

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

**FILED**

STATE OF OKLAHOMA  
EX REL. THE OKLAHOMA BOARD  
OF MEDICAL LICENSURE  
AND SUPERVISION,

Plaintiff,

v.

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

Defendant.

AUG - 4 2005

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 05-05-2956

**COMPLAINT**

COMES NOW the Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), by and through its attorney, Elizabeth A. Scott, Assistant Attorney General, and for its Complaint against the Defendant, John H. Migliaccio, M.D., alleges and states as follows:

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.*

2. Defendant, John H. Migliaccio, M.D., holds Oklahoma license no. 12763.

3. On or around October 13, 2003, Defendant was notified by Patrick Jenkins, CRNA at McCurtain County Memorial Hospital, that Mark Valentine, M.D. was impaired while working at the hospital. Defendant researched the claim and learned that Dr. Valentine in fact was impaired while working at the hospital on October 13, 2003.

4. On November 1, 2004, Defendant was again notified by Patrick Jenkins, CRNA that Dr. Valentine was in the middle of a surgical procedure at the hospital and was in an impaired state. Mr. Jenkins requested Defendant to come to the surgery room.

5. Defendant entered the surgery room but did not scrub in. He spoke to Dr. Valentine and noted that Dr. Valentine was nodding off and performing sub-par. Defendant

admits that he observed Dr. Valentine to be in an impaired state during the surgery and that Dr. Valentine should not have been performing the surgery.

6. After observing Dr. Valentine to have been conducting surgery in an impaired state, Defendant left the surgery room before the procedure was finished. Defendant did nothing to stop Dr. Valentine from proceeding with the surgery while in an impaired state.

7. After Dr. Valentine completed the surgical procedure, the patient was moved to ICU, where he coded. Defendant heard the code and arrived at the ICU prior to Dr. Valentine arriving. When Dr. Valentine arrived at the ICU, Defendant spoke with him while he was in an impaired state, then allowed him to proceed with running the code. Defendant did nothing to stop Dr. Valentine from proceeding with the code while in an impaired state. The patient subsequently died.

8. Defendant is guilty of unprofessional conduct in that he:

A. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(8) and OAC 435:10-7-4(11).

B. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509(13) and OAC 435:10-7-4(39).

C. Aided or abetted the practice of medicine and surgery by an unlicensed, incompetent, or impaired person in violation of OAC 435:10-7-4(21).


D. Failed to inform the Board of a state of physical or mental health of the licensee or of any other health professional which constitutes or which the licensee suspects constitutes a threat to the public in violation of OAC 435:10-7-4(42).

E. Failed to report to the Board unprofessional conduct committed by another physician in violation of OAC 435:10-7-4(43).

*Conclusion*

WHEREFORE, the Plaintiff respectfully requests that the Board conduct a hearing, and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation and any other appropriate action with respect to Defendant's medical license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,

  
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