

August 3, 2004

BY FEDERAL EXPRESS AND E-MAIL

Michael Greger, M.D.  
185 South Street, #6  
Jamaica Plain, MA 02130  
[Mhg1@cornell.edu](mailto:Mhg1@cornell.edu)

Re: Your Statements Concerning Atkins and Use of Atkins Trademarks

Dear Dr. Greger:

This letter is on behalf of Atkins Nutritionals, Inc. ("Atkins") in regard to certain statements appearing on your website located at [www.AtkinsFacts.org](http://www.AtkinsFacts.org) and [www.AtkinsFacts.com](http://www.AtkinsFacts.com) and made to the [CarbSmartChoices@yahoo.com](mailto:CarbSmartChoices@yahoo.com) mailing list regarding the Atkins Nutritional Approach™ ("ANA").

Notwithstanding your self-proclaimed concern for the public interest, your campaign to scare the public with aspersions and false innuendo about Atkins and the ANA undermines the public interest in receiving accurate information. Atkins respects and encourages legitimate debate regarding the merits of different nutritional programs. However, it will not abide the manner in which you have overstepped the line between legitimate advocacy and misleading commentary that impinges on Atkins' rights.

As you are undoubtedly aware, your position that the ANA presents serious health risks is at odds with the overwhelming weight of the evidence. In fact, as documented on the Atkins website (<http://atkins.com/science/researchsupportingatkins.html>), there are currently no fewer than thirty-four studies demonstrating the weight loss and other health benefits – and absence of adverse health effects – of a low carbohydrate diet. At least nine of those studies specifically compare a low carbohydrate diet favorably to a low fat and/or low calorie or "typical" diet.

In the face of this substantial medical evidence, most claims on your website constitute either exaggerated or scientifically undemonstrated statements, mere opinions from medical professionals or organizations, or out-of-context statements made by the late Dr. Atkins over 30 years ago (when less was known about nutrition and medicine).

While the empirically-supported conclusions of recognized medical professionals and organizations should be recognized, anecdotal claims and opinions without supporting references from the primary scientific literature are impossible to analyze objectively. You frequently fail to provide such references on your website, and ignore those studies supporting the ANA when they are inconvenient for you. Furthermore, by devoting a significant portion of your critique to the first edition of Dr. Atkins' diet book, published in 1972, you impart the misleading impression that Atkins has not incorporated the numerous advances in medical and nutritional research (such as the recognition of lipid subclasses as risk factors for heart disease) that have since occurred. In short, you have published a polemical piece that, despite containing bits of useful information, is exaggerated, blatantly misrepresentative, and materially erroneous.

A number of objectionable statements appear on the AtkinsFacts.org website regarding Atkins. Page references are to the "printer friendly" version of the site's main text:

- The site contains numerous distortions of information culled from cited sources. These distortions are inaccurate and extremely irresponsible. For example, you refer to a study that suggests that a quarter pound of beef raises insulin levels in diabetics as much as a pound of straight sugar (page 6). This study is flawed, because from an insulin standpoint, fifty grams of beef causes a rise in insulin that is statistically indistinguishable from the increase in insulin due to the same quantity of glucose. This is not surprising as insulin is responsible for delivering amino acids into body tissues. In addition, you fail to state whether this study was in a controlled setting, where a load of the food was given under fasting conditions, or in a mixed diet setting. In fact, the referenced study was performed under fasting conditions and study subjects served as their own controls. Leaving out this crucial information allows the data to be misinterpreted and misused for the purpose of supporting your argument. In another instance, you report that the Induction Phase of the ANA only provides two grams of fiber a day (page 13). This number was not calculated by doing an independent nutrient analysis based on the menus provided in Atkins' *New Diet Revolution*, and although reference is made to the 1999 edition of the book, nowhere does the book mention that only two grams of fiber are provided. In fact, the Induction Phase using just whole foods would deliver approximately 18 grams of fiber per day. The addition of one Atkins Advantage® bar includes an additional 6-10 grams of fiber per day. The lay reader, unfamiliar with medical research or how to sort through the findings of a study, is likely to accept your statements unquestioningly.
- Cost of Supplements. The site mentions the cost of vitamins and manufactured foods purportedly necessary to be purchased from Atkins in order to adhere to the ANA (page 19). However, these products are recommended only to supplement a variety of whole foods, including meats, cheeses, fruits, vegetables, and whole grains. The ANA

guidelines meet the federal minimum fruits and vegetables recommendations, including in the Induction Phase. Atkins also advises limiting use of manufactured foods as meal replacements to once a day.

- Comparisons to Other Nutritional Approaches. At pages 7 and 15 of the site, you provide an inaccurate interpretation of the data from the Dansinger study comparing the ANA, Weight Watchers, The Zone Diet, and the Ornish Diet, leaving the impression that the largely vegetarian Ornish Diet is superior to the ANA. That study actually showed a significant reduction in the Framingham risk score in all diets except for the Ornish Diet, and the average weight loss on the ANA was 6.4% after one year. The researchers concluded that any of those four popular nutritional approaches can promote weight loss and reduce heart disease risk. Dansinger also concluded that matching individuals with the correct program is the best way to achieve weight loss and health improvements.
- Water Loss. You distort your explanation of the biochemistry of carbohydrate metabolism in order to incorrectly associate the weight loss achieved through the ANA with being mere “water loss.” However, numerous studies have demonstrated that fat mass is lost on an Atkins-type program as long as calories are adequate.
- Side Effects. You exaggerate the potential side effects of the ANA at pages 12 and 14 of the website. It is true that followers of the ANA may experience temporary fatigue, difficulty concentrating and headaches in the first few days of doing Atkins, while the body adapts to switching metabolic pathways. By the second week of the Induction Phase, however, after the transition and when blood sugar is stabilized, most individuals experience high energy and clear thinking throughout the day. Headaches also typically disappear. Furthermore, other short-term side effects such as nausea and gastrointestinal symptoms also typically resolve themselves after the body has adjusted to a new way of eating. In unusual cases when symptoms continue past the first week, it is recommended that individuals advance to the next phase, increasing their carbohydrate intake. Constipation can occur on any weight loss program. Contrary to your assertion, the ANA includes fiber-rich foods such as spinach, eggplant, broccoli, asparagus and leafy greens. Beyond the Induction Phase, it also includes low-glycemic fruits such as berries and nuts and seeds. If more fiber is needed during Induction, fiber supplements such as psyllium husks, wheat bran or flax meal are recommended. Fiber supplementation is usually unnecessary in the Ongoing Weight Loss phase and beyond because individuals are consuming more vegetables and fruits.
- Cancer Risk. You selectively refer to articles to support your claim that the ANA can increase the risk of cancer. Interestingly, this is something you accused Dr. Atkins of doing at page 6 of your site. In fact, studies you omit from your discussion contradict your conclusions.

- Bone Loss and Kidney Function. Your arguments at page 21 that the ANA can adversely affect bones and kidney function are similarly unsupported. Urinary calcium loss is not an inevitable result of a low-carbohydrate dietary regimen. Although some short-term studies reveal a net urinary calcium loss, long-term studies directly examining bone loss via DEXA scan (a superior indicator of bone health relative to urinary calcium) reveal no bone loss. Atkins offers a variety of foods rich in calcium in all phases of the program, including Induction, where cheese, tofu, and leafy dark green vegetables such as spinach, chard and kale are encouraged. In subsequent phases, other high calcium foods such as yogurt and milk can be added. Nor does the ANA adversely affect kidney function. Although Atkins recommends that individuals with renal impairment seek medical approval from their personal physician prior to starting the ANA, studies have shown that high protein intake was not associated with renal function decline in women with normal renal function. It is important to note, which you do not, that the women in the Nurses Health Study were on long-term ibuprofen therapy prior to the study. This pharmaceutical intervention may lead to a decline in kidney function, particularly in the setting of alcohol consumption, thereby confounding any effects, if any, of high-protein intake. Of further note, this study examined a mixed composition diet (i.e. no major restrictions on any macronutrient) and not a low-carbohydrate diet analogous to the ANA.
- Lipid Profile. You assert at page 23 that the ANA adversely affects the lipid profile thereby increasing risk of cardiovascular disease. However, in the studies referenced by Atkins at <http://atkins.com/science/researchsupportingatkins.html>, the majority of subjects following a low-carbohydrate diet experience favorable responses (e.g. a decrease in serum triglycerides or LDL and an increase in serum HDL) (Westman 2002). A rise in serum LDL levels is not an inevitable response to low-carbohydrate dietary regimens. Some studies report no statistically significant changes in LDL levels (Stern, 2004; Yancy, 2004) or a statistically significant reduction (Westman, 2002) in LDL levels. Furthermore, some studies reveal that in subjects who experienced an increase in serum LDL levels, the increase is due to a greater number of large LDL particles (pattern A) and not an increase of atherogenic small LDL particles (pattern B) (Sharman 2004, Hays 2003, Sharman 2002). In addition, in some instances, the opposite trend may occur in low fat diets: "Paradoxically, a low-fat/high-carbohydrate diet exacerbates atherogenic dyslipidemia if the patient does not lose a significant amount of weight or increase his or her level of physical activity." (Volek 2002)
- Health Effects of Saturated Fat. Your assertions at page 26 regarding the health effects of saturated fats are misleading. Studies looking at the effects of saturated fat on LDL and total cholesterol have primarily been conducted in conjunction with a high carbohydrate

diet. In studies looking at the effect of saturated fat in the context of a controlled carbohydrate diet, adverse effects have not been found in a majority of the studies (Sharman 2004, Hickey 2003, Hays 2003, Hays 2002, Westman 2002, Volek 2000). Some of the studies showed a shift in the size of LDL to the larger, more buoyant size (Sharman 2004, Hays 2003, Sharman 2002) and current research shows that small LDL particles are more atherogenic (Dreon 1998). Saturated fat can raise HDL (Hickey 2003, Westman 2002). High HDL levels have shown to be protective against coronary heart disease. Therefore, even if LDL is slightly increased, the LDL/HDL ratio and total cholesterol/HDL ratio are still improved after following a low carbohydrate, high saturated fat diet (Volek 2003).

