

BEFORE THE MEDICAL LICENSURE COMMISSION OF ALABAMA

ALABAMA BOARD OF)
MEDICAL EXAMINERS,)
)
Complainant,)
)
vs.) CASE NO. 85-009
)
HERBERT RAY EVERS, M.D.,)
)
Respondent.)

ORDER

This matter is before the Medical Licensure Commission based upon the Complaint and Petition for Revocation of the License of Herbert Ray Evers, M.D., which was filed by the Alabama Board of Medical Examiners on November 25, 1985. The Medical Licensure Commission entered an Order setting a hearing to consider this Complaint on December 4, 1985, and the Order was served upon the Respondent by certified mail, return receipt requested, with the date of delivery shown as December 6, 1985. At the request of the parties, the hearing was continued until July 23, 1986, when the hearing was held pursuant to the Commission's Order setting said Hearing. The Respondent, Herbert Ray Evers, M.D., appeared at this hearing and was represented by counsel, John Henig, Esquire, and William Moore, Esquire. Mr. Wendell R. Morgan, attorney for the Alabama Board of Medical Examiners, presented the case to the Commission. James R. Seale served as Hearing Officer. Medical Licensure Commission's Chairman, Leon C. Hamrick, M. D., and Commission members Thomas Alphin, M.D., Jerry Gurley, M.D.,

Richard Harris, M.D., Dale Trammell, M.D., and James Walker, M.D. were present. At this hearing, the Commission heard testimony from witnesses and received a number of exhibits. This hearing was continued until September 22, 1986.

On September 22, 1986, said hearing was resumed and continued through September 24, 1986. The Respondent, Herbert Ray Evers, M.D., appeared at this hearing and was represented by counsel, John Henig, Esquire, and William Moore, Esquire. Mr. Wendell R. Morgan, attorney for the Alabama Board of Medical Examiners, presented the case to the Commission. James R. Seale served as Hearing Officer. Present at this hearing were Medical Licensure Commission Chairman, Leon C. Hamrick, M.D., and Commission members Thomas Alphin, M.D., Jerry Gurley, M.D., Richard Harris, M.D., Dale Trammell, M.D., and James Walker, M.D. The Commission heard the testimony of the Respondent and other witnesses and received a number of exhibits.

After reviewing all the testimony and exhibits now before the Commission, the Commission makes the following findings with reference to the Complaint filed herein:

1. A. With respect to Paragraph 3(A), the Commission finds that Maxie Walker, a patient with advanced carcinoma of the breast, was subjected to a therapy by the use of black and yellow salve (Ointments A and Z) that would not positively alter the natural course of her illness, did not improve the longevity or quality of her life, and in fact had a marked adverse effect on the quality of her life.

B. With respect to Paragraph 3(B), the Commission finds that this patient, Maxie Walker, was not followed properly by clinical and laboratory means. Improperly diagnosed life threatening conditions (i.e., acute anemia, electrolyte and fluid imbalance, progressive skin necrosis, and sepsis) did occur and were not treated in a timely and customary manner.

C. With respect to Paragraph 3(C), the Commissions finds that this patient, Maxie Walker, was subjected to a treatment with no scientific support as to efficacy and with known serious potential complications. Said patient was then left in the care of a physician, Stephen Schweinsberg, M.D., unfamiliar with these treatments, and there is no reasonable evidence that any attempt was made to educate Dr. Schweinsberg in the methods of treatment, potential complications, side effects or their management.

D. The Commission finds that there is insufficient evidence to support the allegations of Paragraph 3(D) of the Complaint.

Based on the foregoing, it is the conclusion of the Medical Licensure Commission that the Respondent, Herbert Ray Evers, M.D., violated § 34-24-360(3), Code of Alabama, 1975, by engaging in the practice of medicine in such a manner as to endanger the health of one Maxie Walker, a patient then under his care during the period April 14 through April 26, 1985.

