FILED
COURT OF APPEALS
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CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Mazen B. Hamadeh,	:	
Appellant-Appellant,	:	
v.	:	No. 00AP-1292
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
Appellee-Appellee.	:	

JOURNAL ENTRY OF DISMISSAL

Appellant having failed to file a brief within the time required by App.R. 18(C), and having failed to respond to notification from the Assignment Commissioner that the time for filing the brief had expired, this appeal is *sua sponte* dismissed for failure of appellant to file a brief.

Judge Cynthia C. Lazarus

Judge John P. Kennedy

Judge Donna Bowman

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

MAZEN B. HAMADEH,	]	
Appellant,	]	**CASE NO. 99CVF12-10701**
	]	**JUDGE CONNOR**
STATE MEDICAL BOARD OF OHIO,	]	
Appellee.	]	

MW 10·10·00

FINAL APPEALABLE ORDER

DECISION AND JUDGMENT ENTRY GRANTING APPELLEE'S MOTION TO DISMISS FILED JANUARY 7, 2000.

Rendered this 10 day of October, 2000.

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2000 OCT 11 AM 8:44
CLERK OF COURTS

Connor, J.

This case is before the Court on Appellant's motion to dismiss filed January 7, 2000. Appellee claims that by filing his request for hearing late that Appellant has failed to exhaust his administrative remedies and the Court is, therefore, without jurisdiction to hear the matter.

The Medical Board issued a notice of opportunity for hearing to Appellant on September 8, 1999 at the address he last provided to the Board. The letter was served by certified mail on Appellant on September 25, 1999. It notified him that he had thirty days to request a hearing from the date of the mailing of the notice. The notice was mailed on September 9, making any request for hearing due on October 9. The 9th was a Saturday and the 11th was a holiday. Thus, his

appeal was due no later than October 12. His request for hearing was received by the Medical Board on October 14. It was not mailed until the 12th.

Appellant has failed to exhaust his administrative remedies by failing to request a hearing at the administrative level. ***State v. Fiorica, 1988 Ohio App. LEXIS 4367, Franklin App. No. 88AP-516, unreported, decided November 3, 1988; Harrison v. Ohio State Med. Bd. (1995), 103 Ohio App. 3d 317; Citywide Ambulance Servs. v. Director, Ohio Dep't. of Human Servs, 1997 Ohio App. LEXIS 1551, Franklin App. No. 96APE08-1119, unreported, decided April 17, 1997.*** As a result, the Common Pleas Court is without jurisdiction to hear the matter on the merits since Appellant failed to exhaust his administrative remedies and since there is no claim that his request was timely filed with the Board. Had there been any dispute over the timeliness of the hearing, the Court could have reviewed that issue. ***Id., Hsueh v. State Med. Bd. of Ohio, 1989 Ohio App. LEXIS 3977, Franklin App. No. 88AP-276, unreported, decided October 17, 1989.*** Dr. Hamadeh does not make that claim.

Appellant argues that ***Goldman v. State Medical Bd. (1996), 110 Ohio App. 3d 124***[1] requires that the Court review the case despite the fact

[1] This case is commonly known as ***Goldman I.*** The appeal after remand is known as ***Goldman II (Goldman v. State Med. Bd. of Ohio, 1998 Ohio App. LEXIS 4918, Franklin App. No. 98AP-238, unreported, decided October 20, 1998).*** The ***Goldman*** cases appear to be in conflict with ***Harrison*** and ***Fiorica*** but have not specifically overruled them. In ***Goldman I,*** the Franklin County Court of Appeals held that even without a request for hearing by the Appellant whose license was in peril, the Board had to afford a "meaningful hearing" and not act in a summary fashion. In so holding they were interpreting the language in R.C. 4731.22 which at the time required an adjudicatory hearing requiring "procedural safeguards".

that Appellant waived his appearance at the Board hearing. However, apparently in response to ***Goldman***, the legislature amended the code as it pertains to what is required at the Board hearing where no timely request for hearing was made as is the situation herein. Effective March 9, 1999, R.C. 4731.22(J) was amended to read as follows, eliminating the need for an adjudicatory hearing under these circumstances:

> (J) If the board is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and if the individual subject to the notice does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by an affirmative vote of not fewer than six of its members, a final order that contains the board's findings. In that final order, the board may order any of the sanctions identified under division (A) or (B) of this section.

The legislature has eliminated the Goldman requirement of a "meaningful review" where a physician has done nothing to protect his own rights. Since Appellant waived his right to a hearing by failing to file his request for hearing in a timely manner, the Board acted pursuant to the authority found in R.C. 4731.22(J). Appellant failed to exhaust his administrative remedies and this Court, therefore, is without jurisdiction to consider an appeal.

Therefore, the motion to dismiss filed by Appellee is **GRANTED.** Costs to Appellant.

JOHN A. CONNOR, JUDGE

Appearances:

Kevin P. Byers, Esq.
Attorney for Appellant

Rebecca J. Albers, Esq.
Attorney for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Mazen B. Hamadeh, MD, *
6702 Mission Club Blvd, #208
Orlando, Florida 32821
Appellant,

v. *

State Medical Board of Ohio,
77 South High St., 17th Floor
Columbus, Ohio 43266-0315 *
Appellee.

CASE NO. _____

JUDGE _____

Appeal from the State Medical Board of Ohio

APPELLANT'S NOTICE OF APPEAL

Pursuant to **RC 119.12**, notice is hereby given that Appellant, Mazen B. Hamadeh, MD, appeals the order of the State Medical Board dated November 17, 1999, mailed December 10, 1999, and received by Appellant on December 14, 1999, (copy attached as Exhibit A.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

Kevin P. Byers 0040253
One Columbus
10 West Broad Street, Suite 260
Columbus, Ohio 43215
614.228.6283 Fax 228.6425

Attorney for Mazen B. Hamadeh, MD

SMB original

KEVIN P. BYERS
CO., LPA
One Columbus
614.228.6283

Certificate of Service

I certify that an original of the foregoing document was hand delivered this 17th day of December, 1999, to the Court of Common Pleas of Franklin County, Ohio, 369 South High Street, 3d Floor, Columbus, Ohio 43215 and also a copy was deposited in first class U.S. Mail this same date addressed to Assistant Attorney General Anne B. Strait, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPByers

Kevin P. Byers

KEVIN P. BYERS
CO., LPA
❖ ❖ ❖
One Columbus
614.228.6283

State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

November 17, 1999

Mazen B. Hamadeh, M.D.
6702 Mission Club Blvd., #208
Orlando, FL 32821

Dear Doctor Hamadeh:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on November 17, 1999.

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 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.

Very truly yours,

Anand G. Garg, M.D.
Secretary

AGG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 233 896 626
RETURN RECEIPT REQUESTED

CORRECTED MAILING
CERTIFIED MAIL RECEIPT NO. Z 233 896 651
RETURN RECEIPT REQUESTED

Mailed 11/18/99
Corrected Mailing 12/10/99

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry, approved by the State Medical Board, meeting in regular session on November 17, 1999, constitute a true and complete copy of the Findings, Order and Journal Entry in the Matter of Mazen B. Hamadeh, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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

(SEAL)

Anand G. Garg, M.D.
Secretary

NOVEMBER 17, 1999
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

MAZEN B. HAMADEH, M.D. *

FINDINGS, ORDER AND JOURNAL ENTRY

By letter dated September 8, 1999, notice was given to Mazen B. Hamadeh, M.D., that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.07, Ohio Revised Code, said notice was sent September 9, 1999 via certified mail, return receipt requested, to the address of record of Doctor Hamadeh, that being 6549 Tanglewood Bay Drive, Suite 1511, Orlando, FL 32821.

Doctor Hamadeh responded to the Board's notice and requested a hearing, but his request for hearing in this matter was received by the Board on October 14, 1999. Such request was not filed in a timely manner due to the fact that more than thirty (30) days had elapsed since the mailing of the Notice of Opportunity for Hearing.

WHEREFORE, for the reasons outlined in the letter of Notice of Opportunity for Hearing, which is attached hereto and incorporated herein, it is hereby ORDERED that the license of Mazen B. Hamadeh, M.D., to practice medicine and surgery in the State of Ohio be REVOKED.

This Order shall become effective IMMEDIATELY.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 17TH day of NOVEMBER 1999, and the original thereof shall be kept with said Journal.

Anand G. Garg, M.D.
Secretary

(SEAL)

NOVEMBER 17, 1999
Date

State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/ 466-3934 • Website: www.state.oh.us/med/

September 8, 1999

Mazen B. Hamadeh, M.D.
6549 Tanglewood Bay Drive, Suite 1511
Orlando, Florida 32821

Dear Doctor Hamadeh

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, permanently 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 October 8, 1997, the State Medical Board of Ohio issued an order granting you a certificate to practice medicine and surgery in Ohio and reprimanding you for practicing medicine or surgery without a certificate.

(2) Effective on or about February 20, 1999, the Disciplinary Subcommittee of the Michigan Board of Medicine (hereinafter the "Michigan Board") issued a Consent Order and Stipulation which reprimanded you. The Consent Order and Stipulation included your agreement that the allegations of fact contained in Count II of the Michigan Board Administrative Complaint dated September 28, 1998, are true and constitute a violation of Section 16221(h) of the Michigan Public Health Code. Count II of the Administrative Complaint alleged that you failed to notify the Michigan Board of the State Medical Board of Ohio's October 8, 1997 adverse order within 30 days of its issuance, as required by Section 16222(3) of the Michigan Public Health Code. A copy of the Michigan Board Consent Order and Stipulation and Administrative Complaint are attached hereto and fully incorporated herein.

The Michigan Board Consent Order and Stipulation as alleged in paragraph (2) above, constitutes "[t]he 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, the imposition of probation by that authority, or the issuance of an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code (as in effect prior to March 9, 1999).

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

Mailed 9/9/99

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.

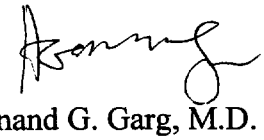
You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence 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, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # Z 233 896 452
RETURN RECEIPT REQUESTED

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
OFFICE OF HEALTH SERVICES
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

RECEIVED
NOV 20 1998
HEALTH SERVICES
Complaint and Allegation Division

In the Matter of

MAZEN B. HAMADEH, M.D.
License Number: 43-01-061310

File Number: 43-98-1561-00
CONSENT ORDER AND STIPULATION

CONSENT ORDER

WHEREAS, an Administrative Complaint was issued on September 28, 1998, charging Mazen B. Hamadeh, M.D., hereafter Respondent, with having violated sections 16221(b)(x) and 16221(h) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq; and

WHEREAS, Respondent has admitted, by Stipulation submitted herewith, that the facts alleged in the Complaint are true and constitute violations of the Public Health Code; and

WHEREAS, the Disciplinary Subcommittee of the Michigan Board of Medicine, hereafter Disciplinary Subcommittee, has reviewed the Stipulation and, based upon the matters asserted therein, agrees that the public interest is best served by resolution of the outstanding Complaint; now, therefore,

STATE OF MICHIGAN — INGHAM COUNTY
We certify that the foregoing is a true
copy of the original on file in the office
of the Department of Consumer and Industry
Services, Office of Health Services.

IT IS HEREBY FOUND that the allegations of fact and law set forth in the Complaint are true and constitute violations of sections 16221(b)(x) and 16221(h) of the Public Health Code, supra.

Accordingly,

IT IS HEREBY ORDERED that, for violation of sections 16221(b)(x) and 16221(h) of the Public Health Code, supra, Respondent shall be and hereby is REPRIMANDED.

IT IS FURTHER ORDERED that this order shall be effective 30 days from the date signed by the Disciplinary Subcommittee, as set forth below.

Dated: 1/20/99

MICHIGAN BOARD OF MEDICINE

By _____
Chairperson, Disciplinary Subcommittee

CONTINUED ON PAGE 3

STATE OF MICHIGAN — INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Consumer and Industry Services, Office of Health Services.

STIPULATION

STATE MEDICAL BOARD
OF OHIO
1999 JUN 23 P 2:17

1. The allegations of fact contained in the Administrative Complaint dated September 28, 1998, are true and constitute violations of sections 16221(b)(x) and 16221(h) of the Public Health Code, supra.

2. Respondent understands and intends that by signing this stipulation Respondent is waiving the right, pursuant to the Public Health Code, the rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq; MSA 3.560(101) et seq, to require Complainant to prove the charges set forth in the Administrative Complaint by presentation of evidence and legal authority, and to appear with an attorney and such witnesses as Respondent may desire to present a defense to said charges.

3. Douglas Mack, M.D., a member of the Board who supports this proposal, and Complainant's representative are both free to discuss this matter with the Disciplinary Subcommittee and recommend acceptance of the resolution set forth in the foregoing Consent Order.

4. The foregoing Consent Order is approved as to form and substance by Respondent and Complainant and may be entered as the final order of the Disciplinary Subcommittee in said cause.

STATE OF MICHIGAN -- INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Consumer and Industry Services, Office of Health Services.

5. The foregoing proposal is conditioned upon acceptance by the Disciplinary Subcommittee, Respondent and Complainant expressly reserving the right to further proceedings without prejudice should the Consent Order be rejected.

AGREED TO BY:

Thomas C. Lindsay II, Director
Office of Health Services
Complainant
Dated: November 30, 1998

AGREED TO BY:

Mazen B. Hamadeh, M.D.
Respondent
Dated: NOVEMBER 18TH 98

State of Ohio)
County of Lucas) ss

On the 18th day of November, 1998, before me, a Notary Public in and for said county, appeared Mazen B. Hamadeh, M.D., who, upon oath, stated that he has read the foregoing Consent Order and Stipulation by him subscribed, that he knows the contents thereof to be true, and that the signing of said Consent Order and Stipulation is his free act and deed.

Notary Public, Lucas County
My Commission expires SUSAN R. CALMES
Notary Public, State of Ohio
My Commission Expires Feb. 27, 2000

This is the last and final page of a Consent Order and Stipulation in the matter of Mazen B. Hamadeh, M.D., File Number 43-98-1561-00, before the Disciplinary Subcommittee of the Michigan Board of Medicine, consisting of four pages, this page included.

BH

STATE OF MICHIGAN — INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Consumer and Industry Services, Office of Health Services.

STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
OFFICE OF HEALTH SERVICES
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

MAZEN B. HAMADEH, M.D.
License Number: 43-01-061310

File Number: 43-98-1561-00

ADMINISTRATIVE COMPLAINT

NOW COMES the Michigan Department of Consumer & Industry Services, hereafter Complainant, by Thomas C. Lindsay II, Director, Office of Health Services, and files this complaint against Mazen B. Hamadeh, M.D., hereafter Respondent, alleging upon information and belief as follows:

1. The Michigan Board of Medicine, hereafter Board, is an administrative agency established by the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq. Pursuant to section 16226 of the Public Health Code, supra, the Board's Disciplinary Subcommittee is empowered to discipline licensees for violations of the Code.

2. Respondent is currently licensed to practice medicine in the state of Michigan and holds a current controlled substance license.

STATE OF MICHIGAN — INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Consumer and Industry Services, Office of Health Services.

3. On or about June 25, 1996, Respondent filed an application for licensure to practice medicine and surgery in the state of Ohio.

4. On October 8, 1997, the State Medical Board of Ohio, hereafter Ohio Board, issued an Entry of Order which granted Respondent a license to practice medicine and surgery in Ohio and also reprimanded Respondent. The Ohio Board order was based on Respondent's conduct as set forth in a Report and Recommendation issued in the matter. Copies of the Entry of Order and Report and Recommendation, marked Exhibit A, are attached and incorporated.

5. Respondent failed to notify the Department of the final adverse administrative action taken by the Ohio Board within 30 days after the date of the action.

COUNT I

The foregoing disciplinary action in the state of Ohio constitutes a final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, in violation of section 16221(b)(x) of the Public Health Code, supra.

STATE OF MICHIGAN — INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Consumer and Industry Services, Office of Health Services.

COUNT II

Respondent's failure to notify the Department of the final adverse administrative action by the Ohio Board, as required by section 16222(3) of the Public Health Code, supra, constitutes a failure to report, in violation of section 16221(h) of the Public Health Code, supra.

The within complaint is based upon files and records maintained by the Department and the attached Affidavit of Pamela Dixon.

WHEREFORE, Complainant requests that the within complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the license. If compliance is not shown, Complainant further requests that formal proceedings be commenced pursuant to the Public Health Code, rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq; MSA 3.560(101) et seq.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(7) of the Public Health Code, supra, Respondent has 30 days from the date of receipt of this complaint to submit a written response to the allegations contained herein. The written response shall be submitted to Complainant, Thomas C. Lindsay II, Director, Office of

STATE OF MICHIGAN — INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Consumer and Industry Services, Office of Health Services.

Health Services, Department of Consumer & Industry Services, P.O. Box 30670, Lansing, MI 48909.

RESPONDENT IS FURTHER NOTIFIED that, pursuant to section 16231(8) of the Public Health Code, supra, Respondent's failure to submit a written response within 30 days, as noted above, shall be treated as an admission of the allegations contained herein and shall result in transmittal of this complaint directly to the Disciplinary Subcommittee for imposition of an appropriate sanction.

Thomas C. Lindsay II, Director
Office of Health Services

DATED: September 28, 1998

Attachments

This is the last and final page of an Administrative Complaint in the matter of Mazen B. Hamadeh, M.D., File Number 43-98-1561-00, before the Disciplinary Subcommittee of the Michigan Board of Medicine, consisting of four pages, this page included.

