

BEFORE THE IOWA BOARD OF PHYSICIAN ASSISTANTS

IN THE MATTER OF)	NOS. 08-001, 09-020, and 09-022
)	
MICHAEL JOHNSTON, P.A.,)	NOTICE OF HEARING AND
)	STATEMENT OF CHARGES
Respondent.)	

COMES NOW the Iowa Board of Physician Assistants (Board) and files this Notice of Hearing and Statement of Charges pursuant to Iowa Code sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued Iowa license 001694 on January 20, 2006. Respondent's license is current and will next expire on September 30, 2012. Respondent's last known address is 8068 NE 38th Avenue, Altoona, IA 50009.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on January 18, 2012 before the Board of Physician Assistants. The hearing shall begin at 9:30 AM and shall be located in the Lucas State Office Building, Fifth Floor Board Room 526, Des Moines, Iowa.

Answer. Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are required by 645 IAC 11.12 to file an Answer. The Answer should specifically admit, deny, or otherwise answer all allegations contained in sections C and D of this Notice of Hearing and Statement of Charges. Pleadings shall be filed with the Board at the following address:
Board of Physician Assistants, 5th Floor, Lucas State Office Building, Des Moines, Iowa, 50319.

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.

Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 641 IAC chapter 11. At hearing, you may appear personally or be represented by legal counsel at your own expense. You will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf on issues of material fact, cross-examine witnesses present at the hearing, and examine and respond to any documents introduced at hearing. If you need to request an alternative time or date for hearing, you must comply with the requirements of 645 IAC 11.18. The hearing may be open to the public or closed to the public at your discretion.

Pre-hearing Conference. Any party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board's rules regarding pre-hearing conferences are contained at 645 IAC 11.17.

Prosecution. The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Copies of pleadings should be provided to counsel for the State at the following address: September Lau, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

Communications. You may not contact board members in any manner, including by phone, letter, or e-mail, about this Notice of Hearing and 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.

B. LEGAL AUTHORITY AND JURISDICTION

Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148C, and 272C.

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, 148C, and 272C and 645 IAC chapter 329.

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 645 IAC 11.21.

C. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

Respondent is charged with obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority, in violation of 645 IAC 329.2(7).

Count II

Respondent is charged with violation of a regulation or law of this state, another state, or the United States which relates to the practice of the profession, in violation of 645 IAC 329.2(12).

Count III

Respondent is charged with failure to comply with the terms of a Settlement Agreement and Final Order in violation of 645 IAC 329.2(19).

Count IV

Respondent is charged with habitual intoxication or addiction to the use of drugs in violation of 645 IAC 329.2(6).

Count V

Respondent is charged with engaging in any conduct that subverts or attempts to subvert a board investigation in violation of 645 IAC 329.2(17).

D. FACTUAL CIRCUMSTANCES

1. On April 21, 2010, the Board approved a Settlement Agreement and Final Order (Settlement Agreement) in the above-captioned case numbers. This Settlement resolved a Statement of Charges issued against Respondent on February 12, 2010, charging Respondent under 645 IAC 329.2(7) with obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority; under 645 IAC 329.2(12) with violating a law which relates to the practice of the profession; and under 645 IAC 329.2(31) with violation of the terms of an impaired practitioner recovery contract. The Factual Circumstances of the February 12 Statement of Charges is incorporated herein by reference.

2. Per the terms of the Settlement Agreement, Respondent's license was placed on Probation for four years (through April 2014). In pertinent part, the terms of this Probation required Respondent to abstain from the use of alcohol and drugs, and to submit to random urine and/or blood testing as a part of a chemical screening program.

3. In October of 2011, two samples provided by Respondent for testing were designated "invalid" for abnormal results.

4. In November of 2011, Respondent submitted a sample of hair for drug testing. The results of such testing came back positive for Opiates, Oxycodone and Hydrocodone.

5. While on Probation, Respondent has used Lortab and Percocet in violation of the Settlement Agreement. Respondent reports using such drugs in September and October of 2011.

6. On October 19, 2011, Respondent addressed the discipline committee of the Board, asking to be released from probation and reporting that he had been fully compliant with the terms of the Settlement Agreement.

E. SETTLEMENT

This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 645 IAC chapter 12. If you are interested in pursuing settlement of this matter, please contact September Lau, Assistant Attorney General, at 515.281.5328.

-4-

F. PROBABLE CAUSE FINDING

On this 1st day of December, 2011, the Iowa Board of Physician Assistants found probable cause to file this Notice of Hearing and Statement of Charges.