



the necessary elements for which [she] is charged”); *Reeves v. State*, 1939 OK CR 152, 96 P.2d 536 (holding that crime of obtaining property by false pretenses requires among other things, a “false representation or statement of past existing fact” and “an obtaining of something of value by accused . . . without compensation to the person from whom it is obtained”), *overruled in part on other grounds by Broadway v. State*, 1991 OK CR 113, ¶ 7, 818 P.2d 1253, 1255.

### DECISION

The Judgment of the District Court is **AFFIRMED**. Under Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2008), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKMULGEE COUNTY  
THE HONORABLE JOHN MALEY, DISTRICT JUDGE

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#### OPINION BY: A. JOHNSON, J.

LUMPKIN, P.J.: Concur in Part/Dissent in Part  
C. JOHNSON, V.P.J.: Concur  
CHAPEL, J.: Concur  
LEWIS, J.: Concur  
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**LUMPKIN, PRESIDING JUDGE: CONCUR IN PART/DISSENT IN PART**

While I agree Counts 1-22 were properly dismissed due to the time period covered by those Counts being before the period covered by the fraudulent license, i.e. February 1, 2004 through January 31, 2006, I must dissent to the Court's affirming the action of the district court on the remaining Counts. With all due respect, I believe the district court, and maybe this Court, was more concerned about the fairness of the state statute that required the revocation of the defendant's LPN License due to failure to pay state income taxes than it was about the fraud that had been committed through the use of a falsified LPN License.

The Court states there was a failure to prove "an obtaining of something of value by accused . . . without compensation to the person from whom it was obtained." Yet the analysis misses the point of what took place, i.e. the nursing home contracted for the services of a properly licensed LPN nurse but they did not receive the services of a licensed LPN. While the defendant did work at the nursing home, she was not a licensed LPN, thus her fraudulent acts deprived the nursing home of the level of services for which she was hired. The nursing home would not have hired her for an LPN position if they had known she was not a licensed LPN. It was her "false representation" that caused the nursing home to hire and pay her at an LPN rate of pay. To follow the district court's analysis, any person fraudulently holding themselves out as a licensed professional, who actually performed some services, could not be

prosecuted for that fraud because some service was actually provided. However, the real issue is, was the nursing home deprived of the services of a licensed LPN by the defendant's fraud? The answer is yes. It does not matter that the defendant actually worked the hours at the nursing home, because the hours were not worked by a licensed LPN. The payments she received for the work of a licensed LPN were received due to her fraud and misrepresentation. I would reverse and remand for the district court to issue a bind over on Counts 23 through 84.