

NORTH CAROLINA
ORANGE COUNTY

NORTH CAROLINA BOARD
OF CHIROPRACTIC EXAMINERS

In the Matter of:

MICHAEL DEBARTOLO, DC,
Respondent.

FINAL AGENCY DECISION

THIS MATTER coming on to be heard before the Board of Chiropractic Examiners at its regular meeting held on December 14, 2006, in Charlotte, North Carolina; and at the call of the case, the respondent was represented by his counsel, Michael C. Allen, and the staff of the Board of Examiners was represented by its counsel, Vance C. Kinlaw. All parties affirmed their readiness to proceed; and after hearing the evidence presented and giving due consideration to the arguments of counsel and the record as a whole, the Board, with the consent of the parties, makes the following:

Findings of Fact

1. This case was heard by a majority of the Board, Dr. John A. Webster, presiding. Dr. Dennis Hall Sr., Secretary of the Board, was also present but did not actively participate in the Board's deliberations due to his earlier participation in the respondent's probable cause hearing.
2. The probable cause hearing for this complaint was held in Durham on October 12, 2006.
3. The respondent, Dr. Michael DeBartolo, is a duly licensed chiropractic physician in North Carolina and maintains an office and clinic in Hillsborough.
4. This matter comes before the Board upon a formal complaint filed on January 20, 2006 by Mrs. Penny Morgan, a former patient of Dr. DeBartolo. The primary allegations set forth in the complaint are (1) that Dr. DeBartolo engaged in lewd or immoral conduct towards Mrs. Morgan and (2) that he failed to render acceptable care. The Chiropractic Review Committee found no probable cause with respect to the charge of lewd or immoral conduct but did find probable cause with respect to the charge of failing to render acceptable care.
5. Mrs. Morgan, a resident of Durham County who had never before been treated by a chiropractor, was referred by a friend to Dr. DeBartolo in June 2005. She began treatment for chronic and debilitating back pain and experienced great relief from chiropractic care. The success of treatment fostered her trust and confidence in Dr. DeBartolo.
6. After several weeks of routine office visits, Dr. DeBartolo and Mrs. Morgan began to take a romantic interest in one another. On August 21, 2005, they met in a location outside the clinic and began a sexual relationship that continued for the next four months. On almost every occasion, Mrs. Morgan traveled to Dr. DeBartolo's residence under the pretext of receiving massage therapy. The

relationship ended after it was discovered by Dr. DeBartolo's wife in mid-December and subsequently reported to Mrs. Morgan's husband.

7. Mrs. Morgan contends that Dr. DeBartolo seduced her by making suggestive remarks and touching her inappropriately during office visits on July 26 and August 2. Dr. DeBartolo denies any misconduct in his office and contends that the parties' personal relationship was entirely consensual and instigated by Mrs. Morgan. The evidence presented at the probable cause hearing included notes exchanged by the parties and a time line which established that Mrs. Morgan's complaint was not filed until after the affair had been uncovered. The Review Committee found no credible evidence to support the contention that Mrs. Morgan had been seduced, coerced or subjected to undue influence and concluded that the relationship was consensual.

8. Dr. DeBartolo did not refer Mrs. Morgan to another chiropractor or health care provider prior to starting a personal relationship with her.

BASED ON THE FOREGOING Findings of Fact, the Board enters the following:

Conclusions of Law

1. The Board of Chiropractic Examiners is duly constituted and has jurisdiction of subject matter and of the person of the respondent. The complaint filed January 20, 2006 is properly before the Board for adjudication on the merits. The burden of proof is borne by the staff of the Board, and the standard of proof is the greater weight of the evidence.

2. N.C.G.S. 90-154(b)(7) states that not rendering acceptable care is grounds for disciplinary action by the Board.

3. A chiropractic physician who wishes to begin a personal relationship with a current patient has an affirmative duty to first discontinue the professional relationship and refer the patient to another chiropractor or provider for treatment. The failure to make a referral under such circumstances constitutes not rendering acceptable care.

4. By consenting to the entry of this Final Agency Decision, the respondent waives any objection to venue or defect in the service of notice of hearing and agrees and stipulates that this matter may be taken up by the Board at this time.

5. Under the Chiropractic Disciplinary Guidelines currently used by the Board, not rendering acceptable care falls within the "Serious" category of disciplinary violations. The presumptive sanctions for this category, when neither aggravating or mitigating factors predominate, range from probation upon specified terms and conditions to one-year license suspension. Probation may also be added to license suspension.

6. Part III of the Chiropractic Disciplinary Guidelines sets forth numerous mitigating and aggravating factors commonly considered by the Board in selecting sanctions. Pursuant to Part III, the Board finds as follows:

- A. The mitigating factors present in Dr. DeBartolo's case are:
 - (1) The respondent has no prior history of disciplinary violations;
 - (2) The respondent acknowledged culpability at an early stage of the disciplinary process, cooperated with the Board, and voluntarily undertook rehabilitation or remedial measures prior to the disposition of the case;
 - (3) The respondent showed remorse;
 - (4) The respondent's misconduct has been addressed by the civil justice system.
- B. There are no aggravating factors present in Dr. DeBartolo's case.

7. In the judgment of the Board, the mitigating factors outweigh the aggravating factors. Therefore, in conformity with the Chiropractic Disciplinary Guidelines, sanctions shall fall within the lower end of the presumptive range for a "Serious" violation.

WHEREFORE, BY CONSENT, and upon his plea of guilty, the North Carolina Board of Chiropractic Examiners hereby finds the respondent, Dr. Michael DeBartolo, guilty of not rendering acceptable care, in violation of N.C.G.S. 90-154(b)(7). It is ordered, adjudged and decreed that Dr. DeBartolo be sanctioned as follows:

- 1. Dr. DeBartolo's license to practice chiropractic in North Carolina shall be suspended for six months. This sanction is stayed upon the following terms and conditions:
 - A. Dr. DeBartolo shall serve a period of active suspension for thirty (30) consecutive days. The beginning date of the period of active suspension shall be no earlier than December 15, 2006 and no later than June 30, 2007. At the conclusion of active suspension, Dr. DeBartolo shall be placed on probation for one year. During this 12-month period, Dr. DeBartolo shall:
 - (1) Successfully complete at his own expense the course entitled Professional/Problem-Based Ethics ("ProBe") offered by Dr. Joseph d'Oronzio. This course shall be in addition to and shall not count towards fulfilling the annual 24-hour continuing education requirements for license renewal; and

(2) Take at his own expense and pass the ethics examination given by the National Board of Chiropractic Examiners.

B. If Dr. DeBartolo wilfully fails to comply with this Decision, the term of six months' suspension now stayed shall be invoked.

2. Dr. DeBartolo shall *not* be subject to Part IV, Paragraph 9 of the Disciplinary Guidelines (mandatory divestiture of clinic ownership).

3. This Decision shall become effective upon ratification.

4. This Decision is a public document and shall be reported to national data banks and to the chiropractic licentiate body in North Carolina by summary in the Board's next newsletter.

RATIFIED THIS 14th day of December, 2006.

NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

By: John A. Webster, DC
John A. Webster, DC, President

CONSENT:

Michael DeBartolo D.C.
Michael DeBartolo, DC
Respondent

Michael C. Allen
Michael C. Allen
Attorney for Respondent

Dennis L. Hall Sr., DC
Dennis L. Hall Sr., DC
Secretary of the Board

Vance C. Kinlaw
Vance C. Kinlaw
Attorney for the Board