

**BEFORE THE BOARD OF PSYCHOLOGY**

<b>IN THE MATTER OF:</b>	)	
	)	<b>FILE NO. Psy 08-004</b>
<b>Howard Weinberg</b>	)	
<b>License No. 00596</b>	)	
	)	<b>NOTICE OF HEARING</b>
<b>Respondent.</b>	)	<b>AND STATEMENT OF CHARGES</b>

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**COMES NOW** the Iowa Board of Psychology and files this Notice of Hearing pursuant to Iowa Code Sections 17A.12(2), 17A.18(3), and 645 Iowa Administrative Code (IAC) 11.6. Respondent was issued Iowa license 000596 on August 5, 1989, which will next expire on June 30, 2010. Respondent practices in Iowa City.

**A. TIME, PLACE AND NATURE OF HEARING**

Hearing. A disciplinary contested case hearing shall be held on November 13, 2009 before the Board of Psychology. 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 Psychology, 5<sup>th</sup> 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: Emily Kimes-Schwiesow, Assistant Attorney General, Iowa Attorney General's Office, 2<sup>nd</sup> 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, 154B, 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, 154B, and 272C and 645 IAC chapter 242.

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 conviction of a crime related to the profession or the conviction of any crime that would affect the licensee's ability to practice psychology in violation of 645 Iowa Administrative Code 242.2(12).

#### **COUNT II**

Respondent is charged with unethical conduct, in violation of 645 Iowa Administrative Code 242.2(30).

#### **COUNT III**

Respondent is charged with failure to notify the board of a criminal conviction within 30 days of the action in violation of 645 Iowa Administrative Code 242.2(16).

### **D. FACTUAL CIRCUMSTANCES**

1. On September 24, 1999, Respondent entered into a settlement agreement with the Board wherein he agreed with the Board's charges that he had engaged in unethical conduct, failed to properly supervise employees, failed to keep complete and appropriate records, and failed to pay a required renewal fee. Respondent's license was suspended for thirty days.
2. On April 15, 2008, Iowa City police responded to Neo Computers in Iowa City, Iowa to

investigate a report of child pornography found on a customer's computer. Iowa City police were shown a sales order which identified the owner of the computer as the Respondent. Iowa City police obtained a state search warrant for Respondent's home. Police found over 1,000 images believed to be child pornography on Respondent's computers.

3. Respondent admitted that computers in his possession contained visual images of minors engaged in sexually explicit conduct.
4. On or about March 27, 2009, Respondent pled guilty to Possession of Child Pornography in violation of 18 U.S. Code sections 2252(a)(4)(B).
5. Respondent did not notify the Board within 30 days of this conviction.

#### **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 the 14th day of August, 2009, the Iowa Board of Psychology 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 2, 2009.**