

**CONSENT AGREEMENT
BETWEEN
ROBERT J. CUTTICA, M.D.,
AND
THE STATE MEDICAL BOARD OF OHIO**

This CONSENT AGREEMENT is entered into by and between ROBERT J. CUTTICA, M.D., and the STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Ohio Revised Code Chapter 4731.

ROBERT J. CUTTICA, M.D., enters into this AGREEMENT being fully informed of his rights under Ohio Revised Code Chapter 119, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

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

- A. The STATE MEDICAL BOARD OF OHIO is empowered by Ohio Revised Code Section 4731.22(B) 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 violation of any of the enumerated subsections.
- B. The STATE MEDICAL BOARD OF OHIO enters into this CONSENT AGREEMENT based upon the Notice of Opportunity for Hearing dated March 11, 1992, a copy of which is attached hereto as "Exhibit A" and incorporated herein, and expressly reserves the right to institute formal proceedings based upon any other violations of Ohio Revised Code Chapter 4731, whether occurring before or after the effective date of this AGREEMENT.
- C. ROBERT J. CUTTICA, M.D., is licensed to practice medicine and surgery in the State of Ohio.

D. ROBERT J. CUTTICA, M.D., admits the following factual allegations:

- (1) On or about February 22, 1990, you testified as an expert witness on the plaintiff's behalf, via deposition, in the medical malpractice case of Strohmeier v. Hsu, M.D., which was filed in the Trumbull County Court of Common Pleas.
- (2) In that deposition, you testified under oath that you had "Board Certification" in the specialty of orthopedic surgery as of 1980 and that you passed both the "written and orals on the first attempt." However, you are, in fact, not now, nor have you ever been certified by the American Board of Orthopaedic Surgery.

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, ROBERT J. CUTTICA, M.D., knowingly and voluntarily agrees with the STATE MEDICAL BOARD OF OHIO to the following terms:

1. ROBERT J. CUTTICA, M.D., is hereby issued a "letter of caution."
2. ROBERT J. CUTTICA, M.D., agrees to release the STATE MEDICAL BOARD, its members, employees, agents, officers and representatives, jointly and severally, from any and all liability arising from the within matter, including liability for attorney fees.

The above described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

If, in the discretion of the STATE MEDICAL BOARD OF OHIO, ROBERT J. CUTTICA, M.D., appears to have violated or breached any term or condition of this AGREEMENT, the STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary

proceedings for any and all possible violations or breaches.

ROBERT J. CUTTICA, M.D., acknowledges that he has had an opportunity to ask questions concerning the terms of this AGREEMENT and that all questions asked have been answered in a satisfactory manner.

THIS CONSENT AGREEMENT shall be considered a public record as that term is used in Ohio Revised Code Section 149.43, and shall become effective upon the last date of signature below.

Robert J. Cuttica
ROBERT J. CUTTICA

0/30/92
DATE

William C.H. Ramage
WILLIAM C.H. RAMAGE
Attorney for Dr. Cuttica

6/30/92
DATE

Carla S. O'Day
CARLA S. O'DAY, M.D.
Secretary

7/1/92
DATE

Timothy S. Jost
TIMOTHY S. JOST, ESQUIRE
Supervising Member

7/1/92
DATE

Odella Lampkin
ODELLA LAMPKIN
Assistant Attorney General

7/1/92
DATE



STATE MEDICAL BOARD OF OHIO

77 South High Street, 17th Floor • Columbus, Ohio 43266-0315 • (614) 466-3934

March 11, 1992

Robert J. Cuttica, M.D.
6470 Tippecanoe Road
Canfield, OH 44406

Dear Doctor Cuttica:

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

- (1) On or about February 22, 1990, you testified as an expert witness on the plaintiff's behalf, via deposition, in the medical malpractice case of Strohmeyer v. Hsu, M.D., which was filed in the Trumbull County Court of Common Pleas.

In that deposition, you testified under oath that you were "Board Certified" as an orthopaedic surgeon in 1980 and that you passed both the "written and orals on the first attempt". However, you are, in fact, not now, nor have you ever been certified by the American Board of Orthopaedic Surgery.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code.

Further, your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively constitute "commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed," as that clause is used in Section 4731.22(B)(10), Ohio Revised Code, to wit: Section 2921.11, Ohio Revised Code, Perjury.

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 (30) days of the time of mailing of this notice.

Mailed 3/12/92

March 11, 1992

Robert J. Cuttica, M.D.
Page 2

You are further advised that 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 (30) 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, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Henry G. Cramblett, M.D.
Secretary

HGC:jmb

Enclosures:

CERTIFIED MAIL #P 569 363 476
RETURN RECEIPT REQUESTED

Forms

Intimidation. 4 OJI § 521.03
 Statutory charge. 2A Ohio Crim. Prac. & Pro. 8.97

Research Aids

Intimidation:
 O-Jur3d: Crim L § 2135
 Am-Jur2d: Evid § 293; Obst Jus §§ 9, 20; Witn § 560

ALR

Admissibility in criminal case, on issue of defendant's guilt, of evidence that third person has attempted to influence a witness not to testify or to testify falsely. 79 ALR3d 1156.
 Truth as defense to state charge of criminal intimidation, extortion, blackmail, threats, and the like, based upon threat to disclose information about victim. 39 ALR4th 1011.
 Validity, construction, and application of state statutes imposing criminal penalties for influencing, intimidating, or tampering with witness. 8 ALR4th 769.

CASE NOTES AND OAG

1. (1984) A victim to a crime becomes a "witness," within the meaning of RC § 2921.03(A), at the time of the original victimization, i.e., it is of no consequence that the victim had not yet had the opportunity to identify the offender, or that a complaint had not yet been issued, or that the police had not yet apprehended him: State v. Crider, 21 OApp3d 268, 21 OBR 338, 487 NE2d 911.

2. (1984) The intimidation statute, RC § 2921.03(A), is designed to protect those persons who saw, heard or otherwise knew, or were supposed to know, material facts about a criminal proceeding. Once a person becomes possessed of such material facts, he likewise becomes a "witness" within the meaning of RC § 2921.03(A), and subject to its protection: State v. Crider, 21 OApp3d 268, 21 OBR 338, 487 NE2d 911.

[CONSTRUING FORMER ANALOGOUS RC § 2917.03]

1. Removing a witness from the county of his residence where he is under subpoena to attend the trial of a cause pending, with the purpose and effect of preventing his appearance upon the day of trial, being a wrongful act which obstructs the administration of justice, is a contempt of court: Baldwin v. State, 11 OS 681 [overruled. Hale v. State, 55 OS 210, 45 NE 199, 60 AmSt 691, 36 LRA 254].

2. The provisions of the federal and state constitutions and this section [former RC § 2917.07] insure the right of every citizen of this state to seek remedy by court action for any injuries done to him in his person or property and entitle him to have justice administered according to law without denial or delay, and any person who attempts to interfere unlawfully with this right is guilty of a violation of the fundamental principles guaranteed by constitutional and statutory provisions: Armstrong v. Duffy, 90 App 233, 47 OO 233, 103 NE2d 760.

§ 2921.04 [Intimidation of crime victim or witness.]

(A) No person shall knowingly attempt to intimidate or hinder the victim of a crime in the filing or

prosecution of criminal charges, or a witness in a criminal case in the discharge of his duty.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property, shall attempt to influence, intimidate, or hinder the victim of a crime in the filing or prosecution of criminal charges, or a witness in a criminal case in the discharge of his duty.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, or who is attempting to arbitrate or assist in the conciliation of any such dispute, either prior to or subsequent to the filing of a complaint.

(D) Whoever violates this section is guilty of intimidation of a crime victim or witness. Violation of division (A) of this section is a misdemeanor of the first degree. Violation of division (B) of this section is a felony of the third degree.

HISTORY: 140 v S 172. Eff 9-26-84.

Not analogous to former RC § 2921.04 (RS §§ 803-1, 803-2; GC § 12395; 92 v 89, §§ 1, 2; 106 v 341; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Cross-References to Related Sections**Penalties—**

Felonies, RC § 2929.11.

Misdemeanors, RC § 2929.21.

Corrupt activity defined, RC § 2923.31.

Court order to cease violation, RC § 2945.04.

Knowledge defined, RC § 2901.22(B).

Organized criminal activity, RC § 177.01.

Research Aids

Intimidating a crime victim:

Am-Jur2d: Obst Jus § 9.3

§§ 2921.05 to 2921.10 Repealed, 134 v H 511, § 2 [RS §§ 218-217, 218-218, 6826, 7017-7—7017-9; 69 v 189; 73 v 249; 76 v 187, 188; 95 v 69; 95 v 305; 97 v 306; GC §§ 12396—12398-2, 12426, 12461, 12462; 108 v Pt I 57; Bureau of Code Revision, 10-1-53; 132 v H 664]. Eff 1-1-74.

These sections concerned offenses against the state.

PERJURY**§ 2921.11 Perjury.**

(A) No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.

(B) A falsification is material, regardless of its admissibility in evidence, if it can affect the course or outcome of the proceeding. It is no defense to a

charge under this section that the offender mistakenly believed a falsification to be immaterial.

(C) It is no defense to a charge under this section that the oath or affirmation was administered or taken in an irregular manner.

(D) Where contradictory statements relating to the same material fact are made by the offender under oath or affirmation and within the period of the statute of limitations for perjury, it is not necessary for the prosecution to prove which statement was false, but only that one or the other was false.

(E) No person shall be convicted of a violation of this section where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.

(F) Whoever violates this section is guilty of perjury, a felony of the third degree.

HISTORY: 134 v H 511. Eff 1-1-74.

Not analogous to former RC § 2921.11 (RS §§ 674-13, 6827b; 89 v 40; 97 v 307; GC § 12463; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2. Eff 1-1-74.

Committee Comment to H 511

This section changes former law to limit the crime of perjury to falsification committed in the course of a judicial or quasi-judicial proceeding. Other falsifications under oath or affirmation are covered in section 2921.13 of the Revised Code. Also, unlike former law, it is no defense to a charge of perjury under this section that the oath or affirmation was irregularly taken. The section also changes the former requirement for corroboration to include a number of qualifications not previously stated.

Formerly, perjury included any falsification of a material matter in any proceeding before a tribunal or before an officer created by law, and also any falsification in a matter for which an oath was authorized, whether or not material. Under this section, the falsification must be in an "official proceeding" (defined in section 2921.01 of the Revised Code as, in essence, a judicial or quasi-judicial proceeding). Also, under this section, the falsification must be made while under oath or equivalent affirmation.

Former law required that an oath had to be "lawfully administered," and this was strictly construed. *Straight v. State*, 39 OS 496 (1883). Under this section, an irregularity in the oath or affirmation is no defense.

Under former law, perjury could not be proved except upon the testimony of two witnesses, or upon the testimony of one witness plus corroborating circumstances. This section narrows the requirement for corroboration by stating merely that conviction is precluded where proof that the statement involved was false depends entirely on its contradiction by one person other than the defendant.

Under this section, the false statement involved must be material, i.e., it must be such that it can affect the course or outcome of the proceeding in which it is made, regardless of its admissibility under the rules of evidence. This is substantially the same as the requirement for materiality in former law. See, 42 OJur2d 433. Whether a perjurer mistakenly believes his false statement to be immaterial has no bearing on the case.

Perjury is a felony of the third degree.

Cross-References to Related Sections

Penalties for felonies, RC § 2929.11.

Affidavits re title to real estate, RC § 5301.25.2.

Corrupt activity defined, RC § 2923.31.

Immunity in antitrust action does not extend to perjury, RC § 1331.16.

Immunity of witness, RC § 2945.44.

Ineligibility for pre-trial diversion program, RC § 2935.36.

Knowingly defined, RC § 2901.22(B).

Oath, affirmation, RC §§ 3.20, 3.21.

Official proceedings defined, RC § 2921.01(D).

Organized criminal activity, RC § 177.01.

Violation by person granted immunity in antitrust action, RC § 1331.16.

Comparative Legislation

Perjury:

18 USC §§ 1621, 1622

CA—Penal Code §§ 14, 118, 1103a

FL—Stat Ann § 837.011

IL—Ann Stat ch 38 § 32-2

IN—Code § 35-44-2-1

KY—Rev Stat Ann § 523.020

MI—Comp Laws Ann § 750.422

NY—Penal Law §§ 210.00–210.30

PA—CSA tit 18 § 4902

Text Discussion

Elements of offense. 1 Ohio Crim. Prac. & Pro. § 62.10

Forms

Perjury. 4 OJI § 521.11

Statutory charge. 2A Ohio Crim. Prac. & Pro. 8.98

Research Aids

Perjury and related offenses:

O-Jur3d: Crim L § 2142 et seq

Am-Jur2d: Perj § 1 et seq

ALR

Acquittal as bar to a prosecution of accused for perjury committed at trial. 89 ALR3d 1098.

Actionability of conspiracy to give or to procure false testimony or other evidence. 31 ALR 1423.

Admissibility, in subrogation of perjury prosecution, of evidence of alleged perjurer's plea of guilty to charge of perjury. 63 ALR2d 825.

Conviction of perjury where one or more of elements is established solely by circumstantial evidence. 88 ALR 852.

Corroboration by circumstantial evidence of testimony of single witness in prosecution for perjury. 111 ALR 825.

Incomplete, misleading, or unresponsive but literally true statement as perjury. 69 ALR3d 993.

Invalidity of statute or ordinance giving rise to proceedings in which false testimony was received as defense for prosecution for perjury. 34 ALR3d 413.

Materiality of testimony forming basis of perjury charge as question for court or jury in state trial. 37 ALR4th 948.

Offense of perjury as affected by lack of jurisdiction by court or governmental body before which false testimony was given. 36 ALR3d 1038.