

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

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)

FILED

NOV 19 2009

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.)
)
MARK DAVID WINCHESTER, M.D.,)
LICENSE NO. 17303,)
)
Defendant.)

Case No. 09-06-3786

**ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION**

Plaintiff, the State of Oklahoma, ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Elizabeth A. Scott, Assistant Attorney General for the State of Oklahoma, and the staff of the Board, as represented by the Secretary of the Board, Gerald C. Zumwalt, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, Mark David Winchester, M.D., Oklahoma license no. 17303, who appears in person and pro se, proffer this Agreement for acceptance by the Board *en banc* pursuant to Section 435:5-1-5.1 of the Oklahoma Administrative Code ("OAC").

AGREEMENT AND ACKNOWLEDGMENT BY DEFENDANT

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on September 15, 2009 and acknowledges that hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act").

Defendant, Mark David Winchester, M.D., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his right to a full hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions of this Order. Defendant acknowledges that he has read and understands the terms and conditions stated herein.

PARTIES' AGREEMENT AND STIPULATIONS

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

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, Mark David Winchester, M.D., holds Oklahoma license no. 17303 and practices family medicine in Norman, Oklahoma.

3. Beginning November 19, 1991 and continuing through February 14, 1992, Defendant completed approximately three (3) months of inpatient treatment for substance abuse at COPAC.

4. In or around September 1993, Defendant relapsed on Hydrocodone, benzodiazepines and Fastin. Defendant obtained the medications by forging prescriptions. He obtained inpatient treatment at Rush Behavioral Health Center beginning December 13, 1993 and continuing through January 3, 1994. Upon returning from Rush, Defendant executed a monitoring contract with the Oklahoma Health Professionals Recovery Program.

5. In or around June mid 2006, Defendant relapsed on Marijuana. He subsequently began abusing Lortab and Oxycodone, which he obtained by taking medications prescribed to his wife from various doctors. He additionally obtained Lortab from a friend who gave him the medications with the understanding that Defendant would give the medications to patients in need. Defendant did not give the medications to patients, but instead used the medications for himself. He also abused Oxycontin that he obtained from an elderly patient who had a bad reaction to the medication and who had returned it to Defendant.

6. Beginning June 23, 2008 and continuing through August 7, 2008, Defendant obtained treatment for substance abuse at Resurrection Health Care (formerly Rush Behavioral Health Center).

7. On or about May 10, 2007, Defendant submitted his Application for Renewal of his full medical license in the State of Oklahoma for the period July 2, 2007 through July 1, 2008. On his Application for Renewal, Defendant was asked the following question: "Have you been addicted to or abused any drug or chemical substance including alcohol?" In response to this question, the Defendant answered "NO". Defendant admits that he was using drugs at the time he filled out the renewal application.

8. On or about May 9, 2008, Defendant submitted his Application for Renewal of his full medical license in the State of Oklahoma for the period July 2, 2008 through July 1, 2009. On his Application for Renewal, Defendant was asked the following question: "Have you been addicted to or abused any drug or chemical substance including alcohol?" In response to this question, the Defendant answered "NO". Defendant admits that he was using drugs at the time he filled out the renewal application.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. 407 §509(4) and OAC 435:10-7-4(3).

B. Engaged in ... 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 59 O.S. §509(13) and OAC 435:10-7-4(39).

D. 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 physician condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

E. 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).

F. Engaged in ... 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).

G. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself in violation of OAC 435:10-7-4(26).

H. 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, Mark David Winchester, M.D., Oklahoma medical license 17303, is guilty of unprofessional conduct set forth below based on the foregoing facts:

A. Habitually uses habit-forming drugs in violation 59 O.S. 407 §509(4) and OAC 435:10-7-4(3).

B. Engaged in ... 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 59 O.S. §509(13) and OAC 435:10-7-4(39).

D. 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 physician condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

E. 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).

F. Engaged in ... 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).

G. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself in violation of OAC 435:10-7-4(26).

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

Order

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

1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.
2. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Defendant shall be placed on **PROBATION** for a period of **FIVE (5) YEARS** under the following terms and conditions:
 - A. Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said Act 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 Oklahoma State Board of Medical Licensure and Supervision.
 - B. Upon request of the Board Secretary, Defendant will request all hospitals in which he anticipates practicing to furnish to the Board Secretary of the Oklahoma State Board of Medical Licensure and Supervision a written statement regarding monitoring of his practice while performing services in or to that hospital.
 - C. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of Medical Licensure and Supervision.
 - D. Defendant will not supervise allied health professionals that require surveillance of a licensed physician.
 - E. Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Consultant or other Board designee to obtain copies of medical records and authorize the Compliance Consultant or other Board designee to discuss Defendant's case

with Defendant's treating physicians and/or physicians holding Defendant's records.

F. Defendant will submit biological fluid specimens to include, but not limited to, blood and urine, for analysis, upon request of the Oklahoma State Board of Medical Licensure and Supervision or its designee, and Defendant will pay for the analysis thereof.

G. Defendant will not prescribe, administer or dispense any medications for personal use or for that of any family member.

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, including but not limited to alcohol, which will cause a body fluid sample to test positive for prohibited substances.

J. Defendant will authorize in writing the release of any and all information regarding his treatment at Resurrection Health Care and any other records of his medical, emotional or psychiatric treatment to the Oklahoma State Board of Medical Licensure and Supervision.

K. Defendant will abide by the terms and recommendations of Resurrection Health Care and with all terms of his postcare contracts with Resurrection Health Care and the Oklahoma Health Professionals Recovery Program.

L. Defendant will sign a ten (10) year contract with the Health Professionals Recovery Program and shall attend a minimum of one (1) meeting per week unless excused by the HPRP.

M. Applicant will additionally attend a minimum of three (3) meetings per week of a local 12-Step program.

N. Defendant shall obtain individual therapy with a Carol Terry, PhD or another therapist approved in advance in writing by the Board Secretary. Defendant shall submit quarterly reports of his treatment from his therapist to the Board Secretary or his

designee for his review. Defendant shall continue his therapy until his therapist and the Board Secretary deems it no longer necessary.

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

P. Defendant shall promptly notify the Board of any citation or arrest for traffic or for criminal offenses involving substance abuse.

Q. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.

R. Defendant will keep current payment of all assessments by the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of his case, which shall include but is not limited to a one hundred dollar (\$100.00) per month fee during the term of probation.

S. Until such time as all indebtedness to the Oklahoma State Board of Medial Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

T. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.

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

V. 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.

3. Defendant shall pay an **ADMINISTRATIVE FINE** in the amount of \$15,000.00, to be paid on or before January 19, 2010.

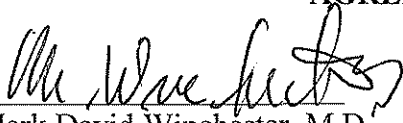
4. Promptly upon receipt of an invoice for such charges, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.

Dated this 19 day of November, 2009.

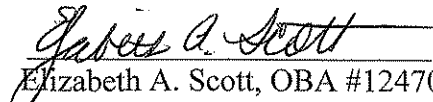


Curtis Harris, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED

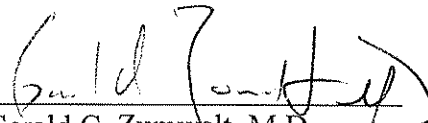


Mark David Winchester, M.D.
License No. 17303



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Attorney for the Oklahoma State
Board of Medical Licensure and
Supervision



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

CERTIFICATE OF MAILING

I certify that on the 20 day of November, 2009, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Mark David Winchester, 1301 N. Council, #1, Blanchard, OK 73010-0770.



Janet Swindle