

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,

FILED
MAY 20 1993 *jd*

KENNETH W. FOSTER, M.D.)
Medical License No. 15885,)
Defendant.

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION
CASE NO. ~~15885~~

FINAL ORDER

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on May 15, 1993, at the office of the Oklahoma 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 Kenneth W. Foster, M.D., Defendant, appeared in person and by legal counsel, Gene Stipe, Attorney at Law, P.O. Box 1368, McAlester, OK 74502, and Kevin J. Walker, Attorney at Law, P.O. Box 1641, Seminole, OK 74868.

The Oklahoma Board of Medical Licensure and Supervision en banc heard statements, reviewed exhibits and being fully advised in the premises, the Oklahoma Board finds and orders as follows:

FINDINGS OF FACT

1. That Defendant, Kenneth W. Foster, M.D., holds Oklahoma Medical License No. 15885.
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 effective on September 11, 1991, the Division of Medical Quality, Medical Board of California, did adopt a Stipulation signed by the Defendant in Case No. D-3972 wherein Defendant did admit to prescribing Vicodin, Hydrocodone, Benzodiazepines, Prozac and Amitriptyline to addicts or habitual users or to other patients in amounts that constitute excessive prescribing and the Defendant did agree to a 60 days suspension of his California license and a period of probation of his California license of five years under terms and conditions as set out in the Decision and Stipulation.

CONCLUSIONS OF LAW

1. That Kenneth W. Foster, M.D., holding Oklahoma Medical License No. 15885, is in violation of the Oklahoma Medical Practice Act, 59 O.S. 1991, Sec. 509, Paragraph 17, to-wit:
 - "17. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or

narcotic drugs without medical need in accordance with published standards."

2. That Kenneth W. Foster, M.D., is in violation of the Rules and Regulations promulgated by this Board, specifically Rule 435:10-7-4(6), to-wit:

"Dispensing, prescribing or administering a controlled substance or narcotic drug without medical need."

ORDER

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

1. That the Defendant, Kenneth W. Foster, M.D., holding Oklahoma Medical License No. 15885, should be and is hereby placed on a term of PROBATION to the Oklahoma State Board of Medical Licensure and Supervision for a period of five (5) years beginning on May 14, 1993, under the following terms and conditions:

- (a) During the period of probation Defendant's practice of medicine and surgery is limited to practice at the institutions of the Oklahoma Department of Corrections only and at no other site or in any private practice of any nature.
- (b) During the period of probation Defendant will not prescribe, administer or dispense any Schedule II or Schedule III controlled dangerous substances.
- (c) That Defendant will conduct his practice in compliance with the Oklahoma Medical Practice Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said Act 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 made by the Board.
- (d) During the period of probation Defendant shall furnish each and every state in which he holds licensure or applies for licensure, and notify all hospitals or clinics or groups in which he anticipates holding any form of staff privileges, a copy of this Board Order stipulating sanctions imposed by the Board.
- (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.

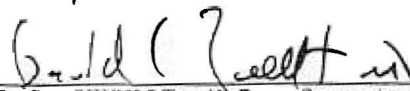
- (h) During the period of probation Defendant will not supervise a Physician's Assistant.
- (i) Pursuant to Title 59 O.S. Sec. 506, Defendant shall promptly pay within 30 days of receipt of invoice from the Board the costs of investigation, prosecution and probation of this case, unless the Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.
- (j) 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.
- (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.

2. That the jurisdiction of the Board in this individual proceeding will continue in this matter until the terms and conditions of probation are modified or withdrawn by the Oklahoma State Board of Medical Licensure and Supervision, either on their own motion or on the motion of the Defendant.

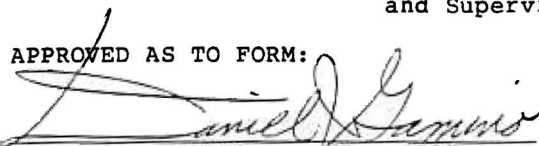
3. That failure to meet any of the above terms of probation will constitute cause for the Board to initiate additional proceedings to suspend or revoke Defendant's Oklahoma medical license, after additional due notice and hearing.

4. That Defendant shall be placed on Level I probation until modified by the Board Secretary.

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:

Gene Stipe
 Attorney at Law
 P.O. Box 1368
 McAlester, OK 74502

Kevin J. Walker
 Attorney at Law
 P.O. Box 1641
 Seminole, OK 74868

