

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

STATE OF OKLAHOMA

FILED

MAY 7 1998

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

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

Plaintiff,)

v.)

Case No. 96-08-1819

PATRICK S. HERD, M.D.,)
MEDICAL LICENSE NO. 18233,)

Defendant.)

AMENDED FINAL ORDER

This Amended Final Order amends and corrects the Final Order entered in this cause ~~April~~ April 23, 1998. The April order contained several scrivener's errors and did not accurately reflect the *en banc* decision of the Oklahoma State Board of Medical Licensure and Supervision entered March 27, 1998. This Amended Final Order supersedes the order entered April 23, 1998 in its entirety.

This cause came one for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board"), *en banc*, on March 27, 1998, at the office of the Board, 5104 N. Francis, Suite C, Oklahoma City, OK, 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 *en banc* heard sworn testimony, reviewed exhibits, and being fully advised in the premises, FINDS and ORDERS as follows:

Findings of Fact

1. Defendant, Patrick S. Herd, M.D., is the holder of Oklahoma Medical License No. 18233.

2. From approximately July 1995 to November 1997, Defendant prescribed, administered or dispensed controlled dangerous substances and other drugs to patients and maintained patients on those drugs for long periods of time. Such prescribing, administering, or dispensing was in excess of the amount considered good medical practice and was without medical need. The controlled dangerous substances prescribed, administered or dispensed by the Defendant included the following:

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

3. Defendant prescribed, administered or dispensed controlled dangerous substances for weight control to, among others, the following patients:

Patient	Start Date	Starting Weight (in pounds)	Height	Ending Weight (in pounds)	Ending Date
Female					
A	12/7/95	103.8	5'4"	104.0	3/13/96
B	4/12/96	157.0	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	183.0	5'5"	203.6	7/18/97
F	3/19/96	152.0	5'1"	147.0	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	102.0	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					
L	3/28/96	176.0	5'10"	173.8	6/25/97
M	9/15/95	173.4	5'9"	173.4	4/18/97

4. Defendant did not maintain complete medical records and charts that contained all pertinent medical information on his patients, including those patients listed above.

5. Defendant's medical records fail to demonstrate that Defendant prescribed, administered or dispensed controlled dangerous substances to the patients listed above with sufficient examination and the establishment of a valid physician-patient relationship.

6. As a result of these acts and omissions, Defendant was perpetuating significant harm to the public health, safety and welfare.

7. The Board has jurisdiction of the subject matter herein, and proper notice has been given as required by law and the rules of the Board.

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Act and the OAC. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

2. Defendant, Patrick S. Herd, M.D., License No. 18233, by reason of the above facts, is in violation of 59 Okla. Stat. § 509(13) and (17) of the Act, which provide:

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. Defendant, Patrick S. Herd, M.D., License No. 18233, by reason of the above facts, is in violation of the following section of the OAC, which provide:

(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 State Board of Medical Licensure and Supervision as follows:

1. The Defendant, Patrick S. Herd, M.D. holding Oklahoma Medical License No. 18233, should be and is hereby FORMALLY REPRIMANDED for the conduct described above and also is placed on PROBATION for a period of five (5) years beginning on the date of this Order.

2. The following terms, conditions and requirements are apply during the probationary period:

a. Defendant will not practice any weight control or pain management.

b. Defendant will keep and maintain adequate medical records to support any prescription of controlled and non-controlled addictive substances to any patient and shall make those records available to agents and representatives of the Board upon their request to include quarterly review of records as collected by the Board staff.

c. Defendant will limit his practice to psychiatry for patients of the Carl Albert Community Mental Health Center, McAlester, Oklahoma, and the Board staff will obtain reports from the Chief of Psychiatry at Carl Albert

Community Mental Health Center regarding Defendant's clinical performance.

d. Defendant will keep duplicate, serially numbered prescriptions of all controlled and non-controlled addictive substances readily retrievable, in numerical order and will furnish copies to investigators or other authorized agents of the Board immediately upon request.

e. Defendant will conduct his practice in compliance with the Act and OAC as interpreted by the Board. Any question of interpretation regarding the Act or its implementing regulations 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 received by Defendant from the Board.

f. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and each and every hospital, clinic or other institution in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating the sanctions imposed by the Board herein.

g. Defendant will not supervise allied health professionals.

h. Defendant will keep the Board informed of his current address.

i. Defendant will pay when due all assessments by the Board for prosecution, investigation and monitoring of his case.

j. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

3. The jurisdiction of the Board in this individual proceeding will continue until the terms, conditions and requirements of probation are modified or lifted by the Board on its own motion or upon the motion of the Defendant.

4. Failure to meet any of the terms of probation will constitute cause for the Board to initiate additional proceedings to revoke or suspend Defendant's Oklahoma Medical License, after due notice and hearing.

5. Termination from probation and reinstatement of a full, unrestricted medical license shall take place and become effective only after review by the Board upon proof of compliance and satisfaction of all terms, conditions and requirements for full licensure in the State of Oklahoma.

Dated this 7 day of May, 1998.



Gerald C. Zumwalt, M.D., Secretary
Oklahoma State 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, via certified mail, postage prepaid, this 13 day of May, 1998 to:

Patrick S. Herd
RR 1 Box 67D
McAlester OK 74501



Janet L. Owens VICKIE L. MATTINGLY

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