

**BOARD OF CHIROPRACTIC EXAMINERS
STATE OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel.)	
BOARD OF CHIROPRACTIC EXAMINERS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 025-2007
)	
Stuart Hershberger, D.C.)	
License Number 2294)	
)	
Respondent.)	

FINAL ORDER

Hearing on this matter was held March 10th, 2009, before the Oklahoma Board of Chiropractic Examiners (hereinafter "the Board"). at the offices of the Veterinary and Dental Board, 201 N.E. 38th, Suite 1 and 2, Oklahoma City, Oklahoma. Present for the Board was legal counsel, P. Kay Floyd. Respondent Stuart Hershberger appear *pro se*.

Whereupon the hearing began and the sworn testimony of witnesses for the Plaintiff was presented, along with exhibits, which were admitted and are incorporated herein and made a part hereof.

Accordingly, after careful consideration of all evidence, testimony, and exhibits, the Board issues the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Respondent was licensed to practice Chiropractic in the State of Oklahoma in the year

██████.

2. On November 6, 2006, Board Executive Director Beth Carter, sent a letter to Respondent that the Board had received notice from the Oklahoma Tax Commission (OTC) that Respondent was not in compliance with state income tax laws. The letter instructed Respondent that the Board would not be able to renew his license for 2007 until OTC notified the Board that Respondent had come into compliance. The letter further stated that Respondents then current license would expire on December 31, 2006. The letter provided Respondent with a contact number for the OTC License Compliance Unit and with a copy of Oklahoma Statutes, Title 68, § 238.1.

3. On December 28, 2006 Respondent submitted a 2007 license renewal form to the Board. The form was incomplete as it lacked Respondents' signature. In addition, Respondent failed to submit the required proof of malpractice insurance with the renewal form. Respondent did not sign the 2007 license renewal form or submit proof of malpractice insurance until April 5, 2008.

4. On [REDACTED], 2007, Executive Director Carter sent a letter to Respondent informing him that his license had been placed in lapsed status on January 1, 2007, for failure to renew due to noncompliance with the OTC. The letter further informed Respondent that he did not have a current license to practice chiropractic and that he must cease and desist from practicing immediately.

4. On February 27, 2007, the Board received notice from the OTC that Respondent had come into compliance however Respondent had not yet sign the 2007 license renewal form or submitted proof of malpractice insurance.

5. As a result of Respondent not signing his 2007 license renewal form or submitting proof of malpractice insurance, Respondent was sent another notice on March 6, 2007,

stating that as of January 1, 2007, Respondents' license was placed in lapsed status for failure to renew and effective March 1, 2007, his license was administratively suspended for failure to comply with Oklahoma Statute 59 O.S. § 161.11.

4. Respondents' daughter, who is an employee at Respondent's clinic, accepted the March 6, 2007 notice. Respondent, however, claims that he never saw the notice.

5. On April 5, 2007, Board staff sent Respondent his original renewal form at which time Respondent signed the form and returned it to the Board office along with proof of malpractice insurance. Respondents' license was thereafter reinstated effective April 5, 2007.

5. On July 24, 2007, the Board received a complaint from Progressive Direct Insurance Company stating that Progressive Direct had paid \$3550.00 to Respondent for treatment of a patient while he was not license from January 1 through April 5, 2007.

6. Upon receipt of the complaint, the matter was investigated by a member of the Board Advisory Committee, Dr. Jim Muse. After concluding his investigation on December 3, 2007, Dr Muse recommended a hearing be scheduled before the Board.

CONCLUSIONS OF LAW

1. The Oklahoma Board of Chiropractic Examiners has jurisdiction over the parties and subject matter in the above entitled cause.

2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.

3. O.S. Title 59 § 161.11, **Renewal license fee**, and OAC 140:10-5-1, **Renewal license; requirements**, states in part that each licensee holding an original license to

practice chiropractic in the state shall pay to the Board, on or before the 1st day of January of each year, an annual renewal fee. Failure to comply with the statute and rule shall result in suspension or revocation of the original license.

4. O.S. 59 § 161.12, **Grounds for imposing penalties**, states in part that certain acts or occurrences by a chiropractic physician shall constitute grounds for penalties, including violating a provision of the Oklahoma Chiropractic Practice Act or violation of any rule of the Board.

5. O.S. 59 § 161.14, **Requirement of License**, prohibits practicing chiropractic in this state without having first obtained an original license to practice chiropractic from the Board of Chiropractic Examiners, or after the original license has been revoked or suspended .

6. Respondent failed to renew his license in violation of Title 59 O.S., Section 161.11 and OAC 140:10-5-1. Thereafter, Respondents' chiropractic license was suspended for the period of January 1 through April 5, 2007. During the period of January 1 through April 5, 2007, Respondent continued to practice chiropractic in Oklahoma even though he was not licensed by the Board in violation of the Act and Rules listed above.

7. Based on the above Findings of Fact, the Board has authority to take disciplinary action against Respondent pursuant to 59 O.S., Section 161.12.

ORDER

It is therefore **ORDERED, ADJUDGED** and **DECREED** by the Oklahoma Board of Chiropractic Examiners that Respondent, Stuart Hershberger, violated State

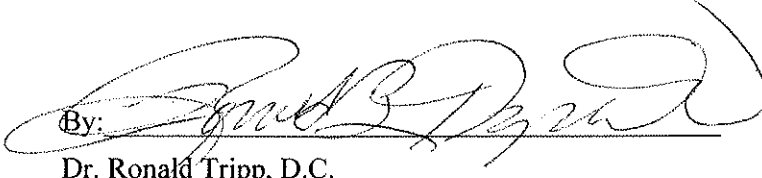
statute and Board rule and is hereby ordered to pay a Twenty-Five Hundred Dollar (\$2,500.00) fine. Payment is to be made in the amount of \$208.33 payable on the 1st day of each month for twelve months beginning April 1, 2009. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dated this 24th day of March, 2009.

By: 

Dr. Ronald Tripp, D.C.

President, Oklahoma Board of Chiropractic Examiners.