November 28, 2017

Stephen Barrett
VIA Email

RE: Public Records Request- Cynthia Benkert, DC 23209

Mr. Barrett:

This responds to your request sent to the Board of Chiropractic Examiners via email on November 23, 2017. You have requested a copy of the accusation Cynthia Benkert, D.C.

In response to your inquiry, enclosed are the certified documents pertaining to your request. If you have further questions regarding this matter, please contact me at (916) 263-5355 ext. 5362.

Best Regards,

Valerie James
Management Services Technician
In the Matter of the Accusation Against:  
CYNTHIA BENKERT, D.C.  
3590 Claremore Avenue  
Long Beach, CA 90808  
Chiropractic License No. DC 23209

CARLOS SEALS, D.C.  
8561 Nuevo Avenue, Suite B  
Fontana, CA 92335  
Chiropractic License No. DC 16052

Complainant alleges:

PARTIES

1. Robert Puleo (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Chiropractic Examiners, Department of Consumer Affairs.

2. On or about August 29, 1994, the Board of Chiropractic Examiners issued Chiropractic License Number DC 23209 to Cynthia Benkert, D.C. (Respondent Benkert). The Chiropractic License was in effect through December 24, 2015 when it was placed in inactive status. The License expired on November 30, 2016, and has not been renewed.
3. On or about July 19, 1984, the Board of Chiropractic Examiners issued Chiropractic License Number DC 16052 to Carlos Seals, D.C. (Respondent Seals). The Chiropractic License was revoked effective June 1, 2001 following a hearing in the disciplinary case AC 2000-146. The license was reinstated; revoked with revocation stayed, effective January 9, 2015, and placed on probation for a terms of five (5) years subject to certain terms and conditions. The license is in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2017, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Chiropractic Examiners (Board), Department of Consumer Affairs, under the authority of the following sections of the Chiropractic Act (Act).¹

5. California Code of Regulations, title 16, section 355.1 states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by the board, or its suspension, or forfeiture by order of the board or by order of a court of law, or its surrender without the written consent of the board shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

6. Section 10² of the Act states, in pertinent part, that the Board may suspend or revoke a license to practice chiropractic or may place the license on probation for violations of the rules and regulations adopted by the Board or for any cause specified in the Chiropractic Initiative Act.

¹The Chiropractic Act, an initiative measure approved by the electors on November 7, 1922, while not included in the Business and Professions Code by the legislature, is set out in West's Annotated California Codes as sections 1000-1 to 1000-19, and is included in Deering's California Codes as Appendix I, for convenient reference.

²The Chiropractic Act, an initiative measure approved by the electors on November 7, 1922, while not included in the Business and Professions Code by the legislature, is set out in West's Annotated California Codes as sections 1000-1 to 1000-19, and is included in Deering's California Codes as Appendix I, for convenient reference.
7. Section 15 of the Act states that, "Any person who shall practice or attempt to practice chiropractic, or any person who shall buy, sell or fraudulently obtain a license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor" or "D.C." or any word or title to induce, or tending to induce belief that he or she is engaged in the practice of chiropractic, without first complying with the provisions of this act; "(or any licensee under this act who uses the word "doctor" or the prefix "Dr." without the word "chiropractor," or "D.C." immediately following his or her name) or the use of the letters "M.D." or the words "doctor of medicine," or the term "surgeon," or the term "physician," or the word "osteopath," or the letters "D.O." or any other letters, prefixes or suffixes, the use of which would indicate that he or she was practicing a profession for which he or she held no license from the State of California, or any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) and not more than seven hundred fifty dollars ($750), or by imprisonment in the county jail for not more than six months, or by both fine and imprisonment.

8. California Code of Regulations, title 16, section 304, states:

"The revocation, suspension, or other discipline by another state of a license or certificate to practice chiropractic, or any other health care profession for which a license or certificate is required, shall constitute grounds for disciplinary action against a chiropractic licensee or grounds for the denial of chiropractic licensure of an applicant in this state."

9. California Code of Regulations, title 16, section 302, states:

(a) Scope of Practice.

(1) A duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto.

(2) As part of a course of chiropractic treatment, a duly licensed chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including, but not limited to, air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound,
water, and physical therapy techniques in the course of chiropractic manipulations and/or
adjustments.

(3) Other than as explicitly set forth in section 10(b) of the Act, a duly licensed
chiropractor may treat any condition, disease, or injury in any patient, including a pregnant
woman, and may diagnose, so long as such treatment or diagnosis is done in a manner consistent
with chiropractic methods and techniques and so long as such methods and treatment do not
constitute the practice of medicine by exceeding the legal scope of chiropractic practice as set
forth in this section.

* * *

(5) A duly licensed chiropractor may employ the use of vitamins, food supplements, foods
for special dietary use, or proprietary medicines, if the above substances are also included in
section 4057 of the Business and Professions Code, so long as such substances are not included in
materia medica as defined in section 13 of the Business and Professions Code. The use of such
substances by a licensed chiropractor in the treatment of illness or injury must be within the scope
of the practice of chiropractic as defined in section 7 of the Act.”

10. California Code of Regulations, title 16, section 303, states:
Each person holding a license to practice chiropractic in the State of California under any
and all laws administered by the board shall file his proper and current place of practice address
of his principal office and, where appropriate, each and every sub-office, with the board at its
office in Sacramento and shall immediately notify the board at its said office of any and all
changes of place of practice address, giving both his old and his new address within 30 days of
change.

11. California Code of Regulations, title 16, section 308, states:
(a) Each person holding a license shall display a current active license in a conspicuous
place in the licensee’s principal office or primary place of practice.
(b) Any licensed Doctor of Chiropractic with more than one place of practice shall obtain
from the Board a Satellite Office Certificate for each additional place of practice. Said certificate
must be renewed annually.
(c) A licensed Doctor of Chiropractic must display in a conspicuous place a current active Satellite Office Certificate at the office for which it was issued. No licensed Doctor of Chiropractic shall display any chiropractic license, certificate or registration, which is not currently active and valid.

12. California Code of Regulations, title 16, section 311, states:

Constructive educational publicity is encouraged, but the use by any licensee of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensational or fabulous statements, or which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons, constitutes grounds for the imposition of any of the following disciplinary penalties: (a) Suspension of said licensee's right to practice in this State for a period not exceeding one (1) year. (b) Placing said licensee upon probation. (c) Taking such other action, excepting the revocation of said licensee's license, in relation to disciplining said licensee as the board in its discretion may deem proper.

13. California Code of Regulations, title 16, section 312, subpart (b), states:

(b) Unlicensed individuals may conduct standard neurological, orthopedic, physical and chiropractic examinations, except they may not perform such examinations which require diagnostic or analytic interpretations nor may they render a conclusion either verbally or in writing regarding the patient's physical condition. As an example, unlicensed individuals may not perform evaluations of heart or lung soundings. Such individuals shall be at all times under the immediate and direct supervision of a licensed Doctor of Chiropractic.

"Immediate and direct supervision" means the licensed Doctor of Chiropractic shall be at all times on the premises where the examinations are being conducted. The licensed Doctor of Chiropractic shall be responsible for the verification of the recorded findings and will be solely responsible for rendering a conclusion based on the findings.

14. California Code of Regulations, title 16, section 316:

(a) Every licensee is responsible for the conduct of employees or other persons subject to his supervision in his place of practice, and shall insure that all such conduct in his place of practice conforms to the law and to the regulations herein.
California Code of Regulations, title 16, section 317, states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct which has been brought to its attention, or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct includes, but is not limited to, the following:

(a) Gross negligence;
(b) Repeated negligent acts;
(c) Incompetence;
(d) Gross negligence;
(e) Incompetence;
(f) The commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of the individual's activities as a license holder, or otherwise;
(g) Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public;
(h) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
(i) The administration of treatment or the use of diagnostic procedures which are clearly excessive as determined by the customary practice and standards of the local community of licensees;
(j) A licensed doctor of chiropractic shall verbally and in writing inform each patient of the material risk of serious bodily harm. The chiropractor shall obtain the patient's informed consent prior to initiating clinical care. The signed written consent shall become part of the patient's record.
(k) Violation of any act of fraud or misrepresentation.
(l) Misrepresentation.
(m) The participation in any act of fraud or misrepresentation.

