

BEFORE THE IOWA BOARD OF SOCIAL WORK

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IN THE MATTER OF:	)	DIA NO. 13SW002
	)	CASE NO. 08-021
	)	
THOMAS FOLLETT	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent	)	DECISION AND ORDER

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On February 11, 2013, the Iowa Board of Social Work (Board) filed a Notice of Hearing and Statement of Charges charging Thomas Follett (Respondent) with eight counts:

Count I: Failing to inform his clients of the proposed services to be provided and the purpose of those services, in violation of 645 IAC 282.2(1)"a";

Count II: Failing to maintain timely records that include a treatment plan and any revisions made to the treatment plan during treatment, in violation of 645 IAC 282.2(5)"b";

Count III: Violating client confidentiality, in violation of 645 IAC 282.2(4)"g";

Count IV: Violating client confidentiality and failure to obtain informed consent, in violation of 645 IAC 282.2(4)"a"(3);

Count V: Engaging in a dual relationship with a former client within five years following the termination of the client relationship, in violation of 645 IAC 282.2(8)"a"(2);

Count VI: Failing to maintain sufficient, timely, and accurate documentation in client records, in violation of 645 IAC 282.2(5)"a";

Count VII: Improperly delegating professional responsibilities to a person whom he knows or has reason to know is not qualified by training, education, experience, or classification to perform the requested duties, in violation of 645 IAC 282.2(15); and

Count VIII: Violation of a regulation, rule, or law of this state or another state, or the United States, which relates to the practice of social work, including, but not limited to the rules of conduct found at 645 IAC 282.2, in violation of 645 IAC 283.2(12).

The hearing was held on December 2, 2013 before the following members of the Board: Mark Hudson, Public Member and Chairperson; Mark Hillenbrand, LISW; Valerie Huntley, LISW; Amy Courneya, LISW; Jody Weigel, LMSW; Dana McCarthy, LBSW; and Neil Nelsen, Public Member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. A certified court reporter recorded the hearing. Assistant Attorney General Sara Scott represented the state.

The hearing was scheduled to begin at 10:00 a.m. Respondent did not appear at that time, although he was properly served with notice of the hearing by restricted certified mail. (State Exhibits 2, 4) The hearing commenced at 10:10 a.m., and Respondent appeared for hearing at approximately 10:20 a.m. Respondent was self-represented and requested a closed hearing. The hearing was then closed to the public, pursuant to Iowa Code section 272C.6(1)(2013) and 645 IAC 11.19(10). Following the hearing, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2013), to deliberate their decision. The administrative law judge was instructed to prepare Findings of Fact, Conclusions of Law, Decision and Order, in accordance with the Board's deliberations.

## THE RECORD

The record includes the testimony of Kimberly Groves and Janet Abendroth, and State Exhibits 1-14 (See exhibit index for description). Respondent chose not to testify or present evidence.

## FINDINGS OF FACT

### *Licensure and Prior Discipline*

1. On November 9, 1998, the Board issued Respondent license number 05253 to practice as a licensed independent social worker (LISW) in the state of

Iowa. Respondent's license is current and expires on December 31, 2014. (Exhibits 1, 7)

2. Respondent has a prior history of discipline by the Board. On November 10, 2008, the Board charged Respondent with failing to inform his clients of treatment goals, violating confidentiality, failing to obtain signed consents, engaging in conflicts of interest and dual relationships, and engaging in unethical conduct. These charges were based on three separate complaints (Complaint Nos. SW03-019, SW04-064, and SW08-007). The charges were resolved informally when Respondent and the Board entered into a Settlement Agreement and Final Order on May 10, 2010. Pursuant to that settlement, Respondent's license was placed on probation for two years, and he agreed to meet with a practice monitor, undergo a comprehensive evaluation and comply with any recommendations, and complete continuing education in the area of ethics. (State Exhibit 10; Testimony of Kimberly Groves)

3. Respondent completed the terms of probation imposed in the May 10, 2010 Settlement Agreement and Final Order, including the comprehensive evaluation, meetings with a practice monitor, and continuing education in ethics. The comprehensive psychological evaluation concluded that Respondent did not have any psychiatric disorder or psychopathological condition requiring treatment. Respondent and Sarah Messmer, LISW completed a one-year mentorship, during which they discussed the Board's administrative rules and issues relative to conflicts of interest, dual relationships, appropriate interactions with clients, and other relevant ethical issues. Respondent was discharged from the terms of his probation on May 10, 2012. (State Exhibit 10; Testimony of Kimberly Groves)

*The Current Complaint and Statement of Charges*

4. In September 2008, the Board received a fourth complaint (SW08-021), which was filed by one of Respondent's former employees and which made some allegations that were similar to the three prior complaints. This complaint alleged, in part, that Respondent employed a former patient who is a professional clown to perform play therapy with clients. The complaint further alleged that Respondent hired other former clients to perform tasks such as cleaning his office, cleaning his home, and performing yard work. It was alleged that some of the former clients had keys to the office and could access patient records. The complaint further alleged that Respondent frequently had sessions

with clients outside of his office. The Board deferred its referral of the fourth complaint for investigation until after the first three complaints were resolved. (State Exhibit 6; Testimony of Kimberly Groves)

5. In September 2011, after Respondent had completed his one year practice mentorship, the Board referred the fourth complaint (08-021) to the Department of Inspections and Appeals (DIA) for investigation. On September 14, 2011, DIA Investigator Kimberly Groves interviewed the complainant, who had worked for Respondent from March-August 2008. The complainant reported, in relevant part, that:

- Respondent held some therapy sessions in the kitchenette area of the office, where he also kept patient files and a computer. Many people went in and out of this area, and the files were accessible to anyone who came into the office;
- KQ, a professional clown and a friend of Respondent's, provided play therapy to some of Respondent's clients, took clients to public places without Respondent, and composed client progress notes, which she left for Respondent to add information and sign. Respondent billed for KQ's play therapy sessions;
- Respondent loaned money to clients and employed former clients to work in his office and home, some of whom had criminal backgrounds. Respondent paid one client to mow his lawn and bought medicine, cigarettes, and dinner for another former client;
- Respondent conducted therapy sessions at the park, at his home while he washed his car, during walks, and at restaurants.

(Testimony of Kimberly Groves; State Exhibit 7, pp. 26-28; Exhibit 10, p. 96<sup>1</sup>)

6. On September 12, 2012, DIA Investigators Kimberly Groves and Jerry Viers made an unannounced visit to Respondent's office. Respondent was not present at the time, and his office door was locked. The investigators noticed several drawings hanging on the wall outside of Respondent's office in an area that is open to the public. The drawings had first and last names on them, which Respondent later confirmed were names of clients. (State Exhibit 7, p. 28)

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<sup>1</sup> The page numbers provided refer to the sequential numbers in the bottom right hand corner of the State's Exhibits.

7. On September 26, 2012, Investigators Groves and Viers interviewed Respondent at his office.

a. Respondent was still in a therapy session with a client when the investigators arrived. While waiting for Respondent, Groves and Viers could overhear the therapy session that Respondent was conducting, even though the door to the therapy room was closed.

b. Groves also noticed several additional drawings with client names on the wall of the waiting room inside Respondent's office. Respondent confirmed that these were client names on the drawings.

c. Respondent gave the investigators a tour of his office, which consisted of five rooms including a kitchenette. The kitchenette had a sink, refrigerator, counter, cabinets, microwave, chairs, desk, and unlocked file cabinets containing client files. Respondent allows his clients to decide where their therapy session will be held and acknowledged that some therapy sessions are held in the kitchenette.

d. Respondent acknowledged that KQ assists him in play therapy sessions with some clients. Respondent described KQ as a professional clown and recovering alcoholic. He acknowledged that KQ does not have any professional license or any expertise to provide play therapy. Respondent estimated that he employed KQ approximately twice a month or as needed. Respondent told the investigators that KQ does an excellent job with his clients, is a college graduate and very smart, and has "been through psychotherapy successfully." He denied that KQ scheduled any sessions on her own and stated that he utilizes her partly for "protection" because "everybody sues everybody." Respondent acknowledged that KQ had taken some clients to the park, restaurants, or the Dairy Queen without him but stated that he was mostly present at KQ's sessions.

e. Respondent confirmed that KQ writes or adds to the therapy progress notes that are placed in his clients' files. Investigator Groves was able to discern which notes were written by KQ because of the different handwriting. The investigators observed progress notes in some client files that were written by KQ and were not signed by Respondent. Respondent told the investigators that KQ does not sign or initial her notes to the file. Respondent billed insurance for sessions involving KQ.

f. Respondent told the investigators that the clients' parents always know that KQ is involved in the therapy sessions and have acknowledged that it is ok, although he does not obtain written consents or release of information forms from the parents. Respondent reported that KQ is "very famous around here" and "well-loved" by everyone.

g. Respondent acknowledged that he has hired former clients to mow his lawn and clean his office because they needed money and it is "the right thing to do." He reported that he had given money to "tons" of clients to "do stuff" for him. He specifically mentioned "B," who was a client of his approximately 18 months earlier, who mowed his lawn about a month prior to this interview. Respondent told the investigators that he currently did not have any clients working for him but "there will be tomorrow or sometime soon."

h. Respondent admitted loaning money to clients in the past, but stated that he has tried not to loan money to clients in the last four years because the world is too bureaucratic. Respondent told the investigators that 4-6 years earlier he had loaned his car to a former client for a couple of weeks. This former client had recently become Respondent's client again.

i. Respondent denied giving anyone keys to enter the office when he is not there and commented that he is always in the office and practically lives there.

j. Respondent confirmed that he provides therapy sessions for clients at locations outside of his office, including but not limited to at the park, on hunting trips, and while walking the trails. Respondent stated that the clients choose where to have the therapy sessions and he bills insurance for these sessions.

When the investigators asked if Respondent had changed anything in his practice since his probation ended, he replied that he is not taking very many patients and he is trying to stay out of trouble. He commented that the "world has gone nuts" and he can't "trust the Department of Inspections" or the "Board of Social Work." With respect to his probation, Respondent commented, in part, that everything the Board did was unjust, stupid, uncalled for, and unfair. (Testimony of Kimberly Groves; State Exhibit 7, pp. 29-31)

8. On December 24, 2012, the Board asked the DIA Investigators to obtain additional information about KQ and to obtain further information from Respondent's former practice mentor.

On January 9, 2013, Investigators Groves and Adams made an unannounced visit to Respondent's office. They noted that the clients' drawings were still displayed inside and outside of Respondent's office. When the investigators arrived, Respondent was engaged in a therapy session with an adult client. The investigators could clearly hear the conversation between Respondent and the client, even though the door to the therapy room was closed. (Testimony of Kimberly Groves; State Exhibit 8, pp. 33-34)

The investigators obtained the following additional information about KQ from Respondent on January 9, 2013:

a. KQ was a former client of Respondent. He had treated her weekly for approximately two years and she successfully completed therapy about nine years earlier. KQ began working for him in therapy sessions when her own therapy ended and she was "feeling good." Respondent stated that KQ is loving and good with the children and that if he thought she was bad for the state of Iowa he wouldn't be doing it.

b. Respondent and KQ do not have a formal business arrangement. He pays her by check from his personal account.

c. Respondent told the investigators that KQ had worked with three clients earlier that month. Respondent named 9 other clients that KQ had worked with but also stated that there were others. KQ had also participated in some family therapy sessions.

d. KQ writes or adds information to the "Clinical Practice/Treatment Notes," which are kept in the client files. Respondent admitted that someone reviewing KQ's notes may be unable to determine if he was present for the therapy sessions. The investigators obtained copies of some of these "Clinical Practice/Treatment Notes," and they are included in the hearing record. Respondent stated that he bills insurance for sessions when KQ is involved because he is the provider. Respondent could not recall if he had talked to his practice mentor, Sarah Messmer, about KQ being involved in play therapy

sessions. Respondent remarked that he did not know that it was wrong. (Testimony of Kimberly Groves; State Exhibit 8, p. 34; State Exhibit 9)

9. On January 10, 2013, Investigator Groves made an unannounced visit to the office of Sarah Messmer, DCSW, LISW, who had served as Respondent's practice mentor during his probation. Ms. Messmer stated that she addressed issues with Respondent involving professional and personal boundaries, dual relationships, confidentiality, conflicts of interest, and Board laws and rules. She did not review any of Respondent's files. Respondent participated in their sessions and completed reading assignments.

