

FILED OF RECORD

APR 26 2023

K.B.M.L.

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1850

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MARTIN A. BARRIOS, M.D., LICENSE NO. 42222, 1550 HIGHWAY 15 SOUTH, SUITE 270, JACKSON, KENTUCKY 41339

ORDER OF REVOCATION

On April 20, 2023, the Kentucky Board of Medical Licensure (hereinafter “the Board”), acting by and through its Hearing Panel A, took up this case for final action. The members of Panel A reviewed the Amended Complaint, filed December 14, 2022; the hearing officer’s Findings of Fact, Conclusions of Law and Recommended Order, filed February 22, 2023; the hearing officer’s Notice of Prohibited *Ex Parte* Communication with attachments, filed March 9, 2023; and a March 23, 2023 memorandum from the Board’s counsel.

Having considered all the information available and being sufficiently advised, Hearing Panel A ACCEPTS the hearing officer’s findings of fact and conclusions of law and ADOPTS those findings and conclusions and INCORPORATES them BY REFERENCE into this Order; Hearing Panel A FURTHER ACCEPTS AND ADOPTS the hearing officer’s recommended order. (Attachment) Having considered all of the sanctions available under KRS 311.595, the legislative intent set forth in KRS 218A.205(3)(f), and the nature of the violations in this case, Hearing Panel A has determined that revocation is the appropriate sanction. Accordingly, Hearing Panel A

ORDERS:

1. The license to practice medicine held by Martin A. Barrios, M.D., is hereby REVOKED and he may not perform any act which constitutes the “practice of medicine,” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities – in the Commonwealth of Kentucky;

2. The provisions of KRS 311.607 SHALL apply to any petition for reinstatement filed by the licensee. The Board shall not consider a petition for reinstatement of license pursuant to KRS 311.607 unless and until:
 - a. At least two (2) years have passed from the date of filing of this Order of Revocation;
 - b. The licensee has satisfied all terms and conditions of the judgment, including but not limited to any terms of imprisonment, probation and/or supervised release, entered against him in *Commonwealth of Kentucky v. Barrios*, Case No. 18-CR-213 (Madison Circuit Court);
 - c. The licensee has completed a Board-approved clinical skills assessment(s) and/or evaluation(s), at his expense; and
 - d. Pursuant to KRS 311.565(1)(v), the licensee has fully reimbursed the Board the costs of the proceedings in the amount of \$2,000.00.
3. If the licensee's license to practice medicine in the Commonwealth of Kentucky should ever become reinstated, that reinstatement SHALL be contingent upon the licensee entering into an Agreed Order of Indefinite Restriction pursuant to which the licensee SHALL be indefinitely and permanently banned from prescribing or dispensing controlled substances in accordance with the legislative intent set forth in KRS 218A.205(3)(f) and 201 KAR 9:081 and any other terms and conditions deemed appropriate by the Panel at that time.

SO ORDERED on this 26th day of April, 2023.


WAQAR A. SALEEM, M.D.
CHAIR, HEARING PANEL A

CERTIFICATE OF SERVICE

I certify that the original of this Order of Revocation was delivered to Mr. Michael S. Rodman, Executive Director, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; a copy was mailed, first-class postage prepaid, to Keith Hardison, Esq., Hearing Officer, 2616 Bardstown Road, Louisville, Kentucky 40205; and a copy was mailed via certified mail return-receipt requested to the licensee, Martin A. Barrios, M.D., License No. 42222, 751 Lakeshore Drive, Lexington, Kentucky 40502 and via email martin.a.barrios@gmail.com on this 20th day of April, 2023.



Nicole A. King
Assistant General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
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502/429-7150

EFFECTIVE DATE AND APPEAL RIGHTS

Pursuant to KRS 311.593(1) and 13B.120, the effective date of this Order will be thirty (30) days after this Order of Revocation is received by the licensee.

The licensee may appeal from this Order, pursuant to KRS 311.593 and 13B.140-.150, by filing a Petition for Judicial Review in Jefferson Circuit Court within thirty (30) days after this Order is mailed or delivered by personal service. Copies of the petition shall be served by the licensee upon the Board and its General Counsel or Assistant General Counsel. The Petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested, along with a copy of this Order.

