

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

FILED

SEP 29 2005

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 04-04-2800

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
)
GARY MICHAEL KRAMER, M.D.,)
LICENSE NO. 22848)
)
Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on September 22, 2005, at the office of the Board, 5104 N. Francis, Suite C, 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 through counsel, Linda Scoggins.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, 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.*
2. 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.
3. Defendant, Gary Michael Kramer, M.D., holds Oklahoma license no. 22848.

FRAUD OR MISREPRESENTATION TO BOARD

4. On or about April 1, 2002, Defendant submitted his Application for Licensure in the State of Oklahoma. On his application, Defendant was asked the following question:

"Have you ever been named as a defendant in a civil suit (include malpractice)?"

In response to this question, Defendant answered "yes" and attached an explanation reflecting that he had been named as a defendant in the following four (4) separate medical malpractice cases:

- a. Case brought by Kenneth Williams filed in April 1995 in Wyandotte County, Kansas District Court, Case No. 95C1971 settled for \$110,000.00
- b. Case brought by Rosella Nelson-Morrisroe filed in October 1997 in Wyandotte County, Kansas District Court, Case No. 97C4508 settled for \$130,000.00.
- c. Case brought by Timothy Vaughn filed in Wyandotte County, Kansas District Court, Case No. 97C05231 settled for \$40,066.00.
- d. Case brought by fourteen year old female filed in Finney County, Kansas District Court, Case No. 01C65 settled for \$5,000.00

5. On July 18, 2002, Defendant appeared before the Board on his licensure application. When questioned about lawsuits against him, Defendant testified under oath as follows:

Frische: Doctor, when the times that you've been sued, looks like the first one was for an incident in 1993; when was the last incident, the fourth case, when was the incident actually?

Kramer: I want to say 1999.

Frische: 1999, so in six years four lawsuits.

Kramer: Yes sir.

6. After examining Defendant's application and attachments and hearing the sworn testimony of Defendant, the Board voted to issue Defendant's Oklahoma medical license.

7. Subsequent to the Board's issuance of Defendant's Oklahoma medical license, Board staff learned that Defendant had also been named as a Defendant in the following medical malpractice cases in Kansas:

- a. Case brought by Fred Robinson filed August 4, 2000 in Finney County, District Court of Kansas, Case No. 00C207. Defendant filed an Answer on September 13, 2000 and the case was set for Jury Trial on November 18, 2002, with a defense verdict.
- b. Case brought by Marla Romesburg filed April 19, 2000 in Finney County, District Court of Kansas, Case No. 00C85. Defendant filed an Answer on May 11, 2000 and the case was settled for \$150,000.00.
- c. Case brought by Bernetha Dreiling filed April 5, 2000 in Finney County, District Court of Kansas, Case No. 00C72. Defendant filed an Answer on October 30, 2000 and the case was settled on November 1, 2004 for \$88,000.00.
- d. Case brought by Heirs of Karl Giesick filed May 9, 2001 in Finney County, District Court of Kansas, Case No. 01C103. Defendant was served on May 23, 2001 and the case was settled for \$450,000.00.
- e. Case brought by Betsy Glunt filed June 18, 2001 in Finney County, District Court of Kansas, Case No. 01C145. Defendant filed an Answer on October 17, 2001.
- f. Case brought by Charles Fenton filed April 5, 2001 in Finney County, District Court of Kansas, Case No. 01C85. Defendant filed an Answer on April 27, 2001 and the case was settled for \$75,000.00 on April 13, 2002.

8. On July 28, 2005, the State filed an Application to Determine Emergency and on August 11, 2005, the Board Secretary conducted a hearing on the State's Application for an Emergency Suspension. At the hearing, Defendant testified under oath that prior to seeking licensure in Oklahoma, he had also been named as a defendant in three (3) separate malpractice cases in Missouri.

9. A review of Defendant's Application for Licensure filed April 1, 2002 and the statements he made at his hearing on July 18, 2002 reveals that Defendant failed to disclose any of these nine (9) additional malpractice cases in which he had been named as a defendant.

10. On or about May 19, 2003, Defendant submitted his Application for Renewal of Oklahoma License. On his application, Defendant was asked the following question:

"Since the last renewal or initial licensure (whichever is most recent): ...
Have you been named as a defendant in a civil suit (including malpractice)?"

In response to this question, Defendant answered "NO."

