

Nirav R. Shah, M.D., M.P.H.  
Commissioner

**NEW YORK**  
state department of  
**HEALTH**

Public

Sue Kelly  
Executive Deputy Commissioner

February 26, 2013

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Joel E. Abelow, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

Frank Jose Ballesteros, M.D.  
#38106-004 FDC Miami Federal Detention Center  
P.O. Box 019120  
Miami, Florida 33101

**RE: In the Matter of Frank Jose Ballesteros, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 13-46) 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.

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As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

REDACTED

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure

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

COPY

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
FRANK JOSE BALLESTEROS, M.D. : ORDER  
CO-12-04-1909-A :  
-----X

BPMC #13-46

A Commissioner's Order, Notice of Referral Proceeding and Statement of Charges, dated November 8, 2012, were served upon the Respondent, Frank Jose Ballesteros, M.D. **GREGORY FRIED, M.D.** (Chair), **JAMES G. EGNATCHIK, M.D.**, and **JANET M. MILLER, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Joel E. Abelow, Esq., Associate Counsel. The Respondent failed to appear in person and was not represented by Counsel. A hearing was held on February 21, 2013. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

### STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(ii) [conviction of committing an act constituting a crime under Federal law]. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in

arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Frank Jose Ballesteros, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on October 1, 1991 by the issuance of license number 187116 by the New York State Education Department. (Exhibit #4).

2. On or about April 10, 2012, in United States District Court, Southern District of Florida, Respondent was found guilty of one (1) count of Conspiracy to Possess with intent to Distribute Oxycodone and Oxymorphone, in violation of Title 21 of the United States Code §846, two (2) counts of Possession with Intent to Distribute Oxycodone and Oxymorphone, in violation of Title 21 of the United States Code §841(a)(1), and one (1) count of Conspiracy to Commit Health Care Fraud, in violation of Title 18 of the United States Code §1349, all felonies. On or about August 10, 2012, in United States District Court, Southern District of Florida, Respondent was sentenced, *inter alia*, to three hundred and sixty-five (365) months of imprisonment. (Exhibit #5).

#### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a

unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that Respondent was convicted of committing crimes under Federal law. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(a)(ii). As a result, the Hearing Committee voted to sustain the specification of professional misconduct.

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine should be revoked.

This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The court records document that Respondent was part of a wide-ranging conspiracy to unlawfully possess and distribute large quantities of controlled substances. Respondent repeatedly, and inappropriately, prescribed large quantities of highly addictive controlled substances, without following accepted standards of the profession, all in the name of money. In doing so, he placed the public at risk, while enriching himself. Respondent is currently serving a prison sentence in excess of thirty years. Revocation of his medical license is the

only appropriate sanction for the level of misconduct which he perpetrated upon the public.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;
2. Respondent's license to practice medicine in New York State be and hereby is REVOKED;
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Great Neck, New York  
FEBRUARY 25, 2013

REDACTED

~~GREGORY FRIED~~, M.D. (CHAIR)

JAMES G. EGNATCHIK, M.D.  
JANET M. MILLER, R.N.

TO: Joel E. Abelove, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower - Room 2512  
Albany, New York 12237

Frank Jose Ballesteros, M.D.  
#38106-004 FDC Miami Federal Detention Center  
P.O. Box 019120  
Miami, Florida 33101



APPENDIX I

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

IN THE MATTER  
OF  
FRANK JOSE BALLESTEROS, M.D.  
CO-12-04-1909-A

STATEMENT  
OF  
CHARGES

FRANK JOSE BALLESTEROS, M.D., Respondent, was authorized to practice medicine in New York state on October 1, 1991, by the issuance of license number 187116 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 10 2012, in United States District Court, Southern District of Florida, Respondent was found guilty of one (1) count of Conspiracy to Possess with Intent to Distribute Oxycodone and Oxymorphone, in violation of Title 21 of the United States Code Section 846, two (2) counts of Possession with Intent to Distribute Oxycodone and Oxymorphone, in violation of Title 21 of the United States Code Section 841(a)(1), and one (1) count of Conspiracy to Commit Health Care Fraud, in violation of Title 18 of the United States Code Section 1349, all felonies. On or about August 10, 2012, in United States District Court, Southern District of Florida, Respondent was sentenced, *inter alia*, to three hundred and sixty five (365) months of imprisonment.

SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges.

1. The facts in Paragraph A.

DATED: *November 8*, 2012  
Albany, New York

REDACTED

PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct