**CONSENT AGREEMENT**
**BETWEEN**
**THOMAS G. OLSEN, M.D.**
**AND**
**THE STATE MEDICAL BOARD OF OHIO**

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

Dr. Olsen enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

## BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

A. The Board is empowered by R.C. 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 any of the enumerated violations.

B. The Board enters into this Consent Agreement in lieu of further formal proceedings based upon the violations of Section 4731.22(B), as set forth in the Notice of Opportunity for Hearing issued by the Board on May 12, 2004 that is attached hereto as Appendix A and incorporated herein by this reference. The Board expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.

C. Dr. Olsen is licensed to practice medicine and surgery in the State of Ohio, License # 35-046058.

D. Dr. Olsen states that he is licensed to practice medicine and surgery in Florida, Connecticut, North Carolina, Maryland, Kentucky, Minnesota and Illinois. Dr. Olsen states that he was licensed to practice medicine and surgery in Indiana, but that that license has expired. Dr. Olsen further states that his applications for licensure in West Virginia, Georgia and Arkansas are being held in abeyance pending resolution of this matter. Dr. Olsen states that he will be applying for licensure in Colorado, South Carolina, Alabama, Kansas, Arizona and Iowa.

E. Dr. Olsen admits that on or about March 18, 1996, he submitted to the Hamilton County Court of Common Pleas, Domestic Relations Division, Hamilton County, Ohio, a false statement that understated his income. That conduct resulted in an adjudication of a misdemeanor conviction, which has since been expunged. Dr. Olsen admits that this conduct constitutes a violation of R.C. 4731.22(B)(14). Dr. Olsen further admits that he submitted a renewal application for his license to

practice medicine and surgery in October 2003 and failed to advise the Board that he had pled guilty to and been found guilty of Driving Under the Influence of Alcohol or Drugs in violation of R.C. 4511.19. Dr. Olsen admits that that conduct constitutes a violation of R.C. 4731.22(A) and R.C. 4731.22(B)(5).

F. The Board dismisses the allegations contained in paragraphs (1) and (2) of the Notice of Opportunity for Hearing and the allegations that the conduct set forth in paragraph (3) constitutes a violation of R.C. 4731.22(B)(10).

## AGREED CONDITIONS

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

**REPRIMAND; PROBATION**:

A. It is hereby ORDERED that:

Thomas George Olsen, M.D. is REPRIMANDED and his certificate to practice medicine and surgery in the State of Ohio shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least three years.

1. Dr. Olsen shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.

**Community Service**

2. Dr. Olsen shall perform community service by providing 600 free patient visits for dermatological services within the first eighteen months of the probationary period. Such free dermatological services shall be provided according to the community service plan attached hereto and incorporated herein as Appendix B as if fully rewritten.

On a quarterly basis, Dr. Olsen shall provide documentation to the Board of the number of patient visits, the diagnosis and the treatment plan for each patient for whom dermatological services were performed pursuant to this agreement. This documentation must be in a format acceptable to the Board so that, if required, the patients can be identified and the patient records can be provided to the Board upon request. Should Dr. Olsen discontinue treatment of a patient, Dr. Olsen shall make every effort to refer the patient to an appropriate treatment provider and provide copies of the patient records to that treatment provider at no cost to the patient.

**Personal Ethics Course**

3. Before the end of the first year of probation, or as otherwise approved by the Board, Dr. Olsen shall provide acceptable documentation of successful completion of a course or courses dealing with personal ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for re-licensure for the Continuing Medical Education period(s) in which they are completed.

   In addition, at the time that Dr. Olsen submits documentation of successful completion of the course or courses dealing with personal ethics, he shall also submit to the Board a written report describing the course, setting forth what he learned from the course, and identifying with specificity how he will apply what he had learned to his practice of medicine in the future.

**Quarterly Declarations and Appearances**

4. Dr. Olsen shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

5. Dr. Olsen shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.

6. In the event Dr. Olsen is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

**Required Reporting By Licensee**

7. Within thirty days of the effective date of this Consent Agreement, Dr. Olsen shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or

jurisdiction in which he currently holds any professional license. Dr. Olsen further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, Dr. Olsen shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

8. Within thirty days of the effective date of this Consent Agreement, Dr. Olsen shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Olsen shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

## FAILURE TO COMPLY

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

## MODIFICATION OF TERMS

Dr. Olsen shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

## ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. Olsen 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. Olsen 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, and may be reported to appropriate organizations, data banks, and

governmental bodies. Dr. Olsen agrees to provide his social security number to the Board and hereby authorizes the Board to utilize that number in conjunction with that reporting.

**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.

Thomas G. Olsen
THOMAS GEORGE OLSEN, M.D.

May 29, 05
DATE

Michael Barrett by R. Kerns per authority
MICHAEL BARRETT
Attorney for Dr. Olsen

May 31, 2005
DATE

R. Kevin Kerns
R. KEVIN KERNS
Attorney for Thomas George Olsen, M.D.

May 31, 2005
DATE

Lance A. Talmage, M.D.
LANCE TALMAGE, M.D.
Secretary

6-8-05
DATE

RAYMOND J. ALBERT
Supervising Member

6/8/05
DATE

Kyle C. Wilcox by Rebecca Albert
KYLE C. WILCOX
Assistant Attorney General

6/8/05
DATE

# PROJECT TO PROVIDE DERMATOLOGIC CARE TO THE UNINSURED IN MONTGOMERY COUNTY, OHIO

Thomas O. Olsen, M.D. Stephen B. Levitt, M.D.

## I. Project

Thomas O. Olsen, M.D. and Stephen B. Levitt, M.D. propose a project whereby dermatologic care would be provided at no cost to uninsured individuals of Montgomery County, Ohio, representing a population base of 1 million people. There are two (2) major goals of the project: 1) Relieve personal suffering and potential economic burden (loss of work) of the uninsured population in Montgomery County, Ohio, who require dermatologic care; and, 2) Identify the cutaneous diseases/conditions that are currently not being treated because of lack of insurance.

## II. Method

Dr. Olsen and Dr. Levitt, part of a nine-person practice group in Dayton, Ohio, agree to evaluate and treat uninsured patients with dermatologic needs in Montgomery County, Ohio. The offices, staff and other resources of these two (2) physicians will be utilized to evaluate and treat the uninsured. The project will be conducted over a 1½ year period and will include 800 initial and/or return patient office visits. At least 600 of the patient visits will be handled by Dr. Olsen.

Letters will be sent to the Medical Directors of the following medical clinics and centers, advising them of the project and the availability of the free dermatologic services for uninsured patients:

- Adolescent Wellness Center, 141 W. Third St., Dayton, Ohio
- Cassano Community Health Center, 1 Fransican Way, Dayton, Ohio
- Good Samaritan Hospital Clinic, 3535 Salem Ave., Dayton, Ohio
- Huber Health Center, 8701 Old Troy Pike, Huber Heights, Ohio
- Reachout Family Health Center, 614 Xenia Ave., Dayton, Ohio
- Drew Health Center, 1323 W. Third St., Dayton, Ohio
- East Dayton Health Center, 1 Wyoming St., Dayton, Ohio

Standard medical records will be kept during the evaluation and treatment sessions to include a medical history and physical examination as well as gathering demographic data on the individual patient. The patient will be asked to complete a brief questionnaire which will help to assess; 1) Length of time without health insurance; 2) Reason for no health insurance; and, 3) Likelihood of continuing medical treatment of their skin condition once the 1½ year project has been completed. (See enclosures.)

It is anticipated that medical evaluation and diagnosis will lead to various treatment modalities that potentially the group of the uninsured could not afford. Every effort, therefore, will be made to partner with the various pharmaceutical companies to provide necessary

medications through their "samples programs".

Medical records will be kept by physicians and paraprofessionals adhering to the various privacy and security concerns addressed by the Health Insurance Portability and Accountability Act (HIPAA). Medical records must be kept in a format so that, if required, the patients can be identified and the patient records provided to the Board upon request. Should Dr. Olsen and/or Dr. Levitt discontinue treatment of a patient, Dr. Olsen and Dr. Levitt shall make every effort to refer the patient to an appropriate treatment provider.

## III. Reporting on Project to Board

Reports concerning the progress of the project will be made to the State Medical Board of Ohio ("Board") on a quarterly basis. The quarterly progress reports will be made in writing and, if requested by the Board, Dr. Olsen and Dr. Levitt will meet representatives of the Board to discuss the project's progress. Once completed, a final report on the project will be sent to the Board.

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BY
TERMINATION
BY
FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2005 JAN 28 PM 3:14
CLERK OF COURTS-CV

**IN THE COURT OF COMMON PLEAS**
**FRANKLIN COUNTY, OHIO**

| | | |
|---|---|---|
| **THOMAS GEORGE OLSEN, M.D.,** | : | |
| **Plaintiff,** | : | **JUDGE HOLBROOK** |
| **v.** | : | **Case No. 04CVH11-12193** |
| **STATE MEDICAL BOARD OF OHIO** | : | |
| **Defendant.** | : | |

**JUDGMENT ENTRY GRANTING THE STATE MEDICAL BOARD'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF.**

This case is before the Court upon the motion of the plaintiff, Thomas George Olsen, M.D., seeking declaratory and injunctive relief. The plaintiff, in a motion for declaratory and injunctive relief filed with this Court on November 19, 2004, sought a ruling from this Court to declare the charges of the State Medical Board invalid and to bar the Board (via TRO) from hearing the allegations set forth in the notice letter dated May 12, 2004. The State Medical Board filed a motion to dismiss this complaint on November 26, 2004. For the reasons stated in the decision of this Court rendered and filed on January 18, 2005, which decision is incorporated by reference as if fully rewritten herein, it is hereby:

ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Defendant State Medical Board of Ohio, and the November 26, 2004, Motion to Dismiss the Complaint for Declaratory and Injunctive Relief, is hereby granted. Costs to Plaintiff.

IT IS SO ORDERED.

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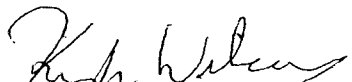
Date

_____
**JUDGE MICHAEL J. HOLBROOK**

APPROVED:

JIM PETRO (0022096)
Attorney General



**KYLE C. WILCOX** (0063219)
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Counsel for Dr. Olsen

**MICHAEL R. BARRETT** (0018159)
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Counsel for Dr. Olsen

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2005 JAN 13 AM 10:17
CLERK OF COURTS

COURT OF COMMON PLEAS, FRANKLIN COUNTY, CIVIL DIVISION

THOMAS GEORGE OLSEN, M.D.,

PLAINTIFF,

VS.

OHIO STATE MEDICAL BOARD,

DEFENDANT.

CASE NO. 04CV-12193

JUDGE HOLBROOK

HEALTH & HUMAN
JAN 18 2005
SERVICES SECTION

DECISION AND ENTRY

Rendered this ~~January 10, 2005~~ 11th day of January, 2005.

Defendant State of Ohio Medical Board has filed a motion to dismiss the complaint. Plaintiff has responded with a memorandum contra. The Plaintiff Thomas George Olsen, M.D. filed this action on November 19, 2004 and seeks declaratory and injunctive relief. A request for temporary restraining order was denied by Judge Travis. The Board sent notice to Plaintiff on May 12, 2004 that it intended to conduct a hearing to determine whether or not to discipline Plaintiff with respect to violations noted in the notice. Four separate reasons were listed in the notice. The first pertained to engaging in a scheme to hide income from Plaintiff's ex-spouse during a period from 1993 to 1998. The second was that Plaintiff underestimated his income to the Internal Revenue Service for the years 1994 to 1996. Reason three was that Plaintiff filed a false sworn statement in 1996 understating his net income in domestic relations court in Hamilton County. The fourth

reason was that a renewal application for license in October 2003 was given to the Board indicating an answer of "no"to question one on the application which asked whether Plaintiff had been found guilty of, or pled guilty or no contest to a misdemeanor or felony since the time of the last application. The Board stated in the notice the Plaintiff had pled guilty to and was found guilty of driving under the influence of alcohol or drugs on February 27, 2003.

The Board has sought dismissal of Plaintiff's complaint on the basis that Plaintiff failed to exhaust his administrative remedies. The Board contends that Plaintiff has violated various provisions of R.C. 4731.22 Plaintiff contends that exhaustion of remedies does not apply because the issue is whether the Board has authority or power to act. Plaintiff takes the position that the Board is acting beyond its statutory authority as to the first three charges. Apparently Plaintiff does not take issue with the Board's authority to decide the fourth basis for possible discipline.

Plaintiff has requested relief by declaratory judgment and by injunction. Ohio law requires three elements necessary to obtain a declaratory judgment as an alternative to other remedies. They are: (1) that a real controversy between adverse parties exists; (2) which is justiciable in character; (3) and that speedy relief is necessary to the preservation of rights which may be otherwise impaired or lost.[1] Similarly, a party requesting a preliminary injunction must show that: (1) there is a substantial likelihood that the plaintiff will prevail on the merits; (2) the plaintiff will suffer

[1] *Herrick v. Kosydar* (1975), 44 Ohio St.2d 128, 130, 339 N.E.2d 626



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irreparable injury if the injunction is not granted; (3) no third parties will be unjustifiably harmed if the injunction is granted; and (4) the public interest will be served by the injunction."[2] Each element must be established by clear and convincing evidence. In determining whether to grant injunctive relief, no one factor is dispositive.[3] The four factors must be balanced with the "flexibility which traditionally has characterized law of equity." Id.

In *Arbor Health Care Co. v. Jackson* [4], the Court determined when a plaintiff seeks a declaration of its constitutional rights in addition to a declaration of its statutory rights there is a right to declaratory relief. The Court held that, despite the presence of a constitutional claim, it was preferable for plaintiff to have exhausted its administrative remedies prior to seeking declaratory relief in the common pleas court in order to avoid unnecessarily deciding the constitutional issue. The Supreme Court [5] has embraced the principle stated in *Noble Cty. Engineer v. State Emp. Relations Bd.* [6] that a plaintiff cannot challenge the legal authority of an agency through a declaratory judgment action unless the validity or constitutionality of the statute is raised. The United States Supreme Court as well as courts of other jurisdictions mirror the holding in *Myers v. Bethlehem Shipbuilding Corp.*[7] "[It is] the long settled rule of judicial administration that no one is

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[2] *Procter & Gamble Co. v. Stoneham* (2000), 140 Ohio App.3d 260, 267, 747 N.E.2d 268
[3] *Cleveland v. Cleveland Elec. Illum. Co.* (1996), 115 Ohio App.3d 1, 14, 684 N.E.2d 343
[4] (1987), 39 Ohio App.3d 183, 530 N.E.2d 928
[5] *Fairview General Hosp. v. Fletcher* (1992), 63 Ohio St. 3d 146, 586 N.E.2d 80: see also *Noernberg v. Brook* (1980), 63 Ohio St.2d 26, 406 N.E.2d 1095
[6] (Dec. 23, 1987), Franklin App. No. 87AP-587
[7] (1938), 303 U.S. 41, 50-51, 58 S. Ct. 459, 463, 82 L. Ed. 638, 644

entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." While litigants will not be required to pursue administrative channels when such pursuit would be futile, the doctrine of exhaustion of remedies remains in full force.[8] Claims of denial of due process or constitutional infirmity may be brought outside of the administrative procedures.[9] A failure to exhaust administrative remedies, while generally precluding court relief, is not applied where the defect relates to the power or authority of an agency to act in any respect.[10]

As a general rule, an administrative body determines its own jurisdiction.[11] A tribunal having general subject matter jurisdiction, absent a patent and unambiguous lack of jurisdiction, possesses authority to determine its own jurisdiction, and a party challenging its jurisdiction has an adequate remedy via appeal from its holding that it has jurisdiction.[12]

The procedural history giving genesis to the instant action is not in dispute. The Board notified Plaintiff of its intent to determine discipline on May 12, 2003. Pursuant to R.C. 119, Plaintiff requested a hearing. The date for a hearing before a Hearing Officer for the Board was set for November 22

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[8] *Jones v. Village of Chagrin Falls* (1997), 77 Ohio St. 3d 456, 1997 Ohio 253, 674 N.E.2d 1388, additional holding in *Jones v. Chagrin Falls* (1997), 80 Ohio St. 3d 1431, 685 N.E.2d 543

[9] . *Karches v. Cincinnati*, 38 Ohio St. 3d 12, 17, 526 N.E.2d 1350, 1355 (citing *Glover v. St. Louis-San Francisco Ry. Co.* [1969], 393 U.S. 324, 89 S. Ct. 548, 21 L. Ed. 2d 519

[10] *State ex rel. Barbuto v. Ohio Edison Co.* (1968), 16 Ohio App. 2d 55, 241 N.E.2d 783, Affirmed by *State ex rel. Barbuto v. Ohio Edison Co.*(1968),16 Ohio St. 2d 54, 242 N.E.2d 562

[11] *City of Whitehall ex rel. Wolfe v. Ohio Civ. Rts. Comm.* (1995), 74 Ohio St. 3d 120, at 123, 124, 656 N.E.2d 684

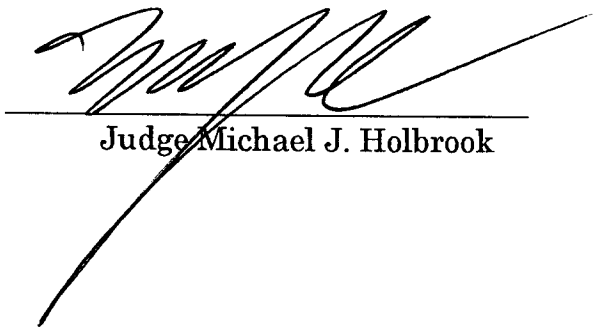
[12] *Goldstein v. Christiansen* (1994), 70 Ohio St. 3d 232, 235, 638 N.E.2d 541

and 23, 2003. Plaintiff filed this action on November 19, 2003. Plaintiff asserts that the Board has no authority to consider the charges listed in the notice as one through three. Plaintiff states that the Board lacks authority to consider charges relating to perjury or tampering with evidence because the acts were private and not made to deceive or misrepresent information to the Board. Plaintiff also asserts that the statute of limitations has passed on any such actions and that the Board's actions violate Plaintiff's due process rights.

As noted above, a tribunal such as the Board, has the authority to determine its jurisdiction. The first step of the administrative process can be motions and or presentation of relevant evidence to the Board's Hearing Officer to contest jurisdiction. While Plaintiff has cited a number of cases, none controvert the holding that the Board has the right to determine its own jurisdiction unless it is patently and unambiguously without such authority. Upon the limited facts contained within the pleadings, this Court can not find the Board is patently and unambiguously without jurisdiction to consider the charges. There is no evidence that the Plaintiff has had a summary suspension of his medical license. Plaintiff can continue to practice during the pendency of the administrative process. As such, there appears to be no denial of fundamental due process or irreparable injury. It should be further noted that there is no evidentiary record at this juncture. The Board will have the opportunity to consider Plaintiff's jurisdictional arguments with the

benefit of factual scrutiny. A review of the charges in the notice of opportunity is not a substitute for a full and adequate record of evidence and testimony. Similar arguments as to the right to injunctive relief in a medical board disciplinary proceeding were offered to Judge O'Neill in the case of *Brightwell v. State Medical Board*, Franklin County Common Pleas Case No. 04CV-2955. The defect of the lack of an evidentiary basis was noted in that decision, as was the lack of case law specifically on point.

Plaintiff's action must be dismissed. The Court finds that there is an adequate remedy in the nature of the administrative review procedures. The motion of the Board to dismiss is therefore supported and will be granted. Counsel for the Board shall prepare a Judgment Entry pursuant to Local Rule 25.01.



Judge Michael J. Holbrook



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Appearances:

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Attorneys for Plaintiff

Kyle C. Wilcox
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, OH 43215
Attorney for Defendant State Medical Boar

# State Medical Board of Ohio

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


May 12, 2004

Thomas George Olsen, M.D.
524 Walnut Springs Drive
Dayton, OH 45419

Dear Doctor Olsen:

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) During the period of in or about 1993 to 1998, you agreed to engage in a scheme with Stephen B. Levitt, M.D., to hide a portion of your practice-related income in amounts exceeding $200,000 net annually and approximately $900,000 net in 1998 in order to protect your income from your ex-spouse.

(2) From in or about 1994 through at least 1996, you caused to be submitted to the United States Internal Revenue Service income tax documents that contained what you knew to be understatements of your actual net income in amounts exceeding $200,000 annually.

(3) In or about 1996, you caused to be submitted to the Hamilton County Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio, in connection with a pending domestic relations action a false sworn statement that understated your net income by approximately $400,000.

(4) On or about October 21, 2003, you submitted to the Board a renewal application to maintain your license to practice medicine and surgery. You signed a statement in that application indicating that you "certify, under penalty of loss of [your] right to practice in the State of Ohio, ... that the information provided on this application for renewal is true and correct in every respect." You answered "NO" to question number 1 on that renewal application which asks whether you had "been found guilty of, or pled guilty or no contest to ... a misdemeanor or felony" since the time of your last application.

Mailed 5/13/04

In fact, on or about February 27, 2003, in the Kettering Municipal Court in Kettering, Ohio, you pled guilty to and were found guilty of Driving Under the Influence of Alcohol or Drugs, in violation of Section 4511.19, Ohio Revised Code.

Your acts, conduct, and/or omissions as alleged in paragraphs (1) through (4) above, individually and/or collectively, constitute "[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board," 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 (3) above, individually and/or collectively, constitute "[c]ommission 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.

Further, your acts, conduct, and/or omissions as alleged in paragraph (3) above, individually and/or collectively, constitute "[c]ommission 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 2921.12, Ohio Revised Code, Tampering with Evidence.

Further, your acts, conduct, and/or omissions as alleged in paragraph (4) above, individually and/or collectively, constitute "fraud, misrepresentation, or deception in applying for or securing any certificate to practice or certificate of registration issued by the board," as that clause is used in Section 4731.22(A), 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, 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,

Lance A. Talmage, M.D.
Secretary

LAT/blt
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5140 1415
RETURN RECEIPT REQUESTED