

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

DAVID G. WINDSOR, M.D., RESPONDENT

File Nos. 02-96-081, 02-99-231 & 02-01-1464

FINAL ORDER

BE IT REMEMBERED:

DATE: July 20, 2005.

1. Respondent was issued license number 18558 to practice medicine and surgery in Iowa on January 10, 1972.
2. Respondent's Iowa medical license expired on December 1, 2001.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.
4. The Board filed a Statement of Charges against Respondent's Iowa medical license on February 10, 2005, charging Respondent with:
 - A. Being convicted of a felony for filing a false tax return in violation of federal law;
 - B. Being disciplined by the Missouri Medical Board for violating a law which involves moral turpitude;

- C. Engaging in unprofessional or unethical conduct when he inappropriately engaged in a pattern of sexual harassment including verbal and physical conduct of a sexual nature with numerous female co-workers; and
 - D. Engaging in unethical conduct or practice harmful or detrimental to the public when he was arrested and charged with operating a motor vehicle while under the influence (OWI) of drugs or alcohol on at least three separate occasions.
5. A contested case hearing was held on the Statement of Charges before a three member panel of the Board on May 3, 2005.
 6. A Findings of Fact, Conclusions of Law, Decision and Order (Proposed Decision) was issued by the Panel on June 1, 2005.
 7. A copy of the Proposed Decision was delivered to counsel for the State of Iowa, Theresa Weeg, Assistant Attorney General, on June 3, 2005.
 8. A copy of the Proposed Decision was delivered to the office of the attorney for Respondent on June 8, 2005.
 9. No appeal of the Proposed Decision was filed within thirty (30) days of issuance pursuant to 653 IAC 12.50.

THEREFORE IT IS HEREBY ORDERED that the Proposed Decision in this matter, a copy of which is attached as Exhibit A, is a **FINAL DECISION** of the Board and the Decision and Order outlined therein is a **FINAL ORDER OF THE BOARD**.

THEREFORE IT IS HEREBY ORDERED that Respondent's Iowa medical license is **REVOKED**. Respondent is also ordered to pay a **\$3,000 civil penalty** within thirty (30) days of the date of this **FINAL ORDER**.



Bruce L. Hughes, M.D., Chairperson
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686

July 20, 2005

Date

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE)	DIA NO: 005DPHMB005
STATEMENT OF CHARGES AGAINST)	CASE NOS: 02-96-081
)	02-99-231
)	02-01-1464
)	
DAVID G. WINDSOR, M.D.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT,)	DECISION AND ORDER

To: DAVID G. WINDSOR, M.D.

This matter concerns a statement of charges filed against David Windsor, M.D., on February 10, 2005. Respondent was charged with four violations of the board's regulations. The violations include being convicted of a felony, being disciplined by another state's licensing authority, sexually harassing female coworkers, and criminal offenses for driving while intoxicated.

The case was set for hearing before a panel of the board on May 3, 2005, at the board's offices in Des Moines. The following board members were present: Susan Johnson, M.D. Yasyn Lee, M.D., and Paul Thurlow. Jeffrey Farrell, an administrative law judge from the Department of Inspections and Appeals, assisted the board. Assistant Attorney General Theresa Weeg represented the public interest. Respondent did not appear.

After hearing the testimony and examining the exhibits, the board convened in closed executive session to deliberate their decision. See Iowa Code section 21.5(1)(f). The panel directed the administrative law judge to prepare the decision in accordance with its deliberations.

THE RECORD

The state's exhibits 1-16 were admitted into the record. The state presented B.J. Jennisch as a witness.

FINDINGS OF FACT

Board records indicate that Respondent practiced psychiatry in southern Iowa and northern Missouri. The board began receiving complaints regarding Respondent in 1996. Respondent has not practiced in Iowa since 2001. (Exhibit 13).

The first complaints concerned sexual harassment. The board received several written statements from health care professionals who worked with Respondent at the Leon Hospital. One woman stated that Respondent put his arms around her and kissed her on the lips, while they were working at the hospital. He commented on another woman's "big chest," and told her that she had "nice legs . . . but that doesn't mean I want to fuck you." He told a third woman that, as a social worker, she "must be a nurturer and therefore have big tits." He asked a fourth woman for a sexual favor because he knew her "husband was out of town." On a second occasion, he asked the same woman to "take her clothes off." He told a fifth woman that she must be doing a good job with a child patient, by "mothering her with your big tits." Respondent resigned from the hospital after several women filed complaints against him. (Exhibits 2, 3, 7).

On May 11, 1999, the board received an anonymous complaint from a female patient. The woman reported that Respondent was arrested three times for driving while intoxicated. She also reported that he was arrested once for resisting arrest. She stated that he had pinched her buttocks, and used the words "fuck" and "cunt" in her presence during treatment sessions. (Exhibit 4).

Respondent's criminal history record shows arrests for driving while intoxicated in Missouri in 1997 and 1998. The 1997 arrest resulted in probation. The Board's records did not include a disposition from the 1998 arrest. Respondent also pled guilty to operating a motor vehicle while intoxicated in Iowa in 1996. (Exhibits 8-9).

On November 3, 2000, the Missouri State Board of Registration for the Healing Arts (the Missouri board) filed a 60 page, 17 count hearing complaint against Respondent. The Missouri board alleged many instances of unprofessional and incompetent conduct. (Exhibit 10).

The Missouri case was resolved on August 7, 2001. The Missouri board reported that Respondent was convicted of a felony charge of filing a false income tax return on October 17, 2000. The

board revoked Respondent's license based solely on the felony conviction for filing a false tax return. The Missouri revocation did not resolve the allegations of unprofessional conduct or practice issues cited in the complaint. (Exhibit 12).

On July 13, 2004, the Iowa board sent Respondent a letter offering him the opportunity to voluntarily surrender his Iowa medical license as part of a disciplinary settlement agreement rather than face a formal disciplinary hearing. The Respondent returned the letter to the board's office with handwritten comments stating that he would not sign a consent order, he would not surrender his license, and he would not attend any hearing the board chose to schedule. (Exhibit 14).

B.J. Jennisch completed the investigation for the Iowa Board. On September 15, 2004, Mr. Jennisch met the Respondent at his home to discuss a voluntary license surrender. Mr. Jennisch testified that respondent smelled strongly of alcohol at the time of their meeting. Respondent stated that he would not surrender his license.

On February 10, 2005, the board filed a statement of charges against Respondent's Iowa medical license. Mr. Jennisch personally served the charges and a notice of hearing on Respondent on February 14, 2005, and he testified that Respondent again appeared to have been drinking alcohol at the time he was served. Respondent told Mr. Jennisch that he would not appear at the hearing.

Mr. Jennisch met Respondent a third time on April 24, 2005. Mr. Jennisch appeared at Respondent's home to personally serve the continuance order. Mr. Jennisch testified that Respondent was drinking straight alcohol at the time of service.

CONCLUSIONS OF LAW

Failure To Appear

The board shall issue a notice of hearing and statement of charges following the board's determination of probable cause. 653 IAC 12.11(2). A notice of hearing shall be served upon the licensee either by personal service or by restricted certified mail, return receipt requested, at least 30 days before the scheduled hearing. 653 IAC 12.12(1). The board may enter a default decision or proceed with the hearing if a licensee fails

to appear or participate in a contested case hearing after proper service of notice. 653 IAC 12.28(1).

Respondent was personally served with the statement of charges and notice of hearing. Respondent made it clear that he did not intend to appear for the hearing. Accordingly, the board properly proceeded with the hearing in his absence.

The Statement of Charges

The board is a professional examining board created to review applications for licenses and regulate the profession. See generally Iowa Code chapters 147, 148 and 272C. The board may discipline licensees pursuant to the standards set forth in the code. See Iowa Code section 147.55. The board has adopted rules pursuant to Iowa Code chapter 17A to help define the statutory standards. See 653 IAC 12.4, ch. 13.

Respondent was charged with four counts of regulatory violations: 1) being convicted of a felony; 2) being disciplined by the medical licensing authority in another state; 3) engaging in unprofessional or unethical conduct by sexually harassing female coworkers; 4) engaging in unprofessional or unethical conduct or practice harmful or detrimental to the public by operating a motor vehicle while under the influence of drugs or alcohol. Each count is discussed below.

1. Felony conviction: The board may discipline a licensee if the person has been convicted of a felony in Iowa, another state, or the United States. Iowa Code section 148.6(2)(b); 653 IAC 12.4(6). Respondent was convicted of a felony count of filing a false income tax return in federal court in Missouri on October 17, 2000. (Exhibit 12).

2. Discipline by another state: The board may also discipline a licensee if the licensing authority in another state has taken disciplinary action against the licensee. Iowa Code section 148.6(2)(d). The Missouri board revoked respondent's license on August 7, 2001.

3. Sexual harassment: The board may also discipline a licensee if the person has engaged in unethical conduct or practice harmful or detrimental to the public. Iowa Code section 147.55(3); 272C.10(3). The statement of charges also cites board rules 653 IAC 12.4(3) and (36). Section 12.4(3) repeats the statutory provision and provides some further

explanation, but nothing relating to sexual harassment.¹ Section 12.4(36) prohibits "unprofessional conduct."

Respondent's conduct of making sexual comments to staff members of the Leon Hospital was clearly unprofessional conduct. He regularly made comments about staff members' legs or breasts. He asked women to take off their clothes and to perform sexual favors. He even grabbed one woman and kissed her on the lips. Respondent's behavior was graphic and pervasive and was directed at a wide number of female coworkers. His conduct shows no regard toward the women with whom he worked.

4. OWI arrests and convictions: Respondent was also charged under Iowa Code sections 147.55(3) and 272C.10(3) and board rules 653 IAC 12.4(3) and (36) in count IV. The statement of charges alleges that respondent committed unethical and unprofessional conduct by being arrested for OWI on at least three separate occasions.

The panel has concern with the allegations in this count. Certainly, proof of three separate occasions of driving while intoxicated could constitute unethical or unprofessional conduct. However, an arrest without a conviction does not amount to a finding of guilt. The State could have proven the violation in other ways, such as by providing evidence of the underlying violations (e.g., the blood alcohol tests, testimony of the arresting officer), but that was not done here.

However, the criminal history record provided by the state did show one conviction of DWI in Missouri. The state also provided evidence of an additional conviction for OWI in Iowa. The board could discipline a licensee for two OWI convictions, either as unprofessional conduct, or for violation of a state or federal criminal law connected with the practice of medicine. See Iowa Code section 148.6(2)(c). Driving while under the influence of drugs or alcohol relates to the practice of medicine.

The board's concerns about a potential impairment in this matter are increased by Mr. Jennisch's testimony that respondent smelled of alcohol or appeared intoxicated on each of the three occasions that Mr. Jennisch appeared at Respondent's home to serve papers or discuss board business. While there is no law that prevents Respondent from drinking alcohol at home, the fact

¹ Section 12.4(3)(b) references the standards and principles of medical ethics and the code of ethics set out in rules 13.10 and 13.11. However, there are no current rules at 13.10 or 13.11.

that respondent smelled of alcohol on each of the three occasions Mr. Jennesch met him, coupled with respondent's two OWI convictions, establishes a pattern of uncontrolled use of alcohol and this raises serious concerns of a potential impairment that could affect the practice of medicine.

The panel finds a violation of its regulations on this ground. Further, the concerns discussed above would have to be addressed in the unlikely event respondent ever again became licensed in this state.

Sanction: If the board finds a violation of the statutory or regulatory provisions concerning the practice of medicine, the board may revoke or suspend the license, and/or impose a civil penalty not to exceed \$10,000. Iowa Code sections 148.6, 148.7(7).

This case involves an array of serious misconduct on several levels over a span of many years. Respondent has been convicted of a felony relating to honesty by filing a false tax return, he has sexually harassed several coworkers, and he has been convicted of multiple offenses for drinking and driving. He has, through his conduct, shown a contempt for the laws of the states and United States, as well as a complete disregard of the dignity of his fellow health care colleagues. Respondent has not provided any defense, or demonstrated any remorse for any of his acts of misconduct.

In light of the seriousness and variety of the violations, the panel finds that revocation is the appropriate sanction. Additionally, the panel believes a civil penalty of \$3,000 is warranted.

DECISION AND ORDER

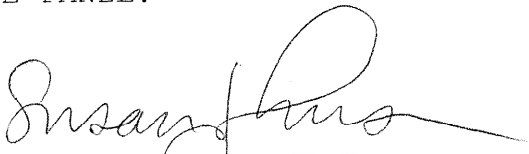
Revocation: The Iowa Board of Medical Examiners **revokes** the Iowa medical license issued to Respondent.

