

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

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

Plaintiff,

v.

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

Defendant.

FILED

OCT 01 2007

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 06-10-3177

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, Kenneth W. Foster, 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, Kenneth W. Foster, M.D., holds Oklahoma license no. 15885 and practices as a psychiatrist in Poteau, Oklahoma.

3. On or about May 15, 1993, Defendant was placed on a **FIVE (5) YEAR PROBATION** based upon a finding that he prescribed controlled dangerous substances in excess of the amount considered good medical practice and without medical need.

4. On or about March 18, 1994, Defendant's license was **REVOKED** based upon a finding that he had obtained his Oklahoma medical license by fraud.

5. On or about June 16, 1994, Defendant's license was reinstated as a Special License for the period July 1, 1994 until May 9, 1996 wherein his practice was limited to the Oklahoma Department of Corrections.

6. Subsequent to May 9, 1996, Defendant has practiced as a psychiatrist in Oklahoma with a full medical license.

7. 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. Drug Enforcement Agency records reflect that from January 5, 2006 until July 19, 2007, Defendant had requested and obtained Provigil samples on twenty-nine (29) separate occasions. On August 30, 2007, Board investigators, along with OBN agents, conducted an audit of Defendant's dispensing records. Defendant admitted that he kept no dispensing log, but that dispensing records were found in individual charts. When investigators asked for the charts that reflected giving of Provigil samples, Defendant provided two (2) charts. Both of these charts contained notations that Provigil "prescriptions" had been given. Both of these charts appeared to have been altered, in that this writing was scratched through with a notation that "samples" were given instead. Board investigators then contacted these patients, who confirmed that they had received prescriptions, and **not** samples dispensed by Defendant. Board investigators additionally confirmed through pharmacy records that these patients received prescriptions, rather than samples from Defendant.

13. Board investigators requested additional records of Defendant's dispensing of the Provigil samples he had allegedly dispensed. Defendant advised the investigators that they were welcome to look through the approximate two-thousand (2000) charts in his office in order to find this information.

14. 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.

15. Based on Investigator Singer's belief that Defendant was impaired at the time of the interview, and based upon Defendant's prior positive drug tests for marijuana and amphetamines not prescribed to him, Investigator Singer requested a urine specimen from Defendant. Defendant refused to provide a urine specimen to Investigator Singer at that time.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. §509(4) 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(8) 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(13) 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(15) and OAC 435:10-7-4(40).

E. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).

F. Prescribed, sold, administered, distributed, ordered or gave any 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 (5) and (26).

G. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

H. Failed to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs in violation of 59 O.S. §509(10).

I. 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).

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

K. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine in violation of OAC 435:10-7-4(19).

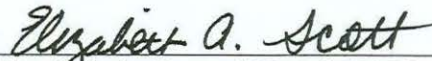
L. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).

M. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).

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,



Elizabeth A. Scott (OBA #12470)
Assistant Attorney General
State of Oklahoma
5104 N. Francis, Suite C
Oklahoma City, OK 73118
Attorney for the Plaintiff