

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1626

DEC 02 2014

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY CHAISAK PENGVANICH, M.D., LICENSE NO. 17517, 1607 DIXIE HIGHWAY, LOUISVILLE, KENTUCKY 40210

**AGREED ORDER OF RETIREMENT**

Come now the Kentucky Board of Medical Licensure (“the Board”), acting by and through its Inquiry Panel B, and Chaisak Pengvanich, M.D. (“the licensee”), and, based upon their mutual desire to fully and finally resolve this matter without further investigation or an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER OF RETIREMENT**:

**STIPULATIONS OF FACT**

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Retirement:

1. At all relevant times, Chaisak Pengvanich, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee’s medical specialty is internal medicine.
3. On or about December 4, 2007, Patient A’s daughter filed a grievance with the Board in which it was alleged that the licensee was negligent in his diagnosis and treatment of Patient A’s colon cancer, resulting in Patient A’s death.
4. Patient A’s charts were subpoenaed and obtained from the licensee, Norton Audubon Hospital and two other medical providers and forwarded to a Board consultant for review.

5. On or about May 15, 2008, the Board consultant issued a report in which he found that the licensee departed from or failed to conform to the standards of acceptable and prevailing medical practices in the Commonwealth of Kentucky in his diagnosis, treatment and documentation of care in regard to Patient A.
6. The Board consultant also concluded that the licensee's medical practices in regard to Patient A rose to the level of "gross incompetence, ignorance, negligence or a combination thereof" and could be considered an incident of malpractice.
7. The Board consultant's report of May 2008 is attached herewith and incorporated herein in its entirety.
8. On or about August 3, 2008, Sgt. Stanley Salyards of the Louisville Metro Police Narcotics/Vice Prescription Drug Squad requested that the Board investigate the licensee's practice of prescribing Promethazine VC Codeine, which has a street value of \$200.00/oz.
9. During its investigation, the Board's medical investigator interviewed Misti Whitfield, R.Ph., Manager of Kroger Pharmacy #752, who stated substantially as follows: She noticed an individual escorting many first-time male customers to her pharmacy and that each of these customers presented with prescriptions for the same medication - Promethazine VC Codeine - from the licensee. Although the customers did not cough or look ill, the customers typically presented a prescription for cough syrup and specifically requested the brand name Actavis. The men frequently asked to smell the cough syrup before purchasing it. Ms. Whitfield noticed that addresses given by the new customers were scattered throughout the Louisville area and would indicate that they were not shopping at their neighborhood pharmacy. Ms. Whitfield

contacted the licensee to check the validity of the prescriptions. The licensee confirmed that he had written the prescriptions for bronchitis and that he had also prescribed an antibiotic. The licensee instructed Ms. Whitfield not to fill the Promethazine VC Codeine without also filling the prescription for the antibiotic. The customers never presented the antibiotic prescription unless the pharmacist asked and insisted upon it.

10. A review of a KASPER report on the licensee, dated July 1, 2007 through August 29, 2008, and a Kroger pharmacy printout led to the identification of nineteen (19) patients who had presented a prescription for Promethazine VC Codeine from the licensee and who warranted further review.
11. The patient charts of the identified nineteen (19) patients were subpoenaed and obtained from the licensee for review by a Board consultant.
12. In December 2008, the Board consultant reviewed the KASPER report, dated July 1, 2007 through August 29, 2008, the Kroger pharmacy print out and the nineteen patient charts and concluded that the licensee departed from or failed to conform to the standards of acceptable and prevailing medical practices in the Commonwealth of Kentucky “by continuing to prescribe narcotic medications on a repeat basis for the same problems without addressing the issue of potential addiction or diversion.”
13. The Board consultant also concluded that the licensee’s prescribing practices demonstrated a pattern of “gross incompetence, ignorance or negligence or possibly malpractice” and that a continuation of his practices would constitute a danger to the health, welfare and safety of his patients and the general public.

14. The consultant's report of December 2008 is attached herewith and incorporated herein in its entirety.
15. On or about February 19, 2009, the Board's Inquiry Panel A considered the above information and chose to ask the licensee to enter into an Agreed Order of Indefinite Restriction, in which he would be restricted from prescribing controlled substances until his completion of certain prescribing courses and a clinical skills assessment and education program. If the licensee declined to enter into the agreement, the Panel directed that a Complaint and Emergency Order of Restriction be issued against the licensee.
16. On or about March 23, 2009, the licensee's legal counsel addressed a letter to the Board's then-assistant general counsel, in which she requested that the licensee not be subjected to restriction on his license.
17. On or about March 30, 2009, the Board's counsel polled, by fax, members of the Panel as to whether they would agree to offer the licensee an Interim Agreed Order (Diversion) in lieu of an Agreed Order of Indefinite Restriction.
18. By Poll, the members of Inquiry Panel A chose to allow the licensee to enter into an Interim Agreed Order (Diversion), which held the investigation open while the licensee completed certain actions, including that he submit to a clinical skills assessment at CPEP and, if recommended, that he direct CPEP to develop an Education Plan.
19. The Interim Agreed Order (Diversion) also provided that, upon the licensee's compliance and completion of those actions, the Inquiry Panel would have the option of closing the investigation without further action, asking the licensee to agree to an

amendment of the diversion order to include additional or different conditions determined by the Panel to be appropriate, or issuing a Complaint and Emergency Order.

20. In addition, the Interim Agreed Order (Diversion) provided that if there is information satisfactory to the Panel or its Chair that the licensee failed to comply with any condition of the Interim Agreed Order, or failed to comply with a requirement of the Interim Agreed Order within the time specified for such completion, the Panel or its Chair may immediately issue a Complaint and an Emergency Order.
21. The licensee agreed to the terms of the Interim Agreed Order (Diversion) and executed his agreement thereto on or about April 28, 2009.
22. Pursuant to the terms of the Interim Agreed Order (Diversion), the licensee completed the "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" course at the Vanderbilt Medical Center, Center for Professional Health, on August 12-14, 2009.
23. Pursuant to the terms of the Interim Agreed Order (Diversion), the licensee underwent a clinical skills assessment at CPEP on or about June 29 and 30, 2009.
24. On or about August 19, 2009, CPEP forwarded an assessment report to the licensee and recommended the development of an educational intervention plan.
25. After August 19, 2009, the licensee did not direct CPEP to develop the recommended educational intervention plan pursuant to the terms of the Interim Agreed Order (Diversion). Instead, the licensee requested additional information about an educational intervention plan and CPEP forwarded that information to the licensee on or about October 2, 2009.

26. After October 2, 2009, the licensee did not direct CPEP to develop the recommended educational intervention plan pursuant to the terms of the Interim Agreed Order (Diversion).
27. On or about December 16, 2009, even though an educational intervention plan had not yet been developed for him, the licensee requested that the Panel allow him to modify the education plan.
28. The licensee's non-compliance with the Interim Agreed Order (Diversion) due to his failure to direct CPEP to develop an educational intervention was placed on the Inquiry Panel's agenda for its February 18, 2010 meeting.
29. On or about February 16, 2010, two days prior to his scheduled appearance before the Inquiry Panel for noncompliance, the licensee directed CPEP to develop the recommended education plan.
30. On or about March 15, 2010, CPEP forwarded an educational intervention plan to the licensee. The licensee did not take action to implement the education plan.
31. On May 20, 2010, the Inquiry Panel reviewed CPEP's assessment report of the licensee and the education plan. The Inquiry Panel chose to issue a Complaint and Emergency Order of Suspension against the licensee if he did not begin the CPEP education plan by June 15, 2010.
32. On or about June 10, 2010, the licensee initiated the education plan.
33. On or about June 21, 2011, CPEP informed the licensee that he had completed the educational activities described in the plan and directed him to schedule the post-education evaluation of that plan.

34. On or about October 7, 2011, CPEP informed the licensee that in order to complete the education plan, he must successfully complete a post-education evaluation.
35. On or about October 12, 2011, after the Board informed the licensee that his failure to complete the education plan could be construed as non-compliance with the Board's order and would be considered at the next Inquiry Panel A meeting, the licensee requested that the Panel not require him to complete the education plan.
36. In November 2011, the licensee appeared before the Inquiry Panel and it considered his failure to timely schedule the next required steps in his education plan and his request that he not be required to complete the education plan. The Inquiry Panel determined that the licensee's prescribing of controlled substances during a prolonged investigation places the safety and health of his patients and the public at risk and in danger.
37. The Board's Inquiry Panel issued a Complaint and an Emergency Order of Restriction against the licensee's license to practice medicine in the Commonwealth of Kentucky, alleging violations of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4), and KRS 311.595(13) and restricting the license from the prescribing of controlled substances pending resolution of the Complaint.
38. On December 12, 2011, at the licensee's request, an emergency hearing was held to determine the propriety of the Emergency Order of Restriction.
39. On December 19, 2011, the hearing officer affirmed the Emergency Order of Restriction and the licensee did not appeal that decision.
40. In January 2012, the licensee completed a Post-Education Evaluation with CPEP. As a result of his performance on that evaluation, CPEP found that the licensee

demonstrated several persistent medical knowledge needs and some limited but important educational needs in regard to clinical judgment and reasoning and in documentation. CPEP recommended that the licensee participate in an Addendum to the Educational Intervention Plan, in order to address those deficiencies.

41. Between June 2012 and January 2013, the licensee participated in the Addendum activities developed by CPEP. At the licensee's request, an administrative hearing on the Complaint was held in abeyance pending his completion of the Addendum.
42. On February 1, 2013, CPEP reported that the licensee had completed the Addendum, had demonstrated appropriate improvements relevant to the education goals and had demonstrated adequate knowledge, as well as safe and reasonable decision making.
43. On or about March 21, 2013, the licensee resolved the Complaint, KBML Case No. 1360, by entering into an Agreed Order, pursuant to which he was required to maintain a controlled substances log, subject to Board review; to receive two (2) favorable consultant reviews; to reimburse the costs of the proceedings to date in the amount of \$3,067.75, within six (6) months; to pay a fine of \$2,500.00, within six (6) months; and to not violate any provision of KRS 311.595 and/or 311.597.
44. On or about September 6, 2013, about six months after the licensee completed the remedial education program through CPEP, a Board consultant reviewed ten (10) of the licensee's patient charts and found that he could not conclude conclusively that they were below the minimum standard or that the licensee departed from acceptable and prevailing medical practices.
45. On or about August 25, 2014, approximately a year and a half after the licensee completed the remedial education program through CPEP, a Board consultant

reviewed the licensee's patient charts and found that the licensee departed from acceptable and prevailing medical practices in regard to the diagnosis, treatment and documentation of upper respiratory infections, to the extent that he demonstrated gross ignorance, gross incompetence and gross negligence. The Board consultant also found that the licensee departed from acceptable and prevailing medical practices by overprescribing antibiotics and cough syrup without regard to the patients' unique medical conditions or propensity for drug addiction and diversion. Many of the noted deviations were consistent with the licensee's medical practices prior to his receiving remedial education and inconsistent with the remedial education he received through the prior Board actions. The Board consultant also found that, if the licensee were to continue to practice in this fashion, he could pose a danger to the health, welfare and safety of his patients and the general public.

46. On November 20, 2014, the Board's Inquiry Panel B reviewed the above information and the licensee appeared and was heard by the Panel before it deliberated. The licensee represented that he intends and desires to retire from the practice of medicine. The Panel and the licensee agreed to enter into this Agreed Order of Retirement, in lieu of the issuance of a Complaint and Emergency Order of Suspension.

#### STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Retirement:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.

2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9) - as illustrated by KRS 311.597(3) and (4) – and KRS 311.595(13). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Retirement.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Retirement.

### **AGREED ORDER OF RETIREMENT**

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending grievance without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF RETIREMENT:**

1. In accordance with the licensee’s stated intent and in lieu of revocation, the license to practice medicine within the Commonwealth of Kentucky held by Chaisak Pengvanich, M.D., is **RETIRED**, effective as of February 1, 2015, and continuing for an indefinite period;
2. Beginning February 1, 2015, and continuing throughout the indefinite period of this Agreed Order of Retirement, the licensee SHALL NOT perform any act, within the Commonwealth of Kentucky, which constitutes the “practice of medicine or osteopathy” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction or any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
3. Within six months of the date of entry of this Agreed Order of Retirement, the licensee SHALL REIMBURSE the Board the costs of the investigation in the amount of two-thousand seven-hundred and twenty-five dollars (\$2,725.00);
4. The licensee SHALL NOT petition the Board for a new license to again practice medicine in the Commonwealth of Kentucky, pursuant to KRS 311.607, prior to the expiration of two (2) years from entry of this Agreed Order of Retirement. Prior to petitioning for a license to again practice medicine, the licensee SHALL complete psychiatric and neuropsychological evaluations and a Board-approved

clinical skills assessment program, at his expense, and he SHALL satisfy to the Panel that he is of good moral character and both physically and mentally competent to resume the practice of medicine without undue risk or danger to patients or the public. The decision whether to issue a new license to again practice medicine in the Commonwealth of Kentucky lies within the sole discretion of the Panel;

5. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Retirement, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Retirement, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order of Retirement would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order of Retirement; and
6. The licensee understands and agrees that any violation of the terms of this Agreed Order of Retirement would provide a legal basis for additional disciplinary action, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.


SO AGREED on this 26<sup>th</sup> day of November, 2014.

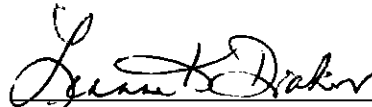
FOR THE LICENSEE:

  
CHAIKSAK PENGVANICH, M.D.

\_\_\_\_\_  
COUNSEL FOR THE LICENSEE  
(IF APPLICABLE)

FOR THE BOARD:

  
\_\_\_\_\_  
RANDEL C. GIBSON, D.O.  
CHAIR, INQUIRY PANEL B



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LEANNE K. DIAKOV

General Counsel

Kentucky Board of Medical Licensure

310 Whittington Parkway, Suite 1B

Louisville, Kentucky 40222

(502) 429-7150



Morgan Haugh  
Medical Group

May 15, 2008

Ms. Betty Prater  
Kentucky Board of Medical Licensure  
310 Whittington Parkway  
Louisville, KY 40222

Dear Ms. Prater:

My apologies for the delay in completing this review and returning my findings to you. I have completed the review of the entire chart and the information provided to me.

In summary, this case involves a grievance filed against Dr. Chaisak Pengvanich for allegedly failing to adequately evaluate findings found on a barium enema performed on patient [redacted] in October of 1987 and ultimately missing a diagnosis of colon cancer. [redacted] was diagnosed with cecal carcinoma in February 2007 and subsequently died after surgical intervention.

First of all, I agree with Dr. Pengvanich that the findings noted in the October 27, 1987, barium enema were not related to the carcinoma diagnosed on [redacted] in 2007. The area in question on the barium enema was in the rectosigmoid area, and the carcinoma diagnosed prior to [redacted] in death was in the cecum which was at the opposite end of the colon. No mention is made of any rectosigmoid malignancy in the information provided regarding the patient's surgical treatment of the cecal carcinoma.

Having stated the above, I will address concerns that did arise from review of [redacted] chart. First of all, although the barium enema findings probably did not have any bearing on the patient's death, the findings should have been further investigated at the time of the initial procedure. The area in question probably did represent some retained fecal matter; however, with the nature of the report and the location of the abnormality, the Standard of Care would have been to further investigate with additional diagnostic testing such as sigmoidoscopy. Dr. Pengvanich raises the question of whether colonoscopy was readily available in 1987. Regardless of whether a colonoscopy was readily available, certainly proctoscopy (with rigid proctoscope if necessary) would have been available and further evaluation of the area in question would have been indicated.

Probably of more concern is the fact that during her entire relationship with Dr. Pengvanich as her primary care physician, there is no evidence that the patient was advised to have any form of colon cancer screening. This is even more concerning in light of the patient's persistent and worsening anemia. The patient was noted by her cardiologist to have worsening anemia; and, I cannot detect any significant work-up to evaluate this to determine an underlying cause which would have included in the differential diagnosis GI blood loss. Certainly in that instance, colon cancer is of primary concern.

Prater, 05/15/08, pg. 2.

It is my opinion that Standard of Care prevailing in the Commonwealth of Kentucky would dictate that the patient be offered some form of colon cancer screening through health maintenance care. I also believe that the Standard of Care for evaluation of an elderly patient with worsening anemia would have included workup to rule out GI lesions resulting in GI blood loss.

It appears that Dr. Pengvanich in retrospect has indicated the patient would have been high risk for further interventional procedures. However, in that instance, this should have been documented and the patient should have been made aware of the potential problems that could have been missed without more aggressive evaluation. In my review, I did not find any indication that the patient was made aware of such information.

As a result, it is my opinion that the care rendered in regards to this particular patient was below minimum standards in diagnosis, treatment, medical records and in my overall opinion.

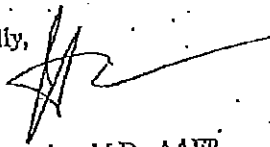
Regarding questions outlined in your previous letter, I must conclude that Dr. Pengvanich did engage in conduct which departed or failed to conform to standards acceptable and prevailing medical practice within the Commonwealth of Kentucky in his failure to adequately diagnose this patient's colctal carcinoma. I also must conclude that in this particular patient, the medical practice would have been deemed to be a result of gross incompetence, ignorance, negligence, or a combination thereof. I also feel that this could be considered an incident of malpractice.

Regarding the physician's practice constituting a danger to the health, welfare, and safety of his patients or the general public, I must conclude that if this is a pattern of care provided, then it would constitute a danger. However, my review includes only one isolated chart, and, therefore, I am not sure that this can be generalized to the physician's overall practice.

I hope this information is of benefit in your investigation, and I again apologize for the tardiness of this opinion.

These opinions are reached through review of the chart information provided as well as review of pertinent literature and my experience as a Board Certified Family Physician.

