

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

Swamisaran Bommakanti, Physician
1225 Summit Avenue
Apt. 208
Oshkosh, Wisconsin 54901

STATE DEPT. OF HEALTH
REGULATORY AFFAIRS
CONDUCT
January 23, 1992

JAN 23 1992

RECEIVED

Re: License No. 164833

Dear Dr. Sommakanti:

Enclosed please find Commissioner's Order No. 12287. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department. In the event you are also served with this Order by personal service, the effective date of the Order is the date of personal service.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

GUSTAVE MARTINE
Supervisor

DHJ/GM/er

CERTIFIED MAIL - RRR

cc: Michael S. Kelton, Esq.
Lippman Krasnow & Kelton
Attorneys At Law
711 Third Avenue
New York, New York 10017-4059



The University of the State of New York

IN THE MATTER

OF

SWAMISARAN BOMMAKANTI
(Physician)

**DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 12287**

Upon the application of SWAMISARAN BOMMAKANTI, for reconsideration of the determination of the Board of Regents pursuant to the Rules of the Board of Regents, under Calendar No. 12287, the report of the Regents Review Committee, a copy of which is made a part hereof, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (January 22, 1992): That the unanimous recommendation as well as the majority recommendation (two to one) of the Regents Review Committee be accepted; that the application of SWAMISARAN BOMMAKANTI, for reconsideration be granted in part, as hereafter set forth, and that the prior vote and order under Calendar No. 11005, be deemed modified to the extent that, in regard to the course of retraining which the applicant must complete successfully in order to terminate the partial suspension of his license, the Health Department shall, within thirty days after the effective date of the order of the Deputy Commissioner for the Professions upon this reconsideration,

- (a) select a particular course of retraining, in surgery, which it claims the American Board of Ophthalmology would approve; and
- (b) obtain the approval of the American Board of Ophthalmology for the said course of retraining it selects; and

- (c) notify both the applicant and the applicant's attorney of said particular specified course of retraining which it has selected and has obtained the approval of the American Board of Ophthalmology.

In the alternative, in the event that the Health Department does not timely satisfy each of these three requirements as to selecting, obtaining, and notifying, the Health Department shall, within ten days after the expiration of the above 30 day period,

- (a) select any course of retraining in the area of surgery equivalent to the course as ordered by the Board of Regents; and
- (b) approve said course of retraining; and
- (c) notify both the applicant and the applicant's attorney of said particular specified course of retraining which it has selected and approved;

that the prior vote and order also be deemed modified as follows: in the event that the Department of Health fails to timely comply with the above, as aforesaid, the applicant may, in only that event, fulfill this retraining requirement if he submits written proof that he has successfully completed such a course of retraining in surgery as approved by the International Eye Care; and that the Deputy Commissioner for the Professions be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

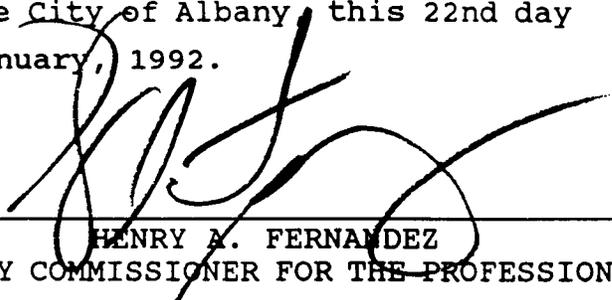
and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

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IN WITNESS WHEREOF, I, Henry A. Fernandez, Deputy Commissioner for the Professions of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand, at the City of Albany, this 22nd day of January, 1992.



HENRY A. FERNANDEZ
DEPUTY COMMISSIONER FOR THE PROFESSIONS

**ORDER OF THE DEPUTY COMMISSIONER FOR
THE PROFESSIONS OF THE STATE OF NEW YORK**

SWAMISARAN BOMMAKANTI

CALENDAR NO. 12287

24.7 Review in other cases. The committee on the professions shall review and submit its recommendation to the Board of Regents for final determinations in the following cases:

- (b) **petitions for restoration of a professional license which has been revoked or surrendered pursuant to Education Law, section 6510 or 6510-a. At least one year shall have elapsed from the date of service of the order of revocation, acceptance of surrender, or denial of a prior application for restoration or reinstatement by vote of the Board of Regents, for the acceptance by the department of a petition to the Board of Regents for restoration of a license or certificate, except that a period of time during which the license was suspended during the dependency of the discipline proceeding may reduce the one-year waiting period. This section shall not apply to restoration of licenses which have been temporarily surrendered pursuant to Education Law, section 6510-b, or Public Health Law, section 230(13).**
 - (1) **Materials submitted in response to the Committee on the Professions' recommendation to the Board of Regents shall be filed no later than 15 days following the postmarked date of the written notification of the decision or recommendation of the Committee on the Professions.**
 - (2) **If an applicant has failed to remain current with developments in the profession, and a substantial question is presented as to the applicant's current fitness to enter into the active practice of the profession, the Board of Regents may require that the applicant take and obtain satisfactory grades on a proficiency examination satisfactory to the department prior to the issuance of a license or limited permit.**



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

SWAMISARAN BOMMAKANTI

**No. 12287
APPLICATION
FOR
RECONSIDERATION**

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

SWAMISARAN BOMMAKANTI, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

A hearing, as to various specifications charging respondent with committing professional misconduct, was held before a hearing committee of the State Board for Professional Medical Conduct. The hearing committee found and concluded that respondent was guilty of certain specifications of the charges to the extent indicated in its report and recommended that (1) respondent's license to practice as a physician in the State of New York be suspended partially in the area of surgery until he successfully completes a course of retraining approved by the American Board of Ophthalmology; (2) respondent be required to pass the certifying

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examination of the American Board of Ophthalmology; and (3) after the suspension has ended, respondent be placed on probation for a period of two years to include monitoring by another physician of respondent's surgical cases and review of his medical records.

The Commissioner of Health recommended to the Board of Regents that the findings and conclusions of the hearing committee be accepted in full, the recommendation of the hearing committee be rejected, and respondent's license to practice be revoked.

On July 10, 1990, respondent appeared before us when we originally reviewed this matter. Our report was thereafter issued and reviewed by the Board of Regents.

On October 13, 1990, the Board of Regents accepted the recommendation of our Committee. The vote and order, under Calendar No. 11005, was issued on October 26, 1990 and thereafter was duly served upon respondent. Therefore, the Board of Regents accepted the measure of discipline recommended by this Regents Review Committee to: suspend partially respondent's license in the area of surgery until he submits written proof of his successfully completing a course of retraining, at respondent's expense, in surgery, taken in the United States or Canada, and previously approved by the American Board of Ophthalmology; place respondent on probation for three years; and, upon termination of the aforesaid indefinite suspension, place respondent on probation for two years.

The reconsideration application is limited to that portion of

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the measure of discipline relating to the indefinite suspension until the applicant completes a course of retraining in the area of surgery, which course must be previously approved by the American Board of Ophthalmology. The applicant's two claims are: first, the American Board of Ophthalmology does not and will not previously approve such courses, and second, surgical retraining performed under the direction of International Eye Care should be accepted as satisfying the course requirement because it satisfies the spirit and intent of the measure of discipline.

The application was supported by a letter from the American Board of Ophthalmology indicating that said Board does not have jurisdiction to approve courses and the applicant, therefore, will not be able to obtain from said Board an approval letter for the courses he is taking. The application was also supported by a letter from International Eye Care indicating that respondent has been working there since October 13, 1990 as a fellow undergoing additional training in anterior segment surgery.

The Department of Health opposed the application for reconsideration and claimed that the American Board of Ophthalmology "routinely approves training programs." The Department of Health further claimed that although the American Board of Ophthalmology "does not approve individual courses", respondent should be required to complete the course of retraining required by the Board of Regents to be approved by the American Board of Ophthalmology if he is to practice surgery.

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In reply, the applicant's attorney wrote that he was told, by telephone, by the American Board of Ophthalmology that said Board does not in fact "routinely approve training programs" and that the Department of Health was "in error" as it is, in fact, "impossible" to perform this requirement.

Based on a further claim by the applicant's attorney, the Department of Health responded that the American Board of Ophthalmology approves "full residency programs of either 36 or 48 months" and that such is the amount of retraining deemed necessary by the Board of Regents in order to permit the applicant to practice surgery. The applicant's attorney then submitted, in support of the application, two further letters, dated October 1, 1991 and October 4, 1991, respectively, along with a letter dated October 1, 1991 from the American Board of Ophthalmology. In his letters, the applicant's attorney claimed that: said Board does not approve residency programs; does not approve of any type of training or retraining program which is done by the Board; and a full residency program of either 36 or 48 months would not be the "type of retraining program ordered by the Commissioner of Education."

The October 1, 1991 letter from the American Board of Ophthalmology indicated that said Board does not have the authority to accredit individual courses and that "(A)ccreditation of residency programs is not performed by Boards." Furthermore, that letter indicated that it was incorrect to state that the Board

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"approves full residency programs involving 36 or 48 month residency trainings." The primary function of the American Board of Ophthalmology, according to its Executive Director, is to determine that physician applicants have successfully completed a course of education in an accredited program and then to evaluate the candidate via examination.

No further submissions have been received by us.

In our opinion, the applicant believes, in good faith, that it is impossible for him to comply with the retraining requirement in its present form. However, the correspondence contained in this record, when read as a whole, does not constitute an unequivocal statement by the American Board of Ophthalmology that it will not approve of any course of retraining as ordered by the Board of Regents, as distinguished from that submitted by the applicant. Therefore, we cannot, on this record, say that it is definitely impossible for approval to be obtained from the American Board of Ophthalmology of a course of retraining selected by the Department of Health.

Although the Health Department has not, as yet, specified any particular course of retraining, it should, in view of its continuous position, be given the opportunity to show that the course of retraining can be selected and, as claimed by the Health Department, approved by the American Board of Ophthalmology.

We unanimously recommend that the application for reconsideration be granted in part, as hereafter set forth, and

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that the prior vote and order under Calendar No. 11005, be deemed modified to the extent that, in regard to the course of retraining which the applicant must complete successfully in order to terminate the partial suspension of his license, the Health Department shall, within thirty days after the effective date of the order of the Deputy Commissioner for the Professions upon this reconsideration,

- (a) select a particular course of retraining, in surgery, which it claims the American Board of Ophthalmology would approve; and
- (b) obtain the approval of the American Board of Ophthalmology for the said course of retraining it selects; and
- (c) notify both the applicant and the applicant's attorney of said particular specified course of retraining which it has selected and has obtained the approval of the American Board of Ophthalmology.

In the alternative, in the event that the Health Department does not timely satisfy each of these three requirements as to selecting, obtaining, and notifying, the Health Department shall, within ten days after the expiration of the above 30 day period,

- (a) select any course of retraining in the area of surgery equivalent to the course as ordered by the Board of Regents; and

- (b) approve said course of retraining; and
- (c) notify both the applicant and the applicant's attorney of said particular specified course of retraining which it has selected and approved.

Our unanimous recommendation is premised on the views that:

(1) the applicant's license continue to be suspended partially in the area of surgery until the applicant successfully completes an appropriate course of retraining, at respondent's expense, in surgery taken in the United States or Canada; and (2) a mechanism, as indicated above, be permitted to assure that it is possible for such a course of retraining to be available to the applicant.

Our Committee is divided, however, with regard to the issue as to the applicant, in the event that he will not be timely directed to take a course of retraining, being permitted to fulfill the retraining requirement through his obtaining the approval from the International Eye Care for retraining by them.

The undersigned and Simon J. Liebowitz, by majority vote, recommend that the prior vote and order also be deemed modified as follows: in the event that the Department of Health fails to timely comply with the above, as aforesaid, the applicant may, in only that event, fulfill this retraining requirement if he submits written proof that he has successfully completed such a course of retraining in surgery as approved by the International Eye Care. The other one member of our Committee votes not to agree with this

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last recommendation and does not render a recommendation thereon at this time.

Respectfully submitted,

J. EDWARD MEYER

MELINDA AIKINS BASS

SIMON J. LIEBOWITZ


Chairperson

Dated: January 10, 1992