

**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.)
MELITA TATE, M.D.,)
LICENSE NO. MD 21826,)
Defendant.)

FILED
DEC 13 2017
**OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION**

Case No. 16-08-5354

VERIFIED COMPLAINT

The State of Oklahoma, *ex rel.* Oklahoma State Board of Medical Licensure and Supervision (“Board”), for its Verified Complaint against Melita Tate, M.D. (“Defendant”), alleges and states as follows:

I. AUTHORITY

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 physicians and surgeons in the State of Oklahoma. 59 O.S. 2011 § 480, *et seq.* and Okla. Admin Code § 435:5-1-1 *et seq.*
2. In Oklahoma, Defendant holds medical license number 21826, issued on October 9, 2000.
3. The acts and omissions complained of herein were made while Defendant was acting as a physician pursuant to her medical license conferred upon her by the State of Oklahoma. Such acts and omissions occurred within the physical territory of the State of Oklahoma.

II. ALLEGATIONS OF PROFESSIONAL MISCONDUCT

4. On July 20, 2016, the Board received an email from Investigator Cindy Fain (“IV Fain”), with the Oklahoma Pharmacy Board, advising that agency had received a complaint on August 18, 2015, from D.W. stating she had received an unsolicited prescription for Lidocaine patches from a pharmacy in Omaha, Nebraska. The prescribing physician was Melita Tate, M.D. D.W. stated she had never been seen as a patient by the Defendant.
5. Additionally, IV Fain reported that the Oklahoma Pharmacy Board had received a complaint on May 20, 2016, from Pharmacist Bryan Bell (“Pharm.D. Bell”) in Laverne,

Oklahoma. Pharm.D. Bell advised A.R. claimed she received several boxes of unsolicited Fluocinonide 0.1% cream, from a pharmacy in North Carolina. The prescribing physician was Melita Tate, M.D.

6. On March 7, 2016, the Oklahoma Pharmacy Board sent a subpoena to Health Choice for: "An itemized record of all reimbursed claims, including patient names, to Oak Creek Pharmacy...." located in Omaha, Nebraska. This information contained four (4) patients that had received a 30 day supply of Dermacinrx Silapak. The cost of each of the prescriptions was \$4,292.04, meaning that four (4) prescriptions written for or by the Defendant were billed to Health Choice insurance for a total of \$17,168.16.
7. On August 18, 2016, Board Investigators Steve Washbourne and Jana Lane met with Defendant at her office in Tulsa, Oklahoma, to discuss the circumstance leading to her issuing prescriptions without examining patients. Defendant advised she had worked for a company named 24 Hour Virtual MD and admitted she would authorize non-CDS prescriptions to individuals she had conversations with over the telephone but never examined in person. Defendant also admitted she would review on-line or paper charts without ever speaking to or seeing the patients prior to authorizing non-CDS prescription medications. Defendant said she has no records of these individuals as the company that she worked for retained all of the information. Defendant is unsure exactly how many patients she authorized prescriptions for through this company.
8. On August 31, 2016, Defendant provided the Board with a statement regarding her employment with 24 Hour Virtual MD. On this statement, Defendant advised the following:

Defendant was approached in April 2014 at a convention in Arkansas from a business owner who was needing physicians in Oklahoma to help with prescribing for patients who had pain. This man stated that the prescriptions their company used were topical and non-narcotic.

Defendant received emails outlining his program stating how it would help patients with pain to use topical compounded creams.

After agreeing to work for this company, a contract was signed by Defendant. Defendant did not have legal counsel review it.

Defendant began receiving prescriptions to review, initially mostly by fax. These would contain anywhere from two (2) to 30 prescriptions; and one time Defendant believes it was 82 prescriptions. None of these were scheduled medication. Defendant believed the patients were contacting the company. The data Defendant received included the patient name, phone number, address (all were in Oklahoma) and medical conditions, allergies, other medications they took, etc. Defendant was given a check sheet with many of the medications they could compound for specific conditions.

The prescriptions were for topical medications for local pain, for scarring, for topical fungal infection, and later for some vitamins and lab screening. Defendant would usually contact the patients or have one of her staff contact them. Occasionally when things were busy and 24hour Physicians was waiting they would call and offer to have their staff contact the patients. Defendant thinks 24hour Physician staff did this on two or three separate occasions. The patients called were notified who they were (Dr. Tate's office with 24 hour physicians), that they had received a request for a prescription for a medication for a specific condition, and wanted to address any questions the patient might have. Of the patients they reached, Defendant would have approximately one (1) or two (2) per batch that seemed to know nothing of the prescription(s) and did not want them. Defendant would notify the company to remove them due to the patient declining the medication.

In the middle of the year in 2015, Defendant was asked to renew her contract as the company was branching off or splitting with another company. Defendant then worked for both companies (24 hour VMD and netcare.now). The new company recorded the original conversations that the patients were having with the "callers" from the company. Defendant began doing these calls herself around the end of January and the first part of February 2016. During a call, the patient seemed so confused that I Defendant pulled up the phone recording afterwards. Defendant listened to the patient's and interviewer's voices, and discovered the call had been made TO the patient not FROM the patient. At this point Defendant began to be uncomfortable with the process. Defendant sent in the remainder of the prescriptions she had and discontinued with the company by on or around March 3, 2016.

Defendant states she intends to cooperate with the Oklahoma Medical Board. Defendant has not obtained legal counsel. Defendant states she will abide by whatever decision the Board deems appropriate. In August 2016 during a visit by Board investigator Jana Lane Defendant became aware that her actions were possibly not in compliance with the Board.

9. Defendant provided 1099-MISC forms from 2014 through 2016 which show Defendant was paid \$42,985 for her services for the two companies.

III. VIOLATIONS

10. Based on the foregoing, Defendant is guilty of professional misconduct as follows:

- a. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship; 59 O.S. 2011 § 509(12);

- b. The violation, or attempted violation, direct or indirect, of any of the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, either as a principal, accessory or accomplice; 59 O.S. 2011 § 509(13);
- c. Aiding or abetting, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state; 59 O.S. 2011 § 509(14) and Okla. Admin. Code § 435:10-7-4(22);
- d. Failure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient; 59 O.S. 2011 § 509(18) and Okla. Admin. Code § 435:10-7-4(36);
- e. Failure to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, including but not limited to an initial in-person patient examination, office surgery, diagnostic service or any other medical procedure or any other medical procedure or treatment. Adequate medical records to support diagnosis, procedure, treatment or prescribed medications must be produced and maintained; 59 O.S. 2011 § 509(20) and Okla. Admin. Code § 435:10-7-4(41);
- f. 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; Okla. Admin. Code § 435:10-7-4(49).

IV. CONCLUSION

Given the foregoing, the undersigned requests the Board conduct a hearing; and, upon proof of the allegations contained herein, impose such disciplinary action as authorized by law, up to and including suspension or revocation with or without the right to reapply, and any other appropriate action with respect to the Defendant's professional license, including an assessment of costs and attorney's fees incurred in this action as prescribed by law.



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VERIFICATION

I, Jana Lane, under penalty of perjury, under the laws of the State of Oklahoma, state as follows:

1. I have read the above Verified Complaint regarding Defendant, Melita Tate, M.D., and
2. The factual statements contained therein are true and correct to the best of my knowledge and belief.



Jana Lane

Jana Lane, Investigator
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Date: 11-29-2017



Oklahoma Co., Oklahoma
County, State of Execution