

FILED

STATE OF SOUTH DAKOTA
COUNTY OF BROWN

)
) SS. **JAN 03 2012** IN CIRCUIT COURT
SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM
5TH CIRCUIT CLERK OF COURT FIFTH JUDICIAL CIRCUIT

By E CIV. 11-853 / 11

SOUTH DAKOTA BOARD OF
MEDICAL AND OSTEOPATHIC
EXAMINERS,

Plaintiff,

v.

ROCKY STEINERT,

Defendant.

ORDER FOR PERMANENT INJUNCTION

THIS MATTER having been tried before the Court on December 8, 2011, with the Board of Medical and Osteopathic Examiners (BMOE) represented by William H. Golden, Assistant Attorney General, and Defendant Rocky Steinert appearing personally and represented by his attorney Drew C. Johnson, and the Court finding that it is appropriate to issue a permanent injunction consistent with its Findings of Fact and Conclusions of Law, it is hereby

ORDERED that the Defendant Rocky Steinert shall not practice medicine, diagnose and/or treat his patients with Multi-Radiance (MR-4) Laser.

Dated this 3rd day of January 2012 ~~December~~, 2011.

BY THE COURT:

Jack R. Von Wald
Jack R. Von Wald
Circuit Court Judge

STATE OF SOUTH DAKOTA
Fifth Judicial Circuit Court
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on file in my office on this date:

ATTEST:

Allison Kumpf
Clerk of Courts

SEAL

JAN - 4 2012

Marla R. Zastrow
Brown County Clerk of Courts
By: Marla R. Zastrow

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FIFTH JUDICIAL CIRCUIT

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CIV. No. 11-853

FINDING OF FACTS
AND
CONCLUSIONS OF LAW

This matter having been tried before the Court on December 8, 2011, with the Board of Medical and Osteopathic Examiners (BMOE) represented by William H. Golden, Assistant Attorney General, and Defendant Rocky Steinert present and represented by Drew C. Johnson, Attorney at Law. The Court finds the following:

Findings of Fact

1. The BMOE received a complaint from a chiropractor on April 14, 2011, that Rocky Steinert was offering his services to the public to treat their medical conditions with a laser.
2. After an investigation by the Board of Medicine's Investigator, a letter was sent to Mr. Steinert on May 25, 2011, notifying him that he must cease and desist the practice of medicine without a license.
3. Rocky Steinert, through his attorney Drew Johnson, responded by sending a letter to the Board asking what authority the Board had to issue a cease and desist letter.

4. Rocky Steinert placed an advertisement in the local paper stating that laser therapy would be an effective support modality for conditions including the following: Back pain, tennis elbow, tendonitis, fibromyalgia, arthritis pain, bursitis, muscle strain, soft tissue injury, carpal tunnel syndrome, and conditions resulting in acute, sub-acute, or chronic pain.

5. On his website, Rocky Steinert offered laser therapy for pain reduction, inflammation, allergy relief, and scar tissue reduction.

6. Rocky Steinert, through his attorney Drew Johnson, sent a letter to the Board on July 1, 2011, stating that the multi-radiance medical Class 1-M Laser Therapy device that he was using was a non-surgical laser. The letter further stated that the device was FDA approved for use of pain and therapeutic applications.

7. The exhibits attached to the July 1, 2011, letter explained the conditions that Rocky Steinert could treat with laser therapy.

8. The BMOE called Ted Huss, the Board Investigator, as a witness to testify about his investigation which showed that Mr. Steinert's advertising and website listed the medical conditions that he said he could treat with laser therapy.

9. Dr. James McGrann testified that the conditions that Mr. Steinert listed in his advertisement, on his website, and in the documentation he provided regarding the M-4 Laser were all medical conditions.

10. Dr. McGrann further testified that reducing scar tissue and inflammation requires alterations to human tissue.

11. Dr. McGrann further testified that the MR-4 laser operates on multi-frequencies including infra-red and other wave spectrums which may produce heat, but the wave lengths would not penetrate the skin.

12. Rocky Steinert called Doug Johnson who testified as an expert concerning the MR-4 Laser. On cross-examination Mr. Johnson admitted that the MR-4 laser would alter human tissue.

13. Rocky Steinert testified that he did not treat any of the medical conditions he listed in his advertisement or on his website. He stated he merely offered the laser for therapeutic purposes.

14. Dr. McGrann testified that for a physician the words treatment and therapy are interchangeable.

Conclusion of Law

1. This matter is properly venued and the Court has jurisdiction over the parties and subject matter.

2. The Board of Medical and Osteopathic Examiners has been granted the authority to seek an injunction to prohibit the practice of medicine without the appropriate license. SDCL 36-2-2, SDCL 36-2-12, and SDCL 36-4-34

3. Statutes set forth that surgery constitutes the practice the medicine including the use of laser or ionized radiation for the purpose of cutting or otherwise altering human tissue for diagnostic, palliative, or therapeutic purposes. SDCL 36-4-8.2.

3. The MR-4 Laser does not cut tissue as a typical surgical laser would, but it does otherwise alter human tissue for therapeutic purposes.

4. The MR-4 Laser as defined in SDCL 36-4-9 constitutes an apparatus within the definition of the statute.

5. The Court finds the MR-4 Laser is included within the statute as an apparatus used for the cure, relief, or palliation of any ailment or disease of the mind or body or the cure or relief of any wound, fracture, or bodily injury or deformity. Therefore, the machine is intended and has been represented as a device that will provide some sort of relief within the meaning of the statute.

6. The term therapeutic is synonymous with the term treatment and therefore falls within the statute SDCL 36-2-2(6) which specifically defines treatment.

7. Rocky Steinert is not specifically diagnosing his patients. The patients tell him that they have one of the ailments listed in his advertisements, and he then programs his laser to treat the ailment. This is an affirmation of a diagnosis and thereby implicates that there is an actual diagnosis.

8. Rocky Steinert is using his therapeutic laser and the diagnosis for a healing purpose and for the treatment of human ills, which is an intrusion into the practice limited to physicians, surgeons and chiropractors, and for which an appropriate license is required. The Board of Medical and Osteopathic Examiners is entitled to an injunction to prohibit Rocky Steinert from practicing medicine and from utilizing the MR-4 Laser for treating his patients.

9. Rocky Steinert has held himself out a person authorized to practice medicine, and has engaged in the practice of the healing arts which requires an appropriate license pursuant to SDCL 36-2-2. The factual allegations are

synonymous to the previous ruling of our Court. See *Evans v. Hoyme*, 105 N.W.2d 71 (SD 1960).

10. The Court finds that it is appropriate in this matter to issue a permanent injunction consistent with the above Findings of Fact and Conclusions of Law to prohibit Rocky Steinert from practicing medicine and from diagnosing and treating his patients with Multi-Radiance (MR-4) Laser.

JAN 3, 2012

Jack R. Von Wald
Honorable Jack Van Wald
Circuit Court Judge

ATTEST:

Marla R Zastrow

Clerk of Court

By: Alonakunjed

Deputy

(SEAL)

STATE OF SOUTH DAKOTA
Fifth Judicial Circuit Court
I hereby certify that the foregoing instrument
is a true and correct copy of the original as the
same appears on file in my office on this date:

JAN - 4 2012

Marla R. Zastrow
Brown County Clerk of Courts

By: Marla R Zastrow