NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

DRS. DAN CULLUM, ALVIN PHILIPOSE, DAMON COFFMAN, RYAN NOVAK, KIM HESTER, JAMES HICKMAN, and DOUG COOK,

Plaintiffs/Appellants,

vs.

STATE OF OKLAHOMA, *ex rel.* OKLAHOMA BOARD OF CHIROPRACTIC EXAMINERS,

Defendant/Appellee.

Case No. 122,692

APPEAL FROM THE DISTRICT COURT OF
BEAVER COUNTY, OKLAHOMA

HONORABLE JON PARSLEY, DISTRICT JUDGE

AFFIRMED

James M. Love
TITUS HILLIS REYNOLDS LOVE
Tulsa, Oklahoma

David V. Carsey
Braden W. Mason
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and

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Pro Hac Vice
For Plaintiffs/Appellants

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OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Drs. Dan Cullum, Alvin Philipose, Damon Coffman, Ryan Novak, Kim Hester, and Doug Cook appeal the trial court's decision finding the Oklahoma Board of Chiropractic Examiners correctly determined that platelet injection therapy was not within the scope of practice for chiropractors.[1] Upon review, we affirm the decision of the district court.[2]

I.

The chiropractic physicians named above filed a petition for declaratory ruling before the board. The question raised by the chiropractors was whether platelet injection therapy (PIT), also referred to as platelet rich plasma therapy, is within the chiropractic scope of practice as defined in 59 O.S. § 161.2 and OAC 140:1-1-2. The board issued a written declaratory ruling on December 10, 2019, finding that PIT was outside the scope of chiropractic practice. The same day, the attorney general's office issued an opinion finding same. The chiropractors filed a notice of appeal and petition for review of the board's decision on January 16, 2020.

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[1] Dr. Hickman filed a voluntary motion to dismiss and withdraw on April 4, 2025. It was granted by the court four days later.

[2] The appellants' motion for oral argument is denied.

One of the chiropractors who filed the 2019 petition referenced above, Dr. Dan Cullum, filed another petition for declaratory ruling before the board on October 13, 2021. The petition asked the board to declare that "scope of practice" as defined in 59 O.S. § 161.2 and OAC 140:1-1-2 does not exclude PIT and autologous activated platelet therapy (AAPT). At the board's meeting on December 9, 2021, the board's members voted unanimously that a chiropractic physician's scope of practice per 59 O.S. § 161.2 and OAC 140: 1-1-2 did not include PIT or AAPT. On March 15, 2022, the attorney general issued another opinion to the executive director of the board which adopted and reaffirmed the board's 2019 ruling. The board's declaratory ruling detailing their decision and adopting the findings of the 2019 ruling was issued on March 16, 2022.

Dr. Cullum filed an application for rehearing on March 28, 2022. He argued that rehearing was necessary because there was newly available evidence, a need for additional evidence, and that probable error was committed by the board because the board went into an executive session to discuss the petition and neither Dr. Cullum nor counsel were allowed to participate in or listen to the session. At a meeting in October 2022, the board unanimously voted to deny the motion for reconsideration on all three grounds provided. The board issued its order detailing this decision on December 8, 2022. Dr. Cullum filed a notice of appeal with the trial court on January 6, 2023. Dr. Cullum argued that the board's decision was clearly erroneous in view of the reliable, material, probative, and substantial competent evidence and also that the board's decision was arbitrary and capricious.

The board filed a motion to dismiss the appeal in the district court, alleging that a briefing schedule was set back in 2020 when the seven chiropractors filed their notice of intent to appeal, and no action was taken in that case until Dr. Cullum filed a second appeal to the district court in 2023. The court subsequently issued an order which consolidated the two cases. After engaging in motion practice, the parties ultimately stipulated that they waived oral arguments and submitted the case to the court for its ruling on the briefs and record provided. Both parties submitted findings of fact and conclusions of law. On October 29, 2024, the court issued a journal entry denying the petitioners' district-court appeal. The chiropractors appeal that decision.

II.

Because the correctness of an administrative agency order is before us, the Oklahoma Administrative Procedures Act (OAPA), 75 O.S. § 250 *et seq.*, governs our review. *City of Tulsa v. State ex rel. Pub. Employees Relations Bd.*, 1998 OK 92, ¶ 12, 967 P.2d 1214, 1219. "Under the OAPA a district court, the Court of Civil Appeals and th[e Supreme] Court apply the same review standards to the administrative record." *Id.* ¶ 12. An agency's order will be affirmed if the record contains substantial evidence in support of the facts upon which the decision is based and the order is otherwise free of error. *Scott v. Oklahoma Secondary School Activities Ass'n*, 2013 OK 84, 313 P.3d 891. The order is subject to reversal, however, if the appealing party's substantial rights were prejudiced because the agency's findings, inferences, conclusions, or decisions were entered in excess of its statutory authority or jurisdiction, or were arbitrary,

capricious, or clearly erroneous in view of the reliable, material, probative and substantial competent evidence. *Id.*; *Oklahoma Dept. of Public Safety v. McCrady*, 2007 OK 39, 176 P.3d 1194. An appellate court may not substitute its judgment for that of the agency on its factual determinations. *McCrady*, 2007 OK 39 at ¶ 10.

III.

A.

The petitioners asked the board to declare that "scope of practice" as defined in 59 O.S. § 161.2 and OAC 140:1-1-2 does not exclude PIT. The petitioners describe PIT as taking blood from a patient, processing it in a machine to separate the platelets from the plasma, and then injecting the platelets into the patient's joints. The concentrated injection of platelets stimulates healing, regenerates tissue, reduces pain, and improves function and mobility.

Our statutes define the chiropractic scope of practice as follows:

> Chiropractic is the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans. The scope of practice of chiropractic shall include those diagnostic and treatment services and procedures which have been taught by an accredited chiropractic college and have been approved by the Board of Chiropractic Examiners.

59 O.S. § 161.2(A). Meanwhile, the Oklahoma Administrative Code defines the scope of practice as follows:

> "Scope of practice" means chiropractic is the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans. Pursuant to 59 O.S. § 161.2, the Board hereby approves those diagnostic and treatment services and procedures related to the science and art of

> chiropractic as defined herein and as described in the Oklahoma Chiropractic Practice Act and, which have been taught by an accredited chiropractic college.... Nothing in this rule shall permit a Chiropractic Physician to prescribe legend drugs, beyond injectable nutrients as authorized by, as is currently the law in Title 59 Section 161.12 of the Oklahoma Statutes.

140 O.A.C. § 1-1-2. Finally, statutory law details various penalties for chiropractors. The relevant section reads as follows:

> A. 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.

59 O.S. § 161.12.

In denying Dr. Cullum's request, the board found that Dr. Cullum failed to provide sufficient evidence that PIT was being taught by an accredited chiropractic college.[3] Additionally, the board found that the scope of chiropractic in Oklahoma regarding injectables is limited to vitamins, minerals, and nutritional supplements. The board opined that platelets and plasma are biologics and that Dr. Cullum did not provide sufficient evidence showing that platelets or plasma injected into a patient during PIT are vitamins, minerals, or

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[3] As further explored below, the board specifically found that Dr. Cullum showed that he previously taught a PIT course as a continuing education course *approved by* the National University of Health Sciences (NUHS) but did not provide substantial evidence to support a finding that PIT is *being taught* by an accredited chiropractic college such as NUHS.

nutritional supplements. The appellants object to these findings and conclusions, as further explored below. Additionally, the appellants object to the board's purported reliance on certain attorney general opinions.

B.

First, we note at the outset that the legislature gave the board wide-ranging authority to decide what is outside the scope of chiropractic practice by requiring board approval for all treatments included within the scope. 59 O.S. § 161.2 ("The scope of practice of chiropractic shall include those diagnostic and treatment services and procedures which have been taught by an accredited chiropractic college ***and*** have been approved by the Board of Chiropractic Examiners." (emphasis supplied)). The board could have chosen to approve only specifically listed treatments, even if they were taught at an accredited chiropractic college. However, the board limited its own power with the adoption of its administrative rules, which effectively pre-approved those treatments "which have been taught by an accredited chiropractic college ...." 140 O.A.C. § 1-1-2. Thus, the primary importance in this appeal is whether the board's finding that PIT has *not* been so taught is supported by the record.

The appellants argue that "PIT injectable therapy has been taught by the National University Health system, one of the oldest accredited Chiropractic Institutions in the country since at least 2009."[4] *Brief-in-Chief*, pg. 25. However,

[4] We note here that the appellants raised several other issues in their petition in error that were not briefed. Those issues are deemed waived pursuant to Oklahoma Supreme Court Rule 1.11(k).

upon careful review, we hold that the appellants cannot successfully challenge the court's finding that PIT was not being taught at an accredited college. The board was presented with evidence that showed that PIT was taught as a continuing education course *sponsored by* an accredited chiropractic college, and therefore, not *taught by* an accredited chiropractic college. *Amended Record of the Declaratory Ruling Number 2021-02*, pg. 437. The syllabus provided to the board shows that the student learning outcome was to "explain the clinical uses and mechanisms of ... platelet rich plasma ...." *Id.* at 316. Notably, the goal of the course was not to explain methodology for how to inject platelet rich plasma. Further, the workshop on PIT, which was taught by Dr. Cullum, spanned only four days and PIT is not mentioned in the hour-by-hour breakdown of the four-day workshop. *Id.* at 517. At bottom, there was sufficient evidence presented to the board to support its finding that PIT was not taught by an accredited chiropractic college. This finding is fatal to the appellants' cause.

As explained above, this Court will affirm an agency's order if the record contains substantial evidence in support of the facts upon which the decision is based. *Scott v. Oklahoma Secondary School Activities Ass'n*, 2013 OK 84, 313 P.3d 891. The order is subject to reversal, however, if the appealing party's substantial rights were prejudiced because the agency's findings, inferences, conclusions, or decisions were entered in excess of its statutory authority or jurisdiction, or were arbitrary, capricious, or clearly erroneous in view of the reliable, material, probative and substantial competent evidence. *Id.*; *Oklahoma Dept. of Public Safety v. McCrady*, 2007 OK 39, 176 P.3d 1194. Here, we find that

the board was presented with substantial evidence that PIT was not taught by an accredited chiropractic college and the board's declaratory ruling that PIT is not in the scope of practice for chiropractors in Oklahoma was not arbitrary, capricious, or clearly erroneous in review of the evidence presented by the board.

C.

While we find the above analysis sufficient to decide this appeal, we will address other arguments the appellants present.

The appellants' brief focuses almost entirely on their argument that the attorney general opinions that the board relied upon in reaching its decision that PIT was not in the scope of practice are incorrect and, therefore, the board's decision should be invalidated. The attorney general opinions that were put before the board during administrative proceedings will each be discussed briefly below.

Attorney General Opinion 92-13 addressed the following question: "Did the enactment of 59 O.S.1991 § 161.2, change the healing art of chiropractic beyond its traditional boundaries to include the fields of orthopedics, physical therapy, pediatrics and family practice?" 1992 OK AG 13, ¶ 0 (emphasis removed). The central holding of this opinion is that chiropractic physicians cannot be authorized to practice in areas outside the traditional and defined scope of chiropractic, such as orthopedics or pediatrics, or to prescribe or administer dangerous drugs.[5] *Id.* ¶ 29. The relevant question presented in

[5] The opinion states that the legislature did not intend to expand, contract, or alter the field of chiropractic or to allow doctors of chiropractic to practice in other health fields.

Attorney General Opinion 02-22 was: "Does the Oklahoma Chiropractic Practice Act, 59 O.S. 2001, §§ 161.1 – 161.20, or the Oklahoma State Board of Chiropractic Examiners' administrative rules, OAC 140:1-1-1 – 140:25-3-8, authorize a licensed chiropractor to administer injections such as flu shots, vitamins and other therapeutic agents?" 2002 OK AG 22, ¶ 0. The opinion ultimately concluded that flu shots could not be administered by chiropractors, but injectable vitamins were allowed to be administered. *Id.* ¶ 18. Regarding whether a chiropractor may inject a "therapeutic agent," the opinion stated that only vitamins, minerals, or nutritional supplements were permitted to be injected, *i.e.*, no other therapeutic agents were permitted. *Id.* ¶ 7.

The other two attorney general opinions referenced by appellants were not published; rather, they were sent directly to Beth Kidd, executive director of the board, in response to specific questions she raised regarding scope of practice for chiropractors. Opinion 2019-264A asked the attorney general for his opinion on whether PRP fell within the scope of practice. The attorney general responded that the board "has the authority to regulate the practice of chiropractic in this state in accordance with the provisions of the Act." *Amended Record of Declaratory Ruling Number 2021-02*, pg. 70. Opinion 2022-5A, also sent directly to Beth Kidd, was issued in response to Dr. Cullum asking the board to issue a finding that PRP is within the scope of practice. This opinion similarly found that

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Id. ¶ 29. In so concluding, the attorney general noted that "the legislature did not specify every diagnostic and treatment service and procedure possible to be approved by the Board. In order to address the areas of practice you raised in your question, we must review appropriate statutes and authoritative works in those areas." *Id.* ¶ 17.

"it is the official opinion of the Attorney General that the Oklahoma Board of Chiropractic Examiners has adequate support for the conclusion that these rulings advance the state of Oklahoma's policy to protect public health, safety, and welfare by ensuring chiropractic physicians provide adequate care and meet minimum standards of professional conduct." *Id.* at 503.

The appellants contend that the attorney general opinions discussed above ignore "basic rules of statutory construction" and render the statutory definition of the scope of practice and the science and art of chiropractic "surplusage." *Brief-in-Chief*, pg. 6. According to the appellants, the scope of practice is unambiguously defined in 59 O.S. § 161.12 to permit injectable-certified chiropractic physicians to administer PIT, when the therapeutic measure or treatment service has been taught by an accredited chiropractic college and approved by the board. Thus, the appellants contend that the board should not look to the language in § 161.12(B)(7), which states that chiropractors cannot administer drugs, serums or vaccines but they can inject vitamins, minerals, and nutritional supplements, to define the scope of practice because the legislature intended for § 161.12(B)(7) to be a penalty provision.

Additionally, the appellants point out that the specific language in § 161.12(B)(7) reads as follows: "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." Appellants allege that the board, by arguing that only vitamins,

minerals, and nutritional supplements are allowed to be injected, ignores the "or" and what comes after it in its analysis. Thus, according to the appellants, the attorney general's analysis of § 161.12(B)(7) produced a result that significantly and unnecessarily narrowed the legislature's intended scope of practice.

The Oklahoma Supreme Court has long held that although attorney general opinions are persuasive authority, the Court "accord[s] great weight to the opinion concerning construction of statutes." *Goodin v. Bd. of Ed. of Indep. Sch. Dist. No. 14 of McCurtain Cnty.*, 1979 OK 87, ¶ 9, 601 P.2d 88, 91. Although not clear from the appellants' argument, it appears they mainly take issue with the 1993 and 2002 published attorney general opinions. The 1993 opinion found that chiropractors could not practice in areas outside the traditional and defined scope of chiropractic. The 2002 opinion found that the Chiropractic Act and the board's rules did not authorize a licensed chiropractor to administer vaccines such as flu shots and other therapeutic agents. The legislature has met every year since 2002 and has not expressed any disapproval through legislation regarding the statutory construction used in these attorney general opinions. "The long-continued construction of a statute by a department of government charged with its execution is entitled to great weight and should not be overturned without cogent reasons; and where the legislature has convened many times during this period of administrative construction without expressing its disapproval, such silence may be regarded as acquiescence in or approval of the administrative construction." *Peterson v. Oklahoma Tax Comm'n*, 1964 OK

78, ¶ 16, 395 P.2d 388, 39. Subsection (B)(7) provides specific limitations on what chiropractors may or may not inject, and we find that the attorney general's analysis of this section to be persuasive and in no way violative of the rules of statutory construction.

D.

Next, appellants argue that "all AG opinions violate 74 O.S. § 18(b)(A)(5) by rendering an opinion on a question of fact." *Brief-in-Chief*, 14. Title 74 O.S. § 18b(A)(5) states that the purpose of an attorney general opinion is to give an opinion on a question of law. Upon review of the two attorney general opinions, we find that they do not render an opinion on a question of fact. First, we note that the 2002 opinion declines to answer one of the questions posed because it is a question of fact outside the scope of an attorney general opinion pursuant to 74 O.S. § 18b(A)(5).[6] Additionally, upon review of Opinion 92-13, we find that the attorney general is merely providing a legal interpretation as to the change in the scope of chiropractic due to the enactment of 59 O.S. § 161.12. Thus, these opinions do not answer questions of fact outside the scope of interpretation authorized for an attorney general opinion or violate 59 O.S. § 161.12.

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[6] The relevant section of that opinion reads as follows:

> Your specific question asks whether the performance of diagnostic procedures such as PAP smears and tissue scrapings are authorized ... Whether the performance of diagnostic procedures such as PAP smears and tissue scrapings relate to the "science and art that teaches health in anatomic relation" and have been taught by an accredited chiropractic college ... is a fact question outside the scope of an Attorney General Opinion.
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> 2002 OK AG 22, ¶ 17.

E.

Next, the appellants argue that the attorney general opinions and the board's enforcement of them by means of *de facto* rulemaking violate the Oklahoma constitution. *Brief-in-Chief*, pgs. 19-24. The appellants claim that the attorney general opinions ignore fundamental rules of statutory construction and interpretation; therefore, all of the previous AG opinions interpreting the scope of practice produce an unconstitutional interpretation and, if applied, result in a violation of the appellants' constitutional rights. Although unclear from the briefing, the appellants presumably argue that they were denied due process because the Administrative Procedures Act specifically authorizes a district court declaratory judgment suit to test the validity of an agency rule, 75 O.S. § 306(A), and they were "denied by the Trial Court's ruling to challenge either the Attorney General Opinions or the Board's defacto (sic) Rule based upon it." *Brief-in-Chief*, pg. 20.[7] We note that the appellants in this case did not file a declaratory judgment suit under 75 O.S. § 306(A). Instead, they sought an appeal of the board's declaratory ruling under 75 O.S. § 318. Thus, the appellants were not denied the opportunity to challenge the board's declaration that PIT was not within the scope of practice for chiropractors.

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[7] The appellants' brief also generally references that the attorney general and the board's interpretation of the Chiropractic Act creates a special class and treats those within the same class differently. Notably, the appellants do not articulate what special class is created by this interpretation and how. The Oklahoma Chiropractic Act applies to all licensed chiropractors. It is unclear how a special law is created by the board's interpretation of the Oklahoma Chiropractic Act because all the laws at issue apply only to chiropractors and equally to all chiropractors. The board's declaratory ruling provides that no chiropractors can engage in PIT therapy. This interpretation applies to all chiropractors equally.

F.

Next, the appellants jointly raise two procedural errors allegedly committed by the district court. First, that the court erred by "refusing to exercise its Article VII §§ 1 and 7 Judicial Authority to interpret the Chiropractic Act." *Brief-in-Chief*, pg. 24. Second, that the court erred by failing to consider *de novo* the attorney general's misconstruction of 59 O.S. § 161.12(B)(7), resulting in an interpretation that violated equal protection, due process, and other constitutional provisions. However, the only argument contained in appellants' brief regarding these propositions of error is that, at the hearing on the motion to strike, counsel for the board stated, "I don't disagree that the judiciary has the authority to determine the validity of the AG opinions." Tr. (March 12, 2024), pg. 12. Presumably, the appellants are challenging the part of the court's order which states "my role in this matter is not to review attorney general opinions for correctness. Attorney general opinions are not directly before the court for me to overturn or to rule upon." *District Court Record*, pg. 341.

In response to this allegation of error, the board cites *Aetna Cas. & Sur. Co. v. State Bd. for Prop. & Cas. Rates*, 1981 OK 153, 637 P.2d 1251. The appellants in that case alleged that a property board should not follow certain attorney general opinions because the opinions were not correctly issued. Our Supreme Court found this argument lacked merit and held:

> The real issue on appeal, as appellee stresses, is not the correctness of the Attorney General's opinions, but the correctness of the Board's order of May 2, 1979. It is that order, not the opinions on which it is based, which is the subject of this appeal. An opinion of

> the Attorney General is not a judicial order, and is not directly appealable.

Id. ¶ 9. Here, the appellants argue the attorney general opinions the board "relied upon" in reaching its decision that PIT was not in the scope of practice are incorrect and therefore the board's decision should be invalidated. However, as discussed in *Aetna*, it was not erroneous for the court to not address the correctness of the attorney general opinions because the decision directly before the court was the correctness of the board's declaratory rulings.

F.

Lastly, the appellants argue that the court erred in determining that PIT could not be safely administered by an injectable certified chiropractic physician. However, a review of the court's order indicates that the only time safety was referenced was as follows:

> The overriding concern of this Court, and I think the Board and everyone involved, is that of public safety. That's why we have the process, that's why the Board is there to protect the public, and in this particular question that is involved is whether it is safe for this procedure to be performed by chiropractic practitioners or whether it would be something that should be performed by other licensed medical professionals.

District Court Record, pg. 340. The court did not issue a specific finding of fact or conclusion of law regarding the safety of PIT. Rather, the court used safety to frame the issue before it and the board. Thus, there was no procedural error committed by the court in this regard.

* * *

For the reasons articulated above, the judgment of the district court adopting the board's declaratory ruling that PIT is not within chiropractors' scope of practice is hereby affirmed.

AFFIRMED.

HUBER, J., and WISEMAN, J. (sitting by designation), concur.

March 30, 2026