

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

Jose Katz,		Case No. 14CV-12351
Appellant,		Judge McIntosh
vs.		
State Medical Board of Ohio,		
Appellee.		

**Decision and Judgment Entry Dismissing Revised Code 119.12 Administrative
Appeal for Lack of Subject Matter Jurisdiction**

and

Notice of Final Appealable Order

McIntosh, J.

This case is a Revised Code 119.12 administrative appeal, by Jose Katz, M.D. (Appellant), from an Order issued by the State Medical Board of Ohio on September 10, 2014, permanently revoking Appellant's certificate to practice medicine and surgery in Ohio. The record that the Board has certified to the Court reflects the following facts.

By letter dated May 14, 2014 and mailed to Appellant on May 15, 2014, the Board provided Appellant with the following Notice of Opportunity for Hearing:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio [Board] 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 you or place you on probation for one of more of the following reasons:

- (1) On or about November 20, 2013, in the United States District Court, District of New Jersey, the Court accepted your plea of guilty to one count of Attempt and Conspiracy to Commit Health Care Fraud, in violation of 18 U.S.C. Section 1349, and to one count of False or Fraudulent Claims, in violation of 13 U.S.C. Section 287. The Court sentenced you to serve

78 months imprisonment and to pay restitution in the amount of \$19,000,000.00.

- (2) On or about May 3, 2013, the New Jersey State Board of Medical Examiners [New Jersey Board] issued a Consent Order Granting Surrender of License to be Deemed a Revocation [New Jersey Order], wherein you surrendered your New Jersey License to practice medicine and surgery, and the surrender was deemed to be a revocation of your license.
- (3) On or about June 21, 2013, the New York Department of Health, State Board for Professional Misconduct [New York Board] issued a Surrender Order [New York Order], wherein the New York Board accepted the surrender of your New York license as a physician.
- (4) On or about February 7, 2014, the Texas Medical Board [Texas Board] entered into an Agreed Order of Voluntary Revocation [Texas Order] with you, wherein you and the Texas Board agreed that your Texas medical license would be revoked.

In the Notice of Opportunity for Hearing, the Board alleged that the facts set forth in paragraph (1) constituted a “plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in R.C. 4731.22(B)(9). The Board further alleged that the New Jersey Order, the New York Order, and the Texas Order constituted “[a]ny of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in R.C. 4731.22(B)(22).

The Board notified Appellant that he had the right to request a hearing on the Board’s proposed action against Appellant’s Ohio medical license. Appellant requested a hearing.

Before a hearing could be held, however, Appellant, represented by counsel, agreed to permanently surrender his Ohio medical license. Appellant executed a “Permanent Surrender of Certificate to Practice Medicine and Surgery,” which provided in pertinent part:

I, Jose Katz, M.D., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, Jose Katz, M.D., do hereby voluntarily, knowingly, and intelligently surrender my certificate to practice medicine and surgery, License #35.050993, to the State Medical Board of Ohio [Board], thereby relinquishing all rights to practice medicine and surgery in Ohio.

I understand that as a result of the surrender herein I am no longer permitted to practice medicine and surgery in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement or restoration of certificate to practice medicine and surgery License #35.050993 or issuance of any other certificate pursuant to the authority of the State Medical Board of Ohio, on or after the date of signing this Permanent Surrender of Certificate to Practice Medicine and Surgery. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I hereby authorize the State Medical Board of Ohio to enter upon its Journal an Order permanently revoking my certificate to practice medicine and surgery, License #35.050993, in conjunction with which **I expressly waive the provisions of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, and further expressly and forever waive all rights as set forth in Chapter 119., Ohio Revised Code, including but not limited to my right to counsel, right to a hearing, right to present evidence, right to cross-examine witnesses, and right to appeal the Order of the Board revoking my certificate to practice medicine and surgery.** (Emphasis added.)

On September 10, 2014, the Board voted to ratify Appellant’s “Permanent Surrender of Certificate to Practice Medicine and Surgery.” The surrender became effective on September 10, 2014 when the Board’s Secretary and Supervising Member signed the document.

On September 10, 2014, in accordance with Appellant's "Permanent Surrender of Certificate to Practice Medicine and Surgery," the Board entered upon its Journal an Order permanently revoking Appellant's Ohio medical license.

On September 12, 2014, the Board mailed a copy of the Order to Appellant.

On October 14, 2014, Appellant filed a notice of appeal with the Board and with the Court, from the Board's September 12, 2014 Order permanently revoking Appellant's Ohio medical license.

On March 31, 2015, the Board moved the Court to dismiss this appeal for lack of subject-matter jurisdiction. Appellant has not opposed the motion. For the following two reasons, the motion must be granted.

First, in Appellant's "Permanent Surrender of Certificate to Practice Medicine and Surgery," Appellant expressly waived his right to appeal the Board's Order permanently revoking his Ohio medical license.

Second, even if Appellant had not waived his right to appeal the Board's Order, he has failed to invoke this Court's appellate jurisdiction.

Revised Code 119.12, which governs this appeal, provides:

§ 119.12 Appeal by party adversely affected.

(D) Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from ***. The notice of appeal shall also be filed by the appellant with the court. *** Unless otherwise provided by law relating to a particular agency, **notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order** as provided in this section. (Emphasis added.)

The Board mailed a copy of its Order to Appellant on September 12, 2014. Pursuant to R.C. 119.12(D), *supra*, Appellant's deadline to file a notice of appeal, with the Board and with

the Court, was September 27, 2014. Appellant did not file his notices of appeal until October 14, 2014, seventeen (17) days past the filing deadline.

Where a statute confers the right of appeal, an appeal may be perfected only in the manner prescribed by statute. *Village of Hills & Dales v. Ohio Dept. of Edn.*, 10th Dist. No. 06AP-1249, 2007-Ohio-5156, ¶ 19, discretionary appeal not allowed, 117 Ohio St. 3d 1424, 2008-Ohio-969. A party must strictly adhere to the filing requirements in order to perfect an appeal and invoke the jurisdiction of the court of common pleas. *CHS-Windsor, Inc. v. Ohio Dept. of Job and Family Servs.*, 10th Dist. No. 05AP-909, 2006-Ohio-2446, ¶ 6.

By failing to strictly adhere to the filing requirements of R.C. 119.12(D), *supra*, Appellant has failed to invoke the jurisdiction of this Court. As a pro se party, Appellant is held to the same rules, procedures, and standards as those litigants represented by counsel and therefore must accept the results of his own mistakes and errors. *Discover Bank v. Doran*, 10th Dist. No. 10AP-496, 2011-Ohio-205, ¶ 6.

This appeal is hereby **DISMISSED** for lack of subject-matter jurisdiction.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Clerk of Courts shall serve notice of this judgment and its date of entry upon all parties.

Copies electronically transmitted to all parties and counsel of record.

Franklin County Court of Common Pleas

Date: 12-23-2015
Case Title: JOSE KATZ -VS- OHIO STATE MEDICAL BOARD
Case Number: 14CV012351
Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 14CV012351

Case Style: JOSE KATZ -VS- OHIO STATE MEDICAL BOARD

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 14CV0123512015-03-3199980000
Document Title: 03-31-2015-MOTION FOR JUDGMENT ON
PLEADINGS - DEFENDANT: OHIO STATE MEDICAL BOARD
Disposition: MOTION GRANTED