

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

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel  
OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE AND  
SUPERVISION,

Plaintiff,

KENNETH W. FOSTER, M.D.  
Medical License No. 15885,

Defendant.

**FILED**

MAY 20 1993

CASE NO. OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

FINAL ORDER

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on May 15, 1993, at the office of the Oklahoma Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Daniel J. Gamino, Attorney, appeared for the Plaintiff; and Kenneth W. Foster, M.D., Defendant, appeared in person and by legal counsel, Gene Stipe, Attorney at Law, P.O. Box 1368, McAlester, OK 74502, and Kevin J. Walker, Attorney at Law, P.O. Box 1641, Seminole, OK 74868.

The Oklahoma Board of Medical Licensure and Supervision en banc heard statements, reviewed exhibits and being fully advised in the premises, the Oklahoma Board finds and orders as follows:

FINDINGS OF FACT

1. That Defendant, Kenneth W. Foster, M.D., holds Oklahoma Medical License No. 15885.
2. That the Oklahoma Board of Medical Licensure and Supervision en banc has jurisdiction over the subject matter herein and that notice has been given in all respects as required by law and the rules of the Board.
3. That effective on September 11, 1991, the Division of Medical Quality, Medical Board of California, did adopt a Stipulation signed by the Defendant in Case No. D-3972 wherein Defendant did admit to prescribing Vicodin, Hydrocodone, Benzodiazepines, Prozac and Amitriptyline to addicts or habitual users or to other patients in amounts that constitute excessive prescribing and the Defendant did agree to a 60 days suspension of his California license and a period of probation of his California license of five years under terms and conditions as set out in the Decision and Stipulation.

CONCLUSIONS OF LAW

1. That Kenneth W. Foster, M.D., holding Oklahoma Medical License No. 15885, is in violation of the Oklahoma Medical Practice Act, 59 O.S. 1991, Sec. 509, Paragraph 17, to-wit:

"17. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or

narcotic drugs without medical need in accordance with published standards."

2. That Kenneth W. Foster, M.D., is in violation of the Rules and Regulations promulgated by this Board, specifically Rule 435:10-7-4(6), to-wit:

"Dispensing, prescribing or administering a controlled substance or narcotic drug without medical need."

ORDER

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

1. That the Defendant, Kenneth W. Foster, M.D., holding Oklahoma Medical License No. 15885, should be and is hereby placed on a term of PROBATION to the Oklahoma State Board of Medical Licensure and Supervision for a period of five (5) years beginning on May 14, 1993, under the following terms and conditions:

- (a) During the period of probation Defendant's practice of medicine and surgery is limited to practice at the institutions of the Oklahoma Department of Corrections only and at no other site or in any private practice of any nature.
- (b) During the period of probation Defendant will not prescribe, administer or dispense any Schedule II or Schedule III controlled dangerous substances.
- (c) That Defendant will conduct his practice in compliance with the Oklahoma Medical Practice Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said 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 or interpretation is made by the Board.
- (d) During the period of probation Defendant shall furnish each and every state in which he holds licensure or applies for licensure, and notify all hospitals or clinics or groups in which he anticipates holding any form of staff privileges, a copy of this Board Order stipulating sanctions imposed by the Board.
- (e) During the period of probation Defendant will furnish to the office of the Oklahoma State Board of Medical Licensure and Supervision all current legal addresses and any change of address in writing.
- (f) Defendant shall appear before the Board or a designated member thereof whenever requested to do so.
- (g) During the period of probation Defendant will submit to the Investigation Division of the Oklahoma State Board of Medical Licensure and Supervision any required reports and forms on a timely and prompt basis.

- (h) During the period of probation Defendant will not supervise a Physician's Assistant.
- (i) Pursuant to Title 59 O.S. Sec. 506, Defendant shall promptly pay within 30 days of receipt of invoice from the Board the costs of investigation, prosecution and probation of this case, unless the Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.
- (j) During the period of probation Defendant will keep current payment of all assessment by the Board for investigation, prosecution and probation monitoring of his case.
- (k) That violation of any of the terms and conditions of probation shall be grounds for additional charges to be presented to the Board after notice to the Defendant.

2. That the jurisdiction of the Board in this individual proceeding will continue in this matter until the terms and conditions of probation are modified or withdrawn by the Oklahoma State Board of Medical Licensure and Supervision, either on their own motion or on the motion of the Defendant.

