

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

STATE OF OKLAHOMA

FILE
MAY 20 1993
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

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

Plaintiff,)

v.)

JOHN H. MIGLIACCIO, M.D.
Medical License No. 12763,)

CASE NO. 90-02-1014

Defendant.

ORDER IMPOSING 24-HOUR LICENSE
SUSPENSION AND TERMS OF PROBATION

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on May 14 and 15, 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 John H. Migliaccio, M.D., Defendant, appeared in person and by legal counsel, Mack K. Martin, Attorney at Law, Suite 360, 119 N. Robinson Ave., Oklahoma City, OK 73102.

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, John H. Migliaccio, M.D., holds Oklahoma Medical License No. 12763.
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 on or around January 25, 1993, Defendant was convicted in the United States District Court for the Western District of Oklahoma, Oklahoma City, in Case No. CR-92-106R, of violation of Federal criminal law in conspiracy to defraud and in actual defrauding of the CHAMPUS Medical Program by willfully and knowingly devising a scheme to obtain money by false pretenses, and to use the U.S. Mails in furtherance of said scheme.
4. That Defendant was convicted specifically of one Count of Conspiracy and nine Counts of Mail Fraud.
5. Based on the above facts and omissions, Defendant is perpetuating significant harm to public health, safety and welfare.
6. That following hearing on May 14, 1993, Board voted to suspend Defendant's Oklahoma medical license for a period of six months.

7. That Defendant's legal counsel immediately filed written Motion to Reopen, Rehear or Reconsider based on the legal authority of 75 O.S. 1991, Sec. 317. That motion was presented to the Board Secretary the evening of May 14, 1993. Following consideration of oral argument from legal counsel for Plaintiff and Defendant, the Secretary ruled that the Motion for Reconsideration could be considered by the Board at the conclusion of its regular business on May 15, 1993.

8. That on May 15, 1993, this matter came back before the Board on reconsideration. Additional testimony and exhibits were considered by the Board. The Board found that it should reconsider the sanction to be imposed on the Defendant.

CONCLUSIONS OF LAW

1. That John H. Migliaccio, M.D., holding Oklahoma Medical License No. 12763, is in violation of the Oklahoma Medical Practice Act, 59 O.S. 1991, Sec. 509, Paragraphs 6 and 10, to-wit:

Conviction of a felony or of any offense involving moral turpitude."

"10. The commission of any act which is a violation of the criminal laws of Oklahoma when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct."

ORDER

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

1. That the Defendant's Motion for Reconsideration should be and is hereby GRANTED.

2. That Defendant, John H. Migliaccio, M.D., Oklahoma Medical License No. 12763 should be and is hereby SUSPENDED instanter for a period of 24-hours.

3. That at the conclusion of the 24-hour suspension, Defendant's Oklahoma Medical License No. 12763 is placed on probation to the Oklahoma State Board of Medical Licensure and Supervision for a period of five (5) years beginning on May 16, 1993, under the following terms and conditions:

(a) During the period of probation Defendant shall practice medicine and surgery only 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. All other medical practice by Defendant is specifically prohibited.

(b) Any question of interpretation regarding Defendant's limited practice of medicine and surgery in Oklahoma 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 or interpretation is received by Defendant from the Board.


- (c) During the period of probation Defendant will request 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 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 other State where he holds licensure.
- (e) 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.
- (f) Defendant shall appear before the Board or a designated member thereof whenever requested to do so.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) During the period of probation the Defendant shall not supervise a Physician Assistant.
- (k) 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.

4. 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.

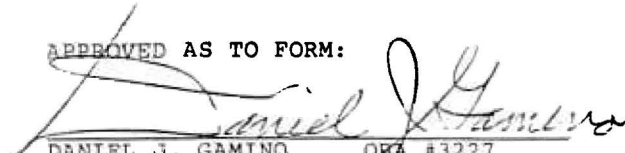
5. That failure to meet any of the above terms of probation will constitute cause for the Board to initiate additional proceedings to suspend or revoke Defendant's Oklahoma Medical License, after additional due notice and hearing.

6. 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., 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 21 day of May, 1993, to:

JOHN H. MIGLIACCIO, M.D.
c/o Mack K. Martin
Attorney at Law
Suite 360
119 N. Robinson
Oklahoma City, OK 73102