

**IN AND BEFORE THE OKLAHOMA STATE BOARD
OF MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA**

FILED

SEP 12 2019

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA, *ex rel.*)
 OKLAHOMA STATE BOARD)
 OF MEDICAL LICENSURE)
 AND SUPERVISION,)
)
 Plaintiff,)
)
 v.)
)
 JAMES MELVIN GILBERT, M.D.,)
 LICENSE NO. MD 9487,)
)
 Defendant.)

Case No. 17-02-5429


**ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION**

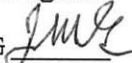
The State of Oklahoma, *ex rel.* Oklahoma State Board of Medical Licensure and Supervision ("Board"), by and through the undersigned counsel for the Plaintiff, as represented by the Secretary of the Board, Billy H. Stout, M.D., and the Executive Director of the Board, Lyle Kelsey, along with James Melvin Gilbert, M.D. ("Defendant"), Oklahoma medical license no. 9487, who appears in person, and through counsel J. Chris Condren of Pierce Couch Hendrickson Baysinger & Green, LLP (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 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 Licensure and Supervision Act ("Act"). 59 O.S. § 480, *et seq.*

Defendant, James Melvin Gilbert, 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

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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 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 stipulate and agree as follows:

1. In Oklahoma, Defendant holds medical license no. 9487, originally issued June 23, 1971.

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2. On July 24, 2018 a Verified Complaint was filed. Hearing was set for March 7, 2019. The allegations included following:
 - a. This action arises out of complaint from another medical practitioner who stated that a patient of his came to an appointment in an impaired state. The complainant stated that his patient was disheveled, had trouble walking and was slurring her speech. The complainant stated that the patient drove herself to the appointment in that condition. Upon checking the PMP the complainant discovered that the patient was receiving multiple controlled dangerous substance ("CDS") prescriptions from James Gilbert, M.D.
 - b. A subpoena was issued to Defendant for nine (9) patient files and records were obtained for each one. Those records were sent for expert review.
 - c. Subsequently, Board Investigator Stephen Washbourne received Medical Examiner Reports on three overdose death patients of Dr. Gilbert. Charts for patients M.T., C.T. and R.F. were obtained and also sent for expert review. Manner of death for R.F. and M.T. was suicide; for C.T. accidental.
 - d. The expert found the following trends throughout the patient records obtained:
 - i. There is a lack of documentation of safety assessments for suicide risks and a lack of documentation to support the medications prescribed.
 - ii. There is generally, throughout most of the charts, very little in the way of chart documentation regarding why things were being done and justification behind treatment and prescribing.
 - iii. Red flags such as repeated lost medications, requests for early refills, DUI arrests were ignored or addressed in a superficial manner.

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- iv. There is very little increase in monitoring when red flag behavior was identified or CDS dosages were increased.
- v. A lack of treatment plans, no consistent mental status exams, and a failure to respond to adverse effects of prescribed medications.
- vi. Very large amounts of pain management CDS and opioid drugs being prescribed, in both number and dosage amounts, being prescribed by a psychiatrist rather than a pain management specialist.
- vii. Defendant often failed to document informed consent and there was little evidence of tapering patients off medications if the desired effect or functional improvement was not achieved.
- viii. Finally, there is little to no use of urine drug screens, even when dosages were very high or there was evidence of behavior consistent with diversion or abuse.

Conclusions of Law

3. 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 pursuant to 59 O.S. § 480 *et seq.* and Okla. Admin. Code §§ 435:5-1-1 *et seq.*
4. 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.
5. 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. 59 O.S. §§ 503, 513(A)(1). The Board's action is authorized by 59 O.S. §§ 509.1(A)(4), (6).
6. 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.
7. Based on the foregoing, Defendant is guilty of unprofessional conduct as follows:
 - a. Prescribing of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing controlled substances or narcotic drugs without medical need in accordance with published standards, in violation of 59 O.S. § 509(16) and Okla. Admin. Code §§ 435:10-7-4(2),(6);

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- b. Failure 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 Okla. Admin. Code § 435:10-7-4(36);
- c. Excessive prescribing of Controlled or Narcotic drugs, in violation of Okla. Admin. Code § 435:10-7-4(1);
- d. Prescribing 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 Okla. Admin. Code § 435:10-7-4(24);
- e. Except as otherwise permitted by law, prescribing to a habitue or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug, in violation of Okla. Admin. Code § 435:10-7-4(25);
- f. Violation of any provision(s) 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 Okla. Admin. Code § 435:10-7-4(39).

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. **JAMES MELVIN GILBERT, M.D.**, Oklahoma medical license no. 9487, is formally **REPRIMANDED**.
3. **JAMES MELVIN GILBERT, M.D.** shall comply with all of the following terms and conditions:

Standard Terms:

- a. 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.*
- b. Defendant shall furnish a file-stamped copy of this Order stipulating sanctions imposed by the Board, to each and every state in which he holds licensure or

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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. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- e. Upon request, Defendant shall make himself available for one or more personal appearances before the Board or its authorized designee.
- f. Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or authorized designee.
- g. 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.
- h. 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:

- i. Defendant shall not prescribe any opiates.
- j. Defendant shall not practice pain management.
- k. Defendant will allow random review of patient charts as requested by the Board Secretary or Compliance Coordinator.
- l. Defendant shall establish a relationship with an experienced educational Preceptor in outpatient adult psychiatry. This involves regularly scheduled meetings to review cases and documentation, discuss decisions related to those cases, review specific topics, and make plans for future learning.
 - i. This includes but is not limited to the following: Controlled Substances (benzodiazepines, stimulants) Intensive Chart Review: Defendant should initially engage in a structured review of the profile of each patient taking controlled substances, create a written inventory, and present all patients for whom he intends to prescribe controlled substances to a Preceptor to discuss confirmation of diagnosis, risk of abuse and addiction, informed consent, and monitoring. Subsequently, Defendant should review all patients for whom he plans to initiate controlled substances or increase the dosage of existing medications with the Preceptor.
 - ii. The educational Preceptor shall serve as a practice monitor and mentor who is Board Certified in psychiatry and participates in maintenance of

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certification. The Preceptor and educational monitoring plan shall be approved of in advance by the Board Secretary.

- iii. The Preceptor shall agree to make himself or herself available to Board staff and will cooperate with Board staff in their monitoring of the Defendant and his practice, including providing quarterly reports to the Board Secretary and Compliance Coordinator.
 - iv. If the Parties are unable to agree to a Preceptor within ten (10) days from the effective date of this Order, then either may make application with the Board for the approval of a Preceptor for the purposes stated herein.
 - v. **The Defendant shall be responsible for any costs of monitoring by the Preceptor.**
 - vi. The relationship between the Preceptor, including their recommendations for the Defendant, shall be reviewed by the Board Secretary at one year from the effective date of this order for consideration of modifications to the terms of this order.
 - vii. In the event the original Preceptor becomes unavailable, for any reason, a replacement shall be named by the Board Secretary acceptable to the Defendant. If the Parties are unable to agree to a practice monitor/mentor within thirty (30) days, then either may make application before the Board for the approval of a replacement mentor for the purposes stated herein.
- m. Continuing Medical Education (CME): Defendant should engage in CME courses that include, but are not limited to, the topics indicated in areas of demonstrated need. This includes, but is not limited to, the following:
- i. Documentation: Medical recordkeeping course, approved of in advance by the Board Secretary.


This CME course is in addition to Defendant's regular CME courses and shall be completed within the first year of this Order. Documentation of the completed CME course must be provided to the Board Secretary or Compliance Coordinator.

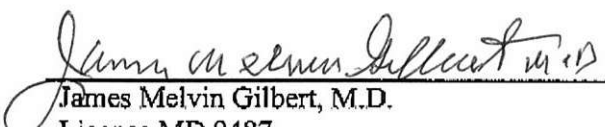
- 4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.
- 5. A copy of this Order shall be provided to Defendant as soon as it is processed.


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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 Melvin Gilbert, M.D.
License MD 9487
Defendant


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


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Attorney for Defendant,
James Melvin Gilbert

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Certificate of Service

This is to certify that on the 11th day of September, 2019, a true and correct copy of this Order was transmitted as indicated, postage prepaid, to the following:

U.S. Certified Mail

James Melvin Gilbert, M.D.
7530 N.W. 23rd Street, #B
Bethany, Oklahoma 73008-4942
Defendant

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Nancy Thiemann

Nancy Thiemann, Legal Assistant

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