

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

JAN 12 2012

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.

PHILIP ANDRE FLOYD, M.D.,
LICENSE NO. 21042,

Defendant.

Case No. 11-01-4137

**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, Philip Andre Floyd, M.D., Oklahoma license no. 221042 who appears in person and through counsel, John W. Coyle, III, 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 June 3, 2011 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, Philip Andre Floyd, 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, Philip Andre Floyd, M.D., holds Oklahoma license no. 21042 and although board certified in surgery, currently practices at the "Fast Medical Center" in Oklahoma City, Oklahoma, a walk-in patient care clinic.

**PRIOR ARRESTS, CHARGES, CONVICTIONS
AND DRIVER'S LICENSE SUSPENSIONS**

1ST ARREST

3. In or around May 1980, Defendant was arrested by the Sallisaw Police Department and charged with Attempting to Elude Officers in a Motor Vehicle. At the time of the incident, Defendant was fifteen (15) years old. This arrest resulted in a conviction.

2ND ARREST

4. In or around July 1980, Defendant was arrested by the Sallisaw Police Department and charged with Hit and Run Resulting in Property Damage. This arrest resulted in a conviction.

5. On or about September 11, 1980, the Oklahoma Department of Public Safety suspended Defendant's Driver's License for points violations.

3RD ARREST

6. In or around July 1981, Defendant was arrested Sequoyah County and charged with Illegal Possession of Alcohol in a Vehicle. This arrest resulted in a conviction.

7. On or about October 13, 1982, the Oklahoma Department of Public Safety suspended Defendant's Driver's License for a 2nd time due to points violations.

4TH ARREST

8. In or around April 1984, Defendant was arrested by the Oklahoma City Police Department for DUI. At that time, Defendant's alcohol level was .10. No charges were filed as a result of that incident.

9. On or about May 17, 1984, the Oklahoma Department of Public Safety suspended Defendant's Driver's License for a 3rd time due to the results of the chemical test where Defendant registered a .10 alcohol level.

5TH ARREST

10. In or around December 1989, Defendant was arrested by the Edmond Police Department and charged with DUI. This arrest resulted in a conviction on or about January 18, 1990.

11. On or about January 15, 1990, the Oklahoma Department of Public Safety suspended Defendant's Driver's License for a 4th time due to the results of the chemical test where Defendant registered a .10 or higher alcohol level.

6TH ARREST

12. In or around March 1990, Defendant was arrested by the Edmond Police Department and charged with Driving While License Suspended. This arrest resulted in a conviction.

7TH ARREST

13. On or around July 31, 1998, Defendant was arrested in Ft. Bend County, State of Texas, and charged with DUI. This incident resulted in a conviction.

8TH ARREST

14. In or around October 2002, Defendant was arrested by the Oklahoma City Police Department for DUI. Officers received a call about a possible drunk driver and when Defendant was pulled over, he was observed to have a strong odor of alcohol, bloodshot and watery eyes, and was swaying on his feet. He refused to submit to a drug test but admitted that he had had "four to five" beers. This incident resulted in a misdemeanor conviction for DUI on or about October 20, 2003.

15. On or about June 28, 2003, the Oklahoma Department of Public Safety suspended Defendant's Driver's License for the 5th time due to chemical test refusal.

9TH ARREST

16. In or around December 2009, Defendant was arrested by the Oklahoma City Police Department. Police officers noted a car driving erratically on the Broadway Extension. Defendant was pulled over and was noted to have a strong odor of alcohol, slurred speech and appeared to be disoriented. The police officer attempted to conduct a field sobriety test, but the Defendant could not follow directions. Defendant initially told the officer he had not been drinking, but eventually admitted he had had five (5) beers. He refused to submit to a drug test when requested. Defendant was arrested for DUI and for Child Endangerment since his nine (9) year old son was with him in the car at the time.

17. On or about May 24, 2010, Defendant plead guilty to the DUI charge and received a deferred sentence.

OTHER MOVING VIOLATIONS

18. In addition to the nine (9) arrests, the majority of which were for alcohol related incidents set forth above, Defendant has been cited an **additional fourteen (14) times on different dates** for moving violations, including but not limited to Operating a Vehicle Without Being Licensed, Operating Contrary to a Condition Stated on License, Speeding, Failure to Obey Traffic Control Signals, Failing to Stop for Stop Sign, and Deposit of Injurious or Harmful Substance on the Road.

FRAUDULENT LICENSURE RENEWALS

19. On or about November 3, 1998, Defendant submitted his initial Application for an Oklahoma Medical License. In response to the question "Have you ever been charged with or convicted of a felony or misdemeanor or of a crime directly or indirectly related to your practice of medicine?", Defendant answered "Yes" and provided a sworn statement whereby he admitted **only** the July 31, 1998 arrest and charge of DWI, as well as the subsequent conviction. He did **NOT** admit the (a) May 1980 charge and conviction for Attempting to Elude Officers in a Motor Vehicle, (b) July 1980 charge and conviction for Hit and Run, (c) July 1981 charge and conviction for Illegal Possession of Alcohol in a Vehicle, (d) December 1989 arrest and conviction for DUI, and (e) March 1990 arrest and conviction for Driving While Suspended.

20. As a result of his admission of the July 31, 1998 arrest and conviction for DWI, Defendant was asked to appear before the Board on his initial licensure application. At the Board meeting, Defendant submitted a letter from Gene Burke, M.D. of Houston, Texas who had completed an assessment of Defendant. In the letter, Dr. Burke stated that based upon his interview with Defendant, he found that Dr. Floyd had never had a previous DWI. Based upon this representation by Defendant to Dr. Burke, Dr. Burke concluded that Defendant did not have a problem with alcohol dependency. At that time, Defendant had in fact been pulled over for DUI in 1984 and had been arrested and convicted of DUI in 1990. These facts were not disclosed by Defendant when he appeared before the Board on his application for an Oklahoma medical license and his application was granted by the Board.

21. On or about January 2, 2003, Defendant submitted his Application for Renewal of Oklahoma License for the period March 2, 2003 through March 1, 2004. On his Application for Renewal, Defendant was asked the following question: "Since the last renewal...[h]ave you been arrested for, charged with, or convicted of a felony or misdemeanor other than a traffic violation?" In response to this question, Defendant answered "NO". Defendant was also asked the following questions: "Since the last renewal...[h]ave you been arrested for, charged with or convicted of a traffic violation involving the use of drugs and/or alcohol?" In response to this question, Defendant answered "NO". Defendant was additionally asked the following question: "Since the last renewal...[h]ave you been addicted to or abused any drug or chemical substance including alcohol?" In response to this question, Defendant answered "NO". Defendant had in fact been arrested for DUI by the Oklahoma City Police Department just three (3) months earlier on October 12, 2002.

22. On or about July 16, 2003, Defendant submitted to an assessment at Rush Behavioral Health. At the conclusion of the assessment, the assessment team determined that Defendant suffered from Alcohol Abuse. Defendant never advised the Board that he was obtaining this assessment.

23. On or about January 8, 2004, Defendant submitted his Application for Renewal of Oklahoma License for the period March 2, 2004 through March 1, 2005. On his Application for Renewal, Defendant was asked the following question: "Since the last renewal...[h]ave you been arrested for, charged with or convicted of a traffic violation involving the use of drugs and/or alcohol?" In response to this question, Defendant answered "NO". Defendant had in fact plead guilty and was convicted of DUI just three (3) months earlier on October 20, 2003. Defendant was additionally asked the following question: "Since the last renewal...[h]ave you obtained an assessment or been treated for use of any drug or chemical substance including alcohol?" In response to this question, Defendant answered "NO". Defendant had in fact obtained an assessment at Rush just six (6) months earlier.

24. On or about April 15, 2004, Defendant sent a letter to the Board offices advising the Board that he had "incorrectly answered" certain questions on his January 2004 renewal application, including the question relating to alcohol related arrests and convictions, and that the purpose of the letter was to "correct the misinformation".

25. On or about January 3, 2010, Defendant submitted his Application for Renewal of Oklahoma License for the period March 2, 2010 through March 1, 2011. On his Application for Renewal, Defendant was asked the following question: "Since the last renewal...[h]ave you been arrested for, charged with, or convicted of a felony or misdemeanor other than a traffic violation?" In response to this question, Defendant answered "NO". Defendant was also asked the following questions: "Since the last renewal...[h]ave you been arrested for, charged with or convicted of a traffic violation involving the use of any drug or chemical substance including alcohol?" In response to this question, Defendant answered "NO". Defendant was additionally asked the following question: "Since the last renewal...[h]ave you been addicted to or abused any drug or chemical substance including alcohol?" In response to this question, Defendant

answered "NO". Defendant had in fact been arrested for DUI by the Oklahoma City Police Department less than one (1) month earlier on December 13, 2009.

