

2014 WL 1414611 (Okla.) (Appellate Brief)  
Supreme Court of Oklahoma.

Charles A. CASHMAN, II, DDS, Appellant,  
v.  
STATE OF OKLAHOMA, ex rel, Oklahoma Board of Dentistry, Appellee.

No. 111,967.  
February 13, 2014.

Appeal from District Court of Oklahoma County Honorable Patricia G. Parrish, Judge of the District Court

**Appellant's Brief in Chief**

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**\*1 INTRODUCTION**

For the purposes of brevity and clarity, the parties hereto will be referred to as they were below. Therefore the Appellant, Charles A. Cashman, II, DDS will be referred to herein as Plaintiff, the Defendant State of Oklahoma, ex rel Oklahoma Board of Dentistry will be referred to as the Board.

References are to the transcript of trial proceedings held June 17 to 19, 2013 as reported by Certified Shorthand Reporter Karen Twyford.

## STATEMENT OF THE CASE

This case was originally filed in the District Court of Oklahoma County January 8, 2007.

Defendant Board filed motions to dismiss. The lower court granted motion to dismiss on all causes of action.

\*2 Dr. Cashman appealed to the Oklahoma Supreme Court, Case No. 106,272. The Court of Civil Appeals issued an Opinion affirming in part the lower court but reversing the lower court to allow trial on the issues of assault and conversion.

Trial on this matter was held June 17 to 19, 2013 before the Honorable Patricia G. Parrish, District Judge.

Judgment was rendered \*3 on June 19, 2013.

Dr. Cashman then perfected this appeal.

## STATEMENT OF FACTS

Dr. Cashman is a licensed dentist in Oklahoma since 1972 (TR, Page 33, Line 1). Dr. Cashman practiced dentistry in his career in Holdenville, Okemah, Shawnee and Prague, Oklahoma, respectively (TR, Page 33, Lines 6-7). He practiced most recently in Prague, Oklahoma from 1993 to date (TR, Page 34, Lines 1-2).

In the 1990's Dr. Cashman elected to limit his dental practice to performing tooth extractions (TR, Page 34, Lines 18-23).

Dr. Cashman's dental office is located in a free standing building in south Prague, Oklahoma (TR, Page 35, Lines 5-10). It contains a 12 by 12 reception room (TR, Page 35, Lines 11-15). A receptionist sits behind a window on the north side of the reception room to greet patients and to check them in (TR, Page \*3 35, Lines 16-22). File cabinets with patient dental records are located behind the receptionist (TR, Page 35, Lines 23-25, Page 36, Lines 1-2).

Dr. Cashman was never sued for malpractice or even received a demand letter from any legal counsel (TR, Page 37, Lines 16-22).

Dr. Cashman personally performs all patient exams and extractions that occur in his office (TR, Page 39, Lines 1-13). Some patients requested multiple teeth pulled or all teeth pulled (TR, Page 39, Lines 17-23). In that case the patient makes a subsequent choice on whether they want dentures (TR, Page 40, Lines 215). Dr. Cashman does not make dentures. Nor does Dr. Cashman perform any dental services on dentures (TR, Page 40, Lines 7-15).

Dr. Cashman is not and has never been a denturist (TR, Page 40, Lines 22-23). Dr. Cashman has no business relationship with any denturist (TR, Page 40, Lines 24-25, Page 41, Lines 1-9).

Dental Board newsletters revealed that in January, 1995, the Dental Board enacted emergency administrative rules against denturists who manufacture dentures without a dentist's order (TR, Page 43, Lines 20-25, Page 44, Lines 1-25, Plaintiff's Exhibit 1). The Dental Board took subsequent disciplinary action against a dental technician who prepared dentures without a dentist's order (TR, Page 46, Lines 23-25, Page 47, Lines 1-9, Plaintiffs Exhibit 2). As late as 2003 \*4 the Dental Board newsletter identified the need for dental services to **elderly** and to disadvantaged patients, to-wit:

“We must also take active steps to provide care to the **elderly** and the disadvantaged population. If we cannot deliver dental care to those groups by conventional means, alternatives must be agreed upon soon. I urge the dental community to come together on that issue.” (TR, Page 49, Lines 16-21, Plaintiffs Exhibit 3).

