

GARFIELD COUNTY, OKLA

IN THE DISTRICT COURT OF GARFIELD COUNTY STATE OF OKLAHOMA

JUN 03 2008

MARGARET F. JONES

THE OKLAHOMA STATE BOARD OF CHIROPRACTIC EXAMINERS,	}
Plaintiff, v.) Case No. CJ-2004-64-03
TAMMY JOY KENNEDY,	
Defendant.)

ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing on the 7th day of April, 2008. The Oklahoma State Board of Chiropractic Examiners appeared by its attorney, Grant E. Moak, Assistant Attorney. The Defendant appeared in person and by her attorney Mark Hammons.

This Court took evidence, heard the argument of counsel and has considered the trial briefs submitted by the parties. In consideration of such matters, this Court makes the following findings of fact:

FINDING OF FACT

- 1. This is an action for a permanent injunction brought by the Oklahoma State Board of Chiropractic Examiners.
- 2. Ms. Kennedy, the Defendant, is an adult resident of Garfield County, Oklahoma.
- The witnesses testify in this proceeding were Dr. Thomas Redenbaugh who is
 offered as an expert witness on behalf of the State and Ms. Tammy Kennedy, the
 Defendant.
- 4. No member of the Oklahoma State Board of Chiropractic Examiners testified in this case.
- 5. Dr. Redenbaugh is not and never has been licensed to practice chiropractic in Oklahoma, has never served on the Oklahoma State Board of Chiropractic Examiners and has never taught chiropractic in Oklahoma.

- 6. Dr. Redenbaugh testified that the characteristic that distinguished the practice of chiropractic from other occupations is that "Chiropractors go behind the elastic barrier of resistance and take the articulation into what is called the paraphysiological space."
- 7. Dr. Redenbaugh testified that manipulating a joint without going beyond the elastic barrier and entering the paraphysiological space was an action that anyone could perform and was not the practice of chiropractic, but the manipulations of joints by the Defendant highly likely entered the paraphysiological space.
- 8. No evidence was presented that Dr. Redenbaugh's definition or the course work that he described had been approved by the Oklahoma State Board of Chiropractic Examiners.
- 9. Dr. Rendenbaugh could not testify that Defendant Kennedy had on any occasion engaged in a manipulation that when went the elastic barrier of resistance and took the articulation in the paraphysiological space, except that he deemed it highly likely the manipulation of joints by the Defendant would not enter the paraphysiological space.
- 10. Ms. Kennedy testified that in manipulating joints she always stopped short of the elastic barrier of resistance, but acknowledged a captivation did occur during some manipulations.

CONCLUSIONS OF LAW

- 1. The court has jurisdiction of the parties and subject matter.
- 2. The practice of chiropractic medicine is a two-part definition:
 - ... 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).

- 3. To secure a permanent injunction, the Plaintiff must prove by clear and convincing evidence
 - A. That Plaintiff engaged in the practice of "chiropractic" medicine, and
 - B. That such violation is continuing or is likely to continue in the future.
- 4. No evidence was offered that any of the definitions or courses described in this case has been "approved by the Board of Chiropractic Examiners". In the Plaintiff's Response to Defendant's Motion to Dismiss filed March 29, 2004, the Plaintiff stated the "Scope of Practice" for chiropractic practitioners was adopted by the Board of Chiropractic Examiners at OAC 140:1-1-2. OAC 140:1-1-2 does not, according the current provision examined by the court, set forth any approval by the Board of Chiropractic Examiners of the specific treatment services and procedures which have been taught by an accredited chiropractic college. Absent this express approval by the Board of Chiropractic Examiners, there is no evidence before the Court allowing a determination of whether or not the Defendant has engaged the practice of chiropractic and Plaintiff's proof fails.

ORDER

The motion for a permanent injunction is denied.

SO ORDERED THIS 2 DAY OF

____, 2000

Associate District Judge