FEB 22 2023

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 1850

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY MARTIN A. BARRIOS M.D., LICENSE NO.42222, 1550 HIGHWAY 15 SOUTH, SUITE 270, JACKSON, KENTUCKY 41339

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND RECOMMENDED ORDER**

This action is before the hearing officer on the *Motion for Summary Disposition* (hereinafter the *Motion*) filed by the Kentucky Board of Medical Licensure (hereinafter “the Board”) on January 27, 2023. No response has been filed by Dr. Barrios, the licensee. After reviewing the *Motion*, the other pleadings of record and the applicable law, the hearing officer finds there are no genuine issues of material fact in dispute and that judgment as a matter of law is appropriate pursuant to KRS 13B.090(2). Therefore the hearing officer recommends the Board grant the *Motion for Summary Disposition*, find Dr. Barrios in violation of KRS 311.595 (4), KRS 311.595 (9), as illustrated by KRS 311.597(4), as well as KRS 311.595 (8) and (10) and impose and impose any appropriate sanction for those violations.

In light of this recommendation, the administrative hearing scheduled for March 6 and 7, 2023, is hereby **CANCELLED**.

In support of this recommendation the hearing officer submits the following Findings of Fact, Conclusions of Law and Recommended Order:

FINDINGS OF FACT

1. At all relevant times Dr. Barrios was licensed by the Board to practice medicine in the Commonwealth of Kentucky. *Answer ¶ 1*
2. Dr. Barrios’ medical specialty is surgery. *Answer ¶ 1*
3. On March 21, 2018, Dr. Barrios was indicted in the Madison Circuit Court for felony charges as follows:

- a. Two (2) counts of Kentucky Medical Assistance Program Fraud when he 1) knowingly or wantonly devised a scheme or planned a scheme or artifice, or entered into an agreement, combination or conspiracy to obtain or aid another in obtaining payments valued at three hundred dollars (\$300) or more from the Kentucky Medical Assistance Program by submitting fictitious false or fraudulent claims or documents to the Cabinet for Health and Family Services, or intentionally engaged in conduct which advanced the scheme or artifice; and/or 2) intentionally, knowingly or wantonly made, presented or caused to be made or presented to an employee or officer of the Cabinet for Health and Family Services any false, fictitious or fraudulent statement, representation or entry in any application, claim, report or document used in determining rights to any benefit or payment valued at \$300 or more; and/or 3) knowingly falsified, concealed or covered up by any trick, scheme or device a material fact, or made a false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry in violation of KRS 205.8463 and KRS 502.020, a Class D Felony.
- b. One (1) count of Trafficking in a Controlled Substance in the Second Degree by knowingly and unlawfully manufacturing, distributing, dispensing, selling transferring, or possessing with intent to manufacture, distribute dispense or sell a controlled substance as a Schedule III Controlled Substance known as Buprenorphine - Naloxone in an amount of twenty (20) dosage units or more, in violation of KRS 218A.1413 and KR 502.020, a Class D felony.
- c. One (1) count of Unauthorized Dispensing, Prescribing, Distributing, or Administering a Controlled Substance classified as a Schedule III Controlled Substance known as Buprenorphine – Naloxone, in violation of KRS 218A.1404 and KRS 502.020, a Class D felony.

Answer ¶ 2¹

4. On March 18, 2018, The Board through its Inquiry Panel B, issued a Complaint against the license of Dr. Barrios based upon the above reference indictment alleging that he had violated KRS 311.595 (9), as illustrated by KRS 311.597(4), as well as KRS 311.395 (10) and (12). *Complaint ¶¶ 3 - 5 and ¶8*

5. The matter was held in abeyance pending resolution of the criminal charges and a series of status conferences were held to review the progress of the court proceedings.

¹ The licensee admitted that he was indicted but denied guilt as to the charged offenses.

See Order *Cancelling Administrative Hearing and Scheduling Status Conference* dated June 28, 2018 and Administrative Record generally.

