

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

FILED

JAN - 8 2010

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
KENNETH M. DUFFY, M.D.,)
LICENSE NO. 12688)
)
Defendant.)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 06-12-3216

AGREED FINAL ORDER OF PROBATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") en banc on the 19th day of November, 2009 at the Board office, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma 73118, pursuant to notice given as required by law and Rules of the Board.

Daniel J. Gamino appeared on behalf of the State of Oklahoma, ex rel. Oklahoma State Board of Medical Licensure and Supervision. Defendant appeared in person and by legal counsel J. Clay Christensen and L. Nazette Zuhdi.

The Board en banc heard statements of counsel, briefly questioned Dr. Duffy, reviewed a copy of the Summary of Treatment on Dr. Duffy prepared by the Professional Renewal Center, Lawrence, Kansas, and being fully advised in the premises **FINDS** and **ORDERS** as follows.

FINDINGS OF FACT

1. Kenneth M. Duffy, M.D. possesses Oklahoma license no. 12688.

2. 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 59 O.S. 2001, §480 et seq. The Board has jurisdiction over this matter, and notice has been given in all respects in accordance with law and the rules of the Board.

3. On November 7, 2008, evidentiary hearing was held by the Board en banc in this cause. Both sides were represented by legal counsel of record. The Board made certain findings of fact and conclusions of law and ordered in pertinent part as follows, to-wit:

“1. That the Defendant’s Oklahoma medical license no. 12688 is hereby placed on probation for a period of three (3) years.

2. That the Defendant shall complete comprehensive assessment as disruptive physician at the Professional Renewal Center, Lawrence, Kansas and authorize release of the Professional Renewal Center’s findings and report to the Oklahoma Board of Medical Licensure and Supervision for its use at its meeting of January 29, 2009 and thereafter.

3. That Professional Renewal Center shall receive all evidence and exhibits submitted to the Board for use in its assessment in evaluation of the Defendant, to include a transcript of the proceedings before the Board held in this cause on November 7, 2008.”

4. On March 27, 2009, the Board en banc received a copy of the Multidisciplinary Assessment on Dr. Duffy prepared by the Professional Renewal Center, Lawrence, Kansas. Both sides were represented by legal counsel of record. The Board made certain findings of fact and conclusions of law and ordered in pertinent part as follows,

“1. The Defendant shall complete treatment recommended by the Professional Renewal Center for a minimum initial commitment of four (4) weeks at one of the following facilities:

(1) the Professional Renewal Center in Lawrence, Kansas....

2. That such treatment shall be completed prior to August 31, 2009.
3. That upon completion of the appropriate treatment program, Defendant will release the treatment report to the Board for its review of the aftercare recommendations in order to determine any further necessary terms of probation.
4. That in place of the original three (3) year probation imposed previously, the Defendant's Oklahoma medical license no. 12688 is hereby placed on probation to continue for a period of two (2) years from the end of inpatient treatment. If the Defendant successfully completes aftercare requirements, then the Defendant may apply for early termination of probation."

5. Based on recommendations of the Professional Renewal Center, Dr. Duffy did return to PRC to participate in an intensive treatment experience. Dr. Duffy successfully completed primary treatment and was discharged on June 25, 2009 with a comprehensive aftercare plan in place.

6. That PRC issued its written Summary of Treatment on July 13, 2009. PRC concluded as follows, to-wit:

"With the following comprehensive aftercare plan firmly in place, the team feels that Dr. Duffy can safely return to the practice of medicine."

CONCLUSIONS OF LAW

1. That Defendant engaged in conduct described in previous orders as disruptive conduct which was dishonorable or immoral which was likely to deceive, defraud or harm the public in violation of 59 O.S. 2001, §509 (8) and (15) and OAC 435:10-7-4 (11), (18), and (40).

2. Any findings of fact which is properly a conclusion of law is hereby incorporated by reference and vice versa.

3. Though Defendant remains fit to practice, pursuant to legal authority of 59 O.S. Supp. 2009, §509.1 the Board is authorized to place Defendant's license under probation and to require that Defendant comply with terms of the PRC Aftercare Agreement.

4. That clear and convincing evidence exists to support the actions ordered herein.

ORDER

The Board en banc enters the following Order in regard to Defendant.

1. That in place of the original three (3) year probation imposed previously, the Defendant's Oklahoma medical license 12688 is hereby placed on probation to continue for a period of two (2) years from the end of inpatient treatment on June 25, 2009. If the Defendant successfully completes aftercare requirements, then the Defendant may apply for early termination of probation.

2. The Board imposes as specific terms and conditions of probation the following recommendations of PRC and the Aftercare Agreement signed by Dr. Duffy, to-wit:

- a. Dr. Duffy shall contact and, if accepted, participate in the Oklahoma State Medical Association's Health Professionals Program under the direction of Lanny Anderson, MD. As part of his participation in that program, Dr. Duffy shall follow all recommendations as set forth by PRC. Dr. Duffy shall schedule a meeting with Dr. Anderson at his earliest convenience.
- b. Dr. Duffy shall participate in regular individual therapy sessions with a psychotherapist if geographically feasible. At least initially, Dr. Duffy shall meet with the therapist weekly, and then at a frequency and duration deemed appropriate by the therapist in consultation with Dr. Anderson and Dr. Duffy. As part of that process, Dr. Duffy shall continue to address underlying developmental and emotional issues and personality characteristics that have contributed to his ongoing professional difficulties.

