IN AND BEFORE THE OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
STATE OF OKLAHOMA

FILED
Oklahoma State Bureau of Narcotics
and Dangerous Drugs Control
JUN 15 2015
Office of the General Counsel
By:

STATE OF OKLAHOMA, ex rel
OKLAHOMA STATE BUREAU OF
NARCOTICS AND DANGEROUS DRUGS
CONTROL, R. DARRELL WEAVER,
Director,
Petitioner,

vs.

HARVEY C. JENKINS, M.D.
Registration # 29444,
Respondent.

Case No. SCH-2015-003

FINAL ORDER

On February 18 and 19, 2015, an Imminent Danger Hearing was held, and on March 3 and 4, 2015, this matter came on for an Administrative Hearing on the Oklahoma Bureau of Narcotics and Dangerous Drugs Control's ("OBNDD") Order to Show Cause ("Order"). The hearing was held at the headquarters building of OBNDD before Administrative Hearing Officer Philip W. Anderson ("Hearing Officer"). Petitioner, the OBNDD, appeared and was represented by its counsel, Sandra LaVenue, Deputy General Counsel, and Marie Schuble, Staff Attorney. Respondent, Harvey C. Jenkins, M.D., appeared and was represented by counsel, Kevin Krahl and John Krahl.

Upon consideration of the evidence and the recommendations made by the Hearing Officer, the OBNDD Director makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That OBNDD has jurisdiction over the subject matter of this action pursuant to 63 O.S. § 101 *et seq.* and the Oklahoma Administrative Code ("OAC") 475-1-1*et seq.*

2. The Director of OBNDD has the authority to render an Order concerning the above styled matter.

3. Respondent is an OBNDD Registrant, with a principal place of business located in Oklahoma City, Oklahoma County, Oklahoma.

4. Respondent was provided sufficient notice according to law and given a hearing conducted pursuant to 63 O.S. §2-305; OAC 475:1-1-1 through 475:1-5-8 and the Oklahoma Administrative Procedures Act 75 O.S. §308a *et seq.*

5. OBNDD filed an Immediate Suspension Due to Imminent Danger letter on February 4, 2015, along with a Notice of Hearing and Order to Show Cause, both of which were lawfully served on Respondent.

6. OBNDD filed an Amended Immediate Suspension Due to Imminent Danger letter on February 17, 2015, which was lawfully served on Respondent.

7. A hearing was conducted regarding the Amended Immediate Suspension Due to Imminent Danger on February 18 and 19, 2015, pursuant to OAC 475:15-1-3.

8. At the conclusion of the hearing regarding the Amended Immediate Suspension Due to Imminent Danger, the Hearing Officer found that there was sufficient clear and convincing evidence presented that at the time the Director suspended Respondent's OBNDD Registration there was an imminent danger of diversion to warrant Respondent's OBNDD Registration be suspended until such time as a full hearing could

be held on the allegations contained in OBNDD's Notice of Hearing and Order to Show Cause.

9. Upon agreement of both Respondent and OBNDD, the Hearing Officer set the Show Cause Hearing for March 3 and 4, 2015. At the beginning of the hearing, the Hearing Officer ordered that all of the admitted evidence and testimony from the hearing on the Amended Immediate Suspension Due to Imminent Danger, including all objections and rulings on the same, would be combined with all admitted evidence and testimony from the Show Cause Hearing for the purposes of the Findings and Fact and Conclusions of Law.

10. The Show Cause Hearing was conducted March 3 and 4, 2015.

11. Petitioner's Exhibits 1 through 5 and 7 through 22 were offered by OBNDD and admitted into evidence at the hearing conducted on February 18, 2015.

12. Petitioner's Exhibits 23 and 24 were offered by OBNDD and admitted into evidence at the hearing conducted on February 19, 2015.

13. Petitioner's Exhibits 25 through 28 and 30 were offered by OBNDD and admitted into evidence at the hearing conducted on March 3, 2015.

14. Respondent's Exhibits 1 and 11 were offered by Respondent and admitted into evidence at the hearing conducted February 18, 2015.

