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,	)	FILED NOV 17 2017 OKLAHOMA STATE BOARD OF MEDICAL LICENSURE & SUPERVISION
Plaintiff,	)	
v.	)	**Case No. 14-08-5019**
SCOTT GREGORY LILLY, M.D., LICENSE NO. MD 21684,	)	
Defendant.	)	

ORDER OF SUSPENSION OF MEDICAL LICENSE

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision ("Board") on May 5, 2017, when the Board meeting adjourned due to loss of quorum. Hearing on this matter reconvened on July 21, 2017 and was completed. Both meetings were held at the Board office, 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and rules of the Board.

Jason Seay and Joseph Ashbaker, Assistant Attorneys General, appeared for the Plaintiff. Defendant appeared in person and through counsel Vickie Z. Behenna and Ruth Addison of Crowe of Dunlevy, P.C.

The following exhibits were admitted into evidence.

Plaintiff and Defendant Joint Exhibit 1:	Notebook of eight (8) patient records SA, GC, CO, RT, JG, JM, CB, AW, redacted
Plaintiff Exhibit 2:	Curriculum Vitae Dr. Richard Thomas Brittingham, M.D., F.A.C.P.
Plaintiff Exhibit 3:	Prescription by Dr. Lilly, patient CB, redacted
Plaintiff Exhibit 4:	Prescription Monitoring Program print, 9/16/2009-9/16/2010, patient FR, redacted
Plaintiff Exhibit 5:	The American Journal of Medicine March 2013, Vol. 126, No. 3A Article: Opioids for Chronic Pain: New Evidence, New Strategies, Safe Prescribing

Plaintiff Exhibit 6:	Okla. Admin. Code § 435:10-7-11 OK State Board of Medical Licensure and Supervision Regulation of Physician and Surgeon Practice
Plaintiff Exhibit 7:	Deposition Transcript, April 26, 2017, condensed Clinton Scott Anthony, D.O
Defendant Exhibit 1: (marked 1; actually 2)	Richard Brittingham paid promotions Dollars for Docs: Talk With Your Doctor
Defendant Exhibit 2: (marked 2; actually 3)	Curriculum Vitae Clinton Scott Anthony, D.O.
Defendant Exhibit 4:	Curriculum Vitae Scott Gregory Lilly, DDS, M.D.
Defendant Exhibit 5:	OBNDD, Voluntary Surrender of Controlled Substances Privileges, executed on July 9, 2015 by Dr. Scott Lilly
Defendant Exhibit 6:	Original Petition, filed June 30, 2017, with Exhs 1-4 *State, ex rel. Mike Hunter, Atty. Gen. of OK v. Purdue Pharma L.P., et al.* Dist. Ct., Cleveland County, OK, Case No. CJ-2017-816
Defendant Exhibit 7:	CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016

Plaintiff's objections to the admission of Defendant's Exhibits 1 and 6 were noted on the record.

The following witnesses were sworn and testified: Lawrence Carter, Board Investigator; Paul Hawk, Agent OBNDD; Richard Thomas Brittingham, M.D., F.A.C.P.; Deborah G. Cole, R.N.; Lloyann Ferrell-Bishop, R.N.; Hailey Scott, Pharm.D.; Clinton Scott Anthony, D.O.; and Defendant.

The Board considered the arguments of counsel, 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, Scott Gregory Lilly, M.D., holds Oklahoma medical license number 21684, issued on July 26, 2000. Defendant's license was expired from July 2, 2017 through July 11, 2017. On July 12, 2017, Defendant renewed his Oklahoma medical license.

2. On July 25, 2016, a Verified Complaint for Professional Misconduct ("Verified Complaint") and Citation were filed; hearing was set on March 2, 2017.

3. Larry Carter testified regarding his previous experience as an investigator with the Oklahoma Bureau of Narcotics and Dangerous Drugs. He described his investigation of Defendant. He was contacted by a family member of a patient of Defendant, who was concerned that the patient was being over medicated. Carter testified that he subpoenaed ten (10) patient medical records from Defendant which were turned over to the Plaintiff's expert for review.

4. Paul Hawk testified regarding the Oklahoma Bureau of Narcotics investigation of Defendant's activities. He stated that Defendant prescribed CDS to known addicts and that several patient deaths were associated with Defendant's prescribing habits.

5. Richard Thomas Brittingham, certified as the Plaintiff's expert witness, was retained by the Board to render opinions about the medical charts for Defendant's deceased patients 'SA' 'GC' 'CO' 'RT' 'JG' and surviving patients 'JM' 'CB' 'AW.' He stated that Defendant's medical records and prescribing practices were below the standard of care within the community.

6. Dr. Brittingham testified that there are numerous red flags concerning Defendant's prescribing of CDS to patient SA. He stated that there is evidence in the record that SA was doctor shopping, yet there is no record of urine drug screens for SA. Dr. Brittingham noted that the Medical Examiner records identify SA's cause of death as acute Morphine toxicity with a femoral blood morphine level of 0.81 micrograms per milliliter, which is about four times toxicity level. He further commented that a major failure is Defendant's lack of clinical surveillance, such as no urine drug screenings, and no pain contract. These are violations of the Board's guidance to physicians in Oklahoma using CDS.

7. Dr. Brittingham testified that patient GC died of acute combined drug toxicity with a Fentanyl level of 8.1 nanograms per milliliter, as well as Alprazolam, Trazadone and Diphenhydramine. Further, there is no record of urine drug screens ever being performed on GC. This is particularly disturbing in that GC had fallen three times in 24 hours, which Dr. Brittingham stated would be potentially made worse if the prescription for opioid pain medications was increased, as was done in this case. GC was taking Fentanyl, Pregabalin, Zolpidem, Oxycodone and Alprazolam. Defendant added a prescription of Dilaudid, a much more potent opioid than Morphine, which Dr. Brittingham stated was incomprehensible.

8. Dr. Brittingham testified that patient CO died of acute combined drug toxicity with a level of Oxycodone in their femoral blood of 0.64 micrograms per milliliter., which according to the aerospace division of the Federal Aviation Administration, is three times the toxic level. He noted that there were again no urine drug screens done on CO and that the amount of opioids was excessive given the diagnoses in this case.

9. Dr. Brittingham testified that patient RT died of acute combined drug toxicity with a level of Morphine of .26 micrograms per milliliter, which is a toxic level, and .55 micrograms per milliliter of Oxycodone which is about 2.5 times toxic level. He testified that there is no clinical evidence in the chart that would support those doses of narcotics. Dr. Brittingham testified, that the charts noted, that RT had a problem with polysubstance

abuse, but there is no evidence of clinical surveillance through urine drug screens, and in spite of Defendant's knowledge of RT's substance abuse history, the clinical notes fail to reflect that fact.

10. Dr. Brittingham testified that patient JG died of acute combined drug toxicity with a level of .27 micrograms per milliliter, which is a toxic level, and there was no evidence of a single drug screen performed throughout RT's history with Defendant. Dr. Brittingham stated that Defendant noted in RT's record that he planned on reducing the number and amount of short-acting opioids and take long-acting opioids, but he did the opposite. The next day, Defendant increased the number of short-acting opioids prescribed to JG.

11. Dr. Brittingham testified that patient JM was pregnant and had a known history of dependence on Xanax, Alprazolam and Benzodiazepines. Although JM had problems with withdrawal seizures from Xanax and Xanax dependency issues, Defendant added Xanax to JM's drug regimen without justification in the chart. Notwithstanding, Dr. Brittingham could find no evidence of a single urine drug screen. JM started a Suboxone regimen for CDS addiction maintenance through a different physician, then returned to Defendant, who resumed prescribing opioids with no justification in the record.

12. Dr. Brittingham testified that patient CB had abdominal pain and was on a relatively significant amount of opioids, including Methadone, which Defendant accelerated without any justification in the chart. He stated further that CB had a break in service, during which he was treated for Suboxone for addiction. Upon returning to Defendant, CB was again prescribed large quantities of Methadone and Oxycodone, without a single urine drug screen or EKG in the chart.

13. Dr. Brittingham testified that patient AW was a 25-year old female who received exceptionally large doses of opioids. He further testified that there is insufficient diagnosis in the chart to warrant the extremely high doses of CDS prescribed to AW. AW gave birth to a baby who had to be transferred to the NICU for high levels of Methadone and Oxycodone Metabolites in her system. Dr. Brittingham's opined that Defendant failed to take into consideration good risk evaluation and mitigation strategies.

14. Deborah G. Cole testified regarding her experience as a neonatal intensive care nurse at St. Francis Hospital of Muskogee, formerly Eastar Hospital of Muskogee, OK. She noted that the number of babies addicted to drugs decreased after Defendant stopped practicing medicine.

15. Lloyann Ferrell-Bishop testified regarding her experience as a registered nurse at Eastar Hospital of Muskogee, OK. She also gave testimony regarding the delivery of drug addicted babies, whose mothers cited Dr.Lilly as the source of their CDS.

16. Hailey Scott testified regarding her experience as a Pharmacist at Economy Pharmacy in Muskogee, OK. She stated that due to the large quantities of CDS prescribed, sometimes multiple short acting opiates, the pharmacy began verifying with Defendant that the dosages were correct. She also stated that the pharmacy adopted a policy to limit the number of pills filled per prescription.

17. Clinton Scott Anthony, certified as an expert witness for the Defendant, stated that opioid prescribing has increased over time and that there is a need for published guidelines with regard to the prescribing of CDS. He noted that the 2016 Centers for Disease Control guidelines have been ratcheting downward. He stated that physicians are poorly trained in pain management and risk mitigation guidelines, such as urine screens and PMP checks Dr. Anthony testified that although Defendant had a lack of understanding, was naïve and made some errors, Defendant's prescribing and treatment did not fall outside the standard of care. Dr. Anthony questioned the Medical Examiner reports which listed cause of death for several patients as multiple drug toxicity because testing drug levels in blood from dead patients was not accurate.

18. Defendant testified that he has no specific training in chronic pain management, and part of his training is management of pain. He also said that his chronic pain patients were almost always on opioids prior to his evaluation, and that each had a medical diagnosis that would result in significant pain. Defendant testified that he pulled PMPs most visits, however, did not put them in the patient's file. He rarely performed urine tests and did not have signed contracts with some of his patients. Also, he saw a lot of patients who had mental health issues.

19. Defendant admitted to prescribing high doses of opioids and that he had a hard time saying no to patients. He also testified to surrendering his OBN and DEA license on July 9, 2015, and has not practiced since that date.

Conclusions of Law

20. 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 pursuant to 59 O.S. 2011, § 480 *et seq*. and Okla. Admin Code §§ 435:5-1-1 *et seq*.

21. Notice was given as required by law and the rules of the Board. 75 O.S. 2011, § 309(A); 59 O.S. 2011, § 504; Okla. Admin. Code §§ 435:3-3-5, 435:3-3-6.

22. The Board is authorized to suspend, revoke or order any other appropriate sanctions against the license of any physician or surgeon holding a license to practice medicine in the State of Oklahoma for unprofessional conduct. 59 O.S. 2011, § 503. This authority is *quasi*-judicial 59 O.S. 2011, § 513(A)(1). The Board's action is authorized by 59 O.S. 2011, §§ 509(8), (16), (18), (19); Okla. Admin. Code §§ 435-10-7-4(1), (2), (6), (11), (15), (24), (27).

23. The Board found that Plaintiff has proven by clear and convincing evidence, that Scott Gregory Lilly, M.D. is guilty of unprofessional conduct as follows:

    b. Engaging in 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).

d. 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) and Okla. Admin. Code §§ 435:10-7-4(2), (6), (24).

e. Failing 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).

f. Failing to provide necessary ongoing medical treatment when a doctor-patient relationship has been established, in violation of 59 O.S. 2011, § 509(19).

h. Engaging in the indiscriminate or excessive prescribing, dispensing or administering of Controlled or Narcotic drugs, in violation of Okla. Admin. Code § 435:10-7-4(1).

i. Engaging in gross or repeated negligence in the practice of medicine and surgery, in violation of Okla. Admin. Code § 435:10-7-4(15).

k. Violating OBN rules and regulations regarding the prescribing of CDS, in violation of Okla. Admin. Code § 435:10-7-4(27).

Orders

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

1. The Oklahoma medical license of **SCOTT GREGORY LILLY, M.D.** is **SUSPENDED FOR SIX (6) MONTHS** from the effective date of an approved Attorney General Opinion.

2. **SCOTT GREGORY LILLY, M.D.** shall not prescribe controlled dangerous substances.

3. **SCOTT GREGORY LILLY, M.D.** is hereby fined **TWENTY THOUSAND DOLLARS ($20,000)**, due instanter.

4. All future practice locations of **SCOTT GREGORY LILLY, M.D.** shall be approved of in advance by the Board Secretary.

5. **SCOTT GREGORY LILLY, M.D.** shall sign a lifetime contract with the Oklahoma Health Professionals Program.

6. **SCOTT GREGORY LILLY, M.D.** shall agree to the inspection of specimens and medical records at the Boards discretion.

7. 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 **SCOTT GREGORY LILLY, M.D.**, after additional notice and hearing as required by law.

8. 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.

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

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 17th day of November, 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 17th day of November, 2017, a true and correct copy of this Order was transmitted as specified, postage prepaid, to the following:

U.S. Certified Mail
Scott Gregory Lilly, M.D.
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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-786A

Billy H. Stout, M.D., Board Secretary
State Board of Medical Licensure and Supervision
101 NE 51st Street
Oklahoma City, OK 73105

November 8, 2017

Dear Dr. Billy H. Stout, M.D., Board Secretary:

This office has received your request for a written Attorney General Opinion regarding action that the State Board of Medical Licensure and Supervision intends to take with respect to medical doctor licensee 21684 in Board case 14-08-5019. The licensee was investigated for excessive prescribing of controlled dangerous substances ("CDS") to patients without a legitimate medical need and for failing to oversee and monitor such patients. After a two-day hearing, the Board proposes to, among other things, suspend the medical license for six months, prohibit the licensee from prescribing CDS medications, assess a $20,000 fine, and require Board Secretary approval for the licensee's future practice locations.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act authorizes the Board to suspend or revoke a license and order other appropriate sanctions against a licensee for unprofessional conduct, *see* 59 O.S.Supp.2016, § 503, which includes "[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," and "[f]ailure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient." 59 O.S.2011, § 509(16), (18). Further, the Board's administrative rules prohibit engaging in the "[i]ndiscriminate or excessive prescribing…of Controlled or Narcotic drugs" and "[g]ross or repeated negligence in the practice of medicine." OAC 435:10-7-4(1), (15). The Board may reasonably believe that the proposed action is necessary to protect public health.

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's policy to ensure the adequate regulation of dangerous substances and require that medical doctors observe minimum standards of professionalism.

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

AMANDA OTIS
ASSISTANT ATTORNEY GENERAL