

STATE OF INDIANA

IN THE HAMILTON COUNTY CIRCUIT/SUPERIOR COURT

MISC. CAUSE NO.

IN THE MATTER OF: )  
 )  
 PRIORITY 1 MEDICAL, INC. )  
 )  
 And )  
 )  
 PEGGY ANN GRABINSKI-SOLANO, )  
 )  
 Respondents. )

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**ASSURANCE OF  
VOLUNTARY COMPLIANCE  
REDACTED VERISON**

The State of Indiana, by Attorney General Curtis T. Hill, Jr. and Deputy Attorneys General Amanda Jane Lee, Jacob M. Murray, and Timothy Weber, and the Respondents Priority 1 Medical, Inc. and Peggy Ann Grabinski-Solano, D.C. enter into an Assurance of Voluntary Compliance under Indiana Code § 24-5-0.5-7.

The State of Indiana alleges that the Respondents violated Indiana's Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, in their transactions with Indiana consumers. The State alleges that Respondents misrepresented the nature of the NutriMost System, a weight loss program, to Indiana consumers, including but not limited to representing that the program required "NO Radical Changes in Lifestyle" and "NO Strenuous Dieting." The State further alleges that Respondents misrepresented the qualities of the NutriMost System to Indiana consumers, including but not limited to misrepresenting Respondent Peggy Ann Grabinski-Solano, D.C. as a medical doctor, misrepresenting the efficacy of the Zyto Hand Cradle, and misrepresenting that the program is "doctor supervised."

The Respondents deny the State's allegations. For purposes of this Assurance only, including its entry and enforcement, the Respondents admit to this Court's jurisdiction. The Respondents waive all rights to appeal or otherwise challenge or contest the validity of this Assurance.

Any violation of the terms of this Assurance constitutes prima facie evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon the parties' consent.

The parties agree to the following:

1. Respondent Peggy Ann Grabinski-Solano, D.C. is an individual with a residence in the State of Indiana, who is a licensed chiropractor in the state of Indiana with license number 08001248A issued on July 11, 1990.
2. Respondent Priority 1 Medical, Inc. is a corporation organized in the State of Indiana with its principal place of business in Indiana.
3. The terms of this Assurance apply to and are binding upon the Respondents, as well as all of either Respondent's current and/or future employees, agents, representatives, successors, and assigns.
4. The Respondents acknowledge the Office of the Indiana Attorney General Consumer Protection Division's authority under Ind. Code § 4-6-9-4 to investigate the matters described in or addressed by this Assurance.
5. The Respondents shall immediately and permanently comply with all provisions of Ind. Code § 24-5-0.5-1 *et seq.*, including but not limited to:
  - 5.1. refraining from committing any unfair, abusive, or deceptive act;

- 5.2. refraining from representing that a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have; and
  - 5.3. refraining from representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not.
6. The Respondents shall immediately and permanently comply with all provisions of Ind. Code § 25-1-9-4 *et seq.*, including but not limited to:
    - 6.1. refraining from advertising services in a false or misleading manner; and
    - 6.2. refraining from knowingly violating any state statute or rule regulating the profession in question.
  7. The Respondents shall immediately and permanently comply with all provisions of 846 IAC 1-3-1 *et seq.*, including but not limited to:
    - 7.1. refraining from performing any service that is beyond the scope of Respondent Grabinski-Solano's education, training, or experience;
    - 7.2. refraining from using or omitting any words, abbreviations, or insignia which would mislead the public into believing Respondents are licensed in Indiana to practice any other licensed occupation or profession for which they do not hold an Indiana license;
    - 7.3. refraining from advertising or soliciting for patronage that which is not in the public interest, including advertising that is false, fraudulent, deceptive, or misleading; and
    - 7.4. practicing chiropractic medicine only in accordance with the body of

scientific systemized knowledge related to the healing arts.

8. Respondents shall immediately and permanently refrain from utilizing any form contract, as defined by 15 U.S.C. § 45(b)(a)(3), which restricts a consumer's ability to speak or publish truthful or non-defamatory negative comments or reviews about any Respondent, or any of the Respondents' products or programs, agents, or employees; or imposes, attempts to impose, or threatens to impose a penalty or fee for a consumer engaging in such conduct; or act in any other way violating the Consumer Review Fairness Act of 2016, 15 U.S.C. § 45(b).
9. Respondents shall immediately and permanently refrain from making, or assisting others in making, expressly or by implication, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product provided as part of the NutriMost System, including through the use of a product or program name, advertisements, depiction, or illustration, any representation that such product:
  - 9.1. enables users to lose weight, including 20-40 pounds;
  - 9.2. is safe for users;
  - 9.3. enables the user to achieve permanent weight loss;
  - 9.4. enables the user to burn a specific number of calories, including 2,000-7,000 calories per day;
  - 9.5. targets abdominal fat;
  - 9.6. allows the user to achieve targeted weight loss; or

9.7. effectively treats, mitigates, or cures a disease, including but not limited to diabetes or psoriasis,

unless the representation is non-misleading and, at the time of making such representation, such representation is within the scope of the Respondents' education, training, and experience, as required by 846 IAC 1-3-1, and is in accordance with the body of scientific systemized knowledge related to the healing arts, as required by 846

IAC 1-3-3(4).

10. Respondents shall immediately and permanently refrain from making, or assisting others in making, expressly or by implication, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, food, drug, or other product intended to provide weight loss or health-related benefits, including any product provided as part of the NutriMost System, including through the use of a product or program name, advertisements, depiction, or illustration, any representation that:

10.1. misrepresents, or assists others in misrepresenting, that such product does not require users to follow a restrictive diet, including prohibiting the consumption of certain foods at certain times or on the same day; and

10.2. fails to disclose, clearly and conspicuously, that users are required to follow a calorie-restricted diet and the specific calorie restriction required, if the use of such product requires substantial and sustained calorie

restrictions which are below the consensus minimum daily caloric intake levels as determined by qualified experts and organizations in the fields of diet and nutrition.

11. Respondents shall immediately and permanently refrain from making, or assisting others in making, expressly or by implication, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any dietary supplement, food, drug, or other product intended to provide weight loss or health-related benefits, including any product provided as part of the NutriMost System, including through the use of a product or program name, advertisements, depiction, or illustration, any representation unless the representation is non-misleading and, at the time of making such representation, such representation is within the scope of the Respondents' education, training, and experience, as required by 846 IAC 1-3-1, and is in accordance with the body of scientific systemized knowledge related to the healing arts, as required by 846 IAC 1-3-3(4).
12. Respondent, Peggy Ann Grabinski-Solano, shall voluntarily acquiesce to her chiropractic license being placed on probation based on the facts and violations alleged in the Administrative Complaint in cause 2017 IBCE 0007.
13. Respondent, Peggy Ann Grabinski-Solano, shall complete twenty-four (24) hours of Continuing Education, twelve (12) of which shall be related to chiropractic advertising requirements in Indiana, and if none offered within the time frame, the Respondent may request the Board of Chiropractic to designate another area

of education, twelve (12) of which shall be related to nutrition. The continuing education shall be completed within twelve (12) months of entry of this Assurance. The continuing education completed must be approved by the Board of Chiropractic Examiners under the requirements of 846 IAC 1-8-4.

14. Respondent, Peggy Ann Grabinski-Solano, shall complete 50 hours of community service. The community service shall be targeted to serve communities of need, such as veteran or homeless populations. Proof of community service completion shall be submitted to the Office of the Indiana Attorney General and to the Board of Chiropractic Examiners within 15 days of completion. All community service shall be completed within twelve (12) months of entry of this Assurance.

15. Within ten (10) days of execution of this Assurance, the Respondent shall provide a full refund to the following consumers in the following amounts:

	<u>CONSUMER</u>	<u>AMOUNT</u>
15.1.	██████████	\$2,400.00
15.2.	██████████	\$1,890.00
	<u>TOTAL</u>	\$4,290.00

16. Respondents shall provide a full or partial refund to each Eligible Consumer who opts-in to receive a refund as set forth in paragraphs 18 through 20 below. “Eligible Consumer” shall mean a consumer who purchased the NutriMost program from Respondents from and including July 1, 2016 to June 11, 2018, and who has not previously received a full refund.

16.1. Each Eligible Consumer listed on Attachment A is eligible for a full refund

of the Eligible Consumer's purchase cost of the NutriMost program. *See*, Attachment A. An Eligible consumer who has previously received a partial refund from Respondents shall be entitled to a full refund less any amount that Respondents have previously refunded the Eligible Consumer.

