

**IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

RAFAL A BADRI,

Plaintiff,

vs.

OHIO STATE MEDICAL BOARD,

Defendant.

CASE NO. 15 CV 003089

JUDGE COLLEEN O'DONNELL

**DECISION AND ENTRY OVERRULING APPELLANT'S OBJECTIONS TO THE MAGISTRATE'S  
DECISION AND ORDER FILED OCTOBER 8, 2015**

**DECISION AND ENTRY ADOPTING MAGISTRATE'S DECISION, FILED OCTOBER 8, 2015**

**DECISION AND ENTRY GRANTING APPELLANT'S MOTION TO ADMIT ADDITIONAL EVIDENCE  
*INSTANTER*, FILED MAY 21, 2015**

**DECISION AND ENTRY GRANTING APPELLEE'S MOTION TO DISMISS APPEAL**

This matter comes before the Court upon the objections of Appellant, Rafal A. Badri ("Dr. Badri"), to the Magistrate's Decision and Order, filed October 8, 2015. Dr. Badri also filed a Motion to Admit Additional Evidence, *Instanter*. As that Motion is unopposed, and the evidence at issue was considered at the hearing before the Magistrate, that Motion is **GRANTED**.

**I. Background**

Dr. Badri initiated this administrative appeal pursuant to R.C. 119.12, appealing the February 12, 2014 Order of Appellee State Medical Board of Ohio ("the Board"), which permanently revoked Dr. Badri's license to practice medicine in the State of Ohio.

On May 20, 2015, the Board filed a Motion to Dismiss the Appeal, arguing that the appeal should be dismissed for failure to exhaust administrative remedies pursuant to R.C. 119.12 and for lack of subject matter jurisdiction. Specifically, the Board argued that Dr. Badri

failed to perfect the appeal because he did not file the appeal within the 15 days required by R.C. 119.12. Additionally, the Board argued that Dr. Badri failed to exhaust his administrative remedies by not requesting a hearing after a September 12, 2013 Notice of Opportunity for Hearing was sent by certified mail to the address he provided to the Board.

Dr. Badri opposed the Board's Motion to Dismiss, claiming that he did not receive valid service of the Notice of Opportunity for Hearing or the February 2014 Order of the Board because he was not living in the United States at the time the Notice and Order were sent. Rather, Dr. Badri alleged that he was not made aware of the proceedings before the Board until February 26, 2015.

This matter came before the Court's Magistrate on October 5, 2015 for an evidentiary hearing to give the parties the opportunity to present evidence as to whether Dr. Badri was served with the Board's September 12, 2013 Notice of Opportunity for Hearing and February 12, 2014 Findings, Amended Order and Journal Entry.

At the hearing, Appellant appeared and was represented by Attorneys Eric Plinke and William Moss. Attorneys Kyle Wilcox and Melinda Snyder appeared on behalf of the Board. Appellant testified on his own behalf and submitted Exhibits 1 through 7, which were admitted without objection. The Magistrate overruled Appellee's objection to the relevance of Appellant's Exhibit 8. Danielle Bickers, a Board Compliance Supervisor, testified for the Board. The Board's Exhibits 1A through 1C, and Exhibit 6, were admitted into evidence without objection.

On October 8, 2015, the Magistrate issued a decision setting forth findings of fact and conclusions of law. Therein, the Magistrate concluded that the Board complied with R.C. 119.07 and properly served Dr. Badri with notice of the September 12, 2013 Notice of Opportunity for

Hearing and the February 26, 2014 Findings, Amended Order and Journal Entry at the address he provided to the Board. The Magistrate thus recommended that this Court grant the Board's May 20, 2015 Motion to Dismiss.

On October 22, 2015, Dr. Badri filed objections to the Magistrate's Decision. In his objections, he argued that because he could rebut the presumption of valid service of the Board's Notice, the Magistrate erred by finding that the Board satisfied the mandates of R.C. 119.07. He argued that the evidence at the hearing demonstrates that the Board knew that Dr. Badri was most easily reached by email, rather than ordinary mail. Nonetheless, the Board issued its order revoking his license without informing him of the decision by email. As he testified that he was not served with, and was unaware of the Board's Notice, he was not validly served and the Board's Motion to Dismiss should be denied.

The Board opposed Dr. Badri's objections on October 26, 2015. The Board argued that it was Dr. Badri's responsibility to maintain an updated address with the Board. Dr. Badri provided his address to receive mail delivery, and the Board complied with the law and mailed notice to the address he provided. Thus, the Board contended that the Magistrate correctly concluded that the Board complied with R.C. 119.07 and properly served Dr. Badri with notice of the opportunity for hearing and the Order revoking his license.

