

**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
NOV 28 2017
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 14-03-4928

**ORDER OF SUSPENSION OF MEDICAL LICENSE
AND RESTRICTIONS**

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (“Board”) on September 14, 2017 at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and the rules of the Board.

Roger Lee Kinney, M.D. (“Defendant”), appeared in person and through counsel Elizabeth A. Scott of Crowe and Dunlevy, P.C. Joseph L. Ashbaker, Assistant Attorney General, appeared on behalf of the Plaintiff.

The following exhibits were admitted into evidence:

- Plaintiff Exhibit 1: OK State Board of Medical Examiners
State of Oklahoma, ex rel.
OKSBME v. Roger L. Kinney, M.D.
1984; case documents
1985; case documents
--
OK State Board of Medical Licensure and Supervision
State of Oklahoma, ex rel.
OSBMLS v. Roger L. Kinney, M.D.
Case No. 8-10-167, 1987; case documents
--
OK State Bureau of Narcotics and Dangerous Drugs
State of Oklahoma, ex rel.
OSBNDD v. Roger L. Kinney, M.D.
Case No. SCH-89-031, 1990; case documents

- Plaintiff Exhibit 2: U.S. Northern District of Oklahoma (NDOK)
U.S. v. Roger L. Kinney, M.D.
Case 85-CR-106-B; Order, filed June 26, 1989
- Plaintiff Exhibit 3: Reports of Investigation by Medical Examiner
Four (4) patients, redacted
- Plaintiff Exhibit 4: Chronology of Events re: Roger Lee Kinney
August 20, 1984 to February 23, 2017
- Plaintiff Exhibit 5: Notebooks, Volumes 1 and 2
Nine (9) patient medical records, redacted
- Plaintiff Exhibit 6: Curriculum Vitae – Stephen E. Connery, M.D.
- Defendant Exhibit A: KSTAR Final Report on FFD 11121,
September 14, 2016, unredacted
Texas A&M University, ATM Health Science Center
- Defendant Exhibit B: Neuropsychological Evaluation
October 14, 2016, unredacted
The University of Oklahoma, Health Sciences Center

Defendant’s objections to the admission of Plaintiff’s Exhibit 3 were noted on the record.

The following witnesses were sworn and testified: Robbin Roberts, Board Investigator; Stephen Connery, M.D. as expert witness for Plaintiff; and Defendant.

The Board considered arguments of counsel, testimony of witnesses, exhibits admitted into evidence and being fully apprised of the premises, makes the following findings of fact, conclusions of law and orders:

Findings of Fact

1. In Oklahoma, Defendant holds medical license no. 8626, issued on June 15, 1966.
2. In 1984, the Board¹, placed Defendant on one year probation for excessive prescribing of CDS. Defendant’s license was suspended in 1986 while he was incarcerated in federal prison for narcotics violations. His license was subsequently reinstated under terms of probation which ended in 1989. See Plaintiff’s Exhibit 4.
3. On December 29, 2015, Complaint (“2015 Complaint”) and Citation were filed by the Board; hearing was set for July 21, 2016, Case No. 14-03-4928. The 2015 Complaint was ultimately heard on September 14, 2017.

¹ The Oklahoma State Board of Medical Licensure and Supervision was previously known as the State Board of Medical Examiners.

4. At the September 14, 2017 Board meeting, Robbin Roberts testified regarding her experience during the investigation of Defendant and her knowledge regarding Plaintiff's expert Stephen Connery, M.D.
5. Stephen Connery, M.D. testified regarding his own expert review of the nine (9) patient records, which were subpoenaed from Dr. Kinney. Dr. Connery stated that there was no documented need for the medications prescribed by the Defendant. He noted that patients had multiple medical issues and were treated with multiple medications, including large amounts of benzodiazepines. He also stated that there were no generalized lists of medications, nor were notations of medications received from other doctors found in the records examined. Dr. Connery opined that Dr. Kinney's excessive prescribing, undocumented prescribing and poor record keeping fell below the applicable standard of care.
6. Defendant testified regarding his educational and professional background. Defendant reviewed the nine patient records and testified on his own behalf. He provided additional background information about the nine patients and stated that many of his current patients are in nursing homes.

