

State Medical Board of Ohio

30 E. Broad Street, 3rd Floor, Columbus, OH 43215-6127

(614) 466-3934

med.ohio.gov

January 14, 2015

Case number: 15-CRF- 009

Iraj Derakhshan, M.D.
205 Cyrus Point Place
Charleston, WV 25314

Dear Doctor Derakhshan:

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

- (1) On or about September 16, 2014, the West Virginia Board of Medicine issued a Consent Order [2014 West Virginia Board Order], a copy of which is attached and incorporated herein. Pursuant to the 2014 West Virginia Board Order, you were publicly reprimanded for your unprofessional conduct in obtaining a former patient's medical records from subsequent medical providers through the use of an altered release, and without obtaining the patient's consent.

The 2014 West Virginia Board Order as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by an agency responsible for authorizing, certifying, or regulating an individual to practice a health care occupation or provide health care services in this state or another jurisdiction, 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," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, 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.

Mailed 1-15-15

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 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 medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, 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,



Kim G. Rothermel, M.D.
Secretary

KGR/JBR/pev
Enclosures

CERTIFIED MAIL #91 7199 9991 7034 8392 3636
RETURN RECEIPT REQUESTED



State of West Virginia *Board of Medicine*

AHMED FAHEEM, MD
PRESIDENT

LETITIA E. TIERNEY, MD, JD
SECRETARY

101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone 304.558.2921
Fax 304.558.2084
www.wvbom.wv.gov

R. CURTIS ARNOLD, DPM
VICE PRESIDENT

ROBERT C. KNITTLE
EXECUTIVE DIRECTOR

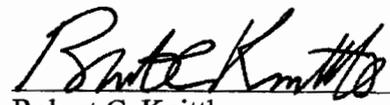
STATE OF WEST VIRGINIA COUNTY OF KANAWHA

I, Robert C. Knittle, Executive Director of the West Virginia Board of Medicine, do hereby certify that I am the official custodian of said Board and certify that the proceeding Consent Order concerning Iraj Derakhshan, M.D., is a true and correct copy of the original hereof as appears on file in this office.

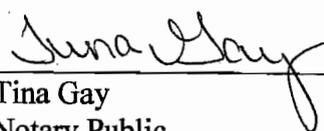
Witness my hand and official seal of the Board, this 25th day of November, 2014.

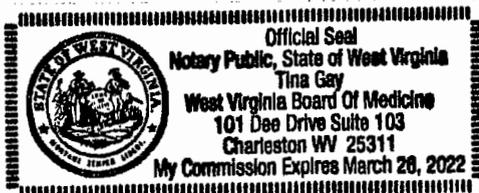


West Virginia Board of Medicine


Robert C. Knittle
Executive Director

Sworn to and subscribed before me this 25th day of November, 2014.


Tina Gay
Notary Public



MEDICAL BOARD

DEC 1 2014

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

IRAJ DERAKHSHAN, M.D.

CONSENT ORDER

The West Virginia Board of Medicine ["Board"] and Iraj Derakhshan, M.D. ["Dr. Derakhshan"] freely and voluntarily enter into the following Consent Order pursuant to West Virginia Code §30-3-14, *et seq.*:

FINDINGS OF FACT

1. Dr. Derakhshan holds an active license to practice medicine in the State of West Virginia, License No. 18591, which was initially issued in 1996. His address of record with the Board is in Charleston, West Virginia.

2. On or about March 23, 2012, the Board received a complaint from a former patient of Dr. Derakhshan, designated 12-20-W, alleging, among other things, that Dr. Derakhshan engaged in unprofessional conduct during the course of his treatment of this patient ["Patient A"].

3. Dr. Derakhshan terminated the physician/patient relationship with Patient A on or about January 18, 2012.

4. Months after terminating the physician/patient relationship, Dr. Derakhshan sought and acquired medical records, including hospital records, of Patient A without first obtaining her consent.

MEDICAL BOARD

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Consent Order
Iraj Derakhshan, M.D.

5. Dr. Derakhshan altered, or caused to be altered, Patient A's previously executed release to remove the date of execution and other pertinent limitations on its use to obtain the referenced records.

6. The Board and Dr. Derakhshan voluntarily enter into this Consent Order to resolve this complaint against Dr. Derakhshan, reference number 12-20-W, and to protect the public interest.

CONCLUSIONS OF LAW

The Board and Dr. Derakhshan stipulate to the following conclusions of law:

1. Dr. Derakhshan's license to practice medicine and surgery in the State of West Virginia is subject to regulation and discipline by the West Virginia Board of Medicine, the "regulatory and disciplinary body for the practice of medicine and surgery" for physicians, podiatrists and physician assistants in West Virginia. W.Va. Code §30-3-5 and §30-3-7(a).

2. The Board has a mandate to ensure "a professional environment that encourages the delivery of quality medical services" to protect the public interest. W.Va. Code §30-3-2.

3. The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon licensure. W.Va. Code §30-3-14. Pursuant to W.Va. Code §30-1-8(c), the Board has promulgated legislative rules that "delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful

Consent Order
Iraj Derakhshan, M.D.

departure from accepted standards of professional conduct and/or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.” W. Va. Code R. §11-1A-12.

4. Probable cause exists to substantiate disciplinary charges against Dr. Derakhshan pursuant to W. Va. Code §§ 30-3-14(c) (17) and W.Va. Code R. §§11-1A-12.1.e and 12.1.j.

5. With respect to the allegations which form the basis of Complaint No. 12-20-W, it is appropriate and in the public interest to waive the commencement of proceedings against Dr. Derakhshan and to proceed without the filing of charges, or a formal Complaint and Notice of Hearing, subject to compliance by Dr. Derakhshan with the provisions of this Consent Order. This Consent Order does not resolve any complaint which is currently filed or which may be filed against Dr. Derakhshan with this Board, other than 12-20-W.

6. This Consent Order sets forth reasonable and appropriate discipline upon the practice of medicine and surgery by Dr. Derakhshan in West Virginia.

CONSENT

By signing his name to this Consent Order, Iraj Derakhshan, M.D., acknowledges that he understands and agrees with the following:

1. Dr. Derakhshan has read and understands this entire Consent Order;
2. Dr. Derakhshan agrees that he has been given adequate time and opportunity to review and consider the terms set forth in this Consent Order;

MEDICAL BOARD

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Consent Order
Iraj Derakhshan, M.D.

3. Dr. Derakhshan understands that he has the right to legal representation in this matter, at his own expense, and agrees that he has exercised this right, and has been afforded adequate time and opportunity to consult with his counsel regarding the legal effect of this Consent Order;

4. Dr. Derakhshan understands that this Consent Order is a legally binding Order of the West Virginia Board of Medicine that affects his rights and privileges;

5. Dr. Derakhshan acknowledges that he is fully aware that, without his consent, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code § 30-3-14(h) and §29A-5-1, *et seq.*;

6. Dr. Derakhshan is aware of his legal rights in this matter, in addition to his right to be represented by counsel at his own expense, including: the right to a formal hearing, after reasonable notice; the right to confront and cross-examine witnesses against him; the right to present evidence and testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; and the right to appeal under Chapter 29A of the West Virginia Code in the event of a final order or decision adverse to him;

7. With the exception of his right to counsel, which he has exercised, Dr. Derakhshan knowingly and voluntarily waives all such additional rights, and agrees to the entry of this Consent Order relative to his practice of medicine in the state of West Virginia;

Consent Order
Iraj Derakhshan, M.D.

8. Dr. Derakhshan has been counseled regarding his rights by his attorney, and agrees to the entry of this Consent Order relative to his practice of medicine in the state of West Virginia; and

9. Dr. Derakhshan understands that this Order is a public document which will be available for public inspection, will be accessible through the Board's website, and will be a permanent part of his historical file with the Board. Matters contained herein may be reported to other jurisdictions, the National Practitioner Data Bank, the Federation of State Medical Boards and as otherwise required by law.

ORDER

WHEREFORE, on the basis of the foregoing stipulated Findings of Fact and Conclusions of Law, and with the consent of Dr. Derakhshan, the West Virginia Board of Medicine hereby ORDERS as follows:

1. Dr. Derakhshan is hereby **PUBLICLY REPRIMANDED** for his unprofessional conduct in obtaining a former patient's medical records from subsequent medical providers through the use of an altered release, and without obtaining the patient's consent, and for his comportment during Patient A's final office visit with him.

2. Dr. Derakhshan agrees that in the future he will not alter, cause to be altered, or permit to be altered any patient release forms.

