

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

NUMBER: 03-A-014

IN THE MATTER OF:

DAVID M. BERRY, M.D.
(CERTIFICATE NO. 024112)

OPINION AND RULING

This matter comes before the Board pursuant to an Administrative Complaint charging Respondent, David M. Berry, M. D., with a number of violations of the Medical Practice Act. The case was heard before a panel consisting of Drs. Elmo J. Laborde, President, Kweli Amusa, and Kim J. LeBlanc, presiding, constituting a quorum of the Board.

On the morning of the hearing, the panel was presented with an e-mail from Respondent, alleging that he had only just learned of the hearing, and requesting a continuance. Counsel for Complainant advised the Board that he had received a call from an attorney, purporting to represent Dr. Berry, who also requested a continuance, or, alternatively, and opportunity to participate in the hearing via telephone.

Complaint counsel objected to the continuance, and placed in evidence correspondence with Dr. Berry relative to this matter, showing that he was fully aware of the proceedings, and that all correspondence had been sent to Respondent at his official address as reflected by the Board's records. The notification of this hearing was received at that address on October 21, 2003, almost a month before the hearing. We consider that ample notice was provided to Respondent, and therefore deny the request for a continuance.

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There are four charges against Respondent. First, he is charged with failing to report criminal charges against him on his application for renewal in either his 2001 or 2002 application, in violation of R. S. 37:1285A(3), which proscribes the use of fraud, deceit, or perjury in obtaining any license issuable by this Board. Second, it is charged that Respondent suffers from chemical dependency or abuse which affects the central nervous system, and is capable of inducing physiological or psychological dependence, and renders him incapable of practicing medicine with reasonable skill and safety to patients. Third, he is charged with illegal or illegitimate prescribing practices, in violation of R.. 37:1285A(6). Fourth, he is charged with failing to self report the prescription forgeries, in violation of R. S. 37:1285A(31).

With respect to the first charge, the record shows that Respondent was arrested on January 25, 2001, and charged with driving while intoxicated, failure to maintain control, and reckless driving. On August 7, 2002, he pled guilty to the first two charges, and was sentenced to ninety (90) days in jail, suspended; a fine of \$584.00; ninety days of unsupervised probation; thirty two hours of community service; attendance at a DWI school; and to refrain from all criminal activity, and the use of alcohol or drugs. On his application for renewal of his license for 2001, dated January 25, 2001, the same day as the above offense; and on his application for renewal for 2002, dated January 18, 2002, he answered "No" to the question "Since your last renewal . . . Were you charged with . . . violation of any municipal, county/parish, state or federal statute?"

Clearly, he should have revealed his arrest on one of those applications. He is therefore guilty of this charge.

With respect to the third charge, the record reveals that on July 13, 2002, Respondent went into a pharmacy in Baton Rouge, and representing himself to be Gregory B., presented a prescription for Pancof HC, allegedly written by Dr. Byrne. When the pharmacist checked, she found the DEA number on the prescription to be Dr. Berry's number, and not that of Dr. Byrne. While she was checking, Dr. Berry left the pharmacy. On August 4, 2002, Dr. Berry entered another pharmacy, and asked for a prescription for Pancof HC, which had been phoned in by him for Michael B. He was recognized as the same person who had presented the prescription in the name of Gregory B., and was asked for identification. He identified himself as Dr. Berry, and said he was picking up the prescription for his patient. The pharmacist notified the police.

Detective, Jeff Pittman, of the Baton Rouge Police, testified that when Respondent was confronted with the above facts, he admitted that he had a substance abuse problem, and that he had falsely written the above prescriptions for his own use. On that day, Respondent voluntarily surrendered his DEA license to the detective.

Once again, the evidence, both oral and written completely bear out the charges against Respondent. We find him guilty of the third charge against him. Since he did not report these events to the Board, he is also guilty of the fourth charge.

With respect to the second charge, we find that, after the events surrounding the forged prescriptions, Dr. Berry consulted Dr. Gary Olbrich, Medical Director of the Physicians Health Program. Dr. Olbrich gave him a list of a number of institutions where he could seek help with his problem. Dr. Berry chose to go to the Betty Ford Center, where he was admitted on August 10, 2002, and discharged on November 23, 2002. His discharge diagnoses were opiate dependence, alcohol dependence, and major depressive disorder. His condition was noted as "improved but remains guarded", and his prognosis "fair to good with close monitoring."

He was to be monitored by the Louisiana Physicians Health Program, and it was recommended that he not practice medicine for at least one year, to allow him to work on his recovery. Dr. Olbrich testified that Respondent has been lost to follow up since his discharge from the Betty Ford Center, and that he has no way of knowing if Respondent has followed their recommendations.

The reports from the Betty Ford Center reveal that Dr. Berry was less than wholehearted in participating in the various programs there. This fact, together with his failure to remain in contact with the Louisiana Physicians Health Program, lead us to conclude that he is not yet fit to practice medicine. We therefore find him guilty of this charge as well.

We impose the following sanctions:

1. The license of David M. Berry, M. D., to practice medicine in the State of Louisiana, as evidenced by Certificate No. 024112, is hereby revoked, effective this date.

2. Respondent may apply for reinstatement of his license five years from this date, provided he can demonstrate conclusively that he has maintained complete sobriety during that time, under the supervision of the Physicians Health Program, or other supervisor

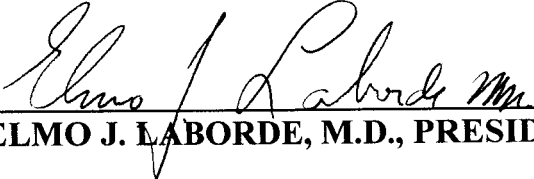
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satisfactory to the Board.

3. Respondent shall pay a fine of \$5,000.00, and all costs of this proceeding.

LAFAYETTE, LOUISIANA, THIS 29th DAY OF NOVEMBER, 2003.

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS


BY: **ELMO J. LABORDE, M.D., PRESIDENT**

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