

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,)

MAY 25 2012

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 00-06-2201

BRUCE STEWART GILMORE, M.D.,)
LICENSE NO. 15474)

Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 17, 2012, 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 through counsel, Daniel Gamino.

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, Bruce Stewart Gilmore, M.D., holds Oklahoma license no. 15474.

PRIOR DISCIPLINARY ACTION

FIRST COMPLAINT

3. On or about June 29, 2000, a Complaint was filed against Defendant based upon excessive prescribing and narcotics laws violations. On or about January 25, 2001, a Final Order of Suspension was entered by this Board whereby Defendant was suspended indefinitely pending completion of a treatment program approved by the Board, to include psychiatric evaluation, substance abuse evaluation and fitness to practice evaluation. Defendant subsequently completed the requirements of the Board and on May 3, 2001, the Board entered an Order Granting Reinstatement of License Under Terms of Probation.

4. The Order Granting Reinstatement of License Under Terms of Probation sets forth Defendant's five (5) year term of probation beginning May 3, 2001, and provided as follows:

- C. Defendant will not prescribe, administer or dispense any medications for personal use or for that of any family member.
 - E. Defendant shall abide by his post care contract with the Oklahoma Physicians Recovery Program and all recommendations of Rush Behavioral Health, and shall attend a minimum of one (1) Caduceus meeting and three (3) 12-Step meetings per week.
 - G. Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Defendant has the affirmative duty to inform any and every doctor treating him of the Board Order immediately upon initiation or continuation of treatment.
 - H. Defendant will have the affirmative duty not to ingest any substance which will cause a body fluid sample to test positive for prohibited substances.
 - I. Defendant shall promptly notify the Board of any relapse, including any entry, or re-entry, into a treatment program for substance abuse.
2. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

5. On January 15, 2002, Defendant provided an observed urine specimen at the request of Tom Sosbee, Compliance and Education Coordinator for the Board. The urine specimen subsequently tested positive for Hydrocodone.

6. On January 29, 2002, Defendant provided an observed urine specimen at the request of Tom Sosbee, Compliance and Education Coordinator for the Board. The urine specimen subsequently tested positive for Hydrocodone.

SECOND COMPLAINT

7. On or about February 13, 2002, a second Complaint was filed against Defendant based upon violation of his probation. Defendant subsequently obtained treatment at Rush Behavioral Health and entered into a Voluntary Submittal to Jurisdiction on March 14, 2002 whereby he was suspended for a period of ninety (90) days beginning February 19, 2002 and placed on indefinite probation. Defendant's Voluntary Submittal to Jurisdiction provided as follows:

- H. Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Defendant has the affirmative duty to inform any and every doctor treating him of the Board Order immediately upon initiation or continuation of treatment.
- I. Defendant will have the affirmative duty not to ingest any substance which will cause a body fluid sample to test positive for prohibited substances.
- L. Defendant will abide by the terms and recommendations of his postcare contracts with Rush and the Physicians' Recovery Program.
- N. Defendant shall promptly notify the Board of any relapse, including any entry, or re-entry, into a treatment program for substance abuse.
- U. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

8. The provisions cited above were not modified or deleted but remained in full force and effect as terms and conditions of Defendant's probation.

9. On September 23, 2003, Defendant provided an observed urine specimen at the request of Tom Sosbee, Compliance and Education Coordinator for the Board. The urine specimen subsequently tested positive for Ethanol and Orphenadrine.

THIRD COMPLAINT

10. On or about October 13, 2003, a third Complaint was filed against Defendant based upon a violation of his probation.

11. On November 20, 2003, after hearing before the Board *en banc*, the Board entered a Final Order of Suspension whereby it suspended Defendant's license for a minimum of nine (9) months, during which time Defendant was required to obtain treatment for substance abuse for a minimum of six (6) months at an inpatient facility approved in advance by the Board Secretary.

After that time, Defendant would be allowed to seek reinstatement of his license, at which time any terms of probation would be determined.

12. On or about September 23, 2004, Defendant appeared before the Board seeking reinstatement of his license. After hearing before the Board *en banc*, the Board entered an Order Granting Reinstatement of License Under Terms of Probation. Under this Order, Defendant's license was to be subject to indefinite probation under the following terms:

I. Defendant will have the affirmative duty not to ingest any substance which will cause a body fluid sample to test positive for prohibited substances including but not limited to alcohol.

K. Defendant will abide by the terms and recommendations of his postcare contracts with Rush Behavioral Health Center and the Physicians' Recovery Program.

M. Defendant shall promptly notify the Board of any relapse, including any entry, or re-entry, into a treatment program for substance abuse.

13. The provisions cited above were not modified or deleted but remained in full force and effect as terms and conditions of Defendant's probation.

14. On December 26, 2007, Defendant provided an observed urine specimen at the request of Tom Sosbee, Compliance and Education Coordinator for the Board. The urine specimen subsequently tested positive for Ethanol.

FOURTH COMPLAINT

15. On or about January 4, 2008, a fourth Complaint was filed against Defendant based upon a violation of his probation.

16. On March 13, 2008, after hearing before the Board *en banc*, the Board entered a Final Order of Revocation whereby it revoked Defendant's license for a minimum of one (1) year. After that time, Defendant would be allowed to seek reinstatement of his license, at which time any terms of probation would be determined.

