

**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.)
)
JAMES LAWRENCE FLECKENSTEIN, M.D.,)
LICENSE NO. MD 23288,)
)
Defendant.)

FILED
SEP 12 2019
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 16-12-5409

**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, and James Lawrence Fleckenstein, M.D. (“Defendant”), Oklahoma medical license no. 23288, who appears in person and through counsel Linda Scoggins of Doerner, Saunders, Daniel & Anderson, L.L.P. (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 certain allegations herein contained and further acknowledges that a hearing before the Board could result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. § 480, *et seq.* (“Act”).

Defendant, James Lawrence Fleckenstein, 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 Board staff stipulates and agree as follows:

1. In Oklahoma, Defendant holds medical license no. 23288, originally issued March 27, 2003.
2. On December 6, 2016, this agency received information from the Oklahoma Bureau of Narcotics (OBN) that Defendant was prescribing numerous Controlled Dangerous Substances ("CDS") to his wife LOL. Defendant and LOL were married August 27, 2014. LOL retained her maiden name.
3. A check of prescribing records shows that between July, 1, 2013 and October 21, 2016, Defendant wrote approximately sixty-seven (67) prescriptions for CDS to LOL. Additionally, five (5) CDS prescriptions were written for TYL. This is a total of 72 CDS prescriptions in approximately three (3) years and four (4) months.
4. Of these 72 prescriptions, there were 28 CDS-IV totaling 790 tabs (1 Alprazolam 1mg #20, 1 Alprazolam 2mg #30, 5 Clonazepam 1mg #120, 1 Diazepam 10mg #20, and 20 Zolpidem 10mg #600). There were 2 CDS-III totaling 120 tabs (2 Hydrocodone 10mg #120). It should be noted Hydrocodone was a CDS-III at the time the prescriptions were written; it is now a CDS-II. There were 42 CDS-II totaling 3,027 tabs (2 Hydromorphone 4mg #100, 1 Meperidine 100mg #10, 3 Oxycodone 10mg #280, 30 Oxycodone 30mg #2103, and 6 Oxycodone ER 40mg #534). This totals 3,937 CDS dosages.

Interview of Defendant

5. On December 22, 2016, Defendant voluntarily agreed to be interviewed by a Board Investigator. The agreed and voluntary interview by a Board Investigator took place at the Board office on January 5, 2017. During this interview, Defendant admitted he had authorized the 72 prescriptions listed in the prescribing records. He admitted the majority of the prescriptions written to his wife LOL were for his personal use. Defendant also admitted there were no medical records for patients LOL and TYL.
6. Defendant stated TYL was a friend of his wife LOL. Defendant admitted that he wrote CDS prescriptions to TYL, who filled them and returned them to the Defendant, and he then used them for his own personal use. Defendant stated TYL agreed to fill prescriptions under her (TYL) name thinking they were for use by LOL.
7. Defendant admitted to a long history of substance abuse. Defendant stated that in the early 1990's he had "a chronic dependence upon alcohol and marijuana, and intermittent abuse of other drugs." Defendant stated he attended in-patient treatment at COPAC in

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Mississippi for six (6) months during this time. Defendant stated he applied for licensure in Oklahoma in 2003. Defendant disclosed his history information and was granted an unrestricted Oklahoma medical license.

8. Defendant stated he began drinking in 2004 after being sober for approximately 12 years. Defendant advised that after his continued use of alcohol for a few years, he voluntarily signed a contract with the Oklahoma Health Professional's Program ("OHPP") on October 18, 2007. He was released from this contract on October 18, 2012 after five (5) years of sobriety.
9. Defendant advised that he had back surgeries in April 2013 and January 2015. Defendant stated he was prescribed opiate pain medication as a result of these surgeries. Defendant admitted after receiving these opiate pain medications he began to fraudulently prescribe CDS to LOL for his own use.
10. Defendant stated that sometime around the end of June 2016, a pharmacist refused to fill any more of his CDS prescriptions for LOL. Defendant advised at this point he knew he had a problem and needed help. Defendant stated that he then contacted Dr. Y shortly thereafter and told him he believed he had become addicted to opioids. After appropriate evaluation, Dr. Y started Defendant on an opioid addiction treatment program which included a Suboxone program (which lasted 22 months), counseling, and drug testing. Defendant stated at this interview he has not taken any other opioids since that time.

Additional Information

11. Defendant agreed to and received a comprehensive assessment at Vanderbilt in Nashville, Tennessee on February 20 and 21, 2017. Defendant received a diagnosis of: (1) Opiate Use Disorder, (2) Alcohol and Cocaine Use Disorder, and (3) Chronic Pain Disorder.
12. Defendant informed OHPP of his opiate addiction in 2016 and began regularly attending meetings and having random drug screens (in addition to those required in Dr. Y's program) through OHPP. A contract with OHPP went into effect the summer of 2017.
13. On March 26, 2018, Defendant plead guilty in Tulsa County District Court to one misdemeanor count of Possession of Controlled Dangerous Substance by Registrant by Fraud/Forgery in violation of 63 O.S. § 2-402. In exchange for that plea of guilty he received a two (2) year deferred sentence.
14. With the agreement and support of OHPP, Defendant moved his residence to Chicago, Illinois in or about April of 2018 and, based in part on a referral from OHPP, was admitted to the after-care program of Positive Sobriety Institute ("PSI") in Chicago, PSI worked with and sent reports to OHPP to ensure Defendant's compliance with the terms of his contract with OHPP.
15. On or about October 7, 2018, Defendant tested positive for alcohol in a random drug screen and acknowledged a relapse. As a result of the relapse, on November 1, 2018, Defendant voluntarily executed an Agreement Not to Practice ("ANTP") in the State of Oklahoma. It was stipulated in the ANTP that it would remain in effect until the pending



case before the Board was concluded and Defendant chose to continue practicing medicine.

16. As part of Defendant's voluntary steps taken to return to the practice of medicine, Defendant chose to have a multidisciplinary comprehensive assessment at PSI on March 9, 2019. The finding of the assessment was that Defendant should enter a treatment program for professionals approved by the Board, for substances abuse disorder and follow all recommendations. Defendant presented for admission to the Board approved program at PSI on March 28, 2019.
17. Defendant completed the PSI treatment program in twelve weeks, on or about June 20, 2019. Defendant was required to be evaluated by PSI prior to return to practice to determine any limitations of practice. The return to practice evaluation was completed July 23, 2019.
18. During the course of Defendant's 2019 assessments and evaluations, his Oklahoma license lapsed. Consequently, Defendant has completed and submitted a new application for licensure with supporting documents and has been informed by licensure staff that said application is complete.

Conclusions of Law

19. 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.*, 59 O.S. 492 *et seq.*; Okla. Admin. Code §§ 435:5-1-1 *et seq.*, 435:10-4-2 *et seq.*, 435:10-4-2.
20. 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.
21. The Board is authorized to suspend, revoke with or without the right to reapply, 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. §§ 503, 513(A)(1). The Board's action is authorized by 59 O.S. §§ 509.1(A)(3), (4), (6), (8), (9).
22. 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. 2011, § 309(E); Okla. Admin. Code § 435:5-1-5.1.
23. Based on the foregoing, Defendant is guilty of unprofessional conduct as follows:
 - a. Habitual intemperance or the habitual use of habit-forming drugs, in violation of 59 O.S. § 509(4) and Okla. Admin. Code § 435:10-7-4(3).
 - b. Conviction or confession to a crime involving violation of the anti-narcotic or prohibition laws and regulations of the federal government, or the laws of this

state, in violation of 59 O.S. § 509(7)(a), (b), 63 O.S. § 2-406(A)(3), and Okla. Admin. Code §§ 435:10-7-4(27), 475:25-1-3(b), (c), 475:30-1-3(a), (d).

- c. The writing of 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 O.S. § 509(11) and Okla. Admin. Code § 435:10-7-4(27).
- d. Prescribing any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use, in violation of Okla. Admin. Code § 435:10-7-4(5).
- e. 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 or to himself or herself. 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 Voluntary Submittal to Jurisdiction, including the findings of fact and conclusions of law stated herein.
2. The Oklahoma Medical License number 23288 of **JAMES LAWRENCE FLECKENSTEIN, M.D.**, shall be under terms of **PROBATION** for a period of **FIVE (5) YEARS**, effective on the date of approval of this Order by the Board.
3. Defendant shall not prescribe any controlled dangerous substances ("CDS") during the period of probation.
4. Defendant shall sign a lifetime contract with the Oklahoma Health Professionals Program ("OHPP") and abide by all recommendations. This shall include, but is not limited to:
 - Maintaining documentation of attendance of at least four (4) 12-step meetings per week.
 - Maintaining documentation of at least 75% attendance of weekly Caduceus meetings with one (1) meeting per month to be via Zoom with Dr. Cheng.
 - Drug screen monitoring shall include fifty-two (52) observed UDS tests per year, two (2) hair follicle tests per year, Soberlink breathalyzer tests twice daily, and PETH blood tests twice yearly.

- Defendant shall obtain a sponsor within two (2) months with at least two (2) years abstinent recovery and maintain weekly contact with said sponsor.
 - Defendant shall attend four (4) individual therapy meetings per month and ensure quarterly reports are provided to the Compliance Coordinator.
 - Defendant shall obtain a primary care physician (PCP).
5. The recommendations set forth above in paragraph 4 may be modified or terminated as agreed to in advance by the Board Secretary.
 6. Defendant shall ensure reports of all OHPP recommendations are submitted quarterly to the Compliance Coordinator.
 7. **JAMES LAWRENCE FLECKENSTEIN, M.D.**, Oklahoma medical license no. 23288 is formally **REPRIMANDED**.
 8. **JAMES LAWRENCE FLECKENSTEIN, M.D.**, is **FINED** five thousand (\$5000) dollars, due within six months (6) months from the filing of this order.

TERMS AND CONDITIONS OF PROBATION

9. **JAMES LAWRENCE FLECKENSTEIN, M.D.**, shall comply with all of the following terms and conditions:

Standard Terms:

- a. Defendant will 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.*
- b. Defendant shall furnish a file-stamped copy of this Order stipulating conditions imposed by the Board, to each and every state in which he holds licensure or applies for 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.
- c. Defendant will keep the Board informed of his current address.
- d. 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.

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- e. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- f. Defendant will not supervise allied health professionals, physician assistants, or advanced nurse practitioners, that require surveillance of a licensed medical practitioner.
- g. For good cause shown, upon request of the Board or its designee, Defendant will submit for biological specimens for analysis, including but not limited to, blood, urine, hair follicle and nail samples, and Defendant will pay the costs attendant thereto.
- h. 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 need. Defendant has the affirmative duty to inform any and every doctor treating him of this Board 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.
- i. Defendant shall not prescribe, administer or dispense any prescription medications for personal use or for that of any family members, friends, employees or associates.
- j. 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.
- k. Defendant shall promptly notify the Board Secretary or Compliance Coordinator of any citation or arrest for traffic or for criminal offenses.
- l. Upon request, Defendant shall make himself available for one or more personal appearances before the Board or its authorized designee.
- m. Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or authorized designee.
- n. 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.
- o. Immediately upon learning that a licensee is in violation of this Order, 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).

- p. The Parties, the Board or its designee, or the Defendant may file a motion for a Board hearing and possible new Board order.

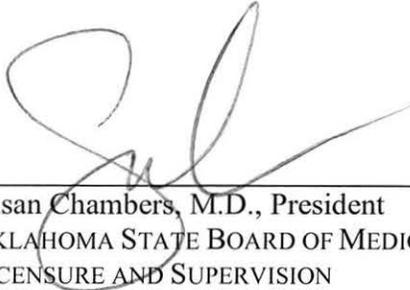
Specific Terms:

- q. If Defendant desires to change his practice specialty from the practice of radiology to another specialty, the proposed working environment must be approved of in advance by the Board Secretary.
 - r. Defendant shall not prescribe, administer or dispense any medications for personal use or for that of any family member.
 - s. Defendant shall promptly notify the Compliance Coordinator of any relapse, including any entry, or re-entry, into a treatment program of substance abuse, including alcohol.
10. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, costs, staff time, salary and travel expenses, witness fees and attorney's fees.
 11. A copy of this Order shall be provided to Defendant as soon as it is processed.
 12. **Failure to meet any of the terms of probation set forth in 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.**

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Dated this 12th day of September, 2019.



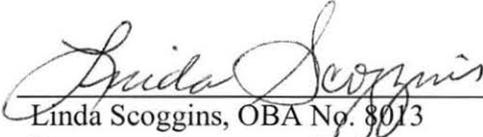
Susan Chambers, M.D., President
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION



James Lawrence Fleckenstein, M.D.
License MD 23288



Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL
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James Lawrence Fleckenstein, M.D.

Certificate of Service

This is to certify that on the 13th day of Sept., 2019, a true and correct copy of this Order was transmitted as indicated, postage prepaid, to the following:

U.S. Certified Mail

James L. Fleckenstein, M.D.
990 N. Lake Shore Drive, 4E
Chicago, Illinois 60611

Defendant

U.S. First Class Mail

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***Attorney for Defendant,
James Lawrence Fleckenstein, M.D.***



Nancy Thiemann, Legal Assistant

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