

**CONSENT AGREEMENT  
BETWEEN  
JOSHUA C. NELSON, D.O.  
AND  
THE STATE MEDICAL BOARD OF OHIO**

This CONSENT AGREEMENT is entered into by and between JOSHUA C. NELSON, D.O., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

JOSHUA C. NELSON, D.O., enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

**BASIS FOR ACTION**

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(6), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for a "departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established." Further, THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B)(22), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, 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."
- B. THE STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT in lieu of formal proceedings based upon the violations of Sections 4731.22(B)(6) and (B)(22), Ohio Revised Code, as set forth

STATE MEDICAL BOARD  
OF OHIO

in Paragraphs E & F below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Agreement.

- C. JOSHUA C. NELSON, D.O., has applied for a license to practice osteopathic medicine and surgery in the state of Ohio.
- D. JOSHUA C. NELSON, D.O., STATES that he is licensed to practice medicine and surgery in the state of California.
- E. JOSHUA C. NELSON, D.O., ADMITS that he entered into a Stipulation, Decision and Order with the Osteopathic Medical Board of California whereby DOCTOR NELSON's license to practice osteopathic medicine and surgery in California was revoked, based on DOCTOR NELSON's treatment of a 37-year-old patient. The revocation was stayed, and DOCTOR NELSON was placed on probation for three years subject to specific terms and conditions. Under the terms of the probation, DOCTOR NELSON is required to take twenty (20) additional hours of continuing medical education during each year of probation. During the first year, the coursework must relate to the area of subarachnoid hemorrhage. During the second and third years of probation, the coursework must relate to neurology generally. The Stipulation, Decision and Order was effective on June 8, 1999. A copy is attached and fully incorporated herein.
- F. DOCTOR NELSON FURTHER ADMITS that he failed to meet minimal standards of care in his treatment of the patient referred to in paragraph E. Specifically, DOCTOR NELSON ADMITS that in providing telephone consultation regarding the patient, he failed to appropriately consider that the patient's bloody spinal tap could have been superimposed on a subarachnoid hemorrhage. DOCTOR NELSON FURTHER ADMITS that he should have obtained more information from the emergency room physician and/or personally evaluated the patient before making a determination that the patient could be discharged from the hospital.

STATE MEDICAL BOARD  
OF OHIO  
1999 AUG 11 11 00 AM '99

**AGREED CONDITIONS**

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, JOSHUA C. NELSON, D.O., shall be granted a certificate to practice osteopathic medicine and surgery in the state of Ohio, and JOSHUA C. NELSON, D.O., knowingly and voluntarily agrees with THE STATE

MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

**STAYED REVOCATION**

1. The certificate of JOSHUA C. NELSON, D.O., shall be and hereby is permanently revoked. Such revocation is stayed.

**PROBATION**

2. The certificate of JOSHUA C. NELSON, D.O., to practice osteopathic medicine and surgery in the state of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a minimum period of three (3) years:

- A. DOCTOR NELSON shall obey all federal, state and local laws, and all rules governing the practice of medicine in Ohio;
- B. DOCTOR NELSON shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution, stating whether there has been compliance with all of the conditions of this CONSENT AGREEMENT. The first quarterly declaration must be received in the BOARD's offices on the first day of the third month following the month in which the CONSENT AGREEMENT becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD's offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD's offices on or before the first day of every third month;
- C. DOCTOR NELSON shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR NELSON written notification of scheduled appearances, it is DOCTOR NELSON's responsibility to know when personal appearances will occur. If he does not receive written

1990 AUG 29 P 3:29

STATE MEDICAL BOARD  
OF OHIO

notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR NELSON shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance;

- D. In the event that DOCTOR NELSON should leave Ohio for three (3) continuous months, or reside or practice outside the state, DOCTOR NELSON must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the CONSENT AGREEMENT, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed;
- E. In the event DOCTOR NELSON is found by the Secretary of the BOARD to have failed to comply with any provision of this CONSENT AGREEMENT, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under the CONSENT AGREEMENT;

**Monitoring Physician**

- F. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR NELSON shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR NELSON's patient charts during the first year of probation and shall submit a written report of such review to the BOARD on a quarterly basis. In approving an individual to serve in this capacity, the BOARD will give preference to a physician who practices in the same locale as DOCTOR NELSON and who is engaged in the same or similar practice specialty. Such chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the BOARD. It shall be DOCTOR NELSON's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis;

Further, the monitoring physician shall otherwise monitor DOCTOR NELSON and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR NELSON shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR NELSON must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD

1999 AUG 21 PM 3:00  
STATE MEDICAL BOARD  
OF OHIO

for another monitoring physician as soon as practicable. DOCTOR NELSON shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore;

All monitoring physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR NELSON's quarterly declaration. It is DOCTOR NELSON's responsibility to ensure that reports are timely submitted;

**Education Requirement**

- G. DOCTOR NELSON shall complete twenty (20) additional hours of continuing medical education during each year of probation. These hours are required in addition to the hours needed to maintain a certificate to practice osteopathic medicine and surgery in Ohio. During the first year of probation, the additional courses must relate to subarachnoid and/or intracranial hemorrhages. During the second and third years of probation, the courses must relate to neurology generally. The additional courses must fulfill Category I requirements. DOCTOR NELSON shall submit to the Board for its prior approval the courses he plans to take to fulfill this requirement. DOCTOR NELSON shall provide proof of attendance for all continuing medical education requirements for each year of probation.

**Required Reporting by Licensee**

- H. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR NELSON shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR NELSON shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments; and,
- I. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR NELSON shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. DOCTOR NELSON further agrees to provide a copy of this CONSENT AGREEMENT by certified

OHIO STATE MEDICAL BOARD  
JAN 21 2 33 PM '09

mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, DOCTOR NELSON shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

#### **FAILURE TO COMPLY**

- J. DOCTOR NELSON AGREES that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR NELSON shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code.

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR NELSON appears to have violated or breached any term or condition of this CONSENT AGREEMENT, the BOARD reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this CONSENT AGREEMENT.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR NELSON has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR NELSON agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

#### **ACKNOWLEDGMENTS/LIABILITY RELEASE**

DOCTOR NELSON acknowledges that he has had an opportunity to ask questions concerning the terms of this CONSENT AGREEMENT and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR NELSON hereby releases THE STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any

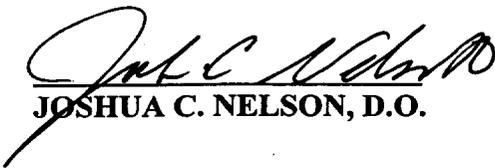
STATE MEDICAL BOARD  
OF OHIO  
AUG 2 2005 5:30 PM

and all liability arising from the within matter.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

**EFFECTIVE DATE**

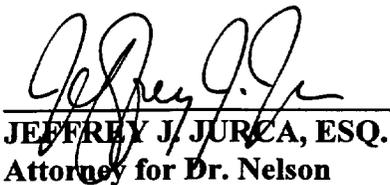
It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and that it shall become effective upon the last date of signature below.

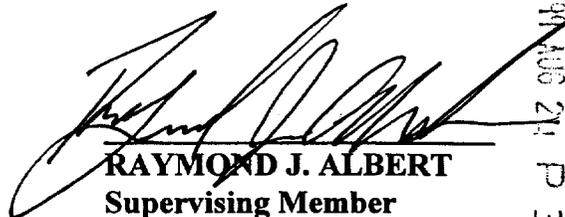
  
JOSHUA C. NELSON, D.O.

  
ANAND G. GARG, M.D.  
Secretary

8/24/99  
DATE

9/8/99  
DATE

  
JEFFREY J. JURCA, ESQ.  
Attorney for Dr. Nelson

  
RAYMOND J. ALBERT  
Supervising Member

STATE MEDICAL BOARD  
OF OHIO  
1999 AUG 21 P 3:30

8-24-99  
DATE

9/8/99  
DATE

  
ANNE B. STRAIT, ESQ.  
Assistant Attorney General

 9/8/99  
DATE

1 BILL LOCKYER, Attorney General  
Of the State of California  
2 HANNAH WISS HIRSCH (State Bar No. 56276)  
Deputy Attorney General  
3 50 Fremont Street, Suite 300  
San Francisco, California 94105-2239  
4 Telephone: (415) 356-6375  
Facsimile: (415) 356-6257  
5 Attorneys for Complainant

6  
7  
8  
9 BEFORE THE  
10 OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12 JOSHUA COOK NELSON, D.O.  
13 3828 Raccoon Valley Road  
Alexandria, Ohio 43001  
14 Osteopathic Physician and Surgeon's  
License No. 20A5133,

