

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,)

DEC 15 1994

Plaintiff,)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.)

Case No. 90021014
License #12763

JOHN H. MIGLIACCIO, M.D.,)
MEDICAL LICENSE NO. 12763)

Defendant.)

DISMISSAL WITHOUT PREJUDICE AND
VACATION OF PROBATION

THIS MATTER came on before the Board of Medical Licensure
Supervision the "Board") upon the Staff's Motion to Dismiss
Without Prejudice and to Vacate Probation, filed November 17, 1994,
and upon the Defendant's Emergency Application for Termination of
Probation and Expungement of Record, filed September 8, 1994.
Staff appears by and through counsel of record James Robert
Johnson, Assistant Attorney General. Defendant ("Migliaccio")
appears in person and by and through counsel of record Mack K.
Martin, 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 May 14 and 15, 1993,
Board found that Migliaccio was convicted in the United States

District Court for the Western District of Oklahoma in case No 92-106-R.

2. Based upon that finding, the Board imposed disciplinary action against Migliaccio, which said disciplinary action has been in force and effect since it was imposed, subject to the Board's modification of discipline by its order of October 1, 1993.

3. On September 7, 1994, The United States Court of Appeals for the Tenth Circuit reversed the conviction of Migliaccio as to all charges, with one charge remanded to the United States District Court for new trial.

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 Migliaccio. The reversal of that conviction constitutes sufficient reason to dismiss the administrative action herein and vacate the terms of probation imposed upon Migliaccio

3. The vacation of probation should relate back to inception to the extent allowed by law.

ORDER

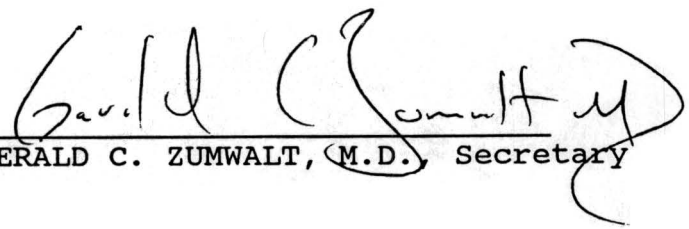
IT IS THEREFORE ORDERED by the Board that the administrative action against John H. Migliaccio, M.D., is hereby DISMISSED. It is the order of the Board that the dismissal of the action shall

NO. 92-106-R
DISMISSED
OCT 14 1994
MEDICAL BOARD
WESTERN DISTRICT OF OKLAHOMA

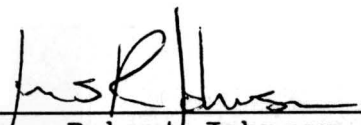
relate back to the date disciplinary action was imposed upon Migliaccio. It is the further order of the Board that the disciplinary action above is held for naught and shall not be considered by the Board to be action by the Board for any reason otherwise allowed by law, such as, for example, prior disciplinary 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. Migliaccio to provide a complete record of the disciplinary action, provided that proper fees for such are

Done this 19th day of November, 1994


GERALD C. ZUMWALT, M.D. Secretary

Approved as to Form:


James Robert Johnson
Assistant Attorney General
Attorney for Plaintiff


Mack K. Martin
Attorney at Law
Suite 360
119 N. Robinson Avenue
Oklahoma City, Oklahoma 73102
(405) 236-8888
Attorney for John H. Migliaccio, M.D.

RECEIVED
MEDICAL
BOARD
NOV 21 1994
10