

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

STATE OF OKLAHOMA, *ex rel.*)
OKLAHOMA STATE BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
PETRINA NESBITT, R.C.,)
LICENSE NO. RC 1809,)
)
Defendant.)

FILED

JUL 21 2017

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 15-10-5213

**MODIFIED ORDER OF LICENSE
UNDER TERMS OF PROBATION**

This cause came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision (“Board”) on May 4, 2017, at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma 73105, pursuant to notice given as required by law and the rules of the Board on State’s Motion to Modify Board Order.

Petrina Nesbitt, R.C. (“Defendant”), holding Oklahoma Respiratory Care license no. 1809, appeared in person.

Joseph L. Ashbaker, Assistant Attorney General, appeared on behalf of the State of Oklahoma (“State”).

The Board considered testimony, arguments of counsel, exhibits admitted into evidence and being fully apprised of the premises, makes the following findings of fact, conclusions of law and orders.

FINDINGS OF FACT

1. Defendant holds Oklahoma Respiratory Care license number 1809.
2. Defendant appeared before the Board on November 3, 2016 for a hearing on the merits pursuant to a Complaint and Citation filed on April 21, 2016.
3. After hearing evidence, reviewing documents and hearing arguments of counsel, this Board entered an Order of License Under Terms of Probation, which was filed February 28, 2017.

4. The Board ordered Defendant to sign a five (5) year contract with OHPP and ordered that she be placed on probation during that time.
5. The Board further ordered that Defendant acquire a drug and alcohol assessment, within 6 months, at a facility approved of in advance by the Board Secretary, and appear before the Board with the results of that assessment.
6. Defendant obtained the required assessment.
7. On April 17, 2017, the State filed its Motion to Modify Board Order in response to the assessment results, and mailed notice of hearing to Defendant.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter and is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of respiratory care practitioners in the State of Oklahoma. 59 O.S. 2011, § 2026 *et seq.* Okla. Admin. Code §§ 435:1-1-1 *et seq.*, 435:45-1-1 *et seq.*
2. Notice was given as required by law and the rules of the Board. 75 O.S. 2011, § 309A; 59 O.S. 2011, § 504; Okla. Admin. Code §§ 435:3-3-5, 3-3-6.
3. The Board is authorized to suspend, revoke or order any other appropriate sanctions against the license of any respiratory care practitioner holding a license to practice medicine in the State of Oklahoma for unprofessional conduct. 59 O.S. 2011, 2031(5). Okla. Admin. Code § 435:45-1-4(b)(3), (5). These actions are authorized by 59 O.S. 2011, §§ 509(4), (8), 509.1(A)(1), (2), (3), (4); Okla. Admin. Code §§ 435:10-7-4(11), 435:45-5-3(a)(1).
4. The Board concluded that the Order of Licensure Under Terms of Probation, filed February 28, 2017 for Defendant, should be modified.

ORDERS

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

1. The State's Motion to Modify Board Order is **GRANTED**.
2. Defendant shall sign a five (5) year contract with the Oklahoma Health Professional Program ("OHPP"), if she has not already done so.
3. Defendant is hereby placed on **FIVE (5) YEARS PROBATION**, with a commencement date of February 28, 2017, under the following terms and conditions.

Standard Terms:

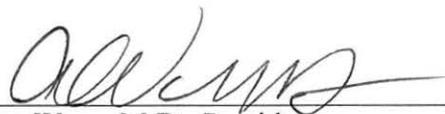
- a) Defendant will conduct her practice in compliance with the Respiratory Care Practice Act (“RCP Act”) as interpreted by the Board. Any question of interpretation regarding the RCP Act or this Order shall be submitted in writing to the Board, and no action based on the subject of the question will 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 she holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which she holds or anticipates holding any form of staff privileges or employment.
- c) Defendant will keep the Board informed of her current address.
- d) Defendant will keep current payment of all assessments by the Board for prosecution, investigation and monitoring of his/her case, which shall include, but is not limited to, a fee of one hundred fifty dollars (\$150.00) per month during the term of probation, unless Defendant/Applicant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.
- e) Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- f) Defendant will submit for analysis, biological fluid specimens, including but not limited to, blood and urine, as well as hair follicle, upon request of the Board or its designee, and Defendant will pay the costs attendant thereto.
- g) Defendant will take no medication except that which is authorized by a physician treating her for a legitimate medical need. Defendant has the affirmative duty to inform any and every doctor treating her of the Board Order immediately upon initiation or continuation of treatment.
- h) Defendant will have the affirmative duty not to ingest any substance, including but not limited to alcohol, which will cause a body fluid sample to test positive for prohibited substances.
- i) Defendant shall make herself available for one or more personal appearances before the Board or its designee upon request.
- j) Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or designee.

- k) 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 assessments, and authorize the Compliance Coordinator to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.
- l) Failure to meet any of the terms of this Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing. Immediately upon learning that a licensee is in violation of a Board-ordered probation, the Executive Director of the Board may summarily suspend the license based on imminent harm to the public and assign a hearing date for the matter to be presented at the next scheduled Board meeting.
- m) If Defendant moves her residence or practice location out of the State of Oklahoma during the probationary period, the probation will be tolled until such time as Defendant returns to the State of Oklahoma and begins practicing within the state. The Defendant will notify the Board Secretary prior to moving out-of-state.

Specific Terms:

- n) Defendant shall sign a five (5) year contract with the OHPP Program and fulfill the all of the requirements of that contract. This will include participation in the Sober Link program and random drug screenings as requested by OHPP staff or Board Compliance Coordinator.
 - o) Defendant shall attend regular therapy sessions with a certified substance abuse counselor approved of in advance by the Board Secretary, and with a counselor who agrees to provide quarterly reports to the Secretary of the Board or the Board Compliance Coordinator.
 - p) If Defendant desires to change her employment, the proposed working environment must be approved of in advance by the Board Secretary.
4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees. .
 5. A copy of this Order shall be provided to Defendant as soon as it is processed.
 6. **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 4th day of May, 2017.



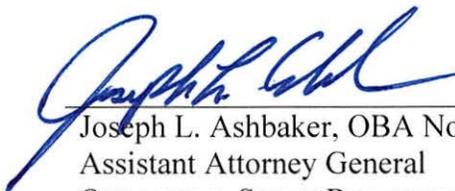
Ann Warn, M.D., President
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION



Petrina Nesbitt, R.C.
License No. 1809



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



Joseph L. Ashbaker, OBA No. 19395
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F: (405) 962-1499

Certificate of Service

This is to certify that on the 24th day of July, 2017, a true and correct copy of the foregoing Order was transmitted as specified, postage prepaid, to the following:

U.S. Certified Mail

Petrina Nesbitt, R.C.
1601 N.E. 11th Street
Moore, Oklahoma 73160-7967

Defendant

U.S. First-Class Mail

Richard Rice
Rice Law Firm
1401 South Douglas Blvd., Suite A
Oklahoma City, Oklahoma 73130
Telephone: (405) 732-6000
rick@ricelawfirm.net

Counsel for Defendant

Petrina Nesbitt, R.C.



Nancy Thiemann, Legal Assistant



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-545A

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

July 18, 2017

Dear Dr. Billy H. Stout, M.D., Board Secretary:

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 respect to Respiratory Care Licensee 1809, in case number 15-10-5213. In August 2015, the licensee was convicted in a head on collision that occurred on January 8, 2015, and entered an *Alford* plea in response to misdemeanor charges for being involved in a personal injury accident while driving under the influence of alcohol and for driving the wrong way on a one-way road. The court ordered a one-year suspended sentence, and the licensee entered a peer-based substance abuse monitoring program. In March 2016, the Board summarily suspended the licensee's respiratory care license for testing positive for alcohol in a random urine test and a subsequent positive blood test, which are in violation of the agreement with the program and resulted in the licensee's discharge from the program. In April 2016, a complaint was filed alleging professional misconduct due to the licensee's criminal conviction and discharge from the program. In June 2016, the licensee was placed on probation with certain terms pending disciplinary proceedings pursuant to a Voluntary Submittal to Jurisdiction that was addressed and approved in Attorney General Opinion 2016-321A. In October 2016, the licensee submitted a drug and alcohol assessment that was not from a Board-approved facility, which violated the terms of probation. In February 2017, the Board issued an Order of License Under Terms of Probation imposing additional terms of probation for the violation, as addressed and approved in Attorney General Opinion 2017-133A. On April 17, 2017, a Motion to Modify Board Order was filed in response to the licensee's successful completion of a Board-approved drug and alcohol evaluation.

After a hearing, the Board now proposes to approve the Modified Order of License Under Terms of Probation that places the licensee on probation for five years beginning February 28, 2017, and requires the licensee to (1) sign a five year contract with the Oklahoma Health Professional Program (the "Program"), if not already completed; (2) comply with the Respiratory Care Practice Act; (3) furnish a copy of the order to all states in which the licensee is licensed or applies for licensure, and any facility employing or offering staff privileges to the licensee; (4) keep the Board informed of current address; (5) pay all associated costs; (6) submit to random blood, hair follicle, and bodily fluid testing; (7) refrain from taking any medication except as authorized by physician, who licensee has informed of the order prior to treatment; (8) refrain from ingesting any substance,

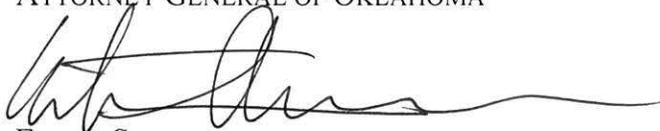
including but not limited to alcohol, which would cause a body fluid sample to test positive for prohibited substances; (9) be available for personal appearances before the Board; (10) timely submit any required reports and forms; (11) authorize release of medical and psychiatric records and authority to discuss the licensee's case with treating physicians; (12) sign a five year contract with the Program and fulfill all contract requirements, including participation in the Sober Link program and submission to random drug screenings; (13) attend regularly therapy sessions with a Board-approved certified substance abuse counselor, who agrees to submit quarterly reports to the Board; and (14) obtain advanced approval from the Board of a proposed working environment for any change in employment. The licensee has agreed to the terms of the proposed order.

The Oklahoma Respiratory Care Practice Act, 59 O.S.2011 & Supp.2016, §§ 2026-2045, authorizes the Board to promulgate rules to enforce the provisions of the Act. 59 O.S.2011, § 2031(1). The Board is authorized to discipline licensees for habitual intemperate use of alcohol, violating the Act, or engaging in unprofessional conduct. *Id.* § 2040(3),(8), and (9); OAC 435:5-1-3. Unprofessional conduct includes “[h]abitually intemperate or addicted use of any drug, chemical or substance which could result in behavior that interferes with the practice of respiratory care and the responsibilities of the licensee” and “[v]iolation of any provision(s) of the [Act] or the rules and regulations of the Board or of an action, stipulation, agreement or order of the Board.” OAC 435:45-5-3(a)(1),(24). The action enforces requirements to ensure the highest level of professional conduct from respiratory care practitioners. The Board may reasonably believe that the agreed terms are adequate to protect patient safety.

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 the public health, safety, and welfare by ensuring that respiratory care practitioners meet minimum standards of professional conduct.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



ETHAN SHANER
DEPUTY GENERAL COUNSEL

RECEIVED

JUL 20 2017

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE
AND SUPERVISION