

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **In re Donald R Samuel MD**

Docket No. **261290**

L.C. No. **2001-001664**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10), orders:

The claim of appeal from the September 2, 2004 final decision of the Disciplinary Subcommittee of the Board of Medicine is **DISMISSED** for lack of jurisdiction. Per the Public Health Code, MCL 333.1101 *et seq.*, a party who is aggrieved by a decision of the Board has an appeal as of right to this Court. MCL 333.16237(6). If the party wants to move the Board to reconsider its decision before filing such an appeal, the party must file the motion in accordance with Section 87 of the Administrative Procedures Act (“Act”). 1998 AC R 338.1633(1). The Act, in turn, requires the motion to be filed “within the time fixed by this act for instituting proceedings for judicial review.” MCL 24.287(3). The Act also provides “[j]udicial review of a final decision or order in a contested case shall be by applicable special statutory review proceedings in any court specified by statute and in accordance with the general court rules.” MCL 24.302. Since the Public Health Code has provided for a special statutory review process to this Court, the aggrieved party must file an appeal or a motion for reconsideration within the time allotted by the court rules. MCL 24.287(3) and 24.302. Our court rules require the aggrieved party to file a claim of appeal within 21 days of either the entry of the final order or the entry of an order denying a postjudgment motion that had been filed within the initial 21-day appellate period. MCR 7.204(A)(1)(a) and 7.204(A)(1)(b). Seeing as appellant filed his postjudgment motion 60 days after the entry of the final order instead of 21 days, his motion was untimely. See MCR 7.204(A)(2)(d). Since this Court’s jurisdiction is time based, *Baitinger v Brisson*, 230 Mich App 112, 115-116; 583 NW2d 481 (1998), this Court must dismiss the appeal. MCL 7.202(6)(a)(i), 7.202(A)(2), and 7.204(A)(1)(b). If appellant still wants to challenge the order in question, he must file a delayed application for leave to appeal conforming to MCR 7.205. See MCR 7.203(B)(5).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 29 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk