



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Patrick K. Chau
Master Case No.: M2010-628
Document: Modification Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
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**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of:

PATRICK K. CHAU,
Credential No. MD.MD.00030053,

Respondent.

Master Case No. M2010-628

MODIFICATION ORDER

APPEARANCES:

Respondent, Patrick K. Chau, pro se

Department of Health Medical Program (Department), by
Office of the Attorney General, per
Kristin G. Brewer, Assistant Attorney General

COMMISSION PANEL: William Gotthold, M.D., Panel Chair
Toni Borias, Public Member
William Brueggemann, Jr., M.D.
Peter Marsh, M.D.
John Maldon, Public Member
Alden Roberts, M.D.
Michelle Terry, M.D.

PRESIDING OFFICER: John F. Kuntz, Review Judge

The Presiding Officer convened a hearing on August 21, 2015, in Vancouver, Washington. The Respondent's modification request is GRANTED IN PART.

PROCEDURAL HISTORY

On January 28, 2015, the Respondent requested a modification of the Stipulated Findings of Fact, Conclusions of Law and Agreed Order dated November 15, 2012 (2012 Agreed Order) to enable the Respondent to practice psychiatry in a state hospital or facility. On August 5, 2015, the Adjudicative Service Unit issued a Notice of

Modification/Reinstatement Hearing. This set the hearing for August 21, 2015.

SUMMARY OF THE PROCEEDING

At the hearing, the Department presented testimony from the following witnesses: Jonathan D. Berman, M.D. The Respondent testified on his own behalf. Reviewing Commission Members Bruce Hopkins, M.D. (in person), and Robert H. Small, M.D. (by telephone), appeared at the modification hearing but did not testify. However, Dr. Small made a recommendation regarding the Respondent's modification request.

The following Department exhibits were admitted:

- Exhibit D-1: Compliance Requirement Summary dated March 2, 2015.
- Exhibit D-2: AMA Physician Profile for Patrick K. Chau, M.D., dated February 24, 2015.
- Exhibit D-3: Statement of Charges dated December 28, 2011.
- Exhibit D-4: 2012 Agreed Order.
- Exhibit D-5: Compliance Letters dated November 15, 2013, and November 7, 2014.
- Exhibit D-6: Preceptor Reports from Jonathan D. Berman, M.D., dated August 20, 2013; June 23, 2014, and November 6, 2014.
- Exhibit D-7: Email from Jonathan D. Berman, M.D., dated June 28, 2013.
- Exhibit D-8: ProBE Evaluation Assessment Report and Essay for Patrick K. Chau, M.D., dated May 8, 2013.
- Exhibit D-9: CPEP Personal Education Intervention Plan for Patrick K. Chau, M.D., dated July 1, 2011.

Exhibit D-10: CPEP Educational Intervention Plan Progress Reports I-V for Patrick K. Chau, M.D., dated February 2013; August 23, 2013; and April 29, 2014.

Exhibit D-11: CPEP Post-Evaluation Report for Patrick K. Chau, M.D., dated January 21, 2015.

Exhibit D-12: Practice Reviews and Memo by Bill N. Crowell, PA-C, HCI, dated June 25, 2013; October 7, 2013; and June 4, 2014.

Exhibit D-13: Notice to Appear and Declaration of Service dated February 20, 2015.

Exhibit D-14: Revised Notice and Declaration of Service dated February 25, 2015.

Exhibit D-15: Letters from Patrick K. Chau, M.D., dated January 15, 2015 and January 28, 2015.

The following Respondent exhibits were admitted:

Exhibit R-1: 2015 Veteran's Administration Medical Evaluations dated April 14, 2015 (neurological) and April 24, 2015 (neuropsychological).

Exhibit R-2: Report from Dr. Berman, dated August 8, 2015.

Exhibit R-3: Report from Dr. Berman, dated February 20, 2015

I. FINDINGS OF FACT

1.1 On August 13, 1992, the Respondent was licensed to practice as a physician and surgeon in the state of Washington. The Respondent's license is currently active.

