

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

JOSE G. (JOSEPH) PRITCHARD, M.D.

Respondent.

ORDER

This proceeding 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 Jose G. (Joseph) Pritchard, M.D. ("Dr. Pritchard"). The West Virginia Board of Medicine ("Board") is the duly authorized State agency to oversee and conduct physician disciplinary hearings pursuant to the provisions of West Virginia Code §30-3-14.

This proceeding was initiated by a Complaint and Notice of Hearing issued by the Board dated October 2, 1987.

A hearing was held on November 5, 1987, at 100 Dee Drive, Charleston, West Virginia, at the offices of the Board. Hearing

Examiner Theodore R. Dues, Jr. was designated by the Board to preside at the hearing and did so preside.

The hearing afforded all parties an opportunity to be heard. Dr. Pritchard, the Respondent, was present in person and represented by counsel, Daniel D. Dahill. The Board, the Petitioner, was present by the Executive Director, Ronald D. Walton, and represented by counsel, Deborah Lewis Rodecker. The Board presented three (3) witnesses; Ronald D. Walton, Steven R. Brown, Claim Specialist with CNA Insurance Company, and Betty Kirkwood, Executive Vice President of the West Virginia Medical Institute. The Respondent, Dr. Pritchard, testified at the hearing, and on his behalf also did Leonard Varacalli, Administrator of Holden Hospital. Eighteen (18) exhibits of the Board were entered into the record as was one (1) exhibit entered of the Respondent.

A stenographic record of the hearing was prepared pursuant to West Virginia Procedural Rules, West Virginia Board of Medicine, Chapter 6-9A and 29A-5, Series I (1983), Regulation 11. At the close of the hearing, the Hearing Examiner requested that proposed Findings of Fact and Conclusions of Law be submitted simultaneously within twenty (20) days of the date of receipt of the transcript. The transcript was received by Counsel to the Board on March 16, 1988, and subsequent to the receipt by the Hearing Examiner of Petitioner's Memorandum of Law with Proposed

Findings of Fact and Conclusions of Law filed with the Hearing Examiner on March 25, 1988, the Hearing Examiner on May 5, 1988, rendered a report; Recommended Findings of Fact and Conclusions of Law. This report of the Hearing Examiner and the record of the hearing described above were submitted to the Board for its consideration prior to its regular meeting on May 16, 1988, and all in accordance with West Virginia Procedural Rules, West Virginia Board of Medicine, Chapter 6-9a and 29A-5, Series I (1983), Regulation 12. The Board has thoroughly considered all of this information in reaching its decision.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

With the exception of Finding No. 12 contained therein, the Board approves the Hearing Examiner's report (Examiner's Recommended Findings of Fact and Conclusions of Law) in its entirety. In lieu of Finding No. 12, the Board finds as follows:

12. As of October 15, 1987, the West Virginia Board of Medicine had not received a Corrective Action Plan from the Respondent, and, upon consideration of the record herein, neither had the Office of the Inspector General, Department of Health and Human Services. In addition, there is no evidence to support a finding that the Peer Review Organization had received any such plan from the Respondent as of that time.

In addition, the Board makes the following findings:

1. Dr. Pritchard was the first, and remains the only, physician for whom the West Virginia Medical Institute, Inc., has recommended a five (5) year exclusion from the Medicare Program,

which recommendation is the most severe recommendation ever made by the West Virginia Medical Institute, Inc.

2. The findings of the West Virginia Medical Institute, Inc., and the Office of Inspector General for the Department of Health and Human Services of the Federal Government, the entities duly constituted to make such recommendations and determinations as found herein regarding a physician's exclusion from the Medicare Program, are entitled to deference and are presumed valid.

3. Dr. Pritchard has repeatedly failed to respond to frequently offered rehabilitative efforts, which failure indicates an unwillingness or inability to comply with his professional obligations.

4. Dr. Pritchard's violations of the West Virginia Medical Practice Act are too numerous and serious to reach a finding other than that he is unqualified to practice medicine in the State of West Virginia.

