

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

FILED
MAY 09 2016
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA, *ex. rel.*)
OKLAHOMA STATE BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
GARY R. KINDELL, M.D.,)
LICENSE NO. MD 15655,)
)
Defendant.)

Case No. 14-08-5027

**ORDER GRANTING
RESTRICTED LICENSE UNDER TERMS OF PROBATION**

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (herein, "Oklahoma Medical Board" or "State") on March 10, 2016, at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and the rules of the Board.

Gary R. Kindell, M.D. (herein, "Defendant" or "Respondent"), holding Oklahoma medical license no. 15655, appeared in person and with counsels Larry Derryberry and Douglas A. Rice of Derryberry & Naifeh, LLP.

Joseph L. Ashbaker, Assistant Attorney General, appeared on behalf of the State.

The Board *en banc* heard testimony, reviewed the exhibits presented, and being fully apprised of the premises, found that there is clear and convincing evidence to support the following:

Findings of Fact

The Plaintiff, the Defendant and the Oklahoma Medical Board staff stipulate and agree as follows:

1. Defendant, Gary R. Kindell, M.D., holds and has maintained Oklahoma medical license number 15655 since 1986. The acts and omissions complained of herein were made while Defendant was acting as a physician pursuant to his medical licenses conferred upon him by the State of Oklahoma and the State of Alaska. Such acts and omissions occurred within the physical territory of the State of Alaska and it is those acts alone which have lead to filing of the current Oklahoma Complaint and Citation.

2. Defendant is licensed as a physician in the State of Alaska, Department of Commerce, Community and Economic Development, Division of Corporations, Business and Professional Licensing, State Medical Board (“Alaska Medical Board”), and holds medical license number MED S 6365; this license was issued on July 28, 2008 and is currently inactive. Defendant is also licensed as a physician in the State of Texas, license number G6735 and is currently inactive
3. On July 26, 2012, the Alaska Medical Board entered a Board Order adopting a voluntarily entered Consent Agreement (“Alaska Consent Agreement”), in which Defendant was placed on Probation for certain prescribing violations as outlined in the Alaska Consent Agreement and again in the Oklahoma Complaint. Defendant admitted to said misconduct in the Alaska Consent Agreement which **ORDERS** that the Alaska medical license issued to Respondent be subject to certain terms and conditions.
4. On July 1, 2015, an Oklahoma Verified Complaint and Citation with a scheduled Oklahoma Medical Board hearing date of March 10, 2016, case no. 14-08-5027, were filed by the Oklahoma Medical Board for allegations of unprofessional conduct including prescribing violations, failure to maintain an office records for each patient and disciplinary action of another state of jurisdiction.
5. On March 10, 2016, after hearing testimonies and recommendations of counsels, the Oklahoma Medical Board concluded that the State has met its burden of proof by clear and convincing evidence that Defendant has violated the provisions of the Oklahoma Allopathic Medical and Surgical Licensure Act as stated in the allegations of the Oklahoma Complaint, paragraph 6 d, case no. 14-08-5027 filed July 1, 2015.
6. The Board *en banc* **GRANTED** a restricted medical license for Defendant to substantially mirror the terms set forth in the Alaska Consent Agreement, to remain in effect for the duration of the five (5) year probation set forth therein and continuing until its expiration date of July 12, 2017. Defendant will be allowed to supervise allied professionals.

Conclusions of Law

1. The Board *en banc* has jurisdiction over the subject matter and is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians, surgeons and other allied health professionals in the State of Oklahoma pursuant to 59 Okla. Stat. § 480 *et seq.* Notice was given as required by law and the rules of the Board.
2. The Board is authorized to suspend, revoke or order any other appropriate sanctions against the license of any physician, surgeon and other allied health professional holding a license to practice medicine in the state of Oklahoma for unprofessional conduct. 59 O.S. Supp. 2014, § 503; Okla. Admin Code § 435:10-7-4(31). This authority is quasi-judicial 59 O.S. 2011, § 513(A)(1).

