

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ROBERT D. CUNARD, M.D., RESPONDENT

FILE No. 02-2014-603

SETTLEMENT AGREEMENT

COMES NOW the Iowa Board of Medicine (Board), and Robert D. Cunard, M.D., (Respondent), and on February 15, 2018, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4), enter into this Settlement Agreement to resolve this matter.

1. **Iowa Medical License:** The Board issued Respondent Iowa medical license MD-30647 on June 27, 1995. Respondent's Iowa medical license is active and will next expire on March 1, 2019.
2. **Jurisdiction:** The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.
3. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced family medicine in Missouri Valley, Iowa.

4. **Stipulated Order: Agreement Not to Prescribe Controlled Substances:** On May 19, 2017, Respondent entered into a Stipulated Order: Agreement Not to Prescribe Controlled Substances, with the Board. The Board alleged that Respondent violated the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate pain management to patients in Missouri Valley, Iowa. Respondent agreed that he shall not prescribe controlled substances with the exception of testosterone and patients in residential hospice and nursing home settings, until this matter is resolved.

5. **Statement of Charges:** On July 20, 2017, the Board filed a Statement of Charges against Respondent alleging that he willfully or repeatedly violated the laws and rules governing the practice of medicine when he failed to provide appropriate medical care and pain management, and indiscriminately or promiscuously prescribed, administered or dispensed drugs, to numerous patients in Missouri Valley, Iowa, between 2011 and 2017, resulting in serious harm to patients and the public.

SETTLEMENT AGREEMENT

6. **CITATION AND WARNING:** Respondent is hereby **CITED** for willfully or repeatedly violating the laws and rules governing the practice of medicine when he failed to provide appropriate medical care and pain management, and indiscriminately or promiscuously prescribed, administered or dispensed drugs, to numerous patients in Missouri Valley, Iowa, between 2011 and 2017, creating risk of serious harm to patients and the public. Respondent is hereby **WARNED** that engaging in such practice in the future may result in further disciplinary action against his Iowa medical license, including revocation.

7. **CIVIL PENALTY:** Respondent shall pay a **\$5,000 civil penalty** within twenty (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 executive director of the Board. The civil penalty shall be deposited into the State General Fund.

8. **PROHIBITION - CHRONIC PAIN MANAGEMENT:** Respondent is permanently 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 or to patients in residential hospice and nursing home settings.

9. **INDEFINITE SUSPENSION:** Respondent's Iowa medical license is indefinitely suspended. Respondent shall not engage in any aspect of the practice of medicine during the period of suspension.

10. **REINSTATEMENT:** Prior to seeking reinstatement of his Iowa medical license, Respondent shall demonstrate to the Board that the basis for the suspension no longer exists and that it will be in the public interest for the license to be reinstated. Respondent shall also successfully complete the following:

- A. **Comprehensive Clinical Competency Evaluation:** Respondent shall successfully complete a comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP), in Denver, Colorado. Respondent shall contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 once he has scheduled the evaluation so the Board may send its investigative information to CPEP. Upon completion of the evaluation, Respondent shall ensure that a report is sent directly to the Board from the program. Respondent shall fully comply with all recommendations made by CPEP including, but not limited to, a structured individualized education plan which may include a point-of-care experience, an educational preceptor, continuing medical education, self-study and/or a clinical reassessment. Respondent is responsible for all costs associated with the evaluation.
- B. **Professional Ethics Program:** Respondent shall successfully complete the Professional/Problem Based Ethics (PROBE) program sponsored by the Center for Personalized Education for Physicians (CPEP), in Denver, Colorado. Upon completion of the program, Respondent shall ensure that a report is sent directly to the Board from the program. Respondent is responsible for all costs associated with the program.
- C. **Record Keeping Course:** Respondent shall successfully complete a Board-approved medical record keeping course. Respondent is responsible for all costs associated with the course.

D. **Board Appearance:** Respondent shall appear before the Board. The appearance shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

11. **INDEFINITE PROBATION:** Should the Board choose to reinstate Respondent's Iowa medical license, Respondent shall be placed on **indefinite probation** subject to the following terms and conditions:

A. **Monitoring Program:** Respondent shall establish a monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-5525. Respondent shall fully comply with all requirements of the monitoring program.

B. **CPEP Recommendations:** Respondent shall fully comply with all recommendations made by CPEP including, but not limited to, a structured individualized education plan which may include a point-of-care experience, an educational preceptor, continuing medical education, self-study and/or a clinical reassessment.

C. **Prescribing Audits:** Respondent shall fully comply with Board-approved audits of his controlled substance prescribing during the period of probation. 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. The Board shall compare this information with information obtained from the Iowa Prescription Monitoring Program.

D. Practice Monitoring Plan: Respondent shall fully comply with the Board-approved practice monitoring plan agreed upon by Respondent and the Board:

- 1) Respondent shall submit the name and CV of an Iowa-licensed, board-certified, family physician to serve as his practice monitor.
- 2) The Board shall provide the practice monitor a copy of this order, the practice monitoring plan, all CPEP reports and all other relevant Board material in this matter.
- 3) The practice monitor shall provide a written statement indicating that the practice monitor has read and understands all material provided by the Board and agrees to serve as the practice monitor under the terms of the practice monitoring plan. The practice monitor shall meet with Respondent regularly, review selected patient records, ensure that Respondent provides appropriate treatment to patients and engage in a quality improvement process that addresses any areas of need.
- 4) The practice monitor shall contact the Board immediately if there is evidence that Respondent has provided substandard care to patients.
- 5) The practice monitor shall agree to submit written quarterly reports to the Board no later than 1/20, 4/20, 7/20 and 10/20 of each year.
- 6) The practice monitor may be asked to appear before the Board in-person, or by telephone or video conferencing. Such appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

E. Worksite Monitoring Program: Respondent shall establish a worksite monitoring program with the Board:

- 1) Respondent shall submit for Board approval the name and CV of a physician who regularly observes and/or supervises Respondent in the practice of medicine.
- 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 that they have read and understand this Order and agrees to serve under the terms of this Order.
- 4) The worksite monitor shall agree to inform the Board immediately 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, or by telephone or video conferencing. 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.

- F. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to his compliance with the terms and conditions of this Order no later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
- G. **Board Appearances:** Respondent agrees to appear before the Board annually or upon request for the duration of the period of probation. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).
- H. **Monitoring Fee:** Respondent shall make a payment of \$300 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 each quarterly report required under this Order. The monitoring fee shall be sent to: Compliance, 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.
12. Respondent voluntarily submits this Order to the Board for consideration.
13. Respondent agrees that the State's counsel may present this Order to the Board for consideration.

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

15. Respondent shall submit documentation to the Board which demonstrates that he has shared a copy of this Order with all medical licensing boards where Respondent holds a license, whether active or not, within thirty (30) days of the date of this order.

16. Respondent shall submit documentation to the Board which demonstrates that he has shared a copy of this Order with all hospitals and clinics where Respondent practices medicine within thirty (30) days of the date of this order.

17. Respondent understands that by entering into this Order, he has a right to legal counsel in this matter, voluntarily waives any rights to a contested case hearing on the allegations in the Statement of Charges, and waives any objections to the terms of this Order.

18. Periods in which Respondent does not practice medicine, practices medicine in another jurisdiction 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.

19. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank.

20. This Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

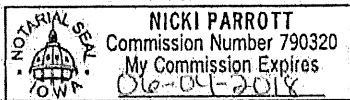
21. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

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

Robert D. Cunard
Robert D. Cunard, M.D., Respondent

Subscribed and sworn to before me on Jan 4, 2018.

Notary Public, State of Iowa.



This Order is approved by the Board on February 15, 2018.

K. Ulveling MD
Kyle G. Ulveling, M.D., Chair
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ROBERT D. CUNARD, M.D., RESPONDENT

FILE No. 02-2014-603

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on July 20, 2017, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2).

1. Iowa Medical License: The Board issued Respondent Iowa medical license MD-30647 on June 27, 1995. Respondent's Iowa medical license is active and will next expire on March 1, 2019.

A. TIME, PLACE AND NATURE OF HEARING

2. Hearing. A contested case hearing shall be held on September 21-22, 2017, before the Board. The hearing shall begin at 8:30 a.m. each day and shall be located in the conference room at the Board office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

3. 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.

4. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on pre-hearing matters, and be present to assist and advise the board at hearing.

5. Prehearing Conference. A prehearing conference will be held by telephone on August 9, 2017, at 9:30 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.

6. 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.

7. 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.

8. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Kent M. Nebel, J.D., the Board's Legal Director at 515-281-7088 or to Assistant Attorney General Julie Bussanmas 515-281-5637.

B. LEGAL AUTHORITY AND JURISDICTION

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

10. 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.

11. 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

12. **Professional Incompetency:** Respondent is charged with professional incompetency pursuant to Iowa Code sections 147.55(2), 148.6(2)(g) and (i), and 272C.10(2) and 653 IAC 23.1(2)(a),(b),(c), (d), (e), and (f), by demonstrating one or more of the following:

- a. Willful or repeated gross malpractice;
- b. Willful or gross negligence;
- c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;
- d. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;
- e. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances; or
- f. A willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery in Iowa.

COUNT II

13. **Inappropriate Prescribing:** Respondent is charged pursuant to Iowa Code sections 148.6(2)(i) and 653 IAC 23.1(7) with willfully or repeatedly violating a lawful rule or regulation adopted by the Board when he indiscriminately or promiscuously prescribed, administered or dispensed drugs for other than a lawful purpose.

COUNT III

14. **Improper Pain Management:** Respondent is charged pursuant to Iowa Code sections 148.6(2)(i) and 653 IAC 13.2 with willfully or repeatedly violating a lawful rule or regulation adopted by the Board when he violated the standards of practice for appropriate pain management.

COUNT IV

15. **Unethical or Unprofessional Conduct:** Respondent is charged pursuant to Iowa Code sections 147.55(3) 148.2(g) and 272C.10(3) and 653 IAC 23.1(4) with engaging in unethical or unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653 IAC 13.7 or 13.20 as interpreted by the board.

STATEMENT OF THE MATTERS ASSERTED

16. **Practice Setting:** Respondent is an Iowa-licensed physician who practices family medicine in Missouri Valley, Iowa.

17. **Stipulated Order: Agreement Not to Prescribe Controlled Substances:** On May 19, 2017, Respondent entered into a Stipulated Order: Agreement Not to Prescribe Controlled Substances, with the Board. The Board alleged that Respondent violated the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate pain management to patients in Missouri Valley, Iowa. Respondent agreed that he shall not prescribe controlled substances with the exception of testosterone and patients in residential hospice and nursing home settings, until this matter is resolved.

18. **Violation of the Laws and Rules Governing the Practice of Medicine:** The Board alleges that Respondent willfully or repeatedly violated the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate medical care and/or pain management to numerous patients in Missouri Valley, Iowa, between 2011 and 2017, resulting in serious harm to patients and the public, including overdose deaths, including, but not limited to, the following:

- A. Respondent indiscriminately and/or promiscuously prescribed controlled substances to numerous patients resulting in serious harm to patients and the public, including overdose deaths.
- B. Respondent prescribed large quantities of potentially lethal medications to numerous patients.

- C. Respondent failed to assess and/or document appropriate assessment of patients' need for chronic opioid therapy.
- D. Respondent failed to perform and/or document appropriate physical examinations, including comprehensive medical histories, pain assessments, and assessment of physical and psychological function.
- E. Respondent failed to review, perform and/or document appropriate diagnostic studies to establish and/or support a diagnosis for patients receiving chronic opioid therapy.
- F. Respondent failed to perform and/or document appropriate evaluations of patients' substance abuse histories and coexisting conditions.
- G. Respondent failed to confirm and/or document confirmation of previous diagnoses, evaluations, and interventions.
- H. Respondent failed to establish and/or document appropriate treatment plans; including clear treatment objectives, diagnostic evaluations, treatments performed or other treatment modalities.
- I. Respondent failed to refer and/or document referral of patients for specialty consultations.
- J. Respondent failed to maintain and/or document appropriate pain management agreements that specify the rules for medication use and the consequences for abuse, misuse or diversion.

