BEFORE IOWA BOARD OF NURSING HOME ADMINISTRATORS

IN THE MATTER OF)	NO. 08-010
Mitchell Worcester,)	NOTICE OF HEARING
Respondent.)	AND STATEMENT OF CHARGES

COMES NOW the Iowa Board of Nursing Home Administrators ("Board") and hereby 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 nursing home administrator license number 02082 on November 16, 1998. Respondent's license is current and is set to expire on December 31, 2013. Respondent's address as reported to the Board is 405 South Street, Tabor, Iowa, 51653.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **October 11**, **2012**, before the Board of Nursing Home Administrators. The hearing shall begin at 9 am and shall be located in the Lucas State Office Building, Fifth Floor Board Conference 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 Nursing Home Administrators, 5th Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, 50319.

<u>Presiding Officer</u>. 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.

<u>Pre-hearing Conference</u>. 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.

<u>Prosecution</u>. 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, Hoover State Office Building, 2nd Floor, Des Moines, Iowa 50319.

<u>Communications</u>. 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

<u>Jurisdiction</u>. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 155, and 272C.

<u>Legal Authority</u>. 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, 155, and 272C and 645 IAC chapter 144.

<u>Default</u>. 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 pursuant to Iowa Code section 147.55(2) and 645 IAC 144.2(3) with professional incompetence, including (a) "a substantial lack of knowledge or ability to discharge professional obligations within the scope of practice," (b) "a substantial deviation from the standards of learning or skill ordinarily possessed and applied by other nursing home administrators in the state of Iowa acting in the same or similar circumstances," (c) "a failure to exercise the degree of care which is ordinarily exercised by a nursing home administrator acting in the same or similar circumstances," and (d) "failure to conform to the minimal standard of acceptable and prevailing practice of a licensed nursing home administrator in this state."

Count II

Respondent is charged pursuant to Iowa Code section 147.55(9) and 645 IAC

144.2(12) with negligence in the practice of the profession.

Count III

Respondent is charged pursuant to Iowa Code section 147.55(9) and 645 IAC 144.2(14) with violation of a regulation, rule or law of this state, another state, or the United States which relates to the practice of nursing home administrators.

D. FACTUAL CIRCUMSTANCES

- Respondent served as nursing home administrator for Tabor Manor Care ("Facility") from October 2007 through at least July of 2011.
- 2. As the administrator, Respondent was responsible for the day-to-day operation of the Facility and for ensuring that the Facility was operated in compliance with all state and federal laws and regulations governing the Facility. He was also responsible for ensuring that the highest degree of quality care practicable was delivered to residents.
- 3. Under Respondent's administration, the Facility lacked adequate policies and procedures to guide staff in the performance of their duties in relation to the following:
 - a) completion of incident reports,
- b) ensuring appropriate physician and family notifications regarding residents,
 - c) investigating allegations/suspicions of resident abuse, and
 - d) handling incidents of resident-on-resident abuse.
- 4. Under Respondent's administration, Facility personnel did not respond appropriately to multiple resident-on-resident sexual encounters and Residents were

therefore harmed.

- 5. Resident MR¹ was admitted to the Facility in December of 2007.
- 6. From June 2008 through October 2008 there were five separate instances in which MR was suspected or directly accused of sexually accosting other residents (FR1, FR2, Fr3, FR4, and FR5).
 - 7. Respondent was made aware of these incidents.
 - 8. Not all of these incidents were reported to DIA as required.
 - 9. Not all of these incidents were reported to the Residents' physicians.
 - 10. Not all of these incidents were reported to the Residents' families.
 - 11. Incident reports were not created for these incidents.
- 12. MR, FR1, FR2, FR3, FR4, and FR5 were denied proper care in relation to these incidents.
- 13. MR was discharged from the Facility in October 2008 without documentation of cause or notice being provided to the family.
- 14. MR's behavioral concerns were never adequately addressed while he resided at the Facility, and the Facility did not provide MR's receiving facility with a full account of MR's behavioral concerns.
- 15. Despite evidence of vaginal penetration, FR5 was not promptly treated and assessed for rape after seen leaving MR's room.
- 16. The above-listed concerns indicate serious deficiencies in Respondent's supervision and management of the Facility, which resulted in harm to residents.

¹ To protect the privacy of the individual Residents involved, they will be referred to by initials throughout

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) 281-7175.

F. PROBABLE CAUSE FINDING

On this 12th day of April, 2012, the Iowa Board of Nursing Home Administrators found probable cause to file this Notice of Hearing and Statement of Charges.