Respectfully,



Jeffrey A. Carrico, M.D., AAFP

vk



Morgan Haugh  
Medical Group

RECEIVED

DEC 19 2008

K.B.M.L.

December 19, 2008

Betty Prater, Medical Investigator  
Kentucky Board of Medical Licensure  
Hurstbourne Office Park  
310 Whittington Parkway, Suite 1B  
Louisville, KY 40222

RE: Chaisak Pengvanich, M.D.

Dear Ms. Prater:

This letter is to relay my opinion in regards to the open investigation against Dr. Chaisak Pengvanich. As I am sure you recall, the review ultimately entailed two different areas of focus. The initial grievance resulted in review of charts to determine if adequate cancer surveillance and screening were being performed. Regarding this aspect of the evaluation, several charts were reviewed. It did ultimately appear that although not always explicitly delineated in health maintenance office visits, the patients were by and large receiving adequate health maintenance and cancer screening. Therefore, I do not find any evidence from this standpoint that Dr. Pengvanich departed from the prevailing medical standards for the Commonwealth of Kentucky, nor did I find any area that suggested he committed any serious act or pattern of acts consistent with malpractice, incompetence, ignorance or negligence. From this standpoint, it did not appear that the physician's continued practice constitutes a danger to the health, welfare, or safety of the physician's patients or general public.

The second aspect of this review involved the possibility of overprescribing of controlled medication in the form of Phenergan with codeine liquid. Several charts were reviewed in regards to this possibility. Ultimately, it is my opinion that Dr. Pengvanich has shown a propensity to overprescribe Phenergan with codeine. Of the charts reviewed, many had repeat visits with the same complaints, receiving similar, if not the same, medical manage on a recurrent basis. Sometimes numerous prescriptions for Phenergan with codeine were prescribed over a several year period. There was also evidence in some charts that diversion or addiction was a potential problem. The physician continued to prescribe Phenergan with codeine in some instances despite this information being present. Therefore, unfortunately, it is my opinion that Dr. Pengvanich did depart from the standard of prevailing care for the Commonwealth of Kentucky by continuing to prescribe narcotic medications on a repeat basis for the same problems without addressing the issue of potential addition or diversion. There was no evidence, in most

Prater, Page 2

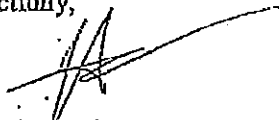
cases, that he pursued further workup or evaluation for recurrent problems requiring this medication. In this situation, I would have to conclude that there is a pattern of prescribing that could be deemed gross incompetence, ignorance or negligence or possibly malpractice. Also, I must state that if the physician's practice continues in this fashion, it could pose a danger to the health, welfare, and safety of the physician's patients and general public.

I would note that in some of the charts, there is evidence that Dr. Pengvanich has started to curtail prescribing this medication to patients that have evidence of diversion.

Individual expert review worksheets have been provided on each of the charts reviewed.

These opinions are rendered based on review of information provided in light of my experience as a Board Certified Family Physician and review of pertinent literature and guidelines.

Respectfully,



Jeffrey A. Carrico, M.D.

vk

MAR 21 2013

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1360

K.B.M.L.

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17517, 1607 DIXIE HIGHWAY, LOUISVILLE, KENTUCKY 40210

**AGREED ORDER**

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26. After October 2, 2009, the licensee did not direct CPEP to develop the recommended educational intervention plan pursuant to the terms of the Interim Agreed Order (Diversion).
27. On or about December 16, 2009, even though an educational intervention plan had not yet been developed for him, the licensee requested that the Panel allow him to modify the education plan.
28. The licensee's non-compliance with the Interim Agreed Order (Diversion) due to his failure to direct CPEP to develop an educational intervention was placed on the Inquiry Panel's agenda for its February 18, 2010 meeting.
29. On or about February 16, 2010, two days prior to his scheduled appearance before the Inquiry Panel for noncompliance, the licensee directed CPEP to develop the recommended education plan.
30. On or about March 15, 2010, CPEP forwarded an educational intervention plan to the licensee. The licensee did not take action to implement the education plan.
31. On May 20, 2010, the Inquiry Panel reviewed CPEP's assessment report of the licensee and the education plan. The Inquiry Panel chose to issue a Complaint and Emergency Order of Suspension against the licensee if he did not begin the CPEP education plan by June 15, 2010.
32. On or about June 10, 2010, the licensee initiated the education plan.
33. On or about June 21, 2011, CPEP informed the licensee that he had completed the educational activities described in the plan and directed him to schedule the post-education evaluation of that plan.

34. On or about October 7, 2011, CPEP informed the licensee that in order to complete the education plan, he must successfully complete a post-education evaluation.
35. On or about October 12, 2011, after the Board informed the licensee that his failure to complete the education plan could be construed as non-compliance with the Board's order and would be considered at the next Inquiry Panel A meeting, the licensee requested that the Panel not require him to complete the education plan.
36. In November 2011, the licensee appeared before the Inquiry Panel and it considered his failure to timely schedule the next required steps in his education plan and his request that he not be required to complete the education plan. The Inquiry Panel determined that the licensee's prescribing of controlled substances during a prolonged investigation places the safety and health of his patients and the public at risk and in danger.
37. The Board's Inquiry Panel issued a Complaint and an Emergency Order of Restriction against the licensee's license to practice medicine in the Commonwealth of Kentucky, alleging violations of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4), and KRS 311.595(13) and restricting the license from the prescribing of controlled substances pending resolution of the Complaint.
38. On December 12, 2011, at the licensee's request, an emergency hearing was held to determine the propriety of the Emergency Order of Restriction.
39. On December 19, 2011, the hearing officer affirmed the Emergency Order of Restriction and the licensee did not appeal that decision.
40. In January 2012, the licensee completed a Post-Education Evaluation with CPEP. As a result of his performance on that evaluation, CPEP found that the licensee

demonstrated several persistent medical knowledge needs and some limited but important educational needs in regard to clinical judgment and reasoning and in documentation. CPEP recommended that the licensee participate in an Addendum to the Educational Intervention Plan, in order to address those deficiencies.

41. Between June 2012 and January 2013, the licensee participated in the Addendum activities developed by CPEP. At the licensee's request, an administrative hearing on the Complaint was held in abeyance pending his completion of the Addendum.
42. On February 1, 2013, CPEP reported that the licensee had completed the Addendum, had demonstrated appropriate improvements relevant to the education goals and had demonstrated adequate knowledge, as well as safe and reasonable decision making.

#### STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order:

1. The licensee's medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(9), as illustrated by KRS 311.597(3) and (4), and KRS 311.595(13). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve the pending Complaint without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

## AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve the pending Complaint without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER:**

1. The license to practice medicine within the Commonwealth of Kentucky held by Chaisak Pengvanich, M.D., SHALL BE SUBJECT to this Agreed Order for a period of five (5) years from the date of filing of the Agreed Order.
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- a. Beginning on the date of entry of this Agreed Order, the licensee SHALL maintain a "controlled substances log" for all controlled substances prescribed. The controlled substances log must include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions should be maintained in the following manner: 1) patient; 2) chart; and 3) log;
- b. The licensee SHALL permit the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;
- c. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Agreed Order;
- d. The licensee understands and agrees that at least two (2) favorable Board Consultant reviews must be obtained, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate this Agreed Order;

- e. Pursuant to KRS 311.565(1)(v), the licensee SHALL REIMBURSE the Board the costs of the proceedings to date in the amount of \$3,067.75, within six (6) months from entry of this Agreed Order;
  - f. Pursuant to KRS 311.565(1)(v), the licensee SHALL pay a FINE to the Board in the amount of \$2,500.00, within six (6) months from entry of this Agreed Order; and
  - g. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of the Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.
4. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including

revocation, pursuant to KRS 311.595(13) and may provide a legal basis for criminal prosecution for practicing medicine without a license.


SO AGREED on this 21st day of March, 2013.

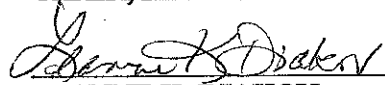
FOR THE LICENSEE:

  
CHAISSAK PENGVANICH, M.D.

\_\_\_\_\_  
COUNSEL FOR THE LICENSEE  
(IF APPLICABLE)

FOR THE BOARD:

  
\_\_\_\_\_  
RANDEL C. GIBSON, D.O.  
CHAIR, HEARING PANEL B

  
\_\_\_\_\_  
LEANNE K. DIAKOV  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
(502) 429-7150

WAIVER OF RIGHTS

I, Chaisak Pengvanich, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 1360. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order, as submitted, I WAIVE my right to demand an evidentiary hearing or to raise additional constitutional or statutory objections in this matter. However, if the Hearing Panel should reject the proposed Agreed Order, I understand that further proceedings will be conducted in accordance with KRS 311.530, *et seq.*, and I will have the right to raise any objections normally available in such proceedings.

Executed this 14<sup>th</sup> day of Feb., 2013.



CHAIKAK PENGVANICH, M.D.  
Respondent

\_\_\_\_\_  
COUNSEL FOR THE RESPONDENT  
(IF APPLICABLE)



Morgan Haugh  
Medical Group

May 15, 2008

Ms. Betty Prater  
Kentucky Board of Medical Licensure  
310 Whittington Parkway  
Louisville, KY 40222

Dear Ms. Prater:

My apologies for the delay in completing this review and returning my findings to you. I have completed the review of the entire chart and the information provided to me.

In summary, this case involves a grievance filed against Dr. Chaisak Pengvanich for allegedly failing to adequately evaluate findings found on a barium enema performed on patient [REDACTED] in October of 1987 and ultimately missing a diagnosis of colon cancer. [REDACTED] was diagnosed with cecal carcinoma in February 2007 and subsequently died after surgical intervention.

First of all, I agree with Dr. Pengvanich that the findings noted in the October 27, 1987, barium enema were not related to the carcinoma diagnosed on [REDACTED] in 2007. The area in question on the barium enema was in the rectosigmoid area, and the carcinoma diagnosed prior to [REDACTED] in death was in the cecum which was at the opposite end of the colon. No mention is made of any rectosigmoid malignancy in the information provided regarding the patient's surgical treatment of the cecal carcinoma.

Having stated the above, I will address concerns that did arise from review of [REDACTED] chart. First of all, although the barium enema findings probably did not have any bearing on the patient's death, the findings should have been further investigated at the time of the initial procedure. The area in question probably did represent some retained fecal matter; however, with the nature of the report and the location of the abnormality, the Standard of Care would have been to further investigate with additional diagnostic testing such as sigmoidoscopy. Dr. Pengvanich raises the question of whether colonoscopy was readily available in 1987. Regardless of whether a colonoscopy was readily available, certainly proctoscopy (with rigid proctoscope if necessary) would have been available and further evaluation of the area in question would have been indicated.

Probably of more concern is the fact that during her entire relationship with Dr. Pengvanich as her primary care physician, there is no evidence that the patient was advised to have any form of colon cancer screening. This is even more concerning in light of the patient's persistent and worsening anemia. The patient was noted by her cardiologist to have worsening anemia; and, I cannot detect any significant work-up to evaluate this to determine an underlying cause which would have included in the differential diagnosis GI blood loss. Certainly in that instance, colon cancer is of primary concern.

Prater, 05/15/08, pg. 2.

It is my opinion that Standard of Care prevailing in the Commonwealth of Kentucky would dictate that the patient be offered some form of colon cancer screening through health maintenance care. I also believe that the Standard of Care for evaluation of an elderly patient with worsening anemia would have included workup to rule out GI lesions resulting in GI blood loss.

It appears that Dr. Pengvanich in retrospect has indicated the patient would have been high risk for further interventional procedures. However, in that instance, this should have been documented and the patient should have been made aware of the potential problems that could have been missed without more aggressive evaluation. In my review, I did not find any indication that the patient was made aware of such information.

As a result, it is my opinion that the care rendered in regards to this particular patient was below minimum standards in diagnosis, treatment, medical records and in my overall opinion.

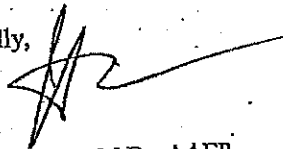
Regarding questions outlined in your previous letter, I must conclude that Dr. Pengvanich did engage in conduct which departed or failed to conform to standards acceptable and prevailing medical practice within the Commonwealth of Kentucky in his failure to adequately diagnose this patient's cecal carcinoma. I also must conclude that in this particular patient, the medical practice would have been deemed to be a result of gross incompetence, ignorance, negligence, or a combination thereof. I also feel that this could be considered an incident of malpractice.

Regarding the physician's practice constituting a danger to the health, welfare, and safety of his patients or the general public, I must conclude that if this is a pattern of care provided, then it would constitute a danger. However, my review includes only one isolated chart, and, therefore, I am not sure that this can be generalized to the physician's overall practice.

I hope this information is of benefit in your investigation, and I again apologize for the tardiness of this opinion.

These opinions are reached through review of the chart information provided as well as review of pertinent literature and my experience as a Board Certified Family Physician.

Respectfully,



Jeffrey A. Carrico, M.D., AAFP

vk



Morgan Haugh  
Medical Group

RECEIVED

DEC 19 2008

K.B.M.L.

December 19, 2008

Betty Prater, Medical Investigator  
Kentucky Board of Medical Licensure  
Hurstbourne Office Park  
310 Whittington Parkway, Suite 1B  
Louisville, KY 40222

RE: Chaisak Pengvanich, M.D.

Dear Ms. Prater:

This letter is to relay my opinion in regards to the open investigation against Dr. Chaisak Pengvanich. As I am sure you recall, the review ultimately entailed two different areas of focus. The initial grievance resulted in review of charts to determine if adequate cancer surveillance and screening were being performed. Regarding this aspect of the evaluation, several charts were reviewed. It did ultimately appear that although not always explicitly delineated in health maintenance office visits, the patients were by and large receiving adequate health maintenance and cancer screening. Therefore, I do not find any evidence from this standpoint that Dr. Pengvanich departed from the prevailing medical standards for the Commonwealth of Kentucky, nor did I find any area that suggested he committed any serious act or pattern of acts consistent with malpractice, incompetence, ignorance or negligence. From this standpoint, it did not appear that the physician's continued practice constitutes a danger to the health, welfare, or safety of the physician's patients or general public.

The second aspect of this review involved the possibility of overprescribing of controlled medication in the form of Phenergan with codeine liquid. Several charts were reviewed in regards to this possibility. Ultimately, it is my opinion that Dr. Pengvanich has shown a propensity to overprescribe Phenergan with codeine. Of the charts reviewed, many had repeat visits with the same complaints, receiving similar, if not the same, medical manage on a recurrent basis. Sometimes numerous prescriptions for Phenergan with codeine were prescribed over a several year period. There was also evidence in some charts that diversion or addiction was a potential problem. The physician continued to prescribe Phenergan with codeine in some instances despite this information being present. Therefore, unfortunately, it is my opinion that Dr. Pengvanich did depart from the standard of prevailing care for the Commonwealth of Kentucky by continuing to prescribe narcotic medications on a repeat basis for the same problems without addressing the issue of potential addition or diversion. There was no evidence, in most

Prater, Page 2

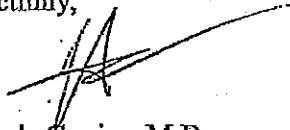
cases, that he pursued further workup or evaluation for recurrent problems requiring this medication. In this situation, I would have to conclude that there is a pattern of prescribing that could be deemed gross incompetence, ignorance or negligence or possibly malpractice. Also, I must state that if the physician's practice continues in this fashion, it could pose a danger to the health, welfare, and safety of the physician's patients and general public.

I would note that in some of the charts, there is evidence that Dr. Pengvanich has started to curtail prescribing this medication to patients that have evidence of diversion.

Individual expert review worksheets have been provided on each of the charts reviewed.

These opinions are rendered based on review of information provided in light of my experience as a Board Certified Family Physician and review of pertinent literature and guidelines.

Respectfully,

A handwritten signature in black ink, appearing to read 'JA Carrico', with a long horizontal stroke extending to the right.

Jeffrey A. Carrico, M.D.

vk

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1360

FILED OF RECORD

DEC - 5 2011

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY CHAISAK PENGVANICH, M.D., LICENSE NO.  
17517, 1607 DIXIE HIGHWAY, LOUISVILLE, KENTUCKY 40210

**EMERGENCY ORDER OF RESTRICTION**

The Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, considered this matter at its November 17, 2011 meeting. At that meeting, Inquiry Panel A considered a memorandum from Betty Prater, Medical Investigator, dated October 19, 2011; an Interim Agreed Order (Diversion), filed of record April 28, 2009; a letter from the Center for Personalized Education for Physicians ("CPEP") to the licensee, dated June 21, 2011; a CPEP Progress Report II, released August 2011; a CPEP Summary Report for the period June 2010 through June 2011; a letter from CPEP to the licensee, dated October 7, 2011; a letter from the licensee's counsel to Betty Prater, Medical Investigator, dated October 12, 2011.

In addition, on February 19, 2009, the Panel considered a memorandum from Betty Prater, Medical Investigator, dated January 21, 2011; a grievance, received December 4, 2007; e-mail correspondence from Sgt. Stanley Salyards of the Louisville Metro Police Narcotics/Vice Prescription Drug Squad, dated August 1, 2008; two Board consultant reports, dated May 15, 2008 and December 19, 2008; and correspondence from the licensee to the Board, dated February 7, 2008 and January 7, 2009.

On February 18, 2010, the Panel considered a memorandum from Betty Prater, Medical Investigator, dated January 28, 2010; the Interim Agreed Order (Diversion), entered April 28, 2009; the CPEP Assessment Report, dated August 19, 2009;

correspondence from CPEP to the licensee, dated October 2, 2009; correspondence from the licensee's counsel to the Panel, dated December 16, 2009; correspondence from CPEP to the Panel, dated January 20, 2010.

On May 20, 2010, the Panel considered a memorandum from Betty Prater, Medical Investigator, dated May 10, 2010; the materials reviewed at the Panel meeting of February 18, 2010; the CPEP education plan, dated March 15, 2010; correspondence from the licensee's counsel to the Board's counsel and medical investigator, dated April 29, 2010; and correspondence from CPEP to the Board's counsel, dated May 10, 2010.

Having considered all of this information and being sufficiently advised, Inquiry Panel A ENTERS the following EMERGENCY ORDER OF RESTRICTION, in accordance with KRS 311.592(1) and 13B.125(1):

#### **FINDINGS OF FACT**

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel A concludes there is probable cause to make the following Findings of Fact, which support its Emergency Order of Restriction:

1. At all relevant times, Chaisak Pengvanich, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is internal medicine.
3. On or about December 4, 2007, Patient A's daughter filed a grievance with the Board in which it was alleged that the licensee was negligent in his diagnosis and treatment of Patient A's colon cancer, resulting in Patient A's death.

4. Patient A's charts were subpoenaed and obtained from the licensee, Norton Audubon Hospital and two other medical providers and forwarded to a Board consultant for review.
5. On or about May 15, 2008, the Board consultant issued a report in which he found that the licensee departed from or failed to conform to the standards of acceptable and prevailing medical practices in the Commonwealth of Kentucky in his diagnosis, treatment and documentation of care in regard to Patient A.
6. The Board consultant also concluded that the licensee's medical practices in regard to Patient A rose to the level of "gross incompetence, ignorance, negligence or a combination thereof" and could be considered an incident of malpractice.
7. The Board consultant's report of May 2008 is attached herewith and incorporated herein in its entirety.
8. On or about August 3, 2008, Sgt. Stanley Salyards of the Louisville Metro Police Narcotics/Vice Prescription Drug Squad requested that the Board investigate the licensee's practice of prescribing Promethazine VC Codeine, which has a street value of \$200.00/oz.
9. During its investigation, the Board's medical investigator interviewed Misti Whitfield, R.Ph., Manager of Kroger Pharmacy #752, who stated substantially as follows: She noticed an individual escorting many first-time male customers to her pharmacy and that each of these customers presented with prescriptions for the same medication - Promethazine VC Codeine - from the licensee. Although the customers did not cough or look ill, the customers typically presented a prescription for cough syrup and specifically requested the brand name Actavis. The men frequently asked

to smell the cough syrup before purchasing it. Ms. Whitfield noticed that addresses given by the new customers were scattered throughout the Louisville area and would indicate that they were not shopping at their neighborhood pharmacy. Ms. Whitfield contacted the licensee to check the validity of the prescriptions. The licensee confirmed that he had written the prescriptions for bronchitis and that he had also prescribed an antibiotic. The licensee instructed Ms. Whitfield not to fill the Promethazine VC Codeine without also filling the prescription for the antibiotic. The customers never presented the antibiotic prescription unless the pharmacist asked and insisted upon it.

10. A review of a KASPER report on the licensee, dated July 1, 2007 through August 29, 2008, and a Kroger pharmacy printout led to the identification of nineteen (19) patients who had presented a prescription for Promethazine VC Codeine from the licensee and who warranted further review.
11. The patient charts of the identified nineteen (19) patients were subpoenaed and obtained from the licensee for review by a Board consultant.
12. In December 2008, the Board consultant reviewed the KASPER report, dated July 1, 2007 through August 29, 2008, the Kroger pharmacy print out and the nineteen patient charts and concluded that the licensee departed from or failed to conform to the standards of acceptable and prevailing medical practices in the Commonwealth of Kentucky "by continuing to prescribe narcotic medications on a repeat basis for the same problems without addressing the issue of potential addiction or diversion."
13. The Board consultant also concluded that the licensee's prescribing practices demonstrated a pattern of "gross incompetence, ignorance or negligence or possibly

malpractice” and that a continuation of his practices would constitute a danger to the health, welfare and safety of his patients and the general public.

14. The consultant’s report of December 2008 is attached herewith and incorporated herein in its entirety.
15. On or about February 19, 2009, the Board’s Inquiry Panel A considered the above information and chose to ask the licensee to enter into an Agreed Order of Indefinite Restriction, in which he would be restricted from prescribing controlled substances until his completion of certain prescribing courses and a clinical skills assessment and education program. If the licensee declined to enter into the agreement, the Panel directed that a Complaint and Emergency Order of Restriction be issued against the licensee.
16. On or about March 23, 2009, the licensee’s legal counsel addressed a letter to the Board’s then-assistant general counsel, in which she requested that the licensee not be subjected to restriction on his license.
17. On or about March 30, 2009, the Board’s counsel polled, by fax, members of the Panel as to whether they would agree to offer the licensee an Interim Agreed Order (Diversion) in lieu of an Agreed Order of Indefinite Restriction.
18. By Poll, the members of Inquiry Panel A chose to allow the licensee to enter into an Interim Agreed Order (Diversion), which held the investigation open while the licensee completed certain actions, including that he submit to a clinical skills assessment at CPEP and, if recommended, that he direct CPEP to develop an Education Plan.

19. The Interim Agreed Order (Diversion) also provided that, upon the licensee's compliance and completion of those actions, the Inquiry Panel would have the option of closing the investigation without further action, asking the licensee to agree to an amendment of the diversion order to include additional or different conditions determined by the Panel to be appropriate, or issuing a Complaint and Emergency Order.
20. In addition, the Interim Agreed Order (Diversion) provided that if there is information satisfactory to the Panel or its Chair that the licensee failed to comply with any condition of the Interim Agreed Order, or failed to comply with a requirement of the Interim Agreed Order within the time specified for such completion, the Panel or its Chair may immediately issue a Complaint and an Emergency Order.
21. The licensee agreed to the terms of the Interim Agreed Order (Diversion) and executed his agreement thereto on or about April 28, 2009.
22. Pursuant to the terms of the Interim Agreed Order (Diversion), the licensee underwent a clinical skills assessment at CPEP on or about June 29 and 30, 2009.
23. On or about August 19, 2009, CPEP forwarded an assessment report to the licensee and recommended the development of an educational intervention plan.
24. After August 19, 2009, the licensee did not direct CPEP to develop the recommended educational intervention plan pursuant to the terms of the Interim Agreed Order (Diversion). Instead, the licensee requested additional information about an educational intervention plan and CPEP forwarded that information to the licensee on or about October 2, 2009.

25. After October 2, 2009, the licensee did not direct CPEP to develop the recommended educational intervention plan pursuant to the terms of the Interim Agreed Order (Diversion).
26. On or about December 16, 2009, even though an educational intervention plan had not yet been developed for him, the licensee requested that the Panel allow him to modify the education plan.
27. The licensee's non-compliance with the Interim Agreed Order (Diversion) due to his failure to direct CPEP to develop an educational intervention was placed on the Inquiry Panel's agenda for its February 18, 2010 meeting.
28. On or about February 16, 2010, two days prior to his scheduled appearance before the Inquiry Panel for noncompliance, the licensee directed CPEP to develop the recommended education plan.
29. On or about March 15, 2010, CPEP forwarded an educational intervention plan to the licensee. The licensee did not take action to implement the education plan.
30. On May 20, 2010, the Inquiry Panel reviewed CPEP's assessment report of the licensee and the education plan. The Inquiry Panel chose to issue a Complaint and Emergency Order of Suspension against the licensee if he did not begin the CPEP education plan by June 15, 2010.
31. On or about June 10, 2010, the licensee's counsel informed the Board that the licensee initiated the education plan.
32. On or about June 21, 2011, CPEP informed the licensee that he had completed the educational activities described in the plan and directed him to schedule the post-education evaluation of that plan.

33. On or about October 7, 2011, CPEP informed the licensee that in order to complete the education plan, he must successfully complete a post-education evaluation.
34. On or about October 12, 2011, after the Board informed the licensee that his failure to complete the education plan could be construed as non-compliance with the Board's order and would be considered at the next Inquiry Panel A meeting, the licensee requested that the Panel not require him to complete the education plan.
35. On November 17, 2011, the licensee appeared before the Inquiry Panel and it considered his failure to timely schedule the next required steps in his education plan and his request that he not be required to complete the education plan. The Inquiry Panel chose to issue a Complaint and Emergency Order of Restriction upon the licensee's ability to prescribe controlled substances.

#### CONCLUSIONS OF LAW

Pursuant to KRS 13B.125(2) and based upon the information available to it, Inquiry Panel A finds there is probable cause to support the following Conclusions of Law, which serve as the legal bases for this Emergency Order of Restriction:

1. The licensee's Kentucky medical license is subject to regulation and discipline by this Board.
2. KRS 311.592(1) provides that the Board may issue an emergency order suspending, limiting, or restricting a physician's license at any time an inquiry panel has probable cause to believe that a) the physician has violated the terms of an order placing him on probation; or b) a physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.

