

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

**FILED**

MAR 10 2011

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

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

v. )  
 )  
 )  
WINTER BATHE, PA, )  
LICENSE NO. PA1420, )  
 )  
 )  
Defendant. )

Case No. 10-10-4093

**ORDER ACCEPTING  
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, Winter Bathe, P.A., Oklahoma license no. PA1420, who appears in person and pro se, proffer 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 January 28, 2011 and 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, Winter Bathe, P.A., states that she is of sound mind and is not under the influence of, or impaired by, any medication or drug and that she fully recognizes her right to appear before the Board for evidentiary hearing on the allegations made against her. Defendant hereby voluntarily waives her 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 acknowledges that she has read and understands the terms and conditions stated herein, and that this Agreement has been reviewed and discussed with her.

### ***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 physician assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §§ 480 *et seq.* and 887.1 *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, Winter Bathe, P.A., holds Oklahoma physician assistant license no. PA1420, and practices in Norman, Oklahoma. At the time of the events in question, Defendant worked at Oklahoma Weight Loss Options in Norman, Oklahoma and at the McBride Clinic in Oklahoma City, Oklahoma. Defendant worked under the supervision of Ronnie Keith, D.O. at Oklahoma Weight Loss Options.

#### **PATIENT CBL-DEFENDANT'S SISTER**

3. A review of the PMP reveals that on or about August 25, 2010, Defendant wrote a prescription for Phentermine 37.5 mg. #30, a Schedule IV controlled dangerous substance, to her sister, Patient CBL. A review of Defendant's records reveals that she failed to perform any physical examination on this patient prior to prescribing the controlled dangerous drugs, that she did not establish a legitimate medical need for the medications, that she did not establish a valid physician patient relationship prior to prescribing the medications, and that she failed to keep any record of the prescription written August 25, 2010.

4. When questioned by Board investigators why she prescribed a controlled dangerous substance to her sister, Defendant claimed that although she worked at a weight loss clinic, she was unaware that Phentermine was a controlled dangerous substance.

5. Defendant admitted to Board investigators that she prescribed the Phentermine to her sister without the knowledge of her supervising physician.

#### **PATIENT LKL-DEFENDANT'S CO-WORKER**

6. On or about November 16, 2009, Defendant called in a prescription for Phentermine 37.5 mg. #30, a Schedule IV controlled dangerous substance, to Patient LKL, another physician assistant who worked with Defendant at the McBride Clinic. A review of Defendant's records reveals that she failed to perform any physical examination on this patient prior to prescribing the controlled dangerous drugs, that she did not establish a legitimate medical need for the medications, that she did not establish a valid physician patient relationship prior to prescribing the medications, and that she failed to keep any record of the prescription written November 16, 2009.

7. Defendant admitted to Board investigators that she prescribed the Phentermine to this physician assistant who was her co-worker without the knowledge of her supervising physician.

#### **PATIENT SML-DEFENDANT'S MOTHER-IN-LAW**

8. On or about March 29, 2010, Defendant wrote a prescription for Phentermine 37.5 mg. #30, a Schedule IV controlled dangerous substance, to Patient SML, Defendant's mother-in-law. A review of Defendant's records reveals that she failed to perform any physical examination on this patient prior to prescribing the controlled dangerous drugs, that she did not establish a legitimate medical need for the medications, and that she failed to keep any record of the prescription written March 29, 2010.

9. Defendant admitted to Board investigators that she prescribed the Phentermine to her mother-in-law without the knowledge of her supervising physician.

#### **PATIENT JWJ-DEFENDANT'S COUSIN**

10. On or about October 14, 2009, November 25, 2009 and January 12, 2010, Defendant wrote prescriptions for Phentermine 37.5 mg. #30, a Schedule IV controlled dangerous substance, to Patient JWJ, Defendant's cousin. A review of Defendant's records reveals that she failed to perform any physical examination on this patient prior to prescribing the controlled dangerous drugs, that she did not establish a legitimate medical need for the medications, that she did not establish a valid physician patient relationship prior to prescribing the medications, and that she failed to keep any record of the prescriptions written October 14, 2009, November 25, 2009 and January 12, 2010.

11. Defendant admitted to Board investigators that she prescribed the Phentermine to her cousin without the knowledge of her supervising physician.

#### **OTHER PRESCRIBING VIOLATIONS**

12. When questioned by Board investigators, Defendant admitted that she has written numerous prescriptions for other dangerous drugs to her friends and family and that she did not keep any record of these prescriptions. She additionally admitted that she prescribed these

medications to her family and friends without the knowledge of her supervising physician, and that they were prescribed away from the clinic setting.

13. Title 435 of the Oklahoma Administrative Code Section 15-5-1 provides as follows:

(b) 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.

14. Defendant is guilty of unprofessional conduct in that she:

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. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. § 509 (12).

C. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient in violation of 59 O.S. § 509 (18).

D. 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(26).

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 59 O.S. §509 (13), OAC 435:10-7-4(39) and OAC 435:15-5-11(a)(7).

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

G. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal

government or the laws of this state in violation of 59 O.S. § 509 (7).

- H. Failed to maintain adequate medical records to support diagnosis, procedure, treatment or prescribed medications in violation of 59 O.S. §509 (20) and OAC 435:10-7-4(41).
- I. Prescribed, dispensed or administered a controlled substance or narcotic drugs in excess of the amount considered good medical practice, or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. 509(16) and OAC 435:10-7-4(2) and (6).
- J. Engaged in the indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
- K. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36).
- L. Failed to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment in violation of OAC 435:10-7-4(49).

### *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 and its applicable regulations and the Physician Assistant Act. The Board is authorized to enforce the acts as necessary to protect the public health, safety and welfare.

2. Defendant, Winter Bathe, P.A., Oklahoma physician assistant license PA1420, is guilty of unprofessional conduct set forth below based on the foregoing facts:

- 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. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. § 509 (12).

- C. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient in violation of 59 O.S. § 509 (18).
- D. 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(26).
- 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 59 O.S. §509 (13), OAC 435:10-7-4(39) and OAC 435:15-5-11(a)(7).
- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- G. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government or the laws of this state in violation of 59 O.S. § 509 (7).
- H. Failed to maintain adequate medical records to support diagnosis, procedure, treatment or prescribed medications in violation of 59 O.S. §509 (20) and OAC 435:10-7-4(41).
- I. Prescribed, dispensed or administered a controlled substance or narcotic drugs in excess of the amount considered good medical practice, or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standards in violation of 59 O.S. 509(16) and OAC 435:10-7-4(2) and (6).
- J. Engaged in the indiscriminate or excessive prescribing, dispensing or administering of controlled or narcotic drugs in violation of OAC 435:10-7-4(1).
- K. Engaged in the improper management of medical records in violation of OAC 435:10-7-4(36).

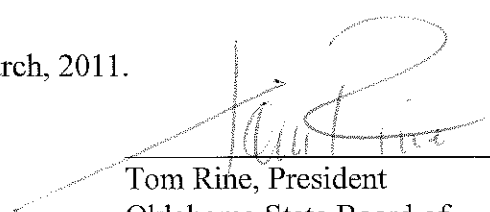
- L. Failed to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment in violation of OAC 435:10-7-4(49).

**Order**

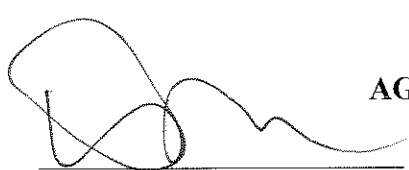
IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

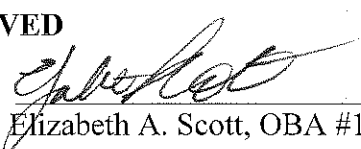
1. The Board *en banc* hereby adopts the agreement of the parties in this Voluntary Submittal to Jurisdiction.
2. Defendant's license shall be **SUSPENDED** for a period of **THIRTY (30) DAYS**.
3. Within one (1) year of the date of this Order, Defendant shall complete a Prescribing Class at a facility approved in advance in writing by the Board Secretary on prescribing and required record keeping. Defendant shall provide to the Board Secretary proof of completion of said class.
4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.
5. A copy of this written order shall be sent to Defendant as soon as it is processed.

Dated this 10 day of March, 2011.

  
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Tom Rine, President  
Oklahoma State Board of  
Medical Licensure and Supervision

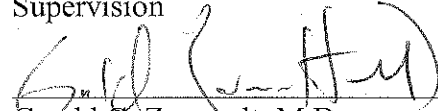
**AGREED AND APPROVED**

  
\_\_\_\_\_  
Winter Bathe, P.A.  
License No. PA1420

  
\_\_\_\_\_  
Elizabeth A. Scott, OBA #12470  
Assistant Attorney General

State of Oklahoma  
101 N.E. 51<sup>st</sup> Street  
Oklahoma City, OK 73105

Attorney for the Oklahoma State  
Board of Medical Licensure and  
Supervision



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

**CERTIFICATE OF MAILING**

I certify that on the 11 day of March, 2011, I mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Winter Bathe, 3131 Pomelo Circle, Norman, OK 73071.



Janet Swindle