

ONSLOW COUNTY
NORTH CAROLINA

NORTH CAROLINA BOARD
OF
CHIROPRACTIC EXAMINERS

In the matter of:)
)
DAVID TAYLOR, D.C.,)
Respondent.)

FINAL AGENCY DECISION

THIS MATTER coming before the Board of Examiners at its regular meeting on October 25, 2014, based upon two disciplinary complaints issued by Vance Kinlaw, attorney for the Board. The first complaint was issued on October 10, 2012 and alleges unlawful patient solicitation. A preliminary hearing was held in connection with this complaint on November 30, 2012 in Wilmington. The second complaint was issued on July 15, 2013 and alleges lack of good moral character as evidenced by the respondent's offer to pay for patient referrals. A preliminary hearing was held in connection with this complaint on April 3, 2014 in Jacksonville.

The Chiropractic Review Committee found probable cause with respect to both complaints and referred these matters to the full Board. On August 20, 2014, the respondent filed a motion, currently pending, to have the cases consolidated and transferred to the N.C. Office of Administrative Hearings. After further negotiation, the Secretary and the Respondent now jointly request that this Board adjudicate the complaints on the merits and ratify the Final Agency Decision herein, to which the parties have consented in advance.

WHEREFORE, after giving due consideration to the evidence and the arguments of counsel, and based on Dr. Taylor's admissions and stipulations, the Board of Examiners makes the following:

Findings of Fact

1. Dr. Taylor is a duly licensed chiropractic physician and practices in Jacksonville, North Carolina. The name of his clinic is Jacksonville Chiropractic & Wellness.

2. Dr. Taylor has a business relationship with M. J. Funkhouser, a licensed massage therapist in Jacksonville. Ms. Funkhouser provides massages to some of Dr. Taylor's patients, has access to a room at Dr. Taylor's clinic where she gives massages, and is allowed to maintain a sign advertising her business on an exterior door at his clinic.

3. On October 6, 2012, Ms. Funkhouser placed approximately ten telephone calls to prospective patients who had recently been injured in automobile accidents. The exact

purpose of the calls is in dispute. Ms. Funkhouser contends that she placed the calls in an attempt to build her own massage therapy business and did not mention Dr. Taylor or his clinic except as an employment reference. However, one of the persons contacted, Ms. Lashaveon Brown, contends that the primary purpose of the call she received was to persuade Ms. Brown to become a patient of Jacksonville Chiropractic & Wellness.

4. Ms. Funkhouser voluntarily discontinued making cold calls to accident victims on October 8, 2012 because the calls did not produce any clients and most of the people she telephoned were offended by the calls.

5. On or about February 6, 2013, the Board staff was contacted by Rachel Ellis, a former patient of Dr. Taylor's. Mrs. Ellis gave a sworn statement to the Board alleging that, during an office visit in mid-January, Dr. Taylor offered to pay her or her husband fifty dollars for any patient they referred to him and that he also said, "Don't tell anybody because I could get into trouble." Mrs. Ellis expressed interest in the proposal but did not attempt to refer anyone, nor did she receive any compensation from Dr. Taylor. Shortly thereafter, she discontinued treatment with Dr. Taylor because of a dispute over the distribution of medical payment proceeds.

6. Dr. Taylor denies offering to compensate Mrs. Ellis or her husband for referring prospective patients and disputes her credibility.

BASED on the foregoing Findings of Fact, the Board of Examiners enters the following:

Conclusions of Law

1. The Board is duly constituted, has jurisdiction of subject matter and of the person of the Respondent, and this matter is properly before the Board for adjudication on the merits.

2. N.C.G.S. 90-401.1 prohibits a health care provider or the provider's agent from initiating telephone contact with any injured person for 90 days following the injury if the purpose of initiating contact, in whole or part, is to attempt to persuade the injured person to become a patient of the health care provider.

3. Based on their pre-existing and ongoing business relationship, there is adequate circumstantial evidence to conclude that Ms. Funkhouser was acting as Dr. Taylor's agent when she placed cold calls to automobile accident victims.

4. N.C.G.S. 90-401 prohibits a health care provider from financially compensating any person 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.

5. N.C.G.S. 90-154(b)(21) states that a licensee's commission of an act demonstrating a lack of good moral character that would have been the basis for denying

licensure had it been committed before he applied for licensure shall be grounds for disciplinary action by the Board.

6. Making an offer of compensation as a reward for a patient referral while knowing that the offer is unlawful and must be concealed demonstrates a lack of good moral character that would have been the basis for denying initial licensure.


7. Dr. Taylor denies any intentional misconduct on his part but stipulates that there is evidence to support disciplinary action by the Board. Dr. Taylor wishes to conclude the pending complaints and therefore consents to the entry of this Final Agency Decision and accepts the disciplinary sanctions imposed herein.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Respondent, Dr. David Taylor, is guilty of unlawful patient solicitation and displaying a lack of good moral character.
2. Dr. Taylor's license to practice chiropractic in North Carolina is suspended for sixty (60) days. However, the foregoing sanction is stayed, and Dr. Taylor is placed on probation for a period of eighteen months under the following terms and conditions:
 - A. Dr. Taylor shall not willfully commit any violation of the statutes and rules governing advertising and patient solicitation.
 - B. Dr. Taylor shall complete two hours of remedial education in North Carolina jurisprudence before July 1, 2015. This remedial education shall be in addition to and shall not be counted towards fulfillment of the continuing education required for annual license renewal.
 - C. Within six months after the effective date of this Decision, Dr. Taylor shall take all five topic areas of the Ethics and Boundaries Assessment Services (EBAS) essay examination given by the National Board of Chiropractic Examiners.
 - D. During his term of suspension, if Dr. Taylor is named as a respondent in any disciplinary complaint alleging unlawful advertising, unlawful patient solicitation or unlawful payment for patient referrals, and the Board or the N.C. Office of Administrative Hearings convicts or renders a finding of guilty for said offenses, he will be deemed in violation of this Final Agency Decision and the sixty-day period of active suspension shall be invoked.
3. This Final Agency Decision shall be reported to the national data banks and summarized in the next issue of the Board's newsletter.

4. The Respondent's Motion for Transfer is deemed withdrawn.

RATIFIED by the full Board of Examiners this the 25th day of October, 2014.


Bruce Hilton, DC, President
N.C. Board of Chiropractic Examiners

Consent:



David Taylor, DC, Respondent



Ricky Sides, DC, Secretary of the Board