

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

STATE OF OKLAHOMA, *ex rel.*,)
THE OKLAHOMA STATE BOARD)
OF MEDICAL LICENSURE AND)
SUPERVISION,)
)
Plaintiff,)
)
vs.)
)
BRYAN LEE, M.D.,)
LICENSE NO. MD 29559,)
)
Defendant.)

FILED
AUG 27 2015
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION
Case No. **MD-10-5055**

VERIFIED COMPLAINT

The State of Oklahoma, *ex rel.*, the Oklahoma State Board of Medical Licensure and Supervision ("Board"), alleges and states as follows for its Complaint against Bryan Lee, M.D. ("Defendant"):

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 Okla. Stat. § 480 *et seq.*
2. Defendant, Bryan Lee, M.D., holds and has maintained Oklahoma medical license number 29559. The acts and omissions complained of herein were made while Defendant was acting as a physician pursuant to the medical license conferred upon him by the State of Oklahoma and such acts and omissions occurred within the physical territory of the State of Oklahoma.
3. According to Defendant, he is currently practicing anesthesiology in McAlester, Oklahoma and practicing weight loss in Oklahoma City, Oklahoma.

Allegations of Unprofessional Conduct

1. This case was initiated as a result of information relayed from members of the Oklahoma Bureau of Narcotics suggesting that Defendant was possibly involved in a "weight loss internet scam."
2. There are two online outlets for weight loss that Defendant is associated with. The first is www.absolutelythin.com ("ABT.com"). ABT.com states that medical visits with their staff are not required as long as a patient has had regular check-ups by their primary care physician, and that the patient can attest to their health or that their other healthcare needs

are under a licensed physician's care. The second website is www.obesityhelp.com ("OBH.com"). OBH.com states that there is a one-time face-to-face visit required, followed by internet follow-ups. The system requires the patient to log in and post their progress to the physician, who then calls in follow-up prescriptions.

3. On November 17, 2014, Investigator Lane filled out the on-line form for ABT.com. She paid the \$100 fee and received an email stating that the physician would contact her within three business days to schedule an appointment. Defendant texted Investigator Lane, who was using the undercover name of J.R. An office visit was set up for the following November 20, 2014 at 5:00pm.
4. Investigator Lane arrived at the office of Defendant at the correct time and was shortly thereafter taken to see the Defendant. After a few preliminary questions Defendant explained how the prescriptions worked, as well as the on-line follow-ups, and gave Investigator Lane 21 business cards and asked her to give them to her friends. No height, weight or any vitals were checked by the Defendant or his staff during the appointment, which lasted 13 and 1/2 minutes, and there was no physical examination of any kind. Defendant then called in two (2) prescriptions to the pharmacy (i) Phentermine, 37.5mg, one every morning, #30 with no refills, and (ii) Prozac, 10mg, one every morning when first sense hunger, #30 with no refills. Investigator Lane picked up copies of the two (2) prescriptions, which would have come to \$29.98 cash price had they been paid for.
5. On April 23, 2015, Investigator Lane acting as her undercover persona, patient J.R., accessed her account on ABT.com to fill out her progress report and obtain a follow-up refill. The site required her to have a new appointment since she had not provided progress reports for more than 3 months. Investigator Lane then provided credit card information for the \$80.00 charge for the follow-up refills to be called in. Defendant then called Investigator Lane to set up the new appointment. Investigator Lane arrived at her appointment and was taken to see the Defendant. After Investigator Lane partially filled out a card Defendant discussed the possibility of taking a mouth swab to determine how her metabolism was, and Lane opted out of that procedure because there was no insurance. Defendant called in the same two (2) prescriptions as the last visit and the appointment was over, having lasted approximately 7 and 1/2 minutes. No height or weight was measured, no vitals were taken and no physical examination was conducted during this appointment either.
6. On May 1, 2015, Investigator Roberts, using her undercover persona of R.H., completed the registration form for weight loss via ABT.com. In order to qualify for the program she had to manipulate the online questionnaire to show that her Body Mass Index (BMI) was high enough; she accomplished this by putting in a height and weight that were not her actual height and weight. After registering and acceptance of a \$100.00 payment, she received an email that said she would hear from someone within three business days. On May 12, 2015, Investigator Roberts advised Defendant, by text, that she still needed an appointment. Defendant called Investigator Roberts and an appointment was scheduled for May 26, 2015. Investigator Roberts arrived at her appointment, where she was not weighed, measured, nor were any of her vital signs taken, and no physical examination was conducted. Defendant did not inquire as to Investigator Roberts' weight which was

below the threshold of what would appear to be the office's policy for prescribing weight control medication, as evidenced by this patient's need to manipulate her answers on the questionnaire. Defendant then explained Phentermine and Prozac, asked a few background questions regarding medical and medication history and called in the prescriptions for Prozac and Phentermine to the pharmacy.

7. On June 3, 2015, Investigators Lane and Duvall interviewed Defendant at his office located at 2020 N.W. Expressway, Suite 200, in Oklahoma City. Investigator Lane informed Defendant of the concerns the investigators had regarding Defendant's failure to do a thorough examination on patients that he was treating for weight loss. Defendant stated that he did a physical examination on every patient, ensured that they did not have hyperthyroidism, uncontrolled hypertension and are not on any oxidase inhibitors and weighs each patient, takes their blood pressure and listens to their heart. He also denied prescribing to anyone who is underweight. Defendant admitted that he would see a patient only once per year and would routinely prescribe 11 months of CDS weight loss medication and anti-depressants without seeing the patient again until the next year.
8. Investigator Lane then served a Subpoena for 10 medical records including "J.R." and "R.H.," the two undercover investigators. Defendant produced 6 of them and stated that he could not readily produce the other 4. He was asked to mail them when they were found. Later that same day Defendant called investigator Lane, whom Defendant believed was J.R., and informed her that investigators from the Medical Board had come to his office and subpoenaed multiple records including hers. Defendant said the way he remembered their visit was that he weighed and measured her and also took her blood pressure. He asked if that was the way she remembered it too; Investigator Lane did not confirm such as her recollection. Defendant went on to say that the Board would probably be calling and insinuated that she should tell them that he had indeed weighed, measured and took her vital signs.
9. On June 3, 2015, Investigator Roberts received a phone call from Defendant on her personal cell phone. Defendant stated that the Medical Board had come to his office today and subpoenaed multiple records including hers (R.H.) and he asked, "don't you remember" that he did a full physical on her at her appointment? Investigator Roberts asked what he meant, to which Defendant responded that he measured her height with a tape measure and weighed her and took her blood pressure. She said that she didn't remember, but that he had the information because she filled it out ahead of time online. He stated that the Medical Board is a "tenacious bunch" and might call her to make sure he was doing everything correctly, so if they asked about a physical "tell them I did."
10. Upon review of the medical records subpoenaed some facts were determined. Patient J.B. has a height of 5'10" on her driver's license but her medical record shows that she is 5'5". Patient R.H. has a height of 5'3" on her driver's license but her medical record shows she is 5'0". Pictures of the patient's driver licenses are in the medical records. Out of 11 records reviewed, 6 had a systolic blood pressure of 120, 8 had a diastolic blood pressure of 80, six had a pulse rate of 80 and 4 had the exact same vital signs of blood pressure of 120 over 80 and a pulse of 80. The records indicate that all 11 physical

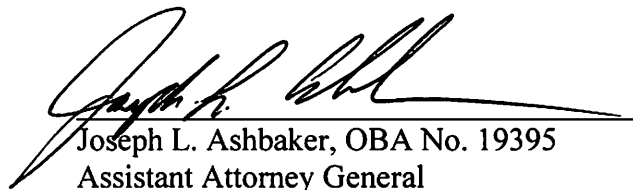
exams were within normal limits including the two undercover visits, wherein no physical examinations were conducted.

11. Based on the foregoing, the Defendant is guilty of unprofessional conduct as follows:
 - a. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public 59 O.S. 2011, § 509(8);
 - b. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship 59 O.S. 2011, § 509(12);
 - c. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standards 59 O.S. 2011, § 509(16);
 - d. Failure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient 59 O.S. 2011, § 509(18);
 - e. Failure to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, including but not limited to an initial in-person patient examination, office surgery, diagnostic service or any other medical procedure or treatment. Adequate medical records to support diagnosis, procedure, treatment or prescribed medications must be produced and 59 O.S. 2011, § 509(20)
 - f. Indiscriminate or excessive prescribing, dispensing or administering of Controlled or Narcotic drugs Okla. Admin. Code § 435:10-7-4(1);
 - g. Prescribing, dispensing or administering of Controlled substances or Narcotic drugs in excess of the amount considered good medical practice or prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with published standard Okla. Admin. Code § 435:10-7-4(2);
 - h. Dispensing, prescribing or administering a Controlled substance or Narcotic drug without medical need Okla. Admin. Code § 435:10-7-4(6);
 - i. Conduct likely to deceive, defraud, or harm the public Okla. Admin. Code § 435:10-7-4(11);
 - j. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery Okla. Admin. Code § 435:10-7-4(9);

- k. Violating any state or federal law or regulation relating to controlled substances. (Title 63 2-312) Okla. Admin. Code § 435:10-7-4(27);
- l. Directly or indirectly giving or receiving any fee, commission, rebate, or other compensation for professional services not actually and personally rendered, though this prohibition shall not prohibit the legal function of lawful professional partnerships, corporations, or associations Okla. Admin. Code § 435:10-7-4(30);
- m. Improper management of medical records Okla. Admin. Code § 435:10-7-4(36);
- n. Failure to cooperate with a lawful investigation conducted by the Board Okla. Admin. Code § 435:10-7-4(38);
- o. Failure to provide a proper setting and assistive personnel for medical act, including but not limited to examination, surgery, or other treatment. Adequate medical records to support treatment or prescribed medications must be produced and maintained Okla. Admin. Code § 435:10-7-4(41);
- p. Abuse of physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship Okla. Admin. Code § 435:10-7-4(44);
- q. Failure to establish a physician/patient relationship prior to providing patient-specific medical services, care or treatment, except in a clearly emergent, life threatening situation Okla. Admin. Code § 435:10-7-4(49);

CONCLUSION

Given the foregoing, the undersigned requests 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 the Defendant's professional license, including an assessment of costs and attorney's fees incurred in this action as provided by law.



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VERIFICATION

I, Jana Lane, under penalty of perjury, under the laws of the State of Oklahoma, state as follows:

1. I have read the above Verified Complaint regarding the Defendant, Bryan Lee, M.D.; and
2. The factual statements contained therein are true and correct to the best of my knowledge and belief.

Jana Lane
Jana Lane, Investigator
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Date: 08-27-2015

Oklahoma Medical Board
Place of Execution

VERIFICATION

I, Robbin Roberts, under penalty of perjury, under the laws of the State of Oklahoma, state as follows:

1. I have read the above Verified Complaint regarding the Defendant, Bryan Lee, M.D.; and
2. The factual statements contained therein are true and correct to the best of my knowledge and belief.

Robbin Roberts
Robbin Roberts, Investigator
OKLAHOMA STATE BOARD OF MEDICAL
LICENSURE AND SUPERVISION

Date: 8-26-15

Medical Board
Place of Execution