

Defendant, Frank Allen Zimba, 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.

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, Frank Allen Zimba, M.D., holds Oklahoma license no. 27269.

PATIENT AM-WRONG SITE SURGERY **NEW YORK**

3. On or about November 14, 2006, Patient AM authorized Defendant to perform a **Right** L2-3 Decompression and Discectomy. Instead, Defendant inappropriately performed a **Left** L2-3 Decompression and Discectomy.
4. The day after the surgery, Defendant realized that he had operated on the wrong side. He then notified the patient and the hospital administration. A review by the hospital revealed that the timeout was inadequate and that Defendant had not pre-marked the side on which he was to operate.

PATIENT BM-WRONG SITE SURGERY **NEW YORK**

5. On or about March 19, 2007, Patient BM authorized Defendant to perform a **Left Side** L5-S1 Discectomy. Instead, Defendant inappropriately performed a **Right Side** L5-S1 Discectomy.
6. During surgery, Defendant realized he had operated on the wrong side so he then correctly performed the **Left Side** L5-S1 Discectomy during the same anesthetic procedure.

7. After completing the surgery on both the incorrect side and the correct side, Defendant reported his mistake to the hospital. However, **he did not report the wrong site surgery to the patient but claims he reported it to the patient's family.**

PRIOR DISCIPLINARY ACTION

8. As a result of these two (2) wrong site surgeries, the New York State Board for Professional Medical Conduct initiated disciplinary action on Defendant's New York medical license. On or about August 2, 2008, Defendant executed a Consent Agreement and Order whereby he plead guilty to "Negligence on More Than One Occasion". As a result of Defendant's guilty plea, on or about September 4, 2008, he was Reprimanded, placed on Probation for one (1) year, and ordered to pay a \$5,000.00 fine.

9. Based upon the disciplinary action in New York, on or about January 27, 2009, the Pennsylvania State Board of Medicine took disciplinary action on Defendant's Pennsylvania medical license. Defendant was Reprimanded, placed on Probation coterminous with his New York Probation, and was ordered to pay a \$2,500.00 fine.

10. Based upon the disciplinary action in New York, on or about May 20, 2009, the Michigan State Board of Medicine took disciplinary action on Defendant's Michigan medical license. Defendant was ordered to pay a fine of \$500.00.

CURRENT ALLEGATIONS OF UNPROFESSIONAL CONDUCT

PATIENT RSJ-WRONG SITE SURGERY OKLAHOMA

11. On or about September 17, 2009, Defendant appeared before the Oklahoma State Board of Medical Licensure and Supervision in support of his application for an Oklahoma medical license. Defendant testified about his malpractice history, as well as his prior disciplinary action. After the full hearing, the Board granted Defendant's request for an Oklahoma medical license.

12. Patient RSJ was in the United States Army and was referred to Defendant by Reynolds Army Community Hospital. On or about February 12, 2010, Patient RSJ authorized Defendant to perform a **Single Level Right L5-S1** minimal transforaminal lumbar interbody fusion and pedicle screw fixation. Patient RSJ understood the plan and signed the Consent Form. The surgery was to be performed at Southwestern Medical Center in Lawton, Oklahoma.

13. Instead of performing the planned surgery on the **Right L5-S1 level**, Defendant mistakenly performed the procedure at the **Right L4-5 level**.

14. Before completing the surgery, Defendant recognized that he had mistakenly performed the procedure at the Right L4-L5 level. He then proceeded to immediately perform the surgery at the originally contemplated level, the **Right L5-S1 level**.

15. After having performed the surgery at both levels, Defendant met with the patient's wife. According to the patient's wife, Defendant did not tell her about the fact that he had initially performed surgery at the L4-L5 level, but instead, told her that he had to fuse an additional level because it was damaged. Defendant also met with the patient's mother. According to the patient's mother, he did not tell her about the fact that he had performed surgery at the incorrect level, but instead, told her that he had trouble getting the screw in and that he had to do additional surgery because the screw would not go in. Dr. Zimba disputes these allegations.

16. The Operative Report prepared by Defendant reports that a one level surgery was initially contemplated and a two (2) level surgery was performed. It does not specifically state that the Defendant performed the surgery at the "wrong level."

17. Based upon the facts set forth in Defendant's Operative Report, the United States Army was billed for a two (2) level surgery.

18. On or about July 28, 2010, Board staff interviewed Defendant. At that time, Defendant admitted that he had performed surgery on Patient RSJ at the L4-L5 level, which had not been originally contemplated. Defendant additionally admitted that he told the patient and the patient's family that he operated at two levels instead of one, but he did not say what caused him to perform the surgery at two (2) levels rather than one (1) as he did not know at the time what caused him to operate at the L4-L5 level.

19. On or about August 2, 2010, Southwestern Medical Center learned through Board staff that it had billed the United States Army for a two-level procedure. When hospital administrators learned this, they immediately notified the Army and corrected the bill and took off the charges for the second level surgery.

20. On or about August 9, 2010, Patient RSJ picked up his medical records from Defendant. He then telephoned Defendant and asked him what happened during this surgery. At that time, Defendant first explained why he believed he operated at L4-L5, and that he didn't realize it until it was too late.

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

A. Engaged in conduct which is likely to...harm the public in violation of 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) and OAC 435:10-7-4(39).

C. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment and medical necessity

of treatment in violation of 59 O.S. §509(18) and of OAC 435:10-7-4(41).

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, Frank Allen Zimba, M.D., Oklahoma medical license 27269, is guilty of unprofessional conduct set forth below based on the foregoing facts:

A. Engaged in conduct which is likely to...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) and OAC 435:10-7-4(39).

C. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment and medical necessity of treatment in violation of 59 O.S. §509(18) and of OAC 435:10-7-4(41).

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 license of Defendant, Frank Allen Zimba, M.D., Oklahoma license no. 27269, is hereby **SUSPENDED** for a period of **SIX MONTHS** beginning September 12, 2011, and continuing until March 12, 2012.

3. Defendant further agrees that he will not return to practice in the State of Oklahoma without first personally appearing before the Board to present evidence that he is competent to practice medicine and surgery and obtaining the Board's express written permission to practice in the State of Oklahoma.

4. Defendant's suspended license shall not be reinstated unless Defendant has reimbursed the Board for all taxed costs and expenses incurred by the State of Oklahoma.

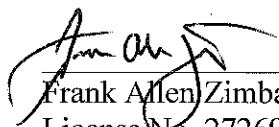
5. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.

Dated this 12th day of January, 2012.




J. Andy Sullivan, President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED

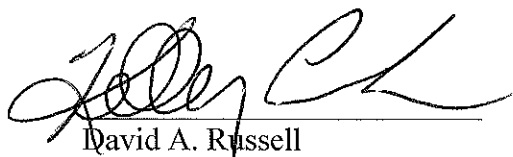


Frank Allen Zimba, M.D.
License No. 27269
5600 Gibson Blvd. Southeast
Apt. 438
Albuquerque, NM 87108

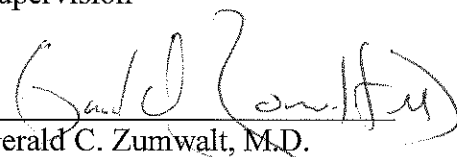


Elizabeth A. Scott, OBA #12470
Assistant Attorney General
State of Oklahoma
101 N.E. 51st Street
Oklahoma City, OK 73105

Attorney for the Oklahoma State
Board of Medical Licensure and
Supervision



David A. Russell
Kelly C. Comarda
Rodolf & Todd
2000 Mid-Continent Tower
401 S. Boston Avenue
Tulsa, OK 74103-4014

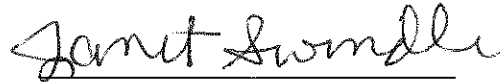


Gerald C. Zumwalt, M.D.
Secretary and Medical Advisor
Oklahoma State Board of
Medical Licensure and Supervision

Attorney for Defendant

CERTIFICATE OF MAILING

I certify that on the 13 day of January, 2012, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Kelly Comarda, Rodolf & Todd, 2000 Mid-Continent Tower, 401 South Boston Avenue, Tulsa, OK 74103-4014.


Janet Swindle
Janet Swindle