

BEFORE THE BOARD OF NATUROPATHIC EXAMINERS

In the Matter of the License of)
WILLIAM A. Turska, N.D.,) FINDINGS OF FACT, CONCLUSIONS
Licensee.) OF LAW AND FINAL ORDER

Pursuant to notice, a hearing was convened in the above matter on December 2, 1993, at the offices of the Oregon Board of Naturopathic Examiners, State Office Building, Suite 410, 800 NE Oregon Street, Portland, Oregon. Licensee, William A. Turska, was present, along with his attorney, Stephen E. Andersen. The Board was represented by Assistant Attorney General Armonica Gilford. Mark Braverman, Attorney, served as the Presiding Hearings Officer for the Board.

Ten (10) exhibits were offered by the Board and admitted over the objection of Licensee. Licensee's exhibits A, B and C were admitted, some over the objection of Board counsel.

The Board submitted an Amended Order of immediate license suspension, dated December 30, 1993, which has been made part of this record. In addition, a further amendment to the Order was made by letter, dated January 12, 1994, and made part of the record by agreement of counsel.

A report titled "Ozone Task Force Report," dated June, 1993 was offered by Licensee for the purpose of "showing that the Oregon Board of Naturopathic Examiners had no substantive basis in the first place to assert that it was automatic." [that the Cease and Desist Order in April, 1993 was justified.] Further,

Licensee offered the report to demonstrate that ozone is not unsafe in its use for treatment of patients (see generally Attorney Andersen's letter of February 1, 1994).

Board counsel objected to the introduction of the "unadopted 'Oregon Report'" on the basis that it was not relevant to these proceedings. The report was not admitted or considered for this Proposed Order.

The proceedings were recorded by audio tape.

The hearing was concluded and the record closed on February 18, 1994, following an opportunity for Licensee and Board counsel to present closing argument.

**NATURE OF THESE PROCEEDINGS
AND LICENSEE'S CONTENTIONS**

The Board seeks through an Order of Immediate License Suspension, first issued on September 21, 1993 and then amended on December 30, 1993 and again on January 12, 1994, to suspend the license of William A. Turska, N.D. to practice naturopathic medicine for the following reasons:

1. Patient D.C. visited Dr. Turska on August 9, 1993, for a consultative visit and again on August 11, 1993 for examination and treatment.
2. On August 11, 1993, Dr. Turska did not answer patient D.C.'s questions regarding why she was asked to disrobe.
3. Dr. Turska yelled at patient D.C. when she asked him to explain why he was inserting a tube containing ozone or aethozol into patient D.C.'s rectum.
4. On August 11, 1993, Dr. Turska slapped and pinched

patient D.C.'s buttocks without explaining his actions and whether his actions of slapping and pinching his patients' buttocks were part of any treatment procedure.

5. The Board considers the above-described acts to constitute conduct or practice which constitutes a danger to the health and safety of the public, in particular to patient D.C. The Board concludes that these acts of Dr. Turska constitute grounds to suspend his license, pursuant to ORS 685.110(6) and (15). Finally, the Board relies upon OAR 850-01-005 which concludes that immediate suspension of Dr. Turska from the practice of naturopathic medicine is necessary to prevent serious danger to the health and safety of his patients.

6. By amendment, the Board adds the following additional reasons for suspension:

a) On April 28, 1993, the Board ordered Licensee to immediately cease and desist using any ozone device or machine shown to be used or intended to be used for the diagnosis, cure, treatment mitigation or prevention of disease or abnormalities of humans, until such device is either approved by or exempt from the requirement of the United States Food & Drug Administration.

b) Licensee violated the Board's April 28, 1993 Cease and Desist Order when on patient D.C.'s second visit, August 11, 1993, Licensee used an ozone generating device to insert ozone or aethozol into patient D.C.'s

rectum, in violation of ORS 685.110(6) and (15). Dr. Turska's response at hearing was to deny the specific allegations, as set forth both in the original and Amended Notices of Immediate Suspension. Further, Dr. Turska denies that his actions constitute serious danger to the health and safety of the public at large. Further, Dr. Turska contends that he did not insert ozone into patient D.C.'s rectum, but instead, inserted aethozol, which is a gas generated by the same device that produces ozone. He further contends, out of context with this case, that the ozone generating device is exempt from USFDA regulations.¹

APPLICABLE LAW

ORS 685.110(6) provides that the Board may suspend a license for any reason when a Licensee is found to be unfit to perform the duties of a naturopathic physician.

ORS 685.110(15) provides that the Board may suspend a license for any repeated conduct or practice contrary to recognized standards of ethics of the profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might impair a physician's ability to safely and skillfully practice naturopathic medicine.

¹ In a separate proceeding the Board has taken action to stop Licensee's use of an ozone device or machine as part of his treatment of patients in his practice: for the diagnosis, treatment, mitigation or prevention of disease or abnormalities of humans and until such time that such device is either approved by the Board or approved or exempt from USFDA requirements regarding such devices. See Exhibit 10, Final Cease and Desist Order, dated September 24, 1993, not appealed by Licensee.

part of any treatment procedure. This conduct greatly upset patient D.C.

7. On August 11, 1993, it is more likely than not that licensee inserted ozone into patient D.C.'s rectum by the use of an ozone generating device.

8. Licensee has displayed unprofessional conduct to patient D.C.

9. Overall, the evidence does not support a conclusion that Licensee presents, in the course of his practice, a **serious** danger to the health and safety of the public.

10. The record lacks substantial evidence that Licensee consumed alcohol while treating patient D.C.

11. In the treatment of patient D.C., on August 11, 1993, Licensee violated the Board's Cease and Desist Order of April 28, 1993.

ULTIMATE FINDINGS OF FACT

Based upon the above findings, Licensee, for the period of August 6, 1993, through August 11, 1993, acted rudely and crudely to patient D.C. for whom he provided treatment in that he slapped and pinched her buttocks without explanation, had her disrobe without explanation. By inserting ozone into patient D.C.'s rectum on August 11, 1993, Licensee violated a Cease and Desist Order issued by the Board on April 28, 1993.

Overall, Licensee conducted himself in a manner which is unprofessional and detrimental to the standards of the

FINDINGS OF FACT

Based upon a preponderance of all the evidence in this case, the following Findings of Fact are supported by substantial evidence in the record:

1. Licensee is currently licensed to practice naturopathic medicine in Oregon but has been temporarily suspended to practice under the Board's Order dated September 21, 1993. Licensee has practiced naturopathic medicine for approximately sixty (60) years.

2. The Board issued a Cease and Desist Order regarding Licensee on April 28, 1993 ordering Licensee to stop using an ozone generating device in the treatment of his patients.

3. Prior to Licensee's suspension, he came to treat patient D.C. in his office from August 6 to August 11, 1993.

4. In the course of treating patient D.C., Licensee failed to answer patient D.C.'s questions regarding why she needed to disrobe and this circumstance greatly upset the patient.

5. During the course of treatment, patient felt demeaned by the actions of Licensee.

6. On August 11, 1993, while giving patient D.C. an injection, Dr. Turska slapped and pinched patient D.C.'s buttocks without explaining his actions and without informing patient D.C. why his actions were

practice of naturopathic physicians and potentially harmful to his patient. It is more likely than not that Licensee inserted ozone rather than aethozol at the time of treatment of patient, D.C.

Licensee's conduct, however, does not represent serious danger to the health and safety of the public but is sanctionable by this Board.

CONCLUSIONS OF LAW

Based upon the above findings, Licensee has violated ORS 685.110(6) and (15) and is therefore subject to appropriate discipline by this Board.

DISCUSSION

Licensee has been a naturopathic physician for some sixty (60) years. On April 28, 1993, the Board ordered Licensee to immediately cease and desist using any ozone device or machine for the diagnosis, cure, treatment, mitigation, disease or abnormalities of humans, until such device was either proven or shown to be exempt from the requirement of the United States Food and Drug Administration (USFDA) or the Board independently determined that the device was safe.

Based upon Licensee's demeanor at hearing, it is apparent that he is substantially defiant of the Board's efforts to establish standards for appropriate conduct regarding the practice of naturopathic physicians, including himself, in Oregon, especially as to the use of ozone which he maintains is safe and has therapeutic value. The Board, however, is authorized by statute to regulate the practice of naturopathic

medicine in Oregon. ORS Chapter 685.

Licensee's own testimony that he did not use ozone on patient D.C. but, instead, used aethozol is not persuasive considering the fact that his own records (Exhibit D) contain a notation and symbol for the use of ozone, rather than the notation and symbol for the use of aethozol. Licensee's explanation that the use of the symbol for ozone rather than aethozol in his records is merely an abbreviation for his convenience is not persuasive under all the facts and circumstances of this case.

Naturopathic physicians are required to keep accurate records which must reflect, for anyone objectively reviewing those records, an accurate history of the course of treatment and diagnosis of their patients. Anyone looking at Licensee's records would objectively conclude that Licensee used ozone on patient D.C. on August 11, 1993, rather than aethozol, as he now maintains.

Licensee's conduct towards patient D.C., between August 6 and August 11, 1993, represents rude, crude and unprofessional behavior, demeaning to naturopathic physicians in general and specifically to himself. It also represents unacceptable and unprofessional conduct toward patient D.C. These incidents involving patient D.C., however, when compared to Licensee's sixty (60) years of practice, do not in and of themselves constitute substantial evidence of a **serious** danger to the public at large, should Licensee continue to practice. Licensee maintains by way of mitigation of his conduct that he did not

understand the Board's Order of April 28, 1993, [while subject to a hearing and a Final Order yet to be issued by the Board], prevented him from using ozone on any patient, including patient D.C.

Licensee's position is reasonable as there is no authority determining the effect of a Cease and Desist Order (assuming it is legally operative) once a hearing has been requested and before a Final Order is issued.

Further, assuming Licensee did violate an effective order issued on April 28, 1993, that Order was based on a belief by this Board that the use of ozone and an ozone generating machine "might" constitute a danger to the public. Yet the Emergency Suspension Order in the case at issue was based on an allegation that Licensee's treatment of patient D.C. constituted a **serious** danger to the public at large.

The evidence in this record does not support a finding or conclusion that the use of ozone in the treatment of patient D.C. or the violation of the April 28, 1993 Cease and Desist Order constituted a **serious** danger to the public at large. The Board has not decided if ozone or an ozone generating device constitutes any danger to the public if used as treatment by naturopathic physicians.

Therefore, in consideration of all the facts in this case, it cannot be said that Licensee poses a "serious" danger to the public if he should continue to practice naturopathic medicine.

Probation, however, is appropriate because the Board has decided in its Final Order of September 24, 1993, that all

naturopathic physicians, including Licensee, may not use ozone or an ozone generating device until the Board decides it is safe or until the United States Food & Drug Administration approves its use.

Licensee is required to abide by Board orders until or unless they are overturned by the Court of Appeals, as are all naturopathic physicians.

Probation is appropriate to ensure that Licensee follows the Final Order in this case.

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ORDER

It is ordered that Licensee be placed on a five-year (5) probation period under the following conditions:

1. That Licensee write an apology to patient D.C. for his rude and crude behavior toward patient D.C., a copy of which will be sent to the Board and maintained in Licensee's file. Licensee is to send the letter of apology within thirty (30) days from the date that the Board's Order becomes final.

2. That Licensee cease his rude and crude conduct toward his patients in general and, in particular, refrain from slapping and pinching their buttocks when providing injections unless he first describes the medical necessity

of doing so to his patient, and, further, that Licensee conduct himself at all times in a manner which is informative and responsive to patients' questions regarding the nature of his treatment.

3. Licensee refrain from violating any statutes and administrative rules (ORS 685 and OAR 850) including prohibitions against using ozone and/or aethezol, using any device that generates ozone and/or aethezol, against sclerosing injections, against any therapeutic injections other than vitamins or minerals, against holding himself out to be a medical specialist and against claiming to cure cancer and/or AIDS.

4. Licensee, on a quarterly basis is to certify in writing to the Board that he has not used an ozone generating device or otherwise inserted ozone into the rectums of his patients throughout the term of his probation.

5. During probation, licensee is to post in a conspicuous location in his waiting room the following notice:

Notice to Patients:

The therapeutic use of ozone or aethezol, or the use of any ozone or aethezol generating device is strictly prohibited by the Oregon Board of Naturopathic Examiners.