Accordingly, it is the ORDER of the Medical Licensure Commission that the license to practice medicine, Certificate No. 2275, of Herbert Ray Evers, M.D., be hereby revoked.

2. A. With respect to Paragraph 4(A), the Commission finds that the representations concerning the effectiveness and results to be achieved from the treatments were improbable and deceptive.

B. The Commission finds that there is insufficient evidence to support the allegations of Paragraph 4(B) of the Complaint.

C. The Commission finds that there is insufficient evidence to support the allegations of Paragraph 4(C) of the Complaint.

D. With respect to Paragraph 4(D), the Commission finds by the evidence presented that said patient's planned course of therapy with Ointments A and Z for her carcinoma of the breast and its manifestations was misrepresentative and deceptive as to the expected outcome.

Based on the foregoing, it is the conclusion of the Medical Licensure Commission that the Respondent, Herbert Ray Evers, M.D., violated § 34-24-360(7), Code of Alabama, 1975, by using untruthful or deceptive or improbable statements concerning the effects or results of his proposed treatment of one Maxie Walker, a patient then under this care during the period April 14 through April 26, 1985.

Accordingly, it is the ORDER of the Medical Licensure Commission that the license to practice medicine, Certificate No. 2275, of Herbert Ray Evers, M.D., be hereby revoked.

3. A. With respect to Paragraphs 5(A) and 5(C), the Commission finds that the Respondent, Herbert Ray Evers, M.D., committed gross malpractice in his care of the patient by the use

of unproven, untested and dangerous treatments without expectation of benefit, and by his careless and reckless indifference to said patient's condition and care and the enormity of subsequent complications.

B. The Commission finds that there is insufficient evidence to support the allegations of Paragraph 5(B) of the Complaint.

Based on the foregoing, it is the conclusion of the Medical Licensure Commission that the Respondent, Herbert Ray Evers, M.D., violated § 34-24-360(9), Code of Alabama, 1975, in that he is guilty of gross malpractice in the treatment of one Maxie Walker, a patient then under his care during the period April 14 through April 26, 1985.

Accordingly, it is the ORDER of the Medical Licensure Commission that the license to practice medicine, Certificate No. 2275, of Herbert Ray Evers, M.D., be hereby revoked.

4. With respect to Paragraphs 6(A), 6(B) and 6(C), the Commission finds that the treatment, its portrayal and the care of said patient were outside the realm of those reasonably expected standards of the medical profession.

Based on the foregoing, it is the conclusion of the Medical Licensure Commission that the Respondent, Herbert Ray Evers, M.D., violated § 34-24-360(2), Code of Alabama, 1975, by demonstrating unprofessional conduct in the treatment of one Maxie Walker, a patient then under his care during the period April 14 through April 26, 1985.

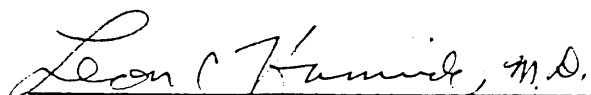
Accordingly, it is the ORDER of the Medical Licensure Commission that the license to practice medicine, Certificate No. 2275, of Herbert Ray Evers, M.D. be hereby revoked.

5. With respect to Paragraph 7(A), the Commission finds that the Respondent did knowingly perform or order to be performed, numerous tests and procedures that were not indicated in the workup for the patient's diagnosis. Additionally, tests and procedures were ordered or performed that would not be expected to provide any benefit to said patient.

Based on the foregoing, it is the conclusion of the Medical Licensure Commission that Respondent Herbert Ray Evers, M.D., violated § 34-24-360(11), Code of Alabama, 1975, by performing or directing the performance of unnecessary diagnostic tests and medical services in connection with his treatment of one Maxie Walker, a patient then under his care during the period April 14 through April 26, 1985.

It is the decision of the Commission that no action be taken with respect to this charge.

DONE this the 17 day of December, 1986.



Leon C. Hamrick, M.D.
Chairman, Medical Licensure
Commission