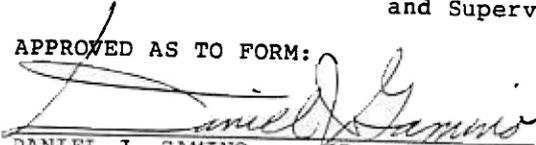
3. That failure to meet any of the above terms of probation will constitute cause for the Board to initiate additional proceedings to suspend or revoke Defendant's Oklahoma medical license, after additional due notice and hearing.

4. That Defendant shall be placed on Level I probation until modified by the Board Secretary.

DATED this 20 day of May, 1993.

  
 GERALD C. ZUMWALT, M.D., Secretary  
 State Board of Medical Licensure  
 and Supervision

APPROVED AS TO FORM:

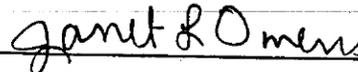
  
 DANIEL J. GAMINO OBA #3227  
 Daniel J. Gamino & Associates, P.C.  
 3315 NW 63  
 Oklahoma City, OK 73116  
 (405) 840-3741  
 ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 21 day of May, 1993, to:

Gene Stipe  
 Attorney at Law  
 P.O. Box 1368  
 McAlester, OK 74502

Kevin J. Walker  
 Attorney at Law  
 P.O. Box 1641  
 Seminole, OK 74868





6. That Defendant's guilty pleas and/or convictions involving DUIs, including January 27, 1984, in LeFlore County, Oklahoma, 1990 in Red Bluff, California, and December 15, 1993, in Hughes County, Oklahoma, and the Defendant's warning and termination from the Las Vegas, New Mexico, Medical Center, all relate to habitual, excessive use of alcohol and raise questions as to the Defendant's fitness to practice medicine.

CONCLUSIONS OF LAW

1. That Kenneth Foster, M.D., holding Oklahoma Medical License No. 15885, is in violation of the Oklahoma Medical Practice Act, 59 O.S. 1991, Sec. 508, and 59 O.S. Supp. 1993, Sec. 509, Paragraph 9, to-wit:

"Whenever any license or certificate has been procured or obtained by fraud or misrepresentation...it shall be the duty of the State Board of Medical Licensure and Supervision to revoke such license or certificate in the same manner as is provided by this Act for the revocation of license or certificate for unprofessional conduct."

"9. Dishonorable or immoral conduct which is likely to deceive or defraud the public."

ORDER

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

1. That the Oklahoma Medical License No. 15885 of Defendant, Kenneth Foster, M.D., should be and the same is hereby REVOKED.

2. That a copy of this written Order should be sent to the Defendant and/or his legal counsel as soon as it is processed.

DATED this 24 day of April, 1994.

State Board of  
and Supervision

J  
Secretary  
Licensure

APPROVED AS TO FORM:

Daniel J. Gamino  
DANIEL J. GAMINO

OBA #3227

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 31 day of March, 1994, to:

KENNETH FOSTER, M.D.  
c/o Kevin J. Walker  
Attorney at Law  
P.O. Box 1641  
Seminole, OK 74868

KENNETH FOSTER, M.D.  
c/o Gene Stipe  
Attorney at Law  
P.O. Box 1368  
McAlester, OK 74502

Janet Owens

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

STATE OF OKLAHOMA

FILED

JUN 22 1994

STATE OF OKLAHOMA, ex rel,  
OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE AND  
SUPERVISION,

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Plaintiff, )

v. )

KENNETH FOSTER, M.D. )  
Medical License No. 15885, )  
Defendant. )

CASE NO. 93-12-1566

ORDER GRANTING SPECIAL LICENSE  
EFFECTIVE AT FUTURE DATE

This cause came on for hearing before the Oklahoma Board of Medical Licensure and Supervision on June 16, 1994, at the office of the Oklahoma State Board of Medical Licensure and Supervision, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Daniel J. Gamino, Attorney, appeared for the Plaintiff; and Kenneth Foster, former holder of Oklahoma Medical License No. 15885, Defendant, appeared in person and by and through legal counsel, Kevin J. Walker, Attorney at Law, P.O. Box 1641, Seminole, OK 74868, and Gene Stipe, Attorney at Law, P.O. Box 1368, McAlester, OK 74502.

