

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT WILLIAM RAINFORD,

Defendant.

Case No. 22-CR-003-JFH

GOVERNMENT’S OPPOSED OMNIBUS MOTION IN LIMINE

COMES NOW the United States of America, by and through United States Attorney Christopher J. Wilson and Assistant United States Attorney Kevin Gross, and respectfully submits this Omnibus Motion in Limine. Defendant opposes this Motion.

On January 11, 2022, Defendant was indicted in the Eastern District of Oklahoma for: (1) Murder in Indian Country; (2) Use, Carry, Brandish and Discharge of a Firearm During and in Relation to a Crime of Violence; and (3) Causing the Death of a Person in the Course of a Violation of Title 18, United States Code, Section 924(c). (Doc. 19).

The incident involves Defendant going to his neighbor’s home on December 12, 2021 and shooting his neighbor 10 times with a pistol, killing his neighbor.

Defendant has raised an insanity defense and will be relying in part on an evaluation conducted by a defense retained psychiatrist, Dr. Jason Beaman, and an evaluation prepared in response to a Government motion by Bureau of Prisons psychologist Dr. Lesli Johnson. (Docs. 53, 55, 63, 67). More specifically, after Defendant raised an insanity defense, the Government moved that the Court order a mental examination of Defendant, but did not request that either Dr. Johnson specifically conduct the examination or that a psychologist conduct the examination. (Doc. 55). After Dr. Johnson’s report was filed, the Government moved to have Defendant

evaluated by a retained psychiatrist. (Doc. 77). Defendant opposed the request, and the Court denied the Government's motion. (Docs. 82 and 83).

The Government expects Defendant to assert at trial that, at the time of the homicide, he was experiencing a substance-induced psychotic disorder based on ingesting large quantities of prescribed Adderall. More specifically, the Government anticipates Defendant will accuse the prescribing physician, Dr. Kenneth Kirk, of prescribing an improper quantity of Adderall.

The Government anticipates calling Dr. Kirk in rebuttal. Dr. Kirk has a lengthy disciplinary history with the Oklahoma Board of Medical Licensure and Supervision. (*See* Attachments). His license was revoked in 2005, he was placed on probation in 2006, his license was suspended in 2008, and he was on probation through 2017. According to the 2005 revocation order, which is publicly accessible:

4. Between 1980 and 1984, while [Dr. Kirk] was in medical school, he was arrested, jailed and charged with possession of marijuana with intent to distribute. [Dr. Kirk] has admitted that he intended to deal drugs to other students in medical school. [He] received a five (5) year suspended sentence.

5. On or about April 12, 1985, [Dr. Kirk] submitted his initial application for an Oklahoma medical license. In response to the question "Have you ever been charged with or convicted of a crime directly or indirectly related to your practice of medicine?", [Dr. Kirk] answered "NO".

The 2005 revocation order notes inpatient drug treatment and drug and alcohol abuse in 1988, 1989, 1994, and 2003, and further states that:

10. In or around April 2004, [Dr. Kirk] was terminated by his employer, Omni Medical Group of Tulsa, Oklahoma based upon violation of company policy. Specifically, [Dr. Kirk] had prescribed numerous controlled dangerous substances to an employee who worked directly with him. [Dr. Kirk] had been repeatedly warned against such practices, but he continued to prescribe to the employee. The employee subsequently overdosed on the medications prescribed by [Dr. Kirk] and died.

11. In or around April 2004, a protective order was entered against [Dr. Kirk] by his wife due to threats of immediate harm to her and their children.

12. On or about May 21, 2004, [Dr. Kirk] entered treatment for the fourth time for drug and alcohol abuse at Rush Behavioral Health Center. While at Rush, [Dr. Kirk] admitted that he currently abused alcohol, Phentermine, Xanax, Phendimetrazine, Ambien, Sonata and Hydrocodone. [Dr. Kirk] also admitted that he had previously abused Marijuana, Cocaine, Amphetamines, Methamphetamines and hallucinogenic mushrooms.

13. While at Rush during his fourth treatment attempt, [Dr. Kirk] was diagnosed with multiple addictions, including stimulant dependence, alcohol dependence, poly substance dependence, bipolar disorder, pornography addiction, compulsive overeating and spending addiction. [Dr. Kirk] has admitted that while abusing diet pills, he used prostitutes and he engaged in “glitter painting”. Rush also concluded that he had Mixed Personality Disorder with borderline, paranoid and antisocial personality features.

According to the 2005 revocation order, [Dr. Kirk] was found guilty of unprofessional conduct on eight (8) separate grounds.

In 2008, his license was suspended for 30 days for violating probation. According to the 2008 order, which is publicly accessible, Dr. Kirk was placed on probation in 2006 with the specific term that he not prescribe any controlled drug in Schedules I through V. Nevertheless,

17. A review of pharmacy records reflects that from July 1, 2006 until April 7, 2008, [Dr. Kirk] authorized approximately **THREE HUNDRED (300)** prescriptions for controlled dangerous substances which were not authorized under the terms of his probation. Medications prescribed by [Dr. Kirk] include Hydrocodone, Lorazepam, Temazepam, Diazepam, Propoxyphene, Alprazolam, Lyrica, Provigil, Clonazepam, Carisoprodol and Ambien.

According to the 2008 order, Dr. Kirk “claimed he did not believe he was violating his probation because he did not physically ‘write’ the prescriptions.”

In 2011, Dr. Kirk was granted permission to prescribe controlled dangerous drugs to hospital inpatients only.

In 2013, Dr. Kirk was granted permission to prescribe controlled dangerous drugs to outpatients with monitoring by the State Board.

In 2015, Dr. Kirk was permitted to increase his work hours to up to 55 hours per week.

In 2017, Dr. Kirk’s probation ended and he appears to have entered an agreement where restrictions were placed on his practice, including, among other things, “random hair follicle and body fluid testing; ingestion of medication only upon authorization of a treating physician who has been made aware of the agreement; not prescribing, administering, ordering or dispensing any medications for personal use; and an affirmative duty not to ingest prohibited substances including alcohol” A modification order was entered in May 2021.

