

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

**FILED**

MAY 18 2005

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

Plaintiff, )  
)

v. )

WILBUR D. HILST, M.D., )  
LICENSE NO. 20686, )

Defendant. )

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 98-06-2014

**SECOND AMENDED 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 Second Amended Complaint against the Defendant, Wilbur D. Hilst, 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, Wilbur D. Hilst, M.D., holds Oklahoma license no. 20686. Defendant was originally granted licensure under the terms of an Order Granting Licensure Under Terms of Probation entered July 7, 1998, with a five (5) year term of probation. The terms of his probation were subsequently modified on two (2) separate occasions so as to allow him to practice at different locations with the prior approval of the Board Secretary.

3. The Order Granting Licensure Under Terms of Probation entered July 7, 1998 set forth Defendant's terms of probation and provided that Defendant should be on probation as follows:

(h) Applicant will not prescribe, administer or dispense any medications for personal use.

(i) Applicant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Applicant will have the affirmative duty to inform any and every doctor treating him of this Order

prior to the commencement of, or continuation of presently ongoing, treatment.

- (j) Applicant will have the affirmative duty not to ingest any other substance which will cause a body fluid sample to test positive for prohibited substances.

4. On or about April 24, 2002, Defendant tested positive for Donnatal on a drug screen obtained on behalf of the Oklahoma State Board of Medical Licensure and Supervision. Defendant admitted that he did not have a prescription for the medication and no physician had authorized it for him.

5. On June 14, 2002, the State filed a Complaint against Defendant based upon violation of his probation.

6. On November 21, 2002, the Board conducted a hearing on the Complaint. After considering the evidence, the Board entered a Final Order Imposing Indefinite Probation and Restriction on License. Under this Order, Defendant's practice was limited as follows:

- a. Dr. Hilst will practice in a controlled environment approved by the Board Secretary and must obtain approval from the Board Secretary prior to making any change in his practice or practice location.

7. On July 30, 2004, Defendant met with Dr. Zumwalt, the Board Secretary, and Tom Sosbee, Compliance and Education Coordinator for the Board. Board staff had learned that Defendant had been working at various locations of "Oklahoma On-Call". According to Board records, Defendant had not obtained the Board Secretary's approval prior to working for Oklahoma On-Call. On that date, the Board Secretary rescinded approval of all previous employment situations with the exception of his current job at Mary Mahoney Memorial Health Care Center.

8. On September 2, 2004, Defendant was issued a Letter of Concern by the Board Secretary based upon the fact that he had worked at Oklahoma On Call, but had not obtained the prior approval of the Board Secretary. In the written Letter of Concern, Defendant was advised as follows:

You must obtain the Board Secretary's approval prior to any new employment requiring your Oklahoma medical license. I have rescinded approval of all employment locations, with the exception of Mary Mahoney Memorial Health Care Center, 12716 N.E. 36<sup>th</sup> Street, Spencer, Oklahoma. No other locations for the Mary Mahoney Memorial Health Care Center are approved at this time. You may use your Oklahoma medical license for no other locations unless you obtain this prior approval from the Board Secretary. You may not begin new employment pending our response to any request for additional employment. Any

request to change locations should be made in writing to the Board Secretary's attention.

9. On September 16, 2004, Defendant met with the Board Secretary, Tom Sosbee, and Lyle Kelsey, Executive Director for the Board. At this meeting, Defendant was advised that he had violated his probation by working for Oklahoma On-Call without the Board Secretary's permission and that the matter would be handled through a Letter of Concern at that point. Defendant advised that he understood and would not work anywhere other than Mary Mahoney Memorial Health Care Center without prior approval of the Board Secretary.

10. On September 30, 2004, Defendant obtained permission from the Board Secretary to work temporarily at the Sequoyah Memorial Hospital in Sallisaw, Oklahoma. Defendant did not advise the Board Secretary that the offer to work temporarily at the Sequoyah Memorial Hospital came through Oklahoma On-Call, the company he had been told he could not work for in the September 2, 2004 Letter of Concern.

11. On November 29, 2004, Defendant obtained permission from the Board Secretary to work one day per week at the Tulsa Job Corp. Defendant did not advise the Board Secretary that the offer to work at the Tulsa Job Corp came through Oklahoma On-Call, the company he had been told he could not work for in the September 2, 2004 Letter of Concern. He obtained specific permission to work on December 3, December 10, December 17 and December 21, 2004. However, records subsequently obtained from Oklahoma On-Call, the company that placed Defendant at the Tulsa Job Corps, reflect that at the time Defendant obtained the Board Secretary's approval to work at the Tulsa Job Corps, he had already worked there on three (3) occasions without permission, specifically, on November 9, 2004, November 18, 2004 and November 23, 2004.

12. Subsequent to the filing of the Complaint, the State subpoenaed records from Oklahoma On-Call. These records reflect that since the September 16, 2004 meeting regarding the Letter of Concern, Defendant has worked at the following locations **without** Board Secretary Approval:

<b><u>Facility</u></b>	<b><u>Dates Worked</u></b>
1 Harmon Memorial Hospital, Hollis, OK	November 5, 2004 November 6, 2004 November 7, 2004 November 8, 2004
2. N.E. Oklahoma Community Health Center, Tahlequah, Oklahoma	November 13, 2004 November 20, 2004 November 22, 2004 November 27, 2004 December 2, 2004

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| 3. White Eagle   | December 28, 2004<br>December 29, 2004<br>December 30, 2004   |
| 4. Woodward Hospital, Woodward, OK                         | January 14, 2005<br>January 15, 2005<br>January 16, 2005<br>January 19, 2005<br>January 20, 2005<br>January 23, 2005<br>January 27, 2005<br>January 28, 2005<br>February 1, 2005<br>February 3, 2005<br>February 6, 2005<br>February 7, 2005<br>February 8, 2005<br>February 9, 2005<br>February 10, 2005 |
| 5. Northeastern Community Health Care,<br>Hobart, Oklahoma | February 25, 2005   |
| 6. Primary Care Associates,<br>Bartlesville, Oklahoma      | February 22, 2005<br>February 23, 2005<br>March 2, 2005   |

13. According to their records, Defendant failed to provide a copy of his Final Order Imposing Indefinite Probation to Oklahoma On-Call as required by paragraph 1(d) of his Order.

14. On or about January 20, 2005, Defendant met with the Board Secretary and with Tom Sosbee, Compliance and Education Coordinator. At this meeting, Defendant admitted that he had started the "Wewoka Regional Medical Center" and that he had already seen "a couple" of patients. The Board Secretary had not granted Defendant permission to practice at this location. The Board Secretary advised Defendant that he would need to request permission to work at the Wewoka Regional Medical Center from the Board at the next Board meeting.

15. The State subsequently obtained Defendant's appointment book for the "Wewoka Regional Medical Center", which reflects that from January 11, 2005 through January 27, 2005, Defendant scheduled at least **50 appointments** for patients to be seen at the Wewoka Regional Medical Center. During this same period of time, Defendant wrote or authorized at least **40 prescriptions** for some of these patients, which were filled at local area pharmacies. These patients were seen and the prescriptions issued by Defendant prior to Defendant even seeking approval from the Board to work at the Wewoka Regional Medical Center.

16. On January 27, 2005, Defendant presented his request to work at the Wewoka Regional Medical Center to the Board. Defendant at first denied that he had seen any patients, then admitted that he may have simply spoken with a "couple" of patients. As set forth in paragraph 15 above, Defendant had in fact treated patients on at least 50 separate appointments and had issued at least 40 prescriptions to these patients prior to presenting his request to the Board. His request was tabled at that time for additional information, and was tabled again at the March 10, 2005 Board meeting.

17. Defendant's appointment book from the Wewoka Regional Medical Center reflects that subsequent to the March 10, 2005 Board meeting, Defendant scheduled at least 67 appointments for patients to be seen at the Wewoka Regional Medical Center. During this same period of time, Defendant wrote or authorized at least 42 prescriptions for some of these patients, which were filled at local area pharmacies. These patients were seen and the prescriptions issued by Defendant prior to any decision by the Board on whether or not Defendant would be allowed to practice at the Wewoka Regional Medical Center.

18. As of the date of the filing of the Amended Complaint, Defendant has not been approved to practice at the Wewoka Regional Medical Center. However, Janet Swindle, Investigations Secretary for the Board, telephoned the Wewoka Regional Medical Center on March 8, 2005 and was able to schedule an appointment with Defendant for March 14, 2005. When she did not show up for her appointment, someone from Defendant's office contacted her and offered to reschedule her appointment. Additionally, on March 14, 2005, Gayle McClenney, Investigator for the Board, called the Wewoka Regional Medical Center and scheduled an appointment with Defendant for March 14, 2005. Defendant's appointment book reflects both of these appointments.

19. Pharmacy records obtained from Roberts Drug Store in Wewoka, Oklahoma reflect that on or about February 28, 2005, Defendant wrote or authorized a prescription for Lonox, a Schedule V controlled dangerous substance, to his wife, Margret Hilst.

20. The November 21, 2002 Final Order Imposing Indefinite Probation and Restriction of License additionally restricted Defendant's license as follows:

2. Defendant's license shall be **RESTRICTED** in that he shall not be allowed to practice surgery without the prior express approval of the Board.

21. A review of the medical records of patients treated by Defendant at the Mary Mahoney Memorial Health Center reveals that Defendant performed the following surgical procedures during the time that he was not allowed to perform surgery under his restricted license:

- a. On May 12, 2004, Defendant performed excisional biopsies of three (3) nevus on Patient PHS in the minor surgery room at the Mary Mahoney Memorial

Health Center. The pathology report reflected one 1) compound nevus and two (2) intradermal nevus.

- b. On May 24, 2004, Defendant performed the excision of a forehead lesion and nevus on the back of Patient JMS in the minor surgery room at the Mary Mahoney Memorial Health Center. The pathology report reflected actinic keratosis.
- c. On June 20, 2004, Defendant removed a cyst on the left side of the face of Patient EAS in the minor surgery room at the Mary Mahoney Memorial Health Center. The pathology report reflected an epidermal inclusion cyst.
- d. On July 7, 2004, Defendant removed a cyst on the arm of Patient MDS in the minor surgery room at the Mary Mahoney Memorial Health Center. The pathology report reflected keratoacanthoma.
- e. On July 20, 2004, Defendant performed the excision of a lesion on the neck and a lesion on the face of Patient DMS. The pathology report reflected benign inflamed keratosis and intradermal nevus.
- f. On July 28, 2004, Defendant performed the excisional biopsy of a mole on the left thigh of Patient TWS in the minor surgery room at the Mary Mahoney Memorial Health Center. The pathology report reflected a fibro fatty skin tag.
- g. On August 19, 2004, Defendant removed a lesion on the right forearm of Patient TYS. The pathology report reflected squamous cell carcinoma.
- h. On September 16, 2004, Defendant removed a callous on the foot of Patient DBS. The pathology report reflected an epidermal inclusion cyst.

22. According to Board records, Defendant has not been given permission by the Board to perform any type of surgery subsequent to the November 21, 2002 restriction on his license.

23. A review of the medical records of patients treated by Defendant at the Mary Mahoney Memorial Health Center reveals that Defendant additionally performed the following surgical procedure during the time that he was not allowed to perform surgery under his restricted license:

a. On May 12, 2004, Defendant performed the excision of a cyst on the forehead of Patient JWS in the minor surgery room at the Mary Mahoney Memorial Health Center. The tissue removed by Defendant was not sent for pathological examination but was thrown away in the trashcan. The patient returned to Defendant on August 10, 2004 with his chief complaint that the growth on his forehead had returned. Defendant did not address this complaint in his notes. On January 10, 2005, the patient returned and was seen by Dr. Hamilton,

an oncologist at Mary Mahoney Memorial Health Center, who diagnosed the patient with malignant melanoma. The malignancy appeared to be in the area previously surgically treated by Defendant.

24. On May 5, 2005, Defendant appeared before the Board at which time the hearing on the Amended Complaint was continued until the July 21, 2005 Board meeting. The Board confirmed that pending the hearing, Defendant was only allowed to work at Prairie View Hospice or any other location approved in writing by the Board Secretary after May 5, 2005.

25. On May 12, 2005, Defendant met with the Board Secretary and Tom Sosbee, Compliance and Education Coordinator for the Board. Defendant represented that he had been offered a position to work at the Oklahoma Community Health Services Clinic in south Oklahoma City. Defendant stated that he had advised this prospective employer that he was on probation, but had not given them a copy of his Order of Probation as is required under his Probation. He further stated that although the clinic had locations in Tipton and Ft. Cobb, he would only work at the Oklahoma City location when there were three (3) to five (5) other physicians there. Defendant was advised he needed to provide a job offer and job description to the Board Secretary before approval could be given.

26. On May 13, 2005, Tom Sosbee traveled to the Oklahoma Community Health Services Clinic and learned that there were no job openings at the Oklahoma City location of the clinic, but that Defendant had inquired solely about working at the Tipton location where it was a solo practice. According to representatives of the clinic, Defendant had not disclosed that he was on probation.

27. At the time of his May 12, 2005 meeting with clinic representatives, Defendant provided them with a copy of his Oklahoma medical license wallet card. An examination of the copy provided to the clinic reveals that Defendant had submitted fraudulent information to the clinic, in that he had altered his wallet card prior to copying it by deleting the word "PROBATION" on the card.

28. On May 13, 2005, Defendant again met with the Board Secretary and Mr. Sosbee, at which time the Board Secretary denied Defendant's request to work at the Oklahoma Community Health Services Clinic due to Defendant's lying and fraudulent representations to both the Board Secretary and representatives of the clinic.

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

A. 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).

B. 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), OAC

435:10-7-4(39), and 59 O.S. §492.1(B)(requirement of good moral character).

C. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).

D. 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 in violation of OAC 435:10-7-4(26).

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

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

G. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).

*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

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Oklahoma City, OK 73118

Attorney for the Plaintiff



CERTIFICATE OF SERVICE

I certify that on the 18 day of May, 2005, I mailed, via first class mail, postage pre-paid, a true and correct copy of this pleading to Daniel Gamino, 3315 N.W. 63<sup>rd</sup> Street, Oklahoma City, OK 73116.

  
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Janet Swindle