

**BEFORE THE BOARD OF CHIROPRACTIC EXAMINERS  
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.	)	
BOARD OF CHIROPRACTIC	)	
EXAMINERS,	)	
	)	
Petitioner,	)	
vs.	)	Case No. 003-2017
	)	
BRIANA SHILEY, D.C.,	)	
License No. 4227,	)	
Respondent.	)	

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**AGREED ORDER**

This Agreed Order is presented for the review and consideration of the Oklahoma Board of Chiropractic Examiners (“Board”) at its regularly scheduled Board meeting held on **August 16, 2018**. A quorum of Board members is present as recorded in the minutes of the meeting. The Board is represented by Martha R. Kulmacz, Assistant Attorney General for the State of Oklahoma, as Prosecutor for the Board. Assistant Attorney General Grant Moak appears as advisor to the Board. Respondent BRIANA SHILEY, D.C., (“Respondent”), License # 4227, is represented by attorneys Alexander C. Vosler and Micah B. Cartwright of Johnson Hanan Vosler Hawthorne & Snider. Respondent and her attorneys do not appear in person as their personal appearances are not required since they previously signed and approved this Agreed Order as reflected below.

The Board alleges that Respondent violated certain provisions of the Oklahoma statutes and Oklahoma Administrative Code (“OAC”) in the manner set forth and described below and as alleged in the Complaint. Pursuant to 59 Okla. Stat. § 161.12(a)

and OAC 140:3-3-5, the violations alleged against Respondent, if established as true, authorize the Board to take disciplinary action, including the authority to revoke or suspend a license, to restrict the practice of the licensee, to censure or reprimand, and/or impose administrative fines or probation, as well as other remedies considered to be less than suspension or revocation. In order to avoid the expense and uncertainty inherent in an evidentiary hearing, the Respondent while neither stipulating to nor admitting the Complaint's Statement of Facts and allegations does not contest them for purposes of the entry of an Agreed Order.

#### COMPLAINT'S STATEMENT OF FACTS

**COUNT 1: Alleged violation of OAC 140:15-7-5(5) and (13): Failure to maintain the highest standard of professional and personal conduct and engaging in sexual behavior during the doctor-patient relationship.**

1. Respondent BRIANA SHILEY ("Dr. Shiley" or "Respondent"), is a licensed chiropractic physician with license number 4227, and was at all times relevant engaged in chiropractic practice at the office of MTP Chiropractic, LLC d/b/a Generations Chiropractic Clinic for approximately eight (8) months in 2016, located at 1991 Tower Drive, Suite G, Moore, OK 73160. This included approximately April/May 2016 through ~~June~~<sup>JANUARY</sup>, 2017.

2. The Board exercises jurisdiction over the Respondent pursuant to 59 O.S. Section 161.1 et seq.

3. During approximately April, 2016, Respondent commenced a relationship with her landscaper/boyfriend which lasted until sometime in approximately November, 2016. The Respondent and the boyfriend did not marry during this period of time.

4. Commencing on June 21, 2016, through December 1, 2016, Respondent performed seventeen (17) chiropractic treatments or adjustments on her boyfriend, all but one (1) of which occurred while Respondent maintained a relationship with her patient.

5. Mollie Pertree, D.C., the owner of Generation Chiropractic Clinic, filed a complaint with the Board on or about February 27, 2017 regarding the facts underlying the complaint. Notice of the complaint was mailed to Respondent on March 22, 2017, and received by Respondent on March 28, 2017.

6. On May 5, 2017, Respondent submitted her response to the Board contending: Respondent admitted: having a relationship with the landscaper/boyfriend that began prior to rendering any chiropractic treatment; that she had provided him with chiropractic treatment during that relationship after other treatment options failed to relieve the pain which adversely affected his ability to perform the duties of his gainful employment; Respondent was on salary and the treatment provided to her boyfriend did not result in any monetary benefit to her; the complaining party, Dr. Pertree, is a disgruntled former employer with whom Respondent is engaged in a business/legal dispute; the relationship with the landscaper/boyfriend ended amicably with the landscaper/boyfriend receiving his final chiropractic treatment from Respondent not long after the relationship ended; Respondent did not coerce, manipulate or abuse her boyfriend's trust; Respondent simply sought to help her boyfriend; the boyfriend did not file a complaint; and Respondent is a relatively new physician and did not intend to violate any rules.

