

BEFORE THE BOARD OF PHYSICAL & OCCUPATIONAL THERAPY  
OF THE STATE OF IOWA

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IN THE MATTER OF	)	NO. 11-002
	)	
<b>Wendy Simon,</b>	)	<b>NOTICE OF HEARING</b>
	)	<b>AND STATEMENT OF CHARGES</b>
RESPONDENT.	)	

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**COMES NOW** the Iowa Board of **Physical & Occupational Therapy** (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 00670 on September 13, 1999. Respondent's license is current and will next expire on March 15, 2013. Respondent's address as reported to the Board is 1405 – 7<sup>th</sup> Avenue, N, Clear Lake, IA 50428.

**A. TIME, PLACE AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on **December 16, 2011**, before the Board of Physical & Occupational Therapy. The hearing shall begin at **9:00 a.m.** 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 Physical & Occupational Therapy, 5<sup>th</sup> 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: September Lau, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> 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, 148A, 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, 148A, and 272C and 645 IAC chapter 202.

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 pursuant to Iowa Code section 147.55(3), (10) and 645 IAC 202.2(29)(b) with "improper sexual contact with, or making suggestive, lewd, lascivious or improper... advances to a patient."

### **Count II**

Respondent is charged pursuant to Iowa Code section 147.55(3) and 645 IAC 202.2(3) with "engaging in unethical conduct or practice harmful or detrimental to the public."

## **D. FACTUAL CIRCUMSTANCES**

1. Respondent obtained full-time employment at a health care facility in Clear Lake, Iowa (Facility) on July 11, of 1995. At the Facility she worked as a lifeguard and medication aid.
2. Male Resident (MR) became a resident of the Facility on October 12 of 1999. He

had diagnoses of cerebral palsy, spastic athetoid, mild mental retardation, quadriplegia, and depression.

3. Respondent was a caretaker for MR at the Facility.
4. Respondent was issued her Physical Therapy Assistant license in September of 1999. She obtained employment as a physical therapy assistant at a separate hospital in June of 2003, and continued to work at the Facility part-time.
5. In October of 2008, Respondent was seen lying on top of and straddling MR in bed while MR was hospitalized.
6. Respondent engaged in other inappropriate behaviors with MR such as holding him in the pool facing her with his face on her chest, kissing his hands and face, and "cuddling" and sleeping with MR in his bed.

#### **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 September Lau, Assistant Attorney General, at 515/281-7175.

#### **F. PROBABLE CAUSE FINDING**

On this 16<sup>th</sup> day of September, 2011, the Iowa Board of Physical & Occupational Therapy found probable cause to file this Notice of Hearing and Statement of Charges.