

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

STATE OF OKLAHOMA, *ex rel.*,)
 THE OKLAHOMA STATE BOARD)
 OF MEDICAL LICENSURE AND)
 SUPERVISION,)
)
 Plaintiff,)
)
 v.)
)
 JEFFREY C. HICKMAN, P.A.,)
 LICENSE NO. PA1298,)
)
 Defendant.)

FILED
 FEB 02 2016
 OKLAHOMA STATE BOARD OF
 MEDICAL LICENSURE & SUPERVISION

Case No. 13-05-4737

**ORDER GRANTING REINSTATEMENT OF LICENSE AFTER
SURRENDER IN LIEU OF PROSECUTION UNDER TERMS OF PROBATION**

This matter came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (“Board”) on January 14, 2016 at the Board office, 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and rules of the Board.

Jeffrey C. Hickman, P.A., (“Defendant”), appeared in person, *pro se*.

Joseph L. Ashbaker, Assistant Attorney General, appeared on behalf of the State of Oklahoma, *ex rel.* the Oklahoma State Board of Medical Licensure and Supervision.

The Board *en banc* heard testimony of Defendant and counsel for the State, and being fully apprised of the premises, entered the following Findings of Fact, Conclusions of Law, and Orders:

Findings of Fact

1. Defendant previously held Oklahoma Physician Assistant license No. 1298.
2. On March 24, 2005, a Complaint, Case No. 04-10-2878, was filed by the Board against Defendant for prescribing violations, and on May 5, 2005, an Order Accepting Voluntary Submittal to Jurisdiction (VSJ), with terms of two (2) years’ probation was filed.
3. On March 28, 2014 a Complaint, Case No. 13-05-4737, was filed by the Board against Defendant for not being properly supervised and for being identified to callers as “Dr. Hickman.” On May 15, 2014 the Board accepted a Surrender in Lieu of Prosecution Pending Receipt of Documentation, and an order was filed on May 23, 2014.

4. On June 9, 2014, Defendant executed a Voluntary Surrender of License in Lieu of Prosecution (SILOP), which was filed on June 13, 2014.

5. On July 23, 2015 the Board denied Defendant's application for reinstatement of his physician assistant license, and an Order Denying Reinstatement of License After Surrender in Lieu of Prosecution was filed on July 29, 2015.

6. On October 29, 2015, Defendant applied for reinstatement of his Oklahoma physician assistant license.

7. On November 5, 2015, Defendant appeared *pro se* and the Board heard testimony of Defendant, State's counsel; also, in support of Defendant, Dr. Robert Westcott of the Oklahoma Health Professionals Program, and Dr. Michael H. Tollett, D.O., who advised that he is interested in having Mr. Hickman work with him at a new clinic. Joseph L. Ashbaker, Assistant Attorney General, appeared and testified on behalf of the State of Oklahoma, ex rel. the Oklahoma State Board of Medical Licensure and Supervision. Mr. Ashbaker announced that the State had no recommendation as to whether the Applicant should get reinstated, however, if the Board decided in the affirmative then the reinstatement should be under terms and conditions of probation. He provided recommended terms and conditions of probation for Board review and consideration.

8. On November 5, 2015, the Board denied reinstatement of the physician assistant license of Defendant. Upon request by the Board, the Attorney General issued its Opinion No. 2015-180a, disapproving the Board's action denying Defendant's reinstatement.

9. On January 14, 2016, a rehearing was conducted regarding the application for reinstatement of the physician assistant license of Jeffrey Hickman, P.A. Defendant testified that he has acquired employment at two separate locations to pursue the two licenses that he holds, as a physician assistant and a chiropractor. He will attend to patients at each location using only one license. He further advised that Dr. Michael H. Tollett, D.O., continues to be interested in having Mr. Hickman work with him at a new clinic.

10. The Board heard testimony and recommendations of counsel. Based on recommendations of the Attorney General and the State, the Board accepted the reinstatement of the physician assistant license of Jeffery Hickman, P.A. under terms of probation.

Conclusions of Law

1. The Board *en banc* has jurisdiction over the subject matter herein, and notice has been given in all respects as required by law and the rules of the Board.

2. The Board has jurisdiction over the subject matter herein pursuant to 59 O.S. § 480 *et seq.* and 59 Okla. Stat. § 519.1 *et seq.*

3. 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 Title 59 Okla. Stat. § 480 *et seq.* The Board is authorized to reinstate a licensee's license after a surrender in lieu of prosecution under 59 O.S. 2011, §§ 495h, 508.1, and 508.2.

4. The Defendant has met all of the requirements for reinstatement of his physician assistant license as defined under 59 O.S. 2011, §§ 495h, 508.1, and 508.2.