1.2 The Commission issued a 2012 Agreed Order, in which the Respondent was found to have committed unprofessional conduct when he violated RCW 18.130.180(4).¹ The Respondent's unprofessional conduct arose from his

¹ The Respondent's license to practice medicine in the state of Washington was previously placed on probation under the 2006 Order issued in Master Case No. M2006-61927, and the 2009 Order in Master Case No. M2008-117887.

improper prescription of thyroid medications and the failure to properly record treatment, for Patients A and B. The sanctions reflected in the 2012 Agreed Order read:

4.1. **License Status: Probation.** The Commission continues the Respondent's license on PROBATION. Respondent's license will remain on probation until he successfully completes any modifications resulting from the evaluation referenced in Paragraph 4.7 below, and until the Commission enters an order in its discretion releasing Respondent from probation.

4.2. **Restrictions on Prescribing.** Respondent is absolutely restricted from prescribing any controlled substances or thyroid medication (including Armour Thyroid) to anyone.

4.3. **Practice Restriction.** Respondent shall not practice forensic medicine or provide evaluations for court-related proceedings.

4.4. **Preceptor Requirement.** Respondent shall not practice medicine in Washington State except under the active supervision of a preceptor physician in compliance with the following requirements:

4.4.1 Respondent shall arrange for a qualified preceptor who is pre-approved by the Commission to monitor Respondent's practice of medicine and to consult with Respondent for a period of at least five (5) years from the effective date of this Agreed Order. This preceptor program is in addition to the preceptor requirement that the Center for Personalized Education for Physicians (CPEP) located in Denver, Colorado has recommended, or may recommend, except to the extent two such programs may overlap. The preceptor shall report in writing to the Commission's Medical Consultant every three months regarding Respondent's medical skills. The Preceptor shall immediately report to the Medical Consultant any concerns the preceptor has regarding Respondent's ability to practice with reasonable skill and safety, or if Respondent is not compliant with requirements of the CPEP program or this order.

4.4.2 Respondent shall ensure that his preceptor has timely reviewed the following documents, as well as any other information the Preceptor requests:

4.4.2.1 Orders from the Commission to Respondent issued November 8, 2006; October 15, 2009; March 17, 2011; and this Agreed Order.

Under the 2009 Order, the Commission suspended the Respondent's prescribing of controlled substances and required the Respondent complete the CPEP evaluation process. See Exhibit D-4, Paragraphs 2.1 and 2.2.

4.4.2.2 All written reports from Respondent's prior preceptors.

4.4.2.3 The March 2010 CPEP program evaluation of Respondent, and all subsequent written CPEP progress reports for Respondent.

4.4.3 The Commission's medical consultant will approve the preceptor, who must be board certified in psychiatry, licensed to practice for at least ten years, and actively licensed and in clinical practice for at least the past five years. Geographic proximity shall be taken into account in determining whether a preceptor is appropriate. The preceptor must have experience training and consulting with other psychiatrists with respect to patient care. The preceptor must not have any prior significant personal or business relationship with Respondent before entering into the approved preceptor relationship.

4.4.4 The preceptor will provide oversight with respect to Respondent's treatment of patients and his prescribing practices, if any. The preceptor will randomly attend at least two of Respondent's office visits with patients per week, and will review the charts regarding those patients and the progress note entries related to those visits. The preceptor will also review the charting for a random selection of ten percent of Respondent's patients per week. To facilitate this oversight, Respondent will provide the preceptor with a patient list at the beginning of every month along with a copy of Respondent's appointment schedule for that month. Respondent will notify the preceptor of any changes to the list and the schedule on a weekly basis. The preceptor will decide which office visits to attend and notify Respondent of the decision before each visit. Respondent will allow the preceptor full access to his charts to facilitate the required chart reviews. Respondent and the preceptor shall meet at least twice every month to discuss and consult on the cases which the preceptor observed and reviewed. Adjustments to these preceptor requirements may be pre-approved by the Commission's Medical Consultant in writing.

4.4.5 Respondent began a preceptor program approved by the Commission in July 2011, and is currently in compliance. The preceptor program now in place may be continued as long as requirements are met to the satisfaction of the Commission.

4.5 **Ethics Course**. Respondent will attend a two-day ethics course approved by the Commission Medical Consultant. The ProBE course offered by the Center for Personalized Education for Physicians (CPEP) in Denver,

Colorado is pre-approved. Respondent will complete the course within six months of the effective date of this Agreed Order unless otherwise allowed in writing by the Commission Medical Consultant. Respondent will provide the course instructors with a copy of the Agreed Order prior to the course. Respondent will sign all necessary waivers to allow the Department staff to communicate with the course instructors as needed. Respondent will submit proof of the satisfactory completion of the course to the Commission. If the course requires Respondent to complete a written report, Respondent will assure that the Commission receives a copy of Respondent's written report. If the course instructors inform the Commission that Respondent did not received an "unconditional pass" or otherwise satisfactorily complete the course, the Commission may require Respondent to re-take the course.

4.6 **Physician Education Course.** Respondent is currently in compliance with a Center for Personalized Education for Physicians (CPEP) Educational Intervention Plan developed for Respondent in June 2011. Respondent shall follow the recommendations and requirements of CPEP for this plan and for any revisions to the plan. Respondent shall successfully complete all aspects of the June 2011 CPEP Educational Intervention Plan.

4.7 **CPEP Re-Evaluation.** In the event Respondent completes the CPEP Educational Intervention Plan, he shall then schedule within four (4) months a follow-up clinical assessment at CPEP to re-evaluate his medical knowledge, patient care, clinical judgment, medical record keeping, reasoning ability, and communication skills. Respondent's awareness of the larger context and system of health care and his ability to effectively call on system resources to provide optimum care shall also be addressed. Respondent shall fully cooperate with this re-evaluation, and shall provide CPEP with pertinent documents, including records relating to Respondent's compliance with Commission Orders. The Medical Consultant will notify Respondent of any additional materials provided to CPEP. Respondent may provide additional materials to CPEP, and will notify the Medical Consultant if he does so. By signing this Agreed Order, Respondent releases CPEP representatives to discuss with representatives of the Commission any matters relating to Respondent's evaluation and CPEP's conclusions and recommendations. Respondent waives any privileges or privacy rights he might otherwise have regarding such matters under federal and state law. Respondent understands that CPEP will provide a copy of its re-evaluation to the Commission's representatives and will communicate with those representatives as needed.

4.8 **Modification Consideration after CPEP Re-Evaluation.** Respondent will appear before the Commission at the next regularly scheduled meeting after CPEP issues it re-evaluation report. The parties may continue the matter to the following meeting if the circumstances so warrant. The purpose of this appearance will be to consider modifications to Respondent's license status

under paragraph 4.1 of this Agreed Order in light of CPEP's re-evaluation findings and any other relevant evidence. The Commission will have full discretion in modifying paragraph 4.1, ranging from removal of probation status to suspension or revocation of licensure.

4.9 **Practice Reviews.** In order to monitor compliance with this Agreed Order, Respondent will submit to semi-annual practice reviews at Respondent's office for the duration of probation. The Commission's representative will inspect office records, review patient records, interview Respondent and interview any professional staff, partners, and employees and preceptors associated with Respondent's practice. The representative will contact Respondent's office to give advance notice before each practice review.

4.10 **Compliance appearances.** Respondent shall appear before the Commission on an annual basis and present proof of full compliance with this Agreed Order. Respondent shall continue to appear annually unless otherwise instructed in writing by the Commission or its representatives.

4.11 **Obey laws.** Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the medical profession in Washington.

4.12 **Termination.** Respondent may file a petition for termination of this Agreed Order after five (5) years if Respondent has been in full compliance during that period. Respondent shall appear in person at a hearing on the petition. At the hearing, evidence in opposition may be considered by the Commission. After considering the petition and the evidence presented, the Commission will have sole discretion to grant or deny Respondent's petition.

4.13 **Responsibility for costs of compliance.** Respondent is responsible for all costs he may incur in the course of complying with this Agreed Order.

4.14 **Consequences of Violation.** If Respondent violates any provision of this Agreed Order in any respect, the Commission may initiate further action against Respondent's license.

4.15 **Updated Address.** Respondent shall inform the Program and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.

4.16 **Sanctions Supercede Prior Sanction Order.** The provisions of Section 4 of this Agreed Order shall replace and supercede the sanction provisions of prior orders.

4.17 **Effective Date.** The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

1.3 The Respondent made compliance appearances before the Commission on November 15, 2013 and November 7, 2014. The Commission found the Respondent was complying with the 2012 Agreed Order at each of these appearances. See Exhibits D-5.

1.4 Healthcare Investigator Bill Crowell, PA-C, conducted practice reviews of the Respondent's medical practice on behalf of the Commission on May 20, 2013, September 30, 2013, and June 2, 2014. See Exhibit D-12. Mr. Crowell's practice reviews show that the Respondent was in compliance with the 2012 Agreed Order.

1.5 The Respondent initiated the Educational Intervention Plan with CPEP in August 2011 and completed the plan as of September 30, 2014. See Exhibits D-8, D-9, and D-10. A review of the CPEP Evaluation and Assessments Reports showed the Respondent made slow but steady progress in the improvement of his practice skills and the overall assessment was that the Respondent unconditionally passed the ProBE Program. See Exhibit D-10 (April 11-13, 2013 report).

1.6 The Respondent needed to complete the CPEP Post-Education Evaluation Process. Prior to attending the Evaluation in December 2014, the Respondent suffered a cerebellar stroke. See Exhibit D-11. While the Respondent did not believe the stroke affected his ability to complete the CPEP evaluation, the results clearly showed otherwise. Despite his participation in the education plan, CPEP determined:

Dr. Chau's overall performance during the Evaluation was poor and he has not demonstrated adequate remediation of his educational needs despite participation in an Education Intervention, continuing medical education, and chart review with an Educational Preceptor. The pattern of clinical education deficiencies identified is concerning and, given the other factors mentioned, CPEP has determined that Dr. Chau has failed the Evaluation. In addition, given the significant concerns raised regarding Dr. Chau's treatment of one patient as documented in a chart reviewed during the Evaluation, CPEP opines that it would not be beneficial to continue the educational intervention.

Exhibit D-11, page 3. CPEP also recommended that the Respondent complete a comprehensive health evaluation, including a neuropsychological evaluation.

1.7 The Respondent completed a neurology evaluation on April 14, 2015, and the examination did not reveal any evidence of neurological deficits from his stroke. The Respondent also completed a neuropsychological evaluation on April 24, 2015. This examination was not supportive of neurocognitive impairment. The evaluator stated the evaluation does not reveal any concerns about the Respondent's professional competency. See Exhibit R-1.

1.8 Jonathan D. Berman, M.D. is the Respondent's currently approved preceptor. He submitted reports on the Respondent on August 20, 2013; June 23, 2014; November 6, 2014; February 20, 2015; and August 8, 2015. See Exhibits D-6, R-2, and R-3. In general, Dr. Berman finds the Respondent's overall practice of psychiatry is competent within the context of his current practice. The Respondent currently has a patient caseload averaging six patients a month.

1.9 Dr. Berman believes the Respondent's decision to attempt the CPEP Post-Education Evaluation so soon after the stroke was not the ideal decision to make and has much to do with the Respondent's failure of the CPEP Evaluation. He now opines that the Respondent is stable post-stroke and his patient care is consistent with

his pre-stroke practice skills. Dr. Berman expressed his willingness to continue as the Respondent's preceptor.

1.10 The Respondent's ability to increase the size of his practice is limited, given the limitations imposed under the 2012 Agreed Order. On January 28, 2015, the Respondent petitioned the Commission to modify the terms of his 2012 Agreed Order. The Respondent seeks to work at a public mental organization (such as a state hospital), which will enable him to practice psychiatry under the specific protocol and supervision required by the 2012 Agreed Order. The Respondent believes that working in a facility where he is not required to bill for patient services and in which he will have professional oversight regarding his prescribing practice will allow him to meet the Commission's restrictions, increase his practice skill, and permit him to provide needed psychiatric services to the community.

