

In the matter of:)
)
ARNIE WYNN, D.C.,)
)
Respondent.)

FINAL AGENCY DECISION

THIS MATTER coming before the Board of Chiropractic Examiners at its regular quarterly meeting held on January 26, 2018 in Greensboro; and after reviewing the record and hearing the recommendations of the staff, the Board makes the following:

Findings of Fact

1. This case was heard by a majority of the Board, Dr. Kevin Sharp presiding. Dr. Rick Davis, Secretary of the Board, was present but did not participate in the Board's deliberations due to his earlier participation in the investigation of the respondent's conduct described below.
2. The respondent, Dr. Arnie Wynn, is a chiropractic physician duly-licensed by the Board. Dr. Wynn maintains a chiropractic clinic at 715 East 5th Street, Suite 214, Charlotte, NC and known as Health and Wellness Services PLLC.
3. On April 29, 2017, Mr. Taj Lott, a former patient of Dr. Wynn, filed a disciplinary complaint alleging that Dr. Wynn unlawfully solicited him to become a patient, in violation of N.C.G.S. 90-401.1, [hereinafter referred to as Count I].
4. In the same complaint, Mr. Lott further alleged that Dr. Wynn overstated the number of times Lott received treatment [hereinafter referred to as Count II].
5. On July 27, 2017, the Chiropractic Review Committee held a preliminary hearing to consider Mr. Lott's complaint and found probable cause on both counts.

Count I

6. Taj Lott, a citizen and resident of Charlotte, was injured in an automobile collision on March 21, 2016. The Charlotte police investigated the collision and filed an accident report. On March 23, Lott received a telephone call from two persons who identified themselves as "Shanté" and "Mr. Tate." They said they ran a service assisting people who had been in accidents and had gotten his name and number from the police accident report. They also said that they could help him line up a rental car, a lawyer, and a chiropractor. They recommended Dr. Wynn by name.
7. Over the next two weeks, Mr. Lott received several more calls from Shanté and Tate, who revealed that they worked for Williams Collision Center in Charlotte. Shanté set up an appointment for Lott at Dr. Wynn's office, and Lott presented there and was accepted as a patient on April 11.

8. Edward Tate, one of the persons who initiated telephone contact with Mr. Lott, was a former patient who had become a friend of Dr. Wynn's through a church they both attended. Dr. Wynn had been to Tate's home and knew that Tate worked for Williams Collision. Tate had referred approximately ten patients to Wynn over a two-year period.

9. Dr. Wynn accepted the benefit of Tate's solicitation activities and made no attempt to stop him from recommending his chiropractic clinic to automobile accident victims.

10. Dr. Wynn did not financially compensate either Edward Tate or Shanté for making patient referrals. Dr. Wynn does not know a "Shante".

Count II

11. On April 11, 2016, Mr. Lott kept his first office visit with Dr. Wynn. After he completed and signed new patient intake forms, Lott was examined by Dr. Wynn and diagnosed as suffering sprain/strain of the cervical, thoracic and lumbar spine. The proposed treatment plan was four treatments per week for four to eight weeks.

12. Dr. Wynn believes and contends that Mr. Lott kept thirteen office visits after the initial visit. Dr. Wynn generated clinical notes indicating that Lott received treatment on April 11, 12, 14, 18, 19, 21, 22, 25, 26 and 29 and May 2, 3, 5 and 9.

13. Dr. Wynn submitted a bill in the amount of \$2,875.00, representing a fourteen-visit course of treatment that began on April 11 and ended on May 9, 2016.

14. In April 2017, Lott challenged the veracity of Dr. Wynn's bill and claimed that he had kept only one additional office visit after the first visit on April 11.

15. Dr. Wynn provided his treatment notes as indicated above but acknowledged that he did not use sign-in sheets at that time and could not conclusively prove Lott's dates of treatment beyond the treatment notes. As a result, Dr. Wynn voluntarily repaid all sums in dispute prior to the filing of the disciplinary complaint.

BASED ON the foregoing Findings of Fact, the Board enters the following:

Conclusions of Law

1. This Board is duly-constituted and has jurisdiction of subject matter and of the person of the respondent.

2. The applicable standard of proof is the greater weight of the evidence, and the burden of proof is borne by the Board staff.

