

**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.)
)
ROGER LEE KINNEY, M.D.,)
LICENSE NO. MD 8626,)
)
Defendant.)

FILED
DEC 29 2015
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 14-03-4928

VERIFIED COMPLAINT

The State of Oklahoma, *ex rel.*, the Oklahoma State Board of Medical Licensure and Supervision (“Board”), alleges and states as follows for its Complaint against Roger Lee Kinney, M.D. (“Defendant”):

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. Defendant, Roger Lee Kinney, M.D., holds Oklahoma medical license number 8626. The acts and omissions complained of herein were made while Defendant was acting as a physician pursuant to the medical license conferred upon him by the State of Oklahoma, and such acts and omissions occurred within the physical territory of the State of Oklahoma.

Background

3. The Board placed Defendant on one year probation in October 1984 for excessive prescribing of CDS. His license was then suspended in 1986 as he was incarcerated in federal prison for narcotics violations in federal case number 85-CR-106-01-BT in the Northern District of Oklahoma. He was convicted of Conspiracy to possess and distribute Cocaine, Distribution of Schedule II controlled drug not in the usual course of professional practice, and federal income tax evasion. He was sentenced to 13 four year sentences to run concurrently. That sentence was modified to 13 three year sentences and 1 four year suspended sentence to run concurrently in 1989. His license was subsequently reinstated under terms of probation. The probation was terminated in October of 1989.

Allegations of Unprofessional Conduct

4. This matter arises from a written complaint asserting Defendant was prescribing schedule II drugs to known drug addicts who were, in turn, selling them to other people. Specifically the complainant alleges that Defendant was continuing to prescribe Oxycodone and Xanax to patient L.R.R., a known drug addict, who was in turn was distributing some of them to Complainant's son and selling the rest.

5. The records of L.R.R. and 9 other patients were requested and received. There were 4 patient deaths in those 10 records. Of the 4 deaths, the ME reports show that W.D.R. died of toxic effects of Alprazolam and Hydromorphone which Defendant prescribed.

6. D.E.R. died of acute combined drug toxicity of Oxycodone and Alprazolam which Defendant prescribed.

7. M.E.R. likely died of acute Oxycodone toxicity which was prescribed by Defendant.

8. T.V.R. died of toxic effects of Methamphetamine.

9. L.R.R., has a deferred felony charge in 2013 for Possession of Drug Paraphernalia, and Defendant has continued to prescribe Oxycodone and Alprazolam on a regular basis for a diagnosis of chronic back pain despite the progress note that says L.R.R. had an MRI that was within normal limits. All other sections of L.R.R.'s patient record are missing so further analysis is not possible.

Summary of Expert Review

10. The 10 medical records acquired by Board Staff were sent for expert review, who, in summary, found as follows:

Patient L.B.R.

11. The chart on this patient was sufficient and no anomalies were identified.

Patient T.C.R.

12. The charting on this patient was insufficient and the selected treatment fell well below the standard of care.

13. This patient was on very high doses of narcotics which were titrated up over a long time without sufficient justification being documented in the patient's records.

14. Between the dates of September 16, 2013 and March 31, 2014, T.C.R. received 1200 tabs of Hydromorphone HCL 8mg, averaging 6 tabs/day or 48mg/day; 700 tabs of Hydrocodone Bitartrate/Acetaminophen 10mg;325mg, averaging 3.6 tabs/day; 450 tabs of Diazepam 5mg, averaging 2.3 tabs/day.

Patient W.D.R.

15. This patient was getting very high doses of benzodiazepines and accelerated doses of opiates.
16. This patient died of an overdose.
17. The expert noted there was no indication in the record of suicidal ideations or depression which suggests that the overdose was not intentional.
18. Between the dates of February 13, 2013 and May 31, 2013, W.D.R. received 600 tabs of Hydromorphone HCL 8mg, averaging 5.6 tabs/day; 480 tabs of Alprazolam 2mg, averaging 4.5 tabs/day; 300 tabs of Hydrocodone Bitartrate/Acetaminophen 10mg;500mg, averaging 2.8 tabs/day.

Patient D.E.R.

19. This patient was receiving very high doses of benzodiazepines.
20. There was a notation in the record stating that oxycodone and hydrocodone prescriptions "have to stop" with no explanation, and yet, the prescriptions continued without explanation.
21. There is very little mention of anxiety in this patient's records in spite of the continued long term high doses of benzodiazepines.
22. This patient died of acute combined drug toxicity of Oxycodone and Alprazolam, both of which Defendant prescribed.
23. Between the dates of October 1, 2012 and April 30, 2013, D.E.R. received 686 tabs of Alprazolam 2mg, averaging 3.3 tabs/day and 240 tabs of Alprazolam 1mg, averaging 1 tab/day; 720 tabs of Hydrocodone Bitartrate/Acetaminophen 10mg;500mg, averaging 3.4 tabs/day; 420 tabs Oxycodone HCL 30mg, averaging 2 tabs/day. D.E.R. also received Promethazine HCL/Codeine Phosphate 10mg/5ml;6.25mg;5ml on a regular basis during this time period.

Patient M.E.R.

24. This patient died of what the Medical Examiner said was likely acute Oxycodone toxicity.
25. The patient was on high doses of CDS and some of the changes in medications were seemingly without reason.
26. M.E.R. was also admitted to the hospital 8 times in 10 months preceding her death, which indicates she had significant medical issues.

27. Between the dates of May 16, 2013 and December 25, 2013, M.E.R. received 720 tabs of Diazepam 5mg, averaging 3.2 tabs/day; 690 tabs Oxycodone HCL 15mg, averaging 3.3 tabs/day; 360 tabs Hydrocodone Bitartrate/Acetaminophen 10mg;325mg, averaging 1.7 tabs/day; 210 tabs Zolpidem Tartrate 10mg, averaging 1 tab/day.

Patient E.H.R.

28. Defendant treated this patient for approximately two years with benzodiazepines without sufficient documentation.

29. This patient was also on phentermine doses which appear to be in excess of what would be considered a normal dose with no documentation to justify such medication.

30. This patient was also filling prescriptions erratically and was overusing at times.

31. The evidence indicates this patient was doctor shopping and getting prescriptions from other doctors and pharmacies.

32. All of these red flags went unnoticed by Defendant, and he continued to prescribe her CDS.

33. Between the dates of October 7, 2013 and March 31, 2014, E.H.R. received 930 tabs of Alprazolam 2mg, averaging 5.3 tabs/day; 300 tabs Phentermine HCL 37.5mg, averaging 1.7 tabs/day; 360 tabs Methadone HCL 10mg, averaging 2 tabs/day; 600 Oxycodone HCL 15mg, averaging 3.4 tabs/day.

Patient P.W.R.

34. This patient's record was more complete with acceptable documentation.

35. P.W.R. was, however, on numerous medications which created a polypharmacy risk and a potential for accidental overdose.

36. In addition, this patient was getting prescriptions from multiple prescribers, a fact which Defendant did not note factoring into his analysis and prescription regimen for this patient.

37. Between the dates of September 7, 2013 and March 31, 2014, P.W.R. received 1100 tabs of Hydromorphone HCL 4mg, averaging 5.4 tabs/day; 420 tabs Morphine 50mg, averaging 2 tabs/day; 360 tabs Alprazolam 1mg, averaging 1.8 tabs/day. P.W.R. also received Clonazepam 0.5mg on a regular basis during this time period from another provider.

Patient W.W.R.

38. This patient presented with pancreatitis yet it was rare for Defendant to give abdominal exams to this patient.

39. There is poor documentation in this case and high doses of benzodiazepines.

40. The record is devoid of any imaging of the pancreas and no amylase lipase.
41. In addition, Defendant tripled the dosage of MSER in one visit which appears unreasonably aggressive.
42. The patient later tested positive on a drug screen for marijuana, ecstasy and amphetamines which was not addressed in the patient's records.
43. Between the dates of September 13, 2013 and March 31, 2014, W.W.R. received 960 tabs Hydrocodone Bitartrate/Acetaminophen 10mg;500mg, averaging 4.8 tabs/day; 960 tabs Alprazolam 2mg , averaging 4.8 tabs/day; 360 tabs Morphine 30mg, averaging 1.8 tabs/day; 720 Hydromorphone HCL 8mg, averaging 3.6 tabs/day.

Patient T.V.R.

44. This patient died of toxic effects of Methamphetamine.
45. There is no indication this death was directly related to the prescription medications.
46. The dosages and medications prescribed seemed to meet medical necessity.
47. Defendant's examinations of this patient, however, seemed to be generally lacking.
48. Defendant only conducted one knee exam in approximately one and one half years of treatment for knee pain for example.
49. The records are devoid of any further physical examination of the knee.
50. This conforms to the general lack of documentation throughout the records reviewed in this case.
51. Between the dates of October 17, 2011 and April 16, 2012, T.V.R. received 960 tabs Hydrocodone Bitartrate/Acetaminophen 10mg;500mg, averaging 5.3 tabs/day; 480 tabs Alprazolam 0.5mg, averaging 2.7 tabs/day.

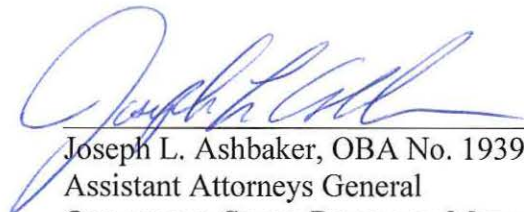
Violations

52. Based on the foregoing, the Defendant is guilty of unprofessional conduct as follows:
 - a. 59 O.S. 2011, § 509(8) Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public; and
 - b. 59 O.S. 2011, § 509(16) Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards; and

- c. 59 O.S. 2011, § 509(18) Failure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient; and
- d. Okla. Admin. Code § 435:10-7-4 (1) Indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs; and
- e. Okla. Admin. Code § 435:10-7-4(2) Prescribing, dispensing or administering of controlled substances or Narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standard; and
- f. Okla. Admin. Code § 435:10-7-4(6) Dispensing, prescribing or administering a controlled substance or Narcotic drug without medical need; and
- g. Okla. Admin. Code § 435:10-7-4(11) Conduct likely to deceive, defraud, or harm the public.

CONCLUSION

Given the foregoing, the undersigned requests the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to the Defendant's professional license, including an assessment of costs and attorney's fees incurred in this action as provided by law.



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VERIFICATION

I, Robbin Roberts, under penalty of perjury, under the laws of the State of Oklahoma, state as follows:

1. I have read the above Complaint regarding the Defendant, Roger Lee Kinney, M.D.; and
2. The factual statements contained therein are true and correct to the best of my knowledge and belief.



Robbin Roberts, Investigator
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Date: 12-23-15

Oklahoma, OK

Place of Execution