

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

FILED

FEB 12 2010

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff)

v.)

Case No. 09-11-3870

ROGELIO BOMBACH, M.D.,)
LICENSE NO. 12832,)

Defendant.)

COMPLAINT

COMES NOW the plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Elizabeth A. Scott, Assistant Attorney General, and for its Complaint against the Defendant, Rogelio Bombach, M.D., Oklahoma license no. 12832, 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 59 Okla. Stat. §480 *et seq.*

2. Defendant, Rogelio Bombach, M.D., holds Oklahoma license no. 12832 and practices as a family practitioner in Sayre, Oklahoma.

3. On or about June 17, 2009, Patient DCL was treated by Defendant at the Sayre Memorial Hospital Emergency Room for a fractured toe. Defendant issued Patient DCL a prescription for Lortab at this visit.

4. On or about October 22, 2009, Patient DCL was treated by Defendant in his office in Sayre, Oklahoma. Patient DCL complained of sleep problems, depression and pain. Patient DCL was pregnant at the time. Defendant prescribed Patient DCL Ambien and Naproxyn. Before the patient left, Defendant wrote his phone number on a prescription pad, gave it to the patient, and told her to call him if she got depressed.

5. Later during the evening of Thursday, October 22, 2009, Defendant called Patient DCL. He advised her that he got her telephone number from her medical chart. He asked Patient DCL if he could take her and her seven (7) year old son with him to Oklahoma City in two (2) days just to get away. Patient DCL agreed.

6. On or about Friday, October 23, 2009, Patient DCL and her son came to Defendant's home for dinner. During this conversation, Patient DCL advised Defendant that she was pregnant. Defendant advised her to stop taking the Naproxyn and Ambien he had prescribed to her.

7. On Saturday, October 24, 2009, Defendant picked up Patient DCL and her son. They returned to his house where he showered. They then drove to Mustang, Oklahoma where Patient DCL's friend had agreed to babysit the child. Defendant and Patient DCL drove to the Embassy Suites in Oklahoma City where Defendant paid for a room. Defendant and Patient DCL ate dinner at a restaurant near the hotel. Defendant and Patient DCL then went to two (2) different bars near the hotel where they drank alcoholic beverages. Defendant drank alcoholic beverages with Patient DCL knowing that she was pregnant. They then walked to Christy's Toy Box, an adult only store near the bar where they had been drinking. Defendant advised Patient DCL that he was going to purchase something and would meet her back at the bar. Patient DCL left the store. Shortly thereafter, Defendant met Patient DCL at the bar, then they returned to their room at the Embassy Suites. Defendant and Patient DCL slept in the same bed that night.

8. Defendant and Patient DCL returned to her home the next day. Defendant advised Patient DCL that she and her son should stay with him at his house so that he could observe her for her depression. They also discussed what medications she could take while she was pregnant. Patient DCL agreed to stay with Defendant at his house.

9. Defendant dropped Patient DCL and her son at her house so that she could gather some personal belongings. During that time, Defendant texted Patient DCL and mentioned "IVM for stress relief". Patient DCL continually asked what "IVM" was, but Defendant would not tell her. Patient DCL spent the night at Defendant's house that night where they slept in the same bed.

10. The next day, October 26, 2009, Defendant texted Patient DCL during the day where he kept telling her she needed "IVM" for stress relief. She again kept asking him what that meant. He finally told her it meant "Inner Vaginal Massage". He explained that it had been proven to relieve stress and treat depression.

11. That evening, while at Defendant's house, Patient DCL complained that she was cramping and thought that she might be miscarrying due to the alcohol she had drank with Defendant several days earlier. Defendant offered to give her a vaginal exam, to which she agreed. Patient DCL claims that Defendant began by doing a normal vaginal exam, but then she heard a buzzing sound. She asked Defendant what the sound was and he said it was an Inner Vaginal Massage. Patient DCL was concerned because of the cramping she was experiencing.

She also claimed that he was being rough with the device and scratched her, so she asked him to stop. Defendant attempted to kiss Patient DCL, but she refused.

12. A few days later, Patient DCL noticed vaginal itching and observed a scratch on her vaginal area. She called Defendant and left him a voicemail message advising him that he had scratched her. Defendant then called Patient DCL back and left her a voicemail message where he said he could not have scratched her because he did not have fingernails. He stated that the scratch might have been from the toy he used on her.

13. Patient DCL continued to stay with Defendant for the next week and sleep in his bed with him. Patient DCL agrees that she did not engage in sexual intercourse with Defendant. Defendant did, however, fondle her breast and kiss her on a few occasions.

14. On November 6, 2009, Patient DCL removed her belongings from Defendant's house.

15. On or about November 17, 2009, Board investigators subpoenaed Patient DCL's medical chart from Defendant's clinic. Defendant was not aware that Board investigators obtained this copy of the patient record from the clinic. The patient record did not contain any record of Defendant's prescription for Ambien to Patient DCL. The patient record additionally included a handwritten addition to the record where it is noted "LMP-2-3 wk-regular".

16. On or about December 1, 2009, Board investigators interviewed Defendant. During this interview, Defendant provided his copy of the patient record. On this patient record, however, Defendant had added the notation that Ambien had been prescribed to the patient.

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

- A. Abused the physician's position of trust in the doctor-patient relationship in violation of OAC 435:10-7-4(44).
- B. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. § 509 (8) and OAC 435:10-7-4 (11).
- C. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4 (19).
- D. Committed any act of sexual abuse, misconduct, or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).

- E. Confessed to a crime involving a violation of the antinarcotic laws and regulations of the federal government or the laws of this state in violation of 59 O.S. § 509 (7).
- F. 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 59 O.S. §509(13) and OAC 435:10-7-4(39).
- G. Engaged in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient in violation of 59 O.S. §509(17).
- H. Failed 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 59 O.S. §509(18) and OAC 435:10-7-4(41).
- I. Made a false or misleading statement regarding the skill or the efficacy or value of the medicine, treatment, or remedy prescribed by a physician or at a physician's direction in the treatment of any disease or other condition of the body or mind in violation of OAC 435:10-7-4(12).
- J. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

Conclusion

WHEREFORE, plaintiff 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 the revocation or suspension of the Defendant's license to practice as a physician and surgeon in the State of Oklahoma, the assessment of costs and fees incurred in this action, and any other appropriate action with respect to Defendant's license to practice as a physician and surgeon in the State of Oklahoma.

Dated this 12th day of February, 2010 at 10:00 a.m.

Respectfully submitted,

Elizabeth A. Scott

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