

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

**WEST VIRGINIA BOARD OF
DENTAL EXAMINERS,**

Complainant,

v.

Case No. 2005-DB-0017D

TERRY L. LAKE, DDS,

Respondent.

ORDER

This matter came on for hearing on April 9, 2009 before Hearing Examiner Jack McClung, Esquire, pursuant to West Virginia Code §§ 30-4-1 *et seq.*, West Virginia Code R. § 5-5-4 *et seq.* and Motion for Enforcement of the November 7, 2007 Order. The West Virginia Board of Dental Examiners (Board) was represented by Darlene Ratliff-Thomas, Assistant Attorney General and Dr. Terry L. Lake (Respondent) was present in person, pro se.

After due consideration of the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Examiner dated June 30, 2009, along with the record and exhibits admitted into evidence in this matter, the Board unanimously voted to accept the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Examiner in its entirety.

Wherefore, based upon the above, the Board in its sworn duty to protect the public and the integrity of the profession, FINDS as follows:

FINDINGS OF FACT

1. The terms of the November 7, 2007 Order provided for a stayed suspension of the license of the Respondent, Dr. Terry L. Lake, clearly stated that the "Respondent shall not prescribe, dispense or administer any scheduled controlled substances for a period of one year after entry of this Order."
2. In August 2008, Susan Combs, Assistant Executive Secretary for the Board performed a random audit through the West Virginia Board of Pharmacy to ensure that the Respondent was complying with the November 7, 2007 Final Order.
3. The audit revealed that on June 16, 2008, the Respondent prescribed Hydrocodone (Lortab) a Schedule III controlled substance under W. Va. Code § 60A-2-208.
4. The prescribing of a scheduled controlled substance is clearly in violation of the November 7, 2007 Final Order issued by the Board.
5. The Respondent did respond to the Board with two separate letters. In the first letter dated November 19, 2008, the Respondent said he did not recall writing such a prescription and had no explanation.
6. By letter dated December 5, 2008, the Respondent exclaimed and stated "Mystery solved!" Respondent contends that he wrote the prescription on "June 16, 2006" and not "June 16, 2008" and that his sister-in-law held onto the prescription. Further,

Respondent contends that his brother was having shoulder pain, so his sister-in-law took the two-year-old prescription to the Rite Aid Pharmacy and “the lady” at the pharmacy changed the year from 2006 to 2008.

7. Marc L. Harman, Executive Secretary for the Board, testified that he served a subpoena upon the Rite Aid Pharmacy in South Charleston, West Virginia.
8. Mr. Harman also testified that he obtained the original prescription written by the Respondent bearing the date of June 16, 2008 and that the date did not appear to have been altered in any manner.
9. The Respondent attached two pages of his brother’s, David Lake, dental records to the December 5, 2008 correspondence.
10. Ms. Combs testified that she reviewed the two pages of dental records of David Lake, and the dates of the last two entries appeared to have been altered.
11. The Respondent testified that a prescription for a controlled substance is good for three (3) days.

CONCLUSIONS OF LAW

1. The West Virginia Board of Dental Examiners has jurisdiction over this matter pursuant to 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 the 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 actions under W. Va. Code § 30-4-1 *et seq.* and the rules promulgated thereunder.

4. By Final Order entered on November 7, 2007, the Board prohibited the Respondent from prescribing, dispensing or administering any scheduled controlled substances for a period of one year. Further, the Final Order requires that the Respondent would have to petition the Board should he choose to prescribe scheduled controlled substances at the end of the one-year prohibition.

5. On June 16, 2008, the Respondent prescribed Hydrocodone (Lortab), a Schedule III controlled substance under W. Va. Code § 60A-2-208.

6. The prescription, written on June 16, 2008, clearly has not been altered.

7. The last two dated entries in the dental records of David Lake have been altered in an attempt to corroborate one of the explanations given by the Respondent.

8. The actions of the Respondent, in writing a prescription on June 16, 2008, for a Schedule III controlled substance, are clearly in violation of the Board's Final Order entered on November 7, 2007.

9. The Respondent's attempt to explain away the violation of the Board's Final Order, was simply not credible.

FINAL ORDER

Now comes the West Virginia Board of Dental Examiners, and hereby adopts the "Hearing Examiner's Findings of Facts and Conclusions of Law," by Hearing Examiner Jack McClung, dated June 30, 2009, 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 June 30, 2009.
2. The dental license of Terry L. Lake, License No. #2379, hereby remains **SUSPENDED** for a period of five (5) year, which commenced on November 7, 2007 and ends on November 6, 2012. This suspension remains stayed except for one hundred twenty (120) days in which Respondent shall serve a suspension, said suspension shall commence on September 1, 2009 and ending December 31, 2009. Respondent shall not engage in the practice or business of dentistry whatsoever, either directly or indirectly, in the State of West Virginia during the SUSPENSION period.
3. That the Respondent shall not return to the practice of dentistry until he personally appears before the Board at one of its regularly scheduled meeting, but no sooner than its January 2010 meeting. Respondent shall not resume the practice of dentistry until he receives written permission from the Board.

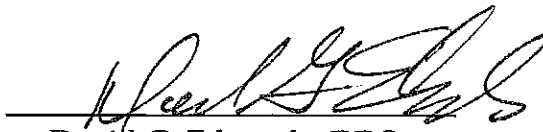
4. The Respondent shall not prescribe, dispense or administer any scheduled controlled substances until he personally appears before the Board and is granted permission by the Board to resume prescribing, dispensing or administering any scheduled controlled substances.

5. That the remainder of the November 7, 2007 Final Order shall remain in full force and effect except for as modified herein.

6. That the Respondent shall reimburse the Board in the amount of Three Thousand Dollars (\$3,000.00) for the costs incurred by the Board associated with the investigation and prosecution of this matter.

ENTERED into the records of the Board this 27 day of Aug. 2009.

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

By: 
David G. Edwards, 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.