

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

FILED

JAN 13 2011

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

Plaintiff

v.

JENNIFER LEE MALONE, OTA,
LICENSE NO. OA913,

Defendant.

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 10-04-3985

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, Jennifer Lee Malone, OTA, Oklahoma license no. OA913, who appears in person and pro se, offer 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 November 19, 2010, and further 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 Occupational Therapy Practice Act.

Defendant, Jennifer Lee Malone, OTA, 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 Physical Therapy Assistants in the State of Oklahoma pursuant to 59 Okla. Stat. §§ 887.1 *et seq.*

2. Defendant, Jennifer Lee Malone, OTA, holds occupational therapy assistant license no. OA913 in the State of Oklahoma.

3. During September and October 2009, Defendant worked as an occupational therapy assistant for Green Country Rehabilitation where she worked at the Tahlequah Public Schools.

4. In or around October 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient MEL, a nine (9) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient MEL on October 1 and October 8, 2009. School attendance records reflected that Patient MEL was absent from school during the time that Defendant claimed to have given the therapy.

5. In or around September 2009 and October 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient CFL, a six (6) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient CFL on September 10, 2009, September 24, 2009 and October 1, 2009. School attendance records reflected that Patient CFL was absent from school during the time that Defendant claimed to have given the therapy. Additionally, Defendant failed to provide scheduled occupational therapy services to Patient CFL on October 8, 2009, October 22, 2009 and October 27, 2009, noting that the patient was absent. School attendance records reflected that Patient CFL was not absent from school on those days.

6. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient EML, a six (6) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient EML on September 29, 2009. School attendance records reflected that Patient EML was absent from school during the time that Defendant claimed to have given the therapy.

7. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient CNL, an eight (8) year old boy, to her

employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient CNL on September 10, 2009 and September 24, 2009. School attendance records reflected that Patient CNL was absent from school during the time that Defendant claimed to have given the therapy.

8. In or around October 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient TPL, a nine (9) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient TPL on October 22, 2009. School attendance records reflected that Patient TPL was absent from school during the time that Defendant claimed to have given the therapy.

9. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient MSL, an eight (8) year old girl, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient MSL on September 10, 2009. School attendance records reflected that Patient MSL was absent from school during the time that Defendant claimed to have given the therapy.

10. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient JAL, a ten (10) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient JAL on September 16, 2009 and September 23, 2009. School attendance records reflected that Patient JAL was absent from school during the time that Defendant claimed to have given the therapy.

11. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient DBL, a fourteen (14) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient DBL on September 23, 2009 and September 30, 2009. School attendance records reflected that Patient DBL was absent from school during the time that Defendant claimed to have given the therapy.

12. In or around August 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient JCAL, an eleven (11) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient JCAL on August 26, 2009. School attendance records reflected that Patient JCAL was absent from school during the time that Defendant claimed to have given the therapy.

13. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient JCEL, an eleven (8) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient JCEL on September 11, 2009 and September 18, 2009. School attendance records reflected that Patient JCEL was absent from school during the time that Defendant claimed to have given the therapy.

14. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient JFL, an eleven (11) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient JFL on September 28, 2009. School attendance records reflected that Patient JFL was absent from school during the time that Defendant claimed to have given the therapy.

15. In or around September 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient DKL, an eleven (11) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient DKL on September 16, 2009. School attendance records reflected that Patient DKL was absent from school during the time that Defendant claimed to have given the therapy.

16. In or around October 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient TML, a fourteen (14) year old boy, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient TML on October 9, 2009 and October 28, 2009. School attendance records reflected that Patient TML was absent from school during the time that Defendant claimed to have given the therapy.

17. In or around October 2009, Defendant submitted false and fraudulent occupational therapy treatment records relating to Patient DWL, a twelve (12) year old girl, to her employer, as well as false and fraudulent billing records to her employer for submission to the state Medicaid program. Specifically, Defendant represented that she provided occupational therapy services to Patient DWL on October 2, 2009. School attendance records reflected that Patient DWL was absent from school during the time that Defendant claimed to have given the therapy.

18. When later questioned by Board Investigator Jana Lane, Defendant admitted that she did not have adequate time to see all of the students she was assigned to see and that she did not keep accurate records of when and if she treated the patients. She additionally admitted that she may have documented that she treated a patient when the patient was not in attendance at school on that date.

19. Defendant is guilty of unprofessional conduct in that she:
- A. Engaged in unprofessional conduct as defined by the rules established by the Board, or violated the Code of Ethics adopted and published by the Board in violation of 59 O.S. §888.9(2).
 - B. Engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of OAC 435:30-1-10(a)(3).
 - C. Participated in fraud, abuse and/or violation of state or federal laws in violation of OAC 435:30-1-10(a)(6).
 - D. Engaged in the improper management of medical records, inaccurate recording, falsifying or altering of patient records in violation of OAC 435:30-1-10(a)(8).
 - E. Falsely manipulated patient records in violation of OAC 435:30-1-10(a)(9).
 - F. Engaged in fraudulent billing practices and/or violation of Medicare and Medicaid laws or abusive billing practices in violation of OAC 435:30-1-10(a)(7).
 - G. Violated any provision of the Occupational Therapy Practice Act or the rules and regulations of the board ... in violation of OAC 435:30-1-10(a)(29).