That the Oklahoma Board of Medical Licensure and Supervision en banc heard testimony, reviewed exhibits and being fully advised in the premises, the Oklahoma Board finds and orders as follows:

FINDINGS OF FACT

1. That Defendant, Kenneth Foster, formerly held Oklahoma Medical License No. 15885.
2. That the Oklahoma Board of Medical Licensure and Supervision en banc has jurisdiction over the subject matter herein and that notice has been given in all respects as required by law and the rules of the Board.
3. That following notice and hearing on March 18, 1994, the Board revoked Defendant's Oklahoma Medical License No. 15885.
4. That the Oklahoma Legislature in May, 1994, did enact the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. Supp. 1994, Sec. 480 et seq. That a portion of that new legislation establishes special licensure wherein the Board may authorize the issuance of conditional, restricted or otherwise circumscribed license as necessary to protect public health, safety and welfare.
5. That evidence indicated that there was a need for the Defendant to provide psychiatric services for the Oklahoma Department of Corrections at the Special Care Unit at the Maximum Security Prison in McAlester, Oklahoma, and to perform evaluations at the Carl Albert Mental Health Center, McAlester, Oklahoma. There was danger that in the event the Department of Corrections did not obtain psychiatric coverage for the Special Care Unit, that program would be lost. And evidence indicated

that if the Defendant was granted special licensure that the program would not be lost.

6. That there has not been presented to the Oklahoma Board either in these proceedings or any prior proceedings regarding this Defendant, any evidence of poor clinical performance or unprofessional conduct by the Defendant during his rendering of medical services for the Oklahoma Department of Corrections.

7. That under these limited circumstances there would be no danger to public health, safety and welfare in the event Defendant was granted special license and limited to rendering medical services at the two geographical locations, Special Care Unit at the Maximum Security Prison, McAlester, Oklahoma, and at the Carl Albert Mental Health Center, McAlester, Oklahoma.

#### CONCLUSIONS OF LAW

1. That the Defendant, formerly holding Oklahoma Medical License No. 15885, may apply for special licensure that may be granted by the Oklahoma Board pursuant to the legal authority of 59 O.S. Supp. 1994, Sec. 493.3 and Sec. 494.4 and rules and regulations promulgated thereunder.

2. That the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. Supp. 1994, Sec. 480 et seq., will become effective on July 1, 1994. Rules established thereunder were passed on an emergency basis by the Board on June 16, 1994, and will also become effective in the future.

3. That with the enactment of those statutes and the promulgation of emergency rules, the Board may consider the application of Kenneth Foster for special licensure and may take action now to be effective in the future at the earliest time allowed by law.

#### ORDER

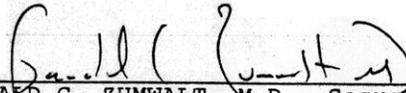
IT IS THEREFORE ORDERED by the Oklahoma Board of Medical Licensure and Supervision as follows:

1. That the application of Kenneth Foster, formerly holding Oklahoma Medical License No. 15885, for special licensure to allow him to provide psychiatric services to the Oklahoma Department of Corrections at the specific locations of the Special Care Unit, Maximum Security Prison, McAlester, Oklahoma, and at the Carl Albert Mental Health Center, McAlester, Oklahoma, should be and the same is hereby GRANTED.

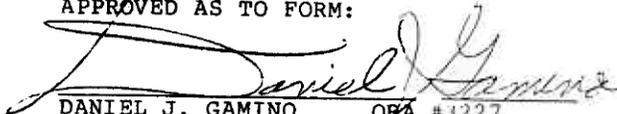
2. That this Order approved in open meeting on June 16, 1994, shall become effective in the future at the earliest time allowed by law.

3. That a copy of this written Order should be sent to the Defendant and/or his legal counsel as soon as it is processed.

DATED this 22 day of June, 1994.

  
GERALD C. ZUMWALT, M.D., Secretary  
State Board of Medical Licensure  
and Supervision

APPROVED AS TO FORM:



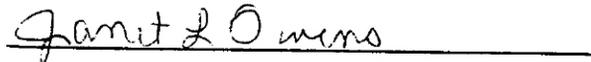
DANIEL J. GAMINO OBA #3227  
Daniel J. Gamino & Associates, P.C.  
3315 NW 63  
Oklahoma City, OK 73116  
(405) 840-3741  
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed, postage prepaid thereon, this 23 day of June, 1994, to:

KENNETH FOSTER  
c/o Kevin J. Walker  
Attorney at Law  
P.O. Box 1641  
Seminole, OK 74868

KENNETH FOSTER  
c/o Gene Stipe  
Attorney at Law  
P.O. Box 1368  
McAlester, OK 74502



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

**FILED**

AUG 31 2007

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

Plaintiff, )

v. )  
KENNETH W. FOSTER, M.D., )

LICENSE NO. 15885 )

Defendant. )

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 06-10-3177

CITATION

YOU ARE HEREBY NOTIFIED that on 31 day of August, 2007, an Application to Determine Emergency was filed by the State seeking to declare that an emergency suspension hearing was imperative for the public health, safety and welfare. The undersigned Secretary of the Board has determined that an emergency exists so as to justify an emergency suspension hearing on your license. On September 7, 2007, the Board Secretary will hold an emergency suspension hearing at 9:00 o'clock a.m., at the offices of the Board, 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, at which time a hearing will be held pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. 1971, Sec. 314. If the Secretary decides, after considering all the testimony and evidence, that there has been a showing by clear and convincing evidence of unprofessional conduct for which the immediate suspension of your license is imperative for the public health, safety and welfare, your license to practice as a physician within the State of Oklahoma will be suspended pending proceedings before the Board *en banc* on all of the Counts in the Complaint.

THEREFORE, you are cited to appear at the hearing described above. If you are not present in person, you may be present through your attorney.

DATED this 31 day of July, 2007, at 10<sup>35</sup> am o'clock.

  
GERALD C. ZUMWALT, M.D.  
Secretary/Medical Advisor  
Oklahoma State Board of Medical  
Licensure and Supervision

**RETURN OF SERVICE BY AGENT**

Received the attached and foregoing Citation, Complaint and Scheduling Order in the investigation of Kenneth W. Foster, MD, at Oklahoma City, Oklahoma, on the 31<sup>st</sup> day of August, 2007, and on the 31<sup>st</sup> day of August, 2007, at 1:30 o'clock P.M. served it on the within named defendant by delivering a copy to: Kenneth W. Foster, MD  
(name of person served)

at (address): 604 Dewey Avenue  
Poteau, OK 74953

Served by: Scott Singer

Subscribed and sworn to before me on this 31 day of August, 2007.



Janet Swindle  
Notary Public

My Commission expires:

8-22-2010

CASE NAME: Kenneth W. Foster, MD

CASE #: 06/10/3177

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. )  
KENNETH W. FOSTER, M.D., )  
 )  
LICENSE NO. 15885 )  
 )  
Defendant. )

AUG 31 2007

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 06-10-3177

APPLICATION TO DETERMINE EMERGENCY

Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision ("State"), seeks to have an emergency declared to enable the Secretary of the Board to conduct an emergency suspension hearing against Defendant, Kenneth W. Foster, M.D., Oklahoma medical license number 15885, as authorized under 59 Okla. Stat. §503.1 and 75 Okla. Stat. §314. In support of this application, the State submits the following:

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 "Act"). Under Section 503.1 of the Act, the Secretary of the Board may determine that "an emergency exists for which the immediate suspension of a license is imperative for the public health, safety and welfare."

2. Defendant, Kenneth W. Foster, M.D., holds Oklahoma license no. 15885, and is authorized to practice as a physician and surgeon in the State of Oklahoma.

3. On or about August 28, 2006, Defendant presented to the Jane Phillips Medical Center Emergency Room in Bartlesville, Oklahoma in an impaired state. Physicians at the emergency room concluded that Defendant was suffering from a steroid induced psychosis. A urine specimen obtained at that time tested positive for **Amphetamines**. At the time of his admission to the emergency room, Defendant admitted to the emergency room physician that he was taking Provigil 200 mg. and Adderall 20 mg.

8. A review of pharmacy records in the state of Oklahoma for the ten (10) month period prior to his hospital admission reveals that Defendant did not receive any prescriptions for Provigil, Adderall, or any other amphetamines during this time period.

9. On or about February 22, 2007, Board Investigator Steve Washbourne obtained a urine specimen from Defendant. This specimen subsequently tested positive for **Marijuana**.

10. On or about July 31, 2007, Board Investigator Steve Washbourne obtained another urine specimen from Defendant. At this time, Defendant advised Investigator Washbourne that he was not taking Adderall, Provigil or Clonazepam. This specimen subsequently tested positive for **Amphetamines**.

11. A review of pharmacy records in the state of Oklahoma reveals that Defendant did not receive any prescriptions for Adderall or any other amphetamines during this time period.

12. On or about August 30, 2007, Board Investigator Scott Singer interviewed Defendant at his offices as part of the Board's ongoing investigation against Defendant. Investigator Singer, who is trained in the detection of intoxicated persons through his thirty-one (31) years of active service as a police officer, concluded that Defendant was under the influence of an intoxicating substance, and that his physical appearance and actions strongly suggested amphetamine type drugs.

13. Based on his belief that Defendant was impaired, Investigator Singer asked Defendant to provide a urine specimen, to which Defendant refused.

14. The State is basing its application for emergency upon the two (2) previous positive drug tests for controlled dangerous substances, Defendant's appearance of impairment at the August 30, 2007 meeting with Board investigators, and his failure to submit to a drug test at that time.

15. Defendant's two (2) previous positive drug tests for controlled dangerous substances, his appearance of impairment at the August 30, 2007 meeting with Board investigators, and his failure to submit to a drug test at that time justify an emergency suspension hearing to protect the public health, safety and welfare.

WHEREFORE, the State respectfully requests that an emergency be declared, that an emergency suspension hearing be conducted by the Secretary and that the Secretary suspend Defendant's license until a hearing before the Board *en banc*.

Respectfully submitted,



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Elizabeth A. Scott (OBA #12470)  
Assistant Attorney General, State of Oklahoma  
5014 N. Francis  
P.O. Box 18256  
Oklahoma City, OK 73154

ATTORNEY FOR THE STATE

OKLAHOMA STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION

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. )  
KENNETH W. FOSTER, M.D., )  
 )  
LICENSE NO. 15885 )  
 )  
Defendant. )

SEP 07 2007  
OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 06-10-3177

**ORDER OF EMERGENCY SUSPENSION**

On the 7th day of September, 2007, the Plaintiff's application for emergency suspension of Defendant, Kenneth W. Foster, M.D., Oklahoma Medical License No. 15885 came on for hearing before the Secretary of the Oklahoma State Board of Medical Licensure and Supervision (the "Board"). Elizabeth A. Scott, Assistant Attorney General, appeared on behalf of the Plaintiff, the State of Oklahoma ex rel. the Oklahoma State Board of Medical Licensure and Supervision. Defendant appeared through counsel, Shannon L. Prescott.

The Secretary, after hearing arguments of counsel, reviewing exhibits admitted and 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 and conclusions of law and orders:

1. Defendant, Kenneth W. Foster, M.D., is licensed as a physician and surgeon in the State of Oklahoma and holds Oklahoma Medical License No. 15885.
2. 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 O.S. §480 et seq. The Board has jurisdiction over these proceedings, and notice has been given in accordance with law.
3. The evidence reflects that Defendant cannot practice medicine with a reasonable degree of safety, competency and skill sufficient to protect the public health, safety and welfare based upon the following facts:

a. On or about August 28, 2006, Defendant presented to the Jane Phillips Medical Center Emergency Room in Bartlesville, Oklahoma in an impaired state. Physicians at the emergency room concluded that Defendant was suffering from a steroid induced psychosis. A urine specimen obtained at that time tested positive for **Amphetamines**. At the time of his admission to the emergency room, Defendant admitted to the emergency room physician that he was taking Provigil 200 mg. and Adderall 20 mg.

b. A review of pharmacy records in the state of Oklahoma for the ten (10) month period prior to his hospital admission reveals that Defendant did not receive any prescriptions for Provigil, Adderall, or any other amphetamines during this time period.

c. On or about February 22, 2007, Board Investigator Steve Washbourne obtained a urine specimen from Defendant. This specimen subsequently tested positive for **Marijuana**.

d. On or about July 31, 2007, Board Investigator Steve Washbourne obtained another urine specimen from Defendant. At this time, Defendant advised Investigator Washbourne that he was not taking Adderall, Provigil or Clonazepam. This specimen subsequently tested positive for **Amphetamines**.

e. A review of pharmacy records in the state of Oklahoma reveals that Defendant did not receive any prescriptions for Adderall or any other amphetamines during this time period.

f. On or about August 30, 2007, Board Investigator Scott Singer interviewed Defendant at his offices as part of the Board's ongoing investigation against Defendant. Investigator Singer, who is trained in the detection of intoxicated persons through his thirty-one (31) years of active service as a police officer, concluded that Defendant was under the influence of an intoxicating substance, and that his physical appearance and actions strongly suggested amphetamine type drugs.

g. Based on his belief that Defendant was impaired, Investigator Singer asked Defendant to provide a urine specimen, to which Defendant refused.

