



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

August 14, 2020

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Trudy A. Menard, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

Frank Howard Bynes, Jr., M.D.


RE: In the Matter of Frank Howard Bynes Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 20-215) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

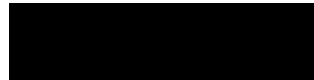
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A solid black rectangular box redacting the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

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IN THE MATTER :
OF :
FRANK HOWARD BYNES, JR., M.D. :
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DETERMINATION
AND
ORDER
BPMC-20-215

A hearing was held on August 12, 2020, remotely by videoconference. Pursuant to Public Health Law (PHL) § 230(10)(e), Samuel F. Bosco, M.D., Chairperson, Peter Kane, M.D., and Gail Homick Herrling, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Trudy A. Menard, Senior Attorney. A Commissioner's Order of Summary Action, Notice of Referral Proceeding and Statement of Charges, all dated June 23, 2020, were duly served upon Frank Howard Bynes, Jr., M.D., (Respondent), who did not appear at the hearing.¹

The Hearing Committee received and examined documents from the Department. (Exhibits 1-6.) The ALJ marked one exhibit into the hearing record. (ALJ Ex. 1.) A stenographic reporter prepared a transcript of the proceeding.

¹ The Notice of Referral Proceeding stated that the hearing would be held at the offices of the New York State Department of Health in Menands, New York (Department Offices) or by videoconference. Due to COVID-19 restrictions, the ALJ sent the Respondent a letter dated July 28, 2020 informing him that the proceedings would commence remotely via WebEx and directed him to contact the Bureau of Adjudication to provide an email address to receive an invitation to join the hearing if he wished to participate. (ALJ Ex. 1.) The Respondent did not contact the Bureau of Adjudication, nor did he appear at the Department Offices on the day of the hearing.

BACKGROUND

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with one specification of professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii) for being convicted of committing an act constituting a crime under federal law. Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice."

FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On September 20, 1989, Frank Howard Bynes, Jr., M.D., the Respondent, was authorized to practice medicine in New York State by issuance of license number 180079. (Dept. Ex. 6.)
2. On February 14, 2020, the Respondent was convicted in the United States District Court, Southern District of Georgia, Savannah Division, of thirteen (13) felony counts of unlawful dispensation of controlled substances (21 U.S.C. § 841[a][1]) and three (3) felony counts of health care fraud (18 U.S.C. § 1347). (Dept. Ex. 5).
3. The conviction resolved allegations that in 2015 and 2016 the Respondent wrote massive quantities of prescription narcotics and other controlled substances, including a high-risk cocktail of opioids, benzodiazepines, and carisoprodol. It was alleged that the Respondent intentionally distributed and dispensed or caused to be distributed and dispensed, controlled substances that were not prescribed for legitimate medical purposes and were not distributed or dispensed in the usual course of professional practice for a significant number of his patients. The manner of

distribution and dispensation included prescribing controlled substances while or after engaging in unprofessional conduct with female patients, prescribing controlled substances to patients taking illicit substances, and prescribing controlled substances to patients in quantities and combinations the Respondent knew were dangerous and could lead to and had led to overdoses, addiction, patient harm, or incapacitation. It was alleged that the Respondent falsified medical records and prescribed controlled substances without adequate/appropriate patient history, examination, testing, diagnosis and treatment plans. It was alleged that the Respondent refused to accept insurance at patient office visits yet facilitated patient's use of health care benefit programs such as Medicare, Medicaid and Tricare to pay for all or some of the controlled substances he prescribed. It was further alleged that the Respondent's operation distributed millions of dosage units of controlled substances within the Southern District of Georgia and elsewhere and obtained hundreds of thousands of dollars which he used for his own use and enjoyment and the use and enjoyment of others. (Dept. Ex. 5.)

4. The Respondent was sentenced to 240 months of imprisonment and ordered to pay \$615,145.07 in restitution to Medicare, Medicaid and Tricare. (Dept. Ex. 5.)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee, by a vote of 3-0, sustains the charge that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(a)(ii).

HEARING COMMITTEE DETERMINATIONS

It is undisputed that the Respondent was convicted of committing an act constituting a crime under federal law, which constitutes professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii).

The Department has recommended that the Respondent's license to practice medicine in New York State be revoked. Given the grave nature of the conviction by the United States District Court for the Southern District of Georgia and the Respondent's failure to appear at the hearing to respond

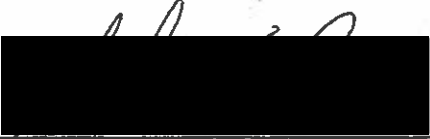
to the charges and allegations, the Hearing Committee unanimously agrees and revokes the Respondent's license in order to protect of the public in the State of New York.

ORDER

Now, after reviewing the evidence from the hearing, it is hereby ordered that:

1. The specification of professional misconduct as set forth in the Statement of Charges is sustained;
2. The Respondent's license to practice medicine in the State of New York is revoked; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: August 13 2020
Albany, New York


Samuel F. Bosco, M.D., Chairperson
Peter Kane, M.D.
Gail Homick Herrling

Trudy A. Menard
Senior Attorney
New York State Department of Health
Bureau of Professional Medical Conduct
Room 2512, Corning Tower, ESP
Albany, New York 12237

Frank Howard Bynes, Jr., M.D.


APPENDIX I

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
FRANK HOWARD BYNES, JR., M.D.

STATEMENT
OF
CHARGES

FRANK HOWARD BYNES, JR., M.D., the Respondent, was authorized to practice medicine in New York State on or about September 20, 1989, by the issuance of license number 180079 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 14, 2020, Respondent was convicted in the United States District Court, Southern District of Georgia, Savannah Division of thirteen (13) felony counts of unlawful dispensation of controlled substances (21 U.S.C. §841(a)(1)) and three (3) felony counts of health care fraud (18 U.S.C. §1347) along with a forfeiture allegation.

The conviction resolved allegations that beginning on or about March 2015 through December 2016, Respondent wrote significant numbers of prescription narcotics and other controlled substances which were not prescribed for a legitimate medical purposes and which were not distributed within the usual course of professional practice. It was also alleged that Respondent prescribed controlled substances while, or after, engaging in unprofessional conduct with female patients. Respondent falsified medical records and prescribed dangerous quantities of controlled substances without

adequate patient history, appropriate examination or verification of medical history. The Respondent was sentenced to 240 months of imprisonment and ordered to pay \$615,145.06 in restitution to Medicaid, Medicare, and Tricare, among other things.

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

A. The facts in paragraph A.

DATE: June 23, 2020
Albany, New York


TIMOTHY J. MAHAR /
Deputy Counsel
Bureau of Professional Medical Conduct