

[IMAGE]

Dynamic Chiropractic – March 8, 1999, Vol. 17, Issue 06

Big Problems for VF Works/Nu-Best Franchising

Franchises Being Sold Illegally?

By Editorial Staff

You've heard the story before: a new technology that is touted as a diagnostic breakthrough and promises to make chiropractors famously successful. And like previous new technologies, the problem is not in the diagnostic capability, but in the details:

Where's the peer-reviewed research?

Is it safe?

Will the insurance companies reimburse for its use?

What about registering the equipment?

What are the liabilities?

VF-Works and its sister company (NU-Best Franchising) are in the business of selling franchises for their video fluoroscopy equipment. The equipment is mounted in a van to give it the mobility to go from chiropractic office to chiropractic office to make fluoroscopy videos for patients. Such a video costs \$650.

VF Works advertises and sells these units to doctors of chiropractic with this claim:

"\$500,000 - \$1 million dollars average annual income."

The cost of this set-up, as stated in the Nu-Best Franchising agreement, is equally impressive:

- \$25,000 - franchise fee
- \$125,000 - VF system van

- \$29,500 - beginning inventories, marketing and working capital

Additional Monthly Expenses:

- 5% royalty (\$500 per month minimum)
- 3% advertising contribution
- estimated \$3,000 per month in insurance
- approximately \$2,000 per month in additional expenses

But VF Works and Nu-Best have run into a few problems.

1. Were Nu-Best franchises sold in states where they weren't registered?
2. Did their vans lack the necessary lead walls to meet state standards?
3. Did the Food and Drug Administration (FDA) to issue a "Program Disapproval Letter," notifying VF Works: (You) "may not legally introduce any of your products into commerce?"
4. Did the FDA ask VF Works to recall their equipment?
5. Did the California Department of Health Services issue a letter: "You may not use or distribute your equipment in California?"
6. Are at least two franchises suing Nu-Best?

As part of our investigation, we contacted John R. Postlethwaite,DC, president and owner of VF Works,Inc., and Nu-Best Franchising,Inc. Dr. Postlethwaite's comments regarding the issues raised are included in this report.

The best way to understand the depth of the problems with VF Works and Nu-Best Franchising is to follow the experiences of one doctor of chiropractic in California. To the mortification of this chiropractor, the problems of buying the VF Works equipment and franchise snowballed over the course of two years until he was directed by the state to cease using the equipment. But by this time, the DC had lost his business. This is a chronology of his experience:

January 28, 1997 - The California DC receives a letter from VF Works, encouraging him to purchase the VF Works equipment and the Nu-Best franchise. The letter stated:

"The boundaries of the L.A. County (California) Franchise sold LAST MONTH are as follows: 'West Central part of L.A. County, defined by Santa Monica Mountains to the North, the Pacific Ocean to the West, the Harbor Freeway to the East and the Century Freeway to the South.'" (emphasis added)

January 29, 1997 - A letter is sent from David Beyer, VF Works/Nu-Best franchising attorney, to Susan V. Wood, Esq., senior corporations council, California Department of Corporations. The letter states:

"The Company (Nu-Best Franchising) denies that it is making any offers, and has not made any sales of franchises to California residents."

July 30, 1997 -John R. Postlethwaite, DC, president of Nu-Best Franchising, Inc., signs the "Nu-Best Franchising, Inc., Franchise Agreement" with the California chiropractor for a Nu-Best franchise in Orange County, California.

September 9, 1997 - Again a letter to the senior corporate council for the California Department of Corporations from Nu-Best attorney David Beyer, which continues to assert:

"Nu-Best informs us that it has not sold any franchises to a California resident, for operation in California or pursuant to an offer made or accepted in California."

