

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

STATE OF OKLAHOMA

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

Plaintiff,

vs.

Case No. 93-08-1542

BERT M. AVERY, M.D.  
Medical License No. 11216

Defendant.

DISMISSAL WITHOUT PREJUDICE AND  
VACATION OF PROBATION

THIS MATTER comes on before the Board of Medical Licensure and Supervision (the "Board") upon Staff's Motion to Dismiss Without Prejudice and to Vacate Probation. Staff appears by and through counsel of record James Robert Johnson, Assistant Attorney General. The Defendant ("Avery") appears in person and by and through counsel of record Robert Cole, Attorney at Law. And the Board, hearing the argument of the parties and otherwise being apprised of the facts and law in this matter, makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Following notice and hearing on February 11, 1994, the Board found that Avery was convicted in United States District Court for the Western District of Oklahoma in Case No. CR-92-106R.
2. Based upon that finding, the Board imposed disciplinary action against Avery, which said disciplinary action has been in force and effect since it was imposed.
3. On September 7, 1994, the United State Court of Appeals for

the Tenth Circuit reversed the conspiracy conviction of Avery as to all charges.

#### CONCLUSIONS OF LAW

1. The Board has the authority to review disciplinary action taken by the Board at any time for any reason deemed sufficient by the Board. 59 O.S.1991, § 508.1.
2. The Board's disciplinary action taken herein was predicated to a substantial degree upon the federal conviction suffered by Avery. The reversal of that conviction constitutes sufficient reason to dismiss the administrative action herein and vacate the terms of probation imposed upon Avery.
3. The vacation of probation should relate back to its inception, to the extent allowed by law.

#### ORDER

IT IS THEREFORE ORDERED by the Board that the administrative action against Bert M. Avery, M.D., is hereby DISMISSED. It is the position of the Board that the dismissal of the action shall relate back to the date disciplinary action was imposed upon Dr. Avery. It is the position of the Board further that disciplinary action is considered by the Board to be held for naught and shall not be considered by the Board to be action by the Board for any purposes otherwise allowed by law, such as, for example, prior disciplinary action for extension of probation in any future action by the Board.


IT IS FURTHER ORDERED by the Board that a copy of this Order shall be provided to any person who requests information in regard to Dr. Avery to provide a complete record of the disciplinary action,

provided that proper fees for such are paid.

Done this 19th day of November, 1994.



Gerald C. Zumwalt, M.D.  
Secretary  
Oklahoma Board of Medical  
Licensure and Supervision



James Robert Johnson  
Assistant Attorney General  
Attorney for Plaintiff



Robert Cole  
Attorney for Defendant

JRJ/jj:Avery.dis