15. Respondent's Exhibits 2 through 9 were offered by Respondent and admitted into evidence at the hearing conducted on February 19, 2015.

16. OBNDD called the following listed witnesses to testify:

a. OBNDD Agent Brian Tallant;

b. Medicaid Fraud Control Agent April Carpenter;

c. OBNDD Agent Tye Briscoe;

d. Medical Board Investigator Jana Lane;

e. Medical Board Investigator Stephen Washbourne;

f. Pharmacy Board Chief Compliance Officer Cindy Hamilton;

g. OBNDD PMP Administrator Don Vogt;

h. OBNDD Chief Agent Mark Stewart; and

i. Tonya McNees.

17. Respondent called the following listed witness to testify:

a. Tashonda Dixon.

18. The following relevant sworn testimony was obtained from the above-listed witnesses:

OBNDD Agent Brian Tallant:

19. He has been assigned to the Diversion Unit with OBNDD since March of 2012, and has received training in diversion at the OBNDD Diversion School, NADDI Diversion training in Memphis, TN, a week-long diversion training in Atlanta, GA, and numerous NADDI workshops and other diversion training since his assignment to that division.

20. He described diversion as the taking of any legal drug, such as oxycodone and hydrocodone, for illegal purposes; and confirmed that OBNDD has jurisdiction over all controlled drugs pursuant to Title 63 of the Oklahoma Statutes.

21. He testified that the most typically diverted drugs are Schedule II drugs such as hydrocodone, oxycodone, Oxycontin and oxymorphone, and Schedule IV drugs such as alprazolam, commonly known as Xanax, and carisoprodol, commonly known as Soma.

22. He identified the red flags of diversion at doctor's offices as long lines of people waiting to get into the office, very short exam times, and little to no medical records.

23. He became involved in an investigation of Respondent when OBNDD was requested by the Oklahoma Attorney General's Office, on July 10, 2013, to assist them with a Medicaid fraud investigation by conducting undercover operations.

24. A few days later he went to Respondent's office to make an appointment as a new patient. The visit was scheduled for October 9, 2013. He was told the initial visit would cost $550, he was given a brief history document that appeared to be a pain contract, and he was told to bring his records with him to the appointment.

25. Based upon his expertise in diversion, he testified that the $550 cash price for an office visit is not a deterrent because drug-seekers can turn around and sell the pills they receive for more than that.

26. He arrived at Respondent's office on October 9, 2013 at 8:45am for his 9:00am appointment. There were already several vehicles in the parking lot and nine people lined up at the door waiting to get in the office.

27. One of the people in line was a female who appeared to be under the influence because of her slurred speech, unable to maintain balance and having to lean up against the wall.

28. He had to wait in another line when he got inside the office at the reception desk where he paid the $550 cash, then was given a piece of paper with codes on it for billing. He then waited in the waiting room with about 25 to 30 other people.

29. He did not bring any medical records with him.

30. Approximately twenty minutes later, he was called back for a urinalysis test, and then returned to the waiting room. At approximately 10:00am, Julie Brown started calling patients to the exam rooms six at a time.

31. The longest time a patient was back in the exam room was approximately five minutes and the shortest was approximately two minutes. Respondent did not arrive at the office until 10:25am, by which time, approximately fifteen patients had already been in and out of exam rooms, some leaving the office with what appeared to be prescriptions.

32. At 10:36am, he was called back and placed in Exam Room No. 1, and at 10:41am, Julie Brown came into the room, asked him his weight and height, and took his blood pressure. He told her he had back pain from an ATV accident in January of 2012 when she asked him the reason he was seeing the doctor. She left the exam room at approximately 10:45am.

33. Respondent walked into the exam room at 11:06am and asked how he could help him, and he told Respondent that he was in an ATV accident in January of 2012, and had been receiving Lortab, but that he had not had a prescription for Lortab since April or May of 2013.

34. He confirmed to Respondent that he had not had an MRI. Respondent then had him stand and walk across the room on his heels and toes, which he performed with no difficulty. Respondent told him to bend at the waist as far forward as he could without pain; he bent over and touched the floor with the palms of his hands. Respondent asked if that hurt, and he said no. Respondent then asked if his back was sore to the touch, and he said no.

