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COURT OF APPEALS  
FRANKLIN COUNTY, OHIO

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CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Brett Bolton, D.O., :

Appellant-Appellant, :

v. :

State Medical Board of Ohio, :

Appellee-Appellee. :

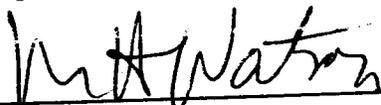
No. 04AP-246

(ACCELERATED CALENDAR)

JOURNAL ENTRY OF DISMISSAL

Appellant having failed to file a brief within the time required by App.R. 18(C), and having failed to respond to notification from the Court that the time for filing the brief had expired, this appeal is *sua sponte* dismissed for failure of appellant to file a brief. All costs of this action shall be assessed against the appellant.

  
\_\_\_\_\_  
Judge William A. Klatt

  
\_\_\_\_\_  
Judge Michael H. Watson

  
\_\_\_\_\_  
Judge Susan Brown

HEALTH & HUMAN  
MAY 03 2004  
SERVICES SECTION



# FINAL APPEALABLE ORDER

STATE MEDICAL BOARD OF OHIO  
FRANKLIN COUNTY, OHIO  
COURT OF COMMON PLEAS

2004 FEB 10 A 8:35

BRET BOLTON, D.O.

Appellant,

v.

STATE MEDICAL BOARD OF OHIO

Appellee

TERMINATION NO. 10  
BY AB 2-5-04

Case No. 03CV 007940

JUDGE MILLER

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COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
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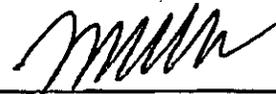
**JUDGMENT ENTRY AFFIRMING THE STATE MEDICAL BOARD'S  
JULY 15, 2003 ORDER PERMANENTLY REVOKING BRET BOLTON, D.O.'s  
CERTIFICATE TO PRACTICE OSTEOPATHIC MEDICINE AND SURGERY  
IN OHIO**

This case is before the Court upon the appeal, pursuant to R.C. 119.12, of the July 15, 2003, Order of the State Medical Board of Ohio which permanently revoked Appellant, Bret Bolton, D.O.'s license to practice osteopathic medicine and surgery in Ohio. For the reasons stated in the decision of this Court rendered on January 7, 2004, which decision is incorporated by reference as if fully rewritten herein, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Appellee, State Medical Board of Ohio, and the July 15, 2003, Order of the State Medical Board in the matter of Bret Bolton, D.O., is hereby AFFIRMED. Costs to Appellant.

IT IS SO ORDERED.

Date

  
2-4-04  
JUDGE MILLER

APPROVED:

JIM PETRO (002296)  
Attorney General

STATE MEDICAL BOARD  
OF OHIO

2004 FEB 10 A 8:35



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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

BRET BOLTON, D.O., ]  
Appellant, ] CASE NO. 03CVF-07-7940  
vs. ] JUDGE NODINE MILLER  
STATE MEDICAL BOARD OF OHIO, ]  
Appellee. ]

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COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
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DECISION ON THE MERITS OF ADMINISTRATIVE APPEAL

Rendered this 7<sup>th</sup> day of January, 2004.

MILLER, J.

This case came before this Court upon an administrative appeal filed by Bret Bolton, D.O. (Appellant) on July 18, 2003. Appellant is appealing the order issued by the State Medical Board (the "Board") mailed on July 15, 2003. The order of the Board permanently revoked Appellant's certificate to practice osteopathic medicine and surgery within the state of Ohio.

In reviewing the certified record filed with this Court, this Court must determine whether the Order of the Board was supported by reliable, probative and substantial evidence and whether the order is in accordance with the law pursuant to R.C. 119.12, which governs administrative appeals. R.C. 119.12 provides that this Court must affirm Appellee's order if it finds that the order is supported by reliable, probative, and substantial evidence and is in accordance with the law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 407 N.E. 2d 1265. "Reliable" evidence has been defined as

evidence that is dependable and can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. *Our Place, Inc. v. Ohio Liquor Control Commission* (1992), 63 Ohio St. 3d 570, 589 N.E. 2d 1303. "Probative" evidence is evidence that tends to prove the issue in question and it must be relevant in determining the issue. *Id.* "Substantial" evidence is evidence with some weight and it must have importance and value. *Id.*

Appellant contends that the order was not in accordance with the law for several reasons. First, Appellant contends that the Board was applying the statute retroactively to conduct that occurred before Appellant was licensed to practice medicine in the state of Ohio. The Board found that Appellant violated R.C. 4731.22(B)(9), which provides that "the board, by an affirmative vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for one or more of the following reasons: (9) A plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony." R.C. 4731.22(B)(9) (Page's 2003). There is no statutory requirement that the conduct, which resulted in a felony conviction, occur during the time that Appellant was licensed in the state of Ohio. Appellant's certificate was permanently revoked because of the conviction. Appellant was licensed by the state of Ohio in June of 2000. Appellant entered his guilty plea to nineteen felony counts on May 17, 2002 and he was sentenced on July 30, 2002. Thus, the Board did not apply the statute retroactively. After Appellant was convicted of the felony and notified the board, the disciplinary proceedings ensued and Appellant's certificate to practice medicine in the

state of Ohio was permanently revoked. Clearly, Appellant was convicted of a felony while being licensed to practice medicine in this state.

Second, Appellant contends that during the administrative hearing, the burden was shifted to him, which denied him of his due process rights. Appellant accuses the Hearing Examiner of playing prosecutor; thereby denying him a fair administrative hearing.

The Ohio Supreme Court has stated that the right to due process in an administrative proceeding is not limited to a simple right to have the hearing conform with the letter of applicable procedural regulations: "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. \*\*\* Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the inexorable safeguard \*\*\* of a fair and open hearing be maintained in its integrity. \*\*\* The right to such a hearing is one of \*\*\* assured to every litigant by the Fourteenth Amendment as a minimal requirement." *State ex rel. Ormet Corp. v. Indus. Comm.* (1990), 54 Ohio St. 3d 102, 103, 561 N.E.2d 920 quoting *Ohio Bell Telephone Co. v. Pub. Util. Comm. of Ohio* (1937), 301 U.S. 292, 304-305, 81 L. Ed. 1093, 57 S. Ct. 724. Accordingly, the crux of such a right to due process in an administrative proceeding is that "statutory procedural provisions aside, a requirement to conduct a 'hearing' implies a 'fair hearing.'" *Ormet, supra*, at 104.

This Court does not find that the administrative hearing was in any way unfair. Appellant was duly notified of the charges against him and was given ample opportunity to address those charges at the hearing. The fact that the Hearing Examiner asked questions for purposes of clarification in an effort to understand Appellant's evidence does not constitute a shifting of the burden. Nor does it imply any degree of unfairness.

Third, Appellant claims that the Board acted contrary to the guarantee of equal protection under the law by imposing a permanent revocation against Appellant but suspending the medical certificate of Anthony G. Polito, DPM, who was convicted of a misdemeanor. Appellant argues that Dr. Polito was convicted of a misdemeanor theft and that such theft occurred during the course of his practice. According to Appellant, his conviction did not arise out of conduct that occurred during the course of his practice and that the Board disparately imposed a more severe sanction.

The record is clear that Appellant pled guilty to nineteen counts of stealing money from an Indian gaming establishment in violation of Title 18, United States Code, Section 1167(B), a felony. According to the plea agreement, Appellant stole \$64,800.

After entering a plea of guilty, Appellant was sentenced to probation for a term of three (2) years. Appellant was also required to make pay \$1,900 in special assessments and to serve 150 hours of community service by way of free medical services to the underprivileged and the elderly. Restitution in the amount of \$64,800 was paid in full.

Appellant's admission and plea of guilty constitutes a violation of R.C. 4731.22(B)(9). R.C. 4731.22(B) requires the Board to address each disciplinary matter on a case-by-case basis. The Court in *Clayman v. State Med. Bd.* (1999), 133 Ohio App. 3d 122, 726 N.E.2d 1098, concluded that evidence as to other disciplinary proceedings

would not bind the Board in a given action, but rather each case was unique as to the underlying facts and considerations. The board has the authority to impose a wide range of sanctions pursuant to R.C. 4731.22, ranging from reprimand to revocation. This discretion reflects the deference due to the board's expertise in carrying out its statutorily-granted authority over the practice of medical professions in Ohio, tailored to the particular circumstances of each case. Therefore, the penalty imposed by the Board in the case of Dr. Polito has no bearing on the penalty that the Board imposed in the instant matter.

Fourth, Appellant contends that there must be a nexus between Appellant's professional duties and the conduct resulting in the conviction. To support this position, Appellant cites to several Board of Education cases. Particularly, Appellant references the case of *Hoffman v. State Board of Education* (2001), 145 Ohio App. 3d 392. The Hoffman case can be distinguished from the present case because the controlling statute in that case, R.C. 3319.31, requires the establishment of a nexus between the licensee's conduct and his ability to teach and administrate. The statute in this case does not have such a requirement. In addition, the Board of Education in the *Hoffman* case imposed a sanction without establishing a nexus and the Courts upheld the sanction.

Finally, Appellant contends that the Board erred in failing to admit newly discovered evidence. The newly discovered evidence that Appellant wanted to admit was evidence that the state of Florida closed its investigation and that no action was taken against his license. Appellant concedes however, that such evidence does not go to the underlying facts. This Court agrees. The fact that the state of Florida closed the investigation and opted not to pursue against Appellant's license is well within the state's

rights. This information, if it is to have any bearing in the present matter, would be for purposes of mitigation. The manner in which the state of Florida handles the situation in no way affects the underlying fact that Appellant was conviction of a felony in violation of the Ohio statute.

Upon consideration of the evidence adduced at that hearing, the Hearing Examiner proposed that Appellant's certificate to practice osteopathic medicine and surgery in the State of Ohio be permanently revoked.

The Board gave Appellant the opportunity to offer mitigating evidence before a penalty was imposed. Upon consideration of the guilty plea, the nature of the offense and the mitigating evidence, the Board adopted the Hearing Examiner's proposal.

This Court is not granted the authority to ameliorate the penalty levied against a practitioner by the Board if there is reliable, probative and substantial evidence supporting a violation. The Tenth District Court of Appeals has consistently held that the trial court is without authority to reweigh the severity of penalty imposed by administrative bodies, such as the Board. See *Garwood v. State Med. Bd. of Ohio*, (1998), 127 Ohio App. 3d 530, 713 N. E. 2d 468, citing *Roy v. Ohio State Medical Bd.* (1992), 80 Ohio App. 3d 675, 610 N.E. 2d 562. See also *DeBlanco v. Ohio State Medical Bd.* (1991), 78 Ohio App. 3d 194, 604 N.E. 2d 212; *Henry's Café, Inc. v. Bd. Of Liquor Control* (1959), 170 Ohio St. 233, 163 N.E. 2d 678.

After a review of the record of proceedings, arguments of counsel, and applicable case law, this Court must conclude that there is reliable, probative and substantial evidence to support the decision of the Board. This Court does not find the error asserted by Appellant to be well taken. Therefore, the order of the

Board permanently revoking Appellant's certificate to practice osteopathic medicine and surgery in the State of Ohio is hereby **AFFIRMED**. Counsel for Appellee shall prepare and submit a Judgment Entry pursuant to Local Rule 25.01.

 1-7-04  

---

JUDGE NODINE MILLER

Copies to:

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Counsel for Appellee

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Brett Bolton, DO,  
PO Box 11664  
Ft. Lauderdale, FL 33339  
Appellant,

v.

State Medical Board of Ohio,  
77 South High St., 17th Floor  
Columbus, Ohio 43215-0315  
Appellee.

\*

03CVF07 7940

CASE NO. \_\_\_\_\_

\*

JUDGE \_\_\_\_\_

\*

Appeal from the State Medical Board of Ohio

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APPELLANT'S NOTICE OF APPEAL

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Pursuant to RC 119.12, notice is hereby given that Appellant, Brett Bolton, DO, appeals the order of the State Medical Board dated July 9, 2003, and mailed July 15, 2003, (copy attached as Exhibit A.) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPBYERS

---

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Attorney for Brett Bolton, DO

CPC original

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COMMON PLEAS COURT  
FRANKLIN CO. OHIO

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CLERK OF COURTS

KEVIN P. BYERS  
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614.228.6283

Certificate of Service

I certify that an original of the foregoing document was hand delivered this 18th day of July, 2003, to the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43266-0315 and also a copy was placed in first class U.S. Mail this same date addressed to Assistant Attorney General Kyle C. Wilcox, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

KPB/RS

Kevin P. Byers





IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Brett Bolton, DO,  
Appellant,  
v.

The State Medical Board of Ohio,  
Appellee.

\*  
CASE NO. \_\_\_\_\_  
\*  
\* JUDGE \_\_\_\_\_  
\*

Appeal from the State Medical Board of Ohio

APPELLANT'S MOTION FOR SUSPENSION OF AGENCY ORDER

By Notice of Appeal filed contemporaneously with the instant motion, Appellant, Brett Bolton, DO, has appealed the July 15, 2003, permanent revocation of his Ohio medical license. The Order was served upon Appellant by mailing on July 15, 2003, was received July 9, 2003, and purports to be effective "immediately upon mailing." For the reasons which follow in the Memorandum in Support and pursuant to RC 119.12, ¶5, Appellant now moves for judicial suspension of the Medical Board order pending resolution of the instant appeal. In accord with RC 119.12, ¶12, the Court is respectfully urged to give the instant motion preference over all other civil matters.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

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Attorney for Brett Bolton

STATE MEDICAL BOARD  
OF OHIO  
DO  
2003 JUL 18 P 4:55

MEMORANDUM IN SUPPORT

The controlling statute, RC 119.12, ¶5, provides in pertinent part that:

[i]n the case of an appeal from the state medical board or chiropractic examining board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order.

The foregoing provision of law evidences the clear intention of the legislature that the remedial suspension provision of RC 119.12 should be considered a meaningful counterpart to a civil TRO, as decided through the Court's exercise of its sound discretion. However, unlike some preliminary civil remedies, there is no requirement under RC 119.12 that a movant must show the probability of likelihood of success on the merits. Rather, the two-pronged test under law is clear and straightforward:

1. Is the Appellant facing "unusual hardship" and;
2. Is the health, safety and welfare of the public put at risk if the stay motion is granted?

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By action taken by the Medical Board, Dr. Bolton's medical license has been revoked, forever, said punishment purportedly effective as of July 15, 2003, before Dr. Bolton even received the paperwork advising of this onerous sanction. If the Board order is allowed to stand during the pendency of the instant appeal, it will indispitably work an unusual hardship to Dr. Bolton since the Medical Board decreed that the license revocation would become effective even

before the expiration of a reasonable time in which to retain appellate counsel and perfect the appeal.

An actual suspension will clearly cause an unusual hardship to Dr. Bolton which will likely never be repaired, even if he eventually prevails in this appeal -- in effect, the bell cannot be "unrung." Without a stay order from this Court, Dr. Bolton will be in the unenviable position of pursuing an appeal which offers no immediate relief and he will be forcefully removed from his many Ohio patients while the merits of the appeal are argued and briefed.

The two statutory criteria under RC 119.12 for suspension of an agency order, "unusual hardship" and "health, safety, and welfare of the public" are analyzed seriatim.

#### I. UNUSUAL HARDSHIP

Because time is of the essence in obtaining a ruling on this motion, it is incumbent upon Dr. Bolton to proactively anticipate and meet the expected opposition by the State. The State will most certainly cite to State Medical Board v. Alsleben (March 17, 1980), Summit Co. CPC Case No. CV80-3-0614, unreported, (Exhibit A attached hereto), in support of its opposition to Appellant's instant motion.

Alsleben is generally recognized as the modern seminal Ohio case on the issue of the propriety of a stay order in an appeal from an administrative agency. Under the rationale of Alsleben, it is presumed that the discipline of one's medical license will naturally create difficulty for a licensee. The legislative use of the adjective "unusual" requires proof that something beyond "mere" financial hardship is necessary to support judicial suspension of an

administrative order pending the merit decision on appeal. Id. at 1. Unfortunately, this twenty-year old case from Akron has been overly cited and unduly relied upon by both administrative agencies and trial courts pertaining to stay motions under RC 119.12.

Careful analysis of the Alsleben opinion yields an important consideration under the "unusual hardship" prong which was unproven in that case. The court noted that "probability of disastrous financial loss" was a basis to find the necessary "unusual hardship" and grant the requested stay order. Id. at 2. As explained herein, Dr. Bolton is facing the very real threat of "disastrous financial loss" precisely as contemplated under the enunciated Alsleben test.

If the Board order stands intact during the appeal, Dr. Bolton will be unable to practice medicine in Ohio while the merits of the appeal are briefed, argued, and decided. Dr. Bolton has practiced in Ohio on a regular basis for almost six years. He is scheduled for procedures for at least one week out of every month and his practice commitments are arranged approximately eight weeks in advance. This is not a case where the loss of the Ohio license is nothing but a "paper" sanction. This harsh and unsupported penalty will cause irreparable damage to Dr. Bolton's reputation, financial standing, and professional credentials.

Moreover, this harsh discipline will be disclosed to a myriad of insurers, regulators, and other healthcare entities even though the instant appeal is pending. A consequence of the dissemination of the adverse information, without a stay order in place, will lead to entirely foreseeable "disastrous financial loss" since Dr. Bolton's

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 OF OHIO

other entities will likely take steps to remove, exclude, or otherwise punish Dr. Bolton, based solely upon the Ohio outcome. A stay order will work to prevent unusual harm to the doctor's reputation, credentials, and financial stability while the merits are briefed.

Also worthy of mention in the Alsleben case is the fact that the cited ruling was after an earlier ruling by the court which granted a stay order under Civ. R. 65. It is actually the outcome from the preliminary hearing which is so often cited by the State in defense of stay motions in administrative appeals even though it was not rendered in a RC 119 proceeding. Moreover, it must be remembered that since 1987 this Court has been vested with exclusive original jurisdiction over appeals from the Medical Board and there are numerous cases, some discussed infra, wherein this Court has granted the preliminary stay to maintain the status quo while the appeal proceeded.

**II. HEALTH, SAFETY, AND WELFARE OF THE PUBLIC**

The second prong for court consideration under RC 119.12 is the apparent threat to the public health, safety, and welfare if a suspension of the agency order is granted. The Board endeavors to forever prohibit Dr. Bolton from practicing due to conduct which he engaged in before Ohio licensure -- events which occurred over five years ago, at the latest.

Dr. Bolton came to the attention of the Ohio Medical Board because of his conviction of nineteen felonies in federal court in Florida. As the record will bear out, Dr. Bolton was duped by a high school buddy into an ostensibly legitimate advertising scheme.

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soon as Dr. Bolton learned the suspicious nature of the relationship and subsequent billings, he terminated his involvement. A number of years later this "buddy" was discovered in one his other financial scams and he promptly turned over everyone he had duped into any of his various moneymaking schemes. Dr. Bolton was one of these unfortunates sold out by this unscrupulous actor. Dr. Bolton cooperated fully from day one with authorities, was granted a significant downward departure from the federal sentencing guideline, and every penny of his restitution was paid by the mastermind "buddy."

There is no hint in this record that Dr. Bolton somehow has practiced substandard medicine or is a risk to his many Ohio patients. On the contrary, there is a conspicuous dearth of evidence that patient care or public welfare have ever been compromised by Dr. Bolton in his years of medical practice. Similarly, there is no evidence or even inference that the public good would be compromised if his Ohio license were protected by a judicial stay order during the course of this appeal.

III. CASELAW

While the State will undoubtedly counter with citations to local cases which resulted in the denial of the stay order, a small sampling of recent rulings from this Court indicate that the stay order available under RC 119.12 is to be liberally granted.

In Nelson v. State Medical Board (June 10, 1992), Franklin Co. CPC Case No. 92CVF-06-4561, unreported, (Exhibit B), Judge Close granted the motion provided that appellant complied with certain restrictions and conditions of practice. In Fattah v. State Medical

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Board (July 15, 1992), Franklin Co. CPC Case No. 92CVF-05-4202, unreported, (Exhibit C), Judge Stratton detailed the balancing of competing interests when she granted the conditional stay order while the appeal progressed. In Hill v. State Medical Board (June 9, 1995), Franklin Co. CPC Case No. 95CVF05-3379, unreported, (Exhibit D) the Court stayed the Board-ordered six-month suspension with conditions. The foregoing cases are clear and concise examples of the Court carefully studying the underlying facts and then balancing the competing public and private interests in these types of cases.

In Ramey v. Ohio State Board of Chiropractic Examiners (December 17, 1993), Franklin Co. CPC Case No. 93CVF-11-8353, unreported, (copy of "Order" attached as Exhibit E), the Court found that Dr. Ramey would suffer unusual hardship and also found no threat to the public health, safety, and welfare. The proposed four-month suspension was thus stayed while the parties briefed the merits of the discipline. Id. Dr. Ramey eventually prevailed in his appeal.

Another recent case of note is Allen v. State Medical Board (March 21, 1996), Franklin Co. CPC Case No. 96CVF03-1713, unreported, (Exhibit F) wherein Judge Bessey found that imposition of the one-year suspension would pose an "unusual hardship" to Dr. Allen and thus stayed the Board order during the life of the appeal. Upon further appeal, the Franklin County Court of Appeals also granted Dr. Allen's stay motion pending the decision. Allen v. State Medical Board (October 1, 1996), Tenth District Court of Appeals Case No. 62AP-09-1212, unreported, (Exhibit G).

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 STATE MEDICAL BOARD  
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In Garwood v. State Medical Board (April 10, 1996), Franklin Co. CPC Case No. 96CVF03-2339, unreported, Judge Fais stayed the one-year suspension while the merits were briefed and argued (Exhibit H). In Guanzon v. State Medical Board (July 15, 1996), Franklin Co. CPC Case No. 96CVF06-4799, unreported, (Exhibit I), Judge Connor found "unusual hardship" and no public risk in staying the disciplinary sanction imposed by the Board. Brewer v. State Medical Board (September 3, 1996), Franklin Co. CPC Case No. 96CVF-07-5471, unreported (Exhibit J), is another example of a judicial stay wherein Judge Cain granted the motion to block the implementation of the Board discipline while the appeal was pending.

An enlightening ruling may be found at Krain v. State Medical Board (January 24, 1996), Franklin Co. CPC Case No. 96CVF01-0290, unreported, (Exhibit K). Dr. Krain was sanctioned by the Ohio Board even though he had not practiced in Ohio for many years. A prime basis for the motion was the harmful "spin-off" effects of the Ohio adverse action, including the potential loss of Dr. Krain's board certification status. Thus, even though a license suspension in Ohio had no direct immediate impact on the doctor's Chicago practice, the compounding negative consequences of the adverse action were of sufficient magnitude to convince Judge Johnson that "unusual hardship" existed and the court thereby stayed the Board order pending a merit decision.

Another recent ruling worthy of note may be found in Larach v. State Medical Board (June 5, 1996), Franklin Co. CPC Case No. 96CVF05-3566, unreported, (Exhibit L). Larach involved an allegation by the

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 OF OHIO  
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Ohio Board that Dr. Larach had not accurately completed his Ohio renewal application after he received an administrative sanction from the Florida Board where he lives and practices. The Florida Board did not report the underlying sanction to the National Practitioner Data Bank (NPDB) but the Ohio Board eventually did and it is this type of detrimental fallout from the Ohio order which Judge Miller found disproportionate and the source of "unusual hardship" as required under RC 119.12. The Court correctly surmised that proof of actual hardship to the doctor need not be shown when it observed that the purpose of Court review in RC 119.12 appeals is "to put a stay in place, if warranted, before the damage occurs." Id. at 3 (emphasis added).

Adding to the severity of the disastrous financial loss Dr. Bolton is facing is the fact that the Ohio order will certainly be submitted to one or both federal repositories of adverse medical licensing actions. Because the Florida medical board investigated Dr. Bolton and eventually determined that no administrative action would ensue, Dr. Bolton has not suffered a report to either the National Practitioner Data Bank (NPDB) nor the Healthcare Integrity and Protection Data Bank (HIPDB). See 45 CFR Parts 60 and 61. However, because the Ohio Medical Board has now rendered this harsh discipline of an actual license revocation, it will certainly be reported to one or both of the federal data banks. Absent preliminary judicial relief in the form of a stay order, the doctor will incur irreparable damage to his credentials by the Ohio action which purports to be effective before an appeal could even be perfected. This irreparable damage to

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 OF OHIO

his credentials will correspond directly to financial loss since it will impinge on his employability and future medical privileges here in Ohio where he actively practices medicine. Similar to the scenario presented to this Court in Larach, the stay should be granted to prevent the harm before it is incurred.

Dr. Bolton will undoubtedly incur irreparable harm should the Ohio Board be permitted to impose the license revocation long before the merits of the case are judicially reviewed. Without a judicial stay order, his reputation will suffer undeserved besmirchment with no recourse or remedy to effectively repair the damage after the fact.

Many other, even more recent, rulings where the stay motion was granted may be analyzed should the Court desire, Exhibit M. These rulings clearly indicate that this Court rightfully and routinely exercises its sound discretion in weighing the competing public and private interests in deciding stay motions under RC 119.12.

IV. SUMMARY

Dr. Bolton is striving at this time to contain the damage inflicted by the onerous Board order until this Court has the opportunity to fully review the factual and legal bases for the order. In this regard the function of the stay is analogous to a temporary restraining order in that it will prevent irreparable harm and preserve the status quo pending the merit decision.

There is absolutely no evidence in the record indicating that staying the Board order could somehow jeopardize the public good. Moreover, there is irrefutable evidence that Dr. Bolton will suffer the precise "unusual hardship" as contemplated under RC 119.12.

STATE MEDICAL BOARD  
OHIO  
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Pursuant to its authority under RC 119.12 and as supported in the foregoing memorandum, the Court is respectfully urged to grant the instant motion and suspend execution of the July 15, 2003, State Medical Board order.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

*KPB/ELS*

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Attorney for Brett Bolton, DO

STATE MEDICAL BOARD  
OF OHIO  
2003 JUL 18 P 4: 56

Certificate of Service

I certify that a true copy of the foregoing document was deposited this <sup>15</sup>26th day of ~~February~~ <sup>JULY</sup>, 2003, in first class U.S. Mail, postage prepaid, addressed to Assistant Attorney General Kyle C. Wilcox, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

*KPB/ELS*

Kevin P. Byers



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

July 9, 2003

Brett Bolton, D.O.  
P. O. Box 11664  
Ft. Lauderdale, FL 33339

Dear Doctor Bolton:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 9, 2003, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5151 0971  
RETURN RECEIPT REQUESTED

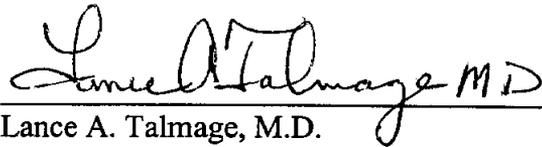
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7000 0600 0024 5151 0964  
RETURN RECEIPT REQUESTED

*Mailed 7/15/03*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 9, 2003, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Brett Bolton, D.O., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Lance A. Talmage, M.D.  
Secretary

(SEAL)

July 9, 2003

Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF

\*

\*

BRETT BOLTON, D.O.

\*

**ENTRY OF ORDER**

This matter came on for consideration before the State Medical Board of Ohio on July 9, 2003.

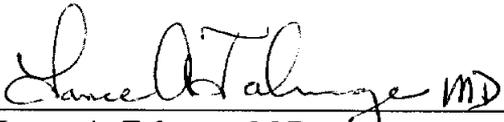
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Brett Bolton, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)

  
\_\_\_\_\_  
Lance A. Talmage, M.D.  
Secretary

July 9, 2003

\_\_\_\_\_  
Date

2004 JUN -3 A 10: 00

**REPORT AND RECOMMENDATION  
IN THE MATTER OF BRETT BOLTON, D.O.**

The Matter of Brett Bolton, D.O., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 8, 2003.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated February 12, 2003, the State Medical Board of Ohio [Board] notified Brett Bolton, D.O., that it had proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in this state. The Board based its proposed action on allegations that related to Dr. Bolton's criminal conviction in the United States District Court, Southern District of Florida, Miami Division. The Board alleged that Dr. Bolton's guilty plea and/or the judicial finding of guilt constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,' as that clause is used in R.C. §4731.22(B)(9)." Accordingly, the Board advised Dr. Bolton of his right to request a hearing in this matter. (State's Exhibit 1A)
- B. On March 12, 2003, Kevin P. Byers, Esq., submitted a written hearing request on behalf of Dr. Bolton. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Kyle C. Wilcox, Assistant Attorney General.
- B. On behalf of the Respondent: Kevin P. Byers, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

Brett Bolton, D.O.

## II. Exhibits Examined

### A. Presented by the State

1. State's Exhibits 1A-1K: Procedural exhibits.
2. State's Exhibit 2: Certified copies of documents pertaining to Dr. Bolton maintained by the United States District Court for the Southern District of Florida in *United States of America vs. Brett Bolton*, Case No. 02-20148-CR-GOLD [*U.S. v. Bolton*].
3. State's Exhibit 3: Copy of the Transcript of Plea Colloquy from *U.S. v. Bolton*.
4. State's Exhibit 4: Copy of the Transcript of Sentencing from *U.S. v. Bolton*. (Note: This exhibit was sealed by the court.)
5. State's Exhibit 5: Copy of an August 23, 2002, letter to the Board from Dr. Bolton.

### B. Presented by the Respondent

Respondent's Exhibits A through C: Letters written to the Board in support of Dr. Bolton. (Note: Respondent's Exhibit B has been sealed to protect patient confidentiality.)

## SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. Brett Bolton, D.O., testified that, in 1996, he had obtained his osteopathic medical degree from Des Moines University. In 1997, Dr. Bolton completed a one-year general internship at Palmetto General Hospital in Hialeah, Florida. Subsequently, he participated in a preceptorship with PAI Medical Group [PAI], a company for which Dr. Bolton still works. Dr. Bolton testified that he has worked for PAI for almost six years, where he is primarily engaged in performing hair transplants. PAI has offices in various cities and states, and Dr. Bolton testified that he travels to PAI's different office locations. Finally, Dr. Bolton noted that PAI has two offices in Ohio, located in Columbus and Cleveland. (Respondent's Exhibit [Resp. Ex.] A; Hearing Transcript [Tr.] at 9-11, 25).

Dr. Bolton testified that he is licensed to practice medicine in Ohio, Florida, Tennessee, and New York. Dr. Bolton further testified that he holds inactive licenses in Michigan and Oregon. (Tr. at 11-12).

2. On February 20, 2002, in the United States District Court, Southern District of Florida, Miami Division, an Information was filed charging Dr. Bolton with nineteen felony counts of misapplying money and funds—each of a value in excess of \$1,000—belonging to a gaming establishment operated by an Indian tribe, in violation of 18 U.S.C. Section 1167(b). Specifically, the Information alleged that:

- on eleven occasions from August 15, 1997, through June 26, 1998, Dr. Bolton, through BB Global Enterprises, Inc., had received checks in the amount of \$3,100 from Miccosukee Indian Gaming;
- on November 21, 1997, Dr. Bolton, through BB Global Enterprises, Inc., had received a check in the amount of \$6,200 from Miccosukee Indian Gaming; and
- on seven occasions from July 31, 1998, through February 26, 1999, Dr. Bolton, through The Miami Mail Marketer, had received checks in the amount of \$3,500 from Miccosukee Indian Gaming.

Finally, the Information alleged that Miccosukee Indian Gaming is “a tribal enterprise wholly owned by the Miccosukee Tribe” and is located in Miami, Florida. (State’s Exhibit [St. Ex.] 2 at 1-4).

3. On May 17, 2002, Dr. Bolton appeared in court and pleaded guilty to the offenses alleged in the Information. The court accepted Dr. Bolton’s guilty plea, found Dr. Bolton to be guilty of those offenses, and scheduled the matter for sentencing. (St. Ex. 2 at 5-9).

During the plea hearing on May 17, 2002, with Dr. Bolton and his attorney present in court, the Assistant United States Attorney described to the court the conduct that had led to criminal charges being filed against Dr. Bolton, as follows:

Miccosukee Indian Gaming is a tribal enterprise that operates a licensed gaming establishment approved by the National Indian Gaming Commission which is located here in Miami-Dade County.

Jeffrey Purcell was an employee of Miccosukee Indian Gaming and was the director of its marketing department. Jeffrey Purcell was a friend of the defendant, Brett Bolton. Between in or about August, 1997, and in or about June, 1998, Purcell and the defendant agreed to a scheme to take money from Miccosukee Indian Gaming.

During this time the defendant had two corporate entities, BB Global Enterprises, Inc. and Miami Mail Marketer, both of which were purportedly in the business of doing direct mail advertising services. Between August, 1997, and June, 1998, Jeffery Purcell would prepare bogus invoices on the letterhead of BB Global Enterprises or Miami Mail Marketer for direct mail marketing service purportedly provided by these two companies. Purcell would then sign off on the invoices, okay for payment, and Miccosukee Indian Gaming would cut a check as payment to either BB Global Enterprises or [Miami Mail Marketers]. No real direct mail marketing services were provided.

When the defendant received the check and cashed it, he would kickback approximately half of it in cash, less taxes, to Mr. Purcell. A total of \$64,800 was paid out and, in effect, stolen from Miccosukee Indian Gaming during this time period.

(St. Ex. 3 at 11-12).

Following the Assistant United States Attorney's description of Dr. Bolton's conduct, the court asked Dr. Bolton if the Assistant United States Attorney's description of events had been accurate. Dr. Bolton replied that it had. (St. Ex. 3 at 12).

4. On August 7, 2002, the court sentenced Dr. Bolton to serve a term of probation of two years on each of the nineteen counts, with all terms to run concurrently, to perform 150 hours of community service in the medical field for the poorest citizens, and to pay a fine in the amount of \$64,800 and an assessment of \$1,900.00. (St. Ex. 2 at 10-15; St. Ex. 4). However, the court noted that Dr. Bolton's fine of \$64,800 had already been satisfied by restitution received from Mr. Purcell. (St. Ex. 2 at 14).
5. By letter received by the Board on August 26, 2002, Dr. Bolton advised the Board of his conviction, and attached copies of relevant court documents. (St. Ex. 5).
6. At hearing, Dr. Bolton testified that the events leading to his criminal conviction had begun toward the end of his time in medical school. Dr. Bolton stated that he had needed money and had been looking for a job. Mr. Purcell, a childhood friend of Dr. Bolton, was then employed as the director of marketing for Miccosukee Indian Gaming. Dr. Bolton testified that Mr. Purcell had offered to help Dr. Bolton, and that he and Mr. Purcell had entered into the business arrangements at issue. (Tr. at 13-14, 22-23).

Dr. Bolton testified that, previously, for reasons unrelated to the business arrangement with Mr. Purcell, Dr. Bolton had formed a corporation—BB Global Enterprises—through which Dr. Bolton had produced a promotional video for a shoulder rehabilitation product.

Therefore, when Dr. Bolton entered into the business arrangement with Mr. Purcell, they used BB Global Enterprises as the corporate entity. (Tr. at 14, 34-35, 42).

7. Dr. Bolton testified that, starting in approximately August 1997, he had designed and distributed fliers promoting the Miccosukee Tribe's facilities. Dr. Bolton further testified that he had obtained from Mr. Purcell information concerning events to be featured in the fliers. Dr. Bolton stated that he had created the fliers, which were "pretty simple Xeroxed copies." Dr. Bolton cut each page into four, eight or sixteen coupons, and set them out at public locations, such as restaurants, night spots and promotional areas at the beaches. (Tr. at 14, 38-40, 51).

Dr. Bolton further testified that, in approximately July 1998, he had begun performing a second function for the business enterprises with Mr. Purcell. Dr. Bolton testified that the new function involved designing circulars that were to be included in coupon books and distributed to the public via mass mailings. He stated that he had given the designs to Mr. Purcell, and that Mr. Purcell was to make arrangements with another friend for mass mailing of the circulars. At that time, Dr. Bolton created a second business entity, The Miami Mail Marketer, through which he was paid for performing the new function. Dr. Bolton testified that, despite having been paid for his services, he later learned that the circulars were not actually being mailed. (Tr. at 14-15, 37-40, 52).

8. Dr. Bolton testified that, at some point during his business relationship with Mr. Purcell, a friend had advised him that the circulars were not being mailed. Dr. Bolton testified that he had confronted Mr. Purcell with this information, and that Mr. Purcell had told him that Mr. Purcell's relationship with the person who was to do the mailing had ended. Dr. Bolton testified that, upon learning that the circulars were not being distributed, he had immediately terminated his relationship with Mr. Purcell. Finally, Dr. Bolton testified that, during the approximately sixteen-month period that he worked with Mr. Purcell, Dr. Bolton had believed that Mr. Purcell was "doing his part of the deal." (Tr. at 15, 35-37, 43-44).
9. Dr. Bolton testified that the checks he had received from Miccosukee Indian Gaming had been written to Dr. Bolton through BB Global Enterprises and/or Miami Mail Marketer. Dr. Bolton further testified that, after receiving each check, he had paid the taxes and then split the remainder with Mr. Purcell. Dr. Bolton explained that he had paid Mr. Purcell for Mr. Purcell's services "as a contractor" because Mr. Purcell had been responsible for making sure the circulars were mailed. Dr. Bolton did not explain, however, why he had split the money with Mr. Purcell prior to July 1998, the time when the mass mailing part of the enterprise had begun. (Tr. at 16, 38, 42-43).

Dr. Bolton testified that he does not believe that the funds that he had split with Mr. Purcell had constituted a "kickback." Moreover, Dr. Bolton testified that he had not pled guilty to the criminal charges because of kickbacks; rather, he had pled guilty for "supposedly" not doing the work. (Tr. at 16, 38).

10. Dr. Bolton testified that, in July 1998, the checks had started coming to The Miami Mail Marketer rather than BB Global Enterprises because it was at that time that Dr. Bolton had started to design the circulars for mass mailing. Dr. Bolton testified that, prior to that time, Dr. Bolton's services had been limited to creating fliers and distributing them in public places. Dr. Bolton testified that the amount he had been paid "almost doubled[]" when he began designing circulars for mass mailing, because he had been "getting two separate checks." [Note, however, that the Information indicates that the all checks to Dr. Bolton subsequent to June 1998 had been written to The Miami Mail Marketer rather than BB Global Enterprises.]

Dr. Bolton testified that he was unable to explain that why, if the checks written to The Miami Mail Marketer were compensation only for designing circulars for mass mailing, he had no longer received checks written to BB Global Enterprises despite the fact that he had continued to distribute fliers. (St. Ex. 2 at 2-4; Tr. at 52-54). Dr. Bolton later testified that, even though the Information does not list checks to BB Global Enterprises after July 1998, he had continued to received checks through BB Global Enterprises after that date to compensate him for designing and distributing fliers. Dr. Bolton testified that those checks had not been included in the Information because the government had "evidently" found no problem with them. Dr. Bolton did not explain, however, why the government had had problems with checks written to BB Global Enterprises prior to July 1998, but had suddenly found them to be acceptable after July 1998. (Tr. at 55-56).

11. Dr. Bolton testified that he had pleaded guilty to the criminal charges because he could not prove that he had done the work for which he had been paid. Dr. Bolton testified that he had had no records of the work he had done because he had stored all of his business records on a computer that he no longer owns. Dr. Bolton testified that he had not saved any of the relevant records because his business with Mr. Purcell had, by that time, been discontinued. (Tr. at 20-21, 27-29).
12. Dr. Bolton testified that, as soon as he found out that the mass mailings were not taking place, "then [he] stopped [his] relationship." Nevertheless, Dr. Bolton further testified that he does not deny responsibility for what happened. Dr. Bolton testified that he accepts "full responsibility for the fact that work did not get done the way it was supposed to." However, Dr. Bolton further testified, "What I was trying to make clear is that it's not that nothing was done. The way this—this presented, they make it out that there was no work done, which is not the case." (Tr. at 27-31).
13. Concerning the statement made during the plea hearing by the Assistant United States Attorney that "Jeffery Purcell would prepare bogus invoices on the letterhead of BB Global Enterprises or Miami Mail Marketer[,]," Dr. Bolton testified that Mr. Purcell had taken care of the billing, that Dr. Bolton had not given Mr. Purcell letterhead to use for that purpose, and that Dr. Bolton had never seen the letterhead that Mr. Purcell had used. Further, concerning the statement made during the plea hearing that "[n]o real direct mail marketing

services were provided[,]" Dr. Bolton testified that he had believed that that statement had referred only to the mass mailing of advertisements, and not to the creation and distribution of fliers. (St. Ex. 3 at 12; Tr. at 40-41).

14. Dr. Bolton testified that, at the time of the hearing, he had performed approximately 130 hours of the 150 hours of community service that the court imposed. Dr. Bolton testified that he is fulfilling the community service requirement of his criminal probation by working for the Multiple Sclerosis Foundation. (Tr. at 22, 45-46).
15. In his August 23, 2002, letter to the Board, Dr. Bolton indicated that his crime had not involved the practice of medicine or concerned Dr. Bolton's ability to practice medicine. At hearing, Dr. Bolton elaborated:

It doesn't affect my judgment in any manner as to how I practice medicine. I mean, this was just a horrible, horrible mistake that—a terrible situation I was involved in, and it has nothing to do with the type of person that I am or, you know, what I'm about, and it has nothing to do with any of my decisions that I make on a day-to-day basis. This is something that happened, you know, well over five years ago that, you know, it's horribly unfortunate that I was foolish enough to be involved in such a thing, but it has no impact on my day-to-day decision-making process.

