

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

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

Plaintiff,

v.

**DAVID RAY FERNANDEZ, P.A.,
LICENSE NO. PA 787,**

Defendant.

FILED

MAY 01 2003

**OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION**

Case No. 02-10-2568

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 Complaint against the Defendant, David Ray Fernandez, P.A., 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 physician assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.* and §519.1 *et seq.*

2. Defendant, David Ray Fernandez, P.A., holds Oklahoma license no. PA787.

3. On December 23, 1998, Defendant was served with a complaint and citation which contained allegations of unprofessional conduct.

4. The charges against Defendant were based upon actions occurring while he was licensed as a physician's assistant in the State of Arkansas. Defendant's Arkansas license lapsed for failure to renew while Defendant was under investigation by the Arkansas State Medical Board for unprofessional conduct involving controlled substances. The Arkansas State Board declined to pursue formal allegations of wrongdoing against Defendant because his license had lapsed.

5. By Order dated July 19, 1999, the State of Oklahoma subsequently agreed to dismiss the pending Complaint and Citation against the Defendant in consideration for Defendant's agreement to practice only under the following conditions for a period of three (3) years:

Defendant will not apply for registration with the Oklahoma Bureau of Narcotics or the United States Drug Enforcement Agency for the authority to prescribe, administer, dispense, order or possess drugs in Schedules III-V for a period of one (1) year; and

If and when Defendant obtains registration with the Oklahoma Bureau of Narcotics or the United States Drug Enforcement Agency for the authority to prescribe, administer, dispense, order or possess drugs in Schedules III-V, he will keep duplicate, serially numbered prescriptions of all substances readily retrievable in numerical order for a period of two (2) years.

6. On or about September 9, 2002, Patient ASF, a 35 year old female, was seen and treated by Defendant. Patient ASF was approximately eight (8) months pregnant and complained of vaginal bleeding. The patient was advised to follow back up if the bleeding continued for the next 24 to 48 hours. On or about September 11, 2002, Patient ASF was admitted to University Hospital in Oklahoma City, Oklahoma where she was diagnosed with abruption. Patient ASF remained at University Hospital until September 13, 2002. Patient ASF's care was jeopardized due to Defendant's acts of negligence and his inability or failure to diagnose and treat Patient ASF with appropriate skill and knowledge.

7. On or about October 15, 2002, Patient KDF, a 14 year old female, was seen and treated by Defendant. Patient KDF complained of exercise induced asthma and had no noted allergy symptoms. Defendant prescribed Claritin 10 mg., but did not perform any respiratory examination. Patient KDF's care was jeopardized due to Defendant's acts of negligence, his failure to order pertinent tests, and his inability to diagnose and treat Patient KDF with appropriate skill or knowledge.

8. On or about August 27, 2002, Patient PMF, a 3 year old female, was seen and treated by Defendant. Patient PMF had previously been treated at the Children's Hospital Emergency Room on August 16, 2002, at which time Ampicillin resistant E Coli had been detected. Defendant had the lab results showing the Ampicillin resistant E Coli at the time of the August 27, 2002 examination. Regardless of the test results, Defendant prescribed Ampicillin 250 mg. to Patient PMF. Patient PMF's care was jeopardized due to Defendant's acts of negligence and his inability to diagnose and treat Patient PMF with appropriate skill and knowledge.

9. On or about October 11, 2002, Patient ACF, an 18 year old female, was seen and treated by Defendant. Patient ACF was approximately 32 to 33 weeks pregnant and complained of headache and congestion. Defendant diagnosed Patient ACF as having an upper respiratory infection with headaches, nausea and vomiting, and prescribed Amoxicillin and Phenergan. However, Patient ACF's chart shows no documented respiratory examination, no documented vital signs and no fundoscopic exam. Patient ACF's care was jeopardized due to Defendant's acts of negligence, his failure to perform pertinent tests and examinations, and his inability to diagnose and treat Patient ACF with appropriate skill and knowledge.

10. On or about October 24, 2002, Patient MRF, a 33 year old male, was seen and treated by Defendant. Patient MRF complained of an infected finger and had a blood sugar level of 472. Defendant performed no tests at that time, but advised Patient MRF to follow up in 24-48 hours for a blood sugar check. Patient MRF's care was jeopardized due to Defendant's acts of negligence, his failure to perform pertinent tests and examinations, and his inability to diagnose and treat Patient MRF with appropriate skill and knowledge.

11. In and around 2002, Defendant treated patients RWF, AIF, BPF, DWF, PGF and ERF. Each of these patients' care was jeopardized due to Defendant's acts of negligence, his failure to perform pertinent tests and examinations, and/or his inability to diagnose and treat these patients with appropriate skill and knowledge.

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

A. Engaged in conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(9) and OAC 435:10-7-4(11).

B. Engaged in gross or repeated negligence in the practice as a physician assistant in violation of OAC 435:10-7-4(15) and 435:15-5-11(4).

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

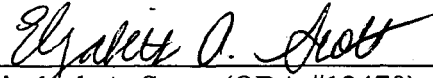
D. Violated a provision of the Medical Practice Act or the rules promulgated by the Board pursuant to OAC 435:15-5-11(7).

E. 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 OAC 435:10-7-4(39).

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 physician assistant license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



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