4. Defendant's medical license is hereby suspended pending a full hearing before the Board *en banc* at the next regularly scheduled meeting, currently scheduled for November 1, 2007.

5. All of the charges against Defendant be heard before the Board *en banc* at its next regularly scheduled meeting.

6. The emergency suspension shall be reported to the National Practitioner Data Bank and all other appropriate groups.

7. Defendant will surrender his Oklahoma wallet card and certificate of medical license to the Board on or before 4:30 p.m. on September 12, 2007.



GERALD C. ZUMWALT, M.D.  
Secretary/Medical Advisor  
Oklahoma State Board of Medical  
Licensure and Supervision

**CERTIFICATE OF SERVICE**

I certify that on the 10 day of Sept, 2007, I mailed a true and correct copy of the Order of Emergency Suspension to Shannon L. Prescott, Glendening, McKenna & Prescott, Tallgrass Office Complex, 10108 E. 79<sup>th</sup> Street, Tulsa, OK 74133 and to Kenneth W. Foster, 604 Dewey Avenue, Poteau, OK 74953.



Janet Swindle

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.  
KENNETH W. FOSTER, M.D.,

LICENSE NO. 15885

Defendant.

FILED

OCT 01 2007

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 06-10-3177

CITATION

YOU ARE HEREBY NOTIFIED that on the 23th day of September, 2007, a sworn Complaint was filed with the undersigned Secretary of the Oklahoma State Board of Medical Licensure and Supervision, State of Oklahoma, charging you with violations of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act at 59 Okla. Stat. §509(4), (8), (9), (10), (13) and (15) and OAC 435:10-7-4 (3), (5), (11), (17), (19), (24), (26), (27), (37), (38), (39) and (40). A copy of the Complaint is attached hereto and made a part thereof.

On November 1, 2007, the Board will be in regular session at 9:00 o'clock a.m., at its offices located at 5104 N. Francis, Suite C, Oklahoma City, Oklahoma, at which time your Complaint will be considered by the Board, and a hearing will be held pursuant to the Oklahoma Administrative Procedures Act, 75 Okla. Stat. §309, *et seq.*, as amended.

If the Board decides, after considering all the testimony and evidence, that you are guilty as charged, your license to practice as a physician within the State of Oklahoma may be suspended or revoked or other disciplinary action may be taken by the Board as authorized by law, including the assessment of costs and attorney's fees for this action as provided by law.

Under the laws of the State of Oklahoma, you are required to file your written Answer under oath with the Secretary of the Board within twenty (20) days after the Citation is served upon you. Unless your Answer is so filed, you will be considered in default, and the Board may accept the allegations set forth in the complaint as true at the hearing of the complaint. If the charges are deemed sufficient by the Board, your license to practice as a physician in the State of Oklahoma may be suspended or revoked.

THEREFORE, you are cited to appear at the hearing. If you are not present in person, you may be present through your attorney.

DATED this 28 day of September, 2007 at 9 <sup>40</sup>/<sub>am</sub> o'clock.

  
\_\_\_\_\_  
GERALD C. ZUMWALT, M.D., Secretary  
Oklahoma State Board of Medical  
Licensure and Supervision



**RETURN OF SERVICE BY AGENT**

Received the attached and foregoing Citation and Scheduling Order in the investigation of Kenneth W. Foster, at Oklahoma City, Oklahoma, on the 1 day of October, 2007, and on the 2 day of October, 2007, at 01:00 o'clock P.M. served it on the within named by delivering a copy to Kenneth W. Foster  
(Name of person served)

At (address):

Kenneth W. Foster  
604 Dewey Ave  
Poteau, Oklahoma 74953

Served by: Gary E. Riche

Subscribed and sworn to before me on this 4 day of October, 2007  
2007

Roberta R. Relyea  
Notary Public

 ROBERTA R. RELYEA  
Notary Public  
State of Oklahoma  
My Commission Expires 06/22/09 # 01008037

CASE NAME: Kenneth W. Foster  
CASE #: 06-10-3177

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. )

KENNETH W. FOSTER, M.D., )  
LICENSE NO. 15885, )

Defendant. )