(Tr. at 23-24). Dr. Bolton later acknowledged that the last check had been written in February 1999, and that five years had not actually passed since then. (Tr. at 26).

Dr. Bolton testified that the conduct that led to his criminal conviction was "absolutely poor judgment" and that he will never "do anything foolish like this ever again." Dr. Bolton further testified that, in his current employment, he is not involved in billing or financial issues, and that he only practices medicine. Finally, Dr. Bolton testified that he believes "[o]ne-hundred percent[]" that honesty and integrity are important in the practice of medicine. (Tr. at 24-26).

16. Dr. Bolton testified that his employer is aware of Dr. Bolton's criminal convictions. Moreover, Dr. Bolton testified that his employer had been "absolutely shocked when he heard about it." Dr. Bolton further testified that his employer is aware that Dr. Bolton is facing scrutiny by medical boards. (Tr. at 47-48).
17. Dr. Bolton presented letters of support from his employer, and from two friends, one of whom was a patient of Dr. Bolton's. All characterize Dr. Bolton as a dependable and honest person, and as a good physician. (Resp. Exs. A through C). Dr. Bolton testified that he had presented letters of support from his employer and friends because,

[T]hey know the type of person I am. They know I'm not, you know, a dishonest person. They know I wouldn't be involved in anything like this. And just basically

stating that they—you know, my father's a doctor, I come from a good family, you know, I'm not involved in anything like this ever. And so [they were just letters] to show how out of character it was for me to be involved in anything like this.

(Tr. at 48-49).

### FINDINGS OF FACT

On May 17, 2002, in the United States District Court, Southern District of Florida, Miami Division, Brett Bolton, D.O., pleaded guilty to, and was adjudged guilty of, nineteen felony counts of misapplying money and funds of a value in excess of \$1,000.00 belonging to a gaming establishment operated by an Indian tribe, in violation of 18 U.S.C. Section 1167(b). The conduct underlying Dr. Bolton's guilty plea and adjudication of guilt occurred with the funds of Miccosukee Indian Gaming, an enterprise wholly owned by the Miccosukee Tribe and located on the Miccosukee Reservation in Miami, Florida.

On August 7, 2002, the court sentenced Dr. Bolton to serve a term of probation of two years on each of the nineteen counts, with all terms to run concurrently; to perform 150 hours of community service in the medical field for the poorest citizens; to pay a fine in the amount of \$64,800, which the court adjudged had already been satisfied by restitution made by another defendant; and to pay an assessment of \$1,900.00.

### CONCLUSIONS OF LAW

The plea of guilty to and/or the judicial finding of guilt of Brett Bolton, D.O., constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.

\* \* \* \* \*

Dr. Bolton presented some evidence that mitigates in his favor. For example, Dr. Bolton is young, and his participation in this scheme may have been based, in part, in extreme naivety. The federal court clearly did not seek to punish Dr. Bolton harshly. Furthermore, shortly after Dr. Bolton's conviction, he voluntarily notified the Board of his conviction and the underlying conduct. Finally, Dr. Bolton provided letters of support that state that Dr. Bolton is an honest person, and that the conduct underlying his criminal conviction had been out of character for him.

Nevertheless, at best, Dr. Bolton's criminal conviction resulted from Dr. Bolton's profoundly poor judgment. It is more likely, however, that Dr. Bolton acted dishonestly in an attempt to enrich himself.

Dr. Bolton's protests of ignorance are not credible. Dr. Bolton accepted a large amount of money, more than \$64,000.00, for a minimal amount of work. Moreover, after paying taxes on the money he received, Dr. Bolton split the remainder with Mr. Purcell. Dr. Bolton testified that he had done so to reimburse Mr. Purcell for Mr. Purcell's arranging the mass mailings. Nonetheless, Dr. Bolton had been splitting the money with Mr. Purcell since August 1997 despite the fact that, prior to July 1998, the mass mailing part of the scheme had not yet been initiated. Dr. Bolton did not offer any explanation for the money he had given to Mr. Purcell prior to July 1998.

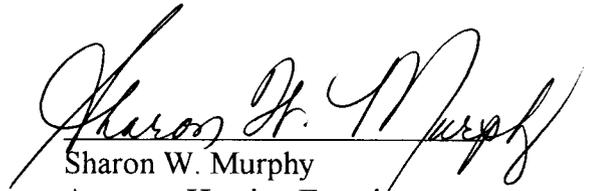
Moreover, Dr. Bolton testified that he had not been involved in the direct mailing portion of the scheme prior to July 1998. Nevertheless, he did not explain why he had he pled guilty to the facts as set forth by the Assistant United States Attorney that, prior to June 1998, Dr. Bolton had received checks for his participation in the "direct mail marketing services." Overall, Dr. Bolton's explanations do not fit the circumstances and, therefore, are not credible.

#### **PROPOSED ORDER**

It is hereby ORDERED that:

The certificate of Brett Bolton, D.O., to practice osteopathic medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

  
Sharon W. Murphy  
Attorney Hearing Examiner



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

## EXCERPT FROM THE DRAFT MINUTES OF JULY 9, 2003

### REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Brett Bolton, D.O.; Ayman M. Kader, M.D.; Terrence Francis Mccoy, M.D.; and Paramjit Singh, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Mr. Browning	- aye

Mr. Browning asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Mr. Browning	- aye

Mr. Browning noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code,

specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Mr. Browning stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

BRETT BOLTON, D.O.

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**DR. BUCHAN MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF BRETT BOLTON, D.O. DR. KUMAR SECONDED THE MOTION.**

.....

A vote was taken on Dr. Buchan's motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Bhati	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain

The motion carried.



# State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: [www.state.oh.us/med/](http://www.state.oh.us/med/)

February 12, 2003

Brett Bolton, D. O.  
P.O. Box 4476  
Ft. Lauderdale, Florida 33338

Dear Doctor Bolton:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about May 17, 2002, in the United States District Court, Southern District of Florida, Miami Division, you pleaded guilty to, and were adjudged guilty of, nineteen (19) felony counts of misapplying money and funds of a value in excess of \$1,000.00 belonging to a gaming establishment operated by an Indian tribe, in violation of 18 U.S.C. §1167(b).

Subsequently, on or about August 7, 2002, you were sentenced to probation for a term of two (2) years on each of the nineteen (19) counts, with all terms to run concurrently; to perform 150 hours of community service in the medical field for the poorest citizens, and required to pay a total fine in the amount of \$64,800 and costs in the amount of \$1,900.00.

The conduct underlying the above plea of guilty, and adjudication of guilt, occurred with the monies and funds of a gaming establishment on the Miccosukee Indian Tribe Reservation, Miami, Florida, as provided in greater detail in the Information, Change of Plea Entry, Plea Agreement, Sentencing Minutes and Judgment in a Criminal Case, which are attached hereto and incorporated herein.

Your plea of guilty to and/or the judicial finding of guilt, as alleged in paragraph one (1) above, individually and/or collectively, constitute "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony," as that clause is used in R.C. 4731.22(B)(9).

Pursuant to R.C. Chapter 119., you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice

*Mailed 2-13-03*

before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L), provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.  
Secretary

AGG/jag  
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5151 3880  
RETURN RECEIPT REQUESTED

5597 Broadrich Road  
Parma, Ohio 44134

CERTIFIED MAIL # 7000 0600 0024 5151 3873  
RETURN RECEIPT REQUESTED

Andrew Cotzin, P.A.  
Broad and Cassel  
500 East Broward Boulevard, Suite 1120  
Ft. Lauderdale, Florida 33394

CERTIFIED MAIL # 7000 0600 0024 5151 3866  
RETURN RECEIPT REQUESTED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
**02-20148 CR - GOLD**

Case No: \_\_\_\_\_  
18 U.S.C. § 1167(b)

MAGISTRATE JUDGE  
SIMONTON

UNITED STATES OF AMERICA

vs.

BRETT BOLTON,

Defendant.

FILED BY [Signature]  
02 FEB 20 AM 10:35  
CLERK OF DISTRICT COURT  
S.D. OF FLORIDA

**INFORMATION**

The United States Attorney charges that:

**General Allegations**

At all times material to this Indictment:

1. The Miccosukee Tribe of Indians of Florida (the "Miccosukee Tribe") was an Indian tribal government located in Miami-Dade County, Florida.
2. Miccosukee Indian Gaming was a tribal enterprise wholly owned by the Miccosukee Tribe and located on the Miccosukee Reservation at 500 S.W. 177 Avenue, Miami, Florida 33194. Miccosukee Indian Gaming operates a licensed gaming establishment for the Miccosukee Tribe pursuant to a resolution approved by the National Indian Gaming Commission. Miccosukee Indian Gaming also promotes sporting and other entertainment events.

OHIO STATE MEDICAL BOARD

JAN 13 2003

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3. B.B. Global Enterprises, Inc. ("B.B. Global Enterprises") was a Florida corporation with a registered address of 1201 North Federal Highway, Fort Lauderdale, Florida 33304, and a mailing address of P.O. Box 4005, Hallandale, Florida 33008.

4. Defendant BRETT BOLTON was an officer of B.B. Global Enterprises. BOLTON also did business under the name of Miami Mail Marketer, with a mailing address of P.O. Box 4005, Hallandale, Florida 33008.

**COUNTS 1-19**

1. The general allegations of this Indictment are hereby realleged and incorporated in Counts 1 through 19 as if fully set forth herein.

2. On or about the dates set forth below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**BRETT BOLTON,**

did knowingly and willfully abstract, purloin, and misapply money and funds of a value in excess of \$1,000, as set forth in Counts 1 through 19 below, belonging to a gaming establishment, that is, Miccosukee Indian Gaming, operated by and for and licensed by an Indian tribe pursuant to a resolution approved by the National Indian Gaming Commission.

COUNT	DATE	FUNDS STOLEN
1	8/15/1997	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
2	9/5/1997	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
3	9/19/1997	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.

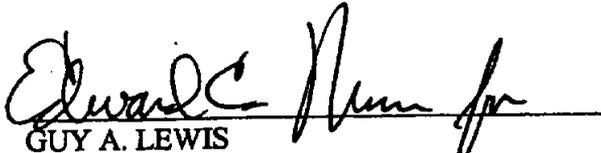
OHIO STATE MEDICAL BOARD

JAN 13 2003

4	10/17/1997	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
5	11/21/1997	Check for \$6,200 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
6	2/6/1998	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
7	2/20/1998	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
8	3/27/1998	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
9	4/17/1998	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
10	5/8/1998	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
11	6/5/1998	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
12	6/26/1998	Check for \$3,100 from Miccosukee Indian Gaming to B.B. Global Enterprises, Inc.
13	7/31/1998	Check for \$3,500 from Miccosukee Indian Gaming to The Miami Mail Marketer
14	8/28/1998	Check for \$3,500 from Miccosukee Indian Gaming to The Miami Mail Marketer
15	10/2/1998	Check for \$3,500 from Miccosukee Indian Gaming to The Miami Mail Marketer
16	11/6/1998	Check for \$3,500 from Miccosukee Indian Gaming to The Miami Mail Marketer
17	11/13/1998	Check for \$3,500 from Miccosukee Indian Gaming to The Miami Mail Marketer

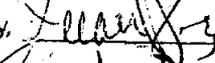
18	1/8/1999	Check for \$3,500 from Miccosukee Indian Gaming to The Miami Mail Marketer
19	2/26/1999	Check for \$3,500 from Miccosukee Indian Gaming to The Miami Mail Marketer

All in violation of Title 18, United States Code, Sections 1167(b) and 2.

  
 GUY A. LEWIS  
 UNITED STATES ATTORNEY

  
 BENJAMIN DANIEL  
 ASSISTANT UNITED STATES ATTORNEY

  
 CURTIS B. MINER  
 ASSISTANT UNITED STATES ATTORNEY

Certified to be a true and correct copy of the document on file  
 Clarence Maddox, Clerk,  
 U.S. District Court  
 Southern District of Florida  
 By:   
 Deputy Clerk  
 Date: 1/9/03

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

vs.

CASE NO. 02-20148-CR-GOLD

Brett Bolton,

CHANGE OF PLEA

On 5/17/02 the above named defendant appeared in person before the Honorable Alan S. Gold, United States District Judge/Magistrate, with Thomas P. O'Connell, counsel appointed by the Court/retained by the defendant, and said defendant stated in open court that he desired to withdraw the plea of not guilty heretofore entered and desired to enter a plea of guilty to Count(s) 1-19 of the ~~Indictment~~/Information.

FILED by SWA D.C.  
MAY 17 2002  
U.S. DISTRICT COURT  
S.D. OF FLA. MIAMI

After the defendant was duly sworn, the Court made ~~findings~~ to guilt. The Court, being satisfied there was a factual basis for the plea, accepted the plea of guilty and found the defendant guilty as charged. Whereupon:

- ( ) The Court proceeded to pronounce sentence. (See J&C)
- (X) The Court postponed sentencing until Tuesday, July 30, 2002 at 4:30 pm
- (X) The defendant being allowed to remain on bond until sentencing.

The defendant being remanded to the custody of the Marshal until a \_\_\_\_\_ bond in the amount of \$ \_\_\_\_\_ is approved and posted.

The defendant being remanded to the custody of the Marshal awaiting sentencing.

The U.S. Attorney announced Count(s) 1

would be dismissed on the government's motion at sentencing.

Judge Alan S. Gold  
Reporter Joseph Millikan  
Courtroom Dpy. Bernadine McGee

AUSA, Curtis Minor

cc: all counsel of record

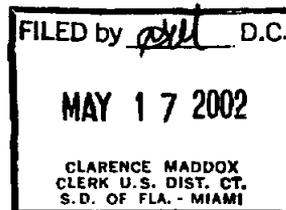
OHIO STATE MEDICAL BOARD

JAN 13 2003

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Clarence Maddox, Clerk,  
U.S. District Court  
Southern District of Florida  
By [Signature]  
Deputy Clerk  
Date 1/9/03

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA



Case No. 02-20148-CR-GOLD

UNITED STATES OF AMERICA,

vs.

BRETT BOLTON,

Defendant.

---

**PLEA AGREEMENT**

The United States of America and Brett Bolton (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to an Information charging him with nineteen counts of stealing money from an Indian gaming establishment, in violation of Title 18, United States Code, Section 1167(b).

2. The defendant is aware that the sentence will be imposed in conformity with the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"), and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the applicable guideline range and impose a sentence that is either more severe or less severe than the guideline range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum

OHIO STATE MEDICAL BOARD

JAN 13 2003

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authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of up to ten (10) years of imprisonment, followed by a term of supervised release of up to three (3) years, for the offenses set forth in the Information. In addition, the Court may impose a fine of up to \$250,000.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$1,900 will be imposed on the defendant. The defendant agrees that the special assessment imposed shall be paid at the time of sentencing.

5. The Office of the United States Attorney for the Southern District of Florida (hereinafter "Office") reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The United States agrees that it will recommend at sentencing that the court reduce by two the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. However, the United States will not be required to make this sentencing recommendation if the defendant: (1) fails or refuses to make a full, accurate and

complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making a false statement or misrepresentation to any governmental entity or official.

7. The United States and the defendant agree, although not binding on the probation office or the court, that USSG § 2B1.1 of the 1998 Federal Sentencing Guideline Manual is the applicable sentencing guideline in this case, and that the "loss" under § 2B1.1(b) in this case is \$64,800, which results in a seven-level increase in the defendant's base offense level. The United States and the defendant also agree, although not binding on the probation office or the court, that no other upward or downward adjustments (other than the downward adjustment for "acceptance of responsibility") apply to the determination of the defendant's sentence.

8. The defendant agrees that he will not seek any downward departures for any reason.

9. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing

recommendation made by the defendant, the government, or a recommendation jointly made by both the defendant and the government.

10. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

GUY A. LEWIS  
UNITED STATES ATTORNEY

Date: 5/17/02

By: *CBM*  
CURTIS MINER  
ASSISTANT UNITED STATES ATTORNEY

Date: 5/17/02

By: *Thomas P. O'Connell*  
THOMAS O'CONNELL  
ATTORNEY FOR DEFENDANT

Date: 5/17/02

By: *Brett Bolton*  
BRETT BOLTON  
DEFENDANT

Certified to be a true and correct copy of the document on file  
Clarence Maddox, Clerk,  
U.S. District Court  
Southern District of Florida  
By: *Clarence Maddox*  
Date: 11-9-03 Deputy Clerk

4  
OHIO STATE MEDICAL BOARD  
JAN 13 2003

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

EILED by ~~XXXX~~ D.C.  
JUL 30 2002  
CLARENCE MADDOX  
CLERK U.S. DIST. CTY  
S.D. OF FLA. - MIAMI

SENTENCING MINUTES

TUESDAY

CASE NO. 02-20148-CR-GOLD DATE 07/30/02 JUDGE ALAN S. GOLD  
DEFT: BRETT BOLTON RPTR JOSEPH MILLIKAN CLERK: Jacob M. Hasbun  
DEF. COUNSEL Thomas P. O'Connell (apptd/retd) AUSA CURTIS B. PINER

- ( ) DEFT. FAILED TO APPEAR-BENCH WARRANT ISSUED. BOND FORFEITED.
- ( ) SENTENCING CONT'D TO \_\_\_\_\_ AT \_\_\_\_\_ AT REQUEST OF \_\_\_\_\_

JUDGMENT/SENTENCE  
AS TO <sup>each of</sup> COUNTS 1-19 ~~IMPRISONMENT~~ <sup>PROBATION</sup> FOR 2 ~~MONTHS~~ <sup>YEARS</sup> ~~CONCURRENTLY~~ <sup>ALL TO RUN</sup>  
AS TO COUNT \_\_\_\_\_ IMPRISONMENT FOR \_\_\_\_\_ MONTHS. <sup>WITH EACH</sup>  
AS TO COUNT \_\_\_\_\_ IMPRISONMENT FOR \_\_\_\_\_ MONTHS. <sup>OTHER.</sup>  
AS TO COUNT \_\_\_\_\_ IMPRISONMENT FOR \_\_\_\_\_ MONTHS.  
AS TO COUNT \_\_\_\_\_ IMPRISONMENT FOR \_\_\_\_\_ MONTHS.

USPO: Dulcedina Moore / no firearms/fine imposed:  
\$ 64,800.00, counsel announced fine paid / As special condition  
of probation the defendant the deft shall perform 150 hours  
of community service.

Assessment: TOTAL = 1,900.00

- ( ) DEFT. SHALL RECEIVE CREDIT FOR TIME SERVED IN FEDERAL CUSTODY.
- ( ) SUPERVISED RELEASE/SPECIAL PAROLE TERM: \_\_\_\_\_
- ( ) THE DEFT IS REMANDED TO CUSTODY OF BOP FOR \_\_\_\_\_, THE MAXIMUM PROVIDED BY LAW, UNDER 18:4205(c) FOR STUDY AND REPORT AS DESCRIBED BY 18:4205(d).
- ( ) VOLUNTARY SURRENDER AT INSTITUTION ON OR BEFORE \_\_\_\_\_
- ( ) DEFT. REMANDED TO CUSTODY OF U.S. MARSHAL TO COMMENCE SENTENCE
- ( ) DEFT. RELEASED ON PRESENT BOND PENDING SURRENDER/APPEAL.
- ( ) BOND ON APPEAL SET AT \_\_\_\_\_
- ( ) \_\_\_\_\_

OHIO STATE MEDICAL BOARD  
JAN 13 2003

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Clarence Maddox, Clerk,  
U.S. District Court  
Southern District of Florida  
By [Signature] 3  
Date 1/9/03 Deputy Clerk

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FILED by *D.J.G.*  
**AUG 07 2002**  
 CLARENCE MADDOX  
 CLERK U.S. DIST. CT.  
 S.D. OF FLA. - MIAMI

**United States District Court  
 Southern District of Florida  
 MIAMI DIVISION**

**UNITED STATES OF AMERICA**

**JUDGMENT IN A CRIMINAL CASE**  
 (For Offenses Committed On or After November 1, 1987)

v.

**Case Number: 02-20148-CR-GOLD**

**BRETT BOLTON**

Counsel For Defendant: Thomas P. O'Connell, Esquire  
 Counsel For The United States: AUSA Curtis B. Miner  
 Court Reporter: Joseph Millikan

The defendant pleaded guilty to Counts 1-19 of the information.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>DATE OFFENSE CONCLUDED</u>	<u>COUNT</u>
18 U.S.C. §1167(b)	Did misapply money and funds of a value in excess of \$1,000.00 belonging to a gaming establishment operated by an Indian tribe.	02/26/99	1-19

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No. \_\_\_\_\_  
 Defendant's Date of Birth: 05/30/70  
 Deft's U.S. Marshal No.: 62664-004

Date of Imposition of Sentence:  
 July 30, 2002

Defendant's Mailing Address:  
 3040 NE 41st Street  
 Fort Lauderdale, Florida 33308

Defendant's Residence Address:  
 3040 NE 41st Street  
 Fort Lauderdale, Florida 33308

*Alan S. Gold*  
 ALAN S. GOLD  
 United States District Judge  
 August 2, 2002

Certified to be a true and correct copy of the document on file  
 Clarence Maddox, Clerk,  
 U.S. District Court  
 Southern District of Florida  
*[Signature]*  
 Deputy Clerk  
 Date 1/9/03

OHIO STATE MEDICAL BOARD

JAN 13 2003

*274*

DEFENDANT: BRETT BOLTON  
CASE NUMBER: 02-20148-CR-GOLD

### PROBATION

The defendant is hereby sentenced to probation for a term of 2 years on each of Counts 1 through 19, all to run concurrently with each other.

While on probation, the defendant shall not commit another federal, state, or local crime.  
The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

**The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.**

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

**The defendant shall also comply with the additional conditions on the attached page.**

### STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
9. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

OHIO STATE MEDICAL BOARD

JAN 13 2003

DEFENDANT: BRETT BOLTON  
CASE NUMBER: 02-20148-CR-GOLD

**SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall also comply with the following additional condition(s) of probation:

The defendant shall perform 150 hours of community service over the period of supervision in the medical field for citizens who would qualify for Medicaid/Medicare benefits, that is the poorest citizens, and as directed by the United States Probation Officer.

OHIO STATE MEDICAL BOARD

JAN 13 2003

DEFENDANT: BRETT BOLTON  
CASE NUMBER: 02-20148-CR-GOLD

### CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in the Schedule of Payments.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$1,900.00	\$64,800.00 <sup>1</sup>	\$

<sup>1</sup>Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

OHIO STATE MEDICAL BOARD  
JAN 13 2003

<sup>1</sup>AUSA Curtis Miner announced in open court that the fine imposed in the amount of \$64,800.00 has been satisfied in full by the restitution amount paid by Defendant Jeffrey Purcell, in Case No. 02-20032-CR-MORENO, U.S. District Court, Southern District of Florida, Miami Division, in the amount of \$181,000.00

DEFENDANT: BRETT BOLTON  
CASE NUMBER: 02-20148-CR-GOLD

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A. Lump sum payment of \$1,900.00 due immediately.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment/fine/restitution is payable to the U.S. COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
301 N. MIAMI AVENUE, ROOM 150  
MIAMI, FLORIDA 33128**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

04APE03

0246

Brett Bolton, DO,  
P.O. Box 11664  
Ft. Lauderdale, Florida 33339  
Appellant-Appellant,

CASE NO. \_\_\_\_\_

v.

State Medical Board of Ohio  
77 South High Street, 17th Floor  
Columbus, Ohio 43215  
Appellee-Appellee.

(Accelerated Calendar)

CPC No. 03CVF07-7940

FILED  
COURT OF APPEALS  
FRANKLIN CO., OHIO  
04 MAR -5 AM 8:55  
CLERK OF COURT

Appeal from the Common Pleas Court of Franklin County, Ohio

NOTICE OF APPEAL

Notice is given that appellant, Brett Bolton, DO, hereby appeals to the Court of Appeals of Ohio, Tenth Appellate District for Franklin County, from the judgment entry and decision (attached hereto) filed in this action by the lower court on February 5, 2004.

Respectfully submitted,

KEVIN P. BYERS CO., L.P.A.

KPBYERS

Kevin P. Byers 0040253  
Fifth Third Center  
21 East State Street, Suite 220  
Columbus, Ohio 43215  
614.228.6283 Fax 228.642

FILED  
COURT OF APPEALS  
FRANKLIN CO., OHIO  
04 MAR -5 AM 8:55  
CLERK OF COURT

HEALTH & HUMAN

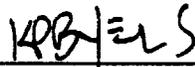
MAR 08 2004

SERVICES SECTION

Attorney for Appellant, Brett Bolton, DO

Certificate of Service

I certify that a true copy of the foregoing document was deposited in first class US Mail this 5th day of March, 2004, addressed to Assistant Attorney General Kyle C. Wilcox, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3428.

  
\_\_\_\_\_  
Kevin P. Byers