

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,)

Plaintiff,)

v.)

ROBERT EUGENE VANDIVER, II, P.A.,)
LICENSE NO. PA527)

Defendant.)

JAN 14 2010

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 09-01-3658

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on January 14, 2010, at the office of the Board, 101 N.E 51st 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 not.

The Board *en banc* after hearing arguments of counsel and reviewing the exhibits admitted, 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 physician assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §§480 *et seq.* and 887.1 *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, Robert Eugene Vandiver, II, P.A., holds Oklahoma physician assistant license no. PA527 and practices in Wilburton, Oklahoma.

SEXUAL MISCONDUCT ALLEGATIONS-PATIENT MWW

3. On or about September 21, 2008, Patient JMW advised Patient MWW that if she would send Defendant a picture of her breast via cell phone, he would call her in a prescription for Lortab. Patient MWW sent a picture of her breast via cell phone to Defendant. On September 22, 2008, Patient JMW notified Patient MWW that her prescription would be ready for pickup later that day. Patient MWW subsequently picked up a prescription authorized by Defendant for twenty (20) Lortab at the Main Street Drug in Wilburton, Oklahoma.

4. At the time Patient MWW received the prescription for Lortab, she had never been a patient of Defendant, nor had she ever seen him in person.

5. A review of Defendant's records reveals that Defendant did not document these prescriptions for controlled dangerous substances to Patient MWW, nor did he perform any physical examination on the patient prior to prescribing the controlled dangerous substances to her.

6. On or about December 10, 2008, Defendant contacted Patient MWW by text messaging. During this conversation, Patient MWW asked Defendant what she could do to get some drugs. Defendant advised Patient MWW to send him nude pictures of her and he would let her know what he would give her for that.

7. On or about December 11, 2008, Patient MWW called Defendant. Patient MWW again asked for drugs and Defendant advised her that he needed to have a chart on her. When she told him he didn't have a chart on her the first time he called in Lortab for her, he reminded her that this time, she had not sent him nude pictures of herself. He then advised her to make an appointment and tell the nurse she had a 4-wheeler accident.

8. After this telephone conversation, Defendant continued to text Patient MWW and ask her sexually explicit questions. He also asked her how many tablets she needed. He again asked her to send him a picture of herself and asked her to come to the back door of the clinic so they could talk in his private office.

9. On or about December 12, 2008, Patient MWW went to Defendant's office to obtain a prescription. At that time, she was wired with an audio/video recorder by the Oklahoma Bureau of Narcotics. At the clinic, Patient MWW told the nurse she was in a 4-wheeler accident and needed to see Defendant as she had been instructed by Defendant. When Defendant entered the examination room, Patient MWW told him she wanted her prescriptions. Without any kind of exam, Defendant wrote Patient MWW two (2) prescriptions, one for Hydrocodone and one for Anaprox. At this point, Patient MWW gave the distress signal, alerting the OBN agents that she needed help.

10. Upon hearing the distress signal, an OBN agent attempted to enter the exam room. The exam room door was locked, so the OBN agent broke the door so as to enter the exam room.

11. When confronted by OBN agents, Defendant admitted that he had prescribed medications to Patient MWW for pictures of her breasts. He also admitted that on December 12, 2008, he wrote prescriptions to her without doing a physical examination.

SEXUAL MISCONDUCT ALLEGATIONS-PATIENT JMW

12. A review of Defendant's records reveals that Defendant began treating Patient JMW, a female, on or around July 26, 2006 and continuing through at least November 26, 2008. Defendant's records reflect that Patient JMW was treated for back pain, anxiety and depression.

13. During this time, Patient JMW's chart and pharmacy records reflect that Defendant wrote or authorized prescriptions to her for controlled dangerous substances, including Lortab, Xanax, Clonazepam and Soma. Defendant's chart reflects that he additionally wrote, administered or authorized prescriptions for non-controlled dangerous drugs to Patient JMW.

14. During the last several months of 2008 while Defendant was treating Patient JMW, he and Patient JMW engaged in sexual acts. These acts occurred at Defendant's office and at other locations. Patient JMW performed sexual acts on Defendant in order to get pills and prescriptions for controlled dangerous substances from Defendant. Defendant also requested nude photos of Patient JMW during the time he was treating her.

15. Defendant admits that Patient JMW performed oral sex on him and that he engaged in a sexual relationship with her during the time he was treating her.

16. On or about December 12, 2009, Defendant was arrested by OBN agents and charged with two (2) counts of Unlawful Distribution of a Controlled Dangerous Substance, a Felony, in Latimer County, State of Oklahoma.

17. On or about September 28, 2009, Defendant entered a plea of no contest and was found guilty of **Unlawful Distribution of a Controlled Substance, a Felony**. Defendant was sentenced to five (5) years imprisonment under the custody of the Oklahoma Department of Corrections, all suspended, as well as fines, costs, restitution and probation. Defendant has not appealed this conviction.

18. Oklahoma Administrative Code Section 435:5-1-5.2 provides as follows:

(b) The Board shall revoke the license of a person licensed by the Board who has a final felony conviction.

19. Defendant is guilty of unprofessional conduct in that he:

A. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).

- B. 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).
- 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 59 O.S. §509(13), OAC 435:15-5-11(a)(7) and OAC 435:10-7-4(39).
- D. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).
- E. Wrote a false or fictitious prescription 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).
- F. 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).
- G. 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).
- H. Committed any 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).
- I. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- J. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).
- K. Prescribed or administered a controlled substance 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).
- L. 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).

M. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).

N. 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).

O. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).

P. Engaged in predatory sexual behavior in violation of OAC 435:10-7-4(45).

Q. Abused the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship in violation of OAC 435:10-7-4(44).

R. Was convicted of a felony or of a crime involving moral turpitude in violation of 435:15-5-11(a)(2).

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. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509(1).

B. 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).

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 59 O.S. §509(13), OAC 435:15-5-11(a)(7) and OAC 435:10-7-4(39).

- D. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government and the laws of this state in violation of 59 O.S. §509(7).
- E. Wrote a false or fictitious prescription 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).
- F. 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).
- G. 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).
- H. Committed any 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).
- I. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- J. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).
- K. Prescribed or administered a controlled substance 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).
- L. 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).
- M. Engaged in indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
- N. 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).

O. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).

P. Engaged in predatory sexual behavior in violation of OAC 435:10-7-4(45).

Q. Abused the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship in violation of OAC 435:10-7-4(44).

R. Was convicted of a felony or of a crime involving moral turpitude in violation of 435:15-5-11(a)(2).

3. The Board further found that the Defendant's physician assistant license should be revoked based upon any or all of the violations of the unprofessional conduct provisions of 59 Okla. Stat. §509 (1), (7), (8), (9), (11), (12), (13), (16), (17) and (18), OAC 435:15-5-11(a)(2) and (7), and OAC 435:10-7-4 (1), (2), (6), (11), (19), (23), (24), (27), (39), (41), (44) and (45).

Order

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

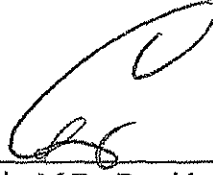
1. The license of Defendant, Robert Eugene Vandiver, II, P.A., Oklahoma license no. PA527, is hereby **REVOKED** as of the date of this hearing, January 14, 2010.

2. If the Board reinstates Defendant's Physician Assistant License, it shall be under terms of probation to be determined at that time by the Board, with consideration of any recommendations of the Physician Assistant Advisory Committee.

3. 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.

4. Defendant's revoked license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs.

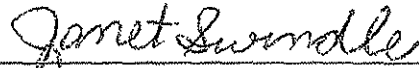
Dated this _____ day of January, 2010.



Curtis Harris, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 15 day of January, 2010, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Robert E. Vandiver, II, HC 64, Box 5100, Tuskahoma, OK. 74574.



Janet Swindle