35. Respondent then stated that he felt the Lortab seemed to be working for him. Tallant thought this was odd because he had told Respondent that he had not had a prescription for Lortab since April or May of 2013. Tallant was wearing a recording device and it was operating from the time he arrived at Respondent's office until he left.

36. He did not provide Respondent with any medical records. Respondent issued him prescriptions for hydrocodone with acetaminophen 10, 500mg, 90 pills, which is also known as Lortab, and Flexeril, 10 mg, 90 pills.

37. Tallant confirmed that on October 9th he did not have anything physically wrong with him, his back was in good shape, he did not have any pain that day, and he passed physical fitness tests for his job twice a year.

38. The PMP is the Prescription Monitoring Program, and any time a person receives a prescription for a controlled drug it shows up on the PMP because the pharmacies are required to put those prescriptions into the system. Tallant was set up with a fake PMP report in his undercover name that established him as a drug-seeker.

39. Don Vogt is OBNDD's PMP Administrator, and is capable of determining if anyone checked Tallant's PMP, and who checked it. Vogt verified that no one checked Tallant's undercover PMP prior to or after his visit with Respondent.

40. He was required to have a follow-up appointment with Respondent on October 23, 2015, approximately two weeks later. He arrived at the front desk at 10:30am, and paid $250 for that visit. He again received the billing paperwork, which stated he was there with a "cervical injury" and he told them it was supposed to be a low back injury. He was called back for a drug screen at 11:20 am, and then went back to the waiting room.

41. About an hour later, at 12:25pm, he was called back to the exam room. A female came in and looked at his paperwork and asked if Respondent was seeing him for his neck, and he told her no, for his lower back. She did not examine him, only asked his weight, height and pain level, to which he responded that his pain level was a one, the least severe on a scale of one to ten.

42. At 1:05pm, Respondent entered the exam room, but did not check any of his vitals. Respondent asked him if the medicine was working and he told Respondent yes, and that he was having trouble sleeping. Respondent asked him if he needed a sleeping pill, and he told Respondent yes. Respondent gave him a prescription for Ambien.

43. Tallant was also recording this office visit, and the recording verifies that his visit with Respondent lasted approximately two minutes.

44. Tallant confirmed that he never filled the prescriptions he received from Respondent, and that his PMP would have shown that if anyone had checked it. He did receive another prescription from Respondent for Ambien, and was scheduled for another visit in two weeks.

45. His third appointment was for November 7, 2013, at 4:30pm, and he arrived around 4:00pm, wearing a video and audio recorder. He paid his $250 and waited in the waiting room until 4:15 for his drug screen, then went back to the waiting room. He was taken to an exam room at 4:41pm. A female came into the room at 4:53pm and asked him if they were seeing him for his neck or back, and he told her for his lower back. She did not take any vitals, and was basically in and out of the room.

46. Respondent came into the room at 4:58pm and informed Tallant that his last drug screen tested negative for the Lortab. Tallant told Respondent that he only took it when he needed it. Respondent did not renew his prescription for Lortab, and told him should come back in four weeks and he would refill them then. This ended his undercover operation and he did not go back to see Respondent.

47. Tallant confirmed that during the three office visits with Respondent, there were between 20 and 40 persons in the waiting room at any one time, and on more than one occasion, he observed individuals falling asleep, and when they got up to walk they appeared to be under the influence of something because they were having trouble walking and were staggering.

48. Tallant was also involved in surveillance of another undercover officer at Respondent's office on April 14, 2014, April 28, 2014, May 12, 2014, and June 16, 2014, and participated in a search warrant of Respondent's office with the Oklahoma Attorney General's Office on January 26, 2015.

49. During his participation in the search warrant, he found several pre-signed prescriptions for controlled drugs, signed by Respondent, and sixteen blank prescriptions that were also pre-signed by Respondent.

50. Tallant testified that based on his training and experience, the blank pre-signed prescriptions by Respondent were a risk for diversion because anybody can get their hands on those prescriptions and put whatever they want on them, and there are no controls to determine if one of them is missing.

51. He also found a box in an unlocked storage room with 509 Schedule II drugs and 14 Schedule IV drugs, along with non-controlled drugs, 30 pill bottles with the patient labels removed, and 31 fentanyl patches, all inside a red bag.

52. He confirmed that having these drugs stored in an unlocked storage room, in an unlocked container, was a risk of diversion as all employees at the office had access.

53. Pursuant to the law, it is not permissible for a doctor's office to possess pills that belong to someone else, and he could not find any lawful reason for the clinic or Respondent to possess the controlled dangerous substances ("CDS") found in the box.

54. Copies of CDS prescriptions for employees of Respondent were obtained from Jim's Community Pharmacy. The prescriptions were not manually signed by Respondent as required by law, but rather had signatures that were stamped or scanned onto the prescriptions. Tallant confirmed that these prescriptions had been filled by checking the PMP.

55. According to the PMP, Respondent's employees were receiving prescriptions for the same type of controlled drugs found in the box in the storage room, to which they had access.

Agent April Carpenter:

56. She has been an agent with the Oklahoma Attorney General's Office in the Medicaid Fraud Control Unit for the past three and a half years, and has prior law enforcement experience, is CLEET certified, and has training in healthcare fraud.

57. She is involved in an on-going investigation against Respondent that initially started with the Oklahoma Healthcare Authority, and confirmed that OBNDD was requested to assist in their investigation because they were potentially dealing with

undercover operations and prescription medication, specifically wanting OBNDD to assist with the undercover operation aspect of the investigation.

58. In addition to conducting surveillance of the undercover officers during their investigation, she obtained a search warrant on January 23, 2015 and served that warrant on January 26, 2015 at approximately 9:00am. There were patients at the clinic then, but Respondent was not yet at the clinic.

59. They found signed prescriptions clipped to folders on the walls in the patient hallway. Signed and blank prescriptions were also found throughout the clinic, on the printer, on the pocket folder and sitting on desks, but not attached to patient folders or any other type of paperwork.

60. Also during the search, they found eighteen blank prescriptions signed by Respondent.

61. She also found three stamps of the Respondent's signature during the search of Respondent's clinic, and identified prescriptions that had either a computer-generated signature of Respondent or a stamped signature of Respondent.

62. Pills and prescription bottles were found during the search in a back area with files and garage bay doors. No records of inventory, receipts or invoices were located in reference to the pills found in the back room.

OBNDD Agent Tye Briscoe:

63. She is presently a senior agent with OBNDD, and has been an agent for about three years, assigned to the Diversion Unit. She has conducted hundreds of diversion investigations, and received training in diversion continuously in local training, CLEET, and national organization training.

64. She is tasked with enforcement of Title 63 of the Oklahoma Statutes, also known as the Uniform Controlled Dangerous Substances Act, and the OBN Rules and Regulations that pertain to registrants- those who would have access to or administer or prescribe or dispense controlled dangerous substances.

65. During OBNDD operations she has gone undercover as a patient, and did so while assisting the Oklahoma Attorney General's Office in an investigation of Respondent, in addition to assisting on a search warrant at Respondent's clinic, Aria Orthopedics.

66. She went undercover as a patient at Respondent's clinic on April 14, 2014, April 28, 2014, May 12, 2014, and June 16, 2014. She submitted to a urinalysis test each time, and on three of those times she brought her own prepared urine sample that contained Percocet. Her vitals were not taken on any of those occasions, except once her blood pressure was taken.

67. While waiting in a patient room, she overheard a conversation between Respondent and a female patient where he was telling her that they found Lortab in her urinalysis that he did not prescribe to her and that was against his rules, but that he was going to write her a prescription anyway.

68. Out of her four appointments with Respondent, she only saw him three times, for six minutes the first time, and thirty seconds each the other two times she saw Respondent.

69. Respondent gave her a total of four Schedule II prescriptions during these visits.

70. During her undercover visits to Respondent's clinic, she was posing as a patient with a shoulder injury, but did not have anything wrong with her, and never brought any

medical records to show Respondent. He did check her shoulder for tenderness, checked her range of motion and moved her arm around. She was not fired as a patient.

71. She also confirmed that pre-signed prescriptions that did not have any drug or directions on them were found during the search warrant on Respondent's clinic. This is of concern because it is a failure to guard against diversion because they were signed and not filled out; anyone could get them and prescribe whatever they want to, which is a violation of the rules regarding guarding against diversion.

72. In her training and experience, she finds that it is common for persons seeking pills to fake their urinalysis tests like she did at Respondent's clinic. They can save enough pills back from selling them so that their urine is positive for a particular drug, so they will get their new prescription.

Medical Board Investigator Jana Lane:

73. She has been an investigator for the Oklahoma Medical Board for the past eight years and is also a registered nurse, being licensed in 2000. She received law enforcement training through CLEET in 2008.

74. She is aware that Respondent was placed on probation with the Medical Board as a result of a urinalysis coming up positive for oxycodone in February 2011. He was placed on probation for three years on November 3, 2011, ending November 3, 2014.

75. Subsequent to being placed on probation with the Medical Board, on October 13, 2013, the Medical Board received a complaint from one of Respondent's patients regarding an infection from a laser tattoo removal. The complainant never had a face to

face meeting with Respondent, and that it was his staff that removed the tattoo, which resulted in Ms. Lane going undercover.

76. During the undercover operation, she was set up for laser tattoo removal without a face to face meeting with Respondent. On the day of her appointment she did see Respondent in the office through the reception window, but no face to face patient/doctor exchange occurred before she was taken back to a room and the tech attempted to begin the procedure without Respondent.

77. On June 26, 2014, while still on probation with the Medical Board, a complaint was filed against Respondent for not having a face to face patient relationship, with a final order being filed on January 15, 2015, placing Respondent on probation for two years plus a fine.

Medical Board Investigator Stephen Washbourne:

78. He has been an investigator for the Oklahoma Medical Board for the past twenty-four years, and worked as an OBNDD Agent for three years prior to that.

79. He received information from the Oklahoma Attorney General's Office, Medicaid Fraud Unit, that they and OBNDD were investigating Respondent regarding possible Medicaid billing fraud and other issues, and that they served and executed a search warrant on January 26, 2015.

80. He reviewed the search warrant return and Agent Tallant's report regarding the execution of the search warrant, and observed a picture of various medication pills, including controlled substances that were seized during the search, which caused him concern because the pills were in a non-secured location, with employees and janitorial

staff having access to them, including Respondent who had abused such substances in the past.

81. He has investigated about 50 cases involving controlled substances located at physican's/practitioner's offices, and based on his experience and knowledge of the law, it is not permissible for a doctor to accept controlled dangerous substances back from patients, it is not something that would be legal for them to do.

82. If controlled substances were received back from a patient, the medication would have to be locked up in a secure cabinet with a lock.

83. He confirmed that Plaintiff's Exhibit 21, a photograph of prescriptions obtained from Respondent's clinic that had been signed by Respondent, but were blank, not filled out, is a problem for the Medical Board and him as an investigator because it is a failure to guard against diversion because someone can get ahold of those prescriptions and fill them out for themselves or others as they are not directed at any particular person.

84. He is familiar with the laws that regulate how controlled dangerous substance prescriptions are supposed to be written. The law requires the date, name of the patient, their address, the quantity and strength of the medicine, and the doctor's signature, which the signed prescriptions in Exhibit 21 did not have.

85. The law requires a doctor to sign a prescription on the date of issuance, and that doctor is responsible for what is written on the prescription.

86. He initiated immediate action to suspend Respondent's medical practice, which was done by the Medical Board on February 11, 2015, forbidding Respondent to practice medicine until he appears before the Medical Board.

Pharmacy Board Chief Compliance Officer Cindy Hamilton:

87. She is the Chief Compliance Officer at the Oklahoma State Board of Pharmacy. She has been with the Board for seventeen years, and has been a pharmacist for twenty-five years.

88. She is familiar with the laws regarding the maintenance of pills at pharmacies and doctors' offices, and the requirements for storage of controlled substances at doctors' offices require them to be locked up at all times.

89. It is not legal for any pharmacy, or any DEA or OBNDD registrant, to take back medications from anybody.

90. She is familiar with the laws and manner in which prescriptions are supposed to be prepared. A written prescription must have the name and address of the physician, the patient's name, the drug, the quantity, the directions for use and the physician's signature.

91. A printed prescription from a computer or stamp of a signature is not acceptable for Schedules II, III, IV or V. There are electronic prescriptions that are allowed to be sent from one computer to another, but DEA requires the computer software to be certified on the part of both the prescriber and the pharmacy. Faxed prescriptions require a manual signature, and Schedule II prescriptions cannot be faxed from a doctor's office to a pharmacy.

92. She checked the certifications and Respondent's software is not certified by DEA to send electronic CDS prescriptions, and Jim's Community Pharmacy is not certified to receive electronic CDS prescriptions.

93. She is familiar with the laws of pre-signing prescriptions, and pre-signed blank prescriptions are not permitted because it would be a failure to guard against diversion.

94. Signed blank prescriptions are in violation of the law in addition to the fact that they can be used to divert drugs.

95. Several of the prescriptions in Plaintiff's Exhibit 21 are in violation of the law because they do not have a handwritten signature of Respondent, but rather a stamped signature, which is in violation of the law.

OBNDD PMP Administrator Don Vogt:

96. He has been employed as the PMP Administrator for OBNDD for almost ten years. OBNDD has had a PMP since 1990, and it has been online since 2006.

97. He manages the program that collects data from pharmacies and/or dispensing practitioners and then provides that information to lawful registrants which are pharmacies and practitioners.

98. Law enforcement can run a PMP report for an investigation, but pharmacies and practitioners can only run them on patients. Registrants can delegate a person to run a PMP for them, but that person must sign up for a sub-account.

99. He confirmed that Respondent has access to the PMP, but no one at his clinic is listed in his profile as authorized by a sub-account.

100. He created an undercover PMP for Agent Tallant to establish him as a doctor shopper, but neither Respondent nor anyone from his office ever checked Agent Tallant's undercover PMP.

OBNDD Chief Agent Mark Stewart

101. He is the Chief Agent of the Diversion Section at OBNDD, and has been with OBNDD for approximately twenty-five years.

102. Approximately ten months ago, he went to Respondent's office to pick up some fentanyl patches. Respondent advised him that he received them back from a patient, and has received other controlled substances back from patients. He made it clear to Respondent that he could not legally possess a controlled substance that was returned by a patient, and he told Respondent where he could dispose of controlled substances.

Tashonda Dixon

103. She is the practice manager for Respondent, and has been for sixteen years. She is responsible for the daily operations of the clinic, the policies and procedures, and she is involved in every facet of the practice.

104. Medications that are returned to the clinic are placed into a biohazard bag in a box, and the bottle with the label is dumped into the bag on top of the medications, which is kept in their storage room.

105. The clinic has taken pills away from patients where the patient did not want them to. If the patient was asking for a different prescription, they would make the patient give the clinic the remainder of the other prescription before they would issue another prescription.

106. She did not maintain records or an inventory on the controlled drugs in the bag inside the box in the back storage room, except for the initial listing of the drugs in the patient's file.

CONCLUSIONS OF LAW

1. The Court finds that OBNDD has jurisdiction over this matter and Respondent.

2. The OBNDD Director has the authority to adopt or reject any and/or all of the provisions of this Order.

3. Respondent was provided a hearing within fourteen (14) days as to the allegations within the Immediate Suspension Due to Imminent Danger letter and the Amended Immediate Suspension Due to Imminent Danger letter.

4. This Hearing Officer found sufficient clear and convincing evidence to continue the suspension of Respondent's OBNDD Registration pending the outcome of the Show Cause hearing.

5. Respondent was provided adequate notice and a hearing as required by law pertaining to the allegations made by OBNDD in its Notice of Hearing and Order to Show Cause, filed on February 4, 2015, served by electronic mail and certified mail.

6. Respondent appeared on February 18 and 19, 2015 and March 3 and 4, 2015, at the hearings and was represented by Counsel, Kevin Krahl and John Krahl.

7. Based on the above provided findings of fact, there is clear and convincing evidence to find that Respondent has committed the following violations of his OBNDD Registration as set forth pursuant to 63 O.S. §2-304(A):

> A registration, pursuant to Section 2-303 of this title, to manufacture, distribute, dispense, prescribe, administer or use for scientific purposes a [CDS] shall be limited, conditioned, denied, suspended or revoked by the Director upon a finding that the registrant:
>
> 4. Has failed to maintain effective controls against the diversion of [CDS] to unauthorized persons or entities;

> 6. Has had a restriction, suspension, revocation, limitation, condition, or probation placed on his professional license or certificate or practice as a result of a proceeding pursuant to the general statutes;
>
> 7. Is abusing or, within the past five (5) years, has abused or excessively used drugs or [CDS];
>
> 9. Has possessed, used, prescribed, dispensed or administered drugs or [CDS] for other than legitimate medical or scientific purposes or for purposes outside the normal course of his professional practice;
>
> 11. Has violated any federal law relating to any controlled substances, any provision of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, or any rules of the [OBNDD].

8. Based upon the above Findings of Fact, it is determined that there is clear and convincing evidence to support a violation of the provision in 63 O.S. §2-304(A)(4), 21 CFR 1306.05, OAC 475:20-1-2 and 475:30-1-3, in that Respondent has failed to maintain effective controls against diversion by signing blank prescriptions; by failing to manually sign all printed and faxed prescriptions; by prescribing CDS to patients without establishing a legitimate medical purpose; by unlawfully possessing CDS; and permitting unsupervised employee access to both the pre-signed prescriptions and unsecured CDS.

> 21 CFR 1306.05
> (a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner.
>
> (d) A practitioner may sign a paper prescription in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). Where an oral order is not permitted, paper prescriptions shall be written with ink or indelible pencil, typewriter, or printed on a computer printer and shall be manually signed by

the practitioner. A computer-generated prescription that is printed out or faxed by the practitioner must be manually signed.

(e) Electronic prescriptions shall be created and signed using an application that meets the requirements of part 1311 of this chapter.

OAC 475:20-1-2
a) All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of [CDS]. In order to determine whether a registrant has provided effective controls against diversion, the Director shall require adherence to the security requirements as set forth generally in the Uniform Controlled Dangerous Substances Act, and specifically by this Chapter, as standards for the physical security controls and operating procedures necessary to prevent diversion. Materials and construction which will provide a structural equivalent to the physical security controls set forth in 475:20-1-4 and 475:20-1-6 may be used in lieu of the materials and construction described in those Sections.

OAC 475:30-1-3
(a) A prescription for a [CDS] to be effective must be issued for a legitimate medical purpose by a registered or otherwise authorized individual practitioner acting in the usual course of his/her professional practice. The responsibility for the proper prescribing and dispensing of [CDS] is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription, as the filling of a prescription is not incumbent on the pharmacy. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of Title 63 Okl.St.Ann. §§ 2-309 and 2-312, and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to [CDS].

9. Based upon the above Findings of Fact, it is determined that there is clear and convincing evidence to support a violation of the provision in 63 O.S. §2-304(A)(6) in that Respondent's Medical License was again restricted by the Medical Board on January 15, 2015 and that Respondent was on probation with the Medical Board at the time that OBNDD Agents found the pre-signed prescriptions along with the unlawfully

possessed CDS. Subsequently, on February 11, 2015, the Medical Board issued an Immediate Summary Suspension of Respondent's Medical License, which renders Respondent ineligible to obtain prescribing privileges pursuant to 63 O.S. §2-309 and OAC 475:10-1-4.

10. Based upon the above Findings of Fact, it is determined that there is clear and convincing evidence to support a violation of the provision in 63 O.S. §2-304(A)(7) in that Respondent was put on probation by the Medical Board in 2011 for abusing oxycodone, a Schedule II CDS.

11. Based upon the above Findings of Fact, it is determined that there is clear and convincing evidence to support a violation of the provision in 63 O.S. §2-304(A)(9), 63 O.S. § 2-307, and OAC 475:25-1-1 *et seq.* in that Respondent unlawfully possessed CDS that he had taken back from patients for other than legitimate medical or scientific purposes or for purposes outside the normal course of his professional practice and by failing to maintain appropriate records, reports and inventories of all CDS in his possession.

