

**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 29 2013

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 12-03-4515

GARY PETER DICKINSON, M.D.,)
LICENSE NO. 13228,)

Defendant.)

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FINAL ORDER

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on March 7, 2013, 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.

Scott Randall Sullivan, Special Prosecutor for the Board, appeared for the plaintiff and Defendant appeared in person and with counsel, Katie Templeton.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of Defendant, and being fully advised in the premises, makes 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 physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §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.

2. Defendant, Gary Peter Dickinson, M.D., holds Oklahoma license no. 13228 and practices family medicine in Edmond, Oklahoma.

3. In or around 2009, Defendant became acquainted with Tara Linville, a pharmaceutical representative. At some point thereafter, Ms. Linville and Defendant's son, Jeff

Dickinson, began working for Xanodyne Pharmaceuticals, a company that sells Zipsor, an anti-inflammatory medication.

4. According to Xanodyne, Ms. Linville received a bonus in the amount of \$30.00 for each prescription for Zipsor filled within her sales territory.

5. On or about February 19, 2010, Defendant wrote two (2) prescriptions for Zipsor 25mg #1 with 10 refills each in the names of Tara Linville and her husband, Timothy Linville. At that time, Ms. Linville was not a patient of Defendant's, but was merely a pharmaceutical representative with whom he did business. Mr. Linville was not a patient of Defendant's either. Defendant gave these prescriptions to his son, Jeff Dickinson, to give to Ms. Linville.

6. On or about March 10, 2010, Defendant's son, Jeff Dickinson, approached Defendant and asked him to help his co-worker, Tara Linville, by writing extra prescriptions for Zipsor so that she could receive sales bonuses. Defendant agreed to this and wrote seventeen (17) prescriptions for Zipsor 25mg #1, with twelve (12) refills each to various family members of Tara Linville. Defendant then gave these prescriptions to his son to give to Ms. Linville.

7. On or about May 3, 2010, Ms. Linville saw Defendant as a patient for the first time. Defendant made a medical record for this patient visit. He did not prescribe Zipsor to the patient at that time.

8. Ms. Linville's patient record contains only one (1) additional notation dated May 14, 2010 reflecting that Defendant prescribed Zipsor 25mg #1, with five (5) refills to the patient. This prescription was given by Defendant at the request of Tara Linville to inflate her bonus from Xanodyne.

9. Defendant's medical records additionally reflect that on or about May 17, 2010, he prescribed Zipsor 25mg #1, with five (5) refills to Timothy Linville, the husband of Tara Linville. Defendant admits that he never saw Timothy Linville as a patient and never conducted an examination of any kind, but only wrote the prescription for Zipsor to him as requested by Tara Linville to inflate her bonus from Xanodyne.

10. When questioned by Board investigators, Defendant admitted that he knew that Tara Linville would get a bonus for every prescription filled for Zipsor, regardless of the quantity of the order (a prescription for one (1) gel cap would be as beneficial for a bonus as a prescription for sixty (60) gel caps). Defendant admitted that these prescriptions were written for Ms. Linville for the purpose of inflating her bonus from Xanodyne.

11. Several weeks later, on or about June 15, 2010, Defendant's son, Jeff Dickinson, provided his father with a list from Tara Linville containing the names of 8-10 persons who were allegedly relatives or friends of Tara Linville with the request to write prescriptions to these persons so as to inflate Ms. Linville's bonus from Xanodyne. Defendant then wrote fifteen (15) separate prescriptions to these 8-10 persons for one (1) gel cap, with twelve (12) refills each. Defendant then gave these prescriptions to his son to give to Ms. Linville.

12. Several months later, on or about August 20, 2010, Jeff Linville provided Defendant with another list from Tara Linville that contained the names of eleven (11) persons who were allegedly relatives or friends of Tara Linville with the request to again write prescriptions to these persons so as to inflate Ms. Linville's bonus from Xanodyne. Defendant then wrote sixteen (16) prescriptions to these 8-10 persons for one (1) gel cap, with unlimited refills each. Defendant then gave these prescriptions to his son to give to Ms. Linville.

13. Defendant admits that the only person to whom he wrote these prescriptions for Zipsor that he saw as a patient was Tara Linville.

14. A review of pharmacy records from Wal-Mart pharmacy alone showing all Zipsor prescriptions written by Defendant to Tara Linville and her family and friends reflects that **at least 52 prescriptions with 6,275 possible refills** were written by Defendant at the request of his son and Ms. Linville. With a cost at Wal-Mart of \$4.01 per prescription and a bonus to Ms. Linville of \$30.00 per prescription, this would have allowed Ms. Linville a profit from her bonuses from Xanodyne in the amount of **\$163,477.10**.

15. When later questioned by Board investigators, Defendant admitted that all fifty-two (52) prescriptions for Zipsor obtained by the investigators at Wal-Mart pharmacy were signed or authorized by him and were given to his son, Jeff Dickinson, to give to Tara Linville.

16. Defendant also admitted that he is a paid spokesman for Xanodyne Pharmaceuticals and is paid by them to speak about Zipsor to other practitioners. According to Xanodyne records, from March 2010 through July 2011, Defendant was paid **\$33,525.16** as a paid spokesman for Zipsor. During this same period of time that Defendant was paid by Xanodyne, he was aiding and abetting his son and Ms. Linville in their plan to defraud Xanodyne.

17. 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 59 O.S. § 509 (8) and OAC 435:10-7-4 (11).
- B. Failed to maintain adequate medical records to support diagnosis, procedure, treatment or prescribed medications in violation of 59 O.S. §509 (20).
- 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 59 O.S. §509 (13) and OAC 435:10-7-4(39).

- D. 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).
- E. 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).
- 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. Failed to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment in violation of OAC 435:10-7-4(49).
- H. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36).

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 (the "Act") and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

2. The Board found "clear and convincing evidence" that 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 59 O.S. § 509 (8) and OAC 435:10-7-4 (11).
- B. Failed to maintain adequate medical records to support diagnosis, procedure, treatment or prescribed medications in violation of 59 O.S. §509 (20).
- 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 59 O.S. §509 (13) and OAC 435:10-7-4(39).

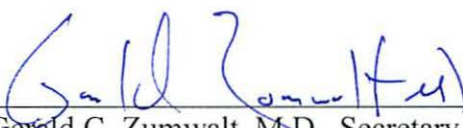
- D. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient in violation of 59 O.S. §509 (18) and OAC 435:10-7-4(41).
- E. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).
- 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. Failed to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment in violation of OAC 435:10-7-4(49).
- H. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36).

Order

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


1. Defendant be issued a **PUBLIC REPRIMAND** and perform two hundred (200) hours of community service.
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 22 day of March, 2013.


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

CERTIFICATE OF SERVICE

I certify that on the 22nd day of March, 2013, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Katie Templeton, SWEET LAW FIRM, 414 NW 4th Street, Suite 150, Oklahoma City, OK 73102.



Barbara J. Smith, Legal Assistant