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**STATE OF FLORIDA  
BOARD OF CHIROPRACTIC MEDICINE**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**vs.**

**Case No.: 2007-09861  
License No.: CH 8143**

**JOSHUA KURT SMITH, D.C.,**

**Respondent.**

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**FINAL ORDER**

THIS MATTER came before the Board of Chiropractic Medicine (hereinafter "Board") at a duly-noticed public meeting on June 20, 2008, in Fort Lauderdale, Florida. Petitioner filed an Administrative Complaint seeking disciplinary action against Respondent's license to practice as a chiropractic physician. A copy of the Administrative Complaint is attached to and incorporated as part of this Final Order. Petitioner was represented by Tobey Schultz, Assistant General Counsel. Respondent was present.

Petitioner and Respondent have stipulated to a disposition of this case. After considering the presentation of the parties and reviewing the record of the case, the Board voted to adopt the Settlement Stipulation as an appropriate settlement of the case. A copy of the Settlement Stipulation is attached to and made a part of this Final Order.

The parties shall be governed accordingly.

Pursuant to Section 456.072(4), Florida Statutes, the Department is authorized to collect costs for investigation and prosecution. The evidence

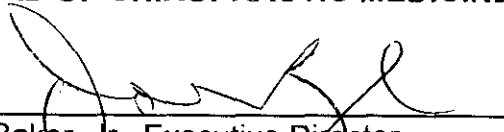
presented to the Board was that the costs associated with this matter are **nine hundred ninety-nine dollars and forty-three cents (\$999.43)**. Payment shall be made to the Department of Health, Compliance Management Unit, Board of Chiropractic Medicine Compliance Officer, P.O. Box 6320, Tallahassee, FL 32324-6320, within **one (1) year** of the filing date of this Final Order.

**IT IS THEREFORE ORDERED** that the Settlement Stipulation is adopted and the Respondent is hereby ordered to reimburse the Department costs in the amount of **\$999.43**.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

**DONE AND ORDERED** this 14<sup>th</sup> day of July, 2008.

**BOARD OF CHIROPRACTIC MEDICINE**

  
\_\_\_\_\_  
Joe Baker, Jr., Executive Director  
*on behalf of* Kenneth Dougherty, D.C., CHAIR

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Joshua Smith, D.C.**, 14063 Port Circle, Palm Beach Gardens, Florida 33410; and by interoffice mail to **Deborah Bartholow Loucks**, Assistant Attorney General, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; **Tobey Schultz**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, on 15 July, 2008.

Greg Sanders

STATE OF FLORIDA  
DEPARTMENT OF HEALTH  
BOARD OF CHIROPRACTIC MEDICINE

DEPARTMENT OF HEALTH  
CLERK  
DATE 11-20-07

DEPARTMENT OF HEALTH

Petitioner,

v.

CASE NO. 2007-09861

JOSHUA SMITH, D.C.

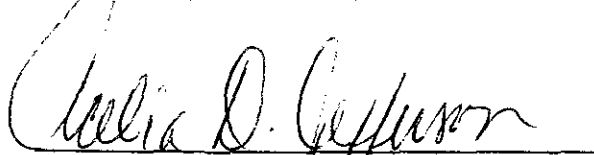
Respondent,

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**MOTION FOR FINAL ORDER BY STIPULATION**


Petitioner, Department of Health, by and through its undersigned counsel, moves the above-styled cause be scheduled before the Board of Chiropractic for consideration of the Stipulation entered into between the parties as settlement of this cause.

Respectfully submitted,



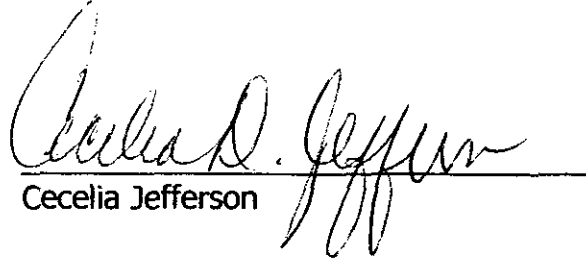
Cecelia Jefferson  
Assistant General Counsel  
Department of Health  
Prosecution Services Unit  
4052 Bald Cypress Way, Bin #C-65  
Tallahassee, FL 323993265  
(850) 245-4640 ext. 8167  
Fax: (850) 245-4682  
Florida Bar No. #0007609

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via certified U.S. Mail Joshua Smith, D.C., 112 Case Grande Court, Palm Beach Gardens, Florida, 33418 , this 20<sup>th</sup> day of December, 2007.

  
Cecelia Jefferson

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**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2007-09861**

**JOSHUA KURT SMITH, D.C.,**

**RESPONDENT,**

\_\_\_\_\_ /

SETTLEMENT STIPULATION

Pursuant to Section 120.57(4), Florida Statutes, the above named parties hereby offer this Stipulation to the Board of Chiropractic Medicine as disposition of the Administrative Complaint, attached hereto as Exhibit "A," in lieu of any other administrative proceedings. The terms herein become effective only if and when a Final Order accepting the Settlement Stipulation is issued by the Board and filed. In considering this Stipulation, the Board may review all investigative materials regarding this case. If this Stipulation is rejected, it, and its presentation to the Board, shall not be used against either party.

STIPULATED FACTS

1. For all times pertinent herein, Respondent was a licensed Chiropractor in the State of Florida, having been issued license number CH 8143.



2. The Respondent was charged in an Administrative Complaint filed by the Board of Chiropractic Medicine and properly served upon Respondent with violations of Chapters 456 and/or 460, Florida Statutes. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.

3. Respondent admits the factual allegations contained in the Administrative Complaint for the purposes of settlement in these administrative proceedings only.

STIPULATED LAW

1. Respondent admits that he is subject to the provisions of Chapters 456 and 460, Florida Statutes, and the jurisdiction of the Board and Department of Health.



2. Respondent admits that the stipulated facts, if proven true, constitute violations of laws.

3. Respondent admits that the stipulated disposition in this case is fair, appropriate, and acceptable to Respondent.

PROPOSED DISPOSITION

1. **Letter of Concern** - Respondent shall receive a Letter of Concern from the Board of Chiropractic Medicine.

2. **Fine**- The Board of Chiropractic Medicine shall impose an administrative fine in the amount of ~~two thousand five hundred dollars~~ <sup>\$ 1000</sup> ~~(\$2,500.00)~~ against the Respondent, to be paid by Respondent to the Department of Health, HMQAMS/Client Services, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer,

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within twelve months of the Final Order accepting this Agreement. All fines shall be paid by check or money order.

3. **Reimbursement of Costs-** The Respondent shall reimburse the Board of Chiropractic Medicine for the actual cost for the investigation and prosecution of this case. Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer within twelve months from the entry of the Final Order in this cause.

4. **Continuing Education** - Within one year of the date of the filing of a Final Order in this cause, Respondent shall attend 4 hours of Continuing Education, 2 of which must be in laws and rules regulating Chiropractic Medicine administered by either the Florida Chiropractic Association or the Florida Chiropractic Society. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as recognition awards, documenting completion of this course within one (1) year of the entry of the Final Order in this matter. All such documentation shall be sent to the Board of Chiropractic Medicine, regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing education course shall consist of a formal, live lecture format.

[REDACTED]  
[REDACTED]



5. **Modification of Current Advertisements**- To the extent it is feasible, Respondent shall arrange to have all of his current advertisements modified to comply with the Board of Chiropractic Medicine.

**STANDARD PROVISIONS**

1. **Appearance:** The Respondent is not required to be present when this Stipulation is presented to the Board.

*[Handwritten signature]*  
1/8/08

2. **No force or effect until final order** - It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

3. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

4. **Future Conduct** - In the future, Respondent shall not violate Chapter 456 or 460 Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice chiropractic medicine. Prior to signing this agreement, the Respondent shall read Chapters 456 or 460 and the Rules of the Board of Chiropractic Medicine, at Chapter 64B2, Florida Administrative Code.



*[Handwritten signature]*  
1/8/08



5. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 460, Florida Statutes.

6. **Purpose of Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

7. **No preclusion of additional proceedings** - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

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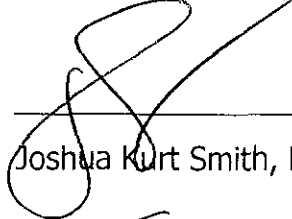
8. **Waiver of attorney's fees and costs** - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

9. **Waiver of further procedural steps** - Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.



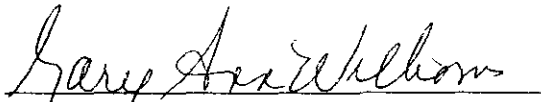
**WHEREFORE**, the parties hereby request the Board to enter a Final Order accepting and implementing the terms contained herein.

**SIGNED** this 31 day of Oct, 2007.

  
\_\_\_\_\_  
Joshua Kurt Smith, D.C.

Before me personally appeared Joshua K. Smith, whose identity is known to me by personally known (type of identification), and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed by Respondent before me this 31<sup>st</sup> day of October, 2007.

  
\_\_\_\_\_  
Notary Public



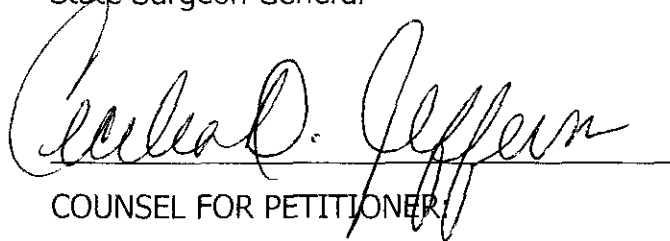
MARY ANN WILLIAMS  
Commission DD 651184  
Expires May 28, 2011  
Bonded Thru Troy Fain Insurance 800-385-7019

Notary Public

My Commission Expires:

**APPROVED** this 6<sup>th</sup> day of November, 2007.

Ana M. Viamonte Ros, M.D., M.P.H.  
State Surgeon General

  
\_\_\_\_\_  
COUNSEL FOR PETITIONER

Cecelia D. Jefferson  
Assistant General Counsel  
(850) 245-4640 ext. 8167

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STATE OF FLORIDA  
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2007-09861

JOSHUA KURT SMITH, D.C.

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Administrative Complaint before the Board of Chiropractic Medicine against Respondent, Joshua Kurt Smith, D. C., and in support alleges:

1. Petitioner is the state department charged with regulating the practice of chiropractic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 460, Florida Statutes.

2. At all times material to this complaint, Respondent was licensed to practice chiropractic medicine in the State of Florida, having been issued license number CH 8143 on or about January 12, 2001.

3. Respondent's address of record is 112 Casa Grande Court, Palm

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Beach Gardens, Florida 33418.

4. Respondent placed an advertisement in the 2007 Jupiter-Tequesta Bellsouth Yellow Pages as well as on a flyer for Abacoa Physical Medicine, a clinic Respondent owns.

5. Both the Yellow Page Advertisement and the flyer advertised that the facility offers the DRX 9000 spinal decompression technology for the treatment of disc herniations, degenerative disc, sciatica, Facet Syndrome, and pre or post surgical pain.

6. Respondent's advertisements stated that the DRX 9000 was "FDA Approved" when the DRX 9000 has only been cleared by the FDA, not approved by the FDA.

7. Respondent's advertisements further stated that in a clinical study, more than 86% of patients treated with the DRX 9000 were effectively corrected.

8. Respondent's statements that the DRX 9000 was 86% effective are misleading. The claim is based on one study only. The study used for the basis of the claim did not have a control group and it involved the use of multiple treatment modalities in addition to non-surgical spinal decompression.

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[REDACTED]  
[REDACTED]

### Count One

9. Petitioner re-alleges and incorporates paragraphs one (1) through eight (8) as if set forth fully herein.

10. Section 460.413(1)(d), Florida Statutes (2006), subjects a chiropractic physician to discipline for false, deceptive or misleading advertising.

11. Respondent's advertisements were false, deceptive, or misleading when it advertised that the DRX 9000 was "FDA approved" when it was only FDA cleared.

12. Based on the foregoing, the Respondent violated Section 460.413(1)(d), Florida Statutes (2006), by using false, deceptive, or misleading advertising.

### Count Two

13. Petitioner re-alleges and incorporates paragraphs one (1) through eight (8) as if set forth fully herein.

14. Section 460.413(1)(d), Florida Statutes (2006), subjects a chiropractic physician to discipline for false, deceptive or misleading advertising.

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15. Rule 64B2-15.001(2)(b), F.A.C. (2006), prohibits a chiropractor from disseminating or causing to be disseminated any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading. Any advertisement or advertising shall be deemed by the Board to be fraudulent, false, deceptive, or misleading when in its content or in the context in which it is presented it makes only partial disclosure of relevant facts.

16. Respondent's advertisement made only partial disclosure of the relevant facts when it:

a. failed to disclose that the alleged 86% success rate is based only on one study group without a control group;

b. failed to disclose that there were different modalities used during the course of the study.

17. Based on the foregoing, Respondent has violated Florida Statutes 460.413 (1) (d), (2005) – (2006).

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WHEREFORE, the Petitioner respectfully requests that the Board of Chiropractic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 24<sup>th</sup> day of September, 2007.

Ana M. Viamonte Ros M.D., M.P.H.,  
State Surgeon General

Cecelia D. Jefferson

Cecelia D. Jefferson  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399  
Florida Bar # 0007609  
(850) 245-4640 ext. 8167  
(850) 245-4682 FAX

**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK: Rae  
DATE: 9-20-07

PCP: Kirby/Wolfson

9/20/07

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## NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

## NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.

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[REDACTED]

[REDACTED]