

APPENDIX G

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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THOMAS A. HARRIS
CLERK OF COURTS

RAZIA MALIK, M.D.

Appellant,

v.

THE STATE OF OHIO,
THE STATE MEDICAL BOARD,

Appellee.

CASE NO. 87CV-04-2054

JUDGE DANA DESHLER

JUDGMENT ENTRY

This matter came on before the Court upon the briefs of counsel on an administrative appeal from the State Medical Board of Ohio pursuant to Chapter 119, Revised Code.

The Court having thus evaluated the arguments on appeal, and having fully reviewed the transcript, exhibits and the complete record before it, hereby finds that the adjudication order of the State Medical Board reprimanding the Appellant is not in compliance with Ohio Revised Code Section 119.06 and is therefore not in accordance with law.

Accordingly, and pursuant to the Decision of the Court rendered August 6, 1987, the Adjudication Order of the State Medical Board reprimanding the Appellant is hereby reversed and held for naught.

DANA A. DESHLER, JUDGE

APPROVED:

James D. Newcomer
JAMES D. NEWCOMER (NEW07)
Attorney for Appellant

Chris J. Costantini
CHRISTOPHER J. COSTANTINI (COS06)
Assistant Attorney General
Attorney for Appellee

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APPENDIX H

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Razia Malik, M.D. :
 Appellant, :
 vs. : Case No. 87CV-04-2054
 The State of Ohio, :
 The State Medical Board, : JUDGE DAMA A. DESHLER
 Appellee. :

DECISION

Rendered this _____ day of August, 1987.

DESHLER, J.

The matter comes on for consideration by the Court upon appeal by Appellant from an Order of the State Medical Board, wherein the Appellant was reprimanded in the process of seeking and obtaining a limited registration as a medical practitioner.

The Court concludes, upon the briefs submitted by the parties, that while the Appellee State Medical Board had the authority to reprimand Appellant, pursuant to 4731.22(A) Revised Code, the Order of Reprimand is contrary to law and must be set aside. Section 119.06 of the Revised Code states that:

No adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 of the Revised Code. Such opportunity for a hearing shall be given before making the adjudication order except in those situations where this section provides otherwise.

The Court concludes that the Appellee's Order of Reprimand was not a ministerial act and as such required

compliance with 119.05 R.C. In this regard, the record reflects a failure of compliance with 119.06 by this Appellee insofar as it relates to the reprimand. The appeal of Appellant is granted and the Order of Reprimand issued by Appellee is set aside and held for naught.

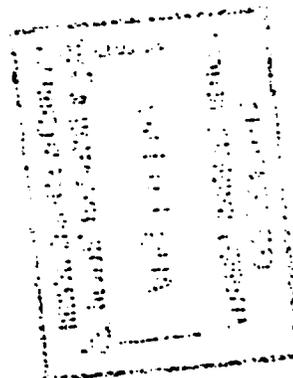


DANA A. DESHLER, JUDGE

Copies to:

James D. Newcomer
Attorney for Appellant

Christopher J. Constantini
Assistant Attorney General



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The court document for this date cannot be found in the records of the Ohio State Medical Board.

Please contact the Franklin County Court of Common Pleas to obtain a copy of this document. The Franklin County Court of Common Pleas can be reached at (614) 462-3621, or by mail at 369 S. High Street, Columbus, OH 43215.

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

March 13, 1987

Razia Malik, M.D.
#2 Staff House
Marcy, N.Y. 13403

Dear Doctor Malik:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Lauren Lubow, Hearing Examiner, Medical Board; a certified copy of the Motions by the State Medical Board, meeting in regular session on March 12, 1987, amending 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


Henry G. Cramblett, M.D.
Secretary

HGC:em

Enclosures

CERTIFIED MAIL NO. P 026 072 759
RETURN RECEIPT REQUESTED

cc: James D. Newcomer, Esq.
300 Second St.,
Columbus, Ohio 43215

CERTIFIED MAIL NO. P 026 072 758
RETURN RECEIPT REQUESTED

Mailed 2/19/87

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 Lauren O. Lubow, Hearing Examiner, State Medical Board of Ohio; and the attached copy of the Motions by the State Medical Board, meeting in regular session on March 12, 1987, amending 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 Razia Malik, 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 and in its behalf.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

March 13, 1987

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF *
 *
RAZIA MALIK, M.D. *

ENTRY OF ORDER

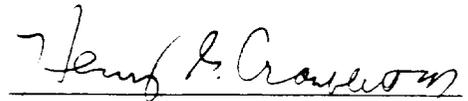
This matter came on for consideration before the State Medical Board of Ohio the 12th day of March, 1987.

Upon the Report and Recommendation of Lauren O. Lubow, Hearing Examiner, in this matter designated pursuant to R.C. 119.09, a true copy of which is attached hereto and incorporated herein, which Report and Recommendation was amended 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 12th day of March, 1987.

It is hereby ORDERED:

1. That Razia Saeed Malik, M.D., be REPRIMANDED for misrepresentation of fact in her application for examination for purposes of obtaining limited registration.
2. That upon completion of a reapplication form and payment of all accompanying fees, Razia Saeed Malik, M.D., be permitted to sit for the June, 1987 FLEX examination in the State of Ohio.
3. That Dr. Malik's application for limited registration be granted.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

March 13, 1987

Date

REPORT AND RECOMMENDATION
IN THE MATTER OF RAZIA SAEED MALIK, M.D.

The matter of Razia Saeed Malik, M.D., came on for hearing before me, Lauren Lubow, Attorney Hearing Examiner for the State Medical Board of Ohio, on January 30, 1987.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Mode of Conduct

- A. During the course of this hearing, rules of evidence were relaxed and both the State and the Applicant were given great latitude in demonstrating the relevancy and materiality of testimony and exhibits offered, as well as in attempting to discredit testimony and evidence presented by the opposing party.

II. Basis for Hearing

- A. By letter of October 9, 1986, the State Medical Board of Ohio notified Dr. Malik that it proposed to deny her May 16, 1986 application for limited registration on the basis of alleged violations of Section 4731.22(A) and 4731.08, Ohio Revised Code. The Board's proposal stemmed from the following allegations:
1. That on or about May 16, 1986, Dr. Malik had filed an application to sit for the December 1986 FLEX examination for purposes of qualifying for limited registration.
 2. That in response to Question 1(b) of Section 4 of the application, "List all FLEX exams which you have taken . . .," Dr. Malik indicated she had taken the FLEX examination in New York in December 1983, December 1984, and June 1985.
 3. That in fact, the Board had been advised by the Federation of State Medical Boards that Dr. Malik had taken the exam in Maryland in June, 1981 and December, 1979; in Connecticut in June, 1978; and in New York in December

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1981, December 1982, June 1983, December 1983, June 1985,
December 1985, and June 1986.

- B. On October 13, 1986, the State Medical Board received a letter from Attorney James D. Newcomer on behalf of Dr. Malik requesting a hearing in this matter.

III. Appearance of Counsel

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Attorney General, by Christopher J. Costantini, Assistant Attorney General.
- B. On behalf of the Applicant: James D. Newcomer, Esq.

IV. Testimony Heard

- A. Presented by the State:
1. Razia Malik, M.D., as on cross-examination
- B. Presented by the Applicant:
1. Razia Malik, M.D.

V. Exhibits Examined

- A. Presented by the State:
1. State's Exhibit #1 - October 9, 1986 letter from the State Medical Board to Dr. Malik proposing to deny her application for limited registration.
 2. State's Exhibit #2 - October 27, 1986 letter from Attorney James Newcomer requesting a hearing on behalf of Dr. Malik.
 3. State's Exhibit #3 - October 27, 1986 letter to the State Medical Board from Mr. Newcomer requesting copies of records in connection with Dr. Malik's hearing.
 4. State's Exhibit #4 - October 31, 1986 letter from the Medical Board setting and postponing a hearing in this

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matter pursuant to Section 119.09, Ohio Revised Code.

5. State's Exhibit #5 - November 17, 1986 letter from the State Medical Board to Mr. Newcomer scheduling a hearing for January 30, 1987.
6. State's Exhibit #6 - August 7, 1986 FLEX status report from the Federation of State Medical Boards concerning Razia Saeed Malik.
7. State's Exhibit #7 - Report from the Federation of State Medical Boards received in the offices of the State Medical Board on October 14, 1986, which lists the FLEX examinations taken by Dr. Malik and the results of those exams.
8. State's Exhibit #8 - Dr. Malik's application for Ticensure received by the Board on May 16, 1986.
9. State's Exhibit #8A - June 24, 1986 letter from the State Medical Board to Dr. Malik requesting additional information necessary for processing her application form.
10. State's Exhibit #8B - June 15, 1986 letter from the State Medical Board to Dr. Malik requesting additional information necessary for processing her application form.

B. Presented by the Applicant:

1. Applicant's Exhibit A - Written testimony of Dr. Razia Malik.
2. Applicant's Exhibit B - August 7, 1986 letter from the Federation of State Medical Boards to Razia Saeed Malik advising her that a certified status report had been forwarded to the State Medical Board of Ohio.

FINDINGS OF FACT

1. Prior to submitting her May 16, 1986 application to take the FLEX examination in Ohio for purposes of obtaining limited registra-

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tion, Dr. Razia Malik had taken the examination in Connecticut in June 1978; in Maryland in December 1979 and June 1981; and in New York in December 1981, December 1982, June 1983, December 1983, June 1985, December 1985 and June 1986.

2. In response to question 1(b) of Section 4 of the May 16, 1986 application, "List all FLEX exams which you have taken . . .," Dr. Malik indicated that she had taken the examination in New York in December 1983, December 1984, and June 1985.
3. In response to a request by the State Medical Board in correspondence dated July 15, 1986 (State's Exhibit #8B), Dr. Malik did complete a FLEX Status Report and forward it along with the required fee to the Federation of State Medical Boards, permitting the Ohio Board to obtain a certified copy of her FLEX history. Dr. Malik was notified by the Federation by letter of August 4, 1986 that this information had been forward to the Ohio Board.

CONCLUSIONS

Dr. Razia Saeed Malik's failure to provide a complete and accurate answer to question 1(b) of Section 4 on her May 16, 1986 examination application undeniably constitutes a misrepresentation in violation of Section 4731.22(A), Ohio Revised Code. However, it appears from the testimony and evidence presented that the Applicant's incorrect answer was an error resulting from misunderstanding and carelessness, rather than a concerted effort by the Applicant to deceive the Ohio Board.

This conclusion is based on Dr. Malik's testimony that she had failed to maintain a record of the ten FLEX examinations she had previously taken and assumed that complete and accurate information would be provided to the Ohio Board by the Federation of State Medical Boards. Her contention that she made this assumption in good faith and with no intent to deceive the Ohio Board is evidenced by her compliance with the Board's July 15, 1986 request that she arrange for the Federation to provide the Ohio Board with her FLEX history. As Dr. Malik indicates in her testimony, she could have refused to complete the FLEX Status Report form and attempted to withdraw her application if she had truly intended to hide her examination history.

To some extent, the Board's ability to carry out its function is dependent upon the accuracy and reliability of the information

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provided by candidates for licensure. Carelessness and neglect must not be seen as an acceptable standard. Consequently, this Hearing Examiner recommends adoption of the Proposed Order set forth below.

Nevertheless, although there has been a misrepresentation made in violation of Section 4731.22(A), Ohio Revised Code, the evidence is insufficient to support a conclusion that such misrepresentation rises to the level of fraud, or that Dr. Malik lacks the good moral character required of licensure applicants by Section 4731.08, Ohio Revised Code.