California Code of Regulations, title 16, section 319.1 states:

(a) A licensed doctor of chiropractic shall verbally and in writing inform each patient of the material risks of proposed care. "Material" shall be defined as a procedure inherently involving known risk of serious bodily harm. The chiropractor shall obtain the patient's written informed consent prior to initiating clinical care. The signed written consent shall become part of the patient's record.
(b) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(CYNTHIA BENKERT, D.C. and CARLOS SEAL, D.C.) ACCUSATION
17. California Code of Regulations, title 16, section 317.5, subdivision (a), states, in pertinent part:

"In any order in resolution of a disciplinary proceeding before the Board of Chiropractic Examiners, the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the Chiropractic Initiative Act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

"NutriMost SoCal"

18. "NutriMost Ultimate Fat Loss System" was developed by a Pennsylvania chiropractor, Ray Wisniewski ("Wisniewski"). Wisniewski travels around the U.S. marketing and selling his fat loss program to other chiropractors and individuals as franchisees. According to a complaint filed by the Federal Trade Commission (FTC) against Wisniewski and his companies, NutriMost, LLC; NutriMost Doctors, LLC deceptively marketed the NutriMost weight-loss program to consumers. Sold at Wisniewski's eight locations in the Pittsburgh area and by franchisees and licensees nationwide, the NutriMost System was marketed as using a new technology that would allow users to safely lose substantial amounts of weight -- typically 20 to 40 pounds or more in 40 days.

19. On or about April 21, 2017, the marketers of this weight-loss system advertised as using "breakthrough technology" and "personalized supplements" to help consumers permanently lose "20 to 40+ pounds in 40 days" without significantly cutting calories, agreed to settle a Federal Trade Commission complaint that the claims were deceptive and not supported by scientific evidence. The court order settling the FTC's charges bars the sellers of the "NutriMost Ultimate Fat Loss System" from making the deceptive claims alleged in the complaint, as well as providing others, including franchisees, with the means of deceiving consumers. The defendants also will pay $2 million to provide refunds to consumers defrauded by buying the system directly from the defendants, not from franchisees.

20. At all times herein alleged, Respondent Benkert was the owner of a business known as “NutriMost SoCal” (“NMSC”), a franchise of Wisniewski and/or his companies that solicited consumers through a website www.nutrimostsocal.com and also through radio advertising, narrated by Benkert. Benkert operated and oversaw operations at three Southern California NMSC locations: Costa Mesa, Norco and Lakewood. Seals was on the staff of NMSC and worked at the Lakewood and Costa Mesa locations on Tuesday and Thursdays and at the Norco location on Monday and Wednesdays.

21. The online advertisement for the Program states: “START YOUR NEW LIFE TODAY! We have created an Exclusive, Custom Weight Loss System which is completely SAFE and has been PROVEN to work!! Lose 20 to 40 or more pounds in only 40 Days! In fact, we GUARANTEE A MINIMUM weight loss of 20 pounds!
A Fat Loss Consultation includes the Body Composition Analysis, a Review of Your Analysis and Health History, along with a Personalized Plan to meet your goals!
A $99 value, now for only $27 (Secure Payment options include PAYPAL or your DEBIT or CREDIT CARD) Click Next to Schedule Your Appointment. Once your appointment is confirmed, you will get an email and if requested an automated text reminder."

22. Respondents represented the “NutriMost program” (“Program”) as a weight loss program that includes a low calorie daily intake between 5-700, with only certain foods allowable such as vegetables, fruits and protein with restriction of starches and sugars. Consumers who contract for the program are directed to discontinue using any products containing “oil” such as makeup, deodorant and shampoo as the elimination of these will promote “detoxification”.

23. Respondents’ represented that the Program which utilized dietary and topical restrictions and also supplements they sell to consumers, would bring about a “super bad burning mode” in reference to “fat”. As part of the Program, consumers were recommended to purchase a “Zyto Scan” where, they placed their hand on a pad connected to a device which purportedly would provide a “print out” of what “deficiencies” their body had in order to determine what supplements would be necessary.
FDA Warning Letter to Zyto Scan

24. According to the Federal Government Food and Drug Administration (FDA), the Zyto Scan was approved only for "the measurement of galvanic skin response." By adding computer software, to allegedly look for organ dysfunction and determining what supplements to provide and then use the Zyto Scan to "activate" the so-called ingredients in their off-the-shelf supplements, takes this device out of its intended use. The FDA, they sent out a "Warning Letter" to ZYTO Technologies, Inc., manufacturer of the Zyto Scan device on or about May 8, 2015, because they were advertising the Zyto Scan as a "device used or intended for the use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease, or are intended to affect the structure or function of the body of man or other animals."

Attached hereto as Exhibit A is a true and correct copy of the FDA "Warning Letter" to Zyto Scan, which is incorporated by this reference.

https://www.fda.gov/iceci/enforcementactions/warningletters/ucm446687.htm

25. Respondent Benkert claims that the Zyto Scan device "assesses 2800 different frequencies of substances" such as "toxins, hormones, supplements, organs as it sends the resonant frequency digital equivalent of different foods." However, as the FDA has warned its manufacturers, they have taken the FDA approval beyond what it was originally approved for and in marketing it to individuals such as Respondents, are not using the Zyto Scan for its intended purpose or use. Benkert admits that she uses the Zyto Scan in her three offices of NMSC for nutritional purposes and that she has her staff sell patients "non-toxic oils" because the toxins in other makeup or creams will stop the body from healing. Respondent Seals states that "as long as the body is toxic, the body cannot heal" and "everything you touch or put on your skin is a toxin."

Both Respondent Benkert and Seals admit that their treatment of patients with the Zyto Scan and NutriMost does not constitute the practice of Chiropractic and assert that their PMA "licenses" authorize their activity.

Patient P.E.

26. In April 2016, consumer P.E. heard Respondent Benkert's radio advertisement for her Program. P.E. went to the website for more details and read that the Program would use
“supplements” and a “new technology” to clean out her system for a $27 consultation. P.E. called NMSC and was given an appointment a day or two later and completed online forms. P.E. believed that she would be consulting privately with a “doctor”, but when she arrived discovered that she was one of four people present for “more of a sales pitch” by Respondent Seals.

27. P.E. was briefly asked her doctor’s name, and any general diseases or complaints. Seals told the group that the Program consisted of removing toxins out of the body by using supplements and technology of the Zyto Scan. Seals guaranteed if the attendees followed the Program, they would lose 20 lbs. during the 40-day program, and if they didn’t lose that much, NMSC would put them through another Program without charge so long as they weren’t “cheating”. P.E. was weighed, measured and her BMI calculated.

28. The presentation lasted 30-45 minutes and Seals told them that they would have to go to the NMSC office weekly and meet with a counselor. They were quoted $1947 for the Program and offered a payment plan. P.E. told Seals it was too expensive for her and he said they could make it affordable for her. Seals told P.E. that once the office staff was trained, they could use and administer the Zyto Scan device on patients. In fact, the Zyto Scan website at the time stated that anyone could scan their own hand and send the results via e-mail to Zyto Scan.

29. P.E. was directed to another room with a counselor “Timi” who tried to convince her the program was worth it and to sign up. P.E. was worried that she had been gone from work for an hour but was convinced by Timi to make a $500 deposit with her VISA debit card and to authorize future periodic billings by NMSC for its Program.

30. Timi went through the program again with P.E., administered the Zyto Scan “analysis” and represented to patient P.E. that the Zyto Scan results indicated the necessary supplements that P.E. would have to take and gave her a food list. The Zyto Scan analysis for P.E. purported to show "Top 7 Vertebral Stressors"; meaning the Zyto Scan allegedly found 7 vertebral biomarkers associated with sedated nerves. The Zyto Scan device purportedly detected vertebral misalignments at "C2, Th4, Th8, Th10, L5, S2, and S4" in patient P.E.
31. The written Zyto Scan results for P.E. state that the Zyto Scan device uses "advanced technology with the biocommunication technology, the computer sends a signal to the body in the form of a virtual stimulus, your body responds with very subtle changes in the electrical properties of your skin and the hand cradle measures these changes and sends that information back to the computer; it's like the computer's asking your body a question and your body's answering. Using this advanced technology, we are now able to access the reaction of the body as it relates to these biological stressors. This technology has enabled us to create this roadmap that we call the NutriMost Ultimate Fat Loss scan which helps us find a clear direction for your path to fat loss and health ... we focus on the technology that enables us to turn OFF fat storage and Turn ON Fat burning."

32. P.E. was told she could not use any products with "oils" and began to calculate what it would cost her to purchase all the foods, supplements and special products to get the promised weight loss results. P.E. was also told it was important to drink only "alkaline water" in the Program but was not told why. P.E. returned to work and ready up on the program and concluded that she would not be able to make her car payment with the cost of the Program and decided to cancel it.

33. The next morning, P.E. sent Seals' office an email and requested to cancel the contract and be refunded her $500. Two days later she received a response, asking what she meant. Timi told P.E. that she would have to speak to the "owner", Respondent Benkert who would get back to her. Two days later, Timi called P.E. and told her she would not be getting a refund and that NMSC would not cancel the contract. P.E. called Benkert and left a voicemail though her calls were not returned. P.E. went to her bank and cancelled her credit card so no other charges could be made by Respondents.

34. Thereafter, NMSC contacted her at least twice a month and tried running her debit card unsuccessfully. P.E. never opened the supplements and they remained in the same condition she received them. P.E. spoke to the office manager "Dianne" who proposed that NMSC would stop attempting to collect on the balance of its fee of $1947 and keep the $500 deposit that NMSC contended was to cover the fee for the Zyto Scan "analysis" This compromise was not acceptable.
35. Seals and Benkert both maintain "Pastoral Medical Association" (PMA) "licenses" that they contend permit them to administer their NutriMost Program to consumers. PMA's website proclaims that it is "private ecclesiastical based health and wellness association" using Biblical principles. PMA is not a duly authorized governmental health licensing authority and its "licenses" convey no legal authority for a health care practitioner to take a medical history, diagnose, analyze, recommend a treatment plan and then charge patients a monetary fee for those services, as Benkert and Seals did.

36. In or about July 2016, Benkert "let Seals go" and he no longer works for NMSC, nor does his wife who had been an office manager, because Seals was not "closing enough cases." It was "too expensive" for Seals to buy his own NutriMost franchise. Up to then, Seals had been signing up about 40-60 Program patients a month in Benkert's offices.

FIRST CAUSE FOR DISCIPLINE

(Failed to Practice Chiropractic as Defined)

37. Respondents Benkert and Seals are subject to disciplinary action under California Code of Regulations, title 16, section 302, subd. (a) (1-3) for failure to practice chiropractic as defined in the examination, diagnosis and treatment of patient P.E. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

38. Respondent Benkert's PMA "license" does not authorize her unlicensed employee, Timi to take P.E., or any other patient's prior medical history, examine, diagnose, analyze, and recommend a treatment plan and then charge patients a monetary fee for those services. Since Timi was unlicensed and Benkert, who owned NMSC also had an inactive license, Benkert failed to practice chiropractic as statutorily defined. Benkert's purporting to offer diagnosis and treatment for weight loss, which was not ancillary or adjunct to the practice of Chiropractic was beyond the scope of Chiropractic practice and such diagnosis and treatment was not authorized by Benkert's PMA "license".
39. Respondent Seals, to the extent that he, or any non-licensee under his supervision, diagnosed or analyzed P.E. using the Zyto Scan acted as a healthcare practitioner and a consent to treat form should have been verbalized and signed by P.E. or any other such patients. Seal’s purporting to offer diagnosis and treatment for weight loss, which was not ancillary or adjunct to the practice of Chiropractic was beyond the scope of Chiropractic practice and such diagnosis and treatment was not authorized by Seal’s PMA “license”.

SECOND CAUSE FOR DISCIPLINE
(Failure to Practice Duly Licensed Chiropractic)

40. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 302, subd. (a) (5) for failure in her responsibility that the conduct by all persons working on her business premises conform to the for the conduct on her business premises to practice duly licensed Chiropractic in her treatment of patient P.E. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

41. Respondent Benkert’s Chiropractic License was inactive at the time she and her staff rendered treatment to patient P.E. and Benkert was not duly licensed to practice Chiropractic.

THIRD CAUSE FOR DISCIPLINE
(Allowing Unlicensed Activity)

42. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 312, subd. (b) for conduct concerning the examination, diagnosis and treatment of patient P.E. that constitutes an extreme departure from the standard of care of Chiropractic. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

43. Benkert allowed Timi, her unlicensed employee, to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient P.E., without immediate, direct supervision and verification of the findings.
FOURTH CAUSE FOR DISCIPLINE
(Responsibility for Conduct on Premises)

44. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 316, for failure to exercise her responsibility that all conduct by persons working on her business premises conform to the applicable law and to the regulations. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

45. Benkert allowed Timi, her unlicensed employee, to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient P.E., without immediate, direct supervision and verification of the findings.

FIFTH CAUSE FOR DISCIPLINE
(Extreme Departure from the Standard of Care)

46. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (a) for conduct concerning the examination, diagnosis and treatment of patient P.E. that constitutes an extreme departure from the standard of care of Chiropractic. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

47. Benkert allowed Timi, her unlicensed employee, to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient P.E., without immediate, direct supervision and verification of the findings. Benkert's conduct constitutes an extreme departure from the standard of care.

SIXTH CAUSE FOR DISCIPLINE
(Extreme Departure from the Standard of Care)

48. Respondents Benkert and Seals are subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (a) for conduct in the examination, diagnosis and treatment of patient P.E. that constitutes an extreme departure from the standard of care of Chiropractic. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

(CYNTHIA BENKERT, D.C. and CARLOS SEALS, D.C.) ACCUSATION
49. Respondents' use or permitting the use of the Zyto Scan device on patient P.E., to
diagnose or treat any disease or condition, including directing a purported regimen of substances
for weight loss, for which the device was not properly intended or approved, was an extreme
departure from the standard of practice of Chiropractic.

SEVENTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

50. Respondents Benkert and Seals are subject to disciplinary action under California
Code of Regulations, title 16, section 317, subd. (b) for repeated conduct that constitutes a
departure from the standard of care of Chiropractic in the examination, diagnosis and treatment of
patient P.E. Complainant incorporates paragraphs 18 through 36 and further alleges
circumstances as follows:

51. Respondents' reliance on the Zyto Scan device to allegedly detect vertebral
misalignments at "C2, Th4, Th8, Th10, L5, S2, and S4" in patient P.E. was a departure from the
standard of practice of Chiropractic.

52. Respondents' relying upon the Zyto Scan device to determine what nutritional
supplements patient P.E. would need for "weight loss" was a departure from standard of practice
of Chiropractic.

53. The Zyto Scan website at the time represented that one could "scan animals if
positioned so that all 6 contact points make contact with the animal; otherwise it can be used for a
surrogate test (where someone is tested while holding the animal)." Such representations
constitute shamanism and the use of the Zyto Scan device on patient P.E. was a departure from
the standard of practice of Chiropractic.

54. Respondent Benkert demonstrated negligence when she represented during the
Board's investigation of P.E.'s complaint that she uses the Zyto Scan device in all three of her
offices for nutritional purposes.

///
///
///
EIGHTH CAUSE FOR DISCIPLINE

(Incompetence)

55. Respondents Benkert and Seals are subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (c) for the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent chiropractor in the examination, diagnosis and treatment of patient P.E. for weight loss. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

56. Respondent Benkert demonstrated incompetence when she represented during the Board’s investigation of P.E. that the Zyto Scan device "might kinda sound whoo, but it’s all based on science." In fact, that representation is not true as the FDA has confirmed in its warning letters to the Zyto Scan device manufacturer.

57. Respondents’ reliance on the Zyto Scan device to allegedly detect vertebral misalignments at “C2, Th4, Th8, Th10, L5, S2, and S4" in patient P.E. was incompetence.

58. Respondents’ relying upon the Zyto Scan device to determine what nutritional supplements patient P.E. would need for “weight loss” was incompetence.

59. The Zyto Scan website at the time represented that one could "scan animals if positioned so that all 6 contact points make contact with the animal; otherwise it can be used for a surrogate test (where someone is tested while holding the animal)." Such representations constitute shamanism and the use of the Zyto Scan device on patient P.E. was incompetence.

60. Respondent Benkert demonstrated incompetence when she represented during the Board’s investigation of P.E.’s complaint that she uses the Zyto Scan device in all three of her 3 offices for nutritional purposes.

61. During the investigation of P.E.’s complaint, Respondent Benkert stated that she has her staff sell “non-toxic oils" because the toxins in other makeup or creams will stop the body from healing. Respondent Seals stated, "as long as the body is toxic, the body cannot heal" and "everything you touch or put on your skin is a toxin." These statements demonstrate incompetence.
NINTH CAUSE FOR DISCIPLINE

(Conduct that Endangers or is Likely to Endanger)

62. Respondents Benkert and Seals are subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (e)) for conduct which has endangered or is likely to endanger public health, welfare, or safety in the examination, diagnosis and treatment of patient P.E. for weight loss. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

63. Respondent Benkert allowed Timi, her unlicensed employee, to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient P.E., without immediate, direct supervision and verification of the findings.

64. Respondents' reliance on the Zyto Scan device to allegedly detect vertebral misalignments at “C2, Th4, Th8, Th10, L5, S2, and S4” in patient P.E. endangered or was likely to endanger her health, safety and welfare.

65. Respondents' utilization of the NutriMost system which dictates a restricted diet for starches and sugars and allowing only between 500 - 700 calories per day, with minerals or supplements purchased from Respondents, endangered or was likely to endanger public health, safety or welfare. The standard of care in such a situation would be for a chiropractor or medical doctor to take a thorough past medical history, and examination including blood pressure, temperature and routinely perform or order blood tests before recommending these types of aggressive caloric restrictions. Further, the patients should be routinely monitored, all of which Respondents failed to do.

TENTH CAUSE FOR DISCIPLINE

(Acts Involving Dishonesty)

66. Respondents Benkert and Seals are subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (k) for dishonest conduct in the examination, diagnosis and treatment of patient P.E. for weight loss. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:
67. During the investigation of P.E.'s complaint, Respondent Benkert stated that she does not use "DC" anywhere on her advertising. This representation was false since Benkert states her Chiropractic credentials on her NutriMost web site advertising.

68. Respondents' representations to patient P.E. that the Zyto Scan device detected vertebral misalignments at "C2, Th4, Th8, Th10, L5, S2, and S4" was false.

69. During the investigation of P.E.'s complaint, Respondent Benkert stated that "every diet is customized for every individual even though all patients are taking the same types of vitamins and minerals provided to them off-the-shelf." This representation that diets are customized is false if the patients are taking the same vitamins and minerals.

70. Respondent Benkert's representation that all of the bottles taken off the shelf (nutrients, supplements that Respondents sell to patients) have a baseline, but that they then use laser lights on the vitamin bottles or the Zyto Scan to allegedly emit a resonant frequency recipe (laser) that embeds the formula for each bottle according to their Zyto Scan results is an act of dishonesty.

ELEVENTH CAUSE FOR DISCIPLINE
(Acts of Fraud or Misrepresentation)

71. Respondents Benkert and Seals are subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (q) for dishonest conduct in the examination, diagnosis and treatment of patient P.E. for weight loss. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

72. Respondent Benkert represented during the Board's investigation of P.E. that the Zyto Scan device "might kinda sound whoo, but it's all based on science," is a fraud or misrepresentation since the FDA has confirmed in its warning letters to the Zyto Scan device manufacturer that there is no scientific basis for utilizing the device as Respondents have.

73. Respondents' representations to patient P.E. that the Zyto Scan device detected vertebral misalignments at "C2, Th4, Th8, Th10, L5, S2, and S4" was a fraud or misrepresentation.
During the investigation of P.E.'s complaint, Respondent Benkert stated that "every diet is customized for every individual even though all patients are taking the same types of vitamins and minerals provided to them off-the-shelf." This representation was a fraud or misrepresentation.

Respondent Benkert's representation that all of the bottles taken off the shelf (nutrients, supplements that Respondents sell to patients) have a baseline, but that they then use laser lights on the vitamin bottles or the Zyto Scan to allegedly emit a resonant frequency recipe (laser) that embeds the formula for each bottle according to their Zyto Scan results is an act fraud or misrepresentation.

TWELFTH CAUSE FOR DISCIPLINE
(Failure to Provide Informed Consent)

Respondents Benkert and Seals are subject to disciplinary action under California Code of Regulations, title 16, section 319.1 for failure to provide informed consent prior to the treatment of patient P.E. for weight loss. Complainant incorporates paragraphs 18 through 36 and further alleges circumstances as follows:

Respondents failed to verbally and in writing inform P.E. of the material risks of their proposed weight loss treatment. Respondents failed to obtain patient P.E.'s written informed consent prior to initiating any clinical care.

THIRTEENTH CAUSE FOR DISCIPLINE
(Failure to File Place of Practice with the Board)

Respondent Seals is subject to disciplinary action under California Code of Regulations, title 16, section 303 for failure to file his sub-office address information for practice at Respondent Benkert's "NutriMost SoCal" within 30 days of his beginning work there.

FOURTEENTH CAUSE FOR DISCIPLINE
(Failure to Purchase or Display Satellite Office Certificate)

Respondent Seals is subject to disciplinary action under California Code of Regulations, title 16, section 308 for failure to obtain from the Board a Satellite Office Certificate.
for his place of practice at Respondent Benkert’s “NutriMost SoCal” and to display the
Certificate at that business.

**Patient M.D.**

80. In the first quarter of 2015, consumer M.D. heard Respondent Benkert’s radio
advertisement for her Program that guaranteed a 20-40-pound weight loss in 40 days. M.D. made
an appointment to go to Benkert’s Costa Mesa office for a “consultation” for which his credit
card was charged $27 over the phone. M.D. went to Respondent’s Costa Mesa office on May 21,
2015. M.D. met Diane Seals, Respondent Seal’s wife, who worked as a front desk receptionist.
Diane Seals had M.D. fill out a health questionnaire.

81. M.D. then met with Respondent Seals who asked him about his medical conditions
and family history. M.D. told Seals that he was being treated for Testosterone deficiency and
that his father had pancreatic cancer. Seals told M.D. the NutriMost diet plan guarantees 20-45
pounds’ weight loss in 40 days. Seals told him that most people lose up to 40 pounds in 40 days.
Seals told M.D. there was a 500 calories per day restriction, but reassured him that he would not
be hungry because of the vitamins and minerals that he would be taking.

82. Seals told M.D. that Respondent Benkert’s NutriMost Program required that he buy
and take a few different supplements, vitamins, shampoo and soaps because there are chemicals
in regular soaps and shampoo. Seals told M.D. that he would need to drink alkaline water that
the Program would provide.

83. The $27 "consultation" fee charged to M.D.’s credit card turned out to be a ruse to get
patients like him into Benkert’s NutriMost offices. In the subsequent investigation of a complaint
filed by M.D. against Respondents, Seals admitted that the consultation fee was actually payment
for a “Body Composition Analysis” (BCA), and after the BCA is performed, Seals discusses the
NutriMost Program with patients. Seals convinced M.D. that the Program was a good diet and
that a lot of people were able to lose a lot of weight. M.D. felt that he was being coerced into
signing the diet plan contract for $2,297.00 where he paid $1,000.00 through a credit account
with Synchrony Bank that Respondents opened for him. Additionally, Seals had M.D. sign an
authorization for 3 monthly debit withdrawals of $432.33 from his bank account. M.D. believed

(CYNTHIA BENKERT, D.C. and CARLOS SEALS, D.C.) ACCUSATION
that he was not given the opportunity to consult with his regular medical doctor because he felt
pressured that he had to make a decision on the spot. $1,497.00 of the charge was for Fat Loss
Scan (NRF) Technology and the rest was for hormone formula, detox formula, supplements,
journal and manual.

84. M.D. stated that after he signed the contract and paid the fee, Respondent Seals took
him to the room next door where the scanning was done. Diane Seals entered information on a
computer and then placed M.D.'s hand on the Zyto Scan device. M.D. scanned his hand for 3-4
minutes. After this a report printed out which Diane Seals appeared to read. The Zyto Scan
analysis for M.D. purported to show "Top 7 Vertebral Stressors"; meaning the Zyto Scan
allegedly found 7 vertebral biomarkers associated with sedated nerves. The Zyto Scan
purportedly detected vertebral misalignments specifically listed patient M.D. at spinal levels "C4,
Th5, Th5, L5, S3, S4". Diane Seals then went to a cupboard and picked three brown bottles that
she then set one by one in front of the Zyto Scan. Diane Seals told M.D. that the Zyto Scan emits
rays that change the contents of the bottles to be customized specifically for M.D.'s diet. Diane
Seals told M.D. that the report indicated that he needed testosterone, pancreatic and kidney
support. M.D. was perplexed since this was the specific health information that he had given to
Diane Seals during the health questionnaire intake. M.D. never met or saw Respondent Benkert.

