

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

IN THE MATTER OF)	NO. 09-011
)	
Brian Gauer)	NOTICE OF HEARING
)	AND STATEMENT OF CHARGES
RESPONDENT.)	

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 01916 on November 19, 1992. Respondent's license is current and will next expire on November 15, 2013. Respondent's address as reported to the Board is 4401 S. Solberg #9, Sioux Falls, South Dakota, 57106.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **September 28, 2012**, 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, 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: September Lau, 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, 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 under Iowa Code section 147.55(3) and 645 IAC 202.2(3) and 202.2(8) with making deceptive representations in the practice of the profession and falsifying patient records.

Count II

Respondent is charged under Iowa Code section 147.55(9) and 645 IAC 202.2(15) with failure to notify the Board of a criminal conviction within 30 days.

Count III

Respondent is charged under Iowa Code section 147.55(4) and 645 IAC 202.2(6) with habitual intoxication.

D. FACTUAL CIRCUMSTANCES

1. Respondent is licensed to practice as a physical therapist in the state of Iowa.
2. **With respect to count I:**
3. Respondent was formerly employed as a physical therapist at Good Samaritan Society in Emmetsburg, Iowa.


4. In the course of Respondent's employment at Good Samaritan, Respondent allegedly did not show up for patients' appointments, documented false times and dates of appointments, and forged patient signatures.
5. **With respect to count II and III:**
6. In 2009, Respondent pled guilty to Public Intoxication.
7. In 2010, Respondent pled guilty to Operating While Intoxicated, 3rd Offense.
8. Respondent did not report either of these criminal actions to the board.

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 15th day of June, 2012, the Iowa Board of Physical & Occupational Therapy found probable cause to file this Notice of Hearing and Statement of Charges.


Chairperson
Iowa Board of Physical & Occupational Therapy

Copies to:

September Lau
Assistant Attorney General
Iowa Attorney General's Office
2nd Floor Hoover Bldg.
Des Moines, IA 50319

Brian Gauer
4401 S. Solberg #9
Sioux Falls, SD 57106