26. On or about January 17, 2011, Defendant submitted his Application for Renewal of Oklahoma License for the period March 2, 2011 through March 1, 2012. On his Application for Renewal, Defendant was asked the following question: "Since the last renewal...[h]ave you been arrested for, charged with or convicted of a traffic violation involving the use of drugs and/or alcohol?" In response to this question, Defendant answered "NO". Defendant had in fact plead guilty and was convicted of DUI just eight (8) months earlier on May 24, 2010.

27. On or about January 18, 2011, Board Investigator Robert DuVall contacted Defendant to set up an interview about the complaint made against him and the fraudulent representations in Defendant's renewal applications. An interview was set for January 26, 2011. However, prior to that scheduled interview with Board investigators, Mr. DuVall received a letter from Defendant dated January 19, 2011 where Defendant claimed that the January 17, 2011 license renewal form contained an incorrect response to a question. Defendant advised that a staff member had completed the renewal form for him and had incorrectly answered the question about prior arrests and convictions.

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

A. 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).

B. 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).

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. Confessed to a crime involving violation of the laws of this state in violation of 59 O.S. §509(7).

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

F. Engaged in fraud or 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. Engaged in the use of 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).

H. 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).

I. Failed to report to the Board any adverse action taken against him by any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section in violation of OAC 435:10-7-4(32).

J. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).

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, Philip Andre Floyd, M.D., Oklahoma medical license 21042, is guilty of unprofessional conduct set forth below based on the foregoing facts:

A. 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).

B. 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).

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. Confessed to a crime involving violation of the laws of this state in violation of 59 O.S. §509(7).

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

F. Engaged in fraud or 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. Engaged in the use of 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).

H. 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).

I. Failed to report to the Board any adverse action taken against him by any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section in violation of OAC 435:10-7-4(32).

J. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).

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.

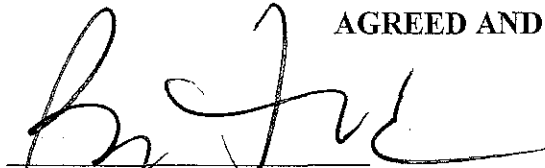
2. The license of Defendant, Philip Andre Floyd, M.D., Oklahoma license no. 21042, is hereby **SUSPENDED** beginning January 12, 2012, and continuing for a period of a **MINIMUM OF FOUR (4) MONTHS**, after which time Defendant may apply for reinstatement by the Board. Prior to appearing before the Board, Defendant shall meet with Board staff to report on the status of his recovery efforts and his proposed plans for re-entry into medical practice.

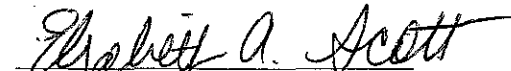
3. At the conclusion of the period of suspension, Defendant shall be placed on **PROBATION** for a period of **FIVE (5) YEARS** under terms to be determined at that time.
4. Defendant's suspended license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs and expenses incurred by the State of Oklahoma.
5. 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.

Dated this 12 day of January, 2012.

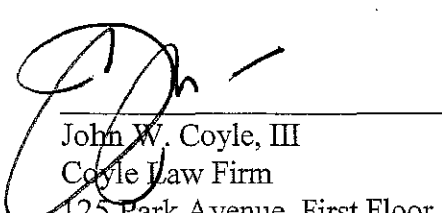

J. Andy Sullivan, President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED

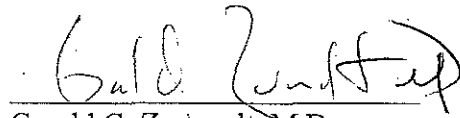

Philip Andre Floyd, M.D.
License No. 21042


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Supervision

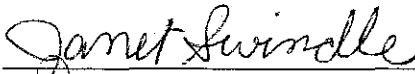

John W. Coyle, III
Coyle Law Firm
125 Park Avenue, First Floor
Oklahoma City, OK 73102

Attorney for Defendant


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 13 day of January, 2012, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to John W. Coyle, III, Coyle Law Firm, 125 Park Avenue, First Floor, Oklahoma City, OK 73102 and to Philip Andre Floyd, 16909 Bradbury Circle, Edmond, OK 73003.


Janet Swindle
Janet Swindle