



Fields of Opportunities

STATE OF IOWA

TERRY BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

IOWA BOARD OF MEDICINE
MARK BOWDEN, EXECUTIVE DIRECTOR

PUBLIC NOTICE OF HEARING

8:30 a.m. Wednesday, June 25, 2014
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa

1. In the matter of the Statement of Charges against **Oduah D. Osaro, M.D.**,
Respondent, File No. 02-13-140

Panel members: Michael Thompson, D.O., acting chair; Frank Bognanno;
Diane Clark; Allison Schoenfelder, M.D.; Jeffrey Snyder, M.D.; Janece
Valentine; Joyce Vista-Wayne, M.D.

¹This hearing may be closed at the discretion of the licensee pursuant to Iowa Code Section
272C.6(1)

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ODUAH D. OSARO, M.D., RESPONDENT

FILE No. 02-13-140

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on January 24, 2014, and files this Statement of Charges pursuant to Iowa Code section 17A.12(2). Respondent was issued Iowa medical license no. 31351 on July 11, 1996. Respondent's Iowa medical license is active and will next expire on February 1, 2016.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A contested case hearing shall be held on March 20, 2014, before the Board. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Board office at 400 SW 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 pre-hearing 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 12, 2014, 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 IAC 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 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 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 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. **Violation of a Law which Relates to the Practice of Medicine:** Respondent is charged pursuant to Iowa Code section 148.6(2)(c) and 653 IAC 23.1(10) with violating a statute or law of this state, another state or the United States without regard to its designation as a felony or misdemeanor, which statute or law relates to the practice of medicine.

COUNT II

12. **Unethical or Unprofessional Conduct:** Respondent is charged pursuant to Iowa Code sections 147.55(3) 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.

STATEMENT OF THE MATTERS ASSERTED

13. Respondent is an Iowa-licensed physician who practices family medicine in Clinton, Iowa.

14. **Participation in the Medicaid Program:** The Board alleges that Respondent violated the laws and rules governing participation in the Medicaid Program and/or engaged in unethical or unprofessional conduct.

A. On or about March 29, 2013, the Iowa Department of Human Services (IDHS) terminated Respondent's participation as a provider in the Medicaid program. IDHS concluded that Respondent inappropriately charged multiple Medicaid recipients for office visits without submitting the covered services to Medicaid for payment and that the amount charged by Respondent was in excess of the amount paid by Medicaid. Respondent appealed the termination. A contested case hearing was held on May 8, 2013.

B. On June 3, 2013, IDHS issued a Final Decision. IDHS upheld Respondent's termination from participation in the Medicaid program. IDHS concluded that Respondent violated the laws and rules governing participation in the Medicaid program - 42 U.S.C. Section 3120a-7b(d), 42 CFR Section 447.15 and 441 IAC 79.2(2) "f" and "p" - when he charged multiple Medicaid recipients for office visits without submitting the covered services to Medicaid for payment, and the

amount charged by Respondent was in excess of the amount paid by Medicaid.

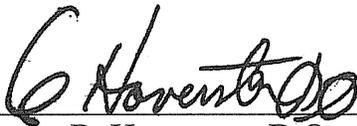
See Attachment A.

E. SETTLEMENT

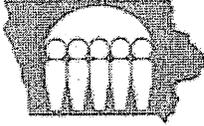
15. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 IAC 25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

16. On January 24, 2014, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



Gregory B. Hoversten, D.O., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686



Iowa Department of Human Services

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

Charles M. Palmer
Director

June 03, 2013

Oduah D Osaro
108 S 4th St
Clinton, IA 52732

RE: Appeal # MED 13005594 - Oduah D Osaro
Case # PROV

Dear Dr. Osaro:

FINAL DECISION

This is to advise you that the **PROPOSED DECISION** you received on your appeal hearing has become the **FINAL DECISION**.

No review was received within the time limits set forth in the notice of **PROPOSED DECISION**.

The local office is instructed to implement the directions contained in the decision, if any. Please call (515) 281-8438 collect if you have any questions in regard to this decision.

