STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS, OHIO 43215

November 17, 1989

Arun Kumar Gupta, M.D.
3708 Fenley
Cleveland Heights, Ohio 44121

Dear Doctor Gupta:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Wanita J. Sage, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on November 8, 1989, including Motions approving and confirming the Findings of Fact of the Hearing Examiner, amending the Conclusions of Law and adopting an amended Order.

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

Henry G. Cramblett, M.D.
Secretary

HGC:em
Enclosures

CERTIFIED MAIL NO. P 055 327 425
RETURN RECEIPT REQUESTED

cc: William M. Todd, Esq.
Terri-Lynne Smiles, Esq.

CERTIFIED MAIL NO. P 055 327 426
RETURN RECEIPT REQUESTED

STATE OF OHIO
STATE MEDICAL BOARD

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 Wanita J. Sage, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on November 8, 1989, including Motions approving and confirming the Findings of Fact of the Hearing Examiner, amending the Conclusions of Law, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Arun Kumar Gupta, 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

November 17, 1989
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

ARUN KUMAR GUPTA, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on the 8th day of November, 1989.

Upon the Report and Recommendation of Wanita J. Sage, 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 modification, approval and confirmation by vote of the Board on November 8, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 8th day of November, 1989.

It is hereby ORDERED:

That the application of Arun Kumar Gupta, M.D., to take the FLEX examination in Ohio be GRANTED, without option to sit in another state as a courtesy candidate for Ohio licensure.

(SEAL)

Henry G. Cramblett, M.D.
Secretary

November 17, 1989
Date

OCT 23 1989

REPORT AND RECOMMENDATION

IN THE MATTER OF ARUN KUMAR GUPTA, M.D.

The Matter of Arun Kumar Gupta, M.D., came on for hearing before me, Wanita J. Sage, Esq., Hearing Examiner for the State Medical Board of Ohio, on September 28, 1989.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

A. By letter of June 14, 1989 (State's Exhibit #1), the State Medical Board notified Arun Gupta, M.D., that it proposed to refuse to register or to take disciplinary action against his certificate to practice medicine and surgery in the State of Ohio. The Board alleged that Dr. Gupta's application for California licensure had been denied in December, 1985, after he had been ejected from the California FLEX examination in December, 1984, because he had been observed looking at the examination of another candidate. California's refusal to license Dr. Gupta was alleged to constitute "the limitation, revocation or suspension by another state of a license or a certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(A), Ohio Revised Code. Further, Dr. Gupta's acts and/or omissions were alleged to constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the Board", as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.08, Ohio Revised Code.

Dr. Gupta was advised of his right to request a hearing in this Matter.

B. By document filed with the State Medical Board on July 12, 1989 (State's Exhibit #3), William M. Todd, Esq., and Terri-Lynne Smiles, Esq., requested a hearing on behalf of Dr. Gupta.

II. Appearances

A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General by John C. Dowling, Asssistant Attorney General

B. On behalf of the Respondent: Terri-Lynne B. Smiles, Esq.,

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III. Testimony Heard

Dr. Gupta was the sole witness at hearing.

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 #2: Certified mail receipt and return card showing service of State's Exhibit #1.

2. State's Exhibit #4: July 14, 1989, letter to William M. Todd, Esq., from the State Medical Board advising that a hearing initially set for July 26, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.

3. State's Exhibit #5: July 27, 1989, letter to Attorney Todd from the State Medical Board scheduling the hearing for September 28, 1989.

4. State's Exhibit #6: Dr. Gupta's March 3, 1989, application for Ohio licensure, including his written explanation for the affirmative answer to Question #20 on the Additional Information Form with documents pertaining to the California Board's investigation of Dr. Gupta's ejection from the December, 1984, California FLEX examination.

5. State's Exhibit #7: Documents filed with the State Medical Board on April 21, 1989, including: notarized letter from Dr. Gupta; investigative reports pertaining to Dr. Gupta's ejection from the December, 1984, California FLEX examination; and December 19, 1984, letter to Dr. Gupta from the California Board of Medical Quality Assurance, setting forth that board's policy with regard to individuals ejected from an examination and advising Dr. Gupta of his right to a hearing.

6. State's Exhibit #8: Certified copies of documents from the California Board of Medical Quality Assurance pertaining to its action against Dr. Gupta, including: December 17, 1985, Decision, adopting the Proposed Decision of the Administrative Law Judge, to become effective January 16, 1986; August 19, 1985, Proposed Decision of the Administrative Law Judge; and May 10, 1985, Statement of Issues against Dr. Gupta.

B. Presented by the Respondent

1. Respondent's Exhibit #1: September 22, 1989, letter from Lawrence Martin, M.D., Chief, Pulmonary Division, The Mt. Sinai Medical Center, recommending Dr. Gupta for acceptance in a post-graduate training program.

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2. Respondent's Exhibit #2: September 27, 1989, letter from George Topalsky, M.D., Chief Resident, Department of Medicine, The Mt. Sinai Medical Center, recommending Dr. Gupta.

3. Respondent's Exhibit #3: September 26, 1989, letter from Lynne E. Check, M.D., recommending Dr. Gupta.

FINDINGS OF FACT

1. Arun Kumar Gupta, M.D., was authorized to sit for the FLEX examination given in Long Beach, California, in December, 1984. On December 4, 1984, the first day of that examination, Dr. Gupta was ejected from the examination room after he was observed repeatedly looking at the answer sheets of the examinees seated to his left and to his right.

   These facts are established by State's Exhibits #7 and #8.

2. By a May 10, 1985, Statement of Issues, the California Board of Medical Quality Assurance proposed that Dr. Gupta's application for California licensure be denied based upon its allegations with regard to the circumstances of his ejection from the December, 1984, FLEX examination. On July 30, 1985, a hearing on the California Board's allegations was held before an Administrative Law Judge. Dr. Gupta appeared at that hearing in person and represented himself. On August 19, 1985, the Administrative Law Judge issued a Proposed Decision, setting forth findings of fact and determinations of issues. Those findings and determinations, as set forth in the Proposed Decision (pp. 2-4) included in State's Exhibit #8, are fully incorporated herein by reference as findings of this Hearing Examiner.

   By Decision dated December 17, 1985, the California Board of Medical Quality Assurance adopted the Proposed Decision of the Administrative Law Judge, to become effective January 16, 1986, and ordered that Dr. Gupta's application for a physician's and surgeon's certificate be denied.

   These facts are established by State's Exhibit #8.

3. On or about March 3, 1989, Dr. Gupta submitted an application for medical licensure to the State Medical Board of Ohio. On this application, Dr. Gupta disclosed the California action by answering "yes" to Question #20 on the Additional Information form and by providing a written explanation accompanied by copies of California's report of investigation, proctors' complaints, and a December 19, 1984, letter from the California Board. Dr. Gupta's written statement referred to the December 19, 1984, letter as the "Board's decision" and indicated that, although he had requested a hearing, there had been no change in the decision since it had been "their word against mine." The December 19, 1984, letter set forth the California Board's policy with regard to individuals ejected from examination and advised Dr. Gupta of his right to request a hearing.

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In April, 1989, Dr. Gupta again sent to the State Medical Board copies of the California report of investigation, proctors' complaints, and December 19, 1984, letter. By an accompanying sworn statement, Dr. Gupta indicated that these documents would explain his affirmative answer to Question #20, that the California case had been resolved as indicated in the December 19, 1984, letter, and that there was nothing pending regarding the case.

Neither of Dr. Gupta's written explanations offered any alternative reasons for his having looked around during the California FLEX examination.

These facts are established by State's Exhibits #6 and #7.

4. At hearing in the present Matter, Dr. Gupta denied that he had tried to look at the answer sheets of other examinees during the December, 1984, FLEX examination. He admitted that he had been looking around, but claimed that he had only been trying to see the clocks, one of which had been situated slightly to his left on the wall in front of him, and the other of which had been situated on the wall to his right. He also claimed that he couldn't have seen anyone else's answer sheet because the examinees had been seated too far apart. Besides, he had known that other answer sheets might have been in a different format than his. He asserted that he had had no reason to cheat or to be nervous about taking the FLEX examination; he had been confident of passing since he had had nine years of training, including medical school. Dr. Gupta denied that the California Board had found that he had cheated. He contended that its decision had been based strictly upon his admission that he had looked around. According to Dr. Gupta, because a certification he had signed prior to the examination had stated that he could be ejected from the examination if caught looking around for any reason, his admission of having looked around had been sufficient for the California Board to assume that his ejection had been justified.

The findings and determinations of the California Board (see State's Exhibit #8) essentially rebut Dr. Gupta's claims and contentions. That Board's Finding V specifically states that Dr. Gupta "repeatedly looked at the answer sheets of fellow examinees seated to his left and to his right." That same Finding indicates that Dr. Gupta's "jittery conduct" had attracted the attention of examination proctors, and sets forth in detail the behaviors they observed before having Dr. Gupta ejected from the examination. Those behaviors included Dr. Gupta's looking at the examination materials of other examinees, and then marking his own answer sheet. Finding VI of the California Board indicates that the certification which Dr. Gupta signed included a statement that an examinee would be ejected if observed "copying from or looking at the examination book or paper of another applicant...." The California Board rejected Dr. Gupta's contention that he had not understood the contents of that certification "due to nervousness." Furthermore, Determinations I through III indicate that the California Board found grounds for denial of Dr. Gupta's application by reason of: his "acts of dishonesty, fraud, and deceit with the intent to benefit himself"; his commission of "an act involving dishonesty which is substantially related to the qualifications, functions, and duties of a physician and surgeon"; and his "attempt to subvert the licensing examination."

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These facts are established by the testimony of Dr. Gupta (Tr. at 13-24, 27, 32-36) and by State's Exhibit #8.

5. Dr. Gupta has not taken the FLEX examination in any other state. Although Dr. Gupta's testimony indicated that he is currently eligible to take the California FLEX examination, the December 19, 1984, letter from the California Board indicates that he is merely eligible to reapply and that, after submission of an application, the California Board will determine his eligibility based upon the facts of his individual case and a review of his academic record.

   These facts are established by the testimony of Dr. Gupta (Tr. at 24-25, 34-36) and by State's Exhibit #7.

6. Since January, 1987, Dr. Gupta has been involved in a three-year internal medicine residency at The Mt. Sinai Medical Center, Cleveland. He will complete this training in December, 1989. Letters of recommendation submitted on Dr. Gupta's behalf (Respondent's Exhibits #1 through #3) indicate that he is held in high regard by his colleagues at Mt. Sinai.

   These facts are established by the testimony of Dr. Gupta (Tr. 11-13, 25-27) and by Respondent's Exhibits #1 through #3.

CONCLUSIONS

1. State's Exhibit #8 substantially establishes that the California Board of Quality Assurance denied the application of Arun Kumar Gupta, M.D., for cheating or attempting to cheat on a licensing examination. Such acts would also 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. Therefore, the California Board's denial of licensure constitutes "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

2. The acts, conduct, and/or omissions of Dr. Gupta which led to his ejection from the California FLEX examination and resulted in the denial of his licensure application by the California licensing authority also constitute failure to furnish satisfactory proof of good moral character, as required for licensure in Ohio pursuant to Section 4731.08, Ohio Revised Code. As set forth in Finding of Fact #4 above, the explanations which Dr Gupta offered at hearing in this Matter are substantially rebutted by State's Exhibit #8. It is simply not believable that protors, who were observing his actions over a period of at least 13 minutes, would confuse glances at wall clocks with glances at examination materials on tables.

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3. No finding is made with regard to violation of Section 4731.22((B)(20), Ohio Revised Code, based upon Dr. Gupta's failure to provide satisfactory proof of good moral character, a threshold requirement for Ohio licensure pursuant to Section 4731.08, Ohio Revised Code. Grounds for this Board's denial of Dr. Gupta's application for licensure and/or imposition of disciplinary action are established pursuant to Conclusions #1 and #2 above.

* * * * *

Dr. Gupta's adamant denials at hearing of both objective and subjective facts, which are firmly rebutted by the findings of the California Board, indicate that Dr. Gupta is still engaging in dishonest conduct with the intent to benefit himself. While Dr. Gupta apparently has potential for positive contributions to the medical profession, this Board can condone neither his breach of integrity with regard to a professional licensing examination nor his current denial of responsiblity for his past acts. It is noted that, while Dr. Gupta disclosed the 1985 California action when he applied for Ohio licensure in 1989, he failed to provide copies of any of the post-hearing California documents.

PROPOSED ORDER

It is hereby ORDERED that:

1. The application of Arun Kumar Gupta, M.D., for licensure or examination for licensure to practice medicine and surgery in the State of Ohio shall be and is hereby denied.

2. Further, Dr. Gupta shall not at any time in the future be eligible to either apply for or obtain licensure to practice medicine and surgery or its related branches in the State of Ohio.

Wanita J. Sage

Wanita J. Sage
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF NOVEMBER 8, 1989

Ms. Thompson, Mr. Compton and Mr. Huston left the meeting at this time.

REPORTS AND RECOMMENDATIONS

Dr. O'Day advised that the findings and orders appearing on the Board's agenda are those in the matters of Michael F. Song, M.D.; Dewey O. Mays, III, M.D.; Thomas W. Coleman, M.D.; Willie Leroy Josey, M.D.; and Arun Kumar Gupta, M.D.

Dr. O'Day asked if 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 Michael F. Song, M.D.; Dewey O. Mays, III, M.D.; Thomas W. Coleman, M.D.; Willie Leroy Josey, M.D.; and Arun Kumar Gupta, M.D. A roll call was taken:

ROLL CALL:	Dr. Gretter	- aye
	Dr. Daniels	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Rauch	- aye
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Ms. Rolfes	- aye
	Dr. Agresta	- aye
	Dr. O'Day	- aye

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

.....

Mr. Dilling, Mr. Dowling, Ms. Belenker, and Mr. Jeffries returned to the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF ARUN KUMAR GUPTA, M.D.

Dr. O'Day stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.

Dr. O'Day advised that a request to orally address the Board has been submitted by Terri-Lynne B. Smiles, Dr. Gupta's attorney. Three affirmative votes are necessary to grant this request.

MR. ALBERT MOVED TO ALLOW MS. SMILES TO ADDRESS THE BOARD.

The motion died for lack of a second.

DR. KAPLANSKY MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF ARUN KUMAR GUPTA, M.D. DR. GRETTER SECONDED THE MOTION.

Dr. O'Day asked if there were any questions concerning the proposed findings of fact, conclusions, and order in the above matter.

MS. ROLFES MOVED THAT THE CONCLUSIONS IN THE MATTER OF ARUN KUMAR GUPTA, M.D., BE AMENDED TO SUBSTITUTE THE FOLLOWING IN PLACE OF PROPOSED CONCLUSIONS #2, #3 AND THE SUBSEQUENT PREAMBLE TO THE PROPOSED ORDER:

> It is undisputed that the California Board of Quality Assurance denied the application of Arun Kumar Gupta, M.D., for cheating or attempting to cheat on a licensing examination. This fact alone constitutes substantial, reliable and probative evidence of improper behavior on the part of Dr. Gupta. However, the professional respect which Dr. Gupta has apparently earned since this incident argues forcefully for giving him the opportunity, after almost five years have passed, to retake the FLEX.

AND, THAT THE PROPOSED ORDER IN THE MATTER OF ARUN KUMAR GUPTA, M.D., BE AMENDED TO READ AS FOLLOWS:

> It is hereby ORDERED:
>
> > That the application of Arun Kumar Gupta, M.D., to take the FLEX examination in Ohio be GRANTED, without option to sit in another state as a courtesy candidate for Ohio licensure.

