

IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA

FILED

SEP 28 2007

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)

Plaintiff,)

v.)

PAUL POWEN CHENG, M.D.,)
LICENSE NO. 18914)

Defendant.)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 06-07-3132

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on September 20, 2007, at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Elizabeth A. Scott, Assistant Attorney General, appeared for the plaintiff and defendant appeared in person and through counsel, Linda Scoggins.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, and being fully advised in the premises, found that there is clear and convincing evidence to support the following Findings of Fact, Conclusions of Law and Orders:

Findings of Fact

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.*

2. The Board has jurisdiction over this matter, and notice has been given in all respects in accordance with law and the rules of the Board.

3. Defendant, Paul Powen Cheng, M.D., holds Oklahoma license no. 18914 and practiced as an anesthesiologist in Enid, Oklahoma.

4. Beginning in or around 2001 and continuing through mid-2006, Defendant engaged in sexual intercourse with Patient AAW. Defendant engaged in these sexual acts at the same time he was maintaining a doctor-patient relationship and prescribing and dispensing controlled dangerous substances to this patient.

4. Beginning in 2004 and continuing through May 30, 2006, Defendant stole Fentanyl and some Versed from Bass Integris Hospital in Enid, Oklahoma. Defendant accomplished this by switching syringes of Fentanyl and Versed that was to be wasted with syringes filled with saline. He also stole Fentanyl from vials by puncturing the vials, pulling out the Fentanyl in a syringe, then replacing the Fentanyl with saline from a syringe to make it appear that the vials still contained Fentanyl. Some of these vials were ultimately returned to the hospital pharmacy since they initially appeared to have not been used. Defendant claims that none of the vials were returned by him to the hospital pharmacy to be used by other physicians.

5. Defendant took the syringes of stolen Fentanyl and Versed out of Bass Integris Hospital in his pocket and delivered them to Patient AAW, the person with whom he was involved in a sexual relationship, for her personal use.

6. Defendant admits that in 2004, he stole approximately 2 to 10 cc. per day, in 2005 he stole approximately 10-15 cc. per day, and in 2006, he stole approximately 25 cc. per day of Fentanyl. Defendant admits that he stole the medication several days each week.

7. Defendant admits that at the time he supplied the Fentanyl and Versed to Patient AAW in or around 2004, he knew she had a drug addiction problem. Defendant admits that he paid for her to attend substance abuse treatment on more than one occasion, that he knew that she left without completing treatment, and that after this time, in approximately 2004, knowing that she was still addicted, he began supplying her with Fentanyl and Versed, which continued through May 30, 2006.

8. When later questioned by Board investigator Steve Washbourne, Defendant admitted that he knew it was unlawful for him to give Fentanyl to Patient AAW.

9. Beginning on or around February 17, 2002 and continuing until at least June 11, 2006, Defendant gave Patient AAW prescriptions for controlled dangerous drugs. Medications prescribed include two (2) prescriptions for Duragesic Patch, a Schedule II controlled dangerous drug, seven (7) prescriptions for Tussionex Susp., Vicoprofen and Hydrocodone, Schedule III controlled dangerous drugs, and four (4) prescriptions for Ambien, Alprazolam and Lunesta, Schedule IV controlled dangerous drugs. A review of Defendant's records reveals that he kept no record of this treatment of Patient AAW, that he did not establish a legitimate medical need for the medical treatment, that he did not perform a sufficient examination prior to prescribing medications, and that he failed to maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient. Defendant claims that the prescriptions he wrote to Patient AAW were medically necessary. Defendant admits he kept no medical chart on Patient AAW.

10. In or around September 2005, Board investigators Mike Kiser and Gary Ricks interviewed Defendant based upon a complaint received by the Board involving some of these incidents. When questioned about Patient AAW, Defendant denied giving any Fentanyl to her. When questioned about whether or not he had ever taken Fentanyl from Bass Integris Hospital, Defendant denied it. After the present Complaint was filed against Defendant, he claimed that he did not remember the specific questions asked and answers given to the Board investigators. He also claimed that he thought the investigators were questioning him about theft of controlled dangerous substances at St. Mary Hospital.

11. On August 10, 2006, Board investigator Steve Washbourne interviewed Defendant based upon new complaints received by the Board regarding these incidents. During this interview, Defendant admitted that he had previously lied to investigators Kiser and Ricks in 2005 when he denied stealing Fentanyl and denied supplying it to Patient AAW. After the present Complaint was filed against Defendant, he claimed that he did not lie to Board investigators.

12. During his August 10, 2006 meeting with investigator Washbourne, Defendant stated that he did not give Patient AAW any controlled dangerous drugs during the first three (3) years (2001-2003) of their relationship. However, a review of pharmacy records in Enid, Oklahoma reveals that Defendant prescribed controlled dangerous substances to Patient AAW beginning in February 2002 and continuing through June 2006.

13. During the time Defendant was involved in the sexual relationship with Patient AAW, he paid for a portion of her housing, her telephone, car, credit card and utility payments. Defendant additionally provided Patient AAW with money during their relationship, including a \$20,000.00 cash payment.

14. In or around May 2006, Bass Integris Hospital became suspicious of Defendant's use of Fentanyl and Versed due to discrepancies in Defendant's record keeping. The hospital pharmacist took syringes left by Defendant in his anesthesia box, which were labeled "Fentanyl" and "Versed". The syringes were submitted for qualitative and quantitative analysis. Assay results showed that neither syringe contained Fentanyl or Versed.

15. On or about October 17, 2006, Defendant was indicted in the United States District Court for the Western District of Oklahoma in the case styled, **United States of America v. Paul P. Cheng, M.D.**, Case No. CR-06-256, wherein Defendant was charged with illegal distribution of controlled dangerous substances, specifically, Fentanyl, Hydrocodone and Alprazolam. On or about March 12, 2007, Defendant entered into a plea agreement wherein he pled guilty to illegal distribution of Alprazolam, a felony. As part of his plea agreement, and in exchange for the concessions of the United States, Defendant agreed to voluntarily waive his right to appeal or collaterally challenge his guilty plea, sentence and restitution imposed, and any other aspect of his felony conviction.

16. On or about August 1, 2007, Tim Leonard, United States District Judge for the United States District Court for the Western District of Oklahoma, accepted Defendant's guilty plea of Knowingly and Intentionally Distributing a Schedule IV Controlled Substance, a Felony. Judge Leonard sentenced Defendant to two (2) years probation, 104 hours of community service, and fines and assessments of \$17,600.00.

17. Title 59 O.S. §513(A)(3) provides as follows:

“Upon proof of a final felony conviction by the courts and after exhaustion of the appellate process, the Board **shall revoke** the physician's license. If the felony conviction is overturned on appeal and no other appeals are sought, the Board shall restore the license of the physician.”

18. On August 6, 2007, pursuant to the authority granted to him under 59 O.S. §506(B), Lyle R. Kelsey, Executive Director of the Oklahoma State Board of Medical Licensure and Supervision, summarily suspended Defendant's license based upon his felony conviction of a state or federal narcotics law, with the case to be set before the Board at the September 20, 2007 Board meeting.

19. 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. Engaged in physical conduct with a patient which is sexual in nature, ... in violation of 59 O.S. §509 (17).
- C. Committed an act of sexual ... misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).
- D. Abused the physician's position of trust by coercion [or] manipulation ... in the doctor-patient relationship in violation of OAC 435:10-7-4(44).
- E. 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).
- F. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient in violation of 59 O.S. §509 (18).

- G. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- H. 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).
- I. Committed an 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).
- J. Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).
- K. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).
- L. Was convicted of a felony or of any offense involving moral turpitude in violation of 59 O.S. §509(5).
- M. Was convicted of or confessed to a crime involving violation of the antinarcotics or prohibition laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).
- N. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).
- O. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).
- P. Failed to keep complete and accurate records of the purchase and disposal of controlled drugs or narcotic drugs in violation of 59 O.S. §509(10).
- Q. Was unable to practice medicine with reasonable skill and safety to patients by reason of ...any mental condition in

violation of 59 O.S. §509(15) and OAC 435:10-7-4 (17) and (40).

- R. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
- S. Was convicted of a felony or any offense involving moral turpitude whether or not related to the practice of medicine and surgery in violation of OAC 435:10-7-4(10).
- T. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).
- U. Prescribed, sold, administered, distributed, ordered or gave to a habitué or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug in violation of OAC 435:10-7-4(25).
- V. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36) and (41).

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act") and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

2. 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. Engaged in physical conduct with a patient which is sexual in nature, ... in violation of 59 O.S. §509 (17).

- C. Committed an act of sexual ... misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).
- D. Abused the physician's position of trust by coercion [or] manipulation ... in the doctor-patient relationship in violation of OAC 435:10-7-4(44).
- E. 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).
- F. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient in violation of 59 O.S. §509 (18).
- G. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- H. 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).
- I. Committed an 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).
- J. Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).
- K. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).
- L. Was convicted of a felony or of any offense involving moral turpitude in violation of 59 O.S. §509(5).

- M. Was convicted of or confessed to a crime involving violation of the antinarcotics or prohibition laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).
- N. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).
- O. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).
- P. Failed to keep complete and accurate records of the purchase and disposal of controlled drugs or narcotic drugs in violation of 59 O.S. §509(10).
- Q. Was unable to practice medicine with reasonable skill and safety to patients by reason of ...any mental condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4 (17) and (40).
- R. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
- S. Was convicted of a felony or any offense involving moral turpitude whether or not related to the practice of medicine and surgery in violation of OAC 435:10-7-4(10).
- T. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).
- U. Prescribed, sold, administered, distributed, ordered or gave to a habitué or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug in violation of OAC 435:10-7-4(25).
- V. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36) and (41).

3. The Board further found that the Defendant's license should be **REVOKED** based upon any or all of the violations of the unprofessional conduct provisions of 59 Okla. Stat. §509(1), (5), (7), (8), (9), (10), (12), (13), (15), (16), (17) and (18) and OAC 435:10-7-4 (1), (2), (6), (10), (11), (17), (23), (24), (25), (27), (36), (37), (38), (39), (40), (41) and (44), conviction of a felony and exhaustion of his right to appeal the conviction.

Order

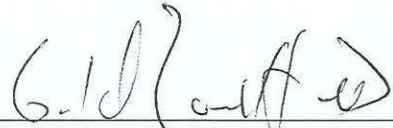
IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The license of Defendant, Paul Powen Cheng, M.D., Oklahoma license no. 18914, is hereby **REVOKED** as of the date of this hearing, September 20, 2007.

2. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

3. Defendant's revoked license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs and expenses incurred by the State of Oklahoma.

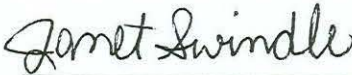
Dated this 28 day of September, 2007.



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 28 day of September, 2007, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Linda G. Scoggins, Scoggins & Cross, PLLC, 204 N. Robinson, Suite 3100, Oklahoma City, OK 73102 and to Paul Powen Cheng, 1220 W. Willow, Suite C, Enid, OK 73703.



Janet Swindle