7. The Advisory Committee considered this matter on February 28, 2018 and recommended a finding of probable cause to file a complaint. On March 27, 2018, the

Board considered the Advisory Committee's recommendation and found probable cause existed to file a Complaint, a Complaint was filed and a Subpoena for Production of Documents was issued and the Respondent was served with both. The parties negotiated the proposed Agreed Order which is submitted to the Board.

8. While the Respondent does not stipulate to all of the facts alleged above or in the Complaint, Respondent agrees that the State has evidence which, if fully believed by the Board, could constitute clear and convincing evidence of a violation alleged in the Complaint and in this Agreed Order.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter under 59 O.S. § 161.1 et seq.
2. Further applicable Oklahoma statutes and rules include but are not limited

to the following:

##### **Section 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:

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;

3. **Count 1.** By engaging in a relationship with her with her boyfriend during the period of time that her boyfriend was also her patient, and by not terminating the dating relationship during the period of time that her boyfriend was also her patient, and by not maintaining the highest standards of the profession, the Respondent violated Board rules at OAC 140:15-7-5 (5).

4. Respondent acknowledges the State has evidence which, if fully believed by the Board, could constitute clear and convincing evidence of violation by Respondent of Board rule at OAC 140:15-7-5 (5), for which Respondent is subject to discipline.

#### **POTENTIAL PENALTIES**

5. Title 59 O.S. § 161.12(a) provides the penalties which may be imposed by the Board, which penalties are as follows:

A. The Board of Chiropractic Examiners is authorized, after notice and an opportunity for a hearing pursuant to Article II of the Administrative Procedures Act, to issue an order imposing one or more of the following penalties whenever the Board finds, by clear and convincing evidence, that a chiropractic physician has committed any of the acts or occurrences set forth in subsection B of this section:

1. Disapproval of an application for a renewal license;
2. Revocation or suspension of an original license or renewal license, or both;
3. Restriction of the practice of a chiropractic physician under such terms and conditions as deemed appropriate by the Board;
4. An administrative fine not to exceed One Thousand Dollars (\$1,000.00) for each count or separate violation;
5. A censure or reprimand; and
6. Placement of a chiropractic physician on probation for a period of time and under such terms and conditions as the Board may

specify, including requiring the chiropractic physician to submit to treatment, to attend continuing education courses, to submit to reexamination, or to work under the supervision of another chiropractic physician.

6. Regarding past disciplinary proceedings, if any, OAC 140:3-3-4 (k) provides that:

The board shall consider past disciplinary action taken against any accused found guilty in any present proceeding. Such past conduct shall not be evidence of guilty in the present proceeding but will be considered only in determining appropriate sanctions to be imposed by the Board in the present proceeding.

7. In considering what penalty should be imposed, OAC 140:3-3-5 provides the following considerations:

Whenever the Board finds a chiropractic physician guilty of a violation in an individual proceeding, the Board may consider the following factors in its determination of a penalty to be imposed against said chiropractic physician:

(1) Consequences to the public. If potential or actual damage to the health, safety or welfare of the general public is more likely than not to occur as a result of acts or omissions by the licensee, the Board may impose a more severe punishment than if such damage is less likely to occur.

(2) Consequences to the patient. If potential or actual damage to the health, safety, or welfare of the patient on whose behalf the complaint is brought is more likely than not to occur as a result of acts or omissions by the licensee, the Board may impose a more severe punishment than if such damage is less likely to occur.

(3) Intent. If it is evident from the facts presented that the violation committed by the licensee was intentional, the Board may impose a more severe punishment than if it is not so evident; provided that such violation may be deemed by the Board to be intentional on the part of the licensee if the violation:

(A) occurred as the result of negligence on the part of the licensee; or

(B) was part of a pattern of extreme or ongoing carelessness as to be without regard for the health, safety or welfare of the general public or a patient; or

(C) violated the principles of the Chiropractic Code of Ethics.

(4) Negligence. If the violation committed by the licensee resulted from negligence on the part of licensee, but was not so gross, or was not the result of such carelessness, as to meet the test of (3) of this subsection, the Board may impose a less severe punishment than would be the case if the negligence met such a test.

### HISTORY OF PRIOR DISCIPLINE

Respondent has no history of prior discipline.

### AGREED ORDER

The Board and Respondent hereby stipulate and agree to the following terms and conditions in resolution of the Complaint:

- 1) Respondent is assessed an administrative fine in the total amount of **One Thousand and 00/100 DOLLARS (\$1,000.00)**, for the violation set forth in Conclusions of Law paragraph 3 above, which fine shall be paid in full to the Oklahoma Board of Chiropractic Examiners on or before **six (6) months of the date of** receipt from Board staff of a copy of this Agreed Order approved by the Board;
- 2) Respondent shall, **within twelve (12) months** of the date of receipt from Board staff of a copy of this Agreed Order approved by the Board, successfully complete and pass with a score of at least three (3) points on each of the following two (2) sections of the Ethics and Boundaries Assessment Services, LLC ("EBAS") Essay Examination: "Boundaries Violations" and "Unprofessional Conduct";
- 3) Respondent shall **within ninety (90) days** from the receipt of this Agreed Order approved by the Board pay to the Oklahoma Board of Chiropractic Examiners all costs of this action in the amount of **One Thousand One Hundred and Ninety Dollars (\$1,190.00)** towards legal fees incurred by the Board;
- 4) Respondent's license shall be placed on **probation for a period of one (1) year** commencing with the date of receipt from Board staff of a copy of this Agreed Order approved by the Board. While on probation Respondent is required to **every ninety (90) days** file with the Board a statement signed under oath disclosing whether during the preceding ninety (90) days from the date of the statement Respondent has engaged in a dating and/or intimate relationship with any patient.

- 5) Respondent acknowledges that Respondent understands the terms and conditions of this Agreed Order and that Respondent is entering into the Agreed Order voluntarily;
- 6) Respondent acknowledges that Respondent understands the Agreed Order is a public record and subject to disclosure under the Oklahoma Open Records Act;
- 7) Respondent acknowledges that Respondent understands the Board may be required to report this adverse action to the National Practitioner Data Bank pursuant to and in accordance with federal regulations;
- 8) Failure of the Respondent to comply with any of the terms of this Agreed Order could result in further disciplinary action as allowed by any applicable law or the Board's rules;
- 9) The Board retains jurisdiction over this case until all matters are finally resolved as set forth in the Agreed Order;
- 10) The Board may initiate disciplinary action against the Respondent for acts, if any, which were not part of the acts giving rise to this individual proceeding and Agreed Order; and
- 11) Should this Agreed Order not be accepted by the Board, Respondent agrees that neither the presentation of this proposed Agreed Order to the Board nor the Board's consideration of the proposed Agreed Order will be deemed to have unfairly or illegally prejudiced the Board or its individual members. Therefore, such action by the Board will not be grounds for precluding the Board or any individual member of the Board from further participating in proceedings related to the matters set forth in **Complaint No. 003-2017**.
- 12) This Agreed Order shall become final upon issuance of an Attorney General Opinion requested by the Board pursuant to Executive Order 2015-33 determining that the proposed action(s) are in furtherance of State policy and are adequately justified.

**IT IS SO ORDERED, ADJUDGED, AND DECREED**

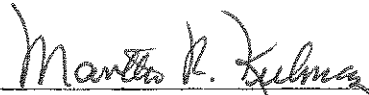
Dated this 16 day of August, 2018.



**Dr. Christopher Waddell, President**  
**Oklahoma Board of Chiropractic Examiners**



**Form and substance of this Agreed Order regarding Complaint 003-2017 are approved.**



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Prosecutor for the State of Oklahoma ex rel.  
The Oklahoma Board of Chiropractic Examiners

#### **ACKNOWLEDGMENTS**

Respondent understands that the Board is free to accept or reject this Agreed Order, and if rejected by the Board, a formal disciplinary hearing on the complaint against Respondent shall be had. The Agreed Order shall not become effective until approved by majority of a quorum of the Board and endorsed by a representative member of the Board and there has been issued an Attorney General Opinion requested by the Board pursuant to Executive Order 2015-33 determining the proposed action(s) are in furtherance of State policy and are adequately justified.

If the Agreed Order is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Agreed Order will not be regarded as evidence against the Respondent at the subsequent disciplinary hearing. Respondent will be free to defend himself/herself and no inferences will be made from Respondent's willingness to have entered into this agreement. It is agreed that neither the presentation of the Agreed Order nor the Board's consideration of the Agreed Order will be deemed to have unfairly

or illegally prejudiced the Board or its individual members and therefore will not be grounds for precluding the board or any individual Board member from further participation in proceedings related to the matters set forth in the Agreed Order.

Furthermore, Respondent understands and acknowledges that this Agreed Order does not affect any criminal, civil or administrative charges, if any, that may be brought by any governmental entity other than the Oklahoma Board of Chiropractic Examiners.

The Board retains jurisdiction over the instant case until all matters are finally resolved as set forth in the Agreed Order.

Respondent understands that discipline assessed is an adverse action that the Board is mandated by federal law to report to the National Practitioner Data Bank (NPDB) and/or possibly to other applicable regulatory agencies. The reporting of such actions may have an effect on Respondent's ability to obtain or maintain licensure as a chiropractic physician in other states.

#### **VOLUNTARY WAIVER OF RIGHTS**

Respondent is fully aware of Respondent's rights to contest the charges pending against Respondent. These rights include: representation by an attorney at Respondent's own expense; the right to a public hearing on any charges or allegations filed; the right to confront and cross-examine witnesses called to testify against Respondent; the right to present evidence on Respondent's own behalf; the right to compulsory process to secure attendance of such witnesses; the right to testify on Respondent's own behalf; the right to receive written findings of fact and conclusions of laws supporting the decision on the merits of the complaint and the right to obtain judicial review of the Board's decision.

Respondent, in exchange for the Board's acceptance of this Agreed Order, voluntarily waives all of these rights.

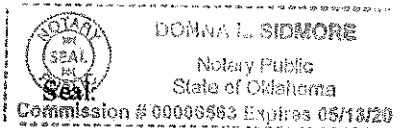
Respondent states that Respondent has read the entirety of the above Agreed Order document. Respondent requests that the Agreed Order be presented to and approved by the Oklahoma Board of Chiropractic Examiners. Respondent states that Respondent has been afforded the opportunity to be represented by Respondent's own attorney at Respondent's own expense in these proceedings and Respondent is either satisfied with that representation or has waived representation.

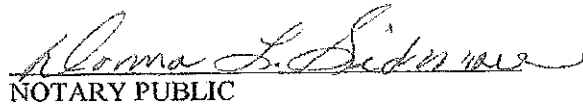
Dated this 15<sup>th</sup> day of August, 2018.

  
BRIANA SHILEY, D.C.  
RESPONDENT

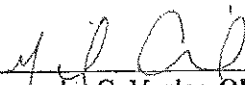
STATE OF OKLAHOMA )  
                                  )SS  
COUNTY OF OKLAHOMA )

SUBSCRIBED AND SWORN to before me by BRIANA SHILEY on this 15<sup>th</sup> day of August, 2018.



  
NOTARY PUBLIC

**APPROVED:**

  
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Alexander C. Vosler, OBA #19589  
Micah B. Cartwright, OBA #32745  
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