

BEFORE THE IOWA BOARD OF MEDICINE

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IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

DAVID H. MARCOWITZ, D.O., RESPONDENT

FILE No. 03-14-105

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STIPULATED ORDER:

AGREEMENT NOT TO PRACTICE MEDICINE

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COMES NOW the Iowa Board of Medicine (Board) and David H. Marcowitz, D.O. (Respondent) on June 3, 2016, and pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into this Stipulated Order.

1. Respondent was issued Iowa medical license no. 3281 on January 24, 2000.
2. Respondent's Iowa medical license is active and will next expire on July 1, 2016.
3. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced general medicine in Moline, Illinois, and Chariton, Iowa.
4. **Illinois Disciplinary Action:** On January 30, 2014, Respondent was disciplined by the Illinois Division of Professional Regulation (Illinois Board) for the following:

- A. Prescribing multiple controlled substances to a patient in Moline, Illinois, between 2008 and 2011, without properly assessing and/or monitoring the patient for drug abuse or dependence.
- B. Providing Phentermine, a weight loss drug, to members of his office staff without establishing an appropriate physician-patient relationship, including performing physical examinations and maintaining medical records.
- C. Failing to produce medical records subpoenaed by the Illinois Board during its investigation.

The Illinois Board suspended Respondent's Illinois medical license for a period of thirty days and Respondent agreed to place his Illinois medical license on permanent inactive status and his Illinois controlled substance license on inactive status. The Illinois Board also ordered Respondent to pay a \$3,000 fine. See Attachment A.

5. **Statement of Charges:** On February 6, 2015, the Board filed a Statement of Charges against Respondent charging him with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country, in violation of Iowa Code section 148.6(2)*d* and 653 IAC 23.1(1). A contested case hearing was held before the Board on May 28, 2015.

6. **Findings of Fact, Conclusions of Law, Decision and Order:** On June 25, 2015, the Board issued a Findings of Fact, Conclusions of Law, Decision and Order. The Board concluded that Respondent had disciplinary action taken against him by the Illinois Board in violation of the laws and rules governing the practice of medicine in Iowa and the June 25, 2015, Decision and Order, included the following provisions:

1. **INDEFINITE SUSPENSION:** Respondent's license to practice osteopathic medicine and surgery in Iowa is **INDEFINITELY SUSPENDED**, effective immediately upon service of this Decision and Order. The suspension is stayed, in lieu of Respondent successfully completing the following requirements:
  - A. **Mental Health Evaluation:** Within 60 days of the date of this Order, Respondent shall successfully complete a mental health evaluation at a Board-approved mental health evaluation program and ensure that a report is sent directly to the Board. Respondent is responsible for all costs associated with the evaluation. If Respondent fails to complete the Board-approved mental health evaluation within 60 days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended within 30 days of the date the notice is served on Respondent. The suspension shall occur automatically, and without further Board action, unless Respondent files a request for hearing on the notice with the Board within 10 days of the date the notice is served.
  - B. **Competency Evaluation:** Within 90 days of the date of this Order, Respondent shall successfully complete a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP) in Denver, Colorado, and ensure that a report is sent directly to the Board that confirms his competence or identifies any areas of deficiency. Respondent shall fully comply with any recommendations for education or remediation made by CPEP as a result of the evaluation. Respondent is responsible for all costs associated with the evaluation. If Respondent fails to complete the competency evaluation within 90 days of the date of this Order, the Board will issue a notice to Respondent that his license will be

suspended within 30 days of the date the notice is served on Respondent. The suspension shall occur automatically, and without further Board action, unless Respondent files a request for hearing on the notice with the Board within 10 days of the date the notice is served.

- C. **Professional Ethics Program:** Within 120 days of the date of this Order, Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by CPEP in Denver, Colorado, and ensure that a report is sent directly to the Board. Respondent is responsible for all costs associated with the professional ethics program. If Respondent fails to complete the professional ethics program within 120 days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended within 30 days of the date the notice is served on Respondent. The suspension shall occur automatically, and without further Board action, unless Respondent files a request for hearing on the notice with the Board within 10 days of the date the notice is served.

7. **Motion to Stay Deadlines:** On January 7, 2016, Respondent filed a Motion to Stay Deadlines asking the Board to stay enforcement of the deadlines established in the June 25, 2015, Decision and Order, outlined above. Respondent indicated that he has attempted to meet the requirements of the Order but his ability to do so has been compromised by recent serious health issues. Respondent indicated that he is not practicing medicine in Iowa or any other state.

8. **Agreement Not to Practice Medicine:** The Board agrees to stay enforcement of the deadlines established in the June 25, 2015, Decision and Order, and in return, Respondent agrees that he shall not engage in any aspect of the practice of medicine until he has fully complied with the provisions established in the June 25, 2015, Decision and Order, outlined above.

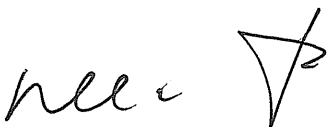
9. This Stipulated Order is a public record.


10. Respondent voluntarily submits this Stipulated Order to the Board for consideration.


11. In the event Respondent violates or fails to comply with any of the terms of this Stipulated Order, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline authorized in Iowa Code Chapters 147, 148 and 272 and 653 IAC 23.

12. This Order is subject to approval by the Board. If the Board fails to approve this Order, it shall be of no force or effect to either party.

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

  
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David H. Marcowitz, D.O. Respondent

  
\_\_\_\_\_  
Date

  
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~~Hamed H. Tewfik, M.D., Chairman~~  
Diane L. Clark R.N., M.A., Chair  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

  
\_\_\_\_\_  
Date

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>IN THE MATTER OF THE STATEMENT )</b>	<b>DIA No. 15IMB001</b>
<b>OF CHARGES AGAINST )</b>	<b>File No. 03-14-105</b>
)	)
<b>DAVID H. MARCOWITZ, D.O., )</b>	<b>FINDINGS OF FACT,</b>
<b>Respondent. )</b>	<b>CONCLUSIONS OF LAW,</b>
)	<b>DECISION AND ORDER</b>
)	)

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Date: June 25, 2015.

On February 6, 2015, the Iowa Board of Medicine (Board) filed a Statement of Charges against David H. Marcowitz, D.O., (Respondent) charging him with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country, in violation of Iowa Code section 148.6(2)*d* and 653 IAC 23.1(1).

A contested case hearing was held on May 28, 2015, before the following Board members: Hamed Tewfik, M.D., Chairman; Allison Schoenfelder, M.D., Vice Chair; Kyle Ulveling, M.D.; Allen Zagoren, D.O.; Carole Frier, D.O.; physician members and Diane Clark and Janece Valentine, public members. Pursuant to Iowa Code section 272C.6(1) and 653 IAC 25.18(12) the hearing was closed to the public at Respondent's request. The hearing was reported by a certified court reporter. Administrative Law Judge Heather Palmer assisted the Board in conducting the hearing. Assistant Attorney General Julie Bussanmas represented the State. Attorney David Brown represented Respondent. Board Investigator James Machamer appeared and testified on behalf of the State. Respondent appeared and testified. Exhibits 1 through 6 were admitted into the record.

**FINDINGS OF FACT**

In 1989, Respondent graduated from the University of Osteopathic Medicine in Des Moines, Iowa. Respondent completed a two-year family practice internship in Chicago and was licensed in the state of Illinois. Respondent is board-certified in family practice. After completing his internship, Respondent practiced medicine in the Chicago area for approximately five years. He then moved to the Quad Cities area and worked for Trinity Hospital for about five years.

Respondent has been licensed in the state of Iowa since January 24, 2000. His license is active and will next expire on July 1, 2016.

In 2000, Respondent opened his own general family practice clinic in the Quad Cities. Respondent saw 40 to 50 patients per day for approximately 10 minutes each. Respondent estimates five percent of his patients received treatment for chronic pain. Respondent reports that when he worked for Trinity Hospital approximately five to 10 percent of his patients received treatment for chronic pain. For a period of time Respondent staffed a methadone clinic in Rock Island and an inpatient residential treatment clinic in Buffalo, Iowa.

When Respondent opened his own office in the Quad Cities he intended to treat workers' compensation patients. Respondent dispensed medication from his office. Respondent testified the workers' compensation carrier he was working with agreed to pay him directly for the medication. Respondent received controlled substances for his office from two sources, ANDA, an internet company, and Dispense RX. Dispense RX was based in California. Austin Wheatley was Respondent's direct contact with Dispense RX. Respondent entered into a business relationship with Wheatley to provide controlled substances to his workers' compensation patients.

Respondent received cash payments from a large percentage of his patients and charged \$55.00 a visit. Respondent worked as a solo practitioner until October 2012, when he closed his Illinois practice.

Lucas County Health Center, a hospital in Chariton, Iowa, recruited Respondent. Respondent reports he commenced his employment with Lucas County Health Center on November 1, 2012. Respondent works in a group practice with four other physicians and additional allied practitioners. All of the professionals are employees of the hospital. Respondent works 40 hours per week, treating children, adolescents, adults, and elderly patients. Respondent reports he treats some patients with chronic pain, but not many. Respondent sees between 15 to 20 patients per day, approximately half the number of patients he saw per day when he operated his own practice. Respondent staffs the emergency room at the hospital one weekend per month and one day per week.

A few of Respondent's former patients followed him from Illinois to Chariton, Iowa. Respondent testified he has one former patient from Illinois he sees at this time.

On March 3, 2014, the Board received notification from the Federation of State Medical Boards that Respondent was disciplined by the state of Illinois due to concerns about his prescribing practices and failure to produce medical records in response to a subpoena. The Board requested a copy of the state of Illinois' file regarding Respondent, which included a copy of the Illinois Complaint and Consent Order.

The state of Illinois issued a Notice of Preliminary Hearing on August 2, 2013, and attached a copy of the Complaint. Respondent avers he never received the Notice of Preliminary Hearing and Complaint. The Notice of Preliminary Hearing lists

Respondent's Iowa address, 1200 N. 7<sup>th</sup> Street, Suite 100, Chariton, IA 50049. (Exhibit 5 at 67). The Notice of Preliminary Hearing contains a certificate of service, issued under the penalty of perjury, which indicates that the document was sent by certified mail to Respondent on August 2, 2013.

The Illinois Complaint sets forth three Counts. Count I contains 101 numbered paragraphs and alleges between 2008 and 2011, Respondent prescribed Hydromorphone, Meprozine, Hydrocodone, and Alprazolam to a patient, H.K., and failed to properly assess H.K. for signs and symptoms of drug abuse and drug dependence. It also alleges that in May 2010 H.K. was self-injecting medications Respondent prescribed, injecting his pregnant girlfriend with the medications, and selling the medications to local drug users, three of whom had died.

Count II alleges Respondent provided Phentermine to office staff who were not patients of Respondent, Respondent failed to complete physical examinations of the office staff, and Respondent failed to maintain medical records documenting the treatment.

Count III alleges Respondent failed to comply with a Medical Board Subpoena Duces Tecum issued on May 15, 2013, directing Respondent to produce patient medical records.

Respondent entered into a Consent Order with the state of Illinois on January 2, 2014, which was fully executed on January 31, 2014. The parties entered into Stipulations, as follows:

David H. Marcowitz, D.O. is licensed as a Physician and Surgeon in the State of Illinois, holding License No. 036-082773 and Illinois Controlled Substance License No. 336-045043. Said licenses are in Active status. At all times material to the matter(s) set forth in this Consent Order, the Department of Financial and Professional Regulation, Division of Professional Regulation, of the State of Illinois had jurisdiction over the subject matter and parties herein.

Information has come to the attention of the Department that Respondent prescribed Controlled Substances to patients in his Illinois practice as well as failed to produce medical records pursuant to the Department's Subpoena when requested. The allegation(s) as set forth herein, if proven to be true, could constitute grounds for suspending, revoking or other discipline of Respondent's Physician and Surgeon license on the authority 225 Illinois Compiled Statutes Paragraph 60/22(A)(5) and (38).

The Department filed a Formal Complaint on August 2013. Subsequently, Respondent mailed his licenses to the Department indicating his desire to permanently leave the State of Illinois.



Respondent has been advised of the right to a hearing, the right to contest any charges brought forward in the Department's Complaint, and the right to administrative review of this Consent Order. Respondent knowingly waives each of these rights, as well as the right to administrative review of this Consent Order. Such waiver ceases if this Consent Order is rejected by either the Medical Disciplinary Board or the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation.

Respondent and the Department have agreed, in order to resolve this matter, that Respondent, David H. Marcowitz, D.O., be permitted to enter into a Consent Order with the Department, providing for the imposition of disciplinary measures which are fair and equitable under the circumstances and which are consistent with the best interests of the people of the State of Illinois.

(Exhibit 3). The state of Illinois and Respondent agreed Respondent's Illinois Physician and Surgeon License and his Illinois Controlled Substances License would be suspended for 30 days, and then placed on permanent inactive status and Respondent would pay a \$3,000 fine.

The Board assigned Investigator James Machamer to investigate the Illinois disciplinary action. Board Investigator Machamer reported the Illinois action stemmed from a joint investigation by the Drug Enforcement Administration ("DEA") and the Illinois State Police regarding inappropriate prescribing. The investigative materials included reports completed by DEA Diversion Investigator George Taylor. Illinois State Police Special Agent Anthony Romeo, DEA Special Agent Jon Johnson, and Illinois Division of Professional Regulation Investigator Janelle Kirby-McPheron assisted with the investigation. Professional Regulation Investigator Kirby-McPheron received a complaint from a woman who reported her friend had overdosed and died from injecting prescription medication he purchased from H.K. that H.K. had obtained from Respondent.

DEA Investigator Taylor and the other investigators interviewed Respondent's former office manager, Dawn Schultz, and other former employees of Respondent. The employees reported Respondent had an unsecured cabinet in his office that contained Hydrocodone, muscle relaxers, and antibiotics.

Multiple staff members reported the front desk would screen patients that came into Respondent's office. The employees noted Respondent saw between 40 and 55 patients per day. Schultz reported eight out of 10 patients requested pain medication. According

to multiple staff members, if a patient made it past the front desk, then the patient would see Respondent and he would issue a prescription for the patient to fill at the pharmacy or have someone in the office dispense the medication to the patient in the office. The staff reported some patients left the office with medication from the controlled substance cabinet and others received prescriptions. The employees reported Respondent issued early refills to patients and those prescriptions were usually filled out of the controlled substances cabinet.

Respondent also owned a building where a transmission shop was located. Several employees of Respondent's medical practice reported Respondent provided the employees of the transmission shop with controlled substances without a prescription, and also wrote prescriptions for individuals who worked at the shop.

At hearing, Respondent testified that a number of the medical staff at the clinic walked out on the same day due to concerns that he was going to fire an employee. Respondent reports he contested the staff members' unemployment insurance claims and they were unhappy with him. Respondent contends the staff made untrue statements to DEA Investigator Taylor about his practice because they were disgruntled.

Respondent acknowledged he spoke with DEA Investigator Taylor on one occasion. DEA Investigator Taylor prepared a report noting Respondent advised him that Respondent believed H.K. might be "shooting up," but not selling controlled substances Respondent prescribed. DEA Investigator Taylor noted Respondent advised him that he was "loose in his prescribing practices" and "provided Phentermine to office staff without being actual patients." (Exhibit 5 at 147-148). During his hearing before the Board, Respondent denied making the above statements to DEA Investigator Taylor. Respondent also denied knowledge H.K. was injecting medication into himself and others and that H.K. was selling his prescription drugs to others.

On January 22, 2014, Respondent applied for renewal of his Iowa Controlled Substances Registration. Question 10a asked, "has the applicant ever been convicted of a felony in connection with controlled substances under any State or Federal law or ever surrendered (in lieu of disciplinary action) or had a CSA registration revoked, suspended, or denied?" (Exhibit 5 at 85). Respondent he replied "No." Respondent signed the Iowa Controlled Substances Registration swearing "under penalty of perjury that the information provided in this application is true and correct" and agreeing he understood "that failure to provide complete and truthful information may constitute grounds for revocation or other disciplinary sanction against [his] registration." (Exhibit 5 at 85). Respondent testified that he did not answer "Yes" to the question because a credentialing person from Lucas County Health Center completed the application for him and he did not think about it.

On May 3, 2014, Respondent electronically applied for renewal of his Iowa medical license. Question 1 under License Information asks:

Have you ever been investigated or subject to an inquiry/review by any medical/osteopathic licensing agency, other than the Iowa Board of Medicine, including an investigation or review which resulted in no formal action since the date of your last renewal? (Answer “Yes” if you have ever been contacted by an investigator or Board agent to review a complaint or report against you.)

(Exhibit 5 at 88). Respondent answered, “No.”

Question 2 asks:

Have you been disciplined or sanctioned by another medical licensing authority, professional society, federal agency, including the U.S. Department of Health and Human Services, or health care facility since the date of your last renewal?

(Exhibit 5 at 88). Respondent answered “Yes” and stated, “see consent order with Illinois.”

In February 2014, Respondent retained David Brown to represent him. Board Investigator Machamer sent Brown an e-mail on May 16, 2014, informing him he would send a letter asking for Respondent’s narrative comments surrounding the Illinois action. Brown replied on May 20, 2014, stating he looked forward to receiving the letter.

On August 27, 2014, Board Investigator Machamer sent Brown an e-mail stating he had left one voicemail and two written messages regarding Respondent. Board Investigator Machamer sent Brown another e-mail on September 4, 2014, stating he had attempted to contact Brown on several occasions to discuss his client and noted Brown had failed to respond. Board Investigator Machamer indicated he would be preparing and submitting his formal report to the Board based on the findings and documents obtained during his investigation without Respondent’s input.

On February 6, 2015, the Board filed a Statement of Charges against Respondent charging him with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country, in violation of Iowa Code section 148.6(2)*d* and 653 IAC 23.1(1).

At hearing, Respondent testified he did not respond to the Illinois subpoena because compliance with the subpoena was impossible. Respondent reported his patient records are located on his home computer and the subpoena requested thousands of pages of records. Respondent testified each patient record requires approximately two cartridges of ink to print and the state of Illinois wanted 40 charts. Respondent acknowledged that he did not produce any medical records pursuant to the subpoena.

Respondent also testified he did not understand the impact that the Illinois Consent Order could have on his license to practice medicine in Iowa. Respondent reported he did not have counsel in Illinois at the time he entered into the Consent Order and he intended to start over in Iowa. The investigation revealed Jeffrey Lang an attorney with Lane & Waterman, LLC, initially represented Respondent in the Illinois action. Respondent reported he could not afford legal representation and he discontinued his relationship with Lang. Respondent contends he entered into the Consent Order because he was going through a divorce and he had no intention of practicing in Illinois again.

Respondent has been diagnosed with high blood pressure and diabetes. He had a heart attack years ago. Respondent did not report any current problems with this health or well-being.

At hearing, Respondent told the Board he is agreeable to the maximum fine of \$10,000, and attending a boundaries course, as long as his Iowa medical license is not restricted. Respondent contends that if his Iowa medical license is restricted he will not be able to continue practicing medicine at the Lucas County Health Center. As of the date of the hearing, Respondent had not been contacted by the Iowa Board of Pharmacy.

### CONCLUSIONS OF LAW

The Board oversees physician licensure and discipline in Iowa.<sup>1</sup> The Board may issue an order to discipline any licensee for a ground set forth in Iowa Code chapter 272 C, or Iowa Code sections 147.55 or 148.6.<sup>2</sup> Iowa Code section 272C.4 grants the Board express authority to “[d]efine by rule acts or omission that are grounds for revocation or suspension of a license” under Iowa Code section 148.6. Pursuant to its express authority, the Board has adopted rules governing licensee discipline and sanctions found at 653 IAC chapters 23 and 25.

The Board charged Respondent with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country, in violation of Iowa Code section 148.6(2)*d* and 653 IAC 23.1(1). Respondent entered into a Consent

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<sup>1</sup> Iowa Code chapters 147, 148, and 272C (2015).

<sup>2</sup> *Id.* § 148.6(1).

Order with the state of Illinois effective January 31, 2014. Respondent agreed to a suspension of his Illinois Physician and Surgeon license for a period of 30 days, and to place his Illinois license on permanent inactive status. Respondent also agreed to pay a \$3,000 fine. The Board determined that the preponderance of the evidence clearly demonstrates that Respondent has had a license to practice medicine and surgery or osteopathic medicine and surgery suspended and he received other disciplinary action by a licensing authority of another state in violation of Iowa Code section 148.6(2)*d* and 653 IAC 23.1(1). Respondent does not deny the fact that he was disciplined by the state of Illinois.