> 63 O.S. § 2-307
> Persons registered to manufacture, distribute, or dispense [CDS] under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with the additional rules the Director issues.
>
> OAC 475:25-1-1 *et seq.*
> The rules of this Chapter list and describe the types of records that must be maintained regarding the lawful possession of [CDS], and also state how long said records must be available for inspection.

12. Based upon the above Findings of Fact, it is determined that there is clear and convincing evidence to support a violation of the provision in 63 O.S. § 2-304(A)(11) in that Respondent unlawfully possessed CDS taken back from patients; he allowed

access to the unlawfully possessed CDS by storing it in an unsecured location; he pre-signed prescriptions for use by his staff when he was not in the clinic; he prescribed CDS for other than a legitimate medical purpose; he failed to maintain effective controls against diversion.

13. That based upon the above Findings of Fact, it is determined that there is clear and convincing evidence to support a violation of the provision in 63 O.S. § 2-402(A)(1), 21 CFR §1317.30, 63 O.S. §2-308 and OAC 475:35-1-1 *et. seq.* in that Respondent obtained and possessed Schedule II and IV CDS in violation of the Uniform Controlled Dangerous Substances Act by taking back dispensed CDS from patients.

> 63 O.S. § 2-402(A)(1)
>
> A. 1. It shall be unlawful for any person knowingly or intentionally to possess a [CDS] unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his or her professional practice, or except as otherwise authorized by this act.
>
> 21 CFR §1317.30
>
> (a) The following persons are authorized to collect controlled substances from ultimate users and other non-registrants for destruction in compliance with this chapter:
>
> (1) Any registrant authorized by the Administration to be a collector pursuant to §1317.40; and
>
> (2) Federal, State, tribal, or local law enforcement when in the course of official duties and pursuant to §1317.35.
>
> (b) The following non-registrant persons in lawful possession of a controlled substance in Schedules II, III, IV, or V may transfer that substance to the authorized persons listed in paragraph (a) of this section, and in a manner authorized by this part, for the purpose of disposal:
>
> (1) An ultimate user in lawful possession of a controlled substance;
>
> (2) Any person lawfully entitled to dispose of a decedent's property if that decedent was an ultimate user who died while in lawful possession of a controlled substance; and

(3) A long-term care facility on behalf of an ultimate user who resides or resided at such long-term care facility and is/was in lawful possession of a controlled substance, in accordance with §1317.80 only.

63 O.S. §2-308
[CDS] in Schedules I and II shall be distributed only by a registrant to another registrant pursuant to an order form obtained from the United States Drug Enforcement Administration. Compliance with the provisions of the Federal Controlled Substances Act respecting order forms shall be deemed compliance with this section. This section shall not apply to dispensing as defined by this act, nor to distribution otherwise authorized by this act.

OAC 475:35-1-1 *et. seq.*
The rules of this Chapter describe the methods of acceptable transfer of [CDS] other than by prescription.

ORDER

Based upon the above provided Findings of Fact and Conclusions of Law, Respondent's registration activities are inconsistent with the public health and safety. It is the order of the Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control that Respondent, Dr. Harvey C. Jenkins' OBNDD Registration #29444 shall be REVOKED. Respondent shall prohibited from making re-application for a new OBNDD Registration for a period of at least two (2) years from the date this Final Order is filed with OBNDD. Further, Respondent shall pay an ADMINISTRATIVE FINE in the amount of $36,000.00, pursuant to 63 O.S. §2-304(D). This fine must be paid in full prior to re-application for OBNDD Registration.

Pursuant to OAC 475:1-5-10, this Order shall be effective thirty (30) days from the filing date of this Order.

Done on this 12th day of June, 2015.

R. Darrell Weaver, Director
OKLAHOMA BUREAU OF NARCOTICS

CERTIFICATE OF SERVICE

I hereby certify that on _____, ____, 2015, I transmitted a copy of the foregoing document, by electronic mail and U.S. Mail, to:

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John Krahl
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