

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

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,  
OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE AND  
SUPERVISION,

Plaintiff,

MERLI G. FERMO, M.D.  
Medical License No. 10751

CASE NO 90-03-1028

Defendant. )  
)

FINAL ORDER

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision en banc on June 8, 1990, at the office of the Oklahoma 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 Merli G. Fermo, M.D., Defendant, appeared in person and by counsel, Michael C. Turpen and Richard A. Mildren, Chapel, Riggs, Abney, Neal & Turpen.

The Board of Medical Licensure and Supervision en banc heard the announcements of counsel and being fully advised in the premises, the Board of Medical Licensure and Supervision therefore finds as follows:

FINDINGS OF FACT

1. That Merli G. Fermo, M.D., holds Oklahoma Medical License No. 10751.

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 from approximately May 6, 1987, to May 15, 1989, Defendant, Merli G. Fermo, M.D., did present claims for payment of public funds to the Oklahoma Department of Human Services (Medicaid) and did collect medical fees on patients based on a billing code indicating that each patient received 45-50 minutes of individual psycho-therapy per day, when in fact that entire quantity of individual psycho-therapy was not rendered by the Defendant. The Defendant did render said patients some amount of individual psycho-therapy, and routinely provided conjoint therapy and family therapy, as well as consultations with other physicians and team meetings with psychologists, nurses, social workers, psychiatric aides and recreational therapists.

4. That on or around February 23, 1990, Defendant, with advice of legal counsel, did plead guilty and received a deferred sentence on five counts of filing a false claim, contrary to the provisions of 21 O.S. 1981, Sec. 358, in Oklahoma County District Court Case No. CF-90-1050. The deferred sentence received by the Defendant, pursuant to 22 O.S. 1981, Sec. 999(c), is not a final judgment and sentence, but only a conditional order entered by the court. Said conditional order will be dismissed by the court and all records of this action will be expunged upon the

Defendant's successful completion of the terms and conditions specified by the court.

5. That as a condition of the five-year deferred sentence, Defendant must pay a fine in the amount of \$50,000.00 and make restitution in the amount of \$150,000.00. That the Defendant has lost her provider agreement with Medicaid and Medicare and cannot continue to render medical services under those programs.

6. That there is no evidence herein of any patient abuse or substandard patient care.

#### CONCLUSIONS OF LAW

1. That Merli G. Fermo, M.D., holding Oklahoma Medical License No. 10751, is in violation of the Oklahoma Medical Practice Act, 59 O.S. 1981, Sec. 509, Paragraph 10, to-wit:

"10. The commission of any act which is a violation of the criminal laws of Oklahoma when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct."

#### ORDER

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

1. That Defendant, Merli G. Fermo, M.D., Oklahoma Medical License No. 10751, should be and is hereby placed on probation to the Oklahoma State Board of Medical Licensure and Supervision for a period of approximately four (4) years and nine (9) months, beginning on June 8, 1990, and ending on February 23, 1995, under the following terms and conditions:

During the period of probation Defendant shall comply with all terms and conditions of the deferred sentence entered on February 23, 1990, in Oklahoma County District Court Case No. CF-90-1050, and shall provide evidence of successful completion and compliance with all terms to the investigation and probation division of the Oklahoma Board of Medical Licensure and Supervision.

That the Defendant shall create and keep in place an in-house, billing system that will prevent all inappropriate future charges to patients or third party payers.

That the Defendant shall provide the Board with notice of any application for reinstatement of her provider status with Medicare in advance of such filing.

During the period of probation Defendant shall notify any hospital where she holds staff privileges, or clinic, or group where she practices, of the terms and conditions of this Board Order and supply a copy thereof.

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.


- (f) That Defendant shall appear before the Board or a designated member thereof whenever requested to do so.
- (g) 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.
- (h) Pursuant to Section 26, H.B. 1478, 1987 Legislature, Defendant shall promptly pay upon receipt of invoice from the Investigation Division of the Board the costs of investigation, prosecution and probation of this 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.

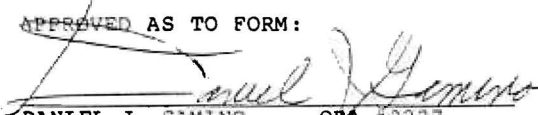
2. That the jurisdiction of the Board in this individual proceeding will continue until the terms and conditions of probation are modified or lifted by the Oklahoma Board of Medical Licensure and Supervision on their own motion or on the motion of the Defendant.


3. The Defendant further agrees 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 21ST day of JUNE, 1990.

  
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

  
MICHAEL C. TURPEN OBA #9139  
Chapel, Riggs, Atney, Neal & Turpen  
5801 N Broadway, Suite 101  
Oklahoma City, OK 73118  
(405) 843-9909  
ATTORNEY FOR DEFENDANT

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 22 day of June, 1990, to:

MICHAEL C. TURPEN  
Chapel, Riggs, Abney, Neal & Turpen  
5801 N. Broadway, Suite 101  
Oklahoma City, OK 73118

Janet Owens