

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

FILED

JUL 18 2008

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
)
KENNETH JOHN KIRK, M.D.,)
LICENSE NO. 15217)
)
Defendant.)

Case No. 04-05-2803

FINAL ORDER OF SUSPENSION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on July 17, 2008, at the office of the Board, 5104 N. Francis, Suite C, 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 through counsel, Stephen Modovsky.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, 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 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, Kenneth John Kirk, M.D., holds Oklahoma license no. 15217.

3. Between 1980 and 1984, while Defendant was in medical school, he was arrested, jailed and charged with possession of marijuana with intent to distribute. Defendant has

admitted that he intended to deal drugs to other students in medical school. Defendant received a five (5) year suspended sentence.

4. On or about April 12, 1985, Defendant submitted his initial application for an Oklahoma medical license. In response to the question "Have you ever been charged with or convicted of a crime directly or indirectly related to your practice of medicine?", Defendant answered "NO".

5. In or around 1988, Defendant completed thirty (30) days of inpatient treatment in Tulsa, Oklahoma for alcohol abuse. Defendant admits that he remained sober approximately one (1) month, then relapsed on Xanax and diet pills.

6. In or around 1989, Defendant completed six (6) months of inpatient treatment at Talbott for alcohol and drug abuse.

7. In or around 1994, Defendant completed three (3) months of inpatient treatment at Rush Behavioral Health Center for alcohol and drug abuse.

8. In or around June 2003, Defendant began abusing Phentermine, taking up to twenty (20) 37.5 mg. tablets per day. Defendant obtained these medications by taking samples and ordering off of the Internet. Defendant subsequently began abusing Vodka, drinking up to one (1) liter per day. He also took Xanax 30 mg., approximately ten (10) pills per day, phendiametrazine, approximately fifteen (15) pills per day, Ambien, approximately two (2) to four (4) pills per night, Sonata, approximately four (4) pills per night, and Hydrocodone 10 mg., approximately eight (8) to ten (10) pills per day.

9. In or around April 2004, Defendant was terminated by his employer, Omni Medical Group of Tulsa, Oklahoma based upon violation of company policy. Specifically, Defendant had prescribed numerous controlled dangerous substances to an employee who worked directly with him. Defendant had been repeatedly warned against such practices, but he continued to prescribe to the employee. The employee subsequently overdosed on the medications prescribed by Defendant and died.

10. In or around April 2004, a protective order was entered against Defendant by his wife due to threats of immediate harm to her and their children.

11. On or about May 21, 2004, Defendant entered treatment for the fourth time for drug and alcohol abuse at Rush Behavioral Health Center. While at Rush, Defendant admitted that he currently abused alcohol, Phentermine, Xanax, Phendiametrazine, Ambien, Sonata and Hydrocodone. Defendant also admitted that he had previously abused Marijuana, Cocaine, Amphetamines, Methamphetamines and hallucinogenic mushrooms.

12. While at Rush during his fourth treatment attempt, Defendant was diagnosed with multiple addictions, including stimulant dependence, alcohol dependence, poly substance dependence, bipolar disorder, pornography addiction, compulsive overeating and spending

addiction. Defendant has admitted that while abusing diet pills, he used prostitutes and he engaged in "glitter painting". Rush also concluded that he had Mixed Personality Disorder with borderline, paranoid and antisocial personality features.

13. Based upon these facts, on May 5, 2005, after hearing before the Board en banc, the Board entered a Final Order of Revocation whereby it revoked Defendant's license.

14. Defendant subsequently surrendered both his OBN and DEA permits.

15. On July 20, 2006, after hearing before the Board en banc, the Board entered an Order Granting Reinstatement of License Under Terms of Probation. Defendant is currently licensed under a five (5) year term of probation under numerous conditions, including the following:

E. Defendant will not prescribe, administer, dispense or possess any drugs in Schedules I through V.

16. The provisions cited above have not been modified or deleted but remain in full force and effect as terms and conditions of Defendant's licensure under terms of probation.

17. A review of pharmacy records reflects that from July 1, 2006 until April 7, 2008, Defendant authorized approximately **THREE HUNDRED (300)** prescriptions for controlled dangerous substances which were not authorized under the terms of his probation. Medications prescribed by Defendant include Hydrocodone, Lorazepam, Temazepam, Diazepam, Propoxyphene, Alprazolam, Lyrica, Provigil, Clonazepam, Carisoprodol and Ambien.

18. When questioned by Tom Sosbee, the Board's Compliance and Education Coordinator, and Dr. Zumwalt regarding these unauthorized prescriptions, Defendant admitted that he had been ordering prescriptions for controlled dangerous substances for which he was not authorized for nursing home patients and hospital inpatients. Defendant claimed that he did not believe he was violating his probation because he did not physically "write" the prescriptions.

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

A. 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).

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

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. Defendant is guilty of unprofessional conduct in that he:

A. 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).

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

3. The Board further found that the Defendant's license should be suspended based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509 (13) and OAC Title 435:10-7-4 (27) and (39).

Order

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

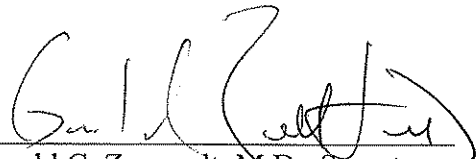
1. The license of Defendant, Kenneth John Kirk, M.D., Oklahoma license no. 15217, is hereby **SUSPENDED** as of the date of this hearing, July 17, 2008 for **THIRTY (30) DAYS**. Upon reinstatement, Defendant shall be placed on **INDEFINITE PROBATION** under the terms set forth in the July 20, 2006 Order Granting Reinstatement of License Under Terms of Probation.

2. Defendant shall pay an **ADMINISTRATIVE FINE** in the amount of \$10,000.00, to be paid on or before August 16, 2008.

3. 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.

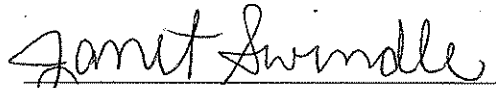
4. Defendant's suspended license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs and expenses incurred by the State of Oklahoma.

Dated this 18 day of July, 2008.


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

CERTIFICATE OF SERVICE

I certify that on the 18 day of July, 2008, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Stephen J. Modovsky, 1204 S. Cheyenne, Tulsa, OK 74119 and to Kenneth Kirk, 6506 E. 89th Place, Tulsa, OK 74133.


Janet Swindle