

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, )

JUL 26 2001

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Plaintiff, )

v. )

Case No. 91-08-1209

THOMAS A. AVERY, M.D., )  
LICENSE NO. 10046 )

Defendant. )

**FINAL ORDER OF REVOCATION**

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on July 19, 2001, 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, Charles M. Laster.

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, Thomas A. Avery, M.D., holds Oklahoma license no. 10046, and is authorized to practice as a physician and surgeon under the terms of a Final Order issued February 12, 1994.

4. The Final Order sets forth Defendant's terms of probation and provides that Defendant shall be on indefinite probation as follows:

- (a) During the period of probation Defendant will not prescribe, administer or dispense any medications for his personal use, to specifically include controlled dangerous substances.
- (b) 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.
- (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.
- (d) 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 sheets signed by the Chairman of each session.
- (e) Defendant shall appear before the Board or a designated member thereof whenever requested to do so.
- (f) 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.

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

6. On or about July 27, 1999, Defendant tested positive for Ethanol on a drug screen obtained on behalf of the Oklahoma State Board of Medical Licensure and Supervision. Defendant admitted to the Board Compliance Coordinator and to the Board Secretary that he had ingested some Levsin Elixir for which he did not have a doctor's approval to take.

7. During his probation review in December 1999, Defendant admitted to the Board Compliance Consultant and to the Board Secretary that he had failed to attend regular meetings of the Physician Recovery Committee of the Oklahoma State Medical Association.

8. On May 15, 2000, Defendant was scheduled to meet with the Compliance Consultant, but failed to appear as required.

9. On or about July 7, 2000, Defendant was terminated by his employer, Great Plains Regional Medical Center based upon blood and urine samples which tested positive for alcohol. Hospital emergency room staff reported that Defendant smelled of alcohol on previous occasions while on duty.

10. On July 24, 2000, Defendant met with Tom Sosbee, Compliance Consultant, for a probation review. At the conclusion of the meeting, Mr. Sosbee requested a urine specimen. At that time, for the first time, Defendant claimed that he had forgotten to tell Mr. Sosbee that he had just taken some Levsin. Levsin had not been prescribed for Defendant at that time. The urine specimen subsequently tested positive for alcohol.

11. The Physician's Recovery Program has reported that Defendant has failed to attend even one (1) meeting per month of the group and that he attended no support group meetings during the month of July 2000.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. §509(5) 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(9) 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(14) 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(16) and OAC 435:10-7-4(40).

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

### *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. §509(5) 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(9) 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(14) 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(16) and OAC 435:10-7-4(40).

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

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(5), (9)

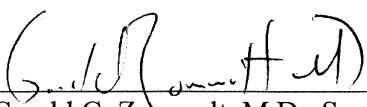
(14) and (16) and OAC 435:10-7-4(3), (11), (26), (39) and (40), and that if Defendant ever obtains reinstatement of his license, that it shall be under terms of probation.

***Order***

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

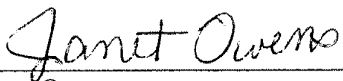
1. The license of Defendant, Thomas A. Avery, M.D., Oklahoma license no. 10046, is hereby **REVOKED** as of the date of this hearing, July 19, 2001.
2. Should Defendant ever obtain reinstatement of his license, it shall be under terms of probation.
3. Promptly upon receipt of an invoice, Defendant shall 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 revoked license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs.

Dated this 26 day of July, 2001.

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

**CERTIFICATE OF SERVICE**

I certify that on the 27 day of July, 2001, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Charles M. Laster, 102 E. Highland, Shawnee, OK 74801 and Thomas A. Avery, 207 Jones Rd., Shawnee, OK.

  
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Janet Owens