BH

STATE OF MICHIGAN — INGHAM COUNTY
We certify that the foregoing is a true copy of the original on file in the office of the Department of Consumer and Industry Services, Office of Health Services.

STATE MEDICAL BOARD OF OHIO
77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614)466-3934

October 8, 1997

Mazen B. Hamadeh, M.D.
6549 Tanglewood Bay Drive, Suite 1511
Orlando, FL 32821

Dear Doctor Hamadeh:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Suzanne E. Kelly, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 8, 1997, 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, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Thomas E. Gretter, M.D.
Secretary

TEG:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. Z 395 587 636
RETURN RECEIPT REQUESTED

cc: Duplicate mailing to:
3516 Mont Marte Dr., Ste. 1124
Orlando, Fl 32822
CERTIFIED MAIL RECEIPT NO. Z 395 587 637
RETURN RECEIPT REQUESTED

Mailed 10/15/97

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Suzanne E. Kelly, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 8, 1997, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and 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 Mazen B. Hamadeh, 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.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

10/9/97
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *

*

MAZEN D. HAMADEH, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 8, 1997.

Upon the Report and Recommendation of Suzanne E. Kelly, State Medical Board Attorney Hearing Examiner, designated in this Matter 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.

PROPOSED ORDER

It is hereby ORDERED that the application of Mazen B. Hamadeh, M.D., for a certificate to practice medicine and surgery in the State of Ohio is hereby GRANTED, on the condition that Dr. Hamadeh otherwise meets all statutory and regulatory requirements.

It is further ORDERED that the certificate of Dr. Hamadeh to practice medicine and surgery in the State of Ohio shall be REPRIMANDED.

Thomas E. Gretter, M.D.
Secretary

(SEAL)

10/9/97
Date

STATE MEDICAL BOARD
OF OHIO

97 SEP -4 PM 3:17

REPORT AND RECOMMENDATION
IN THE MATTER OF MAZEN B. HAMADEH, M.D.

The Matter of Mazen B. Hamadeh, M.D., came on for hearing before Suzanne E. Kelly, Esq., Hearing Examiner for the State Medical Board of Ohio, on August 4, 1997.

INTRODUCTION

I. Basis for Hearing

A. By letter dated May 14, 1997 (State's Exhibit 1), the State Medical Board of Ohio [Board] notified Mazen B. Hamadeh, M.D., that it intended to determine whether to take disciplinary action against or to refuse to register his certificate to practice medicine and surgery for one or more of the following reasons:

1. On or about June 25, 1996, Dr. Hamadeh filed an application for licensure to practice medicine and surgery in the State of Ohio which is currently pending.

2. During the period October 1992 through August 1993, Dr. Hamadeh was employed by Riverside Hospital, Toledo, Ohio, as a "House Officer" where he performed history and physical examinations for compensation.

   Dr. Hamadeh held himself out as a physician with a distinctive name tag inscribed "Dr. M. B. Hamadeh," identified himself to hospital patients as "the history and physicals doctor" and signed the hospital history and physicals records as "Dr. M. B. Hamadeh."

   At no time during the above time period was Dr. Hamadeh licensed to practice medicine and surgery by the State Medical Board of Ohio.

(State Exhibit 1) The Board alleged that the acts, conduct, and/or omissions as alleged above individually and/or collectively, constitute "'(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4731.41, Practice of

STATE MEDICAL BOARD
OF OHIO
97 SEP -4 PM 3:17

medicine or surgery without a certificate and 4731.99, Penalties, [Ohio Revised Code.]"

Further, the Board alleged that Dr. Hamadeh's acts, conduct, and/or omissions as alleged above, individually and/or collectively, constitute "'violating or attempting to violate, directly or indirectly, or assisting in 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 4731.41 Practice of medicine or surgery without a certificate."

The Board also alleged that Dr. Hamadeh's acts, conduct, and/or omissions as alleged above, individually and/or collectively, constitute "'a failure to furnish satisfactory proof of good moral character' as required by Sections 4731.29 and 4731.08, Ohio Revised Code."

In addition, the Board informed Dr. Hamadeh of his right to request a hearing in this Matter. (State's Exhibit 1)

B. Dr. Hamadeh filed a written hearing request on June 18, 1997. (State's Exhibit 2)

II. Appearances

A. On behalf of the State of Ohio: Betty D. Montgomery, Attorney General, by Elizabeth Collis, Assistant Attorney General.

B. On behalf of the Respondent: Dr. Hamadeh was apprised of his right to be represented by counsel, appear on his own behalf or submit written contentions. Dr. Hamadeh chose to submit documents on his behalf.

