



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

October 11, 1991

Anthony G. Kokenakis, M.D.
401 Curryer Road
Middletown, Ohio 45042

Dear Doctor Kokenakis:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on October 9, 1991, including Motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL RECEIPT NO. P 746 510 342
RETURN RECEIPT REQUESTED

cc: Terri-Lynne B. Smiles, Esq.

CERTIFIED MAIL NO. P 746 510 343
RETURN RECEIPT REQUESTED

Mailed 10/16/91



STATE MEDICAL BOARD OF OHIO

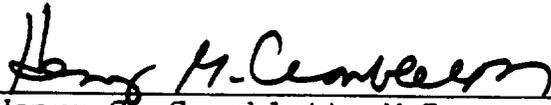
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board; and an excerpt of Minutes of the State Medical Board, meeting in regular session on October 9, 1991, including a Motion approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Anthony G. Kokenakis, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)


Henry G. Cramblett, M.D.
Secretary

10/16/91

Date



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

★

★

ANTHONY G. KOKENAKIS, M.D.

★

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 9th day of October, 1991.

Upon the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board for the above date.

It is hereby ORDERED that:

1. The certificate of Anthony G. Kokenakis, M.D., to practice medicine and surgery in the State of Ohio shall be **SUSPENDED** for an indefinite period of time, but not less than thirty (30) days.
2. The Board shall not consider reinstatement of Dr. Kokenakis' certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Kokenakis shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Kokenakis shall provide documentation acceptable to the Board of satisfactory completion of four hours of Category I C.M.E. for the deficiency in Category I C.M.E. during the 1989-1990 biennium. These hours shall not count toward fulfillment of the requisite hours of C.M.E. for the 1991-1992 biennium. It shall be Dr. Kokenakis' responsibility to work with appropriate Board staff to ascertain what will be considered as satisfactory documentation and to obtain the same.



STATE MEDICAL BOARD OF OHIO

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Page 2

Anthony G. Kokenakis, M.D.

- c. Dr. Kokenakis shall supply documentation acceptable to the Board of satisfactory completion of 100 hours of approved Continuing Medical Education, at least forty hours of which shall be in Category I, for each biennium, if any, during which Dr. Kokenakis' certificate remains suspended after December 31, 1991.
 - d. In the event that Dr. Kokenakis has not been engaged in the active practice of medicine or surgery for a period of more than two (2) years prior to his application for reinstatement, Dr. Kokenakis shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. Kokenakis' clinical competency.
3. Subsequent to reinstatement of Dr. Kokenakis' certificate, Dr. Kokenakis shall remain on probation for three additional full biennial registration periods. During this probationary period, Dr. Kokenakis shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.
 4. Upon successful completion of probation, Dr. Kokenakis' certificate shall be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.



Henry G. Cramblett, M.D.
Secretary

(SEAL)

10/16/91

Date

STATE MEDICAL BOARD
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REPORT AND RECOMMENDATION
IN THE MATTER OF ANTHONY G. KOKENAKIS, M.D.

The Matter of Anthony G. Kokenakis, M.D., came on for hearing before me, Joan Irwin Fishel, Esq., Hearing Examiner for the State Medical Board of Ohio, on August 13, 1991.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter of April 10, 1991 (State's Exhibit #1), the State Medical Board notified Anthony G. Kokenakis, M.D., that it proposed to take disciplinary action against his certificate to practice medicine and surgery in the State of Ohio. Dr. Kokenakis had certified on his registration renewal application card that he had completed the requisite hours of Continuing Medical Education (C.M.E.) for the 1989-1990 biennium, as required by Section 4731.281, Ohio Revised Code. By letter dated March 6, 1991, the State Medical Board notified Dr. Kokenakis that he was required to submit a log listing his C.M.E. for the 1989-1990 biennium, and to provide documentation that he had actually completed at least forty (40) hours of Category I C.M.E. credits. On April 1, 1991 the Board received his letter indicating that he had failed to obtain any Category II C.M.E. credits. The log accompanying the letter indicated that he had completed only twenty-three (23) of the requisite forty (40) hours of Category I C.M.E. credits for the 1989-1990 biennium. The Board alleged that the acts, conduct, and/or omissions of Dr. Kokenakis constituted "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board," as that clause is used in Section 4731.22(A), Ohio Revised Code, and "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.
- B. A Request for Hearing (State's Exhibit #2) was filed by Dr. Kokenakis' counsel on May 2, 1991.

II. Appearances

- A. On behalf of the State of Ohio: Lee Fisher, Attorney General, by Odella Lampkin, Assistant Attorney General
- B. On behalf of the Respondent: Terri-Lynne Smiles, Esq.

III. Testimony Heard

Dr. Kokenakis testified on his own behalf and was cross-examined by the State.

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IV. Exhibits Examined

In addition to those noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit #3: May 6, 1991 letter to Attorney Smiles from the State Medical Board advising that a hearing initially set for May 16, 1991, was postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit #4: May 15, 1991 letter to Attorney Smiles from the State Medical Board scheduling the hearing for June 25, 1991.
3. State's Exhibit #5: Entry dated June 19, 1991 granting the Respondent's continuance request and rescheduling the Matter for July 30, 1991.
4. State's Exhibit #6: Entry dated July 29, 1991 granting the Respondent's continuance request and rescheduling the Matter for August 13, 1991.
5. State's Exhibit #7: Copy of Dr. Kokenakis' renewal application card for the 1991-1992 biennium.
6. State's Exhibit #8: March 6, 1991 letter to Dr. Kokenakis from the State Medical Board notifying him that it would be necessary for him to complete the enclosed log of Continuing Medical Education and to provide the Board with documentation that he had actually completed at least forty (40) hours of Category I C.M.E.
7. State's Exhibit #9: March 22, 1991 letter from Dr. Kokenakis to the Board with enclosed C.M.E. log and documentation of twenty-three (23) hours of Category I C.M.E.
8. State's Exhibit #10: March 25, 1991 letter to the State Medical Board from Dr. Kokenakis.
9. State's Exhibit #11: April 5, 1991 letter to Dr. Kokenakis from the State Medical Board notifying him that he needed to sign the enclosed copy of his C.M.E. log.
10. State's Exhibit #12: April 16, 1991 letter to the C.M.E. Records and Renewal Department of the State Medical Board from Dr. Kokenakis with signed C.M.E. log and certification of eighteen (18) hours of C.M.E. completed in 1991.

STATE MEDICAL BOARD

91 SEP -4 AM 10:07

11. State's Exhibit #13: April 16, 1991 letter to the State Medical Board from Dr. Kokenakis with the same enclosures as State's Exhibit #12.
12. State's Exhibit #14: April 15, 1991 letter to whom it may concern from Russell L. Malcolm, Jr., M.D., 1989 Director of Medical Education, Middletown Regional Hospital.
13. State's Exhibit #15: The same letter as State's Exhibit #14 except for a handwritten notation stating that attached were C.M.E. programs that Dr. Kokenakis attended but for which he did not receive credit.
14. State's Exhibit #16: April 17, 1991 letter to the State Medical Board from Dr. Malcolm regarding the sign-up procedure for Grand Rounds at Middletown Regional Hospital.
15. State's Exhibit #17: Booklet describing the C.M.E. requirements and procedures for the 1989-1990 biennium.

B. Presented by the Respondent

Respondent's Exhibit A: Documentation of Dr. Kokenakis' attendance at a general meeting of the Butler County Medical Society on November 15, 1989.

FINDINGS OF FACT

1. Anthony G. Kokenakis, M.D., had a private practice in orthopedic surgery in Middletown, Ohio from 1955 until March, 1989 when he retired. Dr. Kokenakis believed that retired physicians were not required to complete Continuing Medical Education.

These facts are established by the testimony of Dr. Kokenakis (Tr. 10-13).

2. In applying for renewal of his Ohio Medical License for the 1991-1992 biennium, Dr. Kokenakis certified under penalty of the loss of his right to practice medicine and surgery in the State of Ohio, that he had completed the requisite hours of Continuing Medical Education (C.M.E.) during the last biennium. Because of his mistaken belief that retired physicians did not have to complete C.M.E., Dr. Kokenakis believed that he had completed the requisite hours when he signed his renewal application card.

These facts are established by State's Exhibit #7 and by the testimony of Dr. Kokenakis (Tr. 13).

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3. By letter dated March 6, 1991 the State Medical Board of Ohio notified Dr. Kokenakis that, as a routine and random audit procedure, it would be necessary for him to complete a log of C.M.E. for the 1989-1990 biennium and to provide the Board with documentation that he had actually completed at least forty (40) hours of Category I C.M.E. as certified on his license renewal application. The letter also stated that "sixty (60) hours of Category II credits may be listed on the reverse side of the log."

These facts are established by State's Exhibits #8 and #9.

4. Dr. Kokenakis responded to the March 6, 1991 letter by forwarding to the Board a log listing twenty-three (23) hours of Category I C.M.E. with documentation from Middletown Regional Hospital. Dr. Kokenakis did not list any Category II C.M.E. on the back of the log. Indeed, he stated in his letter accompanying the log that he had believed that he did not have to complete C.M.E. once he had retired.

These facts are established by State's Exhibit #9.

5. Dr. Kokenakis routinely attended Grand Rounds and presentations of the Ohio Medical Education Network (OMEN) at Middletown Regional Hospital. At these meetings there would be a sign-up sheet with preprinted names of physicians. The physician's signature on this sheet was used by the hospital to document attendance for C.M.E. Category I credit purposes. Apparently, at some point the hospital began using a different form for this sign-up procedure. All the physicians were no longer listed on one sheet; retirees, along with some other physicians, were listed on an additional sheet which would not have been directly in front of the physicians as they signed-in. When Dr. Kokenakis had not seen his name on the list as it had been in the past, he had assumed the absence was due to his retirement and he had not signed-in. Dr. Kokenakis was not the only physician at Middletown Hospital to make the same mistake. Once Dr. Kokenakis realized he had not been signing-in on the additional sheet, he requested that the sign-up sheet be changed back to its original form. The hospital was able to verify that Dr. Kokenakis attended presentations totalling twenty-three (23) hours of Category I C.M.E. credit during 1989-1990.

These facts are established by the testimony of Dr. Kokenakis (Tr. 15-17) and by State's Exhibits #9, #14, and #16.

6. When presented with a list of the 1989 Grand Round presentations, Dr. Kokenakis was able to identify fourteen presentations which he had attended, two of which had already been verified by the hospital. He marked them with checkmarks and forwarded the list to the Board (State's Exhibit #15). He also attended a meeting of the Butler County Medical Society in 1989 which was approved for one hour of Category I C.M.E. credit.

These facts are established by State's Exhibit #15, by Respondent's Exhibit A, and by the testimony of Dr. Kokenakis (Tr. 17).

91 SEP -4 AM 10: 08

7. During 1989-1990, Dr. Kokenakis subscribed to various medical journals. He spent approximately four (4) hours per month reviewing these journals.

These facts are established by the testimony of Dr. Kokenakis (Tr. 14).

CONCLUSIONS

1. A physician's review of medical journals garners him one hour of Category II C.M.E. credit for each hour of review. Dr. Kokenakis' testimony indicates that he completed at least sixty (60) hours of Category II C.M.E. credit for the 1989-1990 biennium. His failure to list his periodicals on the back of the C.M.E. log sent to him by the Board does not in itself constitute a violation of law.
2. Section 4731.281, Ohio Revised Code, and Rule 4731-10-03, Ohio Administrative Code, require a practitioner to meet and certify completion of the requisite hours of C.M.E. as a condition for license renewal. There is no exemption from this requirement for retired practitioners. Section 4731.281, Ohio Revised Code, and Rule 4731-10-08(A)(1), Ohio Administrative Code, authorize the Board to conduct random audits to verify practitioners' completion of C.M.E. requirements. Licensees whose applications are selected for audit are required to submit "additional documentation of compliance with C.M.E. requirements as the Board may require." Rule 4731-10-08(A)(2), Ohio Administrative Code, requires applicants for licensure renewal to keep detailed records of C.M.E. hours taken, including any available documentation of the completion of the C.M.E. activity.

If a licensee's assertion of having completed the requisite number of hours was sufficient assurance of completion there would be no need for the audit procedure. Documentation of attendance at Grand Rounds and OMEN presentations at Middletown Regional Hospital is provided by that hospital's education committee. This type of documentation, by a party other than the licensee, is the type of documentation contemplated by the Rule. The Rule also provides that a licensee's failure to maintain records will rebut the presumption of C.M.E. completion created by the licensee's certification on the renewal application card. Dr. Kokenakis, through testimony and evidence, did provide documentation other than his own assertion of attendance. Dr. Malcolm's letters corroborate Dr. Kokenakis' testimony that he routinely attended Grand Rounds and that the hospital changed its sign-in procedure. The fact that Dr. Kokenakis, when marking the lectures he attended on the list provided by the hospital, did not check sixteen courses which would have given him the requisite forty hours, but rather checked only twelve leaving him four hours short, corroborates his testimony that he did indeed attend the presentations marked. Lastly, there is the additional factor of Dr. Kokenakis' retirement and his mistaken belief that

91 SEP -4 11:08:08

retirees do not have to complete C.M.E. Retirees at Middletown were on a separate sign-in sheet. Dr. Kokenakis likely was not overly concerned about signing-n when he did not believe that his attendance was required.

Including these additional twelve hours of Category I C.M.E., Dr. Kokenakis completed a total of thirty-six hours, four hours less than the requisite forty. Furthermore, his mistaken belief that retired physicians did not have to complete C.M.E., while serving as proof of a lack of an intent to deceive the Board, cannot serve as an excuse for violating the law. Consequently, Dr. Kokenakis' signature on his renewal application card constitutes:

- a. "Fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board," as that clause is used in Section 4731.22(A), Ohio Revised Code; and
- b. "Publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

PROPOSED ORDER

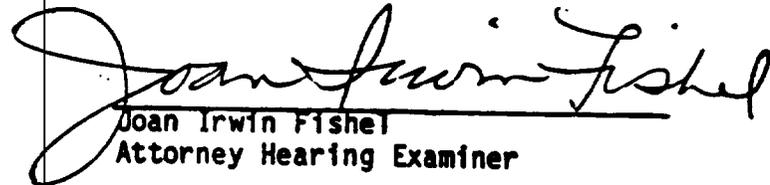
It is hereby ORDERED that:

1. The certificate of Anthony G. Kokenakis, M.D., to practice medicine and surgery in the State of Ohio shall be SUSPENDED for an indefinite period of time, but not less than thirty (30) days.
2. The Board shall not consider reinstatement of Dr. Kokenakis' certificate to practice unless and until all of the following minimum requirements are met:
 - a. Dr. Kokenakis shall submit an application for reinstatement, accompanied by appropriate fees.
 - b. Dr. Kokenakis shall provide documentation acceptable to the Board of satisfactory completion of four hours of Category I C.M.E. for the deficiency in Category I C.M.E. during the 1989-1990 biennium. These hours shall not count toward fulfillment of the requisite hours of C.M.E. for the 1991-1992 biennium. It shall be Dr. Kokenakis' responsibility to work with appropriate Board staff to ascertain what will be considered as satisfactory documentation and to obtain the same.

