

VIRGINIA:

BEFORE THE STATE BOARD OF MEDICINE

IN RE: JOHN F. PHOLERIC, JR, M.D.

ORDER

At the request of John F. Pholeric, Jr., M.D., a continuance was granted by the Virginia State Board of Medicine (hereinafter the "Board") at its July 1985 meeting until its November 1985 meeting for Dr. Pholeric's petition for reinstatement. Dr. Pholeric was originally placed on probation with terms and conditions by Consent Order entered July 12, 1984, and continued on probation by Board Order entered November 16, 1984.

The hearing was held November 23, 1985, in Williamsburg, Virginia. Charles E. Poston, Hearing Officer, was present to conduct the hearing in an orderly fashion; to make rulings of law pertaining to the admissibility of evidence; and to give the Board any required instructions which would enable them to make an appropriate determination. The Board was represented by Clyde W. Mathews, Jr., Assistant Attorney General, who made an opening statement to the Board in Dr. Pholeric's presence reviewing his past history. Dr. Pholeric who appeared without counsel made a statement to and answered questions posed by the Board.

### FINDINGS OF FACT

Having considered all of the evidence presented and noting that Dr. Pholeric was present without counsel, the Hearing Officer found the following facts by clear and convincing evidence:

1) Dr. Pholeric is in compliance with the terms of the Order of the Board dated November 16, 1984;

2) Dr. Pholeric was convicted in United States District Court for the District of Columbia on March 8, 1985, Title 21 of U. S. Code § 843 (A.3) which is the offense of obtaining a controlled substance by fraud.

### CONCLUSIONS OF LAW

1) Dr. Pholeric's conviction in United States District Court is a felony as contemplated by § 54-317.1 of the Code of Virginia (1950), as amended;

2) It is mandatory upon the Board as provided in § 54-321.2 that his license be suspended or revoked.

The Hearing Officer further advised the Board that the execution of either of the above listed sanctions the Board chose to impose, may be suspended under such terms and conditions as the Board deemed necessary.

### ORDER

The Board unanimously accepts the FINDINGS OF FACT AND CONCLUSIONS OF LAW of the Hearing Officer.

WHEREFORE, it is hereby ORDERED that the license of John F. Pholeric, Jr., M.D., to practice medicine in the Commonwealth of Virginia be REVOKED and that the REVOCATION BE STAYED with the following terms and conditions:

1) That Dr. Pholeric be prohibited from prescribing Schedule II through V controlled substances;

2) That Dr. Pholeric continue in psychotherapy with Lillibeth Boruchow, M.D., with reports forwarded to Dr. Robert B. Neu, Acting Chairman of the Psychiatric Advisory Board (PAB) at six month intervals;

3) That Dr. Pholeric be seen by the PAB prior to the July 1986 Board meeting and the PAB will recommend whether he should be seen by the Board in July 1986;


4) That Dr. Pholeric continue to actively participate in The Medical Society of Virginia's Health and Effectiveness Program;

5) That Dr. Pholeric shall, in the interim, maintain a course of conduct in his practice of medicine consistent with the requirements of Title 54, Chapter 12, of the Code of Virginia (1950), as amended, and with all laws of the Commonwealth;

6) That Dr. Pholeric shall not petition the Board for reinstatement for a period of not less than three years from November 23, 1985;

7) Violation of any of the above terms and conditions shall result in the immediate rescission of the stay of revocation.

FOR THE BOARD

  
Gerald J. Bechamps, M.D.  
President  
Virginia State Board of Medicine

ENTERED: 1-13-86

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: JOHN F. PHOLERIC, JR., M.D.  
License No.: 0101-026520

ORDER

In accordance with Sections 54.1-2919, 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with John F. Pholeric, Jr., M.D., on March 14, 2002, in Fredericksburg, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the Informal Conference Committee ("Committee") were: Cheryl Jordan, M.D., Chairman; Robert J. Bettini, M.D.; and Cedric Rucker. Dr. Pholeric appeared personally and was not represented by legal counsel. The purpose of the informal conference was to inquire into allegations that Dr. Pholeric may have violated certain laws governing the practice of medicine in the Commonwealth of Virginia, as set forth in a Notice of Informal Conference dated February 14, 2002.

FINDINGS OF FACT

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact:

1. Beginning in late 1999, while practicing medicine at Countryside Ambulatory Surgery Center and Loudoun Hospital Center, Dr. Pholeric diverted cocaine solutions from ENT procedures he performed at these facilities. Dr. Pholeric stated that on an average of 3-4 times per week, he self-administered the cocaine at night while doing paperwork in his office. Dr. Pholeric further stated that it was possible he used cocaine while on call at hospitals. Dr. Pholeric explained that he dried the solutions and snorted the cocaine residue.
2. On June 27, 2001, Dr. Pholeric's clinical privileges at Loudoun Hospital Center, Leesburg, Virginia, and Countryside Ambulatory Surgery Center, Sterling, Virginia, were summarily suspended due to his diversion of cocaine for his personal and unauthorized use.
3. On June 28, 2001, Dr. Pholeric entered into a Participation Agreement with the Virginia Health

Practitioner's Intervention Program ("HPIP"). Subsequently, on October 24, 2001, he entered into a Recovery Monitoring Contract.

4. From July 5, 2001 through September 21, 2001, Dr. Pholeric received in-patient treatment at Marworth's Healthcare Professional's Program, Waverly, Pennsylvania. He was given Axis I diagnoses of cocaine dependency, alcohol abuse, and history of marijuana dependence.

5. Following a medical leave of absence, Dr. Pholeric returned to active practice status at Reston Hospital in November 2001. Further, his clinical privileges at Loudoun Hospital Center were reinstated and he returned to active practice there on or about February 1, 2002.

6. According to the Medical Director of Virginia Monitoring, Inc., Dr. Pholeric is compliant with all aspects of his HPIP contract and all performance reports have been favorable.

7. Dr. Pholeric reports a sobriety date of June 27, 2001.

8. Dr. Pholeric stated that he completes a minimum of sixty (60) hours of continuing medical education each year.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Committee concludes that Dr. Pholeric has violated Section 54.1-2915.A (3), as further defined in Section 54.1-2914.A(3), (5), (7) and (9) of the Code.

#### ORDER

WHEREFORE, it is hereby ORDERED that the license of Dr. Pholeric be placed on INDEFINITE PROBATION subject to the following terms and conditions:

1. Dr. Pholeric shall comply with the terms of his HPIP contract executed October 24, 2001, and all addenda thereto. Dr. Pholeric shall cause progress reports from HPIP to be submitted to the Board on a calendar quarterly basis. Said reports shall include specific information regarding Dr. Pholeric's recovery

efforts as obtained by HPIP from his work site monitor, practice supervisor and his therapist, as well as the results of all urine drug screens.

2. Dr. Pholeric shall sign an authorization providing for unrestricted communication between and among the Board, its representatives, HPIP, and all treating practitioners.

3. Within approximately one (1) year from entry of this Order, Dr. Pholeric shall be noticed to appear before an informal conference committee of the Board to review his compliance with the terms of this Order.

4. Dr. Pholeric shall maintain a course of conduct in his practice of medicine commensurate with the requirements of Title 54.1, Chapter 29 of the Code and all laws of the Commonwealth.

5. Dr. Pholeric shall cooperate with the Virginia Board of Medicine or the Department of Health Professions in the investigation or inspection of his practice to verify that he is in compliance with this Order.

6. Dr. Pholeric shall notify the Executive Director of the Board, by certified mail, of any change of address within ten (10) days of such occurrence.

7. Dr. Pholeric shall notify the Board immediately, in writing, should he intend to change the location of his practice.

Violation of this Order may constitute grounds for suspension or revocation of Dr. Pholeric's license. In the event that Dr. Pholeric violates this Order, an administrative proceeding may be convened to determine whether his license shall be revoked.

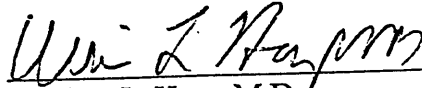
Pursuant to Section 2.2-4023 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2919 of the Code, Dr. Pholeric may, not later than 5:00 p.m., on April 18, 2002, notify William L. Harp, M.D., Executive Director, Board of Medicine, 6606 West Broad Street,

Richmond, Virginia 23230, in writing, that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on April 18, 2002, unless a request for a formal administrative hearing is received as described above.


FOR THE BOARD



William L. Harp, M.D.  
Executive Director  
Virginia Board of Medicine

ENTERED: 3/15/02

LM/PholericOrder.doc

  
A TRUE COPY TESTE:  
RENEE S. DIXON, DISCIPLINE CASE MANAGER  
VIRGINIA BOARD OF MEDICINE

**VIRGINIA**

**BEFORE THE STATE BOARD OF MEDICINE**

**IN RE: John F. Pholeric, Jr., M.D.**

**ORDER**

By letter dated February 10, 1987, John F. Pholeric, Jr., M.D. petitioned the Virginia Board of Medicine (hereinafter "Board") for reinstatement of his privilege to prescribe Schedule II through V controlled substances. Dr. Pholeric's license to practice medicine was revoked with the revocation stayed with terms and conditions by Board Order entered January 13, 1986.

Pursuant to §§ 9-6.14:12 and 54-318.3 of the Code of Virginia (1950), as amended, a formal administrative hearing was held on March 19, 1987 in Tysons Corner, Virginia, to consider Dr. Pholeric's petition. Pursuant to § 9-6.14:14.1E, the hearing was held before a quorum of the Board with the Board president presiding. The proceedings were recorded by a certified court reporter.

The Board was represented by Howard M. Casway, Assistant Attorney General, who made an opening statement and introduced the following exhibits into the record: Joint Exhibit #1 - "Public History;" Joint Exhibit #2 - "Confidential History;" Joint Exhibit #3 - "Public Exhibits;" and Joint Exhibit #4 - "Confidential Exhibits."

Dr. Pholeric was present without counsel. He answered questions posed by Mr. Casway and members of the Board. David Harrer, M.D. testified on Dr. Pholeric's behalf.

### FINDINGS OF FACT

Having considered all the evidence and the record in this case, the Board finds the following facts by clear and convincing evidence:

1. That Dr. Pholeric is before the Board on his petition for the restoration of his Schedule III through V controlled substances prescribing privileges having amended his petition to delete his request for restoration of his Schedule II prescribing privileges.

2. Dr. Pholeric's currently holds a license which was revoked with said revocation stayed by Board Order entered January 13, 1986, upon certain terms and conditions.

3. That Dr. Pholeric entered into the Arlington Hospital inpatient drug treatment program for cocaine addiction on January 26, 1984 and has only been drug free since that time.

4. That on March 8, 1985 Dr. Pholeric was convicted in the United States District Court of the District of Columbia of a felony, obtaining controlled substances by fraud and was placed on five (5) years probation scheduled to end in 1990.

5. The District of Columbia Board of Medicine placed Dr. Pholeric's license on probation with terms and conditions on September 10, 1986.

6. Dr. Pholeric entered into a Stipulation of Settlement with the Drug Enforcement administration which limited his prescribing of Schedule III, III-N, IV, and V controlled substances

for a period of five (5) years upon the condition that he maintain separate records of all his prescribing, dispensing and administering of controlled substances. Additionally, pursuant to that agreement, he is prohibited from self prescribing or using controlled substances unless prescribed for him pursuant to the lawful order of a practitioner.

7. Dr. Pholeric's treating physicians, Dr. Lillibeth Boruchow and Dr. Charles G. Smith, have indicated that Dr. Pholeric is progressing satisfactorily in treatment and they are of the opinion that Dr. Pholeric poses no risk with the reinstatement of his privilege to prescribe Schedule III through V controlled substances.

8. That Dr. Pholeric has complied with the impaired physicians program in Virginia and the District of Columbia.

9. That urine toxicology screens for controlled substances have been negative with one exception.

10. That Dr. Pholeric has complied with the terms and conditions set forth in his Order of the Board entered January 13, 1986.

#### CONCLUSIONS OF LAW

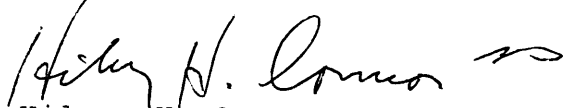
As a matter of law, the Board concludes that the petition of Dr. Pholeric is properly before the Board and it is within the sound discretion of the Board to grant the petition.

The Board further reaffirms its prior conclusions that finding of fact No. 4 constitutes a violation of § 54-317.1(1) and finding of fact No. 3 constitutes a violation of § 54-316(3) as further defined in § 54-317(11).

WHEREFORE, on the basis of the foregoing findings of fact, the Board voted to DENY the petition of Dr. Pholeric to prescribe Schedule III through V controlled substances until Dr. Pholeric obtains approval from the United State District Court to prescribe Schedule II through V controlled substances by the United States District Court. It is further Ordered that the license of Dr. Pholeric be continued on probation upon the terms and conditions presently in effect.

Pursuant to § 9-6.14:14 of the Code of Virginia (1950), as amended, the signed original of this Order shall remain in the custody of the Department of Health Regulatory Boards for public inspection and copying.

FOR THE BOARD



Hilary H. Connor, M.D.  
Executive Director  
Virginia Board of Medicine

ENTERED: 4-9-87

F

VIRGINIA:

BEFORE THE STATE BOARD OF MEDICINE

IN RE: JOHN F. PHOLERIC, JR., M.D.

CONSENT ORDER

*I agree to this  
Consent order & the  
three (3) pages hereafter  
7/11/84*

Pursuant to §§ 9-6.14:11 and 54-318.1 of the Code of Virginia (1950), as amended, an informal conference was held with John F. Pholeric, Jr., M.D., on May 9, 1984, at the Board's office, in Richmond, Virginia. Members of the State Board of Medicine serving on the informal conference committee were: Edward L. Kendig, Jr., M.D., Chairman; George Edward Calvert, M.D.; and Wayne E. Engle, Ph.D. Dr. Pholeric was present but was not represented by counsel. The Board was represented by Howard M. Casway, Assistant Attorney General. Dr. Pholeric made statements to and answered questions posed by the committee members and Mr. Casway.

The Committee concluded that Dr. Pholeric had violated §§ 54-316(2) and (3) as further defined in § 54-317(3), (11), (14), (15), and (16) and § 54-524.65 of the Drug Control Act in that: he diverted cocaine, a Schedule II controlled substance, for his own personal and unauthorized use during the period January 1982 through December 1983; and that on or about January 26, 1984, Dr. Pholeric was admitted to the drug rehabilitation unit of the Arlington Hospital with a diagnosis of cocaine addiction.

### CONSENT

I, John F. Pholeric, Jr., by affixing my signature hereto, acknowledge:

1. That I have been specifically advised to seek advice of counsel prior to signing this document;

2. That I am aware that without my consent, no legal action can be taken against me, except pursuant to the Virginia Administrative Process Act, § 9-6.14 et seq., of the Code of Virginia (1950), as amended;

3. That I have the following rights, among others: the right to a formal fact finding hearing before the Board, to reasonable notice of said hearing, to representation by counsel, and the right to cross-examine witnesses against me;

4. That I waive all such rights to a formal hearing;

5. That I consent to the entry of the following Order affecting my license to practice medicine in the Commonwealth of Virginia.

