

**BEFORE THE IOWA BOARD OF MEDICINE**

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

**RONNIE B. MARTIN, D.O., RESPONDENT**

**FILE No. 03-00-999**

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**REINSTATEMENT ORDER**

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**COMES NOW** the Iowa Board of Medicine (Board) on February 16, 2010, and issues this Reinstatement Order.

1. The Board received information which raised concerns that Respondent failed to conform to the minimal standard of acceptable and prevailing practice of osteopathic medicine and surgery in his treatment of numerous patients.

2. On February 3, 2006, pursuant to the provisions of Iowa Code section 272C.9(1), the Board ordered Respondent to complete a confidential comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP) in Colorado within sixty days.

3. On September 14, 2006, the Board filed formal disciplinary charges against Respondent pursuant to Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11) for violating a

lawful order of the Board when he failed to complete a confidential comprehensive clinical competency evaluation within sixty days as ordered.

4. On January 20, 2008, the case came for hearing before a Panel of the Board. On March 12, 2008, the Panel issued a Proposed Decision of the Panel, suspending Respondent's Iowa medical license until he provides proof that he has completed the CPEP competency evaluation. The Board also ordered Respondent to pay a \$5,000 civil penalty and issued Respondent a Citation and Warning for violating a lawful order of the Board.

5. On April 3, 2008, Respondent filed an Appeal of the Proposed Decision of the Panel and the State filed a Reply Brief.

6. On August 28, 2008, upon review of the entire record and the arguments made by both parties on appeal, the Board affirmed the Proposed Decision of the Panel.

7. Recently, Respondent provided the Board written proof that he completed the CPEP clinical competency evaluation.

**THEREFORE IT IS HEREBY ORDERED:** that Respondent's Iowa medical license is hereby by reinstated.



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



The State argued that a stay is prohibited by Iowa Code section 148.7(9). The statute provides that an order revoking or suspending a license to practice medicine or to discipline a license shall remain in force and effect until the appeal is finally determined and disposed of upon its merit. The request seeks a stay of the \$5,000 civil penalty, which is a form of license discipline.

Respondent argued that section 148.7(9) does not apply, because it is limited to the forms of discipline referred to in section 148.7(7), that is, revocation, suspension, or probation. However, the Board is authorized to impose a civil penalty as a form of licensee discipline pursuant to section 148.6 and chapter 272C, which is the umbrella statute governing all professional licensing regulation. See Iowa Code section 272C.3(2)(e). Section 148.7(9) does not expressly limit itself to forms of discipline listed in section 148.7(7). There is no reason to believe that the term “or to discipline a licensee” was intended to exclude civil penalties. Section 148.7(9) covers the request.

Section 148.7(9) has been limited by the Iowa Supreme Court’s decision in *Glowacki v. Board of Medical Examiners*, 501 N.W.2d 539 (Iowa 1993). In *Glowacki*, the respondent asked the court to stay a 90-day license suspension concerning billing violations. The court found the statute unconstitutional as applied to Glowacki because it would leave him no effective review if he served his suspension while he sought judicial review. The court relied on an admission from the Board that Glowacki was not a threat to the public, so there was no strong public purpose to deny the stay.

In the present case respondent has asked to stay imposition of a civil penalty. A civil penalty is not analogous to the *Glowacki* decision. Respondent can pay the civil penalty now and receive an effective remedy if he prevails on judicial review – the Board can refund the civil penalty. Accordingly, the rationale set forth in *Glowacki* does not apply to request in this case, so section 148.7(9) prohibits a stay.

Even if section 148.7(9) did not apply, respondent has not shown that the statutory factors would require a stay of the fine. Respondent did not provide any reasons why the stay should be granted. There is no showing that respondent will succeed on appeal, or that he would suffer irreparable injury. It is well-established that financial loss, even if substantial, does not meet the standard of showing irreparable injury. See *Teleconnect Co. v. Iowa State Commerce Comm’n*, 366 N.W.2d 511, 514 (Iowa 1985). There is a public interest in collecting the civil penalty now, and as stated above, the civil penalty can always be refunded if respondent prevails on appeal.

**ORDER**

Respondent's request for stay is denied.

Dated this 23<sup>rd</sup> day of October, 2008.

A handwritten signature in black ink, appearing to read "Yasyn Lee", written over a horizontal line.

Yasyn Lee, M.D.

Chairperson

Iowa Board of Medicine

cc: Theresa O'Connell Weeg  
Michael Sellers

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>IN THE MATTER OF THE</b>	)	<b>FILE NO. 03-00-999</b>
<b>STATEMENT OF CHARGES</b>	)	<b>DIA NO. 06DPHMB026</b>
<b>AGAINST:</b>	)	
	)	
	)	
<b>RONNIE B. MARTIN D.O.,</b>	)	<b>FINAL ORDER ON</b>
	)	<b>RESPONDENT'S APPEAL</b>
<b>Respondent.</b>	)	

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**STATEMENT OF THE CASE**

Date August 28, 2008

On September 14, 2006, the Iowa Board of Medicine (Board) filed formal disciplinary charges against Respondent. The Board alleged that Respondent failed to complete a comprehensive clinical competency evaluation in violation of a lawful Board Order. A hearing was held before a panel of the Board on January 30, 2008. On March 12, 2008, the panel issued a Proposed Decision of the Panel. The panel concluded that Respondent violated the Board's statutes and regulations when he failed to comply with a lawful order of the Board to submit to an evaluation. The panel also ordered sanctions, including the indefinite suspension of Respondent's license until he successfully completes a Board-approved comprehensive clinical competency evaluation.