11. Court records in the State of Kansas reveal that Defendant was named as a defendant in the following medical malpractice case:

- a. Case brought by Rhonda Anderson filed December 12, 2002 in the United States District Court for the District of Kansas, Case No. 02-2624-JWL. Defendant filed an Answer on February 5, 2003 and the case was settled for \$200,000.00.

12. A review of Defendant's Application for Renewal of Oklahoma License submitted May 19, 2003 reveals that Defendant failed to disclose the medical malpractice case filed by Rhonda Anderson.

13. On or about June 21, 2004, Defendant submitted his Application for Renewal of Oklahoma License. On his application, Defendant was asked the following question:

"Since the last renewal or initial licensure (whichever is most recent): ...
Have you been named as a defendant in a civil suit (including malpractice)?"

In response to this question, Defendant answered "NO."

14. Court records in the State of Kansas reveal that Defendant was named as a defendant in the following medical malpractice cases:

- a. Case brought by Johnanna Borden filed July 2, 2003 in the United States District Court for the District of Kansas, Case No. 03-1227-JTM. Defendant filed an Answer on July 29, 2003. The case was voluntarily dismissed on February 2, 2004.
- b. Case brought by Brenda Kidd filed March 2, 2004 in the United States District Court for the District of Kansas, Case No. 04-1059-MLB. Defendant filed an Answer on March 31, 2004. On March 17, 2005, the case was dismissed and transferred to another district.
- c. Case brought by Donald Phelps, et al. filed August 5, 2003 in the United States District Court for the District of Kansas, Case No. 03-1282-MLB. Defendant filed an Answer on August 26, 2003. The case is still pending.
- d. Case brought by Frederick Berndt filed August 5, 2003 in the United States District Court for the District of Kansas, Case No. 03-1283-JTM. Defendant filed an Answer on August 26, 2003. The case is still pending.
- e. Case brought by Donna Stanton filed March 30, 2004 in the United States District Court for the District of Kansas, Case No. 04-1109-JTM. Defendant was served on April 3, 2004. The case is still pending.
- f. Case brought by Larry Holum filed May 3, 2003 in Finney County, District Court of Kansas, Case No. 03C170. Defendant filed an Answer on June 24, 2003. The case is still pending.

15. A review of Defendant's Application for Renewal of Oklahoma License submitted June 21, 2004 reveals that Defendant failed to disclose any of these six (6) additional

medical malpractice cases in which he had been named as a defendant.

16. On or about June 21, 2004, Defendant submitted his Application for Renewal of Oklahoma License. On his application, Defendant was asked the following questions:

Since the last renewal or initial licensure (whichever is most recent):

I. Have you had any mental, emotional or nervous disorder or condition which could affect, or if untreated could affect, your ability to practice competently?

T. Have you had a major illness or been hospitalized within the past year?

In response to these questions, Defendant answered "NO."

17. At the August 11, 2005 hearing on the State's Application for Emergency Suspension, Defendant testified under oath that he had been hospitalized in both July 2003 and December 2003 at Laureate in Tulsa, Oklahoma for severe depression. Defendant also testified that he had been treated on an outpatient basis in Cleveland, Ohio in late 2003 or early 2004.

18. A review of Defendant's Application for Renewal of Oklahoma License submitted June 21, 2004 reveals that Defendant failed to disclose these two (2) hospitalizations in 2003 as well as his mental disorder.

19. On or about June 14, 2005, Defendant submitted his Application for Renewal of Oklahoma License. On his application, Defendant was asked the following question:

"Since the last renewal or initial licensure (whichever is most recent): ...

Have you been named as a defendant in a civil suit (including malpractice)?"

In response to this question, Defendant answered "NO."

20. Court records in Muskogee County, State of Oklahoma, reveal that Defendant was named as a defendant in the following medical malpractice case:

- a. Case brought by Belinda Sue Garrett-Hall filed November 5, 2004 in the District Court of Muskogee County, State of Oklahoma, Case No. CJ-04-01772. Defendant was served on May 4, 2005 and the Plaintiff dismissed her case without prejudice on June 10, 2005.

21. A review of Defendant's Application for Renewal of Oklahoma License submitted June 14, 2005 reveals that Defendant failed to disclose the medical malpractice case filed by Belinda Sue Garrett-Hall.

22. A review of Defendant's Application and Renewal Applications submitted to the Board reveals that Defendant disclosed only four (4) of the twenty-one (21) malpractice cases filed against him in Kansas, Missouri and Oklahoma.

23 Title 59 O.S. §508 provides as follows:

"Whenever any license has been procured or obtained by fraud or misrepresentation...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 ... for the disciplining of unprofessional conduct."

Section 508 further provides as follows:

"Use of fraudulent information to obtain a license shall be a misdemeanor offense, punishable, upon conviction, by the imposition of a fine of not less than One Thousand Dollars (\$1,000.00), or by imprisonment in the State Penitentiary for not more than one (1) year, or by both such fine and imprisonment."

FRAUD OR MISREPRESENTATION TO MUSKOGEE HOSPITAL

24. On or about May 11, 2002, Defendant submitted his Application for Medical Staff Appointment to Muskogee Regional Medical Center. On the Application, Defendant was asked questions regarding legal actions against him, specifically whether any professional liability claims or suits had ever been filed against him, if any were presently pending, and if any judgments or settlements had been made against him. In response to these questions, Defendant disclosed the following six (6) cases where he had been named as a defendant: Williams, Nelson-Morrisroe, Vaughn, 14-year old female case, Robinson and Giesick. However, Defendant did **not** disclose the following other four (4) cases where he had been named as a defendant in Kansas: Dreiling, Romesburg, Fenton and Glunt. Additionally, Defendant did **not** disclose the three (3) cases in Missouri where he had been named as a defendant.

25. On or about June 4, 2004, Defendant submitted his Medical Staff Reappointment Application to Muskogee Regional Medical Center. On the Application, Defendant was asked whether he had had any professional actions or claims against his since his application. In response to this question, Defendant answered "Yes" and attached a list of lawsuits filed against him. Defendant disclosed twelve (12) of the seventeen (17) lawsuits brought against him in

Kansas, but did not disclose the following five (5) Kansas lawsuits: Dreiling, Fenton, Holum, Borden and Stanton.

FRAUD OR MISREPRESENTATION TO PLICO

26. On or about July 23, 2002, Defendant submitted his application for professional liability insurance with Physicians Liability Insurance Company of Oklahoma. In response to questions regarding malpractice claims history, Defendant disclosed the following six (6) lawsuits against him in Kansas: Robinson, Giesick, Dreiling, Romesburg, Glunt and 14-year old female case. Defendant did not disclose the following remaining four (4) lawsuits against him in Kansas: Williams, Nelson-Morrisroe, Vaughn, and Fenton. Additionally, Defendant did not disclose the three (3) lawsuits previously filed against him in Missouri.

27. On or about September 9, 2003, Defendant submitted a Policy Renewal Questionnaire to Physicians Liability Insurance Company of Oklahoma. On this questionnaire, Defendant was asked the following question:

Has there ever been any treatment for alcoholism, narcotic addiction or mental illness?

In response to this question, Defendant answered "NO."

28. At the August 11, 2005 hearing on the State's Application for Emergency Suspension, Defendant testified under oath that he had been hospitalized in July 2003 at Laureate in Tulsa, Oklahoma for severe depression.

29. 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 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).
- 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 OAC 435:10-7-4(39) and 59 O.S. §509(13).

- D. 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).

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 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).
- 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 OAC 435:10-7-4(39) and 59 O.S. §509(13).
- D. 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).

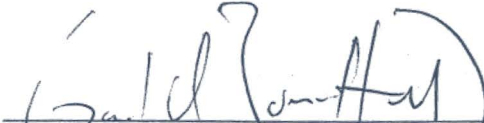
3. The Board further found that the Defendant's license should be revoked based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509 (8) and (13)and OAC Title 435:10-7-4 (8), (11), (19) and (39).

Order

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

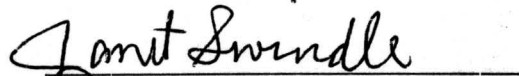
1. The license of Defendant, Gary Michael Kramer, M.D., Oklahoma license no. 22848, is hereby **REVOKED** as of the date of this hearing, September 22, 2005.
2. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees 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 29 day of September, 2005


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

CERTIFICATE OF SERVICE

I certify that on the 29 day of September, 2005, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Linda Scoggins, Scoggins & Cross, 3100 City Place Building, 204 N. Robinson, Oklahoma City, OK 73102 and to Gary Michael Kramer, 209 S. 36th Street, Muskogee, OK 74401.


Janet Swindle