DECISION

The Hearing Examiner's report is attached hereto and incorporated by reference herein. Based upon the foregoing Findings of Fact and Conclusions of Law and the Recommendation of the Hearing Examiner that there is no remedial action reasonably calculated to rehabilitate the problems which dominate the Respondent's conduct in practice except revocation of his license to practice medicine and surgery in the State of West Virginia, the Board hereby ORDERS that the license to practice medicine and surgery of Jose G. (Joseph) Pritchard, M.D., License No. 12539, issued in the State of West Virginia to Jose G. (Joseph) Pritchard, M.D., on February 10, 1981, be REVOKED, effective May 28, 1988, at 12:01 a.m.

Dated this 18th day of May, 1988.

WEST VIRGINIA BOARD
OF MEDICINE



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

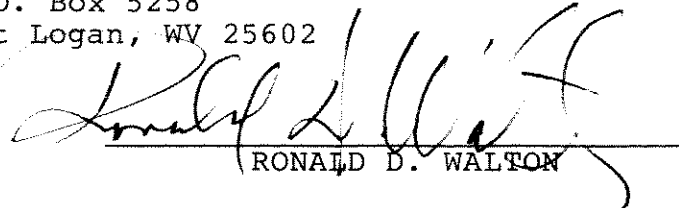


DAVID K. HEYDINGER, M.D.
Secretary, Board of Medicine

CERTIFICATE OF SERVICE

I, Ronald D. Walton, Executive Director of the West Virginia Board of Medicine, do hereby certify that I have served the foregoing ORDER by mailing a copy thereof by United States Certified Mail, postage prepaid, this 23rd day of May, 1988, to:

Daniel Dahill, Esq.
P. O. Box 5258
West Logan, WV 25602



RONALD D. WALTON

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,

Petitioner,

v.

JOSE G. (JOSEPH) PRITCHARD, M.D.,

Respondent.

**EXAMINER'S RECOMMENDED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter matured for public hearing on the 5th day of November 1987, at the Conference Room of the West Virginia Board of Medicine located at 100 Dee Drive, Charleston, WV 25301. The hearing panel consisted of Theodore R. Dues, Jr., Hearing Examiner.

The Petitioner appeared by its representative, Ronald Walton and its counsel Deborah L. Rodecker. The Respondent appeared in person and by his counsel Daniel D. Dahill.

After a review of the record, any exhibits admitted in evidence, any stipulations entered into by the parties, any matters for which the Examiner took judicial notice during the proceedings, assessing the credibility of the witnesses and weighting the evidence in consideration of the same, the Examiner makes the following findings of fact and conclusions of law. To the extent that these findings and conclusions are generally consistent to any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the

Examiner, and conversely, to the extent the same are inconsistent to these findings and conclusions, the same are rejected.

ISSUES

1. Did the Respondent fail to provide adequate care in such a number of cases, said care being medically necessary, to the effect that he failed to meet the professionally recognized standards of health care.

2. If so, did the Respondent's conduct constitute professional incompetence to practice medicine with a reasonable degree of skill and safety.

3. Did the Respondent's conduct pertaining to the provisions of a Settlement Agreement entered into by him with the Federal Department of Health and Human Services and his subsequent representations to the West Virginia Board of Medicine regarding the existence and submission of a Corrective Action Plan to the appropriate agencies constitute a failure to perform a legal obligation effecting unethical and unprofessional conduct.

4. Did the Respondent fail to report a malpractice settlement on his application for biennial registration with the West Virginia Board of Medicine which occurred during the registration period July 1, 1985 through June 30, 1987.

5. If so, did this conduct constitute a fraudulent misrepresentation by the Respondent in his efforts to renew his license.

6. Further, if shown, did the same constitute a false

statement knowingly made by the Respondent in connection with the license application.

7. If any of the above is proved by the West Virginia Board of Medicine, what is the appropriate disciplinary action.

FINDINGS OF FACT

1. The Respondent, Jose G. (Joseph) Pritchard, M.D., is licensed to practice medicine and surgery in West Virginia.

2. The Respondent's license is identified as West Virginia Number 12539, being originally issued in 1981.

3. In March, 1986, the Respondent was notified by the Director of Health Care Administrative Sanctions, Office of Investigations of the Office of Inspector General of the Department of Health and Human Services of the federal government, that a determination had been made to exclude the Respondent from participation in the Medicare program for a five (5) year period, pursuant to Section 1156 of the Social Security Act 42 U.S.C. Section 1320c-5.

4. The basis for this action was the determination by the West Virginia Medical Institute, Inc., the Peer Review Organization for West Virginia, that in 20 cases, the Respondent had violated the obligations posed on him by Section 1156(a) of the Social Security Act by providing care which was determined to be medically unnecessary and which failed to meet professionally recognized standards of health care.

5. This notification to the Respondent further reflected that the Director of Health Care Administrative

Sanctions, Office of Investigations, Office of Inspector General of the Department of Human Services, agreed with the Peer Review Organization's findings, in each of these cases.

6. Subsequent to being notified of this action, the Respondent exercised his right to appeal the determination and requested a hearing.

7. Subsequent to exercising his rights to appeal, the Respondent entered into a Settlement Agreement with the Director of Health Care Administrative Sanctions and the Assistant Regional Counsel, Office of the General Counsel of the Department of Health and Human Services. Therein the parties agreed and stipulated that the Respondent would be excluded in participation in the Medicare Program for a period of 27 months beginning April 6, 1986. The agreement further provided that the Respondent would submit a written corrective action plan, including provisions for continuing medical education, containing the elements orally agreed to by the parties, within 30 days of execution of the Settlement Agreement. It was further agreed between the parties, that within 30 days thereafter, any recommendation for modification of the corrective action plan, if considered appropriate, would be made after consultation with the West Virginia Medical Institute. In this situation, the Respondent was to submit the modified correction action plan within ten days of its approval. Lastly, the Settlement Agreement provided that the corrective action plan was to be incorporated by reference as an intergral part of the Settlement Agreement.

8. On March 25, 1987, the West Virginia Board of Medicine was notified, in writing, by the Director of Health Care Administrative Sanctions, Office of Investigations, Office of Inspector General, of the existence of the aforementioned Settlement Agreement.

9. The West Virginia Board of Medicine requested a copy of the aforementioned Settlement Agreement. On or about May 28, 1987, a copy of the Settlement Agreement was recieved by the West Virginia Board of Medicine.

10. Upon recieving the same, the West Virginia Board of Medicine requested the Respondent to appear before it at a meeting of the Complaint Committee to be held on September 13, 1987, with a specific instruction to the Respondent, to bring a copy of his Corrective Action Plan (which was a part of the aforementioned Settlement Agreement).

11. The Respondent appeared before the Complaint Committee on the requested date. However, the Respondent failed to produce any Corrective Action Plan. During his appearance, he did represent to the Committee that such a plan had been recently submitted by him to the Office of the Inspector General, Department of Health and Human Services.

12. As of the date of this hearing, the West Virginia Board of Medicine had not recieved a corrective action plan from the Respondent, and, upon consideration of the record herein, neither had the Office of the Inspector General, Department of Health and Human Services. In addition, there is no evidence to support a finding that the Peer Review Organization had recieved

any such plan from the Respondent.

13. The evidence of record indicates that during the Complaint Committee's meeting on September 13, 1987, the Respondent was asked certain questions pertaining to the information provided by him on his biennial renewal of his license to practice medicine and surgery in the state of West Virginia for the period of July 1, 1987 through June 30, 1989. Whereon the Respondent had indicated that, during the last registration period, he had no malpractice settlements or judgements rendered against him.

14. This reponse is inconsistent to the information previously recieved by the Petitioner from the Respondent's malpractice insurer. That information indicated that the Respondent had a claim against him settled in 1986.

15. Notwithstanding the fact that apparently the Respondent's attorney did not formally notify him of the aforementioned settlement, the fact that the application, on its face, indicates that a fraudulent answer to any question thereon, regarding malpractice settlements or judgements, would result in licensure denial or revocation, is adequate notice to place persons completing the same, to a higher degree of caution in providing this information.

16. The Respondent failed to exercise reasonable care and due dilligence in the completion of the aforementioned biennial application, by failing to inquire about the status of the claim, which the evidence of record indicates he had actual notice.

18. Further the reasonableness of such an inquiry is bolstered by the fact that the Respondent had, on a previous date, prior to the completion of the aforementioned application, provided his insurer authorization to settle the claim.

DISCUSSION

A considerable amount of the factual basis of the petition filed by the West Virginia Board of Medicine was admitted by the Respondent. To that extent, the Examiner had no trouble defining the actual issues in contention. Specifically, the Respondent offers his hard work, benevolence, eagerness to accomodate his patients, lack of knowledge about the specifics of the malpractice claim against him, and, his utter confusion and depression which resulted in his failure to comply with the various directives of supervising agencies governing his practice, as a defense to the pending charges.

However, though great weight may be applied to some or all of these explanations, they hardly rise, individually or aggregately, to the level of vindicating the Respondent's undisputed conduct in this matter.

The allegations of the Petition were, in most instances, unchallenged by the Respondent. On those issues in which the Respondent chose to challenge or mitigate his actions, as mentioned, his evidence fell miserably short of justifying the conduct in question.

It is quite apparent that the Respondent's professional competence, ethical reasoning and dilligence in his practice, was

below the minimal acceptable ethical professional standards.

CONCLUSIONS OF LAW

1. The West Virginia Board of Medicine has jurisdiction over the subject matter and the parties herein.

2. The Respondent's inability to provide adequate care in cases which was medically necessary constitutes a failure to meet the professionally recognized standards of health care and professional competence; specifically, a lack of professional competence to practice medicine with a reasonable degree of skill and safety for his patients, and a failure to practice medicine with an acceptable amount of care, skill and treatment. West Virginia Code Section 30-3-14(c)(17),(20); West Virginia Board of Medicine Legislative Rules 30-3, Series I, 19.1(i),(y).

3. Respondent's failure to comply with the provisions of the Settlement Agreement reached between the Federal Department of Health and Human Services and his subsequent misrepresentations to the West Virginia Board of Medicine concerning the existence and submission of a Corrective Action Plan, as obligated under the Settlement Agreement, constitutes a failure to perform a legal obligation placed upon him effecting dishonorable, unethical and unprofessional conduct. West Virginia Code 30-3-14(c)(17). West Virginia Board of Medicine Legislative Rules, Chapter 30-3, Series I, 19.1(e),(j),(p).

4. The Respondent's failure to report the existence of a malpractice claim and settlement of the same on his application for biennial registration constitutes a fraudulent

misrepresentation made in the renewal process of his license. West Virginia Code Section 30-3-14(c)(1), (17): West Virginia Board of Medicine Legislative Rules, Chapter 30-3, Series I, 19.1(a).

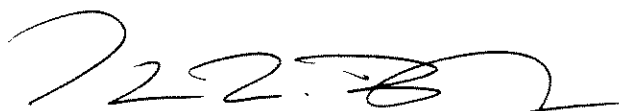
5. Dr. Pritchard fully understood and appreciated the consequences of his acts.

PROPOSED ORDER

After weighing all the evidence in the case, the Examiner finds that there is no remedial action reasonably calculated to rehabilitate the problems which dominate the Respondent's conduct and practice except revocation of his license to practice medicine and surgery in the State of West Virginia. Accordingly, the Examiner does hereby recommend to the West Virginia Board of Medicine that the Respondent's license be revoked.

DATED: May 5, 1988

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner

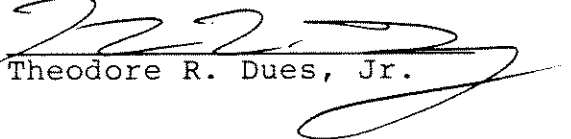
CERTIFICATE OF SERVICE

I, Theodore R. Dues, Jr., Hearing Examiner do hereby certify that I have served a true and exact copy of the foregoing EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW upon the following:

Deborah Lewis Rodecker
West Virginia Board of Medicine
100 Dee Drive, Suite 140
Charleston, WV 25311

Daniel D. Dahill, Esquire
P.O. Box 5258
West Logan, WV 25601-0258

by depositing a copy of the same in a properly addressed envelope on the 24 day of May, 1988.


Theodore R. Dues, Jr.