

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

FILED

NOV 14 2008

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

IN THE MATTER OF THE)
APPLICATION OF)

PAUL POWEN CHENG, M.D.,)

FOR REINSTATEMENT OF OKLAHOMA)
MEDICAL LICENSE NO. 18914)

Case No. 06-07-3132

**ORDER GRANTING REINSTATEMENT OF
LICENSE UNDER TERMS OF PROBATION**

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision on November 6, 2008, at the Board office, 5104 North Francis, Suite C, Oklahoma City, Oklahoma 73118, pursuant to notice given as required by law and rules of the Board.

Defendant, Paul Powen Cheng, M.D., appeared in person and through counsel, Linda Scoggins.

Elizabeth A. Scott, Assistant Attorney General, appeared on behalf of the State of Oklahoma, ex rel. the Oklahoma State Board of Medical Licensure and Supervision.

The Board *en banc* heard testimony, reviewed the exhibits presented, and being fully apprised of the premises, entered the following Findings of Fact, Conclusions of Law, and Orders:

Findings of Fact

1. The Board *en banc* has jurisdiction over the subject matter herein, and notice has been given in all respects as required by law and the rules of the Board.

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

3. 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. On September 20, 2007, pursuant to 59 O.S. §513(A)(3), the Board revoked Defendant’s license to practice medicine in the State of Oklahoma.

20. Defendant is now seeking reinstatement of his Oklahoma medical license no. 18914.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to reinstate the license of a physician pursuant to 59 O.S. §508.1.

2. The Board may impose practice parameters and other restrictions as necessary to protect the health, safety and welfare of the public under 59 O.S. §480 *et seq.*

ORDER

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

1. Defendant shall be placed on **PROBATION** for a period of **FIVE (5) YEARS** under the following terms and conditions:

A. Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said Act shall be submitted in writing to the Board and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Oklahoma State Board of Medical Licensure and Supervision.

B. Upon request of the Board Secretary, Defendant will request all hospitals in which he anticipates practicing to furnish to the Board Secretary of the Oklahoma State Board of Medical Licensure and Supervision a written statement regarding monitoring of his practice while performing services in or to that hospital.

C. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of Medical Licensure and Supervision.

D. Defendant will not supervise allied health professionals that require surveillance of a licensed physician.

E. If Defendant is able to obtain his OBN and DEA certificates thereby allowing him to prescribe controlled dangerous substances, a PMP will be run and reviewed by the Compliance Consultant on a quarterly basis for the remaining period of probation.

F. Defendant shall execute and comply with all terms of his contract with the Oklahoma Health Professionals Recovery Program.

G. Defendant will not prescribe, administer or dispense any medications for personal use or for that of any family member.

H. Defendant will authorize in writing the release of any and all information regarding his treatment at the Professional Renewal Center, and any other records of his medical, emotional or psychiatric treatment to the Oklahoma State Board of Medical Licensure and Supervision.

I. Defendant will abide by the terms and recommendations of the Professional Renewal Center, except that he is not required to comply with recommendation no. 9 that he return to PRC for additional follow-up treatment.

J. Defendant will enter and continue individual therapy with a therapist approved in advance in writing by the Board Secretary, and will authorize in writing the release of any and all records of that treatment to the Board or its designee. Defendant shall

additionally submit quarterly reports from his therapist to the Board Secretary for his review.

K. Defendant shall obtain a practice mentor to be approved in advance in writing by the Board Secretary. Defendant shall submit quarterly reports from his mentor to the Board Secretary for his review.

L. Defendant shall promptly notify the Board of any citation or arrest for traffic or for criminal offenses involving substance abuse.

M. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.

N. Defendant will keep current payment of all assessments by the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of his case, which shall include but is not limited to a one hundred dollar (\$100.00) per month fee during the term of probation, unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

O. Until such time as all indebtedness to the Oklahoma State Board of Medial Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

P. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.

Q. Defendant shall submit any required reports and forms on a timely, accurate and prompt basis to the Compliance Coordinator or designee.

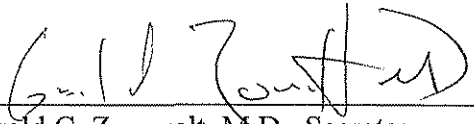
R. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

2. During the period of probation, failure to meet any of the terms of probation will constitute cause for the Board to initiate additional proceedings to suspend or revoke Defendant's license, after due notice and hearing.

3. Defendant's license will be reinstated only upon payment in full of all costs and expenses incurred by the State of Oklahoma.

4. A copy of this written order shall be sent to Defendant as soon as it is processed.

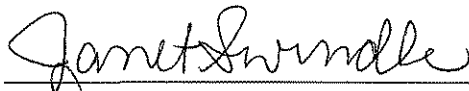
Dated this 14 day of November, 2008.



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

Certificate of Service

On the 14 day of November, 2008, a true and correct copy of this order was mailed, postage prepaid, to Linda G. Scoggins, Scoggins & Cross, PLLC, 204 N. Robinson, Suite 3100, Oklahoma City, OK 73102 and to Paul Powen Cheng, 2800 S.W. 130th, Oklahoma City, OK 73170.



Janet Swindle