**FILED**

OCT 01 2007

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 06-10-3177

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, Kenneth W. Foster, M.D., 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 physicians and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.*
2. Defendant, Kenneth W. Foster, M.D., holds Oklahoma license no. 15885 and practices as a psychiatrist in Poteau, Oklahoma.
3. On or about May 15, 1993, Defendant was placed on a **FIVE (5) YEAR PROBATION** based upon a finding that he prescribed controlled dangerous substances in excess of the amount considered good medical practice and without medical need.
4. On or about March 18, 1994, Defendant's license was **REVOKED** based upon a finding that he had obtained his Oklahoma medical license by fraud.
5. On or about June 16, 1994, Defendant's license was reinstated as a Special License for the period July 1, 1994 until May 9, 1996 wherein his practice was limited to the Oklahoma Department of Corrections.

6. Subsequent to May 9, 1996, Defendant has practiced as a psychiatrist in Oklahoma with a full medical license.

7. On or about August 28, 2006, Defendant presented to the Jane Phillips Medical Center Emergency Room in Bartlesville, Oklahoma in an impaired state. Physicians at the emergency room concluded that Defendant was suffering from a steroid induced psychosis. A urine specimen obtained at that time tested positive for **Amphetamines**. At the time of his admission to the emergency room, Defendant admitted to the emergency room physician that he was taking Provigil 200 mg. and Adderall 20 mg.

8. A review of pharmacy records in the state of Oklahoma for the ten (10) month period prior to his hospital admission reveals that Defendant did not receive any prescriptions for Provigil, Adderall, or any other amphetamines during this time period.

9. On or about February 22, 2007, Board Investigator Steve Washbourne obtained a urine specimen from Defendant. This specimen subsequently tested positive for **Marijuana**.

10. On or about July 31, 2007, Board Investigator Steve Washbourne obtained another urine specimen from Defendant. At this time, Defendant advised Investigator Washbourne that he was not taking Adderall, Provigil or Clonazepam. This specimen subsequently tested positive for **Amphetamines**.

11. A review of pharmacy records in the state of Oklahoma reveals that Defendant did not receive any prescriptions for Adderall or any other amphetamines during this time period.

12. Drug Enforcement Agency records reflect that from January 5, 2006 until July 19, 2007, Defendant had requested and obtained Provigil samples on twenty-nine (29) separate occasions. On August 30, 2007, Board investigators, along with OBN agents, conducted an audit of Defendant's dispensing records. Defendant admitted that he kept no dispensing log, but that dispensing records were found in individual charts. When investigators asked for the charts that reflected giving of Provigil samples, Defendant provided two (2) charts. Both of these charts contained notations that Provigil "prescriptions" had been given. Both of these charts appeared to have been altered, in that this writing was scratched through with a notation that "samples" were given instead. Board investigators then contacted these patients, who confirmed that they had received prescriptions, and **not** samples dispensed by Defendant. Board investigators additionally confirmed through pharmacy records that these patients received prescriptions, rather than samples from Defendant.

13. Board investigators requested additional records of Defendant's dispensing of the Provigil samples he had allegedly dispensed. Defendant advised the investigators that they were welcome to look through the approximate two-thousand (2000) charts in his office in order to find this information.

14. On or about August 30, 2007, Board Investigator Scott Singer interviewed Defendant at his offices as part of the Board's ongoing investigation against Defendant.

Investigator Singer, who is trained in the detection of intoxicated persons through his thirty-one (31) years of active service as a police officer, concluded that Defendant was under the influence of an intoxicating substance, and that his physical appearance and actions strongly suggested amphetamine type drugs.

15. Based on Investigator Singer's belief that Defendant was impaired at the time of the interview, and based upon Defendant's prior positive drug tests for marijuana and amphetamines not prescribed to him, Investigator Singer requested a urine specimen from Defendant. Defendant refused to provide a urine specimen to Investigator Singer at that time.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. §509(4) and OAC 435:10-7-4(3).

B. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(8) and OAC 435:10-7-4(11).

C. 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).

D. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physician condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

E. Committed any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(9).

F. 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 (5) and (26).

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

H. Failed to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs in violation of 59 O.S. §509(10).

I. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).

J. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

K. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine in violation of OAC 435:10-7-4(19).

L. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).

M. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).

