

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

FILED

JAN 15 2015

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA, *ex rel.*)
THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
HARVEY JENKINS, M.D.,)
LICENSE NO. 21473,)
)
Defendant.)

Case No. 13-10-4833

ORDER ACCEPTING
VOLUNTARY SUBMITTAL TO JURISDICTION

Plaintiff, the State of Oklahoma, *ex rel.* the Oklahoma State Board of Medical Licensure and Supervision ("Board"), by and through its attorney, Joseph L. Ashbaker, Jr., Assistant Attorney General, for the State of Oklahoma and the staff of the Board, as represented by the Secretary of the Board, Billy H. Stout, M.D., and the Executive Director of the Board, Lyle Kelsey, and the Defendant, Harvey Jenkins, M.D., Oklahoma medical license no. 21473 who appears in person and through counsel, Linda Scoggins, offer this Agreement effective January 15, 2015, for acceptance by the Board *en banc* pursuant to Okla. Admin. Code § 435:5-1-5.1.

By voluntarily submitting to jurisdiction and entering into this Order, the Defendant pleads guilty to certain allegations in the Complaint and Citation filed herein on June 26, 2014, as more specifically set forth herein, and further acknowledges that a hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act ("Act").

The Defendant, Harvey Jenkins, 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 an evidentiary hearing on the allegations made against him. The 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. The Defendant acknowledges that he has read and understands the terms and conditions stated herein, and that this agreement has been reviewed and discussed with him and his legal counsel.

Agreements and Stipulations

1. The Plaintiff, the Defendant and the Board Staff stipulate and agree as follows:
2. 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 O.S. § 480 *et seq.*
3. The Defendant, Harvey Jenkins, M.D., holds Oklahoma medical license no. 21473.
4. This case was initiated on or about October 11, 2013, when Board Staff received a phone call from Patient AML advising she received a laser treatment from an unlicensed, trained technician at Body Trends in Tulsa, Oklahoma, and did not see the Defendant, Harvey Jenkins, M.D., who is also the owner of the clinic, prior to treatment.
5. Upon investigation, it was found that Patient AML had, in fact, received a tattoo removal laser procedure from an unlicensed, trained technician at Body Trends in Tulsa, Oklahoma. Patient AML's medical record contain a typed progress note dated August 9, 2013, and signed by the Defendant, which gives the impression that Patient AML was evaluated by the Defendant prior to treatment. Defendant was present in the facility during the tattoo removal laser procedure, but did not have a face-to-face meeting with Patient AML. The staff member was trained in the laser procedure and Defendant contends that his intent was for the chart to reflect his review of the records therein.
6. On or about August 21, 2013, Patient AML returned to Body Trends with complaints of redness and pain at the site of the treatment. A photograph of Patient AML's foot treatment site was taken and electronically sent to the Defendant. The Defendant called Patient AML and discussed the matter with her before calling in prescriptions for treatment. A follow-up appointment with Defendant was scheduled, but Patient AML did not return for the appointment.
7. On or about October 17, 2013, Board Investigator JL went undercover as Patient JRL and received a consult for a tattoo removal by Rachel Cummings, the office manager of Body Trends in Tulsa, Oklahoma. The Defendant was not in the facility on this day, however, the paperwork Undercover Patient JRL filled out on this day is signed by the Defendant and dated October 17, 2013.
8. On December 20, 2013, Undercover Patient JRL went to Body Trends in Tulsa, Oklahoma, where she proceeded to the reception window and paid the \$75.00 fee. Undercover Patient JRL observed the Defendant sitting in a chair behind the reception window.
9. Undercover Patient JRL was taken to an examination room by the unlicensed, trained technician. The technician had the laser in one hand and a cold air blower in the other hand and was ready to proceed with the treatment. At this point, Undercover Patient JRL asked the technician to stop and bring the Defendant into the room. The Defendant, Harvey Jenkins, M.D., was brought into the room whereupon an interview with

Undercover Patient JRL commenced.

10. During this interview, the Defendant admitted to Undercover Patient JRL that his face-to-face visits with some patients consist of merely visualizing them from behind the reception window.
11. Board Investigator JL further learned that Patient JGL received an Intense Pulsed Light (“IPL”) laser treatment on or about February 16, 2012. The Defendant did not meet this patient prior to her receiving the treatment from the Defendant’s technician. The following morning, February 17, 2012, Patient JGL called Body Trends and reported to “Sarah” (last name unknown) that the treatment site was burned and hurting. The condition of her treatment site continued to deteriorate over the weekend and she spoke with Sarah multiple times about it. On or about February 20, 2012, Patient JGL was told to go to Body Trends so the Defendant could evaluate her. When Patient JGL arrived, the Defendant was not there. She was seen by Sarah who applied biafine and wrapped her arm. On February 21, 2012, a prescription for biafine was called in for Patient JGL.
12. Board Investigator JL further learned that on or about December 20, 2013, Patient JPL received a laser treatment at Body Trends in Tulsa, Oklahoma. Patient JPL stated he did not see a physician, only the technician who performed the procedure. This is the only visit Patient JPL had at this clinic and he states that his hand is scarred where the procedure was performed.
13. Board Investigator JL further learned that on or about October 11, 2013, December 20, 2013, and January 17, 2014, Patient DLL received a total of three (3) laser treatments at Body Trends. Patient DLL states she did not see the Defendant on any of these three (3) visits. Patient DLL claims she was burned on the last visit, January 17, 2014, which resulted in scar tissue. Patient DLL returned on June 6, 2014, and was finally seen by the Defendant who promised Patient DLL he would give her a complimentary IPL treatment to help get rid of the scarring.
14. The Defendant wrote progress notes in the medical records which appear as though he saw patients in person on days when he did not. For example: Patient JPL’s records state on December 20, 2013, a day when PTL was not seen by the Defendant: “Spoke with patient, explained protocol. Sister had same procedure with good results. Answered Questions. No contraindications. Tolerated treatment well. Precautions given.” This record is signed by the Defendant. On Patient DLL’s medical record of December 20, 2013, it states: “Spoke with patient, doing well. Questions answered.” This record is signed by the Defendant. And on Undercover JRL’s medical record, a consult was provided by a staff member on October 17, 2013. The Defendant initialed and dated the consult records October 17, 2013, even though he was not present in the clinic on that day.
15. The Defendant did not conduct a proper face-to-face visit with at least five (5) patients prior to allowing technicians to perform medical procedures on those patients. According to the Policy & Guidelines for Medical Spas & Aesthetic Procedures from the Oklahoma State Board of Medical Supervision and Licensure dated November 7, 2008: “The practice of medicine and surgery as defined above is grounded upon the doctor/patient

relationship which at a minimum requires a face-to-face evaluation of the patient by the physician or a physician assistant under a physician's supervision, prior to the determined treatment of procedure, development of a patient chart, providing patient informed consent and the process for the patient's follow up care."

16. These alleged violations occurred with the Defendant was already on probation with the Board in Case. No. 10-12-4125.

Conclusions of Law

17. The Defendant is guilty of unprofessional conduct in that he engaged in:
- a) Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship in violation of Title 59 O.S. §509.12;
 - b) Failure 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 Title 59 O.S. §509.18;
 - c) Violation of any provision(s) 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 Okla. Admin. Code § 435:10-7-4(39);
 - d) Failure to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment, except in a clearly emergent, life threatening situation in violation of Okla. Admin. Code § 435:10-7-4(11);

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. It is **ORDERED** that Defendant will pay an **ADMINISTRATIVE FINE** in the amount of **FIVE THOUSAND DOLLARS (\$5,000.00)**; and
3. It is **ORDERED** that the Defendant will be placed on **PROBATION** for a period of two (2) years and said probation shall have the following provisions:

Standard Terms:

- a) The Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act as interpreted by the Board. Any question of interpretation regarding the 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 the Defendant until clarification of interpretation is received by the Defendant from the Board or its designee.

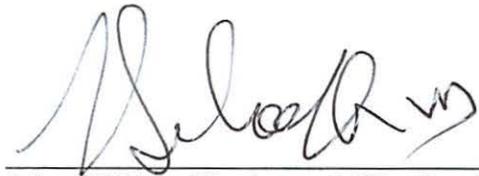
- b) The Defendant will furnish a copy of this order to each and every state in which he holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he holds or anticipates holding any form of staff privileges or employment.
- c) The Defendant will keep the Board informed of his current address.
- d) The Defendant will keep current payment of all assessments by the Board for prosecution, investigation and monitoring of his 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 the Defendant 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, the Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- f) The Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.
- g) The Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or designee.
- h) The 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 authorize the Compliance Coordinator to discuss the Defendant's case with the Defendant's treating physicians and/or any physicians holding the Defendant's records.
- i) 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 the 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.

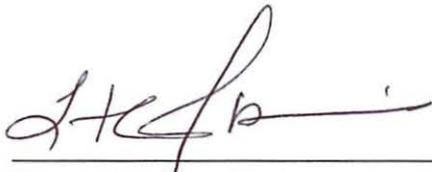
Specific Terms:

- j) Defendant will conduct a proper face-to-face visit with each patient. Defendant will present for review and signature to each patient, a verification that a face-to-face physician/patient visit was conducted. These signed verifications will be submitted to Board Compliance Coordinator on a monthly basis by Defendant.
- k) Defendant will attend two CME courses in Ethics/Boundaries/Professionalism. These two CME courses are *in addition to* his normally required CME courses and will be completed during the term the probation as stated herein.

Dated this 15th day of January, 2015.



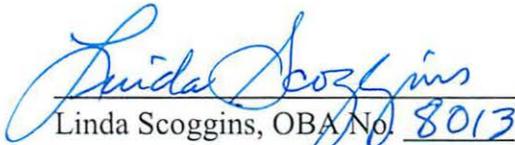
John William Kinsinger, M.D., President
Oklahoma State Board of Medical
Licensure and Supervision



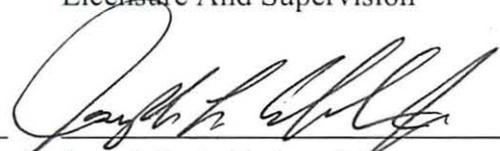
Harvey Jenkins, M.D.
License No. 21473



Billy H. Stout, M.D., Secretary
Oklahoma State Board Of Medical
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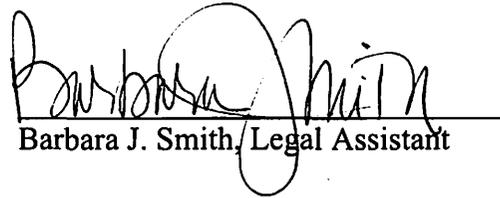
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Certificate of Service

I certify that on the 15th day of January, 2015, a true and correct copy of this Order was provided, postage prepaid, to Ms. Linda Scoggins, Doerner Saunders Daniel & Anderson , 105 N. Hudson, Suite 500, Oklahoma City, OK 73102.


Barbara J. Smith, Legal Assistant

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