

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

FILED

STATE OF OKLAHOMA ex rel.)
THE OKLAHOMA STATE BOARD)
OF MEDICAL LICENSURE AND)
SUPERVISION,)

Plaintiff,)

vs.)

JEFFREY HICKMAN, P.A.)
LICENSE NO. 1298)

Defendant.)

MAY 23 2014

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

CASE NO. 13-05-4737

ORDER ACCEPTING SURRENDER IN LIEU OF PROSECUTION
PENDING RECEIPT OF DOCUMENTATION

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (the "Board") on May 15, 2014, at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

Matthew Ryan Stangl, Assistant Attorney General, appeared for the Plaintiff and the Defendant appeared not.

The Board *en banc* after hearing arguments of counsel, reviewing the exhibits admitted and being fully apprised 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 519 *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, Jeffrey Hickman, P.A. (“Defendant”), holds Oklahoma physician assistant license no. 1298.

Prior History with the Board

4. In October of 2004, Defendant prescribed Lortab to his girlfriend and instructed her to pick the prescription up for him. Defendant later admitted to Board staff that the CDS were, indeed, for him and not his girlfriend. Defendant and the Board thereafter entered into a Voluntary Submittal to Jurisdiction in May of 2005 that placed Defendant on probation for two (2) years and prohibited him from prescribing Schedules II through V during his probationary period.

Current Allegations of Unprofessional Conduct

5. On April 12, 2013, a member of the Oklahoma Pharmacy Board lodged a complaint wherein it was reported that Defendant was not being properly supervised. Defendant’s supervising physician, Wendy Bartanen, M.D. (“Dr. Bartanen”), had experienced some health problems and subsequently moved out of state. It was reported that Dr. Bartanen was returning to Oklahoma only three (3) days a month to supervise Defendant at their clinic in Walters, Oklahoma.
6. On May 10, 2013, a physician called Board Staff and advised that upon having received a referral from Dr. Bartanen’s clinic he called and was told Dr. Bartanen no longer worked there – that it was now just “Dr. Hickman.” (Defendant is a licensed chiropractor in addition to being a PA). The reporting physician voiced concerns that Defendant was not being properly supervised. He also faxed a copy of the referred patient’s progress note which stated the patient had been seen by Dr. Bartanen on April 19, 2013.
7. On May 29, 2013, Investigator JL traveled to the Cotton County Chiropractic Clinic and Cotton County Medical Clinic (“the clinic”) in Walters, Oklahoma. The clinic actually consisted of two separate practices being operated out of the same location (629 E. Missouri, Walters, Oklahoma).
8. Investigator JL spoke with Defendant while at the clinic on May 29, 2013. Defendant advised that Dr. Bartanen owns fifty-one percent (51%) of the clinic and that he owns the other forty-nine percent (49%). Defendant further advised that Dr. Bartanen had not been at the clinic for at least two (2) weeks, and that his alternate supervisor had not been there during that time either. Defendant stated it was his belief that he only needed supervision ten percent (10%) of the time he practices medicine (as a PA). He further stated that the majority of his practice involves seeing chiropractic patients.
9. Investigator JL requested a copy of that day’s (May 29, 2013) schedule for the clinic. Listed on the schedule for Cotton County Chiropractic were six (6) patients with the last appointment time being 11:00 a.m. Also produced was a schedule for “Jeffrey Hickman,

PA,” which was five (5) pages long and listed thirteen (13) patients with the last appointment time being 11:30 a.m. Defendant advised the clinic was closed that afternoon for a funeral.