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, the Oklahoma Occupational Therapy Practice Act, and their applicable regulations. The Board is authorized to enforce the acts as necessary to protect the public health, safety and welfare.

2. Based on the foregoing facts, Defendant, Jennifer Lee Malone, Oklahoma license OA913, is guilty of the unprofessional conduct set forth below:

- A. Engaged in unprofessional conduct as defined by the rules established by the Board, or violated the Code of Ethics adopted and published by the Board in violation of 59 O.S. §888.9(2).

- B. Engaged in dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public in violation of OAC 435:30-1-10(a)(3).
- C. Participated in fraud, abuse and/or violation of state or federal laws in violation of OAC 435:30-1-10(a)(6).
- D. Engaged in the improper management of medical records, inaccurate recording, falsifying or altering of patient records in violation of OAC 435:30-1-10(a)(8).
- E. Falsely manipulated patient records in violation of OAC 435:30-1-10(a)(9).
- F. Engaged in fraudulent billing practices and/or violation of Medicare and Medicaid laws or abusive billing practices in violation of OAC 435:30-1-10(a)(7).
- G. Violated any provision of the Occupational Therapy Practice Act or the rules and regulations of the board ... in violation of OAC 435:30-1-10(a)(29).

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, Jennifer Lee Malone, OTA, Oklahoma license no. OA913, is hereby **SUSPENDED** beginning January 13, 2011, and continuing for a period of ninety (90) days.

3. Pursuant to the parties' voluntary agreement and submittal to jurisdiction, Defendant shall be placed on **PROBATION** for a period of one (1) year following her suspension under the following terms and conditions:

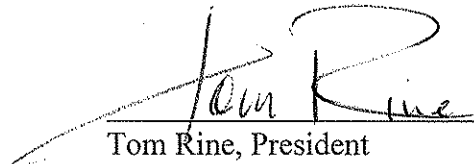
- A. Defendant will conduct Defendant's practice in compliance with the Oklahoma Occupational Therapy Practice Act as interpreted by the Board. Any question of interpretation regarding the Act or this Order shall be submitted in writing to the Board, and no action based on the subject of the question will be taken by Defendant until clarification of interpretation is received by Defendant from the Board.

- B. Defendant will practice under direct clinical on-site supervision as defined in OAC 435:30-1-2 during the entire term of probation.
- C. Defendant will keep the Board informed of her current address.
- D. Defendant shall make herself available for one or more personal appearances before the Board or its designee upon request.
- E. Defendant shall submit any required reports and forms on a timely, prompt and accurate basis to the Compliance Coordinator or designee.
- F. Failure to meet any of the terms of your Board Order will constitute cause for the Board to initiate additional proceedings to suspend, revoke or modify your license after due notice and hearing.
- G. Upon request of the Board Secretary, Defendant will request all hospitals or facilities in which she practices or anticipates practicing to furnish to the Board Secretary of the Oklahoma State Board of Medical Licensure and Supervision a written statement regarding monitoring of her practice while performing services in or to that facility.
- H. Defendant will furnish to each and every state in which she holds licensure or applies for licensure and hospitals, clinics or other institutions in which she 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.
- I. Defendant will keep current payment of all assessments by the Oklahoma State Board of Medical Licensure and Supervision for prosecution, investigation and monitoring of her case, which shall include but is not limited to a one hundred fifty dollar (\$150.00) per month fee during the term of probation.
- J. 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.
- K. Failure to meet any of the terms of this Board Order will constitute cause for the Board to initiate additional proceedings to

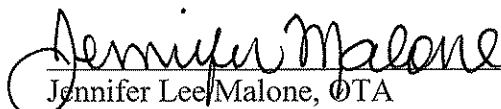
suspend, revoke or modify Defendant's license after due notice and hearing.


4. This Voluntary Submittal to Jurisdiction and Order will go into effect, Defendant's suspension will be lifted, and her license will be reinstated only upon payment in full of all costs and expenses incurred by the State of Oklahoma prior to January 14, 2011.

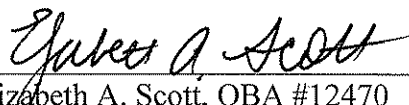
Dated this 13 day of January, 2011.


Tom Rine, President
Oklahoma State Board of
Medical Licensure and Supervision

AGREED AND APPROVED:


Jennifer Lee Malone, OTA
License No. OA913

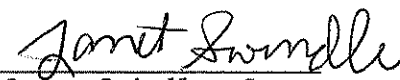

Gerald C. Zumwalt, M.D.
Secretary & Medical Advisor
Oklahoma State Board of
Medical Licensure and Supervision


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405/962-1400

Attorney for the Oklahoma State Board
of Medical Licensure and Supervision

CERTIFICATE OF MAILING

I certify that on the 14th day of January 2011, I mailed a true & correct copy of the Voluntary Submittal to Jurisdiction to Jennifer Lee Malone, OTA, 1540 Sunway, Oklahoma City, OK 73127.

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Janet Swindle, Secretary