

NO. A10-354

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State of Minnesota  
**In Court of Appeals**

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Minnesota Board of Chiropractic Examiners,  
*Respondent,*

v.

Curtis L. Cich, D.C., and Curtis L. Cich, D.C., P.A.,  
a/k/a Cich Chiropractic, P.A.,  
*Appellants.*

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**APPELLANTS' REPLY BRIEF**

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Appellants submit this brief in reply to the brief of Respondent Minnesota Board of Chiropractic Examiners. Respondent has not cited to authority giving the district court power to impose its own two-year suspension of Cich's license. Furthermore, Cich was not disqualified from retaining an ownership interest in his clinic under the Professional Firms Act, and the court should apply the definition of "advertise" set forth in the Chiropractic Act to determine whether there are genuine issues of material fact.

#### **ARGUMENT AND AUTHORITIES**

#### **I. THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION TO SUSPEND CICH'S CHIROPRACTIC LICENSE FOR TWO MORE YEARS.**

#### **A. THE COURT DID NOT HAVE AUTHORITY TO IMPOSE ITS OWN SUSPENSION OF CICH'S LICENSE UNDER SECTION 214.11.**

Respondent argues that the district court's imposition of its own two-year suspension of Cich's chiropractic license was proper under Minn. Stat. § 214.11 (2008). That statute permits a district court, in an action brought by a licensing board, to grant "injunctive relief to restrain any unauthorized practice or violation or threatened violation of any statute or rule which the board is empowered to regulate or enforce." *Id.* (Resp. Br. at 14.) There is no dispute that a district court has jurisdiction to enjoin violations of a Board order

issued pursuant to a statute or rule that the Board is authorized to enforce. But the district court exceeded its jurisdiction in this case because it did not simply enjoin violations of the Board's order for the remainder of the two-year suspension. Instead, the district court imposed a two-year suspension. The district court had no jurisdiction to do so.

The power of a court to grant certain relief based upon a statute is a question of subject matter jurisdiction. See *Hale v. Viking Trucking Co.*, 654 N.W.2d 119, 124 (Minn. 2002); *State v. Rojas*, 569 N.W.2d 418, 420 (Minn. App. 1997). The authority to suspend a chiropractic license belongs exclusively to the Board of Chiropractic. See Minn. Stat. § 148.10, subds. 1(a), 2 (2008); *Pietsch v. Board of Chiro. Exam.*, 683 N.W.2d 303, 309 (Minn. 2004) (holding that Board erred in disciplining chiropractor for solicitation methods not specifically prohibited by section 148.10); *Proetz v. Board of Chiro. Exam.*, 382 N.W.2d 527, 533 (Minn. App. 1986) (examining language of section 148.10 to determine whether suspension conformed to legislative authority delegated to the Board), *review denied* (Minn. May 16, 1986). Although a district court may enjoin violations of the Chiropractic Act pursuant to section 214.11, the district court's injunctive authority is confined by the nature of the alleged violation

and the corresponding statutory grant of authority to the court. See *State v. Gartenberg*, 488 N.W.2d 496, 499 (Minn. App. 1992).

No Minnesota appellate court has interpreted or analyzed section 214.11. However, the *Gartenberg* decision demonstrates that a court enjoining a violation of a statute must not exceed the authority granted by the statute. In that case, the state sought injunctive relief, alleging that a mortgage broker violated various consumer fraud statutes. *Id.* at 497. Pursuant to two enforcement statutes, the court issued an order (1) prohibiting the mortgage broker from doing business or advertising in the state, (2) prohibiting the broker from destroying records or removing assets from the state, and (3) requiring the broker to place all funds collected from consumers in an escrow account. *Id.* at 497-98. On appeal, the broker did not dispute the first two parts of the district court's order, but argued that the court did not have the authority to order funds to be paid into escrow. *Id.* at 498.

This Court carefully analyzed the two enforcement statutes which provided as follows:

[a] person likely to be damaged by a deceptive trade practice may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable.

\* \* \* \*

[t]he attorney general \* \* \* may institute a civil action in the name of the state in the district court for an injunction

prohibiting any violation of sections 325F.68 to 325F.70. The court, upon proper proof that defendant has engaged in a practice made enjoined by section 325F.69, may enjoin the future commission of such practice.

*Id.* (quoting Minn. Stat. §§ 325D.45, subd. 1., 325F.70, subd. 1). The court concluded that the statutes “clearly authorize injunctive relief to prevent violation of the acts,” but that they did not authorize the court to order the brokers to escrow funds. *Id.* at 499. The court therefore ruled that the third part of the district court’s order was “beyond the specific authority contained in the consumer acts” and vacated that portion of the order. *Id.* This Court also concluded that the district court did not purport to act pursuant to its equitable powers and, in any event, had not made the findings necessary to justify doing so. *Id.*

This case is analogous to *Gartenberg*. Here, as in *Gartenberg*, the district court purported to act only pursuant to a statute—section 214.11. Furthermore, to the extent that this Court finds that there is no genuine issue of material fact as to whether Cich violated the Board’s order, there is no dispute that the district court had authority to enjoin violations of the Board’s order *during the remainder of the two-year suspension period*. However, as did the district court in *Gartenberg*, the district court in this case exceeded its statutory authority by imposing restrictions not permitted by section 214.11. Specifically, the district court in this case suspended Cich’s chiropractic license for an additional

two years—a form of relief that section 214.11 did not permit the court to grant.

The Board suspended Cich’s license “for a period of two years,” further stating that Cich’s license “shall be reinstated two years from the date of this Order.”<sup>1</sup> (A. 34: Board’s Find. of Fact, Concl. of Law and Final Decision and Order at 28, ¶ 1, 2.) By doing so, the court not only exceeded the authority conferred by section 214.11, but contravened the very order that it purported to be enforcing by extending Cich’s suspension well beyond the date on which Cich’s license was to be reinstated. (*See id.*)

Respondent cites *State v. Cross Country Bank, Inc.*, 703 N.W.2d 562 (Minn. App. 2005) for the proposition that “when the legislature has explicitly authorized the state to obtain injunctive relief to prevent violation of statutes that protect consumers, the legislature has obviated a showing of irreparable harm and inadequate legal remedy.” *Id.* at 573. The issue on appeal in *Cross Country Bank* was whether a district court issuing an injunction pursuant to a statute must make the findings

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<sup>1</sup> The qualifying language, “conditioned on his compliance with the following terms,” did not authorize the district court to extend or renew Cich’s suspension. Only the Board of Chiropractic may suspend, renew, or reissue a chiropractic license. Minn. Stat. § 148.10, subds. 1(a), 2 (2008). The Board could decline to reissue Cich’s license after the two-year period, but the district court does not have the authority to suspend Cich’s license.

required for granting relief pursuant to the court's equitable power. This Court held that a court acting pursuant to statute need not make those findings. *Id.* at 574. Thus, the excerpt quoted above is simply an alternative formulation of the proposition that Cich has already acknowledged: the district court has authority to straightforwardly enjoin violations of professional board orders issued pursuant to rule or statute. That holding does not advance Respondent's position because all parties agree that the district court purported to act only pursuant to the statutory authority in section 214.11, and the issue on appeal is whether the district court exceeded its jurisdiction under section 214.11.

This is not a circumstance in which a district court enjoined an unlicensed person from practicing. Cich was licensed, and the Board suspended his license for two years. Cich's license was never revoked, and by the terms of the Board's order, Cich's license may be reinstated when the suspension ends. The district court had no authority to enjoin Cich from practicing chiropractic after the two-year suspension expired.

**B. THE DISTRICT COURT'S INJUNCTION ENTERED PURSUANT TO THE CORPORATE PRACTICE OF HEALING DOCTRINE DID NOT AUTHORIZE THE DISTRICT COURT TO SUSPEND CICH'S LICENSE.**

Respondent argues that the corporate practice of healing doctrine provided the district court with an independent basis for enjoining Cich. (Resp't. Br. at 15-17.) This argument is not responsive to the argument

that the district court lacked jurisdiction to suspend Cich's license for an additional two years. The corporate practice of healing doctrine provides that a corporation may not provide professional services through the employment of a professional except as permitted by a statute such as the Professional Firms Act. *Isles Wellness, Inc. v. Progressive Northern Ins. Co.*, 703 N.W.2d 513, 524 (Minn. 2005).

By definition, the corporate practice of healing doctrine only applies to corporate entities. *See id.* at 516-17 (stating that corporate practice of healing doctrine prohibits "corporations" from employing licensed professionals except as permitted by statute or rule). Thus, the doctrine cannot serve as a basis for enjoining an individual from practice, much less suspending a license.

Respondent's argument is flawed not only because the corporate practice of healing doctrine applies only to corporate entities, but because the argument employs circular reasoning; the Board's suspension was the condition that allegedly made Cich "disqualified" for purposes of the corporate practice. (*Id.*) Upon the expiration of the two-year suspension period, the corporate practice of healing doctrine ceased to apply. Thus, the corporate practice of healing doctrine was not a truly independent basis for enjoining Cich, as Respondent argues, and did not

provide the district court with any authority to impose its own suspension of Cich's license.

**C. WHETHER THE DISTRICT COURT EXCEEDED ITS STATUTORY AUTHORITY DOES NOT DEPEND ON WHETHER THE DISTRICT COURT VIOLATED THE PRIMARY JURISDICTION DOCTRINE.**

Respondent argues that the district court had the authority to suspend Cich's license because the district court did not violate the doctrine of primary jurisdiction. Cich has not argued that the district court violated the doctrine of primary jurisdiction. That doctrine provides that an administrative agency's decisions are entitled to deference by a reviewing court because of the agency's expertise. *State v. U.S. Steel Corp.*, 307 Minn. 374, 380, 240 N.W.2d 316, 319-20 (1976).

Assuming, for the sake of argument, that the district court did not violate the doctrine of primary jurisdiction, this conclusion does not alter the fact that the district court lacked the statutory authority to suspend Cich's license. The district court purported to act pursuant to section 214.11, and that statute does not authorize a court to suspend a professional license. Respondent's argument therefore fails.

**II. CICH WAS NOT DISQUALIFIED FROM PROVIDING ALL PERTINENT PROFESSIONAL SERVICES FOR PURPOSES OF THE PROFESSIONAL FIRMS ACT BECAUSE HIS ACUPUNCTURE CERTIFICATE WAS A LICENSE FOR PURPOSES OF THE ACT.**

Respondent contends that Cich's acupuncture certification was not sufficient grounds to preserve his right to retain ownership of his clinic by emphasizing that Cich "did not have a *license* to practice acupuncture." (Resp't. Br. at 24 (emphasis added).) Respondent apparently assumes that Cich's acupuncture certificate does not constitute a "license" for purposes of the Professional Firms Act. But the Professional Firms Act expressly defines "[l]icense" to include "any license, *certificate*, [or] registration." Minn. Stat. § 319B.02, subd. 9a (2008) (emphasis added). Because Cich's acupuncture certificate was not suspended or revoked, Cich was not "disqualified to practice *all* the pertinent professional services." Minn. Stat. § 319B.08, subd. 1(a)(1) (emphasis added); (See App.'s Br. at 12-17.)

**III. GENUINE ISSUES OF MATERIAL FACT EXIST BECAUSE THE STATUTORY DEFINITION OF ADVERTISEMENT IN THE CHIROPRACTIC ACT IS THE PROPER STANDARD.**

Respondent argues that there are no genuine issues of material fact as to whether Cich advertised chiropractic services based on the dictionary definition of the term "advertise." (Resp't. Br. at 29 & n.8.) But Respondent offers no good reason for applying the dictionary

definition of the term advertise given that the very statute pursuant to which the Board prohibited Cich from advertising defines the term “advertise.” See Minn. Stat. § 148.10, subd. 1(e)(7). The court should therefore apply the narrower definition of “advertise” set forth in the Chiropractic Act at section 148.10. See Minn. Stat. § 645.16 (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”) For the reasons discussed in Appellant’s brief, genuine issues of material fact remain as to whether Cich “advertise[d]” as that term is used in section 148.10, subdivision 1(e)(7). (App.’s Br. at 22.)

### **CONCLUSION**

The district court did not have jurisdiction under section 214.11 or any other statute to impose its own suspension of Cich’s chiropractic license. Cich was not disqualified from retaining ownership of his clinic because his acupuncture certificate was a “license” within the meaning of the Professional Firms Act. Genuine issues of material fact exist as to whether Cich advertised chiropractic services, as that term is defined in the Chiropractic Act. For all of these reasons, the district court’s order suspending Cich’s license for an additional two years should be reversed in part.

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A Professional Association

Date: April 4, 2010

  
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