



SEALED

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,
MIKE HUNTER,
ATTORNEY GENERAL OF OKLAHOMA

Plaintiff,

vs.

- (1) PURDUE PHARMA L.P.;
- (2) PURDUE PHARMA, INC.;
- (3) THE PURDUE FREDERICK COMPANY,
- (4) TEVA PHARMACEUTICALS USA, INC.;
- (5) CEPHALON, INC.;
- (6) JOHNSON & JOHNSON;
- (7) JANSSEN PHARMACEUTICALS, INC.,
- (8) ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC., n/k/a
JANSSEN PHARMACEUTICALS;
- (9) JANSSEN PHARMACEUTICA, INC.,
n/k/a JANSSEN PHARMACEUTICALS, INC.;
- (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC,
f/k/a ACTAVIS, INC., f/k/a WATSON
PHARMACEUTICALS, INC.;
- (11) WATSON LABORATORIES, INC.;
- (12) ACTAVIS LLC; and
- (13) ACTAVIS PHARMA, INC.,
f/k/a WATSON PHARMA, INC.,

Defendants.

STATE OF OKLAHOMA, s.s.
CLEVELAND COUNTY
FILED In The Court Consideration
Office of the Court Clerk
MAY 02 2019

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816
Honorable Thad Balkman

William C. Hetherington
Special Discovery Master

SEALED

DEFENDANTS TEVA PHARMACEUTICALS USA, INC.,
CEPHALON, INC., WATSON LABORATORIES, INC., ACTAVIS LLC,
AND ACTAVIS PHARMA, INC., f/k/a WATSON PHARMA, INC.'S
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

EXHIBIT 46 FILED UNDER SEAL

EXHIBIT 46

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

FILED

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

NOV 02 2006

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.)
)
TINA CHRISTINE SMALL, M.D.,)
LICENSE NO. 24054,)
)
Defendant.)

Case No. 06-08-3138

**ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION**

Plaintiff, the State of Oklahoma, ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Elizabeth A. Scott, Assistant Attorney General for the State of Oklahoma, and the staff of the Board, as represented by the Secretary of the Board, Gerald C. Zumwalt, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, Tina Christine Small, M.D., Oklahoma license no. 24054, who appears in person and through counsel, Ken Sue Doerfel, proffer this Agreement for acceptance by the Board *en banc* pursuant to Section 435:5-1-5.1 of the Oklahoma Administrative Code ("OAC").

AGREEMENT AND ACKNOWLEDGMENT BY DEFENDANT

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on October 2, 2006 and acknowledges that hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act").

Defendant, Tina Christine Small, M.D., states that she is of sound mind and is not under the influence of, or impaired by, any medication or drug and that she fully recognizes her right to appear before the Board for evidentiary hearing on the allegations made against her. Defendant hereby voluntarily waives her 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 she has

read and understands the terms and conditions stated herein, and that this Agreement has been reviewed and discussed with her and her legal counsel.

PARTIES' AGREEMENT AND STIPULATIONS

Plaintiff, Defendant and the Board staff stipulate and agree as follows:

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, Tina Christine Small, M.D., holds Oklahoma license no. 24054 and practices physical medicine and rehabilitation in Lawton, Oklahoma.

3. Beginning in or around April 2005 and continuing through July 8, 2006, Defendant treated Patient TCE following her surgery for a malignant brain tumor. Defendant's treatment of the patient included pain management.

4. During the course of the patient's treatment, Defendant was given coupons from drug representatives for six (6) free Morphine Actiq suckers. According to the coupons, patients are only eligible to redeem one (1) coupon. To get around this requirement, but in an effort to assist the financially strapped family of her patient, on or about April 22, 2005, Defendant wrote a prescription for six (6) Morphine Actiq suckers, a Schedule II controlled dangerous substance, in the name of JCE, [Redacted]. Defendant admits that although written in the name of JCE, the prescription was intended for the use of Patient TCE.

5. Defendant also admits that she kept no chart on JCE, [Redacted] during this period of time, that she did not establish a legitimate medical need for the medical treatment, that she did not perform any examination prior to prescribing the medication, and that she failed to maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient. The only record kept by Defendant is a copy of the prescription written to JCE, which was kept in the chart of Patient TCE.

6. In or around April or May 2005, Defendant wrote a prescription for six (6) Morphine Actiq suckers, a Schedule II controlled dangerous substance, in the name of CRE, the [Redacted]. Defendant admits that although written in the name of CRE, the prescription was intended for the use of Patient TCE.

7. Defendant also admits that she kept no chart on CRE, the [Redacted] that she did not establish a legitimate medical need for the medical treatment, that she did not perform any examination prior to prescribing the medication, and that she failed to maintain an

office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient. Defendant kept no record of this prescription in the name of CRE.

8. In or around mid-2006, Defendant wrote a prescription for thirty (30) Xanax, a Schedule IV controlled dangerous substance, with two (2) refills, in the name of CFE, Redacted of Patient TCE. Defendant admits that she did not establish a legitimate medical need for the medical treatment, that she did not perform any examination prior to prescribing the medication, and that she failed to maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient. Defendant kept no record of this prescription in the name of CFE. Defendant also states that CFE had been prescribed Xanax by her personal physician, but did not bring the medication with her.

9. On one (1) occasion, during the course of Defendant's treatment of TCE and during the time Defendant, along with several others, stabled her horses on the patient's property, Defendant met the Redacted for a beer and then immediately left.

10. Defendant is guilty of unprofessional conduct in that she:

- A. 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).
- B. 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).
- C. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
- D. 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).
- E. Failed 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).
- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- G. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid

physician patient relationship in violation of 59 O.S. §509(12).

- H. Prescribed, dispensed or administered a controlled substance 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 in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).
- I. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

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, Tina Christine Small, M.D., Oklahoma medical license 24054, is guilty of unprofessional conduct set forth below based on the foregoing facts:

- A. 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).
- B. 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).
- C. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
- D. 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).
- E. Failed 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).

- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- G. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).
- H. Prescribed, dispensed or administered a controlled substance 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 in violation of 59 O.S. §509(16) and OAC 435:10-7-4(2) and (6).
- I. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

Order

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

1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.
2. The Defendant, Tina Christine Small, M.D., Oklahoma license no. 24054, should be and is hereby **PUBLICLY REPRIMANDED** for the conduct set forth above.
3. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Defendant shall be placed on **PROBATION** for a period of one (1) year under the following terms and conditions:
 - A. Defendant will conduct her practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said Act 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 Oklahoma State Board of Medical Licensure and Supervision.

B. Upon request of the Board Secretary, Defendant will request all hospitals in which she anticipates practicing to furnish to the Board Secretary of the Oklahoma State Board of Medical Licensure and Supervision a written statement regarding monitoring of her practice while performing services in or to that hospital.

C. Defendant will furnish to each and every state in which she holds licensure or applies for licensure and hospitals, clinics or other institutions in which she holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of Medical Licensure and Supervision.

D. Defendant will not supervise allied health professionals that require surveillance of a licensed physician, i.e., physician assistants and advanced registered nurse practitioners.

E. Defendant will keep duplicate, serially numbered prescriptions of all controlled dangerous substances and addictive drugs readily retrievable, in numerical order and will furnish copies to investigators or other authorized agents of the Board immediately upon request.

F. Defendant shall complete a Prescribing Class at a facility approved in advance by the Board Secretary on prescribing and required record keeping. Defendant shall provide to the Board Secretary proof of completion of said class.

G. Defendant shall complete a Boundaries Class at a facility approved in advance by the Board Secretary. Defendant shall provide to the Board Secretary proof of completion of said class.

H. Defendant will not prescribe, administer or dispense any medications for personal use or for that of any family member.

I. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of her current address.

J. Defendant will keep current payment of all assessments by

the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of her case, which shall include but is not limited to a one hundred dollar (\$100.00) per month fee during the term of probation.

K. Until such time as all indebtedness to the Oklahoma State Board of Medial Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

L. Defendant shall make herself available for one or more personal appearances before the Board or its designee upon request.

M. Defendant shall submit any required reports and forms on a timely, accurate and prompt basis to the Compliance Coordinator or designee.

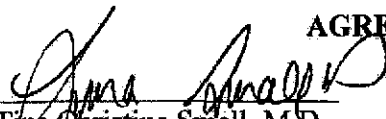
N. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

Dated this 2 day of November, 2006.

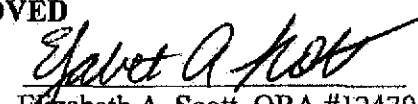


Billy H. Stout, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED

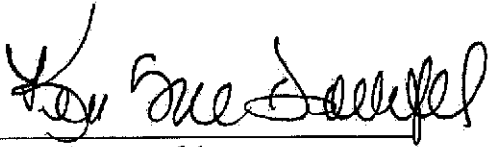


Tina Christine Small, M.D.
License No. 24054



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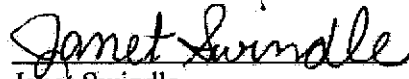
Attorney for the Defendant



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

CERTIFICATE OF MAILING

I certify that on the 6 day of November, 2006, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Ken Sue Doerfel, 910 N.E. 75th, Lawton, OK 73507.


Janet Swindle