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(9)

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Mahendra K. Tandon, M.D., :
Appellant-Appellant, :
v. :
Ohio State Medical Board, :
Appellee-Appellee. :

No. 96APE04-436

(REGULAR CALENDAR)

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on September 30, 1996, appellant's first, second and third assignments of error are overruled, and appellant's fourth assignment of error is rendered moot, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed.

PETREE, P.J., TYACK and LAZARUS, JJ.

By *G. Gary Tyack*
Judge G. Gary Tyack

cc: Philip J. Korey
Betty D. Montgomery, AG
James M. McGovern

STATE REPAIR...
OCT - 8 PM 3:02

FILED
COURT OF APPEALS
FRANKLIN CO., OHIO
96 SEP 30 PM 2:16
JESSE D. JUDGE
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

95-007-2 AM11:40

State Medical Board

STATE MEDICAL BOARD

Mahendra K. Tandon, M.D., :
Appellant-Appellant, :
v. :
Ohio State Medical Board, :
Appellee-Appellee. :

No. 96APE04-436

(REGULAR CALENDAR)

O P I N I O N

Rendered on September 30, 1996

Philip J. Korey, for appellant.

Betty D. Montgomery, Attorney General, and *James M. McGovern*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

On December 7, 1994, the State Medical Board of Ohio ("board") notified Mahendra Kumar Tandon, M.D., that the board intended to determine whether it should take disciplinary action against Dr. Tandon's license to practice medicine and surgery in Ohio. Dr. Tandon requested a hearing.

On February 7, 1995, a hearing was held before an attorney hearing examiner. A report and recommendation was filed on April 20, 1995. In her report, the hearing examiner found, among other things, that Dr. Tandon had been

convicted of four counts of violating Section 7206, Title 26, U.S. Code—tax fraud. The hearing examiner concluded such convictions constituted felonies and publishing false and fraudulent statements under R.C. 4731.22(B)(9) and 4731.22(B)(5), respectively. Therefore, the hearing examiner recommended Dr. Tandon's certificate to practice medicine and surgery in Ohio be revoked, that such revocation be stayed, and that his certificate be suspended indefinitely, but not less than one year. In addition, the hearing examiner proposed Dr. Tandon complete a minimum of 24 credit hours of continuing medical education in ethics.

Dr. Tandon filed objections and, on June 22, 1995, the board mailed a notice of its "Entry of Order," affirming the hearing examiner's report and recommendation.

On June 30, 1995, Dr. Tandon filed a notice of appeal in the Franklin County Court of Common Pleas. Dr. Tandon did not file a notice of appeal with the board until July 20, 1995. On July 31, 1995, the board filed a motion to dismiss the appeal, contending Dr. Tandon failed to comply with R.C. 119.12 in that Dr. Tandon failed to timely file a notice of appeal with the board.

On March 14, 1996, the trial court filed its decision, finding Dr. Tandon had failed to file a timely notice of appeal with the board. A judgment entry was journalized on March 21, 1996, dismissing the appeal. Dr. Tandon (hereinafter "appellant") has appealed to this court, assigning four errors for our consideration:

"I. The trial court erred in granting the Medical Board's Motion to Dismiss the Administrative Appeal Since the Board did not fully comply with Section 119.09 in that the Board did not accurately state the method by which an Appeal may be perfected; the 15-day period did not commence to run and the proposed order of the Board did not constitute a final Appealable order.

"II. The trial court erred in granting the Medical Board's Motion to Dismiss where the Clerk of Courts had represented to counsel that in handling notices of appeal from the Medical Board, it was the practice of the Clerk's office to have counsel mail the notices of appeal to the Clerk's Office and the Office would mail a time-stamped notice to the Board, and where the appellant's counsel relied thereon and timely filed the notice of the appeal on the eighth day of the appeal period and the Clerk of Courts did not file the notice of appeal with the Board until after the 15 day period ran, the Medical Board had constructively received the notice of appeal when it was received by the Clerk's Office.

"III. The trial court erred in ruling that the 'Entry of Order' dated June 15, 1995 and mailed to Dr. Tandon on June 22, 1995 constitutes a final appealable order when by its own terms the suspension was not to take effect until 30 days from the date of mailing of said notification; appellee timely filed a[n] appeal therefrom.

"IV. The Medical Board's decision suspending Dr. Tandon for a minimum of one (1) year based on his tax convictions for 1986-1988 is not in accordance with law in that the suspension violated his right of equal protection and due process and the penalty was not supported by the evidence and was not proportionate."

In his first assignment of error, appellant argues the trial court erred in dismissing his appeal for failure to file a timely notice of appeal with

the board. Appellant contends the board failed to comply with R.C. 119.09 and, therefore, the time in which to file a notice of appeal did not begin to run.

As indicated above, the board mailed the notice of its decision on June 22, 1995. R.C. 119.12, as it relates to appeals taken from agencies and boards, states:

"Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of his appeal. A copy of such notice of appeal shall also be filed by the appellant with the court. Unless otherwise provided by law relating to a particular agency, *such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order* as provided in this section. ***" (Emphasis added.)

In this case, although appellant filed a timely notice of appeal with the trial court, he did not file a notice of appeal with the board until well after the fifteen-day period. Appellant contends, however, that this fifteen-day period did not begin to run because the board did not comply with R.C. 119.09. R.C. 119.09 states, in pertinent part:

"After such order is entered on its journal, the agency shall serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order *and a statement of the time and method by which an appeal may be perfected*. A copy of such order shall be mailed to the attorneys or other representatives of record representing the party." (Emphasis added.)

Here, appellant finds fault with the board's statement regarding the appeal procedure. The June 22, 1995 notice states, in pertinent part:

"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."

Appellant contends such statement does not comply with R.C. 119.09's notice requirements because it does not state that an *original* notice of appeal be filed with the board and a copy filed with the trial court as set forth in R.C. 119.12.

In *Sun Refining & Marketing Co. v. Brennan* (1987), 31 Ohio St.3d 306, syllabus, the Supreme Court of Ohio held:

"The fifteen-day appeal period provided in R.C. 119.12 does not commence to run until the agency whose order is being appealed fully complies with the procedural requirements set forth in R.C. 119.09."

In *Sun*, the noncompliance with R.C. 119.09 was that the Department of Industrial Relations did not send the party a copy of its order; it only sent a copy to the party's attorney. The Supreme Court stated that due process was not satisfied because, given the short time period in which to appeal, the agency must comply with R.C. 119.09 so that the party is put on notice of the agency's decision. *Id.* at 309.

The question we must answer is whether the board in this case fully complied with R.C. 119.09. We note that the only defect alleged by appellant is the failure to state that an "original" notice of appeal must be filed with the board. We also point out that the statement indicated that an appeal must be taken in accordance with R.C. 119.12. Other cases applying R.C. 119.09 and *Sun* do not address similar facts as the ones in the case at bar. Rather, these cases

applied *Sun* when the agency or board omitted an entire procedural requirement set forth in R.C. 119.09. See *Patterson v. State of Ohio, Bd. of Psychology* (Aug. 30, 1990), Franklin App. No. 89AP-1277, unreported (1990 Opinions 3629 at 3632-3633) (lack of proper board order tolls time for taking an appeal); *Franklin Cty. Bd. of Cty. Commissioners v. State Employment Relations Bd.* (Dec. 15, 1987), Franklin App. No. 87AP-98, unreported (1987 Opinions 3048 at 3052-3053) (time in which to take appeal does not begin to run when there is a failure to send the order to an affected party). Hence, we must decide whether the statement in the June 22, 1995 notice was sufficient such that due process was served. We hold that it was.

As indicated above, R.C. 119.09 requires that the board send a certified copy of the order to the party affected along with a statement of the time and method by which to take an appeal. R.C. 119.12 requires that the party file "a notice of appeal" with the board and a "copy of such notice of appeal" with the court. The board's statement indicated that "a notice of appeal" must be filed with the board within fifteen days. Appellant contends the statement should have noted that an *original* notice of appeal had to be filed with the board. R.C. 119.12 does not use the word "original"; it does not qualify the phrase "notice of appeal." Hence, we presume appellant's argument lies in the fact that R.C. 119.12 goes on to state that a *copy* of such notice of appeal be filed with the court.

As indicated by *Sun*, compliance with R.C. 119.09 is necessary so that the party may appeal within the short time frame mandated in R.C. 119.12. If, as in *Sun*, the party is not even sent a copy of the agency's order from which the party may wish to appeal, due process is not satisfied. In the case at bar, the board's statement of the method and time by which to perfect an appeal satisfied due process. Appellant was informed of how to perfect an appeal. Appellant knew it had fifteen days to file a notice of appeal with both the board and the court. The board was not required to place the adjectives "original" or "copy" before "notice of appeal." The intent behind R.C. 119.12's requirement that notices of appeal be filed with both the agency being appealed from and the court is one of administrative economy. See *Drolshagen v. Ohio Dept. of Admin. Services* (June 13, 1996), Franklin App. No. 95APE11-1410, unreported (1996 Opinions 2275 at 2279-2280), quoting *In re Namey* (1995), 103 Ohio App.3d 322, 325-326. In other words, the purpose is to get a notice of appeal to both tribunals within fifteen days. Hence, due process is not violated if the statement indicates that a notice of appeal must be filed with both the board and the court. See, also, *Hausman v. Dayton* (Dec. 22, 1993), Montgomery App. No. 13647, unreported, reversed on other grounds in *Hausman v. Dayton* (1995), 73 Ohio St.3d 671. We note also that here, appellant failed to file *any* notice of appeal with the board within fifteen days.

Based on all of the foregoing facts and principles, we hold that the board's statement sufficiently complied with R.C. 119.09 such that appellant was

provided with due process. Hence, appellant had fifteen days from June 22, 1995 in which to perfect his appeal by filing a notice of appeal with both the board and the trial court. Having failed to do so, the trial court did not err in dismissing appellant's appeal for lack of jurisdiction. See *Sun* at 307. Accordingly, appellant's first assignment of error is overruled.

In his second assignment of error, appellant contends his attorney reasonably relied on the statements of an employee of the Franklin County Clerk for the Court of Common Pleas ("clerk's office") in attempting to perfect appellant's appeal. In an affidavit, appellant's counsel states that he called the clerk's office for information regarding the procedural requirements in appealing from the board. An employee of the clerk's office, Jeff Smith, told him that the practice of the clerk's office was that counsel would send an original notice of appeal and copies thereof to the clerk's office, and the clerk's office would serve such notice on the board. Such would insure that the board had notice of the case number and assigned judge on appeal.

Apparently, in reliance on the above information, appellant's counsel sent the clerk's office, via Federal Express, a notice of appeal and copies thereof on June 29, 1995. The clerk's office received these and such were time-stamped on June 30, 1995. Appellant's counsel, at this time, sent nothing to the board.

In his affidavit, Mr. Smith stated essentially the same thing as counsel's affidavit. Mr. Smith also stated that the clerk's office mailed the

notice of appeal to the board on July 10, 1995. According to appellant's counsel, on July 19, 1995, he sent a notice of appeal to the board via Federal Express after an assistant attorney general informed him that she was going to file a motion to dismiss since the board had not received a notice of appeal. The board received the notice of appeal on July 20, 1995.

Appellant contends that since his attorney reasonably relied upon the statements of the clerk's office employee, the trial court erred in dismissing his appeal on the grounds it was not perfected. We disagree. As discussed in his first assignment of error, appellant was properly informed of the time and method in which to take an appeal. It was appellant's duty, not the clerk's office's duty, to file a timely notice of appeal with the board. Appellant has cited no authority to support his contention that his attorney could rely on the employee's statements. This notwithstanding, however, we note that the employee of the clerk's office did not inform appellant's counsel that the clerk's office would *perfect* appellant's appeal for him. In addition, principles of equitable estoppel generally may not be applied against the state. *Sun, supra* at 207. (Citations omitted.)

Accordingly, appellant's second assignment of error is overruled.

In his third assignment of error, appellant contends the trial court erred in ruling the board's June 22, 1995 entry of order was a final appealable order, when such order did not become effective until thirty days thereafter. It is a general principle that when an otherwise final order affecting a

substantial right is entered upon the court's journal or, as mandated in this case by R.C. 119.12, is mailed by the agency, the time in which to take an appeal begins to run. The date the order becomes effective is immaterial for appeal purposes. Appellant points to nothing that holds otherwise. Accordingly, appellant's third assignment of error is overruled.

Appellant's fourth assignment of error addresses the merits of appellant's suspension. Having found the trial court correctly dismissed appellant's appeal for lack of subject-matter jurisdiction, we are without jurisdiction to rule on this assignment of error. Therefore, appellant's fourth assignment of error is rendered moot.

In summary, appellant's first, second and third assignments of error are overruled. Appellant's fourth assignment of error is moot. The judgment of the trial court dismissing the appeal is affirmed.

Judgment affirmed.

PETREE, P.J., and LAZARUS, J., concur.

filed 4/2/96

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CIVIL DIVISION

MAHENDRA K. TANDON, M.D.	:	
	:	
APPELLANT,	:	
	:	
vs.	:	Case No. 95CVF-06-4509
	:	
STATE MEDICAL BOARD OF OHIO,	:	JUDGE JOHN CONNOR
	:	
APPELLEE.	:	

96 APR 17 10:00 AM

DECISION AND ENTRY SUSTAINING MOTION OF MAHENDRA K. TANDON, M.D., APPELLANT TO CONTINUE STAY

Rendered this 12th day of April, 1996.

CONNOR, J.

This matter comes before the Court upon motion by appellant, Mahendra K. Tandon, M.D. to continue the stay entered by this Court on June 30, 1995. Said motion was filed March 27, 1996.

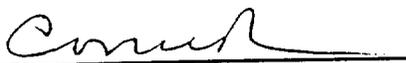
Section 119.12 of the Ohio Revised Code states the following in pertinent part:

If an appeal is taken from the judgment of the court and the court has previously granted a suspension of the agency's order as provided in this section, such suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated.

The Court's Decision on Administrative Appeal and Motion to Dismiss was filed March 14, 1996, and the Judgment Entry Affirming the Order of the State Medical

Board of Ohio was filed March 21, 1996. Therefore, appellant must file his notice of appeal no later than April 20, 1996.

In light of the fact that the stay of the agency's order continues automatically upon the filing of the notice of appeal, this Court hereby SUSTAINS appellant's motion to continue the stay until the notice of appeal is filed or April 20, 1996, whichever occurs first.



JOHN A. CONNOR, JUDGE

COPIES TO:

Philip J. Korey
Attorney for Plaintiff, Appellant

Lili C. Kaczmarek
Assistant Attorney General

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

TERMINATION NO. 10
BY RA

MAHENDRA K. TANDON, M.D.,

Appellant,

vs.

STATE MEDICAL BOARD OF OHIO,

Appellee.

CASE NO. 95CVF06-4509

JUDGE JOHN A. CONNOR

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COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

FILED
APR 21 1996
COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

**JUDGMENT ENTRY
AFFIRMING THE ORDER OF THE
STATE MEDICAL BOARD OF OHIO**

53172J01

This cause is before the Court pursuant to an administrative appeal filed by Appellant pursuant to R.C. 119.12. Appellant appealed the June 16, 1995 order of the State Medical Board of Ohio, which was mailed on June 22, 1995, which suspended Appellant's license to practice and surgery in the State of Ohio. Appellant filed a motion for a stay of the Board's order pending the outcome of the appeal, which was granted by this Court. The Board filed a motion to dismiss the appeal.

For the reasons stated in the Decision of this Court rendered on March 13, 1996 and filed on March 14, 1996, which Decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that this Court lacks jurisdiction to hear this appeal, and hereby DISMISSES the appeal filed by Appellant. Because this Court has no jurisdiction, the stay previously granted to Appellant is of no force and effect and is hereby lifted.

