

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,)

MAR 26 2010

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 09-07-3810

RICHARD CLAY TESSMER, P.A.,)
LICENSE NO. PA1285)

Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on March 11, 2010, at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Elizabeth A. Scott, Assistant Attorney General, appeared for the plaintiff and defendant appeared in person and pro se.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of the Defendant, and being fully advised in the premises, found that there is clear and convincing evidence to support the following Findings of Fact, Conclusions of Law and Orders:

Findings of Fact

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physician assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.* and 887.1 *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.

2. Defendant, Richard Clay Tessmer, P.A., holds Oklahoma physician assistant license no. PA1285 and previously practiced in Miami, Oklahoma.

PRIOR BOARD SUPERVISION

3. On or about November 20, 2003, Defendant obtained his Oklahoma physician assistant license under terms of an Agreement for Licensure. The Agreement for Licensure was based on Defendant's admitted twenty-one (21) year history of alcohol abuse and amphetamine, marijuana and cocaine abuse.
4. On December 25, 2005, Defendant's Agreement for Licensure was terminated.

SEXUAL MISCONDUCT ALLEGATIONS-ARMA MEDICAL CENTER

5. In or around January 1995, Defendant obtained his physician assistant license in Kansas. Defendant began working at the Arma Medical Center in Girard, Kansas.
6. Defendant admits that between 1995 and 1999, he had sex with several patients as follows:
 - a. In 1995, Defendant had sex with a female patient at least five (5) or six (6) times at his house.
 - b. Defendant had sex with three (3) nurses, one medical technician, and a woman who worked in the medical records department at the hospital. Defendant admits that at least two (2) of these women were his patients.
 - c. Between 1997 and 2000, Defendant had sex with Patient SW, a married patient he was treating for abdominal pain. Defendant had sex with her numerous times at his house and they lived together from April 1998 until October 1998. During this time, he and Patient SW used Methamphetamine together.
 - d. While living with Patient SW, he had sex with another worker at a hospital where he was moonlighting.
7. In 2001, Defendant left Arma Medical Center due to his drug use.

SEXUAL MISCONDUCT ALLEGATIONS-CHETOPA MEDICAL CLINIC

8. Between 2001 and 2003, Defendant engaged in sexual activities with a lab technician at the clinic, who was also his patient. During this time, they engaged in sexual activities regularly. Defendant admits that they also smoked marijuana and drank alcohol together.
9. Defendant admits that he had sex on two (2) occasions with a married nurse, who was also his patient.
10. Defendant quit his job at Chetopa Medical Clinic in 2004.

**SEXUAL MISCONDUCT ALLEGATIONS-NORTHEAST OKLAHOMA
MEDICAL CENTER, MIAMI, OKLAHOMA**

11. Between June 2007 and June 2009, Defendant was employed at Northeast Medical Center, in Miami, Oklahoma.

12. While employed at Northeast Medical Center, Defendant admits that he engaged in sexual activities with Patients LPW and Patient CBW (with whom he later engaged in sexual activities), as set forth below in paragraphs 15-24.

13. Defendant additionally admits that he had sex with another female patient on one (1) occasion while employed at the Northeast Oklahoma Medical Center.

14. Defendant admits that there may be more patients and staff with whom he had sex, but he could not remember at this time.

SEXUAL MISCONDUCT ALLEGATIONS-PATIENT LPW

15. Beginning on or about May 9, 2008 and continuing through June 1, 2009, while working at the Northeast Oklahoma Medical Center, Defendant wrote or authorized sixteen (16) prescriptions for controlled dangerous substances to Patient LPW for alleged anxiety and depression. These prescriptions included fourteen (14) prescriptions for Alprazolam, one (1) prescription for Clonazepam, and one (1) prescription for Propoxyphene Napsylate, all Schedule IV controlled dangerous substances, for a total of 890 dosage units.

16. A review of Defendant's records reveals that Defendant did not document these prescriptions for controlled dangerous substances to Patient LPW. Defendant's chart on Patient LPW reflects only two (2) office visits, on August 6, 2008 and November 13, 2008. Additionally, Patient LPW received two (2) prescriptions from Defendant for controlled dangerous substances prior to her first appointment on August 6, 2008.

17. Defendant admits that he engaged in a sexual relationship with Patient LPW at the same time he was prescribing controlled dangerous substances to her. Defendant admits that he allowed Patient LPW to live with him in his home during January and February 2009 during which time he continued to prescribe controlled dangerous substances to her and engaged in sexual activities with her.

18. During the time Patient LPW was living with Defendant and engaging in sexual activities with him, on at least 5-6 occasions, he and Patient LPW injected Methamphetamine together.

SEXUAL MISCONDUCT ALLEGATIONS-PATIENT CBW

19. Beginning on or about December 11, 2007 and continuing through June 19, 2009, while working at the Northeast Oklahoma Medical Center, Defendant wrote or authorized

nineteen (19) prescriptions for controlled dangerous substances to Patient CBW for alleged anxiety. These prescriptions included eight (8) prescriptions for Talwin, six (6) prescriptions for Valium, two (2) prescriptions for Alprazolam, two (2) prescriptions for Midrin, all Schedule IV controlled dangerous substances, and one (1) prescription for Hydrocodone, a Schedule III controlled dangerous substance, for a total of 1080 dosage units.

20. A review of Defendant's records reveals that Defendant did not document all of the prescriptions for controlled dangerous substances to Patient CBW. Defendant's chart on Patient CBW reflects only four (4) office visits where he treated her, the last being on April 2, 2008.

21. Defendant admits that he dated her and spent the night with Patient CBW at the same time he was prescribing controlled dangerous substances to her. Defendant additionally admits that during this time, he spent time with her at her house, using Methamphetamine with her.

22. In April 2008, Patient CBW and her husband moved to Florida. Beginning in April 2008 and continuing until June 2009, Defendant began visiting Patient CBW in Florida by driving to see her approximately one (1) week every two (2) months. Defendant admits that while driving to Florida, he used IV Methamphetamine, and that while driving back, he used IV crack Cocaine. While in Florida, Defendant admits that he, Patient CBW and Patient CBW's husband binged on IV Cocaine and IV crack Cocaine for approximately seven (7) days each time.

23. Defendant admits that when he visited Patient CBW, he gave her money and bought her a car.

24. Defendant admits that he engaged in sexual activities with Patient CBW while visiting her in Florida. Defendant additionally admits that he continued to prescribe controlled dangerous substances to her after she moved to Florida, in that Patient CBW received sixteen (16) of the prescriptions for controlled dangerous substances after she was last seen by Defendant in his office on April 2, 2008.

SUBSTANCE ABUSE ALLEGATIONS

25. Defendant admits that prior to obtaining his Oklahoma physician assistant license, he had a twenty-one (21) year history of drug and alcohol abuse.

26. Beginning in fall 2007, Defendant's drug use began to escalate. Defendant admits that he was abusing Methamphetamine, first by snorting it, then by smoking it, and finally by injecting it intravenously. He eventually was using IV Methamphetamine on a daily basis. On July 1, 2009, Defendant met with Merlin Kilbury, M.D. and agreed to go to Acumen Institute for an assessment. However, Defendant continued to use Methamphetamine for the next seven (7) days until July 7, 2009. Defendant admits that during this time, he shot up five (5) to seven (7) times per day. Defendant entered Acumen for assessment on July 12, 2009.

27. Defendant admits that in mid 2008 and continuing for approximately one (1) year, he used Cocaine and crack Cocaine for seven (7) days every two months, and ingested alcohol on a regular basis.

FRAUDULENT LICENSE APPLICATIONS ALLEGATIONS

28. In or around 1975, Defendant was arrested and charged with Burglary, a Felony. Defendant spent thirty (30) days in jail and received one (1) year probation.

29. In or around April 1989, Defendant was arrested and charged with Driving While Intoxicated.

30. As a result of the DWI arrest, in August 1989, Defendant entered a thirty (30) day inpatient alcohol treatment program in Broken Arrow, Oklahoma.

31. In or around 1996, Defendant began snorting Methamphetamine while he worked. As a result of this drug use, in January 1997, he entered a thirty (30) day inpatient drug treatment program at Valley Hope in Atchison, Kansas.

32. Defendant admits that in or around 1998, Defendant was arrested for trespassing during an argument with a woman he was dating.

33. On or about May 7, 2003, Defendant submitted his Application for his physician assistant license in the State of Oklahoma. Defendant was asked the following question: "Have you ever been arrested or charged or convicted of a felony or misdemeanor?" In response to this question, Defendant answered "YES". In his sworn affidavit, Defendant admitted the burglary, but did not disclose the 1989 DWI arrest or the 1998 trespassing arrest.

34. On the May 7, 2003 Application, Defendant was also asked the following question: "Have you ever obtained an assessment or been treated for use of any drug or chemical substance including alcohol?" In response to this question, Defendant answered "YES". In his sworn affidavit, Defendant admitted that he obtained treatment in 1997 at Valley Hope in Atchison, Kansas, but did not disclose that he had also obtained inpatient treatment in Broken Arrow, Oklahoma in 1989.

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

A. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).

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. 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 435:15-5-11(a)(7), 59 O.S. §509(13) and OAC 435:10-7-4(39).

D. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).

E. Habitually uses intoxicating liquors or habit-forming drugs in violation of OAC 435:15-5-11(a)(1), 59 O.S. §509(4) and OAC 435:10-7-4(3).

F. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).

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. 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).

I. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

J. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).

K. Prescribed or administered a controlled substance without medical need in accordance with published standards in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).

L. 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).

M. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).

N. 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).

O. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

P. Engaged in predatory sexual behavior in violation of OAC 435:10-7-4(45).

Q. Abused the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship in violation of OAC 435:10-7-4(44).

R. Purchased or prescribed any regulated substance in Schedule I through V for the physician's personal use in violation of OAC 435:10-7-4(5).

S. 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 OAC 435:10-7-4(8).

T. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act and the Physician Assistant Act and their applicable regulations. The Board is authorized to enforce the Acts as necessary to protect the public health, safety and welfare.

2. Defendant is guilty of unprofessional conduct as follows:

A. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).

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. 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 435:15-5-11(a)(7), 59 O.S. §509(13) and OAC 435:10-7-4(39).

D. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).

E. Habitually uses intoxicating liquors or habit-forming drugs in violation of OAC 435:15-5-11(a)(1), 59 O.S. §509(4) and OAC 435:10-7-4(3).

F. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).

B. 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. 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).

I. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

J. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).

K. Prescribed or administered a controlled substance without medical need in accordance with published standards in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).

L. 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).

M. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).

N. 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).

O. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

P. Engaged in predatory sexual behavior in violation of OAC 435:10-7-4(45).

Q. Abused the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship in violation of OAC 435:10-7-4(44).

R. Purchased or prescribed any regulated substance in Schedule I through V for the physician's personal use in violation of OAC 435:10-7-4(5).

S. 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 OAC 435:10-7-4(8).

T. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

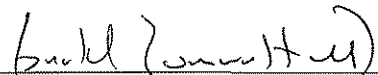
3. The Board further found that the Defendant's license should be revoked based upon any or all of the violations of the unprofessional conduct provisions of 59 Okla. Stat. §509 (1), (4), (7), (8), (9), (12), (13), (15), (16), (17) and (18), OAC 435:10-7-4 (1), (2), (3), (5), (6), (8), (11), (17), (19), (23), (27), (39), (40), (41), (44) and (45), and OAC 435:15-5-11(a)(1) and (7).

Order

IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The license of Defendant, Richard Clay Tessmer, P.A., Oklahoma license no. PA1285, is hereby **REVOKED** as of the date of this hearing, March 11, 2010.
2. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

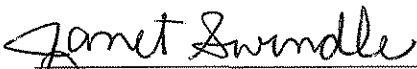
Dated this 26 day of March, 2010.



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 26 day of March, 2010, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Richard Clay Tessmer, 439752 E. Highway 10, Welch, OK 74369-9354.



Janet Swindle