

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

DUANE LEE GRIFFITH, M.D.,	:	
	:	
Appellant,	:	
	:	Case No. 13 CV 12030
vs.	:	
	:	Judge Stephen McIntosh
STATE MEDICAL BOARD OF OHIO,	:	
	:	
Appellee.	:	
	:	

DECISION AND JUDGMENT ENTRY

This matter is before the Court following the Magistrate’s Decision signed and dated June 23, 2015, determining that Appellant, Duane Lee Griffith, M.D., was not served with the Notice of Opportunity for Hearing dated May 8, 2013, and mailed to Dr. Griffith by the State Medical Board of Ohio (“Board”) on May 9, 2013. The Magistrate’s Decision further determined that the Board’s August 14, 2013 Order revoking Dr. Griffith’s Ohio medical license is therefore not valid and must be vacated pursuant to R.C. 119.07. The Board did not file any written objections, and more than fourteen (14) days have passed since the filing of the Magistrate’s Decision. Thus, for the reasons stated in the Magistrate’s Decision, it is hereby:

ORDERED, ADJUDGED AND DECREED that Board’s August 14, 2013 Order revoking Dr. Griffith’s Ohio medical license is not valid and must be vacated pursuant to R.C. 119.07, and furthermore, this matter is remanded to the Board for further proceedings consistent with the Decision and Judgment Entry of the Franklin County Court of Common Pleas.

IT IS SO ORDERED.

Date

JUDGE MCINTOSH

APPROVED:

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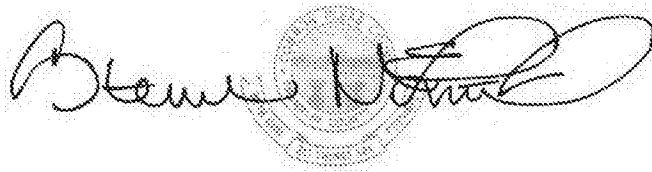
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Franklin County Court of Common Pleas

Date: 08-25-2015
Case Title: DUANE L GRIFFITH MD -VS- OHIO STATE MEDICAL BOARD
Case Number: 13CV012030
Type: JUDGMENT ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a circular, embossed seal. The seal contains text around its perimeter, which is partially obscured by the signature.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 13CV012030

Case Style: DUANE L GRIFFITH MD -VS- OHIO STATE MEDICAL
BOARD

Case Terminated: 15 - Transfer to another Judge or Court

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

Duane Lee Griffith, M.D.,		Case No. 13CV-12030
Appellant,		Judge McIntosh
vs.		Magistrate Browning
State Medical Board of Ohio,		
Appellee.		

Magistrate’s Decision

Browning, M.

Pursuant to Civ. R. 53 and Local R. 99, the Court referred this R.C. 119.12 administrative appeal to the undersigned Magistrate for an evidentiary hearing on March 7, 2014, on the sole issue of whether Appellant, Duane Lee Griffith, M.D., was served with the Notice of Opportunity for Hearing dated May 8, 2013 and mailed to Appellant by the State Medical Board of Ohio on May 9, 2013. By agreement of the parties, the hearing was vacated and the issue has been submitted to the Magistrate on witness affidavits and the parties’ briefs on the service issue.

Having considered the affidavit testimony of Appellant, Eleanor Rogers, Kerry Coman, Linda Cooper, Nina Burns, and Kay Rieve, and having considered the parties’ briefs on the service issue, the Magistrate hereby renders the following decision.

Findings of Fact

1. Appellant received his license to practice medicine and surgery in Ohio in 2006. *Griffith Affid.* ¶ 2. He received his Texas medical license in 2007. *Id.* Since July 2007, Appellant has resided and practiced medicine exclusively in Texas. *Id.* Since December 2008,

Appellant's mailing address, on file with the Medical Board, has been P.O. Box 130459, Tyler, Texas 75713. *Rieve Affid.* ¶¶ 9, 15.

2. At all relevant times, Eleanor Rogers, Kerry Coman, Linda Cooper, and Nina Burns were employed by Appellant's medical practice in Texas. *Rogers Affid.* ¶ 2, *Coman Affid.* ¶ 2, *Cooper Affid.* ¶ 2, *Burns Affid.* ¶ 2. Eleanor Rogers was an administrative assistant whose job duties included the credentialing of physicians in the practice. *Rogers Affid.* ¶ 2. Kerry Coman was the practice administrator through September 2013. *Coman Affid.* ¶ 2. Linda Cooper became the practice administrator in October 2013. *Cooper Affid.* ¶ 2. Nina Burns was an administrative assistant. *Burns Affid.* ¶ 2.

3. In a Notice of Opportunity for Hearing dated May 8, 2013 and mailed to Appellant on May 9, 2013, the Medical Board notified Appellant that the Board intended to determine whether to take disciplinary action against Appellant's Ohio medical license, for his having allegedly violated provisions of R.C. 4731.22. The Board mailed the Notice by certified mail, return receipt requested, to P.O. Box 130459, Tyler, Texas 75713.

4. On May 29, 2013, Appellant's employee Eleanor Rogers signed for and received the certified mail containing the May 8, 2013 Notice of Opportunity for Hearing. *Rogers Affid.* ¶ 3. Ms. Rogers opened the mail but did not deliver it to Appellant. *Id.* She placed the Notice in Appellant's credentialing file in her office. *Id.* Ms. Rogers did nothing further with the Notice. *Id.*

5. On August 14, 2013, the Medical Board approved an Order wherein the Board revoked Appellant's Ohio medical license. On August 29, 2013, the Board mailed the Order to Appellant by certified mail, return receipt requested, to P.O. Box 130459, Tyler, Texas 75713.

6. On September 5, 2013, Appellant's employee Nina Burns signed for and received the certified mail containing the August 14, 2013 Order. *Burns Affid.* ¶ 4. It was Ms. Burns' practice to give such correspondence only to Eleanor Rogers or Kerry Coman. *Burns Affid.* ¶ 5. Ms. Burns did not give the Order to Appellant or make him aware of the Order. *Burns Affid.* ¶ 6.

7. Kerry Coman was the practice administrator for Appellant's practice through September 2013. *Coman Affid.* ¶ 2. Her position was eliminated due to the merger of Appellant's practice with another practice. *Id.* Ms. Coman's last day of work was September 30, 2013. *Id.* Beginning October 1, 2013, Linda Cooper was the practice administrator for Appellant's practice. *Cooper Affid.* ¶ 2. Prior to October 1, 2013, Ms. Cooper had no involvement in Appellant's practice. *Cooper Affid.* ¶ 3.

8. On Sunday October 6, 2013, while Kerry Coman was cleaning out her office, she found the August 14, 2013 Order from the Medical Board in a tray on her desk. *Coman Affid.* ¶ 3. She had no knowledge of the Order's existence prior to that date. *Id.* Ms. Coman did not know who put the Order in her office or when it was put in her office. *Coman Affid.* ¶ 4. She read the Order and realized that it pertained to Appellant's Ohio medical license. *Coman Affid.* ¶ 3.

9. On Sunday October 6, 2013, Kerry Coman called Eleanor Rogers, who was at home. *Coman Affid.* ¶ 3. Ms. Coman told Ms. Rogers about the August 14, 2013 Order, advised Ms. Rogers that she (Ms. Coman) was leaving the Order on Ms. Rogers' desk, and instructed Ms. Rogers to address the Order "first thing" on Monday October 7, 2013 with Appellant. *Id.* Ms. Coman did not give the Order to Appellant or inform him of its contents. *Coman Affid.* ¶ 6.

10. Eleanor Rogers did not go into the office the week of October 7, 2013. *Rogers Affid.* ¶ 4. She did not tell Appellant about the August 14, 2013 Order, and she did not tell the new practice administrator, Linda Cooper, about the Order. *Id.*

11. On October 14, 2013, Eleanor Rogers went to the office for a couple of hours to take care of some work matters. *Rogers Affid.* ¶ 4. At that time, she took the August 14, 2013 Order from her office and gave it to the new practice administrator, Linda Cooper. *Id.* Ms. Rogers admitted to Ms. Cooper that she (Ms. Rogers) had not notified Appellant of the Order. *Cooper Affid.* ¶ 4.

12. On October 14, 2013, Linda Cooper read the August 14, 2013 Order and thereby learned of the existence of the May 8, 2013 Notice of Opportunity for Hearing. *Cooper Affid.* ¶ 6. By that time, Eleanor Rogers had left the office and gone home. *Id.* Ms. Cooper therefore went into Ms. Rogers' office and found the May 8, 2013 Notice in a file cabinet, in a folder that contained credentialing documents regarding Appellant. *Id.*

13. On October 14, 2013, Linda Cooper informed Appellant about the May 8, 2013 Notice of Opportunity for Hearing and the August 14, 2013 Order. *Cooper Affid.* ¶¶ 4, 6.

14. On October 14, 2013, Appellant first learned, from Linda Cooper, of the Medical Board's disciplinary proceedings against Appellant. *Griffith Affid.* ¶ 3. Appellant was in the clinic that day, treating patients, when Ms. Cooper stopped Appellant between patient appointments and gave him the two certified mailings from the Medical Board. *Id.*

15. On October 14, 2013, Linda Cooper called the Medical Board to discuss the August 14, 2013 Order, but she had to leave a voicemail. *Cooper Affid.* ¶ 5. No one from the Medical Board ever returned the call. *Id.*

16. Upon being informed of the Medical Board's May 8, 2013 Notice of Opportunity for Hearing and August 14, 2013 Order, Appellant took immediate action to investigate the Board's disciplinary proceedings against him. *Griffith Affid.* ¶ 4. Had Appellant known of the Board's May 8, 2013 Notice, he would have requested an administrative hearing on the Board's charges against him. *Id.*

17. Appellant learned that, on May 29, 2013, Eleanor Rogers signed for the certified mailing of the May 8, 2013 Notice of Opportunity for Hearing, and that Ms. Rogers placed the Notice in Appellant's credentialing file without his knowledge. *Griffith Affid.* ¶ 5. Ms. Rogers was not authorized to withhold and/or fail to provide Appellant with correspondence from any agency or regulatory board with whom Appellant held licensure. *Griffith Affid.* ¶ 6.

18. Appellant learned that, on September 5, 2013, Nina Burns signed for the certified mailing of the August 14, 2013 Order, and that she did not inform Appellant of the Order. *Griffith Affid.* ¶ 7. Ms. Burns was not authorized to withhold and/or fail to provide Appellant with correspondence from any agency and/or regulatory board with whom Appellant held licensure. *Griffith Affid.* ¶ 8.

19. On October 23, 2013, having received no return call from the Medical Board, Appellant retained legal counsel to assist him in this matter. *Cooper Affid.* ¶ 7.

Conclusions of Law

1. Revised Code 119.07 provides:

*** [I]n all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, **the agency shall give notice to the party informing the party of the party's right to a hearing. Notice shall be given by registered mail, return receipt requested,** and shall include the charges or other reasons for the proposed action, the law or rule directly involved, and a statement informing the party that the party is entitled to a hearing if the party requests it within thirty days of the time of mailing the notice. ***

*** The failure of an agency to give the notices for any hearing required by sections 119.01 to 119.13 of the Revised code in the manner provided in this section shall invalidate any order entered pursuant to the hearing. (Emphasis added.)

2. “If a notice is sent by certified mail, return receipt requested, and thereafter a signed receipt is returned to the sender, a prima facie case of delivery to the address is established.” *New Co-Operative Co. v. Liquor Control Comm.*, 10th Dist. No. 01AP-1124, 2002-Ohio-2244, ¶ 8. “Valid service of process is presumed when the envelope is received by any person at the defendant’s address; the recipient need not be an agent of the defendant.” *Id.*

3. In the instant case, the certified mail receipt for the May 8, 2013 Notice of Opportunity for Hearing was signed for and returned to the Medical Board. Therefore, there is a presumption that valid service of that Notice was completed upon Appellant. However, the presumption of valid service is rebuttable by sufficient evidence demonstrating non-service. *New Co-Operative Co.*, ¶ 9. In order to rebut the presumption of valid service, Appellant submitted sworn affidavits from four of his practice’s employees. The affidavit testimony of those witnesses is recited above.

4. In determining whether a party has sufficiently rebutted the presumption of valid service, a trial court may assess the credibility and competency of the submitted evidence of non-service. *New Co-Operative Co.*, ¶ 9. An affidavit, by itself, stating that a party did not receive service, may not be sufficient to rebut the presumption without any other evidence of a failure of service. *Id.*

5. The Magistrate has assessed the credibility and competency of the evidence of non-service submitted by Appellant. Although the Magistrate was not able to observe the appearance of the witnesses or their manner of testifying, the Magistrate was able to consider the reasonableness of the testimony, the opportunity the witnesses had to see, hear, and know the

things concerning which they testified, and the facts and circumstances surrounding the testimony. Having had the ability to consider those “tests of truthfulness,” the Magistrate has rendered the Findings of Fact set forth above.

6. The Magistrate concludes that, because of the circumstances described above in the Findings of Fact, and primarily because of the neglectful conduct of Eleanor Rogers, Appellant was not served with the Medical Board’s May 8, 2013 Notice of Opportunity for Hearing.

Decision

Upon consideration of the foregoing Findings of Fact and Conclusions of Law, it is the Magistrate’s decision that Appellant was not served with the Notice of Opportunity for Hearing dated May 8, 2013 and mailed to Appellant by the Medical Board on May 9, 2013. Accordingly, pursuant to R.C. 119.07, *supra*, the Board’s August 14, 2013 Order, revoking Appellant’s certificate to practice medicine and surgery in Ohio, is not valid and must be vacated.

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION IN THE FOREGOING MAGISTRATE'S DECISION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53(D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

Copies electronically transmitted to all counsel of record.

Copies mailed by Franklin County Clerk of Courts to:

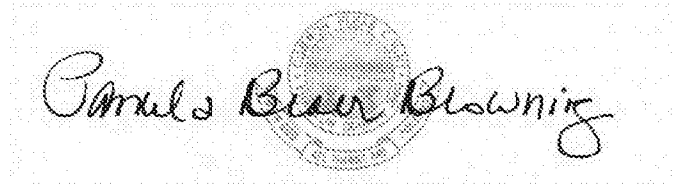
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Franklin County Court of Common Pleas

Date: 06-23-2015
Case Title: DUANE L GRIFFITH MD -VS- OHIO STATE MEDICAL BOARD
Case Number: 13CV012030
Type: MAGISTRATE DECISION

So Ordered

A rectangular box containing a handwritten signature in cursive that reads "Pamela Broer Browning". The signature is written over a circular seal, which is partially obscured by the ink. The seal appears to be the official seal of the Franklin County Court of Common Pleas.

/s/ Magistrate Pamela Broer Browning