## **II. Standard of Review**

In reviewing objections to a magistrate's decision, "the trial court must conduct an independent analysis of the underlying issues, undertaking the equivalent of a de novo determination and independently assessing the facts and conclusions contained in the magistrate's decision." *Shihab & Assocs. Co. v. Ohio DOT*, 168 Ohio App.3d 405, 2006-Ohio-4456, 860 N.E.2d 155 (10th Dist.). In accordance with this standard of review, the Court has independently reviewed the Magistrate's Decision, Objections, and related briefing.

The Court notes that Dr. Badri neither filed a copy of the transcript of the hearing, nor sought leave to supplement the objections. Pursuant to Civ.R. 53(D)(3)(b)(iii),

An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ. R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. \* \* \* The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

### III. Analysis

In her Decision, the Magistrate found that pursuant to an October 14, 2009 Entry regarding the terms of Dr. Badri's probation, he was required to notify the Board in writing of any change of principal practice address or residence address within 30 days of such change. *See* Paragraph F of the October 14, 2009 Entry of Order. As of December 2012, Dr. Badri provided the Board with "270 E. 270th Street, Euclid, Ohio 44132" as his official address for communication purposes. Further, the Magistrate found that the Board had served Dr. Badri with the Notice and Order at this address by unclaimed certified mail service, followed by ordinary mail.

R.C. 119.07 provides:

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is returned because the party fails to claim the notice, the agency shall send the notice by ordinary mail to the party at the party's last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

"If a plaintiff follows the civil rules governing service of process, a rebuttable presumption of proper service arises." *Erin Capital Mgmt. LLC v. Fournier*, 10th Dist. Franklin No. 11AP-483, 2012-Ohio-939, ¶ 18. "A defendant can rebut the presumption of proper service

with sufficient evidence that service was not accomplished.” *Id.* at ¶ 19. Here, because the service of process sent by ordinary mail was not returned and the Board obtained a certificate of mailing, a rebuttable presumption of service arose.

Dr. Badri cites to three cases involving the State Medical Board of Ohio where courts found the presumption of service to be rebutted. *See Griffith v. State Med. Bd. Ohio*, Franklin C.P. Case No. 13 CV 12030 (June 23, 2015); *Sandhu v. State Med. Bd. Ohio*, Franklin C.P. No. 07 CVF 17446 (Dec. 3, 2008); *Menon v. State Med. Bd. Ohio*, Franklin C.P Case No. 06 CVF 01-404 (Oct. 10, 2006). In those cases, the courts ruled that although employees or family members had signed the certified mail receipts, the physicians were able to overcome the presumption of service with credible testimony that they had not received the notices. *See id.*

The Court finds Dr. Badri’s reliance on the above-cited cases to be misplaced. In those cases, the physicians were not on probation with the Board, nor were they required to notify the Board in writing of any change of principal practice address or residence address pursuant to the terms of that probation.

Furthermore, the Court is not persuaded by Dr. Badri’s argument that the Board should have transmitted its notifications via email. The Board is required by R.C. 119.07 to send its notices by certified mail, followed by ordinary mail service. If the Board had emailed the Notice of Hearing and Order to Dr. Badri, he could then argue that the Board never achieved valid service upon him because it utilized a service method outside of the provisions of R.C. 119.07.

Upon an independent review, the Court finds that the Magistrate properly applied her findings of fact to the governing case law. The Court concludes that Dr. Badri failed to rebut the presumption of service and thus, the Board’s service of the September 12, 2013 Notice of

Opportunity for Hearing and the February 26, 2014 Findings, Amended Order and Journal Entry were valid.

**IV. Conclusion**

Upon review, the Court **ADOPTS** the October 8, 2015 Magistrate's Decision. Dr. Badri's Objections are **OVERRULED**. Based upon the Court's conclusion that Dr. Badri failed to perfect his appeal within the 15 days required by R.C. 119.12, the Court lacks jurisdiction to consider this appeal. Accordingly, the Board's Motion to Dismiss Appeal is **GRANTED**, and this appeal is **DISMISSED**.

**Pursuant to Civ.R. 58, the Clerk of Court shall serve notice of this judgment and its date of entry upon all parties.**

**IT IS SO ORDERED.** Copies to all parties.

Franklin County Court of Common Pleas

**Date:** 08-23-2016

**Case Title:** RAFAL A BADRI -VS- OHIO STATE MEDICAL BOARD

**Case Number:** 15CV003089

**Type:** DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Colleen O'Donnell". The signature is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE" around the bottom. The seal is partially obscured by the signature.

/s/ Judge Colleen O'Donnell

Court Disposition

Case Number: 15CV003089

Case Style: RAFAL A BADRI -VS- OHIO STATE MEDICAL BOARD

Case Terminated: 10 - Magistrate

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0030892015-05-2099980000  
Document Title: 05-20-2015-MOTION TO DISMISS -  
DEFENDANT: OHIO STATE MEDICAL BOARD  
Disposition: MOTION GRANTED
  
2. Motion CMS Document Id: 15CV0030892015-05-2199980000  
Document Title: 05-21-2015-MOTION - PLAINTIFF: RAFAL A.  
BADRI - MOTION TO ADMIT ADDITIONAL EVIDENCE INST  
Disposition: MOTION GRANTED
  
3. Motion CMS Document Id: 15CV0030892015-10-2299980000  
Document Title: 10-22-2015-OBJECTION TO - PLAINTIFF: RAFAL  
A. BADRI  
Disposition: OBJECTION DENIED



**COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

**RAFAEL A. BADRI,** :  
 :  
 **Appellant,** : **CASE NO. 15 CV 3089**  
 :  
 **-vs-** : **JUDGE COLLEEN O'DONNELL**  
 :  
 **STATE MEDICAL BOARD OF OHIO,** : **MAGISTRATE CHRISTINE LIPPE**  
 :  
 **Appellee.** :

**MAGISTRATE DECISION AND ORDER**

**LIPPE, MAGISTRATE**

This matter was referred to this Magistrate pursuant to Civil Rule 53 and Local Rule 99.02. Appellant Rafael Badri filed this appeal on April 9, 2015. On May 20, 2015 Appellee, State Medical Board of Ohio (“Board”) filed a motion to dismiss. In its motion to dismiss, the Board asserted that this Court did not have jurisdiction because Appellant failed to exhaust his administrative remedies by not requesting a hearing. Appellant filed a Memorandum Contra on June 3, 2015, asserting, among other things, that he could rebut the presumption of valid service. On June 9, 2015, Appellee filed a reply.

Judge O’Donnell stated in her June 30, 2015 Order of Reference that this Magistrate will conduct an evidentiary hearing so that “[T]he parties will have an opportunity to present witness testimony as to whether Appellant was served with the Board’s September 12, 2013 Notice of Opportunity and the Board’s February 12, 2014 Findings, Amended Order and Journal Entry mailed on February 26, 2014.” See June 30, 2015 Amended Order of Reference.

Appellant appeared and was represented by Attorneys Eric Plinke and William Moss. Attorneys Kyle Wilcox and Melinda Snyder appeared on behalf of the Board. Appellant testified on

his own behalf. Appellant submitted Exhibits 1 through 7, which were admitted without objection. Appellee objected to the relevance of Appellant's Exhibit 8. The Court hereby admits Appellant's Exhibit 8 into evidence. Danielle Bickers, a Board Compliance Supervisor, testified for Appellee. State's Exhibits 1A through 1C, and State Exhibit 6, were admitted into evidence without objection.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The undisputed evidence demonstrates that, pursuant to an October 14, 2009 Entry of Order detailing the terms and conditions of Appellant's probation and Board oversight, Appellant was required to notify the Board in writing of any change of principal practice address or residence address within 30 days of such change. Paragraph F of the October 14, 2009 Entry of Order states as follows:

**REQUIRED REPORTING OF CHANGE OF ADDRESS:** Dr. Badri shall notify the Board in writing of any change of principal practice address or residence address within 30 days of such change.

2. Ms. Bickers testified that in December 2012, she sought to clarify Dr. Badri's address after he contacted her seeking her assistance regarding a lawsuit that had been filed against him. The evidence demonstrates that in a December 3, 2012 email, Ms. Bickers made a request to Dr. Badri asking him to update his address:

Our website lists your mailing address as 270 E. 270<sup>th</sup> Street, Euclid, Ohio 44132 because that's the last address you gave us. Maybe if you just update your address, that will fix the confusion?

State's Exhibit 6.

In response, Appellant sent an email to Ms. Bickers on December 4, 2012 stating as follows:

The address that you qouted (sic) me (270 East 270<sup>th</sup> street, 44132) is my US address and this is where I stay when in US. I use it for all my official correspondence and mail delievery (sic). It belongs to my good friend (Debbie Morgan) that came with me to my first meeting with you in Columbus. In addition, Debbie holds the power of attorney for me.

The Court will note that Debbie Morgan is copied on this email, and the word "Address"

appears in the “Subject” line. State’s Exhibit 6. Appellant did not present any evidence demonstrating that he had complied with Paragraph F of the October 14, 2009 Entry of Order at *any time after this email exchange*, wherein he notified the Board of a change of address. As of December 2012, when this email exchange took place, and more importantly, during a time when Appellant testified that he was not residing in the United States, he provided the Board with this address: “270 E. 270<sup>th</sup> Street, Euclid, Ohio 44132.” Thus, this Magistrate finds that Appellant provided “270 E. 270<sup>th</sup> Street, Euclid, Ohio 44132” as his official address with the Board for communication purposes prior to, and from December 2012, and until this appeal was filed on April 9, 2015. Moreover, Appellant admitted under oath that Paragraph 5 of his March 28, 2015 Affidavit is contradicted by what he wrote in State’s Exhibit 6.

3. R.C. 119.07 provides, in pertinent part:

When any notice sent by registered mail, as required by sections 119.01 to 119.13 of the Revised Code, is returned because the party fails to claim the notice, the agency shall send the notice by ordinary mail to the party at the party’s last known address and shall obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

It is Appellant’s position that the Board knew he was living abroad in September of 2013 and February of 2014 and thus, should have ignored the mandates of R. C. 119.07 and served him through his email address.

A. Service of September 12, 2013 Notice of Opportunity.

The evidence demonstrates that the Board issued a Notice of Opportunity for Hearing to Appellant on September 12, 2013, to the address he provided to the Board. This notice was sent by certified mail, return receipt requested, to Appellant’s address of record. On October 16, 2013, the Board received the notice sent in return mail with a

notation from the United States Postal Service that delivery of the item was attempted on September 14, 2013, but that it was unclaimed. The evidence reflects that pursuant to R.C.119.07, the Notice of Opportunity for Hearing was mailed to Appellant and delivered on October 16, 2013 to the address he provided to the Board as of October 24, 2013. A certificate of mailing is in the record. There is no evidence that the Notice of Opportunity for Hearing was ever returned to the Board offices. Appellant's Exhibits 2 and 5. Accordingly, as a matter of law, this Magistrate concludes that the Board complied with R.C. 119.07 as to the September 12, 2013 Notice of Opportunity for Hearing that was sent to Appellant to the address he provided to the Board as of September and October 2012. Appellant verified this address with the Board in December 2012. State's Exhibit 6. There is no evidence that Appellant changed his address as he was required to do pursuant to the Board's October 14, 2009 Entry of Order. This Magistrate concludes as a matter of law that the Board complied with R.C. 119.07, and that Appellant was properly served with the September 12, 2013 Notice of Opportunity for Hearing.

B. Service of February 12, 2014 Findings, Amended Order and Journal Entry.

The evidence demonstrates that on February 26, 2014, the Board mailed its February 12, 2014 Findings, Amended Order and Journal Entry to Appellant to the address he provided to the Board. The evidence demonstrates that the Board's letter and the February 12, 2014 Findings, Amended Order and Journal Entry were sent by certified mail, return receipt requested, to Appellant's address of record as of that date. On March 31, 2014 the Board received the notice, sent in return mail, with a notation from the United States Postal Service that the delivery of the item was attempted on February 28, 2014, but was unclaimed as of March 19, 2014. The evidence reflects that pursuant to R.C. 119.07, the

February 12, 2014 Findings, Amended Order and Journal Entry was mailed to Appellant on April 3, 2014 and delivered to the address he provided to the Board as of that date. The Board obtained a certificate of mailing that is included in the record of proceedings. There is no evidence that the February 12, 2014 Findings, Amended Order and Journal Entry was ever returned to the Board offices. Appellant's Exhibit 3. Moreover, there is no evidence that Appellant notified the Board about a change of address, pursuant to the Board's October 14, 2009 Entry of Order, after providing the Board with his address in December 2012. Accordingly, as a matter of law, this Magistrate concludes that the Board complied with R.C. 119.07 as to the February 12, 2014 Findings, Amended Order and Journal Entry.

**DECISION**

This Magistrate concludes as a matter of law that the Board complied with R.C. 119.07 and properly served Appellant with notice of the September 12, 2013 Notice of Opportunity for Hearing, and the February 26, 2014 Findings, Amended Order and Journal Entry, at the address he provided to the Board.

Counsel for Plaintiff and Defendant are hereby **ORDERED** to e-file their respective hearing exhibits so that these exhibits are included in the record of this case.

It is so **ORDERED**.

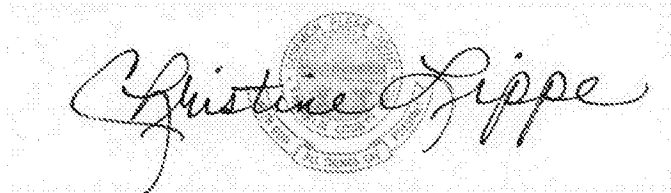
A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FINDING OF FACT OR CONCLUSION OF LAW IN THIS DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3).

**Copies to all parties registered for e-filing**

Franklin County Court of Common Pleas

**Date:** 10-08-2015  
**Case Title:** RAFAL A BADRI -VS- OHIO STATE MEDICAL BOARD  
**Case Number:** 15CV003089  
**Type:** MAGISTRATE DECISION

So Ordered

A rectangular box containing a handwritten signature in cursive that reads "Christine Lippe". 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 Christine Lippe