

BEFORE THE WEST VIRGINIA BOARD OF CHIROPRACTIC

WEST VIRGINIA BOARD OF CHIROPRACTIC,
Complainant,

v.

Complaint Nos. 2013-147
 2013-152
 2013-156
 2014-159

EMIL R. NARDONE, II, D.C.,
Respondent.

CONSENT AGREEMENT AND ORDER

After due investigation of two written complaints and two complaints initiated by the West Virginia Board of Chiropractic (hereinafter "Board"), the Board determined that there was probable cause to believe that Emil R. Nardone, II, D.C. (hereinafter "Respondent") has exhibited unprofessional and unethical conduct in the practice of chiropractic, in violation of the provisions of W. Va. Code ' 30-16-1 *et seq.* and the Rules of the Board, W. Va. Code R. ' 4-1-1 *et seq.*

However, in lieu of this Agreement the Board has dismissed Complaints No. 2013-147 and 2014-159. The Respondent was provided with written notice of the allegations against him pursuant to the rules of the Board and the laws of this State.

Now, in lieu of a hearing, the parties have reached an agreement for the resolution of the above styled matter and the parties agree to entry of the following Order in disposition of this matter.

FINDINGS OF FACT

The Board adopts the following findings in this matter:

1. The Board is a state agency created by West Virginia Code ' 30-16-1, *et seq.*, and is empowered to regulate the practice of chiropractic in the State of West Virginia.
2. In order to carry out its regulatory duties, the Board is empowered to suspend, revoke or to otherwise discipline an individual's chiropractic license because of authority granted to by W. Va. Code ' 30-16-11.
3. Emil R. Nardone, II, D.C., (hereinafter "Respondent") is a licensee of the Board and is subject to the license requirements of the Board.
4. That at all time relevant the Respondent owned and practiced at The Original Nardone Chiropractic & Wx in Benwood, West Virginia.
5. That the Respondent uses various forms of advertisement, including the Internet. On the Respondent's website page located at nardonechiropractic.com, the Respondent states that he is "#1 rated and nationally recognized." Moreover, Respondent in a You Tube video makes a claim that he has been "nationally recognized as an expert in drug free pain management" and is in "the top five percent chiropractic offices in America and one of the country's fastest growing top rated chiropractic wellness centers." Further, similar claims can be found at northeastfunctionalhealth.com which is another of the

Respondent's websites wherein Dr. Nardone claims he is a "nationally-recognized and highly sought after functional healthcare expert;" however, there are no citations to substantiate this claim of expertise.

6. Moreover, this website continues to state that the Respondent specializes in diabetic care, and that the Respondent can reverse chronic disease. Additional claims are made in regards to the reversal of Type II diabetes through a natural alternative instead of traditional drugs such as insulin. It is stated on the website that where most physicians test for blood sugar and A1C levels and not much else, Dr. Emil Nardone designed an integrative testing approach that goes into much more depth.

7. Respondent in responding to one of the Board initiated complaints regarding advertising via electronic mail on May 14, 2103, stated that he has been voted the #1 rated chiropractor in the Ohio Valley three times beginning in 2009 by the *Wheeling Intelligencer*. The Board had initiated the other complaint based upon anonymous information received regarding advertising and scope of practice and through its own investigation. On December 5, 2013, the Board sent the Board-initiated complaint to the Respondent for a response, and the Respondent did respond via letter dated January 3, 2014.

8. Respondent denies that his advertisements are deceptive and misleading, and states that a third party was hired and made decisions on his advertising.

9. Respondent denies practicing outside the scope of practice and states that he has not promised any type of cure for diabetes.

10. Respondent is not a licensed osteopathic doctor or medical doctor.

11. That the Board found probable cause in violation of W. Va. Code ' ' 30-16-11(a)(4), (5), (6) and (12) and W. Va. Code R. ' 4-1-6.1.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations of unprofessional or unethical conduct set out above in the *Findings of Fact* section, the Board is authorized to suspend, revoke or otherwise restrict the license of the Respondent to practice as a chiropractic, pursuant to W. Va. Code ' 30-16-11.
3. That the Board finds that the Respondent is in violation of W. Va. Code ' ' 30-16-11(a)(4), (5), (6) and (12) and W. Va. Code R. ' 4-1-6.1.

CONSENT OF LICENSEE

I, Emil R. Nardone, II, D.C., by affixing my signature hereto, acknowledge the following:

1. That I have had the opportunity to consult with counsel and execute this Consent Agreement voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.
2. That no person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth herein.
3. That I acknowledge that I am aware that I may pursue this matter through appropriate administrative and/or court proceedings, and I am aware of my legal rights regarding this matter, but intelligently, knowingly and voluntarily waive such rights.
4. That I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.

The Respondent, Emil R. Nardone, II, D.C., by affixing his signature hereon, agrees to the following:

ORDER

On the basis of the foregoing, the Board does hereby ORDER and DECREE that:

1. Respondent, Emil R. Nardone, II, D.C., is hereby REPRIMANDED for his actions in the instant matters as outlined above.
2. Respondent shall remove all language in all forms of advertisements, including but not limited to Internet, radio, television, print media that include claims of superiority without any substantiation which includes the You Tube video. Moreover, the Respondent agrees to remove all claims and offers to reversing Diabetes or curing it. Further, the Respondent shall not hold himself out as a specialist in Diabetes care or treatment.
3. Respondent shall pay up to \$2,000.00 dollars in costs incurred by the Board in investigating and prosecuting these matters. Full payment shall be received in the Board office no later than six months from entry of this *Consent Agreement and Order*.
4. The Board is bound by agreement and by law to report the results of all disciplinary actions, including the instant matter, for posting in the Chiropractic Information Network/Board Action Databank (CIN-BAD).
5. This *Consent Agreement and Order* resolves and addresses all pending matters before the Board involving the Respondent.
6. That this document is a public record as defined in W. Va. Code ' 29-1-2(4).

7. This *Consent Agreement and Order* constitutes the entire agreement between the parties.

8. This *Consent Decree and Order* shall be interpreted in accordance with the laws of the State of West Virginia, and venue of any lawsuit filed by any party arising in whole or in part out of this *Consent Decree and Order* shall be in the Circuit Court of Kanawha County, West Virginia, and further that in the event any part of this *Consent Decree and Order* is invalidated by order of a court of competent jurisdiction or by legislative action, the remainder of this *Consent Decree and Order* shall remain in binding effect. In recognition of this Agreement and these terms, we hereby affix our signatures.

WEST VIRGINIA BOARD OF
CHIROPRACTIC

By:



Roger A. Kritzer, D.C.
Board Chairman

Entered:

21/0/14

DATE

Reviewed and agreed to by:



Emil R. Nardone, II, D.C., Respondent



Shawn Fluharty, Counsel for the Respondent