

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

FILED

MAR 14 2008

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 06-10-3177

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

Defendant.)

FINAL ORDER OF REVOCATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on March 13, 2008, 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 in person and pro se.

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.* 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.

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. 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).

C. 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).

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

E. 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).

F. 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).

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

H. 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).

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

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

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 in that he:

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

B. 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).

C. 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).

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

E. 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).

F. 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).

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

H. 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).

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

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

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(4), (10) and (15), and OAC Title 435:10-7-4 (3), (5), (17), (19), (24), (26), (27), (37), (38) and (40).

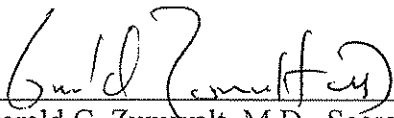
Order

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

1. The license of Defendant, Kenneth W. Foster, M.D., Oklahoma medical license no. 15885, is hereby **REVOKED** as of the date of this hearing, March 13, 2008.

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.

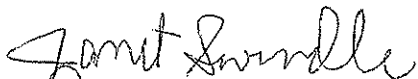
Dated this 14 day of March, 2008.



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

CERTIFICATE OF SERVICE

I certify that on the 14 day of March, 2008, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Kenneth W. Foster, 604 Dewey Avenue, Poteau, OK 74953.



Janet Swindle