HEARING CONDUCTED BY THE
TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS
SOAH DOCKET NO. 503-14-1671.MD
TEXAS MEDICAL LICENSE NO. N-5626

IN THE MATTER OF THE	BEFORE THE
COMPLAINT AGAINST	
SOO YOUNG CHONG, M.D.	TEXAS MEDICAL BOARD

FINAL ORDER

During an open meeting held in Austin, Texas, the Texas Medical Board (Board) finds that the above-styled case was assigned to Administrative Law Judges (ALJs) Rebecca Smith and Laura Valdez of the State Office of Administrative Hearings, who presided over the case at the final hearing on the merits, which was held on April 18-19, 2017. The ALJs issued a Proposal for Decision (PFD) on September 22, 2017, which contained findings of fact and conclusions of law. The PFD was properly served on all parties, and all parties were given an opportunity to file exceptions and replies as part of the record herein. Respondent filed exceptions. Board Staff filed a reply to Respondent's exceptions. The ALJs overruled Respondent's exceptions.

The Board, after review and due consideration of the PFD, adopts the findings of fact and conclusions of law of the ALJs.

I. FINDINGS OF FACT

Respondent's Medical Practice

1. Soo Young Chong, M.D. (Respondent) is a physician licensed by the Texas Medical Board (Board). He holds medical license number N5626, issued by the Board in April 2010.

2. During his residency, Respondent worked one day per week at a pain management clinic.

3. Respondent received board certification in psychiatry, and, in November 2010, became the medical director of an addiction treatment center.

4. In August 2013, Respondent became the medical director of MedPlus Health and Rehab (Clinic), in Houston, Texas. The Clinic was owned by Randy Presley, an advanced practice nurse.

5. Respondent and Mr. Presley entered into a collaborative agreement on September 4, 2013.

6. Mr. Presley treated all the patients, who were all seeking treatment for pain, at the Clinic. Respondent never treated any patients at the Clinic.

7. Respondent did not spend a majority of his time at the Clinic.

8. After receiving a complaint, the Board began investigating the Clinic, and on March 13, 2014, Board investigator Mary Chapman arrived at the Clinic with an "instanter subpoena" for patient records from January 2014. As part of her investigation, Ms. Chapman reviewed patient records and also conducted interviews, including interviews of Respondent and Mr. Presley.

9. On June 20, 2016, Mr. Presley pleaded guilty to the 3rd degree felony offense of practicing medicine in violation of the Medical Practice Act. He received deferred adjudication and was placed on community supervision for 5 years. On October 24, 2016, Mr. Presley entered into an Agreed Order with the Texas Nursing Board in which he agreed to voluntarily surrender his nursing license.

10. On June 16, 2014, Respondent entered into an Agreed Order of Temporary Suspension with the Board.

11. Board staff's (Staff's) claims involve Respondent's treatment of chronic pain with opioids and muscle relaxants, which are controlled substances regulated under the Texas Controlled Substances Act, located at chapter 481 of the Texas Health and Safety Code.

12. Controlled substances are listed in five scheduled categories based on the risk of abuse and addiction. Schedule I includes drugs that carry an extremely high risk of abuse and addiction and cannot be legally prescribed; Schedule II drugs have medicinal value but a high abuse potential, and may only be prescribed by physicians; and Schedule III through Schedule V drugs have a lower risk of abuse and may be prescribed by physicians and physician assistants or nurse practitioners with prescriptive authority.

Certification of Pain Management Clinics

13. The Clinic was never registered with the Board as a pain management clinic.

14. As the medical director, Respondent was an operator of the Clinic.

15. In January 2014, 576 patients were seen in the Clinic, and 571 (or 99 percent) of those patients received a prescription for opioids and/or carisoprodol.

16. In January 2014, 567 patients, or 98 percent, received prescriptions for both opioids and carisoprodol.

17. Although there was a notation of "massage chair" in the records for 407 of the patients seen in the Clinic in January 2014, the massage chair in the Clinic, essentially a desk chair with removable pads, was not capable of providing a treatment modality.

18. "Massage table" was noted in the records for 166 (or 29%) of the 576 patients seen in the Clinic in January 2014.

19. A table massage would be a treatment modality.

20. Assuming table massages included in the records were actually provided by Mr. Presley, 166 patients, or 29 percent, received a procedure in addition to or instead of pain medication.

21. In January 2014, a majority of the patients at the Clinic were prescribed opioids and/or carisoprodol.

22. A majority of patients did not receive another form of treatment from Mr. Presley along with their pain medications.

Pain Management Clinic Requirements

23. Respondent was not present at the Clinic for 33% of the Clinic's operating hours and did not review 33% of the Clinic's charts.

24. Respondent did not ensure that adequate billing records were maintained for seven years for all patients.

25. Respondent did not establish at the Clinic quality assurance procedures that include continuing medical education; documentation of the background, training, and certifications for all clinical staff; a written drug screening policy and compliance plan for patients receiving chronic opioids; and performance of periodic quality measures of medical and procedural outcomes and complications.

Supervision Allegations

26. Staff did not establish that Respondent delegated professional medical responsibility to someone he knew or had reason to know was not qualified by training, experience, or licensure to perform the responsibility.

27. The Collaborative Agreement between Respondent and Mr. Presley did not:

- specify which acts require a particular level of training or licensure and under what circumstances they are to be performed;
- state specific requirements which are to be followed by persons acting under same in performing particular functions;

- specify any experience, training, and/or education requirements for those persons who shall perform such orders;
- establish a method for initial and continuing evaluation of the competence of those authorized to perform same;
- provide for a method of maintaining a written record of those persons authorized to perform same;
- specify the scope of supervision required for performance of same, for example, immediate supervision of a physician;
- set forth any specialized circumstances under which a person performing same is to immediately communicate with the patient's physician concerning the patient's condition;
- state limitations on setting, if any, in which the plan is to be performed; or
- specify patient record-keeping requirements which shall, at a minimum, provide for accurate and detailed information regarding each patient visit; personnel involved in treatment and evaluation on each visit; drugs, or medications administered, prescribed or provided; and such other information which is routinely noted on patient charts and files by physicians in their offices.

28. Respondent did not ensure that the Clinic had a protocol containing a list of the types or categories of dangerous drugs and controlled substances available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring.

29. Respondent did not maintain permanent records of the Clinic patients discussed, the times the physician was onsite at the Clinic, and quality assurance activities that were undertaken at the Clinic.

30. Respondent did not ensure a system was in place at the Clinic to monitor the issuance of prescriptions under his name.

Patient Care Claims

31. Respondent delegated prescriptive authority to Mr. Presley from August 19, 2013, until June 16, 2014.

32. Mr. Presley saw Patients A-F, among other patients, at the Clinic under Respondent's supervision during this period.

33. Patients A-F all presented with chronic low back pain and all indicated they were taking narcotic pain medication at the time of their first Clinic visit.

34. Mr. Presley prescribed Patients A-F controlled substances for chronic pain.

35. An adequate medical history will detail the patient's history of present illness, including the different attributes of pain and what triggers or relieves it; all of the medications the

patient is currently taking or has taken in the past; any underlying or coexisting diseases or conditions; and information about whether the patient has a history of substance abuse.

36. The medical histories recorded in Respondent's records for Patients A-F describe the patients' pain in bare, conclusory terms, without elaborating on what triggered the pain or relieved it, and include little to no detail about the origin or cause of their pain.

37. All of the patients came to the Clinic already taking pain medications—or reporting previous experience with pain medications—but Mr. Presley's medical records reveal no inquiry into who prescribed them, for what purpose, or how the patients' pain responded.

38. The standard of care requires a physician to perform problem-focused physical examinations.

39. The standard of care for a physical examination for chronic lower back pain requires adequate assessment of the patient's range of motion, active and passive joint range of motion, lumbar range of motion, reflexes, motor level, and sensory level of the patient's lower extremities; palpation for any spasm, tenderness, or trigger points; observing for any curvature of the spine; conducting a straight leg raise test and other maneuvers such as a Kemp's test.

40. No physical examination was performed for Patient D at his visit on February 14, 2014.

41. Mr. Presley performed inadequate physical examinations for Patient E on March 6, 2014, and for Patient F on February 20, 2014 .

42. The standard of care requires the physician to monitor a patient on opioid therapy to ensure the patient is compliant with the medication regimen and to guard against abuse and diversion.

43. Conducting urine drug screens, counting pills, checking the Texas Department of Public Safety prescription database, and obtaining pharmacy records are all methods to ensure prescriptions of opioids are being taken as directed.

44. There are no records of drug screens in any of the records for Patients A-F.

45. Patient D showed signs of aberrant drug-taking behavior.

46. Mr. Presley failed to ensure that Patients A-F were monitored for substance abuse or diversion.

47. When Respondent reviewed the records for Patient A's January 7, 2014 visit to the Clinic, he noted that imaging needed to be ordered and a urine drug screen performed.

48. Patient A was seen again on March 6, 2014. No urine screen or imaging was ordered.

49. Respondent reviewed the records for Patient A's March 6, 2014 visit and again noted the need for imaging and urine drug screening.

50. Respondent never ensured that Mr. Presley followed his instructions with Patient A and never checked that the urine drug screening was performed.

51. Staff did not establish that Mr. Presley was over treating, under treating, or providing no treatment for pain or that Mr. Presley was prescribing drugs for purposes other than the proper treatment of pain.

Aggravating Factors

52. Respondent's violations involved more than one patient.

53. Respondent's failure to supervise posed an increased risk of harm to the public.

54. Respondent did not assert or present evidence of any mitigating factors.

Procedural History

55. Staff filed the Complaint in this contested case on January 8, 2014. Staff filed a First Amended Complaint on October 16, 2015, and a Second Amended Complaint on March 30, 2017.

56. Staff filed a Notice of Adjudicative Hearing on April 3, 2017.

57. The Notice of Adjudicative Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.

58. The hearing on the merits was held on April 18-19, 2017, before Administrative Law Judges Laura M. Valdez and Rebecca S. Smith in the William P. Clements Building, 300 West 15th St., Austin, Texas. Attorney Ann Skowronski represented Staff, and attorney Don Lewis represented Respondent. The record closed on July 26, 2017, with the filing of written briefs.

II. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Texas Occupations Code title 3, subtitle B.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Texas Government Code ch. 2003.

3. Respondent was adequately and timely apprised of the hearing and the allegations against him. Tex. Gov't Code §§ 2001.051-.052.

4. Staff has the burden of proving the elements of its case and any aggravating factors by a preponderance of the evidence, while Respondent has the burden of proving the elements of any claimed exemption under the law as well as any mitigating factors. 1 Tex. Admin. Code § 155.427; 22 Tex. Admin. Code § 190.15(a),(b).

5. The Board has authority to take disciplinary action against a licensee who violates the statutes or rules regarding physicians. Tex. Occ. Code § 164.001.

Pain Management Clinics

6. A pain management clinic is a publicly or privately owned facility for which a majority of patients are issued on a monthly basis a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone. Tex. Occ. Code § 168.001.

7. A pain management clinic may not operate in Texas unless it is registered as a pain management clinic with the Board. Tex. Occ. Code § 168.101(a); 22 Tex. Admin. Code § 195.2(a)(1).

8. The owner or operator of a pain management clinic is responsible for registering the clinic. Tex. Occ. Code § 168.102(a); 22 Tex. Admin. Code § 195.2(a)(1).

9. The Clinic was not exempt from registration as pain management clinics because it was not a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and who personally uses other forms of treatment with the issuance of a prescription for a majority of the patients. Tex. Occ. Code § 168.002(8).

10. By not obtaining pain management clinic registrations for the Clinic, Respondent violated Texas Occupations Code §§ 168.101(a) and 168.102(a) and 22 Texas Administrative Code § 195.2(a)(1).

11. A violation of state law committed in connection with a physician's practice of medicine constitutes unprofessional or dishonorable conduct that is likely to deceive or defraud the public. Tex. Occ. Code § 164.053(a)(1).

12. Because he violated the registration requirements for his pain management clinics, Respondent is subject to discipline by the Board. Tex. Occ. Code § 164.051(a)(1), (3).

13. By failing to be on-site at the Clinic at least 33% of the Clinic's total number of operating hours, Respondent violated Texas Occupations Code § 168.201(c)(1).

14. By failing to review 33% of the Clinic's patient charts, Respondent violated Texas Occupations Code § 168.201(c)(2).

15. By failing to establish for the Clinic quality assurance procedures that include continuing medical education; documentation of the background, training, and certifications for all clinical staff; a written drug screening policy and compliance plan for patients receiving chronic opioids; and performance of periodic quality measures of medical and procedural outcomes and complications, Respondent violated 22 Texas Administrative Code § 195.4(f)(4).

16. By failing to establish standing delegation orders that contained the required elements, Respondent violated 22 Texas Administrative Code § 193.2(12)(C-K)(repealed eff. Nov. 2, 2013) and 22 Texas Administrative Code § 193.2(19)(C-K)(eff. Nov. 7, 2013).

17. By failing to establish a protocol containing a list of the types or categories of dangerous drugs and controlled substances available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring, Respondent violated 22 Texas Administrative Code § 193.2(10) (repealed eff. Nov. 2, 2013); 22 Texas Administrative Code § 193.2(18) (eff. Nov. 7, 2013).

Patient Care Claims

18. As delegating physician, Respondent is responsible for the medical acts of the person performing the delegated medical acts. Tex. Occ. Code § 157.001(b); 22 Tex. Admin. Code § 193.5(b).

19. By failing to take adequate medical histories for Patients A-F, Mr. Presley failed to follow the standard of care, was negligent in performing medical services, and failed to use proper diligence in his medical practice. 22 Tex. Admin. Code § 190.8(1)(A)-(C).

20. By failing to perform problem-focused physical examinations for Patients D-F, Mr. Presley failed to follow the standard of care, was negligent in performing medical services, and failed to use proper diligence in his medical practice. 22 Tex. Admin. Code § 190.8(1)(A)-(C).

21. By failing to monitor Patients A-F to guard against abuse and diversion, Mr. Presley failed to follow the standard of care, was negligent in performing medical services, failed to use proper diligence in his medical practice, and failed to safeguard against potential complications. 22 Tex. Admin. Code § 190.8(1)(A)-(D).

22. Respondent committed unprofessional conduct by failing to supervise Mr. Presley. Tex. Occ. Code § 164.053(a)(8).

23. Staff did not establish that Respondent is subject to discipline for engaging in nontherapeutic prescribing. Tex. Occ. Code § 165.053(a)(5).

Aggravating Factors

24. Under 22 Texas Administrative Code § 190.15(a), as aggravating factors that may warrant more severe or restrictive action against Respondent, the Board may consider that the evidence established the following:

- one or more violations that involved more than one patient; and
- increased potential harm to the public.

III. ORDER

The Board hereby adopts the Findings of Fact and Conclusions of Law as proposed by the ALJ and ORDERS the following:

1. Respondent's Texas medical license is hereby REVOKED.

2. Respondent shall immediately cease practice in Texas. Respondent's practice in the state of Texas after the date of entry of this Final Order shall constitute a violation of this Order, subjecting Respondent to disciplinary action by the Board or prosecution for practicing without a license in Texas.

3. Respondent shall comply with all the provisions of the Medical Practice Act and other statutes regulating the unlicensed practice of medicine.

4. Respondent may petition the Board for reissuance of his Texas medical license after one year's time from the effective date of this Final Order. Respondent may apply for reissuance of his Texas medical license pursuant to applicable Board Rules and statutes, including but not limited to Sections 164.151 and 164.152 of the Act, and Board Rules 163 and 167. A decision by the board to deny an application to reinstate or reissue a license is subject to judicial review in the manner provided by Section 164.009 of the Act.

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this 8 day of December 2017.

Sherif Zaafran, M.D., President
Texas Medical Board