

IN AND BEFORE THE OKLAHOMA BOARD OF
MEDICAL LICENSURE AND SUPERVISION

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
OKLAHOMA BOARD OF)
MEDICAL LICENSURE AND)
SUPERVISION,)

Plaintiff,)

vs.)

CASE NO. 96-08-1819

PATRICK S. HERD, M.D.,)
Medical License No. 18233,)

Defendant.)

FINAL ORDER

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision en banc on March 27, 1998, at the office of the Oklahoma State 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 Patrick S. Herd, M.D., Defendant, appeared in person, pro se, without legal counsel, and waived his right to legal counsel and agreed to proceed.

The Board of Medical Licensure and Supervision en banc heard sworn testimony, reviewed exhibits and being fully advised in the premises, the Board FINDS and ORDERS as follows:

FINDINGS OF FACT

1. That Defendant, Patrick S. Herd, M.D., holds Oklahoma Medical License No. 18233.

2. That the 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 the law and the rules of the Board.

3. That from approximately July, 1995, to approximately November, 1997, Defendant did prescribe, administer or dispense controlled dangerous substances and other drugs to patients and did maintain patients on those drugs for long periods of time and that such prescribing, administering, or dispensing was in excess of the amount considered good medical practice and without medical need. Included in the controlled

dangerous substances prescribed, administered or dispensed by the Defendant were the following, to-wit:

| <u>DRUG</u> | <u>SCHEDULE</u> |
|----------------------|-----------------|
| Adderall | II |
| Demerol | II |
| Lortab | III |
| Bontril | III |
| Tylenol/Cod #4(60mg) | III |
| Didrex | III |
| Klonopin | IV |
| Phentermine | IV |
| Adipex | IV |
| Pondimin | IV |
| Triazolam | IV |
| Redux | IV |
| Alprazolam (Xanax) | IV |

4. That among the patients that Defendant prescribed, administered or dispensed controlled dangerous substances for weight control were the following, to-wit:

| <u>Patient</u> | <u>Beginning Date</u> | <u>Beginning Weight</u> | <u>Height</u> | <u>Ending Weight</u> | <u>Ending Date</u> |
|----------------|-----------------------|-------------------------|---------------|----------------------|--------------------|
| A | 12/7/95 | 103.8 # | 5'4" | 104 # | 3/13/96 |
| B | 4/12/96 | 157 # | 5'5" | 134.2 # | 7/15/97 |
| C | 9/15/95 | 113.8 # | 5'2" | 114.4 # | 4/18/97 |
| D | 12/4/95 | 145.6 # | 5'8" | 151.6 # | 6/19/97 |
| E | 12/11/95 | 183 # | 5'5" | 203.6 # | 7/18/97 |
| F | 3/19/96 | 152 # | 5'1" | 147 # | 6/27/97 |
| G | 7/15/96 | 161.4 # | 5'4" | 165.6 # | 6/18/97 |
| H | 7/20/95 | 159.6 # | 5'8" | 166.2 # | 7/9/97 |
| I | 11/1/95 | 102 # | 5'4" | 115.2 # | 7/3/97 |
| J | 1/17/96 | 111.4 # | 5'3" | 105.6 # | 6/25/97 |
| K | 12/4/95 | 157.2 # | 5'4" | 145.6 # | 7/16/97 |

MALE PATIENTS

| | | | | | |
|---|---------|---------|-------|---------|---------|
| L | 3/28/96 | 176 # | 5'10" | 173.8 # | 6/25/97 |
| M | 9/15/95 | 173.4 # | 5'9" | 173.4 # | 4/18/97 |

5. That Defendant did not maintain medical records and charts on the aforesaid patients and other patients that were complete and contained all pertinent medical information.

6. That Defendant did prescribe, administer or dispense controlled dangerous substances to some of the aforesaid patients without sufficient examination and the establishment of a valid physician-patient relationship.

7. That Defendant was perpetuating significant harm to public health, safety and welfare by continuing the acts and omissions set forth in the above allegations.

CONCLUSIONS OF LAW

1. The Oklahoma State Board of Medical Licensure and Supervision has jurisdiction in this matter.

2. That Patrick S. Herd, M.D., holding Oklahoma Medical License No. 18233, is in violation of the Oklahoma Medical Practice Act, 59 O. S. Supp. 1996, Sec. 509, Paragraphs 13 and 17, to-wit:

“13. Prescribing or administering a drug or treatment without sufficient examination or the establishment of a valid physician-patient relationship.”

“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.”

3. That Patrick S. Herd, M.D., is in violation of the rules and regulations promulgated by this Board, specifically, Rule 435:10-7-4(1), (2), and (6), to-wit:

“(1) Indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs.”

“(2) 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.”

“(6) Dispensing, prescribing or administering a controlled substance or narcotic drug without medical need.”

ORDER

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

1. That the Defendant, Patrick S. Herd, M.D., holding Oklahoma Medical License No. 18233, should be and is hereby **FORMALLY REPRIMANDED** for the conduct set forth above and also placed on **PROBATION** to the Oklahoma State Board of Medical Licensure and

Supervision for a period of five (5) years to begin on March 27, 1998, under the following terms and conditions:

(a) During the period of probation Defendant will not practice any weight control or pain management.

(b) During the period of probation Defendant will maintain adequate medical records to support any prescription of controlled dangerous substances to any patient and shall make those records available to agents and representatives of the Oklahoma Board of Medical Licensure and Supervision upon their request to include quarterly review of records as collected by the Board staff.

(c) Defendant will execute such release of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Consultant to obtain copies of medical records and authorize the Compliance Consultant to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records. Board staff to obtain reports from the Chief of Psychiatry at Carl Albert regarding clinical performance of the Defendant.

(d) During the period of probation, Defendant will keep duplicate, serially numbered prescriptions of all controlled dangerous substances readily retrievable, in numerical order and will furnish copies to investigators or other authorized agents of the Oklahoma State Board of Medical Licensure and Supervision immediately upon request.

(e) Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision 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 of interpretation is received by Defendant from the Oklahoma State Board of Medical Licensure and Supervision.

(f) During the period of probation, Defendant will request all hospitals in which he anticipates practice to furnish to the Oklahoma State Board of Medical Licensure and Supervision, a written

statement regarding monitoring of his practice while performing services in or to that hospital.

(g) During the period of probation, Defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of Medical Licensure and Supervision.

(h) During the period of probation, Defendant will not supervise allied health professionals.

(i) During the period of probation, Defendant will keep the Board informed of his current address.


(j) During the period of probation, Defendant will keep current payment of all assessment by the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of his case.

(k) Until such time as all indebtedness to the Oklahoma State Board of Medical Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

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

3. 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.

DATED this 23 day of April, 1998.


GERALD C. ZUMWALT, M.D.,
Secretary/Treasurer
Oklahoma Board of Medical Licensure
and Supervision

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 29 day of April, 1998, to:

PATRICK S. HERD, M.D.
RR 1 Box 67 D
McAlester OK
74501

Janet Owens