

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

FILED

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

MAY 28 2010

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 09-08-3829

MICHAEL CURTIS WEST, M.D.,)
LICENSE NO. 20377)

Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 20, 2010, at the office of the Oklahoma State Medical Association, 313 N.E. 50th Street, 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 G. Scoggins.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony Defendant, 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.* 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.

2. Defendant, Michael Curtis West, M.D., holds Oklahoma license no. 20377 and practices in Valiant, Oklahoma and Wright City, Oklahoma.

**AIDING AND ABETTING UNLICENSED
PRACTICE OF MEDICINE**

3. In or around 2006, Defendant purchased the CosMedic Clinic, a weight loss clinic in Valiant, Oklahoma. When Defendant first purchased the clinic, he periodically worked at the clinic. He additionally hired a physician assistant to see patients at the clinic.

4. In or around December 31, 2007, Defendant's physician assistant left the clinic. Defendant did not replace her, nor did he begin working at the weight loss clinic. Instead, he allowed three (3) unlicensed individuals to examine patients, take vital signs, and prescribe controlled dangerous substances, which were dispensed out of the CosMedic Clinic by the unlicensed individuals.

5. A review of the PMP records at the CosMedic Clinic in Valiant, Oklahoma reveals that for an eleven (11) month period from September 1, 2008 until July 31, 2009, **6,215 prescriptions for controlled dangerous substances** were dispensed by Defendant and by the unlicensed individuals employed by Defendant. A total of **493,780 dosage units** of controlled dangerous substances were dispensed by Defendant and these unlicensed individuals during just eleven (11) months. These controlled dangerous drugs were primarily Phentermine, Supramine, Fastin and Bontril, all weight loss medications. Prescriptions were for thirty (30), sixty (60), ninety (90) or one-hundred twenty (120) dosage units of these medications.

6. Defendant admits that he never performed a physical examination on the majority of the patients who received the controlled dangerous drugs set forth in paragraph 5 above prior to the patients being dispensed controlled dangerous substances by his unlicensed employees. Defendant additionally never saw the majority of the patients prior to the patients receiving controlled dangerous substances prescribed by his unlicensed employees. Defendant further admits that the majority of these patients who received controlled dangerous substances did not see any licensed practitioner prior to being prescribed the drugs.

7. Defendant admits that when patients came to the clinic, if they met certain standards, they would be allowed to receive weight loss medications prescribed by his unlicensed employees when he was not present. The patients were not charged for office visits, but were only charged for the medications prescribed by the unlicensed employees. The patients were advised of the medication choices and the cost for differing dosage units. The patients then advised Defendant's unlicensed employees what controlled dangerous substance they wanted and the dosage units they were willing to pay for. The controlled dangerous substances were then dispensed by Defendant's unlicensed employees to the patients.

8. Defendant additionally admits that he devised an incentive bonus plan for his employees to encourage more prescribing of controlled dangerous substances by the unlicensed employees. Under Defendant's plan, the clinic employees would receive a \$250.00 bonus each week that the clinic generated more than \$25,000.00 in sales of controlled dangerous substances. Defendant admits that his employees received this bonus on a few occasions.

UNDERCOVER INVESTIGATION

9. On or about August 25, 2009, Board Investigator Jana Lane conducted an undercover office investigation into the allegations that Defendant was aiding and abetting the unlicensed practice of medicine at the CosMedic Clinic in Valiant, Oklahoma. Investigator Lane posed as patient "Jana Rhodes" for a "walk-in" visit at the clinic and wore a digital recorder to record the office visit.

10. When the undercover investigator first arrived, she inquired about the laser treatment the clinic was advertising on pamphlets in the waiting room. She was introduced to clinic employee Angela Wright who identified herself as a "laser tech". Ms. Wright advised that she was still in training but she could perform a laser treatment on Investigator Lane as part of her training at no charge. Paperwork was completed and Ms. Wright performed a laser treatment on the undercover investigator's leg. The undercover investigator was not examined by any licensed healthcare provider prior to receiving the laser treatment.

11. The undercover investigator was later called back to an exam room for the weight loss portion of her office visit. At this time, an unlicensed individual, Nancy Marx, weighed her and took her blood pressure. Ms. Marx then explained the choice of controlled dangerous substances available to the undercover investigator and the price for either thirty (30), sixty (60) or ninety (90) pills. The undercover investigator chose thirty (30) Phentermine and paid the clinic \$60.00 for the drugs. There was no charge for the actual office visit.

12. At no time during the undercover investigator's office visit was she treated or examined by any licensed healthcare provider.

13. After paying for the drugs, the undercover investigator received a prescription bottle with thirty (30) Phentermine 37.5 mg. The label identified the prescribing physician as "Dr. M.C. West Jr." of "CosMedic Inc." Investigator Lane then left the clinic.

FAILURE TO COMPLY WITH OBN LAWS AND RULES

14. Oklahoma Bureau of Narcotics and Dangerous Drugs laws provide that a dispenser of drugs in Schedules II through V is required to transmit records of the dispensing the drugs to the central repository at OBN, known as the Prescription Monitoring Program ("PMP") within twenty-four (24) hours of the dispensing. Failure to do so constitutes a misdemeanor.

15. Defendant continued to operate the CosMedic Clinic and dispense large quantities of controlled dangerous substances until he closed it in early March 2010. However, the PMP does not reflect that any medications were dispensed by the clinic during 2010 as required by OBN law.

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

- A. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).
- B. 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).
- C. 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).
- D. 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).
- E. 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).
- F. Engaged in the indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
- G. Engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).
- H. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- I. 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).
- J. 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) and OAC 435:10-7-4(41).
- K. Directly or indirectly gave or received any fee, commission, rebate, or other compensation for professional services not

actually and personally rendered in violation of OAC 435:10-7-4(30).

- L. 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).

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. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).
 - B. 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).
 - C. 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).
 - D. 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).
 - E. 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).
 - F. Engaged in the indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).

- G. Engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).
- H. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- I. 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).
- J. 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) and OAC 435:10-7-4(41).
- K. Directly or indirectly gave or received any fee, commission, rebate, or other compensation for professional services not actually and personally rendered in violation of OAC 435:10-7-4(30).
- L. 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).

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), (7), (8), (9), (12), (13), (14) and (18), and OAC 435:10-7-4 (1), (11), (15), (21), (27), (30), (39) and (41).


Order

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

1. The license of Defendant, Michael Curtis West, M.D., Oklahoma license no. 20377, is hereby **REVOKED** as of the date of this hearing, May 20, 2010.
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 May, 2010.


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 May, 2010, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Michael Curtis West, Rt. 3, Box 514-4, Broken Bow, OK 74728 and to Linda G. Scoggins, Scoggins & Cross, PLLC, 201 Robert S. Kerr, Suite 710, Oklahoma City, OK 73102.


Janet Swindle