3. There is probable cause to believe that the licensee has violated KRS 311.595(9), as illustrated by KRS 311.597(3) and (4), as well as KRS 311.595(13).
4. The Panel concludes there is probable cause to believe this physician's practice constitutes a danger to the health, welfare and safety of his patients or the general public.
5. The Board may draw logical and reasonable inferences about a physician's practice by considering certain facts about a physician's practice. If there is proof that a physician has violated a provision of the Kentucky Medical Practice Act in one set of circumstances, the Board may infer that the physician will similarly violate the Medical Practice Act when presented with a similar set of circumstances. Similarly, the Board concludes that proof of a set of facts about a physician's practice presents representative proof of the nature of that physician's practice in general. Accordingly, probable cause to believe that the physician has committed certain violations in the recent past presents probable cause to believe that the physician will commit similar violations in the near future, during the course of the physician's medical practice.
6. The United States Supreme Court has ruled that it is no violation of the federal Due Process Clause for a state agency to temporarily suspend a license, without a prior evidentiary hearing, so long as 1) the immediate action is based upon a probable cause finding that there is a present danger to the public safety; and, 2) the statute provides for a prompt post-deprivation hearing. Barry v. Barchi, 443 U.S. 55, 61 L.Ed.2d 365, 99 S.Ct. 2642 (1979); FDIC v. Mallen, 486 U.S. 230, 100 L.Ed.2d 265,

108 S.Ct. 1780 (1988) and Gilbert v. Homar, 117 S.Ct. 1807 (1997). Cf. KRS 13B.125(1).

KRS 13B.125(3) provides that the Board shall conduct an emergency hearing on this emergency order within ten (10) working days of a request for such a hearing by the licensee. The licensee has been advised of his right to a prompt post-deprivation hearing under this statute.

**EMERGENCY ORDER OF RESTRICTION**

Based upon the foregoing Findings of Fact and Conclusions of Law, Inquiry Panel A hereby ORDERS that the license to practice medicine in the Commonwealth of Kentucky held by Chaisak Pengvanich, M.D., is RESTRICTED and Dr. Pengvanich is prohibited from PRESCRIBING, DISPENSING OR PROFESSIONALLY UTILIZING CONTROLLED SUBSTANCES until the resolution of the Complaint setting forth the allegations discussed in this pleading or until such further Order of the Board.

Inquiry Panel A further declares that this is an EMERGENCY ORDER, effective upon receipt by the licensee.

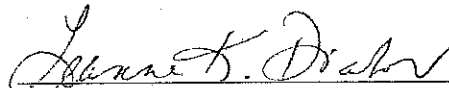
SO ORDERED this 1<sup>st</sup> day of December, 2011.



C. WILLIAM BRISCOE, M.D.  
CHAIR, INQUIRY PANEL A

**CERTIFICATE OF SERVICE**

I certify that the original of this Emergency Order of Restriction was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and copies were mailed via certified mail return-receipt requested to Chaisak Pengvanich, M.D., License No. 17517, 1607 Dixie Highway, Louisville, Kentucky 40210 and Lisa English Hinkle, Esq., 201 East Main Street, Suite 1000, Lexington, Kentucky 40507, on this 5<sup>th</sup> day of December, 2011.



Leanne K. Diakov  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150



Morgan Haugh  
Medical Group

May 15, 2008

Ms. Betty Prater  
Kentucky Board of Medical Licensure  
310 Whittington Parkway  
Louisville, KY 40222

Dear Ms. Prater:

My apologies for the delay in completing this review and returning my findings to you. I have completed the review of the entire chart and the information provided to me.

In summary, this case involves a grievance filed against Dr. Chaisak Pengvanich for allegedly failing to adequately evaluate findings found on a barium enema performed on patient [REDACTED] in October of 1987 and ultimately missing a diagnosis of colon cancer. [REDACTED] was diagnosed with cecal carcinoma in February 2007 and subsequently died after surgical intervention.

First of all, I agree with Dr. Pengvanich that the findings noted in the October 27, 1987, barium enema were not related to the carcinoma diagnosed on [REDACTED] in 2007. The area in question on the barium enema was in the rectosigmoid area, and the carcinoma diagnosed prior to [REDACTED] in death was in the cecum which was at the opposite end of the colon. No mention is made of any rectosigmoid malignancy in the information provided regarding the patient's surgical treatment of the cecal carcinoma.

Having stated the above, I will address concerns that did arise from review of [REDACTED] chart. First of all, although the barium enema findings probably did not have any bearing on the patient's death, the findings should have been further investigated at the time of the initial procedure. The area in question probably did represent some retained fecal matter; however, with the nature of the report and the location of the abnormality, the Standard of Care would have been to further investigate with additional diagnostic testing such as sigmoidoscopy. Dr. Pengvanich raises the question of whether colonoscopy was readily available in 1987. Regardless of whether a colonoscopy was readily available, certainly proctoscopy (with rigid proctoscope if necessary) would have been available and further evaluation of the area in question would have been indicated.

Probably of more concern is the fact that during her entire relationship with Dr. Pengvanich as her primary care physician, there is no evidence that the patient was advised to have any form of colon cancer screening. This is even more concerning in light of the patient's persistent and worsening anemia. The patient was noted by her cardiologist to have worsening anemia; and, I cannot detect any significant work-up to evaluate this to determine an underlying cause which would have been included in the differential diagnosis GI blood loss. Certainly in that instance, colon cancer is of primary concern.

Prater, 05/15/08, pg. 2

It is my opinion that Standard of Care prevailing in the Commonwealth of Kentucky would dictate that the patient be offered some form of colon cancer screening through health maintenance care. I also believe that the Standard of Care for evaluation of an elderly patient with worsening anemia would have included workup to rule out GI lesions resulting in GI blood loss.

It appears that Dr. Pengvanich in retrospect has indicated the patient would have been high risk for further interventional procedures. However, in that instance, this should have been documented and the patient should have been made aware of the potential problems that could have been missed without more aggressive evaluation. In my review, I did not find any indication that the patient was made aware of such information.

As a result, it is my opinion that the care rendered in regards to this particular patient was below minimum standards in diagnosis, treatment, medical records and in my overall opinion.

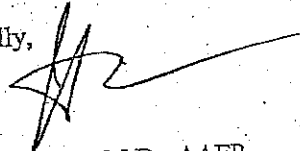
Regarding questions outlined in your previous letter, I must conclude that Dr. Pengvanich did engage in conduct which departed or failed to conform to standards acceptable and prevailing medical practice within the Commonwealth of Kentucky in his failure to adequately diagnose this patient's cecal carcinoma. I also must conclude that in this particular patient, the medical practice would have been deemed to be a result of gross incompetence, ignorance, negligence, or a combination thereof. I also feel that this could be considered an incident of malpractice.

Regarding the physician's practice constituting a danger to the health, welfare, and safety of his patients or the general public, I must conclude that if this is a pattern of care provided, then it would constitute a danger. However, my review includes only one isolated chart, and, therefore, I am not sure that this can be generalized to the physician's overall practice.

I hope this information is of benefit in your investigation, and I again apologize for the tardiness of this opinion.

These opinions are reached through review of the chart information provided as well as review of pertinent literature and my experience as a Board Certified Family Physician.

Respectfully,



Jeffrey A. Carrico, M.D., AAFP

vk



Morgan Haugh  
Medical Group

RECEIVED

DEC 19 2008

K.B.M.L.

December 19, 2008

Betty Prater, Medical Investigator  
Kentucky Board of Medical Licensure  
Hurstbourne Office Park  
310 Whittington Parkway, Suite 1B  
Louisville, KY 40222

RE: Chaisak Pengvanich, M.D.

Dear Ms. Prater:

This letter is to relay my opinion in regards to the open investigation against Dr. Chaisak Pengvanich. As I am sure you recall, the review ultimately entailed two different areas of focus. The initial grievance resulted in review of charts to determine if adequate cancer surveillance and screening were being performed. Regarding this aspect of the evaluation, several charts were reviewed. It did ultimately appear that although not always explicitly delineated in health maintenance office visits, the patients were by and large receiving adequate health maintenance and cancer screening. Therefore, I do not find any evidence from this standpoint that Dr. Pengvanich departed from the prevailing medical standards for the Commonwealth of Kentucky, nor did I find any area that suggested he committed any serious act or pattern of acts consistent with malpractice, incompetence, ignorance or negligence. From this standpoint, it did not appear that the physician's continued practice constitutes a danger to the health, welfare, or safety of the physician's patients or general public.

The second aspect of this review involved the possibility of overprescribing of controlled medication in the form of Phenergan with codeine liquid. Several charts were reviewed in regards to this possibility. Ultimately, it is my opinion that Dr. Pengvanich has shown a propensity to overprescribe Phenergan with codeine. Of the charts reviewed, many had repeat visits with the same complaints, receiving similar, if not the same, medical manage on a recurrent basis. Sometimes numerous prescriptions for Phenergan with codeine were prescribed over a several year period. There was also evidence in some charts that diversion or addiction was a potential problem. The physician continued to prescribe Phenergan with codeine in some instances despite this information being present. Therefore, unfortunately, it is my opinion that Dr. Pengvanich did depart from the standard of prevailing care for the Commonwealth of Kentucky by continuing to prescribe narcotic medications on a repeat basis for the same problems without addressing the issue of potential addition or diversion. There was no evidence, in most

Prater, Page 2

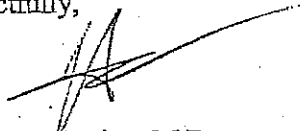
cases, that he pursued further workup or evaluation for recurrent problems requiring this medication. In this situation, I would have to conclude that there is a pattern of prescribing that could be deemed gross incompetence, ignorance or negligence or possibly malpractice. Also, I must state that if the physician's practice continues in this fashion, it could pose a danger to the health, welfare, and safety of the physician's patients and general public.

I would note that in some of the charts, there is evidence that Dr. Pengvanich has started to curtail prescribing this medication to patients that have evidence of diversion.

Individual expert review worksheets have been provided on each of the charts reviewed.

These opinions are rendered based on review of information provided in light of my experience as a Board Certified Family Physician and review of pertinent literature and guidelines.

Respectfully,

A handwritten signature in black ink, appearing to be 'Jeffrey A. Carrico', written over a horizontal line.

Jeffrey A. Carrico, M.D.

vk

DEC - 5 2011

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1360

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY CHAISAK PENGVANICH, M.D., LICENSE NO.  
17517, 1607 DIXIE HIGHWAY, LOUISVILLE, KENTUCKY 40210

**COMPLAINT**

Comes now the Complainant C. William Briscoe, M.D., Chair of the Kentucky Board of Medical Licensure's Inquiry Panel A, and on behalf of the Panel which met on November 17, 2011, states for its Complaint against the licensee, CHAISAK PENGVANICH, M.D., as follows:

1. At all relevant times, Chaisak Pengvanich, M.D., was licensed by the Board to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is internal medicine.
3. On or about December 4, 2007, Patient A's daughter filed a grievance with the Board in which it was alleged that the licensee was negligent in his diagnosis and treatment of Patient A's colon cancer, resulting in Patient A's death.
4. Patient A's charts were subpoenaed and obtained from the licensee, Norton Audubon Hospital and two other medical providers and forwarded to a Board consultant for review.
5. On or about May 15, 2008, the Board consultant issued a report in which he found that the licensee departed from or failed to conform to the standards of acceptable and prevailing medical practices in the Commonwealth of Kentucky in his diagnosis, treatment and documentation of care in regard to Patient A.

6. The Board consultant also concluded that the licensee's medical practices in regard to Patient A rose to the level of "gross incompetence, ignorance, negligence or a combination thereof" and could be considered an incident of malpractice.
7. The Board consultant's report of May 2008 is attached herewith and incorporated herein in its entirety.
8. On or about August 3, 2008, Sgt. Stanley Salyards of the Louisville Metro Police Narcotics/Vice Prescription Drug Squad requested that the Board investigate the licensee's practice of prescribing Promethazine VC Codeine, which has a street value of \$200.00/oz.
9. During its investigation, the Board's medical investigator interviewed Misti Whitfield, R.Ph., Manager of Kroger Pharmacy #752, who stated substantially as follows: She noticed an individual escorting many first-time male customers to her pharmacy and that each of these customers presented with prescriptions for the same medication - Promethazine VC Codeine - from the licensee. Although the customers did not cough or look ill, the customers typically presented a prescription for cough syrup and specifically requested the brand name Actavis. The men frequently asked to smell the cough syrup before purchasing it. Ms. Whitfield noticed that addresses given by the new customers were scattered throughout the Louisville area and would indicate that they were not shopping at their neighborhood pharmacy. Ms. Whitfield contacted the licensee to check the validity of the prescriptions. The licensee confirmed that he had written the prescriptions for bronchitis and that he had also prescribed an antibiotic. The licensee instructed Ms. Whitfield not to fill the Promethazine VC Codeine without also filling the prescription for the antibiotic. The

customers never presented the antibiotic prescription unless the pharmacist asked and insisted upon it.

10. A review of a KASPER report on the licensee, dated July 1, 2007 through August 29, 2008, and a Kroger pharmacy printout led to the identification of nineteen (19) patients who had presented a prescription for Promethazine VC Codeine from the licensee and who warranted further review.
11. The patient charts of the identified nineteen (19) patients were subpoenaed and obtained from the licensee for review by a Board consultant.
12. In December 2008, the Board consultant reviewed the KASPER report, dated July 1, 2007 through August 29, 2008, the Kroger pharmacy print out and the nineteen patient charts and concluded that the licensee departed from or failed to conform to the standards of acceptable and prevailing medical practices in the Commonwealth of Kentucky "by continuing to prescribe narcotic medications on a repeat basis for the same problems without addressing the issue of potential addiction or diversion."
13. The Board consultant also concluded that the licensee's prescribing practices demonstrated a pattern of "gross incompetence, ignorance or negligence or possibly malpractice" and that a continuation of his practices would constitute a danger to the health, welfare and safety of his patients and the general public.
14. The consultant's report of December 2008 is attached herewith and incorporated herein in its entirety.
15. On or about February 19, 2009, the Board's Inquiry Panel A considered the above information and chose to ask the licensee to enter into an Agreed Order of Indefinite Restriction, in which he would be restricted from prescribing controlled substances

until his completion of certain prescribing courses and a clinical skills assessment and education program. If the licensee declined to enter into the agreement, the Panel directed that a Complaint and Emergency Order of Restriction be issued against the licensee.

16. On or about March 23, 2009, the licensee's legal counsel addressed a letter to the Board's then-assistant general counsel, in which she requested that the licensee not be subjected to restriction on his license.
17. On or about March 30, 2009, the Board's counsel polled, by fax, members of the Panel as to whether they would agree to offer the licensee an Interim Agreed Order (Diversion) in lieu of an Agreed Order of Indefinite Restriction.
18. By Poll, the members of Inquiry Panel A chose to allow the licensee to enter into an Interim Agreed Order (Diversion), which held the investigation open while the licensee completed certain actions, including that he submit to a clinical skills assessment at CPEP and, if recommended, that he direct CPEP to develop an Education Plan.
19. The Interim Agreed Order (Diversion) also provided that, upon the licensee's compliance and completion of those actions, the Inquiry Panel would have the option of closing the investigation without further action, asking the licensee to agree to an amendment of the diversion order to include additional or different conditions determined by the Panel to be appropriate, or issuing a Complaint and Emergency Order.
20. In addition, the Interim Agreed Order (Diversion) provided that if there is information satisfactory to the Panel or its Chair that the licensee failed to comply with any

condition of the Interim Agreed Order, or failed to comply with a requirement of the Interim Agreed Order within the time specified for such completion, the Panel or its Chair may immediately issue a Complaint and an Emergency Order.

21. The licensee agreed to the terms of the Interim Agreed Order (Diversion) and executed his agreement thereto on or about April 28, 2009.
22. Pursuant to the terms of the Interim Agreed Order (Diversion), the licensee underwent a clinical skills assessment at CPEP on or about June 29 and 30, 2009.
23. On or about August 19, 2009, CPEP forwarded an assessment report to the licensee and recommended the development of an educational intervention plan.
24. After August 19, 2009, the licensee did not direct CPEP to develop the recommended educational intervention plan pursuant to the terms of the Interim Agreed Order (Diversion). Instead, the licensee requested additional information about an educational intervention plan and CPEP forwarded that information to the licensee on or about October 2, 2009.
25. After October 2, 2009, the licensee did not direct CPEP to develop the recommended educational intervention plan pursuant to the terms of the Interim Agreed Order (Diversion).
26. On or about December 16, 2009, even though an educational intervention plan had not yet been developed for him, the licensee requested that the Panel allow him to modify the education plan.
27. The licensee's non-compliance with the Interim Agreed Order (Diversion) due to his failure to direct CPEP to develop an educational intervention was placed on the Inquiry Panel's agenda for its February 18, 2010 meeting.

28. On or about February 16, 2010, two days prior to his scheduled appearance before the Inquiry Panel for noncompliance, the licensee directed CPEP to develop the recommended education plan.
29. On or about March 15, 2010, CPEP forwarded an educational intervention plan to the licensee. The licensee did not take action to implement the education plan.
30. On May 20, 2010, the Inquiry Panel reviewed CPEP's assessment report of the licensee and the education plan. The Inquiry Panel chose to issue a Complaint and Emergency Order of Suspension against the licensee if he did not begin the CPEP education plan by June 15, 2010.
31. On or about June 10, 2010, the licensee's counsel informed the Board that the licensee initiated the education plan.
32. On or about June 21, 2011, CPEP informed the licensee that he had completed the educational activities described in the plan and directed him to schedule the post-education evaluation of that plan.
33. On or about October 7, 2011, CPEP informed the licensee that in order to complete the education plan, he must successfully complete a post-education evaluation.
34. On or about October 12, 2011, after the Board informed the licensee that his failure to complete the education plan could be construed as non-compliance with the Board's order and would be considered at the next Inquiry Panel A meeting, the licensee requested that the Panel not require him to complete the education plan.
35. On November 17, 2011, the licensee appeared before the Inquiry Panel and it considered his failure to timely schedule the next required steps in his education plan and his request that he not be required to complete the education plan. The Inquiry

Panel determined that the licensee's prescribing of controlled substances during a prolonged investigation places the safety and health of his patients and the public at risk and in danger. As a result, the license was restricted from the prescribing of controlled substances.