Orders

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

1. The physician assistant license of **JEFFREY C. HICKMAN** is hereby **REINSTATED UNDER TERMS OF PROBATION** as follows:

Standard Terms of Probation

- A. Defendant will conduct his/her practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Board. Any question of interpretation regarding the Act or this order 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 will furnish a copy of this order to each and every state in which he/she holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he/she holds or anticipates holding any form of staff privileges or employment.
- C. Defendant will not supervise allied health professionals that requires surveillance of a licensed physician.
- D. Defendant will keep the Board informed of his/her current address.
- E. Defendant will keep current payment of all assessment by the Board for prosecution, investigation and monitoring of his/her case unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.
- F. Defendant shall make himself/herself available for one or more personal appearances before the Board or its designee upon request.
- G. Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or designee.
- H. Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Coordinator to obtain copies of medical records and authorize the Compliance Coordinator to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.
- I. Failure to meet any of the terms of your Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify license after due notice and hearing.

Specific Terms of Probation

- A. Five (5) year duration.
- B. All supervisors approved by the Board Secretary.
- C. Job location approved by the Board Secretary.
- D. Regardless of the practice location, the supervising physician must spend a minimum of eight (8) hours or one full day a week on site seeing patients and observing Mr. Hickman's practice to include charting. Mr. Hickman will ensure that the supervising physician sends the Board Secretary quarterly reports on Mr. Hickman's overall practice. Mr. Hickman will appear in front of the Board in order to modify this term.
- E. Mr. Hickman will attend an ethics course approved by the Board Secretary within the first year of probation.
- F. Mr. Hickman will not prescribe scheduled drugs for the first year of probation.
- G. Mr. Hickman will attend a prescribing course approved by the Board Secretary within the first year of probation in anticipation of lifting his Board CDS restriction and restoration of his Oklahoma Bureau of Narcotics (OBN) and Drug Enforcement Administration (DEA) Permits.
- H. Mr. Hickman will sign a contract with the Oklahoma Health Professionals Program (OHPP) for the duration of the probation.
- I. Mr. Hickman will obtain an assessment and counseling by a board-certified psychiatrist approved by the Board Secretary.
- J. Mr. Hickman will not take any controlled dangerous substances unless indication is documented and prescribed by a licensed treating physician.
- K. 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.
- L. Mr. Hickman will identify himself as Physician's Assistant Hickman or P.A. Hickman at all times when acting in such capacity.
- M. Mr. Hickman will not treat the same patient on the same day as a physician's assistant and a chiropractor.
- N. Mr. Hickman will ensure that his chiropractic office and his physician assistant's office are not in the same facility. His employment and office arrangement must be approved by the Board Secretary in compliance with this order.

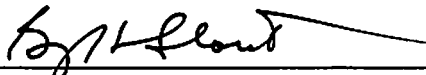
2. During the period of probation, failure to meet any of the terms of probation will constitute cause for the Executive Director of the Board to immediately suspend Defendant's license pursuant to 59 O.S.§506(B).

3. 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; and

4. A copy of this written order shall be sent to Defendant as soon as it is processed.

5. **This Order is subject to review and approval by the Oklahoma Attorney General, and this Order shall become final upon completion of the review by the Oklahoma Attorney General unless disapproved, in which case this Order shall be null and void.**

Dated this 2nd day of February, 2016.

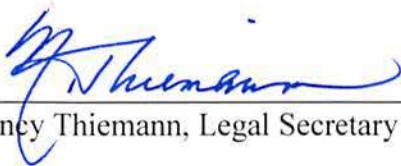


Billy H. Stout, M.D., Board Secretary
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Certificate of Mailing

This is to certify that on the 2nd day of February, 2016, a true and correct copy of this Order was sent by U.S. first-class mail, postage prepaid, to the following:

Jeffrey C. Hickman
13811 S.W. Baseline Road
Faxon, Oklahoma 73540



Nancy Thiemann, Legal Secretary



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2016-53A

FILED

FEB 02 2016

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

Billy Stout, M.D., Board Secretary
State Board of Medical Licensure and
Supervision
101 NE 51st Street
Oklahoma City, Oklahoma 73105

January 28, 2016

Dear Board Secretary Stout:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Medical Licensure and Supervision intends to take with regard to an application for reinstatement by former physician assistant licensee 1298. The Board initially denied the application for reinstatement because of confusion between licensee's roles as a physician assistant and as a licensed chiropractor, but the prior Attorney General Opinion No. 2015-180A disapproved this action because it was inconsistent with statutory policies regarding the status of chiropractors.

Now, the Board has proposed—pursuant to a consent agreement—to grant the application for reinstatement while imposing a five-year probation with several practice conditions. Those conditions include attending courses in ethics and prescriptions; not prescribing scheduled drugs for the first year of probation; undergoing a psychiatric assessment; not ingesting any controlled dangerous substances without a valid prescription; identifying himself as a physician assistant at all times when acting as one; not treating a patient on the same day both as a chiropractor and physician assistant; and not using the same facility as an office location for both licensee's chiropractic and physician assistant practices.

