

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

**WEST VIRGINIA BOARD OF MEDICINE,
PETITIONER,**

V.

**SETH J. STINEHOUR, D.P.M.,
RESPONDENT.**

**ORDER OF SUMMARY SUSPENSION OF LICENSE TO PRACTICE PODIATRY
AND NOTICE OF HEARING**

The West Virginia Board of Medicine ("Board," hereinafter) has determined, pursuant to the provisions of *The West Virginia Medical Practice Act, W. Va. Code § 30-3-1, et seq.* as the duly constituted body responsible for the licensure and professional discipline for podiatrists in the State of West Virginia, and particularly, *W. Va. Code §30-3-14(a), (c)(21), and (j)*, due to the imminent danger to the public resulting from his physical and mental impairments, that the privilege to practice podiatry previously issued to the Respondent, Seth J. Stinehour, D.P.M., should and shall be summarily suspended, for the protection of the public interest and safety.

FINDINGS OF FACT

1. Seth J. Stinehour, D.P.M., currently holds an active license to practice podiatry in the State of West Virginia, License No. 10383, issued in 2004 by the Board, and his address of record is in Rochester, New York. (Exhibit 1).

2. In July 2009, the Complaint Committee of the Board ("Committee") received a complaint against Dr. Stinehour from a former patient of Dr. Stinehour's alleging that Dr. Stinehour would not produce the patient's medical records and that the procedure he had performed on him had been ineffective necessitating another surgery by a different physician.

3. Dr. Stinehour filed a timely response to the complaint.

4. In his response, Dr. Stinehour claimed that the Complainant was "in possession of all his original pre-op and post-op X-rays, an incident in which I do not appreciate." Further, Dr. Stinehour claimed that the Complainant had appeared at Dr. Stinehour's office and had been "...disruptive in the waiting room, panicked my staff member handed the original films to him. She acted under duress and in the best interest of the patient(s)."

5. On September 10, 2009, the Complainant, by counsel, filed a reply to the response filed by Dr. Stinehour. The Complainant denied being verbally abusive to Dr. Stinehour's staff and indicated that the Complainant was only given the post-op x-ray, not the pre-op x-ray. The Complainant also indicated that his subsequent treating physician attempted to obtain the complete office records and x-rays of the Complainant, and was unable to do so.

6. Further investigation ensued.

7. In November 2009, the Board issued a Subpoena Duces Tecum commanding Dr. Stinehour to produce a number of documents in relation to the treatment of the Complainant.

8. Dr. Stinehour did not produce all of the documents required by the November 2009 Subpoena Duces Tecum, in particular the purported pre-op x-rays of the

Complainant. Dr. Stinehour produced a note from the chart documenting a pre-op appointment with the Complainant that indicated on November 12, 2007, x-rays were taken of the Complainant. The note indicates, "X-ray of the Calcaneus taken in 2 views reveals bone spur at 4. [done by ss]".

9. In January 2010, a Subpoena Duces Tecum was issued by the Board commanding Dr. Stinehour's appearance at a meeting of the Complaint Committee in March 2010. The January 2010 Subpoena Duces Tecum commanded Dr. Stinehour to bring the entire original medical record(s)/file(s), including any and all pre-op x-rays, including the materials covered by the Subpoena Duces Tecum issued in November 2009.

10. Dr. Stinehour appeared for an informal meeting with the Complaint Committee on March 7, 2010, but did not bring the documents required by either the November 2009 Subpoena Duces Tecum or the January 2010 Subpoena Duces Tecum.

11. Further investigation ensued and the Board issued a number of additional Subpoenas in this matter as part of its investigation.

12. Charges were filed against Dr. Stinehour with regard to this matter in a Complaint and Notice of Hearing dated October 12, 2010.

13. Before any hearing was held, an additional complaint was initiated by the Board's Complaint Committee, based upon other matters, and in connection therewith, Dr. Stinehour appeared for an informal meeting of the Complaint Committee in March 2011. Also at this meeting, Dr. Stinehour did not bring with him any documents to satisfy the subpoena previously issued by the Board.

14. As a result of Dr. Stinehour's appearance and conduct at the March 2011 Complaint Committee meeting, in accordance with the provisions of *W.Va. Code* §30-3-14(f), Dr. Stinehour was directed to present himself for a complete mental and physical examination on March 24, 2011, to be completed and arranged by Ralph S. Smith, Jr., M.D., ("Dr. Smith"). Dr. Stinehour appeared for the examination and was examined by Dr. Smith and his associates. Reports of the examination were prepared and provided to the Board.

15. Dr. Smith's April 4, 2011, report was received and reviewed at the Board of Medicine. The report expressed Dr. Smith's medical opinion regarding Dr. Stinehour's inability to practice podiatry at this time, due to his mental and physical condition. A copy of the report was provided to Dr. Stinehour's counsel. (Exhibit 2).

16. In order to terminate the investigation and resolve all these matters noted above with the Board regarding all the evidence obtained, and in light of Dr. Stinehour's relocation to another state, Dr. Stinehour, by Counsel, expressed a desire to surrender his license to practice podiatry in the State of West Virginia. A Consent Order was drafted, reviewed and verbally and telephonically approved by the parties, but has not been executed or returned by Dr. Stinehour or by his Counsel to the Board for entry. (Exhibit 3).

17. More than ten (10) days have passed since the Consent Order was provided to Dr. Stinehour's Counsel. (Exhibit 4).

CONCLUSIONS OF LAW

1. The West Virginia Board of Medicine has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. *W. Va. Code* §30-3-1, *et seq.*

2. Probable cause exists to substantiate charges of disqualification of Dr. Stinehour from the practice of podiatry in the State of West Virginia due to *W.Va. Code* § 30-3-14(c)(17) and (21) and 11 CSR 1A 12.1(e) and (j) relating to engaging in unprofessional conduct and the inability to practice podiatry with reasonable skill and safety due to mental impairment.

3. *W.Va. Code* §30-3-14(k) and 11 CSR 3 10.16, provide, *inter alia* that:

...if the board determines the evidence in its possession indicates that a podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided for in subsection (j) of this section on a temporary basis and without a hearing, if institution of procedures for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of such action

4. *W.Va. Code* §30-3-14(j) provides that one of the actions which may be taken by the Board is suspension of a license to practice podiatry.

ORDER

At its regular meeting on May 16, 2011, with a quorum of the Board present and voting, the Board found and determined with no dissenting votes that under all of the facts and circumstances and given the cumulative effect of the evidence in the possession of the Board, that for Dr. Stinehour to continue to hold an active license to practice podiatry in the State of West Virginia constitutes an immediate danger to the health, welfare, and safety of the public. The Board concluded as a matter of law, that such a danger to the public demands extraordinary measures, and the Board, with a quorum of the Board present and voting, therefore found, with no dissenting votes, that in accordance with its statutory mandate to protect the public interest, the license to practice podiatry, License No. 10383, held by Seth J. Stinehour, D.P.M., must be

summarily **SUSPENDED**, in accordance with the provisions of *W.Va. Code* §30-3-14(k) and 11CSR 3 10.16.

In all of the foregoing matters, Dr. Ferrebee, Dr. Wazir, and Ms. Henderson, abstained from voting due to their participation in the consideration of these matters by them as members of the Complaint Committee and its determinations of probable cause, and Dr. Arnold had previously deemed himself disqualified for the consideration of the matters by the Complaint Committee and did not participate either in its determinations of probable cause or for this matter before the entire Board.

As provided in *W.Va. Code* §30-3-14(k) and 11 CSR 3 10.16, if an action pursuant thereto is taken by the Board, institution of proceedings for a hearing before the Board must be initiated simultaneously with the temporary action and must begin within fifteen (15) days of such action.

ACCORDINGLY, the Board **ORDERS** that the license to practice podiatry held by Seth J. Stinehour, D.P.M., License No. 10383, is summarily **SUSPENDED**, effective May 17, 2011, at 12:01 o'clock a.m.

NOTICE


Dr. Stinehour is, hereby, **NOTIFIED** that on the 1st day of June, 2011, at 3:00 o'clock p.m., the West Virginia Board of Medicine will convene in its offices at 101 Dee Drive, Charleston, West Virginia, with a duly qualified hearing examiner, for the purpose of hearing evidence with regard to the contents of this **ORDER**. At such hearing, Dr. Stinehour must be

present in person and may be accompanied by Counsel if he so desires. He may present any witnesses and/or evidence that he may desire to present to show cause why his license to practice podiatry should not be subject to further restriction.

The foregoing **ORDER** was entered and **NOTICE** was issued this the 16th day of May 2011.

WEST VIRGINIA BOARD OF MEDICINE


Reverend O. Richard Bowyer
President


Catherine Slemp, M.D., M.P.H.
Secretary

competence from malpractice data.

- A number of studies have been conducted to identify indicators of substandard care among physicians. There is no conclusive evidence that malpractice data correlates with professional competence.
- There are a variety of factors unrelated to professional competence or conduct which affect the likelihood that a physician will be the subject of a malpractice claim, such as, the physician's time in practice, the nature of the specialty, the types of patients treated, geographic location, etc. For example, certain medical specialties have a higher rate of malpractice claims because of a higher risk inherent to the field of practice.
- Settlements of malpractice cases by insurance companies are sometimes handled as business decisions. In the case of some minor claims, it is less expensive for the insurance company to make a monetary settlement than it is for them to take the case to court. Many times such cases are settled without a finding of fault or admission of guilt on the part of the physician.
- A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

End of Report

CONFIDENTIAL

EXHIBIT

Exhibit 2

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: SETH J. STINEHOUR, D.P.M.

CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Seth J. Stinehour, D.P.M. ("Dr. Stinehour") freely and voluntarily enter into the following Consent Order pursuant to *W. Va. Code* § 30-3-1, *et seq.*;

FINDINGS OF FACT

1. Dr. Stinehour currently holds an active license to practice podiatry and surgery in the State of West Virginia, License No. 10383, issued in 2004 by the Board, and his address of record is in Rochester, New York.
2. In July 2009, the Complaint Committee of the Board ("Committee") received a complaint against Dr. Stinehour from a former patient of Dr. Stinehour's alleging that Dr. Stinehour would not produce the patient's medical records and that the procedure he had performed on him had been ineffective necessitating another surgery by a different physician.
3. Dr. Stinehour filed a timely response to the complaint.
4. In his response, Dr. Stinehour claimed that the Complainant was "in possession of all his original pre-op and post-op X-rays, an incident in which I do not appreciate." Further Dr. Stinehour claimed that the Complainant had appeared at Dr. Stinehour's office and had been "...disruptive in the waiting room, panicked my staff member handed the original films to him. She acted under duress and in the best interest of the patient(s)."
5. On September 10, 2009, the Complainant, by counsel, filed a reply to the response filed by Dr. Stinehour. The Complainant denied being verbally abusive to Dr. Stinehour's staff and indicated that the Complainant was only given the post-op x-ray, not the pre-op x-ray. The Complainant also indicated that his subsequent treating physician attempted to obtain the complete office records and x-rays of the Complainant, and was unable to do so.
6. Further investigation ensued.

7. In November 2009, the Board issued a Subpoena Duces Tecum commanding Dr. Stinehour to produce a number of documents in relation to the treatment of the Complainant.

8. Dr. Stinehour did not produce all of the documents required by the November 2009 Subpoena Duces Tecum, in particular the purported pre-op x-rays of the Complainant. Dr. Stinehour produced a note from the chart documenting a pre-op appointment with the Complainant that indicated on November 12, 2007, x-rays were taken of the Complainant. The note indicates, "X-ray of the Calcaneus taken in 2 views reveals bone spur at 4. [done by ss]".

9. In January 2010, a Subpoena Duces Tecum was issued by the Board commanding Dr. Stinehour's appearance at a meeting of the Complaint Committee in March 2010. The January 2010 Subpoena Duces Tecum commanded Dr. Stinehour to bring the entire original medical record(s)/file(s), including any and all pre-op x-rays, including the materials covered by the Subpoena Duces Tecum issued in November 2009.

10. Dr. Stinehour appeared for an informal meeting with the Complaint Committee on March 7, 2010, but did not bring the documents required by either the November 2009 Subpoena Duces Tecum or the January 2010 Subpoena Duces Tecum.

11. Further investigation ensued and the Board issued a number of additional Subpoenas in this matter as part of its investigation.

12. Charges were filed against Dr. Stinehour with regard to this matter in a Complaint and Notice of Hearing dated October 12, 2010.

13. Before any hearing was held, an additional complaint was initiated by the Board's Complaint Committee, based upon other matters, and in connection therewith, Dr. Stinehour appeared for an informal meeting of the Complaint Committee in March 2011.

14. As a result of Dr. Stinehour's appearance and conduct at the March 2011 Complaint Committee meeting, in accordance with the provisions of West Virginia Code § 30-3-14(f), Dr. Stinehour was directed to present himself for a complete mental and physical examination on March 24, 2011, to be completed and arranged by Ralph S. Smith, Jr., M.D., ("Dr. Smith").

15. Dr. Smith's April 4, 2011, report was received and reviewed, and expressed concerns regarding Dr. Stinehour's ability to practice podiatry at this time.

16. In order to terminate the investigation and resolve all these matters noted above with the Board regarding all the evidence obtained, and in light of Dr. Stinehour's relocation to another state, Dr. Stinehour desires to surrender his license to practice podiatry in the State of West Virginia.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. *W. Va. Code* §30-3-1.

2. Probable cause exists to substantiate charges of disqualification of Dr. Stinehour from the practice of podiatry in the State of West Virginia due to *W. Va. Code* § 30-3-14(c)(17) and (21) and 11 CSR 1A 12.1(e) and (j) relating to engaging in unprofessional conduct and the inability to practice podiatry with reasonable skill and safety due to mental impairment.

3. The Board has determined that it is appropriate and in the public interest to waive the commencement of additional proceedings and terminate proceedings commenced against Dr. Stinehour, and to proceed without the filing of additional formal charges in a Complaint and Notice of Hearing at this time, provided Dr. Stinehour enters into this Consent Order.

CONSENT

Seth J. Stinehour, D.P.M., by affixing his signature hereon, agrees solely and exclusively for purposes of this agreement and the entry of the Order provided for and stated herein, and proceedings conducted in accordance with this Order, to the following:

1. Dr. Stinehour acknowledges that he is fully aware that, without his consent here given, no permanent legal action may be taken against him except after a public hearing held in accordance with *W. Va. Code* §30-3-14(h) and §29A-5-1, *et seq.*;

2. Dr. Stinehour further acknowledges that he has the following rights, among others: the right to a formal public hearing before the Board, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, the right to cross-examine witnesses against him, and the right to appeal under Chapter 29A of the West Virginia Code in the event of a final order or decision adverse to him;

3. Dr. Stinehour waives all such rights;

4. Dr. Stinehour consents to the entry of this Order relative to his practice of podiatry in the State of West Virginia, and;

5. Dr. Stinehour understands that this Order is considered public information, and that matters contained herein may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the Consent of Dr. Stinehour, the West Virginia Board of Medicine hereby ORDERS as follows:

Effective May 7, 2011, Dr. Stinehour's License No. 10383, is SURRENDERED to the Board.

All charges filed in the Complaint and Notice of Hearing dated October 12, 2010, will be terminated and dismissed by the Board.

Dr. Stinehour will not apply to the Board for licensure until he proves by medical and psychiatric evidence to the Board's satisfaction that he is competent to return to the practice of podiatry.

The foregoing Consent Order was entered this _____ day of _____, 2011.

WEST VIRGINIA BOARD OF MEDICINE

Reverend O. Richard Bowyer
President

Catherine Slemp, M.D., M.P.H.
Secretary

Seth J. Stinehour, D.P.M.

Date: _____

STATE OF
COUNTY OF

I, _____, a Notary Public for said county and state do hereby certify that Seth J. Stinehour, D.P.M., whose name is signed above, has this day acknowledged the same before me. Given under my hand this _____ day of _____, 2011. My commission expires .

Notary Public

STEVEN JOHNSTON KNOPP
ATTORNEY AT LAW
POST OFFICE BOX 722
WILLIAMSON, WEST VIRGINIA 25661
(304) 235-1938
E-MAIL: sjknopp.wvbar@gmail.com

April 11, 2011

Mr. Joseph Farrell, Esquire
Farrell, White and Legg, PLLC
914 Fifth Avenue
Huntington WV 25772-6457

RE: *Seth J. Stinehour, D.P.M., Consent Order*

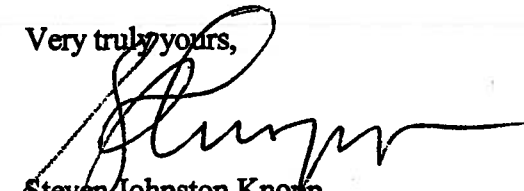
Dear Mr. Farrell:

I have enclosed with this letter a Consent Order which I believe addresses the concerns we discussed about reapplication for licensure.

Please return the executed Order to me at the Board of Medicine for the Board's action.

With best personal regards, I remain

Very truly yours,



Steven Johnston Knopp

SJK/bv
Enclosure: As stated

CERTIFICATE OF SERVICE

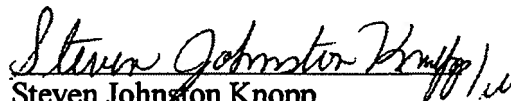
I, Steven Johnston Knopp, Counsel for the West Virginia Board of Medicine in this matter, do hereby certify that I have served the foregoing ORDER OF SUMMARY SUSPENSION OF LICENSE TO PRACTICE PODIATRY AND NOTICE OF HEARING, by on the 16th day of May, 2011, hand delivering a copy to counsel of record for Seth J. Stinehour, D.P.M.:

Joseph M. Farrell, Jr., Esquire
914 Fifth Avenue
P.O. Box 6457
Huntington, West Virginia 25772-6457

and

by depositing a copy of the same in the United States mail, postage prepaid, certified, on this 16th day of May, 2011 addressed as follows:

Seth J. Stinehour, D.P.M.
150 Fairhaven Road
Rochester, NY 14610


Steven Johnston Knopp
West Virginia Bar # 2085
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, West Virginia 25311