

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

November 28, 1984

Benjamin E. Malka, M.D.
1001 May Street
East Liverpool, OH. 43920

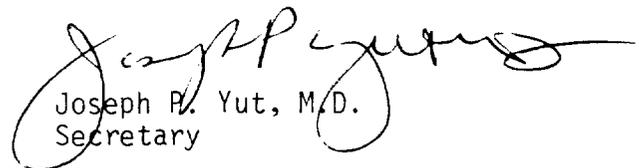
Dear Doctor Malka:

Please find enclosed a certified copy of the Entry of Order, the Report and Recommendation of John H. Buchan, D.P.M., Member, State Medical Board of Ohio and a certified copy of the Motion by the State Medical Board, meeting in regular session on November 14, 1984, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board.

You are hereby notified that you may appeal this Order to the Court of Common Pleas of the county in which your place of business is located, or the county in which you reside. If you are not a resident and have no place of business in this state, you may appeal to the Court of Common Pleas of Franklin County, Ohio.

To appeal as stated above, you must file a notice of appeal with the Board setting forth the Order appealed from, and the grounds of the appeal. You must also file a copy of such notice with the Court. Such notices of appeal shall be filed within fifteen (15) days after the date of mailing of this letter and in accordance with Section 119.12, Revised Code.

THE STATE MEDICAL BOARD OF OHIO


Joseph P. Yut, M.D.
Secretary

JPY:em

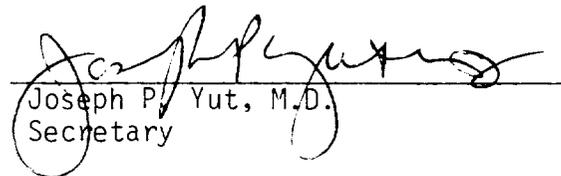
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STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

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 John H. Buchan, D.P.M., Member, State Medical Board of Ohio; and the attached copy of the Motion approved by the State Medical Board, meeting in regular session on November 14, 1984, approving and confirming said Report and Recommendation as the Findings and Order of the State Medical Board constitutes a true and complete copy of the Findings and Order of the State Medical Board in the matter of Benjamin E. Malka, M.D., as it appears in the Journal of the State Medical Board of Ohio.

(SEAL)


Joseph P. Yut, M.D.
Secretary

11-28-77
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *
 *
BENJAMIN E. MALKA, M.D. *

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 14th day of November, 1984.

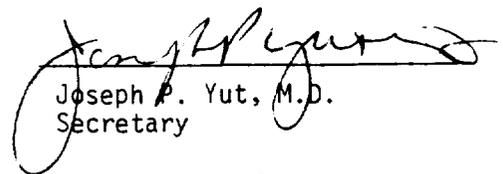
Upon the Report and Recommendation, a true copy of which is attached hereto and incorporated herein, of John H. Buchan, D.P.M., Hearing Member in this matter designated pursuant to R. C. 4731.23, which Report and Recommendation was approved and confirmed by vote of the Board on the above date, the following order is hereby entered on the Journal of the State Medical Board for the 14th day of November, 1984, and made part of the Board's proceedings:

It is hereby ORDERED that:

1. Dr. Benjamin E. Malka's application to take the FLEX examination in Ohio be and is hereby denied.
2. Further, that Dr. Benjamin E. Malka shall not be permitted to apply for examination and/or licensure in the State of Ohio for two years from the effective date of this Order.

The effective date of November 14, 1984 is placed on the Order.

(SEAL)


Joseph P. Yut, M.D.
Secretary

STATE OF OHIO
THE STATE MEDICAL BOARD

REPORT AND RECOMMENDATION
IN THE MATTER OF BENJAMIN E. MALKA, M.D.

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RECEIVED

On April 11, 1984, the matter of Benjamin E. Malka, M.D., came before me, John J. Buchan, D.P.M.

INTRODUCTION AND SUMMARY OF EVIDENCE

1. The State Medical Board of Ohio notified Benjamin E. Malka, M.D., by letter of November 10, 1983, that it proposed to deny his application to sit for the December, 1983 medical licensure examination (FLEX) in Ohio. (State's Exhibit #1) The State's action is based upon alleged violations of sections 4731.08 and 4731.22(A), Ohio Revised Code.
2. In response to a request by Dr. Malka, the State Medical Board scheduled and continued a hearing in this matter pursuant to Section 119.09, Ohio Revised Code. (State's Exhibit #2)
3. By letter of March 23, 1984, the Medical Board scheduled Dr. Malka's hearing for April 11, 1984. (State's Exhibit #3)
4. Dr. Malka was present at the April 11, 1984 hearing to represent himself, having been duly advised of his right to counsel, as well as of his right to present witnesses.
5. Mary Joseph Maxwell, Assistant Attorney General, appeared on behalf of the State.
6. In her opening remarks, Ms. Maxwell indicated that the Board had proposed to deny Dr. Malka's application to sit for the December, 1983 FLEX for the following reasons:
 - A. That Dr. Malka had altered the date on a Certificate of Recommendation bearing the notarized signature of William B. Mikita, M.D., such that the document appeared to have been executed in 1983 rather than in 1982.
 - B. That Dr. Malka had altered the date on a Certificate of Recommendation bearing the notarized signature of Gerard McLaughlin, M.D., such that the document appeared to have been executed in 1983 rather than in 1982.
 - C. That in connection with his application to sit for the December, 1983 FLEX, Dr. Malka had submitted a photograph of himself upon which he had forged the signatures of William B. Mikita, M.D., and Gerard McLaughlin, M.D., without their knowledge or consent.

7. The State contends that the above described acts by Dr. Malka demonstrate that he lacks the good moral character required of licensure applicants by Section 4731.08, Ohio Revised Code. In addition, the State believes that such acts, individually and/or collectively, constitute the use of fraud, misrepresentation or deception in securing a certificate issued by the State Medical Board, and present grounds for discipline under Section 4731.22(A).
8. Dr. Malka explained in his opening statement that he had submitted his application to take the FLEX at the last minute and felt compelled to rush. He added that Dr. Mikita and Dr. McLaughlin had always signed recommendations for him in the past and had always regarded him highly.
9. Dr. Malka's testimony outlined the following circumstances and events:
 - A. He is a United States citizen.
 - B. He attended medical school in Spain, graduating in 1974.
 - C. He completed a four year residency in pediatrics in Spain and then practiced there for two years in a clinical set-up.
 - D. He moved to East Liverpool, Ohio in 1980 after a friend advised him that the town was recruiting doctors. He was given a job as a surgical assistant pending receipt of his Ohio certification.
 - E. Beginning in 1980 he had submitted four or five applications to the Board, which were not approved for various technical reasons. He was finally granted permission to take the examination in February, 1983.
 - F. He submitted an updated application to take the June, 1983 FLEX, but decided not to sit for that examination.
 - G. In April, 1983, with the intention of concentrating exclusively on studying for the FLEX, he moved to Miami, Florida to take a preparatory course. He took the course twice and completed his studies in early December, 1983.
 - H. He had submitted a re-application to take the December, 1983 FLEX on August 12, 1983. (State's Exhibit #6)
 - I. In his re-application, he had changed the date on a Certificate of Recommendation written by Dr. Gerard McLaughlin in 1982 to read 1983. (State's Exhibit #7)
 - J. He had also changed the date on a Certificate of Recommendation written by Dr. William B. Mikita in 1982 to read 1983. (State's Exhibit #7)
 - K. He had signed the names of Drs. Mikita and McLaughlin to the backs of photographs attached to his application because they had signed two or three pictures for him in the past.

10. In addition to those previously noted, Ms. Maxwell identified and admitted the following Exhibits in support of the State's proposal:
 - A. State's Exhibit #4 is a letter dated October 27, 1983, from William B. Mikita, M.D., stating that he did not personally sign the photo card dated May, 1983 and withdrawing his recommendation of Dr. Malka.
 - B. State's Exhibit #5 is a letter dated October 31, 1983 from Gerard McLaughlin, M.D., stating he did not sign the back of the photograph copy dated May, 1983.
 - C. State's Exhibit #6 is a copy of Dr. Malka's re-application to take the June, 1983 FLEX, including Certificates of Recommendation signed by William B. Mikita, M.D., and Gerard P. McLaughlin, M.D.
 - D. State's Exhibit #7 is a copy of Dr. Malka's re-application to take the December, 1983 FLEX, including Certificates of Recommendation signed by Drs. Mikita and McLaughlin upon which the dates had been changed by Dr. Malka.
11. Dr. Malka submitted the following Exhibits on his own behalf:
 - A. Petitioner's Exhibit A is a written statement from Dr. Malka requesting permission to sit for the FLEX.
 - B. Petitioner's Exhibit B is an April 6, 1984 addendum to a letter from Dr. Malka dated November 18, 1983.

FINDINGS OF FACT

1. Dr. Malka has submitted applications to take the Ohio FLEX on several occasions, but he did not receive permission from the Board to take the examination until February, 1983.
2. Dr. Malka submitted an application to take the December, 1983 FLEX on August 12, 1983.
3. The application materials submitted by Dr. Malka on August 12, 1983 included Certificates of Recommendation purportedly signed and dated by Dr. William B. Mikita and Dr. Gerard McLaughlin.
4. By his own admission, Dr. Malka was responsible for altering the dates on the Certificates of Recommendation such that the documents appeared to have been executed in 1983, rather than in 1982.
5. In conjunction with his application to sit for the December, 1983 FLEX, Dr. Malka submitted a photograph of himself upon which he had forged the signatures of William B. Mikita, M.D., and Gerard McLaughlin, M.D., without their knowledge or consent.

CONCLUSIONS

1. By forging and altering notarized documents for the purpose of gaining entrance to the FLEX examination, Dr. Benjamin E. Malka has blatantly perpetrated fraud, misrepresentation and deception. Such acts unquestionably present grounds for the State Medical Board to refuse Dr. Malka's request to take the examination pursuant to Section 4731.22(A), Ohio Revised Code.
2. Further, the forgeries and alterations perpetrated by Dr. Benjamin E. Malka clearly evidence his lack of the good moral character required of licensure applicants by Section 4731.08, Ohio Revised Code.

PROPOSED ORDER

It is hereby ORDERED that:

1. Dr. Benjamin E. Malka's application to take the FLEX examination in Ohio be and is hereby denied.
2. Further, that Dr. Benjamin E. Malka shall not be permitted to apply for examination and/or licensure in the State of Ohio for two years from the effective date of this Order.



John H. Buchan, D.P.M.
Hearing Member
State Medical Board of Ohio

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

EXCERPT FROM THE MINUTES OF NOVEMBER 14, 1984

REPORT AND RECOMMENDATION IN THE MATTER OF BENJAMIN E. MALKA, M.D.

Mr. Bumgarner and Ms. Yale remained out of the room.

Dr. Lovshin asked if each member of the Board received, read and considered the hearing record, the proposed findings and order, and any objections filed to the proposed findings and order in the matter of Benjamin E. Malka, M.D. A roll call was taken:

ROLL CALL:	Dr. O'Connor	- aye
	Dr. Lancione	- aye
	Dr. Buchan	- abstain
	Dr. Rauch	- aye
	Mr. Johnston	- aye
	Dr. Yut	- aye
	Dr. Oxley	- aye
	Ms. Rolfes	- aye
	Dr. Stephens	- aye

.....
DR. LANCIONE MOVED TO APPROVE AND CONFIRM DR. BUCHAN'S FINDINGS OF FACT, CONCLUSIONS AND PROPOSED ORDER IN THE MATTER OF BENJAMIN E. MALKA, M.D. DR. STEPHENS SECONDED THE MOTION. A discussion followed:

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

ROLL CALL VOTE:	Dr. O'Connor	- nay
	Dr. Lancione	- aye
	Dr. Buchan	- abstain
	Dr. Rauch	- aye
	Mr. Johnston	- aye
	Dr. Yut	- nay
	Dr. Oxley	- aye
	Ms. Rolfes	- aye
	Dr. Stephens	- ave

The motion carried.

MR. JOHNSTON MOVED THAT AN EFFECTIVE DATE OF NOVEMBER 14, 1984 BE PLACED ON THE ORDER. DR. YUT SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. O'Connor	- abstain
	Dr. Lancione	- aye
	Dr. Buchan	- abstain
	Dr. Rauch	- aye
	Mr. Johnston	- aye

Dr. Yut	- aye
Dr. Oxley	- aye
Ms. Rolfes	- aye
Dr. Stephens	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
Suite 510
65 South Front Street
Columbus, Ohio 43215

November 10, 1983

Benjamin E. Malka, M.D.
1001 May Street
East Liverpool, OH 43920

Dear Doctor Malka:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio proposes to deny your application to sit for the December, 1983 medical licensure examination in Ohio for one or more of the following reasons:

- (1) You did submit to the Medical Board in support of your current application a Form 3, Certificate of Recommendation, bearing the Signature of William B. Mikita, M.D., purportedly subscribed and sworn to on September 21, 1983. This recommendation was in fact obtained by you in support of your application to sit for the December, 1982 Ohio medical licensure examination, and was subscribed and sworn to on September 21, 1982. You altered the date on the form to make it appear to read 1983.
- (2) You did submit to the Medical Board in support of your current application a Form 3, Certificate of Recommendation, bearing the Signature of Gerard McLaughlin, M.D., purportedly subscribed and sworn to on September 21, 1983. This recommendation was in fact obtained by you in support of your application to sit for the December, 1982 Ohio medical licensure examination, and was subscribed and sworn to on September 21, 1982. You altered the date on the form to make it appear to read 1983.
- (3) In connection with your application to sit for the December 1983 medical licensure examination, you did submit a photograph of yourself attached to which was a photoslip bearing the purported signatures of William B. Mikita, M.D. and Gerard McLaughlin, M.D. Such purported signatures were in fact forgeries committed or procured by yourself without the knowledge or consent of Doctors Mikita and McLaughlin.

Such acts committed by you in the above paragraphs (1), (2) and (3), individually and/or collectively, demonstrate that you lack the good moral character required by Section 4731.08, Ohio Revised Code, for a certificate to be granted.

Benjamin E. Malka, M.D.

November 10, 1983

- 2 -

Further, such acts committed by you in the above paragraphs (1), (2) and (3), individually and/or collectively, constitute fraud, misrepresentation, or deception in applying for or securing any licensure or certificate issued by the Board, as that clause is used in Section 4731.22(A), Ohio Revised Code.

In accordance with Chapter 119., Ohio Revised Code, you are advised that you have the right to a hearing in this matter. If you wish to request such a hearing, that request must be made within thirty (30) days of the time of mailing of this notice. Final action may be taken on the proposed denial if a timely request for hearing is not made.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, 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.

Copies of Section 4731.08 and 4731.22, Ohio Revised Code are enclosed for your information and review.

Very truly yours,



Oscar W. Clarke
President
State Medical Board of Ohio

OWC:jmb

Enclosure

CERTIFIED MAIL # P347 350 252
RETURN RECEIPT REQUESTED