

BEFORE THE IOWA BOARD OF RESPIRATORY CARE

IN THE MATTER OF)	NO. 04-001
)	
ANNE MARIE WILSON GILLENY,)	NOTICE OF HEARING
)	AND STATEMENT OF CHARGES
RESPONDENT.)	

COMES NOW the Iowa Board of Respiratory Care ("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. The Board issued Respondent Anne Marie Gilleney Iowa license number 00894 on June 21, 1996. Respondent's license is current and will next expire on March 31, 2010. Respondent's address as reported to the Board is 1404 W Park Ave., Boone, Iowa 50036.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on February 10, 2009, before the Board. The hearing shall begin at 10:00 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 Respiratory Care, 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. 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: Julie Bussanmas, 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, 152B, 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, 152B, and 272C and 645 IAC chapter 263.

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 sections 147.55(8) and 272C.10(8), and 645 IAC 263.2(19) with failure to comply with the terms of a settlement agreement and final order of the Board.

D. FACTUAL CIRCUMSTANCES

1. On December 14, 2004, Respondent entered into a Settlement Agreement and Final Order with the Board to resolve pending disciplinary charges.
2. Under the terms of the Settlement Agreement and Final Order the Board placed Respondent's license on probation for five years, subject to certain terms and conditions.
3. The Settlement Agreement and Final Order provided in part, "Respondent shall not consume alcohol."
4. On August 21, 2008, the Board alleges Respondent violated her Settlement Agreement and Final Order when she tested positive for ethyl glucuronide (EtG), a test that

detects alcohol metabolites in the system for up to five days following the consumption of alcohol. Ms. Gilleney admitted that she had consumed alcohol to celebrate her husband's and father-in-law's birthdays. Respondent also tested positive for EtG on January 30, 2008.

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 Julie Bussanmas, Assistant Attorney General, at (515) 281-7175.

F. PROBABLE CAUSE FINDING

On this 27th day of October, 2008, the Iowa Board of Respiratory Care found probable cause to file this Notice of Hearing and Statement of Charges.

This statement of charges and notice of hearing is approved by the board on October 27, 2008.