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

Respectfully submitted,



Elizabeth A. Scott (OBA #12470)

Assistant Attorney General

State of Oklahoma

5104 N. Francis, Suite C

Oklahoma City, OK 73118

Attorney for the Plaintiff

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

FILED

MAR 14 2008

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

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Plaintiff, )

v. )

Case No. 06-10-3177

KENNETH W. FOSTER, M.D., )  
LICENSE NO. 15885 )

Defendant. )

**FINAL ORDER OF REVOCATION**

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on March 13, 2008, 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 and pro se.

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.* 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, Kenneth W. Foster, M.D., holds Oklahoma license no. 15885 and practices as a psychiatrist in Poteau, Oklahoma.

3. On or about May 15, 1993, Defendant was placed on a **FIVE (5) YEAR PROBATION** based upon a finding that he prescribed controlled dangerous substances in excess of the amount considered good medical practice and without medical need.

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8. A review of pharmacy records in the state of Oklahoma for the ten (10) month period prior to his hospital admission reveals that Defendant did not receive any prescriptions for Provigil, Adderall, or any other amphetamines during this time period.

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12. Drug Enforcement Agency records reflect that from January 5, 2006 until July 19, 2007, Defendant had requested and obtained Provigil samples on twenty-nine (29) separate occasions. On August 30, 2007, Board investigators, along with OBN agents, conducted an audit of Defendant's dispensing records. Defendant admitted that he kept no dispensing log, but that dispensing records were found in individual charts. When investigators asked for the charts that reflected giving of Provigil samples, Defendant provided two (2) charts. Both of these charts contained notations that Provigil "prescriptions" had been given. Both of these charts appeared to have been altered, in that this writing was scratched through with a notation that "samples" were given instead. Board investigators then contacted these patients, who confirmed that they

had received prescriptions, and **not** samples dispensed by Defendant. Board investigators additionally confirmed through pharmacy records that these patients received prescriptions, rather than samples from Defendant.

13. Board investigators requested additional records of Defendant's dispensing of the Provigil samples he had allegedly dispensed. Defendant advised the investigators that they were welcome to look through the approximate two-thousand (2000) charts in his office in order to find this information.

14. On or about August 30, 2007, Board Investigator Scott Singer interviewed Defendant at his offices as part of the Board's ongoing investigation against Defendant. Investigator Singer, who is trained in the detection of intoxicated persons through his thirty-one (31) years of active service as a police officer, concluded that Defendant was under the influence of an intoxicating substance, and that his physical appearance and actions strongly suggested amphetamine type drugs.

15. Based on Investigator Singer's belief that Defendant was impaired at the time of the interview, and based upon Defendant's prior positive drug tests for marijuana and amphetamines not prescribed to him, Investigator Singer requested a urine specimen from Defendant. Defendant refused to provide a urine specimen to Investigator Singer at that time.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. §509(4) and OAC 435:10-7-4(3).

B. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physician condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

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 (5) and (26).

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

E. Failed to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs in violation of 59 O.S. §509(10).

F. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).

G. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

H. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine in violation of OAC 435:10-7-4(19).

I. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).

J. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).

### *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. Habitually uses habit-forming drugs in violation 59 O.S. §509(4) and OAC 435:10-7-4(3).

B. Is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physician condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

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 (5) and (26).

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

E. Failed to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs in violation of 59 O.S. §509(10).

F. Prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for other than medically accepted therapeutic purposes in violation of OAC 435:10-7-4(24).

G. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

H. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine in violation of OAC 435:10-7-4(19).

I. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:10-7-4(37).

J. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).

3. The Board further found that the Defendant's license should be revoked based upon any or all of the violations of the unprofessional conduct provisions of 59 O.S. §509(4), (10) and (15), and OAC Title 435:10-7-4 (3), (5), (17), (19), (24), (26), (27), (37), (38) and (40).

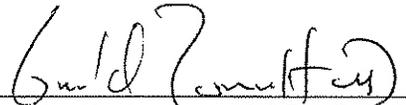
### *Order*

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

1. The license of Defendant, Kenneth W. Foster, M.D., Oklahoma medical license no. 15885, is hereby **REVOKED** as of the date of this hearing, March 13, 2008.

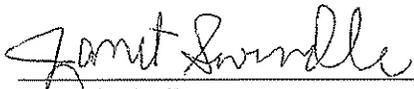
2. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

Dated this 14 day of March, 2008.

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

**CERTIFICATE OF SERVICE**

I certify that on the 14 day of March, 2008, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to Kenneth W. Foster, 604 Dewey Avenue, Poteau, OK 74953.

  
\_\_\_\_\_  
Janet Swindle