Respondent appealed the decision of the panel. Both parties filed written briefs and arguments. On July 9, 2008, the Board heard oral argument. Attorney Michael Sellers represented Respondent. Assistant Attorney General Theresa Weeg represented the State.

Respondent asked the Board to continue the appeal decision to allow the Iowa Supreme Court time to issue a decision on his appeal on the Board's July 13, 2006, Order that required him to attend the competency evaluation. Respondent is not practicing in Iowa. He is currently employed as the dean of a new medical school in Colorado that is expected to start classes this month. Respondent argued that the public interest in Iowa would not be harmed by waiting for the Supreme Court decision. The State resisted the request, claiming that the case has already been delayed for years. The State argued that the public is at risk because Respondent is not restricted from practicing in any other state.

The Board denied the request to continue. The original evaluation order was issued on February 3, 2006, and Respondent has yet to submit to an evaluation. While Respondent is not currently practicing in Iowa, the Board is responsible for investigating his alleged actions because they occurred in Iowa. Respondent has been free to practice in other states, even

after Iowa found probable cause to believe a competency evaluation was needed. This creates a risk of harm to the public. Two and half years have now passed since the evaluation order was issued by the Board. Respondent has had two contested case hearings before the Board, and opportunities to seek stays in the courts. The Board considers the evidence regarding Respondent's conduct to be sufficiently serious to enforce the evaluation order now.

After denying the request to continue the final decision, the Board then considered the appeal on the merits. Upon review of the entire record, and the arguments made by both parties on review, the Board voted to adopt the panel's decision in its entirety.

**ORDER**

It is hereby ordered that the Proposed Decision of the Panel, issued on March 12, 2008, is hereby affirmed.

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



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Yasn Lee, M.D.  
Chairperson  
Iowa Board of Medicine

cc: Theresa O'Connell Weeg  
Michael Sellers

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>IN THE MATTER OF THE</b>	)	<b>FILE NO. 03-00-999</b>
<b>STATEMENT OF CHARGES</b>	)	<b>DIA NO. 06DPHMB026</b>
<b>AGAINST:</b>	)	
	)	
<b>RONNIE B. MARTIN, D.O.,</b>	)	
	)	<b>PROPOSED DECISION</b>
<b>Respondent.</b>	)	<b>OF THE PANEL</b>

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**To: Ronnie Martin, D.O.**

Date: March 12, 2008.

On September 14, 2006, the Iowa Board of Medicine (the Board) filed a Statement of Charges against Ronnie Martin, D.O. (Respondent). The Statement of Charges alleged that Respondent violated a lawful order of the Board.

On January 30, 2008, the case came for hearing before a Panel of the Board. The following Board members were present: Yasyn Lee, M.D., Rod Zeitler, M.D., and Tom Drew, public member. Jeffrey Farrell, an administrative law judge from the Department of Inspections and Appeals, assisted the Board. Assistant Attorney General Theresa O'Connell-Weeg represented the public interest. Attorney Michael Sellers represented Respondent. The hearing was closed to the public at the election of the licensee.<sup>1</sup>

After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate. *See* Iowa Code section 21.5(1)(f). The Board directed the administrative law judge to prepare the decision in accordance with its deliberations.

**THE RECORD**

The State's exhibits 1-6 were admitted. Respondent testified briefly on his own behalf.

**FINDINGS OF FACT**

On February 3, 2006, the Board issued an order directing Respondent to schedule and complete a confidential comprehensive clinical competency evaluation at the Center for Personalized Education for Physicians (CPEP). The Board's order followed a physician complaint, Board investigation, and peer review committee report. The Board outlined a number of concerns, including a failure to perform appropriate physical examinations,

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<sup>1</sup> *See* 653 IAC 24.4(4) (*citing* Iowa Code section 272C.6(1)). Respondent initially requested an open hearing, but later requested a closed hearing.

failure to maintain appropriate medical records, falsified records, and inappropriate practice concerning medications. (Exhibits 1, 3).

On March 3, 2006, Respondent filed an objection to the evaluation order. The matter was heard by the Board on June 21, 2006. Respondent raised two defenses. First, he claimed that the Board did not have jurisdiction to order an evaluation. Respondent left Iowa in April of 2001 to take a job at an osteopathic medicine college in Florida. He has not practiced in Iowa since that time. His Iowa medical license has been inactive since February 1, 2003. Second, Respondent claimed that the Board did not have probable cause to issue the evaluation order. (Exhibits 2-3).

On July 13, 2006, the Board issued an order directing Respondent to comply with the competency order within 60 days. The Board found that it retained jurisdiction to conduct investigations concerning alleged licensing violations that occurred while Respondent practiced in Iowa. The Board noted that he could reactivate his license as a matter of right by filing an application, paying the fee, and submitting proof of continuing medical education. The Board stated that the investigation into Respondent's wrongdoing would be hampered by the delay if it waited to recommence the investigation until Respondent returned to Iowa. The Board stated its concern that physicians could avoid investigation and discipline simply by moving out of the investigating state. The Board also found sufficient factual basis to support probable cause for the evaluation order. (Exhibit 3).

Respondent did not complete the Board-ordered competency evaluation by the 60 day deadline. On September 14, 2006, the Board filed the statement of charges in the present action. Respondent filed a motion to dismiss, which was again centered on the question whether the Board had jurisdiction over a doctor that moved out of state and did not have an active Iowa medical license. On April 30, 2007, the Board entered an order denying the motion. The grounds for the denial were discussed in detail in the order and need not be repeated here. (Exhibits 4-6).