16.2. Each Eligible Consumer listed on Attachment B is eligible for a partial refund in the amount of one-fourth (1/4) of the Eligible Consumer's purchase cost of the NutriMost program. *See*, Attachment B. An Eligible Consumer who has previously received a partial refund from Respondents shall be entitled to a refund equal to one-fourth (1/4) of the full amount that the Eligible Consumer paid less any amount that Respondents have previously refunded the Eligible Consumer.

17. Within ten (10) days of entry of this Assurance, Respondent Priority 1 Medical Inc. shall send by certified mail a Notice of Refund Eligibility ("NRE") to the last known address of Eligible Consumers listed in Attachments A and B.

17.1. An exemplar NRE for Eligible Consumers listed on Attachment A is attached to this Assurance as Attachment C.

17.2. An exemplar NRE for Eligible Consumers listed on Attachment B is attached to this Assurance as Attachment D.

18. Eligible Consumers shall complete, execute and return by postal mail or personal delivery to Priority 1 Medical Inc. at 2620 Conner Street, Noblesville, IN 46060, or by e-mail to P1m@noblesville.comcastbiz.net the prepaid postage Refund Request Card ("RRC") enclosed with the NRE, within sixty (60) days of



receipt of the NRE.

19. Eligible Consumers, who submit an RRC postmarked or otherwise timely delivered within 60 days of their receipt, shall receive refunds as outlined in Paragraphs 16.2 and 16.3.
20. Within ten (10) days of receipt of a completed and executed RRC from an Eligible Consumer, Priority 1 Medical Inc. shall send a certified check by mail payable to the requesting Eligible Consumer in the relevant refund amount as outlined in Paragraphs 16.2 and 16.3.
21. Priority 1 shall maintain all records related to its obligations under Paragraphs **15** through **20** for one (1) year after the approval of this Assurance and shall make such records available upon request by the Office of the Indiana Attorney General.
22. Respondents shall make a payment of Five Thousand (\$5,000) dollars to the Office of the Indiana Attorney General to be fully paid within eighteen months of execution of this Assurance.
23. Respondents shall not represent that the Office of the Indiana Attorney General approves or endorses any past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.
24. Respondents shall fully cooperate with the Office of the Indiana Attorney General in resolving any future written complaints received by the Consumer Protection Division.
25. The Office of the Indiana Attorney General shall file this Assurance with the

Hamilton County Circuit Court. The Court's approval of this Assurance shall not act as a bar to any private right of action except that Respondents do not forfeit any defenses to any Eligible Consumer who seeks and receives a refund and files a private right of action.

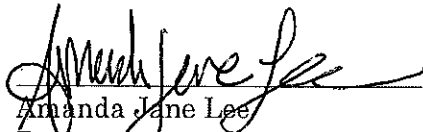
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DATED this 21<sup>th</sup> day of June 2018.

STATE OF INDIANA

Curtis T. Hill, Jr.  
Attorney General of Indiana  
Atty. No. 1958-98

By:

  
Amanda Jane Lee  
Deputy Attorney General  
Atty. No. 32662-79

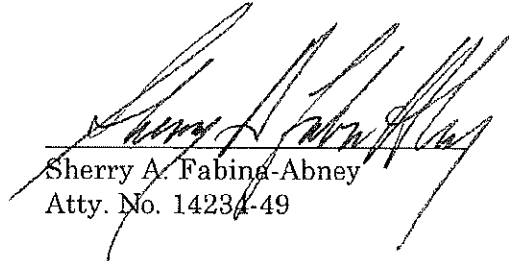
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Office of the Attorney General  
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Indianapolis, IN 46204

RESPONDENTS

Priority 1 Medical, Inc.  
Peggy Ann Grabinski-Solano, D.C

  
Sherry A. Fabina-Abney  
Atty. No. 14234-49

Myra C. Selby  
Atty. No. 2031-49

Ice Miller LLP  
One American Square, Suite 2900  
Indianapolis, IN 46282

**Attachment A**  
**Full Refund Eligible**  
**Consumers**

[REDACTED]

[REDACTED]



## ATTACHMENT C

Dear \_\_\_\_\_:

Re: Priority 1 Medical/NutriMost

For the past \_\_\_ years, we at Priority 1 Medical (“Priority”) have been honored to serve and address the medical, physical and nutritional health needs of thousands of people in the Central Indiana region. This includes you who, in addition to perhaps receiving medical or chiropractic care, also chose to enroll in the NutriMost personalized weight loss program which we administer as a licensee of NutriMost, LLC. We are proud to say that we have been not only able to meet, but beat, our 20 pound weight loss guarantee for the great majority of participants who completed the NutriMost program, who lost, on average, more than 20 pounds. Even though you were not one of those individuals, we still hope you were pleased with whatever weight you did lose and that you found value in the nutritional counseling, information, and products that were provided as part of the program.