Sarah Messmer told Investigator Groves that she was unaware of KQ's role in Respondent's social work practice. Ms. Messmer told Groves that in her professional opinion, it is inappropriate for an unlicensed individual to participate in or conduct therapy sessions unless there is a signed release. Ms. Messmer told Groves that it is inappropriate for a licensed social worker to display pictures/drawings with names of clients or former clients. Ms. Messmer told Groves that she was unsure if Respondent fully understands and agrees with the Board's professional laws and rules as they relate to best practices. (Testimony of Kimberly Groves; State Exhibit 8, p. 35)

10. The Board filed the current Statement of Charges against Respondent on February 11, 2013. On February 26, 2013, Respondent filed a written response to the charges. (State Exhibit 11) On March 26, 2013, Respondent submitted copies of new forms that he had developed for use in his practice. Respondent's new Treatment Plan form includes the following statement:

I wish for [KQ] to assist TM Follett, MSW with my child in play therapy:

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Parent/Guardian signature

Date

Respondent also submitted a copy of his new "Patient's Informed Consent" form, which includes the following sentence: "I also wish KQ to assist therapist in sessions with me or my child." (State Exhibit 12)

11. Janet Abendroth is an LISW who serves as a peer reviewer for the Board. Ms. Abendroth has substantial experience providing mental health therapy to

children and supervising a school based mental health team. Ms. Abendroth has also worked for the Iowa Chapter of the National Association of Social Workers, where she assisted in handling ethics complaints. Ms. Abendroth reviewed the investigative reports and exhibits in this case and provided credible expert testimony at the hearing before the Board. (State Exhibit 14; Testimony of Janet Abendroth)

a. In Ms. Abendroth's professional opinion, Respondent's posting of client drawings constitutes a breach of his duty to maintain client confidentiality. Posting the drawings with clients' first and last names allows anyone who walks into Respondent's office to identify who is receiving therapy from him. Ms. Abendroth added that she would have some concerns about this practice even if the clients' names had not been on the drawings because the drawings may reveal personal information about the client.

b. Ms. Abendroth further testified that it was inappropriate for Respondent to allow KQ to provide play therapy to his clients and to document notes in the clients' records. Play therapy may only be provided by a properly licensed therapist, such as an LISW or an LMSW. KQ lacked the required qualifications and licensure to permit her to provide play therapy for Respondent's clients. The new consent forms developed by Respondent do not resolve Ms. Abendroth's ethical and professional practice concerns because KQ should not be providing play therapy to Respondent's clients, with or without client consent.

c. Ms. Abendroth further testified that Respondent's progress notes failed to meet professional standards for documentation because they did not always indicate who was present in the room for the therapy session, and they were not always properly signed. Progress notes must be signed by the therapist who is providing the therapy.

d. Ms. Abendroth further testified that all therapy, including play therapy, must be provided in a private confidential space where no one can overhear the session.

e. Ms. Abendroth further testified that employing or paying any client or former client for services violates the Code of Conduct due to the power differential between Respondent and the client or former client. She further

noted that there is always the possibility that a former client would want to return to Respondent for therapy.

(Testimony of Janet Abendroth)

## CONCLUSIONS OF LAW

The Iowa legislature has directed the Board to adopt rules relating to the standards required for licensees engaged in private practice as a social worker and standards for the professional conduct of all licensees.<sup>2</sup> The Board has adopted rules prescribing “Rules of Conduct” for licensed social workers at 282 IAC 282.2. The Board has also adopted rules establishing “Grounds for Discipline” for licensed social workers at 645 IAC 283.2.

### COUNT I

Count I charged Respondent with failing to inform his clients of the proposed services to be provided and the purpose of those services, in violation of 645 IAC 282.2(1) “a.” 645 IAC 282.2(1) “a” provides:

**282.2(1) *Informed consent.***

*a.* A licensee shall provide services to clients only in the context of a professional relationship based, when appropriate, on valid written informed consent. A licensee shall use clear and understandable language to inform clients of the proposed services, purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, a client’s right to refuse or withdraw consent, and the time frame covered by the consent.

The state argued that this count goes to the appropriateness of the play therapy services that KQ provided to Respondent’s clients, to Respondent’s failure to properly inform his clients of KQ’s role in providing services, and to Respondent’s failure to obtain a written release from the client or the client’s parent or guardian for KQ to be present during therapy sessions.

The Board declines to find a violation under Count I because the violations with respect to Respondent’s utilization of KQ’s services in his social work practice

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<sup>2</sup> Iowa Code section 154C.4(1), (2)(2011, 2013).

are more accurately and specifically addressed in other counts. Moreover, even if Respondent had fully informed his clients of KQ's role in providing play therapy and even if he had signed releases for every client, it would still have been inappropriate for him to have involved KQ in therapy sessions.

## COUNT II

Count II charged Respondent with failing to maintain timely records that include a treatment plan and any revisions to the treatment plan made during the course of treatment, in violation of 645 IAC 282.2(5)"b." 645 IAC 282.2(5)"b" provides:

**282.2(5) Record keeping.**

...

*b.* A licensee who provides clinical services in any employment setting, including private practice, shall maintain timely records that include subjective and objective data, assessment or diagnosis, a treatment plan, and any revisions to the assessment or diagnosis, a treatment plan, and any revisions to the assessment, diagnosis, or plan made during the course of treatment.

The state argued that this count relates to Respondent's failure to document KQ's presence during therapy sessions and failure to document whether Respondent was in fact present during the session. The Board declines to find a violation under Count II. The exhibits include a number of Respondent's "Clinical Practice/Treatment Notes," but do not include actual treatment plans. It is unclear to the Board if Respondent was asked to provide his treatment plans. The Board believes that Respondent's documentation violations are best addressed through Count VI.

## COUNTS III, IV

Counts III and IV charged Respondent with violating client confidentiality and with failure to obtain informed consent, in violation of 645 IAC 282.2(4)"a"(3), 282.2(4)"b," and 282.(4)"g." These rules provide:

**282.2(4). Privacy and Confidentiality**

*a.* A licensee shall not disclose or be compelled to disclose client information unless required by law, except under the following circumstances:

...

(3) With the written informed consent of the client that explains to whom the client information will be disclosed or released and the purpose and time frame for the release of information. If the client is deceased or unable to provide informed consent, a licensee shall obtain written consent from the client's personal representative, another person authorized to sue, or the beneficiary of an insurance policy on the client's life, health, or physical condition.

...

b. Before the disclosure is made, a licensee shall inform a client, to the extent possible, about the disclosure of confidential information and the potential consequences of the disclosure. This requirement applies whether a licensee discloses confidential information on the basis of client consent or other legal basis.

...

g. A licensee shall not discuss confidential information in any setting unless privacy can be ensured. A licensee shall not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.

The preponderance of the evidence established that Respondent violated 645 IAC 282.2(4)"a"(3) when he posted drawings with clients' names on the walls of his office, when he conducted therapy sessions in office spaces that do not ensure privacy and confidentiality, when he conducted therapy sessions or allowed KC to conduct therapy sessions in public places like parks and trails, when he failed to maintain client files in a locked secure location, and when he allowed an unlicensed person to be present during therapy sessions. All of these practices either resulted in the inappropriate disclosure of confidential client information to unauthorized persons and/or created a substantial risk that confidential information would be overheard or disclosed to unauthorized persons.