15 Respondent.

Case No.: 98-07

16 STIPULATION, DECISION AND  
ORDER

1999 AUG 21 P 3:30  
STATE MEDICAL BOARD  
OF OHIO

17 IT IS HEREBY STIPULATED by and between Joshua Cook Nelson  
18 (hereinafter "the Respondent"), represented by Kenneth L. Freeman, Attorney at Law, and Linda  
19 J. Bergmann, Executive Director of the California State Osteopathic Medical Board (hereinafter  
20 "Board"), by and through her attorney, Hannah Wiss Hirsch, Deputy Attorney General, as  
21 follows:

- 22 1. The Respondent has received and read the Accusation which is presently  
23 pending in Case No. 98-07 before the California State Osteopathic Medical Board.  
24 2. The Respondent was duly served with the Accusation and with all other  
25 documents required by law in the above-entitled matter.  
26 3. The Respondent is represented by counsel, Kenneth L. Freeman, Attorney at  
27 law, of the Law Firm of Freeman and Galie, in the above-entitled matter.  
28

1                   4. The Respondent fully understands the nature of the charges alleged in the  
2 above-entitled Accusation, and, that said charges, if proved, would constitute cause for  
3 disciplining his license as an Osteopathic Medical doctor.

4                   5. The Respondent is fully aware of his rights to a hearing on the charges and  
5 allegations contained in the Accusation No. 98-07, his rights to reconsideration and appeal, and  
6 all other rights afforded him, under the Administrative Procedure Act (Government Code  
7 sections 11370, etc.) and the laws of the State of California.

8                   6. The Respondent hereby, freely, knowingly and voluntarily waves his rights to  
9 a hearing, reconsideration and appeal, and all other rights afforded him under the Administrative  
10 Procedure Act (Government Code sections 11370, etc.) and the laws of the State of California,  
11 except for his rights to petition for modification or termination of probation.

12                   7. Linda J. Bergmann, as Executive Director of the California State Osteopathic  
13 Medical Board made and filed this Accusation solely in her official capacity. The Respondent's  
14 license status and history as set forth in paragraph 2 of the Accusation are true and correct. A  
15 copy of the Accusation is attached hereto as Exhibit A.

16                   8. Respondent admits that, if proven, grounds exist to discipline his license for  
17 the reasons set forth in paragraphs 8, 9 and 10 of the Accusation attached herein as Exhibit A.  
18 For purposes of this stipulation, Respondent agrees that his license may be disciplined pursuant  
19 to Business and Professions Code section 2234. This admission is based on Respondent, in  
20 providing telephone consultation regarding a patient, failing to appropriately consider that the  
21 bloody spinal tap could have been superimposed on a subarachnoid hemorrhage, and under the  
22 circumstances he should have evaluated the patient in person as that would have allowed him to  
23 personally assess all data on the patient and better appreciate the seriousness of her condition.

24                   9. In mitigation, respondent has had no prior discipline, and this is the only case  
25 in which respondent has been involved. Subsequent to this case respondent became Board-  
26 certified in neurology by the American Board of Psychiatry and Neurology in January of 1998.

27                   10. Agreements and admissions made by Respondent herein are for the purposes  
28 of this proceeding, for any other disciplinary proceedings by the Board, for any petition for

1 reinstatement, reduction of penalty, or application for relicensure, and shall have no force or  
2 effect in any other case or proceedings.

3 11. The parties stipulate that respondent performed no surgical service or  
4 invasive procedure in regard to the patient alleged in the Accusation. Pursuant to the provisions  
5 of Welfare and Institutions Code section 14124.12, and as part of its disciplinary process, the  
6 Board determines that no surgical service or invasive procedure gave rise to the probation set  
7 forth herein, and that compelling circumstances exist that warrant respondent to receive  
8 continued Medi-Cal reimbursement during the period of probation.

9 12. In consideration of the foregoing admissions and recitals, the parties agree  
10 that the Board shall, without further notice or formal proceedings, issue and enter an Order as  
11 follows:

12 **ORDER**

13 **IT IS HEREBY ORDERED THAT OSTEOPATHIC** physician and surgeon's  
14 License No. 20A5133 issued to Joshua Cook Nelson is revoked. However, the revocation is  
15 stayed and Respondent is placed on probation for three years on the following terms and  
16 conditions:

17 (1) Respondent shall obey all Federal, State and local laws, all rules governing the  
18 practice of medicine in California, and remain in full compliance with any court ordered  
19 criminal probation, payments and other orders.

20 (2) Respondent shall submit to the Board quarterly declarations under penalty of  
21 perjury on the Quarterly Report of Compliance Form OMB10 (5/97) which is hereby  
22 incorporated by reference stating whether there has been compliance with all conditions  
23 of probation.

24 (3) Respondent shall comply with the Board's probation surveillance program.  
25 Respondent shall, at all times, keep the Board informed of his addresses of business and  
26 residence which shall both serve as addresses of record. Changes of such addresses shall  
27 be immediately communicated in writing to the Board. Under no circumstances shall a  
28 post office box serve as an address of record.

STATE MEDICAL BOARD  
1999 AUG 14 3:30 PM

1 Respondent shall also immediately inform the Board, in writing, of any travel to  
2 any areas outside the jurisdiction of California which last, or is contemplated to last, more  
3 than thirty (30) days.

4 (4) Respondent shall appear in person for interviews with the Board's medical  
5 consultants upon request at various intervals and with reasonable notice.

6 (5) Respondent is hereby ordered to reimburse the Board the amount of \$5,000.00  
7 within 90 days from the effective date of this decision for its investigative and  
8 prosecution costs. Failure to reimburse the Board's cost of its investigation and  
9 prosecution shall constitute a violation of the probation order, unless the Board agrees in  
10 writing to payment by an installment plan because of financial hardship. Respondent  
11 agrees that this debt cannot be discharged in bankruptcy.

12 (6) Following the effective date of this decision, if Respondent ceases to practice  
13 due to retirement, health reasons, or is otherwise unable to satisfy the terms and  
14 conditions of probation, Respondent may voluntarily tender his certificate to the Board.  
15 The Board reserves the right to evaluate the Respondent's request and to exercise its  
16 discretion whether to grant the request, or to take any other action deemed appropriate  
17 and reasonable under the circumstances. Upon formal acceptance of the tendered license,  
18 Respondent will no longer be subject to the terms and conditions of probation.

19 (7) In the event Respondent should leave California to reside or to practice outside  
20 the State or for any reason should Respondent stop practicing medicine in California,  
21 Respondent shall notify the Board or its designee in writing within ten (10) days of the  
22 dates of departure and return or the dates of non-practice within California. Non-practice  
23 is defined as any period of time exceeding thirty (30) days in which Respondent is not  
24 engaging in any activities defined in Section 2051 and/or 2052 of the Business and  
25 Professions Code. All time spent in an extensive training program approved by the Board  
26 or its designee in or out of State shall be considered as time spent in the practice of  
27 medicine. Periods of temporary or permanent residence or practice outside of California  
28 or of non-practice within California, as defined in this condition, will not apply to the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

reduction of the probationary period.

(8) Within ninety (90) days of the effective date of this decision, and on an annual basis thereafter, Respondent shall submit to the Board for its prior approval educational programs or courses related to the violations charged in this Accusation. Specifically, Respondent shall take twenty (20) additional hours of continuing education during each year of probation. During the first year the coursework shall relate to the area of sub-arachnoid hemorrhage. During the second and third years of probation the coursework shall relate to neurology generally. Each of the additional twenty (20) hours of continuing education shall be completed before the end of each of the respective years of probation. This program shall be in addition to the continuing medical education requirement for re-licensure. Following the completion of each course, the Board or its designee may administer an examination to test the Respondent's knowledge of the course. Respondent shall provide proof of attendance for both continuing medical education requirements and additional education courses on a yearly basis.

(9) If Respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving Respondent notice and the opportunity to be heard. If an Accusation and/or Petition To Revoke Probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. Upon successful completion of probation, Respondent's certificate will be fully restored.

//  
//  
//  
//  
//  
//  
//  
//

STATE MEDICAL BOARD  
OF OHIO  
1999 AUG 21 P 3:30

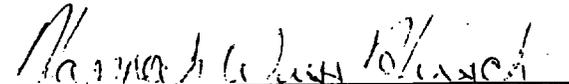
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

13. The within Stipulation shall be subject to the approval of the Board. If the Board fails to adopt this Stipulation as its Order and Decision, the Stipulation shall be of no force or effect for either party.

I concur in the Stipulation and Order.

Dated: 5/03/99

BILL LOCKYER, Attorney General  
Of The State Of California

  
HANNAH WISS HIRSCH  
Deputy Attorney General

Attorneys for Complainant

Dated: 4/26/99

  
KENNETH L. FREEMAN, Esq.

Attorney for Respondent

I hereby certify that I have read this Stipulation and Agreement in its entirety, that I fully understand the legal significance and consequences thereof, and agree to said Stipulation and waiver and in witness thereof I affix my signature.