In considering disposition of this case, it should be noted that due to Dr. Malik's admitted carelessness in completing the application, which necessitated this hearing, she has already forfeited the opportunity to sit for the December 1986 examination and the accompanying fee.

PROPOSED ORDER

It is hereby ORDERED:

1. That Razia Saeed Malik, M.D., be reprimanded for misrepresentation of fact in her application for examination for purposes of obtaining limited registration.
2. That upon completion of a reapplication form and payment of all accompanying fees, Razia Saeed Malik, M.D., be permitted to sit for the June, 1987 FLEX examination in the State of Ohio.



Lauren Lubow, Esq.
Hearing Examiner

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EXCERPT FROM THE MINUTES OF MARCH 12, 1987

REPORT AND RECOMMENDATION IN THE MATTER OF RAZIA MALIK, M.D.

Mr. Costantini returned to the meeting at this time.

Dr. Stephens asked if each member of the Board had 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 Razia Malik, M.D. A roll call was taken:

ROLL CALL:	Dr. Cramblett	- aye
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye

The motion carried.

Dr. Lovshin stated that this case differs from similar cases the Board considered this date because Dr. Malik applied for limited registration in order to assume a position at Massillon State Hospital. Under the statutes, she must sit for the first FLEX offered after the registration is issued.

Ms. Lubow advised that the basic issue is the same; i.e., whether or not the Board should accept the application filed by Dr. Malik to take the FLEX.

Dr. Lovshin stated that Dr. Malik has not even begun work yet, but is waiting for the Board to issue her a limited registration. He advised that should the Board grant her a limited registration, she would take the next test which would be in December.

Mr. Newcomer stated that Dr. Lovshin has explained the situation accurately. If the Board allows Dr. Malik to have the limited registration, she will take the examination as soon as possible. The limited registration will only allow Dr. Malik to work at the state institution. A job is waiting for her at Massillon State Hospital.

Dr. Lovshin stated that he does not know Dr. Malik personally, but from reviewing her credentials, he feels that she has a better background than other psychiatrists working in state institutions.

Dr. O'Day stated that she will offer an ammendment to the proposed Order.

Dr. Cramblett stated that the Board would hope that those taking care of Ohio's mentally ill would be able to pass the FLEX examination. In her application to take the FLEX, Dr. Malik failed to disclose the number of times she previously took and failed the examination.

Ms. Rolfes asked for an explanation of limited registration.

Dr. Cramblett stated that a person is issued a limited registration, allowing them to take care of patients in state institutions. This can be renewed four times, but the person must take the FLEX at the first available opportunity after being registered.

Dr. Lovshin asked if Dr. Malik should be required to take the FLEX in June, prior to her beginning work at Massillon.

Dr. Cramblett asked when Dr. Malik wants to begin work. He stated that if she wants to begin working right away, she would be required to take the FLEX in June.

Dr. Lancione, responding to Mr. Newcomer's written objections, stated that the Board is considering reprimanding Dr. Malik because she omitted information from her FLEX application. He added that when Dr. Malik does or doesn't begin working has nothing to do with this.

Dr. O'Day stated that she doesn't feel that Dr. Malik omitted the dates to be fraudulent, but was simply careless in completing the application.

Ms. Rolfes asked if a background check has been done on Dr. Malik. Dr. Cramblett stated that such checks are done routinely.

Dr. Rothman asked if the Board would be acting consistently if it approved and confirmed the hearing officer's report and recommendation in this matter. Ms. Lubow stated that it would, adding that the issue at the hearing was the application.

Dr. Rothman suggested that the Board could act to allow Dr. Malik to sit for the FLEX, and then entertain a request for the limited registration.

DR. ROTHMAN MOVED TO APPROVE AND CONFIRM MS. LUBOW'S FINDINGS OF FACT AND CONCLUSIONS IN THE MATTER OF RAZIA MALIK, M.D. DR. LOVSHIN SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye

The motion carried.

Dr. Barnes arrived at the meeting at this time. He advised that he had 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 Razia Malik, M.D.

DR. ROTHMAN MOVED TO APPROVE AND CONFIRM MS. LUBOW'S PROPOSED ORDER IN THE MATTER OF RAZIA MALIK, M.D. DR. BUCHAN SECONDED THE MOTION.

DR. O'DAY MOVED THAT THE PROPOSED ORDER IN THE MATTER OF RAZIA MALIK, M.D., BE AMENDED TO READ AS FOLLOWS:

IT IS HEREBY ORDERED:

1. THAT RAZIA SAEED MALIK, M.D., BE REPRIMANDED FOR MISREPRESENTATION OF FACT IN HER APPLICATION FOR EXAMINATION FOR PURPOSES OF OBTAINING LIMITED REGISTRATION.
2. THAT UPON COMPLETION OF A REAPPLICATION FORM AND PAYMENT OF ALL ACCOMPANYING FEES, RAZIA SAEED MALIK, M.D., BE PERMITTED TO SIT FOR THE JUNE, 1987 FLEX EXAMINATION IN THE STATE OF OHIO.
3. THAT DR. MALIK'S APPLICATION FOR LIMITED REGISTRATION BE GRANTED.

DR. BARNES SECONDED THE MOTION.

Dr. Buchan asked how Dr. Malik's employer would know if Dr. Malik failed the June FLEX examination. Ms. Lubow stated that the purpose of the limited registration is to allow the registrant to sit for the examination twice. She can continue to work.

Mr. Bumgarner explained that under the statutes, a person may be granted a limited registration after appropriate graduation has been established. That person must then take the FLEX at the first reasonable opportunity. He may take the examination two consecutive times. He may defer the first available examination, but that will count as one of the two he is permitted. The expiration of the registration is the date of notification of failure of the second consecutive examination. If the examination is passed, a limited certificate is issued, which may be renewed four times. Mr. Bumgarner added that the Board will notify the institution employing the physician of his second failure and expiration of the limited registration. Mr. Bumgarner referred the Board to Section 4731.292, R.C., and 4731-3-22 O.A.C.

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

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye

The motion carried.

A roll call vote was taken on Dr. Rothman's motion, as amended:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Lancione	- aye
	Dr. Barnes	- aye
	Dr. Buchan	- aye
	Dr. Lovshin	- aye
	Dr. Rothman	- aye
	Dr. Rauch	- aye
	Dr. O'Day	- aye
	Ms. Rolfes	- aye

The motion carried.

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

October 9, 1986

Razia Malik, M.D.
#2 Staff House
Marcy, NY 13403

Dear Doctor Malik:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board proposes to deny your application for limited registration for the following reasons:

- 1) On or about May 16, 1986 you filed an application to sit for the December 1986 examination for purposes of limited registration.
- 2) In response to Question 1(b) of Section 4 of the application you indicated that you had taken the FLEX examination in the following states on the following dates:

<u>State</u>	<u>Date</u>
New York	December 1983
New York	December 1984
New York	June 1985

Question 1(b) of Section 4 states: "List all FLEX exams which you have taken. Indicate whether you took all three days or whether you took only part of the exam."

- 3) In fact, you sat for the FLEX examination in Maryland on the following dates: June of 1981, and December 1979. You sat for the FLEX exam in Connecticut in June of 1978. You sat for the FLEX exam in New York in December 1981, December 1982, June 1983, December 1983, June 1985, December 1985 and June 1986.

Your acts, conduct and omissions as alleged in paragraphs 1 through 3 constitute a violation of Section 4731.22(A), Ohio Revised Code, to wit: committing fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board.

October 9, 1986

Further, your acts, conduct and omissions as listed in paragraphs 1 through 3 establish a failure to furnish satisfactory proof of good moral character as required by Section 4731.08, Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, please be advised that you may request a hearing on this matter. If you wish to request such hearing, that request must be made 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 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.

A copy of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 569 364 093
RETURN RECEIPT REQUESTED