

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. )  
KENNETH W. FOSTER, M.D., )  
 )  
LICENSE NO. 15885 )  
 )  
Defendant. )

AUG 31 2007

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 06-10-3177

APPLICATION TO DETERMINE EMERGENCY

Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision ("State"), seeks to have an emergency declared to enable the Secretary of the Board to conduct an emergency suspension hearing against Defendant, Kenneth W. Foster, M.D., Oklahoma medical license number 15885, as authorized under 59 Okla. Stat. §503.1 and 75 Okla. Stat. §314. In support of this application, the State submits the following:

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.* (the "Act"). Under Section 503.1 of the Act, the Secretary of the Board may determine that "an emergency exists for which the immediate suspension of a license is imperative for the public health, safety and welfare."

2. Defendant, Kenneth W. Foster, M.D., holds Oklahoma license no. 15885, and is authorized to practice as a physician and surgeon in the State of Oklahoma.

3. On or about August 28, 2006, Defendant presented to the Jane Phillips Medical Center Emergency Room in Bartlesville, Oklahoma in an impaired state. Physicians at the emergency room concluded that Defendant was suffering from a steroid induced psychosis. A urine specimen obtained at that time tested positive for **Amphetamines**. At the time of his admission to the emergency room, Defendant admitted to the emergency room physician that he was taking Provigil 200 mg. and Adderall 20 mg.

8. A review of pharmacy records in the state of Oklahoma for the ten (10) month period prior to his hospital admission reveals that Defendant did not receive any prescriptions for Provigil, Adderall, or any other amphetamines during this time period.

9. On or about February 22, 2007, Board Investigator Steve Washbourne obtained a urine specimen from Defendant. This specimen subsequently tested positive for **Marijuana**.

10. On or about July 31, 2007, Board Investigator Steve Washbourne obtained another urine specimen from Defendant. At this time, Defendant advised Investigator Washbourne that he was not taking Adderall, Provigil or Clonazepam. This specimen subsequently tested positive for **Amphetamines**.

11. A review of pharmacy records in the state of Oklahoma reveals that Defendant did not receive any prescriptions for Adderall or any other amphetamines during this time period.

12. On or about August 30, 2007, Board Investigator Scott Singer interviewed Defendant at his offices as part of the Board's ongoing investigation against Defendant. Investigator Singer, who is trained in the detection of intoxicated persons through his thirty-one (31) years of active service as a police officer, concluded that Defendant was under the influence of an intoxicating substance, and that his physical appearance and actions strongly suggested amphetamine type drugs.

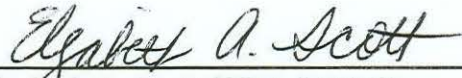
13. Based on his belief that Defendant was impaired, Investigator Singer asked Defendant to provide a urine specimen, to which Defendant refused.

14. The State is basing its application for emergency upon the two (2) previous positive drug tests for controlled dangerous substances, Defendant's appearance of impairment at the August 30, 2007 meeting with Board investigators, and his failure to submit to a drug test at that time.

15. Defendant's two (2) previous positive drug tests for controlled dangerous substances, his appearance of impairment at the August 30, 2007 meeting with Board investigators, and his failure to submit to a drug test at that time justify an emergency suspension hearing to protect the public health, safety and welfare.

WHEREFORE, the State respectfully requests that an emergency be declared, that an emergency suspension hearing be conducted by the Secretary and that the Secretary suspend Defendant's license until a hearing before the Board *en banc*.

Respectfully submitted,



---

Elizabeth A. Scott (OBA #12470)  
Assistant Attorney General, State of Oklahoma  
5014 N. Francis  
P.O. Box 18256  
Oklahoma City, OK 73154

ATTORNEY FOR THE STATE

OKLAHOMA STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION