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

STATE OF OKLAHOMA

FILED

FEB 17 1994

STATE OF OKLAHOMA, ex rel,)
OKLAHOMA STATE BOARD OF)
MEDICAL LICENSURE AND)
SUPERVISION,)
)
Plaintiff,)
)
v.)
)
THOMAS A. AVERY, M.D.)
Medical License No. 10046,)
)
Defendant.)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

CASE NO. 91-08-1209

FINAL ORDER

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on February 12, 1994, at the office of the Oklahoma State Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Daniel J. Gamino, Attorney, appeared for the Plaintiff; and Thomas A. Avery, M.D., Defendant, appeared in person and by and through legal counsel, Charles M. Laster, Attorney at Law, Lawyers Building, 102 E. Highland, Shawnee, OK 74801.

That the Oklahoma Board of Medical Licensure and Supervision en banc heard the oral argument of counsel, reviewed exhibits, heard testimony and being fully advised in the premises, the Oklahoma Board finds and orders as follows:

FINDINGS OF FACT

1. That Defendant, Thomas A. Avery, M.D., formerly held Oklahoma Medical License No. 10046.

2. That the Oklahoma Board of Medical Licensure and Supervision en banc has jurisdiction over the subject matter herein and that notice has been given in all respects as required by law and the rules of the Board.

3. That on or around May 20, 1993, following notice and hearing, the Oklahoma Board of Medical Licensure and Supervision issued a Final Order to the Defendant. The Final Order incorporated terms and conditions of a Voluntary Submittal to Jurisdiction worked out between Defendant, Defendant's legal counsel, and the Board's legal counsel.

4. Said Order provided in pertinent part as follows, to-wit:

"(c) During the period of probation Defendant will abstain from consuming alcohol or any substance, specifically including but not limited to controlled dangerous substances, which would adversely affect his ability to practice medicine or surgery as interpreted by the Oklahoma State Board of Medical Licensure and Supervision."

5. That said portion of the aforesaid Final Order has remained in full force and effect and has not been modified or

amended by the Oklahoma Board of Medical Licensure and Supervision.

6. That since the date of the issuance of the aforesaid Final Order, Defendant has deliberately and willfully ingested alcohol as shown by analysis of urine sample he provided on August 25, 1993, at the request of the Compliance Coordinator. Analysis of that urine sample indicated it was positive for alcohol at the level of .18.

7. That the Defendant's conduct in ingesting alcohol in this amount is contrary to the plain terms and conditions of the Final Order issued by the Board.

8. That the conduct of the Defendant in ingesting alcohol in that amount contrary to the Board Order imperatively requires emergency Board action in order to protect public health, safety and welfare.

9. That following notice and hearing on October 2, 1993, the Board found that in the interest of protection of public health, safety and welfare, Defendant's Oklahoma medical license should be suspended until this matter came on for evidentiary hearing and that the Defendant's Oklahoma medical license was suspended on an emergency basis.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction over this matter pursuant to the legal authority of the Oklahoma Medical Practice Act, 59 O.S. 1991, Sec. 481 et seq., and the previous Orders entered by the Board on or around May 20, 1993, and on or around October 2, 1993.

ORDER

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

1. That Defendant, Thomas A. Avery, M.D., formerly holding Oklahoma Medical License No. 10046, should be and is hereby SUSPENDED for a period of six (6) additional months until August 12, 1994.

2. That at the conclusion of the aforesaid six-month suspension, Defendant, Thomas A. Avery, M.D., should be restored to Oklahoma Medical License No. 10046 and further be placed on a term of indefinite probation to the Oklahoma State Board of Medical Licensure and Supervision beginning on August 12, 1994, under the following terms and conditions:

During the period of probation Defendant will not prescribe, administer or dispense any medications for his personal use, to specifically include controlled dangerous substances.

During the period of probation Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need and Defendant shall have an affirmative duty to inform any physician treating him of Defendant's previous use of alcohol and previous diagnosis of recurrent depression.

During the period of probation Defendant will abstain from consuming alcohol or any substance, specifically including but not limited to controlled dangerous substances, which would adversely affect his ability to practice medicine or surgery as interpreted

by the Oklahoma State Board of Medical Licensure and Supervision.

During the period of probation Defendant will submit biological fluid specimens to include, but not limited to, blood and urine, for analysis, upon request of any investigator or other agent representing the Oklahoma State Board of Medical Licensure and Supervision, and Defendant will pay for testing and analysis of those specimens.

- (e) During the period of probation Defendant will continue regular attendance at the Physician Recovery Committee of the Oklahoma State Medical Association and shall sign a recovery contract with that organization that shall include but not be limited to requiring Defendant to make 90 AA meetings in 90 days and to appear for and participate in weekly meetings of the Physician Recovery Committee until such time as the Committee advises weekly attendance is not mandatory and to make a copy of the contract available to Compliance Consultants of the Oklahoma Board of Medical Licensure and Supervision and Defendant shall fulfill all terms and conditions thereof. Defendant shall document attendance of the above meetings by producing sheet signed by Chairman of each session.

During the period of probation Defendant shall furnish each and every state in which he holds licensure or applies for licensure, and notify all hospitals or clinics or groups in which he anticipates holding any form of staff privileges, a copy of this Board Order stipulating sanctions imposed by the Board.

During the period of probation Defendant will furnish to the office of the Oklahoma State Board of Medical Licensure and Supervision all current legal addresses and any change of address in writing.

Defendant shall appear before the Board or a designated member thereof whenever requested to do so.

During the period of probation Defendant will submit to the Investigation Division of the Oklahoma State Board of Medical Licensure and Supervision any required reports and forms on a timely and prompt basis.

That Defendant will conduct his practice in compliance with the Oklahoma Medical Practice 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 the interpretation is received by Defendant from the Board.

- (k) During the period of probation Defendant will not supervise a Physician's Assistant.

Pursuant to Title 59 O.S. Sec. 506, Defendant shall promptly pay within 30 days of receipt

of invoice from the Board the costs of investigation, prosecution and probation of this case, unless the Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.


During the period of probation Defendant will keep current payment of all assessment by the Board for investigation, prosecution and probation monitoring of his case.

That violation of any of the terms and conditions of probation shall be grounds for additional charges to be presented to the Board after notice to the Defendant.

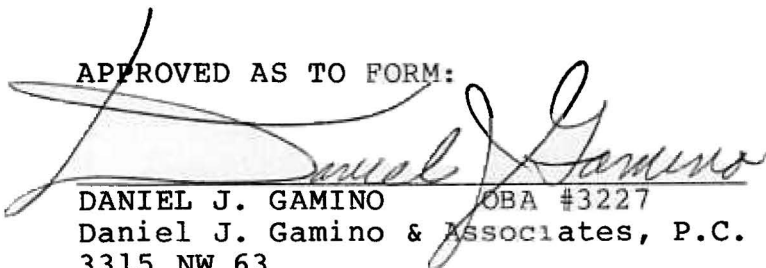
3. That the jurisdiction of the Board in this individual proceeding will continue in this matter until the terms and conditions of probation are modified or withdrawn by the Oklahoma State Board of Medical Licensure and Supervision, either on their own motion or on the motion of the Defendant.

4. That failure to meet any of the above terms of probation will constitute cause for the Board to initiate additional proceedings to suspend or revoke Defendant's Oklahoma medical license, after additional due notice and hearing.

DATED this 17 day of Feb, 1994.


GERALD C. ZUMWALT, M.D., Secretary
State Board of Medical Licensure
and Supervision

APPROVED AS TO FORM:


DANIEL J. GAMINO OBA #3227
Daniel J. Gamino & Associates, P.C.
3315 NW 63
Oklahoma City, OK 73116
(405) 840-3741
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 18 day of Feb, 1994, to:

THOMAS A. AVERY, M.D.
c/o Charles Laster
Attorney at Law
102 E. Highland
Shawnee, OK 74801