Orders

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

1. The Board *en banc* hereby finds that the State has met its burden of proof by clear and convincing evidence.
2. **GARY R. KINDELL, M.D.** is hereby placed on **PROBATION** for the remainder of the five (5) year term as shown in the Alaska Consent Agreement. The ending date of the probationary term will be July 12, 2017.
3. The Oklahoma professional healthcare license of **GARY R. KINDELL, M.D.** is **RESTRICTED** under **PROBATION** that will substantially mirror the Alaska Medical Board's probation as delineated in the Alaska Consent Agreement and will have the following terms:

Standard Terms:

- a) Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Board. Any question of interpretation regarding the Act or this order shall be submitted in writing to the Board, and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Board or its designee.
- b) Defendant will furnish a copy of this order to each and every state in which he holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he holds or anticipates holding any form of staff privileges or employment.
- c) Defendant will keep the Board informed of his current address.
- d) Defendant will be financially responsible for all assessments by the Board for prosecution, investigation and monitoring of his case, which shall include, but is not limited to, a fee of one hundred fifty dollars (\$150.00) per month during the remainder of the probationary term as shown in the Alaska Consent Agreement. Defendant will keep current these payments unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.
- e) Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- f) Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.

- g) Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or designee.
- h) Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Coordinator to obtain copies of medical records and authorize the Compliance Coordinator to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.
- i) 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 license after due notice and hearing. Immediately upon learning that the licensee is in violation of a Board order, the Executive Director of the Board may summarily suspend the license based on imminent harm to the public and assign a hearing date for the matter to be presented at the next scheduled Board meeting.

Specific Terms:

- j) Defendant will inform the Board Secretary of any move from Oklahoma to another licensing jurisdiction.
 - k) In addition to yearly CME requirements, Defendant shall attend and satisfactorily complete no less than forty (40) hours of pain management education each year for the remainder of the probationary term anticipated by the Alaska Consent Agreement beginning in 2016. The CME must be approved by the Board Secretary and proof of completion must be provided to the Board Secretary.
 - l) Within (10) calendar days of the effective date of this Order, Defendant shall notify his employer and any hospital in which he has privileges, of the terms of this Order.
 - m) If Defendant desires to change his employment, the proposed working environment must first be approved by Board Secretary.
4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.
 5. A copy of this Order shall be provided to Defendant as soon as it is processed.
 6. **This Order is subject to review and approval by the Oklahoma Attorney General, and this Order shall become final upon completion of the review by the Oklahoma Attorney General unless disapproved, in which case this Order shall be null and void.**

Dated this 9th day of May, 2016.



Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Certificate of Service

This is to certify that on the 10th day of May, 2016, a true and correct copy of this Order was sent by U.S. first-class mail or as specifically indicated, postage prepaid, to the following:

Gary R. Kindell, M.D.
1115 Cedar Canyon Drive
Chandler, Oklahoma 74834-9005

Defendant

VIA Certified Mail, Return Receipt Requested, Restricted Delivery

-and-

Larry Derryberry
Douglas A. Rice
DERRYBERRY & NAIFEH, LLP
4800 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
Telephone: (405) 528-6569
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***Counsel for Defendant,
Gary R. Kindell, M.D.***



Nancy Thiemann, Legal Secretary



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

FILED

MAY 09 2016

**OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION**

ATTORNEY GENERAL OPINION
2016-232A

Billy Stout, M.D., Board Secretary
State Board of Medical Licensure and
Supervision
101 NE 51st Street
Oklahoma City, Oklahoma 73105

April 6, 2016

Dear Board Secretary Stout:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Medical Licensure and Supervision intends to take with respect to medical doctor licensee 15655. The proposed action is to impose license restrictions until July 12, 2017. The restrictions include additional education in pain management, notification of any employer of the discipline, and approval of the Board before changing employment. The licensee had been disciplined in Alaska for overprescribing pain medications, and the probation was to run until July 12, 2017. The licensee largely complied with the Alaska discipline but moved to Oklahoma in 2014.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2015, §§ 480–518.1, authorizes the Board to discipline licensees for “unprofessional conduct,” 59 O.S.Supp.2015, § 503. The Board’s administrative rules include as unprofessional conduct any “[d]isciplinary action of another state or jurisdiction against a license . . . based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action” in Oklahoma. OAC 435:10-7-4(31). Unprofessional conduct in Oklahoma includes the “[p]rescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or . . . without medical need.” 59 O.S.2011, § 509(16). Given the licensee’s compliance with discipline in Alaska, the Board may reasonably believe that requiring additional education and imposing other minor restrictions are sufficient to prevent future violations.

It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision has adequate support for the conclusion that this action advances the State of Oklahoma’s policy to ensure the adequate regulation of dangerous substances.

A handwritten signature in black ink, appearing to read "E. Scott Pruitt".

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA