

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>STATE OF IOWA ex rel. BRENNA BIRD, ATTORNEY GENERAL OF IOWA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>TRAVIS BROUGHTON, REGENERATIVE MEDICINE AND ANTI-AGING INSTITUTES OF OMAHA, LLC. AND OMAHA STEM CELLS, LLC,</p> <p>Defendants.</p>	<p>Case No. EQCE086086</p> <p>RULING AND JUDGMENT</p>
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I. Introduction

The Iowa Attorney General on behalf of the State of Iowa sued Defendants pursuant to the Iowa Consumer Fraud Act, Iowa Code § 714.16 (also referred to herein as “Act” or “CFA”). The Attorney General alleged Defendants violated the Act by engaging in false, misleading, and deceptive conduct and unfair practices in the advertising and sale of so-called “regenerative medicine” and/or “stem cell therapy” treatments. The Attorney General alleged the Defendants’ advertising claimed, without a reasonable basis, that the treatments provided relief and, in some cases, effectively cured various types of physical ailments and medical conditions, including knee pain, back pain, osteoarthritis, joint pain, neuropathy, and COPD, among others. The Attorney General seeks a permanent

injunction preventing Defendants from continuing to engage in the alleged conduct, requests the court to impose civil penalties, including enhanced civil penalties for targeting older Iowans under Iowa Code § 714.16A, order reimbursement of money Iowa consumers paid for the treatments, and order Defendants to pay attorney fees and costs.

The matter was tried to the court on January 21-24, 2025. The parties were allowed until February 24, 2025, to submit post-trial briefs. The court took the matter under advisement and now issues this Ruling and Judgment.

II. Facts

Defendant Travis Broughton, f/k/a Travis Autor (“Broughton”) is one of the founders of a chain of businesses that advertised and sold what it broadly referred to as “regenerative medicine” and/or “stem cell therapy.” Broughton owns or owned a company known as Regenerative Medical Supply, LLC. Regenerative Medical Supply LLC and Broughton’s ex-wife Emily Autor were founders and co-owners of an entity known as Stem Cell Centers, LLC (“Stem Cell Centers”), an Alaska Corporation.¹ Stem Cell Centers established offices, or “clinics,” in multiple cities throughout the United States, including Defendants Omaha Stem Cells, LLC (“OSC”) and Regenerative Medicine and Anti-Aging Institutes of Omaha, LLC (“RMAI-Omaha”). Each clinic was set up as a separate legal entity, but Stem Cell Centers was the sole member or owner of the entity.

¹ The Attorney General sued Emily Autor and Stem Cell Centers, LLC, but the court dismissed those defendants because the court lacked personal jurisdiction over them. (D0050).

Broughton identified his title as “CEO.” He did not identify the entity for which he was CEO, but the court infers from his testimony that he was CEO of Stem Cell Centers. In that role he was responsible for management of the enterprise that included OSC and RMAI-Omaha.

Broughton obtained a doctorate in chiropractic from Life University in Georgia and worked as a practicing chiropractor until 2008. Broughton surrendered his chiropractor license in 2008 in connection with allegations of professional misconduct. He moved to Idaho, and even though he no longer had a license to practice chiropractic, opened a chiropractic and physical therapy clinic there. He employed two physical therapists, a chiropractor, and a medical doctor.

Broughton first learned about stem cell therapy at a professional seminar. Soon thereafter, in approximately 2012, Broughton and his now ex-wife founded Stem Cell Centers, eventually opening multiple clinics. In March 2018, OSC opened in Omaha, Nebraska. On June 1, 2019, RMAI-Omaha assumed OSC’s operations.

The business of Stem Cell Centers was to promote and sell regenerative medicine therapies through its network of clinics.² The therapies involved the injection or infusion of stem cells and/or exosomes into a person’s body, which purported to relieve symptoms and even cure conditions that resulted in chronic pain and disability, including osteoarthritis, neuropathy, and Chronic

² Although Stem Cell Centers is not a defendant in this case, the evidence showed that Stem Cell Centers, under the direction of Broughton, was responsible for producing the advertising and marketing materials that were used to solicit customers for OSC and RMAI-Omaha.

Obstructive Pulmonary Disease (COPD), among others. Stem Cell Centers described stem cells as “natural healing cells found in your body that can change into any type of tissue,” which it claimed could regenerate and repair damaged tissue. Exosomes, according to Broughton, are a healing chemical that stem cells secrete.

The target market of Stem Cell Centers consisted primarily of elderly persons suffering from chronic pain or disease that other forms of medical treatment had been unable to relieve. Stem Cell Centers promoted regenerative therapies as a means by which its users could enhance their quality of life during their elder years. OSC and RMAI-Omaha solicited customers in Iowa primarily through informational seminars it hosted throughout the state. Prospective customers were invited to the seminars using direct mail, television commercials, and newspaper advertisements. Company representatives gave a presentation at the seminars that included slides, videos, and distribution of folders with information about the available therapies.³ Seminar attendees were provided coupons that gave discounts on therapies if they made an appointment at the seminar.

The printed ads and television commercials represented that stem cell therapy is “the most significant medical breakthrough in natural medicine this century.” A typical advertisement represented that Stem Cell Centers was “a

³ The evidence did not disclose whether the presenters were employees of Stem Cell Centers or OSC/RMAI-Omaha. The materials and information they presented to potential customers was developed by Stem Cell Centers but OSC/RMAI-Omaha were the entities where the customers were referred for the therapy.

national leader in stem cell therapy” and claimed, “we have successfully treated tens of thousands of patients suffering from chronic pain and other conditions.” It offered potential patients who suffer from ailments such as knee pain, back pain, osteoarthritis, neuropathy, joint pain, and COPD to “discover a life free of pain.” A typical advertisement contained one-or-two sentence testimonials of people who claimed the treatment relieved their symptoms caused by these various conditions.

Direct mail flyers sent to prospective customers contained more information about the therapies than the commercials or newspaper advertisements. The following is a representative sample of claims made in the direct mailer about regenerative medicine:

Regenerative medicine is the practice of using the body’s fundamental natural systems for repair and healing. Stem cells are the body’s essential regenerative building blocks of life. They divide, multiply, renew and regenerate – all of which can potentially help heal and repair damaged tissue throughout your body. Treating the root cause of your condition in this way can reduce pain and inflammation, which could provide you with a higher quality of life.

Seminar attendees were given a folder with information about the company and treatments it provided. Examples of claims Stem Cell Centers made in these documents included the following:

- “Stem cells are natural healing cells found in your body that can change into any type of tissue. Their job is to help regenerate and repair damaged tissue.”
- “Stem cells do not just cover up the problem, they may have the ability to help your body heal naturally so that your pain decreases, and functionality improves.”

- “When we introduce new stem cells to a patient’s body, these new stem cells ‘wake up’ your body’s own stem cells. They can make them act like they are young again, consequently healing your body with their own cells.”
- A stem cell “secretes chemicals called exosomes into your bloodstream, which positively affect the surrounding microenvironment.”
- Stem cells are “excellent at breaking down scar tissue which significantly improves range of motion.”

The seminar presenter used a PowerPoint presentation, which included slides and video testimonials. Statements in the slides included claims about how stem cell therapy worked on various types of health conditions. For example:

- Concerning COPD, Stem Cell Centers claimed, among other things, that “stem cells can heal damaged lung tissue;” “Stem cells can grow new blood vessels;” “Stem cell therapy can reverse and repair the damage caused by COPD whether you know you have it or not.”
- Concerning neuropathy, a slide represented that, “stem cells can grow new blood vessels;” and “stem cells can grow new peripheral nerves and reverse this process.”
- One slide asked the question, “anyone wish they could turn back the hands of time?” The answer was, “[r]egenerative medicine can do just that.” It also stated, “treated groups had remarkable improvements in physical performance measures and inflammatory biomarkers, as well as pulmonary function all of which characterize the aging process.”
- With respect to knee pain caused by osteoarthritis, a slide stated, “It does not matter what level of knee degeneration you have for this treatment. The results are the same!”

- One slide stated, “stem cell treatment improves brain function in Alzheimer’s patients.”

Most if not all the advertisements, direct mail solicitations, and information provided at a seminar contained disclaimers to the effect that stem cell therapy is still considered experimental by the FDA and that it does not work for every person. At the same time, however, Stem Cell Centers represented that, “the results we have had using stem cell therapy are extremely successful;” and “a high enough percentage of patients respond favorably and are satisfied with the results, that we feel that this is a very viable treatment option for conditions we treat.”

OSC and RMAI-Omaha was managed by a nurse practitioner, who was also the primary care provider at the clinic. The nurse practitioner was responsible for consulting with patients, developing treatment plans, and administering treatment. There were two physicians that provided oversight, one worked at the corporate headquarters in another state, and the other was local. No physician was involved in direct patient care, evaluation, or administration of the therapy. There were also one or two employees involved in sales.

OSC and RMAI-Omaha claimed to administer several different types of treatment, including stem cells obtained from umbilical cord blood, platelet-rich plasma, exosomes, or Wharton’s jelly, which supposedly contained both stem cells and exosomes. Intravenous (IV) administration of the product was typically used, supposedly for the “overall wellness of the patient.” Stem Cell Centers claimed in its marketing materials that IV treatment was effective because the

stem cells after entering the body migrate to the areas where they are needed. In some patients, the stem cell containing product would be injected into a joint or muscle where the patient was experiencing symptoms. In patients with COPD, the product was administered using IV and/or breathing treatment. In one of the slides presented to seminar attendees Stem Cell Centers claimed the most effective treatment administration included both an injection to the specific body area and an IV infusion.

