

NORTH CAROLINA
FORSYTH COUNTY

NORTH CAROLINA BOARD
OF
CHIROPRACTIC EXAMINERS

In the matter of:)
)
JOHN STOETZEL, DC,)
Respondent.)

FINAL AGENCY DECISION

THIS MATTER coming before the Board at its regular quarterly meeting held on April 26, 2014 in Greensboro; and after reviewing the record and hearing the recommendations of the staff, the Board makes the following:

Findings of Fact, Count I

1. The respondent, Dr. John Stoetzel, is a citizen and resident of Forsyth County, North Carolina, and is a chiropractic physician duly licensed by this Board. He maintains an office and chiropractic practice in Winston-Salem.
2. On September 5, 2012, the Secretary of the Board issued a disciplinary complaint against Dr. Stoetzel alleging that an advertisement Dr. Stoetzel caused to be published in *Que Pasa*, a Spanish language newspaper, offered a free or reduced rate service without stating the usual fee or the three-day disclaimer, in violation of N.C.G.S. 90-154(b)(13) and N.C.G.S. 90-154.1(b).
3. A preliminary hearing was held in this matter on September 21, 2012 in Greensboro. Dr. Stoetzel was present and offered unsworn testimony before the Chiropractic Review Committee.
4. At the hearing, Dr. Stoetzel admitted that his advertisement failed to comply with the applicable statutes.
5. Dr. Stoetzel further admitted that he had been telephoned by the Board's attorney about this matter in May or June, 2012. The attorney informed him of the specific problems that needed to be corrected. Dr. Stoetzel assured the attorney that he would fix the ad as soon as possible.
6. In response to the conversation with the Board's attorney, Dr. Stoetzel instructed one of his employees to telephone the publisher of *Que Pasa* and direct the publisher to remove the portion of the ad offering a free or reduced rate service but otherwise continue to run the ad. The employee did so.
7. Despite the employee's directive, the uncorrected advertisement continued to appear in subsequent editions of the newspaper and continued to offer a free or reduced rate service through the end of September 2012. However, at Dr. Stoetzel's request, another component of the ad, a photograph of Dr. Stoetzel and his clinic staff, was changed during this same period.

8. Dr. Stoetzel did not follow up with the newspaper publisher and cause the offer of a free or reduced rate service to be removed until after he was served with the formal disciplinary complaint of September 5, 2012.

9. Based on the evidence presented at the preliminary hearing, the Chiropractic Review Committee found that probable cause existed to refer this matter to the full Board of Examiners for a formal hearing on the merits.

10. Dr. Stoetzel now enters a plea of guilty to the charges set forth in the disciplinary complaint of September 5, 2012 and waives his right to contest said charges.

Findings of Fact, Count II

11. On October 20, 2013, the Secretary of the Board issued a disciplinary complaint alleging that an advertisement Dr. Stoetzel caused to be published in the 2013 edition of the Winston-Salem yellow page directory was false or misleading, in violation of G.S. 90-154(b)(1). Specifically, the advertisement makes the following claims:

A. "Ultra-computerized adjustments (amazingly quick results)". This text is alleged to constitute a guarantee of beneficial result from chiropractic treatment, in violation of Rule 21 NCAC 10 .0302(c)(1);

B. "We *specialize* in relief care, corrective care, wellness care; stress management" (emphasis added). This text is alleged to constitute a claim of specialization outside the specialties recognized by the Board of Examiners, in violation of Rule 21 NCAC 10 .0304(b).

12. A preliminary hearing was held in this matter on November 21, 2013 in Greensboro. Dr. Stoetzel was present and offered unsworn testimony before the Chiropractic Review Committee.

13. At the hearing, Dr. Stoetzel admitted that his advertisement failed to comply with the applicable statute and rules. He further testified that the advertisement had been offered to him by the yellow pages publisher at the last minute as a bonus for his purchasing other advertising. The salesperson assured him that other chiropractic ads used similar language. There was no time to stop the ad before publication, even though Dr. Stoetzel was aware that the term "specialize" might contravene Rule 21 NCAC 10 .0304(b).

14. Based on the evidence presented at the preliminary hearing, the Chiropractic Review Committee found that probable cause existed to refer this matter to the full Board of Examiners for a formal hearing on the merits.

15. Dr. Stoetzel now enters a plea of guilty to the charges set forth in the disciplinary complaint of October 20, 2013 and waives his right to contest said charges.

BASED ON THE FOREGOING Findings of Fact, the Board enters the following:

Conclusions of Law

1. This Board is duly-constituted and has jurisdiction of subject matter and of the person of the respondent.

2. The applicable standard of proof is the greater weight of the evidence.

3. N.C.G.S. 90-154(b)(13) states: "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.

4. N.C.G.S. 90-154.1(b) states:

Any chiropractic advertisement that offers a free or reduced rate service shall contain the following notice to prospective patients: "if you decide to purchase additional treatment, you have the legal right to change your mind within three days and receive a refund." If the advertisement is published in print, the foregoing notice shall appear in capital letters clearly distinguishable from the rest of the text.

5. N.C.G.S. 90-154(b)(16) states: "Violating the provisions of G.S. 90-154.1" is grounds for disciplinary action by the Board.

6. 21 NCAC 10 .0302 states in pertinent part:

(c) Prohibited Advertising. The Board of Examiners deems the following to be false or misleading advertising in violation of G.S. 90-154(b)(1):

- (1) Advertising which purports to guarantee a beneficial result from chiropractic treatment.
- (2) *[Omitted because not applicable]*
- (3) Advertising in which the licentiate is identified as a specialist, unless the licentiate has complied with the requirements of 21 NCAC 10 .0304. . .

7. 21 NCAC 10. 0304 sets forth the subjects recognized by the Board as chiropractic specialties and the educational requirements for being credentialed as a specialist. Dr. Stoetzel has not satisfied any of the requirements of 21 NCAC 10 .0304 and is not entitled to make a claim of specialization.

8. Under the Board's published guidelines for the imposition of disciplinary sanctions, violations of G.S. 90-154(b)(1), G.S. 90-154(b)(13) and G.S. 90-154.1(b) fall in the category of Least Serious Violations. The presumptive disciplinary sanctions for Least Serious Violations range from reprimand to 90-day license suspension, depending on applicable aggravating and mitigating factors.

9. The aggravating factor present in Dr. Stoetzel's case is: the respondent published an unlawful advertisement after receiving remedial instruction from the Board concerning the advertising statutes and rule.

10. The mitigating factor present in Dr. Stoetzel's case is: the respondent poses little or no danger to the public.

11. Neither aggravating nor mitigating factors predominate, so the sanctions selected shall fall within the presumptive range for a Least Serious Violation.

WHEREFORE, WITH THE CONSENT OF THE RESPONDENT, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Dr. John Stoetzel is guilty of the advertising violations alleged in the disciplinary complaints dated September 5, 2012 and October 20, 2013.
2. Commencing on the date of ratification of this Decision, Dr. Stoetzel is placed on probation for a term of two years upon the following condition: he shall submit to the staff of the Board of Examiners any and all advertising he proposes to use and shall correct prior to publication each and every advertising defect identified by the staff.
3. This Final Agency Decision shall be reported to national data banks, and a summary shall be published in the next issue of the Board's newsletter.

THIS IS THE 26th day of April, 2014.

N.C. BOARD OF CHIROPRACTIC EXAMINERS

By: Brenda Sutton DC
Presiding

Consent:

John Stoetzel DC
John Stoetzel, DC, Respondent