

In the Matter of:

BAXTER W. PASCHAL JR., D.C.,
Respondent.

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FINAL AGENCY DECISION

THIS MATTER coming on to be heard before the Board of Chiropractic Examiners at its regular meeting held on January 22, 2011 in Greensboro, North Carolina; and at the call of the case, the attorney for the Board tendered a proposed Decision agreed and stipulated to by the Secretary of the Board and the respondent. Upon recommendation of the Board staff, and with the consent of the parties, the Board makes the following:

Findings of Fact

1. This case was heard by a majority of the Board, Dr. David Yarasheski, presiding. Dr. Randy Schilsky, Secretary of the Board, was present but did not actively participate in the Board's deliberations due to his earlier participation in the investigation of the charge against the respondent.

2. The respondent, Dr. Baxter W. Paschal Jr., is a resident of Cumberland County and was a duly licensed chiropractic physician in North Carolina until December 26, 2006. He formerly maintained a chiropractic office known as the Cape Fear Valley Chiropractic Group in Fayetteville, North Carolina.

3. This matter comes before the Board upon a formal complaint filed on May 15, 2006 by the Secretary of the Board. The complaint alleges that Dr. Paschal had been convicted of a felony, which is a violation of Section 90-154(b)(2) of the Chiropractic Practice Act.

4. Dr. Paschal waives preliminary hearing before the Chiropractic Review Committee, stipulates that probable cause exists to refer this matter to the full Board, tenders a plea of guilty to the complaint of May 15, 2006, and stipulates to the Findings of Fact recited below.

5. In May 2001, the Internal Revenue Service assessed Dr. Paschal approximately \$164,000 in delinquent payroll taxes on his clinic's employees for the years 1998-2000. The IRS also assessed Dr. Paschal and his wife approximately \$7,400 in personal income taxes.

6. During the period March-May 2002, Dr. Paschal offered to compromise the assessments and filed with the IRS a schedule of assets that showed he did not have sufficient assets to pay the full amounts owed.

7. On May 1, 2005, the U.S. Attorney for the Middle District of North Carolina obtained an indictment against Dr. Paschal alleging that he had obstructed the IRS by willfully failing to disclose all his assets.

8. On April 5, 2006, Dr. Paschal entered a guilty plea and was duly convicted in the U.S. District Court for the Middle District of North Carolina of the felony of Obstructing and Impeding the Administration of the Internal Revenue Laws [Case No. 1:05-cr-383]. He received a sentence of sixteen months' incarceration in a federal correctional facility, followed by one year's supervised

probation. Dr. Paschal completed his sentence, including probation, and has been discharged by federal authorities.

6. Dr. Paschal was originally licensed in North Carolina in 1974 and remained continuously licensed and in good standing until voluntarily surrendering his license on December 26, 2006. He has been deprived of his chiropractic license for four years and one month.

7. Dr. Paschal took and passed the Special Examination in Chiropractic (SPEC) in October 2010 and the North Carolina Jurisprudence Examination in January 2011. Subject to the disposition of the disciplinary complaint of May 15, 2006, he is eligible for immediate license reinstatement.

BASED ON the foregoing Findings of Fact, the Board makes 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 May 15, 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)(2) states that conviction of a felony or of a crime involving moral turpitude is grounds for disciplinary action by the Board.

3. Conviction of the federal crime of Obstructing and Impeding the Administration of the Internal Revenue Laws constitutes conviction of a felony and is, therefore, a violation of N.C.G.S. 90-154(b)(2).

4. Under the Chiropractic Disciplinary Guidelines currently used by the Board, conviction of a felony falls within the "Most Serious" category of disciplinary violations. The presumptive sanctions for this category, when neither aggravating nor mitigating factors predominate, range from 90-day license suspension to permanent license revocation.

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

- A. The aggravating factor present in Dr. Paschal's case is that he harbored a dishonest or selfish motive.
- B. The mitigating factors present in Dr. Paschal's case are that he has no history of disciplinary violations, his misconduct did not result in harm to chiropractic patients, and his misconduct has been addressed by the criminal justice system.

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

WHEREFORE, BY CONSENT, the North Carolina Board of Chiropractic Examiners hereby finds the respondent, Baxter W. Paschal Jr., guilty of having been convicted of a felony, in violation of N.C.G.S. 90-154(b)(2). It is ordered, adjudged and decreed that Dr. Paschal be sanctioned as follows:

(1) Dr. Paschal's license to practice chiropractic in North Carolina shall be suspended for twenty-four consecutive months, beginning retroactively on December 27, 2006 and continuing through December 26, 2008.

(2) The above period of suspension having been fully served, Dr. Paschal's license to practice is hereby reinstated.

This Decision shall become effective on the date of ratification. This Decision is a public document and shall be reported to national data banks and to the licentiate body by summary in the Board's next newsletter.

RATIFIED THIS the 22nd day of January, 2011.

NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

Conforming copy of this Decision entered this 6th day of June, 2011 *nun pro tunc* to the date of ratification noted above.

By: s/ David Yarasheski, D.C.
David Yarasheski, D.C., President

s/ Randy Schilsky, D.C.
Randy Schilsky, D.C., Secretary