- Your claim at page 27 of the site that the ANA is responsible for the death of Rachel Huskey is inflammatory and without support. While the death of Ms. Huskey is certainly tragic, the immediate cause of her death is reported as an underlying electrolyte imbalance. The physicians involved in the case have freely admitted that it cannot be known whether her diet (or other causes including eating disorders) contributed to her death. Similarly, your claims at page 24 that participants in a recent study of the ANA died are also baseless and inflammatory. In the first case, the authors of the study attribute the death to "poor compliance with drug therapy for diabetes" (Samaha, 2003). In regards to the second death, it is commonly known in the medical community that the occurrence of severe ischemic cardiomyopathy was the result of chronic plaque build-up in the coronary arteries occurring over the course of years and is not the result of a ten-month diet study. The authors of the study do not speculate on a cause for the latter death.
- With respect to claims brought against Atkins by Jody Gorran, Atkins believes that those claims are entirely lacking in merit and will be dismissed. Mr. Gorran's claims are predicated on a falsified portrayal of the nutritional advice contained in *Dr. Atkins' New Diet Revolution* and on the Atkins website. In addition, according to his medical records attached to his complaint, Gorran has a "significant" family history of heart disease and seeks to hold Atkins liable for the consequences of his eating "large amounts of pastrami and cheesecake" – a diet that does not, in fact, comport with the Atkins program – for over two years, despite having learned some two months into this regimen of a dramatic rise in his cholesterol level.

These and other comparable unsubstantiated, defamatory statements regarding Atkins and the ANA may serve to promote your agenda, but, as noted, they do not serve the public interest in receiving accurate information regarding Atkins and its program, and, unless modified in the fashion we urge, will continue to harm Atkins' reputation and cause injury to Atkins.

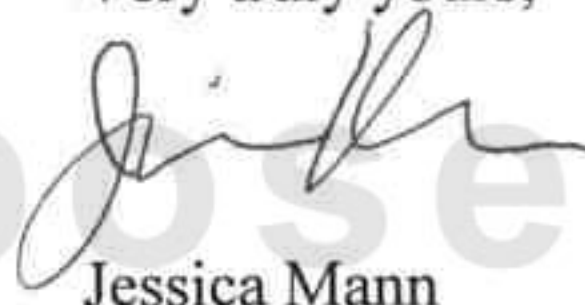
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In addition, your use of the Atkins name and trademark in connection with your website constitutes a violation of the Lanham Act. Atkins owns a family of trademarks incorporating the word ATKINS including ATKINS (U.S. Reg. Nos. 2,708,481; 2,699,457; and 2,689,974), DR. ATKINS (U.S. Reg. No. 2,246,113), ATKINS DIET (U.S. Reg. No. 2,434,476), the Atkins "A" logo (U.S. Reg. No. 2,411,688) and other related marks, both registered and pending registration (the "ATKINS Marks"). In addition to these trademarks, Atkins owns and uses numerous internet domain names incorporating the ATKINS Marks.

Your use of the ATKINS Marks as part of the domain names for your website, as well embedded in the metatag section of the site's source code, constitutes dilution and is likely to confuse consumers who would believe, in conducting an internet search, that your site is affiliated with or sponsored by Atkins. Only upon being wrongfully diverted to your site would one learn there is not an affiliation with Atkins. Unauthorized use of this type will typically entitle Atkins to a broad range of monetary and equitable remedies under federal and state law, including section 1125 of Title 15 of the United States Trademark Act. To help mitigate the concerns set forth above regarding misleading comments about Atkins, it is imperative that you include on your AtkinsFacts.org website a prominent disclaimer reading: "This site is not affiliated with, sponsored by, or related in any way to Atkins Nutritionals, Inc. If you would like to visit their site, please use the following link: [www.atkins.com](http://www.atkins.com)." In demanding this disclaimer, Atkins in no way waives, and in all respects reserves, its rights under federal and state trademark and unfair competition laws to seek relief for your unlawful use of the Atkins-owned trademarks.

Please be advised that if you persist in misrepresenting the Atkins Nutritional Approach and the research supporting the ANA, you do so at your own risk. We intend to monitor closely the AtkinsFacts.org website and other oral and written statements by you.

Very truly yours,



Jessica Mann  
Associate General Counsel