

BEFORE THE IOWA BOARD OF PHYSICIAN ASSISTANTS

IN THE MATTER OF)	NO. 09-019
)	
MICHAEL BARGER, P.A.,)	NOTICE OF HEARING AND
)	STATEMENT OF CHARGES
Respondent.)	

COMES NOW the Iowa Board of Physician Assistants (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 001007 on December 26, 1995. Respondent's license to practice as a physician assistant in Iowa expired September 30, 2009. Respondent's address as reported to the Board is 401 N. 7th Street, Adel, IA 50003.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on April 21, 2010, before the Board of Physician Assistants. The hearing shall begin at 10:00 AM 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 Physician Assistants, 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: Theresa Weeg, 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, 148C, 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, 148C, and 272C and 645 IAC chapter 329.

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 professional incompetency, in violation of Iowa Code sections 147.55(2), 272C.10(2) and the Board's administrative rules at 645 IAC 329.2(2)(a)-(e).

Count II

Respondent is charged with habitual intoxication or addiction to the use of drugs in violation of Iowa Code sections 147.55(4), 272C.10(4) and the Board's administrative rules at 645 IAC 329.2(6).

Count III

Respondent is charged with obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority, in violation of 645 IAC 329.2(7).

Count IV

Respondent is charged with negligence in the practice of the profession, in violation of 645 IAC 329.2(10).

Count V

Respondent is charged with falsification of or failure to maintain complete client records, in violation of 645 IAC 329.2(8) and 327.7(4).

D. FACTUAL CIRCUMSTANCES

1. On May 14, 2009, the Iowa Board of Pharmacy issued an immediate suspension of Respondent's controlled substance registration based upon its investigation into Respondent's prescribing and record-keeping practices.

2. In its Order of Immediate Suspension of Controlled Substance Registration, the Pharmacy Board found,

a. Respondent is over-prescribing Schedule II, III, and IV controlled substances to patients without the presence of a legitimate medical purpose. Doses of Demerol are being prescribed for patients, which doses exceed any medical standard known to the Board. Such doses create an immediate patient safety risk.

b. Respondent is failing to maintain accurate and complete records of controlled substance dispensing and utilization.

c. Respondent is failing to maintain accurate and complete records of controlled substances in his possession.

d. Respondent is obtaining controlled substances by fraudulent means.

e. Respondent is diverting controlled substances to unauthorized uses.

3. On May 14, 2009, Respondent submitted to a drug test during an investigation into his prescribing practices by the Board of Pharmacy. The sample was taken during work hours while Respondent was practicing as a physician assistant. Test results later revealed Respondent tested positive for several controlled substances, including meperidine metabolite, oxycodone, and oxymorphone.

4. During May 2008 through April 2009, Respondent prescribed over 600 Demerol tubex for purported use with his patients.
5. Some patients would pick up their prescription at the pharmacy and return to the clinic with the Demerol and sometimes Respondent would pick up the prescribed Demerol at the pharmacy.
6. The Demerol was purportedly administered to patients through trigger-point injections of a "demerol cocktail."
7. Respondent administered doses of Demerol that exceeded dosing guidelines for some patients.
8. Chart documentation indicates Respondent failed to administer the amount of Demerol prescribed to some patients.
9. Respondent failed to adequately document his prescription, administration, and destruction of controlled substances in patient medical records.
10. Respondent wrote prescriptions for amounts of Demerol that exceeded the amount administered to patients.
11. In some cases, Respondent purportedly sent the patients home the unused Demerol. In other cases, there is no documentation regarding the Demerol.
12. Respondent's supervising physician did not perform trigger-point injections, was not aware of Respondent's practice, had not determined Respondent's proficiency or competence in "Demerol cocktail" trigger-point injections and had not delegated Respondent performance of trigger-point injections or pain management therapy.
13. Demerol IM is not a recognized injection treatment for trigger point management.
14. Respondent was obtaining and taking OxyContin without a valid prescription.

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 Theresa Weeg, Assistant Attorney General, at 515.281.5328.

F. PROBABLE CAUSE FINDING

On this 12th day of February, 2010, the Iowa Board of Physician Assistants 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 February 12, 2010.