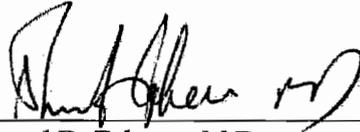
3. This Consent Order shall be deemed entered on the date that this Order, with all required signatures affixed hereupon, is received in the Board's 101 Dee Drive, Charleston, West Virginia, office. The Executive Director of the West Virginia

Consent Order
Iraj Derakhshan, M.D.

Board of Medicine is hereby authorized to denote the date of entry on behalf of the Board
in accordance with this paragraph.

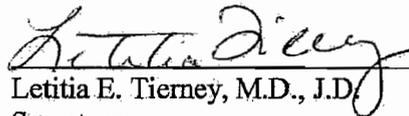
DATE OF ENTRY: September 16, 2014

WEST VIRGINIA BOARD OF MEDICINE



Ahmed D. Faheem, M.D.
President

Date: 9-8-14



Letitia E. Tierney, M.D., J.D.
Secretary

Date: 9-11-14

ACCEPTANCE

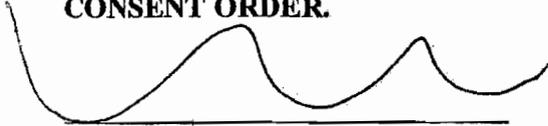
I, IRAJ DERAKHSHAN, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT ORDER. I HAVE BEEN GIVEN SUFFICIENT TIME AND OPPORTUNITY TO CONSIDER THIS CONSENT ORDER, AND I UNDERSTAND THE EFFECT IT WILL HAVE UPON MY LICENSE TO PRACTICE MEDICINE AND SURGERY IN WEST VIRGINIA.

BY SIGNING THIS CONSENT ORDER, I HAVE WAIVED CERTAIN RIGHTS, BUT I DO SO KNOWINGLY AND VOLUNTARILY, AND I DO NOT WISH TO ASSERT THOSE RIGHTS IN THIS MATTER.

I UNDERSTAND THAT I HAVE THE RIGHT TO LEGAL COUNSEL, I HAVE BEEN PROVIDED WITH AMPLE TIME TO SEEK LEGAL ADVICE, AND I HAVE, IN FACT, RECEIVED LEGAL COUNSEL REGARDING MY ACCEPTANCE OF THIS CONSENT ORDER.

Consent Order
Iraj Derakhshan, M.D.

I AM SIGNING THIS CONSENT ORDER VOLUNTARILY, AND I UNDERSTAND THE POTENTIAL CONSEQUENCES OF VIOLATING THIS CONSENT ORDER.



Iraj Derakhshan, M.D.

Date: 7/18/14

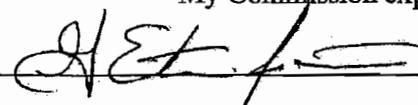
STATE OF West Virginia

COUNTY OF Kanawha, to-wit:

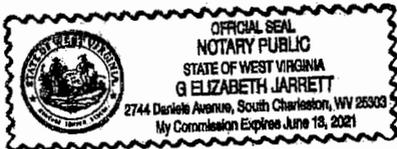
I, G. Elizabeth Jarrett, a Notary Public for said county and state do hereby certify that Iraj Derakhshan, M.D., whose name is signed herein above has this day acknowledged the same before me.

Given under my hand this 18th day of July, 2014.

My Commission expires June 13, 2021



Notary Public



MEDICAL BOARD

DEC 1 2014

CONSENT AGREEMENT
BETWEEN
IRAJ DERAKHSHAN, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between Iraj Derakhshan, M.D., ["Dr. Derakhshan"], and the State Medical Board of Ohio ["Board"], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. Derakhshan 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 pursue his appeal 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 Board 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 "Any of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, 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. Dr. Derakhshan is licensed to practice medicine and surgery in the State of Ohio, License # 35-062000.
- C. Dr. Derakhshan states that he is licensed to practice medicine and surgery in the states of West Virginia and California, and the District of Columbia.
- D. On or about November 9, 2005, the Board issued to Dr. Derakhshan a Notice of Opportunity for Hearing ["November 2005 Notice"], a copy of which is attached hereto and fully incorporated herein.
- E. Dr. Derakhshan admits to the factual and legal allegations as set forth in the November 2005 Notice.

- F. Dr. Derakhshan states, and the Board acknowledges receipt of acceptable documentation to support, that he has completed both the “Intensive Course in Medical Record Keeping” and “Intensive Course in Controlled Substance Management” at Case Western Reserve University, Cleveland, Ohio, November 17-18, 2005 and December 7-10, 2005 respectively.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. Derakhshan knowingly and voluntarily agrees with the Board to the following terms, conditions and limitations:

Permanent Limitations/Restrictions

1. The certificate of Dr. Derakhshan to practice medicine and surgery in the State of Ohio shall be permanently LIMITED and RESTRICTED as follows:
 - a. Dr. Derakhshan shall not advise patients to cut time-released medications in half; and
 - b. Dr. Derakhshan shall not examine more than twenty-five (25) patients in a twenty-four (24) hour period, excluding those patients Dr. Derakhshan visits or otherwise treats in any hospital.

Required Reporting by Licensee

2. Within thirty days of the effective date of this Consent Agreement, Dr. Derakhshan shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services (including but not limited to third party payors) or is receiving training, and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Derakhshan shall promptly 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. In the event that Dr. Derakhshan provides any health care services or health care direction or medical oversight to any emergency medical services organization or emergency medical services provider, within thirty days of the effective date of this Consent Agreement Dr. Derakhshan shall provide a copy of this Consent Agreement to the Ohio Department of Public Safety, Division of Emergency Medical Services. Further, Dr. Derakhshan shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to

whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed. This requirement shall continue for two years from the effective date of this Consent Agreement.

3. Within thirty days of the effective date of this Consent Agreement, Dr. Derakhshan shall provide a copy of this Consent Agreement to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license, as well as any federal agency or entity, including but not limited to the Drug Enforcement Agency, through which he currently holds any license or certificate. Dr. Derakhshan further agrees to provide a copy of this Consent Agreement at time of application to the proper licensing authority of any state in which he applies for any professional license or for reinstatement of any professional license. Further, Dr. Derakhshan shall provide the Board with one of the following documents as proof of each required notification within thirty days of the date of each such notification: (1) the return receipt of certified mail within thirty days of receiving that return receipt, (2) an acknowledgement of delivery bearing the original ink signature of the person to whom a copy of the Consent Agreement was hand delivered, (3) the original facsimile-generated report confirming successful transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was faxed, or (4) an original computer-generated printout of electronic mail communication documenting the email transmission of a copy of the Consent Agreement to the person or entity to whom a copy of the Consent Agreement was emailed. This requirement shall continue for two years from the effective date of this Consent Agreement.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. Derakhshan 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.

In the event that the Board initiates future formal proceedings against Dr. Derakhshan, including but not limited to issuance of a Notice of Opportunity for Hearing, this Consent Agreement shall continue in full force and effect until such time that it is superseded by ratification by the Board of a subsequent Consent Agreement or issuance by the Board of a final Board Order.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Derakhshan 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.

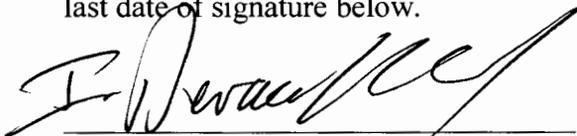
Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. Derakhshan hereby releases the Board, its members, employees, agents, officers and representatives jointly and severally from any 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. Dr. Derakhshan acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

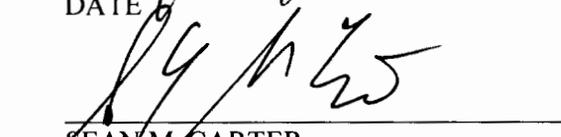
It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



IRAJ DERAKHSHAN, M.D.

3/26/08

DATE



SEAN McCARTER
Attorney for Iraj Derakhshan, M.D.

4/1/2008

DATE



LANCE A. TALMAGE, M.D.
Secretary, State Medical Board of Ohio

5-14-08

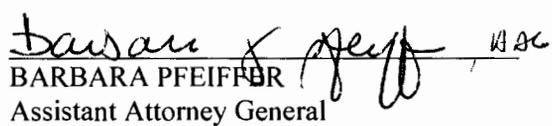
DATE



RAYMOND J. ALBERT
Supervising Member,
State Medical Board of Ohio

5/14/08

DATE



BARBARA PFEIFFER
Assistant Attorney General
04/01/08

DATE

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Iraj Derakhshan, M.D., :
Appellant, : Case No. O6CVGO1-914
v. : Judge J. Connor
The State Medical Board of Ohio :
Appellee. :

ENTRY OF REMAND

Pursuant to the "Joint Motion to Remand Appeal of Iraj Derakhshan, M.D.", it is hereby **ORDERED** that the matter of *Iraj Derakhshan, M.D. v. State Medical Board of Ohio*, Case No. O6CVGO1-914 is hereby **REMANDED** to the State Medical Board of Ohio for further proceedings consistent with the Settlement Agreement between the parties.

Costs to Iraj Derakhshan, M.D.

DATE

JUDGE CONNOR

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2008 APR 14 PM 1:23
CLERK OF COURTS-CV

20235A07

FILED
COURT OF APPEALS
FRANKLIN CO OHIO

2007 OCT 30 PM 2:45

CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Iraj Derakhshan, M.D.,	:	
	:	
Appellant-Appellant,	:	
	:	No. 07AP-261
v.	:	(C.P.C. No. 06CVF01-914)
	:	
State Medical Board of Ohio,	:	(REGULAR CALENDAR)
	:	
Appellee-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on October 30, 2007, appellant's assignment of error is sustained, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court for resolution of appellant's facial constitutional challenge to R.C. 4731.22(B)(22). Costs shall be assessed against appellee.

FRENCH, McGRATH, and WHITESIDE, JJ.

By Judith L. French
Judge Judith L. French

WHITESIDE, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

HEALTH & HUMAN
NOV 02 2007
SERVICES SECTION

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN CO OHIO
2007 OCT 30 PM 2:41
CLERK OF COURTS

Iraj Derakhshan, M.D., :
Appellant-Appellant, :
v. : No. 07AP-261
State Medical Board of Ohio, : (C.P.C. No. 06CVF01-914)
Appellee-Appellee. : (REGULAR CALENDAR)

O P I N I O N

Rendered on October 30, 2007

Law Office of Sean A. McCarter, and Sean A. McCarter, for appellant.

Marc Dann, Attorney General, Barbara Pfeiffer, and Karen Unver, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Appellant-appellant, Iraj Derakhshan, M.D. ("appellant"), appeals from the dismissal by the Franklin County Court of Common Pleas of his appeal from the revocation of his medical license by appellee-appellee, the Ohio State Medical Board ("appellee"). For the following reasons, we reverse.

{¶2} On November 9, 2005, appellee voted to send to appellant a citation letter, which notified appellant that appellee intended to determine whether to limit, revoke or

HEALTH & HUMAN SERVICES SECTION
NOV 02 2007

suspend his license to practice medicine in Ohio. Appellee stated the following grounds:

On or about July 11, 2005, you entered into a Consent Order with the West Virginia Board of Medicine [West Virginia Consent Order] that required you, *inter alia*, to complete, within ten months, courses in "Controlled Substance Management" and record keeping; to cease advising patients to cut time-released medications in half with a pill cutter; and to continue to reduce the number of patients you examine or otherwise treat daily. A copy of the West Virginia Consent Order is attached hereto and incorporated herein.

{¶3} The letter stated that the West Virginia Consent Order provided grounds for action under R.C. 4731.22(B)(22). That section authorizes appellee to take action regarding an individual's medical license if a medical licensing entity in another jurisdiction limits, revokes or suspends the individual's license, refuses to renew or reinstate a license, imposes probation, or issues an order of censure or other reprimand.

{¶4} The letter also advised appellant of his entitlement to a hearing and that, if he wished to request a hearing, he was to submit his written request within 30 days. Appellant did not request a hearing. Appellant asserts that, while he asked his attorney to request a hearing, the attorney did not do so.

{¶5} On January 11, 2006, appellee found that there was reliable, probative, and substantial evidence to support the allegations contained in the November 9, 2005 letter. Appellee voted to revoke appellant's license to practice medicine in Ohio.

{¶6} On January 20, 2006, appellant filed a notice of appeal to the Franklin County Court of Common Pleas. The notice identified the grounds for the appeal as the following:

- A. The revocation of [appellant's] medical license is not supported by reliable, probative, and substantial evidence.
- B. The revocation of [appellant's] medical license is contrary to law.
- C. The revocation of [appellant's] medical license was arbitrary and capricious.
- D. The revocation of [appellant's] medical license constitutes an abuse of discretion.

{¶7} On February 24, 2006, appellee moved to dismiss appellant's appeal for his failure to exhaust administrative remedies and lack of subject-matter jurisdiction. Specifically, appellee argued that appellant had failed to request a hearing, and that failure deprived the trial court of jurisdiction over the appeal.

{¶8} In response to the motion to dismiss, appellant argued that the doctrine of exhaustion did not preclude his appeal because it raised a facial constitutional challenge to appellee's authority, i.e., that R.C. 4731.22(B)(22) violated his rights of due process. Because appellee had no authority to decide constitutional questions, appellant argued, his failure to raise the issue before appellee did not preclude his appeal. In its reply, appellee responded that appellant had failed to raise this constitutional challenge in his notice of appeal, and, therefore, the trial court had no jurisdiction to consider the constitutional question.

{¶9} On March 9, 2007, the court issued a decision and entry granting appellee's motion to dismiss appellant's appeal. Relying on precedent from this court, the trial court found that appellant's failure to request a hearing before appellee deprived the court of jurisdiction to hear the appeal. In making this finding, the court rejected appellant's argument that the exhaustion doctrine does not apply to constitutional

challenges. Further, the court found that appellant had effectively waived any constitutional challenge by failing to raise it in his notice of appeal.

{¶10} Appellant filed a timely appeal to this court, and he raises the following assignment of error:

The Lower Court erred in dismissing the appeal of an administrative decision in its Decision and Entry Sustaining Motion to Dismiss.

{¶11} Before reaching the merits of appellant's arguments, we consider appellee's argument that appellant's notice of appeal was defective as a matter of law because it did not state the grounds for the appeal. This defect, appellee argues, deprived the trial court of subject-matter jurisdiction. Subject-matter jurisdiction is a question of law, which we review de novo. *Village of Hills & Dales v. Ohio Dept. of Edn.*, Franklin App. No. 06AP-1249, 2007-Ohio-5156, at ¶16.

{¶12} Appellant's right to appeal the revocation of his medical license arises from R.C. 119.12. That section provides, in pertinent part: "Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal." The issue here is whether appellant's notice of appeal adequately set forth "the grounds" of his appeal.

{¶13} We begin with the principle that, when a statute confers the right to appeal, the appeal can be perfected only in the mode prescribed by that statute. *Ramsdell v. Ohio Civil Rights Comm.* (1990), 56 Ohio St.3d 24, 27. Parties must strictly adhere to the filing requirements in order to perfect an appeal and invoke the jurisdiction of the court of common pleas. *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47,

2007-Ohio-2877, at ¶17; *Harrison v. Ohio State Med. Bd.* (1995), 103 Ohio App.3d 317, 321.

{¶14} In support of its argument that appellant failed to adhere to the filing requirements of R.C. 119.12, appellee relies primarily on *Green v. State Bd. of Registration for Professional Engineers and Surveyors*, Greene App. No. 05CA121, 2006-Ohio-1581. In *Green*, a licensed surveyor appealed from an order by the state surveyor licensing board, which reprimanded Green and suspended his license. Green appealed to the common pleas court, which accepted jurisdiction. On appeal to the Second District Court of Appeals, the board argued, in part, that the trial court erred in accepting jurisdiction because Green's notice of appeal did not adequately set forth the grounds for the appeal. The Second District agreed with the board and held that the common pleas court lacked jurisdiction.

{¶15} In its opinion, *id.* at ¶14, the Second District described Green's notice of appeal as follows:

The notice of appeal that Green filed merely states that he "is adversely affected" by the Board's order "finding that Appellant violated Revised Code Section 4733.20(A)(2)" and the sanctions the Board imposed. That bare contention, coupled with only a reference to the statutory authority under which the Board acted, is insufficient to satisfy the "grounds" requirement of R.C. 119.12. *Berus v. Ohio Dep't. Of Admin. Services*, Franklin App. No. 04AP-1196, 2005-Ohio-3384.

{¶16} The Second District also explained that the "grounds" requirement in R.C. 119.12 required an appellant to "set forth facts sufficient on their face to show how the agency's order is not supported by reliable, probative, and substantial evidence and is

not in accordance with law. Otherwise, the agency is not put on notice of the claim or claims against which it must defend." *Green* at ¶13.

{¶17} While we agree with the holding in *Green*—the notice of appeal did not state the grounds for the appeal, and that defect deprived the trial court of jurisdiction over the appeal—we do not agree with the court's explanation of R.C. 119.12 requirements.

{¶18} In *Ohio Real Estate Comm. v. Jones* (Mar. 27, 1984), Franklin App. No. 83AP-396, this court considered whether a notice of appeal met R.C. 119.12 requirements. The notice of appeal at issue referenced the order from which the appellant was appealing, but identified no grounds for the appeal. Relying on *Zier v. Bur. of Unemp. Comp.* (1949), 151 Ohio St. 123, and *Masterson, Winchester Auto Sales, Inc. v. Ohio Motor Vehicle Dealers' & Salespersons' Licensing Bd.* (June 4, 1981), Franklin App. No. 80AP-979, this court held that the appellant's failure to identify any grounds for the appeal deprived the trial court of jurisdiction over the appeal.

{¶19} In *Stultz v. Ohio Dept. of Admin. Serv.*, Franklin App. No. 04AP-602, 2005-Ohio-200, this court considered, as an alternate ground for affirming the dismissal of appellant's appeal, whether the appellant's notice of appeal stated reasons for the appeal. We found that the "appellant's notice of appeal referenced only the parties and the claim number and did not indicate a reason or basis for his appeal." *Id.* at ¶10. Therefore, his notice of appeal was insufficient to invoke the jurisdiction of the trial court.

{¶20} Similarly, in *Berus v. Ohio Dept. of Admin. Serv.*, Franklin App. No. 04AP-1196, 2005-Ohio-3384, as an alternate basis for affirming the dismissal of the appellant's appeal, this court considered whether the appellant's notice of appeal was

defective. We concluded that the appellant's notice of appeal referenced the parties and the agency decision from which she was appealing. The appellant did not, however, "indicate any reason or basis for her appeal." *Id.* at ¶13. As a result, her notice of appeal was insufficient to invoke the jurisdiction of the trial court. See, also, *Kelsey's Learning Ctr. v. Ohio Dept. of Job & Family Serv.*, Franklin App. No. 05AP-1311, 2006-Ohio-3657 (affirming dismissal of the appellant's appeal because it failed to state any grounds for the appeal).

{¶21} Finally, in *CHS-Windsor, Inc. v. Ohio Dept. of Job & Family Serv.*, Franklin App. No. 05AP-909, 2006-Ohio-2446, this court considered whether the appellant's notice of appeal stated the grounds for the appeal or, alternatively, whether appellant could amend its notice. The notice of appeal at issue stated "that '[t]he Adjudication Order is not in accordance with law in that it is not a ["]Final Order["]' as required by state law because it purports to exclude any collection of amounts which may be owed to the Department as a result of a certain audit identified within the Adjudication Order.'" *Id.* at ¶10. This court determined, however, that the lack of a final order is a reason why an appeal cannot be taken; it is not a ground for an appeal. Therefore, the appellant had not stated a ground for appeal, and, without an amendment to the notice of appeal, the trial court lacked jurisdiction.

{¶22} In each of these prior cases from this court, the notice of appeal at issue contained no grounds for the appeal. That critical fact distinguishes these prior cases from the appeal before us, where appellant identified four separate grounds for his appeal to the trial court. While we can appreciate appellee's desire for more detail about appellant's arguments, R.C. 119.12 only requires an appellant to "set[] forth * * *

the grounds of the party's appeal." It does not require an appellant to set forth specific facts to support those grounds, and we expressly decline to adopt such a requirement. Because we find that appellant's notice of appeal stated the grounds for his appeal and invoked the jurisdiction of the trial court, we reject appellee's contrary arguments.

{¶23} We turn now to appellant's argument that the court erred in determining that it lacked subject-matter jurisdiction because appellant failed to exhaust his administrative remedies. The doctrine of exhaustion requires a person to exhaust administrative remedies before seeking redress from the judicial system. *Basic Distrib. Corp. v. Ohio Dept. of Taxation*, 94 Ohio St.3d 287, 290, 2002-Ohio-794, citing *Noemberg v. Brook Park* (1980), 63 Ohio St.2d 26. The purpose of the doctrine is to allow an administrative agency to apply its expertise in developing a factual record without premature judicial intervention in administrative processes. *Nemazee v. Mt. Sinai Med. Ctr.* (1990), 56 Ohio St.3d 109, 111; *Prairie Twp. Bd. of Trustees v. Hay*, Franklin App. No. 01AP-1198, 2002-Ohio-4765, at ¶26.

{¶24} While many courts describe the exhaustion doctrine as a jurisdictional concept, the Supreme Court of Ohio and this court have clarified that a party's failure to exhaust available administrative remedies is not a jurisdictional defect. *Jones v. Village of Chagrin Falls*, 77 Ohio St.3d 456, 462, 1997-Ohio-253. Rather, " ' it is an affirmative defense which must be timely asserted in an action or it will be considered waived.' " *Prairie Twp.* at ¶26, quoting *The Salvation Army v. Blue Cross & Blue Shield of N. Ohio* (1993), 92 Ohio App.3d 571, 577; accord *Grudzinski v. Med. College of Ohio* (Apr. 12, 2000), Lucas App. No. L-00-1098 (stating that the rule of exhaustion "is not jurisdictional, but may be raised as an affirmative defense"). But whether a party's

failure to exhaust administrative remedies is deemed a jurisdictional defect or an affirmative defense, Ohio courts agree that allowing " 'a claimant * * * to raise an issue for the first time in an appeal to the court of common pleas would frustrate the statutory system for having issues raised and decided through the administrative process.' " *Carmack v. Caltrider*, 164 Ohio App.3d 76, 2005-Ohio-5575, at ¶6, quoting *Kaltenbach v. Mayfield* (Apr. 27, 1990), Pickaway App. No. 89-CA-10.

{¶25} Here, appellee timely raised appellant's failure to request a hearing and his resulting failure to exhaust his available administrative remedies. In response, appellant asserts that the exhaustion doctrine does not apply to preclude his facial constitutional challenge to R.C. 4731.22(B)(22) because appellee had no authority to address such a challenge. We agree with appellant.

{¶26} As the Supreme Court of Ohio explained in *Jones*, supra, at 460-461:

* * * We have long held that failure to exhaust administrative remedies is not a necessary prerequisite to an action challenging the constitutionality of a statute, ordinance, or administrative rule. *Driscoll v. Austintown Assoc.* [(1975)], 42 Ohio St. 2d 263, * * * paragraph two of the syllabus; *Karches v. Cincinnati* (1988), 38 Ohio St. 3d 12, 17 * * *; *Fairview Gen. Hosp. v. Fletcher* [(1992)], 63 Ohio St. 3d 146, 149 * * *.

The policy interest underlying the rule distinguishing between cases presenting constitutional issues and others is simply the conservation of public resources. Because administrative bodies have no authority to interpret the Constitution, requiring litigants to assert constitutional arguments administratively would be a waste of time and effort for all involved. "If resort to administrative remedies would be wholly futile, exhaustion is not required." *Karches v. Cincinnati* [(1988)], 38 Ohio St. 3d 12, 17 * * * (citing *Glover v. St. Louis-San Francisco Ry. Co.* [1969], 393 U.S. 324 * * *); *Driscoll v. Austintown Assoc.*, 42 Ohio St.2d 263, 275 * * *.

{¶27} Here, the trial court distinguished *Jones* as a case arising from a declaratory judgment action. However, we find this distinction to be without legal consequence in this case. As the court in *Jones* noted, Ohio courts have long held that exhaustion is not required where resort to administrative remedies would be futile. The parties before us agree that appellee holds no authority to decide constitutional questions. Therefore, it would have been futile for appellant to raise such questions administratively, and his failure to request an administrative hearing did not preclude his facial constitutional challenge.

{¶28} In reaching this same conclusion, Ohio courts have distinguished facial constitutional challenges from as-applied challenges. In *Bd. of Edn. of the South-Western City Schools v. Kinney* (1986), 24 Ohio St.3d 184, syllabus, in the context of an appeal from the Board of Tax Appeals, the Supreme Court of Ohio held:

A party that challenges the constitutionality of the application of a tax statute in a particular situation is required to raise that challenge at the first available opportunity during the proceedings before the Tax Commissioner, and a failure to do so constitutes a waiver of that issue.

{¶29} In support of this holding, the Supreme Court stated, *id.* at 185-186:

One who challenges the constitutional application of legislation to particular facts is required to raise that challenge at the first available opportunity during the proceedings before the administrative agency. Cf. *Sun Finance & Loan Co. v. Kosydar* (1976), 45 Ohio St. 2d 283, 284, fn. 1 * * *. Otherwise, it would be impossible to develop the factual record necessary for the resolution of the case. *Petrocon v. Kosydar* (1974), 38 Ohio St. 2d 264 * * *.

{¶30} The Supreme Court of Ohio applied this same reasoning in the context of an appeal from an order of the Public Utilities Commission of Ohio ("PUCO") in *City of*

Reading v. Pub. Util. Comm. of Ohio, 109 Ohio St.3d 193, 2006-Ohio-2181. In holding that an appellant could raise a facial constitutional challenge for the first time on appeal from a PUCO order, the court explained:

* * * Extrinsic facts are not needed to determine whether a statute is unconstitutional on its face. When a party challenges the constitutionality of a statute as applied to a specific set of facts, however, a record is required. The proponent of the constitutionality of a statute also needs notice and an opportunity to develop an evidentiary record to support that view. See *Cleveland Gear [Co. v. Limbach* (1988), 35 Ohio St.3d 229], 232, 520 N.E.2d 188.

For these reasons, we hold that a facial constitutional challenge to a statute need not first be raised before the commission. However, a litigant must raise an as-applied constitutional challenge in the first instance during the proceedings before the commission in order to allow the parties to develop an evidentiary record.

Id. at 195-196. See, also, *S&P Lebos, Inc. v. Ohio Liquor Control Comm.*, 163 Ohio App.3d 827, 2005-Ohio-5424, at ¶¶10-11; *Am. Legion Post 0046 Bellevue v. Ohio Liquor Control Comm.* (1996), 111 Ohio App.3d 795, 797-798, citing *Rahal v. Liquor Control Comm.* (1965), 1 Ohio App.2d 263, 271.

{¶31} This court appears to have applied these principles in *State Med. Bd. v. Fiorica* (Nov. 3, 1988), Franklin App. No. 88AP-516, where it addressed the concept of exhaustion as it applied on appeal to a doctor's failure to request an administrative hearing following notification by the State Medical Board of its intention to determine whether to revoke the doctor's license based on another state's revocation of his license there. This court held that the doctor's "failure to timely request a hearing before appellee was a failure to exhaust his administrative remedies."

{¶32} The appellant-doctor in *Fiorica* raised the following assignment of error to this court:

"2. The constitutional question on the invalidity of the extreme penalty imposed under these circumstances without regard to mitigating factors was not within the competency of the administrative Board in the first, and there was therefore no duty upon appellant to exhaust administrative remedies in the Board. The jurisdiction to address this constitutional challenge rested with the trial court and it erred in declining to resolve the matter.["]

{¶33} This assignment of error indicates that the appellant-doctor in *Fiorica* raised an as-applied constitutional challenge—that is, a challenge to the penalty "imposed under these circumstances"—for the first time in the trial court. The trial court declined to consider the appellant's argument that appellee's penalty was unconstitutional as applied to the appellant, and this court affirmed based on the exhaustion doctrine and the appellant's failure to request an administrative hearing. As our prior discussion indicates, we would agree with the *Fiorica* court's conclusion that the appellant's failure to request an administrative hearing, and her resulting failure to develop a factual record, precluded the trial court from considering the as-applied constitutional challenge the appellant raised for the first time on appeal. Failure to request an administrative hearing would not, however, preclude an appellant from raising a facial constitutional challenge for the first time on appeal.

{¶34} For these reasons, we sustain appellant's assignment of error and hold that appellant was entitled to raise a facial constitutional challenge to R.C. 4731.22(B)(22) for the first time on appeal to the trial court. Accordingly, we reverse the decision of the Franklin County Court of Common Pleas, and we remand this matter to

the trial court for resolution of appellant's facial constitutional challenge to R.C. 4731.22(B)(22).

*Judgment reversed and cause
remanded with instructions.*

McGRATH and WHITESIDE, JJ., concur.

WHITESIDE, J., retired of the Tenth Appellate District,
assigned to active duty under authority of Section 6(C),
Article IV, Ohio Constitution.

EXHIBIT A

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

TERMINATION NO. 10
BY 614
3/7/05

Iraj Derakhshan, M.D., :
Appellant, : CASE NO. 06CVF01-914
-vs- : JUDGE JOHN A. CONNOR
Ohio State Medical Board, :
Appellee. :

DECISION AND ENTRY SUSTAINING MOTION TO DISMISS

Rendered this February day of ~~January~~, 2007.

CONNOR, JUDGE

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2007 MAR -9 AM 8:25
CLERK OF COURTS

The above-styled case is before the Court on an appeal under R.C. 119.12 from an Order of the Ohio State Medical Board (hereinafter "the Board" or "Appellee").

Appellant Iraj Derakhshan, M.D. (hereinafter "Appellant") appeals the revocation of his medical license. The Board issued an Order and Journal Entry stating the same on January 11, 2006. The revocation became effective immediately.

It should be noted that it is undisputed in the record that Appellant never requested a hearing at the administrative level, despite an opportunity for the same, as stated in the Notice of November 9, 2005, which was received by Appellant on November 12, 2005 by way of certified mail.

Based on the aforementioned procedural history, Appellee submits a Motion to Dismiss this appeal. Appellant filed a Memorandum Contra. Both a Reply and Surreply were submitted, and shall be considered by the Court.

Appellee asserts that the Appellant failed to exhaust his administrative remedies and as a result, subject matter jurisdiction is lacking. Appellee contends that R.C. 119.12 imposes

statutory prerequisites to jurisdiction in this Court and based on Appellant's actions, the Court is deprived of the ability to render a decision on the merits.

In response, Appellant concedes that contrary to his wishes, his previous attorney neglected to request a hearing at the administrative level, thereby depriving him an opportunity to argue his position before the Board. However, Appellant asserts that such an oversight is actually immaterial because this appeal concerns issues of law and constitutionality. According to Appellant, the Board is powerless to adjudicate such non-factual arguments and therefore, any administrative hearing would have been a nullity.

The Tenth District Court of Appeals has on numerous occasion been called upon to interpret the breadth of the requirements of R.C. 119.12. That court has stated that failure to timely comply with a request for a hearing in accordance with R.C. 119.07 constitutes failure to exhaust administrative remedies. *State v. Fiorica* (Nov. 3, 1988), Franklin App. No. No. 88AP-516, unreported. Similarly, it has been provided that this measure is mandatory in nature, and absence of such a request is a jurisdictional shortcoming precluding further review. *Harrison v. Ohio St. Med. Bd.* (1995), 103 Ohio App.3d 317; *Hsueh v. Ohio St. Med. Bd.* (Oct. 17, 1989), Franklin App. No. No. 88AP-276, unreported.

Upon consideration of this matter in conjunction with the foregoing authority, the Court finds that the record reflects that although Appellant was afforded an opportunity for an evidentiary hearing before the Board, he neglected to request such a remedy and proceeded directly to perfecting an appeal with this Court. This constitutes a failure on Appellant's part to exhaust his administrative remedies and acts as basis for this Court to be deprived of jurisdiction to hear this appeal on the merits.

Appellant attempts to circumvent this well-established requirement by insisting that any administrative hearing in this instance would be futile, as the Board lacks the authority to determine the constitutionality of the controlling statute. This is an interesting argument considering that Appellant readily admits that the failure to request an administrative hearing was the direct result of his prior attorney's neglect to request such a hearing, in contravention of his wishes. However, any effort for this Court to determine whether an administrative hearing would be meaningful or whether that measure would be aided by the Board's expertise in these matters ignores the fact that failure to request a hearing results in a jurisdictional defect. Because this Court under such circumstances is devoid of jurisdiction, it is incapable of evaluating the futility of the administrative hearing had it been requested.

This Court is also aware of Appellant's submission that the Ohio Supreme Court backed off such a jurisdictional stance, as was previously espoused in *Norenberg v. City of Brook Park* (1980), 63 Ohio St.2d 26. Appellant submits that in the case of *Jones v. Chagrin Falls* (1997), 77 Ohio St. 3d 456, the Supreme Court reversed its earlier line of authority in this area. However, that decision was in the context of declaratory judgments and its application to R.C. 119 appeals is unclear. Nevertheless, even if this Court retains jurisdiction in light of this precedent, the inescapable conclusion can be reached that Appellant deprived the Board of an opportunity to call on its own expertise and correct any alleged errors at the administrative level.