IT IS SO ORDERED.

Costs to Appellant.

DATE 3/20/96

Connor
JOHN A. CONNOR, JUDGE

APPROVED:

PHILIP J. KOREY (0026029)
The Leader Building, Suite 410
526 Superior Avenue
Cleveland, Ohio 44114-1979
(216) 696-9555

ATTORNEY GENERAL BETTY D. MONTGOMERY

Lili C. Kaczmarek 3.18.96

LILI C. KACZMAREK (0046864)
Assistant Attorney General
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30 East Broad Street
Columbus, Ohio 43215-3428
(614) 466-8600

53172102

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Original to JWR to file

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY
CIVIL DIVISION

MAHENDRA K. TANDON, M.D.,]
Appellant,] CASE NO. 95CVF06-4509
vs.] JUDGE JOHN A. CONNOR
STATE MEDICAL BOARD OF OHIO,]
Appellee.]

DECISION ON ADMINISTRATIVE APPEAL AND MOTION TO DISMISS

Rendered this 13th day of March, 1996.

Mahendra K. Tandon, M.D., appellant herein, brings this appeal from a decision by the State Medical Board revoking his license to practice medicine, but staying that revocation and suspending his license for a minimum period of one year, with conditions and a five year probationary period to follow reinstatement. This Court has entered a stay of the sanction, pending the review of Appellant's conviction.

Dr. Tandon was convicted of four felonies in a jury trial in the United States District Court, Northern District of Ohio, Eastern Division. The violations involved Appellant's making "false and fraudulent statements" when filing his income tax returns for the years 1986 through 1988. Dr. Tandon was sentenced to 18 months in prison and a \$10,000.00 fine. Execution of the sentence was stayed when Dr. Tandon posted an appeal bond.

At the sentencing hearing, Federal District Judge Matia, responding to an allegation by the assistant U.S. Attorney that Appellant had committed perjury,

stated that

I believe that the defendant lied on the witness stand on numerous occasions, and I must say that I have never been as offended by false testimony as I was in this particular case.

Sentencing Transcript at 39-40;
Report and Recommendation of
Attorney Hearing Examiner, p. 4

The recommendation of the Attorney Hearing Examiner was unanimously adopted (with one abstention) after considerable debate by the State Medical Board. Thereafter, Appellant filed this appeal.

Appellee has filed a motion to dismiss this appeal, on the ground that a jurisdictional defect exists regarding Appellant's filing of the notice of appeal. Specifically, Appellant did not file an original notice of appeal with the State Medical Board within the 15 days mandated by R.C. 119.12. Appellant does not deny that he failed to do so, but argues the notice to him of his appeal rights did not specify

...that Dr. Tandon must file an original [notice] with the Board and a copy to the court.

Reply Brief of Appellant, p. 3

The notice sent to Appellant dated June 16, 1995 and mailed June 22, 1995, reads as follows:

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 must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Common Pleas Court 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.

(Emphasis added)

Appellant's contention, therefore, is without merit. The language of the notice clearly indicates that notice must be timely filed with both the State Medical Board of Ohio and with this Court. Further, it states that the filing must be done in accordance with R.C. 119.12, which specifically sets out the requirements for filing an appeal.

Appellant next argues that the filing of an appeal need only take place within thirty days of the enforcement date of the order. While he correctly argues that an order appealed from must be a final one, citing **In re: Mingo Junction Safety Forces** (1991), 74 Ohio App. 3d 313, he incorrectly assumes that it is the enforcement date, and not the filing date, that affects the thirty day period. App.R. 4(A) states:

A party shall file the notice of appeal...within thirty days of the later of the entry of the judgment or order appealed, or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.

(Emphasis supplied)

Thus, it is the issuance of the entry, and the service of it, which are controlling, not the date in which the entry's terms are effectuated. In addition, the notice sent to Appellant makes it clear as to when the appeal must be filed. That notice clearly states that the triggering mechanism for a timely appeal is based on the mailing of

the notice, not the implementation date of the entry's contents.

Appellant mailed a copy of his notice of appeal to the Medical Board on July 19, 1995, and that notice was received by the Board the next day. This mailing was done outside of the fifteen day requirement of R.C. 119.12, since notice of the Medical Board's order had been sent to Appellant on June 22, 1995. While Appellant argues that the letter received from the Medical Board was "imperfect" in its explanation, there is no doubt that the letter received by Appellant stated that a filing was required, within 15 days after the mailing of the notice, at both the Common Pleas Court and the Medical Board. Appellant clearly did not comply with these mandatory requirements.

Failure to file a timely notice of appeal divests this court of jurisdiction to hear the appeal. In re Namey (1995), 103 Ohio App. 3d 322; Capparell v. Love (1994), 99 Ohio App. 3d 624. See also: State v. Davis (1996), 74 Ohio St. 3d 232.

Based on the foregoing, this Court lacks jurisdiction to hear this appeal, and hereby dismisses this case. Because this Court has no jurisdiction, the stay previously entered is of no force and effect, and is hereby lifted.

Appellee shall prepare the appropriate entry pursuant to Local Rule 25.



Judge John A. Connor

Appearances on page 5.

Appearances:

Philip J. Korey, Esq.
Counsel for Appellant

Lili C. Kaczmarek, Esq.
Assistant Attorney General
Counsel for Appellee

Cannon

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

95CVF06- 4509

MAHENDRA K. TANDON, M.D.
6584 Maplewood Drive
Apartment 204
Mayfield, OH 44124

CASE NO.

JUDGE

Plaintiff-Appellant

vs.

NOTICE OF APPEAL FROM
STATE MEDICAL BOARD

STATE MEDICAL BOARD
77 South High Street
17th Floor
Columbus, OH 43266-0315

Defendant-Appellee

FILED
JUN 20 1995
CLERK OF COURT
FRANKLIN COUNTY, OHIO

1) In accordance with ORC §119.12, Appellant Mahendra K. Tandon, M.D., respectfully gives his Notice of Appeal from the order of the Ohio State Medical Board on June 16, 1995, the said Order being mailed on June 22, 1995.

2) The Order suspends Dr. Tandon's certificate to practice medicine and surgery in Ohio for an indefinite period of time but not less than one year, with certain requirements to be met prior to an application for reinstatement. A copy of the Order is attached hereto as Exhibit 1.

3) The principal basis for the Board's decision to suspend Dr. Tandon's license is Dr. Tandon's convictions on four tax count violations for the tax years 1986, 1987, and 1988 in the United States District Court for the Northern District of Ohio, Eastern Division, Case Number 94-00243.

4) In over twenty years as a licensed physician, Dr. Tandon has never been charged with any improper conduct arising out of his medical practice. The tax convictions which form the basis for the Board's Order do not adversely affect or impact on his ability to practice medicine in an honorable manner. This represents the first occasion Dr. Tandon has ever been before the Board.

5) Dr. Tandon has appealed his convictions to the United States Sixth Circuit Court of Appeals in Cincinnati, Ohio, Case Number 95-3148. His initial brief is due in that Court on July 24, 1995. See Exhibit 2.

6) Judge Paul R. Matia of the Northern District of Ohio granted Dr. Tandon an appeal bond. To qualify for an appeal bond under federal law, 18 USC Sec. 3143, a defendant must demonstrate to the District Court by "clear and convincing evidence" that he does not pose a threat or a danger to the community, his appeal "is not for purpose of delay and raises a substantial question of law or fact likely to result in -

i. reversal,

ii. an order for a new trial . . ."

and/or a reduced sentence. See Exhibit 3. Dr. Tandon submits he will present meritorious issues on appeal to the Sixth Circuit which may result in a reversal of his convictions.

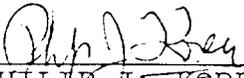
7) The Board's Order was not supported by reliable, probative, or substantial evidence in that the Board's decision was based on the tax convictions which are on appeal,

and further, the sanction issued by the Board for conduct not arising out of the medical practice was not supported by reliable evidence. Further, the Board's finding that Dr. Tandon published a false and fraudulent statement by filing the tax returns is not supported by law in that tax returns are not public record.

8) These and other matters will be addressed in more detail in the upcoming proceedings.

WHEREFORE, Dr. Tandon respectfully asks that the Board's Order be set aside.

Respectfully submitted,


PHILIP J. KOREY (0026029)
The Leader Building, Suite 410
526 Superior Avenue
Cleveland, OH 44114-1979
(216) 696-9555

Attorney for Plaintiff-Appellant



STATE MEDICAL BOARD OF OHIO

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

June 16, 1995

Mahendra Kumar Tandon, M.D.
P. O. Box 603596
Cleveland, Ohio 44103-4620

Dear Doctor Tandon:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Melinda R. Early, Esq., Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 14, 1995, including a Motion 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

Thomas E. Gretter, M.D.
Secretary

TEG:em
Enclosures

CERTIFIED MAIL RECEIPT NO. P 741 124 595
RETURN RECEIPT REQUESTED

cc: Philip J. Korey, Esq.

CERTIFIED MAIL RECEIPT NO. P 741 124 596
RETURN RECEIPT REQUESTED

Mailed 6-22-95



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 Melinda R. Early, Esq., Attorney Hearing Examiner, State Medical Board; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on June 14, 1995, including a Motion approving and confirming the Report and Recommendation as the Findings and Order of Order of the State Medical Board of Ohio, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Mahendra K. Tandon, 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)



Thomas E. Gretter, M.D.
Secretary

6/15/95

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

*

*

MAHENDRA KUMAR TANDON, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 14th day of June, 1995.

Upon the Report and Recommendation of Melinda R. Early, 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 of Ohio for the above date.

It is hereby ORDERED that:

1. The certificate of Mahendra Kumar Tandon, M.D., to practice medicine and surgery in the State of Ohio, shall be REVOKED. Such revocation is stayed, and Dr. Tandon's certificate is SUSPENDED for an indefinite period of time, but not less than one year. The State Medical Board shall not consider reinstatement of Dr. Tandon's certificate to practice medicine and surgery in Ohio, unless and until all of the following minimum requirements are met:
 - a. Dr. Tandon shall submit an application for reinstatement, accompanied by appropriate fees. The Board shall not act upon such application until the one year suspension has expired.
 - b. Dr. Tandon shall provide acceptable documentation of his successful completion of a minimum of twenty-four (24) credit hours of Category I continuing medical education in ethics. Such credit hours are to be approved in advance by the Board, and are to be in addition to continuing medical education requirements otherwise required by Section 4731.281, Ohio Revised Code.
 - c. In the event that Dr. Tandon has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to his application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Tandon's fitness to resume practice.

2. Upon reinstatement, Dr. Tandon's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:
 - a. Dr. Tandon shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Tandon shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
 - c. Dr. Tandon shall appear in person for interviews before the full Board, or its designated representative, at six (6) month intervals, or as otherwise requested by the Board.
 - d. In the event that Dr. Tandon should leave Ohio for three (3) consecutive months, or reside or practice outside the State of Ohio, Dr. Tandon shall notify the Board in writing of the dates of departure and return. Periods of time spent outside the State of Ohio shall not apply to the reduction of the probationary period.
3. If Dr. Tandon violates the probation in any respect, the Board, after giving Dr. Tandon notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Tandon's certificate to practice medicine and surgery in Ohio.
4. Upon successful completion of probation, Dr. Tandon's certificate to practice medicine and surgery in Ohio shall be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the Board. In the thirty (30) day interim, Dr. Tandon shall not undertake the care of any patient not already under his care.



Thomas E. Gretter, M.D.
Secretary

6/15/95

Date

(SEAL)

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**REPORT AND RECOMMENDATION
IN THE MATTER OF MAHENDRA KUMAR TANDON, M.D.**

The Matter of Mahendra Kumar Tandon, M.D., was heard by Melinda R. Early, Esq., Hearing Examiner for the State Medical Board of Ohio, on February 7, 1995.

INTRODUCTION

I. Basis for Hearing

- A. The State Medical Board notified Mahendra Kumar Tandon, M.D., by letter dated December 7, 1994, (State's Exhibit 1), that it proposed to take disciplinary action against his license to practice medicine and surgery in Ohio based on the following factual allegation. The Board alleged that on or about October 3, 1994, the United States District Court, Northern District of Ohio, Eastern Division [District Court], found Dr. Tandon guilty of four counts of violations of Section 7206, Title 26, United States Code, Fraud and false statements. The Board asserted that the judicial finding of guilt constituted "(a) plea of guilty to, or a judicial finding of guilt of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code." Additionally, the Board asserted that Dr. Tandon's conduct, upon which the conviction was based, constituted "publishing a false, fraudulent, deceptive, or misleading statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

The Board advised Dr. Tandon of his right to request a hearing.

- B. Philip J. Korey, Esq., filed a written hearing request in behalf of Dr. Tandon on December 15, 1994. (State's Exhibit #2).

II. Appearances

- A. In behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Lili C. Kaczmarek, Assistant Attorney General
- B. In behalf of the Respondent: Philip J. Korey, Esq.

III. Testimony Heard

No testimony was presented.

IV. Exhibits Examined

In addition to State's Exhibits 1 and 2, noted above, the following exhibits were identified and admitted into evidence in this Matter:

A. Presented by the State

1. State's Exhibit 3: December 19, 1994, letter to Mr. Korey from the Board, advising him that a hearing had been initially scheduled for December 29, 1994, but additionally advising that it had been postponed pursuant to Section 119.09, Ohio Revised Code.
2. State's Exhibit 4: December 22, 1994, letter to Mr. Korey from the Board scheduling the hearing for February 7, 1995. (2 pp.)
3. State's Exhibit 5: Certified copy of the Indictment filed in Case No. 1:94CR243 on July 21, 1994. (5 pp.)
4. State's Exhibit 6: Certified copies of the Indictment filed July 21, 1994, together with the associated four guilty verdicts, filed October 3, 1994, in Case No. 1:94CR243. (9 pp.)
5. State's Exhibit 7: Copy of Section 7206, Title 26, United States Code, Fraud and false statements. (1994). (4 pp.)
6. State's Exhibit 8: Copy of the judgment entry in *United States v. Mahendra K. Tandon*, Case No. 1:94CR0243-01, filed January 26, 1994. (5 pp.)

B. Presented by Respondent

1. Respondent's Exhibit A: Copy of Dr. Tandon's Amended 1987 U.S. Individual Income Tax Return, signed March 9, 1989.
2. Respondent's Exhibit B: Copy of Dr. Tandon's Amended 1988 U.S. Corporation Income Tax Return, signed November 27, 1989.
3. Respondent's Exhibit E: Copies of letters submitted to the District Court judge from colleagues and family friends in support of Dr. Tandon.
4. Respondent's Exhibits C, D, F, and G: Proffered.

V. Post-hearing Admissions to the Record

A. The following documents are hereby admitted to the record:

1. Board Exhibit A: March 1, 1995, memorandum to the Assistant Attorney General from the Hearing Examiner requesting

information regarding the sentencing hearing transcript from *United States v. Mahendra K. Tandon*, Case No. 1:94CR0243-01.

2. State's Exhibit 9: Copy of the sentencing hearing transcript from *United States v. Mahendra K. Tandon*, Case No. 1:94CR0243-01. (Replacing the previously marked State's Exhibit 9).
3. Board Exhibit B: March 10, 1995, Entry acknowledging receipt of the sentencing hearing transcript from *United States v. Mahendra K. Tandon*, Case No. 1:94CR0243-01, and closing the hearing record.

PROCEDURAL MATTERS

At hearing, the Hearing Examiner allowed the State additional time in which to obtain and submit a copy of the sentencing hearing transcript from *United States v. Mahendra K. Tandon*, Case No. 1:94CR0243-01. The State submitted the transcript on March 10, 1995, and the hearing record then closed.

SUMMARY OF THE EVIDENCE

The transcript of testimony and all exhibits were thoroughly reviewed and considered by the Hearing Examiner prior to preparing the findings, conclusions, and recommendations set forth in this Report and Recommendation, even if not specifically mentioned.

1. A grand jury in the United States District Court, Northern District of Ohio, Eastern Division, charged Mahendra K. Tandon with four counts of felony violations of Sections 7206(1) and 7206(2) Title 26, United States Code, on July 24, 1994. These charges claimed that Dr. Tandon made false and fraudulent statements when filing his 1986, 1987, and 1988, United States Individual Income Tax Return, Form 1040, and his 1988 United States Corporation Short-Form Income Tax Return, Form 1120-A. (State's Exhibit [St. Ex. 15]). On October 3, 1994, a jury found Dr. Tandon guilty of all four charges. (St. Ex. 6).
2. On January 26, 1995, the District Court judge sentenced Dr. Tandon to eighteen months incarceration, followed by one year supervised release. The Court also imposed a \$10,000 fine. The Federal Sentencing Guidelines would have allowed eighteen to twenty-four months incarceration, and a \$4,000 to \$40,000 fine. The Court stayed execution of the sentence and allowed a bond pending appeal. (St. Ex. 8).
3. In 1989, shortly after he received notice that his tax returns would be audited, Dr. Tandon filed amended tax returns. (Tr. at 39 and 41, Respondent's Exhibits [Resp. Ex.] A and B, Sentencing Hearing Transcript [Sent. Tr.] at

44). In doing so, Dr. Tandon paid the Internal Revenue Service [IRS] an additional \$18,400. (Sent. Tr. at 41). Because he filed the amended returns five years prior to the grand jury indictment, Dr. Tandon's attorneys asked the District Court to consider this as mitigating evidence in support of imposing a lighter sentence than otherwise required by the federal sentencing guidelines. The judge refused to do so. (Sent. Tr. at 45). Dr. Tandon's attorney also asked this Hearing Examiner to consider Dr. Tandon's actions in filing amended tax returns and paying additional taxes five years before he was criminally charged as mitigating evidence. (Tr. at 32-33)

4. At the sentencing hearing, the Assistant U. S. Attorney alleged that Dr. Tandon committed perjury during the course of the trial in an effort to impede the doing of justice. The Court found that in two circumstances, Dr. Tandon falsified testimony which amounted to the obstruction of justice. The judge noted: "I believe that the defendant lied on the witness stand on numerous occasions, and I must say that I have never been as offended by false testimony as I was in this particular case." The District Court's finding that Dr. Tandon committed perjury was utilized by the Court in determining the level of Dr. Tandon's sentence under the federal sentencing guidelines. (Sent. Tr. at 39-40).
5. Dr. Tandon submitted approximately twenty letters of support from colleagues and family friends which were originally submitted to the District Court judge prior to the sentencing hearing. All of these letters stressed the quality of Dr. Tandon's character, integrity, and ethical standards. The credibility of all these letters is undermined given the extent to which Dr. Tandon committed perjury during the criminal trial. Moreover, one particular supporting opinion is completely unreliable.

One writer stated: "Although he is a medical practitioner in USA, he has maintained a very simple life style. While other doctors with similar qualifications maintain very high standard of living, Dr. Tandon lives in a simple apartment. This simple fact tells more about his adherence to simple living and high moral standards." (Resp. Ex. E, letter of Dr. Arvind Bansal). Dr. Tandon's simple lifestyle included a leased Rolls Royce for which the District Court judge determined Dr. Tandon unlawfully depreciated \$38,480. (Sent. Tr. at 6).

FINDING OF FACT

1. On or about October 3, 1994, in the United States District Court, Northern District of Ohio, Eastern Division, a jury found Dr. Tandon guilty of four counts of violations of Section 7206, Title 26, United States Code, Fraud and false statements.

CONCLUSIONS

1. The jury's verdict of guilty of four violations of Section 7206, Title 26, United States Code, Fraud and false statements, constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a felony,' as that clause is used in Section 4731.22(B)(9), Ohio Revised Code."
2. Dr. Tandon's conduct, upon which the conviction was based, constitutes "publishing a false [and] fraudulent . . . statement,' as that clause is used in Section 4731.22(B)(5), Ohio Revised Code."

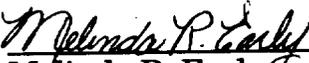
PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of Mahendra Kumar Tandon, M.D., to practice medicine and surgery in the State of Ohio, shall be REVOKED. Such revocation is stayed, and Dr. Tandon's certificate is SUSPENDED for an indefinite period of time, but not less than one year. The State Medical Board shall not consider reinstatement of Dr. Tandon's certificate to practice medicine and surgery in Ohio, unless and until all of the following minimum requirements are met:
 - a. Dr. Tandon shall submit an application for reinstatement, accompanied by appropriate fees. The Board shall not act upon such application until the one year suspension has expired.
 - b. Dr. Tandon shall provide acceptable documentation of his successful completion of a minimum of twenty-four (24) credit hours of Category I continuing medical education in ethics. Such credit hours are to be approved in advance by the Board, and are to be in addition to continuing medical education requirements otherwise required by Section 4731.281, Ohio Revised Code.
 - c. In the event that Dr. Tandon has not been engaged in the active practice of medicine and surgery for a period in excess of two (2) years prior to his application for reinstatement, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Tandon's fitness to resume practice.
2. Upon reinstatement, Dr. Tandon's certificate shall be subject to the following probationary terms, conditions, and limitations for a period of five (5) years:

- a. Dr. Tandon shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
 - b. Dr. Tandon shall submit quarterly declarations under penalty of perjury stating whether or not there has been compliance with all the provisions of probation.
 - c. Dr. Tandon shall appear in person for interviews before the full Board, or its designated representative, at six (6) month intervals, or as otherwise requested by the Board.
 - d. In the event that Dr. Tandon should leave Ohio for three (3) consecutive months, or reside or practice outside the State of Ohio, Dr. Tandon shall notify the Board in writing of the dates of departure and return. Periods of time spent outside the State of Ohio shall not apply to the reduction of the probationary period.
3. If Dr. Tandon violates the probation in any respect, the Board, after giving Dr. Tandon notice and the opportunity to be heard, may institute whatever disciplinary action it deems appropriate, up to and including the permanent revocation of Dr. Tandon's certificate to practice medicine and surgery in Ohio.
 4. Upon successful completion of probation, Dr. Tandon's certificate to practice medicine and surgery in Ohio shall be fully restored.

This Order shall become effective thirty (30) days from the date of mailing of notification of approval by the Board. In the thirty (30) day interim, Dr. Tandon shall not undertake the care of any patient not already under his care.



Melinda R. Early
Attorney Hearing Examiner



STATE MEDICAL BOARD OF OHIO

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

EXCERPT FROM THE DRAFT MINUTES OF JUNE 14, 1995

REPORTS AND RECOMMENDATIONS

Dr. Garg announced that the Board would now consider the findings and orders appearing on the Board's agenda.

Dr. Garg noted that the matters of Mustafa Feroze, M.D., and James Miller, D.O., which were initially scheduled for consideration this month, would be considered at a later time. He asked that Board members retain their copies of the hearing records in these cases until such time as they are considered.

Dr. Garg asked whether each member of the Board received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Dewey Mays, Jr., M.D.; William G. Conrad, M.D.; Russell William Fiel, D.O.; James R. Holt, D.O.; Emil E. Pogorelec, D.O.; Jovencio L. Raneses, M.D.; James Michael Sinard, M.D.; Mahendra K. Tandon, M.D.; and Jose A. Torres, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye
	Dr. Garg	- aye

Dr. Garg asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Bhati	- aye
	Dr. Stienecker	- aye

Dr. Egner	- aye
Dr. Agresta	- aye
Dr. Buchan	- aye
Ms. Noble	- aye
Mr. Sinnott	- aye
Dr. Heidt	- aye
Dr. Steinbergh	- aye
Dr. Garg	- aye

In accordance with the provision in Section 4731.22(C)(1), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of this matter. Dr. Gretter did not serve as Secretary in the above-named cases. Mr. Albert did not serve as Supervising Member in the matter of Russell William Fiel, D.O.

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

.....
Dr. Gretter joined the meeting at this time.

Dr. Garg asked whether Dr. Gretter had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Dewey Mays, Jr., M.D.; William G. Conrad, M.D.; Russell William Fiel, D.O.; James R. Holt, D.O.; Emil E. Pogorelec, D.O.; Jovencio L. Raneses, M.D.; James Michael Sinard, M.D.; Mahendra K. Tandon, M.D.; and Jose A. Torres, M.D. Dr. Gretter indicated that he had.

Dr. Garg asked whether Dr. Gretter understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. Dr. Gretter stated that he does understand.

.....
REPORT AND RECOMMENDATION IN THE MATTER OF MAHENDRA K. TANDON, M.D.

.....
DR. GRETTER MOVED TO APPROVE AND CONFIRM MS. EARLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MAHENDRA K. TANDON, M.D. DR. STEINBERGH SECONDED THE MOTION.

EXCERPT FROM THE MINUTES OF JUNE 14, 1995
IN THE MATTER OF MAHENDRA K. TANDON, M.D.

.....
A vote was taken on Dr. Gretter's motion to approve and confirm.:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Stienecker	- aye
	Dr. Gretter	- aye
	Dr. Egner	- aye
	Dr. Agresta	- aye
	Dr. Buchan	- aye
	Ms. Noble	- aye
	Mr. Sinnott	- aye
	Dr. Heidt	- aye
	Dr. Steinbergh	- aye

The motion carried.



STATE MEDICAL BOARD OF OHIO

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

December 7, 1994

Mahendra Kumar Tandon, M.D.
4620 St. Clair Avenue
Cleveland, OH 44103-4620

Dear Doctor Tandon:

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) On or about October 3, 1994, in the United States District Court, Northern District of Ohio, Eastern Division, you were found guilty of four (4) felony counts of violation of 26 U.S.C. § 7206, Fraud and false statements.

The judicial finding of guilt as alleged in paragraph (1) above constitutes "(a) plea of guilty to, or a judicial finding of guilt of, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

Your 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.

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.

Mailed 12/8/94

December 7, 1994

Tandon
Page 2

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,



Carla S. O'Day, M.D.
Secretary

CSO:bjm

Enclosures

CERTIFIED MAIL # P 348 888 287
RETURN RECEIPT REQUESTED