

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

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

Plaintiff,

) **FILED**
)
)
) **JUL 17 2003**
)
) **OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION**

v.

**ELLIOTT HAMPTON HOWE, JR., M.D.,
LICENSE NO. 14304,**

Defendant.

) **Case No. 00-10-2256**
)
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)

**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, Elliott Hampton Howe, Jr., M.D., Oklahoma license no. 14304, 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 November 9, 2000 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").

Defendant, Elliott Hampton Howe, M.D., 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 and surgeons in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *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, Elliott Hampton Howe, M.D., holds Oklahoma license no. 14304.

3. In June 1999, Defendant was admitted to Talbott Recovery Center for the treatment of chemical dependency. Defendant was subsequently released in October 1999.

4. Defendant has admitted that from January 2000 through September 2000, he periodically wrote prescriptions for Hydrocodone and Hycotuss, both Schedule III controlled dangerous substances, in the names of former patients. Defendant additionally admits that he picked up these medications and that they were for his own personal use rather than for his former patients. For the past year, he has taken from seven (7) to twenty (20) Hydrocodone tablets per day, and four (4) to five (5) ounces of Hycotuss per day.

5. Defendant was subsequently contacted and criminal charges were filed by the Tulsa County Police Department regarding his illegal actions pursuant to 63 O.S. §2-407 (A-1), Obtaining a Controlled Dangerous Substance by Fraud.

6. On or about November 30, 2000, after due notice and hearing, the Board Secretary entered an Order of Emergency Suspension based upon the aforementioned acts, wherein Defendant's license was suspended pending a full hearing before the Board.

7. Defendant subsequently entered and completed treatment for substance abuse at Talbott Recovery Campus in September 2002.

8. Defendant is guilty of unprofessional conduct in that he:

A. Habitually uses habit-forming drugs in violation 59 O.S. 407 §509(5) and OAC 435:10-7-4(3).

B. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(9) and OAC 435:10-7-4(11).

C. 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(14) and OAC 435:10-7-4(39),

D. 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 physician condition in violation of 59 O.S. §509(16) and OAC 435:10-7-4(40).

E. Purchased or prescribed a regulated substance in Schedules I through V for the physician's personal use in violation of OAC 435:10-7-4(5).

F. Prescribed, sold, administered, distributed, ordered or gave a 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).

G. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509(12).

H. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of 435:10-7-4(17).

I. Confessed to a crime involving a violation of the anti-narcotic laws of the federal government or the laws of this state in violation of 59 O.S. §509(8) and 63 O.S. §2-407.

J. Committed an act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(10).

K. Prescribed a controlled substance without medical need in accordance with published standards in violation of 59 O.S. §509(17) and OAC 435:10-7-4(2) and (6).

L. Used a false, fraudulent or deceptive statement in a

document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).

M. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27), 63 O.S. §2-407, and OAC 475:20-1-2, OAC 475:20-1-6, OAC 475:25-1-3 and OAC 475:30-1-3.

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

2. Defendant, Elliott Hampton Howe, Jr., Oklahoma medical license 14304, is guilty of unprofessional conduct set forth below based on the foregoing facts:

A. Habitually uses habit-forming drugs in violation 59 O.S. 407 §509(5) and OAC 435:10-7-4(3).

B. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. §509(9) and OAC 435:10-7-4(11).

C. 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(14) and OAC 435:10-7-4(39),

D. 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 physician condition in violation of 59 O.S. §509(16) and OAC 435:10-7-4(40).

E. Purchased or prescribed a regulated substance in Schedules I through V for the physician's personal use in violation of OAC 435:10-7-4(5).

F. Prescribed, sold, administered, distributed, ordered or gave a 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).

- G. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509(12).
- H. Is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of 435:10-7-4(17).
- I. Confessed to a crime involving a violation of the anti-narcotic laws of the federal government or the laws of this state in violation of 59 O.S. §509(8) and 63 O.S. §2-407.
- J. Committed an act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine in violation of 59 O.S. §509(10).
- K. Prescribed a controlled substance without medical need in accordance with published standards in violation of 59 O.S. §509(17) and OAC 435:10-7-4(2) and (6).
- L. Used a false, fraudulent or deceptive statement in a document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).
- M. Violated a state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27), 63 O.S. §2-407, and OAC 475:20-1-2, OAC 475:20-1-6, OAC 475:25-1-3 and OAC 475:30-1-3.

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 placed on **PROBATION** for a period of five (5) years following his suspension under the following terms and conditions:
 - A. Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and

Supervision Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said 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 Oklahoma State Board of Medical Licensure and Supervision.

B. Upon request of the Board Secretary, Defendant will request all hospitals in which he anticipates practicing to furnish to the Board Secretary of the Oklahoma State Board of Medical Licensure and Supervision a written statement regarding monitoring of his practice while performing services in or to that hospital.

C. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of Medical Licensure and Supervision.

D. Defendant will not supervise allied health professionals that require surveillance of a licensed physician.

E. Defendant will not prescribe, administer, dispense or possess any drugs in Schedules I through V.

F. Defendant will not apply for state and federal registration for controlled dangerous substances until the term of his probation has expired unless authorized to do so by the Board.

G. Defendant will submit biological fluid specimens to include, but not limited to, blood and urine, for analysis, upon request of the Oklahoma State Board of Medical Licensure and Supervision or its designee, and Defendant will pay for the analysis thereof.

H. Defendant will not prescribe, administer or dispense any medications for personal use or for that of any family member.

I. Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Defendant has the affirmative duty to inform any and every doctor treating him of the Board Order immediately upon

initiation, or continuation of treatment.

J. Defendant will have the affirmative duty not to ingest any substance which will cause a body fluid sample to test positive for prohibited substances.

K. Defendant will practice no more than forty (40) hours per week in a controlled environment approved in advance by the Board Secretary.

L. Defendant will authorize in writing the release of any and all information regarding his treatment at Talbott and any other records of his medical, emotional or psychiatric treatment to the Oklahoma State Board of Medical Licensure and Supervision.

M. Defendant will abide by the terms and recommendations of his postcare contract with Talbott, a copy of which is attached hereto, including psychiatric treatment or counseling with a doctor or therapist approved by the Oklahoma State Board of Medical Licensure and Supervision. Defendant will authorize in writing the release of any and all records of that treatment to the Oklahoma State Board of Medical Licensure and Supervision and will authorize the Compliance Consultant to the Board to discuss his case and treatment with the individuals providing Defendant's treatment.

N. Defendant will attend five (5) meetings per week of a local 12-step program, including one (1) meeting per week of the Physicians' Recovery Program if Defendant is practicing in Oklahoma. Defendant shall affiliate and sign an after care contract with the Oklahoma Physicians' Recovery Program if and when he returns to practice in Oklahoma.

O. Defendant shall promptly notify the Board of any relapse, including any entry, or re-entry, into a treatment program for substance abuse.

P. Defendant shall promptly notify the Board of any citation or arrest for traffic or for criminal offenses involving substance abuse.

Q. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.

R. Defendant will keep current payment of all assessments by

the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of his case, which shall include but is not limited to a one hundred dollar (\$100.00) per month fee during the term of probation, unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

S. Until such time as all indebtedness to the Oklahoma State Board of Medial Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

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

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

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

W. Defendant shall fulfill all terms of his deferred sentence in the District Court of Creek County, State of Oklahoma.

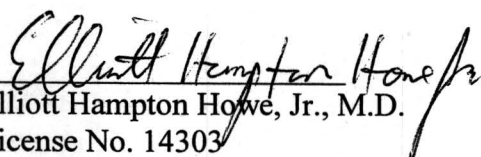
3. This Voluntary Submittal to Jurisdiction and Order will go into effect, Defendant's suspension will be lifted, and his license will be reinstated only upon payment in full of all costs and expenses incurred by the State of Oklahoma prior to July 18, 2003.

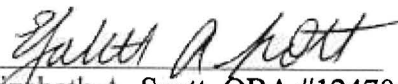
Dated this 17 day of July, 2003



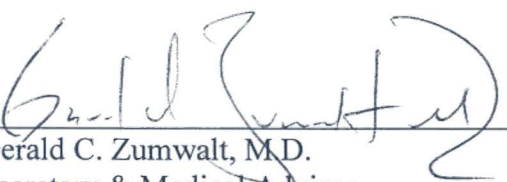
Eric Frische, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED


Elliott Hampton Howe, Jr., M.D.
License No. 14303

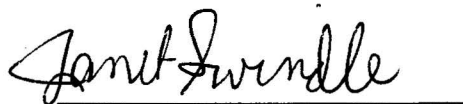

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Secretary & Medical Advisor
Oklahoma State Board of
Medical Licensure and Supervision

CERTIFICATE OF MAILING

I certify that on the 18 day of July, 2003, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Elliott Hampton Howe, Jr., M.D., 4183 S. Zunis Avenue, Tulsa, OK 74105.


Janet Swindle

Patient Identification

DISCHARGE DATE: 9/12/02

NAME:

Elliott Howe

HOME ADDRESS:

Fugate Hall 144 Mills Street
Atlanta, GA 30315

TELEPHONE: (H):

(404) 526-4339

(M): 404-303-3915

The following continuing care plan is a set of recommendations that have been developed by the clinical treatment team at Talbott Recovery Campus. It utilizes the expertise gained from years of treating chemically dependent individuals. Our experience is that patients who follow these guidelines significantly enhance their recovery. Where appropriate, impaired networks, boards, employers, families and referral sources have provided input regarding the recommendations presented in this plan. It is not meant to be a binding legal agreement, but a recommended recovery plan. We recommend the adherence to this plan for a period of 5 years.

1. I agree to abstain completely from taking any mood-changing chemical except when cleared by my primary physician and monitoring physician (and when appropriate, in consultation with an Addictionologist). I also agree to have my primary physician and monitor clear any and all medications (prescribed, over the counter, or herbal/ nutritional/health food store). I agree not to self prescribe. Listed below are any and all current medications prescribed/cleared by my TRC attending physician:

Glucophage	500mg 2x/day	hetz	12.5mg Daily
Actos	45mg daily	Xalatan	1 drop eye at night
Lotrel	205mg Qx daily	tamoptic	1 drop eye at night
Doxazasin	8mg bedtime	Zoloff	50mg daily

- 2.
4. If I change address, I agree to notify the Continuing Care Director at least two weeks before such a move in order to develop a new support network.
5. I agree to complete, submit for review to my monitoring professional, and mail the Talbott Recovery Campus Continuing Care Quarterly Monitoring Reports every 3 months for 5 years.

Patient Identification

6. Listed below are any and all current-legal/licensure issues:

My medical license is suspended.
on a deferred sentence - 5 yrs probation for
felony charges of prescription fraud.

7. Relapse prevention suggestions for return to work include:

8. I will be returning to work at the following location:

Company: Northside Hospital = Critical Care Technician
Address: 1000 Johnson Ferry Rd NE, Atlanta, GA 30342
Phone: (404) 303-3915 1061
My return to work date is: Anne Nix 9/23/02

It is suggested that I work no more than 40 hours per week, unless agreed on and cleared by my monitor.

Until I return to work, I will be following a schedule that will include the following:

going to OR to visit daughter and state
medical board, visiting with physician
support group, seeing Dr's, attending meetings

9. The following is my primary physician. I agree to execute a continuing care release to my primary physician including full address prior to my discharge.

Name: Dr. John Gearhardt / Warren Clinics
Address: 10125 G South Sheridan Tulsa, OK 74133
Phone: (918) 291-5000

As soon as Northside's Insourcing
begins - obtain local primary physician

Patient Identification

10. I will utilize the following as my monitor/monitors. I agree to execute a continuing care release to each member of my monitoring team (including full address) prior to my discharge.

Monitor Name: Dr. John Doyle Phone: 770-994-0185

Address: TRC

Quarrelous
Other Name:
to be sent to:
Address:

Harold Throssen MD Phone: 405-376-9728
OK PHP - 1100 N. Mustang Rd.
Mustang, OK 73064

I agree to contact my monitor/monitors the Monday following discharge and then as directed.

12. I agree to random/observed urine/blood monitoring drug screens to be set up by my monitor and agree to pay for these urine/blood drug screens.

Plan: TRC Color of Day - "Green"

Frequency: - 2-3 a mn -

Drop Site: Several - probably the one near Northside

13. I have asked the following person to be my sponsor. I agree to utilize my sponsor to continue to work a daily recovery program.

Name: Frank W. Walker Phone: (404) 431-0709

Address: _____

I agree to the following living recommendations:

Will be living at ^{Figuera} ~~Figuera~~ Hall

15. I understand that the recommendation is that I attend daily meetings for 90 days and then 47 meetings per week for the duration of this continuing care plan. I understand that my aftercare/monitoring groups can count in that total if my monitor approves. I have obtained a home group and will develop a regular plan for meeting attendance.

Home Group: Triangle Club

Meeting Schedule:

Monday: Northside Hospital
Tuesday: Caduceus 6:15 pm
Wednesday: ~~Fogel~~ Hall (AP) Fugua
Thursday: Northside Hospital
Friday: Vining Fire House
Saturday: St. Phillips
Sunday: St. Gudes (NA)

Maintain a meeting log for OK PTHP

16. The day, time and location of my Health Professionals group is:

Day: Tuesday
Time: 6:15
Location: TRC

17. The day, time and location of my continuing care group is:

Day: Continuing Care Monitoring Group
Time: Mon x 3 mos then Quarterly
Location: Tues. 3:00-4:30 per apt. Jim Weigel

18. I agree to participate in recommended therapy as indicated below. I also agree to complete a continuing care release, including full address, for all therapeutic parties listed below:

Family Therapist: N/A Phone: _____
Address: _____

Patient Identification

Individual Therapist: N/A Phone: _____

Address: _____

Medication Management: Dr. John Gearhart Phone: (918) 291-5000

Address: 10125 G South Sheridan,
Tulsa, OK 74133

19. Recommendations for return visits include:

3 Month Return Visit: Apr Dec 6 Month Return Visit: Apr, Feb

Annually for 5 years thereafter. If I am unable to attend a scheduled return visit, I will contact the Continuing Care Director in writing with reason for absence.

20. In addition to this Talbott Recovery Campus plan, I will be under contract with the following:

? OK PHP

21. I have identified the following barriers to maintaining a drug free life-style:

resentments from wife, lack of structure and
account ability, dishonesty, fatigue, too tired

22. In addressing the preceding barriers, I would like to commit to the following recovery activities:

- a. Spiritual: talk to sponsor daily, 1-2 hours per week
prayer/meditation/Relaxation
- b. Leisure/Social: Daily meetings, Stay in touch
with support network
- c. Physical Health: maintain exercise program and
diet program, get adequate rest
- d. Other: take time for healthy fun

Patient Identification

23. will comply with the Talbott Recovery Campus Business Office agreement.

The above continuing care plan has been explained to my satisfaction, and I understand its contents.

Elliott H. Hance Jr.
Patient Name (Printed)

Elliott H. Hance Jr.
Patient Signature

Barbara Anderson
Barbara Anderson, MCM, MAC, Signature
Continuing Care Director

9/11/02
Date

9/11/02
Date