85. M.D. was provided these NutriMost products by Respondents:
a. NutriMost NRF Embedded Frequencies Carrier Hormone bottle with dropper;
b. NutriMost NRF Embedded Frequencies Carrier Detox bottle with dropper;
c. NutriMost NRF Embedded Frequencies Carrier Weight Loss bottle with dropper;
d. NutriMost TestoMost - Comprehensive Hormone Rejuvenation Support;
e. NutriMost RenaMost - Superior Kidney Support;
f. NutriMost HydroVitalize - Superior Minerals & Cellular Hydration Support
Featuring Fulvic Acid;
g. NutriMost PancreMost - Superior Pancreatic Support;
h. NutriMost Hydro-Molecular - Unsurpassed Active Molecular Hydrogen;
i. Premier Pink Salt (12 oz.);
j. NutriMost So Cal, bottle water for alkaline water.

86. M.D. went home with the above vitamins, minerals and hormone supplements but he was not provided with a copy of the NutriMost contract and the scanning report. M.D. received a copy of the contract and NRF scanning report days later after he requested them from Seals. M.D. never used any of the material and the bottles remained unopened.

87. Following his appointment with Respondent Seals, M.D. consulted with his doctor, Bradley W. Kays, M.D. Kays advised M.D. not to him not to go through with the NutriMost diet because the 500 calorie diet was too extreme and might endanger M.D.'s health. The following Monday, May 25, 2015, M.D. telephoned Seals to cancel the NutriMost Program. It was Memorial Day weekend and M.D. left a voicemail. The following day a woman called him back. After M.D. told her he wanted to cancel she put him “on hold” and ended up telling him she could not give him an answer.

88. M.D. went back to the Costa Mesa office on Thursday May 28. He met Seals and explained to him that he could not do the 500 calorie per day diet because his doctor advised him against it. Seals appeared understanding and told M.D. that if he brought all the unopened material back to the Respondents' office, he might cancel the Program and receive a full refund of his money. However, Seals said that he would have to contact Respondent Benkert and inform her since she was the owner of the company.

89. M.D. waited while Seals contacted Benkert by phone. Benkert's position was that her contract with M.D. included a "no cancellation clause" but in a follow-up email on May 29, Benkert offered M.D. half of his money back if he returned all the material that he had been provided. M.D. paid a total of $1,432.33 to Respondent Benkert and has not received any refund from either Seals or Benkert. He filed a complaint with the Board on or about October 7, 2015.

90. During the Board's investigation of M.D.'s complaint, Benkert was interviewed and stated that the Zyto Scan device scans a patient for their bio-communication resonant frequency to find out what hormones are out of balance, what toxins are present in the body, what nutritional deficiencies are present and what organs need to be supported. Benkert stated that based on the

(CYNTHIA BENKERT, D.C. and CARLOS SEALS, D.C.) ACCUSATION
scan her Program was able to make custom homeopathic formulas for detoxification, weight loss, energy hormones and nutritional deficiencies for her patients. Benkert claimed this was done by using "laser light that sends out the same resonant frequency recipe that shows up in the report. The laser light shines into the brown colored bottles" and the "bottles have a base of vitamins and minerals in them and the lasers transmit the resonant frequency into the liquid one by one as it sits in front of the emitting laser tower. Benkert stated that once the start button is pushed, that particular recipe will get embedded into the bottle, "its very similar to homeopathic medicine."

FIFTEENTH CAUSE FOR DISCIPLINE
(Failed to Practice Chiropractic as Defined)

91. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 302, subd. (a) (1-3) for failure to practice chiropractic as defined in the examination, diagnosis and treatment of patient M.D. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

92. Respondent Benkert’s PMA “license” does not authorize her unlicensed employee, Diane Seals to take M.D., or any other patient’s prior medical history, examine, diagnose, analyze, and recommend a treatment plan and then charge patients a monetary fee for those services. Since Diane Seals was unlicensed and Benkert, who owned NMSC also had an inactive license, Benkert failed to practice chiropractic as statutorily defined. Benkert’s purporting to offer diagnosis and treatment for weight loss, which was not ancillary or adjunct to the practice of Chiropractic was beyond the scope of Chiropractic practice and such diagnosis and treatment was not authorized by Benkert’s PMA “license”.

93. During the course of the Board’s investigation, Benkert stated she does not perform any chiropractic care at her three office locations and that she has put her Chiropractic License into an "inactive" status as she is "burnt out" on chiropractic. She said her passion was not chiropractic so she sold her practice and decided to only do nutrition.
SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to File Place of Practice with the Board)

94. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 303 for failure to file her sub-office address information for practice. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows: During the Board’s investigation, Benkert stated she “manages 3 different office locations” in Costa Mesa, Lakewood and Norco, CA. However, Respondent failed to list any of these three office locations as either a primary or Satellite Office location.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Failure to Purchase or Display Satellite Office Certificate)

95. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 308 for failure to obtain from the Board a Satellite Office Certificate for her three places of practice and to display these at the locations. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows: During the Board’s investigation, Benkert stated she “manages 3 different office locations” in Costa Mesa, Lakewood and Norco, CA. However, Respondent failed to obtain and display Satellite Office Certificates for any of the locations.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Failure to Purchase or Display Satellite Office Certificate)

96. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 311 for the use of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensational or fabulous statements, or which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

97. Respondent caused to publish an advertisement that stated her NutriMost Program was “Professionally Supervised” with “Customized Plan”. However, these representations were false since in her weight loss treatment of patients P.E. and M.D., Timi and Diane Seals,
respectively, administered the Zyto Scan and directed the alleged vitamins or supplements that
the patients should take without professional supervision.

NINETEENTH CAUSE FOR DISCIPLINE

(Failure to Use Word Chiropractor to Induce Belief that Is a Medical Doctor)

98. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 311 for the use of advertising which contains misstatements,
falsehoods, misrepresentations, distorted, sensational or fabulous statements, or which is intended
or has a tendency to deceive the public or impose upon credulous or ignorant persons.
Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges
circumstances as follows:

99. Respondent caused to publish a second advertisement for her weight loss Program
that listed “Dr. Cynthia Benkert” without designating whether or not she was a chiropractor,
medical doctor, or other type of physician. This constitutes the failure to use the word
“chiropractic, chiropractor, or letters DC” in advertising to induce a belief the chiropractor is an
MD or other physician and is an advertising violation and also a violation of Section 15.

TWENTIETH CAUSE FOR DISCIPLINE

(Allowing Unlicensed Activity)

100. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 312, subd. (b) for conduct concerning the examination, diagnosis
and treatment of patient M.D. that constitutes an extreme departure from the standard of care of
Chiropractic. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further
alleges circumstances as follows:

101. Benkert allowed Diane Seals, her unlicensed employee, to perform an exam, diagnose
or make analytic interpretations and then manufacture a treatment plan for patient M.D., without
immediate, direct supervision and verification of the findings.

///

///

///

(CYNTHIA BENKERT, D.C. and CARLOS SEALS, D.C.) ACCUSATION
TWENTY-FIRST CAUSE FOR DISCIPLINE

(Responsibility for Conduct on Premises)

102. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 316, for failure to exercise her responsibility that all conduct by persons working on her business premises conform to the applicable law and to the regulations. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

103. Benkert allowed Diane Seals, her unlicensed employee, to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient M.D., without immediate, direct supervision and verification of the findings.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Extreme Departure from the Standard of Care)

104. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (a) for conduct concerning the examination, diagnosis and treatment of patient P.E. that constitutes an extreme departure from the standard of care of Chiropractic. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

105. Benkert allowed Diane Seals, her unlicensed employee, to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient M.D., without immediate, direct supervision and verification of the findings. Benkert's conduct constitutes an extreme departure from the standard of care.

106. When M.D. desired to cancel the Program and obtain a refund of money he had paid to Benkert, Benkert told him that she would refund half his payment if he returned the bottles of vitamins and supplements that he had been provided in unopened condition. However, Benkert's employee Diane Seals had represented that the Zyto Scan had emitted rays over the bottles that had changed their composition and customized them for M.D.'s weight loss program. This contradiction of how the substances could be returned if the substances were already energized
specific to patient M.D.'s "customized" weight loss requirements, constitutes a further extreme
departure from the standard of care.

107. Respondent's use or permitting the use of the Zyto Scan device on patient M.D., to
diagnose or treat any disease or condition, including directing a purported regimen of substances
for weight loss, for which the device was not properly intended or approved, was an extreme
departure from the standard of practice of Chiropractic.

TWENTY-THIRD CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

108. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (b) for repeated conduct that constitutes a departure from
the standard of care of Chiropractic in the examination, diagnosis and treatment of patient M.D.
Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges
circumstances as follows:

109. Respondents' reliance on the Zyto Scan device to allegedly detect vertebral
misalignments at spinal levels "C4, Th5, Th5, L5, S3, S4" in patient M.D. was a departure from
the standard of practice of Chiropractic.

110. Respondents' relying upon the Zyto Scan device to determine what nutritional
supplements patient M.D. would need for "weight loss" was a departure from the standard of
practice of Chiropractic.

111. In her interview with the Board investigator during the course of the investigation,
Benkert stated the Zyto Scan scans a patient for their bio communication resonant frequency to
find out what hormones are out of balance, what toxins are present in the body, what nutritional
deficiencies are present and what organs need to be supported. For Respondent to rely upon the
Zyto Scan device to make these determinations is a departure from the standard of practice.

112. The Zyto Scan website at the time represented that one could "scan animals if
positioned so that all 6 contact points make contact with the animal; otherwise it can be used for a
surrogate test (where someone is tested while holding the animal)." Such representations
I. constitute shamanism and the use of the Zyto Scan device on patient M.D. was a departure from
the standard of practice of Chiropractic.

113. Respondent Benkert demonstrated negligence when she represented during the
Board’s investigation of P.E.’s complaint that she uses the Zyto Scan device in all three of her
offices for nutritional purposes.

TWENTY-FOURTH CAUSE FOR DISCIPLINE
(Incompetence)

114. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (c) for the lack of possession of or the failure to exercise
that degree of learning, skill, care and experience ordinarily possessed and exercised by a
competent chiropractor in the examination, diagnosis and treatment of patient M.D. for weight
loss. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges
circumstances as follows:

115. Respondent Benkert demonstrated incompetence when she represented during the
Board’s investigation of M.D. that the Zyto Scan device “might kinda sound whoo, but it’s all
based on science.” In fact, that representation is not true as the FDA has confirmed in its warning
letters to the Zyto Scan device manufacturer.

116. Respondent’s reliance on the Zyto Scan device to allegedly detect vertebral
misalignments at “C4, Th5, Th5, L5, S3, S4” in patient M.D. was incompetence.

117. Respondent’s relying upon the Zyto Scan device to determine what nutritional
supplements patient M.D. would need for “weight loss” was incompetence.

118. The Zyto Scan website at the time represented that one could “scan animals if
positioned so that all 6 contact points make contact with the animal; otherwise it can be used for a
surrogate test (where someone is tested while holding the animal).” Such representations
constitute shamanism and the use of the Zyto Scan device on patient M.D. was incompetence.

119. Respondent Benkert demonstrated incompetence when she represented during the
Board’s investigation that she uses the Zyto Scan device in all three of her offices for nutritional
purposes; that the Zyto Scan scans a patient for their bio-communication resonant frequency to
find out what hormones are out of balance, what toxins are present in the body, what nutritional deficiencies are present, what organs need to be supported; and that the Zyto Scan device can alter the composition of and customize the supplements and vitamins that she sells to particular weight-loss patients.

120. Benkert demonstrated incompetence when she stated that she has her staff sell "non-toxic oils" because the toxins in other makeup or creams will stop the body from healing.

TWENTY-FIFTH CAUSE FOR DISCIPLINE
(Conduct that Endangers or is Likely to Endanger)

121. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (c) for conduct which has endangered or is likely to endanger public health, welfare, or safety in the examination, diagnosis and treatment of patient M.D. for weight loss. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

122. Respondent Benkert allowed Diane Seals, her unlicensed employee, to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient M.D., without immediate, direct supervision and verification of the findings.

123. Respondent's reliance on the Zyto Scan device to allegedly detect vertebral misalignments at "C4, Th5, Th5, L5, S3, S4" in patient M.D. endangered or was likely to endanger his health, safety and welfare.

124. Respondent Benkert represented during the Board's investigation that the Zyto Scan device "might kinda sound whoo, but it's all based on science." Such a representation endangers or was likely to endanger the patient's health, safety and welfare since the FDA has confirmed in its warning letters to the Zyto Scan device manufacturer that there is no scientific basis for utilizing the device as Respondents have, by purportedly scanning the skin of the patient's hand and detecting "harmonic" deficits as it relates to the patient's internal organs, hormone deficiencies and then computing the supplements as well as the foods the patient is supposed to eat for weight loss. It further endangers or is likely to endanger the patient's health by asserting that the Zyto Scan device is capable of altering the molecular composition of the supplements and
vitamins Respondent sells to the patient to make them “customized” for the patient’s diagnostics, in conjunction with his restricted diet.

125. Respondent’s utilization of the NutriMost system which dictates a restricted diet for starches and sugars and allowing only between 500 - 700 calories per day, with minerals or supplements purchased from Respondents, endangered or was likely to endanger public health, safety or welfare. The standard of care in such a situation would be for a chiropractor or medical doctor to take a thorough past medical history, and examination including blood pressure, temperature and routinely perform or order blood tests before recommending these types of aggressive caloric restrictions. Further, the patients should be routinely monitored, all of which Respondent failed to do.

TWENTY-SIXTH CAUSE FOR DISCIPLINE
(Acts Involving Dishonesty)

126. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (k) for dishonest conduct in the examination, diagnosis and treatment of patient M.D. for weight loss. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

127. During the investigation of M.D.’s complaint, Respondent Benkert stated that she does not use “DC” anywhere on her advertising. This representation was false since Benkert states her Chiropractic credentials on her NutriMost web site advertising.

128. Respondents’ representations to patient M.D. that the Zyto Scan device detected vertebral misalignments at “C2, Th4, Th8, Th10, L5, S2, and S4” was false.

129. Respondent’s representation to M.D. that he was being given a diet customized for him, even though he was given the same types of vitamins and minerals provided to him off-the-shelf after the Zyto Scan device allegedly emitted altering rays on the bottles was false.

130. Respondent’s representation that all of the bottles taken off the shelf (nutrients, supplements that Respondents sell to patients) have a baseline, but that they then use laser lights on the vitamin bottles or the Zyto Scan to allegedly emit a resonant frequency recipe (laser) that embeds the formula for each bottle according to their Zyto Scan results is an act of dishonesty.
131. Respondent's reliance on the Zyto Scan device to allegedly detect vertebral
misalignments at "C4, Th5, Th5, L5, S3, S4" in patient M.D. was an act of dishonesty.

132. Respondent's reliance on the Zyto Scan to allegedly scan M.D. for his bio
communication resonant frequency to find out what hormones were out of balance, what toxins
were present in his body, what nutritional deficiencies were present and which of his organs
needed to be supported was an act of dishonesty.

133. Respondent's representation that she has her staff sell "non-toxic oils" because the
toxins in other makeup or creams will stop the body from healing is a dishonest statement.

TWENTY-SEVENTH CAUSE FOR DISCIPLINE
(Acts of Fraud or Misrepresentation)

134. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (q) for dishonest conduct in the examination, diagnosis
and treatment of patient M.D. for weight loss. Complainant incorporates paragraphs 1.8 through
25 and 80 to 89, and further alleges circumstances as follows:

135. Respondent Benkert represented during the Board’s investigation that the Zyto Scan
device "might kinda sound whoo, but it's all based on science." is a fraud or misrepresentation
since the FDA has confirmed in its warning letters to the Zyto Scan device manufacturer that
there is no scientific basis for utilizing the device as Respondent has on patient M.D.

136. Respondents' representations to patient P.E. that the Zyto Scan device detected
vertebral misalignments at "C4, Th5, Th5, L5, S3, S4" in patient M.D. was an act of fraud or
misrepresentation.

137. Respondent Benkert's representation that all of the bottles taken off the shelf
(nutrients, supplements that Respondent sells to patients) have a baseline, but that they then use
the Zyto Scan to allegedly emit a resonant frequency recipe (laser) that embeds the formula for
each bottle according to their Zyto Scan results, is an act fraud or misrepresentation.

138. The Zyto Scan website at the time represented that one could "scan animals if
positioned so that all 6 contact points make contact with the animal; otherwise it can be used for a
surrogate test (where someone is tested while holding the animal)." Such representations
constitute shamanism and the use of the Zyto Scan device on patient M.D. was an act of fraud or misrepresentation.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Failure to Provide Informed Consent)

139. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 319.1 for failure to provide informed consent prior to the treatment of patient M.D. for weight loss. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

140. Respondent failed to verbally and in writing inform M.D. of the material risks of their proposed weight loss treatment. Respondent failed to obtain patient M.D.’s written informed consent prior to initiating any clinical care.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(False and Misleading Advertising)

141. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 311 and Section 15 of the Act for false and misleading advertising. Complainant incorporates paragraphs 18 through 25 and 80 to 89, and further alleges circumstances as follows:

142. Respondent caused to run an advertisement that guaranteed a weight loss of 20-40 pounds. The ad also stated it was “professionally supervised” and a “customized plan”. In fact, the representations were false and misleading based on the treatment provided to patients P.E. and M.D. Respondent permitted her unsupervised staff Timi and Diane Seals to perform the Zyto Scan and to administer the alleged vitamins or supplements based on the alleged Zyto Scan analysis and altering laser rays on said vitamins or supplements. Respondent failed to provide a customized plan as the alleged Zyto Scan transformation of Respondent’s stock vitamins and supplements was false.

143. Respondent caused to run a second ad that listed her as “Dr. Cynthia Benkert” without designating whether she was a medical doctor, chiropractor or other type of physician.
This constitutes a failure to use the word “Chiropractic” or the initials “D.C.” to induce a belief in consumers that the chiropractor is an M.D. or other physician.

**Patient R.M.**

144. On or about October 19, 2016, consumer R.M. saw Respondent Benkert’s print advertisement in the Premier Value Magazine for her Program that guaranteed a 20-40-pound weight loss in 8 weeks and was “discounted.” R.M. made an appointment to go to Benkert’s Norco office for a short presentation of 15-30 minutes done by Benkert herself with one other person present that day. Benkert told R.M. that being overweight could increase the potential for cancer and other diseases. Benkert performed a body analysis on R.M. and told her that she had the body of an 87-year-old based on her weight. During her presentation, Respondent did not discuss the side effects of a 500 calorie per day diet or the supplements. Benkert allowed patients to ask questions during her presentation, but presented in a way that she tells patients, "this is a one-time deal, and you need to sign up today if you want to lose weight." During the presentation, Respondent stated that she was trained as a chiropractor. Following the presentation, Benkert asked R.M. if she was interested in the program and she said, "Yes." R.M. informed Benkert that she had high blood pressure and was told to text Respondent and tell her what her blood pressure readings were daily. Respondent guarantees that you will lose 20-40 lbs.: on her Program and that if you don't lose the weight, you can re--do the program.

145. R.M. was then directed to the receptionist who took her to another room where she was told by the receptionist that the (Zyto Scan) device would analyze and determine what areas R.M. was deficient in when she put her hand in the device’s cradle. The receptionist obtained a print out from the device and then brought out several bottles of supplements and vitamins. She gave R.M. a book along with the supplements that explained how she should take each of them. She said she was told to put "5 ml drops under the tongue and then to put 20 drops in her water and drink it all day long by sipping it." R.M. also had to take the supplements with the drops, and she could only eat 500 calories day. She was also instructed to weigh all of her food, and could not have any oil, sugar or carbs while on the diet. R.M. was told that she was also only allowed to use a certain kind of deodorant, shampoo and make-up that was all natural. R.M. was told that
the first day when she started the diet, she could only eat nuts. R.M. was told that, "It didn't matter what kind, as long as it was a nut." R.M. chose to eat pumpkin seeds. R.M was required to go into the office and weigh-in once a week with the receptionist, a patient does not see Respondent Benkert after the initial presentation.

146. R.M. paid for the Program on October 19, 2016, but she didn't start the diet until November 7, 2016. She was told the diet would cost approximately $2,000 and she paid with two different credit cards. She was scared to start the diet, so she didn't begin immediately. A week later she made an appointment to go in and speak to Benkert about the diet before starting it. She started eating the seeds on the day she knew she was going to see Benkert because she knew she would get a chance to express her concerns and get her questions answered. When R.M. went to Benkert's office she met with the receptionists and not Respondent. The receptionist complimented R.M on how "rosy" her skin looked. R.M told the receptionist that she thought she might have had an allergic reaction to the pumpkin seeds. R.M.'s face felt hot the entire day, and she believed she was having a reaction to the seeds because she had never eaten pumpkin seeds before.

147. The next morning, after taking the supplements that she purchased from Respondent, R.M. experienced itching, and reddish skin and bumps on her face and chest. She phoned Respondent Benkert's office to report this and requested to speak to Benkert. Late that afternoon, she still had not heard from Benkert and then spoke with her husband, B.M. who emailed to Benkert. At or about 1050 pm on November 8, 2016, Respondent Benkert replied by email to B.M. and directed to "stop all formulas and supplements but continue with the foods and pink salt only and we can talk tomorrow." R.M. never heard back from Respondent Benkert and did not try to phone her again. R.M. has never made a formal request to Benkert for the return of money she was paid and has only disputed the fee with her credit card company. R.M. called and set-up another appointment, but never went to it.
THIRTIETH CAUSE FOR DISCIPLINE
(Failure to Use Word Chiropractor to Induce Belief that Is a Medical Doctor)

148. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 311 for the use of advertising which contains misstatements, falsehoods, misrepresentations, distorted, sensational or fabulous statements, or which is intended or has a tendency to deceive the public or impose upon credulous or ignorant persons.

Complainant incorporates paragraphs 18 through 25 and 144 through 147, and further alleges circumstances as follows:

149. Respondent caused to publish an advertisement for her weight loss Program that "guarantees" losing 20 - 45 pounds in 40 days' and listed herself as "Dr." and/or used the phrase "Doctor supervised" without identifying she was a chiropractor. This constitutes the failure to use the word "chiropractic, chiropractor, or letters DC" in advertising to induce a belief the chiropractor is an MD or other physician and is an advertising violation and also a violation of Section 15.

THIRTY-FIRST CAUSE FOR DISCIPLINE
(Failed to Practice Chiropractic as Defined)

150. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 302, subd. (a) (1-3) for failure to practice chiropractic as defined in the examination, diagnosis and treatment of patient R.M. Complainant incorporates paragraphs 144 through 147 and further alleges circumstances as follows:

151. Respondent Benkert purports to hold a PMA "license". This ersatz license does not authorize any of her unlicensed employees to take R.M., or any other patient's prior medical history, examine, diagnose, analyze, and recommend a treatment plan and then charge patients a monetary fee for those services. Since Benkert, who owned NMSC had an inactive license, she failed to practice chiropractic as statutorily defined. Benkert's purporting to offer diagnosis and treatment for weight loss, which was not ancillary or adjunct to the practice of Chiropractic was beyond the scope of Chiropractic practice and such diagnosis and treatment was not authorized by Benkert's PMA "license".

(CYNTHIA BENKERT, D.C. and CARLOS SEALS, D.C.) ACCUSATION
THIRTY-SECOND CAUSE FOR DISCIPLINE

(Allowing Unlicensed Activity)

152. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 312, subd. (b) for conduct concerning the examination, diagnosis and treatment of patient R.M. that constitutes an extreme departure from the standard of care of Chiropractic. Complainant incorporates paragraphs 144 through 147 and further alleges circumstances as follows:

153. Benkert allowed her unlicensed employee receptionist to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient R.M., without immediate, direct supervision and verification of the findings.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Responsibility for Conduct on Premises)

154. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 316, for failure to exercise her responsibility that all conduct by persons working on her business premises conform to the applicable law and to the regulations. Complainant incorporates paragraphs 144 through 147 and further alleges circumstances as follows:

155. Benkert allowed her unlicensed employee receptionist to perform an exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient R.M., without immediate, direct supervision and verification of the findings.

THIRTY-FOURTH CAUSE FOR DISCIPLINE

(Extreme Departure from the Standard of Care)

156. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 317, subd. (a) for conduct concerning the examination, diagnosis and treatment of patient R.M. that constitutes an extreme departure from the standard of care of Chiropractic. Complainant incorporates paragraphs 144 through 147 and further alleges circumstances as follows:

///
157. Benkert allowed her unlicensed employee receptionist to perform an exam, diagnose
or make analytic interpretations and then manufacture a treatment plan for patient R.M., without
immediate, direct supervision and verification of the findings. Benkert's conduct constitutes an
extreme departure from the standard of care.

158. Benkert was not aware until she was interviewed by the Board's investigator that
R.M. had a pre-existing condition of hypertension.

THIRTY-FIFTH CAUSE FOR DISCIPLINE
(Repeated Negligent Acts)

159. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (b) for repeated conduct that constitutes a departure from
the standard of care of Chiropractic in the examination, diagnosis and treatment of patient P.E.
Complainant incorporates paragraphs 144 through 147 and further alleges circumstances as
follows:

160. With regards to the Zyto Scan's printed report of patient R.M., Benkert admitted
during the Board's investigation that "we are not trained to read" these reports. Relying upon
and diagnosing and providing a treatment plan based upon a report that a chiropractor can not
interpret constitutes a departure from the standard of care.

161. During the Board's investigation, Benkert was asked what each bottle of supplements
contained or what it was used for, to which she could not provide adequate explanation.

THIRTY-SIXTH CAUSE FOR DISCIPLINE
(Incompetence)

162. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (c) for the lack of possession of or the failure to exercise
that degree of learning, skill, care and experience ordinarily possessed and exercised by a
competent chiropractor in the examination, diagnosis and treatment of patient R.M. for weight
loss. Complainant incorporates paragraphs 144 through 147 and further alleges circumstances as
follows:
163. With regards to the Zyto Scan’s printed report of patient R.M., Benkert admitted
during the Board’s investigation that "we are not trained to read" these reports. Relying upon
and diagnosing and providing a treatment plan based upon a report that a chiropractor can not
interpret constitutes a departure from the standard of care.

164. Respondent Benkert demonstrated incompetence when she represented during the
Board’s investigation of R.M. that she does not know what the Zyto Scan device does and stated
"that would be like asking me what an x-ray does or what electrical stimulation machine does."

THIRTY-SEVENTH CAUSE FOR DISCIPLINE
(Excessive or Unnecessary Treatment)

165. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (d) for unnecessary or excessive treatment regarding her
treatment of patient R.M. for weight loss. Complainant incorporates paragraphs 144 through 147
and further alleges circumstances as follows:

166. Benkert admitted during the Board’s investigation, concerning supplements that her
office prescribed to R.M. that "PancreMost" bottle "supports the pancreas." The label states it is
primarily roots and leaves. Benkert stated the "CardioMost" would "support the heart."
However, on RM’s Scale Measurement there is no indication following the Zyto Scan reading
that R.M.’s pancreas or heart that needed "supporting" and therefore such purported treatment,
including selling these supplements to R.M. was excessive or unnecessary.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE
(Conduct that Endangers or is Likely to Endanger)

167. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (e)) for conduct which has endangered or is likely to
endanger public health, welfare, or safety in the examination, diagnosis and treatment of patient
R.M. for weight loss. Complainant incorporates paragraphs 144 through 147 and further alleges
circumstances as follows:
168. Respondent Benkert allowed her unlicensed employee receptionist to perform an
exam, diagnose or make analytic interpretations and then manufacture a treatment plan for patient
R.M., without immediate, direct supervision and verification of the findings.

169. Benkert was not aware until she was interviewed by the Board’s investigator that
R.M. had a pre-existing condition of hypertension.

170. Respondent Benkert’s admission that she does not know what the Zyto Scan device
does and statement "that would be like asking me what an x-ray does or what electrical
stimulation machine does" is an endangerment to the health, welfare and safety of the public
since the Zyto Scan device is recognized by the FDA only as a skin galvanic resistance device
and adding the NutriMost computer to it to purport to tailor a weight loss program, violates the
FDA’s accepted purpose of the device and takes it out of its intended usage.

THIRTY-NINTH CAUSE FOR DISCIPLINE
(Acts Involving Dishonesty)

171. Respondent Benkert is subject to disciplinary action under California Code of
Regulations, title 16, section 317, subd. (k) for dishonest conduct in the examination, diagnosis
and treatment of patient R.M. for weight loss. Complainant incorporates paragraphs 144 through
147 and further alleges circumstances as follows:

172. In her advertising, Benkert used the phrase “doctor supervised" that implies she was
acting as a licensed health care practitioner; however, in her statements to the Board investigator
she contended she was not practicing chiropractic and simply owning and managing a
NutriMost franchise with three locations. During the investigation of P.E.’s complaint,
Respondent Benkert stated that she does not use “DC” anywhere on her advertising; however, this
representation was false since Benkert represents her Chiropractic credentials on her NutriMost
web site advertising.

173. Benkert required R.M. to sign up for her Program as a "Member" of the Pastoral
Medical Association (PMA), an organization not recognized by any state, federal or regulatory
health care agencies as a legitimate governance body, as a subterfuge to attempt to by-pass her
professional chiropractic duties and responsibilities. Further, the PMA membership agreement
purports to require the patient to go through a PMA dispute resolution process with the threat of legal action if they do not.

174. Respondent Benkert purported to provide R.M. with a weight loss Program and sold her dietary supplements allegedly based on diagnostic findings of the Zyto Scan device, for which the device is not approved by the FDA.

FORTIETH CAUSE FOR DISCIPLINE

(Failure to Provide Informed Consent)

175. Respondent Benkert is subject to disciplinary action under California Code of Regulations, title 16, section 319.1 for failure to provide informed consent prior to the treatment of patient R.M. for weight loss. Complainant incorporates paragraphs 144 through 147 and further alleges circumstances as follows:

176. Respondent failed to verbally and in writing inform R.M. of the material risks of her proposed weight loss treatment. Respondents failed to obtain patient P.E.'s written informed consent prior to initiating any clinical care.

PETITION TO REVOKE PROBATION

(Against Respondent Seals, Only)

177. In the prior proceeding before the Board, In the Matter of the Petition for Reinstatement of Revoked License of Carlos Seals, OAH No. 2013100679, Respondent Seals previously revoked Chiropractic License Number DC 16052 was reinstated, revoked, and placed on certain terms and conditions of probation for a term of five (5) years, effective January 9, 2015. Attached hereto as Exhibit B, is a true and correct copy of the Decision in the underlying Accusation No. 00-146 that resulted in the revocation of Respondent Seals' Chiropractic License Number DC 16052 effective June 1, 2001, following hearing. Attached hereto as Exhibit C, is a true and correct copy of the Decision reinstating Respondent Seals' Chiropractic License and placing it on five years' probation effective January 9, 2015.

178. As one of his terms and conditions of probation, Respondent Seals was required to "[O]bey all federal, state and local laws, and all statutes and regulations governing the practice of chiropractic in California.” (Exhibit C, p. 5, para. 4) Good cause exists to lift the stay of
revocation of Respondent Seals’ Chiropractic License Number DC 16052 and revoke the License because he has failed to obey all statutes and regulations governing the practice of chiropractic in California. The circumstances are as alleged in the preceding First through Fourteenth Causes for Discipline that are incorporated herein by reference as though set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Chiropractic Examiners issue a decision:

1. Revoking or suspending Chiropractic License Number DC 23209, issued to Cynthia Benkert, D.C.

2. Ordering Cynthia Benkert to pay the Board of Chiropractic Examiners the reasonable costs of the investigation and enforcement of this case, pursuant to Title 16, California Code of Regulations, section 317.5;

3. Revoking or suspending Chiropractic License Number 16052, issued to Carlos Seals, D.C.;

4. Ordering Carlos Seals to pay the Board of Chiropractic Examiners the reasonable costs of the investigation and enforcement of this case, pursuant to Title 16, California Code of Regulations, section 317.5;

5. Lifting the previous stay of revocation of Chiropractic License Number 16052, issued to Carlos Seals, D.C., and revoking the License; and

6. Taking such other and further action as deemed necessary and proper.

DATED: 07/10/17

ROBERT PULEO
Executive Officer
Board of Chiropractic Examiners
Department of Consumer Affairs
State of California
Complainant

(CYNTHIA BENKERT, D.C. and CARLOS SEALS, D.C.) ACCUSATION