- K. Respondent failed to obtain and/or document appropriate informed consent, including discussion of the risks associated with chronic opioid therapy.
- L. Respondent failed to perform and/or document appropriate monitoring, including consideration of the appropriateness of continued opioid therapy, the use of other treatment modalities, urine drug testing and evidence of abuse, misuse or diversion.
- M. Respondent failed to appropriately utilize and/or document appropriate utilization of the Iowa Prescription Monitoring Program for patients receiving chronic opioid therapy.
- N. Respondent failed to appropriately utilize and/or document appropriate utilization of urine drug screens for patients receiving chronic opioid therapy.
- O. Respondent failed to appropriately address and/or document efforts to address urine drug screens that were negative for prescribed medications.
- P. Respondent failed to address and/or document appropriate efforts to address patients who demonstrated evidence of substance abuse, misuse or diversion.
- Q. Several of Respondent's patients experienced motor vehicle accidents and/or frequent falls and Respondent failed to address and/or document efforts to address substance abuse as the cause of these incidents.

- R. Respondent continued to prescribe large quantities of potentially lethal medications to patients despite evidence of abuse, misuse or diversion.
- S. Respondent routinely provided early refills to patients despite evidence of abuse, misuse or diversion.
- T. Respondent prescribed Methadone to patients despite the fact that they were participating in a structured opioid treatment program.
- U. Respondent prescribed Methadone to multiple patients for the treatment of opioid addiction/withdrawal without an appropriate DEA registration.
- V. Respondent prescribed Suboxone to a patient for the treatment of opioid withdrawal without an appropriate DEA registration.
- W. Respondent prescribed an exceptionally high volume of Pseudoephedrine, a drug that is frequently abused in combination with other stimulants, opioids, or benzodiazepines and which is used as a raw material for the manufacture of Methamphetamine.
- X. Respondent prescribed an exceptionally high volume of Phenergan with Codeine, a drug that is frequently abused in combination with other stimulants, opioids, or benzodiazepines.
- Y. Respondent frequently wrote multiple prescriptions for high dose opioids to patients simultaneously to be filled at multiple pharmacies.
- Z. Respondent prescribed large quantities of opioids and benzodiazepines to patients at the same time placing them at increased risk of harm, including unintentional death.

- AA. Respondent's patients frequently received early refills, from multiple prescribers, using multiple pharmacies, with multiple payment sources.
- BB. Respondent failed to provide appropriate medical care to patients who had significant comorbid conditions and other contraindications including, hypertension; Hepatitis C; and cardiac conditions.
- CC. Respondent prescribed a potentially fatal number and combination of opioids and benzodiazepines to patients with histories of depression and suicidal ideation.
- DD. Respondent failed to maintain appropriate medical records.

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 July 20, 2017, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



Kyle G. Ulveling, M.D., Chair
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF

ROBERT D. CUNARD, M.D., RESPONDENT

FILE No. 02-2014-603

**STIPULATED ORDER:
AGREEMENT NOT TO PRESCRIBE CONTROLLED SUBSTANCES**

COMES NOW the Iowa Board of Medicine (Board) and Robert D. Cunard, M.D. (Respondent) on May 19th, 2017, and pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into this Stipulated Order.

1. **Iowa Medical License:** The Board issued Respondent Iowa medical license MD-30647 on June 27, 1995. Respondent's Iowa medical license is active and will next expire on March 1, 2019.
2. **Jurisdiction:** The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.
3. **Practice Setting:** Respondent is an Iowa-licensed physician who practices family medicine in Missouri Valley, Iowa.
4. **Violation of the Laws and Rules Governing the Practice of Medicine:**

The Board alleges that Respondent violated the laws and rules governing the practice of medicine in Iowa when he failed to provide appropriate pain management to patients in Missouri Valley, Iowa.

5. **Agreement Not to Prescribe Controlled Substances:** Respondent agrees that he shall not prescribe controlled substances with the exception of testosterone and patients in residential hospice and nursing home settings, until this matter is resolved.

6. This Stipulated Order is a public record.

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

8. 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.

9. 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.

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

Robert D. Cunard

Robert D. Cunard, M.D. Respondent

5-19-17

Date

Subscribed and sworn to before me on _____, 2017.

Notary Public, State of _____.

This Order is approved by the Board on *May 19*, 2017.

K. Ulveling MD

Kyle G. Ulveling, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686