

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

FILED

NOV - 4 2004

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

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff)

v.)

Case No. 04-07-2845

JOHN EDWARD PIERSING, P.A.,)
LICENSE NO. PA1309,)

Defendant.)

VOLUNTARY SUBMITTAL TO JURISDICTION

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 for the State of Oklahoma and the staff of the Board, as represented by the Secretary of the Board, Gerald C. Zumwalt, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, John Edward Piersing, P.A., Oklahoma license no. PA1309, who appears in person and pro se, offer this Agreement for acceptance by the Board *en banc* pursuant to Section 435:5-1-5.1 of the Oklahoma Administrative Code ("OAC").

AGREEMENT AND ACKNOWLEDGMENT BY DEFENDANT

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on September 30, 2004 and further acknowledges that hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act") and the Physician Assistant Act.

Defendant, John Edward Piersing, P.A., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his right to a full hearing, submits to the jurisdiction of the Board and agrees to abide by the terms and conditions of this Order. Defendant further acknowledges that he is entitled to have his interests represented by legal counsel and that he has elected to proceed without legal representation, thereby waiving his right to an attorney. Defendant acknowledges that he has read and understands the terms and conditions stated herein.

PARTIES' AGREEMENT AND STIPULATIONS

Plaintiff, Defendant and the Board staff stipulate and agree as follows:

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 assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §§ 480 *et seq.* and 887.1 *et seq.*
2. Defendant, John Edward Piersing, P.A. holds Oklahoma license no. PA1309.
3. On or about July 22, 2004, while working at Prague Municipal Hospital, Defendant attempted to restrain a seventeen (17) year old patient by squeezing his neck. The patient was handcuffed behind his back, and his legs and midsection were restrained by two (2) police officers. The patient then spit on Defendant, at which time Defendant delivered two (2) blows with his right fist to the left side of the patient's head. Defendant paused approximately five (5) seconds, then delivered a third and final blow to the patient's left cheekbone and eye area. The incident was witnessed by the two (2) police officers. As a result of this incident, a Police Report was filed with the Prague Police Department.
4. On or about July 22, 2004, Defendant's supervising physician withdrew his supervisory position over Defendant.
5. On or about August 24, 2004, an investigator for the Board interviewed Defendant regarding the incident. When questioned, Defendant claimed that he did not remember hitting the patient.
6. Defendant is guilty of unprofessional conduct in that he:
 - A. 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).
 - B. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).
 - C. ^{was} ~~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 physical condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

- D. Violated a provision of the Medical Practice Act or the rules promulgated by the Board pursuant to OAC 435:15-5-11(7).
- E. Violated any provision of the Medical Practice Act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of OAC 435:10-7-4(39).
- F. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).
- G. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).

Was negligent while in practice as a physician assistant or violating the Code of Professional Ethics adopted by the American Academy of Physician Assistants, Inc. in violation of OAC 435:15-5-11(4).

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. The Board is authorized to enforce these Acts as necessary to protect the public health, safety and welfare.

2. Based on the foregoing facts, Defendant, John Edward Piersing, Oklahoma license PA1309, is guilty of the unprofessional conduct set forth below:

- A. 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).
- B. Engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).
- C. 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 physical condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).
- D. Violated a provision of the Medical Practice Act or the rules promulgated by the Board pursuant to OAC 435:15-5-11(7).

- E. Violated any provision of the Medical Practice Act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of OAC 435:10-7-4(39).
- F. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).
- G. Failed to cooperate with a lawful investigation conducted by the Board in violation of OAC 435:10-7-4(38).
- H. Was negligent while in practice as a physician assistant or violating the Code of Professional Ethics adopted by the American Academy of Physician Assistants, Inc. in violation of OAC 435:15-5-11(4).

Order

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

1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.

2. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Defendant shall be **FORMALLY REPRIMANDED**.

3. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Defendant shall be placed on **PROBATION** for a period of **TWO (2) YEARS** under the following terms and conditions:

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

B. Defendant will enter and continue counseling, therapy or psychiatric treatment with a counselor approved in advance by the Board Secretary for anger management and stress. Defendant will authorize in writing the release of any and all records of that treatment to the Board or its designee. Defendant shall additionally submit quarterly reports from

his therapist to the Board Secretary for his review. Defendant will remain in counseling until both the counselor and the Board Secretary authorize his release from counseling.

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

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

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

F. Defendant will keep current payment of all assessment by the Board for prosecution, investigation and monitoring of his case, including but not limited to a \$100.00 per month probation monitoring fee.

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

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

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

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


K. Within the first year of probation, Defendant shall attend a seminar approved in advance by the Board Secretary for a minimum of ten (10) hours on stress and anger management. Defendant shall provide to the Board Secretary proof of completion of said seminar.

L. Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Consultant or other Board designee to obtain copies of medical records and authorize the Compliance Consultant or other Board designee to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.

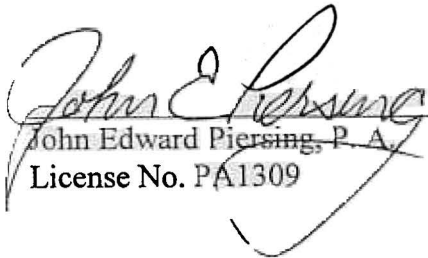
4. Promptly upon receipt of an invoice for such charges, Defendant


shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.


Dated this 4 day of November, 2004.


John Leatherman, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED:


John Edward Pierson, P. A.
License No. PA1309

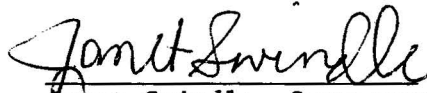

Gerald C. Zumwalt, M.D.
Secretary & Medical Advisor
Oklahoma State Board of
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405/848-6841

Attorney for the Oklahoma State Board
of Medical Licensure and Supervision

CERTIFICATE OF SERVICE

On the 5 day of Nov, 2004, a true and correct copy of this order was mailed, postage prepaid, to John Pierson, PA at NBU 5404, Prague Oklahoma 74864.


Janet Swindle, Secretary