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,	)	FILED DEC 08 2016 OKLAHOMA STATE BOARD OF MEDICAL LICENSURE & SUPERVISION
Plaintiff,	)	
v.	)	**Case No. 16-02-5266**
JERRY HERNANDEZ, M.D., LICENSE NO. MD 29256,	)	
Defendant.	)	

ORDER ACCEPTING VOLUNTARY SUBMITTAL TO JURISDICTION

Plaintiff, the State of Oklahoma, *ex rel.*, the Oklahoma State Board of Medical Licensure and Supervision ("Board"), by and through its attorney, Joseph L. Ashbaker, Assistant Attorney General, for the State of Oklahoma 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, along with Jerry Hernandez, M.D. ("Defendant"), Oklahoma medical license no. 29256, who appears in person, (collectively, the "Parties"), offer this Order Accepting Voluntary Submittal to Jurisdiction (herein, "Order" or "Agreement"), 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, the Defendant pleads guilty to the allegations in the Complaint and Citation filed herein on October 21, 2016, and further acknowledges that a hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act ("Act").

Defendant, Jerry Hernandez, M.D., 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. 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.

If the Board does not accept this Order, the Parties stipulate that: (1) it shall be regarded as null and void; (2) Admissions by the Defendant herein, if any, shall not be regarded as

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evidence against him in a subsequent disciplinary hearing; and (3) 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

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

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 59 O.S. § 480 *et seq*.

2. Defendant, Jerry Hernandez, M.D., holds Oklahoma medical license number 29256.

CURRENT ALLEGATIONS OF UNPROFESSIONALCONDUCT

1. The current case was initiated as a result of a written complaint stating that on multiple occasions in January, 2016, Defendant had a strong odor of Marijuana on his body. The complaint further stated that Defendant would take frequent breaks and go to his vehicle at work. A "bong" was also seen in his vehicle.

2. Defendant was asked to submit to a urinalysis, per his employment contract, but refused. Defendant's hospital privileges were subsequently suspended on January 22, 2016.

3. Board investigators contacted Defendant and discussed the allegations with him. During the course of those discussions Defendant agreed to go to Professional Renewal Center (PRC) for a drug and alcohol assessment. He also agreed not to practice medicine until he completed all required assessments and treatments.

4. Defendant was evaluated at PRC on March 11-13, 2016 and upon completion of his assessment, entered Pine Grove Behavioral Health Center for in-patient treatment.

CONCLUSIONS OF LAW

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

   a. Habitual intemperance or the habitual use of habit-forming drugs, in violation of 59 O.S. 2011, § 509(4);

   b. The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician's practice of medicine, in violation of 59 O.S. 2011, § 509(9);

c. The habitual or excessive use of any drug which impairs the ability to practice medicine with reasonable skill and safety to the patient in violation of Okla. Admin. Code § 435:10-7-4(3);

d. Violating any state or federal law or regulation relating to controlled substances in violation of Okla. Admin. Code § 435:10-7-4(27).

ORDERS

IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

2. The Board *en banc* hereby adopts the Agreement of the Parties in this Voluntary Submittal to Jurisdiction;

3. It is **ORDERED** that the Defendant is hereby placed on **PROBATION** for five (5) years.

4. It is **ORDERED** that the terms of Defendants' probation are as follows:

Standard Terms:

A. Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure and Supervision 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 authorized designee.

B. 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.

C. Defendant will not supervise allied health professionals that require surveillance of a licensed medical practitioner.

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

E. Until such time as all indebtedness to the Board has been satisfied, Defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.

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

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

H. Defendant will keep current payment of all assessments by the Board for prosecution, investigation and monitoring of his case, which shall include, but is not limited to, a fee of one hundred fifty dollars ($150.00) per month 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.

I. Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the Compliance Coordinator to obtain copies of any and all medical records and assessments, and authorize the Compliance Coordinator to discuss Defendant's case with Defendant's treating physicians and/or any physicians holding Defendant's records.

J. Failure to meet any of the terms of this Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify Defendant's license after due notice and hearing. Immediately upon learning that a licensee is in violation of a Board-ordered probation, the Executive Director of the Board may summarily suspend the license based on imminent harm to the public and assign a hearing date for the matter to be presented at the next scheduled Board meeting.

K. If Defendant moves his residence or practice location out of the State of Oklahoma during the probationary period, the probation will be tolled until such time as Defendant returns to the State of Oklahoma and begins practicing within the state. The Defendant will notify the Board Secretary prior to moving out-of-state.

Specific Terms:

L. Defendant will inform the Board Secretary of any move from Oklahoma to another licensing jurisdiction.

M. Defendant will join and sign a contract with Oklahoma Physicians Health Program (OHPP) and fulfill the all of the requirements of that contract.

N. Defendant will follow all guidelines and recommendations of the OHPP, including signing a five-year monitoring contract. This monitoring contract will require ongoing random urine drug screens, a workplace monitor, Caduceus and 12-step meeting attendance.

O. Defendant will attend a minimum of four 12-step meetings per week when unemployed. Defendant will attend a minimum of three such meetings once he has obtained employment.

P. Defendant is not to work more than 55 hours per week, nor is he to work night shifts until and unless prior approval to do so is given by Board Secretary.

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Q. Defendant will see a board certified psychiatrist, approved by Board Secretary, for evaluation and treatment plan.

R. Defendant desires to change his employment, the proposed working environment must first be approved by Board Secretary.

5. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and costs, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.

6. A copy of this Order shall be provided to Defendant as soon as it is processed.

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**.

Dated this 3rd day of November, 2016.

Jerry Hernandez, M.D.
License No. 29256
Defendant, Pro se

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

Joseph L. Ashbaker, OBA No. 19395
Assistant Attorney General
OKLAHOMA STATE BOARD OF MEDICAL
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101 N.E. 51st Street
Oklahoma City, Oklahoma 73105
405/962.1400
405/962.1499 – Facsimile

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Certificate of Service

This is to certify that on the 9th day of December, 2016, a true and correct copy of this Order was transmitted by U.S. certified mail, postage prepaid, to the following:

Jerry Hernandez
1302 North Grant Street
Cordell, Oklahoma 73632-1812
Defendant, Pro se

Nancy Thiemann, Legal Secretary

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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

FILED
DEC 08 2016
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

ATTORNEY GENERAL OPINION
2016-734A

December 6, 2016

Billy Stout, Board Secretary
State Board of Medical Licensure and
Supervision
101 N.E. 51st Street
Oklahoma City, Oklahoma 73105

Dear Board Secretary Stout:

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 pursuant to a consent agreement with medical doctor license 29256. The proposed action is to place the licensee on probation for five years with both standard and specific terms. The terms of the probation require the licensee to submit to drug tests; release medical records to the Board; enter a five year contract with the Oklahoma Health Professionals Program, a drug and alcohol monitoring program; attend "12-step" meetings; undergo evaluation and treatment by a Board certified psychiatrist; limit work hours to no more than 55 hours per week with no night shifts; submit any change in working environment to the Board for approval; and pay the Board's costs. The Board initiated an investigation after allegations were made that the licensee had a strong odor of marijuana and was observed making frequent trips to the parking lot while on duty. Marijuana paraphernalia was also seen in the licensee's vehicle. The licensee's hospital privileges were suspended in January 2016. Following a drug and alcohol assessment, the licensee entered an in-patient treatment program in March 2016.

The Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S.2011 & Supp.2016, §§ 480–518.1, authorizes the Board to impose appropriate sanctions for unprofessional conduct, 59 O.S.Supp.2016, § 503. Unprofessional conduct includes circumstances when a physician's practice may be compromised by substance abuse. 59 O.S.2011, § 509(4), (9). Here, the licensee has agreed to the additional conditions imposed on the license. The Board may reasonably believe that the agreed terms are necessary to protect patient safety.

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 uphold minimum standards of professionalism among physicians.

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA