

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

**IN RE: CHIROPRACTIC LICENSE # 3850 HELD BY
DAVID R. BARBER, D.C.**

DAVID R. BARBER, D.C.
105 Dennis Dr.
Lexington KY 40503



PD CHK # 12349900

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 David R. Barber, 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, the Respondent advertised a free or discounted service in violation of KRS 312.150(2)(f), without including adequate notice of the seventy-two (72) hour right of rescission required by KRS 312.019(9)(g) and 201 KAR 21:080, Section 2(1); and

WHEREAS, the Respondent failed to send a copy of the written advertisement to the Board simultaneous to publication of the advertisements as required by 201 KAR 21:065, Section 3; and

WHEREAS, the Board’s records indicate that the Respondent previously violated the aforementioned right of rescission requirement; and

WHEREAS, the Respondent's business, Back in Action, Spinal Decompression Center fails to include Dr. Barber's name and the word "chiropractic" in the facility's name as required by KRS 312.145(3); and

WHEREAS, the Respondent continues to advertise unsubstantiated claims regarding the use of the DRX 9000; and

WHEREAS, the Respondent identifies the DRX 9000 as adjunctive care; 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:

- 1) The Respondent shall carefully review 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;
- 2) The Respondent, David R. Barber, D.C., accepts the reprimand of the Board for the above-stated violations. The Respondent agrees he will act more diligently in the future to insure that all advertising issued by him, or on his behalf, complies with KRS Chapter 312 and the accompanying administrative regulations;
- 3) The Respondent shall notify all consumers known to him who responded to the advertisement and advise those consumers of the complete notice of right of rescission, as required by 201 KAR 21:080, Section 1(3). A copy of the notification to all consumers who responded to the advertisement shall be mailed to the board *on or before November 12, 2007*;

4) The Respondent, David R. Barber, D.C., shall post a notice in a conspicuous place in his chiropractic office notifying all patients that the advertisement which is the subject of the Agreed Order herein contained an error regarding the promise of free or discounted services, which is in violation of KRS 312.150(2)(f). A copy of said notice shall accompany this signed Agreed Order when returned to the offices of the Board;

5) The Respondent, David R. Barber, D.C., shall pay a fine to the board, relative to these violations, in the amount of two thousand dollars (\$2,000.00) by certified check or money order. Said fine shall be made payable to the "Kentucky Board of Chiropractic Examiners";

6) The Respondent shall submit all advertisements to the Board for review and pre-approval before they appear in any medium;

7) The original, executed Agreed Order, copy of notice, and fine must be received in the office of the board, *postmarked no later than November 12, 2007*;

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

9) The Respondent acknowledges that he is ineligible for participation in any chiropractic preceptorship program for five (5) years pursuant to 201 KAR 21:085, Section 2(7); and

10) The Respondent, David R. Barber, D.C., 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

The Respondent, David R. Barber, D.C., has had the opportunity at all times to seek advice from competent counsel of choice. 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 in an administrative proceeding. 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

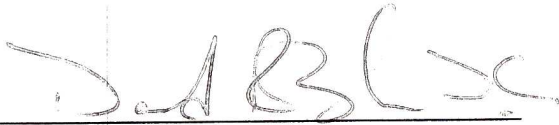
The Respondent acknowledges that, once adopted by the Board, this Agreed Order may be considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act, and may be reportable under federal law.

Complete Agreement

This Settlement Agreement consists of five (5) pages and embodies the entire agreement between the Kentucky Board of Chiropractic Examiners and David R. Barber, D.C. It may not be altered, amended or modified without the express

written consent of both parties.

Have Seen, Understood and Approved:



DAVID R. BARBER, D.C.
License No. 3850
Respondent

11/2/07

Date



MARK WOODWARD, D.C.
President
Kentucky Board of Chiropractic
Examiners

11/14/07

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 9 day of NOVEMBER, 2007:

DAVID R. BARBER, D.C.
105 Dennis Drive
Lexington KY 40503
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



Karalee Oldenkamp, D.C.
Executive Director
Kentucky Board of Chiropractic Examiners