36. By his conduct, the licensee has violated KRS 311.595(9), as illustrated by KRS 311.597(3) and (4), and KRS 311.595(13). Accordingly, legal grounds exist for disciplinary action against his Kentucky medical license.

37. The licensee is directed to respond to the allegations delineated in the Complaint within thirty (30) days of service thereof and is further given notice that:

(a) His failure to respond may be taken as an admission of the charges;

(b) He may appear alone or with counsel, may cross-examine all prosecution witnesses and offer evidence in his defense.

38. NOTICE IS HEREBY GIVEN that a hearing on this Complaint is scheduled for May 1, 2 and 3, 2012 at 9:00 a.m., Eastern Standard Time, at the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Said hearing shall be held pursuant to the Rules and Regulations of the Kentucky Board of Medical Licensure and pursuant to KRS Chapter 13B. This hearing shall proceed as scheduled and the hearing date shall only be modified by leave of the Hearing Officer upon a showing of good cause.

WHEREFORE, Complainant prays that appropriate disciplinary action be taken against the license to practice medicine held by CHAISAK PENGVANICH, M.D.

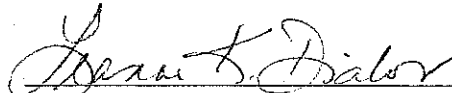
This 1<sup>st</sup> day of December, 2011.



C. WILLIAM BRISCOE, M.D.  
CHAIR, INQUIRY PANEL A

**CERTIFICATE OF SERVICE**

I certify that the original of this Complaint was delivered to Mr. C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; and a copy was mailed to Thomas J. Hellmann, Esq., Hearing Officer, P.O. Box 676, 415 West Main Street, Frankfort, Kentucky 40602-2271 and via certified mail return-receipt requested to Chaisak Pengvanich, M.D., License No. 17517, 1607 Dixie Highway, Louisville, Kentucky 40210 and Lisa English Hinkle, Esq., 201 East Main Street, Suite 1000, Lexington, Kentucky 40507, on this 5<sup>th</sup> day of December, 2011.



Leanne K. Diakov  
Assistant General Counsel  
Kentucky Board of Medical Licensure  
310 Whittington Parkway, Suite 1B  
Louisville, Kentucky 40222  
Tel. (502) 429-7150



Morgan Haugh  
Medical Group

May 15, 2008

Ms. Betty Prater  
Kentucky Board of Medical Licensure  
310 Whittington Parkway  
Louisville, KY 40222

Dear Ms. Prater:

My apologies for the delay in completing this review and returning my findings to you. I have completed the review of the entire chart and the information provided to me.

In summary, this case involves a grievance filed against Dr. Chaisak Pengvanich for allegedly failing to adequately evaluate findings found on a barium enema performed on patient [REDACTED] in October of 1987 and ultimately missing a diagnosis of colon cancer. [REDACTED] was diagnosed with cecal carcinoma in February 2007 and subsequently died after surgical intervention.

First of all, I agree with Dr. Pengvanich that the findings noted in the October 27, 1987, barium enema were not related to the carcinoma diagnosed on [REDACTED] 2007. The area in question on the barium enema was in the rectosigmoid area, and the carcinoma diagnosed prior to [REDACTED] in death was in the cecum which was at the opposite end of the colon. No mention is made of any rectosigmoid malignancy in the information provided regarding the patient's surgical treatment of the cecal carcinoma.

Having stated the above, I will address concerns that did arise from review of [REDACTED] chart. First of all, although the barium enema findings probably did not have any bearing on the patient's death, the findings should have been further investigated at the time of the initial procedure. The area in question probably did represent some retained fecal matter; however, with the nature of the report and the location of the abnormality, the Standard of Care would have been to further investigate with additional diagnostic testing such as sigmoidoscopy. Dr. Pengvanich raises the question of whether colonoscopy was readily available in 1987. Regardless of whether a colonoscopy was readily available, certainly proctoscopy (with rigid proctoscope if necessary) would have been available and further evaluation of the area in question would have been indicated.

Probably of more concern is the fact that during her entire relationship with Dr. Pengvanich as her primary care physician, there is no evidence that the patient was advised to have any form of colon cancer screening. This is even more concerning in light of the patient's persistent and worsening anemia. The patient was noted by her cardiologist to have worsening anemia; and, I cannot detect any significant work-up to evaluate this to determine an underlying cause which would have included in the differential diagnosis GI blood loss. Certainly in that instance, colon cancer is of primary concern.

Prater, 05/15/08, pg. 2

It is my opinion that Standard of Care prevailing in the Commonwealth of Kentucky would dictate that the patient be offered some form of colon cancer screening through health maintenance care. I also believe that the Standard of Care for evaluation of an elderly patient with worsening anemia would have included workup to rule out GI lesions resulting in GI blood loss.

It appears that Dr. Pengvanich in retrospect has indicated the patient would have been high risk for further interventional procedures. However, in that instance, this should have been documented and the patient should have been made aware of the potential problems that could have been missed without more aggressive evaluation. In my review, I did not find any indication that the patient was made aware of such information.

As a result, it is my opinion that the care rendered in regards to this particular patient was below minimum standards in diagnosis, treatment, medical records and in my overall opinion.

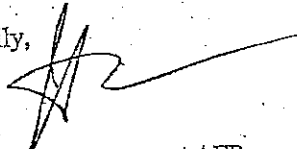
Regarding questions outlined in your previous letter, I must conclude that Dr. Pengvanich did engage in conduct which departed or failed to conform to standards acceptable and prevailing medical practice within the Commonwealth of Kentucky in his failure to adequately diagnose this patient's cecal carcinoma. I also must conclude that in this particular patient, the medical practice would have been deemed to be a result of gross incompetence, ignorance, negligence, or a combination thereof. I also feel that this could be considered an incident of malpractice.

Regarding the physician's practice constituting a danger to the health, welfare, and safety of his patients or the general public, I must conclude that if this is a pattern of care provided, then it would constitute a danger. However, my review includes only one isolated chart, and, therefore, I am not sure that this can be generalized to the physician's overall practice.

I hope this information is of benefit in your investigation, and I again apologize for the tardiness of this opinion.

These opinions are reached through review of the chart information provided as well as review of pertinent literature and my experience as a Board Certified Family Physician.

Respectfully,



Jeffrey A. Carrico, M.D., AAFP

vk



Morgan Haugh  
Medical Group

RECEIVED

DEC 19 2008

K.B.M.L.

December 19, 2008

Betty Prater, Medical Investigator  
Kentucky Board of Medical Licensure  
Hurstbourne Office Park  
310 Whittington Parkway, Suite 1B  
Louisville, KY 40222

RE: Chaisak Pengvanich, M.D.

Dear Ms. Prater:

This letter is to relay my opinion in regards to the open investigation against Dr. Chaisak Pengvanich. As I am sure you recall, the review ultimately entailed two different areas of focus. The initial grievance resulted in review of charts to determine if adequate cancer surveillance and screening were being performed. Regarding this aspect of the evaluation, several charts were reviewed. It did ultimately appear that although not always explicitly delineated in health maintenance office visits, the patients were by and large receiving adequate health maintenance and cancer screening. Therefore, I do not find any evidence from this standpoint that Dr. Pengvanich departed from the prevailing medical standards for the Commonwealth of Kentucky, nor did I find any area that suggested he committed any serious act or pattern of acts consistent with malpractice, incompetence, ignorance or negligence. From this standpoint, it did not appear that the physician's continued practice constitutes a danger to the health, welfare, or safety of the physician's patients or general public.

The second aspect of this review involved the possibility of overprescribing of controlled medication in the form of Phenergan with codeine liquid. Several charts were reviewed in regards to this possibility. Ultimately, it is my opinion that Dr. Pengvanich has shown a propensity to overprescribe Phenergan with codeine. Of the charts reviewed, many had repeat visits with the same complaints, receiving similar, if not the same, medical manage on a recurrent basis. Sometimes numerous prescriptions for Phenergan with codeine were prescribed over a several year period. There was also evidence in some charts that diversion or addiction was a potential problem. The physician continued to prescribe Phenergan with codeine in some instances despite this information being present. Therefore, unfortunately, it is my opinion that Dr. Pengvanich did depart from the standard of prevailing care for the Commonwealth of Kentucky by continuing to prescribe narcotic medications on a repeat basis for the same problems without addressing the issue of potential addition or diversion. There was no evidence, in most

Prater, Page 2

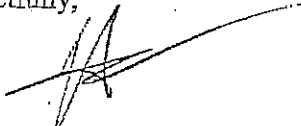
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I would note that in some of the charts, there is evidence that Dr. Pengvanich has started to curtail prescribing this medication to patients that have evidence of diversion.

Individual expert review worksheets have been provided on each of the charts reviewed.

These opinions are rendered based on review of information provided in light of my experience as a Board Certified Family Physician and review of pertinent literature and guidelines.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jeffrey A. Carrico', with a long horizontal stroke extending to the right.

Jeffrey A. Carrico, M.D.

vk