

**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.)
)
 MARK DOUGLAS FOSSEY, M.D.,)
 LICENSE NO. MD 11793,)
)
 Defendant.)

FILED

MAR 05 2020

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 18-12-5677

**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 Mark Douglas Fossey, M.D. (“Defendant”), Oklahoma medical license no. 11793, who appears in person, and through counsel Robert B. Sartin and Emily B. Kosmider of Barrow & Grimm, P.C. (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, Mark Douglas Fossey, 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

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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. 11793, originally issued July 1, 1978.
2. On November 15, 2019, a Verified Complaint and Citation were each filed by the Board. Hearing was set for March 5, 2020. Defendant was served on November 24, 2019, a Proof of Service was prepared by private process server, and filed on December 18, 2019.
3. The allegations set forth in the Verified Complaint include the following:
 - a. On June 19, 2014, the Defendant self-reported an investigation on his renewal application with the Board.
 - b. On June 14, 2015, the Defendant self-reported an investigation on his renewal application with the Board.
 - c. The Defendant resigned, while under investigation, from his position on January 6, 2018.
 - d. Board Investigator Robbin Roberts reviewed the Defendant's PMP and discovered the following prescriptions, all written to the same individual.
 1. RX #4503587 dated 5/6/17 for Alprazolam 0.5 mg., #60;
 2. RX #4504923 dated 10/20/17 for Alprazolam 0.5 mg., #60;
 3. RX #4505866 dated 2/15/18 for Alprazolam 0.5 mg., #60;
 4. RX #4506578 dated 5/17/18 for Alprazolam 0.5 mg., #60;
 5. RX #4507159 dated 8/7/18 for Alprazolam 0.5 mg., #60;
 6. RX #4507759 dated 11/1/18 for Alprazolam 0.5 mg., #60; and,
 7. RX #4508560 dated 2/27/19 for Alprazolam 0.5 mg., #60.
 - e. On May 21, 2019, Investigator Roberts interviewed the Defendant via telephone. She advised the Defendant she had reviewed his PMP and observed he had been prescribing CDS to only one person since he resigned at the VA.
 - f. Investigator Roberts asked the Defendant if he had a medical record for that individual.
 - g. The Defendant admitted the individual is a family friend, that he did not have a medical record, and stated "I am embarrassed."

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4. On December 6, 2019, Entry of Appearance by Robert B. Sartin, Emily B. Kosmider of Barrow & Grimm, P.C., was filed as counsel for Defendant.
5. Orders of Continuance with Notice of Hearing were filed on October 23, 2019 and December 30, 2019. Hearing on the 2019 Complaint and all deadlines were reset to the March 5, 2020 Board meeting.

Conclusions of Law

6. 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.* and Okla. Admin. Code §§ 435:5-1-1 *et seq.*
7. 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.
8. The Board is authorized to suspend, revoke or order any other appropriate conditions 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.
9. 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.
10. Based on the foregoing, Defendant is guilty of unprofessional conduct as follows:
 - a. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship, in violation of 59 O.S. § 509(12) and Okla. Admin. Code § 435:10-7-4(49);
 - b. Failure to maintain adequate medical records to support diagnosis, treatment or prescribed medications, in violation of 59 O.S. § 509(20) and Okla. Admin. Code § 435:10-7-4(36).

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. **MARK DOUGLAS FOSSEY, M.D.**, Oklahoma medical license no. 11793, is formally **REPRIMANDED**.

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3. **MARK DOUGLAS FOSSEY, M.D.** is **FINED** five thousand (\$5,000) dollars, due within six (6) months from the filing of this Order.
4. **MARK DOUGLAS FOSSEY, 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
 - b. Defendant will keep the Board informed of his current address.
 - c. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any bankruptcy proceeding.
 - d. Defendant shall not prescribe, administer or dispense any prescription medications for personal use or for that of any family members, friends, employees or associates.
 - e. Upon request, Defendant shall make himself available for one or more personal appearances before the Board or its authorized designee.
 - f. 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.
 - g. The Parties, the Board or its designee, or the Defendant may file a motion for a Board hearing and possible new Board order.
5. 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.
 6. A copy of this Order shall be provided to Defendant as soon as it is processed.

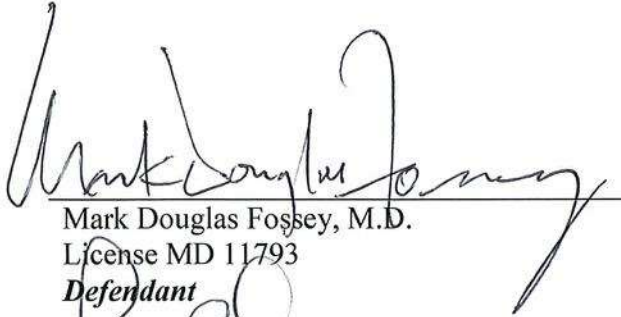
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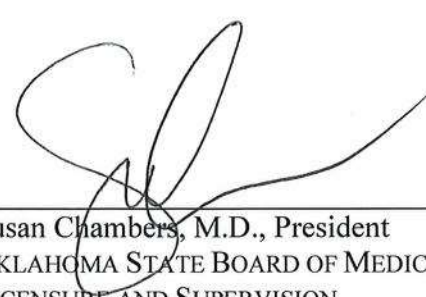
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Dated this 5th day of March, 2020.


Mark Douglas Fossey, M.D.
License MD 11793
Defendant


Robert B. Sartin, OBA No. 12848
Emily B. Kosmider, OBA No. 32096
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Susan Chambers, M.D., President
OKLAHOMA STATE BOARD OF MEDICAL
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Billy H. Stout, M.D., Board Secretary
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**Attorney for Plaintiff,
Oklahoma State Board of Medical
Licensure and Supervision**

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Certificate of Service

This is to certify that on the 9th day of March, 2020, a true and correct copy of this Order was transmitted as indicated, postage prepaid, to the following:

U.S. Certified Mail

Mark Douglas Fossey, M.D.
1228 E. 27th Street
Tulsa, Oklahoma 74114-3914
Defendant

U.S. First Class Mail

Robert B. Sartin, OBA No. 12848
Emily B. Kosmider, OBA No. 32096
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Attorneys for Defendant,
Mark Douglas Fossey, M.D.



Nancy Thiemann, Legal Assistant

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