#### COUNT V

This count alleges a violation of 282.2(8)"a"(2), which provides:

**282.2(8) *Dual relationships and conflicts of interest.***

a. "Dual relationship" means that a licensee develops or assumes a secondary role with a client, including but not limited to

a social relationship or business association. For purposes of these rules, “dual relationship” does not include a sexual relationship...

...

(2) Former clients. A licensee shall not engage in a dual relationship with a client within five years of the termination of the client relationship. A licensee shall not engage in a dual relationship with a former client, regardless of the length of time elapsed since termination of the client relationship, when there is a risk of exploitation or potential harm to a client or former client.

...

The preponderance of the evidence established that Respondent violated 645 IAC 282.2(8)“a”(2) when he engaged in improper dual relationships by hiring former clients to provide services for him. This includes Respondent’s hiring of KQ to provide play therapy to his clients and his hiring of another former client to mow his lawn. By his own admissions prior to hearing, these dual relationships occurred less than five years after the two clients completed therapy with Respondent.

#### COUNT VI

This count alleges a violation of 645 IAC 282.2(5)“a,” which provides:

**282.2(5) Record keeping.**

a. A licensee shall maintain sufficient, timely, and accurate documentation in client records. A licensee’s records shall reflect the services provided, facilitate the delivery of services, and ensure continuity of services in the future.

The preponderance of the evidence established that Respondent violated 645 IAC 282.2(5)(a) when he failed to maintain sufficient and accurate documentation in his client records. Many of Respondent’s treatment records are not properly signed by him and do not fully and accurately document the therapy provided or the identity of the person(s) providing therapy to the client.

#### COUNT VII

This count alleges a violation of 645 IAC 282.2(15), which provides:

**282.2(15)** *Organization relationships and business practices.* A licensee shall not:

...

*e.* Delegate professional responsibilities to a person when the licensee knows, or has reason to know, that the person is not qualified by training, education, experience, or classification to perform the requested duties.

The preponderance of the evidence established that Respondent violated 645 IAC 282.2(15) when he improperly delegated professional responsibilities to a person that he knew or should have known was not qualified by training, education, experience or classification to perform the requested duties. Respondent improperly allowed KQ to provide “play therapy” to his clients. KQ was not properly qualified or licensed to provide play therapy.

#### COUNT VIII

645 IAC 283.2(12) provides that the board may impose any of the disciplinary sanctions provided in rule 645-283.3 when the board determines that the licensee has violated a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of social work, including but not limited to, the rules of conduct found in 645 IAC 282.2.

The preponderance of the evidence established that Respondent violated 645 IAC 283.2(12) when he violated the rules of conduct found at 645 IAC 282.2. Specifically, Respondent has violated the rules of conduct relating to patient confidentiality, dual relationships, improper delegation of professional responsibilities, and sufficient and accurate documentation in client records.

#### SANCTION

In determining an appropriate sanction, the Board considered the nature and circumstances of the current violations, the similarities between the current violations and Respondent’s prior violations, and Respondent’s ongoing insistence that he has done nothing wrong or unethical in his professional practice. Based on this record, the Board can only conclude that the remedial actions previously imposed (probation, continuing education and a practice mentor) were ineffective. Moreover, Respondent has provided no assurance to

the Board that he will not continue to conduct his social work practice in violation of the professional and ethical standards.

### DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 05253, issued to Respondent Thomas Follett, is hereby INDEFINITELY SUSPENDED.

IT IS FURTHER ORDERED that any reinstatement of Respondent's license shall be subject to the provisions of 645 IAC 11.31. The burden will be on Respondent to establish that the reasons for the indefinite suspension of his license no longer exist and that it is in the public interest for his license to be reinstated.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$68.75 for the court reporter fees. The total fees of \$143.75 shall be paid within thirty (30) days of issuance of this decision.

Dated this 16th day of January, 2014.



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Mark Hudson, Chairperson  
Iowa Board of Social Work

cc: Sara Scott, Assistant Attorney General (LOCAL)  
Thomas Follett, Respondent (RESTRICTED CERTIFIED)

Pursuant to Iowa Code section 17A.19(2011) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.