

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

STATE OF OKLAHOMA

FILED

STATE OF OKLAHOMA, ex rel,)
OKLAHOMA STATE BOARD OF)
MEDICAL LICENSURE AND)
SUPERVISION,)

FEB 17 1994

Plaintiff,)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.)

~~BERT M. AVERY, M.D.~~)
Medical License No. 112167)

CASE NO. 93-08-1542

CASE NO. 90-02-1013

Defendant.)

FINAL ORDER

This cause came on for consideration before the Oklahoma Board of Medical Licensure and Supervision on February 11, 1994, 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 and through legal counsel, Robert W. Cole, Attorney at Law, 2525 NW Expressway, Suite 600, Oklahoma City, OK 73112, and Floyd K. Propps, Attorney at Law, 3555 NW 58, Suite 510, Oklahoma City, OK 73112.

That the Oklahoma Board of Medical Licensure and Supervision en banc heard the oral argument of counsel, reviewed exhibits, heard testimony of Defendant and being fully advised in the premises, the Oklahoma Board 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 before hearing any testimony or reviewing any exhibits relating to the merits of the case, the Board reviewed a Voluntary Submittal to Jurisdiction agreed to by the Defendant and his legal counsel and tendered as appropriate disposition of the case.

4. That the Board found the Voluntary Submittal to Jurisdiction and the terms and conditions thereof were an appropriate disposition of this case and accepted same.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction over this matter pursuant to the Oklahoma Medical Practice Act, 59 O.S. 1991, Sec. 481 et seq., and by the Voluntary Submittal to Jurisdiction executed by Defendant.

ORDER

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

1. That the Defendant, Bert M. Avery, M.D., holding Oklahoma Medical License No. 11216, should be and is hereby placed on a term of PROBATION to the Oklahoma State Board of Medical Licensure and Supervision for a period of five (5) years beginning on February 11, 1994, under the following terms and conditions:

- (a) During the period of probation Defendant shall practice medicine and surgery directly in connection with unpaid community service supervised by the United States Probation Office carrying out the sentence of the United States District Court for the Western District of Oklahoma in Case No. CR-92-106-R. While fulfilling all requirements of the aforesaid community service, and except for compliance with the provisions memorialized in paragraph 1.(r) of this document, Defendant may engage in the additional practice of medicine and surgery but be limited to twenty (20) office hours per week, exclusive of duties and requirements beyond the control of Defendant, such as emergency room visits, surgeries, and deliveries.
- (b) Any question of interpretation regarding Defendant's limited practice of medicine and surgery shall be submitted in writing to the Board and no action based on the subject of the question shall be taken by Defendant until clarification or interpretation is received by Defendant from the Board.
- (c) During the period of probation Defendant will request, in writing, that all hospitals or institutions where he practices to furnish to the Board periodic written statements monitoring his activities while performing community service in that setting.
- (d) During the period of probation, Defendant will comply with all federal and state laws dealing with prescribing, administering or dispensing controlled dangerous substances.
- (e) During the period of probation Defendant will take no medication except that which is authorized by a treating physician for a legitimate medical need and Defendant shall have an affirmative duty to inform any physician treating him of Defendant's previous use of alcohol.
- (f) During the period of probation Defendant will abstain from consuming alcohol or any substance, specifically including but not limited to controlled dangerous substances, unless authorized by a treating physician for a legitimate medical need, which would adversely affect his ability to practice medicine or surgery.
- (g) Since Defendant entered the impaired physician program in 1987 and has made no attempt to hide his alcoholism and has reported when required and reported to the Oklahoma Medical Board since 1989 and was

under probation and supervision at Southwestern Hospital in Lawton, Oklahoma, for three years and successfully completed all requirements and presently has no restrictions has successfully completed treatment for alcohol abuse in 1987 and has exhibited no relapses since that time, Defendant will start at level one (1) probation. After six months of successful completion at level one (1) probation, Defendant can begin level two (2) probation. During level two (2) probation, Defendant will submit biological fluid specimens, four times per year, to include, but not be limited to, blood and urine, for analysis, upon request of any Investigator or other agent representing the Board and Defendant will pay for the testing of those specimens. Upon successful completion of said testing, the Board, in its discretion and upon application by Defendant can further reduce the frequency of said testing.