DR. GRETTER SECONDED THE MOTION.

Ms. Rolfes stated that the California Board denied Dr. Gupta a license because Dr. Gupta signed a statement that he would not look around during the examination. Dr. Gupta violated that statement; however, it was never verified that he cheated during the examination.

Ms. Rolfes continued that the violation took place in 1984. Since that time Dr. Gupta's record has been very good, and he has worked at a fine hospital.

Ms. Rolfes stated that she was bothered by the allegation that a person sitting five feet away from another person could see the answers. She stated that with the assistance of her husband, she tried to re-enact the situation and didn't have time to focus on the paper situated five feet away.

Ms. Rolfes stated that looking around during an examination is not proof that Dr. Gupta cheated, although he did violate the agreement he signed, which stated that he would not look around during the examination.

A roll call vote was taken on Ms. Rolfes' motion to amend:

ROLL CALL VOTE:

Dr. Gretter	- aye
Dr. Daniels	- aye
Dr. Stephens	- aye
Mr. Jost	- aye
Dr. Rauch	- abstain
Mr. Albert	- aye
Dr. Kaplansky	- aye
Ms. Rolfes	- aye
Dr. Agresta	- aye

The motion carried.

MR. ALBERT MOVED TO APPROVE AND CONFIRM MS. SAGE'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER AS AMENDED IN THE MATTER OF ARUN KUMAR GUPTA, M.D. DR. KAPLANSKY SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:

Dr. Gretter	- aye
Dr. Daniels	- aye
Dr. Stephens	- aye
Mr. Jost	- aye
Dr. Rauch	- abstain
Mr. Albert	- aye
Dr. Kaplansky	- aye
Ms. Rolfes	- aye
Dr. Agresta	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

June 14, 1989

Arun Gupta, M.D.
3708 Fenley
Cleveland Heights, OH 44121

Dear Doctor Gupta:

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 December 4, 1984, you were ejected from the FLEX examination administered by the State of California at the Long Beach Convention Center after you were observed looking at the examination of another candidate.

Subsequently, on or about December 17, 1985, your application for licensure was denied by the State of California based upon a Decision and Order which is attached hereto and fully incorporated by reference herein.

The refusal to license, as alleged in the above paragraph (1), constitutes "the limitation, revocation or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(A), Ohio Revised Code.

Further, the acts and/or omissions, as alleged in the above paragraph (1), individually and/or collectively, constitute "(v)iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.08, Ohio Revised Code.

June 14, 1989

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, that request 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 the 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 MD

Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P569 363 942
RETURN RECEIPT REQUESTED

STATE OF CALIFORNIA
Board of Medical Quality Assurance
I do hereby certify that this document is a true and correct copy of the original on file in this office.

SIGNED 4/27/89 DATE

CHIEF ENFORCEMENT
TITLE

BEFORE THE DIVISION OF LICENSING

BOARD OF MEDICAL QUALITY ASSURANCE

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:	No. A-442
ARUN KUMAR GUPTA	L-34594
Respondent.	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Medical Quality Assurance as its decision in the above-captioned matter.

This Decision shall become effective on January 16, 1986.

IT IS SO ORDERED December 17, 1985.

BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BY:

GALAL S. GOUGH, M.D.
President
Division of Licensing

MCG:btm

1989

I

Complainant Kenneth J. Wagstaff is the Executive Director of the Board of Medical Quality Assurance of the State of California (hereinafter referred to as the "Board") and made and filed the Statement of Issues solely in his official capacity.

II

On March 8, 1984, the Division of Licensing of the Board (hereinafter referred to as "Division") received an application to take the Federation Licensing Examination (hereinafter referred to as "FLEX") from Arun Kumar Gupta (hereinafter referred to as "respondent").

III

On or about November 6, 1984, the Board informed respondent that he had qualified to take the FLEX that was scheduled to be administered at the Long Beach Convention Center, Long Beach, California, on December 4, 5 and 6 of 1984.

