

In the Matter of: )  
 )  
BLAKE W. PRELIPP, D.C., )  
Respondent. )

**FINAL AGENCY DECISION**

THIS MATTER coming on to be heard before the Board of Chiropractic Examiners at its regular meeting held on October 26, 2013 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. Ronald E. Cohn, presiding. Dr. Ricky Sides, Secretary of the Board, was present but did not actively participate in the Board's deliberations due to his earlier participation in the formation of the charges against the respondent. Dr. Michael Estramonte, President of the Board, voluntarily recused himself because he is a geographic competitor of the respondent.

2. The respondent, Dr. Blake W. Prelipp, is a resident of Mecklenburg County and a duly licensed chiropractic physician in North Carolina. At all times pertinent to this case, Dr. Prelipp maintained an office and clinic at 4444 Park Road, Charlotte, and a second office and clinic at 6407 South Boulevard, Charlotte. Both offices operate under the name American Back Care Chiropractic, PC. In addition to these locations, Dr. Prelipp currently maintains offices at two more locations in Charlotte: 5801 Executive Center Drive, 8310-B Medical Plaza Drive.

3. This matter comes before the Board upon a formal complaint filed on May 24, 2013 by Dr. Sides in his capacity as Secretary. The complaint alleges that Dr. Prelipp failed to render acceptable care, in violation of N.C.G.S. 90-154(b)(7) and N.C.G.S. 90-154.3, and committed deception or misrepresentation, in violation of N.C.G.S. 90-154(b)(9).

4. Dr. Prelipp waives his right to a probable cause hearing and hereby pleads no contest to the charge of unacceptable care set forth in the disciplinary complaint of May 24, 2013. Dr. Prelipp pleads not guilty to the charge of committing deception or misrepresentation.

5. Prior to and including December 2011, Dr. Prelipp created and maintained for use in his clinic locations an initial examination protocol that did not include the taking of any vital signs (blood pressure, pulse rate, temperature, respiration, height and weight). Consequently, his staff did not routinely take vital signs on new patients, regardless of whether or not a physician was present.

6. Prior to and including December 2011, Dr. Prelipp routinely allowed non-physician staff members at his clinic locations to apply TENS units, heat and ice, and vibrating mechanical compression to patients without a physician being present in the clinic. However, these staff members were licensed massage therapists, and Dr. Prelipp believed that such activities were properly performed within the scope of their massage therapy licenses.

5. Instructing and allowing non-physician staff members to perform therapeutic exercises with a patient, issue instructions for home exercise, administer contrast therapy and apply Biofreeze, all without a physician seeing the patient, is not rendering acceptable care.

6. Under N.C.G.S. 90-154.3(b)(5), a chiropractic physician has a duty to educate himself as to the definitions and correct use of CPT codes, and his repeated failure to code correctly constitutes unacceptable care with respect to the maintenance of patient records. Also, incorrect coding increases the likelihood that third-party payors could become confused about the services actually rendered, potentially resulting in overpayment to the physician.

7. Allowing CPT examination codes to be billed to the accounts of patients upon whom no examinations were performed or when no physician, physical therapist or occupational therapist was on site to perform examinations is unacceptable care.

8. Allowing the billing of physical therapy examination codes on occasions when no examination was actually performed and no physician was on site is unacceptable care.

9. Allowing the billing of CPT code 99082 (transportation of patient) when no physician accompanied patients and the patients' travels were not unusual is inconsistent with the recommendation found in coding guidebooks published by the American Medical Association, which guidebooks the Board generally considers authoritative. However, there may be disagreement among experts as to when code 99082 should be used. The Board therefore declines to conclude that the respondent's use of this code constituted unacceptable care as a matter of law, but the respondent is cautioned to conform his use of code 99082 henceforth to the recommendations of the AMA guidebooks.

10. Allowing the billing of CPT code 97016 (vasoneumatic compression) when patients in fact received mechanical vibratory compression is unacceptable care.

11. Under the 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 to one-year license suspension. Probation may also be added to license suspension.

12. 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. Prelipp's case are that he has no recent history of disciplinary violations and that he voluntarily undertook remedial measures prior to the disposition of this disciplinary action.

B. There are no aggravating factors present in Dr. Prelipp's case.

13. In the judgment of the Board, the mitigating factors predominate. 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, the North Carolina Board of Chiropractic Examiners hereby finds the respondent, Blake W. Prelipp, guilty of failing to render acceptable care. It is ordered, adjudged and decreed that Dr. Prelipp be sanctioned as follows:

7. Prior to and including December 2011, Dr. Prelipp created a protocol under which non-physician staff members were instructed and allowed to perform therapeutic exercises with patients, issue instructions for home exercise, administer contrast therapy and apply Biofreeze, all without a physician seeing the patient. However, these staff members were licensed massage therapists, and Dr. Prelipp believed that such activities were properly performed within the scope of their massage therapy licenses.

8. Prior to and including December 2011, Dr. Prelipp allowed CPT examination code 97001 to be routinely billed to the accounts of patients upon whom no examination was performed and when no physician, physical therapist or occupational therapist was on site to perform an examination.

9. Prior to and including December 2011, Dr. Prelipp allowed the billing of physical therapy examination codes on occasions when no examination was performed by a physician and no physician was on site, the examination having been performed by a licensed massage therapist.

10. Prior to and including December 2011, Dr. Prelipp allowed the billing of CPT code 99082 (transportation of patient) when no physician accompanied patients and the patients' travel did not appear to be unusual.

11. Prior to and including December 2011, Dr. Prelipp allowed the billing of CPT code 97016 (vasoneumatic compression) when patients in fact received mechanical vibratory compression.

12. For each instance of incorrect coding noted above, Dr. Prelipp denies any intent to misrepresent the nature and extent of the treatment actually delivered and contends that he acted in good faith based on his understanding of what the appropriate coding should be.

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 24, 2013 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 it is a violation of the chiropractic practice act for a chiropractor to fail to render acceptable care in the practice of the profession. N.C.G.S. 90-154.3 states that it shall be unlawful for a doctor of chiropractic to examine, treat or render any professional service to a patient that does not conform to the standards of acceptable care.

3. Failing to take vital signs on a new patient during the initial examination is not rendering acceptable care.

4. Allowing non-physician staff members to apply TENS units, heat and ice, and vibrating mechanical compression to *new* patients without a physician being present to adjust the devices' initial settings to the appropriate level is not rendering acceptable care. However, nothing in this Conclusion precludes non-physician staff members from applying therapeutic modalities upon established patients without a physician being present if such modalities are applied in conformity with the Board's prior declaratory ruling concerning standing orders.

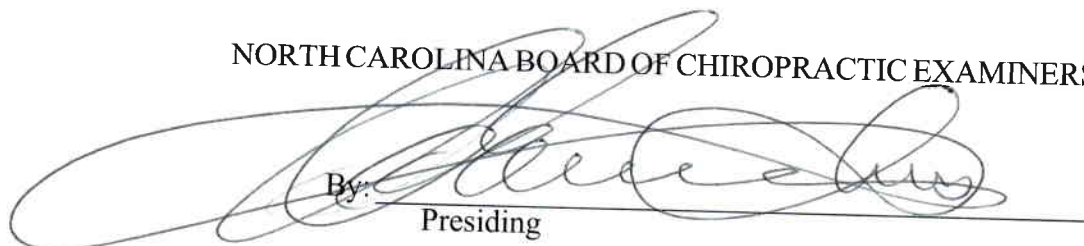
Dr. Prelipp's license to practice chiropractic in North Carolina shall be suspended for six months. This suspension is stayed upon the following terms and conditions:

- A. Prior to February 28, 2014, Dr. Prelipp shall serve a period of active license suspension for seven consecutive days; and
- B. Following completion of the active term of suspension, Dr. Prelipp shall be placed on probation for a term of eighteen months; during which time he shall change his examination and treatment protocols and modify his billing procedures to correct all the various violations described in this Decision and shall report in writing to the Secretary that he has done so. In particular, Dr. Prelipp shall modify his intake protocol to make certain that no therapeutic services are delivered to any new patient until a licensed physician has examined said patient; and
- C. Dr. Prelipp shall attend continuing education classes approved by the Board of Examiners in the subjects of jurisprudence and ethics and boundaries. This coursework shall be completed before December 31, 2013 and shall not count towards the twenty-fours required for annual license renewal; and
- D. During his term of probation, Dr. Prelipp shall take and pass the Ethics and Boundaries examination given by the National Board of Chiropractic Examiners.
- E. The charge of committing deception or misrepresentation, in violation of N.C.G.S. 90-154(b)(9), is hereby dismissed.

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 26<sup>th</sup> day of October, 2013.

NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

By:   
Presiding

CONSENT:

  
Blake W. Prelipp, D.C.  
Respondent

  
Ricky Sides, D.C.  
Secretary