Additional requirements including Board Secretary oversight, guidance from a supervising physician, and inspection of the licensee's person and records by the Board upon request will be used to enforce the probation.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2015, §§ 480–519, makes it a felony to practice medicine and surgery without a license, 59 O.S.2011, § 491(A)(1)–(2). The practice of medicine and surgery includes the use of phrases such as “physician,” “doctor,” or “M.D.” See 59 O.S.2011, § 492(A), (C)(5). However, the practice of medicine does not include the use of a designation such as “doctor” when that title “additionally contains the description of another branch of the healing arts for which one holds a valid license” in Oklahoma. *Id.* § 492(C)(5); see also *id.* § 492(D)(4), (9), (E)(2), (F). Oklahoma

law recognizes licensed chiropractor as a kind of "doctor," however. *See* 59 O.S.2011, §§ 161.2, 161.3(6), 161.15.

Yet physician assistants are fundamentally limited in their practice. Oklahoma law specifically states that physicians cannot "practice medicine or prescribe drugs and medical supplies in this state except when such actions are performed under the supervision and at the direction of a physician approved by the State Board of Medical Licensure and Supervision." *Id.* § 519.11(C). Thus, the statutes show that while licensee may be able to practice as a chiropractor and as a physician assistant, the Board has reasonable concerns about confusion and ensuring that licensee observes the limitations on practice imposed by law on physician assistants. The conditions imposed in the order reasonably ensure licensee reduces confusion and separates chiropractic and physician assistant practice.

It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision has adequate support for the conclusion that this action advances the State of Oklahoma's policy to protect public health and ensure patient welfare.

A handwritten signature in blue ink that reads "Scott Pruitt". The signature is written in a cursive, flowing style.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2015-180A

FILED
DEC 10 2015
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Billy Stout, M.D., Board Secretary
State Board of Medical Licensure and
Supervision
101 NE 51st Street
Oklahoma City, Oklahoma 73105

December 9, 2015

Dear Board Secretary Stout:

This office has received your request for a written Attorney General Opinion regarding agency action that the State Board of Medical Licensure and Supervision intends to take with regard to an application for reinstatement by former physician assistant licensee 1298. The Board denied the application due to a failure of a motion of the Board reinstating the license to pass with a majority—the vote was evenly tied.

The licensee had been subject to disciplinary proceedings in 2014 for not being properly supervised by a physician and for being identified as a “doctor” to patients calling the licensee’s workplace. To resolve that prior discipline, the licensee entered a Voluntary Surrender of License in Lieu of Prosecution—a licensee’s voluntary decision available under Oklahoma statutes that requires an admission of guilt and surrender of license, *see* 59 O.S.2011, § 509.1(E).

The key issue underlying licensee’s difficulty with the Board on supervision and being identified as a “doctor” is that the licensee is also a licensed chiropractor. For example, during the hearing on the current reinstatement application, one Board member commented at length about the possibility of confusion between the licensee’s role as a physician assistant within conventional medicine and the licensee’s role as a chiropractor. As part of the current reinstatement application, licensee offered to take several steps to mitigate this possibility of confusion, including separating the physical workplaces where the two professions were performed. The licensee even verbally offered, at the hearing, to locate a chiropractic clinic in a separate county from where the licensee would perform physician assistant services.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2015, §§ 480–519, makes it a felony to practice medicine and surgery without a license, 59 O.S.2011, § 491(A)(1)–(2). The practice of medicine and surgery includes the use of phrases such as “physician,” “doctor,” or “M.D.” *See* 59 O.S.2011, § 492(A), (C)(5). However, the practice of medicine does not include the use of a designation such as “doctor” when that title “additionally contains the description of another branch of the healing arts for which one holds a valid license” in Oklahoma. *Id.* § 492(C)(5); *see also id.* § 492(D)(4), (9), (E)(2), (F). Thus, if

Oklahoma law elsewhere authorizes chiropractors to use the title of “doctor,” the Act could not be said to prohibit licensee from using that title so long as it identified only the licensee’s practice as a chiropractor and not as a physician assistant.

Oklahoma law does recognize chiropractors as “doctors.” *See* 59 O.S.2011, § 161.2 (referring to a “chiropractic physician”); *id.* § 161.3(6) (referring to “[c]hiropractic physician” and “doctor of chiropractic”); *id.* § 161.15 (recognizing that “[d]octors of chiropractic” may sign death certificates as well as all other public health certificates on the same terms as osteopathic and allopathic physicians).

The Oklahoma Legislature, through the statutes, has evinced a policy of recognizing chiropractors as “doctors” or “physicians.” While the Board may be appropriately concerned about the possibility that confusion might arise from the licensee’s dual license-holding, the denial of licensee’s application for reinstatement cannot be said to advance a statutory policy, particularly in light of the licensee’s willingness to accept conditions of practice on the physician assistant license. Instead of denying the application, the Board should approve the application and impose conditions of practice on the physician assistant license that would reduce the likelihood of confusion. Those conditions may include location, patient, designation, and timing restrictions.

It is, therefore, the official opinion of the Attorney General that the State Board of Medical Licensure and Supervision lacks adequate support for the conclusion that this action advances the State of Oklahoma’s policy to protect public health and ensure patient welfare. The action is hereby **disapproved**.

A handwritten signature in blue ink, appearing to read "E. Scott Pruitt", with a long horizontal flourish extending to the right.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA