

**State of New Hampshire**  
**OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION**  
**DIVISION OF HEALTH PROFESSIONS**

Board of Chiropractic Examiners  
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In the Matter of:

**Andrew Gallinaro, DC**

**License No.: 650-0102**

(Adjudatory/Disciplinary Proceeding)

**Docket No. 19-DC-010**

**FINAL DECISION AND ORDER**

Board Members:

Keith J. Zimmerman, D.C.  
Lisa M. Lanzara-Bazzani, D.C.  
Tamara Lovelace, D.C.  
Lawrence Patten

Not Participating:

David Lundgren, D.C.

Appearances:

Tierney M. Chadwick, Esq.  
Sloane and Walsh, LLP  
Counsel for Respondent

Janice Rundles, Esq.  
Caitlin Pool, Esq.  
Administrative Prosecutions Unit  
Hearing Counsel

Also Present:

Jon-Daniel Lavalley, Esq., Board Counsel  
Michelle Thibeault, Board Administrator

Hearing Counsel Witnesses:

M.M.  
P.M.  
Allison Vachon, Investigator  
David Letellier, D.C.

Respondent Witnesses:

Susan Baker  
Andrew Gallinaro, D.C.

John Merrick, D.C.  
Jennifer Henry

### **Background Information**

The New Hampshire Board of Chiropractic Examiners (the “Board”) first granted a license to Andrew Gallinaro, DC (the “Respondent”) on January 10, 2002. Respondent holds license number 650-0102. Respondent offers chiropractic and “functional health” services under the corporate name Comprehensive Healthcare, located in Londonderry, New Hampshire. On May 11, 2017, Respondent entered a Settlement Agreement requiring, among other things, Respondent to practice under a monitoring contract with a licensed chiropractor; to incorporate chiropractic treatment into his functional health treatment program; and, to refrain from advertising offers to cure medical conditions. Exhibit 17.

On March 5, 2018, the Board received a complaint from M.M. (“Complainant”), who had recently attended a weight loss seminar offered by Respondent and a subsequent consultation in his office. According to the complaint, Respondent diagnosed Complainant with several serious medical conditions, including that she was in imminent danger of a fatal heart attack. Complainant alleged Respondent claimed he could cure these medical problems if Complainant paid for his six-month program. See Exhibit 1. The complaint noted that, during the consultation and subsequent visit, Respondent did not provide Complainant with chiropractic treatment. Id. Complainant claimed that she consulted with another provider, who did not support Respondent’s diagnoses of the Complainant.

Following receipt of the complaint, the Board opened an investigation. Dr. David Letellier was assigned to investigate. On July 25, 2019, Dr. Letellier completed a report of Investigation (“ROI”). In preparing the ROI, Dr. Letellier reviewed, among other things, the complaint, recorded interviews of the complainant, Respondent, and Respondent’s chiropractic

assistant, medical records and notes made by Respondent, treatment records of the complaint, reports of telephonic interviews of the complainant's mother and husband, photographs, and advertisements for Respondent's programs. See Exhibit 3 at 1–2.

After reviewing the ROI, the Board voted to proceed with a hearing and issued a Notice of Hearing on August 14, 2019. The Notice of Hearing contained allegations against Respondent relative to his care of patient M.M. See Notice of Hearing, paragraph 5, subparagraphs A–I. The Notice of Hearing also indicated the specific issues to be determined at the hearing, including the issues found at paragraph 6, subparagraphs A–F, claiming potential violations of RSA 316-A:1, RSA 316-A:15, RSA 316-A:22, II(c)–(d), (g), RSA 316 and Ch 401.06, Ch 403.01, Ch 403.02, Ch 403.04, Ch 406.05, Ch 406.09.

The hearing was held on October 24, 2019, and November 7, 2019. Dr. Gallinaro appeared and was represented by his attorney, Tierney M. Chadwick, Esq. Dr. Gallinaro submitted the following exhibits:

- A. Agreement for Monitoring Services.
- B. Letter dated November 10, 2017, from John Merrick, M.A., P.T., D.C. to NH Board of Chiropractic Examiners.
- C. 1<sup>st</sup> Quarterly Report Submitted by Dr. Merrick to NH Board of Chiropractic Examiners. **(filed under seal)**.
- D. 2<sup>nd</sup> Quarterly Report submitted by Dr. Merrick to NH Board of Chiropractic Examiners. **(filed under seal)**.
- E. June 1<sup>st</sup> letter of Dr. Merrick to NH Board of Chiropractic Examiners.
- F. 3<sup>rd</sup> Quarterly Report submitted by Dr. Merrick to NH Board of Chiropractic Examiners. **(filed under seal)**.

G. 4<sup>th</sup> Quarterly Report submitted by Dr. Merrick to NH Board of Chiropractic Examiners. **(filed under seal)**.

H. October 8, 2018, Letter from NH Board of Chiropractic Examiners to Andrew Gallinaro.

I. Facebook post of M.M. to Comprehensive Healthcare's Facebook Page.

J. Letter from Doreen Whittenberg to Dr. John Merrick regarding Second Quarterly Report.

Hearing Counsel submitted the following exhibits.

1. Complaint, dated March 5, 2018.  
2. Response to Complaint, dated June 20, 2018.  
3. Report of Investigation ("ROI"), dated July 25, 2019.  
4. Records pertaining to Complainant's visits to Respondent between 2/13/18 and 3/2/18. **(filed under seal)**.

5. Blood test results and other materials given to Complainant during 3/1/18 office visit. **(filed under seal)**.

6. Complainant's OB/GYN records for 3/2/18. **(filed under seal)**.

7. Complainant's phone record for 3/2/18.

8. "Contour Light" advertisement received by Complainant via email from Respondent.

9. Transcript of Respondent's recorded (under oath) interview with Consumer Protection Bureau ("CPB") on March 26, 2019.

10. Examples of advertisements provided by Respondent pursuant to subpoena duces tecum issued by CPB.

11. Respondent's CV, provided pursuant to CPB subpoena.
  12. Informed consent form used by Respondent for Comprehensive Healthcare clients, provided pursuant to CPB subpoena.
  13. Informed consent form used by Respondent for Functional Health clients (from website), provided pursuant to CPB subpoena.
  14. Memorandum of interview conducted for Dr. Suket Kumar, DC, on May 9, 2019 by Investigator Vachon, and Complainant's records of chiropractic treatment by Dr. Kumar in 2016. **(filed under seal)**.
  15. Photographs taken at site visit to Respondent's office on November 1, 2018.
  16. Transcript of recorded interview of Respondent conducted by APU on June 26, 2019.
  17. Settlement Agreement in prior case against Respondent (No. 650-0102), approved by Board on May 11, 2017.
  18. Letter dated June 12, 2018, sent by Board to Dr. John Merrick, monitor for Respondent under 2017 Settlement Agreement, regarding 3<sup>rd</sup> Quarterly Report.
  19. Curriculum Vitae of Dr. David Letellier, DC.
- Hearing counsel called Complainant, Complainant's husband, Allison Vachon, and Dr. David Letellier as witnesses. Dr. Gallinaro testified on his behalf, as well as Susan Baker, John Merrick, D.C., and Jennifer Henry. Pertinent testimony of these witnesses is discussed below.

### **DISCUSSION**

Dr. Letellier testified that he is the Professional Misconduct Coordinator for the Board and was assigned to investigate the complaint at issue at the hearing. Dr. Letellier testified consistent with the information contained within the Notice of Hearing. Dr. Letellier stated that

services provided must be related to chiropractic care. Respondent testified during an interview that he provided only functional health and wellness services to 20% of his clients. “Functional health and wellness services” are not chiropractic services, and are not permissible preparatory and complementary services without the associated chiropractic examination or service.

According to Dr. Letellier, chiropractic practice requires a treating provider to conduct an examination upon an initial consultation; Respondent failed to do so in Complainant’s case.

Complainant, M.M., testified that she first met Respondent at his February 18, 2018, weight loss treatment seminar. She subsequently scheduled an initial consultation with Respondent and paid for lab work to be performed. Complainant stated that she did not discuss chiropractic care at all with Respondent, nor did she intend to seek chiropractic care with Respondent. Rather, the purpose of consulting with Respondent was to explore weight loss solutions.

On March 1, 2018, Complainant had a follow-up appointment with Respondent, which was also attended by Complainant’s husband. During this appointment, Respondent gave Complainant and her husband the results of her lab work. Complainant testified that Respondent stated, among other things, that Complainant had an infection in her system that other providers had not recognized. Further, Respondent told Complainant that, while other providers had diagnosed Complainant with fibromyalgia, she did not, in fact, have a diagnosis of fibromyalgia. Respondent diagnosed Complainant with several medical conditions, including pre-diabetes, fatty liver, renal stress stage 2, and megaloblastic anemia. See also Exhibit 5. Respondent told Complainant that she was the type of individual who would “just drop dead of a heart attack.” Complainant’s husband testified similarly regarding this visit with Respondent.

Respondent recommended that Complainant participate in a six-month program with Respondent that consisted of supplements and visits. The program cost \$6400.00. Respondent told Complainant that if she participated in the program, it would resolve these medical problems. Complainant told Respondent that she could not afford \$6400.00, to which Respondent asked if they could find a way to pay for the program. Complainant stated they decided to go home and would figure out how to pay for the program. Respondent instructed Complainant not to consult with another provider, including a medical doctor, because those providers do not treat the underlying causes.

Complainant shared her lab results with her mother (a nurse) that evening, who was not concerned about Complainant's lab results. The next day, Complainant attended a scheduled appointment with her OB/GYN and showed her provider the results. The provider stated that Complainant did not have the severe medical issues that Respondent had diagnosed "and wasn't going to die in three days." In response, Complainant canceled her next follow-up appointment with Respondent. Thereafter, Dr. Gallinaro called Complainant and inquired why Complainant had canceled. Complainant reported that she had spoken to another provider. Dr. Gallinaro became angry and the Complainant ended the phone call.

Allison Vachon, an Investigator with the Administrative Prosecutions Unit, testified that she was assigned to investigate the complaint at issue in the hearing. Ms. Vachon testified that, during the investigation, she conducted several interviews, including an interview with Dr. Gallinaro's former associate, Suket Kumar, D.C. Dr. Kumar told Ms. Vachon that Dr. Gallinaro required an associate because Dr. Gallinaro was primarily focusing on functional medicine.

Ms. Vachon conducted an unannounced inspection of Dr. Gallinaro's office on November 1, 2018. During the inspection, Ms. Vachon took four photographs at the site

inspection. See Exhibit 15. Two photographs depict supplements available at Dr. Gallinaro's office; two other photographs depict signs purporting to advertise Dr. Gallinaro's Functional Health and Wellness Services.

John Merrick, D.C., testified that he practiced as a chiropractor for thirty-plus years. Dr. Merrick testified that he has a professional association with Dr. Gallinaro, whom he has known for 10–12 years. Dr. Gallinaro's practice focuses on holistic health. Upon Dr. Gallinaro's request, Dr. Merrick attended the mediation leading to the 2017 Settlement Agreement. Dr. Merrick served as Dr. Gallinaro's monitor for the 2017 Settlement Agreement. Dr. Merrick understood, based on the negotiations leading to the 2017 Settlement Agreement, that, as long as Dr. Gallinaro's patients were receiving chiropractic care from any provider, Dr. Gallinaro could provide those patients with functional health services even if the patients did not receive chiropractic care directly from Dr. Gallinaro. Dr. Merrick acknowledged receiving a letter dated June 12, 2018, from the Board, informing Dr. Merrick that, per RSA 316-A, all active patients were required to be under corrective care or wellness care in Dr. Gallinaro's office. Exhibit 18.

Dr. Gallinaro testified that his "approach has always been how can you get someone to a better level of health and how can you do it with lifestyle and nutrition changes and chiropractically . . . ." According to Dr. Gallinaro:

[T]he role of a chiropractor is to find out what is the r[oot] cause. You know, if someone has a headache does that mean they have a vitamin deficiency. They might have a bone out of place, they might have multiple food sensitivities. So you adjust them and they feel good for a couple days, but if you don't eliminate the dyes in the foods they're eating you're not going to help them in the long run, so my philosophy is how do we actually fix the problem.

As part of his functional health practice, in 2018, Dr. Gallinaro was certified by the Pastoral Medical Association, which is "a Christian based organization . . . that believes in the principles of natural health and healing, functional health and wellness . . . ."

Regarding the 2017 Settlement Agreement, Dr. Gallinaro agreed that he “understood that one of the concerns the Board had was related to the functional health program,” and that “the Board wanted [him] to incorporate chiropractic care” into treatment of diabetes in his patients. Dr. Gallinaro explained that, based on conversations during the mediation leading up to the 2017 Settlement Agreement, he believed the terms permitted patients who were being treated by another chiropractor to still be treated by Dr. Gallinaro for functional health only.

Dr. Merrick served as Dr. Gallinaro’s monitor under the 2017 Settlement Agreement. Dr. Gallinaro testified that he performed “a standard level three exam” for functional health patients. Dr. Merrick reported in his first few quarterly reports that “not all functional health patients had to be adjusted,” but Mr. Merrick did not inform Dr. Gallinaro that he was in violation of the 2017 Settlement Agreement “by not adjusting those patients.” Dr. Gallinaro testified that “[t]here were some patients that were not receiving any chiropractic care.” He admitted that he previously reported that twenty percent of his patients “were solely functional health patients, not chiropractic patients,” but testified those services were not offered under the chiropractic license.

According to Dr. Gallinaro, M.M. was treated by Dr. Coomb’s, Dr. Gallinaro’s associate, in 2016. Even though Dr. Gallinaro did not adjust M.M., he considered M.M. to be his patient, because he was the clinical director. When M.M. came to the weight loss seminar, Dr. Gallinaro had M.M.’s chiropractic records. Dr. Gallinaro testified that, although M.M. came in for weight loss, that did not “mean that chiropractic wasn’t also going to be part of [the] wellness plan for her.” Dr. Gallinaro was “quite concerned about her findings” on bloodwork and recommended M.M. follow up with her primary care physician “before we get started with any program or recommendations . . . .” Dr. Gallinaro denied telling M.M. that she was “going to drop dead of a heart attack,” but did state she had certain risk factors for cardiovascular disease.

**FINDINGS OF FACT AND RULINGS OF LAW**

The first issue before the Board is whether, between February 13 and March 2, 2018, Respondent engaged in repeated professional misconduct by violating the terms of his 2017 Settlement Agreement (8-C:1-2). Based on the testimony and evidence introduced at hearing, the Board found that Respondent again purported to diagnose and/or be able to cure serious medical conditions, and again did not incorporate chiropractic treatment into the treatment program he offered to Complainant. The Board thus determined that Dr. Gallinaro violated RSA 316-A:1 (definition); RSA 316-A:22, II(g) (willful or repeated violations of this chapter) and Ch 403.01(g) (willful or repeated violations of statute or rule)

The second issue is whether, between October 2017 and August 14, 2019, Respondent engaged in professional misconduct by failing to incorporate chiropractic treatment into the treatment programs he offered to his functional health clients. Based on the testimony and evidence introduced at hearing, the Board found that twenty (20) percent of Respondent's clients received functional health and wellness services and no chiropractic services, in violation of the 2017 Settlement Agreement. The Board thus determined that Dr. Gallinaro violated RSA 316-A:1 (definition), RSA 316-A:22, II(g) (willful or repeated violations), and Ch 403.01(g) (repeated violations of statute or rule).

The third issue before the Board is whether, between February 13 and March 2, 2018, Respondent engaged in professional misconduct in his interactions with Complainant by practicing outside the scope of chiropractic science. Based on the testimony and evidence introduced at hearing, the Board found that "functional health" is not permissible preparatory and complementary, without chiropractic examination or services, and advertising such is misleading. The Board thus determined that Dr. Gallinaro violated RSA 316-A:1 (definition),

Andrew Gallinaro, DC  
Docket No. 19-DC-010

RSA 316-A:22, II(c) (disciplinary action), Ch. 401.06 (prep and complementary procedures) and 406.09 (prep and complementary procedures).

The fourth issue before the Board is whether, on or about March 1, 2018, Respondent engaged in professional misconduct by exaggerating Complainant's medical condition, and/or proposing unnecessary treatment to Complainant, and/or suggesting to Complainant that he could cure her medical conditions. The Board found the testimony and evidence introduced at hearing did not establish by a preponderance of evidence Dr. Gallinaro committed professional misconduct with respect to that issue.

The fifth issue to be decided is whether, on March 1, 2018, and March 2, 2018, Respondent engaged in professional misconduct by advising Complainant that she should not consult her medical doctors about her purported medical conditions. The Board found the testimony and evidence introduced at hearing did not establish by a preponderance of evidence Dr. Gallinaro committed professional misconduct with respect to that issue.

The sixth issue to be decided is whether, between March 2, 2018, and August 14, 2019, Respondent engaged in professional misconduct by failing to respond honestly and candidly to the Board's investigation of this complaint. The Board found the testimony and evidence introduced at hearing demonstrates that Dr. Gallinaro had an established professional association with Dr. Merrick that predated the 2017 Settlement Agreement, in violation of Section 8-F:2 of the 2017 Settlement Agreement. The Board thus determined that Dr. Gallinaro violated RSA 316-A:22, II(c) (disciplinary action) and Ch. 403.04 (professional dishonesty as unprofessional conduct).

**DISCIPLINARY ACTION**

Pursuant to RSA 316-A:22, based on the Findings of Fact and Rulings of Law above, given Dr. Gallinaro's history of misconduct, the Board voted to SUSPEND Dr. Gallinaro's license for at least sixty (60) days under the conditions listed below. Given these circumstances, the Board finds suspension the appropriate level of discipline. Additionally, given Respondent's past history with the Board, the Board voted to impose a civil penalty. Under RSA 316-A:22 and Ch 403.05, for a continuing violation, the Board has the authority to impose a fine of \$100 for each day the violation continues. Here, the Board has determined that the violation began at least two years prior to the date of this hearing, a total of at least 730 days. While the Board could thus impose a civil penalty up to \$73,000.00, the Board has used its discretion to impose a civil penalty in the amount of \$30,000.00, to be paid in full thirty (60) days from the date of this Order.

**THEREFORE, IT IS ORDERED** that Respondent's license to practice chiropractic care is SUSPENDED, for at least 60 days, beginning thirty days from the date of this Order. The thirty days are intended to allow Respondent time to wind up his practice, facilitate any referrals of patients to a new provider and the transfer of patient records, and to notify all patients that he is not currently practicing chiropractic care in New Hampshire. Respondent's suspension shall be lifted once he applies for reinstatement under the circumstances listed below.

**THEREFORE, IT IS ORDERED** that Respondent shall pay a civil penalty in the amount of \$30,000.00. Payment shall be made, in full, within thirty (60) days from the date of this Order. Payment shall be made in the form of a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 121 South Fruit Street, Concord, New Hampshire.

**THEREFORE, IT IS ORDERED** that, to apply for reinstatement, Respondent shall:

- (1) complete the suspension period of at least sixty (60) days;
- (2) pay the civil penalty in full;
- (3) provide the Board with three names of New Hampshire licensed chiropractors willing to provide Respondent with monitoring services, along with each person's CV and a letter acknowledging the individual has reviewed the 2017 Settlement Agreement;
- (4) Enter into a one-year monitoring contract with a Board-approved, New Hampshire licensed chiropractor. The monitoring agreement shall consist of a preliminary assessment of Respondent's practice and procedures and evaluate the specific ethical and professional issues described in the Settlement Agreement and within this order. The monitor shall make specific recommendations in order to remediate any noted issues in the assessment. The monitor shall file an initial report detailing the preliminary assessment and any recommendations with the board within thirty (30) days from the engagement of the monitor. The monitor shall furnish detailed monthly updates;
- (5) Participate and obtain a passing score of the Ethics and Boundaries Assessment Services (EBAS)
- (6) Take the New Hampshire Jurisprudence Exam and obtain a passing score.

**IT IS FURTHER ORDERED** that Respondent shall, within the first year following reinstatement, complete a course in Chiropractic Philosophy in addition to the 20 hours of continuing education required for renewal of license.

**IT IS FURTHER ORDERED** that Respondent's violation of any of the requirements set forth in this Final Decision and Order shall be a separate and sufficient basis for disciplinary action by the Board against Respondent and will result in revocation of his New Hampshire license.

**IT IS FURTHER ORDERED** that Respondent shall furnish a copy of this Final Decision and Order to any employer, any state licensing, certification or credentialing authority

Andrew Gallinaro, DC  
Docket No. 19-DC-010

to which he may apply for employment and/or privileges or to any current employer or credentialing authority, within thirty (30) days from the effective date of this Final Decision and Order, and continue for as long as he holds a New Hampshire license.

**IT IS FURTHER ORDERED** that Respondent shall immediately comply with RSA 316-A:25, I and Ch 406.07, concerning advertisement or representations to practice chiropractic.

**IT IS FURTHER ORDERED** that this Final Decision and Order shall become a permanent part of Respondent's file, which is maintained by the Board as a public document;

**IT IS FURTHER ORDERED** that notwithstanding Ch 210.05, Respondent may move for rehearing with the Board within 30 days of the effective date of this Decision and Order, pursuant to Jus 813.01 – Jus 813.05; and

**IT IS FURTHER ORDERED** that this Final Decision and Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date: May 8, 2020



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Michelle L. Thibeault, Administrator I  
Authorized Representative of the  
New Hampshire Board of Chiropractic Examiners