At the hearing on January 30, 2008, Respondent testified that he has not and will not refuse to follow a lawful order of the Board. Respondent based his claim on the premise that he filed an appeal in district court, contesting the Board's July 13, 2006, decision concerning the evaluation order. He contends that he is entitled to due process on the appeal underlying the statement of charges before the Board can impose discipline. Respondent testified that, if the Board's order is affirmed by the courts, he will abide by the order. (Respondent testimony).

Respondent also testified that he is the dean at a new medical school that is in the process of being built in Colorado. The school has provisional accreditation and is accepting students. Classes are expected to begin on August 4, 2008. (Respondent testimony).

### CONCLUSIONS OF LAW

The Board is a professional licensing board created to review applications for licenses and regulate the profession. *See generally* Iowa Code chapters 147, 148. The Board may discipline licensees pursuant to the standards set forth in the code. *See* Iowa Code section 147.55. The Board has adopted rules pursuant to Iowa Code chapter 17A to help define the statutory standards. *See* 653 IAC ch. 23-25.

The statement of charges alleged that Respondent violated Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11) by violating a lawful order of the Board. The Board is authorized by Iowa Code section 272C.9(1) to order a licensee to submit to a competency examination. A physician has a right to object to the order, after which the case is set for a contested case hearing. 653 IAC 24.4(3).<sup>2</sup>

The Board entered a lawful order pursuant to Iowa Code section 272C.9(1) when it ordered Respondent to comply with a competency evaluation on February 3, 2006. Respondent filed an objection, and the Board followed its regulations by scheduling and holding a contested case hearing. Respondent submitted evidence and argument during that hearing. The Board issued a written decision finding it had jurisdiction and that its order was supported by probably cause. The Board ordered Respondent to comply with the February 3, 2006, order within 60 days from the issuance of the order on the objection.

The 60 day period provided by the order has long passed. Respondent has not complied with the order. Respondent is fully aware of the order. The order is unambiguous. Respondent has violated a lawful order of the Board.

Respondent's claim that the order is not lawful because he has not exhausted his appeals pursuant to chapter 17A is not persuasive. The act of filing a petition for judicial review does not itself stay execution or enforcement of any agency action. Iowa Code section 17A.19(5)(a); *Teleconnect Co. v. Iowa State Commerce Com'n*, 366 N.W.2d 511, 513 (Iowa 1985). The appealing party may request a stay from the agency or a reviewing court. The Board's order has not been stayed. The Board's order remains valid and in force absent a stay. Respondent has no legally valid ground for failing to comply with the order.

Respondent also argued that the Board should wait for the appeal process because Respondent is not currently practicing in Iowa, and his time is focused on starting a new medical school in Colorado. He claims there is no harm in waiting for the appeal process. The Board disagrees. This matter has been under investigation for several years already. There is no indication how long further appeals might take. There is a public

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<sup>2</sup> This rule was formerly 653 IAC 12.3.

interest in Respondent completing the comprehensive competency evaluation as ordered by the Board. Additionally, Respondent may be licensed or become licensed in other states, so those states' have an interest in Iowa completing its investigation and disciplinary action so they have disclosure of any violations here.

**DECISION AND ORDER**

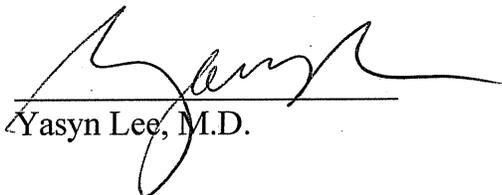
Respondent has violated Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11) by failing to comply with the Board's evaluation order, which was entered on entered on July 13, 2006. Based on the violation, the Board enters the following sanctions.

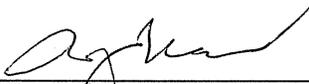
1. **SUSPENSION:** Respondent's license is hereby suspended until he provides proof that he has completed the competency evaluation at CPEP, as set forth in the February 3, 2006, evaluation order.
2. **CIVIL PENALTY:** Respondent shall be assessed a civil penalty in the amount of **\$5,000**. The civil penalty shall be paid within twenty (20) days of the date of this Order 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.
3. **CITATION AND WARNING:** Respondent is hereby **CITED** for violating a lawful order of the Board. Respondent is hereby **WARNED** that such conduct in the future may result in further formal disciplinary action, including revocation of his Iowa medical license.

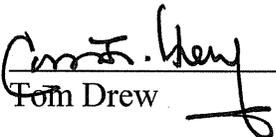
Additionally, Respondent shall pay a disciplinary hearing fee of \$75.00. Iowa Code section 272C.6(6); 653 IAC section 25.33(2). Respondent shall also pay any costs certified by the executive director. *See* 653 IAC 25.33(3). All sanctions, fees and costs shall be paid in the form of a check or money order payable to the State of Iowa and delivered to the Board of Medical Examiners within thirty days of the issuance of the final decision.

Dated this <sup>12<sup>th</sup></sup> day of March, 2008.

THE PANEL:

  
Yasyn Lee, M.D.

  
\_\_\_\_\_  
Rod Zeitler, M.D.

  
\_\_\_\_\_  
Tom Drew

cc: Theresa O'Connell Weeg  
Assistant Attorney General

Michael Sellers  
Respondent's Attorney

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BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF IOWA

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IN THE MATTER OF THE	)	FILE NO. 03-00-999
STATEMENT OF CHARGES	)	DIA NO. 06DPHMB026
AGAINST:	)	
	)	
RONNIE B. MARTIN, D.O.,	)	01-28-08P02:49 RCVD
	)	<b>ORDER REGARDING MOTION</b>
Respondent.	)	<b>TO CONTINUE</b>

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**STATEMENT OF THE CASE**

This disciplinary hearing is scheduled before the Board of Medical Examiners (the Board) for January 30, 2008. On January 14, 2008, respondent's attorney filed a motion for continuance. The motion alleged that the same issue has been fully litigated in a similar case that is pending before a panel of the Board. Respondent argued that the Board should not expend additional time on this case until it decides the similar case.

The State filed a resistance on January 23, 2008. The State pointed out that this matter arose from a final evaluation order issued by the Board on July 13, 2006. The case has been continued on a number of occasions. The State argued that a continuance is not justified by the existence of a similar case before the Board.

On January 24, 2008, the Board provided copies of the motion, resistance, and response to the undersigned administrative law judge (ALJ) to enter a decision on the motion.

**DISCUSSION**

The Board or presiding officer is authorized by regulation to continue contested case hearings. 653 IAC 25.16. An ALJ may rule on prehearing matters on the Board's behalf. 653 IAC 25.6. The presiding officer may consider the following factors:

- a. prior continuances,
- b. the interests of all parties,
- c. the public interest,
- d. the likelihood of informal settlement,
- e. the existence of an emergency,
- f. any objection,
- g. any applicable time requirements,

- h. the existence of a scheduling conflict,
- i. the timeliness of the request,
- j. other relevant factors.

Several factors weigh against granting the motion. This case first arose on a question concerning respondent's competency to practice, which, by its nature, invokes the public interest. The Board initially sought an order to conduct an evaluation on February 3, 2006. That order was challenged by respondent, and not resolved by the Board until July 13, 2006. Respondent has yet to comply with the order. This action has been continued on multiple prior occasions. The courts have denied Respondent's stay requests. Nearly two years have passed since the Board initially sought the evaluation. There is a public interest in resolving the case in a timely fashion. These factors outweigh any interest that may exist in favor of a continuance.

**ORDER**

Respondent's motion to continue is denied.

Dated this 24th day of January, 2008.



Jeffrey D. Farrell  
Administrative Law Judge

cc: Theresa O'Connell Weeg (by fax: 281-7551)  
Michael Sellers (by fax: 515-221-2702)  
Iowa Board of Medical Examiners (by fax: 281-8641)

**BEFORE THE IOWA BOARD OF MEDICINE**

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<b>IN THE MATTER OF THE</b>	)	<b>FILE NO. 03-00-999</b>
<b>STATEMENT OF CHARGES</b>	)	<b>DIA NO. 06DPHMB026</b>
<b>AGAINST:</b>	)	
	)	
<b>RONNIE MARTIN, D.O.,</b>	)	<b>ORDER ON THE STATE'S</b>
	)	<b>APPEAL OF DENIAL OF STATE'S</b>
<b>RESPONDENT.</b>	)	<b>MOTION FOR LEAVE TO AMEND</b>

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Date: December 17, 2007.

**STATEMENT OF THE CASE AND DISCUSSION**

On July 5, 2007, the State of Iowa filed a motion for leave to amend notice hearing and statement of charges. The State sought to amend the statement of charges to add a section asserting factual allegations relating to the charges. The factual allegations were previously provided to respondent, but withheld from the public after a district court ruled in a different case that the factual allegations in a statement of charges were confidential. The State's motion is responsive to the Iowa Court of Appeals decision in *Reveiz v. Iowa Board of Medical Examiners*, 735 N.W.2d 203 (Iowa App. 2007), which reversed the district court decision in the Reveiz case.

The Board referred the motion and Respondent's resistance to the Department of Inspections and Appeals to assign the case to an administrative law judge. On August 30, 2007, Administrative Law Judge Jeffrey Farrell issued an order denying the motion. The State appealed the ALJ's order to the Board.

On November 8, 2007, the Board heard argument on the appeal. Attorney Michael Sellers represented Respondent Ronnie Martin, D.O.. Assistant Attorney General Theresa Weeg represented the State. The Board included the following members: Yasyn Lee, M.D., Siroos Shirazi, M.D., Rod Zeitler, M.D., Colleen Kennedy, M.D., and Sally Schroeder and Tom Drew, public members. ALJ Farrell assisted the Board during deliberations and drafting of this order.

After considering the arguments of the parties, the Board decided to affirm the ALJ's order. There is no due process ground to amend the statement of charges because the statement of factual assertions was provided to Respondent at the time the charges were filed. The statement of factual assertions is an existing document, so the Board can consider releasing that document under *Reveiz* and other applicable law in the event a public records request is

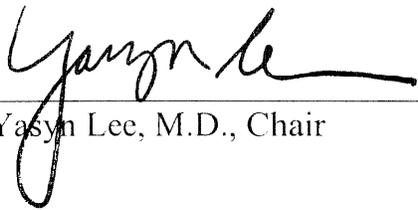
Case No. 03-00-999  
Page 2

made.

**ORDER**

The ALJ's order denying the State's motion for leave to amend is affirmed.

Dated this 17<sup>th</sup> day of December, 2007.

A handwritten signature in black ink, appearing to read "Yasyn Lee", written over a horizontal line.

Yasyn Lee, M.D., Chair

cc: Theresa O'Connell Weeg  
Michael Sellers

**BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA**

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<b>IN THE MATTER OF THE</b>	)	<b>FILE NO. 03-00-999</b>
<b>STATEMENT OF CHARGES</b>	)	<b>DIA NO. 06DPHMB026</b>
<b>AGAINST:</b>	)	
	)	
<b>RONNIE B. MARTIN, D.O.,</b>	)	<b>ORDER ON RESPONDENT'S</b>
	)	<b>MOTION TO DISMISS</b>
<b>Respondent.</b>	)	

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**INTRODUCTION**

April 30, 2007.

This matter was set for a contested case hearing before the Iowa Board of Medical Examiners (the Board) on March 28, 2007. Attorney Michael Sellers represented respondent. Assistant Attorney General Theresa Week represented the State.

At hearing, the parties asked the Board to continue the evidentiary hearing and instead hear arguments on a verbal motion to dismiss by Ronnie Martin, D.O. (Respondent). The parties also asked for the opportunity to file written briefs. The board agreed to the requests, and heard arguments on the motion. Respondent served a written motion and brief on April 6, 2007, the State served a resistance and brief on April 17, 2007, and respondent served a reply brief on April 23, 2007.

The Board deliberated on the motion during a telephonic meeting on April 26, 2007. The Board included the following members: Dr. Yaslyn Lee, Dr. Blaine Houmes, Dr. Siroos Shirazi, Dr. Yogesh Shah, Sally Schroeder, and Paul Thurlow. Jeffrey Farrell, an administrative law judge, assisted the Board during deliberations and drafting this order.

**STATEMENT OF THE CASE**

This case concerns a statement of charges filed on September 19, 2006. The only count set forth in the statement of charges is whether respondent violated a lawful order of the Board. The statement of charges cites Iowa Code section 148.6(2)(i) and 653 IAC 23.1(11) as legal authority.

On February 3, 2006, the Board issued a Confidential Evaluation Order requiring that Respondent complete a comprehensive clinical competency evaluation at a Board-approved program. The Board determined that there was probable cause to order the evaluation. Respondent filed an objection to the evaluation order. On June 21, 2006, the Board held a hearing on Respondents' objection. On July 13, 2006, the Board issued an order affirming its prior decision and requiring respondent to complete the clinical

competency evaluation by September 11, 2006. Upon reviewing the entire record, including the testimony and evidence submitted by Respondent, the Board again concluded that there was probable cause to order the confidential clinical competency examination. The record included serious complaints about the quality of medical care provided by Respondent while he was working as a physician in the state of Iowa.

Respondent challenged the Board's evaluation order on judicial review before the Iowa District Court. On January 29, 2007, the district court dismissed the petition for judicial review. Respondent has appealed the district court decision to the Iowa Supreme Court.

## **CONCLUSIONS OF LAW**

### **FIRST ISSUE – INACTIVE MEDICAL LICENSE**

Whether the Board has authority to pursue disciplinary action against a physician who holds an Iowa medical license but who has allowed the license to go inactive due to non-renewal. Respondent argues that the Board cannot take disciplinary action against Respondent because he did not renew his Iowa medical license and it is inactive. The Board issued Respondent an Iowa medical license on November 4, 1999, and Respondent allowed his license to go inactive on February 1, 2003. The Board evaluated Respondent's motion in light of the Iowa Court of Appeals recent decision in *Imber v. Iowa Board of Medical Examiners*, 2007 WL 601544 (Iowa App. 2007). Imber was licensed to practice in Iowa in 1982. His Iowa license lapsed in 1984. In 1996, the California Medical Board filed a statement of charges against Imber. In 1997, Imber entered into a settlement in which he surrendered his license.

In 2001, the Iowa Board filed a statement of charges against Imber based on the California Board's disciplinary action. The Iowa Board dismissed the charges in 2002, stating that it did not want to expend its limited resources on a disciplinary action that was based on another state's action when the physician's license was inactive in Iowa. The Board recorded its dismissal on its public website.

In 2005, Imber asked the Board to remove and expunge from the website all references to the commencement and dismissal of the disciplinary action against him. Imber argued, in part, that the Board did not have authority to initiate disciplinary action against him because his license had lapsed in Iowa.

The court rejected Imber's argument. The court held that the Board has authority over all licensees, whether the license is active or inactive. The court concluded its decision by stating: "We therefore conclude the Board has authority to discipline all licensees, not only those that are actively licensed."

Respondent attempted to distinguish this case from *Imber* by analyzing the statute governing evaluation orders. See Iowa Code section 272C.9. The problem with respondent's argument is that this case is a disciplinary case, just like *Imber*. It is true that the statement of charges is based on respondent's failure to comply with the evaluation order, but this is a disciplinary case nonetheless. The evaluation order has been challenged by respondent, and was affirmed as valid before the Board and the district court.

Even if this were a challenge to an evaluation order, the Board would reject respondent's argument. Respondent dissected the four paragraphs of Iowa Code section 272C.9 in an attempt to distinguish the evaluation provision in subsection (1) with the violation provisions set out in subsections (2) and (3). Respondent further argued that subsection (4), which specifically authorizes discipline for violations of subsections (2) and (3), is significant because it shows an intent to treat evaluation orders differently.

However, each subsection in section 272C.9 is directed at "licensees," which *Imber* holds to include inactive licensees as well as active licensees. Further, there is no reason to refer to subsection (1) in subsection (4), because subsection (1) already references licensee discipline. The Board can only order an evaluation upon a finding of probable cause, the Board can use the evaluation report in a later disciplinary proceeding, and the Board may find that the allegations supporting the evaluation order are legally established if the licensee refuses to submit for the evaluation. The legislature clearly intended for the evaluation process to be a tool that may lead to licensee discipline. Additionally, the legislature has authorized the Board to impose discipline against licensees who violate a lawful order of the Board in a disciplinary or licensure hearing. Iowa Code section 148.6(2)(i). For all of these reasons, there is no indication in the statute that the legislature intended to treat inactive licensees differently than active licensees in evaluation cases. Respondent cannot divest the Board of jurisdiction by choosing not to renew his Iowa medical license. Therefore, the Board concluded that it has authority to pursue disciplinary action against a physician who holds an Iowa medical license but who has allowed the license to go inactive due to non-renewal.

