

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

FILED

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

FEB 07 2010

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Plaintiff,)

v.)

Case No. 09-07-3812

BETTI LOUISE WYMER, P.A.,)
LICENSE NO. PA 467,)

Defendant.)

COMPLAINT

COMES NOW the 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, and for its Complaint against the Defendant, Betti Louise Wymer, P.A., alleges and states as follows:

1. The Board is a duly authorized agency of the State of Oklahoma empowered to license and oversee the activities of physician assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §480 *et seq.* and §519.1 *et seq.*

2. Defendant, Betti Louise Wymer, P.A., holds Oklahoma license no. PA467. At the time of the events which are the subject of this Complaint, Defendant owned or controlled the day to day operations of the following three (3) medical clinics:

- i. Generations Clinic in Oklahoma City, Oklahoma-This clinic opened in January 2005. Defendant owned 50% and Tara Williss, R.N., owned 50%. On or about August 6, 2009, during the pendency of the State's investigation of this case, 100% ownership of the clinic was sold to Brady Aunko, Defendant's son, for \$50.00.
- ii. Generations Clinic in Moore, Oklahoma-This clinic opened in January 2006. Defendant owned 50% and Tara Williss, R.N., owned 50%. On or about August 6, 2009, during the pendency of the State's investigation of this case, 100% ownership of the clinic was sold to Brady Aunko, Defendant's son, for \$50.00.

iii. **Thomas Family Clinic in Chickasha, Oklahoma**-This clinic opened February 2008. Defendant owned 25%, Defendant's brother owned 25%, Defendant's son Brady Aunko owned 25% and Renee Whitehorn owned 25%. On August 6, 2009, during the pendency of the State's investigation of this case, Defendant gave up her interest, along with that of her brother, to her son, Brady Aunko.

3. None of the owners of any of these three (3) clinics are physicians.

4. Defendant operated these clinics, either in person or via telephone, on a daily basis during the time in question.

EMPLOYMENT OF DUNCAN MCRAE, M.D.
THOMAS FAMILY CLINIC-CHICKASHA

5. Beginning on or about February 14, 2008 and continuing through August 18, 2009, Defendant's primary supervising physician was Duncan McRae, M.D. Dr. McRae was employed only at the Thomas Family Clinic in Chickasha. Dr. McRae and Defendant admit that during the time Dr. McRae was her supervisor, he came to the clinic only one (1) day per month. Dr. McRae was paid \$1,000.00 per month for working at the clinic one (1) day per month.

6. During this time, Defendant employed no physicians other than Dr. McRae to act as her supervisor at the Thomas Family Clinic in Chickasha.

7. On or about August 6, 2009, Board investigators advised Dr. McRae that a physician assistant may not employ his or her supervising physician pursuant to 59 O.S. §519.6(B)(e), which provides as follows:

[I]t remains clear that the physician assistant is an agent of the supervising physician; but, **in no event shall the supervising physician be an employee of the physician assistant.**

After being advised of this statute, Defendant advised Defendant that he would no longer act as her supervising physician. Defendant confirmed this in a letter to Defendant dated August 18, 2009 where he formally withdrew as her supervising physician at all clinics owned or controlled by Defendant.

USE OF UNLICENSED PERSONNEL
THOMAS FAMILY CLINIC IN CHICKASHA

8. In or around 2009, Defendant stopped working at the Thomas Family Clinic on a regular basis due to her husband's illness. Rather than employing physicians or physician assistants, Defendant hired numerous unlicensed persons to practice medicine in her absence.

9. Beginning in or around January 2009, Lawanda Manous was employed by Defendant Betti Wymer at the Thomas Family Clinic in Chickasha. Ms. Manous was employed as an unlicensed medical assistant. Ms. Manous admits that when patients have come to the clinic when no practitioners are present, she has examined them, then called Defendant with the information. Defendant would then tell Ms. Manous what prescriptions to call in. Ms. Manous treated these patients and prescribed controlled dangerous substances using Defendant's DEA number, all with Defendant's knowledge and consent. If the patients were established patients, Ms. Manous would authorize refills without calling Defendant for instructions, all with Defendant's knowledge and consent.

10. In or around 2009, Carlos Mier was employed by Defendant Betti Wymer at the Thomas Family Clinic in Chickasha. Mr. Mier was employed as a "Physician Assistant" although he does not hold a physician assistant license from any state. When patients came to the clinic and no licensed practitioners were present, Mr. Mier would examine them and treat them, including prescribing controlled dangerous substances to them. In many instances, he would not call Defendant Wymer but would simply order that the prescriptions be called in under Defendant's DEA number. Mr. Mier treated these patients and prescribed controlled dangerous substances using Defendant's DEA number, all with Defendant's knowledge and consent.

