

FILED

MAR 22 2007

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

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

Plaintiff,

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MAR 14 2007

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE
AND SUPERVISION

v.

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

Defendant.

Case No. 05-09-2993

**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, Mars Baldoza Gonzaga, M.D., Oklahoma license no. 11062, who appears in person and pro se, 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 August 21, 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, Mars Baldoza Gonzaga, M.D., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his 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 he has

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

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, 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-two (92) prescriptions for controlled dangerous drugs to Patient BDW for alleged pain, anxiety, and chronic bronchitis. These prescriptions include one (1) prescription for Dilaudid, a Schedule II controlled dangerous drug, 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 prescribed 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 prescribed 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).

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, Mars Baldoza Gonzaga, M.D., Oklahoma medical license 11062, 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. 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).

Order

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

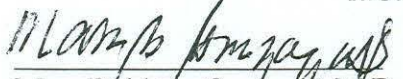
1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.
2. The Defendant, Mars Baldoza Gonzaga, M.D., Oklahoma license no. 11062, should be and is hereby **PUBLICLY REPRIMANDED** for the conduct set forth above.
3. Within one (1) year of the date of this Voluntary Submittal to Jurisdiction, Defendant shall complete a course on addiction, to be approved in advance by the Board Secretary. Defendant shall provide to the Board Secretary proof of completion of said class.
4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.
5. A copy of this written order shall be sent to Defendant as soon as it is processed.


Dated this 22 day of March, 2007.




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

AGREED AND APPROVED


Mars Baldoza Gonzaga, M.D.
License No. 11062

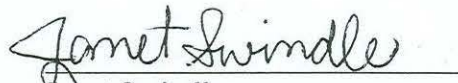

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Board of Medical Licensure and
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Gerald C. Zumwalt, M.D.
Secretary and Medical Advisor
Oklahoma State Board of
Medical Licensure and Supervision

CERTIFICATE OF MAILING

I certify that on the 23 day of March, 2007, I mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Mars Baldoza Gonzaga, P.O. Box 1237, Drumright, OK 74030.


Janet Swindle