

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

FILED

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
DAVID WARREN FAGELL, M.D.,)
LICENSE NO. 20973,)
)
Defendant.)

MAY 17 2001

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 01-02-2302

VOLUNTARY SUBMITTAL TO JURISDICTION AND ORDER

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 for the State of Oklahoma, and the staff of the Board, as represented by the Secretary of the Board, Gerald C. Zumwalt, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, David Fagell, M.D., Oklahoma license no. 20973, who appears in person and through counsel, Jim Dolenga, proffer this Agreement for acceptance by the Board *en banc* pursuant to Section 435:5-1-5.1 of the Oklahoma Administrative Code ("OAC").

AGREEMENT AND ACKNOWLEDGMENT BY DEFENDANT

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on March 22, 2001 and acknowledges that hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act").

Defendant, David Warren Fagell, M.D., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his right to a full hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions of this Order. Defendant acknowledges that he has read and understands the terms and conditions stated herein, and that this Agreement has been reviewed and discussed with him by his legal counsel.

PARTIES' AGREEMENT AND STIPULATIONS

Plaintiff, Defendant and the Board staff stipulate and agree as follows:

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, David Warren Fagell, M.D., holds Oklahoma license no. 20973.

3. On or about November 15, 2000, Defendant was disciplined by the State of Missouri based upon his filing of a false renewal application in 1999 with the Missouri Board of Registration for the Healing Arts. Defendant had advised the Missouri board that he had completed the required twenty-five (25) hours of Continuing Medical Education ("CME"), when in fact he had not. Defendant was also disciplined for engaging in the unauthorized practice of medicine during this time period.

4. As a result of the aforesaid Settlement Agreement, the Missouri Board of Registration for the Healing Arts issued a Public Reprimand of the Defendant David Warren Fagell, M.D. A complete copy of the Settlement Agreement entered by the Missouri Board of Registration for the Healing Arts is attached hereto as Exhibit "A" and incorporated herein by reference.

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, David Warren Fagell, M.D., Oklahoma medical license 20973, is guilty of unprofessional conduct set forth below based on the foregoing facts:

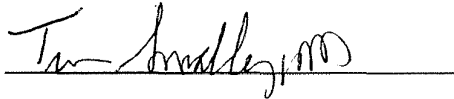
A. Disciplinary action of another state or jurisdiction against a license based upon acts of conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in Oklahoma in violation of OAC 435:10-7-4(31).

Order

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

1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.
2. The Defendant, David Warren Fagell, M.D., Oklahoma license no. 20973, should be and is hereby **PUBLICLY REPRIMANDED** for the conduct set forth above.
3. Defendant shall give a copy of this Voluntary Submittal to Jurisdiction and Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Defendant has privileges, has applied for privileges or applies for privileges.
4. Defendant agrees to pay the costs, including attorney's fees, for the investigation and prosecution of this action.

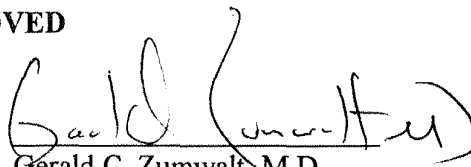
Dated this 17 day of May, 2001.



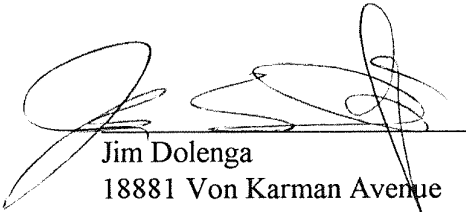
Tim Smalley, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED

David Warren Fagell M.D.
David Warren Fagell, M.D.
License No. 20973



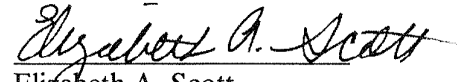
Gerald C. Zumwalt, M.D.
Secretary & Medical Advisor
Oklahoma State Board of
Licensure and Supervision



Jim Dolenga
18881 Von Karman Avenue
Suite 1750
Irvine, California 92612

Attorney for the Defendant

Effective Date 5/3/2001

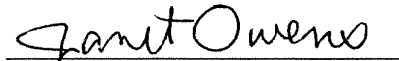


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Attorney for the Oklahoma
State Board of Medical
Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 22 day of May, 2001, I mailed a true and correct copy of the Voluntary Submittal Jurisdiction to David W. Fagell, MD, Core 88 Black Falcon Ave #353, Boston, MA 02210-2414 and Jim Dolenga, 18881 Von Karman Ave, Suite 1750, Irvine, CA 92612.



Janet Owens, Secretary