Civil Penalty: The panel also orders Respondent to pay a **civil penalty** in the amount of **\$3,000**. The civil penalty shall be paid within thirty (30) days of the date this decision becomes final. Respondent shall make payment by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

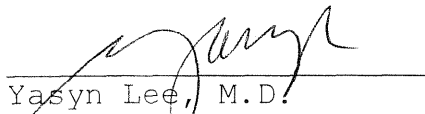
Disciplinary Hearing Fee and Certified Costs: Respondent shall pay a disciplinary hearing fee of **\$75.00**. Iowa Code section 272C.6(6); 653 IAC section 12.43(5). Respondent shall also pay any costs certified by the executive director. See 653 IAC 12.43(4). All sanctions, fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the Board of Medical Examiners within thirty days of the issuance of the final decision.

Dated this 1st day of June, 2005.

THE PANEL:



Susan Johnson, M.D.



Yasyn Lee, M.D.



Paul Thurlow

cc: Theresa O'Connell Weeg
Assistant Attorney General

A proposed panel decision becomes a final decision unless appealed to the board by a party adversely affected. The notice of appeal must be served on the executive director within thirty (30) days after service of this proposed decision. 653 IAC 12.32(2). The board may also review a proposed panel decision on its own motion.

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

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STATEMENT OF CHARGES AGAINST)	CASE NOS: 02-96-081
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The panel has concern with the allegations in this count. Certainly, proof of three separate occasions of driving while intoxicated could constitute unethical or unprofessional conduct. However, an arrest without a conviction does not amount to a finding of guilt. The State could have proven the violation in other ways, such as by providing evidence of the underlying violations (e.g., the blood alcohol tests, testimony of the arresting officer), but that was not done here.

However, the criminal history record provided by the state did show one conviction of DWI in Missouri. The state also provided evidence of an additional conviction for OWI in Iowa. The board could discipline a licensee for two OWI convictions, either as unprofessional conduct, or for violation of a state or federal criminal law connected with the practice of medicine. See Iowa Code section 148.6(2)(c). Driving while under the influence of drugs or alcohol relates to the practice of medicine.

The board's concerns about a potential impairment in this matter are increased by Mr. Jennisch's testimony that respondent smelled of alcohol or appeared intoxicated on each of the three occasions that Mr. Jennisch appeared at Respondent's home to serve papers or discuss board business. While there is no law that prevents Respondent from drinking alcohol at home, the fact

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The panel finds a violation of its regulations on this ground. Further, the concerns discussed above would have to be addressed in the unlikely event respondent ever again became licensed in this state.

Sanction: If the board finds a violation of the statutory or regulatory provisions concerning the practice of medicine, the board may revoke or suspend the license, and/or impose a civil penalty not to exceed \$10,000. Iowa Code sections 148.6, 148.7(7).

This case involves an array of serious misconduct on several levels over a span of many years. Respondent has been convicted of a felony relating to honesty by filing a false tax return, he has sexually harassed several coworkers, and he has been convicted of multiple offenses for drinking and driving. He has, through his conduct, shown a contempt for the laws of the states and United States, as well as a complete disregard of the dignity of his fellow health care colleagues. Respondent has not provided any defense, or demonstrated any remorse for any of his acts of misconduct.

In light of the seriousness and variety of the violations, the panel finds that revocation is the appropriate sanction. Additionally, the panel believes a civil penalty of \$3,000 is warranted.

DECISION AND ORDER

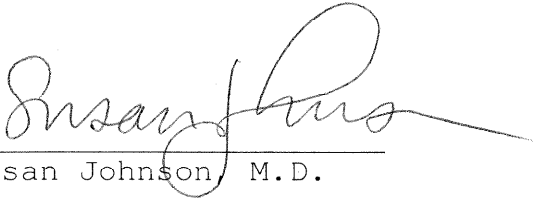
Revocation: The Iowa Board of Medical Examiners **revokes** the Iowa medical license issued to Respondent.

Civil Penalty: The panel also orders Respondent to pay a **civil penalty** in the amount of **\$3,000**. The civil penalty shall be paid within thirty (30) days of the date this decision becomes final. Respondent shall make payment by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

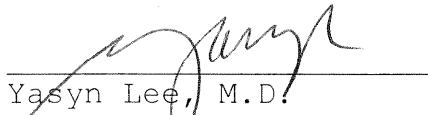
Disciplinary Hearing Fee and Certified Costs: Respondent shall pay a disciplinary hearing fee of **\$75.00**. Iowa Code section 272C.6(6); 653 IAC section 12.43(5). Respondent shall also pay any costs certified by the executive director. See 653 IAC 12.43(4). All sanctions, fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the Board of Medical Examiners within thirty days of the issuance of the final decision.

Dated this 1st day of June, 2005.

THE PANEL:



Susan Johnson, M.D.



Yasyn Lee, M.D.



Paul Thurlow

cc: Theresa O'Connell Weeg
Assistant Attorney General

A proposed panel decision becomes a final decision unless appealed to the board by a party adversely affected. The notice of appeal must be served on the executive director within thirty (30) days after service of this proposed decision. 653 IAC 12.32(2). The board may also review a proposed panel decision on its own motion.

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

DAVID G. WINDSOR, M.D., RESPONDENT

FILE Nos. 02-96-081, 02-99-231 & 02-01-1464

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medical Examiners (the Board), on February 10, 2005, and files this Statement of Charges against David G. Windsor, M.D., (Respondent), a physician licensed pursuant to Iowa Code Chapter 147 (2003) and alleges:

1. Respondent was issued license number 18558 to practice medicine and surgery in Iowa on January 10, 1972.
2. Respondent's Iowa medical license expired due to non-renewal on December 1, 2001.
3. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 147, 148 and 272C.

COUNT I

4. Respondent is charged under Iowa Code section 148.6(2)(d) (2003) and IAC section 12.4 (6) with being convicted of a felony in the courts of this state or another state, territory, or country, including the courts of the United States.

COUNT II

5. Respondent is charged under Iowa Code section 148.6(2)(d) (2003) with being disciplined by the medical licensing authority of another state.

COUNT III

6. Respondent is charged under Iowa Code sections 147.55(3) and 272C.10(3) (2003) and 653 IAC sections 12.4(3) and (36) with engaging in unprofessional or unethical conduct or practice harmful or detrimental to the public when he inappropriately engaged in a pattern of sexual harassment including verbal and physical conduct of a sexual nature with numerous female co-workers which created an intimidating, hostile and offensive work environment.

COUNT IV

7. Respondent is charged under Iowa Code sections 147.55(3) and 272C.10(3) (2003) and 653 IAC sections 12.4(3) and (36) with engaging in unprofessional or unethical conduct or practice harmful or detrimental to the public when he was arrested and charged with operating a motor vehicle while under the influence (OWI) of drugs or alcohol on at least three separate occasions.

CIRCUMSTANCES

8. On October 17, 2000, Respondent entered a guilty plea to one felony count of Filing a False Income Tax Return (1995 Tax Year), in federal court in Missouri.

9. On July 2, 2001, the Missouri State Board of Registration for the Healing Arts (Missouri Board) filed a Notice of Automatic Revocation based on Respondent's guilty plea in federal court in Missouri. The Missouri Board also filed a Complaint against Respondent's Missouri medical license alleging Respondent failed to conform to the minimal

standard of acceptable and prevailing practice of medicine in his prescribing practices of controlled substances to patients with mental health conditions and substance abuse histories.

10. On August 7, 2001, the Missouri Board issued a Findings of Fact, Conclusions of Law and Disciplinary Order revoking Respondent's Missouri medical license. The Missouri Board concluded that Respondent's Missouri medical license was subject to revocation as he had pleaded guilty of a felony offense involving moral turpitude, an essential element of which is fraud and dishonesty, in violation of the laws and rules governing the practice of medicine in Missouri. The Missouri Board prohibited Respondent from applying for reinstatement of his Missouri medical license for at least two years and one day from the date of the Disciplinary Order.

11. At least eight former female co-workers complained that Respondent engaged in a pattern of inappropriate sexual comments and touching. The Board received information indicating Respondent resigned from the hospital to avoid disciplinary action for his sexual improprieties.

12. Respondent has been charged with operating a motor vehicle while under the influence of drugs or alcohol on at least three separate occasions.

On this the 10th day of February, 2005, the Iowa Board of Medical Examiners finds probable cause to file this Statement of Charges.



Bruce L. Hughes, M.D., Chairperson
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686