



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

OFFICE OF PROFESSIONAL DISCIPLINE

475 Park Avenue South - Second Floor
New York, NY 10016-6901

July 15, 2010

Frank J. Ballesteros, Physician

REDACTED

Re: Application for Restoration

Dear Dr. Ballesteros:

Enclosed please find the Commissioner's Order regarding Case No. CP-10-04 which is in reference to Calendar No. 23022. This order and any decision contained therein goes into effect five (5) days after the date of this letter

Very truly yours,

Donald Dawson
Director of Investigations

By:

REDACTED

Ariana Miller
Supervisor

DD/AM/go

cc:



The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of FRANK J.
BALLESTEROS, for restoration of
his license to practice as a physician
in the State of New York.

Case No. CP-10-04

It appearing that the license of FRANK J. BALLESTEROS, REDACTED

, to practice as a physician in the State of New York, was revoked by a Hearing Committee of the State Board for Professional Medical Conduct on August 19, 1994, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the Committee on the Professions' recommendation that FRANK J. BALLESTEROS should serve a probationary period if he desires to practice in New York, now, pursuant to action taken by the Board of Regents on March 9, 2010, it is hereby

ORDERED that the petition for restoration of License No. 187116, authorizing FRANK J. BALLESTEROS to practice as a physician in the State of New York, is granted, and his license to practice as a physician in the State of New York shall be fully restored, provided that, should he wish to practice in the State of New York, he notify the Director of the Office of Professional Medical Conduct prior to beginning practice in New York and be placed on

probation at that time for a period of three years under the terms and conditions specified in the Terms of Probation.



IN WITNESS WHEREOF, I, David M. Steiner, Commissioner of Education of the State of New York for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 2 day of July, 2010.

REDACTED

Commissioner of Education

It appearing that the license of FRANK J. BALLESTEROS, REDACTED
, to practice as a physician in the State of New York, was revoked by a Hearing Committee of the State Board for Professional Medical Conduct on August 19, 1994, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the Committee on the Professions' recommendation that FRANK J. BALLESTEROS should serve a probationary period if he desires to practice in New York, now, pursuant to action taken by the Board of Regents on March 9, 2010, it is hereby

VOTED that the petition for restoration of License No. 187116, authorizing FRANK J. BALLESTEROS to practice as a physician in the State of New York, is granted, and his license to practice as a physician in the State of New York shall be fully restored, provided that, should he wish to practice in the State of New York, he notify the Director of the Office of Professional Medical Conduct prior to beginning practice in New York and be placed on probation at that time for a period of three years under the terms and conditions specified in the Terms of Probation.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Committee on the Professions
2nd Floor, West Wing
89 Washington Avenue
Albany, New York 12234
Telephone: (518) 486-1765
Fax (518) 474-3863

March 9, 2010

Frank J. Ballesteros

REDACTED

Dear Dr. Ballesteros:

Your application for the restoration of your physician license was considered by the Board of Regents at its March 9, 2010 meeting.

After consideration of the entire matter, the Board of Regents voted to grant your application for the restoration of your physician license, provided that, should you wish to practice in New York, you so notify the Director of the Office of Professional Medical Conduct prior to beginning practice in New York and be placed on probation at that time for a period of three years under the terms and conditions specified in the Terms of Probation attached as Exhibit A to the Report of the Committee on the Professions. The Order of the Commissioner of Education pertaining to this decision is being prepared and will be delivered to you.

If you have any questions, you may contact me at 518-486-1765.

Sincerely,

REDACTED

Seth Rockmuller

cc: Walter Ramos
Mary Ellen Clerkin ✓
Deborah Couser



FOR EXECUTIVE SESSION

TO: The Professional Practice Committee

FROM: Frank Muñoz
REDACTED

SUBJECT: Report of the Committee on the Professions Regarding
the Petition of Frank J. Ballesteros for Restoration of his
Physician License

DATE: February 23, 2010

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S): REDACTED

Executive Summary

Issue for Decision

Should the Regents approve the recommendation of the Committee on the Professions pertaining to restoration of licensure as listed on the attached report?

Proposed Handling

The question will come before the Professional Practice Committee at its executive session meeting in March 2010 for discussion and action. It will then come before the full Board at its March 2010 meeting for final action.

Procedural History

Section 24.7 of the Rules of the Board of Regents authorizes the Committee on the Professions to review and submit its recommendations to the Board of Regents for final determinations of petitions for restoration of professional licenses which have been revoked or surrendered pursuant to Section 6510 or 6510-a of the Education Law or Title II-A of Article 2 of the Public Health Law. The recommendation in this case followed an investigation, a personal appearance before a Peer Committee, and a personal

appearance before the Committee on the Professions. The salient facts in the case and recommendation of the Committee on the Professions are set forth in the attached report of the Committee.

Background Information

One petition for restoration of licensure is attached for review and approval.

Recommendation

That the Board of Regents grant the application of Dr. Ballesteros for restoration of his license to practice as a physician in the State of New York, provided that, should Dr. Ballesteros wish to practice in New York, he so notify the Director of the Office of Professional Medical Conduct prior to beginning practice in New York and be placed on probation at that time for a period of three years under the terms and conditions specified in the Terms of Probation attached as Exhibit A to the Report of the Committee on the Professions

Timetable for Implementation

Approval of the Committee on the Professions' recommendation will be effective March 9, 2010

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Physician License

Re: **Frank J. Ballesteros**

Frank Jose Ballesteros, REDACTED, petitioned for restoration of his physician license. The chronology of events is as follows

- 12/21/87 Convicted in Dade County, Florida, of the crimes of Issuance of a Worthless Check and Possession of a Controlled Substance (cocaine) Sentenced to 2 years probation, payment of restitution of \$398 90, and completion of a drug rehabilitation program
- 02/16/89 Issued license number ME55074 to practice medicine in the State of Florida.
- 01/22/90 Applied for license to practice as a physician in New York State Denied having been charged with a crime in any state or country.
- 04/01/91 Convicted in Dade County, Florida of Resisting an Officer with Violence to his Person. Sentenced to 1 year of probation, a \$1,000 fine, and participation in anger control program.
- 10/01/91 Issued license number 187116 to practice medicine in New York State
- 10/06/92 Final Order by Board of Medicine of the State of Florida in disciplinary action, which imposed 5 years of probation and payment of a fine of \$3,000, and required participation in Florida's Physician's Recovery Network (PRN)
- 09/10/93 Convicted of Conspiracy to Defraud the United States in U.S. District Court, Southern District of Florida, with respect to Medicare claims. Sentenced to 5 years probation with a special condition that he be confined to a community halfway house for 6 months to be followed by 6 months of home confinement, 100 hours of community service per year during probation, and payment of restitution in the amount of \$35,966.
- 08/19/94 Determination and Order No 94-161 by the New York State Board for Professional Medical Conduct (BPMC) sustained 5 specifications of professional misconduct based on the convictions and Board actions in

Florida, and 2 specifications related to fraudulently obtaining his New York license.

- 02/27/95 Order of Florida Board of Medicine, following 1993 Medicare fraud conviction, suspended medical license for 2 years, but stayed the suspension except for the first 30 days, during which he was still allowed to provide medical treatment as a community service, and fined him \$3,000. He was also required to take 100 hours of continuing medical education credits
- 10/97 Completed 5 year monitoring by Impaired Practitioners Program as consultants to Florida Board of Medicine.
- 11/16/04 Application submitted for restoration of physician license
- 01/12/07 Peer Committee restoration review
- 04/17/07 Report and Recommendation of Peer Committee to restore medical license
- 02/27/08 Committee on the Professions restoration review
- 02/23/10 Report and recommendation of Committee on the Professions.

Disciplinary History. (See attached disciplinary documents.) The Bureau of Professional Medical Conduct charged Dr. Ballesteros in June of 1994 with 7 specifications of professional misconduct. He was charged with 1 specification of having been convicted of a federal crime, based on his federal conviction of Medicare fraud in 1993. He was charged with 3 specifications of misconduct for having been convicted of crimes in another jurisdiction which would have constituted crimes in New York State, based on his convictions in Florida for Issuing a Worthless Check and for Possession of a Controlled Substance in 1987 and for Resisting an Officer in 1991. He was also charged with 1 specification of having had disciplinary action taken against him in another state for conduct which would have constituted professional misconduct if committed in New York State stemming from the 1992 order by the Florida Board of Medicine placing him on probation for 5 years as a result of personality problems and/or abuse of chemicals. Finally, he was charged with 1 specification of practicing the profession with moral unfitness and 1 specification of having obtained his medical license in New York fraudulently, both for having responded "No" on his application for licensure to a question asking whether he had been charged with a crime. Dr. Ballesteros, who did not attend the New York hearing, was found guilty by the hearing committee of all specifications of misconduct, and his license was revoked in BPMC Determination and Order No 94-161 on August 19, 1994. The Florida Board of Medicine, on February 27, 1995, following Dr. Ballesteros' Medicare fraud conviction, suspended his license for 2 years, staying all but 30 days of the suspension, and required him to provide 50 hours of community service. He was also required to take 100 hours of continuing medical education within 2 years, pay a fine, and comply with his federal probation and the requirements of the Physician's Recovery Network.

On November 16, 2004, Dr Ballesteros submitted the instant application for restoration of his physician license.

Recommendation of the Peer Committee. (See attached Report of the Peer Committee) The Peer Committee (Cordice, Kavalier, Robinson) convened on January 12, 2007 In its report dated April 17, 2007, the Committee unanimously recommended that the application of Dr. Ballesteros for restoration of his license to practice as a physician in the State of New York be granted without conditions.

Recommendation of the Committee on the Professions. On February 27, 2008, the Committee on the Professions (COP) (Templeman, O'Grady-Parent, Hansen) met with Dr Ballesteros to consider his application for restoration He was not represented by an attorney.

Dr Ballesteros was asked to explain his understanding of why his license had been revoked. He stated that the incident for which he was convicted of issuing a bad check was a single occurrence that happened after his wife had taken all of the money out of their joint account without his knowledge. He reported that the conviction for drug possession, and subsequent convictions, came about at a time when he was using drugs to handle stresses in his life, including a divorce and the death of his mother. He indicated that he had begun using drugs in 1986 following medical school and that his 1991 conviction came about after he was pulled over for driving while intoxicated. He also blamed his use of drugs and alcohol for his failure to disclose his convictions on his 1990 application for his New York State physician's license, claiming that he was impaired at the time he completed the form

Dr Ballesteros further attributed to his impairment his involvement in Medicare fraud in 1990. He told the COP that he was approached by scam artists who indicated that they were going to open a clinic and asked him to pre-sign forms for patients that he would be seeing in the future He reported that he was to get an advance salary in anticipation of seeing these patients. He stated that he was impaired when he was approached about this scam. The clinic never opened, and he never saw any patients. He indicated that, when the billings were investigated, he cooperated with authorities and went undercover to assist them in securing evidence against the organizers of the scam. He reported that he worked things out with the FBI and the Florida authorities so that he only had to cease practicing medicine for a short period of time, enabling him to pay back all restitution for unbilled services for which he was responsible and to receive substance abuse treatment. He indicated that he didn't appear in the disciplinary action in New York State because he was so busy in Florida and that he had never actually practiced in New York State

Dr. Ballesteros admitted to the COP that he is a recovering alcoholic. He told the Committee that in 1992 he began in earnest a process to gain control over his substance abuse, participating in out-patient treatment 5 days a week at South Miami Hospital for 35 months, following which he began an extended care program that lasted almost 6 years during which he attended weekly meetings. He indicated that he underwent random drug screenings from 1992 to 1997 He reported that he then joined the Professionals Resource Network, a group that worked with the Florida Board of Medicine to assist impaired physicians He reported that he still attends monthly meetings at South Miami Hospital and attends AA and NA meetings as needed. He stated that he has remained clean throughout this period of time.

Dr. Ballesteros emphasized to the COP that he is very remorseful about his past actions. He told the Committee that, although he cannot change what he did in the past, he has devoted himself to recovering, to his family, and to work. He reported that he has remarried and now has 5 children for whom he needs to provide. He indicated that he has a stable family life and a group of friends and sponsors who support him. He stated that he has continued to educate himself and has taken well over 100 credit hours of continuing medical education. He reported that he has worked 500 hours as a volunteer for the Florida Health Department and that he has been able to continue practicing as a physician, except for the time he was in treatment at South Miami Hospital, thereby keeping his medical skills up-to-date. He stated that he had recently begun a position as a physician for the Florida Department of Correction, for which he had to pass a drug screening test in October 2007.

When asked by the COP to explain why he wanted his New York physician's license restored, Dr. Ballesteros explained that he wants to become board certified in family medicine and that he believes he cannot do so until his license in New York State is reinstated. He indicated that he has no intention of coming to New York to practice but that, if he did, he would contact the New York recovering physician group that was equivalent to the support group he attends in Florida and associate himself with that group for support. The applicant also told the Committee that he sees the restoration of his New York license as another step in his recovery that is important to him personally.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has a significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept, without question, the arguments presented by the petitioner, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP concurs with the Peer Committee's assessment that Dr. Ballesteros has presented a compelling case in support of his application for restoration. We believe that he is remorseful. He openly admitted to the COP that he realizes his past addiction and mistakes while recognizing that he needs to be continually vigilant to stay free of drug and alcohol abuse. He has participated in an extensive amount of drug rehabilitation with out-patient treatment and psychological counseling, followed by 6 years of extended care with drug screening. He also participated in AA and NA as well as an impaired physicians group, and, based on the record in this proceeding and the applicant's meeting with us, we accept his assertion that he has been free from substance abuse for over a decade. In addition, with respect to re-education, Dr. Ballesteros has participated in a significant

amount of continuing medical education and, more importantly, has continued to practice medicine in Florida since his 30 day suspension in 1995. He has received positive references from both employers and fellow physicians. We also note that Dr Ballesteros' license revocation had nothing to do with negligent practice. We believe, as did the Peer Committee, that he has turned his life around in a very positive way.

Therefore, after a careful review of the record and its meeting with Dr. Ballesteros, the Committee on the Professions votes unanimously to concur with the recommendation of the Peer Committee that the application of Dr. Ballesteros for restoration of his license to practice as a physician in the State of New York be granted. The COP also recommends that, should Dr. Ballesteros wish to practice in New York, he so notify the Director of the Office of Professional Medical Conduct prior to beginning practice in New York and be placed on probation at that time for a period of three years under the terms and conditions specified in the attached Terms of Probation of the Committee on the Professions

Leslie Templeman, Chair
Stanley Hansen
Erin O'Grady-Parent

EXHIBIT "A"

TERMS OF PROBATION
OF THE COMMITTEE ON THE PROFESSIONS

Frank J. Ballesteros

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct (OPMC), of any employment and/or practice, applicant's residence, telephone number, and mailing address, and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), NYSED, that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;
5. That applicant shall remain drug-free during the period of probation and shall be a participating member in good standing of the Committee for Physician's Health (CPH). Applicant shall arrange for an authorized person from CPH to submit reports every two months to the Director, OPMC, unless otherwise agreed to in writing by said Director. The reports shall state whether the applicant continues to be a participating member in good standing, and shall indicate the results of drug testing performed by CPH on the applicant, which shall be performed at intervals to be determined by the Medical Director for CPH,
6. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;

7. That the period of probation shall be tolled during periods in which the applicant is not currently engaged in the practice of medicine in New York State. The applicant shall notify the Director of OPMC, in writing, if he is not engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. He shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State, and

8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.



The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE

-----X
In the Matter of the Application of

FRANK JOSE BALLESTEROS

for the restoration of his license to
practice as a physician in the State
of New York.

REPORT OF
THE PEER COMMITTEE
CAL. NO. 23022

-----X
FRANK JOSE BALLESTEROS, hereinafter known as the applicant,
was previously licensed to practice as a physician in the State of
New York by the New York State Education Department. Said license
was revoked by the Office of Professional Medical Conduct, New
York State Health Department, as a result of a professional
misconduct proceeding. The applicant has applied for restoration
of his license.

CHRONOLOGY OF EVENTS

12/21/87 Convicted in the Circuit Court for Dade County,
Florida, of the crime of Issuance of a Worthless
Check and sentenced to two years probation and
restitution in the amount of \$398.90.

FRANK JOSE BALLESTEROS (23022)

- 12/21/87 Convicted in the Circuit Court for Dade County, Florida, of the crime of Possession of a Controlled Substance (cocaine) and sentenced to two years of probation and required to enter and complete a drug rehabilitation program.
- 02/16/89 Issued license number ME55074 to practice as a physician in the State of Florida.
- 04/01/91 Convicted in the Circuit Court for Dade County, Florida, by plea of nolo contendere, of the crime of Resisting an Officer with Violence to his Person and sentenced to one year of probation, entered into an anger control program and paid a \$1,000 fine.
- 10/01/91 Issued license number 187116 to practice as a physician in the State of New York.
- 10/06/92 Final Order issued by the Board of Medicine of the State of Florida in disciplinary action against the applicant's Florida medical license, placing the applicant on probation for five years, imposing a fine in the amount of \$3,000 and requiring the applicant to continue to participate in and comply with the recommendations of the Florida Physician's

FRANK JOSE BALLESTEROS (23022)

Recovery Network (PRN).

09/10/93 Convicted in the United States District Court for the Southern District of Florida, by plea of guilty, of Conspiracy to Defraud the United States relating to fraudulent claims submitted to Medicare and sentenced to five years probation, with special conditions of six months confinement to a community halfway house followed by six months home detention, and 100 hours per year of community service.

08/19/94 Determination and Order (No. 94-161) of the Hearing Committee of the New York State Board for Professional Medical Conduct served upon the applicant, sustaining seven specifications of professional misconduct and revoking the applicant's license to practice as a physician in the State of New York.

02/27/95 Final Order of the Florida Board of Medicine served upon the applicant, pursuant to an administrative complaint regarding the applicant's medical license and fining the applicant \$3,000, suspending his license to practice medicine in Florida for two years, the first 30 days stayed for community service

FRANK JOSE BALLESTEROS (23022)

of 50 hours and requiring the submission of a practice plan prior to practicing medicine outside of an HMO setting during the period of probation. A requirement for continuing medical education was also imposed, as set forth in a subsequent Order Clarifying Terms of Probation.

10/97 Successfully completed a five year monitoring contract with the Impaired Practitioners Program, consultants to the Florida Department of Health and the Board of Medicine.

11/16/04 Application for restoration of license to practice as a physician in the State of New York first filed, thereafter closed for non-action and reopened in January 2006.

01/12/07 Peer Committee Restoration Review.

BACKGROUND INFORMATION

The written application, supporting papers provided by the applicant and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD) have been compiled by the prosecutor from OPD into a packet that has been distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

FRANK JOSE BALLESTEROS (23022)

PRIOR DISCIPLINE PROCEEDINGS

Action by the State Board for Professional Medical Conduct:

OPMC Hearing Committee: By Determination and Order resulting from a hearing held in August 1994, the OPMC hearing committee determined the applicant to be found guilty of seven specifications of professional misconduct. The hearing committee determined that the applicant's license to practice physician in the State of New York be revoked.

Order of the OPMC Hearing Committee: The order enforcing the penalty was served by mail upon the applicant, effective August 26, 1994.*

Specifications of misconduct: The applicant was found guilty of Obtaining the License Fraudulently (first specification), Moral Unfitness (second specification), Conviction of a Crime Under Federal Law (third specification), Disciplinary Action by Another State (fourth specification), and Conviction of a Crime in Another Jurisdiction (fifth through seventh specifications).

Nature of the misconduct: The misconduct at issue involved the failure of the applicant to disclose his prior criminal convictions at the time of his application for a medical license in New York State (first and second specifications), his conviction in the United States District Court for the Southern District of Florida of the crime of Conspiracy to Defraud the

* Certain references in the record refer to the effective date as 8/26/95 but, read as a whole, the record tends to indicate that the correct date is 8/26/94.

FRANK JOSE BALLESTEROS (23022)

United States (third specification), being disciplined by Final Order dated October 3, 1992 of the Florida Board of Medicine, whereby the applicant was found unable to practice medicine with reasonable skill and safety until the full extent of either his personality problems or abuse of chemicals were resolved, in that, if committed in New York State his conduct would constitute professional misconduct of being an habitual abuser of drugs or having a psychiatric conditions which impairs the ability to practice (fourth specification), and the applicant's three convictions in the Circuit Court for Dade County, Florida, for Possession of a Controlled Substance (cocaine) (1987), Issuance of a Worthless Check (1987), and Resisting an Officer with Violence to his person (1991) (fifth, sixth and seventh specifications).

APPLICATION FOR RESTORATION

On August 24, 2004, the applicant first executed the State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to, below:

Entries in the basic application form:

Continuing Education: The applicant attached documents from Challenger Corporation regarding continuing medical education. In addition, he stated that he has remained current in his specialty of family medicine through attending lectures, advanced reading, and attending meetings with colleagues.

Professional Rehabilitation Activities: The applicant stated

FRANK JOSE BALLESTEROS (23022)

that he has been involved with the PRN since 1993, regularly attends Alcoholics Anonymous meetings and attended anger management classes.

Submissions of Affidavits: The applicant submitted five affidavits, all from physicians, supporting his application for restoration of his license to practice.

Additional attachments to the application: The applicant also submitted a copy of his resume and certain documentation relating to his attempt to gain certification in family medicine.

INVESTIGATIVE INFORMATION

The packet provided by OPD contains the following additional information from the investigation that resulted from the filing of the application for restoration:

March 2, 2006 report of the OPD investigator for this proceeding which includes a summary of a March 2, 2006 interview of the applicant by the investigator in which, after summarizing the applicant's criminal and disciplinary history states, in part, as follows:

Applicant stated that when he learned his New York State medical license was revoked, he felt upset and powerless, but accepted the consequences based on the fact that his prior addiction to drugs and alcohol clouded his judgment. In retrospect, he takes full responsibility for his actions, and now realizes that being granted a professional license is a privilege not to be abused.

He stated that his specialty in medicine is family practice. Since he was able to practice the profession of medicine in the State of Florida, he had substantial income to support

FRANK JOSE BALLESTEROS (23022)

his family and pay his required restitution.

Applicant stated that even though his family and friends were supportive of him throughout this entire ordeal, he got divorced and remarried in January of this year.

Applicant stated that since the revocation of his New York State medical license, he has kept up with the profession of medicine by practicing the profession in the State of Florida since now he holds an unrestricted medical license. He also reads a number of medical journals relating to his specialty of family medicine, JAMA, the New England Journal of Medicine, and publications dealing with emergency medicine for primary care physicians. He also attends dinner functions with his peers, lectures, and has taken a number of continuing medical education courses from 1994 through 2006 on the internet and sponsored by the AMA. He has taken over 104 credit hours.

From 1993 through 1998, applicant worked approximately 500 hours as a volunteer on a STD unit for the State of Florida Public Health Department. He also volunteered his time by counseling unwed and pregnant women who belonged to a religious group called Respect Life from early 1991 through 1992, approximately 200 hours.

Since his Florida medical license was placed on probation for a period of five years, he was still able to practice the profession of medicine and has been gainfully employed as a physician as follows:

MIAMI DADE HEALTH & REHABILITATION SERVICES - July 2005 - present, employed as a primary care physician.

CAC FLORIDA CARE PLUS - May, 1995 - May, 2004, employed as a primary care physician.

FRANK JOSE BALLESTEROS (23022)

SOUTH FLORIDA RECEPTION CENTER/EMSA
CORRECTIONAL CARE - From May, 1995 -
May, 1999, employed as Chief Health
Officer. All employers are aware of
his prior criminal history and the
action taken against his Florida
medical license.

In order to overcome his alcohol and drug addiction, applicant entered a half-way house, participated in and successfully completed a five year monitoring program for impaired physicians in the State of Florida. He also attends AA and anger management meetings and is prescribed medication for high blood pressure.

When asked why the members of the New York State Board for Medicine and the members of the other committees should grant him the restoration of his New York State medical license, he responded by saying that he is truly sorry for his prior mistakes and the root of his prior problems was his drug and alcohol addictions and therefore he used bad judgment. He is fully rehabilitated, was able to resume working as a physician in the State of Florida during the time his Florida license was on probation.

April 3, 2005 report of the OPD investigator which again includes a review of the applicant's history, employment, continuing education, community service and rehabilitation.

March 25, 2006 letter from Dennis J. Graziano, Director, OPMC, stating his office's position on the current application. After a detailed rendition of the applicant's criminal and disciplinary history, the letter concludes as follows:

In his application, Dr. Ballesteros states that he continues to attend

FRANK JOSE BALLESTEROS (23022)

Alcoholics Anonymous.' He also states that "when I am tempted to repeat my previous actions, I know there are other physicians I can talk to who will assist me and prevent me (from) repeating that destructive behavior." Dr. Ballesteros does not reside or practice in this state, and has never done so.' He has no professional colleagues or therapeutic relationships in New York State to "assist" him or prevent him from repeating his past behaviors should temptation strike. His application does not provide any compelling reason to reinstate his New York license. This office opposes restoration of his professional license.

PEER COMMITTEE MEETING

On January 12, 2007 this Peer Committee met to consider this matter. The applicant appeared before us personally and chose to proceed without an attorney. Also present was Joan Handler, Esq., an attorney from the Division of Prosecutions, OPD.

The peer committee meeting began with opening remarks by the applicant on his own behalf. The applicant referred to his having had a lot of difficulties, stating that he believes that things that have happened have happened for a reason. He stated that they are consequences of substance dependence, which is a disease that he believes that he has addressed and dealt with. He pointed out that he has been employed since the events happened about fifteen years ago and has been clean, sober and working. He referred to work he has done for the Correctional System in the State of Florida, working with inmates, stating that he believes that having his license restored is one of the

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steps that he needs to take to make amends to the people for the things that he has done wrong because of his substance abuse. He added that he must have his license reinstated in the State of New York in order to be able to take the Family Practice Boards and become board certified.

After the applicant's statement, there followed opening remarks by Ms. Handler, on behalf of OPD. This consisted primarily of a review of the applicant's criminal and disciplinary history.

Next, the applicant testified on his own behalf. In his testimony, he provided additional details regarding his employment history, criminal record and his addiction and subsequent recovery from substance abuse.

Specifically, the applicant explained that he has been continuously employed as a physician in Florida, despite his numerous criminal convictions and the disciplinary proceedings against him and enumerated the various positions that he has held during that time period. At present, he is working at Bayview Mental Health, a private practice, multi-specialty group.

The applicant addressed the origin of his substance abuse problem, referring back to 1986. He stated that, having graduated from medical school in 1982, he had been unsuccessful in his efforts to pass the licensing examination. He had recently divorced from his first wife. His mother started having

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chest pain and collapsed. The applicant had to resuscitate her in an ambulance but she died on the way to the hospital. The applicant continued, stating that he became very depressed and sought refuge in drugs and admitted to having abused street drugs, cocaine and valium.

The applicant described the process that he went through, over a period of years, to gain control over his substance abuse. He stated that his treatment began in March of 1992 when he began with the PRN, an impaired physician group that works with the Florida Medical Association and the Florida Board of Medicine. He was in primary care, out-patient treatment for three months at South Miami Hospital, five days a week. He attended meetings on the weekends and was also provided with psychological counseling during this time period. Thereafter, he began Extended Care, which lasted almost six years and involved continued availability for drug screening, weekly PRN meetings and staying within the recovery group. This second stage of treatment continued until 1997. Finally, in that regard, the applicant described the substance abuse support that he continues to date, explaining that he participates in groups with Alcoholics Anonymous when he needs the support, choosing this over the equivalent program for substance abuse because he finds the participants to be more his peers. He reiterated that he has remained "clean" and continues to have a sponsor to keep him on track.

The applicant also explained some of the circumstances that

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led to the federal conviction, explaining how he had initially gotten involved in a fraudulent scheme and had signed forms to bill for patient services relating to aerosol treatments without having actually performed the services. He stated that, at the time, he believed he was participating in a legitimate plan to begin an HMO. Later, he learned from the FBI and State Attorneys how the scam was being done. He cooperated with the federal investigation and was fortunate not to have to spend time in prison. He stated to us that his involvement was around \$34,000 and that he paid back all of the money that was related to his Medicare provider number.

The applicant stated that he is very ashamed about the conduct that led to the revocation of his license in New York State. He continued, stating that in the last fifteen years he has had to go through this many, many times through each employer, through each insurance company that he applied to, through people he meets, through family and friends and feels he has done everything he could. He recognizes that he cannot erase or change what is done, the mistakes he has made, and can only go forward and try to continue to stay clean, stay sober and to do the right thing. He stated that he will devote himself to medicine and his family and give back the gift that was given to him of recovery, adding that he believes that there were miracles in his life that helped him to be here today.

The applicant continued, stating that, initially, at the

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time of his application to New York State for a medical license, he was still in the midst of his recovery and stated that he thought that he could escape his trouble by relocating to New York. He never did come to live or practice in New York and when the disciplinary process here began, the applicant stated that he did not appear because he was dealing with all the complications facing him in Florida, including the federal criminal charges.

Lastly, the applicant explained his reason for wishing to having his New York State medical license restored. He testified that, despite certain ties to the New York metropolitan area, including his brother who lives in New Jersey, he has no present intention of moving to New York or practicing in this State. Instead, he is requesting this restoration because he believes that he cannot obtain his board certification in family medicine, his specialty, until his licensure issues with New York State are resolved and his license is reinstated. Additionally, he explained that seeking the restoration of this license is also a part of his rehabilitation process. Were he in fact to relocate to New York, he stated that he would contact the equivalent of PRN or have PRN contact New York State and advise them that he is a physician who was impaired, who had a drug problem who was in PRN and he would learn who to call in New York, to go to groups and to identify with other recovering professionals.

At the conclusion of the applicant's presentation, each side made closing remarks. In so doing, Ms. Handler described the

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applicant's main point for wanting his license as that he cannot sit for the family practice board unless it is restored, pointing out that, despite this, he had presented, no evidence other than his statement regarding the fact that he cannot sit for that certification without the New York State license. Further, she stated, once he is licensed, there is no restriction on his practice. Finally, she reminded this peer committee that under the case law in New York, a license is not restored unless there is compelling reason to do so, raising the question as to whether the ability to sit for the board certification examination is a compelling reason to restore the applicant's license.

The applicant concluded by referring to all of the things that he has done in treatment for his substance dependence. He mentioned having terminated all of his probations, all of his convictions sooner than expected, all through what he referred to as the miracles of life, of God being there for him, prayer, meditation, recovery.

RECOMMENDATION

We have reviewed the entire record in this matter, including the written materials received before and during our meeting. In arriving at our recommendation, we note that, in a licensure restoration proceeding, the burden is on the applicant to demonstrate that which would compel the return of the license. Greenberg v. Board of Regents of University of New York, 176 A.D.

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2d, 1168, 575 N.Y.S. 2d 608, 609. In reaching our recommendation, we consider whether the applicant demonstrates sufficient remorse, rehabilitation and reeducation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the original offense and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

The applicant appeared before us with the daunting task of convincing us that he is deserving of the restoration of his license to practice as a physician in New York State, despite his complex history of criminal convictions and professional disciplinary actions. According to his own testimony, he did so in part to enable him to become board certified in family medicine and, in part, to complete his journey toward correcting the damage that has occurred due to his conduct over a period of years while he was a substance abuser. We believe that the applicant has succeeded in conquering the challenges that he faced and deserves the chance to continue to grow and perform as a physician.

Specifically, we are mindful that all of the misconduct here at issue, criminal and otherwise, occurred many, many years ago, and that the applicant has been free of substance abuse for more than a decade. He has made this recovery through a long treatment process, a process that he initially rejected but

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thereafter whole-heartedly embraced and followed. Moreover, it is clear that he recognizes his addiction as a life-long challenge that requires constant vigilance. He continues to seek out the support that is available to him, including involvement with Alcoholics Anonymous, frequent contact with other recovering abusers and his sponsor. Further, it is clear that he has become well integrated into his community and has been recognized by that community for his achievements. He has the benefit of family, friends and spiritual support, including his brother who is a psychiatrist in the New York metropolitan area.

Further, we find the applicant to be sincerely remorseful. He understands his addiction and its effect on his life and his judgment. He accepts the consequences of his impairment and is making an active effort to give back to the people and the community that he has harmed. The applicant recognizes the early roots of his addiction which was triggered by family trauma, yet understands that it is and will be a lifetime disease.

Additionally, with regard to reeducation, we note that the applicant has been in virtually continuous practice in medicine in Florida. He has taken continuing medical education courses. Moreover, the issues that gave rise to the revocation of his license did not involve professional incompetence in his practice. Thus, we are satisfied that the applicant is ready to practice medicine in this State, should he so chose.

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Overall, we are impressed by the applicant's open demeanor. He was direct in his presentation to us and the answers that he provided in response to questions put to him. We believe that he has made a full recovery which has continued over a period of many years. His continuing effort and active participation in this recovery leads us to conclude that he is not likely to become impaired by substance abuse, nor likely to become involved in criminal activity, brought on by impaired judgment.

Further, while the applicant stated his pursuit of board certification in Florida was a motivating factor in seeking the restoration of his New York State medical license, this Peer Committee does not find this issue to be of consequence to our decision of whether or not his license should be restored and do not base our decision on that issue. Instead, we have examined the applicant's conduct which led to the revocation in this State, which conduct occurred at a time when the applicant was drug dependent and impaired and, thereafter, while he was struggling with recovery. The applicant has amply demonstrated that he has turned his life around. Were his license restored in this State, rather than be a threat to the public, he would be an asset to his profession and his community, whether he thereafter chose to continue to live in Florida or made the move to New York. Should he choose the latter move, we would suggest that he follow through with his representation that he would contact the

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New York State equivalent of the PRN, the Committee for Physician Health of the Medical Society of the State of New York.

Thus, for all of the above reasons, it is the unanimous recommendation of this Peer Committee that the application before us be granted.

Respectfully submitted,

John Cordice, M.D., Chairperson

Florence Kavalier, M.D.

Benjamin Robinson, Esq., Public Member

REDACTED

~~Chairperson~~

04/17/07
Dated

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE

-----X
In the Matter of the Application of

FRANK JOSE BALLESTEROS

for the restoration of his license to
practice as a physician in the State
of New York.
-----X

REPORT OF
THE PEER COMMITTEE
CAL. NO. 23022