IV

On December 4, 1984, respondent reported to the examination site, was assigned FLEX No. 0053057, and commenced participation in the examination. However, before the conclusion of the first day, he was ejected from the examination room. Said ejection was reasonable and for good cause as set forth hereinbelow.

V

On December 4, 1984, during the multiple choice section of the written examination, respondent repeatedly looked at the answer sheets of fellow examinees seated to his left and to his right. Such conduct was observed by a licensing technician of the Division whose attention was first directed to respondent during the morning session by his jitteriness for approximately 5 to 6 minutes during which time he did not mark his answer sheet. From approximately 3:05 to 3:18 p.m., respondent was observed to look to his left with his head slightly turned, glance at the examination material of the examinee seated to his immediate left, and then mark his own answer sheet. Respondent was observed to repeat this procedure; however, the examinee to his left completed this portion of the examination and was excused, at which time respondent did then look to his right with his head slightly turned, glance at the examination material of the examinee stead to his immediate right, and then mark his own answer sheet. Respondent repeated the procedure

II

Grounds for the denial of respondent's application for a physician's and surgeon's certificate exist pursuant to the provisions of Business and Professions Code Section 2221 in conjunction with Section 2234 of said Code by reason of respondent's unprofessional conduct in that respondent has committed an act involving dishonesty which is substantially related to the qualifications, functions, and duties of a physician and surgeon.

III

Grounds for the denial of respondent's application for a physician's and surgeon's certificate exist pursuant to the provisions of Business and Professions Code Section 496 by reason of respondent's attempt to subvert the licensing examination.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I

1. The ejection of Arun Kumar Gupta from the Federation Licensing Examination was reasonable and for good cause.

2. The application of Arun Kumar Gupta for a physician's and surgeon's certificate is hereby denied.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on July 30, 1985, at Los Angeles, California, and recommend its adoption as the decision of the Board of Medical Quality Assurance.

DATED: August 19 1985

Marguerite C. Geftakys

MARGUERITE C. GEFTAKYS
Administrative Law Judge
Office of Administrative Hearings

MCG:btm

3. On or about November 6, 1984, the board informed respondent that he had qualified to take the FLEX that was scheduled to be administered at the Long Beach Convention Center, Long Beach, California in December 4th, 5th and 6th of 1984.

4. On December 4, 1984, respondent, reported to the examination site, was assigned FLEX Number 0053057 and initiated his participation in the examination. However, before the conclusion of the day, he was ejected from the examination room.

5. Business and Professions Code section 480, subdivision (a)(2), provides that a board may deny a license regulated by the Business and Professions Code on the ground that the applicant has done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another or substantially injure another. (All sectional references herein are to the Business and Professions Code unless otherwise noted.)

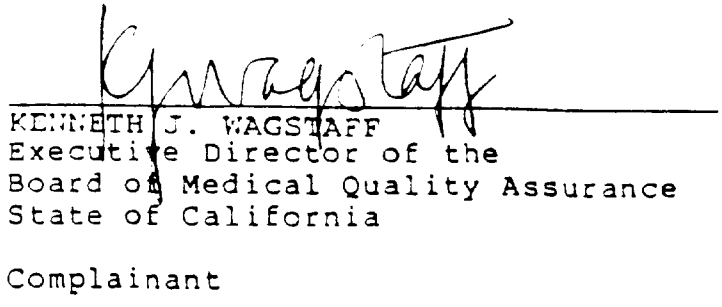
6. Section 480, subdivision (a)(3), provides that a board may deny a license regulated by the Business and Professions Code on the ground that the applicant has done any act which if done by a licentiate of the profession in question would be grounds for suspension or revocation of license.

7. Section 2221 provides that the division may deny a physician's and surgeon's certificate to any applicant guilty of unprofessional conduct and for that purpose shall exercise all the powers granted in the Medical Practice Act.

/

hearing, issue a decision denying respondent's application and ordering such other and further relief as it deems proper.

DATED: May 10, 1985.



KENNETH J. WAGSTAFF
Executive Director of the
Board of Medical Quality Assurance
State of California

Complainant