

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, 2010. 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 April 21, 2010, before the Board of Physician Assistants. The hearing shall begin at 9:00 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: Theresa Weeg, 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 violation of the terms of an impaired practitioner recovery contract in violation of 645 IAC 329.2(31).

D. FACTUAL CIRCUMSTANCES

1. On November 19, 2007, Respondent took prescription medication, hydrocodone, from a patient without authorization for his personal use. Upon investigation, the Board discovered a second incident wherein a patient returned a hydrocodone prescription to Respondent for disposal. Respondent took the prescription without authorization for his personal use.

2. On May 1, 2008, Respondent pled guilty to Prohibited Acts, in violation of Iowa Code section 124.403. Respondent was sentenced to one year in jail, suspended, and placed on probation.

3. On July 15, 2009, Respondent used Vicodin. Respondent did not have a legitimate prescription for the drug.

4. On July 17, 2009, Respondent requested and received a prescription from one of his coworkers for Hydrocodone.

5. The coworker reported Respondent told him that he had taken unauthorized Vicodin and had to take a urine drug analysis for the IPRC.

6. On July 17, 2009, Respondent tested positive for Hydrocodone and Hydromophone.

7. On August 12, 2009, the IPRC referred Respondent to the Board for non-compliance with the terms of his IPP contract.

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 Theresa Weeg, Assistant Attorney General, at 515.281.5328.

F. PROBABLE CAUSE FINDING

On this 12th day of February, 2010, the Iowa Board of Physician Assistants found probable cause to file this Notice of Hearing and Statement of Charges.

This notice of hearing and statement of charges is approved by the board on February 12, 2010.