

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

STATE OF OKLAHOMA, *ex rel.*)
 OKLAHOMA STATE BOARD)
 OF MEDICAL LICENSURE)
 AND SUPERVISION,)
)
 Plaintiff,)
)
 v.)
)
 DANIEL RIVERA, M.D.,)
 LICENSE NO, MD 39937)
)
 Defendant.)

FILED

MAR -7 2024

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 23-02-6201

**ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION**

The State of Oklahoma, *ex rel.* Oklahoma State Board of Medical Licensure and Supervision (“Board”), by and through the undersigned counsel for the Plaintiff, as represented by the Secretary of the Board, Billy H. Stout, M.D., and the Executive Director of the Board, Lyle Kelsey, along with Daniel Rivera M.D. (“Defendant”), Oklahoma medical license no. 39937, who appears in person, and through counsel Elizabeth Scott (collectively, the “Parties”), and offer this Order Accepting Voluntary Submittal to Jurisdiction (herein, “Order” or “Agreement”) for acceptance by the Board. Okla. Admin. Code § 435:5-1-5.1.

By voluntarily submitting to jurisdiction and entering into this Order, Defendant acknowledges that a hearing before the Board could result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (“Act”). 59 O.S. § 480, *et seq.*

Defendant, Daniel Rivera M.D., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for an evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his right to a full hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions of this Order. Defendant acknowledges that he has read and understands the terms and conditions stated herein, and that this Agreement may be reviewed and discussed with him by legal counsel prior to execution.

If the Board does not accept this Order, the Parties stipulate that it shall be regarded as null and void. Admissions by Defendant herein, if any, shall not be regarded as evidence

against him in a subsequent disciplinary hearing. Defendant will be free to defend himself and no inferences will be made from his willingness to have this Order accepted by the Board. The Parties stipulate that neither the presentation of this Order nor the Board's consideration of this Order shall be deemed to have unfairly or illegally prejudiced the Board or its individual members and, therefore, shall not be grounds for precluding the Board nor any individual Board member from further participation in proceedings related to the matters set forth herein.

Findings of Fact

The Plaintiff, Defendant, and the Board staff each stipulate and agree that the following Findings of Fact were alleged in the Verified Complaint and are the basis of the Orders in this agreement:

1. In Oklahoma, Defendant holds medical license no. 39937.
2. This case was initiated by multiple complaints alleging Defendant admitted to an addiction relapse, admitted he would fail a urine drug screen if given and admitted to obtaining fentanyl from his cases at work.
3. Defendant worked for a medical contracting company in which physicians such as Defendant would work as contract physicians for a period of time. During the relevant time periods Defendant worked at Mercy in Ada, Oklahoma and at Ascension St. John in Tulsa, Oklahoma.
4. While working at Mercy, several incidents caused concern from employees working with Defendant. These employees observed certain behaviors which were "red flags" for diversion of CDS.
 - Defendant relieved a CRNA for a break and left a used syringe labeled fentanyl for the CRNA when they returned. That CRNA was relieved by a second CRNA. The turnover instructions were that the syringe was left by Defendant and apparently contained fentanyl. The second CRNA, after contacting Spencer Phillips, Manager of Surgical Services, took the syringe to the pharmacy and watched the pharmacist place the syringe in a tamper proof bag.
 - On or about February 7 Defendant relieved a CRNA to give them a short break. When Defendant left the room, the CRNA called Spencer Phillips, Manager of Surgical Services, over and stated that this is the syringe that Dr. Rivera left me. The CRNA administered 50mcg of the "fentanyl" that Defendant left. The patient had no response to the medication. The CRNA then used a new syringe and pulled another vial of fentanyl and gave another 50mcg. The patient immediately had a response to the fentanyl given. The Circulator called for relief and took the syringe left by Defendant to Mr. Mike O'Grady, Director of Pharmacy, who placed it in a tamperproof bag.



- Defendant got a patient ready and gave medications to the CRNA on the case. The CRNA called Spencer Phillips, Manager of Surgical Services, over and showed him a full syringe labeled fentanyl. The CRNA and Spencer Phillips took the syringe to Mr. Mike O'Grady, Director of Pharmacy, who placed the syringe in a pampers proof bag.

5. The syringes were sent to DynaLabs for testing. The results of that investigation were:

- i. DynaLabs Certificates of Analysis: Three syringes
- ii. Test date: 02/10/2023: Syringe(s) 1x1 ml: fentanyl: Test Result: 0.0000% Date Compounded: 2/6/2023
- iii. Test date: 02/10/2023: Syringe(s) 1x4 ml: fentanyl: Test Result: 0.0000% Date Compounded: 2/6/2023
- iv. Test date: 02/20/23: Syringe(s) 1x5 ml: fentanyl: Test Result: 0.0000% Date Compounded: 2/9/2023

6. Further "red flags" noted were that large amounts of fentanyl was used in a short amount of time, the patients were waking up and their responses were not matching up to the drug allegedly given. Examples noted were:

- Patient A- Total fentanyl used: 2,350mcg. The concern is that the patient started out on a Levophed drip but was able to be removed from it during the procedure and in report ICU "patient's blood pressure had been good, titrate as needed."
- Patient B- Total fentanyl used: 1000mcg. The patient is a paraplegic, severe injury below the waist, patient didn't need pain meds in preop or PACU because he can feel no pain.
- Patient C- Total fentanyl used: 1000mcg. Patient woke up in PACU with severe pain, 10/10 and had to be given additional pain medication to control pain.
- Patient D- Total fentanyl used: 400mcg. Patient woke up in PACU, given additional 100mcg of fentanyl and patient's blood pressure dropped like she hasn't received any pain medication.

7. Based on the foregoing, a Drug Diversion Response Team Investigation was initiated. The investigation determined the following:

- "Previous history with substance abuse. Completed the impaired provider program in 2008".
- "Peer reported concerns of patients waking up immediately following a case and always wanting to start the case and pull meds, but wants the CRNA to finish the



case by handing off syringes of medication. Also, reports by peers of doses given and vitals are not dipping/responding appropriately”.

- “High doses of fentanyl being used”.
 - “High dose for case severity”.
 - “Wasting full vials of fentanyl.”
 - ...“The audit has 1050mcg of fentanyl unaccounted for and 5 full vials of fentanyl wasted by Dr. Rivera.”
8. A member of the Ascension Medical Staff in Tulsa reported that “On March 27th, my office was informed that an anesthesiologist was working under the influence of drugs, additionally a rapid Inventory of his narcotic administration per case was very high and inappropriate. The physician was confronted and very quickly admitted he was diverting fentanyl for his use. His behavior was consistent with narcotic usage and a drug screen was obtained. He was searched by our security and no drugs were noted on him or in his locker. As per our policy, a ride was obtained to return him to his residence. He was summarily removed from our medical staff.”
9. Captain Thomas West, Campus Police Ascension St. John, also investigated Defendant based on complaints made by colleagues at St. John. On March 28, 2023, Captain West was notified by Dr. John Forest of an anesthesiologist, Defendant, that may be under the influence of narcotics and has taken them from cases he has worked. Captain West questioned Defendant. Defendant told Captain West that he had relapsed and he was using again, he also stated that he needed help. The ensuing investigation found significant evidence of diversion. The investigative report states that Defendant admitted stealing fentanyl from surgery.
10. On numerous occasions Defendant stated he was going to get a nail or hair follicle drug test. Board staff has never received a result from any such test. Further, Defendant spent from April through October repeatedly stating he was going to attend in-patient treatment, yet to date he has not done so. Defendant signed an agreement not to practice on April 26, 2023 and has relinquished his DEA certificate. Emails from Defendant to Board Investigator Melissa Davis stated:
- April 25, 2023 - “Due to family/financial reasons, I will start my treatment at Florida Recovery Center on Monday 5/15 at the earliest and 5/30 at the very latest.”
 - May 23, 2023 - “With the cost told to me by the treatment center, I will enter treatment as soon as our loan is approved.”
 - July 28, 2023 - “My wife is still working and extended her contract through November. I plan on entering treatment Monday 10/16 at the absolute latest.”



- September 20, 2023 - "May need another month or so."
- October 24, 2023 - "Unfortunately my situation hasn't changed but is slightly getting better financially. At this rate I will enter treatment in Florida in February/March at the latest."

Conclusion of Law

1. The Board has jurisdiction over the subject matter and is the duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma. 59 O.S. § 480 et seq. and Okla. Admin. Code §§ 435:5-1-1 et seq.
2. Notice was provided as required by law and the rules of the Board. 75 O.S. § 309; 59 O.S. § 504; Okla. Admin. Code §§ 435:3-3-5, 435:3-3-6.
3. The Board is authorized to suspend, revoke or order any other appropriate conditions against the license of any physician or surgeon holding a license to practice medicine in the State of Oklahoma for unprofessional conduct. 59 O.S. §§ 503, 513(A)(1). The Board's action is authorized by 59 O.S. § 509.1.
4. The Board is authorized to accept voluntary submittals to jurisdiction mutually agreed to by parties to a disciplinary action to resolve the action without need for a hearing. 75 O.S. § 309(E); Okla. Admin. Code § 435:5-1-5.1.
5. Based on the foregoing allegations in the Verified Complaint, Defendant admits that if proven, he could be found guilty of unprofessional conduct as follows:
 - a. Habitual intemperance or the habitual use of habit-forming drugs in violation of Title 59 § 509(4):
 - b. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public in violation of Title 59 § 509(8) and OAC 435:10-7-4(11):
 - c. The inability to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition in violation of Title 59 § 509(15) and OAC 435:10-7-4(40):
 - d. The habitual or excessive use of any drug which impairs the ability to practice medicine with reasonable skill and safety to the patient in violation of OAC 435:10-7-4(3):
 - e. Being physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17):

RM


- f. Practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18):

Orders

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

1. The Board hereby adopts the Agreement of the Parties in this Order Accepting Voluntary Submittal to Jurisdiction, including the findings of fact and conclusions of law stated herein.
2. The Oklahoma Medical License of **DANIEL RIVERA M.D.** shall be suspended indefinitely. Such suspension shall remain in force and effect until further order of the Board.
3. **DANIEL RIVERA M.D.** will not be eligible to apply for said suspension to be lifted until and unless he completes in-patient treatment at a Board approved facility and after prior approval from the Board Secretary.
4. **DANIEL RIVERA M.D.** will follow all discharge recommendations from the aforementioned in-patient treatment.
5. It is further ordered, if the Board lifts the suspension, **DANIEL RIVERA M.D.** will be put on probation, the terms and conditions of which will be determined at the time of reinstatement of his ability to practice.
6. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.
7. A copy of this Order shall be provided to Defendant as soon as it is processed.

Dated this 7th day of MARCH, 2024.



Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Steven Katsis, M.D., President
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION



THE BOARD OF DIRECTORS OF THE COMPANY HAS REVIEWED THE FINANCIAL STATEMENTS OF THE COMPANY FOR THE YEAR ENDED 31st MARCH 2014 AND IS SATISFIED THAT THE FINANCIAL STATEMENTS GIVE A TRUE AND FAIR VIEW OF THE FINANCIAL POSITION OF THE COMPANY AT THE END OF THAT YEAR AND OF ITS PERFORMANCE AND CASH FLOWS FOR THAT YEAR.

Notes to the Financial Statements

1. The financial statements are prepared in accordance with the provisions of the Companies Act, 2013 and the Companies (Accounts) Regulations, 2014.

2. The financial statements are prepared on the accrual basis of accounting and are in conformity with the Indian Accounting Standards (Ind AS) notified under the Companies Act, 2013.

3. The financial statements are prepared on the going concern basis, unless otherwise stated.

4. The financial statements are prepared on the historical cost basis, unless otherwise stated.

5. The financial statements are prepared on the basis of the accounting policies set out in the notes to the financial statements.

6. The financial statements are prepared on the basis of the accounting policies set out in the notes to the financial statements.

7. The financial statements are prepared on the basis of the accounting policies set out in the notes to the financial statements.

8. The financial statements are prepared on the basis of the accounting policies set out in the notes to the financial statements.

Mr. [Name]

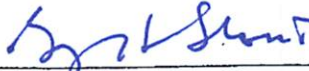
[Signature]

For and on behalf of the Board of Directors
[Name]
[Designation]

For and on behalf of the Board of Directors
[Name]
[Designation]

Dated this ~~15~~ day of ~~February~~, 2024.

7th March 2024



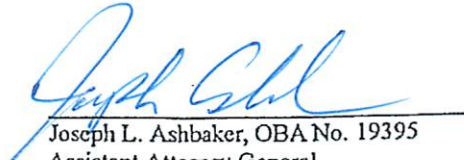
Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION



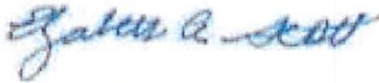
Steven Katsis, M.D., President
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION



Daniel Rivera, M.D.,
License MD 39937
Defendant



Joseph L. Ashbaker, OBA No. 19395
Assistant Attorney General
STATE OF OKLAHOMA,
OFFICE OF ATTORNEY GENERAL
Attorney for Plaintiff,
Oklahoma State Board of Medical Licensure
and Supervision



Elizabeth A. Scott, OBA No. 12470
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
Elizabeth.scott@crowedunlevy.com
Counsel for Defendant
Daniel Rivera, M.D

Certificate of Service

This is to certify that on the ~~15th~~ day of March, 2024, a true and correct copy of this Order was transmitted as indicated, postage prepaid, to the following:

U.S. Certified Mail

E-Mail

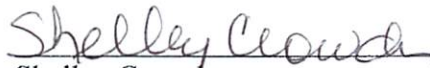
Daniel Rivera, M.D.

Defendant

U.S. First Class Mail and E-Mail

Elizabeth A. Scott
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
Elizabeth.scott@crowedunlevy.com
Counsel for Defendant
Daniel Rivera, M.D

Joseph L. Ashbaker
Assistant Attorney General
State of OK, Office of Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
Attorney for Plaintiff,
Oklahoma State Board of Medical
Licensure and Supervision


Shelley Crowder