1.11 The Commission finds the Respondent has no neurological or neuropsychological impairment that would prevent him from increasing his current patient census. There is insufficient objective evidence to demonstrate whether the Respondent can move from a very small (six patients per month) private practice setting to a full patient practice in a state hospital facility. Reviewing Commission Member Robert Small, M.D. recommends that rather than grant the Respondent's modification request that he be allowed to practice in an outpatient community health center with a reduced patient census that allows an increase in the number of patients as the Respondent shows he can successfully practice at the increased patient census. Such an approach will allow for both supervision and continuing to work with the preceptor to evaluate the Respondent's patient care.

II. CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over Respondent and this subject matter. Chapter 18.130 RCW

2.2 RCW 18.130.160 permits the Commission to fashion appropriate remedies in disciplining Respondent. This includes restrictions or limitations on Respondent's practice.

2.3 Based upon the Findings of Fact, the Commission concludes the Respondent has no neurological or neuropsychological impairment that would prohibit him from increasing the number of patients he treats. Even though the Respondent did not pass the CPEP Post-Education Evaluation, the Respondent has otherwise complied with the Commission's 2012 Agreed Order.

2.4 Given the Respondent's recovery from the November 2014 CVA stroke and his substantial compliance with the 2012 Agreed Order, the Commission concludes that the Respondent be given an opportunity to increase his patient census. The Commission further concludes that the Respondent's requested modification cannot be granted absent any objective evidence that it can be done safely. For that reason, the Commission will grant the Respondent an opportunity to show he can practice safely under the conditions set forth below.

III. ORDER

3.1 The Respondent's request for a modification of the 2012 Agreed Order is GRANTED IN PART.

3.2 Paragraph 4.1 of the 2012 Agreed Order is MODIFIED as follows:

4.1 **License Status: Oversight.** Respondent's license will remain on oversight until he successfully completes all requirements of the 2012 Agreed Order as modified by the present Order.

3.3 Paragraph 4.18 is added to the 2012 Agreed Order:

4.18 **Practice Plan.** Pursuant to Paragraph 4.8, the Respondent shall submit to the Commission a practice plan for Commission review and approval within 60 days of the effective date of the modification order. The Respondent's practice plan will address the Respondent working at a Commission-approved outpatient community mental health facility with a gradual increase of the patient census managed by the Respondent, with the goal of establishing whether he safely manage the treatment of the patient census that is higher than his current patient treatment level. The Respondent will start at a half patient census level as determined by the Reviewing Commission Member or Commission Medical Director, with increases in the patient load when it is shown that he can safely practice at the higher patient load level. The Respondent will not increase the patient census level unless it is in full compliance with the Commission-approved practice plan or the increase in patients is otherwise approved in writing by the Reviewing Commission Member or Commission Medical Director. The Respondent shall not practice at a community mental health facility until the Reviewing Commission Member or Commission Medical Director approves the practice plan in writing.

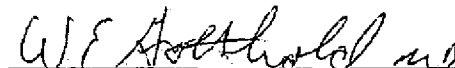
The Respondent's practice plan must include daily supervision at the approved community mental health facility by a Commission-approved supervisor. The supervisor will directly report to the Commission or the Commission's Medical Director unless otherwise notified in writing that the frequency of the supervision requirement is reduced or eliminated.

3.3 The Respondent's request for a modification of the 2012 Agreed Order to permit him to practice at a state mental health hospital is DENIED.

3.4 All other terms and conditions of the 2012 Agreed Order remain in full force and effect.

Dated this 8th day of September, 2015.

Medical Quality Assurance Commission



WILLIAM GOTTHOLD, M.D.,
Panel Chair

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Department of Health Medical Program
P.O. Box 47866
Olympia, WA 98504-7866

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Commission does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).

For more information, visit our website at:
<http://www.doh.wa.gov/PublicHealthandHealthcareProviders/HealthcareProfessionsandFacilities/Hearings.aspx>