

NORTH CAROLINA
MECKLENBURG COUNTY

NORTH CAROLINA BOARD
OF CHIROPRACTIC EXAMINERS

In the Matter of:)
)
KEITH T. HELMENDACH, D.C.,)
Respondent.)

FINAL AGENCY DECISION

THIS MATTER coming on to be heard before the Board of Chiropractic Examiners at a meeting held on [insert date] in [insert location], North Carolina; and at the call of the case, the attorney for the Board tendered a proposed Decision agreed and stipulated to by the Secretary of the Board and the respondent. Upon recommendation of the Board staff, and with the consent of the parties, the Board makes the following:

Findings of Fact

1. This case was heard by a majority of the Board, Dr. Terry L. Bradley, presiding. Dr. John A. Webster, Secretary of the Board, was present but did not actively participate in the Board's deliberations due to his earlier participation in the respondent's probable cause hearing.

2. The respondent, Dr. Keith T. Helmendach, is a duly licensed chiropractic physician in North Carolina and maintains a chiropractic office in Mecklenburg County. The name of Dr. Helmendach's office is HCC Spinal Care Center, and its address is 7215-A Lebanon Road, Charlotte, NC 28277.

3. This matter comes before the Board upon a formal complaint filed on June 26, 2007 by Dr. Dennis L. Hall, who at that time was Secretary of the Board. The complaint alleges that Dr. Helmendach violated numerous statutes and rules governing chiropractic advertising.

4. A probable cause hearing was held in this matter in Greensboro on October 4, 2007. Although he received timely notice of the hearing, Dr. Helmendach did not appear due to a scheduling error on his part. After reviewing the advertisements identified in the complaint, the Review Committee found probable cause to refer the complaint to the full Board of Examiners.

5. On January 4, 2008, Dr. Helmendach filed a written response to the complaint in which he admitted that he was guilty of the alleged advertising violations.

6. Dr. Helmendach caused to be published a series of advertisements wherein his name appears but without designation as a chiropractic physician, chiropractor or doctor of chiropractic. The following advertisements contain this defect:

- a. *M.D. News* (reprint of a trade magazine cover story and used by Dr. Helmendach as a brochure)
- b. *Accidental Discovery by NASA* (brochure)
- c. *What is the theory behind decompression?* (flyer)
- d. *Dear Friend* (flyer dated December 13, 2006)
- e. *Breakthrough Treatment of Sciatica and Bulging Discs* (newspaper ad)
- f. *DRX Success* (brochure)
- g. *Dear Friend* (flyer referencing date of February 28, 2007)
- h. Business cards for HHC Spinal Care Center.

7. Dr. Helmendach caused to be published a series of advertisements in which he offered free or reduced-rate services but did not state his usual fee or include the three-day disclaimer text. The following advertisements contain these defects:

- a. *Accidental Discovery by NASA* ("I'm offering you the *Exact Back Pain/DRX 9000* Qualification Examination with everything listed above **absolutely free.**" Page 3)
- b. *What is the theory behind decompression?* ("free, complimentary candidate assessment")
- c. *Dear Friend*, reference date 12/13/06 ("free initial consultation")
- d. *DRX Success* ("free consultation")
- e. *Dear Friend*, reference date 2/28/07 ("**we are therefore, offering a special 1-visit trial. This offer is absolutely free.**")

8. Dr. Helmendach caused to be published an advertisement that purports to guarantee a beneficial result from chiropractic treatment. The brochure entitled *Accidental Discovery by NASA* reads in pertinent part as follows:

"I cannot guarantee results. It is illegal for a doctor to guarantee results. But I can guarantee your satisfaction. If you qualify for care and are accepted and you are not happy for any reason within the first 7 days, I'll refund your money." (Page 3.)

9. Dr. Helmendach caused to be published an advertisement that identifies him as a specialist. The flyer entitled *Dear Friend* and bearing a reference date of 2/28/07 reads in pertinent part as follows:

"If you are interested in this therapy and would like to be treated by the Specialists in True Spinal Decompression, please call."

10. Official notice is taken that Dr. Helmendach has not caused to be filed with the Board a diploma or certificate in any approved post-graduate course of study that would allow him to identify himself as a specialist.

