

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

**IN THE MATTER OF THE** )  
**EX REL., THE OKLAHOMA STATE** )  
**BOARD OF MEDICAL LICENSURE** )  
**AND SUPERVISION,** )  
  
**Plaintiff,** )  
  
**v.** )  
  
**DARNELL ERIC BLACKMON, SR., M.D.,** )  
**LICENSE NO. 22856,** )  
  
**Defendant.** )

**FILED**

SEP 24 2015

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

**Case No. 14-06-4978**

**ORDER ACCEPTING VOLUNTARY SUBMITTAL TO JURISDICTION**

Plaintiff, the State of Oklahoma, *ex rel.*, the Oklahoma State Board of Medical Licensure and Supervision (herein referred to as, "State" or "Board"), by and through its attorney, Jason Seay, Assistant Attorney General, for the State 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 Darnell Eric Blackmon, Sr., M.D. ("Dr. Blackmon" or Defendant"), Oklahoma medical license no. 22856, who appears in person and through counsel, John D. Russell and Susan I. Jordan of Gable Gotwals and John M. Freese, Sr. of Freese & March (collectively, the "Parties"), offer this Order Accepting Voluntary Submittal to Jurisdiction (herein referred to as "Agreement" or "Order"), effective September 24, 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, Dr. Blackmon acknowledges that the evidence to be presented at a hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act ("Act"). 59 O.S. § 480 *et seq.*

The Defendant 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.

If the Board does not accept this Order, the Parties stipulate that it shall be regarded as null and void. Admissions by the Defendant herein, if any, shall not be regarded as evidence

BOARD     *BH*    

DEB     *[Signature]*

against him in a subsequent disciplinary hearing. The Defendant will be free to defend himself, and no inferences will be made from his willingness to have this Order accepted by the Board. The Parties stipulate that neither the presentation of this Order nor the Board's consideration of this Order shall be deemed to have unfairly or illegally prejudiced the Board or its individual members and therefore shall not be grounds for precluding the Board nor any individual Board member from further participation in proceedings related to the matters set forth herein.

### *Findings of Fact*

Unless expressly stated otherwise below, the State, Dr. Blackmon, and the Board staff stipulate and agree as follows:

1. Dr. Blackmon holds Oklahoma medical license no. 22856. He has been licensed to practice medicine since 1996. He is board certified by the American Board of Orthopedic Surgery in Orthopedics and was recertified in 2015. He had never previously been disciplined by the State of Oklahoma and his Oklahoma medical license had never been restricted or limited in any way. The acts and omissions complained of herein are wholly unrelated to his orthopedic practice.
2. The acts and omissions complained of herein occurred during the time Dr. Blackmon was licensed as a physician pursuant to the medical license conferred upon him by the State of Oklahoma. The acts and omissions complained of occurred within the physical territory of the State of Oklahoma.
3. This action arises out of a complaint of a patient of the Enhance Spa (the "Spa"), for which the Defendant was the medical director pursuant to a written agreement. The Spa was owned by ES, a registered nurse. The complainant made inquiry about an invasive medical procedure known as Hormone Replacement Therapy ("HRT") and was advised by TH, an unlicensed employee of the Spa, that the procedure is invasive and would be conducted with no physician oversight. Rather, the procedure would be conducted by registered nurses in conjunction with unlicensed staff. The complainant was advised the Defendant was not on the physical premises of the Spa. The complainant declined the procedure and left the Spa. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.
4. On 13 June 2014, Board Investigator RR called the Spa to enquire about HRT and spoke with TH about the procedure. TH advised she would be surprised if RR did not qualify for HRT, although a licensed physician would find otherwise. RR asked TH about the physician on staff. TH advised the Defendant was not on location. TH advised this was not a problem. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.
5. On 1 July 2014, RR visited the Spa for a scheduled appointment. RR completed paperwork had her blood drawn by PK, a registered nurse. RR asked PK if the Defendant was present at the Spa, to which PK responded in the negative. RR asked PK who would conduct the procedure. PK responded that she would do so and offered that she

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personally had performed over 400 pellet implant procedures. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.

6. On 2 July 2014, TH called RR to report the blood chemistry test results. TH reported RR's testosterone normal but RR would benefit from HRT. RR made an appointment for the HRT procedure to be conducted on 10 July 2014. During this phone call, RR again made inquiry as to who would be performing the procedure. TH advised that she and PK will perform the procedure. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.
7. On 10 July 2014, RR returned to the Spa accompanied by Board Investigator JL. This visit was video recorded, and shows PK practicing medicine by making diagnoses, representing that she can "call in" prescriptions, and attempting to conduct medical procedures. PK interpreted RR's blood chemistry results and stated that HRT would benefit RR. PK advised RR that PK would call in a prescription for Doxycycline, which PK noted in RR's file. PK stated the Defendant was not in the office. PK told RR that she would be conducting the HRT procedure and had done so for both the Defendant and the Defendant's wife. PK stated that she would mix up some Lidocaine without Epinephrine and add a buffer (sodium bromide) in it so it would not burn. PK took out a syringe and began mixing liquid ingredients. RR asked PK how an emergency would be handled if RR had a reaction to the injection. PK advised that she would take care of RR. At that time, RR stopped the procedure, advised of her identity, and requested to speak with the Defendant. PK stated that she needed to speak with ES, a registered nurse and owner of the Spa, and left the room. A short time later, PK re-entered the room and asked RR if she still wanted the HRT procedure. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.
8. While waiting for PK to return to the room, RR reviewed her chart, which was on a table in the room. The chart had not been signed anywhere by the Defendant. The order form for the HRT treatment had the initials of "LT," which upon subsequent investigation was determined to be a salesperson for the Spa. RR had never met LT. Pictures were taken of the open chart and the medical supplies on the tray, which included the pellet insertion kit, syringe and a bottle of testosterone. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.
9. When ES entered the room, RR explained to ES that she needed to speak with the Defendant. RR explained she also had a subpoena and needed to review records (RR's chart, the complainant's chart, a schedule for Dr. Blackmon, and list of patients for the past thirty days). ES agreed to provide the documents to RR. It took Spa staff nearly one hour to provide a computer-generated copy of the patient list and another 45 minutes to provide five patient charts. When asked why it took so long to provide the documents requested, ES stated she was with a Botox patient. ES offered that she would not alter the documents as doing so would result in revocation of her nursing license. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.

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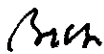


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10. RR reviewed her patient chart on the way to Dr. Blackmon's orthopedic practice to speak with him about the matter. The chart given to RR by ES was forged. The altered document bore the apparent signature of the Defendant (who was not present at the Spa at the time), has different handwriting, does not bear the name "Thea" at the upper left, has no lines filled in second row of the order form, is not dated in the upper left had corner of the order form portion of the order form section, contains a different date format, is not partly written in blue ink, and does not indicate that Doxycycline was ordered. Dr. Blackmon confirmed that he had not signed the chart and that he was unaware that his signature had been used or forged without his agreement or consent.
11. When Dr. Blackmon was presented with this evidence, he acknowledged that he had not reviewed RR's chart. Dr. Blackmon stated that he was not aware of whether the Spa staff possessed a stamp of his signature. The Defendant admitted he had meetings with ES when requested. He did not review charts or see patients. Upon inquiry, the Defendant could not say when the next Spa staff meeting would take place. The Defendant admitted that he does not see patients of the Spa face-to-face. Dr. Blackmon did not have a key to the Spa and did not have computer access or access to patient or financial records.
12. On 22 July 2014, RR accompanied Drug Enforcement Agency (DEA) and Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) agents to audit and take inventory of the Spa's medications. Record keeping and inventory control violations were uncovered. All vials of testosterone were confiscated by the OBNDD. Dr. Blackmon represents he has no personal knowledge of this allegation and therefore cannot admit or deny it.
13. On 24 July 2014, Dr. Blackmon voluntarily met with RR, OBNDD and DEA agents. When asked how patients receive their prescription medications, Dr. Blackmon responded that ES calls in the scripts under his DEA number for testosterone and weight loss medications to a pharmacy out-of-state. The pharmacy fills each script, labels the bottles and ships the prescriptions back to the Spa, which then dispenses the prescription medications to patients. Neither Dr. Blackmon nor the Spa has a dispensing license. Dr. Blackmon stated he was unaware that testosterone and phentermine were controlled dangerous substances ("CDS") and was unaware of the DEA and OBNDD dispensing requirements. Dr. Blackmon also stated that he was unaware that face-to-face visits with patients by him were required. The DEA informed Dr. Blackmon of numerous violations, including not registering a separate DEA number for dispensing HRT and prescription weight loss pills classified as controlled dangerous substances at the Spa, and Dr. Blackmon receiving HRT at the Spa. Dr. Blackmon admitted to receiving HRT at the Spa, although there was no prescription. Dr. Blackmon's prescription history reflects *no* CDS prescriptions. Dr. Blackmon also offered a sample of his signature.
14. Investigators RR and JL called several patients of the Spa. Each stated they had never seen Dr. Blackmon. The weight loss patients, KY and IY, stated they received Qsymia and Phentermine (both are Schedule IV CDS) from employee TH. TH possesses no healthcare license of any kind and yet actively monitored and dispensed medications to

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patients who never saw Dr. Blackmon. Yet, patients of the Spa were receiving CDS prescriptions allegedly executed by Dr. Blackmon without ever seeing him.

15. A review of six patient charts revealed the following:
  - a. Patient BB (employee of the Spa) – has orders for multiple procedures written by PK; the Defendant’s alleged signature is nowhere in the chart except for on a prescription for progesterone.
  - b. Patient TH (employee of the Spa) – has orders for multiple procedures written by ES; PK performed HRT procedure on TH; the only place in TH’s chart that allegedly evidences the Defendant’s signature is an order for massage therapy.
  - c. Patient PK (employee of the Spa) – chart contains records for Botox and laser treatments with no physician orders; shows patient performed her own hair removal.
  - d. Patient AA (employee of the SPA) – chart contains records of laser treatment performed without physician orders; prescribed a topical compound by “LT” but not prescribed by Dr. Blackmon.
  - e. Patient DB – shows patient received HRT by allowing the drug to be ordered under his DEA number and procedure performed on him by PK.
  - f. Patient ES (employee and owner of the Spa) – chart shows numerous procedures performed by staff without Dr. Blackmon’s orders, as well as prescriptions called in by PK; the only part of the chart showing Dr. Blackmon’s alleged signature is on prescriptions for Zolpidem (a sedative and Schedule IV CDS) and Spironolactone (Aldactone, a diuretic). Dr. Blackmon did not prescribe these medications and was unaware that these prescriptions were issued.
16. Dr. Blackmon made application for the renewal of his medical license (the “Renewal”) on 8 May 2014. Therein, the Defendant responded “no” to the question of whether he has been reported to the National Practitioner Database (“NPDB”). The NPDB shows that Dr. Blackmon’s insurance carrier notified the NPDB of a medical malpractice lawsuit settlement. Dr. Blackmon also stated in his Renewal that he did not wish to dispense (as opposed to prescribe) CDS.

### *Conclusions of Law*

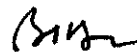
1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physicians and surgeons in the State of Oklahoma pursuant to Title 59 Okla. Stat. § 480 *et seq.* Notice was given in all respects in accordance with law and the rules of the Board.

BOARD     *Blackmon*    

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2. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Act and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.
3. The Defendant is guilty of unprofessional conduct, solely as it relates to his role as medical director of the Spa, as follows:
  - a. Failing to keep complete and accurate records for the purchase and disposal of CDS, in violation of 59 O.S. 2011, § 509(10) and Okla. Admin. Code § 475:25-1-3;
  - b. Prescribing, dispensing or administering CDS in a manner prohibited by:
    - i. 59 O.S. 2011, § 509(12),
    - ii. 59 O.S. 2011, § 509(16),
    - iii. Okla. Admin. Code § 435:10-7-4(1),
    - iv. Okla. Admin. Code § 435:10-7-4(2),
    - v. Okla. Admin. Code § 435:10-7-4(6),
    - vi. Okla. Admin. Code § 435:10-7-4(7),
    - vii. Okla. Admin. Code § 435:10-7-4(24),
    - viii. Okla. Admin. Code § 435:10-7-4(26),
    - ix. Okla. Admin. Code § 435:10-7-4(27), and
    - x. Okla. Admin. Code § 435:10-7-4(49);
  - c. Failing to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, in violation of 59 O.S. 2011, § 509(20) and Okla. Admin. Code § 435:10-7-4(41);
  - d. Failing 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 O.S. 2011, § 509(18);
  - e. Failing to maintain adequate medical records to support diagnosis, procedure, treatment or prescribed medications, in violation of 59 O.S. 2011, § 509(20) and Okla. Admin. Code § 435:10-7-4(41);
  - f. Engaging in the improper management of medical records, in violation of Okla. Admin. Code § 435:10-7-4(36);

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- g. Violating OBN and DEA rules and regulations regarding dispensing CDS at the Spa, in violation of Okla. Admin. Code § 435:10-7-4(27);
- h. Allowing another person or organization to use the Defendant's license to practice medicine, in violation of Okla. Admin. Code 435:10-7-4(22);
- i. Receiving or prescribing hormone replacement therapy classified as controlled dangerous substances to himself and his wife, in violation of Okla. Admin. Code § 435:10-7-4(5), (27) and 63 O.S. 2011, § 2-304(A)(8);
- j. Failing to register as a dispenser of CDS, in violation of Okla. Admin. Code § 435:10-7-1(1) and 63 O.S. 2011, § 2-302(A);
- k. Failing to maintain records regarding the dispensing of CDS, in violation of Okla. Stat. Ann. § 435:10-7-1(2);
- l. Failing to maintain effective controls against diversion of CDS, in violation of 63 O.S. 2011, § 2-303(A)(1) and 21 C.F.R. § 1301.71(a);
- m. Failing to comply with dispenser reporting requirements, in violation of 63 O.S. 2011, § 2-309C(A);
- n. Failing to establish a physician-patient relationship and performing a sufficient examination prior to administering treatment, in violation of 59 O.S. 2011, § 509(12); and
- o. Failing to disclose a medical malpractice lawsuit settlement payout on his periodic re-registration for medical licensing, in violation of Okla. Admin. Code § 435:10-7-4.

**Orders**

**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 the Defendant is hereby **SUSPENDED** for twenty (20) days from the date this Order is accepted by the Board;
3. It is **ORDERED** that Defendant pay an **ADMINISTRATIVE FINE** in the amount of **FIFTY THOUSAND DOLLARS (\$50,000.00)**, payable over a two year period;
4. It is **ORDERED** that Defendant will attend in-person continuing medical education ("CME") prescribing courses (not online CME's), which will approved of by the Board

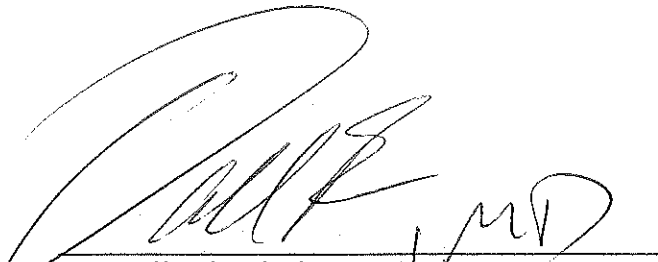
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Secretary who shall also determine the number of hours of CME for fulfilling this requirement, in addition to Defendant's normal CME requirements;

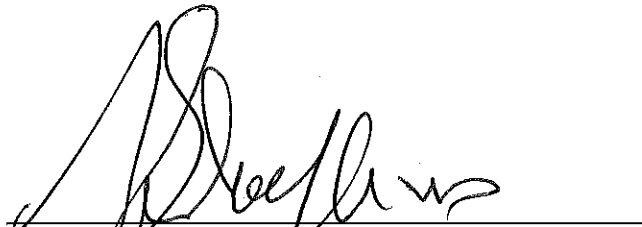
5. It is **ORDERED** that Defendant's **MEDICAL LICENSE IS RESTRICTED** to only supervising healthcare professionals related solely to his orthopedic practice for a period of five (5) years;
6. It is **ORDERED** that Defendant's **MEDICAL LICENSE IS RESTRICTED** to not dispensing controlled dangerous substances (CDS) for a period of five (5) years); and
7. 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; provided, however, that any suspension observed by Dr. Blackmon on or after September 24, 2015, and before the final approval of this Order by the Attorney General, shall be credited towards his suspension obligation.

DATED this 24<sup>th</sup> day of September, 2015.



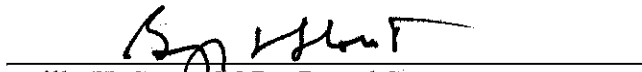
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Darnell Eric Blackmon, Sr., M.D.  
License No. 22856



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Lee Schoeffler, M.D., President  
OKLAHOMA STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION



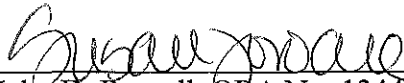
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Billy H. Stout, M.D., Board Secretary  
OKLAHOMA STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION

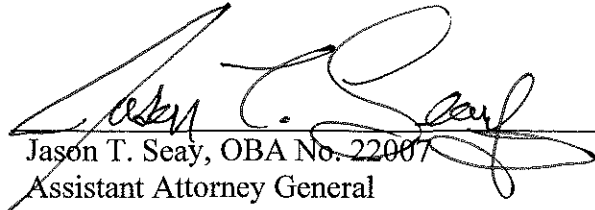
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John D. Russell, OBA No. 13443  
Susan I. Jordan, OBA No. 21928  
GABLEGOTWALS  
1100 ONEOK Plaza  
100 West 5<sup>th</sup> Street  
Tulsa, Oklahoma 74103-4217  
T: (918) 595-4800  
F: (918) 595-4990



Jason T. Seay, OBA No. 22007  
Assistant Attorney General  
OKLAHOMA STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION  
101 N.E. 51<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105  
T: (405) 962-1400  
F: (405) 962-1499

and

John M. Freese, Sr., OBA No. 3132  
FREESE & MARCH  
4510 E. 31<sup>st</sup> Street, Suite 200  
Tulsa, Oklahoma 74135  
T: (918) 749-9336


***Counsel for Darnell Blackmon, M.D.***

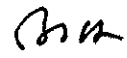
**Certificate of Service**


This is to certify that on the 25<sup>th</sup> day of September, 2015, a true and correct copy of this Order was sent by U.S. first-class mail, postage prepaid, to the following:

John D. Russell  
Susan I. Jordan  
GABLEGOTWALS  
1100 ONEOK Plaza  
100 West 5<sup>th</sup> Street  
Tulsa, Oklahoma 74103-4217

John M. Freese, Sr.,  
FREESE & MARCH  
4510 E. 31<sup>st</sup> Street, Suite 200  
Tulsa, Oklahoma 74135

  
\_\_\_\_\_  
Nancy Thiemann, Legal Secretary

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OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

**FILED**  
**OCT 15 2015**  
OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

**ATTORNEY GENERAL OPINION**  
**2015-34A**

Lyle Kelsey, Executive Director  
State Board of Medical Licensure and  
Supervision  
101 NE 51st Street  
Oklahoma City, Oklahoma 73105

October 13, 2015

Dear Executive Director Kelsey:

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 against licensee 22856. The proposed action is to suspend the licensee for twenty days; impose a fine of \$50,000; restrict the licensee's ability to supervise other healthcare professionals to an orthopedic practice for five years; restrict the licensee's ability to dispense controlled substances for five years; and require the licensee to engage in continuing education in prescribing medications. The licensee took on the role of medical director of a business other than the licensee's primary orthopedic practice, allowed nurses and other personnel to dispense medication under the licensee's authority, and then never conducted any oversight such as reviewing charts, seeing patients face-to-face, or otherwise. The Board found him guilty of or in violation of several related provisions of state and federal law.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2014, §§ 480–519, prohibits a range of unprofessional conduct by doctors, including failing to keep medical records regarding controlled substances; prescribing drugs without “sufficient examination and the establishment of a valid physician-patient relationship;” and prescribing controlled substances “in excess of the amount considered good medical practice” or “without medical need” based on medical standards.. 59 O.S.2011, § 509(10), (12), (16). The Board's administrative rules contain similar proscriptions against, for example, “[i]ndiscriminate or excessive prescribing, dispensing or administering” of controlled substances. OAC 435:10-7-4(1); *see also*, *e.g.*, OAC 435:10-7-4(2), (6), (7).

Oklahoma law, including statutes enacted by the Legislature, thus displays a policy of ensuring that licensed medical doctors prescribe, dispense, and administer controlled substances only with clinical justification and only then with adequate documentation and record-keeping. The action seeks to enforce that requirement—without prohibiting a professional from practice altogether—through temporary penalties, additional education, and license restrictions that prevent the licensee from unilaterally or through participation in other businesses improperly dispensing controlled substances.

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 welfare and adequately regulate controlled substances.

A handwritten signature in red ink, appearing to read "Scott Pruitt", with a large, stylized flourish extending to the right.

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA