

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

FILED

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

MAY 28 2010

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 10-01-3903

JOHNNY MCKAY FOWLER, M.D.,)
LICENSE NO. 22822)

Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 20, 2010, at the office of the Oklahoma State Medical Association, 313 N.E. 50th Street, 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 pro se.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony Defendant, 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, Johnny McKay Fowler, M.D., holds Oklahoma license no. 22822 and practices internal medicine in Tahlequah, Oklahoma.

**PATIENT RSD-SEXUAL MISCONDUCT
AND PRESCRIBING VIOLATIONS**

3. Beginning in or around 1999 and continuing for approximately ten (10) years through the end of 2009, Defendant treated Patient RSD and acted as his personal physician.

4. Pharmacy records reflect that for the period February 2, 2006 until December 31, 2009, Defendant wrote or authorized 274 prescriptions for controlled dangerous substances to Patient RSD. These prescriptions include fifty-six (56) prescriptions for Morphine Sulphate, Concerta, Adderall, and Dextroamphetamine Sulphate, Schedule II controlled dangerous drugs, for a total of 1,628 dosage units, one-hundred forty-eight (148) prescriptions for Hydrocodone and Testosterone, Schedule III controlled dangerous drugs, for a total of 11,174 dosage units, and seventy (70) prescription for Ambien, Alprazolam, Provigil and Lunesta, Schedule IV controlled dangerous drugs, for a total of 3,091 dosage units, for a **total of 15,893 dosage units.**

5. Defendant admits that he kept no records of his treatment of Patient RSD during the entire ten (10) year period he treated him. Defendant did not document any physical examinations on the patient to whom he was prescribing the controlled dangerous drugs, he did not document a full history of the patient, he did not document ordering any appropriate tests, he did not document a legitimate medical need for the medications, and he did not maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient.

6. Beginning in or around 1999 and continuing for ten (10) years through approximately 2009, Patient RSD lived with Defendant and slept in the same bed with him. During a portion of this time, Defendant and Patient RSD engaged in regular sexual contact. Defendant engaged in these sexual acts at the same time that he was maintaining a doctor-patient relationship and prescribing controlled dangerous substances and other dangerous drugs to this patient

**PATIENT SSD-SEXUAL MISCONDUCT
AND PRESCRIBING VIOLATIONS**

7. Beginning in or around January 2009, Defendant treated Patient SSD. The patient complained to Defendant that he wanted to have bigger muscles and wanted to lose weight.

8. Pharmacy records reflect that during this time, Defendant wrote or authorized a prescription for Testosterone Cyp with three (3) refills and a prescription for Synthroid with two (2) refills to Patient SSD.

9. Defendant admits that he kept no records of his treatment of Patient SSD during the time he treated him. Defendant did not document any physical examinations on the patient to whom he was prescribing the controlled dangerous drugs and other dangerous drugs, he did not document a full history of the patient, he did not document ordering any appropriate tests, he did

not document a legitimate medical need for the medications, and he did not maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient.

10. In or around December 2008 and January 2009, Defendant engaged in sexual intercourse with Patient SSD on two (2) occasions. During this same period of time and continuing through at least the end of January 2009, Defendant and Patient SSD continued to exchange sexually explicit emails. The sexually explicit emails also contained references to Defendant's treatment of Patient SSD and medications prescribed by Defendant to Patient SSD.

11. Defendant engaged in these sexual acts with him at the same time that he was maintaining a doctor-patient relationship and prescribing controlled dangerous substances and other dangerous drugs to this patient.

12. 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, or in any verbal behavior which is seductive or sexually demeaning to a patient 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. 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).
- E. Failed 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. §509 (18) and OAC 435:10-7-4(41).
- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- G. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid

physician patient relationship in violation of 59 O.S. §509(12).

- H. Confessed to a crime involving violation of the antinarcotics laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).
- I. Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).
- J. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).

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, or in any verbal behavior which is seductive or sexually demeaning to a patient 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. 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).

- E. Failed 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. §509 (18) and OAC 435:10-7-4(41).
- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- G. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).
- H. Confessed to a crime involving violation of the antinarcotics laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).
- I. Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).
- J. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).

3. The Board further found that the Defendant's license should be **REVOKED** based upon any or all of the violations of the unprofessional conduct provisions of 59 Okla. Stat. §509 (7), (8), (12), (13), (16), (17) and (18) and OAC 435:10-7-4 (1), (2), (6), (11), (23), (27), (39) and (41).

Order

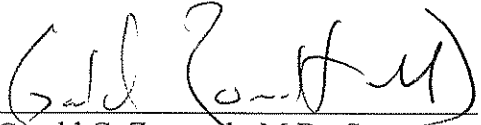
IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The license of Defendant, Johnny McKay Fowler, M.D., Oklahoma license no. 22822, is hereby **REVOKED** as of the date of this hearing, May 20, 2010.

2. 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.

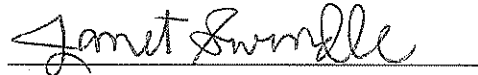
3. Defendant's revoked license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs and expenses incurred by the State of Oklahoma.

Dated this 28 day of May, 2010.


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

CERTIFICATE OF SERVICE

I certify that on the 28 day of May, 2010, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Johnny McKay Fowler, 9919 S. Irvington Avenue, Tulsa, OK 74137-5520.


Janet Swindle