11. Dr. Helmendach caused to be published two advertisements that make claims of 86% success. The newspaper advertisement entitled *Breakthrough Treatment of Sciatica and Bulging Discs* reads in pertinent part as follows:

"Clinical studies have shown spinal decompression to be successful in 86% of patients with herniated discs and degenerative joint disease—without side effects."

The brochure entitled *DRX Success* reads in pertinent part as follows:

"*Pain Free, 86% Success Rate and Up To One-Tenth the Cost of Surgery.*"

12. The primary clinical study cited and relied upon by Dr. Helmendach to support the advertised claim of 86% success is Gionis and Groteke, "Spinal Decompression", *Orthopedic Technological Review*, Nov-Dec 2003, vol 5, no 6, pp 36-9. Official notice is taken that this study had no randomized control group and was not published in a peer-reviewed journal.

13. Official notice is taken that the Oregon Board of Chiropractic Examiners has determined that claims of 86% success, based on the Gionis and Groteke study, are false and misleading.

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 June 26, 2007 is properly before the Board for adjudication on the merits. The burden of proof is borne by the staff of the Board, and the standard of proof is the greater weight of the evidence.

2. N.C.G.S. 90-154(b)(1) states that advertising services in a false or misleading manner is grounds for disciplinary action by the Board.

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

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

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

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

7. At all times relevant to this complaint, Rule 21 NCAC 10 .0302(c)(3) stated that advertising in which the licentiate is identified as a specialist is deemed false or misleading, "unless he has completed all coursework and passed an examination in a post-graduate course of study offered by an institution approved by the Council on Chiropractic Education and has caused to be filed with the Board a copy of his post-graduate diploma or certificate."

8. The following advertisements published by Dr. Helmendach violate N.C.G.S. 90-154.2(4): *M.D. News, Accidental Discovery by NASA, What is the theory behind decompression?, Dear Friend (12/13/06), Breakthrough Treatment of Sciatica and Bulging Discs, DRX Success, Dear Friend (2/28/07)*, business cards for HHC Spinal Care Center.

9. The following advertisements published by Dr. Helmendach violate N.C.G.S. 90-154(b)(13) and N.C.G.S. 90-154.1(b): *Accidental Discovery by NASA, What is the theory behind decompression?, Dear Friend (12/13/06), DRX Success, Dear Friend (2/28/07)*.

10. The following advertisement published by Dr. Helmendach violates Rule 21 NCAC 10 .0302(c)(1): *Accidental Discovery by NASA*.

11. The following advertisement published by Dr. Helmendach violates Rule 21 NCAC 10 .0302(c)(3): *Dear Friend (2/28/07)*.

12. The following advertisements published by Dr. Helmendach violate N.C.G.S. 90-154(b)(1): *Breakthrough Treatment of Sciatica and Bulging Discs and DRX Success*.

13. 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.

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

15. 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, Keith T. Helmendach, guilty of False or Misleading Advertising and the related advertng offenses noted above. It is ordered, adjudged and decreed that Dr. Helmendach be sanctioned as follows:

1. Dr. Helmendach's license to practice chiropractic in North Carolina shall be suspended for thirty days. This sanction is stayed and Dr. Helmendach shall be placed on probation for one year upon the following terms and conditions:
 - A. Dr. Helmendach shall serve an active term of license suspension for three consecutive business days;
 - B. Within the next six months, Dr. Helmendach shall attend a jurisprudence seminar offered by the Board of Examiners and successfully complete the Board's jurisprudence examination;
 - C. Dr. Helmendach shall not commit any further advertising violations during the probationary period.
2. If Dr. Helmendach willfully or negligently fails to comply with the terms of probation, the thirty-day license suspension now stayed shall be invoked.
3. The allegation in the complaint of June 26, 2007 that Dr. Helmendach charged an insurer a fee greater than the advertised fee for the same service, in violation of N.C.G.S. 90-154(b)(15), is dismissed.

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 _____ day of [insert date], 2008.

NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS

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

CONSENT:

Keith T. Helmendach, D.C.
Respondent

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

Daniel R. Hansen
Attorney for the Respondent

Vance C. Kinlaw
Attorney for the Board