BEFORE THE BOARD OF MORTUARY SCIENCE
OF THE STATE OF IOWA

IN THE MATTER OF	)	**CASE NO. MS 07-010**
Mark Reed Kessler,	)	**NOTICE OF HEARING**
License No. 02202	)	**AND STATEMENT OF CHARGES**
RESPONDENT.	)	

COMES NOW the Iowa Board of Mortuary Science (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 02202 on October 8, 1980. Respondent's license is current and will next expire on May 15, 2010. Respondent's address as reported to the Board is 515 S. Division St., P.O. Box 163, Audubon, IA 50025.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on September 10, 2009, before the Board of Mortuary Science. The hearing shall begin at 11:00 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 Mortuary Science, 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. . A prehearing conference will be held by telephone on August 20, 2009, at 1:30 p.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals ("ALJ"). You are responsible for notifying the Board office of the telephone number at which you or your counsel can be reached. Board rules on pre-hearing conferences may be found 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: Pam Griebel, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319, 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, 156, 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, 157, and 272C and 645 IAC chapter 103.

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 unethical conduct and practices harmful or detrimental to the public in violation of Iowa Code sections 147.55(3) and 272C.10(3), and 645 IAC 103.3(4)"c".

D. FACTUAL CIRCUMSTANCES

1. The Board received a complaint in June 2007, alleging, among other issues, that Respondent, while acting as a preceptor, engaged in unethical behavior by creating an unprofessional working environment in which an intern was subjected to offensive and improper remarks and conduct.

2. Following investigation, the Board found probable cause to charge Respondent with engaging in acts or practices that are harmful or detrimental to the public and which constitute

unethical behavior in violation of Iowa Code sections 147.55(3) and 272C.10(3), and 645 IAC 103.3(4)"c".

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 Pam Griebel, Assistant Attorney General, at 515-281-3781.

F. PROBABLE CAUSE FINDING

On this 11th day of June, 2009, the Iowa Board of Mortuary Science 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 June 19, 2009.