

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

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JAN 26 2006

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

Plaintiff,

v.

TERRY JACKSON HEWITT, PTA
LICENSE NO. TA424,

Defendant.

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE
AND SUPERVISION

Case No. 05-10-3009

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, Terry Jackson Hewitt, PTA, Oklahoma license no. TA424, 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 Complaint and Citation filed herein on December 16, 2005 and acknowledges that hearing before the Board would result in some sanction under the Physical Therapy Practice Act.

Defendant, Terry Jackson Hewitt, PTA, 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 physical therapy assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §§ 480 *et seq.* and 887.1 *et seq.*

2. Defendant, Terry Jackson Hewitt, PTA holds physical therapy assistant license no. TA424 in the State of Oklahoma.

3. On or about October 3, 2005, Defendant was pulled over by the Hugo Police Department at which time an open 12-pack of beer was found in his car. Defendant admitted to police officers that he had a beer which he had hidden under the driver's seat. He was cited for Transporting an Open Container and was then released.

4. On or about October 4, 2005, Defendant was pulled over by the Hugo Police Department for suspected drunk driving. His speech was slurred, he smelled of alcohol and was unsteady on his feet. He admitted to police officers that he had consumed three (3) beers. He was arrested and agreed to submit to a blood test, at which time he was transported to the hospital. At the hospital, blood was drawn for testing. The vials of blood were left in the room with Defendant for a short time. When police officers returned, they found that two (2) of the vials' seals were broken and one (1) vial was missing.

5. Defendant later admitted to Board investigators that at the time of his October 4, 2005 arrest, he had consumed at least a 12-pack of beer, and had taken some Xanax and Cocaine.

6. On or about October 5, 2005, Defendant was released from jail and went to the Hugo Police Department to retrieve his vehicle which had been impounded when he was arrested on October 4, 2005. Outside the Hugo Police Department, he became involved in an altercation with his wife when he attempted to choke her, resulting in minor injuries to her. Police officers intervened, but she did not wish to press charges at that time.

7. On or about October 9, 2005, Defendant was arrested by the Hugo Police Department for Criminal Trespass and Public Intoxication. At the time of his arrest, he admitted to police officers that he had used crystal methamphetamine earlier that evening.

8. From October 11, 2005 through October 13, 2005, Defendant sought detoxification and early treatment for methamphetamine, cocaine and alcohol withdrawal at New Vision in Durant, Oklahoma. At the time of his discharge, he refused to obtain in-patient treatment.

9. Based on the allegations stated above, Defendant is guilty of unprofessional conduct as follows:

- A. Used drugs, narcotics, medication, or intoxicating liquors to an extent which affects the professional competency of the licensee in violation of 59 O.S. §887.13(4).
- B. Is guilty of conduct unbecoming a person licensed as a physical therapist or physical therapy 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).
- C. 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).
- D. Engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of OAC 435:20-5-8(5).
- E. Engaged in any conduct which potentially or actually jeopardizes a patient's life, health or safety in violation of OAC 435:20-5-8(9).
- F. Engaged in the unauthorized possession or use of illegal or controlled substances or pharmacological agents without lawful authority or prescription by an authorized and licensed independent practitioner of the State of Oklahoma in violation of OAC 435:20-5-8(14).
- 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(31).
- H. Is guilty of habitual intemperance or the habitual use of habit-forming drugs in violation of OAC 435:20-5-8(2).
- I. Was convicted of or confessed to a crime involving violation of the laws of this state in violation of OAC 435:20-5-8(4).
- J. Is guilty of the habitual intemperance or addicted use of any drug, chemical or substance that could result in behavior that interferes with the practice of physical therapy and the responsibilities of the licensee in violation of OAC 435:20-5-8(13).
- K. Has been convicted of, or confessed to or plead no contest to a felony or misdemeanor in violation of OAC 435:20-5-8(26).

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Physical Therapy 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, Terry Jackson Hewitt, PTA, Oklahoma physical therapy assistant license no. TA424, is guilty of the unprofessional conduct set forth below based on the foregoing facts:

- A. Used drugs, narcotics, medication, or intoxicating liquors to an extent which affects the professional competency of the licensee in violation of 59 O.S. §887.13(4).
- B. Is guilty of conduct unbecoming a person licensed as a physical therapist or physical therapy 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).
- C. 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).
- D. Engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of OAC 435:20-5-8(5).
- E. Engaged in any conduct which potentially or actually jeopardizes a patient's life, health or safety in violation of OAC 435:20-5-8(9).
- F. Engaged in the unauthorized possession or use of illegal or controlled substances or pharmacological agents without lawful authority or prescription by an authorized and licensed independent practitioner of the State of Oklahoma in violation of OAC 435:20-5-8(14).
- 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(31).
- H. Is guilty of habitual intemperance or the habitual use of habit-forming drugs in violation of OAC 435:20-5-8(2).
- I. Was convicted of or confessed to a crime involving violation of the laws of this state in violation of OAC 435:20-5-8(4).
- J. Is guilty of the habitual intemperance or addicted use of any drug, chemical or substance that could result in behavior that interferes with the

practice of physical therapy and the responsibilities of the licensee in violation of OAC 435:20-5-8(13).

- K. Has been convicted of, or confessed to or plead no contest to a felony or misdemeanor in violation of OAC 435:20-5-8(26).

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. The license of Defendant, Terry Jackson Hewitt, PTA, Oklahoma license no. TA424, is hereby **SUSPENDED** for a period of four (4) months beginning October 11, 2005 and continuing until February 11, 2006.
3. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Defendant shall be placed on **PROBATION** for a period of five (5) years following his suspension 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 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. Upon request of the Board Secretary, Defendant will request all hospitals in which he practices to furnish to the Board Secretary a written statement regarding monitoring of his practice while performing services in or to that hospital.
 - D. 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.

E. 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.

F. 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.

G. Defendant will attend at least four (4) meetings per week of a 12-Step program, to include the weekly Physician's Recovery Program meetings.

H. Defendant shall obtain marital counseling with a counselor approved in advance by the Board Secretary. Defendant shall continue with said counseling until both the counselor and the Board approve discontinuance of counseling. Defendant shall submit quarterly reports of his progress from this counselor to the Board Secretary for his review.

I. Defendant shall obtain individual counseling with a certified alcohol and drug counselor approved in advance by the Board Secretary. Defendant shall continue with said counseling until both the counselor and the Board approve discontinuance of counseling. Defendant shall submit quarterly reports of his progress from his counselor 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 a 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 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.

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.


4. Defendant's suspension will be lifted, and his license will be reinstated only upon payment in full of all costs and expenses incurred by the State of Oklahoma prior to January 27, 2006.

Dated this 26 day of January, 2006.


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

AGREED AND APPROVED:


Terry Jackson Hewitt, PTA
License No. TA424


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


Elizabeth A. Scott OBA #12470

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405/848-6841

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 Terry J. Hewitt, PTA, 2401 E. Sidney Ave, Broken Arrow, OK 74014.


Janet Swindle, Secretary