

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

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FEDERAL TRADE COMMISSION,	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
NATIONAL UROLOGICAL GROUP, INC.,	)	
et al.	)	
	)	1:04-CV-3294-CAP
<b>Defendants.</b>	)	
	)	
<hr/>	)	

**FINAL JUDGMENT AND PERMANENT INJUNCTION  
AGAINST TERRILL MARK WRIGHT, M.D.**

This matter comes before the Court on complaint of Plaintiff, Federal Trade Commission (“FTC” or “Commission”), against Defendants National Urological Group, Inc. d/b/a Warner Laboratories, Inc. (“NUG”), National Institute for Clinical Weight Loss, Inc. (“NICWL”), Hi-Tech Pharmaceuticals, Inc. (“Hi-Tech”), Jared Wheat (“Wheat”), Thomasz Holda (“Holda”), Michael Howell (“Howell”), Stephen Smith (“Smith”), and Terrill Mark Wright, M.D (“Wright”). On November 10, 2004, the Commission filed a Complaint for a permanent injunction and other equitable relief in this matter pursuant to Sections 5(a) and 12 of the Federal Trade Commission Act (“FTC Act”), 15U.S.C. §§ 45(a) and 52.

The FTC charged Defendants NUG, NICWL, Hi-Tech, Wheat, Holda, Howell, Smith, and Wright with engaging in deceptive acts or practices in connection with the marketing and sale of dietary supplement products, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. On June 1, 2005, this Court entered a Stipulated Final Order against Defendant Howell.

The Commission filed a motion for summary judgment along with the entry of a separate set of Findings of Fact and Conclusions of Law. On June 4, 2008, the court granted the FTC's motion for summary judgment against NUG, NICWL, Hi-Tech, Wheat, Holda, Smith, and Wright as to monetary relief, and against the same defendants, with the exception of dissolved corporation NICWL, as to injunctive relief. Accordingly, it is hereby **ORDERED,**

**ADJUDGED, AND DECREED:**

#### **FINDINGS**

1. This Court has jurisdiction of the subject matter of this case and the parties hereto pursuant to 28 U.S.C. § § 1331, 1337(a) and 1345 and 1355, and 15 U.S.C. §§ 45(a), 53(b), and 57b.
2. Venue in the Northern District of Georgia is proper as to all parties under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).

3. On June 4, 2008, the court granted the FTC's motion for summary judgment against NUG, NICWL, Hi-Tech, Wheat, Holda, Smith, and Wright as to monetary relief, and against the same defendants, with the exception of dissolved corporation NICWL, as to injunctive relief.
4. The activities of Defendants NUG, NICWL, Hi-Tech, Wheat, Holda, Howell, Smith, and Wright are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
5. The Complaint states a claim upon which relief may be granted against Defendants NUG, NICWL, Hi-Tech, Wheat, Holda, Howell, Smith, and Wright under Sections 5(a) and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a) and 52.
6. This is a final order with respect to Defendant Wright.
7. This Final Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.
8. Entry of this Final Order is in the public interest.

## DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “Defendant” shall mean Terrill Mark Wright, MD;
2. “Advertising” or “Advertisement” means any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears in a brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, packaging, package insert, label, film, slide, radio, television or cable television, audio program transmitted over a telephone system, program-length commercial (“infomercial”), Internet website (including metatags), or in any other medium.
3. “Competent and reliable scientific evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

4. "Weight Loss Product" shall mean any product, program, or service designed, used, or marketed to prevent weight gain or produce weight loss, reduce or eliminate fat, slim, or increase caloric deficit in a user of the product, program, or service.
5. "Thermalean" shall mean shall mean any product containing sida cordifolia, kola nut, citrus aurantium, cassia nomame, green tea extract, and 5-HTP that is manufactured, supplied, distributed, offered for sale, sold, marketed, advertised, or promoted by Defendants under the name Thermalean.
6. "Covered product or service" shall mean any health-related service or program, weight loss product, dietary supplement, food, drug, or device.
7. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
8. "Endorsement" shall mean as defined in 16 C.F.R. § 255.0(b).
9. "Expert" shall mean as defined in 16 C.F.R. § 255.0(d).
10. The term "including" in this Order means "without limitation."

11. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.
12. “Food” and “drug” shall mean as defined in Section 15 of the FTC Act, 15 U.S.C. § 55.

## **ORDER**

### **I.**

#### **PROHIBITED FALSE CLAIMS FOR WEIGHT LOSS PRODUCTS**

**IT IS HEREBY ORDERED** that Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with him who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of Thermalean or any other weight loss product, is permanently restrained and enjoined from misrepresenting, in any manner, expressly or by implication, including through the use of endorsements, that:

- a. Such product is clinically proven to be or is an effective treatment for obesity;

- b. Such product is clinically proven to cause or causes rapid and substantial weight loss;
- d. Such product is clinically proven to enable or enables users to lose 20-35% of abdominal fat, reduce their body fat by 42%, decrease their stored fat by 300%, or increase their metabolic rate by 76.9%;
- e. Such product is clinically proven to inhibit the absorption of fat, suppress appetite, or safely increase metabolism without dangerous side effects;
- f. Such product inhibits the absorption of fat, suppresses appetite, or increases metabolism without dangerous side effects;
- g. Such product is clinically proven to be or is safe;
- h. Such product is clinically proven to have or has virtually no side effects.

**II.**  
**PROHIBITED UNSUBSTANTIATED CLAIMS**  
**FOR WEIGHT LOSS PRODUCTS**

**IT IS FURTHER ORDERED** that Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and his officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with him who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any weight loss product, is hereby permanently restrained and

enjoined from making any representation, in any manner, expressly or by implication, including through the use of endorsements, that:

- a. Such product is an effective treatment for obesity;
- b. Such product causes rapid or substantial loss of weight or fat;
- c. Such product causes a specified loss of weight or fat;
- d. Such product affects human metabolism, appetite, or body fat;
- e. Such product is safe;
- f. Such product has virtually no side effects; or
- g. Such product is equivalent or superior to any drug that the Food and Drug Administration has approved for sale in the United States for the purpose of treating obesity or causing weight loss;

unless the representation, including any such representation made through the use of endorsements, is true and non-misleading, and, at the time the representation is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation. *Provided, however,* that for any representation made as an expert endorser, Defendant must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his represented expertise, in the form of an examination or testing of the product.

**III.**  
**MISREPRESENTATION OF TESTS, STUDIES, OR EXPERTISE**

**IT IS FURTHER ORDERED** that Defendant, directly or through any partnership, corporation, subsidiary, division, trade name, or other device, and his officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with him who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not misrepresent, in any manner, directly or by implication, including through the use of endorsements, the existence, contents, validity, results, conclusions, or interpretations of any test or study, or the expertise that he is represented to possess. *Provided, however,* that for any representation made as an expert endorser, Defendant must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his represented expertise, in the form of an examination or testing of the product or service.

**IV.  
OTHER PROHIBITED CLAIMS**

**IT IS FURTHER ORDERED** that Defendant, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, and their officers, agents, servants, representatives, employees, and all persons or entities in active concert or participation with him who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements, about the health benefits, absolute or comparative benefits, performance, safety, or efficacy of such product or service unless, at the time the representation is made, Defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation. *Provided, however,* that for any representation made as an expert endorser, Defendant must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his represented expertise, in the form of an examination or testing of the product or service.

**V.**  
**CONSUMER REDRESS AND OTHER EQUITABLE RELIEF**

**IT IS FURTHER ORDERED** that:

- A. Judgment in the amount of Fifteen Thousand Four Hundred Fifty Four Dollars (\$15,454.00) is hereby entered in favor of the Commission and against Defendant for consumer redress, with post-judgment interest, at the legal rate.
- B. All payments shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with instructions provided by the Commission.
- C. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief.
- D. In the event that the Commission in its sole discretion determines that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably

related to Defendant's practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant shall have no right to challenge the Commission's choice of remedies under this Paragraph or the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

- E. In accordance with 31 U.S.C. § 7701, Defendant is hereby required, unless he has done so already, to furnish to the Commission his taxpayer identifying numbers (social security number or employer identification number), which shall be used for the purposes of collecting and reporting on any delinquent amount arising out of the Defendant's relationship with the government.

## **VI. COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring and investigating compliance with any provision of this Order,

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Wright shall submit

additional written reports, sworn to under penalty of perjury;  
produce documents for inspection and copying; provide testimony;  
and/or provide entry during normal business hours to any business  
location in Defendant's possession or direct or indirect control to  
inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance  
with this Order by all other lawful means, including but not limited  
to the following:

1. obtaining discovery from any person, without further leave of  
court, using the procedures prescribed by Fed. R. Civ. P. 30,  
31, 33, 34, 36, and 45; and
2. posing as consumers and suppliers to: Defendant Wright, his  
employees, or any other entity that he manages or controls in  
whole or in part, without the necessity of identification or  
prior notice; and

C. Defendant Wright shall permit representatives of the Commission to  
interview any employer, consultant, independent contractor,  
representative, agent, or employee who has agreed to such an

interview, relating in any way to any conduct subject to this Order.

The person interviewed may have counsel present.

*Provided, however,* that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

## **VII. COMPLIANCE REPORTING BY DEFENDANT**

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Order,
  1. Defendant Wright shall notify the Commission of the following:
    - a. Any changes in his residence addresses, mailing addresses, and telephone numbers within ten (10) days of the date of such change;
    - b. Any changes in his employment status (including self-employment), and any change in his ownership of any

business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, creates or forms, or performs services for; a statement of the nature of the business; and a statement of the duties and responsibilities of Defendant in connection with the business;

c. Any changes in Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change; and

2. Defendant Wright shall notify the Commission in writing of any changes in any business entity that Defendant directly or indirectly control(s), or has any ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or

practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant notifies the Commission as soon as is practicable after obtaining such knowledge.

- B. Sixty (60) days after the date of entry of this Order, Defendant Wright shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to:
1. The then-current residence address, mailing addresses, and telephone numbers of Defendant;
  2. The then-current employment and business addresses and telephone numbers of Defendant, a description of the business activities of each such employer or business, and the title and

responsibilities of Defendant, for each such employer or business;

3. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph IX; and
4. Any other changes required to be reported under Paragraph A of this Section.

- C. For the purposes of this Order, Defendant Wright shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Attn: FTC v. National Urological Group, Inc., et. al. (N.D. Ga.)  
Civil Action No. 1:04-CV-3294

- D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Wright.

## **VIII. RECORD KEEPING PROVISIONS**

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendant Wright and any business where (1) he is the majority owner or an officer or director of the business, or directly or indirectly manages or controls the business, or where (2) the business engages, or assists others engaged in, the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any weight loss product or covered product, program, or service, and his agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- A. All payments, whether by salary, consulting fees, retainer, percentage of sales, royalty, expense reimbursement, options, loans, stock dividends, gifts, or other transfer arrangement made to the Defendant by any person or entity engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of a weight loss or covered product in connection with the Defendant's consulting services or endorsement of such product;

- B. Copies of all draft and/or final versions of all endorsements, articles, advertisements, promotional materials, or other marketing materials provided to the Defendant by any person or business entity engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of a weight loss or covered product in connection with the Defendant's consulting services or endorsement of such product;
- C. Copies of all documents provided to the Defendant by any person or business entity in connection with each consulting service or endorsement subject to Subparagraph B, above;
- D. All materials that were relied upon in making any representations subject to Subparagraph B above, including all documents evidencing or referring to the accuracy of any claim therein or to the efficacy or safety of any weight loss or covered product, including, but not limited to, all tests, reports, studies, demonstrations, and other evidence in the Defendant's possession that confirms, contradicts, qualifies, or calls into question the accuracy of such

claims regarding the efficacy or safety of such weight loss or covered product;

- E. All examinations, tests, research, or other evaluations conducted by the Defendant in connection with each consulting service or endorsement subject to Subparagraph B above;
- F. All materials provided by the Defendant to any person or business entity in connection with each consulting service or endorsement subject to Subparagraph B, above;
- G. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order and all reports submitted to the FTC pursuant to this Order; and
- H. Copies of all contracts with any person or entity engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of a weight loss or covered product in connection with the Defendant's consulting services or endorsement of such product.

**IX.**  
**DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendant Wright shall deliver copies of the Order as directed below:

- A. For any business that Defendant Wright controls, directly or indirectly, or in which he has a majority ownership interest, Defendant must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to their assuming their responsibilities.
- B. For any business where Defendant Wright is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant must deliver a copy of this Order to

all principals and managers of such business before engaging in such conduct.

- C. Defendant Wright must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Part.

**X.  
ACKNOWLEDGMENT OF RECEIPT OF ORDER**

**IT IS FURTHER ORDERED** that Defendant Wright, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement, in the form of Attachment A to this Order, acknowledging receipt of this Order.

**XI.**  
**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, this 16<sup>th</sup> day of December, 2008.

/s/ Charles A. Pannell, Jr.  
HON. CHARLES A. PANNELL, JR.  
United States District Judge