

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

FILED

AUG 21 2006

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 05-09-2993

MARS BALDOZA GONZAGA, M.D.,)
LICENSE NO. 11062,)

Defendant.)

COMPLAINT

COMES NOW the 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, and for its Complaint against the Defendant, Mars Baldoza Gonzaga, M.D., alleges and states as follows:

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. Defendant, Mars Baldoza Gonzaga, M.D., holds Oklahoma license no. 11062 and is a general practitioner in Stroud, Oklahoma.

3. From October 22, 1979 until November 11, 2005, Defendant treated Patient BDW, a resident of Oklahoma City, for alleged pain, anxiety and chronic bronchitis.

4. From 1991 until 2003, Defendant's chart reflects that out of seventy (70) patient visits, Patient BDW received a prescription for narcotics on every visit to Defendant. Defendant's chart reflects that he prescribed Promethazine with Codeine on sixty-four (64) of the seventy (70) visits. On the remaining six (6) visits, the patient received one or more prescriptions for Valium, Tylenol with Codeine, Xanax or Viagra. Defendant's chart on this patient reveals that he failed to perform a complete physical examination on this patient prior to prescribing the controlled dangerous drugs, that he did not order appropriate tests, that he did not establish a legitimate medical need for the medications, and that he did not maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient.

5. Pharmacy records and the patient chart reveal that from January 9, 2004 until November 7, 2005, Defendant wrote or authorized ninety-three (93) prescriptions for controlled dangerous drugs to Patient BDW for alleged pain, anxiety, and chronic bronchitis. These prescriptions include two (2) prescriptions for Dilaudid and Dilaudid cough syrup, Schedule II controlled dangerous drugs, twenty-two (22) prescriptions for Hydrocodone and Tylenol with Codeine, Schedule III controlled dangerous drugs, thirty-eight (38) prescriptions for Xanax and Valium, Schedule IV controlled dangerous drugs, and thirty-one (31) prescription for Promethazine with Codeine, a Schedule V controlled dangerous drug. During this period of time, Patient BDW received a prescription for narcotics on every visit to Defendant, as well as numerous prescriptions for narcotics not noted in the patient chart. Defendant's chart on this patient reveals that he failed to perform a complete physical examination on this patient prior to prescribing the controlled dangerous drugs, that he did not order appropriate tests, that he did not establish a legitimate medical need for the medications, and that he did not maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of the patient.

6. In or around December 2004, Vaughn Conway, the law partner of Patient BDW, contacted Defendant and advised him that Patient BDW was addicted to the medications being prescribed by Defendant, and that the medications were affecting Patient BDW's personality and his work.

7. Defendant subsequently advised Patient BDW during his next patient visit about the statements made by Mr. Conway that Patient BDW was addicted to the medications being prescribed by Defendant. Patient BDW told Defendant to ignore Mr. Conway. Defendant continued to prescribe controlled dangerous drugs to Patient BDW.

8. In or around August 2005, Mr. Conway and his employee, Elda Muniz, both contacted Defendant in writing, advising him that the medications Patient BDW was receiving from Defendant were causing him to be impaired. Defendant continued to prescribe controlled dangerous drugs to Patient BDW.

9. Only after receiving a Board subpoena for the patient chart of Patient BDW on November 15, 2005 did Defendant stop prescribing controlled dangerous substances to the patient.

10. When questioned by Board investigators in December 2005, Defendant admitted that both Vaughn Conway and Elda Muniz had previously advised him that Patient BDW was addicted to the medications prescribed by Defendant and that he nevertheless continued to prescribe controlled dangerous substances to the patient. When asked why he continued to prescribe controlled dangerous substances to the patient after receiving complaints from Mr. Conway and Ms. Muniz, Defendant stated that the patient's mother had previously worked for him.

11. Patient BDW continued to request prescriptions for controlled dangerous substances from Defendant, but Defendant refused due to the Board investigation.

12. On or about May 16, 2006, Patient BDW shot his wife and killed himself.

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

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. 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).

C. Prescribed a drug without sufficient examination and establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).

D. 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) and 435:10-7-4(41).

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

F. Prescribed, dispensed or administered a controlled substance or narcotic drugs in excess of the amount considered good medical practice, or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. 509(16).

G. Engaged in the indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).

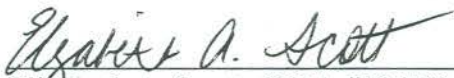
H. Prescribed, sold, administered, distributed, ordered or gave to a habitué or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug in violation of OAC 435:10-7-4(25).

I. Prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standard in violation of OAC 435:10-7-4(2) and (6).

Conclusion

WHEREFORE, the Plaintiff respectfully requests that the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to Defendant's medical license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



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