

BEFORE THE IOWA BOARD OF PHYSICIAN ASSISTANTS

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IN THE MATTER OF THE	)	CASE NO. 09-019
	)	DIA NO. 09DPHPA001
	)	
MICHAEL BARGER, P.A.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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On May 29, 2009, the Iowa Board of Physician Assistants (Board) issued an Emergency Adjudicative Order to Michael Barger, P.A. (Respondent), pursuant to Iowa Code section 17A.18A(2009) and 645 IAC 11.28. The Emergency Adjudicative Order indefinitely suspended Respondent from the practice as a physician assistant and set a hearing for July 15, 2009. The hearing was continued at Respondent's request.

The hearing on the Emergency Adjudicative Order was held on October 21, 2009 at 9:00 a.m. at the Lucas State Office Building, Fifth Floor Conference Room, Des Moines, Iowa. Respondent Michael Barger appeared and was represented by attorney Connie Diekema. Assistant Attorney General Julie Bussanmas represented the state of Iowa. The following Board members served as the presiding officers for the hearing: Edward Friedmann, PA, Chairperson; Patricia Weishaar, PA; Theresa Hegmann, P.A.; Daniel Gillette, M.D.; and Ronald Moore, public member. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1). The hearing was recorded by a certified court reporter. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f), to deliberate their decision. The Board directed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the testimony of Respondent and State Exhibits 1-8 (see Exhibit Index for description).

## FINDINGS OF FACT

1. On December 26, 1995, the Board issued Respondent license number 001007 to engage in the practice of a physician assistant in the state of Iowa. (State Exhibit 2)
2. On June 18, 2007, the Iowa Board of Pharmacy (Pharmacy Board) issued Respondent Controlled Substance Registration Number 5100247, which permitted him to prescribe, dispense, and administer controlled substances, subject to the laws of the state of Iowa and the rules of the Board. (State Exhibit 1, p. 3)
3. Respondent opened his own physician assistant practice in Adel, Iowa in 2002. Since that time, Respondent has hired a second physician assistant and has had several supervising physicians. In 2008, Dr. Dale Grunewald became the supervising physician for the practice. In his role as supervising physician, Dr. Grunewald had daily telephone contact with Respondent and visited Respondent's practice weekly to review patient charts. Respondent consulted Dr. Grunewald prior to admitting any patient to the hospital. (Testimony of Respondent; State Exhibit 4, pp. 14, 276)
4. On May 8, 2009, the Pharmacy Board received a complaint concerning Respondent's prescriptions of Demerol tubex for office use. (State Exhibit 5, p. 1) On May 14, 2009, the Pharmacy Board issued Respondent an Order of Immediate Suspension of Controlled Substance Registration Number 5100247, following its investigation. The Pharmacy Board's investigation revealed, in part, the following:
  - a. During the preceding 12 months, Respondent had prescribed, dispensed, and administered or otherwise utilized medically inappropriate and excessive amounts of controlled substances in Schedules II, III, and IV, including but not limited to various strengths of Demerol Injection, Hydrocodone tablets, Phentermine capsules, Oxycontin tablets, Fentanyl patches, and Clonazepam tablets.
  - b. During the preceding 12 months, Respondent had obtained approximately 618 Demerol tubex for "office use" ostensibly for approximately 84 of his patients. Respondent had picked up some of the Demerol tubex directly from pharmacies. A sample of the approximately 84 patients indicated that some patients may not have received all of the Demerol which was prescribed for them and ostensibly distributed to them.
  - c. During the preceding 12 months, Respondent obtained Demerol tubex in increasing frequency ranging from 5 tubex in May 2008 to 156 tubex in April 2009.

d. During March 2009, Respondent's prescribing of Demerol 100mg Injectable Tubex representing approximately 40% of the total amount dispensed by community pharmacies in the state of Iowa.

e. Respondent's practice of administering excessive doses of Demerol, such as injections of 300 mg for the treatment of pain to individuals who may be opioid naïve, poses an imminent danger to patient health and safety because the dosage may exceed accepted usage.

f. Respondent has failed to adequately document his use of controlled substances in patient medical records or any other records maintained in his office. Some patient medical records conflict with prescription records which indicate that patients received Demerol for use in "mixed drug cocktails" when they in fact did not.

g. Respondent failed to comply with other controlled substances recordkeeping requirements, including maintaining an inventory record of controlled substances maintained at his office.

