

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Jorge A. Martinez, M.D., :
Appellant, : CASE NO. 06CVF09-12106
-vs- : JUDGE DAVID W. FAIS
State Medical Board of Ohio, :
Appellee. :

FINAL APPELLABLE ORDER

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2007 AUG 22 PM 3:29
CLERK OF COURTS
TERMINATION
BY

DECISION AND ENTRY AFFIRMING THE ORDER OF OHIO STATE
MEDICAL BOARD

Rendered this 21st day of August, 2007.

FAIS, JUDGE

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

Appellant, a licensed physician practicing medicine, was notified on February 8, 2006 of the Board's intent to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate his certificate to practice medicine and surgery, or to reprimand or place him on probation. In its Notice, the Board cited a violation of R.C. 4731.22(B)(9) as the reason for its inquiry and immediate suspension.

Subsequently, Appellant requested a hearing, as authorized by the Board's February 8, 2006 Notice. Such an evidentiary hearing took place on June 6, 2006. The State submitted certified copies of Appellant's multiple felony convictions in a separate proceeding in federal court. No witness testimony was introduced by either side. Appellant did forward written documentation in lieu of live testimony.

The hearing officer drafted a Report and Recommendation, which recommended that

Appellant's certificate to practice medicine and surgery in the State of Ohio be permanently revoked. The basis for the hearing officer's decision was the fact that Appellant was convicted as a criminal defendant in the United States District Court for the Northern District of Ohio. After a lengthy criminal trial, the jury found Appellant guilty of 58 felony charges, which include: distribution of a controlled substance, wire fraud, mail fraud, health care fraud, and health care fraud resulting in death. It was therefore the hearing officer's determination that "a certified copy of a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all the elements of that crime" and permanent revocation of Appellant's medical license is warranted.

On August 9, 2006, the Board issued an Entry of Order. The Order provided that after the consideration of the Report and Recommendation, the Board adopted the Report and ordered that Appellant's certificate to practice medicine and surgery be permanently revoked. Appellant responded by filing the instant appeal on September 18, 2006.

Pursuant to R.C. 119.12, a reviewing trial court must affirm an order of the Board if it is supported by reliable, probative and substantial evidence and is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111; *Henry's Cafe, Inc. v. Board of Liquor Control* (1959), 170 Ohio St. 233.

That quality of proof was articulated by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St. 3d 570 as follows:

(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value. *Id.* at 571.

Upon review, the Court observes that Appellant has failed to file a brief in this appeal and thus has not identified any alleged errors in the Board's Order. A review of the Case Scheduling Order reveals that the deadline for Appellant to submit a brief was November 27, 2006 and no motions for extension or amendment of the briefing schedule have been filed with the Court.

In addition, the Court determines that the instant appeal was untimely submitted by Appellant in contravention of R.C. 119.12. The record clearly establishes that Appellant exceeded the 15 day statutorily-imposed deadline in this matter by nearly 3 weeks. As a result, the instant appeal is a nullity and this Court is divested of subject matter jurisdiction.

Nevertheless, and in the alternative, the Court has further reviewed the record in this matter. The basis of the Board's Order was the finding that under its express statutory authority under R.C. 4731.28(B)(9), Appellant was convicted through a judicial finding of guilt. More specifically, the Board relied on 58 felony convictions at the conclusion of a criminal adjudication. After a thorough review of such evidence, the Court finds that the record submitted during the administrative hearing constitutes reliable, probative and substantial evidence supporting the decision of the Board to permanently revoke Appellant's medical certification. Furthermore, Appellant has at no time introduced credible evidence to rebut the findings of fact and conclusions of law of the Board. Consequently, Appellant's appeal is without merit.

Based on the uncontroverted evidence, this Court finds that the State Medical Board of Ohio's Order is supported by reliable, probative and substantial evidence and is in accordance with law. Accordingly, the Court hereby **AFFIRMS** the Order of the State Medical Board of Ohio.

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.

DAVID W. FAIS, JUDGE

COPIES TO:

Jorge A. Martinez, M.D., Appellant *pro se*

Damion M Clifford, Esq., Attorney for Appellee

**THE FOLLOWING DOCUMENT
HAS BEEN REDACTED TO
PROTECT PATIENT
IDENTIFICATION AND OTHER
IDENTIFYING PATIENT
INFORMATION.**

IN THE COMMON PLEAS COURT OF THE FRANKLIN
COUNTY, OHIO

06CVF09 12106

JORGE A. MARTINEZ, MD
APPELLANT PRO-SE

V.

STATE MEDICAL BOARD
OF OHIO

RESPONDANT

APPEAL TO THE "PERMANENT
SUSPENSION" OF THE APPELLANT'S
MEDICAL LICENSE BY THE OHIO
MEDICAL BOARD.

NOW COMES THE APPELLANT, JORGE A. MARTINEZ, M.D., PRO-SE AND
RESPECTFULLY APPEALS TO THIS HONORABLE COURT, PURSUANT TO O.R.C. 119.12
THE ADVERSE ACTION THE STATE MEDICAL BOARD OF OHIO TOOK AGAINST THE
APPELLANT'S MEDICAL LICENSE OF "PERMANENT SUSPENSION", WHERE THE PROPER
ACTION, HARMLESS TO ALL WOULD HAVE BEEN "TEMPORARY SUSPENSION PENDING
THE OUTCOME OF THE FEDERAL APPEAL IN THE SIXTH CIRCUIT" OF THE CONVICTIONS
AND SENTENCES THAT THE APPELLANT IS GOING TO FILE IN DUE DATE.

RELIEF REQUESTED

APPELLANT RESPECTFULLY REQUESTS TO THIS HONORABLE COURT TO ORDER
TO THE STATE MEDICAL BOARD OF OHIO TO CHANGE THE ADVERSE ACTION TAKEN
ON 8-4-06 AGAINST APPELLANT'S MEDICAL LICENSE I.E. "PERMANENT SUSPENSION"
TO A "TEMPORARY SUSPENSION PENDING APPEAL" - OUTCOME IN THE SIXTH CIRCUIT
BASED IN THE FACTS STATED BELOW

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OF OHIO
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FRANKLIN CO. OHIO
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CLERK OF COURTS - CV

~~FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED.~~

ON 1-12-06 BY JURY TRIAL APPELLANT WAS FOUND GUILTY OF FIFTY SEVEN (57) COUNTS ANALYZED HEREIN BELOW ALL RELATED TO THE PRACTICE OF MEDICINE AND APPELLANT CLAIMS THAT HE IS INNOCENT OF ALL THOSE COUNTS AND WAS FALSELY ACCUSED AND WRONGFULLY CONVICTED AND SENTENCED.

TWO COUNTS OF "HEALTH CARE FRAUD RESULTING IN DEATH".

THE APPELLANT WAS WRONGFULLY CONVICTED OF TWO (2) COUNTS OF "HEALTH CARE FRAUD RESULTING IN DEATH" FOR THE DEATHS OF TWO (2) PATIENTS WHO OVERDOSED OF THEIR OWN WILL, UNBEKNOWNST TO APPELLANT, WITH DRUGS APPELLANT HAD NOT PRESCRIBED TO THEM AND IN BLATANT VIOLATION OF APPELLANT'S PRESCRIPTION ORDERS.

ACCORDING TO THE ASSOCIATED PRESS APPELLANT IS THE SECOND PHYSICIAN IN THE UNITED STATES TO HAVE BEEN CONVICTED OF SUCH CHARGES.

1. [REDACTED] WHO DIED ON 1-8-01 AND ACCORDING TO THE PORTAGE COUNTY CORONER'S DETERMINATION HIS DEATH WAS DUE TO AN "ACCIDENTAL" "ACUTE DRUG INTOXICATION" AND SINCE THEN THERE WERE NO NEW FACTS NOR ANY OTHER FORENSIC EVIDENCE THAT COULD POSSIBLY TRIGGER A NEW INVESTIGATION AND THIS CASE WAS CLOSED UNTIL 9-2-04 WHEN APPELLANT WAS INDICTED.

THE RAVENNA POLICE DEPARTMENT HAD INVESTIGATED [REDACTED] DEATH AND, AS STATED IN THEIR INVESTIGATION REPORTS, THEY FOUND THAT [REDACTED] AND [REDACTED] HAD BEEN PILL-BINGING THE MORNING OF 1-8-01 AND [REDACTED] DIED THAT AFTERNOON AND [REDACTED] WHO HAD WITNESSED [REDACTED] OVERDOSING AND HAD SHARED THE DRUGS THEY HAD ILLEGALLY OBTAINED BY DECEPTION ABANDONED [REDACTED] IN THE COUCH SLEEPING, OVERDOSED, UNCONSCIOUS, INTOXICATED DYING WHERE [REDACTED] DIED.

