## BEFORE THE IOWA BOARD OF PHYSICIAN ASSISTANTS

IN THE MATTER OF:	)	CASE NO. 10-011 DIA NO. 11PA001
HAROLD E. VANSCOY, PA	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

On January 19, 2011, the Board of Physician Assistants (Board) issued a Notice of Hearing and Statement of Charges to Harold Vanscoy, PA (Respondent) charging him with failure to comply with the terms of a board order or the terms of a settlement agreement, in violation of Iowa Code section 147.55 and 645 IAC 329.2(19). The hearing was held on April 20, 2011 at 10:45 a.m. at the Lucas State Office Building, Fifth Floor Conference Room, Des Moines, Iowa. Respondent Harold Vanscoy appeared and was represented by attorney Deborah Tharnish. Assistant Attorney General September Lau represented the state of Iowa. The following Board members served as the presiding officers for the hearing: Theresa Hegmann, PA, Chairperson; Joseph Molnar, DO; Ted Smith, PA, Ronald Moore and Mara Swanson, public members. Daniel Gillette, M.D., Susan Koehler, PA, and John Olson, PA were all present for part of the hearing and did not participate in making the decision. 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 Judy Manning, Beth Jorgenson, Anne Cardinal, Harold Vanscoy, Dr. Brian Meeker, State Exhibits 1-14, 16 (see Exhibit Index for description; Exhibit 15 was excluded) and Respondent Exhibits A-C, K (Exhibits D-J were not offered).

## FINDINGS OF FACT

- 1. On August 17, 1995, the Board issued Respondent Harold Vanscoy license number 000987 to engage in the practice of a physician assistant in the state of Iowa. Respondent's license is active and will expire on September 30, 2011. (State Exhibit 1) Respondent moved to Iowa to take a position as a physician assistant with the Vinton Family Medical Center. Prior to receiving his Iowa license, Respondent worked as a physician assistant in the state of North Dakota and had been Director of the Student Health Program at North Dakota University. (Testimony of Harold Vanscoy)
- 2. Respondent admits that he has had an alcohol problem since his return from military service in Viet Nam. In 2008, Respondent self-reported his alcohol dependence and depression to the Iowa Department of Public Health Impaired Practitioner Recovery Committee (IPRC)¹. On December 9, 2008, Respondent and the IPRC entered into an Initial Agreement. Through the Initial Agreement, Respondent agreed to participate in the chemical screening program if the IPRC determined that it was appropriate. On March 5, 2009, Respondent and the IPRC entered into an Impaired Practitioner Recovery contract. (Exhibit 6)

The IPRC contract included a number of terms, including but not limited to participation in the chemical screening program in accordance with the terms outlined in the Recovery Program Description and the collection policy of FirstLab and the IPRC. (Exhibit 6, p. 24) Respondent agreed that:

- it was his responsibility to call the FirstLab Random Notification system each day, including weekends and holidays;
- on the days selected, he would provide a visually witnessed sample at an approved collection site before the close of business that day;
- failure to comply with these provisions would constitute noncompliance with the agreement;
- he would not consume alcohol or foods containing poppy seeds and/or alcohol;
- that he understood that the "incidental" use of alcohol or other mood-altering substances (i.e. mouthwash, hand cleaning gel, or over-the-counter medications containing alcohol) may cause a positive test that cannot be differentiated from

<sup>&</sup>lt;sup>1</sup> The impaired practitioner review committee evaluates, assists, and monitors the recovery or rehabilitation of practitioners in the impaired practitioner program and makes reports to the board in the event of noncompliance. The impaired practitioner program is both an advocate for licensee health and a means to protect the health and safety of the public. 645 IAC 16.2.

intentional ingestion and agreed to avoid contact with or ingestion of these substances;

- that all confirmed, positive tests will be presumed valid and will constitute noncompliance with the agreement;
- that he has the burden of proof to establish that a positive report was erroneous.

