

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

RECEIVED

STATE OF OKLAHOMA ex rel.)
OKLAHOMA STATE BOARD OF)
MEDICAL LICENSURE AND)
SUPERVISION,)
)
Plaintiff,)
)
vs.)
)
JESSICA RUBINSTEIN, P.A.)
LICENSE NO. 2154)
)
)
Defendant.)

JUN 24 2014
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE
AND SUPERVISION

CASE NO. 13-09-4802

FILED

JUL 17 2014

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

**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, Matthew Ryan Stangl, 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, Jessica Rubinstein, P.A., Oklahoma license no. PA2154, who appears in person, offer this Agreement effective July 17, 2014, for acceptance by the Board *en banc* pursuant to *Oklahoma Administrative Code* section 435:5-1-5.1.

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on April 18, 2014, 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").

Defendant, Jessica Rubinstein, 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 an 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 and her legal counsel.

Agreements and Stipulations

Plaintiff, Defendant and the Board staff stipulate and agree as follows:

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 519.1 *et seq.* and Oklahoma Administrative Code (“OAC”) 435:111 *et seq.*
2. Defendant, Jessica Rubinstein, P.A., holds Oklahoma physician assistant license no. 2154.

Allegations of Unprofessional Conduct

3. This case was initiated when a complaint was received from RS, M.D. (“Complainant”), Defendant’s former employer in New York. Complainant reported Defendant stole a prescription pad from his desk and forged fraudulent prescriptions to herself and others. RS also reported the incident to the NYS Bureau of Narcotic Enforcement.
4. On September 16, 2013, Complainant faxed Board Investigator SW a copy of the New York prescribing record which showed prescriptions written to Defendant, as well as Patient JC, by Complainant. Complainant stated that he had never seen Patient JC or Defendant as patients and did not have medical records for either.
5. Complainant informed Board Investigator SW that Defendant worked for him during the months of January, February and March of 2013. Defendant was hired through an employment agency while a staff member of Complainant was out on maternity leave.
6. Upon analyzing the New York prescribing record, it was found that Defendant wrote and authorized four (4) CDS prescription, and also forged two (2) CDS prescriptions, to Patient JC using the prescription pad she had stolen from Complainant. The New York prescribing record also showed that on July 13, 2013, Defendant fraudulently prescribed three (3) CDS to herself by forging Complainant’s signature.

7. On October 11, 2013, Board Investigator SW met with Defendant and her attorney. During this meeting **Defendant admitted to forging the three CDS prescriptions (Percocet, Xanax, and Ambien) for herself on July 20, 2013.**
8. **Defendant also admitted to forging two (2) CDS prescriptions (Oxycodone and Alprazolam), and to writing four (4) CDS prescriptions (Oxycodone, Amphetamine x2, and Alprazolam) in Defendant's own name for Patient JC and, further, not creating a medical record.**

Conclusions of Law

9. Defendant is guilty of unprofessional conduct in that she engaged in:
 - a) Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public in violation of 59 Okla. Stat. § 509(8) and OAC 435:10-7-4(11);
 - b) The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct in violation of 59 Okla. Stat. § 509(9);
 - c) The writing of false or fictitious prescriptions for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 Okla. Stat. § 509(11);
 - d) Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship in violation of 59 Okla. Stat. § 509(12);
 - e) 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 59 Okla. Stat. § 509(18);
 - f) Purchasing or prescribing 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);

- g) Prescribing, selling, administering, distributing, ordering, or giving 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); and
- h) Violating 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. Defendant shall pay an **ADMINISTRATIVE FINE** based on 59 Okla. Stat. § 509(9) & (11); in the amount of \$2,500.00 to be paid on or before November 1, 2014.
3. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Jessica Rubinstein, P.A., holding Oklahoma license no. PA2154, is hereby placed on **PROBATION** for a period of five (5) years and said probation shall have the following provisions:

Standard Terms:

- a) Defendant will conduct her practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act and the Physician Assistant 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 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 assessment by the Board for prosecution, investigation and monitoring of her case unless 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, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- f) Defendant shall make herself available for one or more personal appearances before the Board or its designee upon request.
- g) Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or designee.
- h) 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 Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.
- j) 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 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:

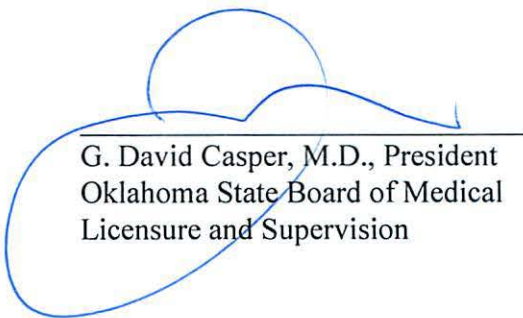
- k) The Defendant, during the term of this probation, will be allowed full prescriptive authority except for no "off label use." Any patients with chronic pain in need of CDS for longer than a 90-day period will require a pain management consultation.

