

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

FILED

SEP 12 2013

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

Plaintiff,)

v.)

THOMAS EDWARD TROW, M.D.)
LICENSE NO. 10255)

Defendant.)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No: 11-11-4439

**ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION**

Plaintiff, the State of Oklahoma, ex rel. the Oklahoma State Board of Medical Licensure and Supervision ("Board"), by and through its attorney, Scott Randall Sullivan, Special Prosecutor, for the State of Oklahoma and the staff of the Board, as represented by the Secretary of the Board, Gerald C. Zumwalt, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, Thomas Edward Trow, M.D., Oklahoma license no. MD 10255 who appears in person, offer this Agreement effective September 12, 2013, for acceptance by the Board *en banc* pursuant to *Oklahoma Administrative Code* Rule 435:5-1-5.1.

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on June 14, 2013, and further acknowledges that a hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act ("Act").

Defendant, Thomas Edward Trow, 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 has been reviewed and discussed with legal counsel, if any.

Agreements and Stipulations

Plaintiff, Defendant and the Board staff stipulate and agree as follows:

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.*
2. Defendant, Thomas Edward Trow, M.D., holds Oklahoma license no. 10255.
3. Defendant is a 65-year-old physician licensed in 1974. He is currently unemployed.
4. Initially, on 10-20-2011, Complainant SM, D.O., called to report his concerns that three (3) patients of Defendant's were receiving a large amount of Xanax. Pharmacy records were obtained. Shortly thereafter on 11-08-2011, Complainant TL, daughter of a deceased patient, filed a complaint with the Board of Examiners of Psychologists against Defendant stating he prescribed CDS to her father, a known addict, 62-year-old Patient RC, who eventually died. The complaint was given to the Oklahoma Attorney General's office and it was reported to this Board on 11-14-2011. On 3-13-2012, Complainant AM with the Oklahoma Health Care Authority ("OHCA") reported that Defendant is practicing Telemedicine via Skype on SoonerCare members and prescribing CDS without ever seeing the patients in person for initial evaluation. She also included the information about Patient RC.
5. Patient RC's medical records were requested and received from McAlester Hospital ER and Hartsell Psychiatric Services and pharmacy records were reviewed. His pharmacy records showed he saw multiple providers who prescribed various CDS. Hartsell clinic representatives confirmed that Defendant sees patients via Skype and almost never sees them in person. Death certificate states Patient RC died of natural causes (HBP and COPD) and no toxicology report was ordered.
6. During the investigation, it was discovered that two more patients whose charts were requested had died as well, Patient PG and Patient ST and an additional one whose chart was not requested was reported by OBN, Patient DF.
7. **Upon completion of a thorough and comprehensive investigation process, it has been determined that no patient deaths are attributable to Dr. Trow.**
8. Oklahoma Health Care Authority ("OHCA") filed an additional and related complaint stating they have been billed for Telemedicine visits via Skype by Hartsell Psychiatric Clinic who contracts Defendant for their medical services, however, neither the clinic nor Defendant has a contract with OHCA to provide such services and Skype is not an approved method of providing Telemedicine. They report Defendant submitted claims on Patient RC for the services underlined below:

4-05-11 - prescribed Xanax 2mg #60
5-02-11 - refill Xanax 2mg, #60
 5-08-11 - *Patient RC was evaluated in ER for benzo poisoning*
6-07-11 - OV and prescribed Depakote #30
 6-11-11 - *Patient RC was evaluated in ER for overdose*
7-05-11 - refill Xanax 1mg #90
8-03-11 - Xanax 1mg #90 and Celexa #30
8-26-11 - prescribed Restoril 30mg #30
9-07-11 - prescribed Xanax 1mg #90, Celexa #30 and Depakote #30
11-1-11 - prescribed Klonopin 1mg #90
 11-2-11 - *Patient RC treated at ER for benzo poisoning*
 11-6-11 - *Patient RC died at home*

9. Defendant's pharmacy record indicates that a significant portion of his practice is pain management. Twelve (12) patients' pharmacy records were reviewed. All twelve (12) contained some type of pain medications to include morphine, fentanyl, oxycodone, hydrocodone, oxycontin and methadone.
10. On 1-17-2013 Board Investigator RR interviewed Defendant at the OSBMLS office. He stated that he is in bad health with back and hip problems making it difficult to travel so Telemedicine appealed to him so he could stay home. He said his RN, Nurse BE, traveled to the various satellite clinics and presented the patients to him via Skype. He practiced from his home in Park Hill and communicated via mail, fax and phone. He stated that he did not think he had to see patients in person since they were psychiatric patients. He also admitted that he treated some patients for pain management issues by Skype as well. When asked if he billed OHCA for mental health visits or medical visits, Defendant said he wasn't sure but he tried to see everyone every 90 days. (Patient medical records do not reflect that.) He stated the patient files are kept at the individual clinics where the patients are seen. He admitted that he does not keep a separate file at his residence as required by Telemedicine guidelines. **Defendant admitted violating the Telemedicine guidelines under OHCA by not obtaining proper contracts and not using approved equipment**, however, he said he thought it was his employer's responsibility and thought they had gotten it all approved.
11. OHCA wrote a Letter of Concern to Defendant on 8-17-2012 informing him that he was in violation of their rules and regulations as follows:
 - a) ***no approved contract with OHCA, using unapproved equipment and no patient consent forms authorizing telemedicine;***
 - b) ***being able to only produce 8 out of 10 patient records they requested;***

- c) *their physician reviewer had concerns about the quantity of CDS and lack of documentation such as pain contracts, random drug screens, pharmacy record monitoring;*
- d) *limited physician documentation with no physical findings; and*
- e) *no countersign by the doctor on verbal orders noted by the LPN.*

12. Defendant responded in writing on 10-7-2012 stating, "Please be aware that many of my patients come from unimaginable social squalor" and "I have come to believe that 6mg of alprazolam a day is preferable to their alternatives." **He further admitted that he did not see some of the patients even via Skype and they were "nurse only" visits.**
13. On 11-9-2012 OHCA sent another letter describing their concerns in more detail such as no initial contact with patients, no complete medical records at both ends of the telecommunication network, HIPAA violations by using unapproved network, nurses acting with little supervision, drug screens showing use of illicit drugs but no change in practice for prescribing, and admission by Defendant that sometimes he didn't even see the patient on Skype but treated over the phone giving verbal orders to the LPN on the other end.
14. On 11-15-2012 OHCA sent Defendant a certified letter terminating his SoonerCare contract **citing concerns for the health and safety of their members.**
15. OSBMLS has established a policy statement on Telemedicine. Defendant has failed to follow these guidelines as set forth in:

Section XVI: Law/Policy Statement of Telemedicine for Mental Health

(c) Telemedicine technology and requirements. Telemedicine technology is limited to consultations, psychotherapy, psychiatric diagnostic interview examinations and testing, discharge planning and pharmacologic management. An interactive telecommunications system is required as a condition of the use of telemedicine.

(d) The following shall not be considered telemedicine:

- (1) Telephone conversation (including text messaging)
- (2) Electronic mail message
- (3) Fax
- (4) Store and forward

(f) Telemedicine Network Standards. An appropriate telemedicine network shall meet all technical and confidentiality

standards as required by state and federal law in order to ensure the highest quality of care.

16. Defendant's employer, Dr. JH, PhD, was cited by the Board of Psychologists on 5-18-2012 for falsifying billing records for SoonerCare recipients. His license was suspended for five years and he voluntarily agreed not to make application for reinstatement and not to ever practice psychology in this state. Defendant worked for him from 2010 to November, 2012 at seven (7) locations across the state. There is no master patient register so locating medical charts for patients is difficult. A blanket subpoena was sent to all seven (7) facilities for twelve (12) patient records. Ten, plus Patient RC's from an earlier subpoena, were received for review by the Board's medical director. There was **no** record found for Patient MO and Patient AD, however, their pharmacy records show Defendant prescribed CDS for them as recently as December of 2012.
17. Defendant stated to Board Investigator RR that he has not worked since 11-20-2012 when OHCA cancelled his provider contract, however, his pharmacy record shows numerous new prescriptions since then including seven (7) of the eight (8) living patients whose charts we obtained and reviewed. Board Investigator RR called Defendant on 4-3-2013 to ask if he was working somewhere now and he stated that he was not. When asked why his pharmacy record had new scripts on it he said he did not know. He said he had not seen patients and had no patient charts but had "called in a refill or two for a couple of patients who really needed it, but that was all."

Conclusions of Law

18. 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. sec. 509 (8);
 - 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. sec. 509 (12);
 - c) Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards in violation of Title 59 O.S. sec. 509 (16);
 - 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. sec. 509 (18);

- e) Indiscriminate or excessive prescribing, dispensing or administering of controlled or Narcotic drugs in violation of Oklahoma Administrative Code Rule 435:10-7-4 (1);
- f) Prescribing, dispensing or administering of Controlled substances or Narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standard in violation of Oklahoma Administrative Code Rule 435:10-7-4 (2);
- g) Dispensing, prescribing or administering a Controlled substance or Narcotic drug without medical need in violation of Oklahoma Administrative Code Rule 435:10-7-4 (6);
- h) Conduct which is likely to deceive, defraud, or harm the public in violation of Oklahoma Administrative Code Rule 435:10-7-4 (11); and
- i) Violating any state or federal law or regulation relating to controlled substances in violation of Oklahoma Administrative Code Rule 435:10-7-4 (27).

Order

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

1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction;
2. Defendant's license is hereby **SUSPENDED** for a period of nine (9) months retroactive to November 30, 2012 and ending August 30, 2013;
3. Defendant shall complete a standard prescribing course with comprehensive prescribing curriculum which is currently offered at Vanderbilt University or an equivalent course thereto. Said prescribing course shall be approved by Board Secretary;
4. Defendant shall not prescribe any CDS *until* after such time as he completes the standard prescribing course mentioned in Paragraph 3 above and, upon his completion of said course, meets with Board Secretary; and

5. Defendant is hereby placed on **PROBATION** for a period of two (2) years and said probation shall have the following terms:

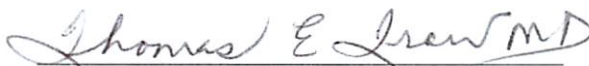
Standard Terms:

- a) Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Board. Any question of interpretation regarding the Act or this order 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 Board or its designee.
- b) Defendant will furnish a copy of this order to each and every state in which he holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he holds or anticipates holding any form of staff privileges or employment.
- c) Defendant will not supervise allied health professionals that require surveillance of a licensed physician.
- d) Defendant will keep the Board informed of his current address.
- e) Defendant will keep current payment of all assessment by the Board for prosecution, investigation and monitoring of his case unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.
- f) Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- g) Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.
- h) Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or designee.
- i) Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Coordinator to obtain copies of medical records and authorize the Compliance Coordinator to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.
- j) Failure to meet any of the terms of your Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify license after due notice and hearing.

Dated this 12th day of September, 2013.



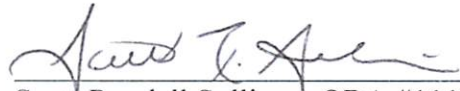
G. David Casper, M.D., President
Oklahoma State Board of Medical
Licensure and Supervision



Thomas Edward Trow, MD
License No. MD 10255



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board Of Medical
Licensure And Supervision

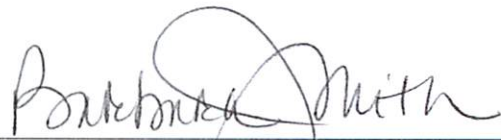


Scott Randall Sullivan, OBA #11179
101 N.E. 51st Street
Oklahoma City, OK 73105

Attorney for Oklahoma State Board of
Medical Licensure and Supervision

CERTIFICATE OF MAILING

This is to certify that on this 12th day of September, 2013, a true and correct copy of this order was mailed, postage prepaid, to Thomas Edward Trow, M.D., 18452 W Lakewood Dr., Park Hill, Ok 74451-2217.



Barbara J. Smith, Legal Assistant