

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

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

Plaintiff,

FILED

MAY 17 2012

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

v.

**SUSAN L. DAVIS, PA,
LICENSE NO. PA533,**

Defendant.

Case No. 10-11-4110

**ORDER ACCEPTING
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, Susan L. Davis, P.A., Oklahoma license no. PA533, who appears in person and through counsel, Deborah Reheard, 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 9, 2011 and acknowledges that hearing before the Board would result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (the "Act") and the Physician Assistant Act.

Defendant, Susan L. Davis, P.A., states that she is of sound mind and is not under the influence of, or impaired by, any medication or drug and that she fully recognizes her right to appear before the Board for evidentiary hearing on the allegations made against her. Defendant hereby voluntarily waives her 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 she has read and understands the terms and conditions stated herein, and that this Agreement has been reviewed and discussed with her.

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 physician assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §§ 480 *et seq.* and 887.1 *et seq.* The Board has jurisdiction over this matter, and notice has been given in all respects in accordance with law and the rules of the Board.

2. Defendant, Susan L. Davis, P.A., holds Oklahoma license no. PA533 and at the time of the events in question, was employed by Steven Delia, M.D. at his clinic in Sallisaw, Oklahoma.

3. From October 2009 through November 5, 2010, Defendant's only supervising physician was Steven Delia, M.D.

4. In or around mid-October 2010, Defendant's supervising physician Dr. Delia was deployed to Afghanistan to serve in the military as part of the Army Reserve.

5. In November 2010, Board Investigators received information that Dr. Delia had left blank pre-signed prescriptions for use by his employees while he was out of the country. An Oklahoma State Pharmacy Board Investigator reported that prescriptions for Schedule II controlled dangerous substances were being presented at pharmacies when Dr. Delia was out of the country.

6. On or about November 5, 2010, Board investigators travelled to Dr. Delia's clinic in Sallisaw, Oklahoma and learned that Dr. Delia employed three (3) individuals: Defendant, LeeAnn Dewberry, LPN, and Jennifer Campney, LPN.

7. When questioned by Board investigators, LPN Dewberry admitted that Dr. Delia had not been in the clinic since mid-October and that she and the other LPN and Defendant had been treating all patients in his absence.

8. When questioned regarding the use of pre-signed prescriptions, LPN Dewberry admitted that when Dr. Delia was out of the office or out of the country, he left a cabinet full of blank pre-signed prescriptions for use by the two (2) LPNs as well as by Defendant. At that time, LPN Dewberry turned over **103 unused prescription pads** containing **5625 blank prescriptions pre-signed by Dr. Delia.**

9. LPN Dewberry also turned over a prescription pad sign-out log which showed that 80 prescription pads (each containing 55 prescriptions) had been signed out for use by the two (2) LPNs and Defendant between March 1, 2010 and November 3, 2010. The total number of blank pre-signed prescriptions signed out and used by these employees during this period of time was **4330 blank pre-signed prescriptions (17.5 per day).**

10. Further examination of the prescription records reflected that of these 4330 blank pre-signed prescriptions used by these employees, **1491 blank pre-signed prescriptions** were issued by Defendant.

11. When interviewed by Board investigators, Defendant admitted that over the past year, Dr. Delia had been out of the office for numerous occasions for weeks to months at a time due to vacations and military duties. During this time over the past year, she admitted that she regularly utilized the blank prescriptions pre-signed by Dr. Delia to issue Schedule II medications to patients, both new and established, as well as refills of medications to established patients. Defendant also admitted that she knew that both LPNs were treating patients and using the blank prescriptions pre-signed by Dr. Delia to give prescriptions to patients.

12. Defendant admitted that after Dr. Delia left for Afghanistan, she and the LPNs treated thirty-five (35) or more patients per day, all without any physician supervision. She also admitted to Board investigators that **“We know we’re not supposed to do this”**.

13. Defendant additionally admitted that at the time of the Board investigation (November 5, 2010), Dr. Delia was not scheduled to return to the United States for almost four (4) more months until February 28, 2011.

14. After returning from Afghanistan, Dr. Delia was interviewed by Board investigators. At that time, Dr. Delia admitted that he did regularly allow his staff to use blank prescriptions pre-signed by him. He admitted that he allowed Defendant to use them to issue Schedule II controlled dangerous substances to patients, both new and established. Dr. Delia admitted that he did not always speak with Defendant before her use of his blank pre-signed prescriptions for Schedule II controlled dangerous substances.

15. Clinic records reflect that from October 14, 2010, the day Dr. Delia left for Afghanistan, until November 5, 2010, the day Board investigators interviewed clinic staff, the clinic documented **452 patient visits**, with treatment by only the LPNs or the Defendant, and with **no physician supervision** as required by law.

16. A review of patient records reflects numerous instances where patients were issued Schedule II controlled dangerous substances by Defendant during periods of time when Dr. Delia was out of the office, out of the State or even out of the country, all through the use of the prescriptions he had pre-signed for his staff's use.

17. Under the Oklahoma Physician Assistant Practice Act, Physician Assistants are **not allowed** to prescribe Schedule II controlled dangerous substances in an outpatient setting.

18. Title 21 CFR §1306.05 provides as follows:

Manner of issuance of prescriptions.

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner.

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

- A. 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).
- B. Committed 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).
- C. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government or the laws of this state in violation of 59 O.S. §509(7).
- D. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509 (1).
- E. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).

- G. 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).
- H. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).
- I. 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).
- J. Violated a provision of the Medical Practice Act or the rules promulgated by the Board pursuant to OAC 435:15-5-11(7).

Conclusions of Law

1. The Board has jurisdiction and authority over the Defendant and subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act and its applicable regulations and the Physician Assistant Act. The Board is authorized to enforce the acts as necessary to protect the public health, safety and welfare.

2. Defendant, Susan L. Davis, P.A., Oklahoma physician assistant license PA533, is guilty of unprofessional conduct set forth below based on the foregoing facts:

- A. 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).
- B. Committed 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).
- C. Confessed to a crime involving violation of the antinarcotic or prohibition laws and regulations of the federal government or the laws of this state in violation of 59 O.S. §509(7).
- D. Procured, aided or abetted a criminal operation in violation of 59 O.S. §509 (1).

- E. Wrote a false or fictitious prescription for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs in violation of 59 O.S. §509 (11).
- F. Violated any state or federal law or regulation relating to controlled substances in violation of OAC 435:10-7-4(27).
- G. 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).
- H. Engaged in the use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery in violation of OAC 435:10-7-4(19).
- I. 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).
- J. Violated a provision of the Medical Practice Act or the rules promulgated by the Board pursuant to OAC 435:15-5-11(7).


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. Defendant's license shall be **SUSPENDED** for a period of **THREE (3) MONTHS**.
3. During the period of suspension, Defendant shall complete a Prescribing Class at a facility approved in advance in writing by the Board Secretary on prescribing and required record keeping. Defendant shall provide to the Board Secretary proof of completion of said class.
4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees and investigation costs.

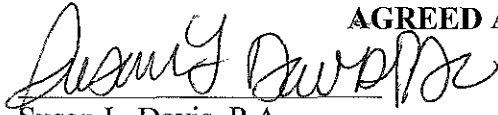
5. A copy of this written order shall be sent to Defendant as soon as it is processed.

Dated this 17 day of May, 2011.

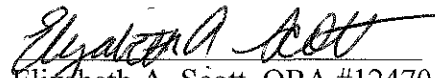


J. Andy Sullivan, M.D., President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED

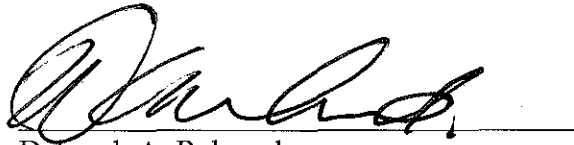


Susan L. Davis, P.A.
License No. PA533

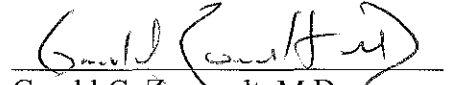


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Gerald C. Zumwalt, M.D.
Secretary and Medical Director
Oklahoma State Board of
Medical Licensure and Supervision

Attorney for Defendant

CERTIFICATE OF MAILING

I certify that on the 18 day of May, 2012, a mailed a true and correct copy of the Order Accepting Voluntary Submittal to Jurisdiction to Deborah A. Reheard, Reheard Law Office, 100 N. 2nd Street, P.O. Box 636, Eufaula, OK 74432 and to Susan L. Davis, P.O. Box 492, Warner, OK 74469.



Janet Swindle