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██████████ WAS PHYSICALLY UNABLE TO DRIVE BUT ██████████ DROVE HIM DOCTOR SHOPPING; ██████████ AND ██████████ HAD A CONSPIRACY OF GOING TO DIFFERENT DOCTORS SHOPPING FOR PRESCRIPTIONS AND OBTAINING DANGEROUS DRUGS BY DECEPTION INCLUDING OXYCONTIN, DIAZEPAM AND HYDROCODONE WHICH WERE FOUND IN HIGH LEVELS IN THE POST-MORTEN BLOOD ANALYSIS OF ██████████.

██████████ DIED AS A DIRECT RESULT OF A SELF-PRESCRIBED, SELF-ADMINISTERED DELIBERATE OVERDOSE OF A LETHAL MIXTURE OF DRUGS HE OBTAINED ILLEGALLY, CRIMINALLY.

IF ██████████ HAD FOLLOWED APPELLANT'S PRESCRIPTION ORDERS HE WOULD NOT HAVE DIED.

IF BUT FOR ██████████ VIOLATING APPELLANT'S PRESCRIPTION ORDERS ██████████ WOULD NOT HAVE DIED.

COMMON SENSE, LOGIC AND LAWFUL REASONING ELIMINATES APPELLANT AS CAUSE OF ██████████ IRRESPONSIBLE, RECKLESS, DANGEROUS, WILFUL AND KNOWING ACTIONS TO GET HIGH WITH DANGEROUS DRUGS THAT DIRECTLY RESULTED IN HIS DEATH.

FOUR DIFFERENT AUTHORITIES HAD INVESTIGATED ██████████ DEATH AND HAD CLEARED APPELLANT OF ANY WRONGDOING INCLUDING.

I- THE SAME STATE MEDICAL BOARD OF OHIO WHICH IS COMPOSED BY MEDICAL DOCTORS WITH A VAST COLLECTIVE MEDICAL KNOWLEDGE AND FOUND NO MEDICAL ERRORS ON BEHALF OF APPELLANT'S MEDICAL CARE RENDERED TO ██████████ AND NO EVEN THE MINIMAL DISCIPLINARY ACTION OR A LETTER OF ADMONITION OR RECOMMENDATION TO CHANGE ANY PROCEDURES OR MANNER OF TREATMENT; ABSOLUTELY NO ACTION WAS TAKEN AGAINST THE APPELLANT BY THE MEDICAL BOARD, PARADOXICALLY, THE MEDICAL BOARD IN ORDER TO SUSPEND APPELLANT'S MEDICAL LICENSE

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PERMANENTLY, BLINDLY PLACES ITS TRUST IN THE LAY JURY'S INBORN MEDICAL KNOWLEDGE THAT ALL OF A SUDDEN IS INVESTED WITH MORE MEDICAL KNOWLEDGE THAN THE BOARD OF MEDICINE TO JUDGE THE MEDICAL DECISIONS THE APPELLANT TOOK TO TREAT [REDACTED] CHRONIC INTRACTABLE PAIN, NOT WITHSTANDING THE BOARD'S PREVIOUS INVESTIGATION'S RESULTS.

II - THE RAVENNA (OHIO) POLICE DEPARTMENT INVESTIGATED [REDACTED] DEATH AND ACCORDING TO THEIR REPORT THEY TRIED TO CONTACT ANOTHER DOCTOR ([REDACTED]) WHO ON 1-3-01 HAD PRESCRIBED TO [REDACTED], UNBEKNOWNST TO APPELLANT'S, SIXTY (60) VALIUM - DIAZEPAM - 5 mg, FIVE (5) DAYS BEFORE [REDACTED] DEATH AND THIS EMPTY PRESCRIPTION BOTTLE OF VALIUM - DIAZEPAM - WAS FOUND BY THE PARAMEDICS ON 1-8-01 ABOUT 6:45 PM NEXT TO [REDACTED] LIFELESS BODY; [REDACTED] DID NOT RETURN THE TELEPHONE CALL OF THE RAVENNA POLICE INVESTIGATORS, THIS WAS THE FIRST TIME THAT [REDACTED] HAD DIAZEPAM - VALIUM - PRESCRIBED TO HIM AND HIGH LEVELS OF WERE PRESENT IN [REDACTED] POST-MORTEN TOXICOLOGIC BLOOD ANALYSIS -

THESE RAVENNA POLICE INVESTIGATORS DID NOT EVEN CALL APPELLANT TO ASK ONE SINGLE QUESTION ABOUT [REDACTED] DEATH.