### ORDER

Based on the findings and conclusions of the committee, it is hereby ORDERED that, effective upon entry of this order, license number 26520 of John F. Pholeric, Jr., M.D., be placed on indefinite probation with the following terms and conditions:

1. That Dr. Pholeric abide by the terms of his after-care contract with the Arlington Hospital Alcoholism Treatment Program, Arlington, Virginia;

2. That a copy of this order will be forward to Dr. Charles G. Smith, M.D., Arlington Hospital Alcoholism Treatment

Program, Arlington Hospital, 1701 North George Mason Drive, Arlington, Virginia 22205, requesting that he, as Dr. Pholeric's treating physician, notify the Board immediately if Dr. Pholeric fails to adhere to any of the terms of his contract that he has entered into with the program;

3. That random urine screens for cocaine be conducted by his treating physician, with reports submitted periodically to the Board of Medicine office;

4. That Dr. Pholeric be seen by the Regional Psychiatric Advisory Committee of the Board in June, 1984, with a report to the full Board at its July, 1984, meeting;

5. That Dr. Pholeric be seen by the full Board at its July, 1984, meeting for final disposition;

6. During the period of probation, Dr. Pholeric shall be restricted from prescribing Schedules II through V controlled substances in his practice of medicine;

7. That Dr. Pholeric shall, in the interim, maintain a course of conduct in his practice of medicine consistent with the requirements of Title 54, chapter 12, of the Code of Virginia (1950), as amended, and with all laws of the Commonwealth.

The Board specifically reserves the right to take further disciplinary action pursuant to Virginia Code § 54-317,1(2), on the basis that Dr. Pholeric may, after entry to this order, be convicted of violations of law arising out of the aforesaid diversion of controlled substances.

Violation of the terms and conditions hereof shall constitute grounds for the immediate suspension of the license of

John F. Pholeric, M.D., and a formal hearing shall be convened to determine whether his license to practice medicine in the Commonwealth shall be revoked.

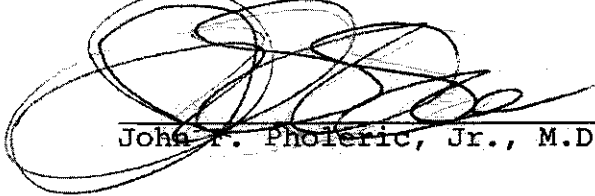
FOR THE BOARD



George J. Carroll, M.D.  
Secretary-Treasurer  
Virginia State Board of Medicine

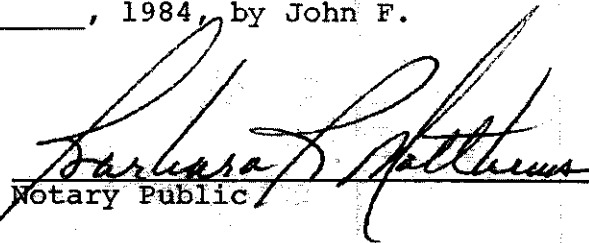
ENTERED: July 12, 1984

Seen and Agreed to:



John F. Pholeric, Jr., M.D.

Subscribed and sworn to before me, the undersigned Notary Public, in and for the Commonwealth of Virginia, at large, this 12 day of July, 1984, by John F. Pholeric, Jr., M.D.

  
Notary Public

My Commission Expires: January 1, 1986

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: JOHN F. PHOLERIC, JR., M.D.  
License No.: 0101-026520

ORDER

In accordance with Sections 54.1-2919, 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with John F. Pholeric, Jr., M.D., on August 28, 2003, in Fredericksburg, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the Informal Conference Committee ("Committee") were: Clarke Russ, M.D., Chairman; and Juan M. Montero, II, M.D. Dr. Pholeric appeared personally and was not represented by legal counsel. The purpose of the informal conference was to review Dr. Pholeric's compliance with the terms and conditions of indefinite probation imposed upon his license to practice medicine pursuant to an Order of the Board entered March 15, 2002, as set forth in a Notice of Informal Conference dated July 11, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact and Conclusions of Law:

1. Dr. Pholeric was issued license number 0101-026520 by the Board to practice medicine in the Commonwealth of Virginia on December 6, 1975. Said license will expire on July 31, 2004, unless renewed or otherwise restricted.
2. By Order entered March 15, 2002, the Board placed Dr. Pholeric's license on indefinite probation, subject to certain terms and conditions.
3. Having considered the information and statements presented, the Committee finds and concludes that Dr. Pholeric is properly before the Board, and that he is in substantial compliance with the Order of the Board entered March 15, 2002.

ORDER

WHEREFORE, it is hereby ORDERED that the terms and conditions imposed upon the license of John F. Pholeric, Jr., M.D., are TERMINATED, and his license is REINSTATED to a full and unrestricted status with all attendant rights and privileges.

