

BEFORE THE IOWA BOARD OF BEHAVIORAL HEALTH PROFESSIONALS

<p>IN THE MATTER OF</p> <p>JAMES WAGNER 402 W. 19th Street South Sioux City, NE 68776</p> <p>RESPONDENT</p>	<p>CASE NO.: 23-0239</p> <p>NOTICE OF HEARING, STATEMENT OF CHARGES, AND EMERGENCY ADJUDICATIVE ORDER</p>
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COMES NOW the Iowa Behavioral Health Professionals (“Board”) and files this Notice of Hearing, Statement of Charges, and Emergency Adjudicative Order against James Wagner (“Respondent”), pursuant to Iowa Code § 17A.12(2), 17A.18(3), 17A.18A, 272C.3(1)(e), and 645 Iowa Administrative Code (“IAC”) 11.28.¹

A. TIME, PLACE AND NATURE OF HEARING

1. **Hearing.** A contested case hearing shall be held on September 20, 2024, before the Board. The hearing shall begin at 9:00 a.m. and shall be located in the conference room at the office of the Iowa Administrative Hearings Division, Wallace Building, 502 East 9th Street, Des Moines, Iowa 50321.
2. **Scheduling Conference.** The parties may request a scheduling conference. Board rules on prehearing conferences may be found at 645 Iowa Administrative Code (“IAC”) 11.17.
3. **Answer.** Within twenty (20) days of the date you are served this Notice of Hearing and Statement of Charges you are permitted by 645 IAC 11.12 to file an Answer. Should you file an Answer, please note whether you will request a continuance of the date and time of the hearing.
4. **Filing of Pleadings.** Pleadings shall be filed with the Board at the following address:
Iowa Board of Behavioral Health Professionals, 6200 Park Avenue, Ste. 100, Des Moines, Iowa

¹ Effective July 1, 2024, Iowa Code § 513(1)(a) provides the rules of the former Iowa Board of Behavioral Science are in full force and effect pending the creation of new rules for the legacy Iowa Board of Behavioral Health Professionals.

50321, by email to tony.alden@dia.iowa.gov, or electronically using the Administrative Electronic Document Management System (adminhearings.iowa.gov/efile/).

5. **Presiding Officer.** The Board shall serve as presiding officer at the contested case hearing, but the Board hereby delegates to an Administrative Law Judge from the Department of Inspections, Appeals and Licensing, the authority to make initial rulings on prehearing matters, and requests the Administrative Law Judge be present to assist and advise the Board at hearing.

6. **Prehearing Conference.** Any party may request a prehearing conference to discuss evidentiary issues related to the hearing in accordance with 645 IAC 11.17.

7. **Hearing Procedures.** The procedural rules governing the conduct of the hearing are found at 645 IAC 11.19. At the 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 the discretion of the Respondent.

8. **Prosecution.** The Office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Lindsey L. Browning, Assistant Attorney General, Office of the Iowa Attorney General 1305 E. Walnut Street, 2nd Floor, Des Moines, Iowa 50319.

9. **Communications.** You may not contact Board members in any manner, including by phone, letter, facsimile, in person 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 and serve upon all parties in the case. You may contact Tony Alden, Executive Officer, Iowa Board of Behavioral Health Professionals, at 515-281-4401 or tony.alden@dia.iowa.gov, or Assistant Attorney General Lindsey L. Browning at 515-281-3441 or lindsey.browning@ag.iowa.gov.

B. LEGAL AUTHORITY AND JURISDICTION

10. **Iowa License.** Respondent was issued Iowa mental health counselor license no. 00771 on December 11, 2001. Respondent's Iowa mental health counselor license will next expire on September 30, 2024.

11. **Jurisdiction.** The Board has jurisdiction in this matter pursuant to Iowa Code § 154D.

12. **Legal Authority.** If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code § 154D and 645 IAC 33.1.

13. **Default.** The Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code § 17A.12(3) and 645 IAC 11.21.

C. STATEMENT OF CHARGES

COUNT I

14. Respondent is charged under 645 IAC 33.1(1) with failure to comply with the American Counseling Association Code of Ethics.

COUNT II

15. Respondent is charged under 645 IAC 33.2(29)(2) with unethical conduct, specifically with making suggestive, lewd, lascivious, or improper remarks or advances to a client.

D. FINDINGS OF FACT

16. **Practice Setting.** Respondent is an Iowa licensed mental health counselor who practiced in Spencer, Iowa, at all times relevant to this complaint.

17. **Factual Background.** On or about the date of May 15, 2023, a patient (“Patient”) of the Respondent’s contacted Seasons Behavioral Health Center (“Seasons”) in Spencer, Iowa. Patient related to staff at Seasons that she had been contacted by Respondent on multiple occasions via text message communication. Patient provided the text message communications to Seasons. Subsequent investigation revealed that the content of these communications was romantic or sexual in nature.

E. SETTLEMENT

18. This matter may be resolved by settlement agreement. The procedural rules governing the Board’s settlement process are found at 645 IAC 12.1. If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified above.

F. PROBABLE CAUSE FINDING

19. On July 30, 2024, the Iowa Board of Behavioral Health Professionals found probable cause to file this Notice of Hearing and Statement of Charges.

G. CONCLUSIONS OF LAW

20. Iowa Code § 272C.3 states in pertinent part, “(n)otwithstanding any other provision of this chapter, each licensing board shall have the powers to: initiate and prosecute disciplinary proceedings [and] impose licensee discipline.” Iowa Code §§ 272C.3(1)(e) and (f).

21. Additionally, the Board may take emergency action “as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare...”. Iowa Code § 17A.18A(2); *see also*, 645 IAC 11.28.

H. ORDER

IT IS THEREFORE ORDERED:

A. The Board finds the Respondent’s continued practices poses an immediate danger to the

public health, safety, or welfare of Iowa patients;

B. Respondent's Iowa mental health counselor license is hereby suspended effective August 21, 2024; and

C. Hearing shall commence on September 20, 2024 to address these allegations.

/s/Aaron Culley

Aaron Culley, LISW
Chairperson
Iowa Board of Behavioral Health Professionals

Copy to:
Lindsey L. Browning
Assistant Attorney General
Office of the Iowa Attorney General
1305 E. Walnut Street
Des Moines, Iowa 50319
Lindsey.Browning@ag.iowa.gov

PLEASE NOTE: If you require the assistance of auxiliary aids or services to participate in this matter because of a disability, immediately call 515-281-0233. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).