Conclusions of Law

7. 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. 2011, § 480 *et seq.* and Okla. Admin. Code §§ 435:5-1-1 *et seq.*
8. Notice was given as required by law and the rules of the Board. 75 O.S. 2011, § 309A; 59 O.S. 2011, § 504; Okla. Admin. Code §§ 435:3-3-5, 3-3-6.
9. The Board is authorized to suspend, revoke 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. This authority is *quasi-judicial* 59 O.S. 2011, § 513(A)(1). 59 O.S. 2011, § 503. This Board's action is authorized by 59 O.S. 2011 § 509(8), (16), (18) and Okla. Admin. Code § 435:10-7-4(1), (2), (6), (11).
10. The Board found that the State has proven, by clear and convincing evidence, that Defendant is guilty of unprofessional conduct as follows:
 - 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
- g. Okla. Admin. Code § 435:10-7-4(11) Conduct likely to deceive, defraud, or harm the public.

Orders

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

1. The Oklahoma medical license of **ROGER LEE KINNEY, M.D.**, is **SUSPENDED** for a period of three (3) months from the effective date an approved Attorney General Opinion.
2. **ROGER LEE KINNEY, M.D.** shall attend a medical records keeping course, to be completed before the end of the suspension. This course shall be in addition to the Defendant's normally required CME courses. This course shall be approved of in advance by the Board Secretary and Defendant shall provide proof upon completion to the Board Secretary.
3. **ROGER LEE KINNEY, M.D.** shall practice in a location to be approved of in advance by the Board Secretary, based upon recommendations of KSTAR and the neuropsychological evaluations to determine appropriate practice setting.
4. **ROGER LEE KINNEY, M.D.** shall not prescribe Schedule II agents.
5. **ROGER LEE KINNEY, M.D.** shall not prescribe Suboxone.
6. Failure to meet any of the terms of this Order will be grounds for the Board to initiate proceedings to revoke the Oklahoma medical license of **ROGER LEE KINNEY, M.D.**, after additional notice and hearing as required by law.
7. 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.
8. A copy of this Order shall be provided to Defendant as soon as it is processed.

This Order is subject to review and approval by the Oklahoma Attorney General, and this Order shall become final upon completion of the review by the Oklahoma Attorney General unless disapproved, in which case this Order shall be null and void.

Dated this 28th day of November, 2017.



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

Certificate of Service

This is to certify that on the 29th day of November, 2017, a true and correct copy of this Order was transmitted as specified, postage prepaid, to the following:

U.S. Certified Mail

Roger Lee Kinney, M.D.
P.O. Box 1042
Sapulpa, Oklahoma 74067-1042

Defendant

U.S. First Class Mail

Elizabeth A. Scott
Anthony J. Hendricks
CROWE & DUNLEVY, P.C.
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102
Telephone: (405) 235-7700
Facsimile: (405) 239-6651
elizabeth.scott@crowedunlevy.com
anthony.hendricks@crowedunlevy.com

***Counsel for Defendant,
Roger Lee Kinney, M.D.***



Nancy Thiemann, Legal Assistant



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-803A

Billy H. Stout, M.D., Board Secretary
State Board of Medical Licensure and Supervision
101 N.E. 51st Street
Oklahoma City, OK 73105

November 17, 2017

Dear Dr. Billy H. Stout, M.D., Board Secretary:

This office has received your request for a written Attorney General Opinion regarding action that the State Board of Medical Licensure and Supervision intends to take with respect to medical doctor licensee 8626. The licensee was investigated for prescribing controlled dangerous substances (CDS) to patients without a legitimate medical need and in unsafe quantities, and for failing to oversee and monitor patients receiving CDS. The Board proposes to suspend the license for three months, require the licensee to attend a record-keeping course and practice in a location approved by the Board Secretary, and impose prescribing restrictions.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act authorizes the Board to suspend or revoke a license or impose other sanctions for unprofessional conduct. 59 O.S.Supp.2017, § 503. Unprofessional conduct includes “[p]rescribing, 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 “[f]ailure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient.” 59 O.S. 2011, § 509(16), (18). The Board may reasonably believe that the proposed action is necessary to protect public health and deter future violations.

It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision has adequate support for the conclusion that this action advances the State's policy to ensure the adequate regulation of dangerous substances and require that medical doctors observe minimum standards of professionalism.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



AMANDA OTIS
ASSISTANT ATTORNEY GENERAL

RECEIVED

NOV 21 2017

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE
AND SUPERVISION