

STATE OF IOWA
BEFORE THE BOARD OF RESPIRATORY CARE EXAMINERS

In the Matter of:)	Case No. 06-001
)	DIA No. 06DPHRC003
Owen Searle,)	
License No. 306 01970,)	
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION AND ORDER

This matter concerns a statement of charges filed against Owen Searle (respondent) on April 24, 2006. Respondent was charged with two counts: 1) violating an impaired practitioner program contract, and 2) habitual intoxication.

The case was set for hearing before the Iowa Board of Respiratory Care Examiners(the board) on July 24, 2006, at the Lucas State Office Building in Des Moines. The following board members were present for the hearing: Kerry George, Robert Zeman, Arlene Lee, Dr. Craig Bainbridge (by telephone), and Kathelene Semke (by telephone). Jeffrey Farrell, an administrative law judge (ALJ) from the Iowa Department of Inspections and Appeals, assisted the board.

John Baty, an assistant attorney general, represented the public interest. The State's exhibits 1-26 were admitted into the record. The State presented Marilyn Ubaldo, Gina Wiekamp, Dr. Tonito Rios, and Roxanne Sparks as witnesses. Respondent did not appear.

FINDING OF FACTS

Respondent Owen Searle has been licensed to practice respiratory care in Iowa. On September 8, 2004, the board received a complaint from a nurse at Spencer Hospital in Spencer, Iowa. (Exhibits 12). The nurse reported that a patient, his wife, and hospital staff had smelled alcohol on respondent's breath on consecutive nights on or around February 7-8, 2004. The incidents occurred less than one week after respondent began working at Spencer. (Wiekamp testimony).

The board first attempted to resolve the complaint by referring respondent to the Impaired Practitioner Review Committee (the committee). (Exhibit 13). Respondent responded by denying any

use of alcohol during work. (Exhibit 14). The board then entered an order requiring respondent to submit himself for a substance abuse evaluation to determine his fitness to practice. (Exhibit 15).

On February 7, 2005, respondent appeared for an evaluation with Dr. Tonita Rios. (Exhibit 16). Respondent stated that he drinks a fifth of rum five days a week. He stated he rarely drinks with other people; he prefers to drink alone. He stated that he had drunk a fifth of Hawkeye rum the night before the evaluation. Respondent also described an extensive drug history, but claimed he stopped using drugs in 1989. (Rios testimony).

Dr. Rios diagnosed respondent with alcohol dependency and recommended intensive outpatient treatment. (Exhibit 16). Dr. Rios found that respondent had a "total lack of insight into his disease and denial." Dr. Rios' opinion is supported by testing, which reflected a high level of denial and defensiveness.

On May 11, 2005, the board filed a statement of charges against respondent alleging a regulatory violation of habitual intoxication. (Exhibit 19). Respondent resolved the charges by entering into a settlement with the board. (Exhibit 20). The settlement required respondent to enter into a contract with the committee. The Impaired Practitioner Recovery Contract (contract) required respondent to participate in alcohol treatment and abstain from all use of alcohol. (Exhibit 21).

On January 25, 2006, the treatment provider sent a letter to the committee. (Exhibit 22). The letter stated that respondent tested positive for alcohol on January 16, 2006, which was the first day of the program. He also tested positive on January 19 and 23. At that time, the provider made a recommendation to respondent that he enter into an inpatient treatment facility or face discharge from the program. Respondent refused to enter inpatient treatment, so the provider discharged him.

On March 20, 2006, the committee sent a memorandum to inform the board that it had nullified its contract with respondent. (Exhibit 23). The committee listed two grounds: 1) respondent was unsuccessfully discharged from his treatment program, and 2) respondent did not abstain from alcohol. Thereafter, the board filed the statement of charges in the present action.

Notice: The board first attempted to serve respondent at an address in Lyman, Wyoming, which is the last address he had given the board. The post office reported that the certified mail was undeliverable. The board contacted the committee, which provided an address at a Clear Lake, Iowa hotel. The board called the Clear Lake hotel, which reported that respondent had checked out and left no forwarding address. The board sent notice to the hotel address, but it was returned as undeliverable. (Ubaldo testimony; exhibits 3-5).

The board obtained an address in Henderson, Nevada that respondent gave the committee. The committee had successfully mailed documents to respondent at that address. The board sent a hearing notice to the Henderson address via certified mail. The notice was returned, because it was unclaimed. The State sent its exhibits to the same address in July of 2006; the documents were accepted and signed by "A Searle." The board also gave notice through publication in the Des Moines Register. (Ubaldo testimony; exhibits 3, 6-8).

CONCLUSIONS OF LAW

Introduction: The Board of Respiratory Care Examiners (the board) was created by the legislature to regulate the practice of respiratory care.¹ The board is authorized to adopt regulations to enforce the provisions of the statute.² The board may suspend, revoke, or impose probation on a licensee for violation of the board's regulations.³

Notice: The board may serve notice of a statement of charges through one of three methods: 1) personal service, 2) restricted certified mail, return receipt requested, or 3) publication, as provided by the Iowa Rules of Civil Procedure.⁴ In this case, the board attempted service through restricted certified mail and publication.

Licensees are affirmatively required to report a change in address to the board within 30 days after it occurred.⁵ The board is within its rights to serve a statement of charges by certified mail to the last known address reported by the licensee. In this case, respondent's last reported address was

¹ Iowa Code sections 147.12, 147.13(18), 272C.1(6)(z); ch. 152B.

² Iowa Code section 152B.6.

³ Iowa Code sections 147.55, 152B.12, 272C.10.

⁴ 645 IAC 11.6(1); see also Iowa Code section 17A.12(1).

⁵ 645 IAC 263.2(24); see also Iowa Code section 147.9.

in Lyman, Wyoming. The board properly served respondent at that address. Due process required nothing more.

However, the board took further efforts by using certified mail to send the statement of charges to addresses in Clear Lake, Iowa and Henderson, Nevada. Respondent had clearly left the Clear lake address, but there is every indication that the Henderson address is good. Respondent received mail from the impaired practitioners committee at that address in October of 2005, as well as the State's exhibits in July of 2006. The fact that the mail went unclaimed does not mean that respondent does not live at the address.

Additionally, the board properly served respondent by publication. The rules of civil procedure require that publication of the notice be made for three weeks in a newspaper of general circulation published in the county where the petition is filed.⁶ The board complied with all requirements of the rule.

Discussion of the statement of charges: The board cited two regulations in its statement of charges. Count I alleged that respondent violated the contract he entered into with the impaired practitioners committee.⁷ Count II alleged habitual intoxication.⁸ The habitual intoxication regulation applies when a licensee demonstrates an inability to practice with reasonable skill and safety by reasons of excessive use of alcohol on a regular basis.

The first count is easily proved. Respondent was required to attend an outpatient treatment program and comply with the program requirements. Respondent was also required to abstain from all use of alcohol. Respondent tested positive for alcohol on his first day of treatment. He tested positive for alcohol two other days within the first week of treatment. The provider understandably removed respondent for violating program requirements. The committee understandably cancelled its agreement with respondent. Respondent made very little effort to comply with his contract.

The record supports the habitual intoxication count as well. A patient and his wife smelled alcohol on respondent's breath on

⁶ Iowa R. Civ. P. 1.313.

⁷ See 645 IAC 263.2(30).

⁸ See 645 IAC 263.2(6).

two occasions within his first week on the job at Spencer Hospital. There is no information on how respondent's use of alcohol specifically impacted patient care, but his conduct clearly posed a risk - his drinking was noticeable to a patient, a visitor, and staff members while working regular shifts.

Further, respondent's drinking harmed the integrity of the respiratory care profession. Patients expect their health care providers to be sober while providing treatment or care. A reasonable patient should question the care he received from a practitioner who smelled of alcohol. The board has a responsibility to assure the public that they will receive a high level of care from members of the profession. Respondent violated the public trust by drinking before work on at least two occasions.

The incidents at Spencer Hospital are consistent with a course of conduct that proved respondent has no insight into the severity of his alcoholism. He showed up for his evaluation after drinking a fifth of Hawkeye rum the night before. He tested positive for alcohol on the first day of his outpatient treatment, and twice again within the first week. Respondent has been convicted of driving while intoxicated, and assault and interfering with arrest during an alcohol-related incident. All three convictions occurred in 1998, but respondent has taken no steps to curb his drinking. He continues to deny he has a problem, even though he drinks a fifth of rum five days a week.

SANCTION

The board takes its public protection responsibilities seriously. The board's ultimate responsibility is to monitor the profession and take disciplinary action when a licensee poses a threat to the public. Respondent has no reservations about letting his drinking impact his work. He has not shown a single sign that he wants to change his ways. To the contrary, he showed no effort to comply with his outpatient treatment and continues to deny any problem.

The board determined that revocation is the only justifiable sanction. The board has already attempted voluntary compliance with assistance from the impaired practitioners committee and compelled compliance with the committee's requirements. There is no point giving any further leniency when respondent has made no effort to commit to a program.

DECISION AND ORDER

The Iowa Board of Respiratory Care Examiners revokes the license held by Owen Searle, license no. 306 01970. Respondent shall also pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit payment for these expenses within thirty days of receipt of the bill.

This findings of fact, conclusions of law, decision and order is approved by the board on August 21, 2006.

Notice

This is a final decision by the board. Respondent may file an application for rehearing.⁹ An application for rehearing must state the specific grounds and the relief sought. The application must also state whether the applicant wants reconsideration of part or all of the decision, and whether the applicant wants to submit additional evidence. An application must be filed within 20 days after this decision is issued. An application shall be deemed denied unless the board grants the application within 20 days after it is filed.

Respondent may also appeal this decision to district court.¹⁰ A petition for judicial review must be filed within 30 days of the date the decision is issued.

⁹ 645 IAC 11.25.

¹⁰ Iowa Code section 17A.19; 645 IAC 11.29.