

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF A PETITION FOR AN :
ADMINISTRATIVE INJUNCTION INVOLVING :
NICOLE JAMES, : ADMINISTRATIVE INJUNCTION
RESPONDENT. :
0004578

Division of Legal Services and Compliance Case No. 14 UNL 090 (MED)

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Nicole James
242 Michigan Street, Suite 202
Sturgeon Bay, WI 54235

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Wisconsin Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Nicole James is not and has never been licensed to practice medicine and surgery in the state of Wisconsin.
2. Respondent reports the following: she holds a bachelor's degree in psychobiology; is a certified functional medicine practitioner (CFMP); is a certified nutritional consultant (CNC); and has a doctorate in pastoral sciences.

3. At all times relevant to this proceeding, Respondent owned and operated the Center for Optimal Health (Center) located in Sturgeon Bay, Wisconsin.

4. The Center maintains a website (www.dcoptimalhealth.net) by which information about the Respondent and the Center is advertised, and by which medical services and treatments are offered.

5. In the Center website advertisement dated June 23, 2015, Respondent holds herself out as “Doctor Nicole James, Functional Medicine Clinician.” The advertisement further offers natural and alternative treatment for cancer patients in Wisconsin.

6. The website’s “Natural and Alternative Treatment for Cancer Patients in Wisconsin” webpage includes, inter alia, the following:

- a. [t]he Center for Optimal Health offers holistic, alternative and natural treatment for cancer patients through the science based approach of functional medicine;
- b. doctor cancer diagnosis evaluation, review, and cancer program design; customized intravenous vitamin therapy; Mpulse Infrared Sauna Therapy for Maximum Detoxification, and Cancer Pain Reduction, Pulse Electro Magnetic Frequency Therapy¹, and
- c. tumor regression and cancer cell suppression, cutting edge treatment protocols, case evaluation, individualized recommendations, science based approach and treatment backed by scientific evidence.

7. The website’s “Functional Medicine Clinician, Doctor Nicole James in Wisconsin” webpage includes, inter alia, the following:

“Doctor James believes that when the body exhibits symptoms it’s trying to tell you something and you need to look under the hood, so to speak, to find the cause and balance the body’s systems. For Doctor James diagnosis doesn’t matter, but instead she believes you must always ask the question why. Doctor James enjoys taking the time to listen to her patient’s entire story and forms a personal connection when trying to detail a path back to health....Changing the course of a child’s life, renewing the life of a cancer patient, and resolving long time chronic symptoms are some of her favorite and most rewarding challenges.”

8. The website’s “Practice Policies” webpage:

- a. instructs potential patients to sign a medical record release form (provided by the Center), to obtain their previous medical records from other providers, and to express mail them to the Center;

¹ The advertisement indicates that PEMP is an approved cancer treatment therapy in European countries.

- b. notifies potential patients that their initial visit will include a 90-minute functional medicine consultation with Respondent and a 15-minute blood draw with a lab technician, and
- c. notifies potential patients that laboratory/diagnostic testing are integral components of the treatment plan and that test results are used to design a personal health care program as well as uncover the root causes of medical conditions.

9. The website's "Functional Medicine & Holistic Treatment at the Center for Optimal Health" webpage includes, inter alia, the following:

- a. the Center's goal is to treat symptoms, conditions, and diseases by identifying and treating the underlying causes;
- b. that (Respondent) relies on science, advanced laboratory testing, and a holistic medicine approach to treat everything from common headaches to serious chronic diseases, and
- c. that today's technology allows the Center to treat patients all across the country via phone and video chat.

10. On June 24, 2015, Department staff interviewed Respondent at the Center. During the interview, Respondent stated that she is not a medical doctor, and because she has a degree in pastoral sciences, she does not need to be licensed as a dietitian.

11. In written documents provided by Respondent during the June 24, 2015 interview, the following representations are made:

- a. Respondent is described as a specialist whose expertise lies in functional, nutritional, and preventative medicines, and
- b. Respondent is noted to utilize advanced testing to discover biochemical and nutrient imbalances, toxins, allergens and the underlying cause of disease

12. Many of the representations made on Respondent's website are also included in the written materials Respondent provided during the June 24, 2015 interview with Department staff.

13. Respondent admitted to Department staff during the June 24, 2015 interview that she meets with patients, discusses their past medical history, discusses concerns the patient may have, and then, if she deems it necessary, will request blood draws to be completed by the phlebotomist for testing. Respondent then evaluates the test results and determines what the patient's body is missing and will prescribe vitamins or supplements.

14. Respondent stated she is not practicing medicine because she does not prescribe drugs.

15. Wisconsin Stat. § 448.01(9), defines “Practice of medicine and surgery” to mean the following:

- a. To examine into the fact, condition, or cause of human health or disease, or to treat, operate, prescribe or advise for the same, by any means or instrumentality.
- b. To apply principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in par. (a) and in sub. (2).
- c. To penetrate, pierce or sever the tissues of a human being.
- d. To offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.

16. Wisconsin Stat. § 448.01(10), defines “Treat the sick” to mean the following:

... to examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, or to undertake, offer, advertise, announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect, or in the expectation thereof.

17. Pursuant to Wis. Stat. § 448.03(1)(a), a license is required to engage in the practice of medicine, which includes treating the sick.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction in this matter pursuant to Wis. Admin. Code ch. SPS 3 and Wis. Stat. § 440.21 and 448.11, and is authorized to enter into the attached Stipulation and Order pursuant to Wis. Stat. § 227.44(5).

2. Most, if not all, of the conduct described above constitutes the practice of medicine and surgery for which a license is required pursuant to Wis. Stat. § 448.03(1)(a).

3. By the conduct described above, Respondent is engaging, or has engaged in the unlicensed practice of medicine, contrary to Wis. Stat. § 448.03(1)(a).

ORDER

1. The attached stipulation is accepted.

2. Unless and until Respondent is properly licensed to practice medicine and surgery by the Wisconsin Medical Examining Board, Respondent is enjoined and prohibited from the

practice of medicine and surgery in the state of Wisconsin. Violation of this special order may result in a forfeiture of up to \$10,000 for each day of violation. See Wis. Stat. § 440.21(4)(a).

3. Unless and until Respondent is properly licensed to practice medicine and surgery by the Wisconsin Medical Examining Board, Respondent is enjoined and prohibited from offering, advertising, announcing, or holding out in any manner that she is able to treat the sick.

4. Unless and until Respondent is properly licensed to practice medicine and surgery by the Wisconsin Medical Examining Board, Respondent is enjoined and prohibited from referring to herself in any manner that suggests or infers that she is licensed to practice medicine and surgery. This includes, but is not limited to, Respondent's use of the phrase "Functional Medicine Clinician" in person, print advertising, business cards, internet website advertising, and/or signage.

5. Unless and until Respondent is properly licensed to practice medicine and surgery by the Wisconsin Medical Examining Board, Respondent is enjoined and prohibited from stating or inferring in person, print advertising, business cards, internet website advertising and/or signage:

- a. that she is licensed, or has received medical school training that qualifies or enables her, to engage in the practice of alternative medicine, functional medicine, or any other form of medicine;
- b. that she is able or qualified to evaluate cancer diagnoses made by a licensed physician;
- c. that she is able to diagnose or treat cancer patients or members of the public using "holistic, alternative, or functional medicine;"
- d. that she is able to "treat the sick" (as defined in Wisconsin Stat. § 448.01(10)) through the science based approach of functional medicine;
- e. that she will provide intravenous vitamin therapy or any other form of intravenous therapy to patients or members of the public;
- f. that she will provide PEMP or any other form of cancer treatment therapy to any patient or member of the public;
- g. that she will provide care or treatment that will result in tumor regression and cancer cell suppression to any patient or member of the public, and
- h. that she will perform advanced, laboratory, and/or diagnostic testing on patients or members of the public by which to uncover the root causes of medical conditions or the underlying cause of disease.

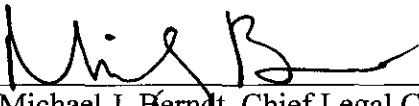
6. If the Department determines there is probable cause to believe Respondent has violated any terms of this Administrative Injunction, the Department may refer the violations

Administrative Injunction
Nicole James, 14 UNL 090

covered by this decision and order to any appropriate prosecutorial unit for review for possible criminal charges.

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Issued at Madison, Wisconsin, this 7th day of March, 2016.

By: 

Michael J. Berndt, Chief Legal Counsel
On behalf of the Department

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF A PETITION FOR AN :
ADMINISTRATIVE INJUNCTION INVOLVING :

NICOLE JAMES,
RESPONDENT.

STIPULATION

0004578

Division of Legal Services and Compliance Case No. 14 UNL 090 (MED)

Respondent Nicole James, and the Division of Legal Services and Compliance,
Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.
2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:
 - the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
 - the right to confront and cross-examine the witnesses against Respondent;
 - the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
 - the right to testify on Respondent's own behalf;
 - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
 - the right to petition for rehearing; and
 - all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
3. Respondent is aware of Respondent's right to seek legal representation. Respondent is represented by Attorney Thomas Parins.
4. Respondent agrees to the adoption of the attached Administrative Injunction by the Department. The parties to the Stipulation consent to the entry of the attached Administrative Injunction without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Department's Administrative Injunction, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Department, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the

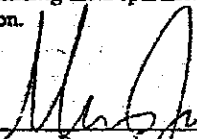
Stipulation to Administrative Injunction
Nicole James, 14 LNL 090

Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Department, the parties agree not to contend that the Department has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney for the Department of Safety and Professional Services may appear before the Department for the purposes of speaking in support of this agreement and answering questions that the Department may have in connection with deliberations on this Stipulation.


7. Respondent is informed that should the Department adopt this Stipulation; the Department's Administrative Injunction is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Department adopt this Stipulation and issue the attached Administrative Injunction.



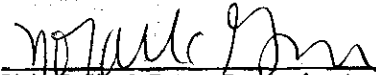
Nicole James, Respondent
242 Michigan Street, Suite 202
Sturgeon Bay, WI 54235

3-3-16
Date



Thomas Parins, Attorney for Respondent
Parins Law Firm, S.C.
416 S. Monroe Avenue
Green Bay, WI 54301-4509

3-3-16
Date



Yolanda Y. McGowan, Prosecuting Attorney
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P.O. Box 7190
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3-3-16
Date