

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

FILED

JUN 26 2014

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA, *ex rel.*)
THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
HARVEY JENKINS, M.D.,)
LICENSE NO. 21473,)
)
Defendant.)

Case No. 13-10-4833

COMPLAINT

The State of Oklahoma, *ex rel.* the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), alleges and states as follows for its Complaint against the Defendant, Harvey Jenkins, M.D.:

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 O.S. § 480, *et seq.*
2. The Defendant, Harvey Jenkins, M.D., holds Oklahoma medical license no. 21473.

Allegations of Unprofessional Conduct

3. This case was initiated on or about October 11, 2013, when Board Staff received a phone call from Patient AML advising she received a laser treatment from an unlicensed technician at Body Trends in Tulsa, Oklahoma, and did not see the Defendant, Harvey Jenkins, M.D., who is also the owner of the clinic, prior to treatment.
4. Upon investigation, it was found that Patient AML had, in fact, received a tattoo removal laser procedure from an unlicensed staff member at Body Trends in Tulsa, Oklahoma. Patient AML's medical record contain a typed progress note dated August 9, 2013, and signed by the Defendant, which gives the impression that Patient AML was evaluated by the Defendant prior to treatment.
5. On or about August 21, 2013, Patient AML returned to Body Trends with complaints of redness and pain at the site of the treatment. A photograph of Patient AML's foot treatment site was taken and electronically sent to the Defendant. The Defendant called

Patient AML and discussed the matter with her before calling in prescriptions for treatment.

6. On or about October 17, 2013, Board Investigator JL went undercover as Patient JRL and received a consult for a tattoo removal by Rachel Cummings, the unlicensed office manager of Body Trends in Tulsa, Oklahoma. The Defendant was not in the facility on this day, however, the paperwork Undercover Patient JRL filled out on this day is signed by the Defendant and dated October 17, 2013.
7. On December 20, 2013, Undercover Patient JRL went to Body Trends in Tulsa, Oklahoma, where she proceeded to the reception window and paid the \$75.00 fee. Undercover Patient JRL observed the Defendant sitting in a chair behind the reception window.
8. Undercover Patient JRL was taken to an examination room by the unlicensed technician. The unlicensed technician had the laser in one hand and a cold air blower in the other hand and was ready to proceed with the treatment. At this point, Undercover Patient JRL asked the unlicensed technician to stop and bring the Defendant into the room. The Defendant, Harvey Jenkins, M.D., was brought into the room whereupon an interview with Undercover Patient JRL commenced.
9. During this interview, the Defendant admitted to Undercover Patient JRL that his face-to-face visits with some patients consist of merely visualizing them from behind the reception window.
10. Board Investigator JL further learned that Patient JGL received an Intense Pulsed Light (“IPL”) laser treatment on or about February 16, 2012. The Defendant did not see this patient prior to her receiving the treatment from the Defendant’s unlicensed technician. The following morning, February 17, 2012, Patient JGL called Body Trends and reported to “Sarah” (last name unknown) that the treatment site was burned and hurting. The condition of her treatment site continued to deteriorate over the weekend and she spoke with Sarah multiple times about it. On or about February 20, 2012, Patient JGL was told to go to Body Trends so the Defendant could evaluate her. When Patient JGL arrived, the Defendant was not there. She was seen by Sarah who applied biafine and wrapped her arm. On February 21, 2012, a prescription for biafine was called in for Patient JGL.
11. Board Investigator JL further learned that on or about December 20, 2013, Patient JPL received a laser treatment at Body Trends in Tulsa, Oklahoma. Patient JPL stated he did not see a physician, only the technician who performed the procedure. This is the only visit Patient JPL had at this clinic and he states that his hand is scarred where the procedure was performed.
12. Board Investigator JL further learned that on or about October 11, 2013, December 20, 2013, and January 17, 2014, Patient DLL received a total of three (3) laser treatments at Body Trends. Patient DLL states she did not see the Defendant on any of these three (3) visits. Patient DLL claims she was burned on the last visit, January 17, 2014, which resulted in scar tissue. Patient DLL returned on June 6, 2014, and was finally seen by the Defendant who promised Patient DLL he would give her a complimentary IPL treatment

to help get rid of the scarring.

13. The Defendant wrote progress notes in the medical records which appear as though he saw patients in person on days when he did not. For example: Patient JPL's records state on December 20, 2013, a day when PTL was not seen by the Defendant: "Spoke with patient, explained protocol. Sister had same procedure with good results. Answered Questions. No contraindications. Tolerated treatment well. Precautions given." This record is signed by the Defendant. On Patient DLL's medical record of December 20, 2013, it states: "Spoke with patient, doing well. Questions answered." This record is signed by the Defendant. And on Undercover JRL's medical record, a consult was provided by an unlicensed staff member on October 17, 2013. The Defendant initialed and dated the consult records October 17, 2013, even though he was not present in the clinic on that day.
14. The Defendant did not conduct a proper face-to-face visit with at least five (5) patients prior to allowing unlicensed staff to perform medical procedures on those patients. According to the Policy & Guidelines for Medical Spas & Aesthetic Procedures from the Oklahoma State Board of Medical Supervision and Licensure dated November 7, 2008: "The practice of medicine and surgery as defined above is grounded upon the doctor/patient relationship which at a minimum requires a face-to-face evaluation of the patient by the physician or a physician assistant under a physician's supervision, prior to the determined treatment of procedure, development of a patient chart, providing patient informed consent and the process for the patient's follow up care."
15. These alleged violations occurred with the Defendant was already on probation with the Board in Case. No. 10-12-4125.
16. The Defendant is guilty of unprofessional conduct in that he engaged in:
 - a) Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public in violation of Title 59 O.S. §509.8 and Okla. Admin. Code 435:10-7-4(11);
 - b) Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship in violation of Title 59 O.S. §509.12;
 - c) Aiding or abetting, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of Title 59 O.S. §509.14;
 - d) Failure 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 Title 59 O.S. §509.18;
 - e) Failure to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, including but not limited to an initial in-person patient examination, office surgery, diagnostic

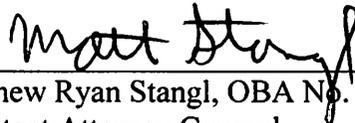
service or any other medical procedure or treatment. Adequate medical records to support diagnosis, procedure, treatment or prescribed medications must be produced and maintained in violation of Title 59 O.S. §509.20 and Okla. Admin. Code 435:10-7-4(41);

- f) Aiding or abetting the practice of medicine and surgery by an unlicensed, incompetent, or impaired person in violation of Okla. Admin. Code § 435:10-7-4(21);
- g) Allowing another person or organization to use a physician's license to practice medicine and surgery in violation of Okla. Admin. Code § 435:10-7-4(22);
- h) Violation of any provision(s) 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 Okla. Admin. Code § 435:10-7-4(39);
- i) Failure to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment, except in a clearly emergent, life threatening situation in violation of Okla. Admin. Code § 435:10-7-4(11);

Conclusion

Given the foregoing, the undersigned requests 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 the Defendant's professional license, including an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



Matthew Ryan Stangl, OBA No. 20343
Assistant Attorney General
State of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
Fax: (405) 522-4536

*Attorney for State of Oklahoma ex rel.
The Oklahoma State Board of Medical
Licensure and Supervision*