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

FILED

STATE OF OKLAHOMA)	SEP 1 1 2003
EX REL. THE OKLAHOMA BOARD)	
OF MEDICAL LICENSURE	ý	OKLAHOMA STATE BOARD OF
AND SUPERVISION,	ý	MEDICAL LICENSURE & SUPERVISION
Plaintiff,)	
)	
V.)	Case No. 02-01-2459
)	
JOE C. FERMO, M.D.,		
LICENSE NO. 11069,)	
)	
Defendant.)	

VOLUNTARY SUBMITTAL TO JURISDICTION AND ORDER

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, Joe C. Fermo, M.D., Oklahoma license no. 11069, who appears in person and through counsel, Rex Thompson, 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 April 17, 2003, 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, Joe C. Fermo, 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 by his legal counsel.

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, Joe C. Fermo, M.D., holds Oklahoma license no. 11069.

3. On or about August 8, 2002, while working at Eastern State Hospital, Defendant was struck by a patient. Two (2) aides intervened and physically restrained the patient. While the patient was being restrained by the aides, Defendant hit the patient twice in the left jaw with a closed fist. The incident was witnessed by four (4) staff members. As a result of this incident, Defendant was terminated from Eastern State Hospital.

- 4. 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(9) and OAC 435:10-7-4(11).
 - B. 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).

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 it applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

2. Defendant, Joe C. Fermo, M.D., Oklahoma medical license 11069, 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(9) and OAC 435:10-7-4(11).

B. 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).

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, Joe C. Fermo, M.D., Oklahoma license no. 11069, should be and is hereby **PUBLICLY REPRIMANDED** for the conduct set forth above.

3. Defendant shall attend a seminar approved in advance by the Board Secretary for a minimum of ten (10) hours on anger management within one (1) year. Defendant shall provide to the Board Secretary proof of completion of said seminar.

4. Defendant shall give a copy of this Voluntary Submittal to Jurisdiction and Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Defendant has privileges, has applied for privileges or applies for privileges.

5. Defendant agrees to pay the costs, including attorney's fees, for the investigation and prosecution of this action.

Dated this <u>1</u> day of August, 2003

In E Stiente

Eric Frische, M.D., President Oklahoma State Board of Medical Licensure and Supervision

AGREED AND APPROVED

Joe C. Fermo, M.D. License No. 11069

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

, Neal, Turpen, Orbison & Lewis 502 West 6th Street Tulsa, OK 74119-1010

alur a. Scott

Elizabeth A. Scott (OBA #12470) Assistant Attorney General State of Oklahoma 5104 N. Francis, Suite C Oklahoma City, OK 73102

Attorney for the Oklahoma State Board of Medical Licensure and Supervision

AGREED AND APPROVED

ermø MD License No. 11069

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

Rex Thompson Riggs, Abney, Neal, Turpen, Orbison & Lewis 502 West 6th Street Tulsa, OK 74119-1010

> Elizabeth A. Scott (OBA #12470) Assistant Attorney General State of Oklahoma 5104 N. Francis, Suite C Oklahoma City, OK 73102

Attorney for the Oklahoma State Board of Medical Licensure and Supervision

CERTIFICATE OF MAILING

I certify that on the 15th day of September, 2003, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Rex Thompson, Attorney, 502 West 6th Street, Tulsa, Ok 74119.

Janet Swindle, Secretary