STATE MEDICAL BOARD  
OF CALIFORNIA  
1999 AUG 21 PM 3:30

Dated: 4/22/99

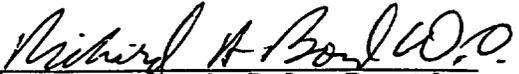
  
JOSHUA COOK NELSON, D.O.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECISION AND ORDER

The above Stipulation has been adopted and shall become the decision of the Osteopathic Medical Board of California effective June 8, 1999.

IT IS SO ORDERED this 8th day of June, 1999.

  
Richard A. Bond, D.O., President  
Osteopathic Medical Board of California

STATE MEDICAL BOARD  
OF OHIO  
1999 AUG 24 P 3:30

STATE MEDICAL BOARD  
OF OHIO

1999 AUG 21 P 3:30

EXHIBIT A

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 HANNAH WISS HIRSCH (State Bar No. 56276)  
Deputy Attorney General  
3 50 Fremont Street, Suite 300  
San Francisco, California 94105-2239  
4 Telephone: (415) 356-6375  
Facsimile: (415) 356-6370

5 Attorneys for Complainant

6  
7 **BEFORE THE**  
8 **OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA**  
9 **STATE OF CALIFORNIA**

10 **In The Matter Of The Accusation**  
**Against:**

**CASE NO. 98-07**

11 **JOSHUA COOK NELSON, D.O.**  
12 **320 Lennon Lane**  
13 **Walnut Creek, California 94598**  
**Osteopathic Physician and Surgeon's**  
**License No. 20A5133,**

**ACCUSATION**

14 **Respondent**

15  
16  
17 **COMES NOW**, complainant Linda J. Bergmann, whose as cause for  
18 disciplinary action, alleges:

19 1. Complainant is the Executive Director of the California State  
20 Osteopathic Medical Board (hereinafter "Board") and make and files this accusation solely in  
21 her official capacity.

22 **LICENSE STATUS**

23 2. On June 15, 1985, Osteopathic Physician and Surgeon's License No.  
24 20A5133 was issued by the Board to Joshua Cook Nelson, D.O. (hereinafter the  
25 "respondent"), and at all times relevant herein, said license was and currently is in full force  
26 and effect and renewed until May 31, 1999.

27 //

STATE MEDICAL BOARD  
OF CALIFORNIA  
1999 AUG 20 P 3:30

1                    **APPLICABLE STATUTES**

2                    3.        This accusation is made in reference to the following statutes of the  
3 California Business and Professions Code (hereinafter all sectional references are to the  
4 Business and Professions Code unless otherwise designated):

5                    a.        Section 3600, a provision of the Osteopathic Act, provides that the law  
6 governing the licentiates of the Board is found in the Osteopathic Act and in Chapter  
7 5 of Division 2, sections 2000, et seq., relating to medicine.

8                    b.        Section 3600-2, a provision of the Osteopathic Act, provides that the  
9 Board shall enforce those provisions of the Medical Practice Act identified as article  
10 12 (commencing with section 2220) as now existing or hereafter amended, as to  
11 persons who hold certificates subject to the jurisdiction of the Board.

12                    c.        Section 2227 provides that the Board may revoke, suspend for a period  
13 not to exceed one year, or place on probation, the license of any licensee who has  
14 been found guilty under the Medical Practice Act. The Board may also require the  
15 licensee to pay the cost of probation monitoring.

16                    4.        Section 2234 of the code provides in relevant part that the Board shall  
17 take action against any licensee who is charged with unprofessional conduct, which includes,  
18 but is not limited to, the following: . . .

19                    (c) repeated negligent acts.

20                    (d) incompetence . . .

21                    5.        Business and Professions Code section 125.3 authorizes an  
22 administrative law judge hearing a case, upon suitable proof, to direct a licentiate found to  
23 have committed a violation or violations of the Licensing Act to pay a sum not to exceed the  
24 reasonable costs of the investigation and enforcement of the case.

25                    **FACTUAL ALLEGATIONS**

26                    6.        On or about May 4, 1996, K.L., a 37 year old woman, was seen in the  
27 Kaiser Emergency Room in Contra Costa County for a new onset of headache five hours

STATE MEDICAL BOARD  
OF CALIFORNIA  
1999 AUG 20 PM 3:30

1 previously. She had a "long history of migraine" and "noted weakness both hands and legs  
2 during episode, resolved, saw lightening bolt." She was treated and released.

3 On or about May 6, 1996, patient K.L. was seen in followup by her doctor  
4 who noted the visual loss and numbness in both legs in the event on May 4, 1996. Her  
5 doctor also noted that she still had the headache and dizziness but no visual loss. In his  
6 medical notes the doctor described "some rigidity" of the neck and raised the question of  
7 meningismus and subarachnoid hemorrhage, though he wrote the "overall suspicion is low".  
8 The patient was sent to the emergency room for a CT brain scan and a lumbar puncture.

9 Later that day, on May 6, 1996, patient K.L. was seen by Doctor M. Lozano  
10 in the emergency room who noted the onset of the headache two days previously, and noted  
11 "positive meningismus" and also noted that the official reading of the CT brain scan was  
12 negative. Doctor Lozano also performed a lumbar puncture. The report states that the first  
13 tube had bloody fluid that was xanthochromic with 1,900,000 red blood cells and 400 white  
14 blood cells, and the fourth tube also contained bloody fluid that was described as  
15 xanthochromic with a total red blood cell count of 900,000 and a white count of 200. The  
16 laboratory reports specifically states "xanthochromia unspun specimen." Doctor Lozano  
17 phoned the neurologist on call, respondent Doctor Nelson, and reported the above findings to  
18 Doctor Nelson. In response to his report Doctor Lozano was told by Doctor Nelson that if  
19 there were truly greater than 30,000 red blood cells due to a subarachnoid hemorrhage then  
20 blood should be seen on the CT brain scan. Doctor Nelson's recommendation was that the  
21 patient could be discharged home.

22 On May 7, 1996 patient K.L. returned to the emergency room and the  
23 emergency room physician described the recent history and noted the number of red blood  
24 cells in the May 6 spinal tap and wrote "positive xanthochromia". The ER physician  
25 repeated the lumbar puncture and wrote "R/O SAH [rule out subarachnoid hemorrhage],  
26 discussed with Doctor Nelson, admit ICU, neuro checks, arrange angiogram".

27 Patient K.L. was transferred to Kaiser Hospital in Redwood City on May 8,

1 1996 where a cerebral angiogram showed a large lobulated aneurysm of the anterior  
2 communicating artery. Shortly after the angiogram the aneurysm ruptured causing a massive  
3 hemorrhage. Her condition deteriorated and she died on May 11, 1996.

4 **FIRST CAUSE FOR DISCIPLINARY ACTION**

5 7. Respondent's conduct as alleged above in paragraph 6 demonstrated a  
6 lack of knowledge about the significance of xanthochromic spinal fluid and constituted  
7 incompetence in violation of Business and Professions Code section 2234(d).

8 **SECOND CAUSE FOR DISCIPLINARY ACTION**

9 8. Respondent's conduct as alleged above in paragraph 6 demonstrated a  
10 lack of knowledge about the significance of the number of red blood cells in spinal fluid and  
11 constituted incompetence in violation of Business and Professions Code section 2234(d).

12 **THIRD CAUSE FOR DISCIPLINARY ACTION**

13 9. Respondent's conduct as alleged above in paragraph 6 demonstrated a  
14 lack of knowledge of the correlation of the CT brain scan and spinal fluid studies and  
15 constituted incompetence in violation of Business and Professions Code section 2234(d).

16 **FOURTH CASE FOR DISCIPLINARY ACTION**

17 10. Respondent's conduct as alleged above in paragraph 6 demonstrated a  
18 lack of knowledge of the significance of xanthochromic spinal fluid, the significance of the  
19 number of red blood cells in spinal fluid and the correlation of the CT brain scan and spinal  
20 fluid studies considered together with the clinical picture of this patient, and constituted  
21 incompetence in violation of Business and Professions Code section 2234(d).

22 **WHEREFORE**, complainant requests that the Board hold a hearing on the  
23 matters alleged herein and that following said hearing, the Board issue a decision:

- 24 1. Revoking or suspending Osteopathic Physician and Surgeon's License  
25 No. 20A5133, heretofore issued to respondent Joshua Cook Nelson, D.O.;
- 26 2. Directing respondent Joshua Cook Nelson, D.O. to pay to the Board a  
27 reasonable sum for its investigative and enforcement cost of this action; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

3. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

DATED: June 18, 1998

Linda J. Bergmann  
LINDA J. BERGMANN, Executive Director  
Osteopathic Medical Board  
State of California

Complainant

STATE MEDICAL BOARD  
OF OHIO  
1999 AUG 24 P 3:30