

NORTH CAROLINA
NEW HANOVER COUNTY
EXAMINERS

NORTH CAROLINA BOARD
OF
CHIROPRACTIC

In the matter of:

JASON A. GRAF, DC,
Respondent.

FINAL AGENCY DECISION

THIS MATTER coming before the Board at its regular quarterly meeting held on July 22, 2016 in Greensboro; and after reviewing the record and hearing the recommendations of the staff, the Board makes the following:

Findings of Fact, Count 1

1. The respondent, Dr. Jason A. Graf, is a citizen and resident of New Hanover County and is a practicing chiropractic physician duly licensed by the Board. Dr. Graf maintains a clinic currently known as the Spine & Joint Institute of Wilmington.
2. On February 26, 2015, Mrs. Dena Beard, a former patient, filed a disciplinary complaint alleging that, in order to persuade her to purchase a package of twelve office visits, Dr. Graf offered her a guarantee of beneficial result, in violation of N.C.G.S. 90-154(b)(1) and Rule 21 NCAC 10 .0302(c)(2).
3. A preliminary hearing was held in this matter on May 28, 2015 in Wilmington. Mrs. Beard, her husband and Dr. Graf were present and gave unsworn testimony before the Chiropractic Review Committee. The Committee determined that probable cause existed to refer Mrs. Beard's complaint to the full Board.
4. Mrs. Beard came to Dr. Graf's clinic because she saw his advertisement in the Wilmington *Star News*. The ad stated in bold headlines:
 - "Knee Pain Slowing You Down? Stop Limping! Start Living. . . Pain Free!!! Laser-Assisted Decompression Therapy Is Helping Knee Pain Sufferers Finally Live a More Active, Pain-Free Life!"
5. The ad contained a patient testimonial and before-and-after drawings of a skeletal knee joint. The ad concluded, "FREE Evaluation. . . Call to receive a complete and thorough Knee Pain Severity Evaluation." In very small type, the ad stated that the evaluation was "normally a \$245.00 value." The ad also recited the three-day disclaimer required by N.C.G.S. 90-154.1.
6. On December 2, 2014, Mrs. Beard presented at Dr. Graf's office for her free knee pain severity evaluation. At the time, she was nearly 62 years of age and a candidate for knee-replacement surgery. On her new patient intake form, she indicated that her level of knee pain was 10 on a scale of 1-10.
7. During the course of the consultation, Dr. Graf stated to Mrs. Beard, in the presence of her husband, "I will fix your knee."
8. Dr. Graf proposed a treatment plan consisting of twelve office visits that would include knee decompression (traction), laser therapy and spinal manipulation. Mrs. Beard agreed to pay \$500 at the beginning of treatment and \$60 per month until the balance of \$2,400 was satisfied.
9. Mrs. Beard signed a standardized consent-to-treat form reciting that she understood her expectations might not be met due to "severe, degenerative and chronic conditions." She also signed a second form

that said in pertinent part, "I also certify that no guarantee or assurance has been made to me as to the results that may be obtained."

10. Mrs. Beard kept eleven office visits. The treatments did not produce any significant improvement in mobility or reduction in pain levels. Mrs. Beard paid for some but not all of the treatment she received and has an unpaid balance of \$1,780.00.

Findings of Fact, Count 2

11. On March 23, 2015, Gary Darden, a former patient, filed a disciplinary complaint similar to Mrs. Beard's. Mr. Darden also alleged that, in order to persuade him to purchase a package of twelve office visits, Dr. Graf orally offered him a guarantee of beneficial results.
12. A preliminary hearing was held in this matter on May 28, 2015 in Wilmington. Mr. Darden and Dr. Graf were present and gave unsworn testimony before the Chiropractic Review Committee. The Committee determined that probable cause existed to refer Mr. Darden's complaint to the full Board.
13. Mr. Darden came to Dr. Graf's clinic in response to the same advertisement that had attracted Mrs. Beard. At the time of his first office visit on January 21, 2015, he was 80 years old and a candidate for epidural injections and knee-replacement surgery. On his new patient intake form, he indicated that his level of knee pain was 2 on a scale of 1-10.
14. Dr. Graf proposed a treatment plan consisting of twelve office visits that would include knee decompression (traction), laser therapy and spinal manipulation. During the consultation, Dr. Graf was, in Mr. Darden's words, "all positives, no negatives." Dr. Graf did not mention the possibility that the treatment might not be a complete and permanent cure. Mr. Darden prepaid the sum of \$2,000 to cover the entire cost of treatment.
15. Mr. Darden signed consent-to-treat forms identical to those signed by Mrs. Beard.
16. Mr. Darden kept all twelve office visits but obtained only temporary relief for about thirty minutes after each visit. Dr. Graf gave Mr. Darden an additional treatment session at no charge, but that also failed to produce any lasting therapeutic benefit.

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.
3. Because the complaints of Mrs. Beard and Mr. Darden involve nearly identical fact patterns and the same respondent, it is appropriate to consolidate the complaints for disposition.
4. N.C.G.S. 90-154(b)(1) states that advertising services in a false or misleading manner shall be a basis for the imposition of disciplinary sanctions.
5. Rule 21 NCAC 10 .0302(c) states that advertising which purports to guarantee a beneficial result from chiropractic treatment is deemed to be false or misleading advertising in violation of N.C.G.S. 90-154(b)(1).
6. When a chiropractic physician publishes an advertisement offering a free or reduced rate service as an enticement, he has a duty to refrain from exploiting the ensuing face-to-face encounter as an opportunity to use high-pressure sales techniques.

7. Owing to age, infirmity and pain levels, prospective patients are frequently in an unequal bargaining position and vulnerable to exploitation. A chiropractic physician has a duty to accurately and effectively communicate to prospective patients that successful treatment outcomes are not assured.
8. Standardized "boilerplate" disclaimers on intake and consent-to-treat forms are not sufficient to counteract the impression created by the combination of print advertising and a physician's oral representations regarding the likelihood of successful treatment outcomes.
9. Under the Board's published disciplinary guidelines, violations of N.C.G.S. 90-154(b)(1) fall within the category of Least Serious Violations. The presumptive sanctions for Least Serious Violations range from reprimand to 90-day license suspension, depending on the applicable aggravating and mitigating factors.
10. The aggravating factor present in this case is that the respondent violated the patients' trust or preyed upon the patients' vulnerability. The mitigating factor present in this case is that the respondent's misconduct did not result in physical harm to the patients. Neither aggravating nor mitigating factors predominate, and so the disciplinary sanctions imposed should fall within the presumptive range.

WHEREFORE, WITH THE CONSENT OF THE RESPONDENT, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED:

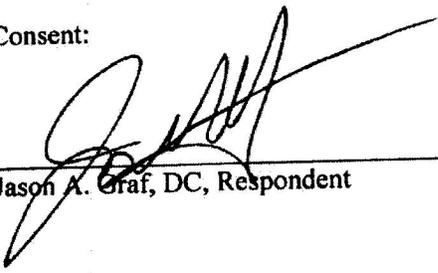
1. Dr. Jason A. Graf is guilty as charged of false or misleading advertising, two counts.
2. Dr. Graf shall be placed on probation for a period of twelve months upon the following terms and conditions:
 - a. During the period of probation, he shall take two hours of remedial continuing education in the subject of North Carolina Jurisprudence. This remedial continuing education shall be in addition to and shall not count towards the continuing education requirement for annual license renewal.
 - b. During the period of probation, he shall take and pass the Ethics and Boundaries Examination given by the National Board of Chiropractic Examiners.
 - c. During the period of probation, he shall obtain the approval of the Board staff for all proposed clinic advertisements in advance of publication.
3. 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 19th day of July, 2016.

N.C. BOARD OF CHIROPRACTIC EXAMINERS

By: Bruce A. Hinton D.C.
Presiding

Consent:


Jason A. Graf, DC, Respondent