

BEFORE THE WEST VIRGINIA BOARD OF CHIROPRACTIC

WV BOARD OF CHIROPRACTIC

WEST VIRGINIA BOARD OF CHIROPRACTIC,
Complainant,

JAN 05 2015

RECEIVED

V.

Complaint No. 2014-160

MARK MYERS, D.C.,
Respondent.

CONSENT AGREEMENT AND ORDER

After due investigation of a written complaint by the West Virginia Board of Chiropractic (hereinafter "Board"), the Board determined that there was probable cause to believe that Mark Myers, D.C. ("Respondent") has exhibited unprofessional 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.* 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. Mark Myers, D.C., ("Respondent") is a licensee of the Board and is subject to the license requirements of the Board.

4. That at all times relevant the Respondent owned and operated his own chiropractic business in Spencer, West Virginia, as a sole proprietor with no employees.

5. On June 3, 2014, the Board received a Complaint against Respondent filed by Brooke Drake. Ms. Drake alleges inappropriate contact with her while undergoing chiropractic treatment in her home. Moreover, Ms. Drake had been previously treated by the Respondent at his chiropractic business.

6. A copy of the Complaint was sent to the Respondent for a response and a timely response was received on June 30, 2014, by the Board.

7. Respondent states that he was treating Ms. Drake not in the course of chiropractic medicine, but instead the Respondent was using the technique called Generative Touch which assists individuals through emotional and physical healing. Moreover, the Respondent stated that he does not charge any monetary amount for this type of service.

8. Respondent admits in his response that he "might have exercised better judgment" in the course of using the Generative Touch technique.

9. The Board initiated an investigation once the response and reply were received by the Board. During the Board's Investigation, the Investigator or designated individuals, reviewed the relevant

documents and interviewed any necessary parties, including both the Complainant and Respondent. Moreover, Respondent appeared voluntarily before the Board at its November 6, 2014, meeting.

10. That the Board's Investigator recommended a finding of probable cause for violations of W. Va. Code § 30-16-11(a)(30) and W. Va. Code R. §§ 4-1-5.4 and 4-1-4.1.

11. That the Board at its November 6, 2014, Board meeting, did by unanimous vote, find probable cause in violation of W. Va. Code § 30-16-11(a)(30) and W. Va. Code R §§ 4-1-5.4 and 4-1-4.1.

12. That the Board found probable cause in violation of W. Va. Code § 30-16-11(a)(30) and W. Va. Code R. §§ 4-1-5.4 and 4-1-4.1.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against Respondent.
2. That based upon the allegations of unprofessional 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.

CONSENT OF LICENSEE

I, Mark Myers, 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.

5. That I admit that my actions were a violation of the statute and rules of the Board.

The Respondent, Mark Myers, 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, Mark Myers, D.C., is hereby REPRIMANDED for his actions as outlined above.

2. Respondent shall take and pass all five topic areas of the EBAS Essay Examination within six months from the entry of this *Consent Agreement and Order*. Moreover, Respondent shall report his EBAS examination results to the Board within six months of entry of this *Consent Agreement and Order*. All costs associated with the taking of this examination shall be bore by the Respondent.

3. Respondent shall develop a form to be read and signed by those patients he treats outside the scope of his chiropractic practice wherein he uses such techniques as Generative Touch. The form must

inform the patient that during the course of treatment the Respondent is not using any chiropractic techniques nor practicing chiropractic medicine. Respondent is performing these techniques as a lay person and not through the practice of chiropractic medicine. This form shall be approved by the Board prior to its use by the Respondent. Once the form is signed and dated by the patient the Respondent shall maintain a file in order that the Board may inspect these forms for up to a period of two years.

4. Respondent shall reimburse the Board for the cost of these proceedings, including but not limited to, legal expenses and administrative costs incurred by the Board. Full payment shall be received in the Board office no later than six (6) months from entry of this *Consent Agreement and Order*.

5. 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).

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:



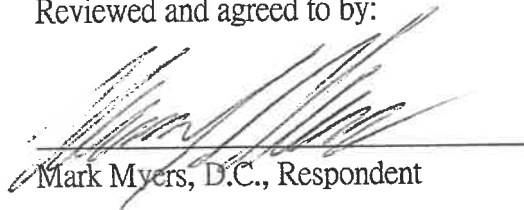
Roger A. Kritzer, D.C.
Board Chairman

Entered:

1-5-2015

DATE

Reviewed and agreed to by:



Mark Myers, D.C., Respondent