

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

FILED

NOV 14 2008

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

Plaintiff,)

v.)

DAVID RAY MITCHELL, M.D.,)
LICENSE NO. 19340)

Defendant.)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 08-01-3433

FINAL ORDER OF SUSPENSION
AND PROBATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on November 6, 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, Susan Nelson.

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, David Ray Mitchell, M.D., holds Oklahoma license no. 19340 and is a practicing psychiatrist in Tulsa, Oklahoma.

3. Beginning in or around June 1995 and continuing through the end of September 2007, Defendant practiced at Laureate Psychiatric Clinic and Hospital in both the inpatient and outpatient eating disorders unit.

4. Defendant admits that he began treating Patient DML beginning in or around October 2006 and continuing through September 5, 2007. Defendant treated Patient DML in the Laureate outpatient clinic for both bulimia and anorexia. Defendant's treatment of Patient DML consisted of medication management as part of her therapy for her eating disorder. Defendant treated Patient DML both individually and in group settings.

5. During this time, Defendant prescribed Patient DML both an anti-depressant and Klonopin on several occasions.

6. In or around the end of September 2007, Defendant resigned from Laureate after being previously demoted due to an incident where he made a sexually inappropriate comment to a female patient.

7. Defendant admits that beginning in or around the end of September 2007 and continuing through the end of December 2007, Defendant engaged in sexual intercourse with Patient DML. Both Defendant and Patient DML were married at the time of the sexual conduct. Defendant engaged in these sexual acts on numerous occasions in his office at Laureate, at hotels, in his car and at Patient DML's family cabin.

8. During the course of their sexual relationship, Patient DML became distraught over her relationship with Defendant and seriously "cut herself", thereby necessitating an inpatient hospital stay for psychiatric care.

9. On or about December 29, 2007, Patient DML and Defendant ended their sexual relationship. Patient DML eventually confessed the sexual relationship to her counselor, who contacted Defendant and advised him that if he did not report his misconduct to the Board, that she would. Defendant then contacted Board staff and reported his sexual misconduct.

10. 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. Engaged in physical conduct with a patient which is sexual in nature, ... in violation of 59 O.S. §509 (17).
- C. Committed an act of sexual ... misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).

- D. Abused the physician's position of trust by coercion [or] manipulation ... in the doctor-patient relationship in violation of OAC 435:10-7-4(44).
- 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. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).
- G. Was unable to practice medicine with reasonable skill and safety to patients by reason of ... any mental or physical condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

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. Engaged in physical conduct with a patient which is sexual in nature, ... in violation of 59 O.S. §509 (17).
 - C. Committed an act of sexual ... misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).
 - D. Abused the physician's position of trust by coercion [or] manipulation ... in the doctor-patient relationship in violation of OAC 435:10-7-4(44).

- 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. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).
- G. Was unable to practice medicine with reasonable skill and safety to patients by reason of ... any mental or physical condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

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 (8), (13), (15) and (17), and OAC 435: 10-7-4 (11), (18), (23), (39), (40) and (44).

Order

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

1. The license of Defendant, David Ray Mitchell, M.D., Oklahoma license no. 19340, is hereby **SUSPENDED** for a period of **SIX (6) MONTHS**, beginning June 6, 2008 and continuing until December 6, 2008.

2. At the conclusion of the term of **SUSPENSION**, 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 Santé 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 Santé and with all terms of his postcare contracts with Santé and the Oklahoma Health Professionals Recovery Program.

L. Defendant will sign a contract with the Health Professionals Recovery Program to include random urine drug screens at least twice per month during the first year of his probation. Defendant shall submit to hair analysis drug screens at least twice per year during the first three (3) years of his probation and at least once per year thereafter.

M. Defendant shall submit to polygraph examinations if recommended by his Home Treatment Team.

N. Defendant shall continue his outpatient treatment as recommended by Santé through his Home Treatment Team, consisting of Renee Marlow, LCSW and Merlin Kilbury, M.D. or another representative of the Health Professionals Recovery Program. Defendant shall not resume the practice of medicine until specifically approved to do so by his Home Treatment Team.

O. During the first year of his probation, Defendant shall not practice individual psychotherapy and shall restrict his patient encounters to assessment, consultation and psychopharmacologic management. All patient encounters during this time period shall be in the presence of a licensed assistant. During the first fourteen (14) days of Defendant's return to practicing medicine, Defendant shall work no more than twenty (20) hours on-site during each seven (7) day period and shall not work off-site. Thereafter, Defendant shall practice no more than fifty (50) hours during any seven (7) day period unless specifically approved to do so by his Home Treatment Team.

P. All patient encounters involving female patients shall be in the presence of a licensed assistant. All patient encounters involving male patients shall also be in the presence of a licensed assistant unless Defendant's employment situation does not allow this. In this case, Defendant must advise the Compliant Consultant in writing why he cannot have a licensed assistant present during these patient encounters and what additional measures he is taking to assure patient safety. In each instance where the licensed assistant accompanies Defendant on patient encounters, Defendant shall obtain documentation from the assistant showing the presence of the licensed assistant.

Q. Defendant shall obtain and continue psychiatric treatment with Mary Weare, M.D. or another psychiatrist approved in advance in writing by the Board Secretary. Defendant shall submit quarterly reports of his treatment from his psychiatrist to the Board Secretary or his designee for his review. Defendant shall continue

his treatment until his psychiatrist and the Board Secretary deem it no longer necessary.

R. Defendant shall establish and continue treatment at least once a year with Mark Galles, M.D. as his primary care physician or with another physician approved in advance in writing by the Board Secretary. Defendant's primary care physician shall manage all of Defendant's medications and shall be made aware of any medications prescribed by Defendant's psychiatrist. All medications prescribed by Defendant's primary care physician and his psychiatrist shall be filled at a single pharmacy. Defendant shall provide the name of this pharmacy to the Compliance Consultant.

S. Defendant shall designate a specific dentist as his dental care provider and shall provide this name to the Compliance Consultant.

T. Defendant shall attend ninety (90) 12-Step meetings in ninety (90) days following his release from Santé. Thereafter, during the first year of his probation, Defendant shall attend a minimum of five (5) 12-Step meetings per week, one (1) of which shall be the Health Professionals Recovery Program meeting. One (1) of these 12-Step meetings shall also be focused on Sexual Recovery. During the remaining four (4) years of his probation, Defendant shall attend a minimum of three (3) 12-Step meetings per week, one (1) of which shall be the Health Professionals Recovery Program meeting. At least twice per month, Defendant's 12-Step meetings shall be focused on Sexual Recovery.

U. Defendant shall return to Santé for any recommended follow-up visits.

V. Defendant's practice shall be restricted to the Oklahoma prison system.

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

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

Y. Defendant will keep the Oklahoma State Board of Medical

Licensure and Supervision informed of his current address.

Z. 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.

AA. 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.

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


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

DD. 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. 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 14 day of November, 2008.



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

CERTIFICATE OF SERVICE

I certify that on the 14 day of November, 2008, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Susan Nelson, Stinnett, Thiebaud & Remington, LLP, 4800 Fountain Place, 1445 Ross Avenue, Dallas, TX 75202 and to David Ray Mitchell, 10109 E. 79th Street, Tulsa, OK 74133-4564.


Janet Swindle
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