IN AND SEFORE 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.)
CASE NO. 96-12-1872

CBERT M. AVERY, M.D.,)
Medical License No. 11216,)
Defendant.)

VOLUNTARY SUBMITTAL TO JURISDICTION

COMES NOW the Defendant, Bert M. Avery, M.D., the undersigned, and states that on this 15 day of May, 1997, he is of sound mind and not under the influence of any medication or drug or impaired therefrom, and said Defendant does further recognize his right to legal counsel and Defendant has knowingly waived his right to legal counsel and is ready to proceed without counsel, and being advised further of his right to appear before the Oklahoma State Board of Medical Licensure and Supervision en banc for evidentiary hearing on the Complaint filed herein does of his own volition and decision waive and forego his right to appear before the Board for full hearing as authorized by law inasmuch as Defendant Avery believes that should he contest the allegations contained within the Complaint there is adequate evidence for disciplinary action to be taken against him and for that reason Defendant Avery chooses not to contest the allegations contained in said Complaint and does hereby voluntarily and of his own volition submit to the jurisdiction of the Oklahoma State Board of Medical Licensure and Supervision insofar as it entails the following activities and restrictions:

1. That Defendant accepts and agrees to and hereby begins a term of probation to the Oklahoma State Board of Medical Licensure and Supervision to begin on May 15, 1997, and to continue for a period of five (5) years from that date under the following terms and conditions:

- (a) During the period of probation Defendant will not prescribe, administer or dispense any medications for his personal use, to specifically include controlled dangerous substances.
- (b) During the period of probation Defendant will take no medication except that which is authorized by a physician treating him 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 and in-patient treatment therefor.
- (c) During the period of probation Defendant will abstain from consuming alcohol or any substance, specifically including but not limited to controlled dangerous substances, which would adversely affect his ability to practice medicine or surgery as interpreted by the Oklahoma State Board of Medical Licensure and Supervision.
- (d) During the period of probation Defendant will submit biological fluid specimens to include, but not limited to, blood and urine, for analysis, upon request of any investigator or other agent representing the Oklahoma State Board of Medical Licensure and Supervision, and Defendant will pay for testing and analysis of those specimens.
- (e) During the period of probation Defendant shall notify any and all hospitals, clinics, or groups in which he holds or anticipates holding any form of staff privileges, of the terms and conditions of this Board Order and supply a copy thereof.
- (f) As a condition of this probation Defendant cannot supervise a Physician Assistant.
- (g) During the period of probation Defendant shall comply with all terms and conditions of his Continuing Care Contract that he executed on or around April 9, 1997, with Talbott-Marsh Recovery System and all terms and conditions of that Continuing Care Contract are incorporated herein and made a part hereof by reference as if fully set out herein.
- (h) 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.
- (i) That Defendant shall appear before the Board or a designated member thereof whenever requested to do so.
- (j) 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.
- (k) Pursuant to Title 59 O.S. Sec. 506, Defendant shall promptly pay within 30 days of receipt of invoice from the Board the costs of

investigation, prosecution and probation of this case, unless the Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

- (1) That Defendant will conduct his practice in compliance with the Oklahoma Medical Practice 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 the interpretation is received by Defendant from the Board.
- (m) 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.
- 2. That the 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.
- 3. The Defendant further agrees that failure to meet any of the above terms of probation 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.

I HAVE READ THIS INSTRUMENT AND UNDERSTAND SAME.

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

APPROVED:

GERALD C. 2UMWALT, M.D. Secretary/Medical Director Oklahoma Board of Medical Licensure and Supervision

P.O. BOX 18256

Oklahoma City, OK 73154

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DANIEL J. GAMINO OBA #3227
Daniel J. Gamino Associates, P.C.

3315 NW 63

Oklahoma City, OK · 73116 (405) 840-3741 ATTORNEY FOR PLAINTIFF

ORDER OF THE BOARD

NOW on this 15 day of May, 1997, this matter came on for consideration before the Oklahoma Board of Medical Licensure and Supervision en banc. Based on representations of legal counsel and representations made by Dr. Avery as set forth above, this tendered Voluntary Submittal to Jurisdiction was ADOPTED by the Oklahoma Board of Medical Licensure and Supervision en banc and shall stand as the Final Order issued in this case.

PRESIDENT

Oklahoma Board of Medical Licensure and Supervision

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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this $\frac{}{\infty}$ day of $\frac{}{}$ day of $\frac{}{}$, 1997, to:

BERT M. AVERY

3617 W. CORE BLVD #C

LAWTON, OK 73505