6. Ultimately, on September 20, 2022, Dr. Barrios entered into pre-trial diversion agreement in the Madison Circuit Court. Dr. Barrios agreed to plead guilty to one count of Unauthorized Dispensing, Prescribing, Distribution, or Administration of a Controlled Substance. The other three counts were dismissed. *Amended Complaint* ¶¶ 8 - 9 and *Answer to Amended Complaint* ¶2

7. The Madison Circuit Court entered an *Order Granting Pre-Trial Diversion* and placed Dr. Barrios on unsupervised diversion for a period of two years at which time the charges will be dismissed if he successfully completes the diversion period. *Amended Complaint* ¶ 9 and *Answer to Amended Complaint* ¶2

8. The factual basis for the plea of guilty was as follows:

Prior to July 27, 2017, the licensee pre-signed and pre-dated prescriptions for a controlled substance for when the licensee was going to be out of the office. On July 27, 2017, the licensee's co-defendant completed the prescriptions for patients scheduled to come in when the licensee was out of the office. The Kentucky Medical Assistance Program was billed for a physician office visit when the licensee was gone and the fulfillment of the prescriptions.

Amended Complaint ¶ 8 and *Answer to Amended Complaint* ¶2

9. The license to practice medicine in the Commonwealth of Kentucky held by Dr. Barrios has been in inactive status since 2019 and he has not practiced medicine since that time. *Amended Complaint* ¶ 10 and *Answer to Amended Complaint* ¶3

10. On December 14, 2022, the Board, through its Inquiry Panel B, issued an *Amended Complaint* against Dr. Barrios' license to practice medicine in the Commonwealth of Kentucky, factually based upon the guilty plea entered by him in September of that year. That *Amended Complaint* alleged that Dr. Barrios has violated KRS 311.595 (4), KRS 311.595 (9), as illustrated by KRS 311.597(4), as well as KRS 311.595 (8) and (10) See *Amended Complaint* generally and ¶ 11

11. Dr. Barrios, through counsel, filed a timely *Answer to Amended Complaint* on

January 13, 2023.²

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this action pursuant to KRS 311.591 and KRS 311.595.

2. The administrative proceeding was conducted in accordance with the provisions of KRS Chapter 13B and KRS 311.591.

3. Under KRS 13B.090 (7) the Board has the burden to prove, by a preponderance of the evidence, the allegations against Dr. Barrios.

4. Pursuant to KRS 13B. 090 (2), “the hearing officer may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute”.

5. Summary proceeding, such as those contemplated by KRS 13B. 090 (2) are generally appropriate when, construing all evidence in favor of the party against whom the motion is made, there are no disputed issues of fact upon which reasonable minds could differ. *Bierman v. Klapheke*, 967 S.W. 2d. 16, 18 – 19 (Ky.1998) and *Steelvest, Inc. v. Scansteel Services Center, Inc*, 807 S.W. 2d 476 (1991)

6. 201 KAR 9:081 Section (2) (c) (3) (a) provides that a licensee may not re-litigate a new criminal conviction in a Board disciplinary proceeding. In his *Answer to Amended Complaint* Dr. Barrios admits that he plead guilty to a criminal felony offense, Unauthorized Dispensing, Prescribing, Distribution, or Administration of a Controlled Substance. See also *Kentucky Bar Association v. Horn* 4 S.W. 3d 135 (1999); *Kentucky Bar Association v. Rice* 229 S.W. 3d 903 (2007)

7. In this action the hearing officer concludes, based upon the pleadings and the record, that there are no genuine issues of material fact upon which reasonable minds could differ and that judgment is appropriate as a matter of law under the provisions of KRS 13B.090 (2).

8. It is undisputed that Dr. Barrios plead guilty to one (1) count of Unauthorized Dispensing, Prescribing, Distributing, or Administering a Controlled Substance classified

² Counsel for Dr. Barrios withdrew at that time and Dr. Barrios has been pro se since. He did not participate in a status conference conducted on January 26, 2023 and has not responded to the Board’s *Motion*.

as a Schedule III Controlled Substance known as Buprenorphine -- Naloxone, in violation of KRS 218A.1404 and KRS 502.020, a Class D felony.

9. The hearing officer therefore concludes that the preponderance of the evidence supports the conclusion that Dr. Barrios has violated KRS 311.595 (4). This statute authorizes disciplinary action when a licensee has:

Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky of a crime as defined in KRS 335.010, if in accordance with KRS Chapter 335B.³

10. KRS 311.595 also authorizes the Board to take disciplinary action against a medical license based upon certain conduct by the licensee. Disciplinary action may be taken if a licensee:

Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof. KRS 311.595 (9)

11. To provide clarity to this statute, KRS 311.597 provides certain illustrations. One such illustration explains that such conduct includes "...any departure from or failure to conform to standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky..." KRS 311.597 (4)

12. Based upon the undisputed factual predicate for Dr. Barrios' guilty plea, specifically his unauthorized dispensing, prescribing, distributing, or administering a Controlled Substance in violation of KRS 218A.1404 and KRS 502.020, the hearing officer concludes that the preponderance of the evidence supports the conclusion that he has departed from and/or failed to conform to standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky and has thereby violated KRS 311.595 (9)

13. Disciplinary action may also be taken against a licensee who has:

Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act including but not limited to ... any other valid regulation of the board.

³ KRS 335.010 defines "conviction of a crime" as being convicted of a felony or misdemeanor.

KRS 311.595 (12)

14. 201 KAR 9:260 contains the Board's regulations regarding the utilization of controlled substances and prohibits prescribing controlled substances not for legitimate purposes in the usual course of medical practice and beyond the bounds of medical practice.

15. Based upon the undisputed facts the hearing officer further concludes that the preponderance of the evidence supports the conclusion that Dr. Barrios has engaged in conduct that violates a valid regulation of the Board, specifically 201 KAR 9:260 and he is therefore in violation of KRS 311.595 (12)

16. KRS. 311.595(8) provides that the Board may place a licensee on probation or revoke suspend, limit or restrict a license based upon proof that the licensee has:

Been unable or is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition including but not limited to...by reason of an extended absence from the active practice of medicine.

17. Based upon the undisputed facts found in the pleadings of record, specifically the admitted allegation that he has not practiced medicine since 2019, the hearing officer concludes that that the preponderance of the evidence supports the conclusion that Dr. Barrios has violated KRS. 311.595(8)

18. And finally, KRS 311.595 (10) provides that the Board may place a licensee on probation or revoke suspend, limit or restrict a license based upon proof that the licensee has:

Knowingly made or caused to be made, or aided or abetted in the making of a false statement in any document executed in connection with the practice of his profession.

19. Again, based upon the undisputed factual predicate for Dr. Barrios' guilty plea, specifically the act of billing the Kentucky Medical Assistance Program for an office visit and fulfillment of a prescription when he was away from his office, the hearing officer concludes that the preponderance of the evidence supports the conclusion that Dr. Barrios has violated KRS. 311.595(10)

RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, the hearing officer recommends the Board find Dr. Barrios guilty of violating KRS 311.595 (4), KRS 311.595 (9), as illustrated by KRS 311.597(4), KRS 311.595 (8), KRS 311.595 (10) and KRS 311. 595 (12) and impose any appropriate sanction for these violations.

NOTICE OF RIGHT TO FILE EXCEPTIONS AND TO APPEAL

Pursuant to KRS 13B.110 (4), a party has the right to file exceptions to this recommended decision.

A copy of the hearing officer's recommended order shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the agency head. Transmittal of a recommended order may be sent by regular mail to the last known address of the party. Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal the circuit court will consider only the issues a party raised in written exceptions.

A party also has the right to appeal the Final Order of the agency pursuant to KRS 13B.140 (1 - 2) which states:

- (1) Except as provided in KRS 452.005, all final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the date of the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The

petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

- (2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

Pursuant to KRS 23A.010 (4), "Such review (by Circuit Court) shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court.

SO ORDERED this 22nd day of February 2023.



KEITH HARDISON
HEARING OFFICER
2616 BARDSTOWN RD.
LOUISVILLE KY 40205
(502) 432-2332
hardisonkeith@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that the original of this FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER was hand delivered this 22nd day of February 2023, to:

MS. JILL LUN
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

for filing; and a true copy was hand delivered this 22nd day of February 2023, to:

HON. NICOLE A. KING
ASSISTANT GENERAL COUNSEL
KY BOARD OF MEDICAL LICENSURE
HURSTBOURNE OFFICE PARK STE 1B
310 WHITTINGTON PKWY
LOUISVILLE KY 40222

and a true copy was mailed this 22nd day of February 2023, by first-class mail, postage prepaid, to:

DR. MARTIN BARRIOS
751 LAKESHORE DR.
LEXINGTON KY 40502

and was sent via email to martin.a.barrios@gmail.com:



KEITH HARDISON
HEARING OFFICER