

IN AND BEFORE 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. 95-08-1747
)
LUNDY E. CAVENDER, M.D.)
Medical License No. (13744))
)
Defendant.)

EMERGENCY ORDER
OF SUSPENSION

This cause came on for hearing before the Secretary of the Oklahoma Board of Medical Licensure and Supervision on December 15, 1995; 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 Lundy E. Cavender, M.D., Defendant, did not appear in person or by representative, but did appear by way of his letter dated December 5, 1995.

The Secretary of the Oklahoma Board of Medical Licensure and Supervision heard statements of legal counsel, reviewed the file and being fully advised in the premises, the Secretary of the Board of Medical Licensure and Supervision finds and orders as follows:

FINDINGS OF FACT

1. That Defendant, Lundy E. Cavender, M.D., holds Oklahoma Medical License No. 13744.

2. That the Secretary of 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 the Board staff obtained service of process for the emergency hearing and the Board hearing of January 19, 1996, by mailing a copy to the Defendant's practice address registered with the Oklahoma Board, 11803 S. Freeway, Suite 204, Fort Worth, Texas 76115. Service was sent by express mail overnight and a return receipt card was received by a "Denny Moore." In addition to that mailing, Board Investigators contacted the Texas Board to find the Defendant's Texas address and received the same address. The Defendant did prepare a letter addressed to the Board dated December 5, 1995, and received by the Board on December 7, 1995. That letter indicated Defendant received personal notice of the hearings but would not be present.

4. That on or around May 11, 1995, the Texas State Board of Medical Examiners in Case No. H-7711, In the Matter of License of Lundy E. Cavender, Jr., M.D., did enter an Agreed Order, regarding the Defendant. The Agreed Order makes findings of fact that Defendant engaged in inappropriate physical contact with mothers of various pediatric patients. The Texas State Board of

Medical Examiners did place Defendant on probation for a period of five (5) years under enumerated terms and conditions.

5. That Huguley Hospital and Harris Southwest Hospital, respectively, each temporarily suspended Defendant's privileges as a result of the aforesaid conduct.

6. That the Defendant's history of unlawful personal conduct with mothers of pediatric patients constitutes a direct threat to public health, safety and welfare to the citizens of Oklahoma.

7. That an emergency exists for which the immediate suspension of a license is imperative to protect public health, safety and welfare and is set at 59 O.S. Supp. 1995, Sec. 503.1, in that absent licensure action by the Oklahoma Board of Medical Licensure and Supervision nothing prevents the Defendant from discontinuing care of a Texas psychiatrist, resigning privileges at Texas hospitals, and without notice immediately returning to Oklahoma and undertaking the practice of medicine and surgery on the legal authority of his existing Oklahoma medical license. Therefore, an emergency does exist and the Secretary of the Board should conduct an immediate hearing thereon.

CONCLUSIONS OF LAW

1. That Lundy E. Cavender, M.D., holding Oklahoma Medical License No. 13744, is in violation of the Oklahoma Medical Practice Act, 59 O.S. Supp. 1995, Sec. 509, Paragraphs 8, 9, 16 and 18, to-wit:

- "8. Conviction or confession of a crime involving the violation of the anti-narcotic or prohibition laws and regulations of the federal government or the Board of Health laws and regulations of the State of Oklahoma."
- "9. Dishonorable or immoral conduct which is likely to deceive or defraud the public."
- "16. The inability to practice medicine with reasonable skill and safety to patients by reason of...or as a result of any mental or physical condition. In enforcing this subsection the Board may, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by it."
- "18. Engaging in any physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient."

2. That Defendant Cavender is in violation of the rules and regulations promulgated by this Board, specifically Rule 435:10-7-4, Paragraphs 11, 17, 18, 23, 31, 39, 40, 41 and 44, to-wit:

- "(11) Conduct likely to deceive, defraud, or harm the public."
- "(17) Being physically or mentally unable to practice medicine and surgery with reasonable skill and safety."
- "(18) Practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery."

- "(23) Commission of any act of sexual abuse, misconduct, or exploitation related or unrelated to the licensee's practice of medicine and surgery."
- "(31) Disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine and surgery based upon acts of conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section, a certified copy of the record of the action taken by the other state or jurisdiction being conclusive evidence thereof."
- "(39) Violation of any provisions of the Medical Practice Act or the rules and regulations of the Board or of any action, stipulation, or agreement of the Board."
- "(40) The inability to practice medicine with reasonable skill and safety to patients by reason of...or as a result of any mental or physical condition. To enforce this paragraph, the Board may, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by it."
- "(41) Failure to provide a proper setting and assisting personnel for medical act, including but not limited to examination, surgery, or other treatment. Adequate medical records to support treatment or prescribed medications must be produced and maintained."
- "(44) Abuse of physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship."

3. That the Secretary of the Board has legal authority to impose emergency suspension pursuant to the legal authority of the Oklahoma Medical Practice Act, 59 O.S. Supp. 1995, Sec. 503.1, and by the rules and regulations of the Board.


ORDER

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

1. That the Defendant, Lundy E. Cavender, M.D., Oklahoma Medical License No. 13744, should be and is hereby SUSPENDED on an emergency basis and shall remain suspended until further order of the Board and shall be set for hearing at the next meeting of the Board presently scheduled for January 19, 1996.

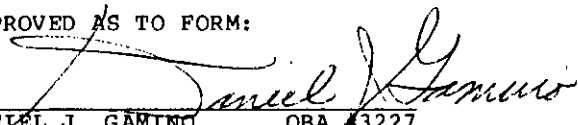
2. That a copy of this Order should be forwarded to Defendant so his record is complete.

DATED this 21 day of December, 1995.



 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 22 day of December, 1995, to:

LUNDY E. CAVENDER, M.D.
11803 S. Freeway, Suite 204
Fort Worth, TX 76115