Moreover, the Court finds persuasive Appellee's argument that Appellant has effectively waived its ability to assert a constitutional challenge as the exclusive basis of this appeal. It is apparent after a review of the Notice of Appeal, dated January 20, 2006, that the grounds for appeal are as follows:

- A. The revocation of [Appellant's] medical license is not supported by reliable, probative, and substantial evidence.
- B. The revocation of [Appellant's] medical license is contrary to law.
- C. The revocation of [Appellant's] medical license was arbitrary and capricious.
- D. The revocation of [Appellant's] medical license constitutes an abuse of discretion.

As such, Appellant's present arguments surrounding the facial unconstitutionality of R.C. 4731.22(B)(22) appear to constitute a knee-jerk reaction to the realization that his failure to exhaust administrative remedies bars a merit-based review by this Court. Only in response to Appellee's Motion to Dismiss are matters of constitutionality raised for the first time by Appellant. This Court concludes that the spirit and substance of Appellant's Notice of Appeal make no mention of any facial unconstitutionality specific to the underlying statute, but rather assert the more traditional errors addressing insufficient evidence. Accordingly, to presently allow consideration of said statute's constitutionality for the first time as a rebuttal to Appellee's dispositive motion is inappropriate, given the procedural history established in the record.

Finally, although unnecessary, it should also be noted that the controlling statute, R.C. 4731.22, has survived prior court scrutiny with respect to facial constitutionality, albeit in the context of a separate subsection. *DeBlanco v. Ohio State Medical Bd.* (1992), 78 Ohio App. 3d 194.

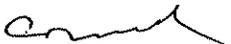
Based on the foregoing, this Court finds that Appellee's Motion to Dismiss is well-founded and meritorious. Appellant's administrative appeal predicated on R.C. 119.12 fails as a matter of law. Accordingly, the Court hereby **SUSTAINS** Appellee's Motion to Dismiss.

Rule 58(B) of the Ohio Rules of Civil Procedure provides the following:

(B) Notice of filing. When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment on the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket. Upon serving the notice and notation of the service in the appearance docket, the service is complete. The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App. R. 4(A).

The Court finds that there is no just reason for delay. This is a final appealable order.

The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.



JOHN A. CONNOR, JUDGE

COPIES TO:

Sean A. McCarter, Esq., Counsel for Appellant
Barbara J. Pfeiffer, Esq., Counsel for Appellee

MAR 19 2007

SERVICES SECTION

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

TERMINATION NO.	10
BY	C14 3/7/07

Iraj Derakhshan, M.D., :
 Appellant, : CASE NO. 06CVF01-914
 -vs- : JUDGE JOHN A. CONNOR
 Ohio State Medical Board, :
 Appellee. :

FILED
 COMMON PLEAS COURT
 FRANKLIN COUNTY, OHIO
 2007 MAR -9 AM 8:25
 CLERK OF COURTS

DECISION AND ENTRY SUSTAINING MOTION TO DISMISS

Rendered this February day of ~~January~~, 2007.

CONNOR, JUDGE

The above-styled case is before the Court on an appeal under R.C. 119.12 from an Order of the Ohio State Medical Board (hereinafter "the Board" or "Appellee").

Appellant Iraj Derakhshan, M.D. (hereinafter "Appellant") appeals the revocation of his medical license. The Board issued an Order and Journal Entry stating the same on January 11, 2006. The revocation became effective immediately.

It should be noted that it is undisputed in the record that Appellant never requested a hearing at the administrative level, despite an opportunity for the same, as stated in the Notice of November 9, 2005, which was received by Appellant on November 12, 2005 by way of certified mail.

Based on the aforementioned procedural history, Appellee submits a Motion to Dismiss this appeal. Appellant filed a Memorandum Contra. Both a Reply and Surreply were submitted, and shall be considered by the Court.

Appellee asserts that the Appellant failed to exhaust his administrative remedies and as a result, subject matter jurisdiction is lacking. Appellee contends that R.C. 119.12 imposes

statutory prerequisites to jurisdiction in this Court and based on Appellant's actions, the Court is deprived of the ability to render a decision on the merits.

In response, Appellant concedes that contrary to his wishes, his previous attorney neglected to request a hearing at the administrative level, thereby depriving him an opportunity to argue his position before the Board. However, Appellant asserts that such an oversight is actually immaterial because this appeal concerns issues of law and constitutionality. According to Appellant, the Board is powerless to adjudicate such non-factual arguments and therefore, any administrative hearing would have been a nullity.

The Tenth District Court of Appeals has on numerous occasion been called upon to interpret the breadth of the requirements of R.C. 119.12. That court has stated that failure to timely comply with a request for a hearing in accordance with R.C. 119.07 constitutes failure to exhaust administrative remedies. *State v. Fiorica* (Nov. 3, 1988), Franklin App. No. No. 88AP-516, unreported. Similarly, it has been provided that this measure is mandatory in nature, and absence of such a request is a jurisdictional shortcoming precluding further review. *Harrison v. Ohio St. Med. Bd.* (1995), 103 Ohio App.3d 317; *Hsueh v. Ohio St. Med. Bd.* (Oct. 17, 1989), Franklin App. No. No. 88AP-276, unreported.

Upon consideration of this matter in conjunction with the foregoing authority, the Court finds that the record reflects that although Appellant was afforded an opportunity for an evidentiary hearing before the Board, he neglected to request such a remedy and proceeded directly to perfecting an appeal with this Court. This constitutes a failure on Appellant's part to exhaust his administrative remedies and acts as basis for this Court to be deprived of jurisdiction to hear this appeal on the merits.

Appellant attempts to circumvent this well-established requirement by insisting that any administrative hearing in this instance would be futile, as the Board lacks the authority to determine the constitutionality of the controlling statute. This is an interesting argument considering that Appellant readily admits that the failure to request an administrative hearing was the direct result of his prior attorney's neglect to request such a hearing, in contravention of his wishes. However, any effort for this Court to determine whether an administrative hearing would be meaningful or whether that measure would be aided by the Board's expertise in these matters ignores the fact that failure to request a hearing results in a jurisdictional defect. Because this Court under such circumstances is devoid of jurisdiction, it is incapable of evaluating the futility of the administrative hearing had it been requested.

This Court is also aware of Appellant's submission that the Ohio Supreme Court backed off such a jurisdictional stance, as was previously espoused in *Norenberg v. City of Brook Park* (1980), 63 Ohio St.2d 26. Appellant submits that in the case of *Jones v. Chagrin Falls* (1997), 77 Ohio St. 3d 456, the Supreme Court reversed its earlier line of authority in this area. However, that decision was in the context of declaratory judgments and its application to R.C. 119 appeals is unclear. Nevertheless, even if this Court retains jurisdiction in light of this precedent, the inescapable conclusion can be reached that Appellant deprived the Board of an opportunity to call on its own expertise and correct any alleged errors at the administrative level.

Moreover, the Court finds persuasive Appellee's argument that Appellant has effectively waived its ability to assert a constitutional challenge as the exclusive basis of this appeal. It is apparent after a review of the Notice of Appeal, dated January 20, 2006, that the grounds for appeal are as follows:

- A. The revocation of [Appellant's] medical license is not supported by reliable, probative, and substantial evidence.
- B. The revocation of [Appellant's] medical license is contrary to law.
- C. The revocation of [Appellant's] medical license was arbitrary and capricious.
- D. The revocation of [Appellant's] medical license constitutes an abuse of discretion.

As such, Appellant's present arguments surrounding the facial unconstitutionality of R.C. 4731.22(B)(22) appear to constitute a knee-jerk reaction to the realization that his failure to exhaust administrative remedies bars a merit-based review by this Court. Only in response to Appellee's Motion to Dismiss are matters of constitutionality raised for the first time by Appellant. This Court concludes that the spirit and substance of Appellant's Notice of Appeal make no mention of any facial unconstitutionality specific to the underlying statute, but rather assert the more traditional errors addressing insufficient evidence. Accordingly, to presently allow consideration of said statute's constitutionality for the first time as a rebuttal to Appellee's dispositive motion is inappropriate, given the procedural history established in the record.

Finally, although unnecessary, it should also be noted that the controlling statute, R.C. 4731.22, has survived prior court scrutiny with respect to facial constitutionality, albeit in the context of a separate subsection. *DeBlanco v. Ohio State Medical Bd.* (1992), 78 Ohio App. 3d 194.

