

IN THE MATTER OF
KENNETH SABLE, D.C.

Respondent

License Number: S01765

* BEFORE THE STATE
* STATE BOARD OF
* CHIROPRACTIC EXAMINERS
* CASE NUMBER: 06-53C

* * * * *

FINAL CONSENT ORDER

Based on information received and a subsequent investigation by the State Board of Chiropractic Examiners (the "Board"), and subject to Md. Health Occ. Ann. § 3-101, et seq., (the "Act") (2005 Repl. Vol. and 2006 Supp.), the Board charged Kenneth Sable, D.C., (the "Respondent"), with violations of the Act. Specifically, the Board charged the Respondent with violation of the following provisions of § 3-313:

(a) Subject to the hearing provisions of § 3-315 of this subtitle, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (3) Practices chiropractic under a false name;
- (7) Solicits or advertises in a false or misleading manner or in any other manner not approved by the Board;
- (8) Is unethical in the conduct of the practice of chiropractic;
- (9) Is professionally incompetent;
- (11) Misrepresents the effectiveness of any treatment, drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain;
- (12) Makes or files a false report or record in the practice of chiropractic;
- (15) Pays or agrees to pay any sum to any person for bringing or referring a patient;

- (18) Practices chiropractic with an unauthorized person or supervises or aids an unauthorized person in the practice of chiropractic;
- (19) Violates any rule or regulation adopted by the Board;
- (21) Commits an act of unprofessional conduct in the practice of chiropractic;
- (28) Violates any provision of this title.

The Board further charges that the Respondent violated its Advertising regulations, Code Md. Regs. tit. 10 § 43.03 (August 6, 2001):

.01 Scope.

A chiropractor may advertise his services subject to the provisions of this chapter.

.02 Qualifications.

A. In an advertisement, a chiropractor shall include at least the chiropractor's:

(1) Name; and

(4) Educational degree.

.03 Prohibitions.

An advertisement may not contain statements which:

A. Contain a misrepresentation of facts;

B. Are likely to mislead or deceive because in context the statement makes only a partial disclosure of relevant facts;

C. Intend to, or are likely to, create false or unjustified expectations of favorable results;

D. Relate to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully disclosing all variables and other relevant factors;

F. Contain representations or implications that in reasonable probability can be expected to cause an ordinary prudent person to misunderstand or to be deceived;

H. Contain representations regarding the use of any equipment, treatment, or procedure not within the accepted, prudent practice of chiropractic.

.04 Solicitation.

A. A chiropractor may not engage in solicitation, including but not limited to, in-person, telephone, or direct mail solicitation which:

- (1) Amounts to fraud, undue influence, intimidation, or overreaching
- (2) Contains statements, which would be improper under Regulation .03 of this chapter.

B. A chiropractor shall also be accountable under this regulation if the chiropractor uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

The Board further charges the Respondent with a violation of its Code of Ethics, Code Md. Regs. tit. 10, § 43.14.03 (January 9, 2000):

C. A chiropractor and chiropractic assistant shall:

(8) Cooperate with any lawful investigation conducted by the Board, including:

- (a) Furnishing information requested,
- (b) Complying with a subpoena,
- (c) Responding to a complaint at the request of the Board, and
- (d) Providing meaningful and timely access to relevant patient records [;]

The Respondent was given notice of the issues underlying the Board's charges by letter dated August 9, 2007. Accordingly, a Case Resolution Conference was held on

October 11, 2007 and was attended by Duane Sedula, D.C., Board Chair, and Stephanie Chaney, D.C., Board member, and Grant Gerber, Board Counsel, Assistant Attorney General. Also in attendance were the Respondent and his attorney, Paul J. Weber, and the Administrative Prosecutor, Roberta Gill, Assistant Attorney General.

Following the Case Resolution Conference, the parties and the Board agreed to resolve the matter by way of settlement. The parties and the Board agreed to the following:

FINDINGS OF FACT

BACKGROUND

1. At all times relevant to the charges herein, the Respondent was licensed to practice chiropractic in the State of Maryland. The Respondent was first licensed on November 22, 1995. The Respondent's license expires on August 31, 2009.
2. The Respondent is a sole practitioner in Waldorf, Maryland.

FINDINGS WITH REGARD TO PATIENT A

3. By letter dated September 25, 2006, Patient A¹ filed a complaint against the Respondent with the Board alleging the following:
 - A. Patient A indicated that he had had back pain during the summer of 2006. Patient A had previously gone to another chiropractor who was moving out of the State.
 - B. Patient A stated that he discovered through his local newspapers, the *Maryland Independent* and the *Washington Times*, a chiropractic clinic that offered the

latest "Space Age Technology" and "How an experiment through NASA led to the discovery of the most promising treatment today." Subsequently, Patient A went to the website listed in the ad, www.discinjuryinfo.com, and typed in his information, which led to the receipt of a package in the mail from the Respondent's Waldorf address. Inside was a free report entitled: "**How An Accidental Discovery by NASA In Outer Space Quickly and Easily Solves 86% of Back Pain And the *Breakthrough Medical Technology That's Bringing It To YOU!***" The report stated "NASA accidentally discovered that the anti-gravity effects of space travel on Astronauts cured their back pain"...and other numerous references to NASA;²

C. At the bottom of the report was the Respondent's website, which stated that "Their expert team consists of engineers who designed for NASA and the US Department of Defense;"

D. Patient A stated that, 12 days later, he received a "Second Notice" from the Respondent, which stated "I revealed to you how NASA accidentally stumbled across an amazing solution to back pain." A few days later, Patient A received a "Final Notice" from the Respondent which had the appearance of a dunning letter. On August 15, 2006, Patient A received a fourth package from the Respondent which contained a CD which had three different movies about the "NASA invention";

E. Patient A decided to go to the Respondent for a "free consultation," which visit occurred on September 12, 2006. At that visit, Patient A was shown a DVD which pitched the DRX-9000 machine with its "marvelous" NASA technology. The Respondent

¹ The patient's name is confidential.

informed Patient A prior to the visit that he would need to bring an MRI and radiology report with him, which he was able to obtain from his prior chiropractor;

F. The Respondent informed Patient A that he would have to take the information home to determine if Patient A would be "accepted" into the program. The conditions of acceptance would be that he would have to be treated a set number of times; that treatment was only 86% effective; and, that he would have to prepay for all treatments up front, which ranged from \$2200-5000+;

G. Two days later, on the 14th, Patient A returned, whereupon the Respondent presented a piece of paper to him showing that he needed 20 sessions for a total of \$8750, less a discount of \$2755, for a total of \$5995, which he was told to pay it all up front through a finance company the Respondent deals with or Patient A could write the Respondent three checks—one for 1/3 of the amount and the other two, post-dated for the following month and the next;

H. Even though the Respondent requested that Patient A bring an MRI, which he reportedly studied, the treatment plan dealt with the DRX9000 machine, which is promoted for herniated discs: Patient A's MRI showed no herniation. Furthermore, the MRI showed a renal mass or cyst, which could cause back pain, but the Respondent failed to include that possibility or cause for referral in his treatment plan;

I. Patient A stated that he arrived for his first treatment appointment on September 18th, where he was taken to a "water table" for hydro-therapy and then was strapped into the DRX-9000 machine by one of the Respondent's female employees,

2 The **Bold**, underlinings and *italics* are in the original documents sent by the Respondent.

where his back began to cramp. When he informed the worker, she said that she would get the doctor, but, according to Patient A, she returned 15 minutes later to tell Patient A that the Respondent was coming.³ Patient A was in increasing pain but was unable to get off the machine or stop it;⁴

J. Patient A further related that the machine turned itself off shortly thereafter and the worker helped Patient A over to a chair because his back was having spasms and he was sweating profusely, which the worker said was "normal" and fitted him with some kind of ice belt. The Respondent then entered the room and reiterated that his reaction was normal and had Patient A lie down on the water table again, but Patient A asked the Respondent to turn it off, because he was in too much pain. Patient A stated that the Respondent helped Patient A to his feet, where Patient A put the belt on and "staggered" out of the clinic;

K. Patient A further stated that, a few hours later, he went to the emergency room where he was treated for "lumbar strain" and given various medicines and told to see a specialist and not to continue whatever treatment had caused this. Patient A stated that, the next day, he stayed home from work because of the pain. When he researched the DRX-9000, Patient A discovered that it was not invented by NASA, whose General Counsel denied any association with the equipment whatsoever;

L. Patient A indicated that he is now under the care of an orthopedic doctor, takes steroids, has injections, and needs surgery for his back problem which he claims

³ The worker was not approved by the Board to provide traction. The Respondent did not submit an application for supervising chiropractor until a month later, and he submitted an application for her approval as a Chiropractic Assistant at that time as well.

⁴ Patient A should have been given a shut-off switch so that he could stop the machine.

were exacerbated by the Respondent's DRX-9000.

4. The detailed four-page Patient History form that Patient A filled out on September 12, 2006 is entitled "Application For Admission, Pain Elimination Center DRX Severe Back Pain Solution Program" and indicates that the "applicant" is "fortunate enough to qualify for a consultation with [the Respondent] at no charge." It then indicates that the case has not been accepted by filling out the form. Patient A then signed that he consented "to allow Dr. Y to speak with [him] and perform and (sic) examination (if necessary) in order to determine if [he is] a good candidate for non-surgical decompression and also to determine if he is willing to accept his case."⁵

5. According to the Respondent's patient chart, he examined Patient A on September 12 for Patient's A's complaint of mid/low back pain. The Respondent did some range of motion testing and determined that Patient A had positive Kemps and Minors—which test difficulty getting up from a sitting position.⁶ It is extremely unusual to diagnose a positive Kemp's test, especially when the MRI taken on August 31, 2006 of the patient showed no herniation and the Respondent failed to undertake standard testing for herniation such as a straight leg raise test, which, if it produces radiating pain down the leg, would indicate a herniated disc. The Respondent failed to make a diagnosis of Patient A. The "assessment" portion of the Respondent's progress notes is blank.