When asked about whether Nu-Best Franchising had sold franchises in states without being licensed to do so, Dr. Postlethwaite, remarked:

"As you know, the sale of franchises is heavily regulated, and in some states pre-registration is required. Some franchisees have claimed that we sold franchises in states in which we were not registered. In two of those states, we utilized registration exemptions rather than go through the expensive registration process. In another state, we admit that we jumped the gun while the registration was pending, but we subsequently resolved this to the franchisee's and the regulator's satisfaction. Allegations have been made in one more state, but in that state we have never consummated franchise sales, either because we didn't receive payment or because we never completed contracts."

March 12, 1998 - California Department of Corporations' senior corporations council Susan Wood sends a

letter to Larry Barrett, chief of the Food, Drug and Radiation Division of the U.S. Department of Health Services. The letter included a November 17, 1996 "transmittal letter" which "related to the department's concern with mobile vans performing diagnostic services equipped with a VF system...." One paragraph reflected the concerns of a potential VF system equipment buyer:

"Subsequent to the August 29, 1996 filing, the Department received a letter from Paula Comstock, PhD, stating that she was '...shocked to learn (upon the California radiation inspection of our van) that our van did not have the promised lead walls, that radiation levels were dangerous outside the van and it would not pass California regulations...."

Dr. Postlethwaite's reaction:

"All of our equipment is independently tested to verify compliance with federal and state regulations regarding the performance of radiographic equipment and doses of radiation to patients, technical staff and members of the general public. Testing by a state-licensed medical physicist found all exposures to be well within the guidelines of the NCRP and state regulations, and well below the levels expected and measured from other fluoroscopic units, either fixed or mobile. Most state radiation examiners have been impressed and have commented on the quality of resolution at these low radiation levels. "The state of Michigan has the highest standards in the U.S., and we are happy to say that we have met even their standards."

July 28, 1998 - The Office for Compliance for the Center of Devices and Radiological Health of the Food and Drug Administration (FDA) issues a four-page "Program Disapproval Letter" addressed to John Postlethwaite, president/owner of VF Works, Inc., listing violations of the Electronic Product Radiation Control (EPRC) regulations: (*Editor's note: [Click here](#) to read the entire text of the July 28, 1998 letter*)

"Our review of the items listed on the FDA 483 and the Establishment Inspection Report (EIR) disclose significant violations of the EPRC. The following is a list of the more significant EPRC violations. This list is not an all-inclusive list of the EPRC violations that may exist at your facility.

"Section 538(a)(1): Your firm has manufactured and distributed Visualizer 2000 c-arm videofluoroscopic units which do not comply with the Federal performance standard for diagnostic x-ray equipment...

"Section 538(a)(3): Your firm failed to establish and maintain finished device testing records for Visualizer 2000 units...

"Section 538(a)(4): Your firm failed to submit a product (initial) report (including a complete description of the product) as well as a description of the quality control and testing program used by your firm..

"Section 538(a)(5): Your firm failed to establish an adequate certification testing program in accordance with the standard or which is in accordance with the Current Good Manufacturing Practices Requirements....

"Based on the violations listed above, FDA's Center for Devices and Radiological Health (Center) is disapproving your testing and quality control program for certification of the Visualizer 2000 system manufactured by your firm. Until this disapproval is lifted, you may not legally introduce any of your products into commerce."

At this point, the California doctor of chiropractic ceased operating his VF Works equipment.

August 7, 1998 - The director of the Florida district of the FDA issues a "warning letter" regarding an inspection of the VF Works device. (*Editor's Note: [Click here](#) to read the entire text of the Aug. 7, 1998 letter.*) This letter echoed the violations in the FDA's "program disapproval letter," but added:

"You should know that these are serious violations of the law that may result in FDA taking regulatory action WITHOUT FURTHER NOTICE TO YOU. (Emphasis added). The actions include, but are not limited to, seizing your product inventory, obtaining a court injunction against further marketing of the product, or assessing civil money penalties."

