

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

FILED

OCT 09 2009

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 09-03-3710

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

Defendant.)

FINAL ORDER OF PROBATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on September 17, 2009, 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 pro se.

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.* 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 Drumright, 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/Apap/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. 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).

B. 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).

C. 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).

D. 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).

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

F. 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 is guilty of unprofessional conduct in that he:

A. 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).

B. 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).

C. 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).

D. 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).

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

F. 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).

3. The Board further found that the Defendant's license should be placed on **INDEFINITE PROBATION** based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509 (13), (15), (16) and (18) and OAC 435: 10-7-4 (1), (2), (6), (39), (40) and (41).

Order

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

1. Defendant, Mars Baldoza Gonzaga, M.D., Oklahoma license no. 11062, is hereby placed on **INDEFINITE PROBATION** under the following terms and conditions:

A. Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said Act shall be submitted in writing to the Board and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Oklahoma State Board of Medical Licensure and Supervision.

B. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of

Medical Licensure and Supervision.

C. Defendant will not supervise allied health professionals that require surveillance of a licensed physician.

D. Defendant shall allow the Compliance Consultant or his designee to review his charts on a quarterly basis to determine if his charts reflect the evaluation, treatment and medical necessity of treatment of his patients.

E. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.

F. Defendant will keep current payment of all assessments by the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of his case, which shall include but is not limited to a one hundred dollar (\$100.00) per month fee during the term of probation, unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

G. Until such time as all indebtedness to the Oklahoma State Board of Medical Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

H. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.

I. Defendant shall submit any required reports and forms on a timely, accurate and prompt basis to the Compliance Coordinator or designee.

J. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

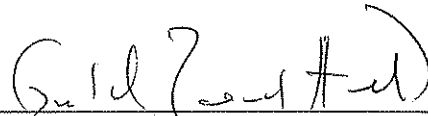
K. Defendant will not prescribe, administer, dispense or possess any drugs in Schedules II through V.

L. Defendant shall attend the University of Oklahoma College of Medicine Office of Continuing Medical Education Primary Care Update each year during the term of his probation.

2. After one (1) year, Defendant shall appear before the Board so that the Board may review Defendant's practices and his charts, as well as his compliance with the probationary terms. Defendant shall continue to appear before the Board on an annual basis during the term of his 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.

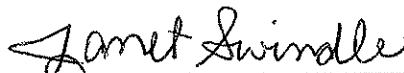
Dated this 9 day of ^{Oct}~~September~~, 2009.
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Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of
Medical Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 9 day of ^{October}~~September~~, 2009, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Mars Gonzaga, P.O. Box 1237, Drumright, OK 74030.



Janet Swindle