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

FILED

MAY 04 2001

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)
)
)

Case No. 00-03-2169

SCOTT GILBERT, M.D.,)
LICENSE NO. 15560)

Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 3, 2001, at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Elizabeth A. Scott, Assistant Attorney General, appeared for the plaintiff and defendant appeared not.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and the sworn testimony of witnesses, and being fully advised in the premises, found that there is clear and convincing evidence to support the following Findings of Fact, Conclusions of Law and Orders:

Findings of Fact

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. The Board has jurisdiction over this matter, and notice has been given in all respects in accordance with law and the rules of the Board.
3. Defendant, Scott Gilbert, M.D., holds Oklahoma license no. 15560.

4. Beginning in or around 1975, Defendant began to abuse marijuana and alcohol. In or around 1983, Defendant began abusing narcotics, including hydrocodone, OxyContin, Demerol, Morphine, Fentanyl, codeine and propoxyphene. He subsequently began abusing cocaine, and then became addicted to Sudafed, taking between 100 to 6,000 mg per day. He then began abusing inhalants, benzodiazepines, Valium, Dalmane and Restoril, as well as Brevital. His use of narcotics escalated to a point in the year 2000 where he was taking 90-100 hydrocodone tablets per day. Defendant obtained the drugs by stealing them from offices where he worked, writing prescriptions to patients and splitting the drugs with the patients, and writing prescriptions in fictitious names and then picking up the prescriptions himself.

5. On Defendant's Application for Renewal of Oklahoma Medical License dated June 30, 1995 and each year thereafter through December 2, 2000, in response to the question "Are you now using any drug or chemical substance including alcohol which has an adverse impact on your ability to practice medicine and surgery" within the past year, Defendant answered "NO" on each occasion.

6. On or about March 15, 1999, Defendant performed surgery in his office on patient TWW. The patient had been diagnosed with fibrocystic breast disease, and the Defendant removed all of the breast tissue by liposuction.

7. On or about June 12, 1999, Defendant performed six (6) surgical procedures over a nine (9) hour period in his office on patient JFW. Defendant failed to recognize certain lab test results and answers to questions on the patient questionnaire which indicated that the surgery should not have been performed, and performed the surgery with the assistance of his minor child and a scrub nurse with no one monitoring the anesthesia at times. After approximately six (6) hours of surgery and after five (5) procedures had been completed, the patient's condition began to deteriorate due in part to excessive blood loss. Defendant admitted using two (2) different suctioning devices, one of which pumped the lost fluids to the basement of the office, resulting in the inability to accurately measure blood loss. At that time, Defendant called Doctors Hospital in Tulsa, Oklahoma to advise them that the patient would be transported to the hospital. Rather than take the patient to the hospital at that time, Defendant waited an hour and a half, then began the sixth (6th) surgical procedure, a rhinoplasty. Defendant continued to perform this additional procedure in spite of the patient's rapidly deteriorating condition, and failed to take adequate precautionary measures when the patient's condition deteriorated to a critical point due to excessive bleeding. After nine (9) hours of surgery, the patient, while still under anesthesia, was subsequently loaded by Defendant and his nurse into the back end of her car and was driven to Doctors Hospital. Upon his arrival at the hospital, it was discovered that the patient was not breathing and was in full cardiac arrest. The patient subsequently died at the hospital.

8. On or about June 14, 1999, Doctors Hospital suspended Defendant's privileges based upon Defendant's conduct with respect to patient JFW.

9. During 1998, 1999 and 2000, Defendant allowed Patty Beal, a registered nurse employed by him, to administer anesthesia in amounts independently determined by her, perform liposuction, perform tattooing, and perform procedures with a laser, all without Defendant's

supervision and in some instances, when Defendant was not even on the premises. While performing some liposuction procedures, she acted as the anesthetist, circulating nurse and as the surgeon at the same time, all with Defendant's knowledge and consent.

10. During 1998, 1999 and 2000, Defendant used non-FDA approved equipment and materials during surgical procedures, including, but not limited to, hardware screws and Superglue rather than FDA approved surgical screws and surgical glue.

11. During 1999, Defendant utilized his minor children to assist him in surgical procedures, including the administration of anesthesia.

12. On or around September 13, 2000, Defendant entered Talbott Recovery Campus for treatment for substance abuse. On December 14, 2000, Defendant was not discharged from Talbott, but was transferred to a treatment facility in Tulsa, Oklahoma to continue his treatment.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. §509(5) and OAC 435:10-7-4(3).

B. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(9) and OAC 435:10-7-4(11).

C. 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(14) and OAC 435:10-7-4(39).

D. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physician condition in violation of 59 O.S. §509(16) and OAC 435:10-7-4(40).

E. Purchased or prescribed a regulated substance in Schedules I through V for the physician's personal use in violation of OAC 435:10-7-4(5).

F. Prescribed, sold, administered, distributed, ordered or gave a drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself in violation of OAC 435:10-7-4(26).

G. Engaged in fraud or misrepresentation in applying for or

procuring a medical license or in connection with applying for or procuring periodic reregistration of a medical license in violation of OAC 435:10-7-4(8).

H. Prescribed, sold, administered, distributed, ordered or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).

I. Confessed to a crime involving a violation of the anti-narcotic laws of the federal government or the laws of this state in violation of 59 O.S. §509(8) and 63 O.S. §2-406 and §2-407.

J. Committed an act which is a violation of the ... (narcotics) laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(10).

K. Prescribed a controlled substance without medical need in accordance with published standards in violation of 59 O.S. §509(17) and OAC 435:10-7-4(2) and (6).

L. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27), 63 O.S. §2-406 and §2-407 and OAC 475:25-1-3.

M. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509(12).

N. Aided or abetted, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of 59 O.S. §509(15) and OAC 435:10-7-4(21).

O. Engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).

P. Was physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

Q. Was engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).

R. Used a ... deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

S. Failed to provide a proper setting and assistive personnel for medical acts, including but not limited to examination, surgery, or other treatment in violation of OAC 435:10-7-4(41).

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act") and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

2. Defendant is guilty of unprofessional conduct as follows:

A. Habitually uses habit-forming drugs in violation 59 O.S. §509(5) and OAC 435:10-7-4(3).

B. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(9) and OAC 435:10-7-4(11).

C. 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(14) and OAC 435:10-7-4(39).

D. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physician condition in violation of 59 O.S. §509(16) and OAC 435:10-7-4(40).

E. Purchased or prescribed a regulated substance in Schedules I through V for the physician's personal use in violation of OAC 435:10-7-4(5).

F. Prescribed, sold, administered, distributed, ordered or gave a drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself in violation of OAC 435:10-7-4(26).

- G. Engaged in fraud or misrepresentation in applying for or procuring a medical license or in connection with applying for or procuring periodic reregistration of a medical license in violation of OAC 435:10-7-4(8).
- H. Prescribed, sold, administered, distributed, ordered or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).
- I. Confessed to a crime involving a violation of the anti-narcotic laws of the federal government or the laws of this state in violation of 59 O.S. §509(8) and 63 O.S. §2-406 and §2-407.
- J. Committed an act which is a violation of the ... (narcotics) laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(10).
- K. Prescribed a controlled substance without medical need in accordance with published standards in violation of 59 O.S. §509(17) and OAC 435:10-7-4(2) and (6).
- L. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27), 63 O.S. §2-406 and §2-407 and OAC 475:25-1-3.
- M. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509(12).
- N. Aided or abetted, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of 59 O.S. §509(15) and OAC 435:10-7-4(21).
- O. Engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).
- P. Was physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).
- Q. Was engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).

R. Used a ... deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

S. Failed to provide a proper setting and assistive personnel for medical acts, including but not limited to examination, surgery, or other treatment in violation of OAC 435:10-7-4(41).

3. The Board further found that the Defendant's license should be revoked based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509 (5), (8), (9), (10), (12), (14), (15), (16) and (17), OAC 435:10-7-4 (2), (3), (5), (6), (8), (11), (15), (17), (18), (19), (21), (24), (26), (27), (39), (40) and (41), 63 O.S. §2-406 and 2-407 and OAC 475:25-1-3.

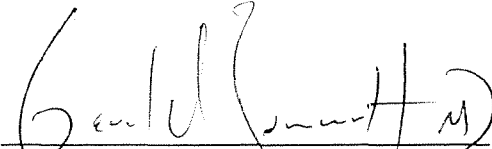
Order

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

1. The license of Defendant, Scott Gilbert, M.D., Oklahoma license no. 15560, is hereby **REVOKED** as of the date of this hearing, May 3, 2001.

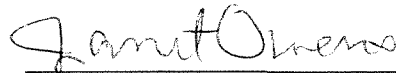
2. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

Dated this 4 day of May, 2001.


Gerald C. Zumwalt, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 4 day of May, 2001, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Robert Sartin, Barrow, Gaddis, Griffith & Grimm, 610 S. Main, Suite 300, Tulsa, OK 74110.



Janet Owens