Other slides presented to seminar attendees represented that the more doses of stem cells or exosomes a person receives, the more effective the treatment will be in relieving symptoms or even curing the condition that is treated. Stem Cell Centers acknowledged that more doses costs more but represented the trade-off for the additional expense was the probability of better and more permanent relief. For example, with COPD, a slide claimed that one dose may provide only temporary symptom relief, but six doses “will give you the greatest chance at restoring your lung function by ‘turning off’ or substantially slowing the debilitating progression.” Similar claims were made concerning osteoarthritis and neuropathy.

At OSC/RMAI-Omaha, each patient received and signed an informed consent form, which reviewed the possible benefits and possible risks of the treatments. The form contained a disclaimer the patient acknowledged by signing, which stated that the company made no guarantee or assurance concerning the outcomes of the treatment, and that once treatment was started, no refunds would be issued.

In 2019, Stem Cell Centers, LLC started using the trade name Regenerative Medicine and Anti-Aging Institute in response to the Federal Food and Drug Administration (FDA) issuing warnings about misrepresenting the efficacy of stem cell treatments. About the same time, the company changed its marketing to emphasize that “exosomes” rather than “stem cells” were the healing agent in its products. RMAI-Omaha records show that most patients who treated there received exosomes and not stem cells.

Broughton did not identify any scientific or clinical studies that supported the representations about the effectiveness of stem cells and/or exosomes treating or curing various health conditions, as represented in Stem Cell Center’s advertising and marketing materials sent and presented to Iowa consumers. Broughton confirmed that Stem Cell Centers itself conducted no formal scientific research to support the claims made in its advertising. Broughton claimed that he monitored his patients post treatment to conduct research on whether the treatments were effective but did not produce data from such monitoring. He testified that the data in question was lost when one of his clinics was taken over by a rival and the computers on which the data supposedly resided were disposed.

Despite the lack of independent research, no research of its own, and an absence of clinical data with evidence supporting the marketing claims of Stem Cell Centers, Broughton testified that he honestly believed based upon his experience that the claims made about stem cell therapies were true and accurate. Part of the claimed basis of Broughton’s expertise is that he does

research on the internet to find the latest research and articles on the subject. But Broughton did not identify a single article he found on the internet that supported the claims in Stem Cell Center's advertising and marketing materials.

The Attorney General presented testimony from Sean Morrison, Ph.D. Dr. Morrison has a Ph.D. in Immunology from Stanford University, where his research focused on hematopoietic (blood-forming) stem cells. From 1999-2011 he held various faculty positions at the University of Michigan, where he also founded and directed the Center for Stem Cell Biology. Since 2011 Dr. Morrison has served in various faculty positions at the University of Texas Southwestern Medical Center, where he also serves as the Director of the Children's Research Institute.

In all his academic positions Dr. Morrison has been involved in clinical research involving stem cells. He serves as an advisor to the FDA on issues involving cell tissue and gene therapy, which includes examining clinical trial data submitted to the FDA by companies seeking approval for cell gene therapy products. Outside of his academic and government roles, Dr. Morrison has consulted with biotechnology companies, advising on the development of anticancer therapies and the development of new cell therapies and other kinds of regenerative medicine therapies. Dr. Morrison's lab has published more than 150 papers in peer-reviewed scientific journals over a 30-year period.

Dr. Morrison testified that stem cells are specialized cells in the body that have the unique ability to self-renew (make copies of themselves) and

differentiate into other types of cells (e.g., muscle, nerve, blood). They exist in various tissues and serve as the body's repair system. For example, blood-forming stem cells in bone marrow regenerate blood cells. Similarly, skin stem cells regenerate skin after injury. According to Dr. Morrison, stem cells are tissue specific. A stem cell from one tissue (e.g., skin) cannot regenerate cells in another (e.g., brain). There is no universal stem cell that can travel throughout the body and repair multiple organs.

Dr. Morrison testified that exosomes are tiny, bubble-like particles released by cells. Exosomes are not stem cells. Exosomes do not contain DNA or the ability to replicate. Exosomes may carry proteins or signaling molecules. They are part of how cells communicate, but their biological function is not fully understood. Dr. Morrison testified that exosomes cannot regenerate tissue and there is no scientific evidence that exosomes can treat disease.

