Final Order No. DOH-15-2134-ERO-MQA
FILED DATE - DEC 3 1 2015
Department of Health
By: Amy L Cairns
Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

IN RE: The Emergency Restriction of the License of Robert Berg, M.D.
License Number: ME 71748
Case Numbers: 2015-26504

ORDER OF EMERGENCY RESTRICTION OF LICENSE

John H. Armstrong, MD, FACS, State Surgeon General and Secretary of Health, ORDERS the Emergency Restriction of the license of Robert Berg, M.D. (Dr. Berg), to practice as a physician in the State of Florida. Dr. Berg holds license number ME 71748. His address of record is 528 S.E. Osceola Street, 2nd Floor, Stuart, Florida 34994. The following Findings of Fact and Conclusions of Law support the emergency restriction of Dr. Berg's license to practice as a physician in the State of Florida.

FINDINGS OF FACT

1. At all times material to this Order, Robert Berg, M.D., (Dr. Berg) was licensed to practice as a physician in the State of Florida, pursuant to Chapter 458, Florida Statutes, and practiced dermatology as an independent contractor at Dermatology of the Treasure Coast (DTC), located in Stuart, Florida.

2. Dr. Berg worked at DTC for approximately twenty years.

3. In or around July 2014, DTC staff noticed Dr. Berg's personality change.

4. Dr. Berg became obsessed with "getting enough sleep," and began using a combination of alcohol and sleep aid medications to be able to sleep.

5. Due to his obsession with sleep, Dr. Berg often failed to report to work and was unreliable to meet his scheduled patient appointments.

6. When Dr. Berg failed to report to work or answer his telephone, DTC staff would drive to Dr. Berg's home to perform a "welfare check."

7. DTC often found Dr. Berg in bed, inebriated from alcohol and sleeping pills.

8. J.W., D.O., the owner of DTC, also performed a welfare check on Dr. Berg. Dr. J.W. found Dr. Berg in bed and inebriated. Dr. J.W. also found several vials of injectable steroids in Dr. Berg's home.

9. DTC staff noticed that when Dr. Berg did report to work, Dr. Berg appeared slovenly and described him as "pretty high."

10. When Dr. J.W. or DTC staff suspected Dr. Berg was impaired, Dr. J.W. sent Dr. Berg home.

11. Dr. J.W. obtained a breathalyzer for the office and implemented

a DTC policy that required Dr. Berg to use the breathalyzer whenever his sobriety was in question.

12. Dr. J.W. and other DTC staff discussed with Dr. Berg the need for Dr. Berg to get professional help.

13. Based on his co-worker's insistence, Dr. Berg entered into a rehabilitation facility in December 2014. However, Dr. Berg left after a few days because he felt that it was "not what he needed."

14. On or about August 25, 2015, Dr. J.W. contacted the Professionals Resource Network (PRN), to express his concerns about Dr. Berg's ability to practice medicine with reasonable safety to patients.

15. PRN is the impaired practitioner program for the Board of Medicine, pursuant to Section 456.073, Florida Statutes (2015). PRN monitors the evaluation, care and treatment of impaired practitioners licensed by the Department. PRN oversees random drug screens and provides for the exchange of information between treatment providers, evaluators, and the Department for the protection of the public.

16. On or about August 26, 2015, PRN sent Dr. Berg a letter.

17. Dr. Berg contacted PRN and scheduled a substance abuse evaluation with R.S., M.D., a physician specializing in Addiction Psychiatry.

18. On or about September 26, 2015, Dr. Berg arrived for his evaluation with Dr. R.S. However, after Dr. R.S. informed Dr. Berg that he would have to submit to a urine drug screen, Dr. Berg became irritable and refused to undergo the evaluation. Dr. R.S. described Dr. Berg as hypomanic.[1]

19. Due to Dr. Berg's refusal to undergo the evaluation and submit to a drug screening, PRN recommended that Dr. Berg voluntarily withdraw from practice and undergo an inpatient evaluation.

20. On or about December 2, 2015, Dr. Berg underwent a Department-ordered mental and physical evaluation with E.K., M.D., a physician specializing in addiction recovery.

21. Dr. Berg's breath alcohol content approximately two hours after arriving for the appointment with Dr. E.K. was approximately 0.04 grams of alcohol per 210 liters of breath.

22. Dr. Berg also submitted to a urine drug and alcohol screening during the evaluation. Dr. Berg tested positive for alcohol at level reflecting significant alcohol use.

[1] Hypomania is a mood state characterized by persistent disinhibition and pervasive elevated (euphoric) or irritable mood but generally less severe than full mania.

23. Dr. E.K. diagnosed Dr. Berg with Alcohol Use Disorder.

24. Dr. E.K. opined that Dr. Berg is not able to practice medicine with reasonable skill and safety to patients.

25. Dr. E.K. recommended that Dr. Berg engage in inpatient treatment for his alcohol use disorder.

26. As of the date of this Order, Dr. Berg has failed to comply with the recommendations of Dr. E.K.

27. In the course of their practice, physicians must possess good judgment and be able to provide care and treatment to patients. Because Dr. Berg is impaired by his use of alcohol, and may not be able to effectively monitor, treat or care for his patients, his continued unrestricted practice as a physician presents an immediate serious danger to the health, welfare and safety of the public.

28. An independent medical expert has determined that Dr. Berg is unable to practice medicine with reasonable skill and safety to patients. Based on that opinion and Dr. Berg's alcohol abuse, there are no less-restrictive means than the terms outlined in this Order that will adequately protect the public.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. The State Surgeon General has jurisdiction over this matter pursuant to Sections 20.43 and 456.073(8), Florida Statutes (2015) and Chapter 458, Florida Statutes (2015).

2. Section 120.60(6), Florida Statutes (2015), authorizes the Department to restrict a physician's license if the Department finds that the physician presents an immediate, serious danger to the public health, safety or welfare.

3. Section 458.331(1)(s), Florida Statutes (2015), subjects a physician to discipline, including restriction, for being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

4. Dr. Berg violated Section 458.331(1)(s), Florida Statutes (2015), by being unable to practice medicine with reasonable skill and safety to patients due to his alcohol use disorder.

5. Section 120.60(6), Florida Statutes (2015), authorized the State Surgeon General to summarily restrict a physician's license upon a finding that the physician presents an immediate, serious danger to the public health, safety, or welfare.

6. Dr. Berg's continued unrestricted practice as a physician constitutes an immediate serious danger to the health, safety, and welfare of the public and this summary procedure is fair, under the circumstances, to adequately protect the public.

WHEREFORE, in accordance with Section 120.60(6), Florida Statutes (2015), it is **ORDERED THAT:**

1. The license of Robert Berg, M.D., license number ME 71748, is hereby immediately restricted to prohibit Dr. Berg from practicing as a physician until PRN, or a PRN-approved evaluator, notifies the Department that Dr. Berg is safe to resume practicing as a physician.

2. A proceeding seeking formal discipline of the license of Robert Berg, M.D., to practice as a physician will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes (2015).

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NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 120.60(6), and 120.68, Florida Statutes, this Order is judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Proceedings are commenced by filing a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the District Court of Appeal, accompanied by a filing fee prescribed by law, and a copy of the Petition with the Agency Clerk of the Department within 30 days of the date this Order is filed.

DONE and ORDERED this 30th day of December, 2015.

for

John H. Armstrong, MD, FACS
State Surgeon General and
Secretary of Health

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