

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

**FILED**

JAN 26 2006

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA )  
EX REL. THE OKLAHOMA BOARD )  
OF MEDICAL LICENSURE )  
AND SUPERVISION, )

Plaintiff )

v. )

JAY DEE BRUMBAUGH, P.T., )  
LICENSE NO. PT2729, )

Defendant. )

Case No. 05-07-2967

**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, Jay Dee Brumbaugh, P.T., Oklahoma license no. PT2729, who appears in person and through his attorney, Heather F. Earnhart, offer 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 Complaint and Citation filed herein on August 4, 2005 and further acknowledges that hearing before the Board would result in some sanction under the Oklahoma Physical Therapy Practice Act.

Defendant, Jay Dee Brumbaugh, P.T., 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 by his legal counsel.

## ***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 physical therapists in the State of Oklahoma pursuant to 59 Okla. Stat. §§ 480 *et seq.* and 887.1 *et seq.*

2. Defendant, Jay Dee Brumbaugh, PT, holds physical therapy license no. PT 2729 in the State of Oklahoma.

3. On or about May 5, 2005, Defendant was arrested and charged in the District Court of Tulsa County, State of Oklahoma, with FELONY MEDICAID FRAUD based upon certain incidents where Defendant submitted claims for physical therapy services rendered to both Medicaid and private insurance companies totaling \$12,476.06 (which restitution was made for the full amount in June 2004, eleven (11) months prior to any charges being filed but after Defendant learned that he was being investigated by the Medicaid Fraud Unit of the Attorney General's Office). Defendant was paid by both, thereby receiving payment in excess of that allowed by Medicaid.

4. On or about June 16, 2005, the State amended its claim to MISDEMEANOR MEDICAID FRAUD. Defendant plead no contest to the charges and received a six (6) month deferred sentence. Defendant was also required to pay restitution of \$3,500.00 by July 18, 2005.

5. On or about December 16, 2005, the Tulsa County District Court found that Defendant had adhered to the provisions of his probation including paying restitution to the Oklahoma Attorney General in the amount of \$3,500.00 and paying court costs totaling \$220.00. The Defendant was then allowed to withdraw his plea of no contest and the case was expunged from the Defendant's court record.

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

- A. Is guilty of conduct unbecoming a person licensed as a physical therapist or physical therapist assistant or guilty of conduct detrimental to the best interests of the public or his profession in violation of 59 O.S. § 887.13(9).
- B. Is guilty of any act in conflict with the ethics of the profession of physical therapy in violation of 59 O.S. §887.13(10).

- C. Engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of OAC 435:20-5-8(b)(5).
- D. Participated in ... violation of state or federal laws in violation of OAC 435:20-5-8(b)(8).
- E. Engaged in .... violation of Medicare and Medicaid laws or abusive billing practices in violation of OAC 435:20-5-8(b)(15).
- F. Was convicted of, or confessed to or plead no contest to a felony or misdemeanor in violation of OAC 435:20-5-8(b)(26).
- G. Violated any provision of the Physical Therapy Practice Act or the rules and regulations of the board or of an action, stipulation, agreement or order of the Board in violation of OAC 435:20-5-8(b)(31).

***Conclusions of Law***

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

2. Based on the foregoing facts, Defendant, Jay Dee Brumbaugh, Oklahoma license PT2729, is guilty of the unprofessional conduct set forth below:

- A. Is guilty of conduct unbecoming a person licensed as a physical therapist or physical therapist assistant or guilty of conduct detrimental to the best interests of the public or his profession in violation of 59 O.S. § 887.13(9).
- B. Is guilty of any act in conflict with the ethics of the profession of physical therapy in violation of 59 O.S. §887.13(10).
- C. Engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of OAC 435:20-5-8(b)(5).

- D. Participated in ... violation of state or federal laws in violation of OAC 435:20-5-8(b)(8).
- E. Engaged in ... violation of Medicare and Medicaid laws or abusive billing practices in violation of OAC 435:20-5-8(b)(15).
- F. Was convicted of, or confessed to or plead no contest to a felony or misdemeanor in violation of OAC 435:20-5-8(b)(26).
- G. Violated any provision of the Physical Therapy Practice Act or the rules and regulations of the board or of an action, stipulation, agreement or order of the Board in violation of OAC 435:20-5-8(b)(31).

***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, Jay Dee Brumbaugh, P.T., holding Oklahoma license No. PT2729, shall be placed on **PROBATION** for a period of **THREE (3) YEARS** under the following terms and conditions:

- A. Defendant will conduct his practice in compliance with the Oklahoma Physical Therapy Practice 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 shall arrange for an external audit of his books and records not less than one time per year. The audits shall include an accounting of all billings and all funds received from Medicaid and from private insurance as compared to patient charts. The audit shall also include an examination of whether or not services billed by employees are actually being delivered by the employees. The audits shall be provided to the Board Secretary upon completion for his review.

C. Defendant shall perform an internal audit of his books and records, including billing records and patient charts not less than one time per year. The audits shall be provided to the Board Secretary upon completion for review.

D. Defendant shall allow the Board or its designee, as well as representatives from the Medicaid Fraud Unit of the Oklahoma Attorney General's office, to audit his books and records immediately upon request.

E. Defendant will furnish a copy of this order to each and every state in which he holds licensure or applies for licensure and to all hospitals, clinics or other facilities in which he holds or anticipates holding any form of staff privileges or employment.

F. Upon request of the Board, Defendant will request all hospitals, clinics and other facilities in which he practices to furnish the Board a written statement monitoring his practice.

G. Defendant will keep the Board informed of his current address.

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

I. Defendant shall promptly notify the Board of any citation or arrest for any criminal offense.

J. Defendant will keep current payment of all assessments by the Oklahoma State Board of Medical Licensure and Supervision for 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 probation, unless Defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Board Secretary.

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

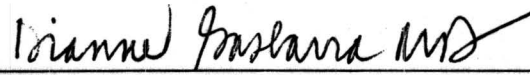
L. Defendant shall submit any required reports and forms on a timely and prompt basis to the Compliance Coordinator or

designee.

M. 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.

4. Promptly upon receipt of an invoice for such charges, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.

Dated this 26 day of January, 2006.

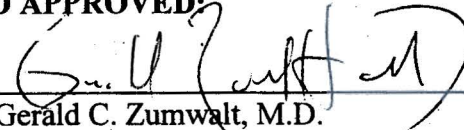


Dianne Gasbarra, M.D., President  
Oklahoma State Board of  
Medical Licensure and Supervision

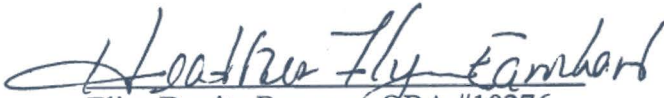
**AGREED AND APPROVED:**



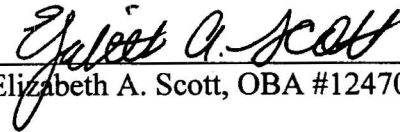
Jay Dee Brumbaugh, P.T.  
License No. PT2729



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



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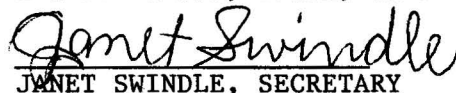
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405/848-6841

Attorney for Defendant,  
Jay Dee Brumbaugh, P.T.  
License No. PT2729

Attorney for the Oklahoma State Board  
of Medical Licensure and Supervision

**CERTIFICATE OF SERVICE**

I CERTIFY THAT ON THE 27TH DAY OF JANUARY, 2006, I MAILED , VIA FIRST CLASS MAIL, POSTAGE PREPAID, A TRUE AND CORRECT COPY OF THIS VOLUNTARY SUBMITTAL TO JURISDICTION TO ELISE BRENNAM, 320 S. BOSTON AVE SUITE 500, TULSA, OK 74103



JANET SWINDLE, SECRETARY