For those who did not achieve our weight loss guarantee, we offered to extend the NutriMost program at no extra cost until they did achieve it, or to provide a pro rata refund for the difference between 20 pounds and the amount of weight they actually lost.

Now, pursuant to an informal agreement with the Office of the Indiana Attorney General, Priority is pleased to inform you that it is increasing its moneyback guarantee to all patients, including you, who were enrolled in the NutriMost program from July 1, 2016 to June 11, 2018. This voluntary agreement resolves some concerns the Office had about the manner in which the NutriMost program was advertised. Even though Priority does not agree with those concerns and feels that its advertising was appropriate, it has determined that this resolution best serves its interests and those of its patients.

Accordingly, as part of the agreement, we are happy to inform you that as someone who did not lose at least 20 pounds, you are eligible to receive a full refund of the purchase price you paid for the NutriMost program, less any partial refund you may already have received.

To claim your refund, please fill out, sign and return, by postal mail, hand delivery, fax to [number] or email to [P1m@noblesville.comcastbiz.net](mailto:P1m@noblesville.comcastbiz.net), the enclosed, prepaid postage postcard, within 60 days of your receipt of this letter. A refund check will then be mailed to the last known address we have for you within 10 days of receipt of your completed, signed, and timely submitted claim.

This offer reflects our respect and appreciation for you as a patient of Priority. It has been our pleasure to assist you with your health needs. If we ever can in the future, please do not hesitate to contact us.

## ATTACHMENT D

Dear \_\_\_\_\_:

Re: Priority 1 Medical/NutriMost

For the past \_\_\_ years, we at Priority 1 Medical (“Priority”) have been honored to serve and address the medical, physical and nutritional health needs of thousands of people in the Central Indiana region. This includes you, as one of our patients who, in addition to perhaps receiving medical or chiropractic care, also chose to enroll in the NutriMost personalized weight loss program which we administer as a licensee of NutriMost, LLC. We are proud to say that we have been not only able to meet, but beat, our 20 pounds weight loss guarantee for the great majority of participants who completed the NutriMost program, who lost, on average, more than 20 pounds. As one of those patients, we congratulate you on your success and hope that you are continuing to benefit from the nutritional counseling, information and products that were provided as part of the program.

For those who did not achieve our weight loss guarantee, we offered to extend the NutriMost program at no extra cost until they did achieve it, or to provide a pro rata refund for the difference between 20 pounds and the amount of weight they actually lost.

Now, pursuant to an informal agreement with the Office of the Indiana Attorney General, Priority is pleased to inform you that it is increasing its moneyback guarantee to all patients, including you, who were enrolled in the NutriMost program from July 1, 2016 to June 11, 2018. This voluntary agreement resolves some concerns the Office had about the manner in which the NutriMost program was advertised. Even though Priority does not agree with those concerns and feels that its advertising was appropriate, it has determined that this resolution best serves its interests and those of its patients.

Accordingly, as part of the agreement, we are happy to inform you that as someone who did lose at least 20 pounds, you are still eligible to receive a 25% refund of the purchase price you paid for the NutriMost program, less any partial refund you may have already received.

To claim your refund, please fill out, sign and return, by postal mail, hand delivery, fax to [number], or email to [P1m@noblesville.comcastbiz.net](mailto:P1m@noblesville.comcastbiz.net), the enclosed, prepaid postage postcard, within 60 days of your receipt of this letter. A refund check will then be mailed to the address we have for you within 10 days of receipt of your completed, signed, and timely submitted claim.

This offer reflects our respect and appreciation for you as a patient of Priority. It has been our pleasure to assist you with your health needs. If we ever can in the future, please do not hesitate to contact us.