

TSBPME Case No. 04-017

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

BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS

AGREED ORDER

§
§
§
§
§
§

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 letter dated June 15, 2004, 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.

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 at this time 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*. Dr. Weinberg, however, has not waived his right to an administrative hearing and judicial review should the Board seek further action at any time with regard to the above referenced complaint.

The Board and Dr. Weinberg have agreed to the entry of an Order dispensing with the need for further action in this matter at this time. 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. A complaint was filed against Dr. Weinberg, and he was provided with notice of the complaint and with an opportunity to respond to the complaints and to show compliance with the law.
3. The complaint alleges Dr. Weinberg committed actions involving drug diversion and prescription fraud, for which he was arrested on May 6, 2004 in Paris, TX.

4. Dr. Weinberg is awaiting criminal adjudication in Lamar County, TX and is innocent until proven guilty.
5. Dr. Weinberg, as a podiatrist licensed in the State of Texas, must comply with the provisions of the Podiatric Medical Practice Act of Texas, the Board Rules and Board Orders.

CONCLUSIONS OF LAW

1. Dr. Weinberg is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et. seq., and the associated rules of the Board, 22 Tex. Administrative Code § 371.1, et seq..
2. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
3. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
4. Texas Occupations 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."
5. 22 Texas Administrative 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."
6. The Findings Of Fact numbers 1 through 5 establish that Dr. Weinberg currently faces criminal charges for conduct that, if proven, would constitute a violation of: *Texas Occupations Code, §202.253(a)(16)* in that he would have failed to practice podiatry in an acceptable manner consistent with public health and welfare.
7. The Findings Of Fact numbers 1 through 5 establish that Dr. Weinberg currently faces criminal charges for conduct that, if proven, would constitute a violation of: *Texas Occupations Code, §202.253(a)(5)* in that he would have: directly or indirectly violated or attempted to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice.

ORDER

1. Dr. Weinberg agrees to not practice podiatric medicine in the State of Texas until the underlying criminal case has been adjudicated. The "practice of podiatric medicine" means the treatment by Dr. Weinberg of patients with any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method.

2. The Board agrees to not proceed with any further action regarding the allegations at issue against Dr. Weinberg until after the completion of the criminal adjudication. The Board agrees that if further action pursuant to these complaints and allegations are necessary at any time the Board will notify Dr. Weinberg within 30 days after the Board receives a copy of the final judgment indicating the completion of the criminal adjudication. If no such notification is made in the required time frame, no further action will be taken by the Board. If he deems necessary, Dr. Weinberg will also be entitled to: an administrative hearing before the State Office of Administrative Hearings, judicial review of any subsequent Order, and participation in a contested case hearing under the *Administrative Procedure Act*.
3. Subject to compliance with the time frames set forth in Order #2, this Order does not prevent the Board from investigating or re-visiting allegations that are the subject of this Order, that currently are under investigation, or that may arise during or after the term of this Agreed Order.
4. Dr. Weinberg's podiatric practice in Paris, Texas is to remain closed until the underlying criminal case has been adjudicated. This includes diagnosing, treating, or consulting with his podiatric patients. Dr. Weinberg may refer his patients to another practitioner for treatment or consultation during the time frame at issue.
5. Dr. Weinberg may keep his office open for the purposes of arranging referrals, handling mail, processing accounts, billing, and insurance matters, and other similar matters if not directly related to the diagnosis and treatment of patients.
6. If Dr. Weinberg shares office space with a podiatrist, the other podiatrist shall be allowed to continue his/her practice, but Dr. Weinberg shall not consult regarding the diagnosis or treatment of patients and shall not share income with the other practitioner, including any income derived in any way from the diagnosis or treatment of patients.
7. If his place of business remains open for any limited purpose set forth in this Order, Dr. Weinberg shall permit a Board representative or staff member to periodically enter his place of business and/or the facility at which he previously maintained an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order.
8. If Dr. Weinberg fails to comply with his voluntary action as stated in Order #1, prior to the completion of the criminal adjudication, the Board is not precluded from seeking injunctive relief or other action to formally suspend Dr. Weinberg's license to practice podiatric medicine.
9. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.

GENERAL PROVISIONS

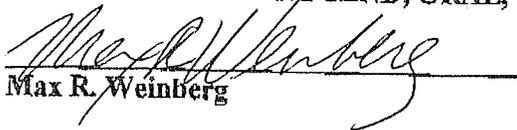
1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board and shall continue in effect until the underlying criminal case is adjudicated.

- 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. 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
 C/O Joseph F. Coniglio, Attorney
 Strasburger & Price, LLP
 901 Main Street, Suite 4300
 Dallas, TX 75202

 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, ORAL, WRITTEN OR OTHERWISE.


 Max R. Weinberg

8/5/2004
 Date

IN THE STATE OF ~~TEXAS~~
LOUISIANA

§

§

PARISH
COUNTY OF _____ JEFFERSON

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 6th day of August, 2004.

Rosario P. Carimi

(Printed Name of Notary Public)

ROSARIO P. CARIMI NOTARY PUBLIC NO. 15707

LOUISIANA

ROSARIO P. CARIMI, NOTARY PUBLIC
PARISHES OF JEFFERSON
ORLEANS, ST. BERNARD, PLAQUEMINE
STATE OF LOUISIANA
MY COMMISSION IS FOR LIFE

Rosario P. Carimi

Notary Public, in and for the State of ~~Texas~~

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 9th day of AUGUST, 2004, after a Board vote.

Bradford W. Glass

Bradford W. Glass, D.P.M.
Board President

Janie Alonzo

Janie Alonzo
Acting-Executive Director