Charles M. Palmer
Director

CMP/tf

cc:
AAC IME
IME Policy
Pty - IME Appeals Mailbox
Attorney General - Timothy Vavricek

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building
502 East 9th Street – Third Floor
Des Moines, Iowa 50319

ODUAH D. OSARO, M.D.)	Appeal No. 13005594
Clinton Urgent Care)	
108 S 4 th Street)	
Clinton, IA 52732)	
)	
Appellant,)	
)	
v.)	
)	
IOWA DEPARTMENT OF HUMAN SERVICES,)	PROPOSED DECISION
)	
Respondent.)	

STATEMENT OF THE CASE

A contested case telephone hearing was held before Administrative Law Judge Carol J. Greta on May 8, 2013. The Appellant, Oduah D. Osaro, M.D., appeared personally and was self-represented. Assistant Attorney General Timothy L. Vavricek appeared on behalf of the Respondent, Iowa Department of Human Services (Department). Rocco Russo, Jr. and Connie Benton, both with Iowa Medicaid Enterprises (IME) appeared and testified on behalf of the Department.

The following documents were admitted into the record:

From the Department, an Appeal Summary and the following pre-labeled exhibits:

- A, Letter of termination from IME to Dr. Osaro
- B, Suboxone scripts written by Dr. Osaro with no corresponding office visit
- C, Preauthorization requests from Dr. Osaro for Suboxone
- D, Transcript of Investigator Benton's phone call to Clinton Urgent Care office
- E, DVD of recorded conversations
- F, FDA information about Suboxone
- G, Manufacturer's package insert for Suboxone
- H, Dr. Osaro's MEDIPASS agreement
- I, Data pulls
- J, CD-Rom of Medicaid payments to physicians in Clinton Co. from Department

(Because they were pre-labeled, these exhibits will be referred to as Dept. Ex. A, Dept. Ex. B, etc.)

From the Appellant, Dr. Osaro, the following pre-labeled exhibits:

- K, Classification of controlled substances
- L, Description of Iowa's heroin problem from commercial website
- M, Suboxone assisted treatment from organization website
- N, Suboxone providers in Iowa from commercial website

- O, Forms used for Suboxone treatment at Clinton Urgent Care
- P, Drug screen reimbursement article from commercial website
- Q, List of fees for services from AMA Fee Book
- R, Treatment decision tree from 2009 Current Procedural Terminology manual
- S, DEA notice of inspection of abused substances
- T, Joint statement on pain management from four Iowa licensing boards
- U, Medical advisory addressing safety by reducing misuse diversion and abuse
- V, Medical advisory, protecting future of buprenorphine treatment
- W, Letter from Tim Baxter, MD, supporting Suboxone programs
- X, Notice of Department Decision
- Y, Brochures from manufacturer of Suboxone
- Z, Discharge instructions for Suboxone program

(Because they were pre-labeled, these exhibits will be referred to as Osaro Ex. K, Osaro Ex. L, etc.)

Osaro Ex. AA was offered, but was not admitted into the record. This exhibit consisted of certain records, including prescription information, regarding several of Dr. Osaro's patients. The Department objected to admission of this exhibit on the grounds that the attempt to provide the information violates Iowa Code § 124.558. The Department's objection was sustained. The copies of Osaro Ex. AA provided to this administrative tribunal have been shredded.

ISSUE

The issue presented is whether the Department correctly sanctioned Dr. Osaro by terminating his participation as a Medicaid provider because Dr. Osaro directly charged Medicaid recipients for covered services.

DECISION

The Department's decision is AFFIRMED (found to be correct).

FINDINGS OF FACT

The Appellant, Oduah D. Osaro (Dr. Osaro), is a medical doctor who is the sole physician practicing at Clinton Urgent Care Clinic. (Osaro Testimony; Dept. Ex. D) He has been an approved Medicaid provider in Iowa for several years. (Osaro Testimony) As such, in 2004 Dr. Osaro signed a MediPASS Agreement with the Department. (Dept. Ex. H) MediPASS is the Department's terminology for its Medicaid Patient Access to Service System. All approved Medicaid providers in Iowa must sign such agreement, which specifies the rights and obligations of both the provider and the Department. (Russo Testimony; Dept. Ex. H)

For approximately four years, Dr. Osaro has been approved to prescribe the prescription drug, Suboxone, which is designed to ease withdrawal symptoms associated with heroin and other opiate addictions. (Osaro Ex. K) Suboxone contains a Schedule III narcotic (buprenorphine) and may only be prescribed by physicians "who meet certain qualifying requirements, and have notified the [U.S.] Secretary of Health and Human Services of their intent to prescribe this product for the treatment of opioid dependence." (Dept. Ex. F) There are fewer than 20 providers in Iowa who may prescribe Suboxone. (Osaro Ex. N)

On or about January 9, 2013, one of Dr. Osaro's patients called a Department representative regarding a misunderstanding about one of her prescriptions written by Dr. Osaro. During the

course of that communication, the Department learned that the patient, who is a Medicaid benefits recipient, was being charged directly \$190 per office visit by Dr. Osaro. (Dept. Ex. E) Investigator Connie Benton called Clinton Urgent Care on January 17, 2013, posing as a Medicaid recipient seeking a Suboxone prescription. She was told by the person answering the phone at the clinic that the cost of the drug itself is covered by Medicaid, but that Dr. Osaro's "policy" is to charge his Suboxone patients \$190 for each office visit and not to submit the cost of the visits to Medicaid. (Benton Testimony; Dept. Ex. D)

The Department then did a further investigation through data pulls requested by Mr. Russo, who is IME's Program Integrity Director. The investigation disclosed that, from January 1, 2010 to March 18, 2013, Dr. Osaro wrote a total of 221 Suboxone prescriptions for 30 Medicaid recipients with no corresponding office visit submitted for payment to Medicaid. (Dept. Ex. I) This exhibit also shows that Dr. Osaro would write the prescriptions to cover 7, 14, or 28 days. (*Id.*)

The cost of the Suboxone itself is covered by Medicaid; the pharmacy submits the claim to Medicaid and the pharmacy accepts payment from Medicaid. Dr. Osaro was aware that Medicaid was paying for the drug because he submitted the prior authorization requests to IME to ensure Medicaid coverage for the cost of the Suboxone. (Dept. Ex. C) However, Dr. Osaro refuses to submit to Medicaid the cost of office visits by patients who see him to obtain the Suboxone prescription. (Osaro Testimony; Dept. Ex. B; Dept. Ex. I) The patient pays a co-pay of \$1 or \$3 to the pharmacy, but pays \$190 to Dr. Osaro. (*Id.*)

Dr. Osaro acknowledged that he requires an office visit for the renewal of each Suboxone prescription. He testified that he bases the number of days for which he writes a Suboxone prescription on the results of the patient's drug screen (urinalysis). Dr. Osaro stated that he currently has 55 patients in his Suboxone program, both Medicaid recipients and non-Medicaid recipients, whom he seeks weekly, biweekly, or monthly. (Osaro Testimony)

Dr. Osaro did not deny that he made a conscious decision to refuse to submit the office visits of his Suboxone patients to Medicaid for payment. The reasons offered by Dr. Osaro for his decision were as follows:

- It is more equitable to all of his patients in the Suboxone program that he demand the same amount of payment from each of them, regardless of the patient's Medicaid or other insured status.
- Not submitting to IME the charges for the office visits of his Suboxone patients is more respectful of the privacy interests of these patients.
- The cost of each office visit includes a urinalysis conducted by his nursing staff to screen for 13 different drugs.
- His charge of \$190 is "extremely discounted" and is less than what he would get in reimbursement from Medicaid (including drug screen cost reimbursement).

On February 28, 2012, IME notified Dr. Osaro that he was terminated from participation as a provider in the Medicaid program, effective 30 days from the date of the letter. (Dept. Ex. A) The letter explains the reason for the termination as follows:

The investigation shows that you have required a Medicaid member to pay you cash in exchange for an office visit in which you prescribed the member

controlled substances. The amount you charged for the office visit was in excess of the amount Medicaid pays for the visit.