17. On or about May 21, 2009, Defendant appeared before the Board seeking reinstatement of his license. After hearing before the Board *en banc*, the Board entered an Order Granting Reinstatement of License Under Terms of Probation. Under this Order, Defendant's license was to be subject to indefinite probation under the following terms:

H. Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Defendant has the affirmative duty to inform any and every doctor treating him of the Board Order immediately upon initiation, or continuance of treatment.

I. Defendant will have the affirmative duty not to ingest any substance which will cause a body fluid sample to test positive for prohibited substances including but not limited to alcohol.

M. Defendant shall promptly notify the Board of any relapse, including any entry, or re-entry, into a treatment program for substance abuse.

T. Defendant shall submit any required reports and forms on a timely, accurate and prompt basis to the Compliance Coordinator or designee.

18. The provisions cited above were not modified or deleted but remained in full force and effect as terms and conditions of Defendant's probation.

CURRENT UNPROFESSIONAL CONDUCT ALLEGATIONS

19. According to the Monthly Supervision Report submitted by Defendant in September 2011, as well as all of those reports submitted by Defendant through all of 2010 and 2011, the **only** medications he had been taking during that time were Creon, insulin, Motrin, flonase and omeprazole, as well as some OTC medications.

20. On September 20, 2011, Defendant provided an observed urine specimen at the request of Gary Ricks, Compliance and Education Coordinator for the Board. At that time, Mr. Ricks asked Defendant if there had been any change in the medications that he was taking, to which Defendant answered "no". The urine specimen subsequently tested positive for Hydrocodone and Dihydrocodeine.

21. On or about October 7, 2011, Investigator Ricks interviewed Defendant at his office and confronted him with the positive drug test results. When asked if he had ingested Hydrocodone, Defendant admitted that he had taken it for alleged back pain. When asked where he obtained the drugs, he stated that he had an "old" prescription for Hydrocodone that he had received when he had lung cancer. When asked how old the prescription was, he first stated that it was six (6) months old, then admitted that it might be a year old. Defendant advised Mr. Ricks that the prescription bottle was at his home. Mr. Ricks then told Defendant that he would need to see the actual prescription bottle as soon as possible. Mr. Ricks left the meeting with Defendant around 11:00 a.m.

22. Board investigators subsequently learned that on the afternoon of October 7, 2011, Defendant went to an appointment at the office of Harry Galoob, M.D. for dermatological treatment and asked for a Hydrocodone prescription, which he received and filled later that afternoon of October 7, 2011. Prior to that time, Dr. Galoob had **never** prescribed Hydrocodone to Defendant.

23. On or about November 14, 2011, Defendant met with Board investigators and produced a 2 ½ year old empty prescription bottle for Hydrocodone from V. Galiano, M.D., a physician in Jacksonville, Florida issued January 28, 2009. Defendant claimed that this was the Hydrocodone that caused the positive drug test.

24. During the November 14, 2011 interview, Board investigators asked Defendant if he had advised Dr. Galoob of his abuse of alcohol and Hydrocodone in the past, as was required under his Order of Reinstatement under Terms of Probation. Defendant stated that he thought he had told Dr. Galoob only about his issues with alcohol.

25. In or around the morning of March 2, 2012, Lyle R. Kelsey, Executive Director of the Oklahoma State Board of Medical Licensure and Supervision summarily suspended Defendant's license to practice medicine and surgery pursuant to the authority given to him under 59 O.S. §506(B).

26. Later that same day on March 2, 2012, at 3:53 p.m., Defendant contacted Assistant Attorney General Elizabeth A. Scott and asked if he could voluntarily suspend his license, rather than be subject to the Summary Suspension previously entered by Mr. Kelsey. Ms. Scott agreed to Defendant's request and allowed him to voluntarily suspend his license to practice medicine. Defendant's voluntary suspension of his license was given in return for the State's withdrawal of its Summary Suspension of his license filed earlier that day.

27. On March 3, 2012, despite the fact that Defendant's license was suspended, he nevertheless practiced medicine and treated twenty-six (26) patients at the clinic where he had worked prior to his suspension.

28. 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. 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).

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).

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. 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. 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).

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).

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 O.S. §509 (8) and (13), and OAC Title 435:10-7-4 (11), (19) and (39).


Order

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

1. The license of Defendant, Bruce Stewart Gilmore, M.D., Oklahoma medical license no. 15474, is hereby **REVOKED** as of the date of this hearing, May 17, 2012.

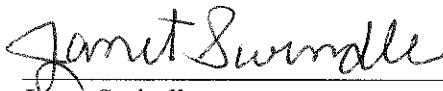
2. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

Dated this 25 day of May, 2012.


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

CERTIFICATE OF SERVICE

I certify that on the 25 day of May, 2012, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Bruce Stewart Gilmore, 830 Franklin Drive, Ardmore, OK 73401-4849 and to Daniel Gamino, Jamestown Office Park, North Building, 3035 N.W. 63rd Street, Suite 214, Oklahoma City, OK 73116.


Janet Swindle