

NORTH CAROLINA
NEW HANOVER COUNTY

NORTH CAROLINA BOARD
OF CHIROPRACTIC EXAMINERS

In the Matter of:

JASON A. GRAF, 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 January 26, 2008 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. Terry L. Bradley, presiding. Dr. John A. Webster, 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.

2. The respondent, Dr. Jason A. Graf, is a duly licensed chiropractic physician in North Carolina and maintains a chiropractic office in New Hanover County, North Carolina. The name of Dr. Graf's office is SpinalCare of Wilmington, and its address is 4024 Oleander Drive, Wilmington, NC 28403. Dr. Graf has a partner in practice, Aaron Richardet, D.C. There are no medical doctors on the staff of SpinalCare of Wilmington.

3. This matter comes before the Board upon a formal complaint filed on September 27, 2007 by Dr. Webster in his capacity as Secretary of the Board. The complaint alleges that Dr. Graf violated numerous statutes and rules governing chiropractic advertising.

4. At a probable cause hearing held in Wilmington on October 18, 2007, Dr. Graf admitted that he is guilty of the alleged violations.

5. In the summer of 2007, Dr. Graf caused to be published, in a local newspaper in Wilmington, three separate advertisements touting the benefits of spinal decompression. For purposes of this Decision, each advertisement will be identified by its caption and discussed separately.

Advertisement #1: "Got Chronic Back Pain that Won't Go Away?"

6. This advertisement contains the following declarations: "No more pain, thanks to non-surgical decompression!"; "It is truly a revolutionary new medical breakthrough that can stop pain dead in its tracks without surgery or pills"; and "Finally, a solution for your chronic back pain!". These declarations, read cumulatively, create the impression that spinal decompression cures a variety of common back problems.

7. In the same advertisement, the phrase "new medical breakthrough" appears three times, and the phrase "no chiropractic" appears once. The cumulative effect of these phrases is to create the impression that SpinalCare of Wilmington, is a medical rather than a chiropractic office.

8. This advertisement declares “New medical breakthrough, gets 86% of chronic back pain sufferers. . . pain free!” The “medical breakthrough” is spinal decompression, and Dr. Graf was encouraged to make this claim by the manufacturer of the spinal decompression machine used in his office. The Board takes official notice that the manufacturer’s claimed 86% cure rate has appeared in a number of chiropractic advertisements around the country and has been deemed false and misleading by the Attorney General of Oregon and criminal prosecutors in California. In a recent civil action in Georgia, the manufacturer was enjoined from making this representation.

9. This advertisement offers “3 free spinal decompression sessions” without stating Dr. Graf’s usual fee for a spinal decompression session and without reciting the three-day disclaimer.

10. In this advertisement, Dr. Graf’s name appears, but he is not identified as a doctor of chiropractic, chiropractor or chiropractic physician.

Advertisement #2: “Breakthrough for Chronic Back Pain Sufferers”

11. This advertisement uses the phrase “medical breakthrough” twice and also contains a reference to “medical standards”. There is no reference to chiropractic, and the advertisement creates the impression that SpinalCare of Wilmington is a medical rather than a chiropractic facility.

12. This advertisement recites a rhetorical question, “Did you know that according to the American Journal of Pain Management, that [*sic*] some decompression procedures have provided relief to 86% of patients with herniated discs?”.

13. This advertisement offers a “Free Consultation and Exam” without stating Dr. Graf’s usual fee for consultations and examinations and without reciting the three-day disclaimer text.

Advertisement #3: “Six Weeks Ago I had Severe Sciatica”

14. This advertisement offers “free consultations” without stating Dr. Graf’s usual fee for consultations and without reciting the three-day disclaimer text.

15. This advertisement fails to identify Dr. Graf as a doctor of chiropractic, chiropractor or chiropractic physician.

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 September 27, 2007 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)(1) states that advertising services in a false or misleading manner is grounds for disciplinary action by the Board.

3. Rule 21 NCAC 10 .0302(c)(1) states that advertising which purports to guarantee a beneficial result from chiropractic treatment is deemed false or misleading advertising.

4. N.C.G.S. 90-154(b)(13) states that advertising any free or reduced rate service without prominently stating in the advertisement the usual fee for that service is grounds for disciplinary action by the Board.

5. N.C.G.S. 90-154.1(b) states that any chiropractic advertisement that offers a free or reduced rate service, examination or treatment shall contain the following notice to prospective patients: "If you decided to purchase additional treatment, you have the legal right to change your mind within three days and receive a refund." This quotation constitutes the "three-day disclaimer" referred to elsewhere in this Decision.

6. N.C.G.S. 90-154.2(4) states that a licensee's failure to use the words Chiropractic Physician, Chiropractor or the initials D.C. in conjunction with the use of his name in his capacity as a chiropractor on all advertising constitutes unethical conduct.

7. Advertisement #1 offends the statutes and rules governing chiropractic advertising in the following ways:

- A. It purports to guarantee a beneficial result from spinal decompression, a form of chiropractic treatment, in violation of Rule 21 NCAC 10 .0302(c) and (N.C.G.S. 90-154(b)(1));
- B. It creates the false impression that SpinalCare of Wilmington is a medical facility, in violation of N.C.G.S. 90-154(b)(1);
- C. It creates the misleading impression that spinal decompression has a cure rate of 86%, in violation of N.C.G.S. 90-154(b)(1);
- D. It offers free treatment without stating the usual fee for such treatment and without reciting the three-day disclaimer, in violation of N.C.G.S. 90-154(b)(13) and N.C.G.S. 90-154.1(b).
- E. It fails to identify Dr. Graf as a chiropractic physician, in violation of N.C.G.S. 90-154.2(4).

8. Advertisement #2 offends the statutes and rules governing chiropractic advertising in the following ways:

- A. It creates the false impression that SpinalCare of Wilmington is a medical facility, in violation of N.C.G.S. 90-154(b)(1);
- B. It creates the misleading impression that spinal compression has a cure rate of 86%, in violation of N.C.G.S. 90-154(b)(1);
- C. It offers a free consultation and examination without stating the usual fee for those services and without reciting the three-day disclaimer, in violation of N.C.G.S. 90-154(b)(13) and N.C.G.S. 90-154.1(b).

9. Advertisement #3 offends the statutes and rules governing chiropractic advertising in the following ways:

- A. It offers a free consultation without stating the usual fee for that service and without reciting the three-day disclaimer, in violation of N.C.G.S. 90-154(b)(13) and N.C.G.S. 90-154.1(b);

- B. It fails to identify Dr. Graf as a chiropractic physician, in violation of N.C.G.S. 90-154.2(4).

10. Under the Chiropractic Disciplinary Guidelines currently used by the Board, violating the statutes and rules governing chiropractic advertising falls within the "Least Serious" category of disciplinary violations. The presumptive sanctions for this category, when neither aggravating nor mitigating factors predominate, range from reprimand to 90-day license suspension. Probation may also be imposed.

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. Graf's case are:

- (1) Dr. Graf has no prior history of disciplinary violations;
- (2) Dr. Graf acknowledged culpability at any early stage of the disciplinary process, cooperated with the Board, and voluntarily undertook remedial measures prior to the disposition of the case;

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

12. 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 "Least Serious" violation.

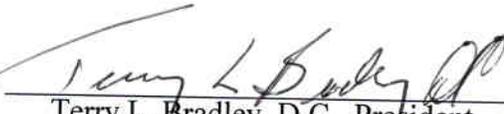
WHEREFORE, BY CONSENT, and upon his plea of guilty, The North Carolina Board of Chiropractic Examiners hereby finds the respondent, Jason A. Graf, guilty of False or Misleading Advertising and the related advertising offenses noted above. It is ordered, adjudged and decreed that Dr. Graf be sanctioned as follows:

- 1. Dr. Graf's license to practice chiropractic in North Carolina shall be suspended for thirty days. This sanction is stayed and Dr. Graf shall be placed on probation for one year upon the following terms and conditions:
 - A. Dr. Graf shall serve an active term of license suspension for three consecutive business days;
 - B. Within the next six months, Dr. Graf shall attend a jurisprudence seminar offered by the Board of Examiners and successfully complete the Board's jurisprudence examination;
 - C. Dr. Graf shall not commit any further advertising violations during the probationary period.
- 2. If Dr. Graf willfully or negligently fails to comply with the terms of probation, the thirty-day license suspension now stayed shall be invoked.

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.

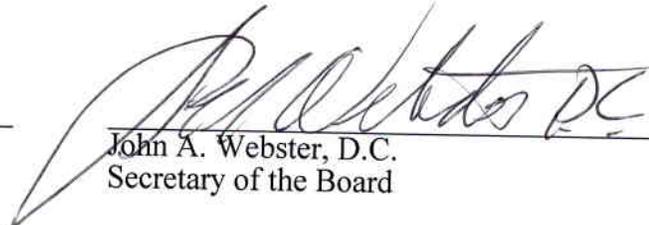
RATIFIED THIS the 26 day of January, 2008.

NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

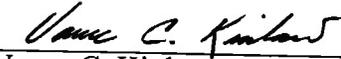
By: 
Terry L. Bradley, D.C., President

CONSENT:


Jason A. Graf, D.C.
Respondent


John A. Webster, D.C.
Secretary of the Board


Thom Goolsby
Attorney for the Respondent


Vance C. Kinlaw
Attorney for the Board