

BEFORE THE OKLAHOMA BOARD OF CHIROPRACTIC EXAMINERS

In the Matter of)	
)	
BERNARD FUH, D.C.)	Complaint No. 15-2017
License No. 3705,)	
)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND SUMMARY ORDER

This matter came before the Oklahoma Board of Chiropractic Examiners (the “Board”) on **June 1, 2017**. The State appeared by and through Assistant Attorney General Martha R. Kulmacz. The Board advisor was Assistant Attorney General Grant Moak. The Board members participating were: **Dr. Christopher Waddell, Dr. Amanda Miller, Dr. Heath Travis, Dr. Matt Aguilar, Dr. Troy Sturgill.**

After reviewing the Advisory Committee Report regarding consumer-filed complaint No. 15-2017, and hearing argument of counsel, the Board hereby makes the following findings, conclusions and summary order pursuant to OAC 140:3-3-6.

FINDINGS OF FACT

1. Respondent is a chiropractic physician holding license no. 3705.
2. Respondent holds Injectable Certification No. 517.
3. Complaint No. 15-2017 was filed by a patient’s wife who alleges that Respondent prescribed and injected various drugs and chemicals for and/or into her husband’s body. The husband is a cancer patient. Respondent had led the patient to believe the injections were being conducted in a safe and sterile manner and that Respondent was authorized to administer them. However, an injection site became necrotic and the patient was placed in the hospital on or about

May 16, 2017. It appears from the complaint that the patient did not understand the nature and quality of the drugs and chemicals being administered.

3. The Advisory Committee member assigned to investigate conducted an onsite review of Respondent's office on May 24, 2017, and spoke with Respondent. The member found very unsanitary conditions in the area where injectables were being mixed and administered. There was no Laminar Flow Hood, no sterile preparation area, and the flooring was carpet. OSHA rules require chiropractic clinics to be maintained in a clean and sanitary condition.

4. Certain drugs and chemicals identified in the complaint as being prescribed or administered to the patient by Respondent do not fall within the category of vitamins, minerals or nutritional supplements. The legend drugs included azulfadine, metformin and prednisone, which were ordered by the chiropractic clinic using the DEA license of an osteopathic physician ("DO"). The patient contends he was never seen by the DO. The DO states the DO never met or examined the patient. The patient's wife states that on or about May 18, 2017, the DO contacted her and told her that the DO did not see the patient, did not review the patient's chart, did not authorize the patient's prescriptions, and had not worked at the chiropractic clinic in 3 months. Respondent has not yet filed a written response, but verbally stated that the DO's last paycheck was picked up on May 22, 2017.

5. It was the unanimous opinion of the Advisory Committee that there is sufficient evidence and reasonable cause to support the allegations in the complaint, and that public health, safety, and welfare imperatively requires emergency action.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter under the Oklahoma Chiropractic Practice Act ("Act") (59 O.S. § 161.1 *et seq.*) Applicable provisions of the Act and Board rules include the following:

59 O.S. § 161.12 - Grounds for Imposing Penalties.

* * *

B. The following acts or occurrences by a chiropractic physician shall constitute grounds for which the penalties specified in subsection A of this section may be imposed by order of the Board:

* * *

7. Unlawfully possessing, prescribing or administering any drug, medicine, serum or vaccine. This section shall not prevent a chiropractic physician from possessing, prescribing or administering, by a needle or otherwise, vitamins, minerals or nutritional supplements, or from practicing within the scope of the science and art of chiropractic as defined in Section 161.2 of this title;

* * *

12. Violating any provision of the Oklahoma Chiropractic Practice Act; or

13. Violating any of the rules of the Board.

OAC 140:15-7-5. Code of Ethics

There is hereby created the "Oklahoma Chiropractic Code of Ethics". This Code of Ethics is based upon the fundamental principle that the ultimate end and objective of the chiropractic physician's professional services and effort should be: "The greatest good for the patient."

* * *

(5) Chiropractic physicians shall maintain the highest standards of professional and personal conduct. Chiropractic physicians shall refrain from all illegal or morally reprehensible conduct;

(6) Chiropractic physicians shall assure that the patient possesses enough information to enable an intelligent choice in regard to proposed chiropractic treatment. The patient shall make his or her own determination on such treatment;

(7) Chiropractic physicians shall observe the appropriate laws, decisions and rules of state governmental agencies of the United States and the State of Oklahoma and cooperate with the pertinent activities.

* * *

2. Applicable provisions of federal law include but are not limited to the following OSHA regulations:

- (a) 29 C.F.R. Section 1910.1030(d)(4) Housekeeping
 - (i) General. Employers shall ensure that the worksite is maintained in a clean and sanitary condition.
- (b) 29 C.F.R. Section 1910.141(3) Housekeeping
 - (i) All places of employments shall be kept clean to the extent that the nature of the work allows.

3. The statutes and rules regarding summary suspensions are provided in 75 O.S. Sections 314(C)(2) and 314.1 and OAC 140:3-3-6.

4. Title 75 O.S. Section 314(C)(2) provides:

If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

5. Title 75 O.S. Section 314.1 provides:

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted pursuant to this article.

6. The Board's rule regarding summary suspension is as follows:

OAC 140:3-3-6. Summary suspension of a license

If the Board, upon review of the report of the Advisory Committee, finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to the effect in its order, summary suspension of an original license or renewal, or both, may be ordered by the Board pending initiation of an individual proceeding. In such an event, the individual proceeding against the affected license shall be initiated within thirty (30) days after the date of the issuance of the summary suspension order.

7. Based upon the Findings of Fact set forth above and as reported to the Board in the Advisory Committee report, and the Conclusions of Law as found by the Board, there exists reasonable grounds to believe that Respondent has violated the Board's statutes and rules as referenced in Conclusions of Law paragraphs 1 and 2 above, and that the public health, safety or welfare imperatively requires emergency action pending a full evidentiary hearing.

SUMMARY ORDER

IT IS THEREFORE ORDERED by the Oklahoma Board of Chiropractic Examiners as follows:

1. The Board, upon review of the report of the Advisory Committee, finds that the public health, safety or welfare imperatively requires emergency action, and hereby **summarily suspends Respondent's Injectable Certification No. 517 effective immediately** pending the initiation of an individual proceeding pursuant to OAC 140:3-3-6.

2. The summary suspension of Respondent's Injectable Certification shall remain in effect until the earlier of either the entry of a further Board order lifting that suspension or the Respondent chiropractic physician establishing to Board staff's written satisfaction after an onsite inspection that the substandard sanitary conditions have been corrected. Respondent shall notify Board staff in writing when Respondent contends the unsanitary conditions have been corrected and request an onsite inspection by Board staff.

3. The name and license number of Respondent was not disclosed to the Board members at the time they were presented with information contained in the Findings of Fact above nor at the time they voted on this order nor at any time during the meeting. The Board authorized the Chair to issue the instant order in a manner which identifies the Respondent by name.

4. This order shall become effective immediately. Although this order will be

submitted for anticompetitive review and a determination by the Oklahoma Attorney General, 74 O.S. § 18b(A)(5), that it is in compliance with the Board's authority and mission to protect public health, safety and welfare, this order's effectiveness is not dependent upon completion of that Attorney General review.

5. Respondent shall immediately cease and desist from injecting any substances into human beings.

All Members present voted "AYE".

Dated this **1st day of June, 2017**.

A handwritten signature in black ink, appearing to read "C. Waddell", written over a horizontal line.

Dr. Christopher Waddell, Board President