Dr. Morrison opined that the advertising and marketing provided to Iowa consumers on behalf of OSC/RMAI-Omaha misrepresented the science of stem cells and exosomes. He testified there have been no clinical trials that would provide a scientific basis that stem cell and/or exosome treatment is effective to treat the conditions identified in the advertising and marketing literature Stem Cell Centers sent and presented to Iowa consumers. Dr. Morrison denied exosomes and stem cells are essentially the same things, as Stem Cell Centers marketing materials seemed to claim or at least imply. Dr. Morrison concluded that 95% of the Iowa patients who treated the Omaha clinic received exosomes

and not stem cells. Dr. Morrison believes that advertising on behalf of OSC/RMAI-Omaha exaggerated the efficacy of the treatments, omitted risk, and misrepresented the status of FDA testing and approvals of stem cell therapy.

Dr. Morrison testified the FDA has approved stem cell therapies for a limited number of conditions, including blood cancers (leukemia), bone marrow failure, and some immune disorders. He testified these treatments involved blood-forming stem cells and are administered in hospital settings with strict protocols. In contrast, he said there is no approved stem cell therapy for the various conditions OSC and RMAI-Omaha claimed to treat, including neuropathy, osteoarthritis, pain, aging, or COPD. Dr. Morrison testified that Stem Cell Centers did not conduct any clinical trials, provided no scientific evidence to support their advertising claims, and their products were not FDA approved.

Dr. Morrison was also critical of OSC/RMAI-Omaha because they had no standard operating procedures concerning identification of the product to use on a particular patient, the amount of the dose, or the location of the injection. The provider made all those decisions. Dr. Morrison noted that OSC and RMAI-Omaha could not possibly have data concerning the effectiveness of its treatments in the absence of standards governing type of product, dose, and injection site.

Four Attorney General exhibits admitted without objection (Exhibits 68, 145, 146, 148) are spreadsheets containing information about Iowa consumers

who attended an OSC/RMAI-Omaha sponsored seminar and those who purchased one or more treatments. The spreadsheets were provided by the Defendants as part of the discovery in the case, but the Attorney General did not present witness testimony that explained in detail what the spreadsheets purported to prove or the reasons there were differences in the data on each spreadsheet.

The court concludes from the data in these exhibits that more than 1,000 people attended a seminar at one of at least 17 different locations around Iowa. Most of the attendees responded to a direct mail solicitation, but others saw an advertisement on television or social media. In the range of 76-109 people received one or more treatments.⁴ The prices charged to patients varied from a low of \$1,400 to a high of \$27,890 for a single treatment. Some patients received multiple treatments, at a cost in the range of \$5,000-\$15,000 per treatment. OSC/RMAI-Omaha received in total over \$800,000 from Iowa consumers. It appears some of those payments were financed through a financing partner OSC/RMAI-Omaha used.

The Attorney General presented testimony from several Iowa consumers who attended a seminar in Iowa and subsequently underwent one or more treatments at OSC or RMAI-Omaha. Each of the consumers was elderly and suffered from a chronic and/or debilitating health condition. Most had undergone traditional medical treatments without relief. Some were desperate

⁴ Exhibit 68 contains names of 81 persons who received one or more treatments. Exhibit 145 has 34 names; Exhibit 146, 109 names, and Exhibit 148, 76 names. Many names are on more than one spreadsheet. The State relies principally on Exhibit 148.

to find a solution to their medical problem. All the testifying consumers were influenced to undergo the advertised therapy based upon the representations about its effectiveness. The patient testimonials were particularly effective. Had these consumers known about the scientific data, or lack thereof, supporting the effectiveness of the treatments, none of them would have purchased them.

III. Analysis

There are two ways in which a person may violate the Iowa Consumer Fraud Act, Iowa Code § 714.16. First, by the act, use, or employment of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely upon it, regardless of whether or not a person has in fact been misled, deceived, or damaged. *Id.* § 714.16(2)(a). Second, through deceptive advertising. *Id.* It is deceptive advertising if a person represents in connection with the advertisement of any merchandise “that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits...if, at the time of the representation, no reasonable basis for the claim existed.” *Id.* Iowa Code § 714.16(2)(a). “Merchandise” includes services. *Id.* § 714.16(1)(e).

It is important to distinguish unfair and/or deceptive conduct from deceptive advertising because there are different burdens of proof. With respect to unfair or deceptive conduct, the Attorney General must prove a violation of the Act by a preponderance of clear, satisfactory, and convincing evidence. *State ex rel. Miller v. Rahmani*, 472 N.W.2d 254, 257 (Iowa 1991) (citations omitted). With respect to deceptive advertising, however, the law imposes on

the person making the representation to demonstrate that a reasonable basis for the claim existed. Iowa Code § 714.16(2)(a); *State ex rel. Miller v. New Womyn, Inc.*, 679 N.W.2d 593, 596 (Iowa 2004).

A. Deceptive Advertising

The term “*advertisement*” includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise. Stem Cell Centers’ newspaper advertisements, television commercials, and direct mail flyers did not directly induce Iowa consumers to receive the therapies OSC/RMAI-Omaha was offering. But the purpose of these efforts was to induce consumers to attend a seminar, whose direct purpose was to persuade consumers to purchase the therapies using, among other things, additional publications, and slide presentations. The advertisements provided just enough information about the treatments and effectiveness thereof to induce a consumer to attend a seminar, where more detailed information was provided, and incentives offered, to schedule an appointment for treatment. The court finds all the published materials Stem Cell Centers, LLC provided to consumers on behalf of OSC/RMAI-Omaha, whether in the form of newspaper advertisements, television commercials, direct mailers, documents provided at a seminar, slides, and video testimonials qualify as an “advertisement” under the CFA.

Defendants have the burden of proving there was a reasonable basis for representations made in their advertisements concerning the effectiveness of

stem cells and/or exosomes to treat people suffering from certain chronic diseases such as osteoarthritis, neuropathy, and COPD. There is no Iowa Appellate Court precedent concerning what constitutes a reasonable basis for a claim that a product or service improves human health. The Attorney General suggests, based upon federal cases interpreting the Federal Trade Commission Act, that a reasonable basis for health-related claims must, at a minimum, consist of competent and reliable scientific evidence. Competent and reliable scientific evidence has been defined as “tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.” *Fed. Trade Comm’n v. Nat’l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1186 (N.D. Ga. 2008); *See also, Fed. Trade Comm’n v. Roca Labs, Inc.*, 345 F. Supp. 3d 1375, 1387 (M.D. Fla. 2018)(to prove a weight-loss claim using competent and reliable scientific evidence requires “experts in the field of obesity treatment and weight loss would require well-designed and properly conducted clinical trials.”). Without adopting the specific test the Attorney General proposes here, the Iowa Supreme Court has nonetheless concluded that claims of product performance must at least be supported by expert evidence that the product in question was adequately tested or that other reliable scientific evidence exists that substantiate the seller’s claims. *See State v. New Womyn, Inc.*, 679 N.W.2d at 596 (holding advertising about the properties of a breast enlargement device violated the

Consumer Fraud Act, as the defendants “presented no credible expert evidence that the device was adequately tested or that reliable evidence would substantiate the claims made for it.”); *Cf., State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 617, 618 (Iowa 1989)(seller of electromagnetic water softener materially misrepresented that device would improve water condition by preventing formation of chemicals that cause hard-water scale, rust, and corrosion when there was no scientific basis to support such claims).

The court does not need to adopt the federal test the Attorney General proposes to conclude that Broughton, OSC, and RMAI-Omaha failed to show there was reasonable basis to support advertised claims concerning the regenerative medicine and stem cell treatments they advertised. The claims that had no reasonable basis included claims concerning the properties of stem cells and exosomes; how stem cells and exosomes act in the human body to heal or cure certain health ailments; that pain and disability resulting from osteoarthritis, neuropathy, COPD, and other conditions would likely improve or be cured with their treatments; that a larger number of doses of the product was more effective in treating a condition than fewer doses; and that a high enough percentage of patients responded favorably and were satisfied with the treatments to allow OSC and RMAI-Omaha to recommended them. The Defendants presented no scientific or expert evidence whatsoever to support such claims, whether in the form of independent scientific studies, studies of their own patients, or otherwise. Broughton’s claim that he possessed data concerning Stem Cell Center’s own patients, but that such data has been lost,

is not credible. No enterprise engaging in legitimate clinical studies would treat its patient data as cavalierly as Broughton described. Nor does Broughton's reliance on articles he supposedly found on the internet provide a reasonable basis to support the advertised claims, because he did not produce such articles or even identify them.

In addition to the Defendants failing to show there was a reasonable basis for their advertised claims, Dr. Morrison's testimony was persuasive evidence the Defendants claims were unreasonable and, in some cases, outright false. Unlike Broughton, whose education concerning stem cells came from promotional seminars and undisclosed internet articles, Dr. Morrison has 30 years of experience studying the properties and effects of stem cells in treating medical conditions. There is evidence stem cells are a cutting edge and perhaps even promising treatment, but the scientific evidence shows there are a limited number of specific health conditions for which stem cells are safe and effective. Contrary to the claims of OSC and RMAI-Omaha, stem cells are tissue specific. There is no scientific evidence that stem cells are a cure-all that travel through the body, identifies defects, and repairs or cures them. Exosomes, the product OSC and RMAI-Omaha gave to most of their customers, are not stem cells, and there is no evidence they can regenerate tissue or treat disease.

B. Unfair and Deceptive Conduct

The Consumer Fraud Act defines deception as "an act or practice which has the tendency or capacity to mislead a substantial number of consumers as

to a material fact or facts.” Iowa Code § 714.16(1)(c). To ascertain whether a practice is likely to mislead in the consumer protection context, courts typically evaluate the overall or “net impression” created by the representation. *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12, 34 (Iowa 2013), citing, *FTC v. Cyberspace.Com LLC*, 453 F.3d 1196, 1200 (9th Cir.2006). “A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.” *Id.*, quoting, *Cyberspace.Com*, 453 F.3d at 1200. “A misleading impression created by a solicitation is material if it ‘involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.’” *Id.* at 1201 (quoting *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 165 (1984)).

The Act defines unfair practice as “an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.” *Id.* § 714.16(1)(i). The Iowa Supreme Court recognized that many courts consider an unfair practice to be “nothing more than conduct ‘a court of equity would consider unfair.’” *Vertrue*, 834 N.W.2d at 34, quoting *State ex rel. Miller v. Cutty's Des Moines Camping Club Inc.*, 694 N.W.2d 518, 525 (quoting *S. Atl. P'ship of Tenn., L.P. v. Riese*, 284 F.3d 518, 535 (4th Cir.2002) (emphasis omitted)). Accordingly, “statutes that prohibit ‘unfair practices’ are designed to infuse flexible equitable principles into consumer protection law so that it may respond to the myriad of unscrupulous business practices modern consumers face.” *Id.*

“[D]eceptive and unfair practices are distinct lines of inquiry.... [W]hile a practice may be both deceptive and unfair, it may be unfair without being deceptive.” *Vertrue*, 834 N.W.2d at 33-34, quoting, *Cutty's*, 694 N.W.2d at 527 (quoting *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1367 (11th Cir.1988)). “Deception occurs primarily (though not exclusively) at the formation stage of a contract. Conversely, unfairness occurs primarily (though not exclusively) with respect to the substance or performance of a contract.” *Id.* (quoting Michael M. Greenfield, *Consumer Law: A Guide for Those Who Represent Sellers, Lenders, and Consumers* § 4. 1, at 161 (1995)).

The Attorney General proved by clear and convincing evidence the representations in the advertising disseminated in Iowa on behalf of OSC and RMAI-Omaha were intended, and had the tendency and capacity, to mislead the targeted customers, primarily the elderly with chronic and/or painful medical conditions for which they received little or no relief from traditional medical treatments. The evidence shows Stem Cell Centers, on behalf of OSC and RMAI-Omaha, unscrupulously exaggerated the functions and capabilities of stem cells to a vulnerable population, some of whom were desperate for relief from chronic medical conditions. A more discerning audience may have recognized the claims of Stem Cell Centers were unrealistic and too good to be true. But to the audience Stem Cell Centers targeted, representations that it had thousands of successful treatments and testimonials from former customers were persuasive. Evidence of past success was an important factor likely to influence the consumer contemplating the therapy. The significant

expense of the treatments, including encouraging consumers to purchase more doses, was a cynical means of portraying the treatments as exclusive and valuable.

The Attorney General similarly proved by clear and convincing evidence, that OSC and RMAI's conduct was unfair to those Iowa consumers that purchased one or more treatments. The consumers were harmed because of the high price for the therapy, some of which was financed. Many had to drive for hours to the OSC/RMAI-Omaha office from where they lived. They were injected with an IV needle and infused with a product and/or subjected to an injection of product into their body that had no reasonable probability of providing any benefit. At least one couple received treatment with product tainted by bacteria that led to life-threatening infections.

C. Defenses

The Defendants contend that, regardless of the representations to Iowa consumers concerning the stem cell treatments, they cannot be liable under the Consumer Fraud Act because the treatments were administered by a medical professional whose medical judgment determined whether the therapy was appropriate for the patient. In addition, the patient signed an informed consent form acknowledging that no guarantee or assurance was made by anyone concerning the experimental treatments being provided. Defendants contend the representations about stem cell treatments are mere puffery, akin to advertisements about pharmaceuticals directed to consumers. The ultimate

decision whether to receive the treatment, Defendant contends, was based upon informed medical advice given to each patient.

The court is not persuaded the medical professionals OSC/RMAI-Omaha employed provided informed or independent medical advice concerning the therapies provided to its customers. Defendants presented no evidence that the medical professionals who worked in its office were well informed about the scientific basis, or lack thereof, supporting the therapies they administered. It appears to the court the purpose of staffing the office with a medical professional was to provide a veneer of medical legitimacy to a treatment that had no medical basis, and perhaps because an IV and/or injection was needed to administer product.

Nor does the consumer's written acknowledgement that OSC/RMAI-Omaha does not guarantee any particular outcome remove liability for a Consumer Fraud Act violation. That the therapy was experimental and results not guaranteed was contained in the advertising. But the advertising also mitigated the effect of such disclaimer by stating that "a high enough percentage of patients respond favorably" to the treatments. Defendants presented no data concerning what percentage of its customers responded favorably to the treatment, or what it considered to be a "high enough" percentage. Even if some consumers were satisfied, that does not establish a defense to consumer fraud. *See State v. Hydro Mag, Ltd.*, 436 N.W.2d at 623 (establishing that there were satisfied customers is not a complete defense to this type of action).

D. Remedies

Remedies available under the Iowa Consumer Fraud Act include a permanent injunction prohibiting the person from continuing the practice or engaging in the practice; restitution; civil penalties; and attorney's fees and costs. See Iowa Code § 714.16(7); *State v. New Womyn, Inc.*, 679 N.W.2d at 597-98. The court may impose additional civil penalties if the violation is committed against an older individual. Iowa Code § 714.16A.

1. Civil Penalties

The attorney general may request the court impose a civil penalty not to exceed \$40,000 “per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful.” *Id.* §714.16(7). But a “course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person.” *Id.*

There is little Iowa Appellate Court precedent concerning what constitutes a separate “violation” of the CFA warranting a civil penalty of up to \$40,000. In *State v. Vertrue, Inc.*, 834 N.W.2d at 39, the Court affirmed the district court’s assessment of \$2,820,000 in civil penalties for violations of the CFA and Iowa’s law governing the sale of Buying Club Memberships (BCL).⁵ The district court imposed a civil penalty for a total of 119 different violations, fifteen of which were CFA violations arising out of the sale of buying club memberships through telemarketing. *Id.* The CFA violations related to “risk

⁵ The Iowa Supreme Court also added on appeal civil penalties for violations of section 714.16A relating to consumer frauds against older Iowans that the district court did not impose.

free” representations, unintelligible telemarketing pitches, and a false claim that part of the transaction was intended as a “thank you.” *Id.* The district court imposed the maximum \$40,000 civil penalty for each of the 15 CFA violations, which the Iowa Supreme Court affirmed. *Id.*

In *State v. New Womyn, Inc.*, 679 N.W.2d at 597, the district court, affirmed by the Iowa Supreme Court, assessed a single \$40,000 civil penalty, presumably for a single violation of the Act. The court found a single violation even though the conduct that violated the CFA included three different representations without a reasonable basis on how the product would perform, and a fourth misrepresentation that claimed the product had been proven to be safe and effective. *Id.*

The Attorney General contends Defendants committed 20 CFA violations. Seventeen of the alleged violations are based upon deceptive advertising, that is, specific representations Defendants made about stem cell therapies for which there was no reasonable basis. Two are based upon conduct the State claims is deceptive and unfair, including “testimonial practices” and representations that consumers who purchased therapy were participating in a research study. The final claimed violation is that the Defendants’ representations that the therapy was “generally safe” was deceptive advertising, as well as deceptive and unfair.

However, the court is not persuaded that each different representation, in and of itself, constitutes a “method, act, or practice” that violates the Act. The method, act, or practice was Defendants’ entire marketing campaign,

starting first with targeting vulnerable, elderly consumers; second, piquing their interest with advertising and direct mail; and third presenting a professional quality seminar to persuade the consumers the treatments were legitimate. The fourth and final act was the unfair practices described herein inflicted on consumers who purchased the treatments, including the financial harm to consumers persuaded to spend thousands of dollars, travel long distances, and subject themselves to an infusion or injection of a product into their bodies that would likely have little or no effect on their health.

The court finds Defendants committed four violations of the CFA. The court further finds that the nature and extent of the conduct warrant the maximum penalty of \$40,000 per violation, or a total civil penalty of \$160,000.

2. Enhanced Civil Penalties for Older Iowans

The maximum penalty for a CFA violation against an older individual is \$5,000 per violation. Iowa Code § 714.16A(1)(a). In determining whether to impose such a penalty and the amount of the penalty, the court shall consider up to four factors, including the following: 1) whether the Defendants acted in willful disregard of the rights of the older individual; 2) whether the Defendants knew or should have known that the conduct was directed to an older individual; 3) whether the older individual was substantially more vulnerable because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability; and 4) any other factor the court deems appropriate. *Id.* § 714.16A(2).

Defendants admittedly targeted older individuals in their marketing and advertising efforts. The target market was not based only on age, but specifically older individuals with chronic or disabling medical conditions who were desperate for relief because other treatments had not been effective. The evidence is persuasive that it was mostly older individuals who attended the seminars and who purchased the therapy. Under these circumstances, the court finds the maximum penalty of \$5,000 per violation is warranted, for a total additional penalty of \$20,000.