When asked about the status of VF Works' equipment with the FDA, Dr. Postlethwaite told us:

"VF Works is fully operational and as of February 4, 1999, we are in full compliance with Title 21 CFR 800 and Section 1000.3(j). We have fully addressed each of the observations in our most recent 483 by the FDA. All questions were answered, and we continue to work with RMS Regulatory and Marketing Services, Inc., of New Port Richey, FL (a company with over 25 years experience in this field) for our continued FDA compliance. Our ISO 9001 certification and CE Mark for Europe are currently in process and will be completed in the coming months."

On the possibility that their status may have changed, we contacted Tim Couzins, the FDA compliance officer in Florida who has been assigned to the VF Works' case (FLA-98-64), on the very same day we received Dr. Postlethwaite's remarks (February 10, 1999). Mr. Couzins told us that the FDA's "program disapproval letter" was still in full effect and that the agency had verbally asked if VF Works would recall their equipment, but the company declined to answer. He also stated that chiropractors who referred patients for scans on VF Works equipment would be liable for any misdiagnosis or injuries.

January 22, 1999 - The California Department of Health Services issues letters to Dr. John Postlethwaite and two franchises in California stating:

"We have received information from the U.S. Food and Drug Administration concerning the use and distribution of x-ray equipment distributed by VF Works, Inc. It appears that your equipment does not meet the federal performance standard in Title 21, Code of Federal Regulations (21CFR), Section 1000.3(j).

"Please be informed that you must not use or distribute your equipment in California until a demonstration is made showing conformance with the federal standard." (Emphasis theirs.)

Dr. Postlethwaite's reply to this was:

"Just recently, we received a letter from the state of California informing us that they have information that our equipment appears not to meet the federal performance standards of Title 21; however, we have already submitted information to them demonstrating conformance with the federal standards CFR 21 section 1000.3(j) and testing which demonstrates the safety of our equipment."

Is the Income Claim Real?

A claim of "\$500K-\$1 million average annual income" is an enticing offer. How realistic is that claim? We asked Dr. Postlethwaite, who replied:

"Our franchises have the potential of grossing at least \$500,000 within the second year and more thereafter if they follow our business system properly. While that is double the potential of the average chiropractic office, we do not feel this is overly optimistic at all for any franchise. Think about it - for this type of testing, we bill about 60% of the average cost of an MRI. Even if reimbursement is limited to 80%, our franchisee will only need to see four (4) patients per day to reach that level of production.

"Considering the average referring clinic has three patients per month who need this test, the franchisee needs approximately 30 clinics per month to reach this minimum goal. If a franchisee has a productive team working the system properly, 30 clinics (or 90 tests per month) should easily be attainable within their second year of service. You ask, how realistic is that? It is very realistic. I tell our franchisees that this business is not hard. It is systematic - just learn the system and follow it because it works. Recently, I completed 73 studies in one week. I have seen as many as 32 in one day. I know one franchisee completed 30 studies in one day recently. While that is unusual production for one day, it is certainly possible for any franchise to accomplish in a week."

We asked Dr. Postlethwaite what level of income the current operators of the company's VF equipment are enjoying:

"We have new franchisees who have not had time to reach such production levels, we have a few franchises who still are not following the program properly and may never reach that level, but we also have franchisees who are very much on target to reach this level and more. There are certain things that accompany a successful business of any kind, and our current and future franchisees must be willing to meet the challenge if they want to succeed. We will continue to assist our franchisees in every way possible, but ultimately it comes down to accepting responsibility for your business and the willingness to put in the hard work necessary to make it go."

Dynamic Chiropractic attempted to contact the 13 Nu-Best diagnostic lab franchises listed on the VF Works website (www.vf-works.com) *Editor's note: The website's content has since been changed.* Each franchise was asked about their income for the last 12 months. These are the results the 13 franchises reported:

Estimated Income over Last 12 Months:

\$320,000 - 1 franchise

\$300,000 - 1 franchise

\$250,000 - 1 franchise

\$50,000 - 2 franchises (one of those is in litigation with Nu-Best)

Out of Business - 3 franchises

No Longer Using Equipment - 2 franchises

Currently in Litigation with Nu-Best - 1 franchise

No Comment - 1 franchise

No Response - 1 franchise

Of the 11 DCs that provided us with information, their average annual income was just over \$88,000, with almost 64% of the responding franchises either out of business, no longer using the equipment, or in litigation with Nu-Best.

Deducting the applicable expenses (as stated in the Nu-Best franchising agreement) from an average annual income of \$88,000 changes the picture considerably:

Expenses:

Royalty (\$500 per month minimum)	\$6,000
Advertising Contribution (3%)	\$2,640
Insurance (\$3,000 per month)	\$36,000
Additional Expenses (\$2,000 per month)	\$24,000

Total Expenses	\$68,640

An \$88,000 annual income minus these expenses leaves less than \$20,000 net income.

Using the same expense guidelines, the two DCs who earned only \$50,000 would be looking at a net loss in excess of \$17,000 per year. This leaves three of the DCs (27%) making money with their franchises.

Dr. Postlethwaite assesses the status of his franchises a little differently:

"We have sold 27 franchises to date. We have experienced an 18.5% failure rate, which is well below the 25% failure ratio which is the standard among all companies offering franchises at this time.

"After reviewing the reasons behind each failure, we have found one common thread. Each failed franchise refused, for various reasons, to follow the prescribed franchise program of hiring the necessary team to operate this business successfully. Although they knew of our recommendation and received many verbal warnings to hire the appropriate team, they, without fail, never complied. This business requires hard work to build and is not intended to be run by a single operator. Although there

are usually other factors that contribute to their failure, the belief that this can be treated as a passive business or can be successful with less commitment or diligence than any other new business requires, is and always will be fatal."

When we suggested that there were a number of chiropractors who had "taken issue" with VF Works and Nu-Best, Dr. Postlethwaite remarked:

"It is unclear what is meant by "taken issue" with VF Works and Nu-Best Franchising. One thing that is clear, however, is the franchisees who did not do well did not follow our franchise system. It has become obvious that some have entered this business for the wrong reasons. This franchise program is first, about helping people find the reason for their pain, and secondly, about building a quality service business that is able to give back to the franchise owner a fair return on his investment. If you get that in reverse or try to circumvent any part necessary in building the whole, you will fail. In spite of all the marketing products and franchise support available to our franchisees, we can only do so much to help them be successful. Unfortunately, a few either did not take our system seriously or were unwilling to make the necessary sacrifices to make their opportunity successful."

Dr. Postlethwaite explained the mission and goals of VF Works:

"Mission: to help people find the reason to their pain by showing injuries that could never be seen before this technology.

"Goal: to bring quality technology to the medical profession to assist them in diagnosing connective tissue injuries and provide more effective treatment protocols. The franchise insures quality service will be made available at no cost to all doctors, large or small. The franchise also sets a high ethical standard closing the door on kickbacks which are prevalent today.

They welcome any of our readers "to tour our facilities in Palm Harbor, FL. We believe seeing this technology first-hand will prove its validity."

The validity or application of video fluoroscopy for chiropractic will have to be determined by valid research published in peer-reviewed journals, of which there now appears to be a serious lack.

What is strikingly clear is the difference between what is reported by the FDA and other government agencies and what is stated by Dr. Postlethwaite. Our investigation uncovered a number of other issues that

were not fully developed at press time. Watch for additional reports.

Editor's note: For reasons not quite clear to us, when we contacted Dr. Postlethwaite for this report he requested to place a full-page advertisement in this issue of *Dynamic Chiropractic*. When we received the advertisement, it did not contain the claim of "\$500K- \$1 million average annual income." Rather than accept the advertisement, we felt it more appropriate to use the space for this report.



Page printed from:

http://www.chiroweb.com/mpacms/dc/article.php?id=35160&no_paginate=true&p_friendly=true&no_b=true