

NORTH CAROLINA

WAKE COUNTY

NORTH CAROLINA STATE BOARD  
OF  
CHIROPRACTIC EXAMINERS

In The Matter Of The  
Complaint against

MARK E. NIEMCHAK, D.C.,  
Respondent.

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DECISION

THIS MATTER coming on before the Board of Examiners at its regular meeting on February 28, 1991 in Durham, North Carolina; and after due consideration of the evidence of record and the arguments of counsel, the Board makes the following:

FINDINGS OF FACT

1. Board members present at the hearing were Dr. Faye Eagles, Dr. Ricky Sides, Dr. Earl Barbour, Dr. John Tierney, Mr. Archie Williams and Dr. Robert Vaughn, presiding. Dr. Tierney voluntarily disqualified himself from the deliberations resulting in this Decision.
2. The respondent was present at the hearing and was represented by his attorney, Walter Horton. The attorney for the Board of Examiners, Vance Kinlaw, was also present.
3. At the time of the matters complained of, the respondent, Dr. Mark E. Niemchak, was a citizen and resident of Wake County, North Carolina, and was a licensed chiropractic physician maintaining an office in Raleigh, North Carolina.
4. This matter comes before the Board upon a formal complaint filed on September 5, 1990 by Dr. John Tierney, Secretary of the Board, alleging that Dr. Niemchak violated G.S. 90-154(b)(13) and G.S. 90-154.1 by mailing to prospective patients letters which offered a free examination without stating the usual cost for examination and without reciting the disclaimer language of G.S. 90-154.1(a).
5. Dr. Niemchak was served with a copy of the complaint by certified mail on or about September 11, 1990. On or about November 9, 1990, Dr. Niemchak's attorney waived his right to a probable cause hearing and consented to have the complaint heard by the full Board. Dr. Niemchak was served with notice of hearing before the full Board on or about January 31, 1991.
6. On or about August 18, 1990, Dr. Niemchak caused to be mailed a total of eighteen letters on his professional stationery, which letters were identical except for named addressees. A copy of the text of the letters has been identified as Board Exhibit 1, attached to this Decision and incorporated by reference. The

stated purpose of each letter was to advise the victim of a recent automobile accident that Dr. Niemchak's office was giving away an "accident information kit" which could be claimed in person by scheduling an appointment with him. Those persons responding to the letter would be entitled to a spinal examination at no cost when they appeared to claim their accident information kit.

7. Dr. Niemchak's letter of August 18, 1990 does not state his usual fee for spinal examinations.

8. Dr. Niemchak's letter of August 18, 1990 does not recite the language of G.S. 90-154.1(a).

Based on the foregoing Findings of Fact, the Board of Examiners makes the following:

#### CONCLUSIONS OF LAW

1. This Board is duly constituted and has jurisdiction of subject matter. The respondent has been given notice as required by law, and this complaint is properly before the Board for adjudication.

2. The letters mailed by Dr. Niemchak to prospective patients on or about August 18, 1990 constitute a form of advertising for purposes of applying G.S. 90-154(b)(13) and G.S. 90-154.1.

3. It is a violation of G.S. 90-154(b)(13) for a chiropractic physician to mail or cause to be mailed a letter to a prospective patient stating that a spinal examination will be offered at no cost without also prominently stating in said letter the physician's usual fee for performing spinal examinations.

4. It is a violation of G.S. 90-154.1(b) for a chiropractic physician to mail or cause to be mailed a letter to a prospective patient stating that a spinal examination will be offered at no cost unless there also appears in capital letters clearly distinguishable from the rest of the text the language of G.S. 90-154.1(a), to wit:

Any patient or any other person responsible for payment has the right to refuse to pay, cancel payment, or be reimbursed for payment for any service, examination, or treatment other than the advertised reduced rate service, examination or treatment which is performed as a result of and within 72 hours of responding to any advertisement for a free or reduced rate service, free or reduced rate examination, or free or reduced rate treatment.

Based on the foregoing Findings of Fact and Conclusions of Law, the Board of Examiners enters the following:

FINAL AGENCY DECISION

The respondent, Dr. Mark E. Niemchak, is hereby found guilty of violating G.S. 90-154(b)(13) and G.S. 90-154.1 by issuing one or more advertising letters which failed to conform to the requirements of the aforesaid statutes.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The respondent's license to practice chiropractic in North Carolina is suspended for a term of ninety (90) days.
2. The disciplinary sanction imposed in the preceding paragraph is suspended, and the respondent is placed on probationary status for a period of three years upon the following terms and conditions:

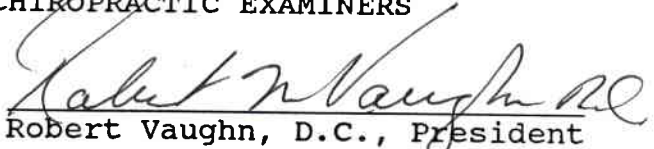
a. The respondent shall be subject to a period of active license suspension for two consecutive workdays, without any weekend or holiday intervening, to begin as soon as the calendar permits following the tenth day after service of this Decision. During the period of active suspension, the respondent shall not consult with, examine, diagnose or treat any patient.

b. The respondent shall not be found guilty of violating any advertising statute or rule administered by the Board of Examiners.

c. The respondent shall report to the Board from time to time as the Board may in writing request as to the nature of his advertising activities and their conformity to all applicable law.

This the 22<sup>nd</sup> day of April, 1991.

NORTH CAROLINA STATE BOARD  
OF CHIROPRACTIC EXAMINERS

BY:   
Robert Vaughn, D.C., President

Attest:

  
John Tierney, D.C., Secretary