

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, )

OCT 12 2006

Plaintiff, )

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

v. )

Case No. 06-10-3178

PHILLIP DARRELL ASHBY, R.C., )  
LICENSE NO. RC2391, )

Defendant. )

**COMPLAINT**

COMES NOW the 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, and for its Complaint against the Defendant, Phillip Darrell Ashby, RC, alleges and states as follows:

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of respiratory care practitioners in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.* and 2026 *et seq.*

2. Defendant, Phillip Darrell Ashby, R.C., previously held Oklahoma respiratory care license no. RC2391.

3. Defendant was initially licensed in the State of Oklahoma under the terms of an Agreement for Licensure dated May 27, 2004 based upon an incident in 1999 where he was arrested and charged with **DRIVING WHILE INTOXICATED (ALCOHOL)**.

4. Defendant's Agreement for Licensure provides as follows:

9. Applicant will notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for traffic or criminal offenses, including driving under the influence or while intoxicated or involving alcohol or any other prohibited substance.

5. The provisions cited above have not been modified or deleted but remain in full force and effect as terms and conditions of Defendant's licensure under agreement.

6. On or about July 11, 2005, Defendant was arrested by the Oklahoma Highway Patrol and charged in the District Court of Wagoner County with **TRANSPORTING AN OPEN CONTAINER (BEER), FAILURE TO PAY TAXES DUE THE STATE OF OKLAHOMA (EXPIRED LICENSE TAG), AND FAILURE TO CARRY VALID INSURANCE VERIFICATION.**

7. Defendant failed to appear in the District Court of Wagoner County to answer these charges on two (2) occasions, after which time on November 3, 2005, **BENCH WARRANTS** were issued for his arrest. At this time, the Bench Warrants against Defendant are still active.

8. On June 14, 2006, Defendant met with Gary Ricks, Compliance Officer for the Board. Defendant did not advise Mr. Ricks of his arrest at this meeting or at any time prior to this meeting as required by the terms of his Agreement.

9. On or about June 30, 2006, Defendant's license expired due to non-renewal.

10. On or about August 3, 2006, Defendant submitted his Application for Renewal of Oklahoma License wherein he was asked the following questions:

Since the last renewal or initial licensure (whichever is most recent):

- E. Have you been arrested for, charged with or convicted of a felony or misdemeanor other than a traffic violation?
- F. Have you been arrested for, charged with or convicted of a traffic violation involving the use of drugs and/or alcohol?

In response to both of these questions, Defendant answered "NO".

11. By letter dated August 25, 2006, Defendant was granted a Temporary Letter to practice as a respiratory care practitioner (under the same terms of his Agreement for Licensure) until his application was acted on by the Board at the November 2-4, 2006 Board meeting. The Agreement for Licensure provides as follows:

- 5. Applicant will have the affirmative duty not to ingest any substance which will cause a body fluid sample to test positive for prohibited substances, including but not limited to alcohol.
- 8. Applicant will notify the Board or its designee of any relapse, including entry, or re-entry, into an inpatient rehabilitation, assessment, or evaluation program and shall provide to the Board or its designee written authorization for any and all records associated with said treatment, assessment or evaluation.



9. Applicant will notify the Board or its designee of any citation, arrest or charge filed against him or of any conviction for traffic or criminal offenses, including driving under the influence or while intoxicated or involving alcohol or any other prohibited substance.

12. The provisions cited above have not been modified or deleted but remain in full force and effect as terms and conditions of Defendant's licensure under agreement.

13. On or about August 26, 2006, Defendant was arrested and subsequently charged in the District Court of Okfuskee County, State of Oklahoma, with **DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL** and **LARCENY OF MERCHANDISE FROM RETAILER**. Defendant plead guilty to the charges and on August 28, 2006, he received a deferred sentence with one and one-half (1 ½) years probation, fines, restitution and court costs. Defendant was further ordered to obtain a drug and alcohol assessment.

14. On September 13, 2006, Defendant met with Gary Ricks, Compliance Officer for the Board, pursuant to Defendant's Agreement for Licensure. During this meeting, Defendant did not advise Mr. Ricks of his July 11, 2005 arrest in Wagoner County, nor of his August 26, 2006 arrest in Okfuskee County. Further, when specifically asked if he had any new traffic or criminal offenses, he advised Mr. Ricks that he did not.

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

- A. Is unfit or incompetent by reason of negligence, habits, or other causes of incompetency in violation of 59 O.S. §2040(2).
- B. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, agreement or order of the Board in violation of 59 O.S. §2040(9) and OAC 435:45-5-3(24).
- C. Violated any provision of the Respiratory Care Practice Act or the rules promulgated by the Board in violation of OAC 435:45-5-3(21).
- D. Is habitually intemperate or addicted to any drug, chemical or substance which could result in behavior that interferes with the practice of respiratory care and the responsibilities of the licensee in violation of OAC 435:45-5-3(1).
- E. Is guilty of fraud or deceit in procuring or attempting

to procure a license or renewal of a license to practice respiratory care in violation of 59 O.S. §2040(1).

- F. Is guilty of dishonest or unethical conduct in violation of 59 O.S. §2040(5).
- G. Has violated or aided or abetted others in violation of any provision of the Respiratory Care Practice Act in violation of 59 O.S. §2040(8).
- H. Is habitually intemperate in the use of alcoholic beverages in violation of 59 O.S. §2040(3).
- I. Falsified documents submitted to the Respiratory Care Advisory Committee or the Oklahoma State Board of Medical Licensure and Supervision in violation of OAC 435:45-5-3(7).
- J. Obtained or attempted to obtain a license, certificate or documents of any form as a respiratory care practitioner by fraud or deception in violation of OAC 435:45-5-3(8).
- K. Failed to furnish the Board, its investigators or representatives, information lawfully requested by the Board in violation of OAC 435:45-5-3(22).

***Conclusion***

WHEREFORE, the Plaintiff respectfully requests that 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 and any other appropriate action with respect to Defendant's provisional respiratory care practitioner license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



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