(Exhibit 6, pp. 20-26; Testimony of Judy Manning)

3. Respondent tested positive for Ethyl Glucuronide/Ethyl Sulfate (EtG/EtS) on two occasions in March, 2009 and missed calls to FirstLab on March 29 and April 1, 2009. A Medical Review Officer was asked to review the positive tests and determined that Respondent was in noncompliance with his contract for failure to call in, for using Nyquil and cough syrup containing alcohol, and for consuming food prepared with alcohol. The IPRC voted to refer Respondent's case to the Board for noncompliance with the IPRC contract but to recommend that he be allowed to continue in the program. (Exhibit 9; Testimony of Judy Manning)

Respondent tested positive for EtG/EtS on September 8, 2009. Respondent was asked to schedule a review by a Medical Review Officer (MRO), but the MRO was cancelled after Respondent admitted that he had consumed three alcoholic drinks in the past 10-14 days after his wife left him. (Exhibit 12) On October 21, 2009, Respondent again tested positive for EtS. (Exhibit 13; Testimony of Judy Manning)

- 4. On January 29, 2010, the IPRC voted to nullify Respondent's IPRC and referred his case to the Board for filing of formal charges due to his noncompliance. (Exhibit 14)
- 5. On October 22, 2010, Respondent and the Board entered into a Combined Statement of Charges, Settlement Agreement, and Final Order. Pursuant to this Settlement Agreement and Final Order, Respondent's license to practice as a physician assistant in Iowa was placed on probation for a period of three (3) years, subject to a number of terms and conditions that were nearly identical to the terms of his prior IPRC. The terms and conditions of probation included, but were not limited to:
  - a) Abstinence from drugs and alcohol. Respondent was prohibited from consuming any alcohol or any controlled or prescription drug unless prescribed for his use by a qualified treating healthcare provider. Respondent was required to inform any treating health care provider of his history of substance abuse prior to receiving any prescription drug and to provide the board written notice within 72 hours of the use of any controlled prescription drug.

b) Chemical screening. Respondent was required to participate in the Board's chemical screening program and to comply with all requirements of the program. Respondent acknowledged his understanding that consuming or contacting foods, medications or other products that contain alcohol or poppy seeds may cause a positive test and agreed to avoid contact with or ingestion of these substances.

. . .

j) Respondent agreed to provide a list of his current medications within 10 days of the effective date of the order and within 10 days of any changes to his medications (with the exception of controlled prescription drugs which must be reported within 72 hours).

In addition, the Combined Statement of Charges, Settlement Agreement and Final Order specifically provided that two (2) missed calls or one (1) failed chemical screening test shall be considered a violation of the Agreement and Order. (Exhibit 5)

6. Respondent became very ill in mid-October and was admitted to the hospital on October 29, 2010, just seven days after the Settlement Agreement and Final Order was approved. Upon admission, Respondent was diagnosed with pneumonia, leukocytosis, fever, severe back pain, and hematuria. During the hospitalization, Respondent had severe onset of leg and back pain. Respondent was prescribed narcotic pain medication by his physician, Dr. Brian Meeker. Dr. Meeker was also Respondent's designated Worksite Monitor. Dr. Meeker asked the hospital's chief operating officer to call the Board to let them know that Respondent was severely ill in hospital, may not able to participate in his program, and was receiving narcotic/opioid medications for pain. Based on this record, it is unclear if that call was made.

Respondent was discharged to skilled care on November 3, 2010, and Dr. Meeker continued to prescribe narcotic pain medications for him for some period of time after that. Respondent was discharged from skilled care to his home on November 8, 2010. Respondent's discharge summary indicates he was receiving 11 medications at the time of discharge, but does not include any opioid or narcotic drugs. Dr. Meeker testified that this was an oversight. Respondent's physician and his nurse visited him on several occasions and found Respondent, who had lost a lot of weight, to be extremely weak and depressed. (Exhibit C; Testimony of Harold Vanscoy; Brian Meeker, D.O.)

7. On November 8, 2010, Respondent was notified that he no longer met the credentialing standards for the Cedar Rapids Hospital Organization (CRPHO), which

required providers to hold an "unrestricted" license to practice. (Exhibit B; Testimony of Harold Vanscoy) On November 16, 2010, Respondent resigned his position at the Vinton Family Medical Clinic and Virginia Gay Hospital effective December 31, 2010. In his written resignations, Respondent expressed his disagreement with the terms of his probation and the CRPHO response. Respondent stated that his resignation was based on these facts and on recent issues with his health. (Exhibit A; Testimony of Harold Vanscoy) Respondent has not worked as a physician assistant since he became ill in mid-October 2010. (Testimony of Harold Vanscoy; Brian Meeker, D.O.)

- 8. Respondent has a long history of peripheral vascular disease and claudication. On November 17, 2010, Respondent had a pelvic and bilateral lower extremity angiogram. Respondent was admitted to the hospital on December 7, 2010 for a left femoral bypass and was discharged from the hospital on December 12, 2010. Respondent testified that his only relapse with alcohol was in September 2010 when his wife left him. (Testimony of Harold Vanscoy; Exhibit C)
- 9. FirstLab requires clients to call in to the program everyday, either by logging in to the computer website or by calling in by telephone. The client is then notified if they have been selected to provide a specimen for testing on that day. Respondent was excused from calling in to FirstLab from December 7-12, 2010 because of his surgery. In December 2010, Respondent failed to call in to the FirstLab chemical screening program on four days: December 4, 17, 18, and 28. There was no indication in the FirstLab records that Respondent was excused from calling in on any of these dates. In December 2010, Respondent was selected for testing on three dates and had two positive tests (on December 21 and 29) and one negative test.

Respondent also failed to call in to FirstLab on January 5, 2011. However at hearing, FirstLab verified that Respondent was excused from calling in on January 5, 2011 because he was attending a funeral. Respondent had a positive test result on January 4, 2011. (Testimony of Anne Cardinal; Beth Jorgenson; Exhibit 16)

## **CONCLUSIONS OF LAW**

Iowa Code section 147.55(9)(2009, 2011) authorizes the Board to revoke, suspend or otherwise discipline a licensee who is guilty of acts or offenses as specified by board rule. The Board has promulgated rules pertaining to discipline for physician assistants at 645 IAC chapter 329. 645 IAC 329.2(19) provides that the board may impose any of the disciplinary sanctions provided in rule 645-329.3(147,272C) when the board

determines that a licensee is guilty of failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

The preponderance of the evidence established that Respondent violated Iowa Code section 147.55(9) and 645 IAC 329.2(19) when he failed to fully comply with the terms of the Combined Statement of Charges, Settlement Agreement and Final Order, which was approved on October 22, 2010. The Settlement Agreement and Final Order specified that two (2) missed calls shall be considered a violation of the Settlement Agreement and Final Order. Respondent had four unexcused missed calls to First Lab in December 2010.

Respondent provided his medical records and testimony from one of his treating physicians and asserts that the missed calls to FirstLab were due to physical and mental impairments attributable to his illness. Respondent testified that some days he was so ill that he was "out of it." The Board fully considered Respondent's illnesses when making its determination in this case. If it were not for his illnesses, the Board would not be giving Respondent a final opportunity to comply with the terms of probation. The probation terms were nearly identical to the requirements of Respondent's prior The Board has reviewed the conditions of probation and has IPRC contract. determined that they are absolutely necessary to protect the public. Respondent is reminded that so long as he maintains his Iowa license to practice as a physician assistant, he is legally obligated to fully comply with all of the terms of probation established by the Board. It is Respondent's affirmative responsibility to notify FirstLab and the Board if his personal health conditions interfere with his ability to comply but to continue to comply unless he is notified by FirstLab that compliance has been excused.

# **DECISION AND ORDER**

IT IS THEREFORE ORDERED that Respondent's license number 000987 is hereby continued on probation for the same three (3) year term previously specified in the October 22, 2010 Settlement Agreement and Order. Respondent's license will continue on probation until October 22, 2013, subject to the terms of probation outlined in this Decision and Order. This Decision and Order is effective immediately upon service. During the entire probationary period, Respondent's license will be subject to the following conditions:

a) **Signed acknowledgement of terms of probation.** Within fourteen (14) days of service of this Decision and Order, Respondent shall provide the Board with a

signed and dated written statement verifying that he has carefully read the entire Decision and Order, that he understands all of its terms, and that he is both able and willing to comply with the terms of probation established herein.

- b) Abstinence from drugs and alcohol. Respondent shall not consume alcohol. Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug has been prescribed for his use by a licensed treating physician or other qualified treating health care provider. Respondent shall inform any treating physician or other—treating health care provider of his history of substance abuse prior to receiving any prescription drug. Respondent shall provide the board written notice within 72 hours of the use of any controlled prescription drug.
- c) Chemical screening. Respondent shall continue participation in the Board's chemical screening program. Respondent shall provide random blood or urine specimens when required. Respondent shall fully comply with all requirements of the chemical screening program, including the daily calls in to the program, and shall be responsible for payment of all expenses he incurs through that program. Consuming or contacting foods, medications, and other products that contain alcohol or poppy seeds may cause a positive test; therefore Respondent shall avoid contact with or ingestion of these substances.
- d) Licensee reports. Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all the terms and conditions of this Decision and Order. The report shall detail each condition of this Decision and Order and how the Respondent has complied with the requirement. The reports shall be filed no later than January 1, April 1, July 1, and October 1 of each year of the Respondent's probation.
- e) AA meeting attendance. Respondent shall attend at least three (3) Board approved aftercare meetings (Alcoholics Anonymous, Narcotics Anonymous, or a similar organization) weekly. Respondent will attach to each quarterly report statements signed or initialed by another person in attendance at the meetings attesting to his attendance. The statement shall include the time, date and location of the meetings attended. Respondent shall have an AA or NA sponsor and have at least weekly contact with this sponsor. Respondent shall contact the Board within 10 days if the sponsor relationship is terminated for any reason.
- f) Therapist / aftercare counselor and reports. Within 30 days of the date this Order goes into effect, Respondent shall resubmit to the Board for its approval the name of a therapist or aftercare counselor, who shall meet once every two weeks with

