

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

WEST VIRGINIA BOARD OF
DENTAL EXAMINERS,

Complainant,

v.

Case No. 2005-DB-0017D

DR. TERRY L. LAKE,

Respondent.

FINAL ORDER

Now comes the West Virginia Board of Dental Examiners (hereinafter "Board"), and hereby adopts the "Hearing Examiner's Findings of Facts and Conclusions of Law," by Hearing Examiner Jack McClung, dated September 28, 2007, in its entirety, incorporated by reference herein.

Accordingly, the Board Orders as follows:

1. The Board shall adopt and ratify the Findings of Facts and Conclusions of Law entered on September 28, 2007.
2. The dental license of Terry L. Lake (hereinafter "Respondent"), License No. 2379, is hereby **SUSPENDED** for a period of five (5) year, with all but sixty (60) days **STAYED** commencing November 30, 2007. Respondent shall not engage in the practice or business of dentistry whatsoever, either directly or indirectly, in the State of West Virginia during the stayed SUSPENSION period.
3. The Respondent shall be placed on Probation for a period of (5) five years, subject to the following terms and conditions:

a. Within one year of entry of this Order, the Respondent shall enroll in and successfully complete twenty (20) hours in pharmacology to be approved by the Board. The course shall include an intensive course in the proper prescribing of controlled dangerous substances. The Respondent shall submit written verification to the Board of his enrollment and successful completion of the same. Such course shall not count toward any continuing educational requirements for licensure renewal.

b. Within one year of entry of this Order, the Respondent shall enroll in and successfully complete twenty (20) hours in ethics and record keeping both to be approved by the Board. The Respondent shall submit written verification to the Board of his enrollment and successful completion of the same. Such course shall not count toward any continuing educational requirements for licensure renewal.

c. The Respondent shall not prescribe, dispense or administer any scheduled controlled substances for a period of one year after entry of this Order. The Respondent shall petition the Board to lift this restriction. That should the Board lift the restriction on the Respondent's license to prescribe, dispense or administer any scheduled controlled substances, the Respondent shall maintain a separate log detailing all control substances prescribed, administered or dispensed to his patients. The Respondent shall list the medication prescribed, administered or dispensed along with an explanation for the medication. A copy of this log shall be sent to the Board monthly and said log shall also be made available upon request by the Board or its designee at any time.

d. The Respondent shall immediately cease the treatment of Patient A or any patient for chronic pain.

e. The Respondent shall take and pass the West Virginia Dental Law Examination.

4. That the Respondent shall be assessed a fine in the amount One Thousand Dollars (\$1,000.00).

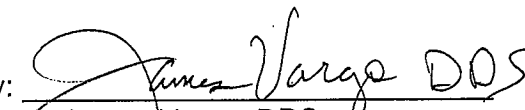
5. That the Respondent shall reimburse the Board in the amount of Six Thousand Dollars (\$6,000.00) for the costs incurred by the Board associated with the investigation and prosecution of this matter.

6. The Respondent shall be responsible for any cost associated with the implementation of this Order.

7. If the Respondent fails to comply with any of the terms of this ORDER, the Board may lift the stay on the SUSPENSION. If the stay is lifted, the SUSPENSION will immediately be in full force and effect.

ENTERED into the records of the Board this 7th day of Nov 2007.

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

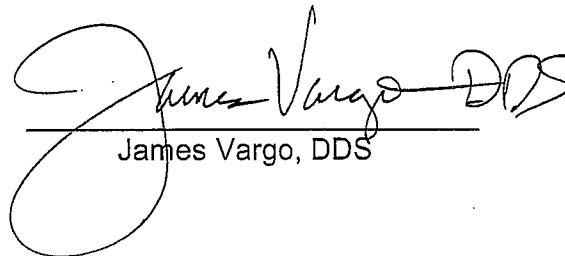
By:  DDS
James Vargo, DDS
Board President

Pursuant the West Virginia Code §29A-5-4(b) an appeal of this decision may be made to the Circuit Court of Kanawha County or in the circuit court of the county in which the licensee resides or do business. This appeal must be filed within 30 days after receiving notice of this decision.

CERTIFICATE OF SERVICE

I, James Vargo, DDS, President of the West Virginia Board of Dental Examiners, do hereby certify that a true and exact copy of the foregoing "Order" was served upon the following by certified mail, return receipt requested this 7th day of November 2007 addressed as follows:

Terry L. Lake, DDS
5001 MacCorkle Avenue, SW
Charleston, West Virginia 25309


James Vargo, DDS

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

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Case No. 2005-DB-0017D

DR. TERRY L. LAKE,

Respondent.

**HEARING EXAMINER'S
RECOMMENDED DECISION**

This matter came on for hearing on May 31, 2007, pursuant to an original COMPLAINT AND NOTICE OF HEARING dated November 15, 2005, and was continued at the request of the Respondent until it was again noticed for hearing by NOTICE OF HEARING dated April 6, 2007. The West Virginia Board of Dental Examiners, Complainant herein, appeared by Darlene Ratliff-Thomas, Assistant Attorney General, and called as witnesses, Susan Michelle Combs, and Dr. Daniel Eric Becker. The Respondent appeared pro se, testified on his own behalf, and called no witnesses.

After a review of the record and exhibits admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the undersigned Hearing Examiner makes the following Findings of Fact and Conclusions of Law. To the extent that these findings and conclusions are generally consistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Hearing Officer. Conversely, to the extent that the

same are inconsistent with these findings and conclusions, they are rejected. To the extent that the testimony of any witness is not in accordance with these findings and conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed and submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

FINDING OF FACT

1. Pursuant to the aforesaid COMPLAINT AND NOTICE OF HEARING, Dr. Terry L. Lake (hereinafter "Respondent"), a dentist licensed to do business within the State of West Virginia, was informed of allegations that he might be in violation of the disciplinary rules and criteria for licensed dentists. (See Complainant or Board Exhibit 1).

2. Dr. Terry L. Lake is a licensee of the West Virginia Board of Dental Examiners and is subject to license requirements of the Board. His license number is 2379.

3. In the Spring of 2005, the Board received information from a local pharmacy that expressed concerns regarding the amount of controlled substances that were being prescribed by the Respondent. (See Hearing Transcript pages 7-8 [hereinafter Tr.]

4. Based upon the information provided, the Board requested, from the Controlled Substance Monitoring Unit, copies of the pharmacy record detailing prescriptions written by the Respondent from April 5, 2004 through April 5, 2005. (Tr. 7; Board Exhibit 1.)

5. The matter was assigned to a complaint committee of the Board, which reviewed the pharmacy records as well as several patient records that had been obtained from the Respondent. Based on the information reviewed as well as an

informal conference, the committee determined that there was probable cause to believe that the Respondent had violated the Dental Practice Act. (Tr. 8; Board Exhibit 1.)

6. The Board offered the testimony of Dr. Daniel Eric Becker, a licensed dentist with more than thirty years of experience with an area of expertise in pharmacology and anesthesia. (Tr. 12-14; Board Exhibit 2.)

7. Dr. Becker testified that he had reviewed progress notes from the Respondent's office and pharmacy records to correlate the prescriptions for various patients. (Tr. 15.)

8. Dr. Becker also submitted a summary opinion based on his review of the progress notes and the pharmacy records. (Tr. 16; Board Exhibit 3.)

9. Dr. Becker testified that from the records he reviewed that Patient C¹ was managed for acute dental problems for about a year. That during this time period Patient C was prescribed "quite an amount" of opiate (pain killers), with minimal or no treatment being rendered. (Tr. 16.)

10. The Respondent testified that Patient C's first appointment was December 4, 2003. And from December 4, 2003 until June 6, 2005, that he prescribed large quantities of controlled substance, Lortab or Lorcets, to this patient as well as antibiotics. That many of these prescriptions were written with no treatment being rendered to the patient. In fact, she missed at least seven (7) appointments; however,

¹ See the Complaint and Notice of Hearing.

she was still given prescriptions even though the Respondent wrote in the patient's chart that he would not write any more prescriptions without treatment. (Tr. 54-60.)

11. Dr. Becker testified that the Respondent's conduct as it related to Patient C was "absolutely below the standards" of dental practice "to carry a patient that long on opioids for acute problems that were not solved; that were not treated." (Tr. 17.)

12. The Board offered testimony regarding the Respondent's treatment of Patient A who suffers from chronic pain.

13. Dr. Becker testified that as to Patient A, the Respondent neglected to follow standard guidelines for the management of chronic pain. (Tr. 18.)

14. The Board submitted a copy of the Veterans Administration Guideline for the Management of Opioid Therapy for Chronic Pain and a copy of West Virginia Board of Medicine Policy for the Use of Controlled Substance for the Treatment of Pain, which detail the standard guidelines used for the management of chronic pain. (Tr. 26-27; Board Exhibits 4 and 5.)

15. The first step in managing chronic pain would be to conduct a thorough pain-scale assessment. There was not evidence that the Respondent conducted such assessment. (Tr. 19.)

16. After pain assessment, step one therapy would involve "using NSAIDs like . . . Ibuprofen-type drugs and/or Tylenol in combination; when this is not successful then you move on to step two, which means you keep step one and then you add an adjunct and by an adjunct we mean it's not a traditional analgesic drug but something like an anti-depressant or anti-convulsants which do interfere with pain pathways." (Tr. 19-20.)

17. After each step in the therapy process, there should be a periodic assessment of the patient using a pain scale. (Tr. 20.)

18. The Board submitted evidence that the Respondent did not follow the standard therapy process, but rather "embarked on opioids immediately and has sustained them [for Patient A] for years and years and years." (Tr. 20.)

19. The Board presented evidence that a review of the Respondent's records for Patient A failed to contain any documents that would show that the Respondent had educated Patient A about opioids. The patient records did not contain any periodic pain scale assessments, liver lab studies,² nor any evidence of any kind of psychological counseling or physical therapy to rule out or confirm Patient A's problem. (Tr. 21-22.)

20. The Respondent acknowledged his prescribing practice as it related to Patient A was excessive and that he was in over his head with his attempts to treat this patient. (Tr. 61-62.)

21. Dr. Terry Lake, the Respondent herein, testified that he did not feel like his treatment of Patient C fell below the standard of treatment because he knew she had legitimate oral problems and was very sensitive and afraid of dental treatment; that her father and mother were also his patients; that he made her come to the office, whether he treated her or not, for the purpose of desensitization and to allow her to become more comfortable when coming to the office; that he finally was able to extract the tooth that was causing her problems and that he hasn't seen her since. Although Dr. Becker was adamant

² When prescribing a long-term medications like NSAIDs and/or Tylenol and anticonvulsants, there is the potential for liver damage; therefore, there should be periodic liver studies to assess if there is any damage to the liver.

that the frequency of Dr. Lake's prescribing controlled substances to this patient was below the standard of treatment, the Board's initial consultant, Dr. Robert Graves, found no problem with the treatment of this patient. (Tr. 47-48; Board Exhibit No. 1, Exhibit E, attached thereto.)

22. Dr. Lake further testified that with respect to Patient A, he acknowledged that it was a more complicated case and stated that he was not the best qualified person in the world to treat Patient A; that she had limited mobility in getting to other places since she takes care of her mother; that at first he used NSAIDS which did not work; that assessments were done; that she was referred to a neurologist, to an ENT, and to Dr. Saldanha at the pain clinic; that an oral surgeon performed surgery and a biopsy was done and a diagnosis was done which turned out to be an untreatable diagnosis; that she was referred to a psychiatrist without relief for psycho-social considerations; that he entered into a pain management agreement with Patient A; that she was sent for liver analysis but there was no documentation of such in his files; that in undertaking to treat Patient A for chronic pain, he was trying to relate the sensitivity of taking care of Patient A without causing her to travel long distances; that he believed the referrals to be appropriate to the area of Charleston; that he tried to do the best he could with the resources available in the area. (Tr. 48-53,60-63; Respondent's Exhibit No. 1.)

CONCLUSIONS OF LAW

1. The West Virginia Board of Dental Examiners has jurisdiction over this matter. See W. Va. Code § 30-4-1 *et seq.*

2. The Respondent, is a licensee of the West Virginia Board of Dental Examiners and is subject to license requirements of the Board.

3. The Board has the power to revoke a license, place a licensee on probation, suspend a license, reprimand a licensee or take other disciplinary action under W. Va. Code § 30-4-1 *et seq.* and the rules promulgated thereunder.

4. Inasmuch as Dr. Graves and Dr. Becker, both engaged by the Board to review relevant files of the Respondent pertaining to this matter, came to different conclusions with respect to the treatment given to Patient C by the Respondent, the undersigned finds that as a result, the evidence is inconclusive as to whether Dr. Lake's treatment of Patient C fell below the acceptable dental standards.

5. It is the finding of the undersigned that based on a review of the evidence adduced at hearing of this matter, the Respondent did not have the requisite training or knowledge to treat Patient A for chronic pain by use of Opioid Therapy for fifteen plus years and, therefore, his treatment of this patient failed to meet acceptable dental standards. See Report of Dr. Becker, Board Exhibit 3.

6. The COMPLAINANT BOARD proved by a preponderance of the evidence adduced at hearing that the Respondent's treatment of Patient A constitutes violations of the Dental Practice Act, specifically, W. Va. Code §§ 30-4-20(a)(3), 30-4-20 (a)(4) and 30-4-20(a)5, and rules of the Board, and therefore subjects the Respondent to disciplinary action with respect to his license to practice dentistry in the State of West Virginia.

THEREFORE, in accordance with the foregoing Findings of Fact and Conclusions of Law it is the recommendation of the undersigned that the Board take whatever disciplinary action that it deems appropriate against the Respondent's license to practice

dentistry in the State of West Virginia up to and including revocation along with an assessment of payment for all costs related to this matter.

Dated this 28th day of September, 2007.



JACK C. McCLUNG
HEARING EXAMINER