

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT AND STATEMENT OF CHARGES AGAINST

HERBERT I. REMER, DO, RESPONDENT

No. 03-92-390

FINAL ORDER

NOW ON MAY 2, 1996, BE IT REMEMBERED:

1. That Herbert I. Remer, DO, (the Respondent), was issued a license to practice osteopathic medicine and surgery in the state of Iowa, on July 13, 1978, as evidenced by certificate number 01760, which is recorded in the permanent records in the office of the Iowa Board of Medical Examiners (the Board).

2. That a Complaint and Statement of Charges was filed against the Respondent on August 10, 1995. A hearing was held on the Complaint and Statement of Charges before a three member panel of the Board on February 29 and March 1, 1996.

3. That a Proposed Ruling Granting Motion for Dismissal at End of State's Case by Panel (Proposed Decision), was issued on March 30, 1996. On April 5, 1996, a copy of the same was sent to the Iowa Attorney General's Office, via LOCAL mail. The Proposed Decision of the Panel was accepted without appeal by the Board on April 29, 1996.

4. That on April 9, 1996, the Proposed Decision was served on the Respondent via U.S. First Class, restricted certified mail, return receipt requested.

5. That pursuant to the provisions of 653 IAC 12.50(29), thirty (30) days having passed and no appeal of the Proposed Decision having been filed by the Respondent or any other party to the proceeding, the said Proposed Decision became a final decision of the Board. Accordingly the undersigned is authorized to enter an order on behalf of the Board.

THEREFORE IT IS ORDERED that the Complaint and Statement of Charges filed against the Respondent on August 10, 1995, is **DISMISSED**



James D. Collins, Jr., MD, Chairperson
IOWA STATE BOARD OF MEDICAL EXAMINERS
1209 East Court Avenue
Des Moines, IA 50319-0180

STATE OF IOWA
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF
THE COMPLAINT AND STATEMENT
OF CHARGES AGAINST

HERBERT I. REMER, D.O.

Respondent

DIA NO. 95DPHMB-21
No. 03-92-390

PROPOSED RULING
GRANTING MOTION FOR
DISMISSAL AT END OF
STATE'S CASE BY PANEL

TO: HERBERT I. REMER, D.O.

PROCEDURAL SUMMARY

On August 10, 1995, the Iowa Board of Medical Examiners (Board) directed its Executive Director to file a Complaint and Statement of Charges against Herbert I. Remer, D.O. (Respondent). The Complaint and Statement of Charges alleged that the Respondent's care of one patient on December 10 and 11, 1992, was substandard and grossly negligent due to failure to:

1. Reasonably evaluate and treat a patient for over two hours when the patient was obviously unstable.
2. Maintain documentation of the patient's RPR, HBAG and Glucose screen in the patient's prenatal records.
3. Record the time of the written orders and progress notes concerning the patient.
4. Mention the patient's postpartum hemorrhage after the delivery note.

The hearing was held before a three member panel of the Board on February 29 and March 1, 1996.

At the end of the State's case (State rested), a motion for dismissal was made by the Respondent. The Panel granted the motion based on its evaluation of the evidence presented by the State.

The members of the Panel were Dr. James Collins, Dr. Teresa Mock and Dr. Donna Norman. The Respondent appeared and was represented by Michael Sellers, a West Des Moines Attorney. The State was represented by Pamela Griebel and Heather L. Adams, Assistant Attorneys General. The hearing was closed to the public, at the written request of the Respondent. The hearing was recorded by a certified court reporter. I. John Rossi,

Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided and instructed to prepare the panel's proposed decision, in accordance with its deliberations.

THE RECORD

The record includes the Complaint and Statement of Charges, Respondent's document that denies the charges and request for hearing, motions by the Respondent for Summary Judgment, to exclude evidence and cease and desist (orders issued denied these motions), review by the Panel of the order to deny dismissal and the Panel affirming the order, the testimony of witnesses called by the State and the following exhibits:

State's Exhibits

- A. Medical Records of Patient T.D., which include the 12/10 and 12/11, 1992 hospital records.
- B. Curriculum Vitae, Dr.Kishiu.
- C. Kishiu's notes.
- D. Peer Review Committee Report 5/15/95.

Respondent's Exhibits (considered)

9. Obstetrics and Gynecology, Lippincott, 5th Edition, pages 764 to 765.
10. Williams Obstetrics, 19th Edition, page 619.
11. High Risk Pregnancy, Saunders, pages 1167, 1168, 1183 and 1184.

Witnesses and exhibits presented by the Respondent out of order were not considered in the deliberations at the end of the State's case.

FINDINGS OF FACT

1. The Respondent is a licensed physician pursuant to Chapter 147, Code of Iowa. He was issued license number 01760 to practice osteopathic medicine and surgery on July 13, 1978.
2. The Respondent was called by the State as a witness. His testimony of the procedures he followed on December 10 and 11, 1992, indicate he made the correct decisions as to the care of the patient involved. The medical records are now complete and include the prenatal documentation.

REASONING AND CONCLUSIONS OF LAW

1. Upon consideration of all the evidence presented by the State, the undersigned Panel determines there was insufficient evidence presented to support any of the charges. The case, therefore, should be dismissed.

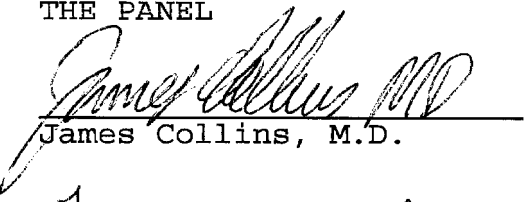
DECISION AND ORDER

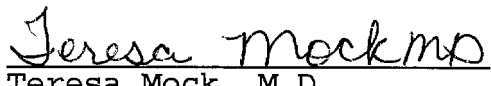
IT IS THEREFORE ORDERED, that this case be dismissed.

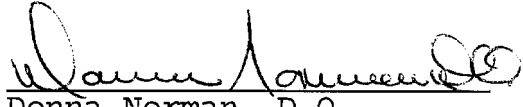
In accordance with 653 IAC 12.50(29), a proposed decision becomes a final decision unless appealed to the Board by a party adversely affected by serving a notice of appeal on the Executive Director within thirty (30) days after service of this proposed decision. The Board may also review a proposed decision on its own motion.

DATED this ^{30TH}~~12th~~ day of March 1996.

THE PANEL


James Collins, M.D.


Teresa Mock, M.D.


Donna Norman, D.O.

cc:

Michael M. Sellers, Attorney
One Corporate Place
1501 42nd Street
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Pamela Griebel and Heather L. Adams
Assistant Attorneys General
Department of Justice
Hoover Building
LOCAL 50319

Iowa Board of Medical Examiners
Executive Hills West
LOCAL 50319

STATE OF IOWA
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF
THE COMPLAINT AND STATEMENT
OF CHARGES AGAINST

HERBERT I. REMER, D.O.

DIA NO. 95DPHMB-21
No. 03-92-390

Respondent

RULING ON MOTION FOR
SUMMARY JUDGMENT FILED
BY THE RESPONDENT

TO: HERBERT I. REMER, D.O.

On January 22, 1996, the Respondent filed a motion for summary judgment in his favor in this matter. There are several claims advanced for this motion. The State of Iowa filed a resistance to the motion. On February 19, 1996, the parties presented oral arguments to augment filed material. Appearing for the Respondent was Michael M. Sellers. The State was represented by Pamela D. Griebel and Heather L. Adams.

1. Is a Motion for Summary Judgment appropriate in this matter? There is some question whether this type of motion is available under 17A, Code of Iowa, proceedings. This administrative law judge believe that Iowa Rule of Civil Procedure 237 is available and that in an appropriate case, a Motion for Summary Judgment would be a proper method of disposing of an issue or a case.

2. Are there issues of Material Facts in this case? For a Motion for Summary Judgment to be granted on the merits requires that there be no genuine issue of material facts. Further, the Respondent has the burden of establishing that there are no genuine issues of material facts. There clearly are disputed facts that can only be resolved in the hearing process. Summary Judgement is therefore not appropriate on this issue. In this case, the Board has filed charges and there is information looked at in the light most favorable to support those charges. That information is disputed by the Respondent.

3. Does the Board lack jurisdiction to pursue these charges for the following reasons:

(a) Because the initial information which triggered the investigation was not received by the Board in a written verified complaint? There is no basis to grant a Summary Judgment on this claim. The Board may commence an investigation on its own, pursuant to Iowa Code Section 148.7(1) and

272C.3(1) "c". Why, how and when information was obtained, collected and used are matters that may affect the quality of evidence presented at a hearing. A Summary Judgment is not appropriate for the allegation made by the Respondent. It does not affect jurisdiction.

(b) Because there was no Respondent participation in a peer review process? There appears to be a dispute over what the Respondent did or did not request under 653 IAC 12.50(5). This matter can best be addressed at a hearing on the merits.

(c) Because of alleged secret investigation(s). The parties through discovery are entitled to full and complete answers to questions and full and complete production of materials requested. In the event, there is non disclosure after such a request is made, either party can at the hearing make an appropriate motion to strike such non disclosed material.

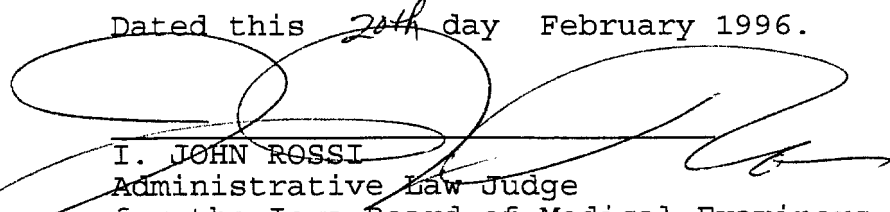
(d) The Respondent appears to also ask that the Board issue some type of ruling ordering its staff and other agents to comply with the requirements of Iowa Code Section 272C.6(4). There is even an allegation of "bad faith" made. There is no need to issue such an order or address the allegation. The code section speaks for itself and the terms and conditions therein are to be complied with by affected parties. This proceeding covers alleged charges that should be addressed at a hearing. Any alleged violation of law or regulations that may have adversely affected the Respondent's rights can be addressed at the hearing.

4. Should this case be dismissed on basis of alleged bias or prejudice? The Respondent files an affidavit wherein he alleges an atmosphere of bias or prejudice on the part of Board employee(s) or their agents and a former attorney representing the State. These matters can be addressed at the hearing. A motion for Summary Judgment is not proper.

This case deals with charges of professional incompetency. The Board will address those charges at a fair and impartial hearing scheduled for February 29, 1996.

WHEREFORE, THE MOTION FOR SUMMARY JUDGMENT is DENIED.

Dated this 24th day February 1996.


I. JOHN ROSSI
Administrative Law Judge
for the Iowa Board of Medical Examiners
(515)224-4490

95DPHMB-21

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Michael M. Sellers
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and by FAX (281-4209)

Dennis Carr
Iowa Board of Medical Examiners
Executive Hills West
LOCAL 50319

STATE OF IOWA
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF
THE COMPLAINT AND STATEMENT
OF CHARGES AGAINST

HERBERT I. REMER, D.O.

Respondent

DIA NO. 95DPHMB-21
No. 03-92-390

RULING ON MOTION FOR
ORDER TO CEASE AND
DESIST FILED BY THE
RESPONDENT

TO: HERBERT I. REMER, D.O.

On January 22, 1996, the Respondent filed a motion for order to cease and desist, alleging that the Iowa Board of Medical Examiners is on a "fishing expedition." On February 19, 1996, the parties presented oral arguments. Appearing were Michael M. Sellers for the Respondent and Pamela D. Griebel and Heather L. Adams for the State.

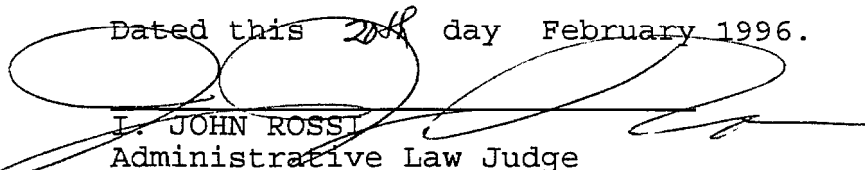
A cease and desist order in this matter is not needed because of the short time before hearing. The Respondent states that he is ready for hearing. A cease and desist order outside the scope of this hearing is beyond this Administrative Law Judge's authority.

This contested case is scheduled for hearing on February 29, 1996, before the Iowa Board of Medical Examiners. Discovery by the parties should have addressed what information will be available for the hearing. Objections, if any, to certain material(s) obtained with no authority, or not provided to a proper discovery inquiry, must be addressed on an individual basis.

The motion of the Respondent can best be addressed when specific evidence is presented at the hearing. In the event there is testimony or exhibits to which the Respondent has objections, those objections will be addressed at that time.

WHEREFORE, THE MOTION FOR CEASE AND DESIST ORDER is DENIED.

Dated this 20th day February 1996.


I. JOHN ROSSI
Administrative Law Judge
for the Iowa Board of Medical Examiners
(515)224-4490

95DPHMB-21

Page 2

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STATE OF IOWA
BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF
THE COMPLAINT AND STATEMENT
OF CHARGES AGAINST

HERBERT I. REMER, D.O.

Respondent

DIA NO. 95DPHMB-21
No. 03-92-390

RULING ON MOTION FOR
ORDER TO EXCLUDE
EVIDENCE FILED BY THE
RESPONDENT

TO: HERBERT I. REMER, D.O.


On January 17, 1996, the Respondent filed a motion for order to exclude evidence, alleging that the Iowa Board of Medical Examiners conducted separate independent investigation(s) and was on a "fishing expedition." On February 19, 1996, the parties presented oral arguments. Appearing were Michael M. Sellers for the Respondent and Pamela D. Griebel and Heather L. Adams for the State.

This contested case is scheduled for hearing on February 29, 1996, before the Iowa Board of Medical Examiners. Discovery by the parties should have addressed what information will be available for the hearing. Objections, if any, to certain material(s) obtained with no authority, or not provided to a proper discovery inquiry, must be addressed on an individual basis. There appears to be no prejudice established at this time.

The motion of the Respondent can best be addressed when specific evidence is presented at the hearing. In the event there is testimony or exhibits to which the Respondent has objections, those objections will be addressed at that time.

WHEREFORE, THE MOTION TO EXCLUDE EVIDENCE is DENIED.

Dated this *20th* day of February 1996.


I. JOHN ROSSI
Administrative Law Judge
for the Iowa Board of Medical Examiners
(515) 224-4490

95DPHMB-21

Page 2

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Dennis Carr
Iowa Board of Medical Examiners
Executive Hills West
LOCAL 50319

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF	)	DIA NO: 95DPHMB-21
THE COMPLAINT AND STATEMENT	)	CASE NO: 03-92-390
OF CHARGES AGAINST)	
	)	RULING ON MOTIONS FOR
HERBERT I. REMER, D.O.	)	EXTENSION OF TIME FOR
	)	DISCOVERY AND MOTION FOR
Respondent	)	CONTINUANCE

On January 10, 1996 the Respondent filed a Motion For Extension of Time For Discovery and Motion For Continuance. Also on January 10, 1996, the state of Iowa filed a Motion to Extend Discovery Deadline and a Response to the Respondent's Motion.

The state's limited motion to extend the discovery deadline to January 17, 1996 is GRANTED.

The Respondent's Motion for Continuance is DENIED. The Respondent has not yet filed a Motion for Summary Judgement.

Dated this 13th day of January, 1996.



Margaret LaMarche
Administrative Law Judge
for the Iowa Board of Medical Examiners

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Dennis Carr
Iowa Board of Medical Examiners
Executive Hills West
(LOCAL)


BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF	)	DIA NO: 95DPHMB-21
THE COMPLAINT AND STATEMENT	)	CASE NO: 03-92-390
OF CHARGES AGAINST)	
	)	ORDER TO COMPEL
HERBERT I. REMER, D.O.)	
)	
Respondent)	

On January 5, 1996 the state of Iowa filed a Motion for Order to Compel Discovery in the above-captioned case. The state of Iowa served the Respondent with a request for production of documents and interrogatories on October 5, 1995. As of January 5, 1996 the Respondent had not provided discovery responses. The state of Iowa requested responses in correspondence dated December 11, 1995 and December 20, 1995. Pursuant to Board order, discovery closes on January 12, 1996.

The Motion to Compel is GRANTED. The Respondent shall serve his discovery responses no later than Tuesday, January 16, 1996 at 9:00 a.m. or sanctions may be imposed.

Dated this 9th day of January, 1996.



Margaret LaMarche
Administrative Law Judge
for the Iowa Board of Medical Examiners

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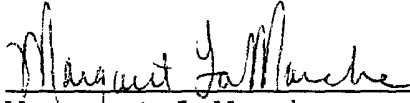
Dennis Carr
Iowa Board of Medical Examiners
Executive Hills West
(LOCAL)

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF	)	DIA NO: 95DPHMB-21
THE COMPLAINT AND STATEMENT	)	CASE NO: 03-92-390
OF CHARGES AGAINST)	
)	
HERBERT I. REMER	)	ORDER FOR PREHEARING
	)	CONFERENCE
Respondent)	

A prehearing conference will be held by telephone conference call in the above-captioned case on Friday, October 27, 1995 at 9:00 a.m. The administrative law judge will place the conference call. The attorneys shall call in their phone numbers to 281-6350.

Dated this ²⁷ day of October, 1995.



Margaret LaMarche
Administrative Law Judge

cc: Theresa O'Connell Weeg
Assistant Attorney General
Hoover Building
(LOCAL)

Scott T. Hunter
One Corporate Place, Suite 320
1501 - 42nd Street
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Iowa Board of Medical Examiners
(LOCAL)

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE COMPLAINT AND STATEMENT OF CHARGES AGAINST

HERBERT I. REMER, DO, RESPONDENT

No. 03-92-390

COMPLAINT AND STATEMENT OF CHARGES

COMES NOW Ann M. Martino, PhD, Executive Director of the Iowa Board of Medical Examiners (the Board), on August 10, 1995 and at the direction of the Board, files this Complaint and Statement of Charges against Herbert I. Remer, DO (the Respondent), a physician licensed pursuant to Chapter 147 of the Code of Iowa and alleges:

1. That James D. Collins, Jr., MD, Chairperson; Laura J. Stensrud, Vice Chairperson; Edra E. Broich, Secretary; James M. Caterine, MD; Eddie D. DeHaan, MD; Mary C. Hodges; Dale R. Holdiman, MD; Teresa A. Mock, MD; Donna M. Norman, DO; and Roger F. Senty, DO, are the duly appointed, qualified and acting members of the Board.

2. That the Respondent was issued license number 01760 to practice osteopathic medicine and surgery in Iowa on July 13, 1978.

3. That the Respondent's license is valid and will next expire on December 1, 1995.

4. That in December 1992, significant parts of the obstetrical care the Respondent provided to Patient #1 as outlined in subparagraphs A through M below, were substandard and grossly negligent.

A) At approximately 8:30 a.m., December 10, 1992, Patient #1, an obstetrical patient of the Respondent was admitted to a hospital.

B) With the Respondent in attendance, Patient #1 delivered at approximately 3:21 p.m., on December 11, 1992.

C) The Respondent noted that the placenta was bilobed and the Respondent's delivery note reflected uterine atony. Within an hour following delivery Patient #1 was given Pitocin, Methergine and Hemabate. At

COMPLAINT AND STATEMENT OF CHARGES

Herbert I. Remer, DO

No. 03-92-390

approximately 7:20 p.m., December 11, 1992, Patient #1 was noted to have increased bleeding. The Respondent was paged and responded within a reasonable time.

D) The Respondent ordered that Patient #1 be given additional Pitocin IV and that additional Methergine be given both PO and IM. The Respondent ordered a STAT CBC and that another CBC be done the morning of December 12, 1992. The Respondent ordered that he be called with the results of the CBCs if the Hb was less than 9.

E) At approximately 10:06 p.m., the Respondent was paged and responded by phone quickly. The Respondent was told by a nurse that Patient #1 was experiencing increased bleeding. The Respondent was asked by the nurse to come to the hospital to evaluate Patient #1 was the patient's condition was worsening. The Respondent ordered a STAT CBC with the results to be called to him. The Respondent also ordered that the IV Pitocin be increased and that pulse oximetry be started on Patient #1 and that the patient be typed and crossmatched for 4 units of packed cells.

F) At approximately 10:30 p.m., December 11, 1992, the Respondent was again paged and responded by phone quickly. The Respondent was told that Patient #1 was non-responsive to stimulus. The Respondent ordered that 2 units of red blood cells be given to Patient #1. The Respondent also ordered the placement of a foley catheter and that a second IV be started.

G) At approximately 11:10 p.m., December 11, 1992, the Respondent was again paged. The Respondent did not respond to the page.

H) At approximately 11:40 p.m., December 11, 1992, the Respondent was contacted at his home. The Respondent came to the hospital arriving at approximately 12:05 a.m., December 12, 1992. At the time of the Respondent's arrival at the hospital, one unit of packed red blood cells (PRBC) had been given and a second unit was being administered.

I) At approximately 12:35 a.m., December 12, 1992, Patient #1 went into respiratory arrest and a "Code" was called.

J) At approximately 12:38 a.m., December 12, 1992, Patient #1 began to breathe without assistance. At approximately 12:40 a.m., the same day, Patient #1 responded to physical and verbal stimuli.

K) Patient #1 was taken to OR shortly thereafter. The Respondent performed a curettage on the patient and retained placental fragments were found.

L) Patient #1 was given 2 additional units of PRBC and recovered with no apparent further complications.

M) The hemoglobin level for Patient #1 was down from 13.1 at the time of the patient's hospital admission to 9.9 after the patient had received 4 units of PRBC.

COMPLAINT AND STATEMENT OF CHARGES

Herbert I. Remer, DO

No. 03-92-390

5. The Respondent's care for Patient #1 was substandard and grossly negligent due to his failure to:

- 1) personally evaluate and treat the patient for over two hours when the patient was obviously unstable;
- 2) maintain documentation of the patient's RPR, HBsAG or Glucose screen in the patient's prenatal record;
- 3) record the times of his written orders and progress notes concerning the patient; and,
- 4) mention the patient's postpartum hemorrhage after the delivery note.

6. The Board is authorized to impose discipline against the Respondent pursuant to provisions of Iowa Code sections 147.55, 147.55(2), 148.6(1), 148.6(2), and 148.6(2)g and 653 IAC 12.4, 12.4(2), 12.4(2)c, 12.4(13), 12.4(25), and 12.4(28) which state in whole or in part:

147.55 - Grounds. A license to practice a profession shall be revoked or suspended when the licensee is guilty of any of the following acts or offenses:

147.55(2) - Professional incompetency.

148.6(1) - The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection.

148.6(2) - Pursuant to this section, the Board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

148.6(2)g - ... [T]he failure to conform to, the minimal standard of acceptable and prevailing practice of ... osteopathic medicine and surgery ...

653-12.4 - Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2, including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

653-12.4(2) - Professional incompetency. Professional incompetency includes but is not limited to:

653-12.4(2)c - A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

COMPLAINT AND STATEMENT OF CHARGES

Herbert I. Remer, DO

No. 03-92-390

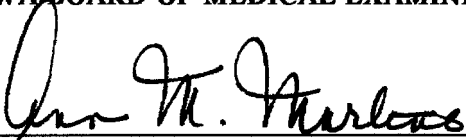
653-12.4(13) - ... [T]he failure to conform to, the minimal standard of acceptable and prevailing practice of ... osteopathic medicine and surgery ...

653-12.4(25) - ... [G]ross negligence.

653-12.4(28) - Violating any of the grounds for revocation or suspension of a license listed in the Iowa Code sections ... 148.6.

WHEREFORE the undersigned charges that pursuant to the provisions of the Iowa Code sections and Iowa Administrative Code rules outlined herein, the Respondent is subject to disciplinary action by the Board. The undersigned prays that the Board enter an order fixing a time and place for hearing the Complaint and Statement of Charges. The undersigned further prays that the Board, upon final hearing, enter its findings of fact and decision to revoke, suspend or otherwise discipline the license to practice osteopathic medicine and surgery issued to the Respondent on July 13, 1978, and for such other relief as the Board deems just in the premises.

IOWA BOARD OF MEDICAL EXAMINERS



ANN M. MARTINO, PhD
Executive Director
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Des Moines, IA 50319-0180
Telephone: (515) 281-5171

DMC/* 08-09-95

a7/Remer.CS