

IN THE MATTER OF
MAX R. WEINBERG, D.P.M.

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BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS

SITTING IN AUSTIN,

LICENSE No. 0859

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Max R. Weinberg, DPM. By letters dated March 18, 1997; October 28, 1998; March 25, 1999; April 19, 1999 and March 27, 2003 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Weinberg of its intent to investigate complaints, concerns or reports filed against him. Dr. Weinberg was duly notified of the allegations against him. Dr. Weinberg has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal. Dr. Weinberg has provided the Board with numerous documents, information and has kept in constant contact with the Board throughout these proceedings.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Weinberg does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Weinberg understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Weinberg, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an order dispensing with the need for further action in this matter. Dr. Weinberg agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the Findings of Fact and Conclusions of Law set out in this Order. The Board makes the following Findings of Fact and Conclusions of Law, and enters this order:

FINDINGS OF FACT

1. Dr. Weinberg is licensed as a podiatric physician in the State of Texas (License Number 0859) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. Complaints were filed against Dr. Weinberg, and he was provided with notice of the complaints and with an opportunity to respond to the complaints and to show compliance with the law.

3. The complaints alleged facts stating that Dr. Weinberg violated Tex. Occup. Code §202.253(15), and that he violated 22 Tex. Admin. Code §375.2.
4. Complaints filed against Dr. Weinberg alleged that he had a problem controlling his anger during patient visits.
5. Since 1999, Dr. Weinberg, on his own initiative, has sought counseling and psychiatric treatment for rehabilitation concerning previous issues of situational depression. Dr. Weinberg's counseling has continued through the present with findings of marked improvement.

CONCLUSIONS OF LAW

1. Dr. Weinberg is required to follow the provisions of the podiatric medical practice act, Texas Occup. Code, §202.001, et. seq., and the associated rules of the Board, 22 Tex. Admin. Code § 371.1, et. seq.
2. Tex. Occup. Code §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
3. 22 Tex. Admin. Code §376.1(a)(1) provides that, "any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine."
4. Tex. Occup. Code §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
5. If proven to be true and correct, The Findings Of Fact numbers 1 through 4 would establish that Dr. Weinberg violated:

Tex. Occup. Code §202.253(15), in that he failed to: Practice podiatry with reasonable skill and safety to a patient because of illness or as a result of a mental or physical condition.

22 Tex. Admin. Code §375.2: A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life.
6. Dr. Weinberg does not admit to the complaint allegations set forth in the Findings of Fact or Conclusions of Law set out in this Order.

ORDER

1. Dr. Weinberg's license to practice podiatric medicine is hereby placed on probationary status for a period of eight (8) months, commencing on the day after the Order is approved by the Board.
2. Dr. Weinberg agrees to cooperate fully with the Board and when requested provide the Board with proper information and adequate knowledge of his remedial actions taken in this matter, to have his license placed on probationary status for eight (8) months and to provide the Board with documentation of his compliance with the Board's requirements upon request by the Board.
3. Dr. Weinberg agrees, in order to cooperate fully with the Board, he will continue to be treated by a psychiatrist of his choice for twelve (12) months and comply with the treatment and recommendations of the treating psychiatrist.
4. If Dr. Weinberg in any way does not comply with the terms of this Agreed Order, his probationary status will be lifted, and an administrative hearing and due process will take place to determine what penalties, if any, would be appropriate.
5. The terms of this Agreed Order, if accepted by the Board, becomes effective upon approval of the Board.
6. If the Board finds that Dr. Weinberg fully complied with the terms of this Agreed Order; the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.

GENERAL PROVISIONS

1. Effective Date. This Agreed Order shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this Agreed Order shall be valid unless in writing. No waiver of default of any terms of the Agreed Order shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed to be in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et. seq., the Podiatric Medical Practice Act.*, and the *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Venue. Venue of all litigation arising from or related to this Agreed Order shall be in the county of competent jurisdiction in Austin, Travis County, Texas.

5. Acknowledgment of Entire Agreement. Dr. Weinberg acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Weinberg has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this Agreed Order by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:
- Max R. Weinberg, DPM
2845 N.E. Loop 286
Paris, TX 75460
- Texas State Board of Podiatric Medical Examiners
P.O. Box 12216
Austin, TX 78711-2216
6. Upon approval of this Agreed Order by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, MAX R. WEINBERG, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.



Max R. Weinberg

6/17/2003
Date

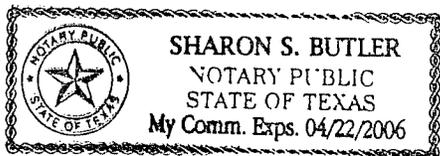
IN THE STATE OF TEXAS §

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COUNTY OF LAMAR §

BEFORE ME, on this day personally appeared Max R. Weinberg known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 17th day of June, 2003.



Sharon S. Butler
(Printed Name of Notary Public)

Sharon S. Butler
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 18th day of JUNE, 2003, after a Board vote.

Donald W. Falknor

Donald W. Falknor, D.P.M.
Board President

Allen M. Hymans

Allen M. Hymans
Executive Director