- l) Defendant will not authorize any personnel under her supervision to initiate an order for a controlled dangerous substance to be issued.**
- m) Defendant will request all hospitals, clinics and other facilities in which she practices to furnish to the Board a written statement monitoring her practice.**
- n) Defendant will submit for analysis biological specimens including, but not limited to, blood, urine and hair, upon request of the Board or its designee, and Defendant will pay for the costs attendant thereto.**
- o) Defendant will not prescribe, administer or dispense any medications for personal use.**
- p) Defendant will take no medication except that which is authorized by a licensed healthcare practitioner treating her for a legitimate medical need. Defendant has the affirmative duty to inform any and every healthcare practitioner treating her of this Board Order immediately upon initiation, or continuation, of treatment.**
- q) Defendant will have the affirmative duty not to ingest any substance which will cause a biological specimen to test positive for prohibited substances including, but not limited to, alcohol.**
- r) Defendant will abide by the post-care recommendations from Palmetto Addiction Recovery Center contained in their report dated March 6, 2014.**
- s) Defendant will enter into a contract for a minimum of five (5) years with Oklahoma Health Professionals Program (“OHPP”). Any violations of Defendant’s contract with OHPP or any positive drug screens should result in further inpatient evaluation.**
- t) Defendant will attend Alcoholics Anonymous (“AA”) meetings in accordance with OHPP policy and acquire an AA home group.**
- u) Defendant will attend weekly aftercare meetings for the next two (2) years at a facility approved by OHPP.**
- v) Defendant will attend weekly Caduceus meetings for the duration of her monitoring contract with OHPP.**


- w) Defendant will acquire an AA sponsor and begin working the 12 Steps of Alcoholics Anonymous in a timely fashion under the direction of a sponsor. Defendant should have a minimum of five (5) contacts per week with her sponsor for the first ninety (90) days after discharge from Palmetto, and then a minimum of two (2) contacts per week for at least the first two (2) years of sobriety.
- x) Defendant will return to Palmetto quarterly for the following year for mirroring in Small Group and attendance in Professionals Group.
- y) Defendant will make an appointment to see either Dr. Colaluca or Dr. Weiss in three (3) months and then quarterly for a minimum of twelve (12) months for follow-up and medication management.
- z) Defendant will promptly notify the Board of any relapse, including any entry, or re-entry, into a treatment program for substance abuse.
- aa) Defendant will promptly notify the Board of any citation or arrest for traffic or for any criminal offenses.
- bb) Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Coordinator or other Board designee to obtain copies of medical records and authorize the Compliance Coordinator or other Board designee to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.

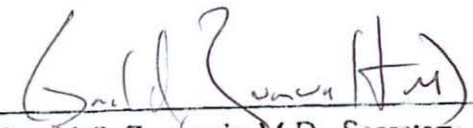
4. A copy of this Order shall be provided to Defendant as soon as it is processed.


Dated this ____ day of _____, 2014.




G. David Casper, M.D., President
Oklahoma State Board of Medical
Licensure and Supervision


Jessica Rubinstein, P.A.
License No. PA2154


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

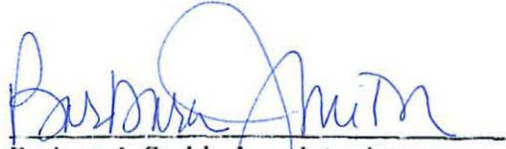

Daniel Gamino, OBA# 3227
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Attorney for Defendant


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Oklahoma City, OK 73105

Attorney for Oklahoma State Board of
Medical Licensure and Supervision

CERTIFICATE OF MAILING

This is to certify that on this 17th day of July, 2014, a true and correct copy of this order was mailed, postage prepaid, to Mr. Dan Gamino, Jamestown Office Park, North Building, 3035 NW 63rd Street, Suite 214, Oklahoma City, OK 73116.


Barbara J. Smith, Legal Assistant