State of West Virginia

WEST VIRGINIA BOARD OF MEDICINE
100 Dee Drive, Suite 104, Charleston 25311
(304) 348-2921

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

vs.

PHANLOBH VICHAIKUL, M.D.

Respondent.

ORDER

This matter arises under the West Virginia Medical Practice Act, West Virginia Code §30-3-1, et seq. It is a disciplinary proceeding involving the status of the license to practice medicine and surgery in West Virginia of Phanlobh Vichaikul, M.D. The West Virginia Board of Medicine is the duly authorized state agency to oversee and conduct physician disciplinary proceedings pursuant to West Virginia Code §30-3-14(a).

This proceeding was initiated by a "Complaint and Notice of Hearing" issued by the West Virginia Board of Medicine dated October 17, 1986. The hearing was held on November 21, 1986,

at 9:00 a.m., at 100 Dee Drive, Charleston, West Virginia. Hearing Examiner Drexel M. Vealey was designated by the Board to preside over the hearing. The hearing afforded all parties an opportunity to be heard and Dr. Vichaikul was present and represented at such hearing by his counsel, P. Lee Clay. Deborah Lewis Rodecker, counsel for the Board, and the Board's Executive Director, Ronald D. Walton, were present.

Ronald D. Walton, Ulyssess Grant Young, an Investigator for the Board, Douglas Dennis Glover, M.D., Dr. Vichaikul and Shirley Ann Avey, Dr. Vichaikul's Office Assistant, all testified at the hearing. A stenographic record of the hearing was prepared pursuant to West Virginia Procedural Rules, West Virginia Board of Medicine, Chapters 6-9A and 29A-5, Series I (1983), Regulation 11. Also received into the record were the Board's Exhibits 1 through 19 and Respondent's Exhibits 1 and 2. Subsequent to the hearing, the Hearing Examiner received two (2) additional exhibits from the Respondent, Nos. 3 and 4.

The Hearing Examiner prepared a report containing recommended Findings of Fact and Conclusions of Law dated January 8, 1987, and this report was submitted to the Board for its consideration at a regular meeting of the Board on January 12, 1987, with the record described above. The Board has

thoroughly considered all of this information in reaching its decision.

FINDINGS OF FACT

The Board approves the Hearing Examiner's proposed Findings of Fact in their entirety.

CONCLUSIONS OF LAW

The Board approves the Hearing Examiner's proposed Conclusions of Law in their entirety.

DECISION

The report of the Hearing Examiner is attached hereto and incorporated by reference in its entirety herein. Based upon the foregoing Findings of Fact and Conclusions of Law and the recommendation of the Hearing Examiner that the license of Phanlobh Vichaikul, M.D., to practice medicine in the State of West Virginia be revoked, the Board hereby ORDERS that the license to practice medicine and surgery, No. 10505, issued in the State of West Virginia to Phanlobh Vichaikul be revoked.

Dated this 14th day of January, 1987.

S. Eileen Catterson M.D.
S. EILEEN CATTERSON, M.D.
President, Board of Medicine

David K. Heydinger, M.D.
DAVID K. HEYDINGER, M.D.
Secretary, Board of Medicine

CERTIFICATE OF SERVICE

I, Ronald D. Walton, Executive Director for the West Virginia Board of Medicine, do hereby certify that a copy of the foregoing Order has been served upon P. Lee Clay, counsel for Respondent herein, by First Class United States Mail, postage prepaid, this 15th day of January, 1987, addressed as follows:

P. Lee Clay, Esquire
Post Office Box 83
Fairmont, WV 26554

Ronald D. Walton

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

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RECOMMENDED FINDING OF FACT AND
CONCLUSIONS OF LAW OF HEARING EXAMINER

This matter was referred to the undersigned hearing examiner by the West Virginia Board of Medicine ("Board") pursuant to the West Virginia Procedural Rules of the West Virginia Board of Medicine, Chap. 6-9A and 29A-5, Series I (1983), the West Virginia Legislative Rules of the West Virginia Board of Medicine, Chap. 30-3, Series I (1984), [1] and the Complaint and Notice of Hearing, dated October 17, 1986. The hearing was held on November 21, 1986 at 9:00 o'clock A.M. at 100 Dee Drive, Charleston, West Virginia.

The undersigned hearing examiner has carefully reviewed and considered the applicable law, regulations and the record submitted herein, including the oral testimony, certain exhibits and arguments of counsel. The Index of Record attached hereto and made a part hereof is the entire record in this matter.

[1] Hereinafter cited as "Legis, R. W. Va. Bd of Med. §_____."

1. Issues Presented.

A. Did Phanlobh Vichaikul, M.D. prescribe certain scheduled controlled substances to four patients in the course of his professional practice other than in good faith and in a therapeutic manner in accordance with accepted medical standards, in violation of West Virginia Code § 30-3-14(c)(13)?

B. Did Phanlobh Vichaikul, M.D. prescribe certain scheduled controlled substances to four patients with the intent or knowledge that they were to be used or were likely to be used other than medicinally or for an accepted therapeutic purpose?

C. Did Phanlobh Vichaikul, M.D. prescribe certain scheduled controlled substances to four patients in such amounts that he knew or had reason to know under the attendant circumstances that said amounts so prescribed were excessive under and did not conform with accepted and prevailing medical standards, which conduct has the effect of bringing the medical profession into disrepute and constitutes unprofessional conduct, in violation of West Virginia Code § 30-3-14(c)(17) and West Virginia Legislative Rules, West Virginia Board of Medicine, Chapter 30-3, Series I, Regulations 19.1 (e), (j), (cc) and 19.2 (a) (4) and 19.2 (d)?

D. Did Phanlobh Vichaikul, M.D., in prescribing the drug dexidrene to Patient No. 2, prescribe a drug which is an amphetamine or sympathomimetic amine drug or a compound designated as a Schedule 2 controlled substance pursuant to

Chapter 60A of the West Virginia Code, in violation of West Virginia Code § 30-3-14(c)(17) and West Virginia Legislative Rules, West Virginia Board of Medicine, Chapter 30-3, Series I, Regulation 19.1 (ff)?

E. Did Phanlobh Vichaikul, M.D. fail to keep written records justifying the course of treatment to four patients, in violation of West Virginia Code § 30-3-14(c)(11)?

II. Findings of Fact.

A. Phanlobh Vichaikul, M.D. is licensed to practice medicine and surgery in the State of West Virginia, and is a resident of the City of Fairmont, West Virginia, specializing in the field of obstetrics and gynecology and also practicing general medicine. Dr. Vichaikul began the practice of medicine in West Virginia on July 8, 1975 at the Grafton City Hospital, Grafton, West Virginia. He graduated from Chiengmai University of Medical Sciences, Chiengmai, Thailand on March 26, 1969 and completed his residency at Lutheran Hospital of Maryland, Baltimore, Maryland on June 30, 1975. His West Virginia No. is 10505 which was first issued by the Board on July 7, 1975, [Board Exhibit No. 1].

B. Copies of the medical records of three patients of Dr. Vichaikul were submitted to the Board pursuant to a subpeona duces tecum requiring medical records of four patients. It was necessary for the Board to issue a second subpeona duces tecum to

obtain the records of Patient Number 4 and a third subpeona duces tecum to obtain the original records of all four patients in question. Dr. Douglas D. Glover, an associate professor of obstetrics and gynecology at Marshall University School of Medicine, and an associate professor of clinical pharmacy at West Virginia University School of Pharmacy, is licensed to practice medicine in West Virginia, testified that there were discrepancies between the copies of medical records submitted initially and the original records submitted later, which were submitted pursuant to the third subpeona duces tecum. Entries were made on the original records that were not on the copies, which indicated that the data in the records had been altered and were damaging to Dr. Vichaikul's testimony. Dr. Glover is an expert and well qualified to testify as to the chemical content, dosage and potential for addiction, dependency and/or abuse of drugs.

Dr. Vichaikul testified that the record of Patient Number Four had been lost and he had attempted to reconstruct the record when he was unable to provide the original. In any event, the records of all four patients contained discrepancies as to dosages of scheduled controlled substances prescribed by Dr. Vichaikul.

Dr. Vichaikul was unable to explain the omission of entries into his patients' records where he had prescribed medications, or to explain why he had prescribed what was termed by Dr. Glover as excessive dosages and dosages that were potentially lethal.

Further, Dr. Vichaikul was unable to justify prescribing Scheduled Controlled Substances to a patient after he had advised the patient that she was becoming addicted to the medication he was prescribing. He did not deny prescribing Scheduled 2 drugs for patient's complaints such as a sore throat, loss of sleep or for pain, all of which Dr. Glover testified was unnecessary. At one point in his testimony, Dr. Glover stated that in the instruction of medicine to medical students, he would use Dr. Vichaikul's methods on how "not to keep office records and how not to treat patients."

All in all, the instances of Dr. Vichaikul maintenance of poor or non-existent records of his patients, prescribing drugs that had potential for addiction, dependency or abuse, and prescribing Schedule 2 drugs and failing to enter such information on a patient's medical record; continuing to prescribe Schedule 2 medications after informing a patient that she was becoming addicted to such medication; prescribing Schedule 2 drugs in large dosages over extended periods of time; prescribing Schedule 2 drugs for pain, coughing and stuffy nose without medical justification; continued prescribing of Schedule 2 drugs after a patient had improved and no longer needed medication; and prescribing medications simultaneously which may have been lethal taken together; all indicate or tend to indicate that Dr. Vichaikul has been grossly negligent and is, therefore, incompetent to practice medicine in the State of West Virginia.

III. Conclusions of Law.

A. Dr. Vichaikul received adequate notice of this proceeding by the mailings of the Complaint and Notice of Hearing to him at his office at 1800 Locust Avenue, Fairmont, West Virginia 26554. W. Va. Code § 29A-7-2.

B. Neither the testimony nor the evidence produced by Dr. Vichaikul were effective in rebutting the charges by the Board that he prescribed Scheduled Controlled Substances in the course of his professional practice other than in good faith and in a therapeutic manner in accordance with accepted medical standards; that he did so with the intent and knowledge that they were to be used or were likely to be used other than medicinally or for an accepted therapeutic purpose; that he prescribed said certain controlled substances in such amounts that he knew or had reason to know under the attendant circumstances that said amounts so prescribed were excessive and did not conform with accepted medical standards, which conduct has the effect of bringing the medical profession into disrepute and constitutes unprofessional conduct; prescribed dexidrene which is an amphetamine or sympathomimetic amine drug or a compound designated as a Schedule 2 controlled substance; and, failed to keep written records justifying the course of treatment, all in violation of West Virginia Code § 30-3-14(c)(13); West Virginia Code § 30-3-14(c)(17) and West Virginia Legislative Rules, West Virginia Board of Medicine, Chapter 30-3, Series I, Regulations 19.1 (e)

and 19.2 (a) (1); West Virginia Code § 30-3-14(c)(17) and West Virginia Legislative Rules, West Virginia Board of Medicine, Chapter 30-3, Series I, Regulations 19.1 (e), (j) (cc) and 19.2 (a) (4) and 19.2 (d); Chapter 60A of the West Virginia Code in violation of West Virginia Code § 30-3-14(c)(17) and West Virginia Legislative Rules, West Virginia Board of Medicine, Chapter 30-3, Series I, Regulation 19.1 (ff); and, West Virginia Code § 30-3-14(c)(11), respectively.

C. This Board may impose any of the following sanctions against Dr. Vichaikul upon a finding by the Board that Dr. Vichaikul has violated the aforesaid laws of the State or rules of the Board:

> (1) Deny his application for a license or other authorization to practice medicine and surgery;
>
> (2) Administer a public reprimand;
>
> (3) Suspend, limit or restrict his license or other authorization to practice medicine and surgery for not more than five years, including limiting the practice of such person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;
>
> (4) Revoke his license or other authorization to practice medicine and surgery or to prescribe or dispense controlled substances;
>
> (5) Require him to submit to care counseling or treatment designated by the Board as a condition for initial or continued licensure or renewal of licensure or other author-

ization to practice medicine and surgery;

(6) Require him to participate in a program of education prescribed by the Board;

(7) Require him to practice under the direction of a physician designated by the board for specified period of time; and

(8) Assess a civil fine of not less than one thousand dollars nor more than ten thousand dollars.

W. Va. Code § 30-3-14(i).

D. Issues Answered.

A. Yes

B. Yes

C. Yes

D. Yes

E. Yes

IV. Recommendation.

The undersigned hearing examiner recommends that the findings of fact and conclusions of law contained herein be adopted by the Board and that the license of Phanlobh Vichaikul, M.D. to practice medicine in the State of West Virginia, License No. 10505, be revoked.

Dated this 8th day of January, 1987.

DREXEL M. VEALEY
Hearing Examiner

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INDEX OF RECORD

A. Board Exhibit Nos.	Description.
1	Record of Personal Information and Application for Biennial Registration for Phanlobh Vichaikul, M.D.
2	Patient No. 1, Prescription Summary
3	Patient No. 2, Prescription Summary
4	Patient No. 3, Prescription Summary
5	Patient No. 4, Prescription Summary
6	Medical Records, Received Pursuant to November, 1985 Subpeona, Patient No. 1
7	Medical Records, Received Pursuant to November, 1985 Subpeona, Patient No. 2
8	Medical Records, Received Pursuant to November, 1985 Subpeona, Patient No. 3

9	Medical Records, Received Pursuant to November, 1985 Subpeona, Patient No. 4
10	Comparison of Prescriptions Submitted in Evidence and Prescriptions Noted In Medical Records, Patient No. 1
11	Comparison of Prescriptions Submitted In Evidence And Prescriptions Noted In Medical Records, Patient No. 2
12	Comparison of Prescriptions Submitted In Evidence And Prescriptions Noted In Medical Records, Patient No. 3
13	Comparison of Prescriptions Submitted In Evidence And Prescriptions Noted In Medical Records, Patient No. 4
14	Medical Records Received Pursuant To October, 1986 Subpeona, Patient No. 1
15	Medical Records Received Pursuant To October, 1986 Subpeona, Patient No. 2
16	Medical Records Received Pursuant To October, 1986 Subpeona, Patient No. 3
17	Medical Records Received Pursuant To October, 1986 Subpeona, Patient No. 4
18	Comparison Of Prescriptions Submitted In Evidence And Prescriptions Noted In Medical Records Received In November, 1986, Patient No. 4

19	Comparison Of Prescriptions Submitted In Evidence And Prescriptions Noted In Medical Records Received In January, 1986, Patient No. 4

B. Respondent's Exhibit Nos. — Description.

1	Respondent's Answer And Memorandum
2	Product Information
3	Statement of Patricia Sallie, RPn
4	Statement of P. Lee Clay of Date Services Refused Or Referred

C. Transcript of Hearing of November 21, 1986.