

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

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)
OKLAHOMA STATE BOARD OF)
MEDICAL LICENSURE AND)
SUPERVISION,)
)
Plaintiff,)
v.)
)
< BERT M. AVERY, M.D.)
Medical License No. (11216))
)
Defendant.)

FILED
MAY 20 1993

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

CASE NO. 90-02-1013

ORDER TO STAY HEARING

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on May 14, 1993, at the office of the Oklahoma State Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Daniel J. Gamino, Attorney, appeared for the Plaintiff; and Bert M. Avery, M.D., Defendant, appeared in person and by legal counsel, Robert L. Wyatt, IV, of Jones & Wyatt, Attorneys, 114 E. Broadway, Suite 1100, P.O. Box 472, Enid, OK 73702-0472.

The Board of Medical Licensure and Supervision en banc reviewed exhibits, heard statements and being fully advised in the premises, the Oklahoma Board of Medical Licensure and Supervision finds and orders as follows:

FINDINGS OF FACT

1. That Defendant, Bert M. Avery, M.D., holds Oklahoma Medical License No. 11216.
2. That the Oklahoma Board of Medical Licensure and Supervision en banc has jurisdiction over the subject matter herein and that notice has been given in all respects as required by law and the rules of the Board.
3. That Defendant presented Motion to File Errata Sheet, Motion to File Out of Time, and Motion to Dismiss Complaint. Board staff had no objection to the Motion to File Errata Sheet and Motion to File Out of Time. The Defendant's Motion to Dismiss was sustained in part, and Plaintiff was ordered to strike from the Complaint any reference to Sec. 509, Para. 10.
4. That Defendant's Alternative Motion to Stay Proceedings was granted on the basis that Defendant was not yet convicted as a matter of law.

CONCLUSIONS OF LAW

1. Until Judgment and Sentence is entered against Defendant, Bert M. Avery, in United States v. Avery, CR-92-106-R, pending in the United States District Court for the Western District of Oklahoma, or some other case, Defendant has not been "convicted" as a matter of law, see State v. Bridwell, 592 P.2d 520 (Okla. 1979).

ORDER

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

1. That Defendant's Motion to File Errata Sheet and Motion to File Out of Time should be and are hereby SUSTAINED.
2. That Defendant's Motion to Dismiss Complaint is SUSTAINED IN PART and Plaintiff is ordered to strike from the Complaint any reference to 59 O.S. 1991, Sec. 509, Para. 10.
3. That Defendant's Alternative Motion to Stay Proceedings should be and is hereby GRANTED.
4. That a copy of this written Order should be sent to the Defendant and/or his legal counsel as soon as possible so their record is complete.

DATED this 20 day of May, 1993.

Gerald C. Zumwalt, M.D.
GERALD C. ZUMWALT, M.D., Secretary
State Board of Medical Licensure
and Supervision

APPROVED AS TO FORM:

Daniel J. Gamino
DANIEL J. GAMINO OBA #3227
Daniel J. Gamino & Associates, P.C.
3315 NW 63
Oklahoma City, OK 73116
(405) 840-3741
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 24 day of May, 1993, to:

BERT M. AVERY, M.D.
c/o Stephen Jones
Robert L. Wyatt, IV
Jones & Wyatt
P.O. Box 472
Enid, OK 73702-0472

Janet J. Owens