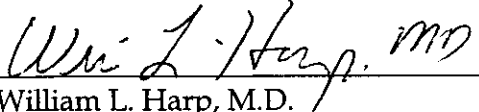
Dr. Pholeric entered into a Recovery Monitoring Contract with the Virginia Health Practitioners' Intervention Program ("HPIP") on November 7, 2001, and again on March 20, 2003. Pursuant to the Recovery Monitoring Contract, HPIP shall notify the Board in the event that Dr. Pholeric fails to fulfill the terms of his contract with HPIP.

Pursuant to Section 2.2-4023 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2919 of the Code, Dr. Pholeric may, not later than 5:00 p.m., on October 14, 2003, notify William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, Virginia 23230, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on October 14, 2003, unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD

  
\_\_\_\_\_  
William L. Harp, M.D.

Executive Director  
Virginia Board of Medicine

Entered: 9/10/03

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: JOHN F. PHOLERIC, JR., M.D.  
License No.: 0101-026520

ORDER

In accordance with Sections 54.1-2400(10), 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with John F. Pholeric, Jr., M.D., on August 25, 2004, in Fredericksburg, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the Special Conference Committee ("Committee") were: Alvin Edwards, M.Div., Ph.D., Chairman; Thomas B. Leecost, D.P.M.; and Karen A. Ransone, M.D. Dr. Pholeric appeared personally and was not represented by legal counsel. The purpose of the informal conference was to inquire into allegations that Dr. Pholeric may have violated certain laws governing the practice of medicine in the Commonwealth of Virginia, as set forth in a Notice of Informal Conference dated July 20, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact and Conclusions of Law:

1. Dr. Pholeric was issued license number 0101-026520 by the Board to practice medicine in the Commonwealth of Virginia on December 6, 1975. Said license will expire on July 31, 2006, unless renewed or otherwise restricted.

2. Dr. Pholeric has violated Sections 54.1-2915(2) and (3) [formerly 54.1-2915.A(2) and (3)], as further defined in Section 54.1-2914.A(9) of the Code, in that, on September 2, 2003, Dr. Pholeric submitted to a urine drug screen ("UDS") in accordance with his

recovery monitoring contract with the Health Practitioners' Intervention Program ("HPIP"), that was positive for a cannabinoid. Dr. Pholeric stated that he had been exposed to second-hand marijuana smoke on the night prior to submitting the drug screen. As a result of the positive urine drug screen:

a. Dr. Pholeric's clinical privileges at Loudoun Hospital Center, Loudoun, Virginia ("Loudoun Hospital"), were suspended by the Medical Executive Committee on September 9, 2003.

b. Dr. Pholeric was admitted to inpatient treatment at Elmhurst Memorial Hospital, Elmhurst, Illinois, from September 22, 2003 to November 21, 2003. His prognosis at discharge was good, given compliance with discharge plans, and Caduceus agreement.

c. Dr. Pholeric entered into Recovery Monitoring Contract #5 with HPIP on November 25, 2003, in which HPIP requested, and he agreed, to refrain from the practice of medicine. Subsequently, Dr. Pholeric entered into Recovery Monitoring Contract #6 with HPIP on January 16, 2004, in which he agreed to return to the practice of medicine under certain restrictions.

3. Patricia Pade, M.D., Associate Medical Director of HPIP, appeared before the Committee and stated Dr. Pholeric is in compliance with his current HPIP contract, which has been extended to June 28, 2007. She stated Dr. Pholeric is currently under the same practice restrictions as he was prior to the September 2, 2003, incident except that his privileges at Loudoun Hospital remain suspended.

4. Dr. Pholeric has a significant history of substance abuse resulting in Board action dating back to 1984, as well as resultant legal repercussions. Dr. Pholeric's positive UDS on September 2, 2003, occurred immediately subsequent to his last meeting with the Board in which he was released from probation.

5. Dr. Pholeric maintained that he did not use marijuana prior to his positive UDS on September 2, 2003, which he maintained was due to second-hand smoke. The Committee finds that the positive UDS establishes that marijuana was in Dr. Pholeric's system.

6. Dr. Pholeric stated his sobriety date as September 2, 2003.

7. Lou Argow, L.P.C., submitted a written statement to the Board dated August 23, 2004, that asserted that Dr. Pholeric is aware of the issues which could cause him concerns in his life. Ms. Argow stated that, in her opinion, Dr. Pholeric is a capable doctor and is not a harm to his patients.

8. Walter R. Zolkiwsky, M.D., Vice President for Medical Affairs at Reston Hospital Center, in a written statement dated June 21, 2004, asserted that Dr. Pholeric has been a member since October 1986, and that there have been no incidents or quality issues concerning his practice of medicine or the safety of his patients.

### ORDER

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the license of John F. Pholeric, Jr., M.D., be, and hereby is, placed on INDEFINITE PROBATION on the following terms and conditions:

1. Dr. Pholeric shall comply with the terms and conditions of his current Recovery Monitoring Contract with HPIP, and all addenda thereto. He shall cause progress reports from HPIP to be submitted to the Board on a calendar quarterly basis.

2. Dr. Pholeric shall notify the Board immediately upon his receipt of notification from HPIP that he is out of compliance with his HPIP contract, or has been dismissed from HPIP.

3. Dr. Pholeric shall sign an authorization providing for unrestricted communication between and among the Board, HPIP and Dr. Pholeric's current or former treating or evaluating practitioners, including substance abuse evaluations or treatment records.

4. Dr. Pholeric shall be noticed to appear before a special conference committee of the board in approximately one year. Said committee shall provide the ongoing monitoring of Dr. Pholeric's Order, determine the frequency of further appearance by Dr. Pholeric before it, and shall serve as the instrument of the Board responsible for reviewing and approving all information relative to the terms and conditions of this Order.

5. Dr. Pholeric shall maintain a course of conduct in his practice of medicine commensurate with the requirements of Title 54.1, Chapter 29 of the Code and all laws of the Commonwealth.

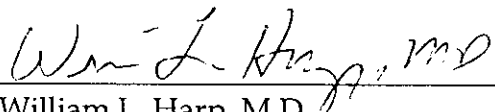
Violation of this Order may constitute grounds for suspension or revocation of Dr. Pholeric's license. In the event that Dr. Pholeric violates this Order, an administrative proceeding may be convened to determine whether his license shall be revoked.

Pursuant to Section 54.1-2400.2(F) of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2400(10) of the Code, Dr. Pholeric may, not later than 5:00 p.m., on October 25, 2004, notify William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, Virginia 23230, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on October 25, 2004, unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD

  
\_\_\_\_\_  
William L. Harp, M.D.  
Executive Director  
Virginia Board of Medicine

ENTERED: 9/20/04

**VIRGINIA:**

**BEFORE THE STATE BOARD OF MEDICINE**

**IN RE: John F. Pholeric, Jr., M.D.**

**CONSENT ORDER**

Pursuant to §§ 9-6.14:11 and 54-318.1 of the Code of Virginia (1950), as amended, an informal conference was held with John F. Pholeric, Jr., M.D., on October 1, 1987, at the offices of the Department of Health Regulatory Boards in Richmond, Virginia. Members of the State Board of Medicine (hereinafter "Board") serving on the informal conference committee (hereinafter "Committee") were: G. Edward Calvert, M.D., Chairman; Wayne E. Engel, Ph.D.; and Read F. McGehee, Jr., M.D. Robert B. Neu, M.D. was also present as a representative of the Psychiatric Advisory Board.

The informal conference had been convened pursuant to a letter from Dr. Pholeric dated June 20, 1987 in which he requested the reinstatement of his privileges to prescribe Schedule II through V controlled substances. Previously, Dr. Pholeric's license to practice medicine in the Commonwealth had been revoked with said revocation stayed upon terms and conditions by Board Order entered January 13, 1986. An earlier petition by Dr. Pholeric for the reinstatement of his prescribing privileges had been denied by the Board in an Order entered April 9, 1987.

Dr. Pholeric was present at the informal conference but was not represented by counsel. The Board was represented by Howard M. Casway, Assistant Attorney General. Dr. Pholeric made statements and answered questions posed by the committee members, Dr. Neu, and Mr. Casway.

#### FINDINGS OF FACT

Having considered the evidence presented, the Committee finds by clear and convincing evidence that:

1. The United States District Court for the District of Columbia had, as a special term of Dr. Pholeric's criminal probation, prohibited him from prescribing certain narcotic drugs;

2. The prescribing restriction was lifted by the Court in an Order dated May 26, 1987;

3. Dr. Pholeric's psychotherapist and the Medical Society of Virginia had both made favorable recommendations to the Court on behalf of Dr. Pholeric; and

4. Dr. Pholeric is in compliance with the terms and conditions of the Board's previous orders and has otherwise abided with the laws and regulations governing the practice of medicine in the Commonwealth.

#### CONCLUSIONS OF LAW

The Committee concludes that Dr. Pholeric's request is properly before the Committee which, as the instrument of the Board responsible for approving and reviewing all information relative to his compliance with the terms and conditions of the stayed revocation

of his license, has discretion to modify and/or continue the terms of the January 13, 1986 Order.

CONSENT

I, John F. Pholeric, Jr., M.D., by affixing my signature hereto, acknowledge that:

1. I have been specifically advised to seek advice of counsel prior to signing this document;

2. I am aware that without my consent, no legal action can be taken against me, except pursuant to the Virginia Administrative Process Act, § 9-6.14 et seq., of the Code of Virginia (1950), as amended;

3. I have the following rights, among others: the right to a formal fact finding hearing before the Board, to reasonable notice of said hearing, to representation by counsel, and the right to cross examine witnesses against me;

4. I waive all such rights to a formal hearing;

5. I admit to the truth of the findings of fact;

6. I consent to the entry of this Order affecting my license to practice medicine in the Commonwealth of Virginia.

ORDER

WHEREFORE, it is hereby ORDERED that the license of John F. Pholeric, Jr., M.D. to practice medicine in the Commonwealth of Virginia remain REVOKED with said REVOCATION STAYED upon the following terms and conditions:

