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

FILED

MAY 27 2011

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA EX REL. THE OKLAHOMA BOARD OF MEDICAL LICENSURE AND SUPERVISION,	)	
Plaintiff,	)	
v.	)	**Case No. 10-05-3996**
BRIAN EUGENE BLAKE, M.D., LICENSE NO. 21213	)	
Defendant.	)	

FINAL ORDER OF ADMINISTRATIVE FINE

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 19, 2011, at the office of the Board, 101 N.E. 51st Street, 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 through counsel, Daniel Gamino.

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.*

2. Defendant, Brian Eugene Blake, M.D., holds Oklahoma license no. 21213 and practices in Kansas, Oklahoma and Broken Arrow, Oklahoma.

AIDING AND ABETTING UNLICENSED PRACTICE OF MEDICINE

3. Beginning in or around 2009, Defendant purchased and began operating the Weight Loss Clinics of Oklahoma in Kansas, Oklahoma. Defendant worked at the Kansas, Oklahoma clinic and treated patients for weight loss.

4. On or around May 2009, Defendant purchased and began operating a second location of the Weight Loss Clinics of Oklahoma in Broken Arrow, Oklahoma.

5. According to Defendant, when a new patient came to either clinic, the patient had to initially be seen by him. Patients paid between $145.00 and $180.00 for the initial examination and were then dispensed various controlled dangerous substances as part of the cost of the office visit. No written prescriptions were issued, in that part of the cost for the exam included the cost of the weight loss medications dispensed.

6. After the patient had seen Defendant for the initial visit, they were allowed to "walk-in" for further office visits at either clinic and to be dispensed additional controlled dangerous drugs for weight loss.

7. From May 2009 until June 2010, both the Kansas and the Broken Arrow clinics were open six (6) days per week. Defendant divided his time between the two (2) clinics.

8. Defendant admits that when he was at one (1) clinic treating patients, the other clinic was operated by unlicensed staff who continued to see existing patients, provide medical care, and dispense controlled dangerous substances to the patients. Medical care provided by the unlicensed staff included giving B-12 and Myoden injections as often as once per week, drawing blood for lab work, taking vital signs, and dispensing controlled dangerous substances.

9. A review of Defendant's dispensing records at the Weight Loss Clinics of Oklahoma in both Kansas, Oklahoma and Broken Arrow, Oklahoma reveals that for the approximate one (1) year period from May 22, 2009 until June 4, 2010 when Defendant was dividing his time between the two (2) clinics, **11,473 prescriptions for controlled dangerous substances** were dispensed by either Defendant or the unlicensed individuals employed by Defendant. In excess of **344,190 dosage units** of controlled dangerous substances were dispensed by either Defendant or these unlicensed individuals during this approximate one (1) year period of time. These controlled dangerous drugs were primarily Phendimetrazine, a Schedule III controlled dangerous substance, and Phentermine, a Schedule IV controlled dangerous substance, both of which are weight loss medications. Defendant's records also reflect that **4,566 B-12 and Myoden injections** were given by either Defendant or his unlicensed employees during this same period of time when he was dividing his time between his two (2) clinics.

10. Defendant admits that when he was working at one (1) clinic and patients were being seen at the other clinic, no physical examination was performed on the patients prior to the patients being dispensed controlled dangerous substances or being given injections by his unlicensed employees.

UNDERCOVER INVESTIGATION

11. On or about June 1, 2010, Board Investigator Jana Lane began an undercover investigation into the allegations that Defendant was aiding and abetting the unlicensed practice of medicine at the Weight Loss Clinics of Oklahoma in Kansas, Oklahoma and Broken Arrow, Oklahoma. Investigator Lane posed as patient and called the Kansas clinic. She was advised as to the cost of the visit and was told that as a new patient, she could be seen on Thursday, June 3, 2010. She was advised that no new patients were being seen on Friday, June 4, 2010 at the Kansas clinic.

12. On June 1, 2010, Investigator Lane also called the Broken Arrow clinic and was advised that new patients could be seen on Friday, June 4, 2010.

13. Based upon this information, Investigator Lane, along with Board Investigator Robert DuVall, travelled to the Kansas clinic on June 4, 2010. They observed four (4) patients enter the clinic. They then went inside and obtained the patient log, which showed that five (5) patients had been treated at the clinic thus far on that day. The clinic had only two (2) employees on the premises: a "certified nursing assistant" and a "certified phlebotomist" who was also the office manager. The office manager admitted that there were no licensed medical practitioners at the clinic that day.

14. A review of the patient charts for the patients treated at the Kansas clinic on June 4, 2010 prior to the Board investigators entering the clinic reveals that four (4) patients were dispensed controlled dangerous substances by unlicensed persons as follows:

a. Patient NMD- 30 Phendimetrazine TR 105 mg
30 Phendimetrazine 35 mg

b. Patient VMD- 30 Phendimetrazine TR 105 mg
30 Phendimetrazine 35 mg

c. Patient PRD- 30 Bontril TR 105 mg
30 Bontril gt 35 mg

d. Patient JWD- 30 Phendimetrazine TR 105 mg
30 Phendimetrazine 35 mg

15. Patient PFD, along with Patient NMD and Patient VMD, also received an injection on this date.

16. A review of the patient records reflects that on the initial visits, the charts contain no weight history, no diagnosis or plan, and do not contain evidence of an adequate physical examination. Follow-up examinations where controlled dangerous substances were dispensed consisted of a recording weight and blood pressure only. Defendant's charts reflect multiple visits with no documentation other than the patient's weight and blood pressure and a label showing the controlled dangerous drugs dispensed.

PRESCRIBING TO HIS SPOUSE

17. A review of Defendant's records reveals that beginning on or about February 28, 2006 and continuing through at least June 2, 2010, Defendant treated his wife, Patient KBD, for weight loss. Defendant's chart on this patient along with PMP records reflect at least seventeen (17) prescriptions dispensed by Defendant or his unlicensed employees to his wife, Patient KBD. These prescriptions included fourteen (14) prescriptions for Phendimetrazine and Bontril, Schedule III controlled dangerous drugs, and three (3) prescriptions for Phentermine, a Schedule IV controlled dangerous drug.

18. Defendant's chart reflects that on six (6) of the eleven (11) office visits where Defendant's wife's weight was recorded and she received controlled dangerous drugs for weight loss, she weighed 135 pounds or less, and on one instance, weighed just 122 pounds, although she was 5'6" tall. During the time Defendant was prescribing controlled dangerous substances to his wife in the form of weight loss medications, he did not maintain an office record which accurately reflected the evaluation, treatment and medical necessity of treatment of the patient. Additionally, even though Defendant was prescribing only weight loss medications, his patient record did not always reflect the patient's weight, nor did it reflect all controlled dangerous drugs dispensed by him or his office staff.

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

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

B. Aided or abetted, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of 59 O.S. §509(14) and OAC 435:10-7-4(21).

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(26).

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

   B. Aided or abetted, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of 59 O.S. §509(14) and OAC 435:10-7-4(21).

   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(26).

3. The Board further found that the Defendant's license should be disciplined based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509 (14) and OAC 435: 10-7-4 (21), (26) and (27).

Order

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

1. Defendant, Brian Eugene Blake, M.D., Oklahoma medical license no. 21213, shall pay an **ADMINISTRATIVE FINE** in the amount of **$10,000.00** to be paid immediately.

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 27 day of May, 2011.

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

CERTIFICATE OF SERVICE

I certify that on the 27 day of May, 2011, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Daniel Gamino, Daniel J. Gamino & Associates, P.C., 3315 N.W. 63rd Street, Oklahoma City, OK 73116.

Janet Swindle