In Dr. Cashman's practice half of his patients are **elderly** (TR, Page 49, Lines 24-25). Another 35 percent of his patients are financially disadvantaged (TR, Page 50, Lines 8-22).

Dr. Cashman has no weapons in his office (TR, Page 50, Lines 23-25). Nor did Dr. Cashman keep on hand any controlled dangerous substances even as samples (TR, Page 51, Lines 1-15). If a patient experienced post-op pain, Dr. Cashman would prescribe short term CDS (TR, Page 52, Lines 1-16). Dr. Cashman also has safeguards in place in his practice against drug seeking persons (TR, Page 52, Lines 18-25, Page 53, Lines 1-25, Page 54, Lines 1-25).

#### EVENTS OF JANUARY 10, 2005

As of January 10, 2005, Dr. Cashman was never contacted by local police about any CDS prescriptions he wrote (TR, Page 55, Lines 10-12). Nor had Dr. Cashman been contacted similarly by the Lincoln County Sheriff or the Oklahoma Bureau of Narcotics and Dangerous Drugs, or the US Drug Enforcement \*5 Administration (TR, Page 55, Lines 13-24). Neither Dr. Cashman nor his staff had ever been arrested for selling drugs (TR, Page 55, Line 25, Page 56, Lines 1-4).

Around 2:00 p.m. on January 10, 2005 Dr. Cashman was operating on a patient in the chair (TR, Page 56, Lines 8-21). Dr. Cashman was interrupted by a Dental Board group that arrived unannounced at his office, to-wit:

"A. I went up front, and they said they were here.

Q. Okay. Who was 'they'?

A. Linda Campbell, the director of the Board; Mr. Edmensten.

Q. From the Bureau of Narcotics?

A. Right. Matt Crusan, Ginger Crowder; that's the ones that I can remember.

Q. Okay. So those four people were there. Did they have any side arms?

A. Yes.

Q. Did they have any badges displayed?

A. Yes.

Q. Was there a civil tone, or was there a louder tone? What was it?

A. Immediately we want to know what is going on down here. Not friendly at all.

Q. Okay. Was there just one of them asking you questions, or a number of them?

A. All of them.

Q. All at the same time?

A. In rapid fire succession.

Q. What were you doing with all the rapid fire questions?

A. Answering the questions as best I could.

Q. Were you trying to be cooperative?

A. I was.” (TR, Page 57, Lines 1-25, Page 58, Line 1).

This delegation was not accompanied by local police from Prague or local sheriff's deputies or any local police (TR, Page 58, Lines 7-13). The group had no search warrant or subpoena or arrest warrant or court order or subpoena from the \*6 Dental Board or emergency order from the Dental Board or from the Oklahoma Bureau of Narcotics or from DEA (TR, Page 58, Lines 14-25, Page 59, Lines 1-10).

Evidence showed Dr. Cashman was attempting to answer questions about him “dealing drugs”, to-wit:

“A. ...And they said, we want to know what is going on with these prescription. We think you are dealing drugs down here, and we've got all these ideas in our head.

Q. Are the sain that in a conversational normal tone?

A. No. They were quite harsh with their tone. We wanted to know what was going on down here, you know.” (TR, Page 59, Lines 18-25).

Dr. Cashman displayed a log book he kept on prescriptions issued (TR, Page 60). The log book was separate from the patient chart (TR, Page 60, Lines 22-25).

“A. And I brought this out voluntarily. This is what I offered to give them. I said, here, take this. Look all you want. I said, the proof is in the pudding. And for some reason Mr. Crusan took offense to that. What kind of craziness is that? I said, it is just a saying, you know, that here is the proof, see for yourself. I was glad to hand that over to them.

Q. Was he loud or argumentative with you?

A. No. He was, like, are you nuts saying that.

Q. What happened next?

A. They took it with them, just like I wanted them to.

Q. Okay.

A. And because I knew they wouldn't find anything wrong in there.

Q. Did you give them authorization?

A. I gave them authorization to take that book.

Q. Okay.

A. I wanted them to take it, too, because I thought, this will clear this up quick.

\*7 Q. So you're showing them that. Is that calming everybody down? Are you answering all the questions? Are you satisfying everybody?