11. From October 2008 until November 2008, Jason Underwood was employed by Defendant Betti Wymer at the Thomas Family Clinic in Chickasha. Mr. Underwood previously held a nursing license which had been revoked in or around 2005. When patients came to the clinic and no licensed practitioners were present, Mr. Underwood would examine them, then call Defendant with the information. Defendant would then tell Mr. Underwood what prescriptions to call in. Mr. Underwood treated these patients and prescribed controlled dangerous substances using Defendant's DEA number, all with Defendant's knowledge and consent.

12. Beginning in or around September 2008 through the present, Brady Aunko, Defendant's son, was employed by Defendant Betti Wymer at the Thomas Family Clinic in Chickasha. Mr. Aunko holds no health professional license. When patients came to the clinic and no licensed practitioners were present, Mr. Aunko would examine them, then call Defendant with the information. Defendant would then tell Mr. Aunko what prescriptions to call in. Mr. Aunko treated these patients and prescribed controlled dangerous substances using Defendant's DEA number, all with Defendant's knowledge and consent.

USE OF UNLICENSED PERSONNEL
GENERATIONS CLINIC-MOORE

13. On or about July 30, 2009, Defendant called Ashley Mayfield, a medical assistant at the Generations Clinic in Moore, Oklahoma. During this conversation, Defendant asked Ms. Mayfield if she could look in patients' ears, then call Defendant so she could tell her what to do. Defendant additionally asked Ms. Mayfield if she knew how to listen to lungs and if she knew what the lungs sound like if the patient has asthma. Ms. Mayfield asked Defendant if she was allowed to do that and Defendant advised her that it was fine so long as the patients were

established patients. Ms. Mayfield did not feel comfortable doing this since she is not a licensed medical professional so she contacted the Board offices and spoke with Board Investigator Jana Lane.

14. On or about August 4, 2009, Defendant called Ms. Mayfield and advised her that a representative from the Oklahoma Health Care Authority was coming to the Moore Clinic and that Ms. Mayfield was to advise them that the physicians had been on vacation and that the physicians who worked there were Duncan McRae, M.D., Betti Wymer, P.A., and Maria Joelson, ARNP. This statement was not true.

15. Dr. McRae has never worked at the Generations Moore Clinic.

UNDERCOVER OPERATION- THOMAS FAMILY CLINIC IN CHICKASHA

16. On or about July 28, 2009, Board Investigators Jana Lane and Steve Washbourne entered the Thomas Family Clinic in Chickasha. Ms. Lane posed as patient "Jana Rhodes" and asked to be seen due to an alleged sore throat. Ms. Lane did not have a sore throat.

17. After waiting approximately 1 ½ hours, Ms. Lane and Mr. Washbourne were lead back to an exam room. A man walked in and examined her. He was not wearing any identification. He examined her then asked where she wanted her prescriptions called in. Ms. Lane asked for written prescriptions, but the man advised that he did not write prescriptions. He then agreed to call them in to Walgreens. The Board investigators asked him for his name and he replied "Carlos Mier". When the investigators left, they asked the receptionist for Mr. Mier's card. She simply wrote his name on a card. When asked if he was a doctor, the receptionist advised that he was a "PA". The investigators paid \$74 for the office visit and left the clinic.

18. The Board investigators then went to Walgreens. They inquired if any prescriptions had been called in and were advised that they had been. The obtained a copy of what was filled out when the prescriptions were called in. This document showed prescriptions for Naproxen 500 mg., Claritin 10 mg., and Amoxicillin 500 mg. These were called in by "Linda" under Defendant Betti Wymer's name.

19. A review of Board records reflects that Carlos Mier is not licensed as a physician, a PA, or as any health professional in the State of Oklahoma.

PRESCRIBING CONTROLLED DANGEROUS SUBSTANCES TO FAMILY MEMBERS

20. From April 1, 2008 until May 10, 2009, Defendant wrote or authorized six (6) prescriptions for controlled dangerous drugs to her son, Patient BAL. These prescriptions include five (5) prescriptions for Hydrocodone 10 mg. and Tussionex ER, Schedule III controlled dangerous drugs, and one (1) prescription for Promethazine with Codeine, a Schedule V

controlled dangerous drug. Defendant's chart on her son reveals that she failed to perform a complete physical examination on her son prior to prescribing the controlled dangerous drugs, that she did not establish a legitimate medical need for the medications, and that she did not maintain an office record which accurately reflects the evaluation, treatment and medical necessity of treatment of her son. Patient BAL's medical record additionally reflects a past history of significant drug abuse.

**DEFENDANT'S PERSONAL USE OF
CONTROLLED DANGEROUS SUBSTANCES
WITHOUT DOCUMENTED MEDICAL NEED**

21. From January 5, 2009 until December 29, 2009, Defendant received thirty-one (31) prescriptions for controlled dangerous drugs for alleged "chronic back pain" and migraine headaches. These prescriptions include twenty-three (23) prescriptions for Morphine Sulphate ER 60, Oxycodone 5 mg and Oxycodone HCl 5 mg, Schedule II controlled dangerous drugs, for a total of 2,115 dosage units, five (5) prescriptions for Soma and Provigil, Schedule IV controlled dangerous drugs, for 214 dosage units, and three (3) prescriptions for Lomotil, a Schedule V controlled dangerous drug, for 300 dosage units, for a total of **2,629 total dosage units** at an average of **7.34 dosage units per day of controlled dangerous drugs**. Defendant's chart does not contain any work up of her back complaints, no drugs screens, no pill counts and no PMP. From the beginning of 2007 and leading up to the middle of 2009, Defendant's chart contains no findings referable to the back or neurological system.

22. Defendant was consuming these controlled dangerous substances at the same time she was practicing as a physician assistant in her clinics, as well as during the time she was too sick to come into the office when she was practicing from her home and directing her unlicensed employees on how to practice medicine and prescribe controlled dangerous substances in her absence.

23. Defendant is guilty of unprofessional conduct in that she:

A. Violated a provision of the Medical Practice Act or the rules promulgated by the Board pursuant to OAC 435:15-5-11(7), 59 O.S. §519.6(B)(e) and OAC 435:15-5-1(b)(6).

B. Prescribed or administered a drug or treatment without sufficient examination and the establishment of a valid physician patient relationship in violation of 59 O.S. §509(12).

C. Engaged in dishonorable or immoral conduct which is likely to deceive, defraud or harm the public in violation of 59 O.S. § 509 (8) and OAC 435:10-7-4 (11).

D. Failed to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical

necessity of treatment of the patient in violation of 59 O.S. §509 (18) and OAC 435:10-7-4(41).

E. Violated any provision of the medical practice act or the rules and regulations of the Board or of an action, stipulation, or agreement of the Board in violation of 59 O.S. §509 (13) and OAC 435:10-7-4(39).

F. She habitually uses intoxicating liquors or habit-forming drugs in violation of OAC 435:15-5-11(a)(1), 59 O.S. §509(4) and OAC 435:10-7-4(3).

G. She is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition in violation of 59 O.S. §509(15) and OAC 435:10-7-4(40).

H. She has engaged in 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. §509(9).

I. She prescribed, dispensed or administered controlled substances or narcotic drugs in excess of the amount considered good medical practice or prescribed, dispensed or administered controlled substances or narcotic drugs without medical need in accordance with published standard in violation of OAC 435:10-7-4(2) and (6).

J. She violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

K. She prescribed, sold, administered, distributed, ordered, or gave any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself or herself in violation of OAC 435:10-7-4(26).

L. She aided or abetted, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state in violation of 59 O.S. §509(14) and OAC 435:10-7-4(21).

M. She engaged in gross or repeated negligence in the practice of medicine and surgery in violation of OAC 435:10-7-4(15).

N. She is physically or mentally unable to practice medicine and surgery with reasonable skill and safety in violation of OAC 435:10-7-4(17).

O. She has engaged in practice or other behavior that demonstrates an incapacity or incompetence to practice medicine and surgery in violation of OAC 435:10-7-4(18).


P. She prescribed, sold, administered, distributed, ordered, or gave to a habitué or addict or any person previously drug dependent, any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug in violation of OAC 435:10-7-4(25).

Q. She engaged in negligence while in practice as a physician assistant or violated the Code of Professional Ethics adopted by the American Academy of Physician Assistants, Inc. in violation of OAC 435:15-5-11(a)(4).

Conclusion

WHEREFORE, the Plaintiff respectfully requests that 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 Defendant's physician assistant license, and an assessment of costs and attorney's fees incurred in this action as provided by law.

Respectfully submitted,



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