3. N.C.G.S. 90-401.1 reads in pertinent part as follows:

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 infirmed person's household, for a period of 90 days following the injury or the onset of the disease or infirmity, if the purpose of initiating the contact, in whole or in part, is to

attempt to induce or persuade the injured, diseased, or infirmed person to become a patient of the health care provider.

4. Rule 21 NCAC 10 .0303 reads in pertinent part as follows:

(a) In-Person and Telephone Solicitation of Auto Accident Victims. In order to protect the public from misrepresentation, coercion or undue influence, it shall be unlawful for a doctor of chiropractic, or the doctor's employee, to initiate direct personal contact or telephone contact with any person who has been injured in a motor vehicle collision, or with any person residing in the injured person's household, for a period of 90 days following the collision, if the purpose of initiating contact is, in whole or part, to solicit the injured person to become a patient of the doctor.

(b) Acceptance of Referrals from Runners. It shall be unlawful for a doctor of chiropractic to accept as a patient any person injured in an automobile accident who was referred by a runner. As used in this Rule, the term "runner" means any person, firm or corporation that routinely obtains the names of injured persons from motor vehicle accident reports or other public records and then contacts those persons to seek medical or chiropractic treatment or pursue legal claims.

5. Edward Tate and Shanté initiated telephone contact with Taj Lott, a person injured in an auto accident, within 90 days following the injury and for the purpose, in part, of attempting to induce or persuade Lott to become a patient of Dr. Wynn.

6. Tate and Shanté were runners within the meaning of Rule 21 NCAC 10 .0303(b).

7. Dr. Wynn, accepted patient referrals from Tate and benefited financially from those referrals. Tate's conduct constituted a violation of N.C.G.S. 90-401.1 that is imputable to Dr. Wynn.

8. By accepting Taj Lott as a patient upon referral from Tate, Dr. Wynn violated Rule 21 NCAC 10. 0303(b).

9. N.C.G.S. 90-154.3 states that the maintenance of patient records is a recognized aspect of acceptable care and that it shall be unlawful for a doctor of chiropractic to render any professional service to a patient that does not conform to the standards of acceptable care.

10. N.C.G.S. 90-154(b)(7) states that not rendering acceptable care is grounds for disciplinary action by the Board.

11. Dr. Wynn's failure to utilize and maintain patient sign-in sheets during the period in which Taj Lott was a patient constitutes not rendering acceptable care.

12. Under the Board's published disciplinary guidelines, violations of N.C.G.S. 90-401.1 and 90-154(b)(7) fall within the category of Serious Violations. The presumptive sanctions for Serious Violations range from probation to one-year license suspension, depending on the applicable aggravating and mitigating factors.

13. The aggravating factor present in this case is that the respondent is charged with two distinct Serious Violations. The mitigating factor present in this case is that the respondent voluntarily paid back the disputed sums prior to the filing of the disciplinary complaint. Since neither the aggravating nor mitigating factor predominates, the sanctions imposed should fall within the middle of the presumptive range.

WHEREFORE, with the consent of the respondent, it is hereby ordered, adjudged and decreed that:

1. Dr. Wynn contests the violations of the Chiropractic Practice Act described herein but is willing to enter into this consent decision and accept the sanctions specified below in order to resolve the issues resulting from the Complaint of April 29, 2017, specifically, but not limited to, unlawful patient solicitation and unacceptable care/deficient record-keeping.
2. Dr. Wynn's license to practice chiropractic in North Carolina shall be suspended for a term of ninety (90) consecutive days, said term to begin on March 1, 2018 and end on May 29, 2018.
3. When Dr. Wynn's license is restored on May 30, 2018, he shall be placed on unsupervised probation for a period of one year upon condition that he not commit a violation of the laws governing patient solicitation or acceptable care in the practice of chiropractic.
4. This Final Agency Decision is a public document and shall be reported to national data banks and posted on the Board's website.

THIS IS the 26th day of January 2018.

N.C. BOARD OF CHIROPRACTIC EXAMINERS

By: Kevin Sharp D.C.
Kevin Sharp, D.C., Presiding

Consent:

Arnie Wynn D.C.
Arnie Wynn, D.C., Respondent