



5. This matter came before the Board upon a formal complaint filed on April 17, 2014 by Dr. Ricky Sides in his capacity as Secretary of the Board. The complaint alleged that Dr. Smith failed to meet the standards of acceptable care with respect to diagnostic radiology. Dr. Smith pleaded not guilty to the charges.

6. On March 18, 2014, an inspector from the Radiology Compliance Branch of the N.C. Department of Health and Human Services visited Dr. Smith's office. As the investigator noted, Dr. Smith owns and since 2004 has been making patient X-rays with a Tingle X-ray unit (Serial No. 25184). This unit was not registered with Radiation Protection Section of the Department of Health and Human Services. In addition to the unregistered unit, the inspector cited Dr. Smith for several other violations of the statutes and rules administered by the Radiation Protection Section.

7. The Secretary of the Board obtained and reviewed a copy of the Radiology Compliance Branch inspection report. Based on the report, the Secretary opened an independent investigation and instructed Dennis Hall, D.C., the investigator for the Board, and Eugene A Lewis, D.C., a consultant to the Board, to inspect Dr. Smith's office and assess whether Dr. Smith was in compliance with the statutes and rules administered by the Board pertaining to diagnostic radiology.

8. Dr. Hall and Dr. Lewis visited Dr. Smith's office on April 9, 2014. They reviewed a representative sample of his recent X-rays, examined the X-ray unit, X-ray room and dark room and found a number of apparent deviations from the standards of acceptable care. The two items of greatest concern were:

(a) Dr. Smith could provide no shielding plan, report of installation, radiation survey or other documentation demonstrating that the shielding in the interior walls of the X-ray room was adequate to prevent accidental exposure of patients and clinic staff to scatter radiation.

(b) The condition of Dr. Smith's darkroom was poor. Stale developing chemicals and light leaks around the door could have affected the quality of his X-rays and necessitated re-takes, thus exposing patients to additional radiation.

9. Based on the report of findings from Dr. Hall and Dr. Lewis, the Secretary issued a disciplinary complaint on April 17, 2014. The complaint recited a total of ten alleged departures from the standards of acceptable care.

10. Dr. Smith responded to the complaint by making voluntary corrections to several of the problems identified by Board investigators. Among other corrections, he ordered new identification markers, purchased a lead apron, posted emergency procedures, obtained a new technique chart and attempted to clean up his darkroom.

11. On May 27, 2014, Dr. Smith entered into an Interim Consent Order with the Secretary of the Board. The Order listed the repairs and corrections voluntarily made by Dr.

Smith up to that point. The Order also imposed, and Dr. Smith accepted, the obligation to obtain a “post-installation radiation survey” not later than July 14, 2014.

12. A “post-installation radiation survey” is the usual and customary method of demonstrating that an X-ray room has adequate shielding to protect against scatter radiation. The survey is performed by a certified physicist, who test-fires the X-ray unit and measures radiation levels at various points in the vicinity of the unit. Submission of a post-installation radiation survey is normally the final step in the process of registering an X-ray unit with the Radiation Protection Section.

13. Dr. Smith did not obtain a post-installation radiation survey by July 14, 2014, the deadline recited in the Interim Consent Order. Consequently, the Secretary of the Board proceeded with a preliminary hearing before the Chiropractic Review Committee on August 14, 2014 to determine whether probable cause existed to refer any of the allegations in the complaint of April 17, 2014 to the full Board.

14. The Chiropractic Review Committee determined that probable cause existed with respect to the following allegations:

- (a) Dr. Smith’s X-ray unit had not been registered with the Radiation Protection Section;
- (b) Dr. Smith had not shown that the interior walls of his X-ray room provided protection from scatter radiation;
- (c) Dr. Smith had not shown that the control booth barrier provided adequate protection from scatter radiation;
- (d) The door to Dr. Smith’s X-ray room had gaps around the doorknob and between the door and frame that could subject patients and clinic staff to scatter radiation;
- (e) Dr. Smith’s dark room had light leaks around the door, and the door did not close properly;
- (f) Dr. Smith’s technique chart was inconsistent with his X-ray machine’s source-image distance as measured by Dr. Hall and Dr. Lewis.

Based on the repairs and corrections voluntarily made by Dr. Smith prior to August 14, 2014, the Review Committee dismissed the remaining allegations set forth in the complaint.

15. Dr. Smith did eventually obtain a post-installation radiation survey on November 21, 2014, nine days after he was served with notice of the formal disciplinary hearing to be held before the full Board of Examiners. The survey confirmed that the shielding in the walls of Dr. Smith’s X-ray room was adequate to protect against scatter radiation.

16. Dr. Smith has now registered his X-ray unit with the Radiation Protection Section.

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 on April 17, 2014 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 in the practice of the chiropractic profession as defined in N.C.G.S. 90-154.3 is grounds for disciplinary action by the Board.

3. N.C.G.S. 90-154.33 states that the Board may adopt rules that establish and define standards of acceptable care with respect to diagnostic radiology. If the Board has not defined a standard of acceptable care by rule, then the standard of acceptable care shall be the usual and customary method as taught in the majority of recognized chiropractic colleges.

4. The Board has not defined any standards of acceptable care for diagnostic radiology by rule. Therefore, the North Carolina standards of care for diagnostic radiology are the usual and customary methods as taught in the majority of recognized chiropractic colleges.

5. It is a violation of the North Carolina standards of acceptable care for a chiropractic physician to make diagnostic X-rays of patients using an X-ray unit that has not been registered with and approved as safe by the relevant governmental authority, which in this case is the Radiation Protection Section of the N.C. Department of Health and Human Services.

6. A chiropractic physician who develops his own X-rays is obligated to maintain a dark room that complies with the applicable standards of care, which standards generally state that the physician shall provide a supply of fresh and potent developing chemicals, sufficient workspace to change film cartridges and a door with seals adequate to prevent light leaks that could cloud X-rays.

7. Under the Chiropractic Disciplinary Guidelines currently used by the Board, Failing to Render Acceptable Care falls within the "Serious" category of disciplinary violations. The presumptive sanctions for this category, when neither aggravating nor mitigating factors predominate, range from probation upon specified terms and conditions to one-year license suspension. Probation may also be added to license suspension.

8. Part III of the Chiropractic Disciplinary Guidelines sets forth numerous aggravating and mitigating factors commonly considered by the Board in selecting sanctions. The parties stipulate that neither aggravating nor mitigating factors predominate in this case.

9. N.C.G.S. 90-154(c) allows The Board to assess the reasonable cost of a full Board hearing against a respondent in certain circumstances. Dr. Smith stipulates and agrees that the Board may impose such costs upon him as specified below and waives any findings of fact or conclusions of law setting forth the justification for the imposition of costs in this case.

WHEREFORE, upon his plea of not guilty, the Board of Examiners hereby finds the respondent, Dr. Roosevelt Smith, guilty of Failing to Render Acceptable Care with respect to diagnostic radiology. It is ordered, adjudged and decreed that Dr. Smith be sanctioned as follows:

1. Dr. Smith shall be placed on probation for a period of twelve months beginning on the effective date of this Decision. As a condition of probation, Dr. Smith's office shall be subject to inspection without prior notice by a representative of the Board. The parties shall stipulate in advance as to who will perform the inspection from a list of persons normally available to the Board for such duties. The purpose of the inspection shall be to confirm Dr. Smith's ongoing compliance with the standards of acceptable care for diagnostic radiology.
2. Dr. Smith shall pay to the Board the sum of \$4,000.00 as costs for the full Board hearing held on December 4, 2014. This sum shall be paid in eight installments due on the first day of each month beginning September 1, 2015 and concluding with the payment due on April 1, 2016. This payment schedule shall not prevent Dr. Smith from pre-paying all or part of the sums due. A payment will be considered made when placed in First Class Mail, postage prepaid and addressed as follows:

Carol Hall, Executive Secretary  
N.C. Board of Chiropractic Examiners  
P.O. Box 312  
Concord, NC 28026

3. If Dr. Smith fails to comply with any provision of this Final Agency Decision, he shall be subject to further disciplinary action pursuant to N.C.G.S. 90-154(b)(20).
4. This Decision is a public document and shall be reported to national data banks and to the chiropractic licentiate body by summary in the Board's newsletter. It shall also be posted on the Board's website in the standard format used for disciplinary infractions.
5. In the event either party believes that the other party has failed to comply with this Decision in any respect, notice shall be sent as follows by registered or certified mail, return receipt requested:

To the Board:

N.C. Board of Chiropractic Examiners  
P.O. Box 312  
Concord, NC 28026

With a copy to:

Vance C. Kinlaw  
101 S. Elm Street, Suite 215  
Greensboro, NC 27401

To Dr. Smith:

Roosevelt Smith, DC  
Health 1<sup>st</sup> Chiropractic and Rehab  
4518-A West Market Street  
Greensboro, NC 27407

With a copy to:

Robert A. Ford  
Brotherton Ford Berry & Weaver, PLLC  
127 North Greene Street, Suite 400  
Greensboro, NC 27401

6. This Decision shall take effect on the date written below.

THIS IS THE 27 day of August, 2015.

N.C. BOARD OF CHIROPRACTIC EXAMINERS



By: Bruce Hilton, DC, President

CONSENT:

  
\_\_\_\_\_  
Roosevelt Smith, DC, Respondent