Given the state of Iowa has proven the violation, it is necessary to determine the appropriate sanction. For a violation of Iowa Code section 147.55 or 148.6, the Board may impose one or more of the following disciplinary measures.

- a.* Suspend the licensee's license to practice the profession for a period to be determined by the board.
- b.* Revoke the licensee's license to practice the profession.
- c.* Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the physician on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice medicine and surgery or osteopathic medicine and surgery, but may impose a disciplinary or correct measure which the board might originally have imposed. . . .<sup>3</sup>

The Board may also require additional professional education or training, impose a civil penalty not to exceed \$10,000, and issue a citation or warning respecting licensee behavior which is subject to the imposition of other sanctions by the Board.<sup>4</sup>

During the contested case hearing Respondent denied the allegations underlying the Illinois Complaint, testified DEA Investigator Taylor and Respondent's staff were untruthful, and presented excuses for his behavior. The Board was not impressed with Respondent's lack of candor and general demeanor during the contested case hearing.

Respondent testified he did not receive the Illinois Complaint and entered into the Consent Order without fully understanding the implications of doing so. Respondent also reported he was not represented by legal counsel when he entered into the Consent Order. The Board concluded that the evidence demonstrated that the Illinois Complaint was properly served on Respondent, he was initially represented by legal counsel in the Illinois action and he chose to enter into the Illinois Consent Order on his own. The Board was not persuaded by Respondent's testimony under these circumstances.

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<sup>3</sup> *Id.* § 148.6(8).

<sup>4</sup> *Id.* §§ 148.6(1), 272C.3(2).

The Board has serious concerns Respondent maintained an unsecured cabinet in his office for controlled substances. The Illinois investigation contains reports authored by DEA Investigator Taylor and Respondent's former employees reported Respondent had an unsecured cabinet in his office that contained Hydrocodone, muscle relaxers, and antibiotics.

The Board has serious concerns Respondent saw between 40 and 55 patients per day at his office in the Quad Cities and most of the patients received pain medication, including early refills. Multiple staff members reported the front desk would screen patients that came into Respondent's office. The employees noted Respondent saw between 40 and 55 patients per day. Schultz reported eight out of 10 patients requested pain medication. According to multiple staff members, if a patient made it past the front desk, then the patient would see Respondent and he would issue a prescription for the patient to fill at the pharmacy or have someone in the office dispense the medication to the patient in the office. The staff reported some patients left the office with medication from the controlled substances cabinet and others received prescriptions. The employees reported Respondent issued prescriptions early to patients and those prescriptions were usually filled out of the controlled substances cabinet.

The Board has serious concerns that Respondent provided controlled substances to employees of the transmission shop without a prescription. The evidence presented to the Board indicates Respondent owned a building containing a transmission shop. And several employees of Respondent's medical practice reported Respondent provided employees of the transmission shop with controlled substances without a prescription, and also wrote prescriptions for individuals who worked at the shop.

The Board has serious concerns Respondent prescribed multiple controlled substances to H.K. in Moline, Illinois, between 2008 and 2011, without properly assessing and/or monitoring H.K. for drug abuse or dependence, despite learning that H.K. and his pregnant girlfriend were injecting the drugs and that H.K. was selling the drugs to local drug users, at least three of whom died. The Board also has serious concerns Respondent provided Phentermine, a weight loss drug and controlled substance, to members of his office staff without establishing an appropriate physician-patient relationship and without performing physical examinations and maintaining medical records. Respondent acknowledged he spoke with DEA Investigator Taylor on one occasion. DEA Investigator Taylor prepared a report noting Respondent indicated he believed H.K. might be "shooting up," but not selling controlled substances Respondent prescribed. DEA Investigator Taylor noted Respondent advised he was "loose in his prescribing practices" and "provided Phentermine to office staff without being actual patients." (Exhibit 5 at 147-148). During his hearing before the Board, Respondent denied making the above statements to DEA Investigator Taylor. Respondent denied knowledge that H.K. was using syringes to inject medication into himself and others and that H.K. was selling his prescription drugs to others.

At hearing Respondent testified a number of the staff walked out on the same day due to concerns he was going to fire an employee. Respondent reports he contested the staff member's unemployment insurance claims and they were unhappy with him. Respondent contends staff made untrue statements to DEA Investigator Taylor about his medical practice because they were disgruntled and he contends DEA Investigator Taylor's reports were also inaccurate. The Board found the reports authored by DEA Investigator Taylor and the statements made by Respondent's former employees credible and Respondent's denials self-serving. The Board noted Respondent chose not to challenge the Illinois Complaint and entered into the Consent Order voluntarily.

The Board has serious concerns Respondent failed to produce any of the medical records requested in the subpoena issued by the state of Illinois. Respondent contends he did not have the resources to produce the requested records. Respondent testified that he maintains his patient's medical records on his home computer and each patient record takes approximately two cartridges of ink to print and the state of Illinois wanted 40 charts. The Board noted that a licensing board needs licensees to cooperate and produce necessary records to conduct a proper investigation. The Board is also concerned Respondent maintains his patient's medical records on his home computer. The Board is concerned whether Respondent has appropriate security, back-up and access to the records.

The Board has serious concerns Respondent failed to provide accurate, complete and truthful information on his application for renewal of his Iowa Controlled Substances Registration on January 22, 2014. The evidence presented to the Board indicates Respondent failed to disclose that he agreed to a 30 day suspension of his Illinois Controlled Substance License (No. 336-045043) on January 2, 2014, and agreed to place the license on permanent inactive status. Respondent also requested the state of Illinois cancel his Illinois Controlled Substance License during the investigation on June 10, 2013. Respondent contends his response was an oversight. Respondent testified he failed to disclose this information because a credentialing person from Lucas County Health Center completed the application for him and he did not think about it. The Board questioned the credibility of Respondent's testimony and in any event, the Board noted that Respondent, not his staff, is responsible for ensuring he submits accurate, complete and truthful information to Iowa licensing authorities.

The Board has serious concerns Respondent failed to provide accurate, complete and truthful information on his application for renewal of his Iowa medical license on May 30, 2014. The evidence presented indicates Respondent failed to disclose that he entered into the Illinois Consent Order in January 2014. Respondent avers he did not provide an affirmative response because he did not complete the application and his attorney notified the Board of the disciplinary action in February 2014. Again, the Board questioned the credibility of Respondent's testimony and in any event, Respondent is responsible for ensuring he submits accurate, complete and truthful information to the Board.

In conclusion, the Board has serious concerns about Respondent's prescribing practices, office practices and medical record keeping practices in the evidence presented to the Board. The Board also has serious concerns about his professional judgment, professionalism and honesty. Additionally, the Board has serious concerns about Respondent's lack of candor during the hearing. The Board noted that Respondent's lack of candor and past behavior raise serious concerns about the protection of the public in Iowa.

## DECISION AND ORDER

### IT IS THEREFORE ORDERED:

1. **INDEFINITE SUSPENSION:** Respondent's license to practice osteopathic medicine and surgery in Iowa is INDEFINITELY SUSPENDED, effective immediately upon service of this Decision and Order. The suspension is stayed, in lieu of Respondent successfully completing the following requirements:

- A. **Mental Health Evaluation:** Within 60 days of the date of this Order, Respondent shall successfully complete a mental health evaluation at a Board-approved mental health evaluation program and ensure that a report is sent directly to the Board. Respondent is responsible for all costs associated with the evaluation. If Respondent fails to complete the Board-approved mental health evaluation within 60 days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended within 30 days of the date the notice is served on Respondent. The suspension shall occur automatically, and without further Board action, unless Respondent files a request for hearing on the notice with the Board within 10 days of the date the notice is served.
- B. **Competency Evaluation:** Within 90 days of the date of this Order, Respondent shall successfully complete a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP) in Denver, Colorado, and ensure that a report is sent directly to the Board that confirms his competence or identifies any areas of deficiency. Respondent shall fully comply with any recommendations for education or remediation made by CPEP as a result of the evaluation. Respondent is responsible for all costs associated with the evaluation. If Respondent fails to complete the competency evaluation within 90 days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended within 30 days of the date the notice is served on Respondent. The suspension shall occur automatically, and without further Board action, unless Respondent files a request for hearing on the notice with the Board within 10 days of the date the notice is served.



- C. **Professional Ethics Program:** Within 120 days of the date of this Order, Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by CPEP in Denver, Colorado, and ensure that a report is sent directly to the Board. Respondent is responsible for all costs associated with the professional ethics program. If Respondent fails to complete the professional ethics program within 120 days of the date of this Order, the Board will issue a notice to Respondent that his license will be suspended within 30 days of the date the notice is served on Respondent. The suspension shall occur automatically, and without further Board action, unless Respondent files a request for hearing on the notice with the Board within 10 days of the date the notice is served.

2. **CITATION AND WARNING:** Respondent is hereby **CITED** for being disciplined by the state of Illinois for: prescribing multiple controlled substances to a patient in Moline, Illinois, between 2008 and 2011, without properly assessing and/or monitoring the patient for drug abuse or dependence, despite learning that the patient and his pregnant girlfriend were injecting the drugs and that the patient was selling the drugs to local drug users, at least three of whom died; providing Phentermine, a weight loss drug, to members of his office staff without establishing an appropriate physician-patient relationship, including performing physical examinations and maintaining medical records; and failing to produce medical records subpoenaed by the state of Illinois during its investigation. Respondent is hereby **WARNED** that such conduct in the future may result in further disciplinary action, including revocation of his Iowa medical license.

3. **CIVIL PENALTY:** Respondent shall pay a **\$3,000 civil penalty** within 20 days of the date of this Order. The civil penalty shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the Board's Executive Director. The civil penalty shall be deposited into the State General Fund.

4. **PROHIBITION - CHRONIC PAIN MANAGEMENT:** Respondent is prohibited from prescribing, administering or dispensing controlled substances for the treatment of chronic pain under his Iowa medical license. Pursuant to 653 IAC 13.2(1), "*Chronic pain* means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient." This prohibition does not prohibit Respondent from prescribing, administering or dispensing controlled substances for the treatment of acute pain. This practice restriction shall continue until further order of the Board.

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

- A. **Board Monitoring Program:** Within 30 days of the date of this Order, Respondent shall establish a Board monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, Iowa 50309-4686, Phone Number (515) 281-5525. Respondent shall fully comply with all requirements of the monitoring program.
  
- B. **Prescription Audit Program:** Respondent shall fully comply with Board-approved audits of his controlled substance prescribing during the period of this Order. Respondent shall submit the names of all patients he has prescribed controlled substances for each quarter. From that list, the Board shall select 10 patients quarterly. Respondent shall provide the Board copies of the medical records for each patient selected for review.
  
- C. **Worksite Monitoring Program:** Respondent shall establish a worksite monitoring program with the Board subject to the following terms and conditions.
  - 1. Respondent shall submit for Board approval the name of a physician who regularly observes and/or supervises Respondent in his practice.
  - 2. The Board shall provide a copy of all Board orders relating to this matter to the worksite monitor.
  - 3. The worksite monitor shall provide a written statement indicating he or she has read and understands this Order and agrees to serve under the terms of this Order.
  - 4. The worksite monitor shall agree to immediately inform the Board if there is evidence of professional incompetence, or a violation of the terms of this Order.
  - 5. The worksite monitor may be asked to appear before the Board, in-person, by telephone, or by video conference. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
  - 6. The worksite monitor shall submit quarterly reports to the Board no later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

- D. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with all the terms of this Order no later than 1/10, 4/10, 7/10 and 10/10 of each year for the duration of the period of this Order.
- E. **Board Appearances:** Respondent shall appear before the Board annually or upon request of the Board during this Order. Respondent shall be given notice of the date, time and location of each appearance. The appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
- F. **Monitoring Fee:** Respondent shall make a payment of \$300 to the Board each quarter for the duration of his probation to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with all quarterly reports required during his probation. The monitoring fee shall be sent to: Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8<sup>th</sup> Street, Suite C, Des Moines, Iowa 50309-4686. Each check shall be payable to the Iowa Board of Medicine.
6. **Obey All Laws and Rules:** Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Iowa.
7. **Compliance with Order:** In the event Respondent fails to comply with any terms of this Order, the Board may initiate action to suspend or revoke his license or to impose other license discipline, as authorized by Iowa Code chapters 148, 272C, and 653 IAC 25.
8. **Duration of Probation:** Periods in which Respondent resides or practices outside the state of Iowa or does not practice medicine or fails to comply with the terms established in this Order shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board.
9. **Notice to All Employers:** Respondent shall provide all employers with a copy of this Order, and provide written verification to the Board of each employer that has received a copy of this Order.

Dated this 25<sup>th</sup> day of June, 2015.



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Hamed Tewfik, M.D., Chair  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 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.<sup>5</sup>

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<sup>5</sup> 653 IAC 25.31.

**BEFORE THE IOWA BOARD OF MEDICINE**

\*\*\*\*\*

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

**DAVID H. MARCOWITZ, D.O., RESPONDENT**

**FILE No. 03-14-105**

\*\*\*\*\*

**STATEMENT OF CHARGES**

\*\*\*\*\*

COMES NOW the Iowa Board of Medicine (Board) on February 6, 2015, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 3281 on January 24, 2000. Respondent's Iowa medical license is active and will next expire on July 1, 2016.

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

1. Hearing. A contested case hearing shall be held on April 16, 2015, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medicine 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 Notice of Hearing you are required by 653 Iowa Administrative Code 25.10 to file an Answer. In that Answer, you should also 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 February 25, 2015, 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 Iowa Administrative Code Chapter 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 Iowa Administrative Code 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, 2<sup>nd</sup> Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to 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 (2005) and 653 Iowa Administrative Code Chapter 25.25.

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 Iowa Administrative Code 25.20.

## C. SECTIONS OF STATUTES AND RULES INVOLVED

### COUNT I

11. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the order of disciplinary action is prima facie evidence.

### STATEMENT OF THE MATTERS ASSERTED

12. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced general medicine in Moline, Illinois, and currently practices in Chariton, Iowa.

13. **Illinois Disciplinary Action:** On January 30, 2014, Respondent was disciplined by the Illinois Division of Professional Regulation (Illinois Board). The Illinois Board alleged that:

- A. Respondent prescribed multiple controlled substances to a patient in Moline, Illinois, between 2008 and 2011, without properly assessing and/or monitoring the patient for drug abuse or dependence, despite learning that the patient and his pregnant girlfriend were injecting the drugs and that the patient was selling the drugs to local drug users, at least three of whom died.
- B. Respondent provided Phentermine, a weight loss drug, to members of his office staff without establishing an appropriate physician-patient relationship, including performing physical examinations and maintaining medical records.



- C. Respondent failed to produce medical records subpoenaed by the Illinois Board during its investigation.


The Illinois Board suspended Respondent's Illinois medical license for a period of thirty days and Respondent agreed to place his Illinois medical license on permanent inactive status and his Illinois controlled substance license on inactive status. The Illinois Board also ordered Respondent to pay a \$3,000 fine. See Attachment A.

#### 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 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088 or [kent.nebel@iowa.gov](mailto:kent.nebel@iowa.gov).

#### F. PROBABLE CAUSE FINDING

15. On February 6, 2015, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



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

STATE OF ILLINOIS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION  
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois,	)
v.	)
Complainant,	)
David H. Marcowitz, D.O.	) No. 2010-04083
License No. 036-082773,	)
CS License No. 336-045043	)
Respondent.	)

CONSENT ORDER

The Department of Financial and Professional Regulation, Division of Professional Regulation, of the State of Illinois, by Vladimir Lozovskiy, one of its attorneys, (hereinafter "Department") and David H. Marcowitz, D.O., (hereinafter "Respondent"), , hereby agree to the following:

STIPULATIONS

David H. Marcowitz, D.O. is licensed as a Physician and Surgeon in the State of Illinois, holding License No. 036-082773 and Illinois Controlled Substance License No. 336-045043. Said licenses are in Active status. At all times material to the matter(s) set forth in this Consent Order, the Department of Financial and Professional Regulation, Division of Professional Regulation, of the State of Illinois had jurisdiction over the subject matter and parties herein.

Information has come to the attention of the Department that Respondent prescribed Controlled Substances to patients in his Illinois practice as well as failed to produce medical records pursuant to the Department's Subpoena when requested. The allegation(s) as set forth herein, if proven to be true, could constitute grounds for suspending, revoking or other discipline of Respondent's Physician and Surgeon license on the authority 225 Illinois Compiled Statutes, Paragraph 60/22(A)(5) and (38).

The Department filed a Formal Complaint on August 2013. Subsequently, Respondent mailed his licenses to the Department indicating his desire to permanently leave the State of Illinois.

Respondent has been advised of the right to a hearing, the right to contest any charges brought forward in the Department's Complaint, and the right to administrative review of this Consent Order. Respondent knowingly waives each of these rights, as well as the right to administrative review of this Consent Order. Such waiver ceases if this Consent Order is rejected by either the Medical Disciplinary Board or the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation.

Respondent and the Department have agreed, in order to resolve this matter, that Respondent, David H. Marcowitz, D.O., be permitted to enter into a Consent Order with the Department, providing for the imposition of disciplinary measures which are fair and equitable under the circumstances and which are consistent with the best interests of the people of the State of Illinois.

#### CONDITIONS

WHEREFORE, the Department, through Vladimir Lozovski, its attorney, and David H. Marcowitz, D.O., Respondent, agree:

A. Illinois Physician and Surgeon license of David H. Marcowitz, D.O., License No. 036-082773 and Illinois Controlled Substance License No. 336-045043 are hereby Suspended for thirty (30) days. Thereafter, Respondent agrees to voluntarily have his Illinois Physician and Surgeon License No. 036-082773 and Illinois Controlled Substance License No. 336-045043 to be placed on permanent Inactive Status. Upon the final approval of this Consent Order, Respondent shall submit the necessary documentation required by the Medical Licensing Unit of

the Department to effectuate the change in license status within 30 days from the effective date of this Order.

B. All requests and documentation regarding Respondent's Illinois Physician and Surgeon License and Illinois Controlled Substance License shall be submitted to:

Medical Licensing Unit  
Illinois Department of Financial and Professional Regulation  
320 W. Washington Street  
Springfield, Illinois 62786

C. Respondent shall pay a Fine in the amount of \$3,000.00 dollars (three thousand dollars) being due within six (6) months of the effective date of this Consent Order Respondent shall submit a check payable to: the Illinois Department of Financial and Professional Regulation. Said fine shall be mailed to Illinois Dept. of Financial and Professional Regulation, Attention: CMU/Accounts Receivable - Fine Payments, 320 W. Washington St., 3<sup>rd</sup> Floor, Springfield, Illinois 62786. In the event that that Respondent shall fail to pay the fine, and the Department is forced to initiate a collection effort to retrieve the fine, Respondent will be responsible for all costs and fees incurred by the collection process;

D. If Respondent fails to have his Illinois Physician and Surgeon License No. 036-082773 and Illinois Controlled Substance No. 336-045043 placed on inactive status within thirty (30) days upon entry of this order, the Director of the Division of Professional Regulation is permitted to issue an Order forthwith mandating the automatic, indefinite and immediate suspension of Respondent's Illinois Physician and Surgeon License No. 036-082773 and Illinois Controlled Substance License No. 336-045043 for a minimum period of twelve (12) months. This suspension shall not preclude the Department from taking any other disciplinary or other actions it deems appropriate. In the event that Respondent contests in writing (by the filing of an appropriate Petition with the Department) the factual basis underlying said suspension within thirty (30) days of the imposition

thereof, then Respondent shall be afforded a hearing on the merits within thirty (30) days from filing of said Petition.

E. This Consent Order shall become effective immediately after it is approved by the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois Division of Professional Regulations

1/2/2014  
DATE

Vladimir Lozovskiy  
Vladimir Lozovskiy  
Attorney for the Department

1/2/2014  
DATE

David H. Marcowitz  
David H. Marcowitz, D.O.  
Respondent

15 Jan 2014  
DATE

Member  
Member, Medical Disciplinary Board

The foregoing Consent Order is approved in full.

DATED THIS 3/12 day of January, 2014

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois Division of Professional Regulations

JAY STEWART  
JAY STEWART  
DIRECTOR

REF: Case No. 2010-04083/ License No. 036-082773/336-045043