The letter also cited Department rules 441—Iowa Administrative Code (IAC) 79.2(2)“f”, “l” and “p” as having been violated by Dr. Osaro. (*Id.*)

The Department showed that the average reimbursement for an office visit to physicians in Clinton County, where Dr. Osaro has his practice, ranges from \$31 to \$116. (Dept. Ex. J) Reimbursement for a drug screen ranges from \$19 to \$27.¹ (Russo Testimony) The average Medicaid reimbursement paid to another Iowa physician who prescribed Suboxone quite regularly was \$58 to \$75. Assuming that the \$58 to \$75 range did not include reimbursement for any in-office lab work, and assuming the high end for reimbursements for drug screens (\$27) and Suboxone office visits (\$75), the maximum amount of reimbursement Dr. Osaro could have reasonably expected from Medicaid would be \$102 per office visit.

Believing the Medicaid program violations to be serious and that a lesser sanction will not remedy the problem, the Department sought the ultimate sanction, termination of Dr. Osaro from the Iowa Medicaid program.

Dr. Osaro argued that if he acted in error, it was done in innocence and in the best interests of his patients.

CONCLUSIONS OF LAW

The Department is responsible for administration of the Medicaid program in Iowa, in accordance with Iowa Code chapter 249A, applicable federal law, the regulations and directives issued pursuant to federal law, applicable court orders, and the Iowa state plan approved in accordance with Title XIX of the federal Social Security Act. Iowa Code § 249A.4(9) specifically directs the Department to adopt administrative rules in compliance with federal law and regulations. The rules adopted by the Department appear in 441—IAC chapter 79.

The Department may review or audit any Medicaid provider at any time at the Department’s discretion. 441—IAC 79.4(2).

Grounds for the Department to sanction providers include the following:

f. Engaging in a course of conduct or performing an act which is in violation of state or federal regulations of the medical assistance program, ...

¹ There was sharp disagreement between Mr. Russo and Dr. Osaro, both of whom are certified professional coders under the Medicaid program, regarding how to code a single test that screens for more than one drug. It appears that Dr. Osaro may not be aware that, beginning in calendar year 2011, drug screens are to be billed per patient encounter and not per number of drugs tested. (Russo Testimony, referencing the 2012 edition of the AMA’s Current Procedural Technology Manual) Dr. Osaro testified he had been relying on the 2009 manual. (Osaro Testimony) Dr. Russo’s testimony is substantiated by an internet article relied on by Dr. Osaro, explaining that practices not using an outside laboratory “can only be assigned one billing code per patient encounter regardless of the number of drugs tested with the screening cup.” (Osaro Ex. P)

p. Documented practice of charging recipients for covered services over and above that paid for by the department, except as authorized by law.

441—IAC 79.2(2).

The federal laws implicated by Dr. Osaro's actions are 42 U.S.C. § 1320a–7b and 42 CFR § 447.15. The regulation states that each state plan “must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the plan to be paid by the individual. ...” 42 CFR § 447.15. In other words, as a condition of participation in Medicaid, a provider must accept reimbursement from Medicaid and may not charge the patient anything more than the Medicaid copayment. *See also Barry Harlem Corp. v. Wright*, 1996 WL 172141 (N.D. Ill. Apr. 10, 1996).

42 U.S.C. § 1320a–7b provides that certain acts involving federal health care programs, including Medicaid, are illegal. The Department asserts that subsections (b) and (d) of this statute were violated by Dr. Osaro.

Subsection “b,” contrary to the assertion of the Department, does not appear to apply unless remuneration is received by a provider in return for a *quid pro quo*. Certainly, the term “remuneration” is broad enough to cover payment for a service, but the facts of this case do not meet the statutory language that the remuneration be solicited or received

- (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, or
- (B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, ...

42 U.S.C. § 1320a–7b(b)(1).

On the other hand, subsection “d” appears to be fully applicable. That subsection makes it a felony for a person to “knowingly and willfully [charge] for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State... .” 42 U.S.C. § 1320a–7b(d)(1).

The evidence presented in connection with this appeal shows that Dr. Osaro deliberately chose to demand full cash payment from all of his Suboxone patients and not to accept the Medicaid reimbursement amount as payment for his patients who are Medicaid recipients. His explanations are not believable, and in any event, his motivation is irrelevant. By signing his MediPASS agreement in 2004, Dr. Osaro agreed to treat Medicaid recipients. A Medicaid-approved provider does not have the discretion to equalize any perceived inequities in the financial playing field.

Additionally, it is not true that his charge of \$190 is less than what Dr. Osaro would get in reimbursement from Medicaid. His argument that the \$190 fee is “extremely discounted” is hollow. Discounted to whom? Surely not to the Medicaid recipient, from whom Dr. Osaro demands \$190 instead of a single digit copayment.

Finally, his argument that not submitting the office visits to IME is more respectful of the privacy interests of these patients is nonsensical. Medicaid recipients understand that their health care information must be provided to IME under the Medicaid program.

Based on the evidence presented, the Department correctly determined that Dr. Osaro violated the applicable laws and regulations – 42 U.S.C. § 3120a-7b(d), 42 CFR § 447.15, and paragraphs “f” and “p” of 441—IAC 79.2(2) – when he chose to charge Medicaid recipients directly for each office visit, rather than submit the charge of the visits to IME and require only the copayment from the Medicaid recipients.

Having agreed with the Department’s determination that Dr. Osaro is in violation of the Medicaid program, the question becomes whether termination from the program is the proper sanction.

Available sanctions include one or more of the following: probation, suspension of payments, referral to state licensing board of investigation, referral to appropriate legal authorities for investigation and prosecution, and/or termination from participation in the Medicaid program. 441—IAC 79.2(3). The factors that must be considered in determining the sanction(s) to be imposed include the following:

- (1) Seriousness of the offense.
- (2) Extent of violations.
- (3) History of prior violations.
- (4) Prior imposition of sanctions.
- (5) Prior provision of provider education.
- (6) Provider willingness to obey program rules.
- (7) Whether a lesser sanction will be sufficient to remedy the problem.
- (8) Actions taken or recommended by peer review groups or licensing boards.

441—IAC 79.2(4).

The Department is correct that a lesser sanction will not remedy the problem. It appears from the types of exhibits he submitted and from his testimony that Dr. Osaro fails to fully appreciate the gravity of his violation. Many of the exhibits submitted by Dr. Osaro justify the existence of the Suboxone program. That is beside the point. This matter is not about the value of the Suboxone program to persons with an opioid addiction.

Put simply, a licensed health care practitioner may not agree to be a Medicaid provider and then pick and choose for which covered services the provider will accept Medicaid reimbursement. In return for becoming a Medicaid provider, Dr. Osaro agreed to accept the patient management fee (\$2/patient/month up to a maximum of \$3000) from IME, plus the Medicaid reimbursement for all covered services. Subsection 7 of Iowa Code § 249A.4 assures Dr. Osaro and other licensed practitioners who are Medicaid providers that they shall have the “professional freedom [to] determine the need for or provide medical care and services.” But billing is a different matter. A Medicaid provider has no discretion to bill outside of Medicaid and demand cash from Medicaid recipients.

Contrary to his self-serving statements that he was putting his patients’ needs over his own, Dr. Osaro’s “policy” to not bill Medicaid for office visits of Suboxone patients *reduced* the availability of a covered service to Medicaid recipients. Medicaid recipients appropriately in need of Suboxone were turned away by Dr. Osaro unless they (or their family) could pay the \$190 cash per office visit. By flaunting the Medicaid laws, Dr. Osaro attempted to help only himself.

The Department correctly determined that Dr. Osaro's participation in Medicaid should be terminated.

ORDER

The Department's decision to terminate Dr. Oduah D. Osaro as a Medicaid provider is **affirmed**. The Department shall take any steps necessary to implement this decision.

Issued this 23rd day of May, 2013.

A handwritten signature in black ink, appearing to read "Carol J. Greta". The signature is fluid and cursive, with a long, sweeping underline.

Carol J. Greta
Administrative Law Judge

cc: AAC IME
IME Policy
Party – IME Appeals Mailbox
AAG – Timothy L. Vavricek