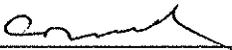
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The Court finds that there is no just reason for delay. This is a final appealable order.

The Clerk is instructed to serve the parties in accordance with Civ. R. 58(B) as set forth above.



JOHN A. CONNOR, JUDGE

COPIES TO:

Sean A. McCarter, Esq., Counsel for Appellant
Barbara J. Pfeiffer, Esq., Counsel for Appellee

FEB - 2 2006

STATE MEDICAL BOARD OF OHIO

STATE MEDICAL BOARD OF OHIO

2006 JAN 20 A 10: 59

Iraj Derakhshan, M.D.
205 Cyrus Point Place
Charleston, WV 25314

Appellant,

-vs-

State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, Ohio 43215-6127

Appellee.

:
:
:
:
:
:

06CVF01

914

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2006 JAN 20 AM 11: 17
CLERK OF COURTS

NOTICE OF APPEAL

Iraj Derakhshan, M.D., Appellant, hereby gives notice of appeal on questions of law and fact to the Common Pleas Court of Franklin County, upon the authority of R.C. §119.12, from the action of the State Medical Board of Ohio in revoking his license to practice medicine, pursuant to the Findings, Order and Journal Entry entered on the journal of the State Medical Board of Ohio on January 11, 2006.

The grounds for this appeal and the errors complained of are as follows:

- A. The revocation of Dr. Derakhshan's medical license is not supported by reliable probative, and substantial evidence.
- B. The revocation of Dr. Derakhshan's medical license is contrary to law.
- C. The revocation of Dr. Derakhshan's medical license was arbitrary and capricious.
- D. The revocation of Dr. Derakhshan's medical license constitutes an abuse of discretion.

A copy of the Findings, Order and Journal Entry appealed from is attached hereto as Exhibit A.

OHIO STATE MEDICAL BOARD
FEB - 2 2006

Respectfully submitted;



Sean A. McCarter (0064215)
The Law Office of Sean A. McCarter
471 East Broad St., Suite 2001
Columbus, Ohio 43215
(614) 358-0880
Fax (614) 280-9675
mccarter@netwalk.com

Counsel for Appellant, Iraj Derakhshan



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

January 11, 2006

Iraj Derakhshan, M.D.
205 Cyrus Point Place
Charleston, WV 25314

Dear Doctor Derakhshan:

Please find enclosed a certified copy of the Findings, Order and Journal Entry approved and confirmed by the State Medical Board meeting in regular session on January 11, 2006.

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 an original Notice of Appeal with the State Medical Board of Ohio and a copy with 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 of the Ohio Revised Code.

Very truly yours,

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL RECEIPT NO. 7003 0500 0002 4332 5992
RETURN RECEIPT REQUESTED

Mailed 1-12-06

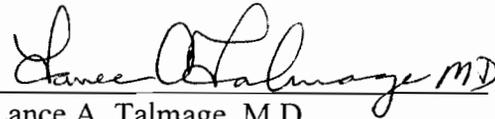
In the matter of Iraj Derakhshan, M.D.
Page 2

Cc: Sean A. McCarter, Esq.
CERTIFIED MAIL NO. 7003 0500 0002 4329 7527
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Findings, Order and Journal Entry approved by the State Medical Board, meeting in regular session on January 11, 2006, constitutes a true and complete copy of the Findings, Order and Journal Entry in the Matter of Iraj Derakhshan, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

January 11, 2006

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

IRAJ DERAKHSHAN, M.D.

*

FINDINGS, ORDER AND JOURNAL ENTRY

By letter dated November 9, 2005, notice was given to Iraj Derakhshan, M.D., that the State Medical Board intended to consider disciplinary action regarding his license to practice medicine and surgery in the State of Ohio, and that he was entitled to a hearing if such hearing was requested within thirty (30) days of the mailing of said notice. In accordance with Section 119.07, Ohio Revised Code, said notice was sent via certified mail, return receipt requested, to the address of record of Dr. Derakhshan, that being 205 Cyrus Point Place, Charleston, West Virginia 25314.

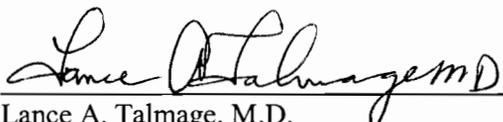
A signed certified mail receipt was returned to the Medical Board offices documenting proper service of the notice. However, no hearing request has been received from Dr. Derakhshan and more than thirty (30) days have now elapsed since the mailing of that notice.

WHEREFORE, having reviewed the November 9, 2005, Notice of Opportunity for Hearing, including the Consent Order between the West Virginia Board of Medicine and Iraj Derakhshan, M.D., and the affidavit of Debra L. Jones, Continuing Medical Education and Renewal Officer, which are attached hereto and incorporated herein, the Board hereby finds that there is reliable, probative and substantial evidence to support the allegations as set forth in the notice of opportunity for hearing issued on November 9, 2005. Further, the Board hereby ORDERS that the license of Iraj Derakhshan, M.D., to practice medicine and surgery in the State of Ohio be REVOKED.

This Order shall become effective IMMEDIATELY.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 11th day of January 2006 and the original thereof shall be kept with said Journal.

(SEAL)



Lance A. Talmage, M.D.
Secretary

January 11, 2006

Date

AFFIDAVIT

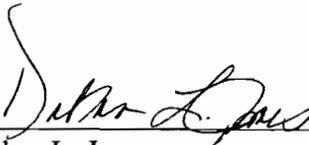
The State of Ohio
Franklin County, SS

I, Debra L. Jones, being duly cautioned and sworn, do hereby depose and say that:

- 1) I am employed by the State Medical Board of Ohio (hereinafter, "The Board")
- 2) I serve the Board in the position of Continuing Medical Education and Renewal Officer.
- 3) In such position I am the responsible custodian of all public licensee records maintained by the Board pertaining to individuals who have received certificates issued pursuant to Chapter 4731., Ohio Revised Code.
- 4) I have this day carefully examined the records of the Board pertaining to Iraj Derakhshan, M.D.
- 5) Based on such examination, I have found the last known address of record of Iraj Derakhshan, M.D., to be:

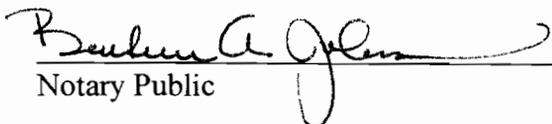
205 Cyrus Point Place
Charleston, West Virginia 25314

- 6) Further, Affiant Sayeth Naught.



Debra L. Jones
Continuing Medical Education and Renewal
Officer

Sworn to and signed before me, Barbara A. Jacobs, Notary
Public, this 13th day of December, 2005.



Notary Public

BARBARA ANN JACOBS, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

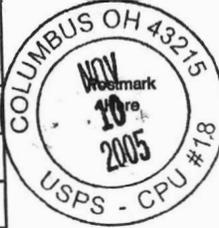
U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE JAM

7003 0500 0002 4333 3751

Postage	\$ 1.06
Certified Fee	2.70
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.11



Sent To
Iraj Derakhshan, M.D.
 Street or P.O. Box
205 Cyrus Point Place
 City, State, ZIP+4®
Charleston, WV 25314

PS Form 3800, June 2002 See Reverse for Instructions

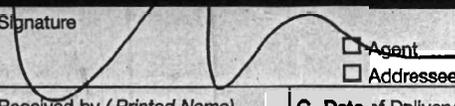
SENDER: COMPLETE THIS SECTION

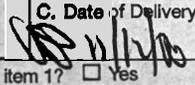
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you.

Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Iraj Derakhshan, M.D.
205 Cyrus Point Place
Charleston, WV 25314

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X  Agent Addressee

B. Received by (Printed Name)
 C. Date of Delivery


D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7003 0500 0002 4333 3751** **CITE**

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.med.ohio.gov

November 9, 2005

Iraj Derakhshan, M.D.
205 Cyrus Point Place
Charleston, WV 25314

Dear Doctor Derakhshan:

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

- (1) On or about July 11, 2005, you entered into a Consent Order with the West Virginia Board of Medicine [West Virginia Consent Order] that required you, *inter alia*, to complete, within ten months, courses in "Controlled Substance Management" and record keeping; to cease advising patients to cut time-released medications in half with a pill cutter; and to continue to reduce the number of patients you examine or otherwise treat daily. A copy of the West Virginia Consent Order is attached hereto and incorporated herein.

The West Virginia Consent Order, as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, 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," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, 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 before this agency, or you may present your position, arguments,

Mailed 11-10-05

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 medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, 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,

A handwritten signature in black ink, appearing to read "Lance A. Talmage, M.D.", written in a cursive style.

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4333 3751
RETURN RECEIPT REQUESTED

R. Curtis Arnold, DPM
South Charleston

STATE MEDICAL BOARD
OF OHIO

Rev. Richard Bowyer
Fairmont

2005 OCT -3 P 4: 25

Ms. Doris M. Griffin
Martinsburg

M. Khalid Hasan, MD
Beckley

J. David Lynch, Jr., MD
Morgantown



State of West Virginia

West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311
Telephone (304) 558-2921
Fax (304) 558-2084

Vettivelu Maheswaran, MD
Charles Town

Leonard Simmons, DPM
Fairmont

Lee Elliott Smith, MD
Princeton

John A. Wade, Jr., MD
Point Pleasant

Badshah J. Wazir, MD
South Charleston

CERTIFICATION

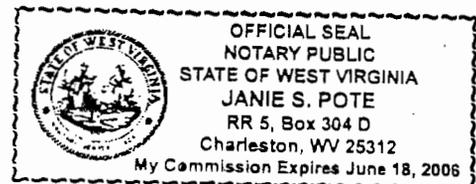
I DO HEREBY CERTIFY that the following attached document IN RE: IRAJ DERAKHSHAN, M.D. is a true and accurate copy of the original document as maintained by the West Virginia Board of Medicine: (1) CONSENT ORDER dated July 11, 2005.

Ronald D. Walton, Interim Exec. Director
West Virginia Board of Medicine

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA

The foregoing instrument was acknowledged before me this 29th day of September, 2005, by Ronald D. Walton, Interim Executive Director, West Virginia Board of Medicine.

My Commission expires June 18, 2006.

Janie S. Pote
Notary Public

PRESIDENT

George N. George, MD

VICE PRESIDENT

Carmen R. Rexrode, MD

SECRETARY

Catherine Slemp, MD, MPH

COUNSEL

Deborah Lewis Rodecker

INTERIM EXEC. DIRECTOR

Ronald D. Walton

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

**WEST VIRGINIA BOARD OF MEDICINE,
PETITIONER,**

V.

**IRAJ DERAKHSHAN, M.D.,
RESPONDENT.**

CONSENT ORDER

The West Virginia Board of Medicine ("Board") and Iraj Derakhshan, M.D. ("Dr. Derakhshan") freely and voluntarily enter into the following Consent Order pursuant to West Virginia Code §30-3-14, et seq.

FINDINGS OF FACT

1. Dr. Derakhshan currently holds a license to practice medicine and surgery in the State of West Virginia, License No. 18591, issued originally in 1996. Dr. Derakhshan's address of record with the Board is currently in Charleston, West Virginia.
2. The Board received a complaint from an individual, on or about October 15, 2002, alleging that Dr. Derakhshan had advised him to take a medication in an improper manner that presented a danger to him.
3. Dr. Derakhshan responded to said complaint on or about November 27, 2002, at which time he denied advising said patient to take the medication in an improper manner, instead Dr. Derakhshan asserts that he gave the complainant proper instructions on how to take the medication and that as long as the complainant followed these instructions, there was no danger presented to the complainant.

4. The Board reviewed a second complaint on or about March 11, 2003, from another individual, also alleging that Dr. Derakhshan had advised him to take the same medication in an improper manner that presented a danger to the complainant.

5. Dr. Derakhshan responded to said complaint by counsel, on or about April 10, 2003, at which time he denied having given the complainant improper advice on how to take the medication, but asserted that as long as the complainant took the medication as directed, he did not face a risk of danger.

6. Dr. Derakhshan appeared before the Complaint Committee for a full discussion of these and related matters.

7. The Complaint Committee conducted an investigation, including a review of patient's medical records, pharmacy records, and obtained an independent medical consultant's review.

8. Based upon said complaints, the investigation, and especially the independent medical review, a "Complaint and Notice of Hearing" was filed against Dr. Derakhshan on September 3, 2004.

9. The Hearing of this matter scheduled for March 16, 17, and 18, 2005, was continued by an Order entered on March 9, 2005, by the Hearing Examiner, Thomas Hayes, upon the request of Dr. Derakhshan's counsel for mediation pursuant to West Virginia Code §30-3-14(r).

10. The mediation began on April 13, 2005 and remained open, to allow the parties to attempt a final resolution of this matter.

11. However, the parties were able to reach a subsequent agreement and now desire to enter into this Consent Order to settle and terminate this matter.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to West Virginia Code §30-3-1 *et seq.* to protect the public interest.
2. Probable cause existed for the filing of charges against Dr. Derakhshan pursuant to the provisions of West Virginia Code §30-3-14(c)(17), West Virginia Code §30-3-14(c)(11), and 11 CSR 1A 12.1(u), relating to the failure to keep written records justifying the course of treatment, and 11 CSR 1A 12.1(j).
3. The Board has determined that it is appropriate to waive further proceedings against Dr. Derakhshan provided that certain terms and conditions are met.

CONSENT

Iraj Derakhshan, M.D., by affixing his signature hereon, agrees, solely and exclusively for purposes of this agreement and the entry of the Order provided for and stated herein, and proceedings conducted in accordance with this Order, to the following.

1. Dr. Derakhshan acknowledges that he is fully aware that, without his consent, herein given, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code §30-3-14(h) and §29A-5-1, *et seq.*
2. Dr. Derakhshan acknowledges that he has the following rights, among others: the right to a formal hearing before the West Virginia Board of Medicine, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, and the right to cross-examine witnesses against him.
3. Dr. Derakhshan waives all rights to such a hearing.

4. Dr. Derakhshan consents to the entry of this Order relative to his practice of medicine and surgery in the State of West Virginia.

5. Dr. Derakhshan understands that this Order is considered public information, and that matters contained herein shall be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law of the Board, and on the basis of the consent of Dr. Derakhshan, the West Virginia Board of Medicine hereby **ORDERS** as follows.

1. Dr. Derakhshan shall successfully complete a course in "Controlled Substance Management", approved in advance by the Board, at his own expense, within ten (10) months of the date of entry of this Order.

2. Dr. Derakhshan shall successfully complete a course in record keeping, approved in advance by the Board, at his own expense, within ten (10) months of the date of entry of this Order.

3. Dr. Derakhshan shall provide to the Board a copy of appropriate documentation confirming his successful completion of the said courses within ten (10) months of the date of entry of this Order.

4. The said courses mentioned herein above are separate from and in addition to the fifty (50) hours of Continuing Medical Education ("CME") required for licensure renewal.

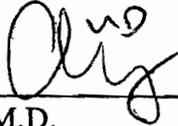
5. Dr. Derakhshan agrees to cease advising patients to cut time-released medications in half with a pill cutter, as long as he maintains a license to practice medicine in the State of West Virginia.

6. Dr. Derakhshan shall continue to reduce the number of patients he examines or otherwise treats in a given day, and shall not examine more than twenty-five (25) patients in a twenty-four (24) hour period, excluding those patients Dr. Derakhshan visits or otherwise treats in any hospital as long as he maintains a license to practice medicine in the State of West Virginia.

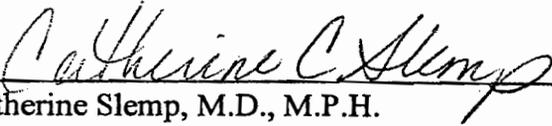
7. Upon the successful completion of the above mentioned terms and conditions, the Hearing Examiner shall enter an order dissolving and terminating this case and thereby striking it from the Board of Medicine's docket.

ENTERED this 11th day of ^{July}~~June~~, 2005.

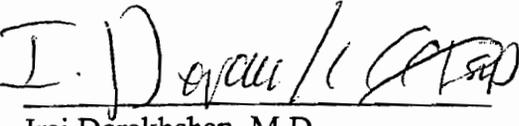
WEST VIRGINIA BOARD OF MEDICINE



Angelo N. Georges, M.D.
President



Catherine Slemp, M.D., M.P.H.
Secretary



Iraj Derakhshan, M.D.

DATE: 6/23/05

STATE OF West Virginia

COUNTY OF Kanawha

I, Patsy V. Carte, a Notary Public for said county and state do hereby certify that Iraj Derakhshan, M.D., whose name is signed on the previous page has this day acknowledged the same before me.

Given under my hand this 23rd day of June, 2005.

My commission expires November 18, 2008.

Patsy V. Carte
Notary Public