⁵ The full name of the Doctor was disclosed to the Respondent. Dr. Y is as described as a friend whose form the Respondent borrowed without deleting Dr. Y's name. The Respondent states that Dr. Y is not affiliated with his practice.

⁶ There are two ways to do a Kemp's test, which is used to locate a herniated disc: one way is to have the patient seated and to cross his/her arms across his/her chest; then the patient is rotated by the Doctor, who pushes the patient back and to the side. If there is radiating pain down the leg, it indicates a herniated disc. The second way is to have the patient stand up and the Doctor puts his hand on the patient's pelvis to stabilize it, while he/she pulls the shoulder back. If pain radiates down the leg, it indicates a herniated disc. The

6. The Respondent failed to do the series of standardized tests for accurately and concisely describing the parameters of Patient A's problems, such as the Straight Leg Raise Test. The Respondent failed to document any other neurological/orthopedic tests/signs.

7. The Respondent failed to document that Patient A had a herniated disc, even though the treatment was diagnosed to deal with that herniation. He failed to properly document the existence of the herniated disc and did not document all of the steps necessary to make that determination.

8. Furthermore, the MRI showed that Patient A had a renal cyst which could be the source of his back pain, especially since he checked off on the patient history form that he had gas, constipation and diarrhea. The Respondent made no attempt to deal with the Respondent's renal issues. In addition, the Respondent failed to record Patient A's pulse, temperature, blood pressure, heart and lung sounds, and respiration as required. The Respondent failed to make a diagnosis of Patient A, inasmuch as the assessment portion of his progress notes is blank.

9. Furthermore, the Respondent charged Patient A \$250 for the DRX 9000 session and \$200 for a disc distractor belt, which, according to the ads was to be free – a \$245 value. The Respondent's treatment plan proposed that Patient A undergo 20 DRX 9000 spinal decompression treatments at \$250 per session for a total of \$5000; 20 hydrotherapy water massage table sessions (10 minute warm up before each DRX session) at \$30 a session, for a total of \$600; a disc distractor belt for \$200; interior spinal

Kemp's test is used to locate the position of disc herniation in the lower back in severe, usually, surgical

muscle rehabilitation (which is unexplained) for 18 sessions, consisting of three sessions per week for six weeks, at \$150 a session for a total of \$2700; mid-point decompression re-evaluation at \$100; and, a decompression exit examination for \$150. This totaled \$8750, but the Respondent gave Patient A a discount of \$2755, or 32.5% of his care free (11 treatments), resulting in the cost to Patient A of \$5995, which, if he paid by cash, check or credit card, he would receive an additional 10%, if paid at once, or \$1898 in three installments. A notice further advised that failure to keep an appointment will not be made up nor the money refunded, and that if a patient were 15 minutes late, it was considered as a missed appointment. Patient A did not sign the payment plan, but he did sign a form regarding what to expect after each treatment on September 14, 2006. That statement contained a phrase that stated that the patient understood that "Non-Surgical Spinal Decompression is NOT magic, its (sic) simply the most advanced and reliable application of science to help you recover."

ALLEGATION WITH REGARD TO UNSUPERVISED PRACTICE

10. The Respondent became a Supervising Chiropractor on March 30, 2005. However, at the time that his worker treated Patient A, she was not an authorized Chiropractic Assistant who could do traction. The Respondent did not submit an application for his worker until October 2006, almost a month after the worker had placed Patient A on the DRX9000 decompression machine.⁷

FINDINGS REGARDING FALSE ADVERTISING

11. The Respondent sent out a 12-page "Free Report" to Patient A entitled

cases.

**“How An Accidental Discovery By NASA In Outer Space *Quickly* and
Easily Solves 86% of**

Back Pain And The *Breakthrough* Medical Technology That’s Bringing It To YOU!”

The “report”, which is addressed to “Dear Back Pain Sufferer,” makes the following claims:

A. “*Former* back pain sufferers are calling non-surgical spinal decompression the “eighth wonder of the world.”

B. The Respondent will reveal the easy way to be pain free “*once and for all*” and that the Respondent will give the reader a “\$245 gift so you can see it all *absolutely risk-free*.”

C. “**Clinical studies have shown non-surgical spinal decompression to be successful (good or excellent relief) in 86% of patients with herniated discs and degenerative joint disease-without the side effects.**” (The Respondent attributes this statement to an article on “Spinla (sic) Decompression” in the Orthopedic Technological Review, November/December 2003.)

D. “One study also showed a 90% reduction in disc herniations in 71.4% of patients.” (The Respondent attributes this claim to an article in the Journal of Neuroimaging, April 1998.)

E. “Even better, treatment with this space-age non-surgical technology is *pain-less, drugless and there are no documented side effects*. In fact, many patients report the treatments are so relaxing...they actually fall asleep.”

F. “Over the years, NASA began to notice an unexpected result of space

⁷ The application is dated October 10, 2006; the Board received same on October 19th.

travel-Astronauts that left with back pain would come back without it. So NASA did what they (sic) are good at...they (sic) investigated this new phenomenon. Here's what they found: During the anti-gravity state of the mission there were decompressive forces on the intervertebral discs and back pain was relieved. They also found Astronauts (sic) height to be increased."

G. "But there was only *one big problem* with this miracle back pain solution: **you needed to spend time in outer space to get these great results!!!** If you weren't an Astronaut—you were out of luck! That's until now...

H. "**Recent medical breakthroughs have led to the development of advanced technologies to reproduce the effects of anti-gravity space travel RIGHT HERE ON EARTH!**"

I. "Through the combination of proven scientific principles, the latest technological developments and the brilliant work of a specialized team of physicians and medical engineers—**Axiom Worldwide**, a medical manufacturing company, now offers this space age technology in its incredible DRX 9000 spinal decompression equipment. The process using the DRX 9000 equipment has been proven to relieve pain by:

- **Enlarging The Disc Space.**
- **Reducing Herniations.**
- **Strengthening Outer Ligaments To Help Move Herniated Material Back Into Place.**
- **Reversing The High Intra-Disc Pressures Through The Application Of Negative Pressure."**

J. "In Simple English...**The "DRX 9000" Relieves Pain Fast!**"

K. The Respondent refers to the success rates reported by the manufacturer of the DRX 9000 in the American Journal of Pain Management, without giving the issue or page of same.

L. "The DRX 9000 has been approved by "The Food and Drug Administration"...**You've gotten to know them as the "FDA"**.⁸

M. "Basically, you lay face up and the amazing DRX 9000 computer simulates an anti-gravity effect on your back that helps herniated material return to it's (sic) normal position and stop the pain. Patients describe the treatment as a gentle, painless, intermittent pulling of your back. And like I said before, it can be so relaxing, many patients actually fall asleep during treatment."

N. "MRI studies comparing regular "old" traction to spinal decompression have shown regular traction dos (sic) NOT return herniated material back into the disc, **while spinal decompression does.**" (The Respondent attributes this statement to an article in the April 1998 Journal of Neuroimaging.)

O. The Respondent states that to determine if one is a candidate for the DRX 9000, he will provide a "surface EMG⁹ to help pin-point what's causing your

8 On May 26, 2006, the Department of Health and Human Services, FDA, gave Axiom the authority to market its device with equivalent devices already on the market. The FDA did not by doing so guarantee any results. It was approved for marketing and use like others similar to it for back relief. The FDA states that the DRX 9000 is substantially equivalent to all other power traction equipment.

9 EMG=electromyography: "electro-" + "-myo-" + "-graphy." ("-myo-" is from the Greek word "mys", meaning muscle and "graphy" comes from the Greek word "grapho" meaning to write). So electromyography literally is the writing (recording) of muscle electricity. However, the SEMG has not been proven of diagnostic value for the types of conditions described in this case. The American Association of Electrodiagnostic Medicine has determined that there are no clinical indication for the use of surface electromyography in the diagnostic and treatment of disorders of nerve or muscle, because it is too difficult to properly position the patient for accurate reassessments. NASA has not used SEMG for diagnostic and clinical data.

problem. This is computerized, "Space-aged" technology being used by NASA. It will determine if you will be helped by my program. This is NOT the needle EMG and is painless!!! I have given you a sample printout of this powerful technology with this report." The Complainant was not given the test. There were no surface EMG reports in the Respondent's notes on Patient A.

P. The Respondent further states: "I have a very busy practice already, mostly by word of mouth. I honestly don't need any more patients. My schedule is close to capacity already. You will be given the information you came in for, told if you qualify for my DRX 9000 program or what your best option is... Now that I've written this report and started running ads, I honestly don't know how long this offer will last. I could literally get swamped with calls overnight and have to shut it down... this offer could be suspended or cancelled at any time. Most likely I will be forced to start a waiting list... **But I will guarantee you an immediate appointment if you call within the next 12 days.** After that, your spot will be released to someone else... So don't delay. Any "thinking it over" and you could be shut out... So when I said your clock is ticking and I want to give this to you before it's too late, I'm talking about a powerful decision you **MUST** make **RIGHT NOW**..."

"You can go to 50 other doctors and read 500 books and listen to all the "experts" in the chat rooms... *and still not even come close to the awesome potential and power I'm about to hand you.*"

Q. "So what's it gonna be? I've shouldered ALL the risk and you don't risk a single penny. Call now. Don't get left out. And start a brand new life WITHOUT back pain *in as little as a couple treatments*".¹⁰

R. "Please remember, you only have 12 days to call and get your FREE spinal decompression evaluation (\$245) value. I have also received hundreds of calls requesting this report. If you do not act fast, you may have to be placed on a waiting list and have to pay the full \$245 fee."

S. "**P.P.S. One last warning:** I want to give you to experience the DRX 9000 before it's too late. Before you lose your career. Before you become a surgical statistic and end up in a wheel chair. Before you live your entire life in misery. Before you are beyond help. After you come in for your FREE evaluation and experience the DRX 9000 you will have the ONE THING so many others around you suffering with back pain do not have. This is your opportunity to possess a power so many suffering with back pain do not have. Sort of like being the only person with an "S" on your chest than can run faster than a locomotive and leap a tall building in a single bound... Conversely, NOT solving your back imprisons you many different ways. It may enslave you to a life of deadly pain pills. It may make you lose your job. Your family. Everything dear to you...including your life."

¹⁰ "A 'couple of treatments' language is found on p.11 of the "report;" however, on p. 6, the Respondent claimed that it typically took "15-20 treatment sessions."

T. The Respondent signed the "report" "Dr. Kenneth J. Sable." There is nothing on the "report" that identifies him as a chiropractor. Furthermore, the website at the bottom of each page is www.southernmarylanddrx.com, again, with no indication that the Respondent is a chiropractor. In addition, as set forth above, the Respondent personally guaranteed the success of the treatments.

U. The Respondent advertised in the October 25, 2006 edition of *The Washington Post* the following ad:

"An Urgent Message For Herniated Disc Sufferers With Back Or Leg Pain
Washington, D.C.- Most people have no idea what to do when they suffer back pain or leg pain from a herniated disc. They use heat, ice, sleep on the floor, stretch, do exercises, and even take pain pills hoping their pain will go away. If you suffer back or leg pain from a herniated disc, don't even think about calling another doctor until you read this newly released FREE report that research has proven 86% successful treating debilitating back pain without drugs, shots, or surgery. If you are sick and tired of suffering, are tired of the medical runaround, and most of all, don't want surgery...call for your free report entitled, "How Space Age Technology is Solving Back Pain Without Drugs, Shots or Surgery!" Call 1-800-743-9128 for the toll free 24-hour recorded message. Supplies are limited. If the phone lines are busy visit: www.latestdiscreport.com."

12. When one accesses that website, however, a page appears which asks one to fill out one's name, street address, apt. number, city, state and zip, and the free report on the DRX9000 would be sent in 24 hours or less.¹¹

¹¹ These ads are paid for by a Dr. "T" out of Burke, VA, using a franchise program with the email address

13. The Board had an individual request information from the site, and the following document was mailed to him on November by the Respondent; the envelope, which the individual received on November 6, 2006, had the Respondent's office address but no name on it regarding the sender. The document, which contained many of the same statements set forth above, also contained the following statements:

A. "WARNING: This Special \$245 FREE Offer Is Only Good For The Next 12 Days."

B. "As you can imagine, the demand for this amazing new back pain technology is extremely high. Since writing this report, our phone lines have been ringing off the hook. *For that reason I can only guarantee you an immediate spot for the next 12 days.* After that, you may be placed on a waiting list and have you pay the full \$245 fee when we get an opening."

C. The first sheet of the document was not signed, although the Respondent referred to himself as "Dr. Kenneth J. Sable", without including his identification as a chiropractor. The rest of the document consisted of the "Free Report" cited above, and the last pages consisted of two pages of testimonies from 13 patients from Maryland, D.C. and Virginia extolling the benefits of the DRX 9000 machine, along with their pictures.

D. The next to the last page consisted of a coupon entitling the holder to a Free DRX 9000 Qualification Evaluation Certificate (A \$240 Value), with instruction to

www.latestdiscreport.com, that included the Respondent, who is not identified by name or degree. The ads for October 2006 cost \$26,979.66. When the toll-free number is called, the caller is asked to give his/her address to receive the report. Altadona does not provide ads; these are provided by independent vendors. Dr T claims he has no names of Maryland chiropractors who pay for this.

bring the certificate to the office. The last page consisted of directions to the Respondent's office, where he listed his name, business address and Maryland phone number, but not his identification as a chiropractor.

E. By document mailed on November 16, 2006, the individual received from the Respondent a "Final Notice" which stated that "**You only Have Until December 5, 2006 To See If You Qualify For My Non-Surgical Spinal Decompression Back Pain Solution Program...FOR FREE!**" The flyer further informed the "Dear Back Pain Sufferer" of the following:

(1) *"The response to my free offer has been truly amazing. So have the results. Since you ordered your free report, countless Maryland residents have become back pain free. Many who thought they were hopeless cases now call the DRX 9000 nothing less than a miracle. Others say it's the "eighth wonder of the world."*

(2) *"Just check out the testimonials on the back of this letter. I'm writing you this letter because we've sent you our report twice and haven't heard from you yet. Quite honestly...I'm shocked."*

(3) The Respondent surmised that the individual did not respond because he/she did not receive a copy of the report the first two times; therefore, he indicated that he was sending another copy with this letter.

(4) *"After you speak to my patients and see and experience the DRX 9000 for yourself...I bet you will be willing to crawl across broken glass to get a spot on my treatment plan. It's that amazing."*

(5) *"Just give us a call by December 5, 2006 and you can still get your Back*

Pain/DRX 9000 Qualification Evaluation and live demonstration (and all the other stuff listed in the report) absolutely free with no obligation."

(6) "But you have to hurry. This offer will vanish in just a few days."

(7) "P.S. Since writing this report, we have been swamped with calls. **The good news for you is...** patients get better so fast we have a few more openings. But it looks like we will have to start a waiting list very shortly. Please call today to guarantee you get an immediate appointment and don't have to pay the \$245 fee."

(8) Once again the Respondent failed to identify himself as a chiropractor.

F. By a document dated 11/22/06, the Respondent sent the individual a postcard, entitled "**This Is It**" ...which contained the following statements:

(1) On the front: "**Your Last Chance To See If You Qualify For The Breakthrough Medical Technology Studies Show Is 86% Successful With Back Pain—FOR FREE!** *Because This May Be Your ONLY Chance To Finally Solve Your Back Pain...I'm Extending Your Offer For 12 More Days!* This is Dr. Sable again! You are getting this new opportunity first because you called and requested my free report not too long ago. But in 12 days I will open this up to the general public and I highly doubt it will last long. *Turn Over For Details...*"

(2) On the reverse side, the Respondent makes the same offers he made in his previous literature/ads. The card also states "So why haven't I given up on you? Simple. Because I realize this may very well be your ONLY chance to stop your back pain. Frankly, I don't want to see you...or anyone else...suffer with back pain when they don't have to."

(3) "Quite a few patients have told me they didn't believe I would give so much of my time away for FREE without a catch. What is in it for you, Doc? Every day I see miracles in my office. I hear FORMER back pain sufferers, with tears in their eyes, telling their story to others. If you come and sit in my office for a couple of hours...you will hear those success stories too."

(4) The Respondent asked the reader to call his number within the next 12 days. "I recommend you do it right now before you put this postcard aside and forget. 12 days goes by fast."

(5) As in the other documents, the Respondent failed to identify himself as a chiropractor.

G. By mailing date of November 30, 2006, the Respondent sent the individual another postcard;

(1) The front declared: **"Warning: Only 5 Days Left! To Get Your FREE Back Pain/DRX 9000 Qualification Evaluation...*Turn Over For Details...***

(2) On the reverse side were the following statements: **"You Only Have 5 Days Left To See If The Amazing DRX 9000 Will End Your Back Pain...Once And For All!"** The Respondent went on to list the same offers indicated in previous mailings. The Respondent again failed to identify himself as a chiropractor.

H. By package dated December 11, 2006, the Respondent sent the individual a CD-ROM which stated on the label to "Bring in this CD_ROM to Receive your FREE consultation A value of \$240.00 www.southernmarylanddrx.com" There was a picture of the DRX 9000 on the label as well.

14. By letter dated January 29, 2007, the Executive Director of the Board wrote to the Respondent about his DRX Success advertisement, and asked the Respondent to document in writing substantiation in medical or scientific terms upon which the claims were based. The Board received some information from the Respondent regarding the 86% claim.

15. By letter received by the Board on February 15, 2005, the Board received a complaint from "Karen" with no address:

A. "Karen" wrote that she "thought this type of give-aways were not compliant with Maryland Law. This chiropractor mails these flyers out all over our town and it looks cheap. I am complaining...P.S. A camera on the front and a money deal card on the back."

B. "Karen" enclosed a flyer that had been mailed by the Respondent announcing, on one side, that "Last Month's winner of a Portable DVD Player was C. H.!"¹²

C. The flyer continued: "This Month's Referral Gift

Casio Digital Camera

Win!

Features: 4.0 Mega Pixels

3 x optical zoom x 3.2 digital zoom

SD Memory Card

(Valued at \$299.00)

For each person you refer to the office this month, you'll receive a \$10

¹² Because C.H. is a patient, her name will remain confidential in this document although the Respondent

gift card to the movies and be entered in a drawing to win the Casio Digital Camera!"

"Each day about 10,000 Americans try chiropractic care for the first time. ... Simply cut out the coupon below and give it to someone you know who could benefit from Dr. Sable's care."

"When they come in for a free computerized pain severity evaluation and complimentary consultation, we'll enter your name in our monthly referral rewards contest!"

D. On the other side of the flyer it announced again that "C.H. wins a Panasonic Portable DVD/CD Player" and a statement that "Cheryl has made great strides in her health since coming in, has gone out of her way to tell others about the benefits of chiropractic care, exhibits a new enthusiasm for living more health consciously and demonstrates great effort to adhere to her recommended treatment plan."

E. The flyer also states "**Testimonial Winner**

A. M.13 will receive a \$25.00 gift certificate to Best Buy!

Thanks for sharing your story with others!" The flyer contains a testimonial about the Respondent's adjustments. It gives Ms. Mills' city and her occupation—"Mail Handler."

F. The flyer then gives directions about entering the \$25 Best Buy Gift Card, e.g., "anyone being treated currently or in the past that has had life changing results (or even if you just feel a lot better!!)"

sent out ads using the name.

13 Again, the Respondent used the name of a real patient, whose name will not be disclosed here, though the ads that went to countless people contained same.

16. As a result of the receipt of the above flyer, the Board's Executive Director verbally told the Respondent to immediately Cease and Desist.¹⁴

17. When the Board received Patient A's complaint, it began an investigation. The Board's investigator visited the Respondent's office on October 25, 2006 and the following occurred:

A. The receptionist informed the investigator that the Respondent was busy with patients and couldn't see him, whereupon the investigator informed the receptionist that he could wait until after the Respondent finished seeing patients;

B. While there, the investigator observed a sign in the waiting room which stated: "Everybody is a winner this month when you refer a friend or family member to [the Respondent.] Receive a \$25 gas card to Wawa just for referring a new patient;"

C. The investigator saw another sign in the waiting room listing the names of five new patients with the names of current patients who referred them;

D. After the investigator had waited an hour, the Respondent came to the waiting room and informed the investigator that his attorney was on the phone and wanted to speak to him. The investigator asked to speak to him in private and informed him that a complaint had been lodged against him regarding the DRX 9000 machine and asked if he could see it and check the licenses of his staff; furthermore, the investigator informed him that he did not wish to speak to the Respondent's attorney;

E. Thereafter, the Respondent showed the investigator the machine and allowed him to inspect staff licenses. At the time that the investigator viewed the DRX

¹⁴ By phone call of 2/17/05, the Board's Executive Director warned the Respondent that he was not

9000 machine, the "CA" was helping a patient onto the table. She then strapped the patient in and started the machine. The Respondent claimed that he and his staff periodically monitored the machine. The investigator asked if a patient could reach the shutoff switch on a cord hanging from a table, to which the answer was "no." The Respondent stated that the shut off was provided to patients who use the machine for the first couple of times to see if the treatment is tolerated well, after which the shutoff switch is not provided. (However, this is not what Patient A stated);¹⁵ The investigator asked the Respondent about the ads that he was running in the newspapers without identifying himself. The Respondent stated that he was no longer running the ads in the *Post*. (On May 9, 2006, the investigator had warned the Respondent about failing to follow the Board's advertising regulations and had emailed him a copy of same.) However, the day after the investigator's visit, another ad ran in the *Post*. These ads have run since May 2006 and do not state a name or address of contact;

F. The investigator informed the Respondent that he could no longer give patients a \$25 gas card for referring new patients;

G. The investigator then asked the Respondent when his worker had started training as a Chiropractic Assistant (CA); the Respondent replied that she had started working for him at the front desk in July 2006 and that he started training her as a CA sometime in September. However, the worker stated that she started training as a CA with the Respondent in July 2006;

allowed to offer gifts of value for referrals.

¹⁵ However, Axiom states the patient should hold the shut-off switch at all times and that the machine should be monitored.

H. She further claimed that the settings on the DRX 9000 were set by the Respondent to be a gentle adjustment and that Patient A had no complaints at that time;

I. The investigator also spoke to the other two women who were working for the Respondent on the day that Patient A was treated. One of them stated that she handles billing and did not see Patient A on the day he was treated, but when she spoke to him a few days later about the bill, he never said anything to her about a problem with the treatment. The other worker stated that she works at the front desk and recalls seeing Patient A as he left after his treatment and said there was nothing unusual except the fact that he left without saying anything,

FINDINGS WITH REGARD TO OTHER ISSUES

18. The Respondent claims that patients get better faster with the DRX 9000 than with "regular" traction, but he continues to put undue pressure on potential patients.

19. The Respondent uses unapproved trade names: he uses "Pain Elimination Center" on information regarding the DRX 9000; and, "Total Health Chiropractic" on his letterhead.

20. On May 14, 2007, Mr. Vallone, wrote to the Respondent asking the following questions:

1. How long have you used the trade name "Total Health Chiropractic?"
2. Board records reflect no authorization for you to use the trade name "Total Health Chiropractic." If you have information or documentation to the contrary, please forward it forthwith to the undersigned.
3. You use/have used the trade name "Pain Elimination Center" imprinted as advertising/identification on CD-ROMs mailed to prospective patients. How

long have you used the trade name "Pain Elimination Center?"

4. Board records reflect no authorization for you to use the trade name "Pain Elimination Center." If you have information or documentation to the contrary, please forward it forthwith to the undersigned.
5. What other trade names have you utilized since the date you were licensed; which of these were unauthorized and which were Board approved.
6. Please specifically detail the following, including full names and addresses:
 - The owner(s) of your practice
 - Any partner, co-owner or associate of your practice
 - Any chiropractor or massage therapist leasing space or serving as an independent contractor in your practice
 - Any chiropractor, massage therapist, registered chiropractic assistant and/or assistant-in-training in your practice

21. On May 23, 2007, the Respondent's attorney responded to the above questions as follows:

1. [The Respondent] had employed the use of "Total Health Chiropractic" on certain documents and items relating to his practice for approximately 9 ½ years.
2. No Such documentation. [The Respondent] is moving his practice and has discontinued the use of "Total Health Chiropractic".
3. [The Respondent] had employed the use of "pain Elimination (sic) Center" on certain documents and items relating to his practice for approximately 2 years.
4. No such documentation. [The Respondent] is moving his practice and has discontinued the use of "Pain Elimination Center".
5. None.

A. [The Respondent] is the only owner of the practice. There is no co-owner or associate of the practice. No current chiropractor or massage therapist leasing space or serving as an independent chiropractor at the office location. Chiropractor 1 leased space at the office location for his separate practice from September 1998 to February 28, 2007. [Dr. Judge's] Chiropractor 1's current address is in Waldorf, MD

20602. [The Worker] is a Chiropractic Assistant in Training who is scheduled to take the C.A. exam in June 2007. The Worker's address is 11540 Acton Lane, Waldorf, MD 20601.

Summary

B. As set forth above, by falsely advertising, using unauthorized persons, failing to ensure the safety/well-being of a patient, giving prizes for referrals, paying people for testimonials, failing to treat according to the standard of care, using unapproved names for his business and failing to obey the standard of practice with regard to chiropractic care, the Respondent violated the Act and the regulations thereunder.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board finds that the Respondent violated § 3-313 (3); (7); (8); (9); (11); (12); (15); (18); (19); (21); (28). The Board further concludes that the Respondent violated its Advertising regulations, Code Md. Regs. tit. 10 § 43.03.01;.02A. (1), (4);.03 A.;B.;C; D.; F.; H. ; .04 A.: (3); (4); B.

The Board further concludes the Respondent did not violate its Code of Ethics.

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law and agreement of the parties, it is this 15th day of November, 2007, by a majority of a quorum of the Board,

ORDERED that the Respondent's license to practice chiropractic is hereby **SUSPENDED** for six (6) months, with all but 20 days **STAYED**, commencing December

13, 2007; and it is further

ORDERED that before the Respondent resumes practice, he shall take and pass the Board's jurisprudence examination;

is further **ORDERED**, upon resumption of practice, the Respondent shall be placed on probation for a least two (2) years, during which the Respondent shall:

A.. Shall complete a mentorship of at least one year. Dr. Sable will meet with his board approved mentor on a monthly basis for the first three months. Thereafter, they will meet quarterly. The mentor shall report to the Board after each meeting;

B. Dr. Sable shall pay a fine of \$4,000.00;

C. Dr. Sable shall pay all costs associated with complying with this order; and

D. the charges relating to out-of-state advertising and non-compliance shall not be included in the consent agreement.

ORDERED that the Consent Order is effective as of the date of its signing by the Board; and be it

ORDERED that should the Board receive a report that the Respondent has substantially violated the Act or if the Respondent violates any conditions of this Order or of Probation, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation. The burden of proof for any action brought against the Respondent as a result of a breach of the conditions of the Order or of Probation/Suspension shall be on the Respondent to demonstrate compliance with the Order or conditions; and be it

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of chiropractic in Maryland; and be it further

ORDERED that, at the end of the Probationary period, the Respondent may petition the Board to be reinstated without any conditions or restrictions on his license, provided that he can demonstrate compliance with the conditions of this Order. Should the Respondent fail to demonstrate compliance, the Board may impose additional terms and conditions of Probation, as it deems necessary;

ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617(h) (Repl. Vol. 1999), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank that it is mandated to report to.


Duane Sadula, D.C., Chairman
State Board of Chiropractic Examiners

CONSENT OF Kenneth Sable, D.C.

I, Kenneth Sable, D.C., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, Paul J. Weber, and have been advised by him of the legal implication of signing this Consent Order,
2. I am aware that without my consent, my license to practice chiropractic in this State cannot be limited except pursuant to the provisions of § 3-313 of the Act and the Administrative Procedure Act (APA) Md. State Govt. Code Ann. §10-201, et sec., (2004 Repl. Vol.).
3. I am aware that I am entitled to a formal evidentiary hearing before the Board.

By this Consent Order, I hereby consent to the foregoing Findings of Fact, Conclusions of Law and Order, provided the Board adopts the foregoing Consent Order in its entirety. By doing so, I waive my right to a formal hearing as set forth in § 3315 of the Act and §10-201, et seq., of the APA, and any right to appeal as set forth in § 3316 of the Act and §10-201, et seq., of the APA. I do not admit to any of the allegations presented in this Consent Order. I acknowledge that my failure to abide by the conditions set forth in this Order and following proper procedures, I may suffer disciplinary action, possibly including revocation, against my license to practice chiropractic in the State of Maryland.

11/2/07
Date _____


Kenneth Sable, D.C.