10. So according to his schedules for May 29, 2013, Defendant’s patient ratio was 32% chiropractic patients and 68% medical patients, at least on that particular morning in which there were a total of nineteen (19) scheduled appointments.
11. Investigator JL also spoke with Dr. Bartanen on May 31, 2013, who advised that since suffering a heart attack in June of 2012 she had been living in the state of Washington and returning to Oklahoma approximately every two (2) months. On June 29, 2013, Dr. Bartanen sent an email to Investigator JL further advising: “I lived in Oklahoma until 7/24/12. I returned to Oklahoma 11/13/12 to 11/15/12. I returned again 3/12/13 until 3/15/13. I returned most recently from 5/29/13 until 6/2/13.”
12. Based on the information provided in her email, then, Dr. Bartanen was actually present at the clinic on only two (2) occasions between July 24, 2012, and May 29, 2013, a period of 310 days or approximately 44 weeks, and she was not present at the clinic on April 19, 2013. *See Paragraph 4, supra.*
13. Defendant is guilty of unprofessional conduct in that:
 - a) A physician assistant must function only under the supervision of a licensed physician. Nothing in the Physician Assistant Act shall be construed to permit physician assistants to provide health care services independent of physician supervision. Oklahoma Administrative Code (“OAC”) 435:15-5-1(b).
 - b) Physician supervision shall be conducted in accordance with the following standards: The supervising physician or alternate supervising physician routinely is present in the facility to provide medical care to patients. OAC 435:15-5-1(b)(4).
 - c) In remote patient care settings, the supervising physician shall be present in the facility at least one-half day each week the facility is in operation. The Committee may recommend that the physician be present more than one-half day each week the facility is in operation based upon the training and experience of the physician assistant and other factors the Committee shall review. This shall be subject to Board review and approval. OAC 435:15-5-1(b)(5).
 - d) The Board may reprimand or place on probation any holder of a physician assistant license, or may limit, suspend or revoke prescription privileges, or may revoke or suspend any license issued to a physician assistant for unprofessional conduct. Acts that constitute unprofessional conduct include, but are not limited to: Violating any provision of the Medical

Practice Act or the rules promulgated by the Board. OAC 435:15-5-11(a)(7).

- e) Proper physician supervision of the physician assistant is essential. Supervision implies that the physician regularly and routinely reviews, and is involved in the health care services delivered by the physician assistant [T]he most essential aspect is that supervision is provided frequently and on an on-going basis. OAC 435:15-9-2(a).
- f) Physician supervision shall be conducted in accordance with the following standards: The supervising physician is on-site to provide medical care to patients a minimum of one-half day per week. Additional on-site supervision may be required at the recommendation of the Committee and approved by the Board. OAC 435:15-9-2(b)(4).
- g) It is assumed by the Board that the physician will be actively involved in the initial care of any new patient seen in the practice. This means that, wherever possible, the physician will personally see the new patient at some point during the initial clinic visit. Where this is not possible, such as in remote patient care settings, the physician assistant shall make clear to the patient that he/she is a physician assistant and not a physician, and under whose supervision he/she is providing care In addition, the patient shall be scheduled to see the physician at their next scheduled clinic appointment OAC 435:15-9-3(b).
- h) In office settings, it is assumed that the physician and the physician assistant function in the same clinical setting and that the physician is available to supervise and consult with the physician assistant about any matter in question, a point in the patient's history, an abnormal physical finding, etc. It is further assumed that the physician assistant immediately notifies the supervising physician of any medical emergency, patient complication or other patient problem encountered. OAC 435:15-9-4(a)(1).
- i) It is assumed that if the primary supervising physician is not available to supervise the physician assistant, another licensed physician, approved by the Board, will be available to provide such supervision. OAC 435:15-9-4(a)(3).
- j) The Board assumes that the physician and physician assistant are in agreement with the principles contained in this subchapter, and are completely familiar with the law and rules governing the use of physician assistants in violation of OAC 435-15-9-5(a); and

- k) The Board reminds both the physician and physician assistant that the approval to practice is under the aegis of the licensed physician, and that the Board's ultimate recourse in case of violation of any agreements under such approval lies in the restriction or removal, after due process, of the physician's license to practice medicine and the physician assistant's license to practice as a physician assistant in Oklahoma. OAC 435-15-9-5(b).

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 and the Physician Assistant Act found at 59 O.S. §§ 519 *et seq.* The Board is authorized to enforce the Act and the Physician Assistant Act as necessary to protect the public health, safety and welfare.

2. Defendant is guilty of unprofessional conduct as follows:

- a) A physician assistant must function only under the supervision of a licensed physician. Nothing in the Physician Assistant Act shall be construed to permit physician assistants to provide health care services independent of physician supervision. Oklahoma Administrative Code ("OAC") 435:15-5-1(b).
- b) Physician supervision shall be conducted in accordance with the following standards: The supervising physician or alternate supervising physician routinely is present in the facility to provide medical care to patients. OAC 435:15-5-1(b)(4).
- c) In remote patient care settings, the supervising physician shall be present in the facility at least one-half day each week the facility is in operation. The Committee may recommend that the physician be present more than one-half day each week the facility is in operation based upon the training and experience of the physician assistant and other factors the Committee shall review. This shall be subject to Board review and approval. OAC 435:15-5-1(b)(5).
- d) The Board may reprimand or place on probation any holder of a physician assistant license, or may limit, suspend or revoke prescription privileges, or may revoke or suspend any license issued to a physician assistant for unprofessional conduct. Acts that constitute unprofessional conduct include, but are not limited to: Violating any provision of the Medical Practice Act or the rules promulgated by the Board. OAC 435:15-5-11(a)(7).

- e) Proper physician supervision of the physician assistant is essential. Supervision implies that the physician regularly and routinely reviews, and is involved in the health care services delivered by the physician assistant [T]he most essential aspect is that supervision is provided frequently and on an on-going basis. OAC 435:15-9-2(a).
- f) Physician supervision shall be conducted in accordance with the following standards: The supervising physician is on-site to provide medical care to patients a minimum of one-half day per week. Additional on-site supervision may be required at the recommendation of the Committee and approved by the Board. OAC 435:15-9-2(b)(4).
- g) It is assumed by the Board that the physician will be actively involved in the initial care of any new patient seen in the practice. This means that, wherever possible, the physician will personally see the new patient at some point during the initial clinic visit. Where this is not possible, such as in remote patient care settings, the physician assistant shall make clear to the patient that he/she is a physician assistant and not a physician, and under whose supervision he/she is providing care In addition, the patient shall be scheduled to see the physician at their next scheduled clinic appointment OAC 435:15-9-3(b).
- h) In office settings, it is assumed that the physician and the physician assistant function in the same clinical setting and that the physician is available to supervise and consult with the physician assistant about any matter in question, a point in the patient's history, an abnormal physical finding, etc. It is further assumed that the physician assistant immediately notifies the supervising physician of any medical emergency, patient complication or other patient problem encountered. OAC 435:15-9-4(a)(1).
- i) It is assumed that if the primary supervising physician is not available to supervise the physician assistant, another licensed physician, approved by the Board, will be available to provide such supervision. OAC 435:15-9-4(a)(3).
- j) The Board assumes that the physician and physician assistant are in agreement with the principles contained in this subchapter, and are completely familiar with the law and rules governing the use of physician assistants in violation of OAC 435-15-9-5(a); and
- k) The Board reminds both the physician and physician assistant that the approval to practice is under the aegis of the licensed physician, and that

the Board's ultimate recourse in case of violation of any agreements under such approval lies in the restriction or removal, after due process, of the physician's license to practice medicine and the physician assistant's license to practice as a physician assistant in Oklahoma. OAC 435-15-9-5(b).


Order

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

1. Defendant Jeffrey Hickman's surrender of his Physician's Assistant license no. 1298 is hereby **ACCEPTED PENDING RECEIPT OF THE APPROPRIATELY EXECUTED SURRENDER IN LIEU OF PROSECUTION FROM DEFENDANT** based upon the above Findings of Fact and Conclusions of Law that he is guilty of unprofessional conduct.

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 23 day of May, 2014.



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

CERTIFICATE OF SERVICE

I certify that on the 23rd day of May, 2014, I mailed, via first class mail, postage prepaid, a true and correct copy of this Order to counsel for Defendant, Mr. Daniel Monty Delluomo, 2816 NW 57th Street, Suite 103, Oklahoma City, OK 73112.



Barbara J. Smith, Legal Assistant