

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

FILED

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

Plaintiff,)

NOV 03 2011

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.)

HARVEY C. JENKINS, JR., M.D.,)
LICENSE NO. 21473,)

Defendant.)

Case No. 10-12-4125

**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, Harvey C. Jenkins, Jr., M.D., Oklahoma license no. 21473, 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 September 30, 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").

Defendant, Harvey C. Jenkins, Jr., 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 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, Harvey Clarke Jenkins, Jr., M.D., holds Oklahoma license no. 21473 and practices pain management in Oklahoma City, Oklahoma.

3. On or about February 11, 2011, Board investigators visited Defendant at his clinic due to a complaint filed against him. At that time, they requested a urine specimen from Defendant. Defendant agreed and advised Board investigators that he was currently taking Oxycodone (allegedly an old prescription from a dentist) and Lortab (also allegedly an old prescription from a dentist).

4. The urine specimen obtained by Board investigators subsequently tested positive for Oxycodone.

5. When confronted with the positive drug test result, Defendant was unable to provide the name of a licensed medical provider who had prescribed Oxycodone to him. A review of the PMP likewise failed to reflect any prescription for Oxycodone to Defendant.

6. At Board staff's request, Defendant agreed to submit to an assessment at Sante Center for Healing from April 11, 2011 until April 14, 2011. While at Sante, Defendant advised assessment personnel that he had ingested only one (1) Oxycodone on February 10, 2011, thus resulting in the positive drug test obtained by the Board investigators.

7. Sante conducted a hair follicle test during Defendant's assessment, which also tested positive for Oxycodone. However, personnel from the drug testing lab advised Sante that the hair follicle test would not be positive for Oxycodone if Defendant had taken only one (1) Oxycodone on February 10, 2011. To the contrary, Defendant would have to have ingested more Oxycodone after February 10, 2011 in order to cause the positive drug test.

8. Sante then confronted Defendant with the results of the hair follicle test. At that time, Defendant changed his story and admitted to Sante that he may have taken more than one (1) Oxycodone prior to February 10, 2011.

9. Sante concluded that Defendant had not been honest with them on two (2) occasions regarding his use of Oxycodone.

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

A. Habitually uses habit-forming drugs in violation 59 O.S. 407 §509(4) 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(8) 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(13) and OAC 435:10-7-4(39).

D. Purchased or prescribed any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use in violation of OAC 435:10-7-4(5).

E. 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).

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

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, Harvey C. Jenkins, Jr., M.D., Oklahoma medical license 21473, 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(4) 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(8) 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(13) and OAC 435:10-7-4(39).

D. Purchased or prescribed any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use in violation of OAC 435:10-7-4(5).

E. 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).

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

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 **THREE (3) YEARS** 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 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 physicians holding Defendant's records.

F. Defendant will submit biological fluid specimens to include, but not limited to, blood and urine, as well as hair samples 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.

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

H. 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.

I. 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.

J. Defendant will authorize in writing the release of any and all information regarding his medical, emotional or psychiatric

treatment to the Oklahoma State Board of Medical Licensure and Supervision.

K. Defendant will abide by the terms and recommendations of Sante.

L. Defendant shall promptly notify the Board of any positive drug test, including any re-entry into an assessment program for substance abuse or entry into a treatment program for substance abuse.

M. Defendant shall promptly notify the Board of any citation or arrest for traffic or for criminal offenses, including but not limited to those involving substance abuse.

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

O. 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 fifty dollar (\$150.00) per month fee during the term of probation.

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

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

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

S. 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.


3. If Defendant ever tests positive for alcohol or any other prohibited substance during the term of probation, he agrees to immediately enter residential treatment for substance abuse. Defendant further agrees that he will not return to the practice of medicine until he has

completed formal substance abuse treatment, has established a substantial track record of abstinence from prohibited substances and has been comprehensively reassessed as fit to return to the practice of medicine.


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.

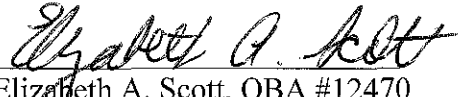
5. Defendant's probation shall not be lifted until he has reimbursed the Board for all costs, legal fees and investigation costs.

Dated this 3 day of November, 2011.



J. Andy Sullivan, President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED


Harvey C. Jenkins, Jr., M.D.
License No. 21473


Elizabeth A. Scott, OBA #12470
Assistant Attorney General
State of Oklahoma
101 N.E. 51st Street
Oklahoma City, OK 73105

Attorney for the Oklahoma State
Board of Medical Licensure and
Supervision


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

CERTIFICATE OF MAILING

I certify that on the 4 day of November, 2011, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Harvey C. Jenkins, Jr., M.D., 8603 S. Western, Oklahoma City, OK 73139.


Janet Swindle