

**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,)
)
Plaintiff,)
)
v.)
)
ROBERT EDWARD MITCHELL, M.D.,)
LICENSE NO. MD 22998,)
)
Defendant.)

FILED

JAN 21 2021

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 19-02-5709

**ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION**

The State of Oklahoma, ex rel. Oklahoma State Board of Medical Licensure and Supervision ("Board"), by and through the undersigned counsel for the Plaintiff, as represented by the Secretary of the Board, Billy H. Stout, M.D., and the Executive Director of the Board, Lyle Kelsey, along with Robert Edward Mitchell, M.D. ("Defendant"), Oklahoma medical license no. 22998, who appears in person, and through counsel Elizabeth A. 'Libby' Scott of Crowe & Dunlevy, P.C. (collectively, the "Parties"), and offer this Order Accepting Voluntary Submittal to Jurisdiction (herein, "Order" or "Agreement") for acceptance by the Board. Okla. Admin. Code § 435:5-1-5.1.

By voluntarily submitting to jurisdiction and entering into this Order, Defendant admits to some of the allegations herein contained and further acknowledges that a hearing before the Board could result in some sanction under the Oklahoma Allopathic Medical and Surgical

Defendant, Robert Edward Mitchell, 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 an 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, and that this Agreement may be reviewed and discussed with him by legal counsel prior to execution.

If the Board does not accept this Order, the Parties stipulate that it shall be regarded as null and void. Admissions by Defendant herein, if any, shall not be regarded as evidence against him in a subsequent disciplinary hearing. Defendant will be free to defend himself and no inferences will be made from his willingness to have this Order accepted by the Board. The

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Parties stipulate that neither the presentation of this Order nor the Board's consideration of this Order shall be deemed to have unfairly or illegally prejudiced the Board or its individual members and, therefore, shall not be grounds for precluding the Board nor any individual Board member from further participation in proceedings related to the matters set forth herein.

Findings of Fact

The Plaintiff, Defendant, and the Board staff each stipulate and agree as follows:

1. In Oklahoma, Defendant holds medical license no. 22998, originally issued August 5, 2005.
2. On September 29, 2020, a Verified Complaint and Citation were each filed by the Board. Hearing was set for January 21, 2020. Defendant was served on October 3, 2020, and a Proof of Service was prepared by private process server PSS-19-5.
3. The Board received a report from the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) alleging Defendant prescribed Controlled Dangerous Substances ("CDS") during a time that his medical license was not active.
4. Defendant's license was inactive from August 2, 2018 through January 1, 2019, and during that time, four (4) prescriptions were called in under his name as follows:
 - a. Patient JCC – Rx #4573712 thirty (30) tablets Zolpidem 10 mg; called in 10/2/2018, and filled 10/2/2018; Wal-Mart pharmacy, 11207 S. State Highway 51, Coweta, OK.
 - b. Patient JCC – Rx #4574073 thirty (30) tablets Zolpidem 10 mg; called in 10/30/2018, and filled 10/30/2018; Wal-Mart pharmacy, 11207 S. State Highway 51, Coweta, OK.
 - c. Patient JCC – Rx #4574457 thirty (30) tablets Zolpidem 10 mg; called in 11/30/2018, and filled 11/30/2018, and refilled 12/31/2018; Wal-Mart pharmacy, 11207 S. State Highway 51, Coweta, OK.
 - d. Patient MRR – Rx #954934 thirty (30) tablets Phentermine 37.5 mg; called in 9/19/2018, and filled 9/19/2018; CVS pharmacy, 7041 S. Yale Ave., Tulsa, OK.

Defendant submits that he did not order, call in or authorize the three (3) prescriptions to Patient JCC, a former patient and employee at Defendant's prior place of employment.

5. On 8/19/2020, Board Investigator Lawrence 'Larry' Carter ("TV Carter") met with Director of Licensing Lisa Cullen. Cullen reported that beginning ninety days before a doctor's license is set to expire, the Board sends three post cards and five e-mails reminding the doctor to renew his/her license, which are sent to whatever addresses the licensee has provided. The final email informs the doctor that the license is now expired, and he/she has thirty (30) days before a



penalty is assessed. In the instant case, the postcards were sent to Defendant's Tulsa address and his most recent email address, which he listed with the Board.

6. Through further investigation it became apparent that patient MRR is related to Defendant within the second degree of consanguinity. Defendant admitted to IV Carter that he treated MRR as a patient and had prescribed Phentermine to her.

7. Defendant voluntarily signed a five (5) year contract with the Oklahoma Health Professionals Program (OHPP), and on August 19, 2019 signed a release allowing OHPP to discuss his case with the Board. During the time the OHPP contract was in effect, Defendant failed numerous Soberlink tests. Defendant claimed use of an albuterol inhaler regularly that can cause a false positive test. IV Carter received the results from a PETH test that is not prone to a false positive, which confirmed the Soberlink test results.

8. On December 19, 2019, IV Carter attempted to meet with Defendant to obtain a urine sample and request a blood test to confirm the failed Soberlink test results. Defendant, refused to meet and referred IV Carter to his attorney.

9. On January 23, 2020, OHPP sent a letter to the Board indicating that Defendant was no longer in compliance and they would no longer monitor him.

10. On December 18, 2019 Defendant failed his Soberlink tests and wrote at least one prescription the same day.

11. On November 15, 2019 Defendant went to Professional Renewal Center (PRC) assessment. Defendant attended and completed a treatment program at Bradford Health Services, and was discharged on 01.31.2020.

12. Any conclusion of law below which is more properly characterized as a finding of fact is hereby incorporated as a finding of fact.

Conclusions of Law

13. 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. 59 O.S. § 480 et seq. and Okla. Admin. Code §§ 435:5-1-1 et seq.

14. Notice was provided as required by law and the rules of the Board. 75 O.S. § 309; 59 O.S. § 504; Okla. Admin. Code §§ 435:3-3-5, 435:3-3-6.

15. The Board is authorized to suspend, revoke or order any other appropriate conditions 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. §§ 503, 513(A)(1). The Board's action is authorized by 59 O.S. § 509.1.



16. The Board is authorized to accept voluntary submittals to jurisdiction mutually agreed to by parties to a disciplinary action to resolve the action without need for a hearing. 75 O.S. § 309(E); Okla. Admin. Code § 435:5-1-5.1.

17. Based on the foregoing, Defendant is guilty of unprofessional conduct as follows:

a. Habitual intemperance or the habitual use of habit-forming drugs (alcohol). 59 O.S. § 509(4).

b. Prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member. Provided that this paragraph shall not apply to family members outside the second degree of consanguinity or affinity. Provided further that this paragraph shall not apply to medical emergencies when no other medical doctor is available to respond to the emergency. Okla. Admin. Code § 435:10-7-4(26).

Orders

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

1. The Board hereby adopts the Agreement of the Parties in this Order Accepting Voluntary Submittal to Jurisdiction, including the findings of fact and conclusions of law stated herein.
2. **ROBERT EDWARD MITCHELL, M.D.**, shall be placed on **PROBATION** for a period of **FIVE (5) YEARS**.
3. **ROBERT EDWARD MITCHELL, M.D.** shall comply with all of the following terms and conditions:

Specific Terms:

- (a) Defendant shall sign a five (5) year contract with Oklahoma Health Professionals Program ("OHPP") to run concurrently with the probation period. Defendant shall abide by all recommendations of the OHPP, including but not limited to random urine drug screens, Peth tests, hair tests, nail tests and breathalyzer tests. Defendant shall ensure OHPP provides quarterly reports to the Board Secretary and/or the Board's Compliance Coordinator of all Defendant's screens, tests results and meeting attendance records.
- (b) Defendant shall limit his/her practice to 40 hours per week. Defendant shall acquire approval in advance from the Board Secretary to increase the number of practice hours per week.
- (c) Defendant shall attend individual therapy sessions with a therapist to be approved of in advance by the Board Secretary. Defendant shall ensure that the therapist



provide quarterly reports to the Board Secretary and Compliance Coordinator, until Defendant is released by the therapist.

- (d) The therapist will refer Defendant to a therapist who is Eye Movement Desensitization & Reprocessing (EMDR) certified, if it is determined that this will be beneficial to the Defendant.
- (e) Defendant shall obtain a primary care physician approved of in advance by the Board Secretary, who shall monitor his general health and who shall also be responsible for managing the use of all prescription and non-prescription medications. Defendant's primary care physician shall be available to discuss the Defendant's health upon request with the Board Secretary and/or Compliance Coordinator.
- (f) Defendant will obtain a sleep study within six (6) month of the effective date of this Order. Defendant shall provide the results and recommendations of the sleep study to the Board Secretary within thirty (30) days of completion thereof.
- (g) Defendant shall obtain an AA twelve-step sponsor and provide the sponsor's name and meeting attendance records monthly to the Compliance Coordinator.
- (h) Defendant shall attend a minimum of three (3) Alcoholics Anonymous/Narcotics Anonymous (AA) meetings. In addition, Defendant shall attend weekly Caduceus meetings, one of which must be in person if in person meetings are available.
- (i) Defendant shall promptly notify the Compliance Coordinator of any relapse, including any entry, or re-entry, into a treatment program of substance abuse.

Standard Terms:

- (j) Defendant shall conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act ("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 authorized designee. 59 O.S. § 480, et seq.
- (k) Defendant shall furnish a file-stamped copy of this Order stipulating terms imposed by the Board, 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.
- (l) Defendant will keep the Board informed of his current address.
- (m) Defendant will keep current payment of all assessments by the Board for prosecution, investigation and monitoring of his case, which shall include, but is not limited to, a fee of one hundred fifty dollars (\$150.00) per month during the



term of probation, unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

- (n) Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any bankruptcy proceeding.
- (o) Defendant will not supervise allied health professionals, physician assistants, or advanced nurse practitioners, that require surveillance of a licensed medical practitioner. Okla. Admin. Code § 435:5-1-8.
- (p) For good cause shown, upon request of the Board or its designee, Defendant will submit biological specimens for analysis, including but not limited to, blood, urine, hair follicle and nail samples, and Defendant will pay the costs attendant thereto.
- (q) Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need, and only during that time in which he is being treated by the physician for that specific medical need. Defendant has the affirmative duty to inform any and every doctor treating him of this Order immediately upon initiation, or continuation of treatment. In the event that Defendant is prescribed any controlled dangerous substance during the term of this Order, Defendant shall contact the Board Secretary or the Board designee to discuss the prescription.
- (r) Defendant shall not prescribe, administer or dispense any prescription medications for personal use or for that of any family members, friends, employees or associates.
- (s) Defendant will have the affirmative duty not to ingest any substance, including but not limited to alcohol, which will cause a body fluid sample to test positive for prohibited substances.
- (t) Defendant shall promptly notify the Board Secretary or Compliance Coordinator of any citation or arrest for traffic or for criminal offenses. This notification will include any complaint of intoxication or severe hangover at place of employment of while rendering health services.
- (u) Upon request, Defendant shall make himself available for one or more personal appearances before the Board or its authorized designee.
- (v) Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or authorized designee.
- (w) Defendant will execute such releases of medical and psychiatric records during the entire term of this Order as necessary for use by the Compliance Coordinator to obtain copies of medical records and assessments, and authorize the



Compliance Coordinator to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.

- (x) If Defendant moves his residence or practice location out of the State of Oklahoma during this Order, this Order will be tolled until such time as Defendant returns to the State of Oklahoma and begins practicing within the state. Defendant will notify the Board Secretary and Compliance Coordinator prior to moving out-of-state.
 - (y) Failure to meet any of the terms of this Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.
 - (z) Immediately upon learning that a licensee is in violation of a Board-ordered probation, the Executive Director of the Board may summarily suspend the license based on imminent harm to the public and assign a hearing date for the matter to be presented at the next scheduled Board meeting. 59 O.S. § 506(B).
 - (aa) The Parties, the Board or its designee, or the Defendant may file a motion for a Board hearing and possible new Board order.
4. 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.
 5. A copy of this Order shall be provided to Defendant as soon as it is processed.



Dated this 31 day of DECEMBER, 2020.

Billy H. Stout

Billy H. Stout, M.D.
Board Secretary OKLAHOMA STATE
BOARD OF MEDICAL LICENSURE
AND SUPERVISION

Robert Edward Mitchell M.D.

Robert Edward Mitchell, M.D.
License MD 22998
Defendant

James M. Brinkworth

James M. Brinkworth, M.D., President
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE AND
SUPERVISION

Joseph L. Ashbaker

Joseph L. Ashbaker, OBA 19395
Assistant Attorney General
STATE OF OKLAHOMA,
OFFICE OF ATTORNEY GENERAL
Attorney for Plaintiff,
Oklahoma State Board of Medical
Licensure and Supervision

Elizabeth A. Scott

Elizabeth A. 'Libby' Scott, OBA 12470
CROWE & DUNLEVY, P.C.
Attorney for Defendant,
Robert Edward Mitchell, M.D.

ACKNOWLEDGMENT

STATE OF OKLAHOMA)
) ss.
COUNTY OF)

This instrument was acknowledged before me on the 4th day of Jan, , by [Defendant] .

Lisa Dick

Notary Public
Commission Expiration:



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Certificate of Service

This is to certify that on the 22nd day of January, 2020, a true and correct copy of this Order was transmitted as indicated, postage prepaid, to the following:

U.S. Certified Mail

Robert E. Mitchell, M.D.
8504 South Winston Ave.
Tulsa, Oklahoma 74137

U.S. First Class Mail, and E-mail

Elizabeth A. 'Libby' Scott, OBA 12470
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
(405) 235-7700
(405) 239-6651 facsimile
elizabeth.scott@crowedunlevy.com

*Attorney for Defendant,
Robert Edward Mitchell, M.D.*

E-mail

Joseph L. Ashbaker, OBA 19395
Assistant Attorney General
STATE OF OKLAHOMA, OFFICE OF
ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105
(405) 521-3921
(405) 521-6246 facsimile
joe.ashbaker@oag.ok.gov
*Attorney for Plaintiff,
Oklahoma State Board of Medical
Licensure and Supervision*



Nancy Thiemann, Legal Assistant

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