

**AIDING AND ABETTING THE UNLICENSED
PRACTICE OF MEDICINE**

PA STUDENT PHIL BURKE

5. Beginning August 2, 2010 and continuing through August 13, 2010, Physician Assistant student Phil Burke completed a rotation at Defendant's offices.

6. Immediately upon beginning his rotation at Defendant's clinics, Defendant supplied PA Student Burke with numerous pre-signed prescriptions for his use at Defendant's clinics and at the hospital. Defendant told PA Student Burke to make sure he had plenty of pre-signed prescriptions with him at the beginning of each day so that they were always available for PA Student Burke's use.

7. According to PA Student Burke, the pre-signed prescriptions were available not only for the use by the Physician Assistant students, but also for all staff and the nurses at each of Defendant's clinics.

8. PA Student Burke admitted to Board investigators that although he began working for Defendant at 9:00 a.m. each day, Defendant rarely came to work until at least 11:00, leaving him (a PA student) to see and treat patients **by himself** and unsupervised until Defendant arrived at the clinic. During this time each day before Defendant arrived at the clinic, PA Student Burke also issued prescriptions to patients utilizing the pre-signed prescriptions left by Defendant for his use.

9. On or about August 6, 2010, PA Student Burke began working at approximately 9:00 a.m. At some point that morning, he heard clinic staff discussing the fact that someone was not coming in because their car broke down at the casino. Minutes later, Defendant called PA Student Burke and told him that he would not be coming in that day because he was having car problems. Defendant told PA Student Burke to see as many patients as he could and to call if he needed anything. PA Student Burke was not given the opportunity to leave.

10. On August 6, 2010, PA Student Burke treated every patient that came to the clinic that day and issued numerous prescriptions to them as instructed by Defendant on the pre-signed prescription pad left by Defendant for his use. PA Student Burke admitted that on that date, he wrote a prescription for any and all medications that had been written to the patients previously as noted in the patient charts. These prescriptions included a prescription for Dexedrine, a Schedule II controlled dangerous substance.

11. During this second week of rotation at Defendant's clinics, PA Student Burke reported to the Physician Assistant Program that he was being asked to issue prescriptions to patients in Defendant's absence and without his supervision. At that time, PA Student Burke showed the staff at the PA School some of Defendant's pre-signed prescriptions, which he still had in his pocket. PA School staff advised him to immediately return all pre-signed prescriptions to Defendant's office. PA Student Burke was subsequently notified by the PA School staff that

he would no longer be required to complete his rotation at Defendant's office and would be assigned elsewhere.

PA STUDENT LACI DUGUAY

12. Beginning February 1, 2010 and continuing through February 25, 2010, Physician Assistant student Laci Duguay completed a rotation at Defendant's offices.

13. Immediately upon beginning her rotation at Defendant's clinics, Defendant supplied PA Student Duguay with numerous pre-signed prescriptions for her use at Defendant's clinics. Defendant told PA Student Duguay that she was expected to write prescriptions for all medications needed by patients seen by her unsupervised at his clinics. PA Student Duguay admitted that she wrote only those prescriptions that had previously been prescribed by Defendant. Prescriptions written by PA Student Duguay included anti-psychotics, anti-depressants, Xanax and Adderall.

14. PA Student Duguay admitted to Board investigators that although she began working for Defendant at 9:00 a.m. each day, Defendant rarely came to work until at least 11:00, leaving her (a PA student) to see and treat patients **by herself** until Defendant arrived at the clinic. During this time each day before Defendant arrived at the clinic, PA Student Duguay also issued prescriptions to patients utilizing the pre-signed prescriptions left by Defendant for her use.

PA STUDENT ANDREA WRAY

15. Beginning June 1, 2010 and continuing through July 1, 2010, Physician Assistant student Andrea Wray completed a rotation at Defendant's offices.