A. No.

Q. What happened?

A. I believe he was almost making fun of that, you know, what is this, because this is not anything that is required, this extra book. I did it to back up the files so I couldn't be accused, it wasn't written down, so you're a drug violator." (TR, Page 61, Lines 20-25, Page 62, Lines 1-23).

Finally Dr. Cashman was standing in the reception area still answering questions when the assault occurred, to-wit:  
"A. So I'm standing in the middle of the floor.

Q. What happened?

A. They start asking a lot of questions.

Q. Okay. Were you trying to answer them?

A. I was trying to answer them.

Q. What happened when you were trying to answer them?

A. After a while, then - I mean, this interrogation is going on, and finally, apparently, Mr. Edmensten took offense and advances into my face, yelling words to the effect, you better start telling the truth right now. And when he got this close, there was a chair behind me, and I went back and fell down into the chair, assumed the submissive -

Q. Do you know why he was advancing on you?

Q. What did you think when he was advancing and you were falling back into that chair and sitting there?

A. To get out of his way.

Q. Why?

A. Same thing. If you're driving on the road and all of a sudden a car is going to hit you, you're going to move. You don't really have time to think that much; it is instinctive. After that, I was real confused - it was harder to answer the questions. It puts you in a state of mind of, what's going on here? What is he going to do? Do I dare say anything else that might set him off \*8 again? So it makes it harder to answer questions after that. I think pretty quick after that -

Q. Did you know if he was going to strike you or not?

A. No, I did not.

Q. Did you know if he might arrest you or not?

A. No.

Q. Do you know if he was going to put handcuffs on you?

A. Well, that was part of the mindset, because they said, this is a criminal as well as Dental Board investigation. This is criminal and civil. We think we may have to take you to jail, because we believe your drug dealing down here. Like the man said, Mr. Pederson said, they used the word drug dealer. They said, we think you're dealing drugs down here, because people are coming from everywhere to here, and they couldn't be coming just to get teeth pulled.

Q. And that's what they are saying?

A. They said, their coming here because you - they found out far and wide that they can walk in the door, these people, fill out a little paper with their history on it, play like they're a patient, and you don't do anything. You just write a prescription, take \$50 or \$100 and they're gone.

Q. Well, is that true?

A. No it's not true.

Q. Did you ever allow a single patient to do that?

A. No. Never. Never. Never.

Q. Did you ever allow a single person to just come in off the street and do that?

A. No.

Q. Did you produce prescription where they said that you wrote where that happened?

A. No.

Q. Did they produce a copy of a prescription?

A. No.

Q. Did they produce an affidavit from a pharmacist?

A. No.

Q. Did they produce any evidence of that?

A. No." (TR, Page 63, Lines 12-25, Page 64, Lines 5-25, Page 65, Lines 1-25, Page 66, Lines 1-5).

Mr. Edmensten was much bigger in stature than Dr. Cashman, to-wit:

\*9 "Q. Is Mr. Edmensten the same height as you? Or is he taller?

A I would say he is twice my size.

Q. How about height?

A. He is bigger.

Q. Okay, how much in weight?

A. Probably 100 pounds more.

Q. Did you make any offensive move toward him to initiate this?

A. No.

Q. Did you make any comment to him to deliberately initiate this?

A. No.

Q. Have you ever driven your car and pulled over by the police on a traffic ticket or a question?

A. Yes.

Q. Did they treat you in this manner?

A. No.” (TR, Page 66, Lines 23-25, Page 67, Lines 1-15).

The group seized and confiscated 25 patient charts (TR, Page 67, Lines 19-25, Page 68, Lines 1-17). Dr. Cashman gave no authorization for the seizure of any patient charts, to-wit:

“Q. Did you authorize anybody to remove records from your office on January 10, 2005?

A. No.

Q. Do you know to this day for sure how many records they took?

A. Not for sure. They said they were going to take 25.

Q. Did you count them?

A. No.

Q. Were you given any opportunity to?

A. No.

Q. Did you authorize them to remove your appointment book?

A. No.

Q. Did they remove your appointment book?

A. Yes.

Q. When did they return the 25 or so patient charts?

A. They have not.

Q. They have not to this day, 2013?

A. Correct.

Q. When did they return your appointment book?

\*10 A. They did not.” (TR, Page 69, Lines 12-25, Page 70, Lines 1-7).

### BOARD HEARING

In February, 2005, the Dental Board held an emergency hearing and suspended Dr. Cashman's license based on that raid (TR, Page 70, Lines 12-23). The suspension lasted several months until Dr. Cashman could complete certain classes (TR, Page 71, Lines 3-25). That suspension had a detrimental effect on Dr. Cashman's income (TR, Page 72, Lines 1-8).

And those Dental Board actions also had a detrimental effect on Dr. Cashman's emotional wellbeing, to-wit:

“A. The assault brought up a conflict that the Board had created with me before. They were coming down there saying, you're a drug dealer. You're not worthy to be a dentist. We need your license revoked. You're just seeing patients that don't receive a tooth pull, just drugs for money, and all this stuff. They were telling me, as an authority figure, that I didn't deserve to be a dentist, that I should have my license revoked, I'm not professional, I'm not anything desirable that should have a dental license.

This is a major authority figure saying these things. Whether they're true or not, when an authority figure says that, whether it is a parent or a government agency, that has an effect. At the same time, the patients of the dentist are another authority figure. Dentists listen to what they say. They want to please those people.

In a way the patient is the boss, because if you don't please them, you're out of business. And the patients are saying, this is wonderful. We're so blessed that you're doing. And this other authority figure is saying that you're a low life and you have no business doing any of this and get out of here for good \*11 and all. This creates a conflict, just like you have one parent that loved a child and the other one hated, and one is telling, you're great, and the other, you're awful. That creates problems, and I'm still living with this problem.

Q. How does that conflict affect you?

A. I - that's the main reason I'm here. I'm not mad at the Board, but we did suffer a lot of financial loss. But I also want the emotional closure. When Mr. Pederson talked about that we've - we've been through this process before, and this has to do with this emotion. Back in '95 I went before the Board, and it's for reasons that aren't all coming out. I went before the Board and they imposed a 90-day suspension.” (TR, Page 82, Lines 23-25, Page 83, Lines 1-25, Page 84, Lines 1-6).

Cross examination of Dr. Cashman revealed the Dental Board staff had a long standing bias against him, to-wit:

“Q. And there was a lot of discussion in your direct testimony about denturists and the Board is out to get you because you - I'm not sure what the allegation was. The Board is out to get you because of why?

A. Because Linda Campbell, the Director of the Board, put out word back in the before the '96 hearing that if a dentist would accept a patient from a denturist - let me rephrase that. If a dentist knew that one of those denturist labs made your teeth, and you brought it into me, I was supposed to refuse service to you.

Q. Okay. So the Board was out to get you because of that; is that right?

A. Because I did not go for that. I didn't know if I legally could say - you see, the general public, people like yourselves - .”

(TR, Page 101, Lines 9-23).

Again on cross examination Dr. Cashman reiterated the assault, to-wit:

“Q. Do you recall testifying he was about four or five feet from you?

A. Maybe that's an estimate, now that I'm starting to think about how it was all laid out.

\*12 Q. You also said he ran at you and got a good run going, right?

A. That I indicated that he took off running wide open?

Q. Yes. Is that right?

A. I might have said that. Yes.

Q. And you said his arms were moving?

A. His arms were moving. He was coming at me. I wasn't saying that he was capable of breaking into a full stride.

Q. And he didn't make any contact with you, right?

A. No. He got right in my face, screaming at me. And I immediately went back into that chair right behind me and assumed the position so that not to make him any madder. After that I was - it was tough to answer questions. I didn't want to ignite anything else.” (TR, Page 110, Lines 10-25, Page 111, Lines 1-2).

“A....He comes through this door. He was listening to these other people talk, asking me questions. And he took offense to my answer.

**Mr. Pederson:** Objection. Move to strike.

The Witness: He comes through the door like this and gets in my face. Stop it right now, sir, and start telling the truth, words to that affect. We know you're lying. Come on.

The Court: Mr. Cashman, come back and take a seat now. Dr. Cashman.

The Witness: And with 300 pounds of him right this close to my face yelling, it was an experience. I immediately fell back into the chair and assumed the submissive position of posture as I could.” (TR, Page 114, Lines 18-25, Page 115, Lines 1-5).

Dr. Cashman explained on cross examination the Dental Board's motive against him, to-wit:

“The Witness: The point is, she said to put out the word to the dentists, you refer service to these people if they come to you with these dentures that the denturists have made. And to me, that's between you and them. I'm just pulling teeth. I didn't send people to the dentist. The dentist found out we pull teeth, they were sending people to us.

\*13 They wanted me to say to you, no, I'm not going to pull your teeth when you went to that dentist. But most of all you didn't even know that a dentist was illegal. They had been doing it so long in this state, they had been doing it for 40 years. It is out in the rural counties where people don't have the money, and these denturists make these cheap teeth for these old people that can't afford \$3,000.00 teeth.” (TR, Page 126, Lines 11-25).

“Q. Is it your understanding that Linda Campbell called these other people? Linda Campbell is your main enemy here, right? She is your main adversary that you're calling out today, right, about she doesn't like denturists so she is after you right?

A. I'm not sure what you're saying, but I'm saying Linda Campbell, after she was overruled and we got reinstated back at that first court, has had it out for me ever since, when you said I had it out for them.

Q. And Linda Campbell had it out for you, correct?

A. Yes, sir.

Q. Okay. And that -

A. That's what this is all about.

Q. And do you know whether or not Linda Campbell who even started this investigation that we're here on today in 2005?

A. No. Linda Campbell was just waiting for an opportunity to exercise her power.

Q. Okay. She was just laying wait?

A. Because if she can make an example of one dentist, she will scare them all.

Q. And is it your understanding that Linda Campbell summoned all these federal agents in the bureau of narcotics to come to your office that day?

A. I believe that she rounded up and went for the raid. I sure do.” (TR, Page 127, Lines 20-25, Page 128, Lines 1-20).

Dr. Cashman revealed that the Oklahoma Bureau of Narcotics had certain information regarding Dr. Cashman reported to them but only when Linda Campbell got involved did this raid on his office occur, to-wit:

\*14 “Q. Dr. Cashman, do you know why Milton Edmensten took no action against you from February 4, 2005, until February 10, 2005?

A. No.

Q. Do you know why, within three hours of giving information to Linda Campbell, all the agents came to your office?

A. I have my opinion, but I don't know the facts.

Q. As far as you know, were those the facts, the timing of it?

A. The facts of the timeline?

Q. As far as you know, was that the timeline?

A. As far as I know.

Q. And is that part of the basis why you're raising questions about Ms. Campbell?

A. Yes.

Q. Because until it got to her, there was not a lot of overt action by Oklahoma Bureau of Narcotics, was there?

A. None that I knew of.” (TR, Page 129, Line 25, Page 130, Lines 1-21).

#### **MR. DOYLE COOPER**

Doyle Cooper testified he is a registered pharmacist for 46 years in Prague, Oklahoma (TR, Page 88, Lines 19-25). Mr. Cooper was familiar with Dr. Cashman's prescription practices (TR, Page 91, Lines 16-24). Mr. Cooper testified Dr. Cashman's [Lortab](#) prescriptions were normal and there was nothing wrong on the face of any of Dr. Cashman's prescriptions (TR, Page 92, Lines 19-25). Nor did Dr. Cashman write prescriptions for drug seeking individuals (TR, Page 93, Lines 1-8).

#### **JUNIOR C. JACKSON**

Mr. Jackson testified he was a licensed private investigator after a long career with the Oklahoma Department of Transportation (TR, Page 151, Lines 1- \*15 25). The Court accepted Mr. Jackson as an expert investigator (TR, Page 153, Lines 9-10).

Mr. Jackson testified Dr. Cashman retained him to investigate possible forgery on one of his prescription pads (TR, Page 153, Lines 17-22). Mr. Jackson found evidence some of Dr. Cashman's blank prescriptions were indeed forged by other people (TR, Page 155, Lines 7-9).

Mr. Jackson identified how any law enforcement investigation of Dr. Cashman should progress (TR, Page 157, Lines 8-25, Page 158 and 159). Mr. Jackson also testified about his experience in administrative agency investigations (TR, Page 166-168). Mr. Jackson was very critical about the Dental Board raid on Dr. Cashman's office, to-wit:

“Q. And did you find that any of those normal guidelines were followed in this case by the Dental Board before they went out to Dr. Cashman?

The Witness: There's a lot of things lacking in this investigation or this raid that they had done on Dr. Cashman's office down there.

Q. As an expert, what do you see that was lacking?

A. I don't see the whole probable cause of what they did.” (TR, Page 169, Lines 13-25).

“Q. I'm just asking if the investigation that the Dental Board did met the normal, reasonable standards of such an investigation?

A. Not in my opinion.

Q. And is that based on the testimony you have given today on what those steps are?

A. Yes.” (TR, Page 172, Lines 18-24).

**\*16 SUSAN KNIGHT**

Ms. Knight testified she's a dental assistant for Dr. Cashman (TR, Page 193, Lines 4-6). She confirmed Dr. Cashman's office used specific safeguards against drug seeking individuals (TR, Page 196, Lines 1-10). Ms. Knight testified further she worked for Dr. Cashman before the date of January 10, 2005 (TR, Page 197, Lines 14-25). During that timeframe Ms. Knight was never questioned by any Dental Board investigator, or any Bureau of Narcotics or DEA or local police department or Lincoln County or Pottawatomie County sheriffs deputy (TR, Page 198, Lines 1-24). Ms. Knight confirmed Dr. Cashman did not keep on hand any CDS or samples (TR, Page 199, Lines 1-5). Nor is Dr. Cashman a dope dealer or part of the drug culture (TR, Page 199, Lines 15-20).

**PROPOSITION I**

***THE DENTAL BOARD IS LIABLE FOR THE ASSAULT COMMITTED BY A JOINT TORTFEASOR.***

At the conclusion of Plaintiffs evidence, the Defendant demurred to the Plaintiffs claim of assault (TR, Page 211). After hearing argument outside of the presence of the jury, the Court granted that demurrer on the assault cause of action (TR, Page 215).

Such ruling was legal error.

Evidence in the record revealed that Mr. Edmensten received certain telephone information regarding Dr. Cashman on January 4, 2005 (TR, Page 130). \*17 Mr. Edmensten took no action thereon. Yet, on January 10, 2005 within three hours of when Dental Board Executive Director Linda Campbell received that same information, Mr. Edmensten was personally participating in the Dental Board raid on Dr. Cashman's office along with Linda Campbell and DEA agents. Absent Dental Board Executive Director Linda Campbell, Mr. Edmensten undertook no raid on Dr. Cashman's office. Mr. Edmensten was fully cooperating in and taking actions as part of the Dental Board raid organized solely by Dental Board Executive Director Linda Campbell.

And the assault against Dr. Cashman occurred as part and parcel of that raid of January 10, 2005.

Indeed, Plaintiff legal counsel submitted requested jury instructions No. 8 and No. 9 that are standard OUJI instructions. They provide in pertinent part the applicable law:

“Direct cause means a cause which, in a natural, continuous sequence, produced injury, without which the injury would not have happened. For negligence to be a direct cause, it is necessary that some injury to the property of a person, in Dr. Cashman, must have been reasonably foreseeable - must have been a reasonable, foreseeable result of negligence.” (Plaintiff proposed instruction 8 (TR, Page 212)).

“There may be more than one direct cause to an injury. When the injury is a result of the combined negligence of two or more persons, the conduct of each person is a direct cause of the injury regardless of the extent to which each contributes.” (Plaintiff requested instruction No. 9 (TR, Page 212)).

\*18 Both jury instructions are standard documents. Both are consistent with the well settled case law, to-wit:

“The foreseeability of the intervening force will determine whether the chain of causation between the defendant's negligence and the injury is to be deemed broken. If the intervening force was foreseeable (or should have been anticipated), then the defendant's original negligence remains approximate cause of the injury.” *Willard v. Kelley*, 803 P.2d 1124, 1990 OK 127.

