

4440

**COMMONWEALTH OF KENTUCKY  
KENTUCKY BOARD OF CHIROPRACTIC EXAMINERS**

**IN RE: CHIROPRACTIC LICENSE # 4440 HELD BY JOHN B. COLE, D.C.**

JOHN B. COLE, D.C.  
4026 Massie Ave.  
Louisville KY 40207

**AGREED ORDER**

***Parties***

**WHEREAS**, the parties to the Agreed Order herein are the Kentucky Board of Chiropractic Examiners, hereinafter referred to as the "Board," and John B. Cole, D.C., hereinafter referred to as the "Respondent."

***Jurisdiction***

**WHEREAS**, the Board has jurisdiction over this matter pursuant to KRS Chapter 312 and the related administrative regulations.

***History***

**WHEREAS**, by letter dated November 20, 2003, Ms. Dorothy Wells alleged that shortly after she was involved in a car accident a "victim's advocate" named Mark Cunningham called her and encouraged her to seek chiropractic services from the Respondent. Ms. Wells allegedly told Mr. Cunningham that she was already under the care of a chiropractor, but Mr. Cunningham allegedly then informed her that she had a pre-existing condition

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which would lessen her chances of obtaining money from her insurance company; and

**WHEREAS**, the Board received a letter from Ms. Paula Thompson wherein she alleged that she was involved in the same auto accident as Ms. Wells and that she too received a call from self-described victim's advocate named Mark Cunningham. Ms. Thompson further alleged that Mr. Cunningham told her he was from GuideOne Insurance and insisted that she schedule an appointment with the Elizabethtown Injury Center where the Respondent was employed. Furthermore, Ms. Thompson claims she told Mr. Cunningham that she was under the care of Dr. Donald Casey and that Mr. Cunningham replied that Dr. Casey was only interested in her settlement money; and

**WHEREAS**, on or about January 13, 2004, Dr. Donald Casey sent a letter to the Board questioning the alleged actions of Mark Cunningham and their alleged relationship with the Elizabethtown Injury and Rehab Center; and

**WHEREAS**, on or about January 16, 2004, the Board received a letter of complaint from Ms. Sheliry Duncan stating that following an accident she was allegedly contacted by the Kentucky Accident and Injury Center. Allegedly, the caller, who was from Florida, encouraged her to see a doctor at the center who could document her injuries at no cost to her and refer her to an attorney; and

**WHEREAS**, on or about January 28, 2004, Dr. Michael Rechter wrote a letter to the Board indicating that he was the principal owner of the Elizabethtown Injury Center; and

**WHEREAS**, on or about January 28, 2004, the Respondent replied by letter stating that the aforementioned complaints were the result of a rogue agent representing a nationwide telemarketing company and providing false information. The Respondent further stated that he has taken steps to alleviate the problem; and

**WHEREAS**, on or about March 4, 2004 the Respondent stated in a letter to the Board that he has contacted his employer, Integra Healthcare Systems to report his concerns about improper marketing practices and promised to self-report any improper solicitations or advertising practices; and

**WHEREAS**, on or about January 26, 2005 the Board wrote a letter to the Respondent thanking him for meeting with Dr. Hideg and confirming that the Respondent is still using telemarketing services, albeit different from the one received by the aforementioned complainants. The Board advised the Respondent in accordance with 201 KAR 21:065, Section 3, to send copies of current and future advertising materials to the Board, including telemarketing transcripts. Finally, the Board requested that the Respondent remove the M.D.'s name from the door and advertising and upon completion to send proof to the Board; and

**WHEREAS**, on or about February 23, 2005 the Respondent sent a letter to the Board indicating that the M.D.'s name had been removed from the front door of the office; and

**WHEREAS**, the parties mutually desire to settle the issues in an expeditious manner, without the need for a formal hearing.

### ***Terms of Agreement***

**THEREFORE, it is hereby agreed** between the undersigned parties that this matter shall be settled and resolved upon the following terms:

The Respondent has carefully reviewed the Agreed Order herein and enters into this Agreed Order knowingly, willingly and voluntarily and after having reviewed the due process rights afforded to him under KRS Chapter 312 and the accompanying regulations;

1) The Respondent admits violating KRS 312.150(1)(g), and (2)(f) he does accept the foregoing reprimand of the Board in lieu of undergoing a formal hearing on the matter;

2) The Respondent shall pay a fine to the board in the amount of two hundred fifty dollars (\$250.00). Said fine shall be made by certified check or money order payable to the "Kentucky Board of Chiropractic Examiners," and must be received with the executed Agreed Order;

3) The Respondent shall submit all future advertisements and telemarketing scripts to the board for prior approval;

4) The board shall make no referral of this matter for any criminal proceeding; and

5) The Respondent agrees that his failure to comply with any of the terms and conditions of this Agreed Order may result in the board setting the matter for an administrative hearing in accord with KRS Chapter 13B.



### ***Voluntary Waiver of Rights***

No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Agreed Order.

The Respondent is fully aware of his rights to contest the Board's denial of his application for renewal in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to testify on his own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the accusation and the right to obtain judicial review of the Board's decision. All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Agreed Order.

### ***Publication of Settlement Agreement***

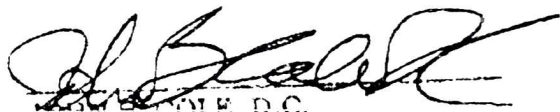
The Respondent acknowledges that, once adopted by the Board, this Agreed Order may be considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act, and may be reportable under federal law.

### ***Complete Agreement***

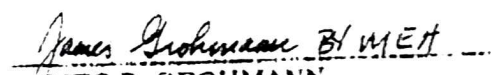
This Settlement Agreement consists of six (6) pages and embodies the entire agreement between the Kentucky Board of Chiropractic Examiners and

John B. Cole, D.C. It may not be altered, amended or modified without the express written consent of both parties.

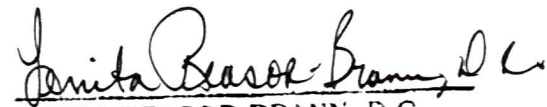
**Have Seen, Understood and Approved:**

  
JOHN B. COLE, D.C.  
License No. 4440  
Respondent

06 July 05  
Date

  
JAMES P. GROHMANN  
Counsel for the Respondent

7/7/05  
Date

  
GENITA REASOR-BRANN, D.C.  
President  
Kentucky Board of Chiropractic  
Examiners

7-12-05  
Date

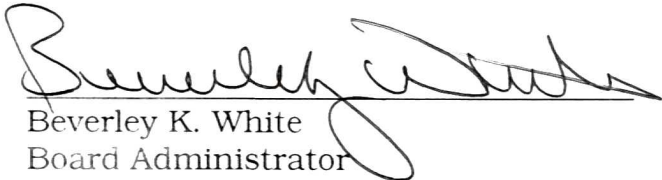
**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing **Agreed Order** was mailed via U.S. mail, postage pre-paid to the following this 16<sup>th</sup> day of July, 2005:

JAMES P. GROHMANN  
O'Bryan, Brown & Toner, PLLC  
Suite 1500 Starks Bldg.  
455 S. Fourth Street  
Louisville KY 40202  
*Counsel for the Respondent*

HON. DIANE SCHULER FLEMING  
Office of the Attorney General  
700 Capitol Ave., Ste. 118  
Frankfort KY 40601  
*Board Counsel*

And the original shall be maintained by the Board

  
Beverley K. White  
Board Administrator  
Kentucky Board of Chiropractic Examiners

REC-10-2005