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BEFORE THE  
OREGON MEDICAL BOARD  
STATE OF OREGON

In the Matter of the Medical License of  
STEVEN ARTHUR LATULIPPE, MD

STEVEN ARTHUR LATULIPPE, M.D.,  
MD22341

Petitioner,

v.

OREGON MEDICAL BOARD,

Respondent.

Appellate Court No. A177050

ORDER ON RECONSIDERATION

13 Steven Arthur LaTulippe, MD, (Licensee) has filed a petition for judicial review of the  
14 Final Order Upon Default issued by the Oregon Medical Board (Board) on September 2, 2021.  
15 On September 7, 2021, Licensee moved to vacate the default final order; on September 20, 2021,  
16 Licensee timely filed his petition for judicial review.

17 In his opening brief on judicial review, filed on April 22, 2022, Licensee argues that he  
18 submitted an untimely request for a hearing on the Board's Complaint and Notice of Proposed  
19 Disciplinary Action dated July 16, 2021, and that the Board erred in failing to hold a hearing to  
20 resolve disputed facts related to that untimely request. On July 7, 2022, the Board withdrew its  
21 September 2, 2021, order for reconsideration in light of that contention on appeal. ORS  
22 183.482(6).

23 **A. Background**

24 On July 16, 2021, the Board mailed the Complaint and Notice of Proposed Disciplinary  
25 Action to Licensee's address of record by regular and certified mail. ORS 183.415 and OAR  
26 847-001-0050. The complaint and notice informed Licensee that he had 21 days from the date  
27 that the complaint and notice were issued in which to request a hearing. Thus, he was required to

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1 request a hearing no later than August 6, 2021. Licensee did not make a timely request for  
2 hearing. The Board issued the Final Order Upon Default on September 2, 2021.

3 On September 7, 2021, Licensee sent the Board a letter. In the letter, he asserted that he  
4 had just returned from a seven-week family trip to Arizona and had not received notification of  
5 the Board's Complaint and Notice of Proposed Disciplinary Action until the previous day,  
6 September 6, 2021. He stated that he wished to "immediately petition to vacate the default  
7 order." Licensee also contended that the Notice was not "served" on him or emailed to him, and  
8 he was therefore "completely unable to respond." He stated that he was unaware that the Board  
9 was planning to take further action against his license, and he assumed that the Board would  
10 notify him of such an action "directly," either by phone or by email.

11 Licensee also asserted that the attorneys who represented him in a meeting of the Board's  
12 Investigative Committee related to the psychiatric care he provided, as well as his prescribing  
13 practices, and with regard to the emergency suspension of his license, did not and were not  
14 representing him at the time of the Complaint and Notice of Disciplinary Action, or at the time of  
15 his September 7, 2021, communication with the Board.

16 The Board construed Licensee's letter of September 7, 2021, as a motion to vacate the  
17 Final Order Upon Default. The Board responded, notifying Licensee of his right to seek judicial  
18 review. Licensee then filed his petition for judicial review.

19 **B. Analysis**

20 As indicated above, Licensee argues on judicial review that he submitted an untimely  
21 request for a hearing and that the Board erroneously failed to hold a hearing to resolve disputed  
22 facts related to that untimely request. Upon reconsideration, the Board assumes, without  
23 deciding, that, in addition to asking the Board to vacate the final order, he also made a request  
24 for a late hearing. The Board addresses that request as follows.

25 Pursuant to OAR 137-003-0528(1)(b), the Board may grant a late hearing request if it  
26 finds that there was good cause for the failure to file a request for hearing within the required  
27 time and the Board receives the request within 60 calendar days after the entry of the final order  
28 by default. As noted above, the Board assumes without deciding that Licensee submitted a late

1 hearing request on September 7, 2021, which was within 60 calendar days after the entry of the  
2 final order by default. For purposes of this order, the Board further assumes that the facts set  
3 forth in that communication regarding the reasons for failure to request a hearing in a timely  
4 fashion are true. The Board finds that the facts presented by Licensee for his failure to make a  
5 timely request for a hearing do not constitute good cause for that failure.

6 Under OAR 847-001-0050, licensees “must designate a mailing address on file with the  
7 Board at all times.” The designated mailing address is considered the address of record, and the  
8 Board sends “all correspondence and documents to that address.” OAR 847-001-0050(2), (3).  
9 Further, “[n]otices sent to the licensee by certified mail or registered mail to the licensee’s  
10 address of record \* \* \* is sufficient notice even if the licensee fails to or refuses to respond to the  
11 postal service ‘return receipt’ and never receives the Notice.” OAR 847-001-0050(4). “Such  
12 mailing permits the Board to proceed with disciplinary action in the absence of a request for a  
13 hearing.” *Id.*

14 Licensee left town for seven weeks. During that time, he chose to have his mail held by  
15 the post office and did not make arrangements to have his mail forwarded, or picked up and  
16 reviewed by a responsible third party. Under similar circumstances, the Court of Appeals has  
17 decided that a licensee’s delay in retrieving mail was not “beyond the reasonable control of the  
18 party,” citing the version of OAR 137-003-0528 that was then in effect. The court held that, “it  
19 was well within the commission’s discretion to conclude that the cause of petitioner’s failure to  
20 timely request a hearing was within [petitioner’s] reasonable control.” *El Rio Nilo v. Oregon*  
21 *Liquor Control Com’n.*, 240 Or App 362, 246 P3d 508 (2011). The court upheld an order  
22 cancelling a liquor license.


23 Under OAR 137-003-0501(7), “good cause” for a failure to act exists when the failure  
24 “arises from an excusable mistake, surprise, excusable neglect, reasonable reliance on the  
25 statement of a party or agency relating to procedural requirements, or from fraud,  
26 misrepresentation, or other misconduct of a party or agency participating in the proceeding.”  
27 Licensee’s inaction here was not the result of such a circumstance, but resulted from his  
28 conscious choice not to have his mail forwarded or picked up and reviewed by a responsible

1 third party, despite the Board's rules that required him to keep the Board apprised of any change  
2 in his residence or mailing address. OAR 847-008-0060 ("Each licensee of the Board shall  
3 notify the Board in writing within 30 days of any change in residence address, practice location,  
4 or mailing address."). That choice was not a mistake, nor was it excusable neglect. The  
5 circumstances that led to Licensee's late receipt of the Complaint and Notice of Proposed  
6 Disciplinary Action were entirely within his own control.

7 For the forgoing reasons, to the extent that Licensee's communication of September 7,  
8 2021, is deemed to be a late hearing request, that request is denied for lack of good cause. OAR  
9 137-003-0528(1)(b).

10 On reconsideration, the Board affirms its Final Order Upon Default issued on September  
11 2, 2021.

12 Dated this 7th day of July, 2022.

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15 Robert M. Cahn, MD  
16 Board Chair  
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