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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF
BRANDON BABCOCK, CP, TO PRACTICE
AS A CHIROPRACTIC PHYSICIAN IN THE
STATE OF UTAH

EMERGENCY ORDER

Case No DOPL 2012- 192

The Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (the "Division") initiated an Emergency Adjudicative Proceeding pursuant to Utah Code Ann § 63G-4-502, the Utah Administrative Procedures Act, Utah Code Ann § 58-1-108(2), the Division of Occupational and Professional Licensing Act, and Utah Administrative Code R151-46b-16, the Department of Commerce Administrative Procedures Act Rules. The Division initiated the Emergency Administrative Proceeding upon evidence that the continued practice of Brandon Babcock (the "Respondent") as a chiropractic physician represented an immediate and significant danger to the public health, safety, and welfare, and that the threat required immediate action by the agency.

Before taking this action, the Chair of the Chiropractic Physician Licensing Board

appointed a three-member committee to review with the Division the proposed action in this matter, pursuant to Utah Code Ann § 58-1-108(2)

Pursuant to the Open and Public Meetings Act, Utah Code Ann § 52-4-1, the Division provided notice of the meeting of the committee for 9 a m on April 25, 2012, at the Heber M Wells Building located at 160 East 300 South, Salt Lake City, Utah Notice of the Emergency Hearing was placed in the lobby of the Heber Wells Building and on the DOPL/public information website on or about April 24, 2012 The committee convened at the appointed date and time The meeting of the committee was closed pursuant to Utah Code Ann § 52-4-205(1) (a) in order to discuss the professional competence and character of an individual The presiding committee member affirmed under oath that the meeting was closed for that purpose The committee reviewed the Division's proposed action and considered information in the form of testimony and exhibits The Division, having considered the committee's recommendations, makes the following Findings of Fact, Conclusions of Law, and Order

FINDINGS OF FACT

1 That since September 12, 2002, the Respondent has been licensed to practice as a chiropractic physician, license number 5189485-1202

2 That from at least February 2012, the Respondent was advertising on both t v and through the newspapers that he could reverse the effects of type II diabetes, and that he could stop drug dependency for patients who were suffering from type II diabetes The Respondent would also advertise free seminars and free gourmet meals where he would sell his diabetes program to reverse type II diabetes to a predominantly older crowd of people who were suffering from type II diabetes

That since April 1, 2012, the Division has received over 50 complaints on the Respondent's practice of luring elderly people into seeing him through advertising or a free dinner and then inappropriately billing these elderly people for a program that allegedly "reverses their type II diabetes "

That on or about April 16, 2012, the Respondent was charged in the Third District Court with ten counts of exploitation of a vulnerable adult and one count of communications fraud. *Eight of these criminal charges were second degree felonies due to an aggregate value of the resources used or profits made being \$5,000 or more, and three of these charges were third degree felonies due to an aggregate value of the resources used or profits made being less than \$5,000*

That on or about April 16, 2012, the Respondent was arrested for the eleven criminal charges mentioned above. Even after being arrested, the Respondent informed potential customers/victims that he was still going to continue with his practice of holding promotional dinners where he was selling his type II diabetes services. As recently as April 24, 2012, the Division has heard reports that the Respondent still plans on holding his seminars and trying to lure elderly patients into paying for his diabetes program.

3 That on or about February 21, 2012, the Respondent met with B B , a 79 year old woman who suffers from type II diabetes. B B had seen an advertisement from the Respondent that he was able to reverse her diabetes. The Respondent persuaded B B into signing up for a credit card when B B thought she was just filling out patient forms. B B did not learn until later that she had signed up for a credit card through Chase Health. B B confronted the Respondent about the credit cards, telling him that she did not use credit cards and that she did not want to start

using them now. The Respondent told B B to "just put away the card in case she needed it."

In addition to diabetes, B B also suffered from polio and was still healing from a recent heart valve replacement procedure. The Respondent never asked B B about any of the medications she was taking in February 2012. In fact, the Respondent never touched B B or examined her in any way. The Respondent also never talked to any of B B's physicians who were treating her in February 2012.

B B tried to comply with the Respondent's dietary program which prohibited pork, beef and bread. The Respondent also told B B to cut back on her insulin and her diabetes medication. After two weeks on the Respondent's program, B B called the Respondent's office because her health was declining and her legs were swelling up to the point where she almost could not walk. The Respondent never called her back. B B called her primary care provider, Dr. Checketts, who advised her to stop taking the supplements that were offered by the Respondent and to get back on all of her diabetes medications.

The Respondent charged B B approximately \$1700 for his services. B B called the Respondent and demanded a full refund because she had opted out in the first 30 days of the program. B B was so upset about the Respondent's fraudulent conduct that she did not sleep for approximately three weeks. After enlisting the aid of her nephew, B B finally got a refund on the \$1700 she was wrongfully charged by the Respondent. B B was so upset over the Respondent's actions when he was trying to get B B to continue with the program that she asked him, "What happens to the bill if I die from your program?" The Respondent did not answer her question.

4 That on or about March 15, 2012, the Respondent met with T L, a 71 year old man who

suffers from Parkinson's Disease, dementia, thyroid problems and diabetes, at one of the Respondent's "free dinner" seminars. On March 15, T L signed what he thought was a contract for the Respondent's services. T L believed the contract stated that he could opt out of the payments and the Respondent's program if he chose to do so in the first 30 days. T L asked the Respondent how his program was going to affect T L 's Parkinson's Disease. T L lived in a care center with strict dietary controls for residents, so he quickly realized that he could not comply with the Respondent's initial cleansing techniques. On March 19, 2012, T L 's daughter, A N , called the Respondent's office and requested a refund for her father. The Respondent's office staff informed A N that T L would still have to pay a \$500 cancellation fee and the fees for the supplement, and that T L was still responsible for the \$6,000 charge with Chase Bank. A N informed the Respondent's staff that her father had not even used the supplements, and that the supplements were still in their original bags. A N also contacted Chase Bank, which was the financial institution affiliated with the Respondent's services contract. Chase Bank told A N to fax a formal letter, disputing the \$6000 charge. A N did fax Chase Bank the dispute letter, but Chase Bank refused to issue A N a refund and told her that she would "have to deal with the provider."

5 That on or about March 2012, the Respondent met with D O , a 65 year old man who suffers from diabetes, high blood pressure and high cholesterol. In November of 2010, D O had open heart surgery due to numerous health problems. While meeting with D O , the Respondent told D O that he could get D O off all of his medications, including his heart medication. The Respondent informed D O that his program normally cost \$6,000, but he would accept \$5400 from D O if D O paid in cash. The Respondent then sent D O two test kits in the mail: a saliva

sample DNA test and a stool sample test. The Respondent informed D O that these two tests alone cost almost \$2,000. D O believed the Respondent was an M D who specialized in endocrinology. D O asked the Respondent about the results from these two tests. The Respondent refused to discuss the results of the tests with D O. The Respondent also refused to give D O any information on any kind of chat room with other patients who were following the Respondent's diabetes program.

After about five months into the program, the Respondent told D O to stop taking his Simvastatin medicine and to reduce his Metformin. D O followed the Respondent's instructions and was tested a month later by his V A doctors. D O's V A doctors informed D O that his newest blood test results were worse than they had ever been. They informed D O that he was in a very dangerous condition—especially with regard to his cholesterol. The V A nurse practitioner advised D O to immediately get back on all of his originally prescribed medications.

After learning that the Respondent's program was actually making him sicker, D O called the Respondent and informed him of this fact. The Respondent told D O, "Not to worry. Your body is just going through a change." D O asked the Respondent for a refund because the Respondent had promised that D O's diabetes would be reversed and it had not been reversed. The Respondent told D O that there would be no refund. The Respondent never spoke to any of D O's doctors or health care providers at the V A and never did any kind of testing on D O except for the spit DNA test and the stool test. D O felt cheated by the entire process and does not want to see other elderly folks cheated by the Respondent.

6 That on or about September 23, 2011, T H a 69 year old man on a fixed income who

suffers from diabetes, met with the Respondent at one of the Respondent's dinner presentations. T H was looking for a way to get his blood sugar under control. The Respondent promised T H that if he signed up for the program, "T H would cut his insulin down or completely out" within three months. T H informed the Respondent that he was skeptical about the \$6,000 cost because he was on a fixed income. The Respondent reassured T H that T H would actually be cutting costs because T H would not be taking as many medications. The Respondent did not examine T H. The Respondent had three meetings with T H that totaled one hour.

At the end of December 2011, T.H. was out of supplements and called the Respondent. The Respondent was not available at the time. After T H threatened to sue, the Respondent's office agreed to extend his treatment for three additional months, but T H would be required to pay any additional charges.

On or about March 14, 2011, T H was admitted to the hospital for 11 days because his kidneys had failed and he had pneumonia. The physician at the hospital told T H that he needed to get off the diet from the Respondent's plan and stop taking all of the supplements. T H called the Respondent's office and asked for a refund of his \$5,000. After some bickering from both sides, the Respondent's office refused to refund the \$5,000 to T H. During the entire time, T H was following the Respondent's program, he believed that the Respondent was a doctor.

7 On or about March 8, 2012, the Respondent met with R K, an 83 year old man who suffers from diabetes. The Respondent made the following statements to R K when he was trying to persuade R K to pay for his treatment: "Do you want to have your foot cut off?" "Do you want to go blind while driving?" The Respondent told R K that he could reverse his diabetes and get his blood sugar levels down to 110. The Respondent also told R K that he

could get R K off all of his diabetic medications. The Respondent tried to get R K to sign up for the \$6,000 treatment program, but R K refused. R K cut the Respondent a check for \$500. After R K got home that night, he decided he would not participate in the Respondent's program and called the Respondent, asking for a refund because the first consultation was supposed to be free. The Respondent told R K that he would have to come back into the office for an exit interview in order to get his refund. R K refused to come back for the exit interview, and he has not received a refund from the Respondent.

8 On or about January 2012, D Z, an elderly lady who suffers from diabetes, met with the Respondent after she had seen the Respondent's advertising that he could reverse her diabetes. The Respondent did not perform any medical tests on D Z during their initial consultation, but he concluded that D Z had Hashimoto's disease and leaky gut. D Z reluctantly decided to sign up for the program, but the next day she called the Respondent and informed him that she was going to cancel her treatment program. The Respondent became angry and informed D Z that she would have to come in for an exit interview. At the exit interview, the Respondent told D Z and her husband that she could try the program and see if it worked or pay him a \$500 cancellation fee. D Z decided to try the program. D Z asked the Respondent about medical testing to see if the program was working. The Respondent informed D Z that he would know if it was working. The Respondent also sent D Z a spit DNA test and a stool test. The Respondent went on to tell D Z that she had Hashimoto's disease and a stomach bacteria.

The Respondent did not make weekly calls to D Z, which was promised at the onset of the treatment program, and D Z informed the Respondent that she was suffering from swollen legs and cramps. The Respondent told D Z to eat more fish without doing any kind of medical

examinations on D Z

D Z 's blood glucose levels are still climbing, and she now is stuck with paying a \$6,000 credit card bill

CONCLUSIONS FROM THE FACTS

1 That the Respondent's unprofessional conduct as described above poses an immediate and significant danger to the public health, safety, and welfare, and requires immediate action by the Division. In particular, the Respondent has repeatedly taken advantage of elderly patients by promising to reverse their diabetes and scaring them into accepting the diabetes treatment by telling them that they could die, they could have their legs cut off, and they could go blind. After convincing these elderly patients, many of whom are on fixed incomes, to pay \$6,000 for the treatment, the Respondent often tells these patients to either go off or cut back on their existing medications without consulting with the patients' physicians and without doing any real medical testing or examinations on the patients. This conduct endangers and exploits these elderly patients both physically and financially.

The fact that the Respondent repeatedly recruits elderly patients through advertising and free dinners to sign up for his program, and that he repeatedly either tricks or "hard sells" these elderly patients who are suffering from diabetes into signing up and paying for his program creates a significant and immediate danger to the public. Further, the fact that the Respondent does little to no medical testing on these elderly patients yet advises them to cut back or stop taking their existing medications creates some real health risks for these patients. Making the matter even worse is the fact that the Respondent does not have any contact with the physicians and/or health care providers for these elderly patients. Lastly, the Respondent is making medical

diagnoses on some of these patients without any real medical examinations or testing

All of the previously mentioned behavior constitutes an immediate threat to the public health, safety, and welfare since the Respondent has built and is actively using a systemic program that tends to cheat, exploit and endanger both the physical and fiscal health of elderly patients who are already suffering from type II diabetes

2 The Division finds that, pursuant to Utah Code Ann § 58-1-401(2)(a), there is a factual basis to conclude that the Respondent has engaged in unprofessional, that he poses an immediate and significant danger/threat to the public health, safety, and welfare, and that the Division should take immediate action to suspend and/or revoke his professional licenses

CONCLUSIONS OF LAW

1 The Division has jurisdiction and authority to act in this matter and has followed appropriate statutory procedures regarding the initiation of emergency adjudicative actions

2 Utah Code Ann § 63G-4-502 provides

(1) An agency may issue an order on an emergency basis without complying with the requirements of this chapter if

(a) the facts known by the agency or presented to the agency show that an immediate and significant danger to the public health, safety, or welfare exists, and

(b) the threat requires immediate action by the agency

(2) In issuing its emergency order, the agency shall

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare,

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the

agency's utilization of emergency adjudicative proceedings, and

(c) give immediate notice to the persons who are required to comply with the order

(3) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the agency shall commence a formal adjudicative proceeding in accordance with the other provisions of this chapter

3 The actions of the Respondent constitute an immediate and significant danger to the public health, safety, and welfare, and require immediate action to protect the public health, safety, and welfare

4 That the Respondent has engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a), (b), (d), (g) and (k)

5 That the Respondent, by victimizing elderly individuals who are already suffering from health problems, and by putting them at further physical and financial risk by advising them to go off their medications and by charging them large sums of money for his services has engaged in unprofessional conduct as defined in Utah Code Ann § 58-1-501(2)(a), (b), (d), (g) and (k)

6 That this Order is necessary to prevent harm to the public pending a formal adjudication of the matters addressed in this proceeding Immediate action is necessary, and this Order is the least restrictive action needed to prevent or avoid the danger to the public health, safety, or welfare

7 The Respondent may challenge the Order pursuant to Utah Admin, Code R151-46b-16 as follows

R151-46b-16 Emergency Adjudicative Proceedings Unless otherwise provided

by statute or rule

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63G-4-502 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63G-4-502. The hearing will be conducted in conformity with Section 63G-4-206.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within a reasonable time after the hearing, the presiding officer shall issue an order in accordance with the requirements of Section 63G-4-502. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

ORDER

The license of Brandon Babcock to practice as a chiropractic physician in the State of Utah, license number 5189485-1202, will be immediately suspended until a hearing can be convened pursuant to Utah Code Ann. § 63G-4-502 and Utah Admin. Code R151-46b-16, and a contravening order is issued. The Division will proceed with a formal adjudicative proceeding to uphold this suspension and/or revoke the Respondent's professional licenses.

The Respondent shall immediately cease and desist from his practice as a chiropractic

physician in the State of Utah until a hearing can be convened pursuant to Utah Code Ann § 63G-4-502 and Utah Admin Code R151-46b-16, and a contravening order is issued

RIGHT TO REVIEW

1 In accordance with Utah Admin Code R151-46b-16, the Division will schedule a hearing upon receipt of a written request from the Respondent. At the hearing it will be determined whether this Emergency Order should be affirmed, set aside, or modified, based on the standards set forth in Utah Code Ann § 63G-4-502. The hearing will be conducted in conformity with Utah Code Ann § 63G-4-206.

2 Upon receipt of a request for hearing pursuant to Utah Admin Code R151-46b-16, the Division will conduct a hearing as soon as reasonably practical, but not later than twenty (20) days from receipt of a written request, unless the Division and the party requesting the hearing agree to conduct the hearing at a later date.

DATED this 25 day of April, 2012



Presiding Officer
Division of Occupational and Professional
Licensing