

In the Matter of: )  
 )  
MICHAEL RICCOBONI, 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 July 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. Randy M. Schilsky, 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. Michael Riccoboni, is a duly licensed chiropractic physician in North Carolina and maintains a chiropractic office in Forsyth County, North Carolina. The current name of Dr. Riccoboni's office is HealthSource Chiropractic, and its address is 420 Utility Drive, Clemmons, NC 27012. Dr. Riccoboni's office was formerly known as Clemmons Village Chiropractic.

3. This matter comes before the Board upon a formal complaint filed on March 3, 2008 by Dr. Webster in his capacity as Secretary of the Board. The complaint alleges that Dr. Riccoboni violated numerous statutes and rules governing chiropractic advertising.

4. At a probable cause hearing held in Greensboro on May 8, 2008, Dr. Riccoboni admitted that he is guilty of the alleged violations.

5. On February 18, 2008, Dr. Riccoboni caused to be published in the *Winston-Salem Journal* a full-page advertisement captioned "Does it Feel Like a Toothache in Your Leg or Thigh?" This advertisement contains the following legal defects:

- a. The advertisement states "100% UNCONDITIONAL SATISFACTION GUARANTEE;" "If you're not satisfied with your treatments, we'll refund every dime you've spent;" and "Absolutely NO RISK-100% MONEY BACK TRIPLE SATISFACTION PLEDGE." These statements constitute guarantees of a beneficial result from chiropractic treatment, in violation of Rule 21 NCAC 10 .0302(c)(1).
- b. The advertisement identifies the respondent as "Dr. Mike Riccoboni" but fails to include his professional designation as a chiropractor, doctor of chiropractic or chiropractic physician, in violation of G.S. 90-154.2(4).

- c. The advertisement offers a “FREE 19-point ‘Back Pain Track-Down’ Exam” without stating the three-day disclaimer text as required by G.S. 90-154.1(b).
- d. The advertisement offers a “free gift” consisting of a 15-minute massage without stating the respondent’s usual fee for that service, in violation of G.S. 90-154(b)13.

6. The advertisement of February 18, 2008 was not prepared by Dr. Riccoboni. It was prepared by copywriters at HealthSource, a foreign corporation offering practice management franchises in this and other states. As a franchisee, Dr. Riccoboni has the right to select the HealthSource advertisements he wishes to run. He also has the right to modify any advertisement prior to publication.

7. Dr. Riccoboni selected and caused to be published without revision the advertisement of February 18, 2008.

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 March 3, 2008 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. 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.

8. 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. Riccoboni's case are:
  - (1) Dr. Riccoboni has no prior history of disciplinary violations;
  - (2) Dr. Riccoboni 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. Riccoboni's case.

9. 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, Michael Riccoboni, guilty of False or Misleading Advertising and the related advertising offenses noted above. It is ordered, adjudged and decreed that Dr. Riccoboni be sanctioned as follows:

1. Dr. Riccoboni's license to practice chiropractic in North Carolina shall be suspended for fifteen days. This sanction is stayed, and Dr. Riccoboni shall be placed on probation for six months upon the following terms and conditions:
  - A. For the next thirty days, Dr. Riccoboni shall submit all his advertising to the staff of the Board prior to publication so that his understanding of the applicable statutes and rules can be monitored and remedial instruction given as necessary;
  - B. Within the next six months, Dr. Riccoboni shall attend a jurisprudence seminar offered by the Board of Examiners and successfully complete the Board's jurisprudence examination;
  - C. Dr. Riccoboni shall not commit any further advertising violations during the probationary period.
2. If the Board discovers any other advertising violations by Dr. Riccoboni that were published prior to this Decision, no disciplinary action shall be taken based on those advertising violations.

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.

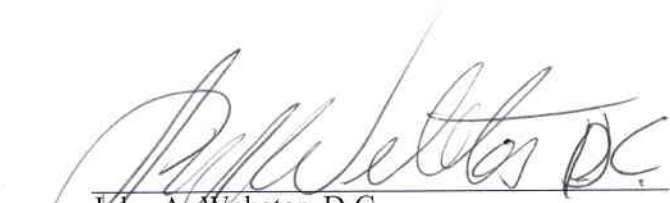
RATIFIED THIS the 26<sup>th</sup> day of July, 2008.

NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

By:   
\_\_\_\_\_  
Presiding Officer

CONSENT:

  
\_\_\_\_\_  
Michael Riccoboni, D.C.  
Respondent

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