“Proximate cause must be the efficient cause that sets in motion the chain of circumstances leading to an injury; if the negligence complained of merely furnishes a condition by which the injury was made possible and a subsequent independent act caused the injury, the existence of such condition is not the proximate cause of the injury. ‘Foreseeability is an essential element of proximate cause in Oklahoma, and it is the standard by which a proximate cause as distinguished from the existence of a mere condition is to be tested.’ *Atherton v. Devine*, 602 P.2d 634 (Okla. 1979)...The question of causation is one of fact for the jury unless there is no evidence from which the jury could reasonably find a causal nexus between the negligent act and the resulting injuries.” *Tomlinson v. Love's Country Stores, Inc.*, 854 P.2d 910, 1993 OK 83.

“Under our law the general rule is that an original tort-feasor, negligently causing injury to a third person, is liable for the negligence of a physician who treats the injured person where a negligent treatment results in aggravation of or increasing the injuries, so long as the injured person exercises good faith in the choice of physicians...This rule is founded on sound reasons of public policy and is merely a particular application of the rule that a tort-feasor whose negligence causes injury is also liable for any subsequent injury or re-injury that is the proximate result of the original wrongdoing....” *Shadden v. Valley View Hospital*, 915 P.2d 364, 1996 OK 140.

“When, however, the intervening act is a *reasonably foreseeable consequence* of the primary negligence, the original wrongdoer will not be relieved of liability. Also, where the primary act of negligence \*19 is not superseded by a second cause, i.e. continues to operate concurrently, so that damages the result of both causes acting in concert - each act may be regarded as the proximate cause and the wrongdoers will be jointly and severally liable for the plaintiff's compensable harm.

Traditionally, causation in a negligence action lies within the realm of fact, not law.” *Lockhart v. Loosen*, 943 P.2d 1074, 1997 OK 103.

And the assault occurred during an investigative raid that was premature and not preceded by the usual, normal and necessary steps identified by the uncontroverted expert witness, Junior C. Jackson (TR, Page 157-172). Clearly, the Dental Board Executive Director acted in a kneejerk fashion to pull in other agencies to accompany her on the January 10, 2005 raid on Dr. Cashman's office. The record is uncontroverted that the Dental Board did not conduct any advance investigation or preliminary steps required before a raid was staged. Dr. Cashman's testimony about Ms. Campbell's bias in seeing him as pulling teeth to aid and abet unlawful denturists (TR, Page 101, 127 and 128) reveals Ms. Campbell's motive against Dr. Cashman. And the assault arose directly from actions of the Dental Board Executive Director Linda Campbell. Mr. Edmensten was at all times herein acting as a part of the Dental Board raid. And the assault occurred during the Dental Board raid.

In addition, Oklahoma law is well settled that at the stage of demurrer to the evidence, just as at summary judgment, the evidence must be viewed in the light most favorable to the party opposing the demurrer, to-wit:

\*20 “All conclusions drawn from the evidentiary material submitted to the trial Court are viewed in a light most favorable to the party opposing motion for summary judgment.” *Sullivan v. Burkhorn Ranch Partnership*, 119 P.3d 192, 2005 OK 41

“All facts and inferences on a motion for summary judgment are to be viewed in the light most favorable to the non-moving party.” *Howell v. Texaco, Inc.*, 112 P.3d 1154, 2004 OK 92

“On a motion for summary judgment, all inferences and conclusions which may be drawn from the underlying facts must be taken in the light most favorable to the party opposing summary judgment.” *Winston v. Stewart and Elder, P.C.*, 55 P.3d 1063, 2002 OK 68

“All conclusions drawn from evidentiary material submitted to trial Court in connection with motion for summary judgment are to be viewed in light most favorable to party opposing motion.” Phelps v. Hotel Management, Inc., supra.

In this case the evidence showed at this stage the Dental Board was liable for the assault committed by the joint tortfeasor, and the defendant demurrer to the evidence on this issue was granted in error.

### CONCLUSION

For the forgoing reasons and legal authorities set forth herein, Appellant Charles A. Cashman, II, DDS, prays that judgment entered by the Court below be reversed and that judgment be entered in favor of Dr. Cashman, or, in the alternative, that the case be remanded for new trial in the Court below pursuant to direction of this honorable appellate Court, and for such other and further relief as the Court may grant.

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