Dr. Kirk was also negatively portrayed in a June 2013 article in the Tulsa World newspaper and accused of improperly treating a patient and causing her death. (*See Attachment*). For example:

Dianne Lopp will never forget the sight of her mother curled up naked on a hospital bed, blood at the corners of her mouth, eyes pleading for help. Lopp’s 66-year-old mother, Mary Wallace Henderson, had been restrained for more than 10 hours in a straitjacket, drugged with Haldol and Zyprexa, and her requests for an attorney went unanswered, records show. Lopp frantically tried to reach the hospital’s doctor, Kenneth Kirk, but he did not return her calls. When she was told seven days later by the facility . . . that her mother had died, Lopp was stunned. Although Henderson was ailing and weak, she did not have a terminal prognosis from the throat cancer diagnosed in February 2012, Lopp said.

ARGUMENT & AUTHORITY

I. Dr. Kirk’s disciplinary history, mental health issues, addictions, and alleged prior malpractice constitute improper impeachment evidence, are not relevant to any issue in the case, have no meaningful probative value, and are inadmissible.

“Evidence of a person’s character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.” Fed. R. Evid. 404(a)(1). Nevertheless, in a criminal case, “a defendant may offer evidence of an alleged **victim’s** pertinent trait” Fed. R. Evid. 404(a)(2)(B) (emphasis added). “Federal Rule of Evidence 405 establishes the permissible methods of proving character under Rule 404(a)(2).” *United States v. Talamante*, 981 F.2d 1153, 1156 (10th Cir. 1992) (citation omitted). “When character evidence is used circumstantially to create an inference that a person acted in conformity

with his or her character, Rule 405 allows proof of character only by reputation and opinion.” *Id.* (citation omitted). Similarly, a witness’s character for truthfulness or untruthfulness may be attacked by reputation or opinion evidence. Fed. R. Evid. 608(a).

“Under Federal Rule of Evidence 404(b), evidence of wrongs, acts, or crimes is admissible for defensive purposes if it tends, alone or with other evidence, to negate the defendant’s guilt of the crime charged against him. Such evidence is often referred to as reverse 404(b) evidence because prosecutors, not defendants, typically invoke Rule 404(b). In the vast run of such cases, the probative value of reverse 404(b) evidence is slight, as it may just amount to pointing a finger at someone else who, having a criminal record, might have committed the crime the defendant is accused of committing.” *United States v. Cook*, 761 Fed. Appx. 840, 849-50 (10th Cir. 2019) (quotations and citations omitted).

“The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Fed. R. Evid. 403. “Evidence is not unfairly prejudicial simply because it is damaging to an opponent’s case. Rather, the evidence must have an undue tendency to suggest decision on an improper basis” *United States v. Curtis*, 344 F.3d 1057, 1067 (10th Cir. 2003) (citations and quotations omitted).

Here, neither Dr. Kirk’s past disciplinary record, mental health issues, addictions, nor prior allegations against him regarding malpractice tend to negate Defendant’s guilt. *See Cook*, 761 Fed. Appx. at 849-50. Indeed, this case is not analogous to one in which a defendant asserts self-defense and seeks to present evidence of the victim’s prior violent acts. *Cf.* Fed. R. Evid. 404(a)(2)(B). Rather, attacking Dr. Kirk based on his past constitutes nothing more than character assassination, which Defendant is not entitled to do. *See, e.g., United States v. Stevenson*, Record

No. CR-21-275-RAW, 2022 WL 4468139, *1 n.2 (E.D.Okla. Sept. 26, 2022) (“Defendant is not entitled to engage in mere ‘character assassination’”).

Whether Dr. Kirk allegedly improperly prescribed medication in 2004 simply has no bearing on whether he did so in 2021 or on whether Defendant was insane at the time he killed the victim. Similarly, whether Dr. Kirk struggled with various addictions and mental health issues years ago does not impact Defendant’s insanity defense and is not relevant to whether Dr. Kirk improperly prescribed Adderall to Defendant. Likewise, as to whether Dr. Kirk committed malpractice in 2012. Even assuming this evidence is relevant, which the Government does not concede, the minimal probative value is substantially outweighed by the danger of confusing the issues. Fed. R. Evid. 403. Accordingly, Dr. Kirk’s disciplinary history, mental health issues, addictions, and alleged prior malpractice are inadmissible, and the Government moves that their use be barred.

II. Defendant should be barred from referring to Dr. Johnson as the Government’s expert, arguing that she works for the Government, contending that the Government asked her to perform an evaluation, or asking Dr. Johnson (or Dr. Beaman) how many times she (or he) has opined that an individual is insane. If the Court permits Defendant to do so, the Government moves for permission to introduce evidence that Defendant opposed a Government evaluation by a retained psychiatrist.

“[E]vidence of truthful character is admissible only after the witness’s character for truthfulness has been attacked.” Fed. R. Evid. 608(a). “It is permissible impeachment to expose a witness’s bias. At common law, bias describes the relationship between a witness and a party which might cause the witness to slant his testimony for or against the party.” *United States v. Baldrige*, 559 F.3d 1126, 1135 (10th Cir. 2009) (citations omitted).

By referring to Dr. Johnson as the Government’s expert, arguing that she works for the Government, and asserting that the Government asked her to perform an evaluation, Defendant would be improperly bolstering his witness, implying that she is more truthful, and violating Fed.

R. Evid. 608(a). Similarly, asking Dr. Johnson (or Dr. Beaman) on direct examination whether she (or he) regularly opines that defendants are insane could also constitute improper bolstering (assuming they do not) in addition to being irrelevant to whether Defendant was insane at the time of the offense, although such evidence could be relevant during cross-examination for purposes of showing bias. *See Baldridge*, 559 F.3d at 1135.

Should the Court deny the Government's motion, the Government moves that it be permitted to introduce evidence in rebuttal that Defendant opposed an evaluation by a retained psychiatrist.

Respectfully submitted,

CHRISTOPHER J. WILSON
United States Attorney

s/ Kevin Gross
KEVIN GROSS, VA Bar # 72990
Assistant United States Attorney
Attorney for the Plaintiff
520 Denison Avenue
Muskogee, OK 74401
(918) 684-5100
Fax (918) 684-5150

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2023, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Darren Robinson, Attorney for Defendant
Daniel Rubin, Attorney for Defendant

s/ Kevin Gross
KEVIN GROSS
Assistant United States Attorney

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

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)

MAY - 6 2005

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 04-05-2803

KENNETH JOHN KIRK, M.D.,)
LICENSE NO. 15217)

Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 5, 2005, at the office of the Board, 5104 N. Francis, Suite C, 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 in person and through counsel, Daniel Gamino.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, 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 physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.*

2. 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.

3 Defendant, Kenneth John Kirk, M.D., holds Oklahoma license no. 15217.

4. Between 1980 and 1984, while Defendant was in medical school, he was arrested, jailed and charged with possession of marijuana with intent to distribute. Defendant has admitted that he intended to deal drugs to other students in medical school. Defendant received a five (5) year suspended sentence.

5. On or about April 12, 1985, Defendant submitted his initial application for an Oklahoma medical license. In response to the question "Have you ever been charged with or convicted of a crime directly or indirectly related to your practice of medicine?", Defendant answered "NO".

6. In or around 1988, Defendant completed thirty (30) days of inpatient treatment in Tulsa, Oklahoma for alcohol abuse. Defendant admits that he remained sober approximately one (1) month, then relapsed on Xanax and diet pills.

7. In or around 1989, Defendant completed six (6) months of inpatient treatment at Talbott for alcohol and drug abuse.

8. In or around 1994, Defendant completed three (3) months of inpatient treatment at Rush Behavioral Health Center for alcohol and drug abuse.

9. In or around June 2003, Defendant began abusing Phentermine, taking up to twenty (20) 37.5 mg. tablets per day. Defendant obtained these medications by taking samples and ordering off of the Internet. Defendant subsequently began abusing Vodka, drinking up to one (1) liter per day. He also took Xanax 30 mg., approximately ten (10) pills per day, phendiametrazine, approximately fifteen (15) pills per day, Ambien, approximately two (2) to four (4) pills per night, Sonata, approximately four (4) pills per night, and Hydrocodone 10 mg., approximately eight (8) to ten (10) pills per day.

10. In or around April 2004, Defendant was terminated by his employer, Omni Medical Group of Tulsa, Oklahoma based upon violation of company policy. Specifically, Defendant had prescribed numerous controlled dangerous substances to an employee who worked directly with him. Defendant had been repeatedly warned against such practices, but he continued to prescribe to the employee. The employee subsequently overdosed on the medications prescribed by Defendant and died.

11. In or around April 2004, a protective order was entered against Defendant by his wife due to threats of immediate harm to her and their children.

12. On or about May 21, 2004, Defendant entered treatment for the fourth time for drug and alcohol abuse at Rush Behavioral Health Center. While at Rush, Defendant admitted that he currently abused alcohol, Phentermine, Xanax, Phendiametrazine, Ambien, Sonata and Hydrocodone. Defendant also admitted that he had previously abused Marijuana, Cocaine, Amphetamines, Methamphetamines and hallucinogenic mushrooms.

13. While at Rush during his fourth treatment attempt, Defendant was diagnosed with multiple addictions, including stimulant dependence, alcohol dependence, poly substance dependence, bipolar disorder, pornography addiction, compulsive overeating and spending addiction. Defendant has admitted that while abusing diet pills, he used prostitutes and he engaged in “glitter painting”. Rush also concluded that he had Mixed Personality Disorder with borderline, paranoid and antisocial personality features.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. 407 §509(4) and OAC 435:10-7-4(3).

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) and OAC 435:10-7-4(39).

D. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physician condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

E. Purchased or prescribed a regulated substance in Schedules I through V for the physician’s personal use in violation of OAC 435:10-7-4(5).

F. Prescribed, sold, administered, distributed, ordered or gave a drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself in violation of OAC 435:10-7-4(26).

G. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

H. 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).

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. Habitually uses habit-forming drugs in violation 59 O.S. 407 §509(4) and OAC 435:10-7-4(3).

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) and OAC 435:10-7-4(39).

D. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physician condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

E. Purchased or prescribed a regulated substance in Schedules I through V for the physician's personal use in violation of OAC 435:10-7-4(5).

F. Prescribed, sold, administered, distributed, ordered or gave a drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself in violation of OAC 435:10-7-4(26).

G. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

H. 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).

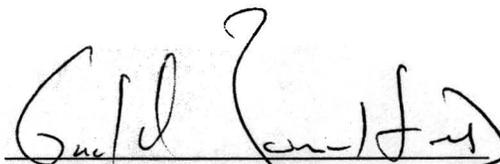
3. The Board further found that the Defendant's license should be revoked based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509(4), (8), (9), (13) and (15) and OAC Title 435:10-7-4(3), (5), (11), (26), (27), (39) and (40).

Order

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

1. The license of Defendant, Kenneth John Kirk, M.D., Oklahoma license no. 15217, is hereby **REVOKED** as of the date of this hearing, May 5, 2005.
2. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.
3. Defendant's revoked license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs.

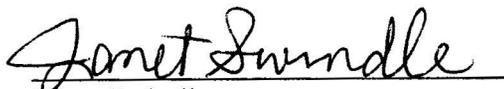
Dated this 6 day of May, 2005.



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 9 day of May, 2005, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Daniel J. Gamino, 3315 N.W. 63rd Street, Oklahoma City, OK 73116 and to Kenneth J. Kirk, 5896 E. 101st, #B, Tulsa, OK 74133.



Janet Swindle

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

FILED

JUL 18 2008

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)

Plaintiff,)

v.)

Case No. 04-05-2803

KENNETH JOHN KIRK, M.D.,)
LICENSE NO. 15217)

Defendant.)

FINAL ORDER OF SUSPENSION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on July 17, 2008, at the office of the Board, 5104 N. Francis, Suite C, 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 in person and through counsel, Stephen Modovsky.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, 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 physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *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, Kenneth John Kirk, M.D., holds Oklahoma license no. 15217.

3. Between 1980 and 1984, while Defendant was in medical school, he was arrested, jailed and charged with possession of marijuana with intent to distribute. Defendant has

admitted that he intended to deal drugs to other students in medical school. Defendant received a five (5) year suspended sentence.

4. On or about April 12, 1985, Defendant submitted his initial application for an Oklahoma medical license. In response to the question "Have you ever been charged with or convicted of a crime directly or indirectly related to your practice of medicine?", Defendant answered "NO".

5. In or around 1988, Defendant completed thirty (30) days of inpatient treatment in Tulsa, Oklahoma for alcohol abuse. Defendant admits that he remained sober approximately one (1) month, then relapsed on Xanax and diet pills.

6. In or around 1989, Defendant completed six (6) months of inpatient treatment at Talbott for alcohol and drug abuse.

7. In or around 1994, Defendant completed three (3) months of inpatient treatment at Rush Behavioral Health Center for alcohol and drug abuse.

8. In or around June 2003, Defendant began abusing Phentermine, taking up to twenty (20) 37.5 mg. tablets per day. Defendant obtained these medications by taking samples and ordering off of the Internet. Defendant subsequently began abusing Vodka, drinking up to one (1) liter per day. He also took Xanax 30 mg., approximately ten (10) pills per day, phendiametrazine, approximately fifteen (15) pills per day, Ambien, approximately two (2) to four (4) pills per night, Sonata, approximately four (4) pills per night, and Hydrocodone 10 mg., approximately eight (8) to ten (10) pills per day.

9. In or around April 2004, Defendant was terminated by his employer, Omni Medical Group of Tulsa, Oklahoma based upon violation of company policy. Specifically, Defendant had prescribed numerous controlled dangerous substances to an employee who worked directly with him. Defendant had been repeatedly warned against such practices, but he continued to prescribe to the employee. The employee subsequently overdosed on the medications prescribed by Defendant and died.

10. In or around April 2004, a protective order was entered against Defendant by his wife due to threats of immediate harm to her and their children.

11. On or about May 21, 2004, Defendant entered treatment for the fourth time for drug and alcohol abuse at Rush Behavioral Health Center. While at Rush, Defendant admitted that he currently abused alcohol, Phentermine, Xanax, Phendiametrazine, Ambien, Sonata and Hydrocodone. Defendant also admitted that he had previously abused Marijuana, Cocaine, Amphetamines, Methamphetamines and hallucinogenic mushrooms.

12. While at Rush during his fourth treatment attempt, Defendant was diagnosed with multiple addictions, including stimulant dependence, alcohol dependence, poly substance dependence, bipolar disorder, pornography addiction, compulsive overeating and spending

addiction. Defendant has admitted that while abusing diet pills, he used prostitutes and he engaged in “glitter painting”. Rush also concluded that he had Mixed Personality Disorder with borderline, paranoid and antisocial personality features.

13. Based upon these facts, on May 5, 2005, after hearing before the Board en banc, the Board entered a Final Order of Revocation whereby it revoked Defendant’s license.

14. Defendant subsequently surrendered both his OBN and DEA permits.

15. On July 20, 2006, after hearing before the Board en banc, the Board entered an Order Granting Reinstatement of License Under Terms of Probation. Defendant is currently licensed under a five (5) year term of probation under numerous conditions, including the following:

E. Defendant will not prescribe, administer, dispense or possess any drugs in Schedules I through V.

16. The provisions cited above have not been modified or deleted but remain in full force and effect as terms and conditions of Defendant’s licensure under terms of probation.

17. A review of pharmacy records reflects that from July 1, 2006 until April 7, 2008, Defendant authorized approximately **THREE HUNDRED (300)** prescriptions for controlled dangerous substances which were not authorized under the terms of his probation. Medications prescribed by Defendant include Hydrocodone, Lorazepam, Temazepam, Diazepam, Propoxyphene, Alprazolam, Lyrica, Provigil, Clonazepam, Carisoprodol and Ambien.

18. When questioned by Tom Sosbee, the Board’s Compliance and Education Coordinator, and Dr. Zumwalt regarding these unauthorized prescriptions, Defendant admitted that he had been ordering prescriptions for controlled dangerous substances for which he was not authorized for nursing home patients and hospital inpatients. Defendant claimed that he did not believe he was violating his probation because he did not physically “write” the prescriptions.

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

A. 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) and OAC 435:10-7-4(39).

B. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

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. 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) and OAC 435:10-7-4(39).

B. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

3. The Board further found that the Defendant's license should be suspended based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509 (13) and OAC Title 435:10-7-4 (27) and (39).

Order

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

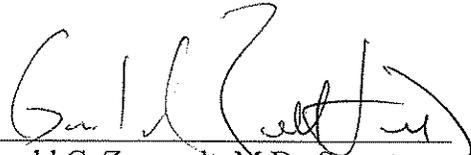
1. The license of Defendant, Kenneth John Kirk, M.D., Oklahoma license no. 15217, is hereby **SUSPENDED** as of the date of this hearing, July 17, 2008 for **THIRTY (30) DAYS**. Upon reinstatement, Defendant shall be placed on **INDEFINITE PROBATION** under the terms set forth in the July 20, 2006 Order Granting Reinstatement of License Under Terms of Probation.

2. Defendant shall pay an **ADMINISTRATIVE FINE** in the amount of \$10,000.00, to be paid on or before August 16, 2008.

3. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

4. Defendant's suspended license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs and expenses incurred by the State of Oklahoma.

Dated this 18 day of July, 2008.


Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 18 day of July, 2008, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Stephen J. Modovsky, 1204 S. Cheyenne, Tulsa, OK 74119 and to Kenneth Kirk, 6506 E. 89th Place, Tulsa, OK 74133.


Janet Swindle

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

FILED

MAY 27 2011

IN THE MATTER OF THE)
APPLICATION OF)

KENNETH JOHN KIRK, M.D.,)

FOR MODIFICATION OF)
PROBATION TERMS FOR)
LICENSE NO. 15217)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

) Case No. 04-05-2803

ORDER MODIFYING PROBATION

This matter came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on May 19, 2011, at the Board office, 101 N.E. 51st Street, Oklahoma City, Oklahoma, pursuant to notice given as required by law and rules of the Board.

Applicant, Kenneth John Kirk, M.D., holding Oklahoma medical license no. 15217, appeared in person without counsel, thereby waiving his right to legal representation. Elizabeth A. Scott, Assistant Attorney General, represented the State.

The Board sitting *en banc* after hearing testimony, reviewing the request and other materials presented, and being fully apprised of the premises, made the following Findings of Fact, Conclusions of Law and Orders:

FINDINGS OF FACT

1. The Board *en banc* has jurisdiction over the subject matter herein, and notice has been given in all respects as required by law and the rules of the Board.
2. Dr. Kirk currently holds medical license no. 15217 under an indefinite term of probation that commenced July 17, 2008.
3. On May 19, 2011, Dr. Kirk requested that the terms of his probation be modified to allow him to prescribe controlled dangerous drugs to hospital inpatients only.
4. Dr. Kirk presented sufficient evidence to support the requested modification.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this matter pursuant to 59 O. S. § 480 *et seq.*
2. Dr. Kirk has presented satisfactory evidence to justify allowing him to prescribe controlled dangerous drugs to hospital inpatients only.

ORDER

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

1. Dr. Kirk's application to modify the terms of his probation is **GRANTED**.
2. Dr. Kirk's probation shall continue indefinitely from the date of its commencement of July 17, 2008 under the terms and conditions set forth in the July 20, 2006 Order, as referenced in the July 17, 2008 Order, with the exception that Dr. Kirk be allowed to prescribe controlled dangerous drugs to hospital inpatients only.
3. Failure to meet any of the terms of this Order will be grounds for the Board to initiate proceedings to suspend or revoke Dr. Kirk's medical license, after additional notice and hearing as required by law.
4. A copy of this written order should be sent to Dr. Kirk as soon as it is processed.

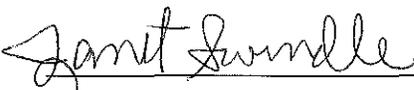
Dated this 27 day of May, 2011.



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

Certificate of Service

On the 27 day of May, 2011, a true and correct copy of this order was mailed, postage prepaid, to Kenneth J. Kirk, 6506 E. 89th Place, Tulsa, OK 74133.



Janet Swindle

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

FILED

NOV 15 2013

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

IN THE MATTER OF THE)
APPLICATION OF)

KENNETH JOHN KIRK, M.D.,)

) Case No. 04-05-2803

FOR MODIFICATION OF)
PROBATION TERMS FOR)
LICENSE NO. 15217)

ORDER MODIFYING PROBATION

This matter came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on November 7, 2013, at the Board office, 101 N.E. 51st Street, Oklahoma City, Oklahoma, pursuant to notice given as required by law and rules of the Board.

Applicant, Kenneth John Kirk, M.D., holding Oklahoma medical license no. 15217, appeared with counsel, Stephen Modovosky. Scott Randall Sullivan, Special Prosecutor for the Board, represented the State.

The Board sitting *en banc* after hearing testimony, reviewing the request and other materials presented, and being fully apprised of the premises, made the following Findings of Fact, Conclusions of Law and Orders:

Findings of Fact

1. The Board *en banc* has jurisdiction over the subject matter herein, and notice has been given in all respects as required by law and the rules of the Board.

2. Dr. Kirk currently holds medical license no. 15217 under an indefinite term of probation that commenced July 17, 2008.

3. On May 19, 2011, Dr. Kirk requested that the terms of his probation be modified to allow him to prescribe controlled dangerous drugs to hospital inpatients only. Dr. Kirk presented sufficient evidence to support the requested modification and it was granted.

3. On November 7, 2013, Dr. Kirk requested that the terms of his probation be modified to allow him to also prescribe controlled dangerous drugs to outpatients.

4. Dr. Kirk presented sufficient evidence to support the requested modification.

Conclusions of Law

1. The Board has jurisdiction to hear this matter pursuant to 59 O. S. § 480 *et seq.*
2. Dr. Kirk has presented satisfactory evidence to justify allowing him to also prescribe controlled dangerous drugs to outpatients.

Order

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

1. Dr. Kirk's application to modify the terms of his probation is **GRANTED CONTINGENT UPON CONTINUED CLOSE MONITORING OF DEFENDANT'S APPROPRIATE CONTROLLED DANGEROUS SUBSTANCE ("CDS") PRESCRIBING RECORD BY THE BOARD.**

2. Failure to meet any of the terms of this Order will be grounds for the Board to initiate proceedings to suspend or revoke Dr. Kirk's medical license, after additional notice and hearing as required by law.

3. A copy of this written order should be sent to Dr. Kirk as soon as it is processed.

Dated this 15 day of November, 2013.



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

Certificate of Mailing

On the 15th day of November, 2013, a true and correct copy of this order was mailed, postage prepaid, to Mr. Stephen Modovsky, Modovsky Law Firm, 1204 South Cheyenne, Tulsa, OK 74119.



Barbara J. Smith, Legal Assistant

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

FILED

MAR 17 2015

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)

Plaintiff,)

v.)

Case No. 04-05-2803

KENNETH JOHN KIRK, M.D.,)
LICENSE NO. 15217)

Defendant.)

ORDER MODIFYING PROBATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on March 12, 2015, 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.

Applicant, Kenneth John Kirk, M.D., holding Oklahoma medical license no. 15217, appeared in person. Dr. Merlin Kilbury appeared in support of Applicant. Gary Ricks, Compliance Coordinator, appeared on behalf of the State.

The Board *en banc* after hearing arguments of counsel, reviewing the request 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 physicians and surgeons in the State of Oklahoma pursuant to Title 59 Okla. Stat. § 480 *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, Kenneth John Kirk, M.D. currently holds medical license no. 15217, under an indefinite term of probation that commenced July 17, 2008.

3. On May 19, 2011, Dr. Kirk requested that the terms of his probation be modified to allow him to prescribe controlled dangerous drugs to hospital inpatients only. Dr. Kirk presented sufficient evidence to support the requested modification and it was granted.
4. On November 7, 2013, Dr. Kirk requested that the terms of his probation be modified to allow him to also prescribe controlled dangerous drugs to outpatients. Dr. Kirk presented sufficient evidence to support the requested modification and it was granted.
5. On March 12, 2015, Dr. Kirk requested that the terms of his probation be modified to allow him to increase his work hours to a maximum of 55 hours per week. Dr. Kirk presented sufficient evidence to support the requested modification of hours increasing his work hours to a maximum of 55 hours per week.

Conclusions of Law

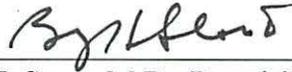
1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act") and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare. Tit. 59 O.S. § 480 *et seq.*
2. Dr. Kirk presented sufficient evidence to support the requested modification of hours increasing his work hours to a maximum of 55 hours per week.

Order

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

1. Dr. Kirk's application to modify the terms of his probation is **GRANTED, INCREASING HIS WORK HOURS TO A MAXIMUM OF 55 HOURS PER WEEK.**
2. Failure to meet any of the terms of this Order will be grounds for the Board to initiate proceedings to suspend or revoke Dr. Kirk's medical license, after additional notice and hearing as required by law.
3. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law.
4. A copy of this written order should be sent to Dr. Kirk as soon as it is processed.

Dated this 17th day of March, 2015.



Billy H. Stout, M.D., Board Secretary
Oklahoma State Board of Medical
Licensure and Supervision

Certificate of Mailing

On the 17th day of March, 2015, a true and correct copy of this order was sent by first-class mail, postage prepaid, to:

Dr. Kenneth John Kirk, M.D.
6506 East 89th Place
Tulsa, Oklahoma 74133-5009



Nancy Thiemann, Legal Secretary

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

FILED
APR 05 2017
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA, *ex rel.*)
OKLAHOMA STATE BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
KENNETH JOHN KIRK, M.D.,)
LICENSE NO. MD 15217,)
)
Defendant.)

Case No. 04-05-2803

**ORDER GRANTING MOTION FOR LICENSURE UNDER
AGREEMENT AFTER INDEFINITE PROBATION**

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision ("Board") on January 12, 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. The Staff Motion to Terminate Probation and Place on agreement was filed on December 15, 2016.

Lyle Kelsey, Executive Director appeared for the Plaintiff and Defendant appeared *pro se*.

The Board having considered testimony and evidence presented hereby **GRANTS** the motion to terminate the indefinite probation pursuant to the Final Order of Suspension filed July 18, 2008. A license is hereby issued pursuant to the Agreement for Licensure After Indefinite Probation executed February 8, 2017.

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 5th day of April, 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 5th day of April, 2017, a true and correct copy of this Order was transmitted as indicated, postage prepaid, to the following:

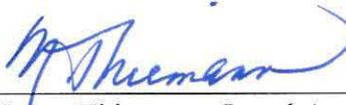
U.S. Certified Mail

Kenneth John Kirk, M.D.

6506 East 89th Place

Tulsa, Oklahoma 74133-5009

Defendant



Nancy Thiemann, Legal Assistant



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-224A

FILED

APR 05 2017

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

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

March 31, 2017

Dear Secretary Stout:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Medical Licensure and Supervision intends to take with respect to Medical Doctor Licensee 15217. On May 9, 1985, the licensee applied for licensure as Medical Doctor and was issued a license on July 1, 1985. In May 2005, the license was revoked for violations alleged in a 2004 complaint, including substance abuse, prescribing violations, and falsifying an application for licensure. In July 2006, the license was reinstated under terms of probation for five years. In April 2008, a complaint was filed alleging violation of the terms of probation in that, from July 1, 2006 until April 7, 2008, the licensee authorized 363 prescriptions for controlled dangerous substances. As a result, the license was suspended in July 2008 for thirty days followed by indefinite probation.

The proposed action is to terminate indefinite probation and enter an agreement with the applicant whereby restrictions will be imposed on the applicant's professional practice in conjunction with reinstatement of the license. The restrictions include: random hair follicle and body fluid testing; ingestion of medication only upon authorization of a treating physician who has been made aware of the agreement; not prescribing, administering, ordering or dispensing any medications for personal use; an affirmative duty not to ingest prohibited substances including alcohol; inform Board on current address; Board access to applicant's practice and treatment-related records; notification of any criminal charges involving substance abuse, or any relapse, including inpatient rehabilitation; notification to potential employers, or other states, of the agreement; appearance before the Board upon request; entrance into a contract with the Oklahoma Health Professional Program ("OHPP"), a substance abuse assistance program; attend "12-step" meetings; and submit timely reports to the Board.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2016, §§ 480-518.1, authorizes the Board to "establish rules authorizing the . . . issuance of licenses under terms of agreement," 59 O.S.2011, § 493.3(D). The Board may enter into such an agreement when circumstances or conditions of an applicant raise questions as to the fitness or ability of the applicant to practice medicine and surgery with reasonable skill and safety or questions as to prior actions of the applicant in this or any other jurisdiction which would constitute

a violation of the Act. OAC 435:10-4-11(b)(2). The Board may reasonably believe that the agreed terms are adequate to protect patient safety.

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 of Oklahoma's policy upholding minimum standards of professionalism among healthcare professionals.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



SHELLY PERKINS
ASSISTANT ATTORNEY GENERAL



Plea for help - Tulsa World (OK) - June 23, 2013 - page A1

June 23, 2013 | Tulsa World (OK) | ZIVA BRANSTETTER World Enterprise Editor | Page A1

Dianne Lopp will never forget the sight of her mother curled up naked on a hospital bed, blood at the corners of her mouth, eyes pleading for help.

Lopp's 66-year-old mother, Mary Wallace Henderson, had been restrained for more than 10 hours in a straitjacket, drugged with Haldol and Zyprexa, and her requests for an attorney went unanswered, records show.

Lopp frantically tried to reach the hospital's doctor, Kenneth Kirk, but he did not return her calls.

When she was told seven days later by the facility, Continuous Care Center of Tulsa, that her mother had died, Lopp was stunned. Although Henderson was ailing and weak, she did not have a terminal prognosis from the throat cancer diagnosed in February 2012, Lopp said.

"My mother very much wanted to live," Lopp said.

When she asked a secretary at Continuous Care Center about Kirk several days after her mother's death on June 14, 2012, Lopp thought the woman's answer was strange.

"She said Dr. Kirk was a wonderful doctor who has never had a complaint."

In fact, Lopp would later learn that Kirk, 53, has a lengthy disciplinary history with the Oklahoma State Board of Medical Licensure and Supervision. The state board is charged with overseeing the medical profession.

Kirk is one of at least five medical doctors practicing in Oklahoma whose licenses have been revoked at least once since 2000, a Tulsa World analysis shows.

Since 2005, the board has revoked Kirk's license, reinstated it with a five-year probation and suspended it again for violating probation. He is currently practicing at Continuous Care Center, an acute-care hospital on the fourth floor of St. John Medical Center, on a lifetime probation with required drug testing, records show.

Disciplined

Dr. Kenneth Kirk:

He has a lengthy disciplinary history with the Oklahoma State Board of Medical Licensure and Supervision.

Kirk has been diagnosed as bipolar, with addictions to alcohol and multiple drugs, as well as pornography, overeating and overspending addictions, medical board records state.

Given Kirk's history, Lopp said, the medical board staff should have allowed the board to hear her complaint about her mother's death. She said hospitals such as Continuous Care should have to inform patients or their relatives if they hire doctors with disciplinary actions on their record.

"If I had known he had been revoked, my mother would never have set foot over the threshold of that hospital - never," said Lopp, a Tulsa resident.

Neither Kirk nor Raymond Repogle, CEO at Continuous Care Centers, responded to repeated requests for comment for this story.

Lyle Kelsey, executive director of the state medical board, said the board does a good job of policing the medical profession. He said a small number of state doctors have some disciplinary action taken against their license, most often for a substance abuse problem. Records show that 149 doctors practicing in Oklahoma have been disciplined since 2000.

About 6,300 doctors have active licenses in Oklahoma.

"I wouldn't say it's one of the more serious ones," he said of Kirk's disciplinary history. "He's on probation right now. He's drug-tested several times a week."

'Troubling' history

Continuous Care Center, 1923 S. Utica Ave., is a 28-bed acute long-term care hospital.

Cheena Pazzo, a spokeswoman for St. John, said Continuous Care purchases a variety of services from St. John but that the two are separate organizations.

Marguerite Chapman, professor emeritus of law at the University of Tulsa, said Kirk's history with the board is "troubling." Chapman was the founder and director of TU's Health Law program for 17 years and is an expert in health-care law and bioethics.

"I was horrified to see that he had been hired to take care of the elderly in a long-term care acute hospital. ... Frankly, I would not want to be a patient in that facility, nor would I want any of my loved ones to be a patient in that facility with Dr. Kirk there," Chapman said.

Lopp said she turned to Continuous Care Center last year after finding she could no longer care for her mother at home. Henderson had been discharged from another hospital in late May 2012 after intensive radiation for her throat cancer and was sent home with a feeding tube, which became infected.

Henderson was admitted June 5, 2012, and Continuous Care's medical records describe her as "very weak" but also "alert, oriented ... fully capable of making all of her own decisions." She was noted to have "severe dysphagia," or difficulty swallowing, but could speak.

Henderson's medical record on admission states that she was to receive "aggressive" physical, speech and occupational therapy to restore her ability to walk and swallow and regain strength.

Chapman said it's important that patients with dysphagia not be given liquids orally due to the risk of choking and pneumonia caused by aspirating liquids into the lungs.

Yet records show that her physician, listed on medical records as Kirk, ordered a "clear liquid diet." Henderson drank soda and coffee and later vomited, her records show.

By June 7, she was coughing up blood and had "pneumonia, hospital acquired possibly aspiration related," medical records show.

Lopp said she visited her mother that day and was shocked at what she found.

"I walk into her hospital room and she's naked, in the fetal position, whimpering, and blood is gushing from her mouth."

Lopp said she demanded to talk to Kirk, who refused to return her calls. On another visit to the hospital, Lopp said she found her mother - a proud, modest woman - without underwear.

Records say Henderson was "agitated and wants a lawyer."

"She called the sheriff earlier today and wants to call the ambulance now," her medical records state.

Continuous Care was later cited for failure to respond to patient grievances.

The following day, Kirk ordered Henderson drugged with Haldol and Zyprexa, powerful sedatives that can qualify as chemical restraints. Kirk also ordered Henderson placed in physical restraints "as necessary," records show.

He noted that Henderson had a "terminal prognosis," although medical records did not mention a terminal diagnosis upon admission.

Chapman said that judging from Continuous Care's own medical records, "clearly this woman was not going there to die but rather going there to get over what you might say is a bad hump."

A Health Department investigation of the facility cites Continuous Care with violating the rights of three patients regarding use of restraints. The report, dated Sept. 13, 2012, states that an unidentified patient, who Lopp said was her mother, was restrained for 10 hours on June 9 and two hours the next day.

"Orders for the use of restraint or seclusion must never be written as a standing order or on an as needed basis," the inspection report states. "The record did not contain evidence the patient needed restrained."

Nurses told the Health Department that "the physician would sometimes write the order just in case we might need it."

The Health Department also cited Continuous Care with deficiencies, including failure to properly handle patient complaints, failure to document use of narcotics, failure to employ qualified radiology staff and failure to notify administrators of a 45-minute total power loss that occurred on a Saturday.

Two days after Henderson's records say she was asking for a lawyer, she was dead.

"Pt. apparently had acute cardiopulmonary cessation in bed. This is an expected death in pt." with cancer and aspiration pneumonia, the record states.

Medical records provided by the hospital to Lopp skip June 13, the day before her death.

Lopp said she believes the decision to allow her mother to have liquids despite her swallowing problems, use of physical restraints and use of drugs that slowed her breathing all led to her mother's death.

"If you judge a profession by its weakest link, its weakest link is Dr. Kirk and the medical board," she said.

Kelsey said Lopp's complaint did not rise to the level needed for board review. Such decisions are made by a group that includes an outside physician, he said.

"We are obligated to bring things that really have merit to it, and this particular case just didn't," Kelsey said.

'A huge gift'

Records show Kirk worked for the Omni Medical Group from 1995 through 2004, when he was fired for what he described as "performance issues."

Kirk was prescribing controlled substances to an employee and was repeatedly warned to stop the practice. He continued prescribing the drugs to the employee, who died.

The board revoked his license in May 2005 in a complaint citing him with 15 counts of unprofessional conduct.

The complaint states that Kirk had entered inpatient drug treatment for a fourth time and took more than 50 pills per day, including Xanax, Ambien, Sonata and Hydrocodone. He also drank up to one liter of vodka per day.

During a board hearing in July 2006 to consider restoring Kirk's license, Kirk's attorney told the board he had a job offer from Replogle, then chief executive of St. John's Sapulpa hospital.

Board records note that Dr. Gerald Zumwalt, secretary of the board, had an office at the same address.

Kirk assured the board he would abide by all requirements if his license were reinstated.

"Yes, I have been to four treatment centers. And, yes, in the last 16 years, I have relapsed twice. But I have had 14 or 15 years of excellent service to the people of Oklahoma. ... My patients love me."

After the board voted 5-4 to reinstate Kirk's license, one board member told him: "I think you got a huge gift today. ... Don't come back here."

But two years later, he was back, this time for prescribing controlled substances to more than 300 patients at St. John Sapulpa, records show.

Chapman said after reviewing Henderson's medical records and learning about her case, there are questions that need to be answered about her death.

Lopp said all she wants is for the full medical board to hear her complaint about Kirk's care of her mother. She said the board is "a rubber stamp factory for ... the foxes who guard the henhouses."

Kenneth Kirk's history

1980:

Arrested in Cleveland County and charged with felony possession of marijuana with intent to distribute. Records state Kirk "admitted that he intended to deal drugs to other students in medical school." Reduced to misdemeanor possession with a five-year deferred sentence.

2001:

Temporarily suspended from St. John Medical Center for incomplete medical records. Suspended again (date unknown) for same reason.

April 2004:

Fired by Omni Medical Group for "performance issues." Protective order entered against Kirk by his wife "due to threats of immediate harm to her and their children."

May 2004:

Entered treatment for the fourth time for drug and alcohol abuse at Rush Behavioral Health Center.

May 2005:

License revoked by state medical board.

April 2006:

Applied for reinstatement of his medical license. Stated he had "used several substances in an addictive fashion in the past beginning in 1978."

July 2006:

Medical board reinstated Kirk's license under a five-year probation with restrictions, including a ban on prescribing or dispensing any controlled drugs.

April 2008:

Complaint filed with the medical board accusing Kirk of authorizing 363 prescriptions for controlled substances for nursing home and hospital patients.

July 2008:

Ray Repogle, CEO of Continuous Care Centers and administrator of St. John in Sapulpa, testified on Kirk's

behalf and to "the hospital's culpability in allowing Dr. Kirk to prescribe to patients." Board voted unanimously to find Kirk in violation of probation, suspending his license for 30 days and imposing a \$10,000 fine.

May 2011:

Kirk appeared before the board to request permission to prescribe narcotics to patients at Continuous Care Centers. Board voted 4-3 to allow him to prescribe certain controlled substances to patients.

June 4, 2012:

Mary Henderson admitted to Continuous Care Center of Tulsa for rehabilitation following treatment for throat cancer.

June 7, 2012:

Medical records show Henderson "called the sheriff earlier today and wants to call the ambulance now." The attending physician, Kirk, authorized "restraints as necessary," along with Haldol and Zyprexa.

June 12, 2012:

Henderson "agitated and wants a lawyer."

June 14, 2012:

Henderson died of an "apparent" heart attack in her hospital bed. "This is an expected death," the medical records note.

Sept. 13, 2012:

Continuous Care Center cited with 13 deficiencies, including improperly restraining Henderson in a straitjacket for 10 hours.

Feb. 1, 2013:

State medical board staff refused to hear complaint regarding Henderson, saying "no factual basis" existed to allow the board to consider it.

Check out your doctor

Various online services exist to check out medical professionals, but experts say consumers should use caution in relying on only one source.

For example, one popular physician rating service contained outdated information on Dr. Kenneth Kirk, a Tulsa physician whose license has been revoked by the state medical board. The service also gave Kirk 3.7 out of five stars, despite his license revocation and other serious disciplinary actions.

Medical experts interviewed by the Tulsa World advise patients or their families to check a doctor's disciplinary record, available at

tulsaworld.com/disciplinedoctors

, for medical doctors.

Osteopathic doctors are not listed on the site, but a list of osteopaths disciplined in the past five years is available at

tulsaworld.com/osteopaths

Also, consumers should seek referrals from trusted sources such as friends or family members. Make sure

the doctor you choose accepts your insurance and has admitting privileges at the hospitals you want to use.

Malpractice lawsuits against doctors can be checked on the Oklahoma Supreme Court Network site -

tulsaworld.com/oscn

- by choosing your county and typing in the doctor's last name under "search court dockets."

Also try a simple Google search for a potential doctor to see if former patients have expressed concerns on patient advocacy sites.

Finally, medical experts say consumers should not be afraid to ask doctors questions about their experience, board certifications, specialties and education.

- ZIVA BRANSTETTER, World Enterprise Editor

Actions taken by Oklahoma Medical Licensure Board since 2009

Discipline description

2012

2011

2010

2009

Administrative fines

1

1

1

0

Agreements not to practice

1

0

2

0

Complaint citations

21

28

21

20

Licenses reinstated

1

2

1

0

Modified orders

0

4

5

6

Probation

12

11

6

15

Probation ended

3

8

10

5

Reprimands

3

6

2

2

Restriction to license

0

1

0

0

Restrictions lifted

1
1
0
0

Revoked licenses

4
0
3
2

Surrendered licenses

3
3
4
4

Suspended licenses

9
11
9
7

Forty-three actively licensed doctors are on probation under the state Medical Licensure Board. About half are serving five-year probation terms, a quarter are serving indefinite probation periods with the balance serving two- or three-year terms.

Among disciplinary actions taken since 2000, 306 doctors have been disciplined, of whom 149 have active licenses and are practicing in Oklahoma.

World Staff Writer Curtis Killman contributed to this report.

Ziva Branstetter 918-581-8306

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