

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

**FILED**

AUG 29 2023

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

STATE OF OKLAHOMA, *ex rel.* )  
OKLAHOMA STATE BOARD )  
OF MEDICAL LICENSURE )  
AND SUPERVISION, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JOHN THOMAS BELK, M.D., )  
LICENSE NO. MD 30768, )  
 )  
Defendant. )

Case No. 23-03-6204

**PLAINTIFF'S RESPONSE AND BRIEF IN OPPOSITION  
TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**

COMES NOW Plaintiff, the State of Oklahoma, *ex rel.* Oklahoma State Board of Medical Licensure and Supervision ("Plaintiff"; "Board"), by and through undersigned counsel, and respectfully submits its Response and Brief in Opposition to Defendant's, John Thomas Belk, M.D., Motion to Dismiss for Lack of Jurisdiction ("Motion").

**SUMMARY OF THE ARGUMENT**

Through his Motion, Defendant essentially attempts to assert he has no license in Oklahoma. A measured examination of the facts and relevant law dictates otherwise. Defendant's Oklahoma licensure to practice allopathic medicine, number 30768, was granted by the Board on July 1, 2016, pursuant to the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act ("Act"). 59 O.S. § 480, *et seq.* The Board's online public database clearly indicates Defendant's license is presently "inactive." Just because a license has been placed in inactive status does not mean the licensure ceases to exist. Defendant is permitted per 59 O.S. § 495d to restore his license to active status upon demonstration of the relevant qualifications. *See*

59 O.S. § 495d. Upon doing so, Defendant’s licensure, represented by license number 30768, can be restored to “active” status with Board approval. By operation of law, Defendant maintains in perpetuity the same licensure from the day the licensure was initially issued by the Board. Because of this, Defendant’s licensure is preserved through his ability and privilege to reinstate his license number 30768 to active status through and by the Board and the Board therefore maintains jurisdiction over Defendant’s licensure. Moreover, in exercising this jurisdiction, Defendant’s due process rights are preserved where the Board is of limited jurisdiction pertaining exclusively to licensure, and where the Board has a compelling interest in ensuring the public’s protection.

### **ARGUMENT AND AUTHORITY**

**I. DEFENDANT DID NOT AND CANNOT “RESIGN” HIS LICENSE; RATHER, DEFENDANT’S LICENSE WAS PLACED IN INACTIVE STATUS BY OPERATION OF LAW.**

Defendant contends he “resigned his license” and the Board “accepted this resignation.” Defendant’s Motion, at p. 6. Despite Defendant’s attempt to aver otherwise, the Act does not provide a mechanism for a physician or any other Board licensee to “resign” their license<sup>1</sup>. Rather, Defendant elected to forgo the submission of his “annual reregistration” as required by the Board to maintain active licensure in Oklahoma under Okla. Admin. Code 435:10-7-10. When a physician does not reregister with the Board within sixty (60) days of the end of the registration period, their license is “suspended”, i.e., placed in inactive status, *regardless* of whether they inform the Board of their intent to forgo renewal. 59 O.S. § 495d. This is an automated process which the Board’s internal licensing system performs and is designed to facilitate the execution of the afore referenced law and prescribed procedure. That Defendant notified Board staff of the fact that he was choosing to not reregister his license holds no legal significance.

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<sup>1</sup> However, a licensee is permitted to *request* that the Board accept their surrender in lieu of prosecution under 59 O.S. § 509.1(E).

## II. THE BOARD HAS THE AUTHORITY TO EXERCISE JURISDICTION OVER LICENSURE, WHICH INCLUDES INACTIVE LICENSES, UNDER THE ACT.

The Act **need not state explicitly** that the Board has the authority to discipline an inactive license. An agency has, by implication and in addition to powers expressly granted by statute, powers necessary for the exercise of expressly granted powers, and powers which **may be fairly implied**. *Farmacy LLC v. Kirkpatrick*, 2017 OK 37, ¶ 20, 394 P.3d 1256, 1261 (quoting *Marley v. Cannon*, 1980 OK 147, ¶ 10, 618 P.2d 401, 405) (emphasis added).

The primary goal of statutory interpretation is to ascertain and follow the intent of the Legislature. *Estes v. ConocoPhillips Co.*, 2008 OK 21, ¶ 16, 184 P.3d 518, 525. Courts employ the rules of statutory construction where a statute's meaning is ambiguous or unclear, so as to avoid absurd consequences. *Id.* The same principles apply to administrative rules. *McClure v. ConocoPhillips Co.*, 2006 OK 42, ¶ 17, 142 P.3d 390, 396 (“Administrative rules, like statutes, are given a sensible construction bearing in mind the evils intended to be avoided.”). Further, where the goal of the statute is protection of the public, as is the case here with the Act, the statute should be construed liberally in order to effectuate this purpose. *Patel v. Kansas State Bd. of Healing Arts*, 22 Kan. App. 2d 712, 716, 920 P.2d 477, 480 (1996) (quoting *State v. Mountjoy*, 257 Kan. 163, 177, 891 P.2d 376 (1995) (“It is fundamental that **where a statute is designed to protect the public**, the language of that statute must be construed in the light of the legislative intent and purpose and is **entitled to a broad interpretation so that its public purpose may be fully carried out.**”)) (emphasis added). Under these principles taken together, although the Act may not explicitly outline the authority to discipline licensure where a license is inactive, the Board holds the **implied power** to take such action under the Act. *Ikpoh v. Dep't of Pro. Regul.*, 338 Ill. App. 3d 918, 927, 789 N.E.2d 442, 449 (2003) (“[A]lthough the Act does not *explicitly* state that the

Department has the authority to discipline a revoked license, the Department has the implied power to do so under the Act.”).

Defendant contends that because 59 O.S. § 503 is written in present tense, the legislature intended to limit the Board’s ability to investigate and initiate disciplinary proceedings to those individuals actively practicing under their licensure. Defendant refers only to 59 O.S. § 503. Defendant’s position is an inference at best, one that if taken as true, would undermine the legislature’s intent in the adoption of the Act as well the Board’s very purpose. In actuality, 59 O.S. § 503 is ambiguous because it does not explicitly state the Board has authority and jurisdiction to initiate proceedings of persons holding licenses at the time of the alleged misconduct. *Wang v. Bd. of Registration in Med.*, 405 Mass. 15, 18, 537 N.E.2d 1216, 1218 (1989) (“This provision is ambiguous in resolving the question before us because the **statute fails to state explicitly** whether the board’s jurisdiction pertains to persons holding certificates at the time of the investigation or to persons holding certificates *at the time of the alleged misconduct.*”) (emphasis added). Because the statutes do not distinguish between expired and active licenses, the Board’s implied jurisdiction encompasses all persons who have ever held a license and appear to have engaged in unprofessional conduct. *Brown v. State*, 110 Wash. App. 778, 784, 42 P.3d 976, 978–79 (2002), *as amended* (Mar. 18, 2002) (“Because the statute does not distinguish between expired and active licenses, it gives the Commission jurisdiction **over any person who has held a license** and appears to have engaged in unprofessional conduct.”) (emphasis added). In Defendant’s case, all instances of the alleged misconduct occurred from March, 2018 through September, 2019 *during the time Defendant was licensed* as an allopathic physician and was *in fact practicing* as a medical doctor in Oklahoma. Further, while Defendant’s *license* expired on July 1, 2022, as previously stated, Defendant’s *licensure* continues to exist, merely in inactive status.

Presently, there is no case law which analyzes the Oklahoma statutory scheme regarding whether the Board retains jurisdiction to initiate disciplinary proceedings against its licensees when a practitioner's licensure is in inactive status. However, other states have scrutinized this very issue and should be considered persuasive authority on the matter. In *Wang v. Board of Registration in Medicine*, the Massachusetts board of licensure initiated disciplinary proceedings against a physician some years well after the physician's Massachusetts license had lapsed, for misconduct that occurred while his license was active. *Wang v. Bd. of Registration in Med.*, 405 Mass. 15, 17, 537 N.E.2d 1216, 1218 (1989). Following a hearing, the licensing board revoked the physician's "registration to practice medicine and his inchoate right to reestablish himself as a licensed physician simply by reregistering." *Id.* The physician then appealed the board's decision to the Supreme Judicial Court of Massachusetts, arguing, much like Defendant here, that the Board lacked jurisdiction over him because his license had lapsed, and also alleging federal and state due process violations. The court ultimately affirmed the board's action, relying on its interpretation of the Massachusetts statutory scheme that "the certificate of registration of a physician who fails to renew "shall be automatically *revoked*, but shall be *revived* upon completion of the renewal process" (emphasis added)." *Id.* at 1219 (quoting G.L. c. 112, § 2). Under this statutory scheme, the Court concluded that:

[T]he board retained jurisdiction over the plaintiff. The board's order revoking the plaintiff's registration, **at a minimum**, revoked Dr. Wang's inchoate right to reestablish his status as a licensed physician in Massachusetts **simply by completing the renewal process**.

*Id.* (emphasis added). The court rendered this decision even though ***more than thirteen (13) years had passed*** between the time of the alleged misconduct and the board's initiation of disciplinary proceedings. *Id.* n.4.

Here, the Oklahoma statutes are worded comparably to the Massachusetts statutes relevant to the same issue in *Wang*. Per Massachusetts statute:

The certification of registration of any physician who does not file a completed renewal application together with the fee shall be automatically revoked, but shall be revived upon completion of the renewal process.

G.L. c. 112, § 2. Oklahoma provides for nearly the exact same procedure and mechanism for failure to renew, to wit:

If a licensee fails to apply for reregistration within sixty (60) days from the end of the previous registration period, as provided in this act, his original license to practice medicine and surgery in this state shall be suspended...

59 O.S. § 495d. Further, the “revival” language and concept utilized by the Massachusetts statutes is mirrored in the Oklahoma statute pertinent to “reinstatement”:

Said original license shall, upon due application by said person therefor, be *reinstated* by the Board<sup>2</sup>...

*Id.* (emphasis added). From review of these statutes, aided by the lens of the *Wang* case, it is clear the legislature intends that upon initial licensure by the Board, the licensure exists in **perpetuity**, and is merely subject to active status, via annual renewal, or inactive status, via failure (whether by choice or not) to renew. Under 59 O.S. § 495d, a physician may have their licensure reinstated, in which case their license can be eligible for return to “active” status from “inactive status.” If Defendant so desired, he could avail himself of this procedure and have his licensure, in the form of license number 30768, restored to active status by the next Board meeting. At the very least, Defendant’s property interest and inherent privilege to practice allopathic medicine in the State of

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<sup>2</sup> It should be noted this sentence in the statute continues on to specify which conditions reinstatement is contingent upon, however, the contingencies are merely showing that the licensee 1) has not practiced medicine in another jurisdiction in violation of the law; 2) has not had their license revoked in another jurisdiction; 3) has not been convicted of a felony or narcotics law; and 4) meets the same standards as required for initial licensure. See 59 O.S. § 495d, (a)–(d).

Oklahoma exist. Accordingly, the license itself, upon reinstatement, is merely representative of Defendant's inherent property interest and privilege which cannot be divested by mere expiration. *Patel v. Kansas State Bd. of Healing Arts*, 22 Kan. App. 2d 712, 715–16, 920 P.2d 477, 480 (1996) (Applying the *Schowengerdt* rationale, one could conclude that Dr. Patel's license **merely represents his privilege to practice medicine in Kansas and that the Board may revoke the privilege regardless of whether the license exists.**) (emphasis added).

### III. DEFENDANT'S DUE PROCESS RIGHTS REMAIN PRESERVED.

#### a. Defendant conflates personal jurisdiction of federal and state district courts with the jurisdiction of a licensing board.

This proceeding is before the Board, not an Oklahoma district court or federal district court. Both parties agree that the Board maintains limited jurisdiction – jurisdiction over licensure. Because Defendant maintains the property interest in his licensure, including the privilege and ability to reinstate his licensure if he so chooses, the Board, of *medical licensure*, inherently and necessarily *maintains jurisdiction over Defendant's licensure*. Rather than Defendant's assertion, the Board operates with “the authority and duty to regulate and administer the practice of allopathic medicine” in the state and the law specifically does not limit this authority to *currently practicing* allopathic physicians. Okla. Admin. Code 435:1-1-2. In the context of “individual proceedings” before the Board, a Defendant is defined as “the *person* against whom an individual proceeding is initiated,” **not any licensed or currently practicing physician**. Okla. Admin. Code 435:3-1-2. (emphasis added).

Moreover, even assuming Defendant's personal jurisdiction concerns are applicable, Defendant in fact availed himself to the forum of Oklahoma when he practiced medicine in the state from 2016 to the 2022, which includes the time in which the professional misconduct occurred. Further, the misconduct occurred **while Defendant was practicing medicine in**

**Wagoner, Oklahoma** and occurred with an **Oklahoma resident patient**. Additionally, as detailed and explained earlier herein, Defendant continues to avail himself to the State of Oklahoma because Defendant still retains the ability to reinstate his license, number 30768; Defendant's property interest in his Oklahoma licensure is **permanent** and exists only in Oklahoma, as does his privilege to restore his licensure to active status. *Wang v. Bd. of Registration in Med.*, 405 Mass. 15, 20–21, 537 N.E.2d 1216, 1220 (1989) (“**Although the plaintiff now is a nonresident physician who challenges the revocation of his registration in this Commonwealth, he retained, until the board issued its decision, a right to renew his certificate of registration.**”) (emphasis added). Accordingly, under these facts, Plaintiff's claim of unprofessional conduct alleged against Defendant arises “out of or relates to the defendant's contacts” with the forum of Oklahoma, the specific contact being his licensure interest. *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.* 137 C.Ct. 1773, 198 L.E.d.2d 395 (2017). The fact that Defendant no longer maintains the laundry list of contacts Defendant cites in his Motion is irrelevant, especially where the conduct occurred while Defendant had been availing himself of the law and privileges afforded him by the Board specifically and the State of Oklahoma generally, and where those contacts did in fact exist during that time. *Id.* (“**Also, the alleged acts of misconduct occurred in Massachusetts during the more than eleven years he was licensed to practice in Massachusetts...We conclude that there was no violation of the plaintiff's due process rights.**”).

**b. Defendant's substantive due process concerns are overstated, and public policy considerations significantly favor Plaintiff, not Defendant.**

Defendant attempts to claim his substantive due process rights would be violated if Plaintiff's jurisdictional interpretation was accepted because there is “no compelling government interest” in the Board prosecuting Defendant's license. Defendant's Motion, at p. 9. This is plainly



not true. The State of Oklahoma, and all state governments, have a compelling interest in ensuring that professional licensees cannot simply allow their license to expire, move to another state and obtain licensure in their profession in that state, all while avoiding repercussions from professional misconduct the licensee engaged in *while practicing as a licensed professional in the first state*. This is particularly so where the license relates to a profession involving rendering life implicating medical care to residents of the state.

If anything, the Board's rights and interests, rather than Defendant's, would be significantly impacted by Defendant's interpretation of Oklahoma law. The Board's purpose, like all state medical licensing boards, is to ensure the protection of the public and its interests. *Steelman v. Oklahoma State Bd. of Med. Licensure & Supervision*, 1992 OK CIV APP 2, ¶ 5, 824 P.2d 1142, 1144 (citing *Reeves v. State*, 36 Okl.Cr. 186, 253 P. 510 (1927) ("The Board derives its power from the police power of the State of Oklahoma to protect the public health.")); *Wang v. Bd. of Registration in Med.*, 405 Mass. 15, 20, 537 N.E.2d 1216, 1219 (1989). In protecting these public interests, it is necessary the Board exercise its right to preserve any evidence relating to charges of unprofessional conduct, lest risking that "witnesses may disappear and the passage of time itself may well dim or even eradicate the memory of the witnesses and thus preclude the construction of an adequate record." *Id.* (quoting *Cross v. State Bd. of Dental Examiners*, 37 Colo.App. 504, 508, 552 P.2d 38 (1976)); see also *Ikpoh v. Dep't of Pro. Regul.*, 338 Ill. App. 3d 918, 928, 789 N.E.2d 442, 450 (2003) (quoting *Boedy v. Department of Professional Regulation*, 433 So.2d 544 (Fla.App.1983) ("To permit a licensee to indefinitely hide behind an inactive status while evidence is lost, witnesses disappear and memory is eradicated serves no useful public interest.")). As the *Wang* court noted, "[A] jurisdictional standard must confer authority to discipline physicians *who commit misconduct while fully licensed*; otherwise a physician's obligation to respond to charges

arising out of his or her licensure would be defeated and the board's public protection function would be frustrated.” *Id.* (emphasis added).

Here, the same public policy considerations are in play. It is plainly contrary to the Board’s stated purpose, and thereby the Oklahoma legislature’s intentions, that a licensee can avail himself of the benefits of licensure in Oklahoma, engage in unprofessional conduct, allow his license to expire, and then claim that they are immune from the Board’s jurisdiction because they no longer have any licensure. The legislature unequivocally rejected the notion that physicians be able to operate in this manner, which would amount to self-regulation, by adopting the Act in the first place. *Boedy v. Dep’t of Pro. Regul.*, 433 So. 2d 544, 544 (Fla. Dist. Ct. App. 1983) (“[T]o suggest that physicians should be able to immunize themselves from prosecution **by simply going inactive** suggests a form of self-regulation of the medical profession which was obviously rejected by the Legislature when it chose to enact Chapter 458...” ) (emphasis added). Defendant’s interpretation of the Act would result in the absurd scenario where the Board has knowledge of unprofessional conduct but is precluded from taking any action to address the conduct, frustrating the entire intent and basis of the Act. *Ikpor v. Dep’t of Pro. Regul.*, 338 Ill. App. 3d 918, 929, 789 N.E.2d 442, 451 (2003) (“The legislature could not have intended for the Department to disregard known violations of the Act simply because the physician’s license is revoked.”). That the Board was unaware of the misconduct at the time it was occurring is absolutely inconsequential, and therefore the Board should not be penalized for what it could not have known at that time.

### CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Defendant’s Motion to Dismiss for Lack of Jurisdiction be overruled.

Respectfully submitted,



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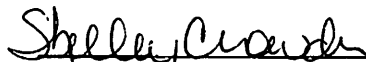
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**CERTIFICATE OF SERVICE**

This is to certify that on the 29<sup>th</sup> day of August, 2023, Plaintiff's Response and Brief in Opposition to Defendant's Motion to Dismiss for Lack of Jurisdiction was sent via U.S. mail first class, and by electronic mail, to:

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