

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

FILED

JAN 18 2007

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA)
EX REL. THE OKLAHOMA BOARD)
OF MEDICAL LICENSURE)
AND SUPERVISION,)
)
Plaintiff,)
)
v.)
)
PHILLIP DARRELL ASHBY, R.C.,)
LICENSE NO. RC2391,)
)
Defendant.)

Case No. 06-10-3178

VOLUNTARY SUBMITTAL TO JURISDICTION

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 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, Phillip Darrell Ashby, R.C., Oklahoma R.C. license no. 2391, who appears in person and pro se, proffer this Agreement for acceptance by the Board *en banc* pursuant to Section 435:5-1-5.1 of the Oklahoma Administrative Code ("OAC").

AGREEMENT AND ACKNOWLEDGMENT BY DEFENDANT

By voluntarily submitting to jurisdiction and entering into this Order, Defendant pleads guilty to the allegations in the Amended Complaint filed herein on November 27, 2006, and acknowledges that hearing before the Board would result in some sanction under the Respiratory Care Practice Act.

Defendant, Phillip Darrell Ashby, R.C., 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 evidentiary hearing on the allegations made against him. 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. 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.

PARTIES' AGREEMENT AND STIPULATIONS

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

Findings of Fact

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of respiratory therapists 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 Complaint in this action was filed against Defendant, the Bench Warrants against him were 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. On or about October 13, 2006, Tom Sosbee, Compliance and Education Coordinator for the Board, served Defendant with the Complaint and Citation. At that time, Mr. Sosbee obtained a urine specimen from Defendant. The specimen subsequently tested positive for Marijuana. Defendant admitted to Mr. Sosbee that he had recently smoked Marijuana.

16. On or about October 26, 2006, Defendant appeared before the Respiratory Care Advisory Committee at which time the Committee recommended that Defendant's Temporary Letter to practice respiratory therapy be withdrawn pending the resolution of the Complaint.

17. On November 2, 2006, Defendant appeared before the Board and requested that his Temporary Letter to practice be reinstated. The Board denied his request.

18. 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).
- L. Engaged in the unauthorized possession and use of illegal or controlled substances or pharmacologic agents without lawful authority or prescription by an authorized and licensed independent practitioner of the state of Oklahoma in violation of OAC 435:45-5-3(2).
- M. Is addicted to, or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics in violation of 59 O.S. §2040(4).

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Respiratory Care Practice Act (the "Act") and its applicable regulations. The Board is authorized to enforce the Act as necessary to protect the public health, safety and welfare.

2. Defendant, Phillip Darrell Ashby, R.C., Oklahoma respiratory care license no. 2391, is guilty of the unprofessional conduct set forth below based on the foregoing facts:

- 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).
- L. Engaged in the unauthorized possession and use of illegal or controlled substances or pharmacologic agents without lawful authority or prescription by an authorized and licensed independent practitioner of the state of Oklahoma in violation of OAC 435:45-5-3(2).
- M. Is addicted to, or has improperly obtained, possessed, used or distributed habit-forming drugs or narcotics in violation of 59 O.S. §2040(4).

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. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Defendant shall be placed on **PROBATION** for a period of **5 YEARS** under the following terms and conditions:

A. Defendant will conduct his practice in compliance with the Oklahoma Respiratory Care Practice Act as interpreted by the Oklahoma State Board of Medical Licensure and Supervision. Any question of interpretation regarding said Act 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 Oklahoma State Board of Medical Licensure and Supervision.

B. Defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege or employment, a copy of the Board Order stipulating sanctions imposed by the Oklahoma State Board of Medical Licensure and Supervision.

C. Defendant will submit biological fluid specimens to

include, but not limited to, blood and urine, for analysis, upon request of the Oklahoma State Board of Medical Licensure and Supervision or its designee, and Defendant will pay for the analysis thereof.

D. Defendant will obtain and utilize a personal physician to coordinate all of his medical care.

E. Defendant will not administer, dispense or possess any drugs in Schedules I through V.

F. Defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Defendant has the affirmative duty to inform any and every doctor treating him of the Board Order immediately upon initiation, or continuation of treatment.

G. Defendant 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.

H. Defendant will attend four (4) meetings per week of a 12-Step program, one (1) of which must be the Health Professional's Recovery Program.

I. Defendant will enter and continue psychiatric treatment with Jackie Neel or another psychiatrist approved in advance by the Board Secretary and will authorize in writing the release of any and all records of that treatment to the Board or its designee. Defendant will continue individual counseling with his psychiatrist until released by both his psychiatrist and the Board Secretary. Defendant will submit quarterly reports from his psychiatrist to the Board Secretary for his review.

J. Defendant shall promptly notify the Board of any citation or arrest for traffic or for criminal offenses involving substance abuse.

K. Defendant shall submit any required reports and forms on an accurate, timely and prompt basis to the Compliance Coordinator or his designee.

L. Defendant will authorize in writing the release of any and all records of his medical, emotional or psychiatric treatment to the Oklahoma State Board of Medical Licensure and Supervision and will authorize the Compliance Consultant to the Board to discuss

his case and treatment with the individuals providing Defendant's treatment.

M. Defendant will keep the Oklahoma State Board of Medical Licensure and Supervision informed of his current address.

N. Defendant will keep current payment of all assessment by the Oklahoma State Board of Medical Licensure and Supervision for the prosecution, investigation and monitoring of his case, which shall include but is not limited to a one hundred dollar (\$100.00) per month fee during the term of his probation.

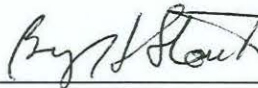
O. Until such time as all indebtedness to the Oklahoma State Board of Medical Licensure and Supervision has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

P. Defendant shall make himself available for one or more personal appearances before the Board or its designee upon request.

Q. Defendant will notify the Board or its designee of any slip, relapse, 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. Defendant acknowledges and agrees that the Board may use such information against Defendant in any future disciplinary proceedings.

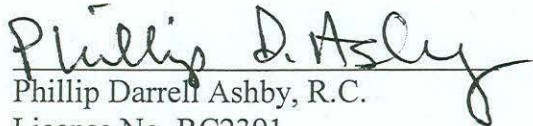
R. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing.

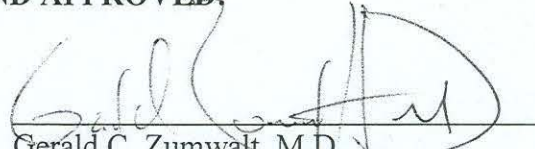
Dated this 18 day of January, 2007.



Billy Stout, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED:


Phillip Darrell Ashby, R.C.
License No. RC2391


Gerald C. Zumwalt, M.D.
Secretary & Medical Advisor
Oklahoma State Board of
Medical Licensure and Supervision


Elizabeth A. Scott OBA #12470

Assistant Attorney General
State of Oklahoma
5104 N. Francis, Suite C
Oklahoma City, OK 73118
405/848-6841

Attorney for the Oklahoma State Board
of Medical Licensure and Supervision

CERTIFICATE OF SERVICE

I certify that on the 22 day of January 2007, I mailed by first class mail a true and correct copy of the Voluntary Submittal to Jurisdiction to Phillip D. Ashby, RC, 4233 S. 35 W. Ave, Tulsa, OK 74107.

Janet Swindle
Janet Swindle, Secretary