

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

MAR 22 2007

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.

GILBERT EUGENE JOHNSON, M.D.,
LICENSE NO. 19272,

Defendant.

Case No. 06-08-3146

**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, Gilbert Eugene Johnson, M.D., Oklahoma license no. 19272, who appears in person and through counsel, John Green, 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 January 27, 2007 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, Gilbert Eugene Johnson, 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, and that this Agreement has been reviewed and discussed with him and his legal counsel.

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, Gilbert Eugene Johnson, M.D., holds Oklahoma license no. 19272, and is a family practitioner in Idabel, Oklahoma.

3. A review of pharmacy records in Idabel, Oklahoma reveals that Defendant began treating DWW, another physician in Idabel, on or around January 6, 2004 and continuing through at least July 27, 2006. Prescriptions written or authorized by Defendant to DWW during this time include two (2) prescriptions for Meperidine, a Schedule II controlled dangerous drug, for 90 dosage units, six (6) prescriptions for Testosterone and Hydrocodone, Schedule III controlled dangerous substances, for 155 dosage units, and twelve (12) prescriptions for Alprazolam, Soma and But/Apap/Caf, Schedule IV controlled dangerous substances, for 780 dosage units. A review of Defendant's records reveals that he failed to perform any physical examination on DWW prior to prescribing the controlled dangerous drugs, that he did not establish a valid physician patient relationship prior to prescribing the medications, that he did not establish a legitimate medical need for the medical treatment, and that he failed to maintain complete and accurate records of all controlled dangerous drugs prescribed.

4. When questioned by the Board's investigator, Defendant admitted that he kept no chart on DWW.

5. With respect to the Testosterone prescribed on November 4, 2004, November 8, 2005, December 13, 2005 and May 15, 2006, Defendant initially indicated to the Board's investigator that he prescribed it for weight lifting, a non-medical purpose. On a subsequent interview, Defendant changed his story and stated that it was for a medical purpose because Levitra and Viagra did not exist at that time. However, a review of pharmacy records reflects that Defendant had prescribed Levitra to DWW on August 24, 2004 and September 13, 2004, and that he had prescribed Viagra on August 24, 2004, all of which was before he prescribed the Testosterone to DWW.

6. Defendant additionally wrote, administered or authorized prescriptions for non-controlled dangerous drugs to DWW, including Viagra, Levitra, Propecia and Promethazine. Defendant failed to perform any physical examination on DWW prior to prescribing these dangerous drugs to him, he did not establish a legitimate medical need for the medications, and he did not establish a valid physician patient relationship prior to prescribing the medications.

7. A review of pharmacy records in Idabel, Oklahoma reveals that Defendant began treating JWW, the wife of DWW, on or around November 4, 2004 and continuing through February 18, 2005. Prescriptions written or authorized by Defendant to JWW during this time include one (1) prescription for Demerol, a Schedule II controlled dangerous substance, for 60 dosage units, one (1) prescription for Histinex HC, a Schedule III controlled dangerous substance, and six (6) prescriptions for Alprazolam and But/Apap/Caf, Schedule IV controlled dangerous substances, for 420 dosage units. A review of Defendant's records reveals that he failed to perform any physical examination on DWW prior to prescribing the controlled dangerous drugs, that he did not establish a valid physician patient relationship prior to prescribing the medications, that he did not establish a legitimate medical need for the medical treatment, and that he failed to maintain complete and accurate records of all controlled dangerous drugs prescribed.

8. When questioned by the Board's investigator, Defendant admitted that JWW was not seen as a patient.

9. A review of pharmacy records in Idabel, Oklahoma reveals that on July 25, 2006 and on October 11, 2006, Defendant wrote or authorized prescriptions in the name of JOW, one of his employees, for Diazepam, a Schedule IV controlled dangerous substance, for 200 total dosage units. A review of Defendant's records reveals that he failed to perform any physical examination on JOW prior to prescribing the controlled dangerous drugs in her name, that he did not establish a valid physician patient relationship prior to prescribing the medications, that he did not establish a legitimate medical need for the medical treatment, and that he failed to maintain complete and accurate records of all controlled dangerous drugs prescribed.

10. Pursuant to Defendant's instructions, JOW picked up the drugs at City Drug, then returned them to Defendant. Defendant's records further reflect that the medications were not meant for JOW's personal use, but were intended for "office use."

11. Pharmacy records in Idabel, Oklahoma further reveals that on March 14, 2006, Defendant wrote or authorized prescriptions to JOW, one of his employees, for Fiorinal w/Codeine and Coughuss, Schedule III controlled dangerous substances. A review of Defendant's records reveals that he failed to perform any physical examination on JOW prior to prescribing the controlled dangerous drugs in her name, that he did not establish a valid physician patient relationship prior to prescribing the medications, that he did not establish a legitimate medical need for the medical treatment, and that he failed to maintain complete and accurate records of all controlled dangerous drugs prescribed.

12. 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. 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).
 - C. 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).
 - D. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
 - E. 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).
 - F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
 - G. Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standard in violation of OAC 435:10-7-4(2) and (6) and 59 O.S. §509 (16).
 - H. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).
 - I. 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).

- J. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
- K. Purchased or prescribed any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use in violation of OAC 435:10-7-4(5).
- L. Used 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, Gilbert Eugene Johnson, M.D., Oklahoma medical license 19272, is guilty of unprofessional conduct set forth below based on the foregoing facts:

- 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. 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).
- C. 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).
- D. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
- E. 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).

- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- G. Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standard in violation of OAC 435:10-7-4(2) and (6) and 59 O.S. §509 (16).
- H. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).
- I. 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).
- J. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
- K. Purchased or prescribed any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use in violation of OAC 435:10-7-4(5).
- L. Used 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).

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. The Defendant, **GILBERT EUGENE JOHNSON, M.D.**,

Oklahoma license no. 19272, should be and is hereby **PUBLICLY REPRIMANDED** for the conduct set forth above.

3. The license of Defendant, **GILBERT EUGENE JOHNSON, M.D.**, Oklahoma license no. 19272, is hereby placed on **PROBATION** beginning March 22, 2007 and continuing for a period of **ONE (1) YEAR** 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 keep duplicate, serially numbered prescriptions of all controlled dangerous substances readily retrievable, in numerical order, and will furnish copies to investigators or other authorized agents of the Board immediately upon request.

E. All prescriptions for controlled dangerous substances authorized by Defendant shall be in writing. Defendant shall not call in any prescriptions for controlled dangerous substances during the term of probation.

F. Within one (1) year of the date of this Order, Defendant shall obtain **CONTINUING MEDICAL EDUCATION** approved in advance by the Board Secretary for a minimum of ten (10) hours on prescribing controlled dangerous substances. Defendant shall

provide to the Board Secretary proof of completion of the continuing medical education.

G. Within one (1) year of the date of this Order, Defendant shall obtain **CONTINUING MEDICAL EDUCATION** approved in advance by the Board Secretary for a minimum of ten (10) hours on record keeping. Defendant shall provide to the Board Secretary proof of completion of the continuing medical education.

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

I. 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, including but not limited to a \$100.00 per month probation monitoring fee.

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

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

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

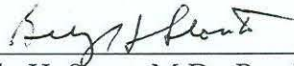
M. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

N. Defendant will not supervise allied health professionals that require surveillance of a licensed physician.

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.


5. A copy of this written order shall be sent to Defendant as soon as it is processed.

Dated this 22 day of March, 2007.

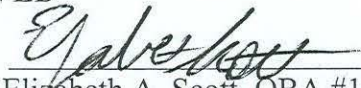


Billy H. Stout, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision


AGREED AND APPROVED



Gilbert Eugene Johnson, M.D.
License No. 19272



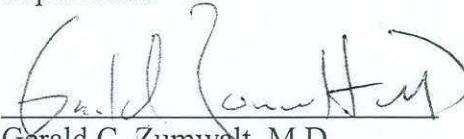
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Attorney for the Oklahoma State
Board of Medical Licensure and
Supervision

3-7-07 OBA No
3567



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 23 day of March, 2007, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to John Green, Attorney 1312 NE 53 Oklahoma City, OK 73111 and Gilbert Johnson, MD, PO Box 1224, Idabel, OK 74745.