

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

STATE OF OKLAHOMA, *ex rel.* )  
OKLAHOMA STATE BOARD )  
OF MEDICAL LICENSURE )  
AND SUPERVISION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
DWAYNE LEWIS ROUSH, M.D., )  
LICENSE NO. MD 19836, )  
 )  
Defendant. )

**FILED**  
JUN 01 2017  
OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 15-05-5140

**ORDER OF SUSPENSION OF LICENSE**

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (“Board”) on May 4, 2017 at the office of the Board, 101 N.E. 51<sup>st</sup> Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and the rules of the Board.

Dwayne Lewis Roush, M.D. (“Defendant”), appeared in person, *pro se*. Counsel Vickie Zemp Behenna did *not* appear on behalf of Defendant, by agreement of Defendant and counsel. Joseph L. Ashbaker, Assistant Attorney General, appeared on behalf of Plaintiff.

The following exhibits were admitted into evidence:

- Plaintiff’s Exhibit 1: Two Medical Examiner records, redacted
- Plaintiff’s Exhibit 2: Misdemeanor charge, failure to file a tax return  
*USA v. Dwayne L. Roush*  
U.S. Dist. Ct., Western District of OK  
Case No. M-14-197-CG
- Plaintiff’s Exhibit 3: June 20, 2014 Application for Renewal  
of Oklahoma License, Medical Doctor  
Dwayne Lewis Roush, M.D.
- Plaintiff’s Exhibit 4: “RC” and “GF” DOC information  
Oklahoma Department of Corrections (DOC)
- Plaintiff’s Exhibit 5: “SL” patient medical records binder, redacted
- Plaintiff’s Exhibit 6: Curriculum Vitae, Heather Hall, M.D.

The following witnesses testified: Stephen Washbourne (“S.W.”), Board Investigator; Heather Hall, M.D.; Don Ferguson, M.D.; and Defendant.

The Board considered arguments of Plaintiff’s counsel and Defendant, testimony of witnesses, exhibits admitted into evidence and being fully apprised of the premises, makes the following findings of fact, conclusions of law and orders:

**Findings of Fact**

1. Defendant holds Oklahoma medical license no. 19836 issued July 11, 1996.
2. Defendant list Pediatrics as his specialty, however, he is not board certified. Defendant’s current practice address is listed at Variety Care Clinic, (“Variety Care”) Oklahoma City, Oklahoma, however, his employment there ended in 2014. He began employment in 2014 with Family Care at Park Lawn (“Park Lawn”), Midwest City, Oklahoma.
3. On April 29, 2014, Defendant pled guilty to one misdemeanor count of failure to file a tax return in the United States District Court for the Western District of Oklahoma in Case No. M-14-197-CG.
4. On June 20, 2014 and June 25, 2015, Defendant submitted his 2014 and 2015 Applications for Renewal of Oklahoma License. On each, Defendant responded “No” to the following question:
  - D. Have you been arrested for, charged with, or convicted of a felony or misdemeanor other than a traffic violation?
5. A review of Defendant’s prescriptions revealed that the majority prescriptions are for Benzodiazepines, particularly Alprazolam C-IV. Many patients were prescribed very high doses of Alprazolam, ranging from 8 mg to 18 mg per day. This was often in combination with higher than usual doses of the sedative Ambien, C-V. Also, many patients were prescribed up to 8mg per day of Xanax. Early refills and overlapping prescriptions on many patients were also noted.
6. Heather Hall, M.D., board certified psychiatrist, reviewed subpoenaed medical records of Defendant’s practice at Park Lawn and at Variety Care. A summary of her review is as follows:
  - a. On the two overdose patient deaths: There appears to be potential harm due to the combinations of drugs prescribed and the lack of documentation of the reasons for those medications.
  - b. On other subpoenaed patient records: There was generally limited and insufficient documentation to support diagnosis and rationale for prescriptions provided. There was a lack of the rationale for prescribing outside the guidelines for a given medication. There was no clear documentation of refills approved at the pharmacy and no documentation of utilization of the PMP to check patients CDS history. For several patients there were multiple prescriptions and pharmacies

noted on the PMP reports suggesting either overtaking of CDS or potential diversion with no notes or consideration given to these issues in the records. Defendant noted that he was not concerned about medication abuse in spite of the prescribing history indicating the contrary.

### **Conclusions of Law**

7. The Board 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 and surgeons in the State of Oklahoma. 59 O.S. 2011, § 480 *et seq.* and Okla. Admin. Code §§ 435:5-1-1 *et seq.*, 435:10-4-2.
8. The Board found that the State has proven, by clear and convincing evidence, that Defendant is guilty of unprofessional conduct as follows:
  - a. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public, in violation of 59 O.S. 2011, § 509(8) and Okla. Admin. Code § 435:10-7-4(11);
  - b. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards, in violation of 59 O.S. 2011, § 509(16);
  - c. Failure 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. 2011, § 509(18);
  - d. Indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs, in violation of Okla. Admin. Code § 435:10-7-4(1); and
  - e. Prescribing, dispensing or administering of controlled substances or Narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standard, in violation of Okla. Admin. Code § 435:10-7-4(2);
  - g. Whenever any license has been procured or obtained by fraud or misrepresentation, or was issued by mistake; or if the diploma of graduation in medicine and surgery or any other credentials required as necessary to the admission to the examination for license were obtained by fraud or misrepresentation or were issued by mistake; or if the reciprocity endorsement from another state, upon which a license has been issued in this state, was procured by fraud or misrepresentation, or was issued by mistake, it shall be the duty of the State Board of Medical Licensure and Supervision to take appropriate disciplinary action in the same manner as is provided by the Oklahoma Allopathic

Medical and Surgical Licensure and Supervision Act for the disciplining of unprofessional conduct, in violation of 59 O.S. 2011, § 508(A);

### **Orders**

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

1. The Oklahoma medical license of **DWAYNE LEWIS ROUSH, M.D.**, is **SUSPENDED** for a period of six (6) months from the effective date of this Order.

2. **DWAYNE LEWIS ROUSH, M.D.** is hereby **FINED TEN THOUSAND DOLLARS (\$10,000)**, due instant.

3. **DWAYNE LEWIS ROUSH, M.D.** shall obtain a mental health assessment from a facility approved of in advance by the Board Secretary, within sixty (60) days of the effective date of this Order.

4. **DWAYNE LEWIS ROUSH, M.D.** shall attend two (2) separate continuing medical education ("CME") courses, one each on prescribing and documentation within six (6) months after the effective date of this Order. These two CME courses shall be in addition to the Defendant's normally required CME courses. These two CME courses shall be approved of in advance by the Board Secretary and Defendant shall provide proof upon completion to the Board Secretary.

5. **DWAYNE LEWIS ROUSH, M.D.** shall appear before the Board at the first Board meeting following six (6) months after the effective date of this Order for review of this matter.

6. Failure to meet any of the terms of this Order will be grounds for the Board to initiate proceedings to revoke the Oklahoma medical license of **DWAYNE LEWIS ROUSH, M.D.**, after additional notice and hearing as required by law.

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

8. A copy of this Order shall be provided to Defendant as soon as it is processed.

9. **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 15<sup>th</sup> day of June, 2017.



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 15<sup>th</sup> day of June, 2017, a true and correct copy of this Order was transmitted as specified, postage prepaid, to the following:

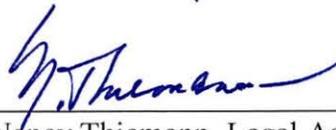
*U.S. Certified Mail*

Dwayne Lewis Roush, M.D.  
409 Winding Creek  
Yukon, Oklahoma 73099

***Defendant***

*U.S. First Class Mail* (courtesy copy)

Vickie Zemp Behenna  
CROWE & DUNLEVY, P.C.  
Braniff Building  
324 North Robinson Avenue, Suite 100  
Oklahoma City, Oklahoma 73102  
Telephone : (405) 235-7700  
Facsimile: (405) 272-5276  
vicki.behenna@crowedunlevy.com



Nancy Thiemann, Legal Assistant



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2017-389A

Billy Stout, Executive Director  
State Board of Medical Licensure and Supervision  
101 N.E. 51<sup>st</sup> Street  
Oklahoma City, OK 73105

May 25, 2017

Dear Executive Director 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 19836, case number 15-05-5140. The proposed action is to suspend the license for six months and require the licensee to pay a \$10,000 fine, obtain a mental health assessment, complete continuing education courses on prescribing and documentation, and appear before the Board in six months for review. The licensee was issued a temporary medical license from July 6, 1995 to August 1, 1996. On July 11, 1996, the licensee was issued a full medical license, specializing in pediatrics, but is not board certified. On April 29, 2014, the licensee pled guilty to a misdemeanor count of failure to file a 2011 tax return. On June 20, 2014 and June 25, 2015, the licensee submitted renewal applications and failed to disclose the misdemeanor on both applications. The licensee's practice location is listed as a clinic in Oklahoma City; however, the licensee ended his employment at the clinic, moved to Midwest City to practice, and failed to update the address as required.

This case was initiated from a complaint by a pharmacist who was concerned about the licensee prescribing patients with very high doses of Alprazolam and the frequency of early refills of medications. A review of prescriptions for a 30-day period found, even though the licensee specialized in pediatrics, the licensee had written very few prescriptions in the age range of a pediatric patient; a majority of prescriptions were for Benzodiazepines (particularly Alprazolam C-IV), given in very high doses, and often in combination with higher than usual doses of the sedative, Ambien, C-V; many patients received early refills and overlapping prescriptions; and several patients exhibited drug seeker/doctor shopping behavior. On May 6, 2015, medical records were subpoenaed from the licensee's medical office and revealed that many patients received high doses of Xanax and early refills. An expert reviewed the medical records and found that the licensee had failed to provide sufficient documentation to support diagnosis and rationale for prescriptions, rationale for prescribing outside the guidelines for a given medication, refills of the medication prescribed, or utilization of the prescription monitoring program to check patients' CDS histories. In fact, the reports for several patients noted multiple prescriptions and pharmacies which suggested either overtaking of CDS or potential diversion. In addition, at least two overdose deaths were associated with the licensee's practice, and the expert reported that for both patients

there appeared to be potential harm due to the combinations of drugs prescribed and the lack of documentation of the reasons for prescribing those medications.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2016, §§ 480–518.1, authorizes the Board to discipline licensees who procure a license by fraud or misrepresentation and who engage in unprofessional conduct. 59 O.S.Supp.2016, §§ 508(A), 503. Unprofessional conduct includes “[d]ishonorable or immoral conduct likely to deceive, defraud, or harm the public,” “[p]rescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or ... without medical need in accordance with published standards,” “[f]ailure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient,” and “[i]ndiscriminate or excessive prescribing, dispensing or administering of [c]ontrolled [substances] or Narcotic drugs.” 59 O.S.2011, § 509(8), (16), (18); OAC 435:10-7-4(1), (2), (11). The action seeks to enforce these requirements that ensure controlled dangerous substances are used appropriately in medical practice. The Board may reasonably believe that the restrictions on the applicant’s license described above will ensure that the licensee does not engage in additional 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 requiring that medical doctors observe standards of professionalism.



MIKE HUNTER  
ATTORNEY GENERAL OF OKLAHOMA



SHELLY PERKINS  
ASSISTANT ATTORNEY GENERAL