruited Respondent and was happy when Respondent was matched to the program. Dr. Yost noted that he left Respondent's place in the program open after Respondent disclosed his addiction because he was of the opinion Respondent would be a good resident. Dr. Yost testified that instead of a "good" resident, Respondent has become a "great" resident. He rated Respondent as "easily in the top ten percent" of the residents he has trained. Dr. Yost rated Respondent's ability to teach as "exceptional", his patient care as "very good and will become excellent", his medical knowledge as "very good", and his professionalism as "superior". He expressed the opinion that Respondent's skills with regard to interpersonal relationships are "off the charts" and he noted that while empathy cannot be taught, Respondent has it.

Dr. Yost testified that he has no doubts about Respondent's integrity and honesty. He noted that Respondent disclosed his substance abuse immediately after being released from detoxification and before he began the program. He also reported his relapse immediately after it occurred. Finally, Dr. Yost reported that Respondent has disclosed his addiction to his fellow residents.

Dr. Yost opined that Respondent has taken full ownership of his disease and is fully committed to his recovery. It was noted that Dr. Yost serves as Respondent's worksite monitor for purposes of the IPHP and has only provided one quarterly report that was not positive. That report was filed after Respondent's relapse. All other reports have been positive. Dr. Yost shared that he believes Respondent's prognosis is good and that it is more likely than not he will remain sober. (Testimony of William Yost; Respondent Exhibit CC)

15. Dr. Susan M. Guenther, Ph.D., testified that she serves as Respondent's therapist under his IPHP contract. Dr. Guenther has been working in the field of addiction since 1984 and currently has four or five physician clients through IPHP. Dr. Guenther estimated that 75%-95% of her practice deals with addiction.

Dr. Guenther first met with Respondent in December 2010 but worked with him telephonically while he was in his second course of in-patient treatment at Resurrection. She currently sees Respondent once or twice per month. His IPHP contract only requires he see her once each month. Respondent also has come to her on a voluntary basis when he feels the need.

Dr. Guenther noted that addiction is a disease that alters the addict's judgment and cognitive abilities to process truth from fiction and reality from fantasy. She opined that not until Respondent sought help was he finally able to realize the impact of his addiction. She noted that Respondent's answers to the questions on the licensure application form denying substance abuse were likely the results of the symptoms of addiction and were not intentionally false.

Dr. Guenther described her experience treating Respondent as "very positive". She noted Respondent has acted responsibly from the beginning of their relationship and his attitude towards recovery is excellent. Dr. Guenther noted that Respondent is a positive influence on her men's group because his empathy and insight are remarkable. She characterized him as one of the best participants in the men's group she has ever had. Dr. Guenther expressed the opinion Respondent would be an excellent addictionologist. Dr. Guenther characterized Respondent as honest, open and responsible. Dr. Guenther stated she was optimistic about Respondent's prognosis. She noted that he is well integrated into his 12-step program and will continue to be, not because he has to, but because he believes it is good for him. (Testimony of Susan Guenther; Respondent Exhibit DD)

16. Dr. Mark W. Purtle testified that he is the Vice President of Medical Affairs for Iowa Health-Des Moines. He has also served as the teaching attending physician at Boadlawns Medical Center for the Internal Medicine Continuity Clinic for several years. Dr. Purtle stated that he has had the opportunity to observe Respondent's clinical, professional and interpersonal skills. He noted that Respondent is one of the better residents he has seen. Dr. Purtle noted Respondent has shown good growth and is a team player. He interacts well with fellow residents and with nursing staff. Dr. Purtle also testified that Respondent is confident but not overly so and takes suggestions well. He observed that Respondent appears to enjoy what he does and demonstrates a respect for the profession. He expressed no doubts as to Respondent's honesty. (Testimony of Mark Purtle; Respondent Exhibit AA)

17. Dr. Jon J. Van Der Veer, D.O., is Chief Resident for the University of Iowa-Des Moines Internal Medicine Residency Program. He testified that he has known Respondent for seven years and first met him when assigned to serve as his "big sibling" in medical school. Dr. Van Der Veer characterized Respondent as friendly, outgoing, honest and professional. He noted that Respondent's interaction with patients is superlative. Dr. Van Der Veer testified that Respondent is viewed as an outstanding resident; he has a good work ethic and

ancillary staff like him. Dr. Van Der Veer expressed his opinion that Respondent has been very compliant with aftercare. (Testimony of Jon Van Der Veer; Respondent Exhibit Z)

18. Dr. Michael T. Flood, D.O., testified that he is the Assistant Program Director for the University of Iowa-Des Moines Internal Medicine Residency Program. He noted that he has known Respondent since Respondent was an osteopathic medical student. He opined that Respondent is not only a very good role model as a resident but also a very good teacher. He testified he believes Respondent would excel in medical academia. He noted that he has observed Respondent to be kind and considerate, very competent and extremely ethical. Dr. Flood expressed his opinion that Respondent was actively pursuing recovery and would not attempt to manipulate the system. (Testimony of Michael Flood; Respondent Exhibit BB)

19. Dr. Douglas B. Dorner, M.D., is the Senior Vice President for Medical Education and Research at Iowa Health-Des Moines and serves as the Director of Medical Education and as the Designated Institution Official for the Accreditation Council for Graduate Medical Education. He has become familiar with Respondent in that capacity. Dr. Dorner testified that he meets students during their orientation and interacts with them for the next one, three or five years. Dr. Dorner stated that he has observed nothing in Respondent to make him believe Respondent is in any way dishonest. In fact, Dr. Dorner opined that Respondent has been incredibly honest about his addiction. He stated that he is supportive of Respondent because Respondent is a "solid human being". (Testimony of Douglas Dorner; Respondent Exhibit HH)

20. Dr. Mary Fry, M.D., is an Addiction Specialist with Resurrection Behavior Health Service for Professionals. She treated Respondent during both of his courses of in-patient treatment. Dr. Fry submitted a letter in which she characterized addiction as a disease that "hijacks the brain". She noted that denial of addiction is a typical symptom of the illness and would be expected prior to treatment. She noted that Respondent worked hard to overcome his denial and that he has maintained a 'solid" recovery program. (Respondent Exhibit II)

21. Dr. Daniel H. Angres is an addiction psychiatrist and the Medical Director of Resurrection Behavioral Health Addiction Services. He has practiced in the field of addiction for nearly thirty years and is board certified in psychiatry and addiction psychiatry. Dr. Angres supervised Dr. Fry in her treatment of Respondent. He testified by deposition.

Dr. Angres expressed his opinion that Respondent took his treatment seriously and was highly motivated for ongoing recovery. He noted that Respondent was compliant during treatment. Dr. Angres stated he believed Respondent's prognosis is very good.

Dr. Angres testified that he believes it is "unrealistic' to expect that Respondent should have answered the questions relating to drug use correctly when he filed his application for an Iowa resident physician license. He explained that addiction is a brain disease which, as it progresses, marginalizes the areas of the brain that allow insight into behavior, lessening the ability to truly reflect on and understand one's actions. This decreased ability is referred to as impaired response and inhibition and salience attribution. It is a physiological component in addition to the psychological defenses of rationalization and minimization that

addicts experience. Dr. Angres stated that it is the rule rather than the exception that people do not recognize their addictions prior to professional identification of them. He expressed his professional opinion that Respondent's negative answers to the five questions on the application form pertaining to substance abuse were the result of his addiction and were not the result of an intention to mislead. (Respondent Exhibit JJ, NN)

22. Dr. Richard L. Hauser, M.D., is a psychiatrist who has been certified as an addiction psychiatrist with the American Society of Addiction Medicine since 1986. He has served as Respondent's program monitor for the IPHP since January 2012. Dr. Hauser testified by deposition.

Dr. Hauser testified that, in his opinion, Respondent would not have been capable of forming the intent to mislead when he filled out the application for his Iowa resident medical license. He noted that Respondent was in complete denial regarding his addiction and his thought processes had been taken over by methamphetamine when he was completing the form. Dr. Hauser stated that Respondent was likely operating in an altered state of mind and was telling himself he would just stop using meth when his residency began.

Dr. Hauser also expressed his opinion that Respondent now has a good grasp on the fact he has an addiction and has done an excellent job of addressing the problem. He expressed his belief that Respondent is doing well in both his recovery and his profession. (Respondent Exhibit EE, MM)

23. Joseph Renzo is an attorney who practices in Des Moines, Iowa. He testified that he represented Respondent after his arrest for operating while intoxicated-first offense. Mr. Renzo explained that he was able to negotiate an agreement whereby Respondent pled guilty to a reduced charge, reckless driving, which is a simple misdemeanor.

Mr. Renzo testified that Respondent contacted him later, when filling out his licensure application. Mr. Renzo stated that, after reviewing the language on the application, he advised Respondent it was not necessary to disclose his reckless driving conviction. Mr. Renzo noted that the question excludes from disclosure convictions for minor traffic offenses. He testified that, in his opinion, since the offense of reckless driving is a misdemeanor, it is a minor traffic violation and it was not necessary to disclose it. (Testimony of Joseph Renzo; Respondent Exhibit GG)

CONCLUSIONS OF LAW

Iowa Code section 147.55(1) provides that a license to practice a profession may be revoked or suspended or the licensee otherwise disciplined if the Board finds that the licensee is guilty of fraud in procuring a license. Iowa Code section 272C.10(1) requires licensing boards to adopt rules providing for discipline in the event a licensee is found to have committed fraud in obtaining a license. 653 IAC 23.1 states:

> The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, 261, or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder. The grounds for

> discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653 IAC 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(15) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice acupuncture, medicine and surgery, or osteopathic medicine and surgery in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

It is undisputed that the answers provided by Respondent to the license application questions regarding substance abuse were incorrect. The real question in this case is whether those answers were the result of fraud on Respondent's part.

The State argues Respondent's answers denying substance abuse were the result of fraud. Respondent, on the other hand argues the answers were the result of the symptoms of his addiction and not a voluntary act intended to mislead the Board. Both parties cite *Rosen v. Board of Medical Examiners,* 539 N.W.2d 345 (Iowa 1995) in support of their positions.

Rosen involved the denial of a license after an application containing false and incomplete answers was filed. In that case, the licensee allowed another physician to complete the application then signed the same without personally reviewing the answers provided. The Iowa Supreme Court upheld the denial after determining Rosen's actions met three criteria necessary to support a finding of fraud: intent to deceive, material misrepresentation, and scienter. *Id.* at 350. The court held that the elements of intent to deceive and scienter could be met if the licensee knew the answers were false or allowed the application to be filed with reckless disregard for whether the answers were true or not. *Id.*

Here, a preponderance of the evidence supports a determination that Respondent's answers to questions 1 (existence of a medical condition that impairs or limits the ability to practice), 3 (does field of practice reduce or eliminate the limitations caused by the medical condition), 5 (does current use of alcohol or drugs impair or limit ability to practice medicine, and 6 (prior conviction of crime other than minor traffic offense) were not fraudulent. Respondent produced convincing evidence that, due to his disease, he was unable to perceive that his negative answers regarding substance abuse were not truthful. Respondent's answers to those questions were the result of the psychological and physiological symptoms of his addiction rather than any intent on his part to knowingly provide false information to the Board for the purpose of obtaining a resident physician license. Further, his answer to the question regarding prior convictions was on the advice of counsel regardless of whether the advice was sound or not.

The Board's decision that Respondent's answers to these questions were not fraudulent should not be interpreted as a decision that a person who is addicted to a substance can never be expected to provide truthful answers to the licensure application questions regarding addiction. That is not the Board's decision. Rather, the Board has determined that in Respondent's case, the expert evidence provided shows that given the stage of Respondent's addiction and the substance he was abusing, he was not able to fully reflect on his condition and recognize his disease.

The Board is less convinced however, that Respondent's negative answer to question 4 (current illegal or improper use of drugs) was a result of his methamphetamine addiction. That question did not require any degree of the insight or personal reflection that Respondent's witnesses testified he was incapable of. Rather, this question was completely factual. Respondent admitted at hearing that he knew methamphetamine was an illegal drug and he certainly knew he was using it. Respondent's argument that he answered the question in the negative because he thought he could just quit using meth is without merit. At the time he answered the question Respondent was engaged in the use of an illegal substance and the Board finds his false answer denying the fact to have been made knowingly and with the intent to deprive the licensing authority of that information which was material to the decision of whether he should be licensed.

Respondent argues that the Board is precluded from finding he answered any of the license application questions fraudulently because the Iowa Physician Health Committee (IPHC) necessarily made a determination that Respondent did not provide fraudulent information when it accepted him into the program. In support of that contention, he cites 653 IAC 14.5(2) which provides:

> An applicant or a licensee <u>may be</u> determined to be ineligible to participate in the [IPHP] as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:
>
> *a.* The applicant or licensee provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the committee.
>
> *b.* The applicant or licensee fails to sign a contract when recommended by the committee.
>
> *c.* The IPHC determines it will be unable to assist the applicant or licensee.

Respondent's reliance on this rule is misplaced. It is clear that Respondent did not provide misleading or fraudulent information to the Iowa Physician Health Committee; he self-reported his addiction and mental health issues to the committee in June 2010, two days after he was discharged from detoxification. His honesty with the committee, however, does not preclude a finding that he acted fraudulently when he provided the Board with a false answer regarding his use of illegal drugs when he submitted his license application.

Additionally, Respondent argues that the Board is precluded from disciplining him for fraud in obtaining his Iowa resident physician license because his application was reviewed previously with regard to the OWI arrest and reckless driving conviction and the Board determined a confidential letter was the appropriate response. That argument is also without merit. The letter of warning sent to Respondent clearly indicated the Board was reserving the right to review and reconsider the matter if the circumstances demonstrated review was necessary. The discovery that Respondent fraudulently denied the use of illegal substances on his application constitutes a case where the matter should be reviewed again.

The Board's primary concern in this case is for the safety of the public. While Respondent has demonstrated a willingness to seek treatment and commitment to his recovery, and while he has thrived professionally since accepting this disease, given the gravity of Respondent's actions in attempting to hide his use of illegal drugs when applying for an Iowa resident physician license, the Board finds that discipline is warranted.

DECISION AND ORDER

1. **CITATION AND WARNING:** Respondent is hereby **CITED** for having acted fraudulently in procuring his license. Respondent is hereby **WARNED** that such practice in the future may result in further disciplinary action, including suspension or revocation of his Iowa resident physician license.

2. **CIVIL PENALTY:** Respondent shall pay a civil penalty of $2,000. The civil penalty shall be paid within thirty (30) days of the date of this Order and shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited in the State General Fund.

3. **PROFESSIONAL ETHICS PROGRAM:** Within sixty (60) days of the Final Order, Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), 7351 Lowry Blvd., Suite 100, Denver CO 80230, #303-577-3232. Respondent shall ensure that a report is sent directly to the Board. If Respondent fails to complete the professional ethics program within sixty (60 days) of the date of this order, the Board shall issue a notice to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

4. **PROBATION.** Respondent shall be placed on probation for the remainder of his Iowa resident medical license, subject to the following terms and conditions:

   A. **Monitoring Program:** Respondent shall establish a monitoring program with Shantel Billington, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph. #515-281-3654 within thirty (30) days. Respondent shall fully comply with all requirements of the monitoring program. If Respondent fails to establish a Board monitoring program or fails to fully comply with the monitoring program, the Board shall

issue a noted to Respondent that his license will be suspended within thirty (30) days of the date the notice is served on Respondent. The suspension shall occur automatically and without further Board action, unless Respondent files with the Board a request for hearing on the notice within ten (10) days of the date the notice is served.

B. **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his 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.

C. **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. Such appearance shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

D. **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: Coordinator of Monitoring Programs, 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.

5. **COMPLIANCE WITH IPHP:** Respondent shall remain in full compliance with all provisions of his IPHP contract. If Respondent fails to remain in compliance with his IPHP contract, 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 272C and 653 IAC 25.

6. **OBEY ALL LAWS:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine.

7. **FAILURE TO COMPLY:** 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 272C and 653 IAC 25.

8. **DURATION OF PROBATION.** Periods in which Respondent does not practice medicine under his Iowa resident physician license or fails to comply with the terms established in this Order, shall not apply to the duration of probation established in this Order.

9. **HEARING FEE:** Respondent shall pay a disciplinary hearing fee of $75.00. Iowa Code section 272C.6(6); 653 IAC section 25.33(2). Respondent shall also pay any costs certified by the executive director. *See* 653 IAC 25.33(3). All sanctions, 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 Board within thirty days of the issuance of the final decision.

Dated this 14th day of August, 2012.

Colleen Stockdale, M.D., M.S., Chairwoman
Iowa Board of Medicine
400 S.W. 8th Street, Suite C
Des Moines, IA, 50309-4686

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.

cc: Theresa O'Connell Weeg, Assistant Attorney General
James Shipman, Respondent's Attorney

BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ANDREW J. STEFANI, D.O., RESPONDENT

File No. 03-11-024

****

STATEMENT OF CHARGES

****

COMES NOW the Iowa Board of Medicine (Board) on March 29, 2012, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2). Respondent was issued Iowa resident medical license no. R-9030 on July 6, 2010. Respondent's Iowa resident medical license is active and will expire on June 30, 2013.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on June 21, 2012, before the Board. The hearing shall begin at 8:30 a.m. and shall be located in a 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 prehearing matters, and be present to assist and advise the Board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on April 18, 2012, at 9:00 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 Iowa Administrative Code 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 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: Julie Bussanmas, 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 Statement of Charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director at 515-281-7088 or Assistant Attorney General Julie Bussanmas at 515-281-5637.

B. LEGAL AUTHORITY AND JURISDICTION

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

9. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A, 147, 148, and 272C 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(1) and 272C.10(1) and 653 IAC 23.1(15) with fraud in procuring an Iowa medical license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice medicine, and includes false representations of

material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

D. STATEMENT OF MATTERS ASSERTED

12. Respondent currently practices medicine in a residency training program in Des Moines, Iowa.

13. On or about April 13, 2010, Respondent submitted an application for an Iowa resident medical license which included the following questions, answers and Affidavit of Applicant:

A. Question #1 of the application asked, "Do you currently have a medical condition which in any way impairs or limits your ability to practice medicine with reasonable skill and safety? If yes, provide a description of your condition and submit the Verification of Medical Condition form which is to be completed by your treating physician(s)." Respondent answered "No".

B. Question #2 of the application asked, "Are you receiving ongoing treatment or participating in a monitoring program that reduces or eliminates the limitations or impairments caused by either your medical condition or use of alcohol, drugs, or other chemical substances? If yes, provide details of your treatment or program, copies of treatment evaluations, statement for the program indicating your progress and recommendations." Respondent answered "No".

C. Question #3 of the application asked, "Does your field of practice, or the setting or the manner in which you have chosen to practice medicine, reduce or eliminate the limitations or impairments caused by your medical condition or use of alcohol, drugs or other chemical substances? If yes, provide a description of your practice and how it has changed since the diagnosis of your medical condition." Respondent answered "No".

D. Question #4 of the application asked, "Are you currently engaged in the illegal or improper use of drugs or other chemical substance? If yes, provide an explanation." Respondent answered "No".

E. Question #5 of the application asked, "Does your current use of alcohol, drugs or other chemical substances in any way impair or limit your ability to practice medicine with reasonable skill and safety? If yes, explain your current usage and how this impairs your ability to practice." Respondent answered "No".

F. Question #6 of the application asked, "Have you ever been convicted of, or entered a plea of guilty, nolo contendere, or no contest to a crime other than minor traffic offense, in any jurisdiction? You must include all misdemeanors and felonies, even if adjudication was withheld by the court so that you would not have a record of conviction. (For example, you must report if your conviction was expunged, you received a deferred judgment, or you received an executive pardon.) Driving under the influence or driving while impaired is not a minor traffic offense. If yes, provide details of the charges and the final

outcome. Provide copies of any court/legal documents related to each incident." Respondent answered "No".

G. The Affidavit of Applicant on the application states, "I hereby swear or affirm, under penalty of perjury, that I am the person described and identified; that the attached photo is a true likeness of myself; that I am the person named in the diploma which accompanies this application; that I am the lawful holder of said diploma; that said diploma was procured in the regular course of instruction and examination without fraud or misrepresentation. I certify that I have carefully read the questions on this application and have answered them completely and truthfully. I declare under penalty of perjury that my answers, and all other statements or information submitted by me in this application process, are true and correct. If it is determined at any time that I have provided misleading or false information on or in support of this application, I understand that my application may be denied or that I may be subject to disciplinary action and criminal prosecution if I am already licensed. I understand that I am required to update answers or information submitted with this application if the response or the information changes during the time period the application is pending. I also understand that this application is a public record in accordance with Iowa Code chapter 22 and that application information is public information, subject to the exceptions contained in Iowa law. Finally, in submitting this application, I consent to any reasonable inquiry

that may be necessary to verify the information I have provided on or in conjunction with this application. I also declare, under penalty of perjury, that if I did not personally complete the foregoing application that I have fully read and confirmed each question and accompanying answer and take full responsibility for all answers contained in this application. Respondent signed and dated the Affidavit of Applicant.

14. On July 6, 2010, the Board granted Respondent an Iowa resident medical license based on the answers he provided on his application for an Iowa resident medical license.

15. The Board subsequently received information which indicates that Respondent repeatedly failed to provide complete, accurate and truthful information on his application for an Iowa resident physician license including, but not limited to, the following:

A. Respondent was charged with Operating a Vehicle While Intoxicated-First Offense (OWI) on or about April 19, 2009, and he pleaded guilty to the reduced charge of reckless driving on July 9, 2009. Respondent failed to report this information on his application for an Iowa resident medical license. On October 7, 2010, the Board sent Respondent a Letter of Warning expressing concern that he failed to report this information on his application for an Iowa resident medical license.

B. The Board subsequently learned that Respondent has a history of a mental health condition and has undergone mental health treatment. Respondent failed to report his mental health condition and/or treatment on his application for an Iowa resident medical license.

C. The Board subsequently learned that Respondent has a history of illicit drug abuse and has undergone substance abuse treatment. Respondent failed to report his drug abuse and/or substance abuse treatment on his application for an Iowa resident medical license.

16. The Board alleges that Respondent failed to disclose a mental health condition and/or mental health treatment on his application for an Iowa resident medical license that he submitted to the Board on April 13, 2010, in violation of the laws and rules governing the practice of medicine in Iowa.

17. The Board alleges that Respondent failed to disclose his illicit drug use and/or substance abuse treatment on the application for an Iowa resident medical license that he submitted to the Board on April 13, 2010, in violation of the laws and rules governing the practice of medicine in Iowa.

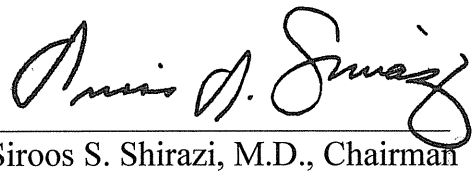
18. The Board alleges that Respondent failed to update his application for an Iowa resident medical license during the period between the date of application and the date the Board granted him an Iowa resident medical license in violation of the laws and rules governing the practice of medicine in Iowa.

E. SETTLEMENT

19. 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

20. On March 29, 2012, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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