1. That Dr. Pholeric continue in psychotherapy with Lillibeth

Baruchow, M.D., with reports forwarded to Robert B. Neu, M.D., Chairman of the Psychiatric Advisory Board, at six (6) month intervals;-

2. That Dr. Pholeric continue to actively participate in the Medical Society of Virginia's Physicians' Health and Effectiveness Program;

3. That Dr. Pholeric comply with the terms and conditions of his criminal probation as provided for by the United States District Court for the District of Columbia on March 8, 1985, and subsequently modified in its Order of May 26, 1987;

4. That Dr. Pholeric shall not petition the Board for reinstatement of his license for a period of not less than one (1) year from November 23, 1987;

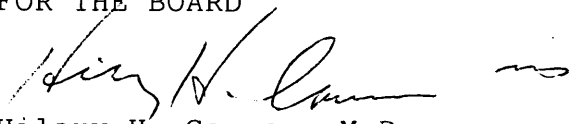
5. That Dr. Pholeric shall maintain a course of conduct in his practice of medicine commensurate with the requirements of Title 54, Chapter 12 of the Code of Virginia (1950), as amended, and with all other laws of the Commonwealth.

Violation of this Order shall constitute grounds for an immediate recession of the stay of revocation. In the event that Dr. Pholeric should violate any of the terms and conditions of this Order or any other provision of law, a formal evidentiary hearing shall be convened to determine whether his license shall be revoked.

Pursuant to § 9-6.14:14 of the Code of Virginia (1950), as amended, the signed original of this Order shall remain in the custody of the Department of Health Regulatory Boards as a public

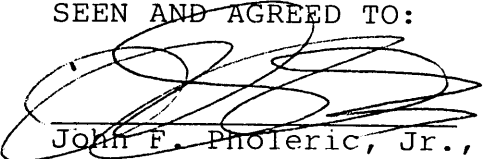
record and shall be made available for public inspection or copying upon request.

FOR THE BOARD

  
Hilary H. Connor, M.D.  
Executive Director  
Virginia State Board of Medicine

ENTERED: 10-11-87

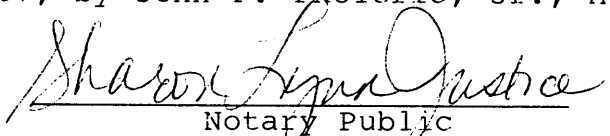
SEEN AND AGREED TO:

  
John F. Pholeric, Jr., M.D.

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF Fairfax/Reston, to wit:

Subscribed and sworn to before me, the undersigned Notary Public, in and for the Commonwealth of Virginia at large, this 26<sup>th</sup> day of October, 1987, by John F. Pholeric, Jr., M.D.

  
Notary Public

My commission expires: June 28, 1991



VIRGINIA:

BEFORE THE STATE BOARD OF MEDICINE

IN RE: John F. Pholeric, Jr., M.D.

ORDER

In accordance with the terms and conditions of probation which were articulated in an Order of the Virginia State Board of Medicine agreed to by John F. Pholeric, Jr., M. D. on July 2, 1984 and reaffirmed on July 16 and 20, 1984, the respondent appeared before the Board of Medicine in Hot Springs, Virginia on July 20, 1984. The hearing was held before John Hooe, Esquire, a hearing officer appointed pursuant to Sections 54-958 and 54-959 of the Code of Virginia (1950), as amended, who was present to conduct the proceeding in an orderly fashion, to make rulings of law pertaining to the admissibility of evidence, and to give the Board any required instructions which would enable them to make appropriate determinations. The Board was represented by Howard M. Casway, Assistant Attorney General. Dr. Pholeric, who appeared with counsel, Dennis Hart, Esquire, made statements to and answered questions posed by members of the Board. The proceedings were recorded by a certified court reporter.

In addition to the evidence tendered by Dr. Pholeric regarding his request for a change in the restrictions placed upon his prescribing authority, the Board considered a report submitted by the Northern Virginia Regional Psychiatric Advisory Committee (PAC).

After due consideration of the evidence tendered by Dr. Pholeric, and the record in the case, the Board voted unanimously to continue Dr. Pholeric's license on indefinite probation upon certain terms and conditions and to continue to restrict him from prescribing Schedules II through V controlled substances in his practice of medicine.

WHEREFORE, it is hereby ORDERED that the requested change by Dr. Pholeric in his prescribing habits be denied and effective upon the entry of this Order, license 26520 of John F. Pholeric, Jr., M.D. be continued on indefinite probation upon the following terms and conditions and to continue to restrict him from prescribing Schedules II through V controlled substances in his practice of medicine:

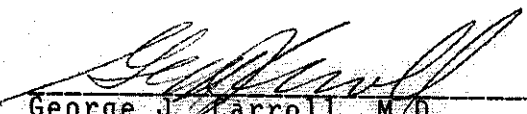
1. That he be required to enter into a program of psychotherapy with a psychiatrist approved by the PAC and that a report of the treating psychiatrist be forwarded to Dr. Neu at six-month intervals;
2. That he obtain psychological testing with a clinical psychologist approved by the Board;
3. That Dr. Pholeric be seen by the Regional Psychiatric Advisory Committee of the Board in June, 1985, with a report to the full Board at its July, 1985 meeting;
4. That Dr. Pholeric be seen by the full Board at its July, 1985 meeting for final disposition;
5. During the period of probation, Dr. Pholeric shall continue to be restricted from prescribing Scheduled II through V controlled substances in his practice of medicine;

6. That Dr. Pholeric shall, in the interim, maintain a course of conduct in his practice of medicine consistent with the requirements of Title 54, chapter 12, of the Code of Virginia (1950), as amended, and with all laws of the Commonwealth.

