

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

FILED

DEC - 4 2003

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
)
DAVID RAY FERNANDEZ, P.A.,)
LICENSE NO. PA787)
)
Defendant.)

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 02-10-2568

FINAL ORDER OF PROBATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on November 20, 2003, at the office of the Board, 5104 N. Francis, Suite C, 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.

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 physician assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.* and 887.1 *et seq.*
2. 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.
3. Defendant, David Ray Fernandez, P.A., holds Oklahoma license no. PA787.

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

5. 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.

6. 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:

- (a) 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
- (b) 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.

7. 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.

8. 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.

9. 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.

10. 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 has 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.

11. 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.

12. 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.

13. 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).

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 and the Physician Assistant Act and their applicable regulations. The Board is authorized to enforce the Acts as necessary to protect the public health, safety and welfare.

2. Defendant is guilty of unprofessional conduct as follows:

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).

3. The Board further found that the Defendant's license should be placed on probation based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509(9), OAC Title 435:10-7-4(11), (15), (18) and (39), and OAC Title 435:15-5-11 (4) and (7).

Order

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

1. The license of Defendant, David Ray Fernandez, P.A., Oklahoma license no. PA787, is hereby placed on **PROBATION** for a period of five (5) years under the following terms and conditions:

A. Defendant will conduct his practice in compliance with the Oklahoma Physician Assistant Act as interpreted by the Board. Any question of interpretation regarding the Act shall be submitted in writing to the Board, and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Board or its designee.

B. Defendant shall consult with his supervising physician on all patients whom he treats prior to the patient leaving the premises where the treatment occurred. A notation shall be made in the patient's chart to reflect that the consultation has occurred.

C. Upon request, Defendant will request all hospitals, clinics and other facilities in which he practices to furnish to the Board a written statement monitoring his practice.

D. Defendant will furnish a copy of this order to each and every state in which he holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he hold or anticipates holding any form of staff privileges or employment.

E. Defendant will keep the Board informed of his current address.

F. Defendant will keep current payment of all assessment by the Board for prosecution, investigation and monitoring of his case.

G. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

H. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.

I. Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or his designee.

J. Failure to meet any of the terms of probation will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

K. A retrospective random chart review of Defendant's patients will be conducted periodically by the Compliance Consultant or other

designated representative of the Board. Defendant shall allow the Compliance Consultant or other designated representative of the Board access to all patient charts at any time and shall allow for the immediate copying of said charts for review by the Board Secretary. The Board Secretary shall review the patient charts to determine Defendant's practices and compliance with this Voluntary Submittal to Jurisdiction.

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

Dated this 4 day of December, 2003.


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

CERTIFICATE OF SERVICE

I certify that on the 4 day of December, 2003, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to David Ray Fernandez, 17 S. W. 43rd Street, Oklahoma City, OK 73109.


Janet Swindle