16. Immediately upon beginning her rotation at Defendant's clinics, Defendant supplied PA Student Wray with numerous pre-signed prescriptions for her use at Defendant's clinics. Defendant told PA Student Wray that she was expected to write prescriptions for all medications needed by patients seen by her unsupervised at his clinics. PA Student Wray admitted that she wrote only those prescriptions that had previously been prescribed by Defendant.

17. PA Student Wray admitted to Board investigators that although she began working for Defendant at 9:00 a.m. each day, Defendant rarely came to work until at least 11:00, leaving her (a PA student) to see and treat patients **by herself** until Defendant arrived at the clinic. During this time each day before Defendant arrived at the clinic, PA Student Wray also issued prescriptions to patients utilizing the pre-signed prescriptions left by Defendant for her use.

PA STUDENT AMBER HAYNES

18. Beginning March 1, 2010 and continuing through April 1, 2010, Physician Assistant student Amber Haynes completed a rotation at Defendant's offices.

19. Immediately upon beginning her rotation at Defendant's clinics, Defendant supplied PA Student Haynes with numerous pre-signed prescriptions for her use at Defendant's clinics. Defendant told PA Student Haynes that she was expected to write prescriptions for all medications needed by patients seen by her unsupervised at his clinics. PA Student Haynes admitted that she wrote only those prescriptions that had previously been prescribed by Defendant.

20. At some point after being asked to prescribe to patients using the pre-signed prescriptions and without any supervision, PA Student Haynes became uncomfortable with what she was being asked to do. With respect to prescriptions for Xanax, she began to withhold these prescriptions until she got Defendant's final approval to issue them. At that point, Defendant told her that this practice (of requiring him to approve prescriptions for controlled dangerous drugs) "would affect her grade", so she did as he instructed and issued the pre-signed prescriptions even though she was just a PA Student and not licensed.

PRESCRIBING VIOLATIONS

21. In September 2010, Board Investigators received information that Defendant was leaving blank pre-signed prescriptions for use by his unlicensed staff, his nurses, as well as by the PA Students in his absence. When questioned by Board Investigators, Defendant admitted that he does leave pre-signed prescriptions in his office for the use of his staff, his nurses, as well as to be used by the PA Students. He admitted that he allowed them for medications that had previously been prescribed to the patient and not for any "new" prescriptions that had never been prescribed to the patient.

22. Defendant admitted that it was not his practice to check to see what the PA Student had prescribed to the patients seen in his absence and without his supervision since the PA Student was merely prescribing the same medication that had previously been prescribed to the patients.

23. Defendant additionally claimed that his supervision of the PA Students where he allowed them to treat patients and prescribe medications was sufficient because his office staff and nursing staff were often present with the students when he was not there.

24. Defendant also admitted that he had on occasion left pre-signed prescriptions at the Hope Community Center in southeast Oklahoma City for his nurse to fill out if he wasn't there.

25. Under the Oklahoma Nursing Practice Act, nurses are not allowed to issue prescriptions.

26. Title 21 CFR §1306.05 provides as follows:

Manner of issuance of prescriptions.

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.

27. On or about August 18, 2011, Board investigators subpoenaed the scheduling/appointment log and sign in sheet for 2010 for Defendant's clinics. Defendant refused to comply. The subpoena was then served on Defendant's attorney, per his request. As of this date, Defendant has still refused to comply with the Board's subpoena for his records.

28. Defendant is guilty of unprofessional conduct in that he:

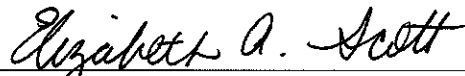
- A. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public in violation of 59 O.S. §509(8) and OAC 435:10-7-4(11).
- B. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).
- C. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government or the laws of this state in violation of 59 O.S. §509(7).
- D. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509 (12).
- E. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
- F. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).
- G. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

- H. Aided or abetted, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of 59 O.S. §509(14) and OAC 435:10-7-4(21).
- I. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).
- J. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).
- K. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

Conclusion

WHEREFORE, the Plaintiff respectfully requests that the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to Defendant's medical license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



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