BEFORE IOWA BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY

IN THE MATTER OF	)	NO. 08-008
	)	
SHANTEL SMITH, PT	)	**NOTICE OF HEARING**
	)	**AND STATEMENT OF CHARGES**
Respondent.	)	

COMES NOW the Iowa Board of Physical and Occupational Therapy ("Board") and hereby 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 physical therapy license number 02290 on October 12, 1995. Respondent's license is active, and will expire on October 15, 2009. Respondent's address as reported to the Board is 529 – 300th Street, Perry, Iowa 50220.

A. TIME, PLACE AND NATURE OF HEARING

Hearing. A disciplinary contested case hearing shall be held on **December 18, 2009**, before the Board of Physical and Occupational Therapy. 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 Physical and Occupational Therapy, 5th Floor, Lucas State Office Building, 321 East 12th Street, 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: Emily Kimes-Schwiesow, 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 with unethical conduct in violation of Iowa Code sections 147.55(3) and 272C.10(3) and 645 IAC 202.2(29)(b) for engaging in conduct of a sexual nature with a patient.

Count II

Respondent is charged pursuant to Iowa Code section 147.55(9) and 645 IAC 202.2(12) with violation of a regulation, rule, or law of this state which relates to the practice of physical therapy, when she failed to preserve the confidentiality of patient records pursuant to 645 IAC 201.2(5).

D. FACTUAL CIRCUMSTANCES

1. While treating a patient from January 7, 2008 to April 20, 2008, Respondent engaged

in verbal and physical contact of a sexual nature with the patient.

2. In March 2008, a patient file in Respondent's physical therapy clinic was accessed by an unauthorized person.

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 Emily Kimes-Schwiesow, Assistant Attorney General, at (515) 281-5637.

F. PROBABLE CAUSE FINDING

On this 21st day of August, 2009, the Iowa Board of Physical and Occupational Therapy 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 September 15, 2009.