Respondent also argues that the Board's policy on out-of-state disciplinary action precludes it from pursuing disciplinary action in this matter. First, the policy in question is just that, an informal policy, and not a law or rule governing the Board's authority or jurisdiction in disciplinary matter. Second, the policy does not prevent the Board from initiating disciplinary action against licensees, it merely why the Board may choose not to focus its limited resources to pursue discipline against physicians who do not pose a risk to the public that needs to be addressed by this Board at this time. The policy states that the Board may choose not to file formal disciplinary action against licensees who have been disciplined in another state when the physician's Iowa license is inactive. The Board determined that disciplinary action may not be necessary in such circumstances

because there is no threat to the public when the physician does not have an active Iowa license, has not practiced in Iowa recently, and the out-of-state disciplinary action is available to the public. The Board reserved the right to file charges if the licensee returns to practice in Iowa in the future or if the Board determined that the licensee poses a threat to the public. This policy clearly does not apply to this case as the Board's action in this matter is not based on out-of-state disciplinary action. In fact, the medical care that raised concerns regarding Respondent's competency occurred while he practiced in Iowa. Further, there is no public disciplinary record in another state to put patients on notice of the Board's concerns in this matter. Finally, the Board's policy clearly indicates that the Board has the authority to pursue disciplinary action if it determines that the licensee's conduct poses a threat to the public. Therefore, the Board's policy on out-of-state disciplinary action does not apply to this matter, and even if it did, the Board clearly has discretion to initiate discipline when there appears to be a risk to the public. There is a strong public interest in this matter to ensure that Respondent practices medicine in a safe and competent manner.

### **SECOND ISSUE – NO LONGER PRACTICING IN IOWA**

Whether the Board has authority to pursue disciplinary action against an Iowa-licensed physician who no longer practices medicine in this state. Respondent argues that the Board cannot take disciplinary action against Respondent because he no longer practices medicine in Iowa and therefore he does not pose a threat to citizens of this state. Respondent relies upon the definition of licensee discipline in the Board rules.

“‘Licensee discipline’ or ‘discipline’ shall mean any sanction the Board may impose upon its licensees for conduct which threatens or denies. Citizens of this state of a high standard of professional care.”

Again, while Respondent is not currently practicing medicine in Iowa, the competency problems that precipitated the Board's action in this matter occurred while he was treating patients in this state. Further, Respondent can return to the practice of medicine in Iowa by simply filing an application to re-activate his Iowa medical license. Respondent cannot divest the Board of jurisdiction by moving out of state. Therefore, the Board has authority to pursue disciplinary action against Respondent even though he does not currently practice medicine in Iowa.

### **THIRD ISSUE – VIOLATION OF A LAWFUL ORDER OF THE BOARD**

Whether Respondent violated a lawful order of the Board which authorizes the Board to pursue discipline. Respondent argues that the Board cannot take disciplinary action against him because he has not refused to submit to the clinical competency evaluation. Respondent relies on Iowa Code Section 272C.9 to support this argument. The Board

noted that it did not charge Respondent with violating Section 272C.9. Instead, he is charged with violating a lawful order of the Board under Iowa Code Section 148.6(2)(i) and 653 IAC 23.1(11). On February 3, 2006, the Board issued the evaluation order in this matter. Respondent filed an objection to the evaluation order and a hearing was held on June 21, 2006. On July 13, 2006, the Board issued an order affirming the evaluation order and requiring respondent to complete the evaluation by September 11, 2006. To date, Respondent has not completed the clinical competency evaluation. Respondent did seek judicial review of the Board's action in this matter, however, Respondent acknowledges that his appeal does not operate to stay these proceedings or the imposition of discipline by the Board. Therefore, Respondent has clearly violated Board July 13, 2006, order.

#### **FOURTH ISSUE – CONSIDERATION OF A NON-DISCIPLINARY LETTER**

Whether the Board should pursue disciplinary action against Respondent in this matter. Respondent argues that because the Board considered sending Respondent a confidential non-disciplinary letter to resolve this matter it should not pursue disciplinary action against him at this time. Respondent notes that the Board's investigative file includes information which indicates that, at one point in Board's investigation, the Board directed staff to draft a confidential non-disciplinary letter for consideration. The Board acknowledges that it has several options available to it when resolving investigative matters, and one option is to send the licensee a confidential non-disciplinary letter which addresses any concerns the Board may have. However, the Board noted that while it considered all of the options available to it, ultimately, the Board concluded that there was probable cause to order Respondent to complete a clinical competency evaluation. Therefore, the fact that the Board considered a confidential non-disciplinary letter at one point in time during the investigation does not preclude the Board from issuing an evaluation or filing disciplinary charges when Respondent failed to complete the evaluation as ordered.

#### **ORDER**

**THEREFORE IT IS HEREBY ORDERED** that Respondent's Motion to Dismiss is hereby **DENIED**.

Dated this 30<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
Yashn Lee, M.D., Chair

cc: Theresa O'Connell Weeg  
Michael Sellers

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

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IN THE MATTER OF THE ) DIA NO. 06DPHMB026  
STATEMENT OF CHARGES AGAINST: ) CASE NOS. 03-00-999  
) 03-27-07P02:JS R(V)  
)  
RONNIE MARTIN, D.O. ) RULING ON RESPONDENT'S  
) THIRD REQUEST FOR  
Respondent ) CONTINUANCE

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On September 14, 2006, the Iowa Board of Medical Examiners (Board) filed a Statement of Charges alleging that Ronnie Martin, D.O. (Respondent), violated a lawful order of the Board. A hearing was initially scheduled for December 6, 2006, but was later rescheduled. On January 23, 2007, an Order was issued rescheduling the hearing to March 28, 2007 at 2:00 p.m. On March 9, 2007, Respondent filed a second continuance request, stating that his daughter was scheduled for an operation in Philadelphia, Pennsylvania on the date of the hearing and that he previously made arrangements to be with her. The second Motion to Continue was denied on March 16, 2007.

On March 19, 2007, Respondent filed a third continuance request, stating that he is a defendant in a medical malpractice case in Fort Lauderdale, Florida, which had been scheduled for jury trial beginning on March 20, 2007. However, Respondent and his attorney in that case are now on 24-hour notice to start the jury trial upon completion of a current pending case in the same courtroom. Respondent submitted a letter from his Florida attorney, who states that the trial is expected to last approximately 2-3 weeks. The Florida attorney has advised Respondent's Iowa attorney that Respondent's attendance at the trial is mandatory.

The state filed a Resistance to the continuance motion on March 19, 2007. Respondent filed a Response on March 21, 2007. The Board delegated ruling on the continuance motion to the undersigned administrative law judge because the presiding administrative law judge is away from the office and unavailable.

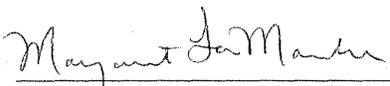
As pointed out by the state, Respondent has clearly known about the pending jury trial for quite some time; he should have notified the Board about this potential scheduling

conflict at an earlier date. Even if Respondent thought the medical malpractice case might be settled or postponed, Respondent should have disclosed the pending trial in his March 9<sup>th</sup> continuance motion. It is still unclear when or if Respondent's Florida jury trial will go forward. The continuance request should be denied at this time, given the public interest in a prompt resolution of this disciplinary proceeding, which has been scheduled since January 23, 2007. Respondent should be allowed to participate in the Board's disciplinary hearing by telephone. If the jury trial goes forward and Respondent's presence is required in the Florida courtroom on March 28, 2007 at 2:00 p.m., a continuance should be granted at that time. However, before a continuance is granted, Respondent should be required to provide the Board with written verification from his Florida attorney that the trial is in session and that Respondent's presence is required in the courtroom.

ORDER

IT IS THEREFORE ORDERED that Respondent's Motion For Continuance is DENIED. Respondent's Continuance Motion will be reconsidered if the Florida medical malpractice trial is in session during the afternoon of March 28, 2007 and Respondent's Florida attorney provides written verification to the Board that Respondent's presence is required in the courtroom.

Dated this 22nd day of March, 2007.



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Margaret LaMarche  
Administrative Law Judge  
For the Iowa Board of Medical Examiners

cc: Theresa O'Connell Weeg  
Office of the Attorney General  
Hoover Building  
Des Moines, Iowa 50319  
and by FAX: (515)281-7551

Michael Sellers  
One Corporate Place  
1501 42nd St., Suite 380  
West Des Moines, IA 50266-1005  
and by FAX: (515) 221-2702

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Kent Nebel  
Director of Legal Affairs  
Iowa Board of Medical Examiners  
400 SW 8th Street, Suite C  
Des Moines, IA 50309-4686  
and by FAX: (515) 281-8641

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF IOWA

---

	)	FILE NO. 03-00-999
IN THE MATTER OF THE	)	DIA NO. 06DPHMB026
STATEMENT OF CHARGES	)	
AGAINST:	)	
	)	
RONNIE B. MARTIN, D.O.,	)	<b>ORDER REGARDING MOTION</b>
	)	<b>TO CONTINUE</b>
Respondent.	)	

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**INTRODUCTION**

This disciplinary hearing is scheduled before the Board of Medical Examiners (the Board) for March 28, 2007. On March 9, 2007, respondent's attorney filed a motion for continuance. The motion alleged that respondent's daughter is scheduled for an operation in Philadelphia, PA on the same date scheduled for the hearing. Respondent stated that he has made arrangements to be present with his daughter during the operation.

The State filed a resistance on March 14, 2007. The State pointed out that this matter arose from a final evaluation order issued by the Board on July 13, 2006. The State alleged in a statement of charges filed on September 14, 2006, that respondent has not submitted to a professional competency evaluation. This matter was previously set for January 31, 2007, but was continued to March 28, 2007. The State further noted that respondent did not provide verification to support his claim that his daughter is having surgery.

On March 14, 2007, respondent filed a response to the State's resistance. Respondent attached a note from Dr. Jane Friebling stating that Amanda Martin, respondent's daughter, is undergoing a colonoscopy on March 28, 2007.

On March 14, 2007, the Board provided copies of the motion, resistance, and response to the undersigned administrative law judge (ALJ) to enter a decision on the motion.

**DISCUSSION**

The Board or presiding officer is authorized by regulation to continue contested case hearings. 653 IAC 25.16. An ALJ may rule on prehearing matters on the Board's behalf. 653 IAC 25.6. The presiding officer may consider the following factors:

- a. prior continuances,
- b. the interests of all parties,
- c. the public interest,
- d. the likelihood of informal settlement,
- e. the existence of an emergency,
- f. any objection,
- g. any applicable time requirements,
- h. the existence of a scheduling conflict,
- i. the timeliness of the request,
- j. other relevant factors.

Several factors weigh against granting the motion. This case initially arose on a question concerning respondent's competency to practice, which, by its nature, invokes the public interest. The Board initially sought an order to conduct an evaluation on February 3, 2006. That matter was challenged by respondent, and not resolved until July 13, 2006. The Board now alleges that respondent has yet to comply with the order. This matter has been continued on one prior occasion, and respondent now seeks a second continuance. A full year has now passed since the Board initially sought the evaluation.

Further, while respondent has demonstrated a conflict, he has not demonstrated that the conflict was unavoidable. The Board issued the order rescheduling the hearing on January 23, 2007. Respondent stated in his motion that he has already made arrangements to be with his daughter in Philadelphia. He did not file his motion to continue until March 9, 2007. Respondent did not provide any information to show why his daughter could not have scheduled her procedure for a different date. Presumably, if she wanted her father present, which is understandable, she could have selected a date other than the one date which her father was to appear before the Board.

**ORDER**

Respondent's motion to continue is denied.

Dated this 16th day of March, 2007.



Jeffrey D. Farrell  
Administrative Law Judge

Case No. 03-00-999

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cc: Theresa O'Connell Weeg (by fax: 281-7551)  
Michael Sellers (by fax: 515-221-2702)  
Iowa Board of Medical Examiners (by fax: 281-8641)

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

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IN THE MATTER OF THE ) DIA NO. 06DPHMB026  
STATEMENT OF CHARGES AGAINST: ) CASE NOS. 03-00-999  
)  
)  
RONNIE MARTIN, D.O. ) RULING ON REQUESTS FOR  
) CONTINUANCE AND STAY  
Respondent )

11-13-06P02:25 RCVD

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On September 14, 2006, the Iowa Board of Medical Examiners (Board) filed a Statement of Charges alleging that Ronnie Martin, D.O. (Respondent), violated a lawful order of the Board. A Notice of Hearing scheduled the hearing for December 6, 2006. On October 23, 2006, Respondent filed a Request for Continuance and Request for Stay Order. On November 6, 2006, the state filed a Resistance to both requests. The Board delegated ruling on these requests to the undersigned administrative law judge.

The Statement of Charges concerns Respondent's failure to comply with the Board's July 13, 2006 Decision and Order, which was issued following hearing, requiring Respondent to submit to a professional competency evaluation. Respondent requests a continuance and stay of the proceedings pending the outcome of his district court appeal of the Board's July 13, 2006 Decision and Order. The state responds that both requests should be denied because Respondent provides no reasons justifying the requests. The state further asserts that there is no legal authority for a stay under Iowa Code section 17A.19(5) and 653 IAC 25.27.

653 IAC 25.27(1) provides, in relevant part, that any party to a contested case may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board or pending judicial review. The petition shall state the reasons justifying the stay or other temporary remedies. In determining whether to grant a stay, the board is required to consider the following factors:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is not granted.

(3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

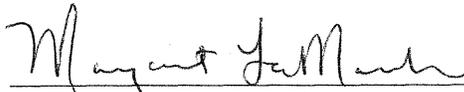
(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's actions in the circumstances.

Iowa Code section 17A.19(5)(c)(2005). Respondent provides no reasons justifying either his request for continuance or his request for stay, other than that an appeal is pending in district court. The hearing concerns Respondent's ongoing failure to comply with a Board Order requiring a competency evaluation. This is clearly a matter involving public safety. Respondent has failed to justify his requests for continuance or stay.

ORDER

IT IS THEREFORE ORDERED that the Respondent's Requests For Continuance and for Stay are hereby DENIED.

Dated this 8th day of November, 2006.



Margaret LaMarche  
Administrative Law Judge  
For the Iowa Board of Medical Examiners

cc: Theresa O'Connell Weeg  
Office of the Attorney General  
Hoover Building  
Des Moines, Iowa 50319  
and by FAX: (515)281-7551

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One Corporate Place  
1501 42nd St., Suite 380  
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Kent Nebel  
Director of Legal Affairs  
Iowa Board of Medical Examiners  
400 SW 8th Street, Suite C  
Des Moines, IA 50309-4686  
and by FAX: (515) 281-8641

**BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA**

\*\*\*\*\*

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

**RONNIE B. MARTIN, D.O., RESPONDENT**

**FILE No. 03-00-999**

\*\*\*\*\*

**STATEMENT OF CHARGES**

\*\*\*\*\*

**COMES NOW** the Iowa Board of Medical Examiners on September 14 2006, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2) (2005). Respondent was issued Iowa medical license no. 3262 on November 4, 1999. Respondent's license is inactive as it expired on February 1, 2003.

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

1. Hearing. A disciplinary contested case hearing shall be held on December 6, 2006, before the Iowa Board of Medical Examiners. The hearing shall begin at 1:30 p.m. and shall be located in the conference room at the Iowa Board of Medical Examiners 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 hearing.

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

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 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.

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

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

Board's Legal Director at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

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

7. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

8. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 25.4.

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

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

### **COUNT I**

10. Respondent is charged under Iowa Code section 148.6(2)(i), (2005) and 653 IAC 23.1(11) for violating a lawful order of the Board.

## **D. STATEMENT OF MATTERS ASSERTED**

11. A short and plain Statement of the Matters Asserted was reviewed and approved by the Board at the time this Notice of Hearing was filed. A Statement of the Matters Asserted shall be furnished to Respondent as an attachment to this Notice. However, this short and plain statement of the matters asserted is not a public record.

### E. SETTLEMENT

12. 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 25.17. 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

13. On this 14<sup>th</sup> day of September, 2006, the Iowa Board of Medical Examiners found probable cause to file this Notice of Hearing.



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