

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,)

AUG 17 2009

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 09-03-3710

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.

PREVIOUS DISCIPLINARY ACTION

3. On or about August 22, 2006, the State filed a Complaint against Defendant. The Complaint was based upon allegations that Defendant had issued numerous prescriptions for narcotics, the majority of which were for Promethazine with Codeine, to Patient BDW, without a documented medical need and despite claims that the patient was addicted to the medications.
4. As a result of that case, on March 22, 2007, Defendant executed a Voluntary Submittal to Jurisdiction wherein he plead guilty to certain allegations in the Complaint. Specifically, Defendant admitted that he had prescribed the narcotics, including the Promethazine with Codeine, to Patient BDW without performing a complete physical exam, that he did not order appropriate tests, that he did not establish a legitimate medical need for the medications, and that his records did not reflect the evaluation, treatment and medical necessity of treatment of

the patient. In that case, Patient BDW's law partner had contacted Defendant and advised him that Patient BDW was addicted to the medications being prescribed by Defendant, yet Defendant continued to prescribe the medications to Patient BDW. Patient BDW eventually shot his wife and killed himself.

5. As a result of pleading guilty to the allegations set forth in the Voluntary Submittal to Jurisdiction, Defendant received a Public Reprimand and was ordered to complete a course on addiction to be approved by the Board Secretary.

CURRENT ALLEGATIONS OF UNPROFESSIONAL CONDUCT

6. From November 4, 1988 until at least June 11, 2009, Defendant treated Patient TDW, the brother of Patient BDW, who was the patient in the August 2006 Complaint against Defendant. Patient TDW is a resident of Drumright, Oklahoma and Defendant treated him for alleged allergic rhinitis, anxiety and acute nasopharyngitis.

7. In 2006, Defendant's chart reflects that out of eighteen (18) patient visits, Patient TDW received a prescription for Promethazine with Codeine for alleged Allergic Rhinitis on each of the eighteen (18) visits to Defendant, along with numerous other controlled and non-controlled medications. 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. Defendant's chart reflects numerous visits with no documentation other than the words "Chronic Rhinitis" and "Phenergan w/Codeine" and the dosage for the same. These charts reflect no physical findings.

8. Pharmacy records and the patient chart reveal that from January 2, 2007 until June 11, 2009, Defendant wrote or authorized one-hundred sixty-seven (167) prescriptions for controlled dangerous drugs to Patient TDW for alleged allergic rhinitis, anxiety and acute nasopharyngitis. These prescriptions include one (1) prescription for Butalbital/Alprazolam/Cod, a Schedule III controlled dangerous drug, fourteen (14) prescriptions for Alprazolam, Schedule IV controlled dangerous drug, two (2) prescriptions for Lonox, a Schedule V controlled dangerous drug, and **one-hundred fifty (150) prescription for Promethazine with Codeine, a Schedule V controlled dangerous drug.** During this period of time, Defendant's chart on Patient TDW reflects one-hundred (100) patient visits and that Patient TDW received a prescription for **Promethazine with Codeine on all one-hundred (100) visits** to Defendant, as well as numerous prescriptions for other narcotics. Pharmacy records reflect the additional fifty (50) prescriptions for Promethazine with Codeine 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.

9. Defendant's long term treatment of Patient TDW with Promethazine with Codeine while failing to perform a complete physical examination, failing to order appropriate tests, failing to establish a legitimate medical need for the medications, and failing to maintain an office record that accurately reflected the evaluation, treatment and medical necessity of treatment of the patient was **after** Defendant had been disciplined by this Board for identical actions and medical treatment of Patient TDW's brother, Patient BDW.

10. 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. 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(15) and OAC 435:10-7-4(40).

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. Engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).

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).

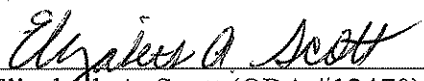
J. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

K. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).

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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