EVIDENCE EXAMINED

I. Testimony Heard

Neither side presented testimony.

II. Exhibits Examined

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

STATE MEDICAL BOARD
OF OHIO
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A. Presented by the State

1. State's Exhibit 3: Copy of June 23, 1997, letter to Dr. Hamadeh from the Board advising that a hearing had been scheduled for June 30, 1997, but further advising that the hearing had been postponed pursuant to Section 119.09, Ohio Revised Code. (4 pp.)

2. State's Exhibit 4: Copy of June 25, 1997, letter to Dr. Hamadeh from the Board scheduling the hearing for July 2, 1997.

3. State's Exhibit 5: Copy of June 26, 1997, State's Motion for Continuance. (3 pp.)

4. State's Exhibit 6: Copy of June 30, 1997, Entry rescheduling the hearing for August 4, 1997.

5. State's Exhibit 7: Affidavit from Penny Grubb, Chief of Licensure, State Medical Board of Ohio. (2 pp.)

6. State's Exhibit 7A: Copy of Dr. Hamadeh's Application for Certificate, Medicine or Osteopathic Medicine in the State of Ohio. (11 pp.)

7. State's Exhibit 7B: Copy of December 11, 1996, letter to Dr. Hamadeh from the Board regarding application for licensure. (6 pp.)

8. State's Exhibit 7C: Copy of Affidavit and Release of Applicant. (8 pp.)

9. State's Exhibit 7D: Copy of January 3, 1997, letter to the Board from Dr. Hamadeh with attachments. (15 pp.)

10. State's Exhibit 8: December 12, 1996, certification by the Secretary of the Board.

B. Respondent's Exhibit

1. Respondent's Exhibit A: Written statement from Dr. Hamadeh with attachments. (3 pp.)

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SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

1. Mazen B. Hamadeh, M.D., earned his medical degree from the Tishreen University, School of Medicine, in Syria. He completed a one year internship at Mount Sinai Medical Center in Cleveland, Ohio, in June 1992. (State's Exhibits [St. Exs.] 7 & 7A at 2)

2. In November 1992, Dr. Hamadeh began working at Riverside Hospital in Toledo, Ohio. His duties included performing histories and physicals for admissions to different specialty departments in the hospital. Dr. Hamadeh received $25.00 for each history and physical examination performed. Dr. Hamadeh noted that he was not involved in any direct patient care delivery, treatment or management. (St. Exs 7 & 7D)

   Dr. Hamadeh's title was history and physical physician and he introduced himself to patients this way. Dr. Hamadeh wore a name tag with the title, Dr. M. B. Hamadeh. He dictated his history and physicals using the title "Dr. M. B. Hamadeh." These were co-signed by the patient's attending physician. Dr. Hamadeh did not have a desk or door name plate with his name and title, nor was his name and title published in any printed or posted directory. (St. Exs. 7, 7C, &7D)

3. From November 1992 to August 1993, Dr. Hamadeh worked for Riverside Hospital. He did not hold a training certificate, nor a certificate to practice medicine and surgery in Ohio during this employment. In September 1993, Dr. Hamadeh began a three year residency in internal medicine at Hurly Medical Center in Flint, Michigan. Following his residency, Dr. Hamadeh moved to Florida. He is currently practicing internal medicine in a group practice. (St. Exs. 7, 7A, 7D & 8)

4. Dr. Hamadeh submitted a written statement.

   > I am very familiar with the hospitals in the states of Ohio and Michigan due to living and completing my residency training in these two states. Regulations mandate hospitals to have history and physical exam for every new inpatient admission performed within the initial 24 hours following the admission time. A large

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number of hospitals (i.e. Mercy, Riverside and St. Charles hospitals in Toledo and many others in Ohio and Michigan and maybe in other states) hired senior medical students, nurse practitioners, physician assistants, physicians awaiting their residency training program start date (like myself) or resident physicians, to perform the history and physical exams. So obviously performing above duty didn't necessarily require a licensed physician, was not involved in any direct patient care delivery, was not pertaining to patient treatment/management and is fully supervised by licensed attending physicians.

Myself, I was among large number of individuals having no state license perform[ing] the above duty in too many hospitals in Ohio/Michigan in NO intention nor attempt to violate any provisions in these state's Medical Boards. I am certain that currently in the state of Ohio there are licensed physicians...who previously performed above described history and physical exams duty with no state license during that duty period.

(St. Ex. 2, Respondent's Exhibit A)

FINDINGS OF FACT

1. On or about June 25, 1996, Dr. Hamadeh filed an application for licensure to practice medicine and surgery in the State of Ohio which is currently pending.

2. During the period October 1992 through August 1993 Dr. Hamadeh was employed by Riverside Hospital, Toledo, Ohio, as a "House Officer" where he performed history and physical examinations for compensation.

   Dr. Hamadeh wore a name tag inscribed "Dr. M. B. Hamadeh," identified himself to hospital patients as "the history and physicals doctor" and signed the hospital history and physicals records as "Dr. M. B. Hamadeh."

3. At no time during the above time period was Dr. Hamadeh licensed to practice medicine and surgery by the State Medical Board of Ohio.

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LEGAL ISSUES

Section 4731.41, Ohio Revised Code, states, in part:

> No person shall practice medicine and surgery, or any of its branches without a certificate from the state medical board....

The practice of medicine is defined in Section 4731.34, Ohio Revised Code, which states, in part:

> A person shall be regarded as practicing medicine, [or] surgery,...within the meaning of this chapter...who uses the words or letters, "Dr.," "Doctor," "Professor," "M.D.,"...or any other title in connection with the person's name which in any way represents the person as engaged in the practice of medicine, surgery,...in any of its branches, or who examines or diagnoses for compensation of any kind, or prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease....
>
> The use of any such words, letters, or titles in any connection or under such circumstances as to induce the belief that the person who uses them is engaged in the practice of medicine, surgery...is prima-facie evidence of the intent of such person to represent the person as engaged in the practice of medicine, [or] surgery....

Dr. Hamadeh admitted that he identified himself as the "history and physicals doctor." He also wore a name plate that identified him as "Dr. M. B. Hamadeh." Dr. Hamadeh received compensation for each history and physical that he completed. These activities clearly fall within the definition of "practice of medicine," as contained in the Ohio Revised Code.

CONCLUSIONS OF LAW

1. The conduct as described in Findings of Fact 2 and 3 individually and/or collectively, constitutes "'(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice,' as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4731.41 Practice of

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medicine or surgery without a certificate and 4731.99 Penalties, Ohio Revised Code."

2. Dr. Hamadeh's conduct as described in Findings of Fact 2 and 3, individually and/or collectively, constitutes "'violating or attempting to violate, directly or indirectly, or assisting in 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 4731.41 Practice of medicine or surgery without a certificate, Ohio Revised Code."

3. Dr. Hamadeh's conduct as described in Findings of Fact 1 through 3, individually and/or collectively, does not constitute "'a failure to furnish satisfactory proof of good moral character' as required by Sections 4731.29 and 4731.08, Ohio Revised Code." Dr. Hamadeh's conduct may have been the result of ignorance of the law or poor judgment, rather than a lack of good moral character. This conclusion is supported by Dr. Hamadeh's complete cooperation with the Board. He fully disclosed his working relationship with Riverside Hospital on his initial application and provided additional information upon request. Further, the individuals who provided references for Dr. Hamadeh's application attested to his good moral character.

PROPOSED ORDER

It is hereby ORDERED that the application of Mazen B. Hamadeh, M.D., for a certificate to practice medicine and surgery in the State of Ohio is hereby GRANTED, on the condition that Dr. Hamadeh otherwise meets all statutory and regulatory requirements.

It is further ORDERED that the certificate of Dr. Hamadeh to practice medicine and surgery in the State of Ohio shall be REPRIMANDED.

Suzanne E. Kelly
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 OCTOBER 8 , 1997

REPORTS AND RECOMMENDATIONS

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

Ms. Noble 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: Patricia J. Bonitatibus, M.D.; Wayne R. Clayman, D.P.M.; Robert C. Erickson, II, M.D. & Michael L. Lykins, D.O.; Gary F. Gladieux, M.D.; Mazen B. Hamadeh, M.D.; Bruce D. Long, M.D.; Salvatore Lee Oliverio, D.P.M.; and John H. Pellegrini, D.O.

A roll call was taken:

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

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

Mr. Sinnott indicated that he did not read the materials in the matter of Gary F. Gladieux, M.D., since his law firm represented Dr. Gladieux. He will abstain from voting.

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 these matters.

Ms. Noble stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

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

.....

REPORT AND RECOMMENDATION IN THE MATTER OF MAZEN B. HAMADEH, M.D.

.....

DR. GARG MOVED TO APPROVE AND CONFIRM MS. KELLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MAZEN B. HAMADEH, M.D. DR. BHATI SECONDED THE MOTION.

.....

A vote was taken:

VOTE:	Mr. Albert	- abstain
	Dr. Bhati	- aye
	Dr. Heidt	- aye
	Dr. Gretter	- abstain
	Mr. Sinnott	- aye
	Dr. Buchan	- aye
	Dr. Stienecker	- aye
	Dr. Agresta	- aye
	Dr. Garg	- 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

May 14, 1997

Mazen B. Hamadeh, M.D.
3516 Mont Martre Drive, Suite 1124
Orlando, FL 32822

Dear Doctor Hamadeh:

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 June 25, 1996, you filed an application for licensure to practice medicine and surgery in the State of Ohio which is currently pending.

(2) During the period October 1992 through August 1993 you were employed by Riverside Hospital, Toledo, OH, as a "House Officer" where you performed history and physical examinations for compensation.

You held yourself out as a physician with a distinctive name tag inscribed "Dr. M. B. Hamadeh," identified yourself to hospital patients as "the history and physicals doctor" and signed the hospital history and physicals records as "Dr. M. B. Hamadeh."

At no time during the above period were you licensed to practice medicine and surgery by the State Medical Board of Ohio.

Your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute "(c)ommission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice," as that clause is used in Section 4731.22(B)(12), Ohio Revised Code, to wit: Section 4731.41 Practice of medicine or surgery without a certificate and 4731.99 Penalties, ORC.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, 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

Mailed 5/15/97

or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: Section 4731.41 Practice of medicine or surgery without a certificate.

Further, your acts, conduct, and/or omissions as alleged in paragraph (2) above, individually and/or collectively, constitute a failure to furnish satisfactory proof of good moral character as required by Sections 4731.29 and 4731.08, Ohio Revised Code.

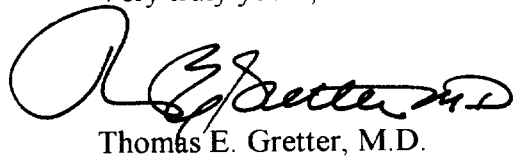
Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing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

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,



Thomas E. Gretter, M.D.
Secretary

TEG/bjs
Enclosures

CERTIFIED MAIL #P 152 984 717
RETURN RECEIPT REQUESTED

rev. 2/15/95

4731.41 Practice of medicine or surgery without certificate.

No person shall practice medicine or surgery, or any of its branches without a certificate from the state medical board; no person shall advertise or announce himself as a practitioner of medicine or surgery, or any of its branches, without a certificate from the board; no person not being a licensee shall open or conduct an office or other place for such practice without a certificate from the board; no person shall conduct an office in the name of some person who has a certificate to practice medicine or surgery, or any of its branches; and no person shall practice medicine or surgery, or any of its branches, after a certificate has been revoked, or, if suspended, during the time of such suspension. Any person licensed as a cosmetic therapist and holding a certificate issued by the state medical board pursuant to Chapter 4731 of the Revised Code may advertise and offer the service of cosmetic therapy and conduct an office for the practice thereof under such rules and regulations as may be prescribed by the state medical board. Section 1701.03 of the Revised Code is not applicable to the practice of cosmetic therapy, except that no corporation shall be licensed to practice cosmetic therapy.

A certificate signed by the secretary to which is affixed the official seal of the board to the effect that it appears from the records of the board that no such certificate to practice medicine or surgery, or any of its branches, in the state has been issued to any such person specified therein, or that a certificate, if issued, has been revoked or suspended, shall be received as prima-facie evidence of the record of such board in any court or before any officer of the state.

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Printed 10/96

4731.99 Penalties.

(A) Whoever violates section 4731.41 or 4731.43 of the Revised Code is guilty of a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

(B) Whoever violates section 4731.49, 4731.50, 4731.60, or 4731.81 of the Revised Code is guilty of a misdemeanor of the fourth degree on a first offense and a misdemeanor of the first degree on each subsequent offense.

(C) Whoever violates section 4731.46 or 4731.47 of the Revised Code is guilty of a felony of the fifth degree.

(D) Whoever violates section 4731.48 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(E) Whoever violates division (A), (B), (C), or (D) of section 4731.224 [4731.22.4] of the Revised Code is guilty of a minor misdemeanor on a first offense and a misdemeanor of the fourth degree on each subsequent offense, except that an individual guilty of a subsequent offense shall not be subject to imprisonment, but to a fine alone of up to one thousand dollars for each offense.

Eff 7-1-96