- c. While Dr. Duffy has never had a substance abuse problem, or issue Dr. Duffy recognizes that the use of illicit or recreational substances can contribute to lapses in judgment. Dr. Duffy shall abstain from all substances except those prescribed by his treating physicians.
- d. Dr. Duffy agrees to participate in a group therapy process. This may be fulfilled by a regularly scheduled Caduceus meeting. Dr. Duffy understands that he can contact Dr. Anderson for information regarding this group process.
- e. Dr. Duffy agrees that as part of his recovery program he needs to take responsibility for his actions. This includes being responsible in his personal, professional and financial behavior and meeting his obligations in each of those areas.
- f. Dr. Duffy agrees to begin regular treatment and preventive health measures with a primary care physician. Dr. Duffy has identified Dr. Hester, a general practitioner, to fulfill this role. Dr. Duffy also agrees to abstain from using any medication other than in the manner, at the dosage, and in the amounts that the prescribing physician directed.
- g. As part of his work at PCR, Dr. Duffy engaged in healthy lifestyle practices (balanced meals, adequate sleep, regular exercise). Dr. Duffy agrees to engage in healthy lifestyle practices when he returns home, including a regular exercise program.
- h. Dr. Duffy understands that to ensure the best possible transition into a work situation Dr. Duffy needs to have the opportunity to continue in his aftercare plan. This would include continuing with his regularly scheduled appointments with his treaters and regular contact with Dr. Anderson. Dr. Duffy agrees to discuss possible changes in his work situation (location, job change or change in hours) with his treaters and Dr. Anderson prior to making any commitments to the work situation.
- i. Dr. Duffy agrees to participate in regular satisfaction surveys of his patients as well as his staff. Dr. Duffy understands that this

may be satisfied by the current surveys being used, which includes five questions about physician behavior. PRC has provided Dr. Duffy samples of possible forms and will work with his hospital to implement them. Dr. Duffy will bring these forms to PRC on an ongoing basis so that he can be provided with ongoing feedback about his performance. Dr. Duffy also agrees to have his staff complete quarterly surveys about his behavior. As the hospital is in the process of being purchased, the feasibility of the surveys likely would be determined by the new administration.

- j. Dr. Duffy agrees to adhere to all guidelines as set forth by the AMA Code of Ethics, giving particular attention to the Principles of Medical Ethics, the Charter on Medical Professionalism, and all professional societies with which he is affiliated. Dr. Duffy also agrees to conduct myself with the highest level of professionalism. PRC has provided Dr. Duffy information on how he can obtain these documents.
- k. Given the limited supports available in his area, Dr. Duffy agrees to return to PRC quarterly over the next year for a minimum of one week to consolidate the gains he has made, explore additional questions that may have arisen since completion of primary treatment, and to update the aftercare recommendations.
- l. Dr. Duffy agrees to discuss with Dr. Anderson and his attorney the potential benefits for him of attending a CME course that addresses issues common to disruptive behavior in the workplace. The purpose of attending this course would be for Dr. Duffy to learn additional practical strategies for implementing what he has learned in his therapy process at PRC. Dr. Duffy understands these courses are offered through Vanderbilt University, Rush University Medical Center and University of South Florida.
- m. Dr. Duffy understands that it is important that he have an integrated aftercare program, which facilitates communication among his aftercare providers. This would be best accomplished through periodic documented contacts of all Dr.


Duffy's aftercare providers (e.g., individual therapists, caduceus leader, Dr. Anderson, workplace contacts as appropriate) which can be synthesized and provided to his PHP. This ensures that Dr. Duffy makes continued progress in his recovery and also provides assurance that the contract is being maintained. Dr. Duffy agrees to sign releases of information and to participate in such a program so that his treating clinicians can coordinate his care. This would include his therapist, physician health program, primary care physician, and PRC treatment team.

- n. Dr. Duffy understands that any failure to comply with these recommendations will result in loss of advocacy and could result in Dr. Duffy being transferred to a higher level of care.
- o. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.
- p. Defendant will keep current payments of all assessments by the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of his case, which shall include but is not limited to a \$100.00 per month fee during the term of probation, unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence as acceptable to the Board Secretary.
- q. Until such time as all indebtedness to the Oklahoma State Board of Medical Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- r. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.
- s. Defendant shall submit any required reports and forms on a timely, accurate and prompt basis to the Compliance Coordinator or Designee.

3. Failure of the Defendant to abide by any of the terms of this Order could result in further disciplinary action as allowed by statute or the Board Rules.

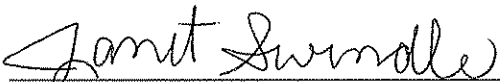
4. The Board retains jurisdiction over the incident over the instant case until all matters are finally resolved as set forth in this Order.

Dated this 8 day of Jan, 2009.


GERALD C. ZUMWALT, M.D., SECRETARY
Oklahoma State Board of Medical Licensure and
Supervision

CERTIFICATE OF MAILING

I certify that on the 8 day of January, ²⁰¹⁰2009 I mailed a true and correct copy of the Agreed Final Order of Probation to J. Clay Christensen at the address of Day, Edwards, Propester & Christensen, P.C., 210 Park Avenue, 2900 Oklahoma Tower, Oklahoma City, OK 73102 and to Kenneth M. Duffy, M.D., PO Box 845, Seiling, Oklahoma 73663.


JANET SWINDLE, SECRETARY
Oklahoma State Board of Medical Licensure and
Supervision