(State Exhibit 1)

5. The Pharmacy Board reported the results of its investigation and its emergency order to this Board on May 15, 2009. The Board initiated its own investigation. Witnesses were interviewed and patient records were obtained. Respondent had submitted to a drug test on May 14, 2009 during work hours while he was practicing as a physician assistant. The drug test results received on May 22, 2009 revealed that Respondent tested positive for several controlled substances, including meperidine metabolite, oxycodone, and oxymorphone. (State Exhibits 1, 4, 5, 8)

6. On May 29, 2009, the Board issued its Emergency Adjudicative Order indefinitely suspending Respondent from practice as a physician assistant pending further order of the Board. This emergency order was based on the Board's findings that:

- Respondent's continued practice as a physician assistant would pose an immediate danger to the public health, safety, and welfare;
- Respondent's competency problems regarding dispensing and record-keeping and his use of controlled substances while practicing as a physician assistant

raise global concerns regarding his ability to practice that cannot be addressed through any means other than full suspension of his license;

- Respondent's apparent use of controlled substances and intoxication while on duty poses a serious and immediate danger to his patients; and
- There are no monitoring requirements or other interim safeguards that would be sufficient to protect the public health, safety, or welfare until this case is finally resolved or until such time as the Board receives satisfactory evidence of Respondent's fitness to practice.

(State Exhibit 2)

7. From June 14 through June 19, 2009, Respondent was evaluated at the Professional Recovery Network (PRN) in Waukesha, Wisconsin. Respondent has admitted a long history of substance abuse, including opioid use, dating back to 1983. He has also admitted other drug and alcohol use. Respondent also admitted that he had been obtaining OxyContin over the internet for personal use since March 2008. From November 2008 through May 2009, Respondent admits taking OxyContin 40 mg, twice a day. (State Exhibit 7)

At hearing, Respondent testified that he was under extreme pressure at work and starting taking the OxyContin because it automatically made him better able to handle the stress and work load. Respondent denied taking any of the Demerol that he had prescribed for patients or taking hydromorphone from any source, even though his drug screen was positive for a Demerol metabolite. Respondent's explanation for his positive drug screens for substances other than oxycodone was that the OxyContin came from Guatemala and must have contained other substances besides OxyContin. (Testimony of Respondent)

8. On June 19, 2009, PRN submitted a written evaluation report to the Board. PRN diagnosed Respondent with opioid and alcohol dependence and recommended:

- abstinence from alcohol, opioids, and all other mind and mood altering substances, with the exception of drugs prescribed or approved by a physician fully aware of the patient's addiction history;
- residential chemical dependence treatment at a Board approved facility that specializes in the treatment of professionals and follow all recommendations of the treatment program; and

- completion of Board approved continuing education programs for prescribing practice, medical documentation, and ethical medical practice in patient interactions.

PRN also concluded that Respondent should not return to practice as a physician assistant without Board approval. (State Exhibit 7)

9. Respondent received substance abuse treatment at the Herrington Recovery Center in Wisconsin from June 19, 2009 through July 18, 2009. Respondent was discharged from the treatment program with recommendations to abstain from mood altering substances, follow up with the Board for a minimum of two years or as long as deemed necessary, have weekly witnessed random drug screens, continue to attend regular 12 step meetings, and obtain a sponsor. After his discharge from treatment, Respondent reports that he attended Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) daily for 90 days. He also reports attending a weekly Caduceus meeting for impaired professionals. Respondent is willing to participate in a random drug testing program and to continue his attendance at AA/NA. (Testimony of Respondent; State Exhibit 7, p. 23)

10. Respondent provided the following explanation for the prescribing practices that led to the summary suspension of his controlled substances registration and the emergency suspension of his physician assistant license:

About 14-16 months ago, Respondent read an article in a "throw away journal" that advocated using a 50-100 mg Demerol (meperidine) cocktail to inject "trigger points" to treat patients' chronic pain. Respondent has not been able to find or produce this article. Respondent did not attempt to research this treatment regimen in any peer reviewed journals. Respondent injected chronic pain patients with Demerol cocktails that included 1- 2 cc Marcaine (a long acting local anesthetic), 1-2 cc Lidocaine (a shorter acting local anesthetic), 40 mg Kenalog (a corticosteroid), and 100- 300 mg of Demerol. Respondent also admitted prescribing up to 1000 mg of Demerol per visit for some patients. Some but not all patients were also taking narcotics by mouth.

Respondent would prescribe the Demerol for the patients, who would go to a pharmacy to have the prescription filled, and then bring the prescription back to Respondent's clinic so that he could administer it by injection. Respondent did not necessarily document the number of times

that he injected the patient or the injection locations. Respondent reported that he threw away the excess drug, but he did not document the wastage. Respondent reports he was having difficulty with his documentation due to his new electronic medical record keeping system. If Respondent trusted the patient and the patient had a good environment he may have prescribed more than one injection at a time and allowed the family to keep the extra medication in case they needed to call him in the evening to inject the patient.

Respondent testified that he now realizes that he was overprescribing Demerol "cocktail" injections to his patients although he did not think so at the time. Respondent testified that he spoke to his supervising physician "once or twice" about his practice of Demerol trigger point injections but he was not surprised that his supervising physician told investigators that he was not aware of the practice. (Testimony of Respondent; State Exhibit 5, pp. 276-277)

11. Respondent's Adel Family Practice clinic is still open and another physician assistant is treating all of the patients under the supervision of Dr. Grunewald. The practice is not currently profitable with just one physician assistant. Respondent is currently working in a retail position. He is asking the Board to allow him to now return to his practice as a physician assistant, subject to monitoring conditions. Respondent is willing to stop treating pain patients and is willing to participate in random drug testing. According to Respondent, Dr. Grunewald is willing to resume supervising his practice. (Testimony of Respondent)

#### CONCLUSIONS OF LAW

Iowa Code section 17A.18A(1)(2009) authorizes administrative agencies to use emergency adjudicative proceedings in a situation involving an immediate danger to the public health, safety or welfare requiring immediate agency action. The Board's procedural rules, found at 645 IAC 11.28, also authorize emergency adjudicative proceedings to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order.

645 IAC 11.28(2) provides that before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing an immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare;
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

The preponderance of the evidence in this record supports the Findings of Fact made by the Board in its Emergency Adjudicative Order and justifies the Board's decision to issue the Emergency Adjudicative Order suspending Respondent's license to practice as a physician assistant. The evidence shows that Respondent over prescribed Schedule II, III, and IV controlled substances to patients in excess of any established medical standard and without the presence of a legitimate medical purpose. At the same time, Respondent was himself obtaining and ingesting OxyContin from unverified internet sources in order to treat his work related stress.

Respondent maintains that the public can be adequately protected if he is permitted to return to practice because he has completed substance abuse treatment, has agreed to stop providing Demerol injections or treating chronic pain patients, and has agreed to submit to random drug testing. However, the Board was not persuaded that the public health, safety and welfare will be adequately protected if Respondent is allowed to resume his practice as a physician assistant, subject to oversight and restrictions. The evidence in this record continues to raise global concerns about Respondent's ability to safely practice that cannot be addressed at this time with any restriction short of full suspension of his license. Respondent has not yet submitted to random drug testing and has provided no objective verification of his ongoing abstinence from drugs and alcohol.

Moreover, the Board was not persuaded that Respondent's explanations and rationales for his prescribing practices were truthful. If the Respondent's explanations and rationales for his prescribing practices were truthful, those explanations raised serious concerns for Respondent's practice with regards to proper diagnosis, appropriate

treatment selection, safe and effective medication choice and safe, effective and appropriate drug dosage selection in his practice as a physician assistant.

#### DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent's request to vacate or modify the Emergency Adjudicative Order issued on May 29, 2009 is hereby DENIED.

IT IS FURTHER ORDERED that the Respondent shall pay a \$75.00 hearing fee and the \$123.75 fee for the court reporter. The \$208.75 shall be paid within thirty (30) days of receipt of this decision. If a transcript is ordered, the cost will be charged to the party requesting it. Iowa Code section 272C.6(6); 645 IAC 11.23.

**This findings of fact, conclusions of law, decision and order is approved by the board on November 19, 2009.**

Any appeal to the district court from a decision in a contested case shall be taken within 30 days from the date of issuance of the decision by the board. Iowa Code section 17A.19; 645 IAC 11.29.