- (h) During the period of probation Defendant shall continue to participate fully in Alcoholics Anonymous and shall continue and complete all supportive programs recommended thereby.
- (i) During the period of probation Defendant shall notify all hospitals or clinics or groups in which he anticipates holding any form of staff privileges of the terms and conditions of the Board Order and supply a copy of the Board Order stipulating sanctions imposed by the Board, and supply a copy to the licensing Board of any State where he holds licensure.
- (j) During the period of probation Defendant will furnish to the office of the Oklahoma State Board of Medical Licensure and Supervision all current legal addresses and any change of address in writing.
- (k) Defendant shall appear before the Board or a designated member thereof whenever requested to do so upon reasonable advance notification.
- (l) During the period of probation Defendant will submit to the Investigation Division of the Oklahoma State Board of Medical Licensure and Supervision any required reports and forms on a timely and prompt basis.
- (m) Pursuant to Title 59 O.S. Sec. 506, Defendant shall pay within 30 days of receipt of invoice from the Board, the costs of investigation, prosecution and probation of this case. Defendant can affirmatively obtain a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.
- (n) During the period of probation Defendant will keep current payment of all assessment by the Board for investigation, prosecution and probation monitoring of his case.

- (o) During the period of probation the Defendant shall not supervise a Physician Assistant.
- (p) That violation of any of the terms and conditions of probation shall be grounds for additional charges to be presented to the Board after notice to the Defendant.
- (q) That nothing shall prevent Defendant from seeking a reduction of the terms memorialized in this Order upon the submittal to the Board of evidence demonstrating a change in circumstances. The reduction shall remain within the discretion of the Board.
- (r) Defendant agrees to a suspension of his license for the remainder of February, 1994, thereby suspending his right to outside private practice, but allowing him to continue to provide community service as outlined elsewhere in this document.

2. That following completion of the period of community service imposed by the United States District Court for the Western District of Oklahoma in Case No. CR-92-106-R, Defendant agrees to continue to perform ten (10) hours per week, including travel time, of community service at ORO in Altus, Oklahoma, an agency funded by the United States Department of Labor, to service migrant farm workers. These people have no other access to health care. Said service shall be for one (1) year, with an organization approved by the Board, and the same shall be documented. If said conviction is reversed, then a material change of conditions has arisen, and Defendant may petition the Board for dismissal of this matter. Defendant may engage in additional practice of medicine and surgery without restriction.

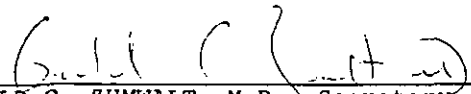
3. If Defendant leaves the State of Oklahoma during the time frame contemplated in paragraph two (2) of this document, the community service requirement shall be held in abeyance or, at Defendant's option, he may seek approval of the Board to perform community service in the other state.

4. Defendant further agrees to continue to provide medical care to all patients with legitimate medical needs, including Department of Human Services patients, the uninsured and the indigent. In addition, Defendant agrees to assist the Board by counseling impaired physicians.

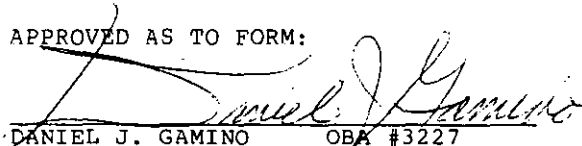
5. That jurisdiction of the Board in this individual proceeding will continue until the terms and conditions of probation are modified or lifted by the Oklahoma Board of Medical Licensure and Supervision on their own motion or on the motion of the Defendant.

6. The Defendant further agrees that failure to meet any of the above terms of this Order will constitute cause for the Board to initiate additional proceedings to suspend or revoke Defendant's Oklahoma Medical License, after additional due notice and hearing.

DATED this 17 day of Feb, 1994.


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

APPROVED AS TO FORM:


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 18 day of Feb, 1994, to:

BERT M. AVERY
c/o ROBERT COLE
Attorney at Law
2525 NW Expressway, Suite 600
Oklahoma City, OK 73112

BERT M. AVERY
c/o FLOYD K. PROPPS
Attorney at Law
3555 NW 58, Suite 510
Oklahoma City, OK 73112