Respondent, until the counselor recommends and the Board approves meetings on a less frequent basis. Respondent shall continue to meet with this counselor until discharged from counseling and until his discharge from counseling is approved by the Board. Respondent shall ensure his counselor submits quarterly written reports to the Board concerning his treatment progress no later than January 1, April 1, July 1, and October 1 of each year.

- g) Monitoring psychiatrist. Within 30 days of the date this Order goes into effect, Respondent shall resubmit to the Board for its approval the name of a psychiatrist, who shall meet every other month with Respondent, until the psychiatrist recommends and the Board approves meetings on a less frequent basis. Respondent shall continue to meet with this psychiatrist until discharged from treatment and until his discharge from treatment is approved by the Board. Respondent shall ensure his psychiatrist submits quarterly written reports to the Board concerning his treatment progress and ability to remain in active practice no later than January 1, April 1, July 1, and October 1 of each year. Respondent shall provide any release necessary for the psychiatrist to consult with Respondent's therapist and worksite monitor.
- h) Substance abuse evaluation. Prior to returning to the work as a physician assistant, Respondent shall provide the Board with an evaluation report from a certified Substance Abuse Counselor. The licensee shall not choose a Substance Abuse Counselor that he has an existing personal or professional relationship to be the counselor. The report must address whether Respondent's recovery from substance abuse is sufficiently stable to allow him to safely return to practice as a physician assistant.
- i) Worksite monitor and reports. Prior to returning to the work as physician assistant, Respondent shall submit to the Board for its approval the name of a worksite monitor, who is another health care professional who regularly observes and/or supervises Respondent in his practice as a physician assistant. Respondent shall provide the worksite monitor a copy of this Decision and Order. Respondent shall ensure his worksite monitor submits quarterly written reports to the Board concerning his practice no later than January 1, April 1, July 1 and October 1 of each year of the applicant's probation. Respondent shall have the worksite monitor sign an agreement to report to the Board any suspected impairments or violations of the law governing physician assistant practice, as well as to provide the quarterly reports required in this section. Respondent shall submit the signed agreement within 14 days of the date of this Order, of new employment, or of a change in worksite monitor if the current worksite monitor cannot fulfill the obligations specified in this section.

- j) **Notification of employer**. If practicing as a physician assistant or in another health-related occupation, Respondent shall provide his present and any future employer a copy of this Decision and Order. Respondent shall within ten days of the date of this Decision and Order provide the Board with written verification from any current employer this notification has occurred. This written verification shall be provided to the Board within 10 days of employment with any new employer.
- k) Respondent shall notify the Board of any changes in address, telephone number, employment, and marital or family conditions that might have an impact on his recovery.
- l) Respondent shall provide a list of his current medications within 10 days of the effective date of this Order, and within 10 days of any changes to his medications (with the exception of controlled prescription drugs, the use of which must be reported within 72 hours).
- m) In the event Respondent violates or fails to comply with any of the terms of this Decision and Order, the Board will initiate appropriate action to revoke or suspend Respondent's license in accordance with Iowa Code section 272C.3(2)(a).
- n) One (1) unexcused missed call shall be considered a violation of this Decision and Order. A late call is considered a missed call.
- o) One (1) failed chemical screening test shall be considered a violation of this Decision and Order.
- p) Respondent is responsible for payment of all expenses incurred in association with any conditions of this Decision and Order.

Upon full satisfaction of the terms and conditions of this Decision and Order, Respondent's license will be restored to unrestricted status.

IT IS FURTHER ORDERED that the Respondent Harold Vanscoy shall pay a \$75.00 hearing fee and the \$151.25 fee for the court reporter. The \$226.25 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.

Dated this 29th day of April, 2011.