

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

STEVEN R. ANGERBAUER, MD,

APPELLANT,

CASE NO. 16CVF-07-7014

vs.

JUDGE REECE

**STATE MEDICAL BOARD
OF OHIO**

APPELLEE.

**DECISION AND ENTRY
DENYING THE APPELLANT'S MOTION TO ENTER FINDING IN FAVOR OF
APPELLANT AS FILED ON SEPTEMBER 7, 2016**

Reece, J.

This matter is before the Court pursuant to the appeal filed by Steven R. Angerbauer, M.D. (Appellant) from a July 13, 2016 (mailed July 14, 2016) Entry of Order of the State Medical Board of Ohio ("Board"). The Board's Entry of Order permanently denied Appellant's application for a medical license. On July 28, 2016 the Appellant filed a Motion to Stay. The Board filed its Memo Contra on August 11, 2016. This Court issued a Decision and Entry on August 12, 2016 denying the stay.

Appellant now has moved this Court to have the matter dismissed in his favor pursuant to R.C. §119.12(I). The Board filed a Motion for Leave to file its Memorandum Contra out of rule. The Memorandum Contra was filed one day late. This Court filed an Entry allowing the late filing on September 28, 2016. Following that action, the Appellant filed a Motion requesting an additional day to file his Reply. The Board agreed with the request and this Court signed the proposed Entry on October 3, 2016 giving the Appellant until October 5, 2016 to file his Reply. The Appellant did file his Reply on October 5, 2016.

After a review of the motion, memorandum contra and reply, and for the reasons that follow the Court **DENIES** the Appellant's Motion to Enter Finding in Favor of Appellant as filed on September 7, 2016.

I. STATEMENT OF THE CASE

The Appellant filed a Notice of Appeal contesting the Entry of Order issued by the Board and mailed on July 14, 2016. The Board's Entry permanently denied Appellant's request for a certificate to practice medicine and surgery in the State of Ohio.

II. FACTS RELEVANT TO CURRENT MOTION

The Appellant commenced this appeal on July 27, 2016. On that date, the Clerk's Original Case Schedule was issued. The Board was given until August 24, 2016 to file the record pursuant to R.C. §119.12(I). The Appellant now claims that because there was no transcript of the Board's meeting contained within the certified filing, the Board has violated R.C. §119.12(I) and therefore, the Appellant believes that this matter should be terminated in his favor.

This matter is ready for review.

III. ANALYSIS OF APPELLANT'S PENDING MOTION

This Court has reviewed the applicable statutory and case law. Please note the following language from R.C. §119.12(I):

(I) Within thirty days after receipt of a notice of appeal from an order in any case in which a hearing is required by sections 119.01 to 119.13 of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed, upon motion, shall cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed thirty days, when it is shown that the agency has made substantial effort to comply. The record shall be prepared and transcribed, and the expense of it shall be taxed as a part of the costs on the appeal. The appellant shall provide security for costs satisfactory to the court of common pleas. Upon demand by any interested party, the agency shall furnish at the cost of the party requesting it a copy of the stenographic report of testimony offered and evidence submitted at any hearing and a copy of the complete record.

The Appellant has asserted that the Board has failed to produce the transcript from the Board meeting conducted on July 13, 2016. The Appellant's argument is limited to that issue.

The Board responded to Appellant's motion by informing this Court that the Board never records those meetings and - as a matter of law - the Board need not record them. The Board also indicated that the Appellant knew that the Board's meeting was not going to be recorded and the Appellant was provided with the opportunity to record the Board's meeting had he truly wanted to. The Board did not believe that it needed to record the meeting but if it had a duty to record it – a fact denied by the Board – then the Board claimed that the Appellant's failure to record the meeting when given the opportunity served as a waiver of the Appellant's current argument.

The Appellant advanced a convoluted interpretation of R.C. §119.09 to assert that the Board's meeting was the 'adjudication hearing' referenced within that part of the code. A clear reading of R.C. §119.09 establishes that the language of the code speaks to a hearing where evidence is admitted; subpoenas may be issued; evidentiary rulings are to be made; and where a hearing examiner or referee may be appointed. The language of the statute goes on to talk about the objections that can be filed and the timeframe for making those objections at the administrative level. In the certified record it is clear that the Appellant was given the opportunity to appear at the 'adjudication hearing' that was held on April 15, 2016.

Subsequent to the April 15, 2016 hearing the Appellant in fact requested additional time to file his objections pursuant to R.C. §119.09. The Appellant did in fact file the objections. Those acts seem to establish the fact that the Appellant – at one time – knew that the April 15, 2016 hearing was the 'adjudication hearing' and that the parties were entering a new phase in the administrative process. Appellant is now taking a new position on appeal. Clearly the Board's

meeting of July 13, 2016 is not the ‘adjudication hearing’. The Appellant’s argument has no merit.

In any event, the Board pointed to the recent case of *Ali Khan, M.D. v. State Medical Board*, Casen No. 12CVF-12914 (J. Beatty, Franklin County Court of Common Pleas) (Sept. 25, 2014) The *Ali Kahn* case rejected a similar argument at page 9 of that decision. Please note the following language from *Ali Kahn*:

In *Mahajan v. State Med. Bd. of Ohio*, 10th Dist. No. 11AP-421, 2011-Ohio-6728, ¶27, the Court addressed the adequacy of the Board’s minutes as follows:

[W]e conclude that the board's minutes contain sufficient facts and information to permit the public to understand and appreciate the rationale behind its decision to impose probation upon Dr. Mahajan's certificate to practice medicine and surgery in Ohio. The minutes are seven, single-spaced pages in length. They include detailed notes of each speaker's statements, identification of each motion, and the official votes of the board members on each motion. While Dr. Mahajan contends that the minutes do not contain every statement made by board members, having reviewed the minutes and the transcript, we conclude that the minutes are full and accurate. They reflect substantial reasoning and explanation by the board members and certainly reflect enough for us to understand and appreciate their rationale.

Applying these principles here, the Court concludes that the Board’s Minutes of its December 11, 2013 Meeting constitute a complete record of its proceedings. The minutes contain detailed notes of each speaker’s statements, identification of the motions, a detailed statement of the proposed order, and the official votes of each member. While the Minutes may not contain every statement made, they reflect sufficient reasoning and explanation by the Board members for an understanding of the rationale behind the Board’s Decision.

The Appellant attempted but failed to distinguish the holding in *Ali Khan*. The *Ali Khan* rationale is true in this case. There was no authority cited by the Appellant to support his claim that the Board was/is required to keep a transcript of its meeting. Nor was there any authority that supported the Appellant’s claim that the minutes produced by the Board were not sufficient.

Having no duty to create or maintain a transcript, this Court need not concern itself with the second question of whether or not the Appellant was harmed by the matter not being in the record. That issue was not even truly addressed by the Appellant.

IV. DECISION:

The Motion of the Appellant to Enter Finding in Favor of Appellant, as filed on September 7, 2016 is **DENIED**.

Guy L. Reece II, Judge

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Franklin County Court of Common Pleas

Date: 10-25-2016

Case Title: STEVEN R ANGERBAUER MD -VS- OHIO STATE MEDICAL BOARD OHIO

Case Number: 16CV007014

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge Guy L. Reece, II

Court Disposition

Case Number: 16CV007014

Case Style: STEVEN R ANGERBAUER MD -VS- OHIO STATE
MEDICAL BOARD OHIO

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0070142016-09-0799980000
Document Title: 09-07-2016-MOTION - PLAINTIFF: STEVEN R.
ANGERBAUER MD - MOTION TO ENTER FINDING IN FAVOR OF
APPE

Disposition: MOTION DENIED