

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

FILED

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

DEC 19 2012

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.)

Case No. 12-07-4579

GARY PAUL KULA, M.D.,)
LICENSE NO. 12616,)
Defendant.)

COMPLAINT

COMES NOW the Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision ("Board"), by and through its attorney, Kathryn R. Savage, Assistant Attorney General, and for its Complaint against the Defendant, Gary Paul Kula, M.D., alleges and states 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 *Okla. Stat. tit 59, §480 et seq.*

2. Defendant, Gary Paul Kula, M.D., holds Oklahoma license no. 12616 and practiced Psychiatry most recently at Abilene Psychiatric Associates, Abilene, Texas.

PRIOR DISCIPLINARY ACTION

3. On November 9, 2001, after hearing before the Board en banc, the Board entered an Order whereby it **SUSPENDED** Defendant's license for a minimum of **ONE (1) YEAR** with certain conditions to be met prior to seeking reinstatement due to a finding that the Defendant engaged in dishonorable or immoral conduct likely to deceive, defraud or harm the public; engaged in physical conduct with a patient which was sexual in nature and prescribed a drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or himself for personal use.

4. On or about December 6, 2002, the Board entered an *Order Granting Reinstatement of License Under Terms of Probation* whereby Defendant was placed on **PROBATION** for a period of **FIVE (5) YEARS**.

5. On or about June 20, 2003, the Defendant's **FIVE (5) YEAR** term of **PROBATION** was tolled due to his relocation to Abilene, Texas.

CURRENT UNPROFESSIONAL CONDUCT ALLEGATIONS

FIRST FRAUDULENT LICENSURE APPLICATION

6. On or about December 30, 2008, a grievance was filed with the Client Rights Department, Rusk State Hospital, Rusk, Texas, by a patient against the Defendant regarding verbal abuse. The Rusk State Hospital Grievance Committee completed an investigation that revealed and confirmed that the Defendant was disrespectful and not therapeutic when interacting with the patient.

7. On or about April 2, 2009, Defendant submitted his Application for Renewal of Oklahoma License. In response to the question "Have you been investigated by or requested to appear before a licensing or disciplinary agency other than the Oklahoma State Board of Medical Licensure and Supervision?" Defendant answered "Yes". Defendant was additionally asked the following question: "Have you been the subject of an investigation or disciplinary action, including probation, by a hospital, clinic, practice group, or residency program?" Defendant answered "No".

8. Based upon the answers and information contained on his application for renewal the Defendant's Oklahoma License was renewed.

SECOND FRAUDULENT LICENSURE APPLICATION

9. On or about October 22, 2009, a grievance was filed with the Client Rights Department, Rusk State Hospital, Rusk, Texas, against the Defendant regarding a concern that he refused to give an order for a restraint. The Rusk State Hospital Grievance Committee completed an investigation that revealed and confirmed that the Defendant refused to give an order for a restraint; did not assess the patient when he was told the patient was banging her head against the wall; and did not allow the nurse to place the patient in the restraint chair in attempt to prevent the behavior.

10. On or about December 9, 2009, the Texas Department of State Health Services notified the Defendant in writing that he was being issued a First Level Reminder (the first level of formal corrective action). The Defendant acknowledged receipt of the memorandum which provides in part,

If you correct this problem immediately and no other problems have arisen, the corrective action will become inactive at the end of three full months . . . However, if you fail to correct this problem and maintain acceptable performance for the next three months, you may be placed on a higher level of formal corrective action.

Emphasis added

11. On or about April 3, 2010, Defendant submitted his Application for Renewal of Oklahoma License. In response to the question "Have you been investigated by or requested to appear before a licensing or disciplinary agency other than the Oklahoma State Board of Medical Licensure and Supervision?" Defendant answered "No". "Have you been the subject of an investigation or disciplinary action, including probation, by a hospital, clinic group, or residency program?", Defendant answered "No".

12. Based upon the answers and information contained on his application for renewal the Defendant's Oklahoma License was renewed.

THIRD FRAUDULENT LICENSURE APPLICATION

13. On or about May 28, 2010, the Texas Department of State Health Services notified the Defendant in writing that he was being issued a Second-Level Reminder (the second level of the performance management system) for refusing to evaluate a patient with elevated blood pressure. The Defendant acknowledged receipt of the memorandum which provides in part,

You have already been on a First-Level Reminder for this issue. You will be placed on a Second-Level Reminder for unprofessional communication and failure to follow guidelines to see a patient on return from the ER.

This reminder will be in effect for six months. If there are no further performance or work rule violations, this reminder will be inactivated at the end of the six month period.

During this six-month period, you will not be eligible for:

- Education leave,
- Leave from the sick leave pool,
- A merit salary increase, a one-time merit payment,
- Extended sick leave,
- Administrative leave for performance awards,
- Enhanced compensation awards,
- Promotions, or
- Participation in the RIF Applicant pool.

Emphasis added

14. On or about August 6, 2010, a grievance was filed with the Client Rights Department, Rusk State Hospital, Rusk, Texas, by a patient against the Defendant regarding an increase in medication. The Rusk State Hospital Grievance Committee completed an investigation that revealed and confirmed that the Defendant increased a patient's medication without her consent after she verbalized to him she did not want him to and without informing her of the medication change.

15. On or about October 11, 2010, a grievance was filed with the Client Rights Office, Rusk State Hospital, Rusk, Texas, by a patient against the Defendant regarding verbal abuse. The Rusk State Hospital Grievance Committee completed an investigation that revealed

and confirmed that the Defendant did not remove himself from the situation when he recognized his presence made the patient's behavior escalate; engaged in a verbal altercation with the patient; and cause the patient's behavior to escalate resulting in a restraint.

16. On or about January 20, 2011, the Texas Department of State Health Services notified the Defendant in writing a Notice of Disciplinary Action – confirmed Verbal and emotional Abuse. The Defendant acknowledged receipt of the memorandum which provides in part,

I am informing you of our determination that Rusk State Hospital is in receipt of an APS Facility Abuse and Neglect Investigation Report from the Texas Department of Family and Protective Services, Case No. 38490348, dated January 2, 2011. . . . As a result of this investigation, DFPS confirmed Emotional/Verbal Abuse, Class III, by you against client J.H.

Accordingly, it is my determination that your action is this incident constitutes grounds for suspension, without pay, for three days and that you are hereby suspended, without pay, for three days.

Therefore, you are suspended for three days without pay from your job with Rusk State Hospital. The days covered by this suspension will be Wednesday, January 26, 2011, Thursday, January 27, 2011 and Friday, January 28, 2011. Your return to work date is Monday, January 31, 2011.

17. On or about April 3, 2011, Defendant submitted his Application for Renewal of Oklahoma License. In response to the question "Have you been investigated by or requested to appear before a licensing or disciplinary agency other than the Oklahoma State Board of Medical Licensure and Supervision?" Defendant answered "No". Defendant was additionally asked the following question: "Have you been the subject of an investigation or disciplinary action, including probation, by a hospital, clinic, practice group, or residency program?" Defendant answered "No".

18. Based upon the answers and information contained on his application for renewal the Defendant's Oklahoma License was renewed.

FORTH FRAUDULENT LICENSURE APPLICATION

19. On or about January 12, 2012, a grievance was filed with the Client Rights Department, Rusk State Hospital, Rusk, Texas, by a patient against the Defendant regarding verbal abuse. The Rusk State Hospital Grievance Committee completed an investigation that revealed and confirmed that the Defendant spoke to a patient in a disrespectful manner during a treatment team meeting. He told a patient she was "a waste of state resources" and was confrontational and disrespectful.

20. On or about February 17, 2012, the Texas Department of State Health Services notified the Defendant in writing a Notice of Possible Disciplinary Action. The Defendant acknowledged receipt of the memorandum which provides in part,

Basis for Possible Disciplinary Action

It is alleged that on February 14, 2012 at approximately 11:30 a.m., you were found slumped back in your chair in your office on the San Jacinto Unit. Upon initial examination, you were unable to speak clearly or walk and you were unresponsive.

I would like to have you provide me with any information that you feel is relevant to the allegations or that might mitigate the circumstances. **You may present this information to me personally, either orally, in writing, or both in the Superintendent's Office on Wednesday, February 22, 2012 at 9:00 a.m.**

Emphasis added

21. On or about February 22, 2012, the following letter of resignation was submitted: I Gary Paul Kula, M.D. hereby tender my resignation from Rusk State Hospital as of February 22, 2012. Signed Gary Paul Kula, M.D.

22. On or about April 15, 2012, Defendant submitted his Application for Renewal of Oklahoma License. In response to the question "Have you been investigated by or requested to appear before a licensing or disciplinary agency other than the Oklahoma State Board of Medical Licensure and Supervision?" Defendant answered "No". Defendant was additionally asked the following question: "Have you been the subject of an investigation or disciplinary action, including probation, by a hospital, clinic, practice group, or residency program?" Defendant answered "No".

23. Based upon the answers and information contained on his application for renewal the Defendant's Oklahoma License was renewed.

24. *Okla. Stat. tit. 59, §508* provides in part:

A. Whenever any license has been procured or obtained by fraud or misrepresentation . . . it shall be the duty of the State Board of Medical Licensure and Supervision to take appropriate disciplinary action in the same manner as is provided by the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act for the disciplining of unprofessional conduct.

B. Use of fraudulent information to obtain a license shall be a misdemeanor offense, punishable, upon conviction, by the

imposition of a fine of not less than One Thousand Dollars (\$1,000.00), or by imprisonment in the State Penitentiary for not more than one (1) year, or by both such fine and imprisonment.

25. Defendant is guilty of unprofessional conduct in that he:

A. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of *Oklahoma Stat. tit. 59, §509(8)* and *Oklahoma Administrative Code* section 435:10-7-4(11).

B. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of *Oklahoma Stat. tit. 59, §509(13)* and *Oklahoma Administrative Code* section 435:10-7-4(39).

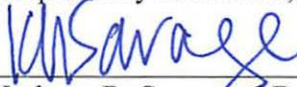
C. Engaged in fraud or misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic reregistration of a medical license in violation of *Oklahoma Administrative Code* section 435:10-7-4(8).

D. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of *Oklahoma Administrative Code* section 435:10-7-4(18).

Conclusion

WHEREFORE, the Plaintiff respectfully requests that the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to Defendant's medical license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



Kathryn R. Savage, OBA #18990
Assistant Attorney General

Oklahoma State Board of Medical
Licensure and Supervision
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Oklahoma City, Oklahoma 73105
Attorney for the Plaintiff