

1 BEFORE THE
2 BOARD OF CHIROPRACTIC EXAMINERS
3 STATE OF OREGON

4 In the Matter of the License of)
5)
6 WALTER C. TRAPP, D.C.) FINAL ORDER
)

7 On November 30, 1993, the Board of Chiropractic Examiners
8 (Board) issued a notice of proposed sanctions to Dr. Walter C.
9 Trapp, D.C. (Dr. Trapp), alleging that he violated ORS 684.100(1)(n)
10 by aiding and abetting unlicensed personnel in the practice of a
11 healing art by providing patient access and use of his clinic,
12 violated ORS 684.100(1)(g) and (B) by possessing acupuncture
13 needles and using such needles in the treatment of persons in the
14 clinic and violated ORS 684.015, 684.025(2) and ORS 684.100(1)(g)(A)
15 by possessing and using laetrile. The Board proposed to revoke
16 Dr. Trapp's license. On December 21, 1993, Dr. Trapp filed a
17 response denying the material allegations of the notice and
18 requested a hearing.

19 On July 26 and August 2, 1994, a hearing was held before
20 Hearings Officer Kathryn Logan in Salem, Oregon. Assistant
21 Attorney General J. Kevin Shuba represented the Board. Richard M.
22 Walsh, Attorney at Law, represented Dr. Trapp.

23 At the hearing, the parties waived recitation of rights under
24 the Administrative Procedure Act. The parties presented evidence
25 and examined witnesses. Timely post-hearing briefs were submitted
26 and considered. The record was closed on September 11, 1994.

ISSUES PRESENTED AT HEARING

2 1. Did Dr. Trapp violate ORS 684.015, ORS 684.025(2) and
3 ORS 684.100(1)(g)(A) and (B) and ORS 684.100(1)(n) by the conduct
4 alleged in the notice?

5 2. If so, what is the appropriate sanction?

6 Based on the preponderance of evidence in this record, the
7 Board adopts the following:

8 **RULINGS**

9 Limitation on Exhibit 2A. During the course of the hearing,
10 the hearings officer ruled that an arrest report (Exhibit 2A)
11 regarding Dr. Martin Lavell would be admitted for the limited
12 purpose of showing the underlying conflict between Dr. Lavell and
13 Dr. Trapp. On August 23, 1994, a Motion to Reconsider Evidentiary
14 Ruling was filed by Dr. Trapp, requesting that Exhibit 2A be
15 admitted with no restrictions. In particular, Dr. Trapp believes
16 that the report shows that Dr. Lavell lied to the police. Such
17 information is relevant to this proceeding, according to Dr. Trapp,
18 because it shows that Dr. Lavell is capable of fabricating a story
19 and, therefore, is not credible.

20 ORS 183.450(1) provides that "evidence of a type commonly
21 relied upon by reasonably prudent persons in conduct of their
22 serious affairs shall be admissible." The incident referred to in
23 the report occurred in May 1991, more than two years prior to the
24 events which gave rise to the revocation proceeding and more than
25 three years prior to this hearing. Dr. Trapp's theory is that

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1 Dr. Lavell lied to the police, so he must be lying in this
2 administrative hearing. To infer that Dr. Lavell is lying under
3 oath in this proceeding because he lied to police officers over
4 three years ago is too great a leap. This evidence is not
5 relevant to the proceeding. The prior ruling stands.

6 Search of Office Cabinet. Dr. Trapp claims that the search
7 of an office cabinet was illegal, and any evidence obtained from
8 such search may not be used against him in this administrative
9 proceeding. Briefly, the facts are as follows:

10 Dr. Lavell was renting office space at a clinic located at
11 15938 SE Division, Portland, Oregon. Dr. Lavell sublet two
rooms of the clinic to Dr. Trapp.

12 Dr. Lavell decided to borrow some of Dr. Trapp's supplies.
13 While looking for cotton swabs or tongue depressors, Dr. Lavell
opened the cabinets. He found some vials of laetrile and some
acupuncture needles in cabinets used by Dr. Trapp.

14 On October 8, 1993, Dr. Lavell escorted Michael Tryon, an
15 investigator for the Board, into a treatment room near the
back of the building. The treatment room was used
16 predominantly by Dr. Lavell. Upper and lower cabinets,
divided by a counter, were located on one wall of the
17 treatment room.

18 Dr. Lavell opened one upper storage cabinet and showed Mike
19 Tryon eight vials of Amygdaline (laetrile). Dr. Lavell then
opened one lower storage cabinet and showed Mike Tryon a box
20 of acupuncture needles. Both cabinets contained supplies
belonging to Dr. Trapp. Neither cabinet was locked.

21 The evidence in this record does not support Dr. Trapp's
22 contention that he had a reasonable expectation of privacy
23 regarding those cabinets. The evidence shows that the storage
24 cabinets were located in Dr. Lavell's treatment room and were not
25 locked. Dr. Lavell found the laetrile while looking for tongue

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1 depressors or cotton swabs. Although each doctor had a separate
2 office, there was no understanding between the doctors that any
3 rooms were "off-limits." Dr. Lavell was the lessee of the clinic
4 space. It is unrealistic to believe that Dr. Trapp thought those
5 cabinets were private. As Dr. Trapp had no expectation of
6 privacy, the search was not unlawful.

7 All other rulings of the hearings officer have been reviewed
8 and are correct.

9 **FINDINGS OF FACT**

10 1. Dr. Trapp is licensed to practice as a chiropractic
11 physician in the State of Oregon. He maintained an office in
12 Portland, Oregon.

13 2. Dr. Lavell is licensed as a naturopathic physician and
14 as a registered nurse. At all relevant times, he leased a clinic
15 in Portland, Oregon. In April 1991, Dr. Lavell sublet two offices
16 in the clinic to Dr. Trapp. They shared the reception room, the
17 waiting area and the bathroom.

18 3. Dr. Trapp had two employees who work in the office,
19 Labertha (Bert) Stinson and Larry Oman. Bert Stinson, who is the
20 receptionist, is also Dr. Trapp's mother-in-law. Larry Oman is
21 not related to Dr. Trapp.

22 4. Bert Stinson's duties include general office duties
23 along with escorting patients to the treatment room, getting gowns
24 for them, and cleaning the treatment room after the patients were
25 done.

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5. Two witnesses, Dr. Lavell and Katherine Buhr (a patient of Dr. Trapp), testified that Bert Stinson applied hot-packs and electrical muscle stimulation to patients. Bert Stinson denied that she ever performed any treatments on patients. Bert Stinson's testimony is not credible. She was extremely evasive in her testimony, causing the hearings officer to remind her that she was testifying under oath. She has a stake in the outcome, not only as an employee, but as the mother of Dr. Trapp's wife.

Katherine Buhr was a credible witness. She testified by telephone, so her demeanor could not be evaluated. She was candid in her answers. She has filed a complaint against Dr. Trapp, supporting licensee's argument that she could be biased, although her testimony did not reflect animosity.

The evidence supports the finding that Bert Stinson performed treatments on Dr. Trapp's patients.

6. Larry Oman did not work a regular schedule. He was responsible for janitorial work in the office and entered data in the computer. He also would pick up the mail and answer the telephone messages. Larry Oman did some massage and hot-pack therapy with patients as a small part of his job. Larry Oman was trained as a Certified Nurse's Assistant and holds a certificate.

7. Dr. Trapp owned some acupuncture needles. He used these needles on himself to treat tendinitis in his arm. At the hearing, he denied using acupuncture needles on family members.

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1 This testimony is directly contrary to his admission made to Board
2 Investigator Michael Tryon on October 12, 1993, when Dr. Trapp
3 stated that he treated family with acupuncture. Based on his
4 admission, we find that Dr. Trapp used acupuncture treatment on
5 himself and family members.

6 Dr. Lavell testified that he observed a man in Dr. Trapp's
7 treatment room with acupuncture needles placed in his back. This
8 observation occurred while Dr. Lavell was walking past Dr. Trapp's
9 treatment room. The door was slightly ajar. Dr. Lavell is
10 certain that the man was not a family member but he did not check
11 to see if he was a patient. According to Dr. Lavell, this event
12 occurred in the late summer or fall of 1992. Dr. Trapp denies
13 that such treatment occurred. Due to the lack of specificity of
14 the event, the stormy relationship between Dr. Lavell and Dr.
15 Trapp (see below), and that no other instances of acupuncture
16 treatment were observed, we find that Dr. Trapp did not perform
17 acupuncture treatment on patients.

18 8. Sometime in late 1992, Dr. Lavell decided to borrow some
19 supplies from Dr. Trapp. Dr. Lavell was in his back treatment
20 room looking in a cabinet containing Dr. Trapp's supplies. He
21 found some glass vials in the cabinet labeled "Amygdaline," a
22 generic name for laetrile.

23 9. The relationship between Dr. Lavell and Dr. Trapp was
24 very poor. During their first week together, Dr. Lavell asked
25 Dr. Trapp to leave.

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1 The relationship improved to a tolerable level until
2 Dr. Trapp brought in Larry Oman and Bert Stinson. Dr. Lavell did
3 not get along with either of them. He believed that they refused
4 to take directives from him.

5 There were numerous disagreements between Dr. Trapp, his
6 employees and Dr. Lavell. The facts behind these disputes are not
7 relevant. It was clear, however, by the end of September, Dr.
8 Lavell and Dr. Trapp, along with Trapp's employees, were barely
9 civil to each other. Dr. Lavell did not trust Dr. Trapp.

10 In late September, an altercation occurred between Bert
11 Stinson and Dr. Lavell. The latent animosity came to the surface,
12 and Luke Stinson and Dr. Lavell almost came to blows. Based on
13 this instances, Dr. Lavell decided that it was time for the
14 doctors to part. He issued an eviction notice to Dr. Trapp on
15 September 27, 1993.

16 10. Dr. Trapp married Bert Stinson's daughter on October 2,
17 1993. He was gone from the office from October 2 through October
18 10, 1993.

19 11. Luke Stinson is Bert Stinson's son and Dr. Trapp's
20 brother-in-law. Luke Stinson was interested in massage and
21 observed Dr. Trapp performing massage therapy on patients.

22 Dr. Trapp performed "recreational" massage on Charles Davis
23 and his wife on a regular basis. Neither patient had a particular
24 ailment or infirmity. They simply enjoyed how they felt after
25 being massaged. One of their scheduled appointments occurred

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1 while Dr. Trapp was on his honeymoon. Prior to leaving, Dr. Trapp
2 arranged with the Davises that Luke Stinson would do the massage.
3 They agreed.

4 On October 4, 1993, while Dr. Trapp was on his honeymoon,
5 Luke Stinson preformed a massage on Charles Davis and his wife in
6 the clinic. Davis did not pay for the massage. Luke Stinson was
7 not licensed.

8 12. Dr. Lavell knew that Luke Stinson had met with Dr.
9 Trapp's patients while Dr. Trapp was on his honeymoon. This final
10 incident caused Dr. Lavell to file a complaint with this Board.

11 13. On October 8, 1993, Mike Tryon contacted Dr. Lavell at
12 the clinic. Dr. Lavell showed Mike Tryon the storage cabinets in
13 Dr. Lavell's treatment room (see Rulings above). In the cabinet
14 were eight full vials identified as laetrile.

15 14. Dr. Trapp denied owning any laetrile. He denied knowing
16 how the laetrile got into his cabinet. He alluded, but did not
17 claim, that Dr. Lavell must have "planted" the laetrile to get him
18 in trouble.

19 CONCLUSIONS OF LAW

20 1. The Board has jurisdiction over Dr. Trapp and the
21 subject matter of this complaint.

22 2. Dr. Trapp violated ORS 684.100(1)(n) by aiding and
23 abetting unlicensed personnel in the practice of a healing art by
24 providing patient access and use of his clinic.

25 ORS 684.100(1)(n) provides that the Board may discipline a
26 person for "aiding or abetting the practice of any of the healing

1 arts by an unlicensed person." Dr. Trapp raises several issues
2 regarding the applicability of this statute to his case. We
3 address each issue in turn.

4 Licensee initially claims that Luke Stinson was not
5 practicing a "healing art" as defined by statute. His argument is
6 two-fold: 1) that Mr. and Mrs. Davis were not being "treated" by
7 massage, and 2) that Luke Stinson was not practicing massage
8 because he was not compensated for his work.

9 Whether the massage was recreational, deep tissue, light or
10 Swedish is not dispositive of the claim. Massage therapy can
11 relieve a specific ailment or provide a general feeling of good
12 health. As such, it is a form of physiotherapy which can
13 appropriately be administered by a chiropractic physician or
14 certified ancillary personnel. Luke Stinson was neither.

15 Having determined that Luke Stinson performed physiotherapy,
16 the issue of compensation is irrelevant. The evidence shows that
17 Dr. Trapp permitted Luke Stinson to perform physiotherapy, which
18 is a healing art. Dr. Trapp knew that Luke Stinson was not
19 licensed. Dr. Trapp violated ORS 684.100(1)(n) by allowing Luke
20 Stinson to perform massage on Mr. and Mrs. Davis.

21 Dr. Trapp also permitted Bert Stinson and Larry Oman to
22 provide therapy when he knew that neither of them was certified as
23 ancillary personnel under the statutes and rules applicable to the
24 Board. Bert Stinson applied hot-packs to patients, and Larry Oman
25 provided some massage and applied hot-packs. In each instance,

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1 Dr. Trapp knew that neither Larry Oman or Bert Stinson were
2 appropriately licensed to perform such therapy.

3 Dr. Trapp claims that such treatment was performed outside
4 the dates alleged in the notice. In fact, paragraph 3 of notice,
5 which states a separate cause of action, does not allege a time
6 period. While it also does not cite which statute was violated by
7 Dr. Trapp, the lack of citation is not fatal. As long as the
8 paragraph states facts which if proven establish a violation of
9 one of the named statutes in the notice, and sufficient notice has
10 been given to Dr. Trapp. Finally, Dr. Trapp did not claim
11 surprise or lack of notice during the hearing. Dr. Trapp violated
12 ORS 684.100(1)(n) by allowing Larry Oman and Bert Stinson to
13 provide treatment to Dr. Trapp's clients.

14 3. Dr. Trapp violated ORS 684.100(1)(g)(A) and (B) by using
15 acupuncture needles on family members.

16 ORS 684.100(1)(g)(A) and (B) states that the Board may
17 discipline a person for:

18 * * * * *

19 (g) Unprofessional or dishonorable conduct which
20 includes but is not limited to:

21 (A) Any conduct or practice contrary to recognized
22 standard of ethics of the chiropractic profession or any
23 conduct or practice which does or might constitute a
24 danger to the health or safety of a patient or the
25 public or any conduct, practice, or condition which does
26 or might impair a physician's ability safely and
skillfully to practice chiropractic.

(B) * * * [P]erforming any chiropractic service,
X-ray, or treatment which is contrary to recognized
standards of practice of the chiropractic profession.

1 We found that Dr. Trapp admitted to using acupuncture on
2 family members. We do not know where the treatments were
3 performed. Although it may be logical to assume that the
4 acupuncture treatments were performed in the clinic, since that is
5 where the needles were stored, it is not necessary to make such
6 assumption. The location of the treatment is not a critical
7 element of the charge. Our finding that Dr. Trapp used
8 acupuncture on family members is sufficient to sustain the charge.

9 To practice acupuncture therapy, a person must either be
10 licensed to practice medicine or licensed to practice acupuncture.
11 Such license is obtained from the Board of Medical Examiners.
12 Dr. Trapp did not have such a license.

13 Dr. Trapp contends that this issue needs to be resolved
14 before the Board of Medical Examiners. He is not correct. Dr.
15 Trapp is not being charged with violations of the laws and rules
16 of the Board of Medical Examiners. He is being charged with
17 performing treatment which is contrary to the recognized standards
18 of practice of the chiropractic profession.

19 There is no dispute that a chiropractor may not administer
20 acupuncture treatments. By engaging in such practice, Dr. Trapp
21 violated the standards of practice.

22 It is not necessary for us to determine whether practicing
23 acupuncture on himself violated ORS 684.100(1)(g)(A) and (B). We
24 leave that decision to a future case.

25 4. Dr. Trapp did not violate ORS 684.100(1)(g)(A) by
26 possessing laetrile.

1 The issue before us is fairly limited: whether the mere
2 possession of laetrile is unprofessional or dishonorable conduct.
3 Counsel for the Board argues that ORS 689.535(2) makes it illegal
4 for unlicensed persons to possess laetrile. The statute provides:

5 * * * * *

6 (a) It shall be lawful for any person licensed
7 under ORS 689.005 to 689.995 to manufacture or sell at
8 wholesale laetrile if:

9 (A) The laetrile is manufactured wholly with the
10 State of Oregon.

11 (B) The laetrile is manufactured with ingredients
12 which have not traveled in interstate commerce; and

13 (C) The laetrile is sold at wholesale within the
14 State of Oregon to an Oregon person legally authorized
15 to resell or otherwise redispense laetrile.

16 (b) The State Board of Pharmacy shall regulate the
17 manufacture, sale and distribution of laetrile,
18 including its dosage forms, within the State of Oregon
19 to insure that the substance is not adulterated or
20 misbranded.

21 We do not read ORS 689.535(2) to prohibit possession of
22 laetrile. There is no discussion in this statute about possession
23 of laetrile. The statute regulates the unlawful activity of an
24 unlicensed person to manufacture or sell laetrile, or the unlawful
25 activity of a licensed person who violates the provisions of the
26 statute.

27 The evidence in this case shows only that Dr. Trapp had
28 laetrile in his possession. The evidence does not support any
29 contention that he used the laetrile. Mere possession is not
30 enough to be a violation of either ORS 689.535(2) or ORS
31 684.100(1)(g)(A).

1 5. Two of the charges involving Dr. Trapp have been
2 established. We find it particularly distressing that Dr. Trapp
3 is allowing unlicensed personnel to perform chiropractic services.
4 These unlicensed services were provided on a fairly regular basis,
5 and were not just isolated instances of treatment. Dr. Trapp has
6 failed to abide by the standards established by statute and by
7 this Board. In addition to the submission of written exceptions,
8 Dr. Trapp's attorney requested permission to appear before the
9 OBCE and orally present his exceptions to the proposed order.
10 However, the OBCE declined an oral presentation and instead
11 considered the arguments made in the voluminous written materials
12 submitted by Dr. Trapp in the form of his November 18, 1994
13 Exceptions to the Proposed Order and September 8, 1994 Supplement
14 to Closing Argument to make its decision in this case.

15 **ORDER**

16 Upon consideration of the November 9, 1994 Proposed Order and
17 the written exceptions filed by Dr. Trapp, the OBCE ORDERS that:

18 1. Dr. Trapp violated ORS 684.100(1)(n) by aiding and
19 abetting unlicensed personnel in the unlicensed practice of a
20 healing art by providing patient access and use of his clinic.

21 2. Dr. Trapp violated ORS 684.100(1)(g)(A) and (B) by using
22 acupuncture needles on family members, a practice outside the
23 scope of chiropractic.

24 3. Dr. Trapp's license to practice chiropractic is
25 suspended for 90 (ninety) days beginning February 15, 1995.

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1 Further, Dr. Trapp is ordered to pay a \$5,000 fine 20 days from
2 entry of this order.

3 DATED at Salem, Oregon, this 8 day of February, 1995.

4 BOARD OF CHIROPRACTIC EXAMINERS
5 State Original signature on file
6 By: at the OBCE office.
Christie Joachim, Executive Director

7 NOTICE: You are entitled to judicial review of this order
8 pursuant to the provisions of ORS 183.480. Judicial Review may be
9 obtained by filing a petition in the Oregon Court of Appeals. The
10 petition must be filed within 60 days from the date of service of
11 this order.

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1 BEFORE THE
2 BOARD OF CHIROPRACTIC EXAMINERS
3 STATE OF OREGON

4 In the Matter of the License of)
5 WALTER C. TRAPP, D.C.) PAYMENT AGREEMENT
6 _____)

7 1. The Oregon Board of Chiropractic Examiners (Board) and
8 Walter C. Trapp, D.C. (Dr. Trapp), hereby stipulate and agree to
9 amend the February 8, 1995 Final Order in this matter as follows.

10 2. After hearing on July 26, 1994 and August 2, 1994, and
11 being fully advised, the Board issued the Final Order imposing a
12 90-day suspension and a civil penalty on February 8, 1995.

13 3. One of the sanctions in the Final Order was a civil
14 penalty in the amount of \$5,000, due and owing 10 days after the
15 entry of the Order.

16 4. On April 5, 1995, Dr. Trapp filed a Petition for
17 Judicial Review and appealed the Final Order including the
18 imposition of the \$5,000 civil penalty.

19 5. On September 1, 1995, Dr. Trapp dismissed his appeal of
20 the Final Order and agrees that the February 8, 1995 Final Order
21 is now final by operation of law.

22 6. To date, Dr. Trapp has served the 90-day suspension from
23 practice, but the \$5,000 civil penalty has not been paid. The
24 Board and Dr. Trapp wish to make provision for orderly payment of
25 the \$5,000 due.

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1 7. Dr. Trapp shall pay to the Board \$2,500 on or before
2 September 15, 1995 and \$2,500 on or before March 15, 1996, for a
3 total of \$5, 000. Payment shall be made by check made payable to
4 the Oregon Board of Chiropractic Examiners, mailed or delivered to
5 the First Floor, Suite F, 3218 Pringle Road SE, Salem, OR 97302-6311.

6 8. The Board, may at its sole option, declare Dr. Trapp to
7 be in default of this agreement and accelerate all amounts due
8 under this agreement if Dr. Trapp fails to make a timely payment
9 and does not cure such failure within ten days of written demand.

10 9. So long as Dr. Trapp is not in default of this
11 agreement, the Board shall not institute collection proceedings,
12 exercise its right of setoff or otherwise attempt to collect the
13 amounts due under the Order.

14 10. In the event Dr. Trapp is rightly declared to be in
15 default of this agreement, interest shall accrue at the statutory
16 rate, from the date of default, on any unpaid principal.

17 11. Upon satisfaction of Dr. Trapp's obligations under this
18 agreement, the Board will provide on request of Dr. Trapp, a
19 satisfaction of judgment or such document as is appropriate to
20 acknowledge that Dr. Trapp has satisfied his obligation to pay a
21 civil penalty under the Board's Final Order.

22 12. If after a contested case hearing, Dr. Trapp is found to
23 be in violation of this Payment Agreement, it may become the basis

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1 for further discipline, including but not limited to, revocation
2 of license.

3 IT IS SO STIPULATED.

4 Original signature on file
at the OBCE office.

5 WALTER C. TRAPP, D.C. IV

Date

9-14-95

6 DATED this 17 day of Oct, 1995.

7 OREGON

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8 Original signature on file
at the OBCE office.

9 BY:

CHRISTOPHER BOGGS, Executive Director

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