3. Reimbursement

The Attorney General relies on Exhibit 148 in proposing that the court order Defendants to reimburse a total of \$810,477 to 76 consumers who purchased treatments. The court finds that Exhibit 148 is sufficiently reliable evidence of money paid to OSC/RMAI-Omaha because of the Defendants' conduct that violated the CFA and will order Defendants to pay that amount to the Attorney General as reimbursement.

4. Liability of Broughton, Individually

Regardless of whether the court imposes penalties and other relief on the corporate entities, Broughton contends he cannot be held liable as an individual for the statutory violations of the corporate entities.⁶ Broughton is

⁶ Broughton moved for directed verdict at the close of evidence based, in part, on the claim the court lacks personal jurisdiction over him as an individual. Broughton's personal jurisdiction defense fails, however, because he did not raise lack of personal jurisdiction as a defense in his answer. See Iowa R. Civ. P. 1.421(1)(b). Regardless, there is precedent that an officer of an out-of-state corporation is subject to personal jurisdiction for consumer fraud claims in Iowa. See *State ex rel. Miller v. Grodzinsky*, 571 N.W.2d 1, 4 (Iowa 1997), *as amended on denial of reh'g* (Dec. 11, 1997)(the agent is still subject to personal jurisdiction of the court if the agent is a "primary participant[] in an alleged wrongdoing intentionally directed at [forum-state]

not correct that he is immune from individual liability in this case. A corporate officer is individually liable for torts which he commits while acting within as well as outside the scope of his employment. *Grefe v. Ross*, 231 N.W.2d 863, 868 (Iowa 1975); *See also, Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 808 (Iowa 1978) (corporate officer is individually liable for fraudulent corporate acts which he or she participated in or committed). Moreover, the evidence showed that, as CEO of Stem Cell Centers, Broughton was the decision-maker with respect to what representations to include as part of the advertising and marketing on behalf of OSC and RMAI-Omaha. There is no evidence that OSC and/or RMAI-Omaha employed people directly involved in the development of the marketing and advertising the court has found violated the Act. *See State ex rel. Miller v. Santa Rosa Sales & Mktg., Inc.*, 475 N.W.2d 210, 220 (Iowa 1991) (liability of corporate officer arose from his complete control of the defendant and his own personal acts in perpetrating consumer fraud).

5. Permanent Injunction

The court will grant a permanent injunction prohibiting Defendants from continuing the conduct in Iowa the court has found violated the CFA⁷, or engaging in such conduct in the the practice or doing an act in furtherance of

resident[s], and jurisdiction over [him] is proper on that basis.)(citations omitted).

⁷ The evidence shows OSC and RMAI-Omaha are no longer operating, and thus no longer engaging in the conduct the court found violates the CFA. Broughton also testified that Stem Cell Centers, LLC is no longer an operating entity, presumably including the ownership or operation of a local clinics like OSC or RMAI-Omaha.

the practice. The permanent injunction applies to OSC, RMAI-Omaha, and Travis Broughton, individually.

6. Attorney's Fees and Costs

The court will consider an award to the Attorney General for attorney's fees and costs. For such claim to be considered, the Attorney General must submit, within 15 days of the entry of this Ruling and Judgment, an attorney fee application.

IV. Disposition

IT IS HEREBY ORDERED that judgment is entered in favor of the Attorney General of Iowa, on behalf of the State of Iowa, and against the Defendants, Travis Broughton, Omaha Stem Cells, LLC, and Regenerative Medicine and Anti-Aging Institute of Omaha, LLC, jointly and severally, as follows:

1. \$160,000 for civil penalties under the Iowa Consumer Fraud Act, Iowa Code § 714.16;
2. \$20,000 for civil enhanced penalties under Iowa Code § 714.16A.
3. \$810,477 to reimburse consumers identified in Exhibit 148;

IT IS FURTHER ORDERED that the Defendants, Travis Broughton, Omaha Stem Cells, LLC, and Regenerative Medicine and Anti-Aging Institute of Omaha, LLC are permanently enjoined from engaging in the State of Iowa in the methods, acts, and/or practices that the court has determined herein violated the Iowa Consumer Fraud Act, and from doing an act in furtherance of such methods, acts, or practices.

IT IS FURTHER ORDERED that the court will consider the Attorney General's claim for attorney's fees and expenses associated with the prosecution of this matter, on the condition the Attorney General submits an attorney fee application within 15 days of the entry of this Ruling and Judgment.

IT IS FURTHER ORDERED that court costs are assessed to Defendants.



State of Iowa Courts

Case Number
EQCE086086

Case Title
STATE EX REL BRENNIA BIRD AG OF IA VS TRAVIS
BROUGHTON ET AL
Type: ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read 'Patrick D. Smith', is positioned above a horizontal line.

Patrick D. Smith, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2025-11-25 14:47:40