

## Court rules for whistleblower

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By BOB STUART  
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An unrepentant Waynesboro doctor fired for what he says was blowing the whistle on poor care at Western State Hospital said Tuesday he looks forward to his reinstatement following a Virginia Supreme Court ruling in his favor.

And Dr. W. Harry Horner vowed to forge ahead with a pair of federal lawsuits against hospital administrators and said he will file additional complaints if patient care issues are not addressed.

"Nothing has been accomplished with regard to improving patient care, and my federal complaints are just beginning," Horner, 53, told The News Virginian in an interview Tuesday.

Horner was fired three years ago as an internist at Western State in Staunton after he says he repeatedly complained about patient care. He had worked there for six years.

Administrators charged that Horner had been guilty of patient abuse and neglect, failed to follow a supervisor's instructions and violated an employee's right to confidentiality.

The abuse and neglect allegation against Horner was based on the contention he had failed to wear gloves while dressing a wound on a diabetic patient with a foot ulcer.

The violation of employee confidentiality came, Horner said Tuesday, after he sent his own complaint of abuse and neglect to the state inspector general.

Horner unsuccessfully fought his firing by filing a grievance through the state. Staunton Circuit Court Judge Humes Franklin ruled in 2002 that Horner be reinstated with back pay and benefits. Horner said including legal fees, he is owed \$600,000.

The local judge said Virginia law at the time gave a state employee's immediate supervisor the position of "first-step respondent." By law, the supervisor could provide remedies for employee grievances.

An appeals court reversed Humes' ruling, but the Supreme Court sided with the local judge last week.

In Horner's case, his supervisor, Dr. Michael T. Clayton, opposed the discipline imposed by higher-ups against his subordinate. Clayton said at the time that the hospital's allegations were "contrived."

In his official response regarding the neglect and abuse complaint, Clayton said Horner had been "diligent and excellent" in his care of the patient in question, and routinely washed his hands while caring for the patient.

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Regarding the violation of employee confidentiality, Clayton said Horner's concerns about clinical care at Western State "merit extreme attention, vigilance and corrective actions where possible."

The state Supreme Court ruled that Virginia laws precluded management from interfering with Clayton's action.

Horner, who hopes to return to Western State by Aug. 1, said he is not fearful.

"It is important I do [return]," he said. "It's OK to tell the truth. It is important to improve patient care."

Horner said in the past years, he twice offered to voluntarily sever ties with Western State in exchange for a year's salary and a clean record, but was rejected.

Telephone calls to Martha Mead, a state mental health spokeswoman, were not returned Tuesday. She told The Associated Press earlier in the day that no decision had been made on whether to rehire Horner, but that the state would comply with any court decision.

Since his firing, Horner has worked at an urgent care center and a Luray hospital and has drawn unemployment.

Horner's attorneys still are pursuing federal suits.

Those suits allege free speech violations and seek damages from Western State Director Jack Barber, medical director Mary Clare Smith and the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

Efforts to reach Barber and Smith were unsuccessful.

The suits were dismissed at the U.S. District Court level, but are on appeal, Horner said.

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The Associated Press contributed to this report.

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### Horner's allegations

Between 1999 and 2001, the doctor accused Western State of:

- Inadequate psychiatric care for patients on the medical acute care unit at Western State.
- Inadequate medical supervision of the nurse practitioners and infection-control practitioner.
- Chronic inability and refusal of staff and administration to identify, acknowledge and/or correct glaring and serious deficiencies in patient care without - and in some cases, despite - monitoring and direction by outside agencies.

Horner said for years the hospital tolerated "rationing" antipsychotic medications. The rationing turned into "find patients to put on medicines so our percentages met national norms" after the U.S. Department of Justice stepped in.

- Efforts by the hospital administration to divide medical and psychiatric care of patients - a plan Horner vehemently opposed because he said it flew in the face of standard medical training and practice.

## Wonderful whistleblowers

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As long as there have been cases of fraud, waste and abuse, there have been whistleblowers. And as long as there have been whistleblowers, there have been government agencies and corporations that retaliated against them.

Dr. W. Harry Horner was a Western State Hospital internist for six years and a top performer, based on his evaluations. But he was fired in 2001 after two years of complaining about inadequate psychiatric care at the state-run hospital in Staunton.

The Virginia Supreme Court, which rarely intervenes in employment matters, has decided in favor of a local judge who ruled Horner should be reinstated with back pay and benefits (which Horner estimates total \$600,000).

Curiously, the Virginia Department of Mental Health, the agency that employed Horner, told The Associated Press on Tuesday that no decision has been made on whether to rehire Horner. That's curious because with the Supreme Court's ruling, the agency has no choice but to bring Horner back.

For nearly two years, starting in mid-1999, Horner criticized Western State administrators for not answering his pleas for better patient care. Two months after he wrote a scathing memo, he was fired for "failure to follow a supervisor's instruction" and "failure to comply with written policy." These grounds for dismissal followed the highest performance ratings attainable by Horner. Even his immediate supervisor, Dr. Michael T. Clayton, said at the time that the charges against Horner were "contrived" and that he wanted "the complete reversal of disciplinary action" against his staff member.

Had state mental health officials and hospital administrators done the right thing, three Horner lawsuits claiming millions of dollars (two are still pending) would not have been filed, the fired doctor says.

Horner even says he offered to quit in exchange for a year's salary and having his employment record expunged. It now appears that taxpayers will wind up paying a lot more than a year's salary to a doctor who dared to blow the whistle.

Horner joins a long line of distinguished heroes who bucked the system. Others discovered the federal government was paying \$7,600 for coffee makers and \$436 for hammers; that the Vietnam War wasn't going so well after all; and countless other instances where public money and safety were being jeopardized.

Bully for you, Dr. Horner.