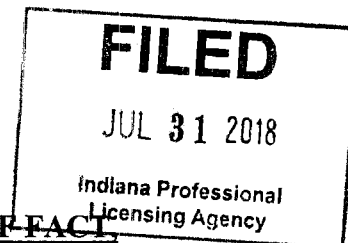


BEFORE THE INDIANA  
BOARD OF CHIROPRACTIC  
EXAMINERS  
CAUSE NUMBER: 2017 IBCE 0007

IN THE MATTER OF THE LICENSE OF: )  
 )  
PEGGY ANN GRABINSKI-SOLANO, D.C. )  
 )  
LICENSE NO: 08001248A )



FINAL ORDER ACCEPTING PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER

The State of Indiana (“Petitioner”), by counsel Timothy M. Weber, Deputy Attorney General, and Peggy Ann Grabinski-Solano, D.C. (“Respondent”), by counsel Sherry Fabina-Abney, signed a Proposed Settlement Agreement (“Agreement”) which purports to resolve all issues involved in the action regarding Respondent’s license filed by Petitioner before the Indiana State Board of Chiropractic Examiners (“Board”), and which Agreement has been submitted to the Board for approval.

The Board, after reviewing the Agreement at the June 28, 2018 meeting held in Room 2 of the Conference Center, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana, now finds it has been entered into fairly and without fraud, duress, or undue influence, and is fair and equitable between the parties. The Board hereby incorporates the Agreement which is attached hereto and incorporated herein as Exhibit 1 and approves and adopts in full the Agreement as a resolution of this matter. The Board approved this Agreement by a vote of 5-0-0. Incorporated into the Agreement was the consensus of both parties to Findings of Fact, Conclusions of Law, and Order.

**WHEREFORE**, the Board hereby accepts and approves the Agreement, settling all matters in this case consistent with the terms of the Agreement between the parties, and Respondent is hereby **ORDERED** to abide by all the terms of the Agreement.

SO ORDERED, this 3/rd day of July, 2018.

INDIANA BOARD OF CHIROPRACTIC EXAMINERS

By: Maureen Bennett  
for David D. Davis, D.C.  
Chair  
Indiana Board of Chiropractic Examiners

**CERTIFICATE OF SERVICE**

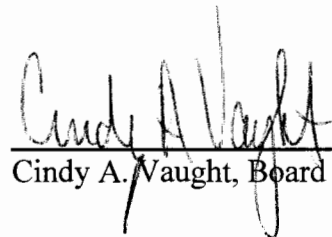
I certify that a copy of the "Final Order Accepting Proposed Findings of Fact, Conclusions of Law, and Order" has been duly served upon:

Peggy Ann Grabinski-Solano, D.C.  
2620 Connor Street  
Noblesville, Indiana 46060  
**Service by U.S. Mail**

Sherry A. Fabina-Abney  
ICE MILLER  
One American Square, Suite 2900  
Indianapolis, Indiana 46282-0200  
**Service by U.S. Mail**

Timothy M. Weber, Deputy Attorney General  
Office of the Attorney General  
Indiana Government Center South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204-2770  
**Service by Email**

7/31/2018  
Date

  
Cindy A. Vaught, Board Director

Indiana State Board of Chiropractic Examiners  
Indiana Government Center South  
402 West Washington St., Room W072  
Indianapolis, Indiana 46204  
Phone: (317) 234-2043  
Fax: (317) 233-4236  
Email: [pla2@pla.in.gov](mailto:pla2@pla.in.gov)

**Explanation of Service Methods**

Personal Service: by delivering a true copy of the aforesaid document(s) personally.

Service by U.S. Mail: by serving a true copy of the aforesaid document(s) by First Class U.S. Mail, postage prepaid.

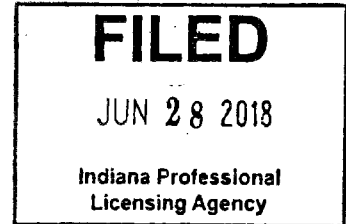
Service by Email: by sending a true copy of the aforesaid document(s) to the individual's electronic mail address.

BEFORE THE INDIANA  
BOARD OF CHIROPRACTIC  
EXAMINERS  
CAUSE NUMBER: 2017 IBCE 0007

IN THE MATTER OF THE LICENSE OF:

PEGGY ANN GRABINSKI-SOLANO, D.C.  
LICENSE NO: 08001248A

)  
)  
)  
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PROPOSED SETTLEMENT AGREEMENT

The State of Indiana ("Petitioner"), by counsel Timothy M. Weber, Deputy Attorney General, and Peggy Ann Grabinski-Solano, D.C. ("Respondent"), by counsel Sherry Fabina-Abney, hereby execute this Proposed Settlement Agreement ("Agreement") to a disposition of the Administrative Complaint filed in this cause. This Agreement is subject to the review and approval of the Board pursuant to Ind. Code § 25-1-9 *et seq.* and the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3 *et seq.*

STIPULATED FACTS

1. Respondent is a chiropractor in the State of Indiana, having been issued license number 08001248A on July 11, 1990.
2. Respondent's address on file with the Indiana Professional Licensing Agency ("IPLA") is 2620 Connor Street, Noblesville, Indiana 46060.
3. Respondent was one of several chiropractors who practiced at Priority One Medical ("Priority"). Priority was an integrative practice which included a medical doctor and other health care professionals.
4. Priority's website is <http://www.chiroindiana.com/> ("Priority's Website").
5. After reviewing the NutriMost program in 2014, Respondent and her husband became licensees of the NutriMost program. NutriMost was offered nationwide at the time.

**EXHIBIT A**

6. Respondent operated a website for NutriMost Indianapolis: <http://www.indthin.com/> ("NutriMost Website"). The NutriMost Website was linked to the NutriMost Fat Loss System official website, run by NutriMost LLC ("Company") and its founder, Dr. Ray Wisniewski, D.C ("Wisniewski").

7. In 2015 and 2016, the Priority's Website linked to the NutriMost Website.

#### Advertising

8. In 2015 and 2016, under the "About Us" tab on the NutriMost Website, Respondent was listed as "Dr. Peggy Solano" without the word chiropractor or designation of D.C.

9. In 2015 and 2016, Respondent advertised her practice and the NutriMost system on local radio stations in Indianapolis, Indiana.

10. Respondent did not identify herself as a chiropractor in the radio advertisements, and instead identified herself often as only, "Dr. Peg."

11. The NutriMost program was advertised as "doctor supervised." While a medical doctor provided medical oversight to the practice and was available for consultation through Priority regarding NutriMost patients, the medical doctor did not personally administer the NutriMost program.

12. In 2015 and 2016, the Priority One website stated, "begin to lose 1-2 pounds per day without any radical change in your lifestyle."

13. In 2015 and 2016, the Priority One website used the following language to describe the NutriMost program:

Fat Virtually Melts Away  
NO Exercise  
NO Strenuous Dieting  
NO Radical Changes in Your Lifestyle  
Simple and Easy-to-Follow!!

14. In 2015 and 2016, the NutriMost website stated:

The most effective way to lose fat is balancing hormones and neurotransmitters, detoxifying the body and balancing vitamins and minerals in a way that gets you into an incredible fat burning zone. Because of groundbreaking NutriMost Technology, we now have a way to lose weight faster, easier, better, and healthier than ever before. The NutriMost system finds your body's specific weaknesses, balances the imbalances, and strengthens your body to reach optimal health. No other weight loss program can compare!

15. Consumers are not provided the NutriMost program packet until after they have signed a contract to enter into the program, which includes an agreement to pay Respondent.

#### NutriMost System

16. In 2015 and 2016, the NutriMost system limited caloric intake to 500 to 800 calories a day during Phase 2 and 3 of the program. After a 2017 Federal Trade Commission settlement with Company and Wisniewski, the Company modified the NutriMost program to increase the daily caloric intake to over 800.

17. In 2015 and 2016, the NutriMost system purported to cause weight loss of twenty (20) pounds in forty (40) days, if the program is followed.

18. In 2015 and 2016, Respondent advertised that the NutriMost program can cause weight loss of one to two pounds per day.

19. Eating a very low caloric diet, i.e., fewer than 800 calories per day, for a substantial and sustained period of time, without supplements and mineral support and without supervision of a health care professional, can result in health complications, including gallbladder disease, heart failure, and kidney failure.

20. Losing more than three pounds a week on a very low caloric diet, i.e., fewer than 800 calories per day, for a substantial and sustained period of time, without supplements and

mineral support and without supervision of a health care professional, can result in health complications, including gallbladder disease, heart failure, and kidney failure.

### **ZYTO Hand Cradle Scanner**

21. The Food and Drug Administration has approved the ZYTO Hand Cradle Scanner (“Zyto Scanner”) for measuring galvanic skin responses.

22. Galvanic skin response is the change in the electrical resistance of the skin caused by emotional stress.

23. In 2015 and 2016, Respondent claimed that the ZYTO Scanner was used with the NutriMost system to “assess the factors of fat burning, fat storage, and fat metabolism, including the organs involved, the hormones, neurotransmitters, vitamins, minerals, toxins, heavy metals, parasites, bacteria, viruses, mycoplasma, candida, or biotoxins.”

24. Respondent licensed the ZYTO Scanner technology from the Company as part of the NutriMost program.

25. On May 8, 2015, the Food and Drug Administration sent ZYTO Technologies, the manufacturers of the ZYTO Scanner, a warning letter. In the letter, the FDA indicates:

The promotion of the ZYTO Hand Cradle for use in diagnosing a disease or condition, predicting biological responses to a wide range of virtual stimuli including drugs and nutritional supplements, or determining whether someone responds to a specific allergen fall outside of the device’s cleared intended use to measure galvanic skin response and constitutes a major change or modification to the device’s intended use.

26. The measurement of hormone levels requires a blood, saliva, and/or urine test.

27. The measurement of organ function requires a blood, saliva, and/or urine test.

28. The ZYTO Scanner is only able to assess galvanic skin response.

### Additional Facts

29. In Respondent's office, her diploma, business cards, lab coat, and treatment rooms reflect that she is a doctor of chiropractic medicine.

30. Some of Respondent's advertisements from 2015 and 2016 indicate that Respondent is a doctor of chiropractic medicine.

31. Respondent no longer utilizes the ZYTO Scanner.

### RELEVANT LAW

32. 846 IAC 1-3-2 (c) states:

To designate that they are licensed to practice chiropractic in Indiana, all licensees practicing chiropractic in Indiana shall use, in conjunction with their names, the words "chiropractic", "chiropractor", or the abbreviation "D.C." alone or in connection with other words, on all signs, letterheads, business cards, or similar items of identification, *advertising, and solicitation of any kind*. Provided, however, chiropractors may not use any words which would mislead the public into believing they are licensed in Indiana to practice any other licensed occupation or profession for which they do not hold an Indiana license.

33. 846 IAC 1-3-2(f)(1) states:

In the conduct of practice, no person holding a license to practice chiropractic shall engage in advertising or soliciting for patronage that which is not in the public interest. Advertising or soliciting not in the public interest shall include advertising that:

is false, fraudulent, deceptive, or misleading.

34. 846 IAC 1-3-2(j) states:

For the purposes of Ind. Code § 25-1-9-6.5 and [846 IAC 1-3-2], advertisements include the use of television, newspaper, radio, billboards, yellow pages, seminars, handbills, mailings, or other similar advertisements to the public.

35. 846 IAC 1-3-3(4) states,

"A practitioner, in the conduct of his chiropractic practice, shall abide by the following standards of competent practice:



A practitioner shall practice in accordance with the body of *scientific systemized knowledge* related to the healing arts.

**STIPULATED CONCLUSIONS OF LAW**

36. Respondent's conduct in advertising on her website that the NutriMost program required no strenuous dieting when the program placed patients on a very low calorie diet subjects her to discipline under Ind. Code § 25-1-9-4(a)(1)(C) because Respondent has advertised services in a misleading manner.

38. Respondent's conduct in failing to identify herself as a chiropractor on the advertising materials mentioned above subjects her to discipline under Ind. Code § 25-1-9-4(a)(3) because Respondent has violated 846 IAC 1-3-2(c), a state regulation pertaining to the practice of chiropractic.

39. Respondent's conduct in advertising on her website that the NutriMost program required no strenuous dieting when the program placed patients on a very low calorie diet subjects her to discipline under Ind. Code § 25-1-9-4(a)(3) because Respondent has engaged in misleading advertising in violation of 846 IAC 1-3-2(f)(1), a state regulation pertaining to the practice of chiropractic.

40. Respondent's conduct in using the Zyto Hand Cradle to purportedly assess the factors of fat burning, fat storage, and fat metabolism, including the organs involved, the hormones, neurotransmitters, vitamins, minerals, toxins, heavy metals, parasites, bacteria, viruses, mycoplasma, candida, or biotoxins, subjects her to discipline under Ind. Code § 25-1-9-4(a)(3) because Respondent has failed to practice in accordance with the body of scientific systemized knowledge related to the healing arts in violation of 846 IAC 1-3-3(4).

41. Respondent's conduct in promoting and administering a weight loss program that limited caloric intake to between 500 and 800 calories per day without testing patients for

underlying health conditions or organ health subjects her to discipline under Ind. Code § 25-1-9-4(a)(3) because Respondent has failed to practice in accordance with the body of scientific systemized knowledge related to the healing arts, thereby failing to abide by the standards of competent practice, in violation of 846 IAC 1-3-3(4), a state regulation pertaining to the practice of chiropractic.

42. Respondent's conduct in promoting and administering a weight loss program that limits caloric intake to between 500 and 800 calories per day without testing patients for underlying health conditions or organ health subjects her to discipline under Ind. Code § 25-1-9-4(a)(4)(A) because Respondent has continued to practice although she has become unfit to practice due to professional incompetence.

#### **AGREED DISPOSITION**

It is now therefore agreed by Respondent and Petitioner as follows:

1. The Board has jurisdiction over Respondent and the subject matter in this disciplinary action.
2. The parties execute this Agreement voluntarily.
3. Both parties voluntarily waive their rights to a public hearing on the Administrative Complaint.
4. Petitioner agrees the terms of this Agreement will resolve any and all pending claims or allegations relating to disciplinary action against Respondent's license.
5. Respondent's license shall be placed on **INDEFINITE PROBATION**.
6. Respondent may petition to have the probation withdrawn after **ONE (1) YEAR**.

7. Upon petitioning for withdrawal, Respondent shall demonstrate compliance with all of the terms of the Assurance for Voluntary Compliance, attached to this agreement as Exhibit A.

8. While on probation, Respondent's license shall be governed by the following terms:

- a. Respondent shall keep the Board abreast of her personal contact information, including her address, telephone number, and email address.
- b. Respondent shall keep the Board abreast of her employment information, including place of employment and contact information for her supervisor, if applicable.
- c. Respondent shall submit all of her advertising to the Board in writing for approval prior to publication of the material.
- d. Respondent shall comply with all terms of the Assurance for Voluntary Compliance.

9. Within **ONE (1) YEAR** of the final order in this matter, Respondent shall complete twenty-four (24) hours of Continuing Education, twelve (12) of which shall be related to chiropractic advertising requirements in Indiana and twelve (12) of which shall be related to nutrition. The continuing education completed must be approved by the Board of Chiropractic Examiners under the requirements of 846 IAC 1-8-4.

10. Within **ONE (1) YEAR** of the final order in this matter, Respondent 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.

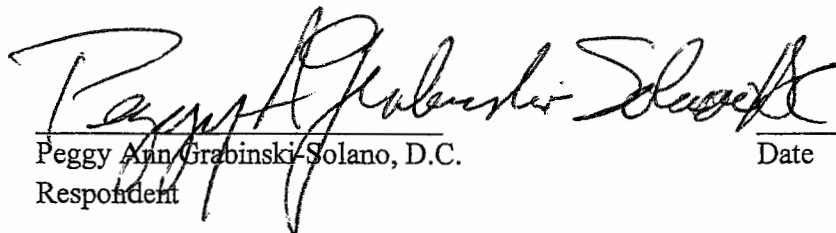
11. Prior to petitioning for withdrawal of the probation, Respondent shall, pursuant to Ind. Code § 4-6-14-10(b), pay a **FEE** in the amount of **FIVE DOLLARS (\$5.00)** to be deposited into the Health Records and Personal Identifying Information Protection Trust Fund. This fee shall be paid by check or money order payable to the State of Indiana, and submitted to the following address:

Office of the Indiana Attorney General  
Attn: Teresa Henson  
302 West Washington Street, 5th Floor  
Indianapolis, IN 46204

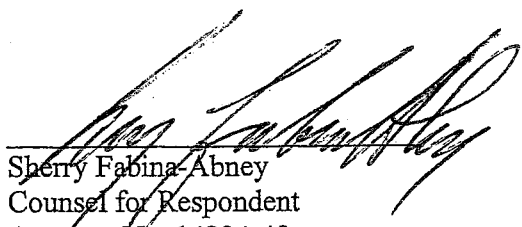
12. Respondent has carefully read and examined this agreement and fully understands its terms and that, subject to a final order issued by the Board, this Agreement is a final disposition of all matters and not subject to further review.

13. Respondent further understands that a violation of the Final Order, any non-compliance with the statutes or regulations regarding the practice of chiropractic, or any violation of this Agreement may result in Petitioner requesting a summary suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Ind. Code § 25-1-9-4, any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

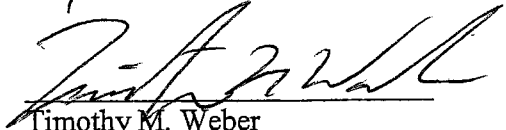
14. The parties agree to the continuing jurisdiction of the Board and that the discipline agreed to, terms of discipline, and licensure status will apply even if the Board renews Respondent's license at a later date.

  
Peggy Ann Grabinski Solano, D.C.  
Respondent

6-28-18  
Date

  
Sherry Fabina Abney  
Counsel for Respondent  
Attorney No. 14234-49

6/29/2018  
Date

  
Timothy M. Weber  
Deputy Attorney General  
Attorney No. 31559-49

6/28/2018  
Date