The Board specifically reserves the right to take further disciplinary action pursuant to Virginia Code § 54-317, 1 (2), on the basis that Dr. Pholeric may, after entry to this order, be convicted of violations of law arising out of the aforesaid diversion of controlled substances.

Violation of the terms and conditions hereof shall constitute grounds for the immediate suspension of the license of John F. Pholeric, Jr., M.D., and a formal hearing shall be convened to determine whether his license to practice medicine in the Commonwealth shall be revoked.

FOR THE BOARD

  
George J. Carroll, M.D.  
Secretary-Treasurer  
Virginia State Board of Medicine

Entered: 11-16-84

**VIRGINIA:**

**BEFORE THE BOARD OF MEDICINE**

**IN RE: JOHN F. PHOLERIC, JR., M.D.**

**ORDER**

By letter dated August 24, 1989 John F. Pholeric, Jr., M.D. petitioned the Virginia Board of Medicine ("Board") for a hearing to consider reinstatement of his license to practice medicine in the Commonwealth of Virginia without restrictions. The stayed revocation of Dr. Pholeric's license was continued upon certain terms and conditions by Consent Order of the Board entered October 11, 1987.

In accordance with the provisions of Sections 54.1-2920, 54.1-110 and 9-6.14:12 of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held on November 16, 1989 in Williamsburg, Virginia. Pursuant to Section 9-6.14:14.1E of the Code, the hearing was convened before a quorum of the Board with the Board's President presiding. The proceedings were recorded by a certified court reporter. The Board was represented by Howard M. Casway, Assistant Attorney General. Dr. Pholeric appeared before the Board and was not represented by legal counsel.

**FINDINGS OF FACT**

Now, having properly considered the evidence presented, the Board finds the following facts by clear and convincing evidence:

1. Dr. Pholeric's license was originally placed on probation by Consent Order dated July 12, 1984 based on his admission that he fraudulently diverted Cocaine for his own unauthorized use and his treatment for Cocaine addiction.

2. On March 8, 1985 Dr. Pholeric was convicted in the United States District Court for the District of Columbia of obtaining controlled substances by fraud, a felony in violation of Section 843, Title 21, U.S.C.

3. On the basis of the aforesaid conviction, the Board revoked Dr. Pholeric's license, with said revocation stayed indefinitely upon certain terms and conditions.

4. Dr. Pholeric's court imposed probation was terminated on September 19, 1989, Dr. Pholeric having fulfilled all court imposed obligations. Previously, in May 1987, the Court had removed the restrictions it had imposed regarding Dr. Pholeric's authority to prescribe Schedule II controlled substances.

5. Dr. Pholeric is authorized to prescribe all controlled substances but is required by the Drug Enforcement Administration to maintain a list or record of all said prescribing and use of controlled substances for approximately one year from the date of this hearing.

6. Dr. Pholeric testified that he does not use Cocaine in either his office or hospital practice of otolaryngology, substituting other drugs in its place. Dr. Pholeric holds medical staff privileges at Arlington Hospital and Reston Hospital.

7. Dr. Pholeric has participated in both the District of Columbia's Impaired Physicians' Program which he completed after two years and is currently in compliance with an aftercare contract with the Medical Society of Virginia's Physicians' Health and Effectiveness Program. Dr. Pholeric attends Cocaine Anonymous, Northern Virginia Physicians in Alcoholics Anonymous and/or Alcoholics Anonymous meetings on a weekly basis.

CONCLUSIONS OF LAW


Based on the foregoing Findings of Fact, the Board finds that Dr. Pholeric's petition for reinstatement of his license to practice medicine in Virginia without restrictions is properly before it and it is within the Board's sound discretion to determine whether Dr. Pholeric has met the burden of demonstrating that he is otherwise competent to resume the unrestricted practice of medicine in Virginia.

ORDER

WHEREFORE, it is hereby ORDERED that the license of John F. Pholeric, Jr., M.D. to practice medicine in the Commonwealth of Virginia be, and hereby is, REINSTATED with all attendant rights and privileges.


Pursuant to Section 9-6.14:14 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public inspection and copying upon request.

FOR THE BOARD

  
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Hilary H. Connor, M.D.  
Executive Director  
Virginia Board of Medicine

ENTERED: 11-30-89

RECEIVED: November 30, 1989

  
\_\_\_\_\_  
Bernard L. Henderson, Jr., Director  
Department of Health Professions

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