

NORTH CAROLINA
WAKE COUNTY

NORTH CAROLINA BOARD
OF CHIROPRACTIC EXAMINERS

In the Matter of:)
)
BRIAN D. ADAMS, DC,)
Respondent.)

FINAL AGENCY DECISION

THIS MATTER coming on to be heard before the Board of Chiropractic Examiners at its regular meeting held on January 28, 2006, in Greensboro, North Carolina; and at the call of the case, the respondent was present and represented by his counsel, Edward E. Hollowell and Timothy J. Hoegemeyer, 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 formation of the charges against the respondent.
2. The respondent, Dr. Brian D. Adams, is a duly licensed chiropractic physician in North Carolina and maintains a chiropractic office in Wake County, North Carolina. The name of Dr. Adams' office is Family Wellness Chiropractic; and its address is 4229 Louisburg Road, Suite 101, Raleigh, NC 27604.
3. This matter comes before the Board upon a formal complaint filed on October 28, 2005 by Dr. Dennis Hall Sr. in his capacity as Secretary of the Board. The complaint alleges that Dr. Adams paid for a patient referral in violation of N.C.G.S. 90-401 and further, that Dr. Adams employed an agent (or "runner") to solicit a personal injury patient by initiating telephone contact within 90 days following the date of injury, in violation of N.C.G.S. 90-401.1.
4. At a probable cause hearing held in Raleigh on December 2, 2005, Dr. Adams admitted that he is guilty of the foregoing violations and voluntarily gave unsworn testimony describing in detail his contractual arrangements with the runner and the runner's unlawful conduct.
5. Dr. Adams received his North Carolina license in June 1998 and opened his office the following September. In May 2005, a man named Cyrano F. Green presented at Dr. Adams' office

as a patient. During the course of the office visit, Mr. Green stated that he owned a marketing firm in Connecticut and was thinking about moving his business to North Carolina. Mr. Green later telephoned Dr. Adams and said, "We're going to send you some people." He gave no details as to the nature of his marketing operation, and there was no discussion of any fees for the prospective referrals. Mr. Green's business was known as Millennium Management.

6. A few weeks later, the first referral patients, all auto accident victims, started reporting to Dr. Adams for examination and treatment. Dr. Adams was surprised to receive these referrals but was favorably disposed towards Millennium Management because it seemed to produce quantifiable results. Dr. Adams was frustrated by not being able to tell whether his previous marketing efforts, such as yellow page advertisements, were working. He wanted to be able to pay for marketing "based on production."

7. In June 2005, Mr. Green telephoned Dr. Adams to confirm that Dr. Adams had received some patient referrals. During this call, Mr. Green for the first time proposed that Dr. Adams enter into a contractual relationship with Millennium Management. The terms were that when a Millennium patient reached the plateau of \$1,000 in billable chiropractic services, Dr. Adams would owe Mr. Green \$500. This fee was payable immediately, regardless of whether the patient had completed treatment or whether Dr. Adams himself had been paid. Dr. Adams agreed to these terms.

8. On September 20, 2005, a Wake County resident, Michael Harrigan, sustained injury in an automobile collision that was the fault of another driver. The next day, Mr. Green initiated telephone contact with Mr. Harrigan for the purpose of inducing him to become a patient of Dr. Adams. Mr. Green told Mr. Harrigan that he was "from the other insurance company." This statement was false.

9. Mr. Harrigan agreed to report to Dr. Adams and kept an appointment on September 22, 2005. He was satisfied with the quality of care he received.

10. Later that day, Mr. Harrigan obtained a copy of the police accident report and learned that State Farm Insurance was the carrier for the liable driver. Mr. Harrigan telephoned the State Farm claims office in Raleigh to thank them for arranging for his treatment. It then became apparent that State Farm had made no such arrangement and had no knowledge of or relationship with Mr. Green. Upon learning that Mr. Green was posing as its representative, State Farm initiated an investigation into the patient solicitation activities of Millennium Management and Dr. Adams. In due course, State Farm contacted the staff of the Board of Chiropractic Examiners.

11. Mr. Harrigan subsequently informed Dr. Adams of Mr. Green's misrepresentations, and Dr. Adams began questioning other Millennium patients as to what Mr. Green had said to them. One patient told him that Mr. Green had claimed to be an emergency room physician. On August 31, 2005, Dr. Adams telephoned a Raleigh attorney but could only speak with a paralegal, who advised him that Mr. Green was not doing anything unlawful.

12. In late September 2005, Dr. Adams received a telephone call from another local attorney, who told him that Mr. Green was a felon, having been convicted of insurance fraud in Connecticut. At that point, Dr. Adams decided to terminate his relationship with Mr. Green and Millennium Management.

13. Dr. Adams estimates that from June through September, 2005, he received 60 to 70 referrals from Millennium Management, of whom approximately 30 became actual patients. During that period, Mr. Green stayed in regular contact with Dr. Adams to confirm referrals and monitor the accumulation of billable services. Mr. Green usually appeared in person to pick up referral fee payments as they became due. Dr. Adams believes that he has generated approximately \$26,000 in billable services from Millennium patients and has paid Mr. Green approximately \$20,000 in referral fees.

14. Although evidence of a pattern of unlawful patient solicitation was disclosed at the probable cause hearing held on December 3, 2005, the disciplinary complaint issued by the Secretary on October 28, 2005 is limited to the solicitation of Michael Harrigan only.

15. On his own initiative in November 2005, Dr. Adams identified all his patients who were Millennium referrals and forwarded to them a written explanation that they were improperly solicited by his agent. Dr. Adams offered to refund the proceeds paid to his clinic on the account of any patient who considered himself or herself victimized by the improper solicitation. Dr. Adams also disclosed to the relevant liability insurer the identity of any Millennium patient who had completed treatment and whose submitted claim was covered by that insurer.

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 October 28, 2005 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. 90-401 provides, in pertinent part:

A health care provider shall not financially compensate in any manner a person, firm, or corporation for recommending or securing the health care provider's employment by a patient, or as a reward for having made a recommendation resulting in the health care provider's employment by a patient.

3. N.C.G.S. 90-401.1 provides, in pertinent part:

It shall be unlawful for a health care provider or the provider's employee or agent to initiate direct personal contact or telephone contact with any injured, diseased, or infirmed person, or with any other person residing in the injured, diseased, or

infirm person's household, for a period of 90 days following the injury or onset of the disease or infirmity, if the purpose of initiating the contact, in whole or part, is to attempt to induce or persuade the injured, diseased, or infirm person to become a patient of the health care provider.

4. N.C.G.S. 90-402 provides:

Violations of the provisions of this article shall be grounds for the offending health care provider's licensing board to suspend or revoke the health care provider's license, to refuse to renew the health care provider's license, or to take any other disciplinary action authorized by law.

5. In the investigation of this case by the staff of the Board, evidence was developed that proves some of the essential elements of fraud (e.g., false material statements relied upon by patients). Although uttered by his agent, these false statements are imputable to the respondent by operation of law. However, no evidence has been presented to the staff that shows any patients were harmed by the false statements upon which they relied. Specifically, Michael Harrigan, the victim named in the disciplinary complaint, declined to appear at the probable cause hearing; and no other Millennium patient has contacted the Board.

6. In order to establish a violation of N.C.G.S. 90-401.1, the complainant is not required to show that false or misleading representations were made to a prospective patient by the respondent or his agent. The complainant is merely required to show that the prospective patient is a member of the protected class and that the respondent or his agent initiated telephone or personal contact.

7. The Board does not possess the statutory authority to order a chiropractic physician to make financial restitution to the victims of his misconduct.

8. By consenting to the entry of this Final Agency Decision, the respondent acknowledges and stipulates that the facts found by the Board herein shall constitute judicial admissions which, if deemed relevant, may be admitted into evidence in subsequent legal proceedings without further authentication.

9. By consenting to the entry of this Final Agency Decision, the respondent waives any 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.

10. Under the Chiropractic Disciplinary Guidelines currently used by the Board, paying for a referral and unlawful patient solicitation fall 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.

11. 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. Adams' 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 remedial measures prior to the disposition of the case; and
 - (3) The respondent showed remorse.
- B. The aggravating factor present in Dr. Adams' case is:
 - (1) The respondent preyed upon the vulnerability of prospective patients who had been recently injured in automobile collisions.

12. 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 "Serious" violation.

WHEREFORE, BY CONSENT, and upon his plea of guilty, the North Carolina Board of Chiropractic Examiners hereby finds the respondent, Dr. Brian D. Adams, guilty of paying for a referral and unlawful patient solicitation, in violation of N.C.G.S. 90-401 *et seq.* It is ordered, adjudged and decreed that Dr. Adams be sanctioned as follows:

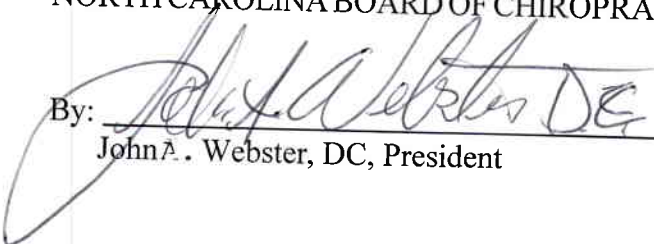
- 1. Dr. Adams' license to practice chiropractic in North Carolina shall be suspended for one year. This sanction is stayed upon the following terms and conditions:
 - A. Beginning March 1, 2006, Dr. Adams shall serve a term of active license suspension for 90 consecutive days, followed by probation for a term of nine months, concluding February 28, 2007. During this 12-month period, Dr. Adams shall:
 - (1) Successfully complete 12 hours of continuing education in the subject of professional ethics. These 12 hours shall be in addition to and shall not count towards fulfilling the annual 24-hour continuing education requirement for license renewal;
 - (2) Attend one presentation summarizing the North Carolina statutes and rules governing chiropractic practice and risk management. This presentation is given four times per year by the Board of Chiropractic Examiners

immediately prior to its licensure examination. Attendance at this presentation shall not count towards fulfilling the annual 24-hour continuing education requirement.


- (3) Prepare and submit a letter of apology to the licentiate body of chiropractic physicians in this State, to be published in the Board's quarterly newsletter. The text of Dr. Adams' letter shall be approved by the Secretary in advance of publication.
 - B. If Dr. Adams wilfully fails to comply with this Decision, the one-year license suspension now stayed shall be invoked.
 - C. Part IV, Item 9 of the Chiropractic Disciplinary Guidelines (compulsory divestiture of clinic ownership) shall not apply to Dr. Adams as long as he remains in compliance with this Decision.
- 2. This Decision shall become effective on March 1, 2006.
 - 3. 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 28th day of January, 2006.


NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

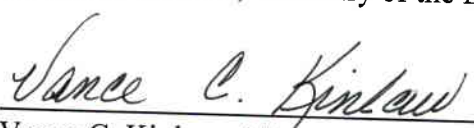
By: 
John A. Webster, DC, President

CONSENT:


Brian D. Adams, DC, Respondent


Dennis L. Hall Sr., Secretary of the Board


Edward E. Hollowell, Attorney


Vance C. Kinlaw, Attorney


Timothy J. Hoegemeyer, Attorney