91 SEP -4 AM 10: 08

- c. Dr. Kokenakis shall supply documentation acceptable to the Board of satisfactory completion of 100 hours of approved Continuing Medical Education, at least forty hours of which shall be in Category I, for each biennium, if any, during which Dr. Kokenakis' certificate remains suspended after December 31, 1991.
 - d. In the event that Dr. Kokenakis has not been engaged in the active practice of medicine or surgery for a period of more than two (2) years prior to his application for reinstatement, Dr. Kokenakis shall take and pass the SPEX examination or any similar written examination which the Board may deem appropriate to assess Dr. Kokenakis' clinical competency.
3. Subsequent to reinstatement of Dr. Kokenakis' certificate, Dr. Kokenakis shall remain on probation for three additional full biennial registration periods. During this probationary period, Dr. Kokenakis shall submit documentation acceptable to the Board of satisfactory completion of the requisite hours of Continuing Medical Education.
 4. Upon successful completion of probation, Dr. Kokenakis' certificate shall be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.


Joan Irwin Fishel
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

EXCERPT FROM THE MINUTES OF OCTOBER 9, 1991

REPORTS AND RECOMMENDATIONS

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Mr. Albert asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Archbold M. Jones, Jr., M.D.; Anthony G. Kokenakis, M.D.; Linda Lucille Arnone; and Dianne Lynne Stange. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Stephens	- aye
	Mr. Jost	- abstain
	Dr. Garg	- aye
	Dr. Kaplansky	- aye
	Dr. Heidt	- aye
	Dr. Hom	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye
	Mr. Albert	- aye

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

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All Assistant Attorneys General and all Enforcement Coordinators left the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF ANTHONY G. KOKENAKIS, M.D.

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DR. AGRESTA MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ANTHONY G. KOKENAKIS, M.D. MS. ROLFES SECONDED THE MOTION.

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A roll call vote was taken on Dr. Agresta's motion:



STATE MEDICAL BOARD OF OHIO

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EXCERPT FROM THE MINUTES OF OCTOBER 9, 1991
IN THE MATTER OF ANTHONY G. KOKENAKIS, M.D.

Page 2

ROLL CALL VOTE:

Dr. Cramblett	- abstain
Dr. Gretter	- aye
Dr. Stephens	- aye
Mr. Jost	- abstain
Dr. Garg	- abstain
Dr. Kaplansky	- aye
Dr. Heidt	- abstain
Dr. Hom	- aye
Ms. Rolfes	- aye
Dr. Agresta	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

April 10, 1991

Anthony G. Kokenakis, M.D.
401 Curryer Road
Middletown, OH 45042

Dear Doctor Kokenakis:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) In your application for registration of your certificate to practice medicine or surgery for the current registration period, you certified that you had completed during the last registration period (January 1, 1989 through December 31, 1990) the requisite hours of Continuing Medical Education (CME), as required by Section 4731.281, Ohio Revised Code.
- (2) By letter dated March 6, 1991 and sent by certified mail you were notified by the State Medical Board that you were required to complete a log listing your CME for the 1989-1990 registration period and to provide documentation that you had actually completed at least forty (40) hours of Category I CME credits. On April 1, 1991 the Board received your letter indicating that you failed to obtain any Category II CME credits. In addition, the log of Category I CME which you submitted indicates that you completed only twenty-three (23) of the requisite forty (40) hours of Category I CME credits required for the 1989-1990 biennium.

Such acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board," as that clause is used in Section 4731.22(A), Ohio Revised Code.

Further, such acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Mailed 4/10/91

April 10, 1991

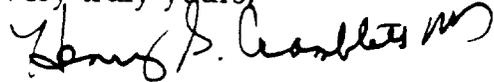
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Enclosures:

CERTIFIED MAIL #P 055 328 868
RETURN RECEIPT REQUESTED

cc: Terri Smiles, Esq.