

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

FILED

JAN 21 1999

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff)

v.)

Case No. 98--10-2035

ARDRY LANCE YARBROUGH, M.D.,)
SPECIAL TRAINING LICENSE NO. 5623,)

Defendant.)

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, Susan Moebius Henderson, 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, Ardry Lance Yarbrough, M.D., Oklahoma special training license no. 5623, who appears in person, and with counsel, Jeff Swanson of the law firm of Best & Sharp, offer 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 no contest to the allegations in the Complaint and Citation filed herein on December 10, 1998 and further 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, Ardry Lance Yarbrough, 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 further acknowledges that he is entitled to have his interests represented by legal counsel and that he has elected to proceed with legal representation from Daniel S. Sullivan and Jeff Swanson of the Best

& Sharp law firm. 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.*

2. Defendant, Ardry Lance Yarbrough, M.D., holds Oklahoma special training license no. 5623, which was granted so that Defendant could complete a PGY-2 residency in family medicine at the University of Oklahoma Health Sciences Center, Tulsa Campus.

3. Defendant has not ever been registered with, or otherwise authorized by, the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBN) or the United States Drug Enforcement Agency (DEA) to prescribe or order controlled dangerous drugs.

Count One Sexual Misconduct

4. Defendant engaged in a sexual relationship with a patient after the patient was discharged from a psychiatric hospital where Defendant was treating her in February of 1997.

5. 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 Okla. Stat. § 509 (9) and OAC 435:10-7-4 (11).

B. Engaged in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient in violation of 59 Okla. Stat. §509 (18).

C. Committed an act of sexual abuse, misconduct or exploitation related or unrelated to the licensee's practice of medicine and surgery in violation of OAC 435:10-7-4 (23).

Count Two
Fraudulent or Forged Prescription

6. In August 1998, Defendant wrote this same woman a prescription for Xanax (C-IV) by forging the signature of Darla Brummell, M.D., Oklahoma license no. 20287.

7. Defendant has engaged in 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 Okla. Stat. § 509 (9) and OAC 435:10-7-4 (11).
- B. Committed an act which is a violation of the criminal laws of the state when such act is connected with the physician's practice of medicine in violation of 59 Okla. Stat. §509 (10).
- C. Wrote false or fictitious prescriptions for any drugs or narcotics declared by the laws of this State to be controlled or narcotic drugs in violation of 59 Okla. Stat. §509 (12).
- D. Indiscriminately or excessively prescribed, dispensed or administered controlled or narcotic drugs in violation of OAC 435:10-7-4 (1).
- E. Used a 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).
- F. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

Count Three
Fraudulent or Forged Prescriptions

7. On or about July 1998, Defendant saw and treated another female patient. At that time, he consulted with his senior resident, Mathew Johnston, M.D., Oklahoma license number 20266, who wrote a Xanax (C-IV) prescription for the patient. Defendant subsequently forged Dr. Johnston's signature on a prescription for an additional 60 Xanax (C-IV) for this same patient.

8. About three (3) weeks later, Defendant met this same patient at a local fast food restaurant and again forged prescriptions for her. This time he wrote prescriptions for Xanax (C-IV) and Valium (C-IV) and forged the signature of one of the faculty physicians, John Tipton, M.D., Oklahoma medical license number 10115. At that time, Defendant advised her that she

needed to find a physician to help her with her addiction and that he would not write additional prescriptions for her.

9. Defendant has engaged in 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 Okla. Stat. § 509 (9) and OAC 435:10-7-4 (11).
 - B. Committed an act which is a violation of the criminal laws of the state when such act is connected with the physician's practice of medicine in violation of 59 Okla. Stat. §509 (10).
 - C. Wrote false or fictitious prescriptions for any drugs or narcotics declared by the laws of this State to be controlled or narcotic drugs in violation of 59 Okla. Stat. §509 (12).
 - D. Indiscriminately or excessively prescribed, dispensed or administered controlled or narcotic drugs in violation of OAC 435:10-7-4 (1).
 - E. Used a 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).
 - F. Prescribed, sold, administered, distributed, ordered or gave to a habitue or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug in violation of OAC 435:10-7-4 (25).
 - G. Prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 Okla. Stat. §509 (17) and OAC 435:10-7-4 (2) and (6).
 - H. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
 - I. Failed to provide a proper setting for a medical examination in violation of OAC 435:10-7-4 (41).

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. Based on the foregoing facts, Defendant, Ardry Lance Yarbrough, Oklahoma special training license 5623, is guilty of the unprofessional conduct set forth below:

- A. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 Okla. Stat. § 509 (9) and OAC 435:10-7-4 (11).
- B. Engaged in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient in violation of 59 Okla. Stat. §509 (18).
- C. Committed an act of sexual abuse, 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. Committed an act which is a violation of the criminal laws of the state when such act is connected with the physician's practice of medicine in violation of 59 Okla. Stat. §509 (10).
- E. Wrote false or fictitious prescriptions for any drugs or narcotics declared by the laws of this State to be controlled or narcotic drugs in violation of 59 Okla. Stat. §509 (12).
- F. Indiscriminately or excessively prescribed, dispensed or administered controlled or narcotic drugs in violation of OAC 435:10-7-4 (1).
- G. Used a 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. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- I. Prescribed, sold, administered, distributed, ordered or gave to a habitue or addict or any person previously drug dependent, any drug legally classified as a controlled

substance or recognized as an addictive or dangerous drug in violation of OAC 435:10-7-4 (25).

- J. Prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 Okla. Stat. §509 (17) and OAC 435:10-7-4 (2) and (6).
- K. Failed to provide a proper setting for a medical examination in violation of OAC 435:10-7-4 (41).

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. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Ardry Lance Yarbrough, M.D., holding Oklahoma special training license No. 5623, is hereby SUSPENDED until at least July 1, 1999 or longer until Defendant submits satisfactory evidence to the Board or its designee that all of the following conditions have been satisfied:

A. Defendant has completed a full assessment for possible sexual and/or chemical addiction at an evaluation facility approved by the Board or its designee, and Defendant submits the written assessment report for approval by the Board or its designee.

B. Defendant agrees to abide by all of the recommendations made in the written assessment report and, if requested by the Board Secretary, agrees to include such recommendations as part of the terms and conditions of licensure.

C. Defendant will enter and complete counseling and/or educational courses satisfactory to the Board or its designee on stress management and patient boundaries and will authorize in writing the release of any and all counseling or treatment records to the Board.

3. Upon reinstatement of his license, Defendant shall be placed on PROBATION for a period of five (5) years from the date of reinstatement under the following terms and conditions:

A. Defendant shall not apply for registration with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBN) or the United States Drug Enforcement Agency (DEA) to

prescribe, dispense, administer or possess any controlled dangerous drugs for a period of one (1) year from his reinstatement.

B. If Defendant obtains registration with OBN and DEA after expiration of the one (1) year period described above, Defendant will keep duplicate, serially numbered prescriptions of all controlled dangerous substances and addictive drugs readily retrievable, in numerical order and will furnish copies to investigators or other authorized agents of the Board immediately upon request.

C. Defendant will request all hospitals, clinics and other facilities in which he practices to furnish to the Board a written statement monitoring his practice whenever so requested by the Board or its designee.

D. 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 any physicians holding Defendant's records.

E. Defendant will conduct his/her practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Board. Any question of interpretation regarding the Act or this order 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 Board or its designee.

F. Defendant will furnish a copy of this order to each and every state in which he holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he holds or anticipates holding any form of staff privileges or employment.

G. Defendant will not supervise allied health professionals.

H. Defendant will keep the Board informed of his/her current address.

I. Defendant will keep current payment of all assessment by the Board for prosecution, investigation and monitoring of his case.

J. Until such time as all indebtedness to the Board 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 will limit his medical practice to the duties required of residents in the family medicine residency program at the University of Oklahoma Health Sciences Center, Tulsa Campus and will not practice outside the program requirements. Defendant will obtain Board approval prior to initiating practice in any other practice setting.

M. Defendant shall forfeit any credit earned as a PGY-2 resident during the 1998-99 residency year and shall repeat his entire PGY-2 residency year following any reinstatement.

4 The foregoing terms of probation shall apply to any medical license held by Defendant in the State of Oklahoma, including any full medical license, and shall continue until the probationary period ends either through lapse of time or pursuant to an earlier Board order expressly releasing Defendant from the terms and conditions of probation.

5. After further notice and hearing, additional, specific terms of probation may be imposed as warranted by the assessment report written as a result of Defendant's evaluation for possible sexual and/or chemical addiction.


6. Promptly upon receipt of an invoice for such charges, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.

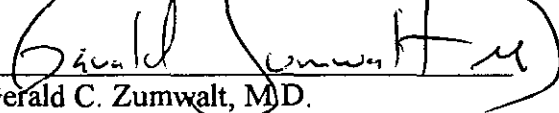
Dated this 21 day of January, 1999.

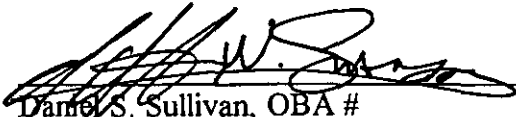



Eric E. Frische, President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED:


Ardry Lance Yarbrough, M.D.
Special Training License No. 6523


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


Daniel S. Sullivan, OBA #
Jeff Swanson, OBA # 116734
Best & Sharp.
Oneok Plaza
100 W. 5th Street, Suite 808
Tulsa, OK 74103-4225
918/582-1234


Susan Moebius Henderson, OBA #11858
Assistant Attorney General
State of Oklahoma
5104 N. Francis, Suite C
Oklahoma City, OK 73118
405/848-6841

Attorney for Defendant,
Ardry Lance Yarbrough, M.D.
Special Training License No. 5623

Attorney for the Oklahoma State Board
of Medical Licensure and Supervision

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CERTIFICATE OF MAILING

This is to certify that on this 25th of January 1999, a true and correct copy of this order was mailed, postage prepaid to:

Ardry Lance Yarbrough, M.D.
5932 S. Rockford
Tulsa, OK 74135

Daniel Sullivan, Attorney
100 W. 5th Street Suite 808
Tulsa, OK 74103-4225

Janet L Owens
Janet L. Owens, Secretary