III - THE PORTAGE COUNTY CORONER WHO IS THE PROPER AUTHORITY TO MAKE THESE TYPES OF INVESTIGATION DETERMINED THAT [REDACTED] DEATH WAS AN "ACCIDENTAL" "ACUTE DRUG INTOXICATION" AND CLOSED THE INQUIRY ABOUT [REDACTED] DEATH RAISING THE LEGAL QUESTION FOR APPEAL THAT: "IS THE JURY ALLOWED TO CHANGE THIS DETERMINATION BY THE CORONER FROM "ACCIDENTAL" "ACUTE DRUG INTOXICATION" TO "HEALTH CARE FRAUD RESULTING IN DEATH" MAINLY WHEN APPELLANT DID NOT PRESCRIBED AN OVERDOSE TO [REDACTED] -

APPELLANT PRESCRIBED OXYCONTIN FOR SIXTEEN MONTHS TO [REDACTED]

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FOR THE CHRONIC, INTRACTABLE PAIN HE SUFFERED DUE TO ACCIDENTS AND MULTIPLE SURGERIES; TWO (2) FAILED BACK SURGERIES, CERVICAL SPINE SURGERY, SHOULDER SURGERY AND KNEE SURGERY THAT HAD LEFT HIM PERMANENTLY DISABLE, WALKING WITH A CANE AT THE AGE OF 34 AND IN CONSTANT AGONIZING PAIN SUFFERING OF REFLEX SYMPATHETIC DYSTROPHY IN HIS LEFT LOWER LIMB; BESIDES, APPELLANT TREATED [REDACTED] WITH THERAPEUTIC NERVE BLOCKS IN HIS AFFECTED NERVES; ON 1-8-01 APPELLANT DID NOT PROVIDED NERVE BLOCKS TO [REDACTED] AND APPELLANT DID NOT BILL FOR NERVE BLOCKS BUT BILLED ONLY FIFTY (\$50⁰⁰) DOLLARS FOR THE OFFICE VISIT.

ON 1-8-01, APPELLANT PRESCRIBED FOURTEE (14) TABLETS OF OXYCONTIN 80 mg WITH THE PRESCRIPTION ORDER OF: "TAKE 1 (ONE) EVERY 12 (TWELVE) HOURS";

[REDACTED] HAD BEEN TAKING EVEN HIGHER DOSES OF OXYCONTIN FOR THE LAST TWELVE (12) MONTHS BEFORE HIS DEATH; [REDACTED] WAS NOT OXYCONTIN NAIVE, HE KNEW HOW TO TAKE HIS PRESCRIPTION OF OXYCONTIN THE PROPER WAY,

ACCORDING WITH THE PHARMACOLOGIC STUDIES PUBLISHED BY PURDUE PHARMA, MANUFACTURERS OF OXYCONTIN IN THE PHYSICIAN'S DESK REFERENCE (P.D.R.)

BOOK IF AN ADULT TAKES ONE (1) TABLET OF OXYCONTIN 80 mg, THE BLOOD LEVEL WILL RAISE TO 100 ng/mL (ONE HUNDRED NANOGRAMS PER MILLILITER) OF BLOOD

IF [REDACTED] WOULD HAVE FOLLOWED APPELLANT'S PRESCRIPTION'S ORDERS HIS BLOOD LEVELS WOULD HAVE BEEN 100 ng/mL BUT FOR THE SELF-PRESCRIBED, SELF-

ADMINISTERED OVERDOSE TAKEN DELIBERATELY BY [REDACTED] AND IN BLATANT VIOLATION OF APPELLANT'S PRESCRIPTION ORDERS, [REDACTED] POST-MORTEN

TOXICOLOGIC BLOOD ANALYSIS REVEALED AN EXCESS OF OXYCONTIN OF 1335 ng/mL, THEREFORE IT CAN BE SAFELY AND LOGICALLY CONCLUDED THAT

THE EXCESS OF OXYCONTIN IN [REDACTED] POST-MORTEN BLOOD WAS NOT PRESCRIBED BY THIS APPELLANT.

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██████████ AVOIDED GIVING A DIRECT STATEMENT TO THE RAVENNA POLICE DETECTIVES ABOUT THEIR CONDUCT AND EVENTS OF 1-8-01 THAT LED TO ██████████ SELF ADMINISTERED LETHAL MULTIDRUG MIXTURE THAT DIRECTLY RESULTED IN HIS DEATH BUT IT IS PERPETUATED IN THE RAVENNA POLICE INVESTIGATION REPORT THAT ON 1-11-01 ██████████, ANOTHER ██████████ OF ██████████ AND ██████████, CALLED AND TOLD THE RAVENNA POLICE INVESTIGATORS THAT ██████████ HAD TOLD HIM THAT ON 1-8-01 IMMEDIATELY AFTER ██████████ PICKED UP THE PRESCRIPTION FOR FOURTEEN (14) OXYCONTIN 80 mg TABLETS APPELLANT PRESCRIBED TO ██████████ ON THAT DATE, ██████████ IN TOOK IN FRONT OF ██████████ AN OVERDOSE OF THREE (3) TABLETS OF OXYCONTIN 80 mg IN A DELIBERATED AND RECKLESS VIOLATION OF THE APPELLANT'S PRESCRIPTION ORDERS THAT WERE "TAKE ONE (1) EVERY TWELVE (12) HOURS", ██████████ FURTHER STATED THAT ██████████ GAVE HIM ONE (1) TABLET OF OXYCONTIN 80 mg TO TAKE (INDICATIVE OF ██████████ OXYCONTIN ADDICTION AND HIGH TOLERANCE) OF THOSE APPELLANT PRESCRIBED TO ██████████ AND ██████████ TOOK IT IN THAT PILL BINGE THAT DIRECTLY RESULTED IN ██████████ DEATH.

IN THE TRIAL'S EVIDENCE THERE ARE STILL NINE (9) TABLETS OF OXYCONTIN 80 mg LEFT OF THE ORIGINAL FOURTEEN (14) APPELLANT PRESCRIBED TO ██████████ ON 1-8-01, REMAINING IN THE PRESCRIPTION BOTTLE; THEREFORE FROM THAT BOTTLE, ██████████ COULD ONLY HAVE TAKEN FOUR (4) TABLETS; IF ██████████ HAD TAKEN ONLY FOUR TABLETS, HIS BLOOD LEVEL WOULD HAVE BEEN 400 ng/mL, BUT THE POST-MORTEM BLOOD ANALYSIS DEMONSTRATED A BLOOD LEVEL OF OXYCONTIN OF 1335 ng/mL, THEREFORE, THE EXCESS OF OXYCONTIN IN ██████████ BLOOD MUST HAVE COME FROM ANOTHER SOURCE BUT THE APPELLANT'S PRESCRIPTION; EVEN IF ██████████ ONLY TOOK FOUR (4) TABLETS FROM APPELLANT'S PRESCRIPTION, IT WAS A BLATANT FREE WILL VIOLATION OF APPELLANT'S PRESCRIPTION ORDERS; APPELLANT IS NOT RESPONSIBLE OF ANY OTHER PERSON'S ACTIONS; IF IT WAS NOT BUT FOR ██████████ RECKLESS

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DISREGARD OF APPELLANT'S PRESCRIPTION ORDERS, [REDACTED] STILL WOULD BE ALIVE. IF IT WAS NOT FOR [REDACTED] DRIVING [REDACTED] AROUND DOCTOR SHOPPING AN ENCOURAGING AND GIVING STRENGTH TO HIS -THEIR- DANGEROUS ACTIONS, [REDACTED] WOULD STILL BE ALIVE; [REDACTED] AIDED AND ABETTED BY HIS BROTHER [REDACTED] CAUSED HIS OWN DEATH; THERE WAS NO MEDICAL ERROR NOR KNOWLEDGE FROM APPELLANT OF [REDACTED] INTENTIONS OF OVERDOSE; HUMAN CONDUCT IS UNPREDICTABLE; [REDACTED] KNEW WHAT HE WAS DOING WAS WRONG AND ILLEGAL -AS WELL AS [REDACTED] - BUT HE -THEY- DID NOT CARE; THERE IS NO LOGIC BUT MISCARRIAGE OF JUSTICE TO SENTENCE APPELLANT TO LIFE IN PRISON FOR THE CRIMINAL CONDUCT OF [REDACTED]; FURTHER, ONCE [REDACTED] WAS SLEEP, UNCONSCIOUS, OVERDOSED, INTOXICATING, DYING, [REDACTED] SIMPLY ABANDONED HIM TO HIS FATE TO DIE, KNOWING THAT HE - [REDACTED] WAS OVERDOSED; IRONICALLY, [REDACTED] AS PART OF [REDACTED] ESTATE HAS BEEN AWARDED ONE HUNDRED AND TWENTY THREE THOUSAND DOLLARS (\$123,000⁰⁰) FROM APPELLANT'S FROZEN ASSETS AS A "VICTIM".

4. [REDACTED] ESTATE HAD FILED A WRONGFUL DEATH CIVIL ACTION AGAINST APPELLANT WHICH THE JUDGE HAD DISMISSED FOR LACK OF MERIT.

FOR ALL THE ABOVE, APPELLANT IS OPTIMISTIC THAT HIS CONVICTION AND SENTENCE WILL BE VACATED BY THE SIXTH CIRCUIT COURT OF APPEALS.

NO ONE SAID THAT THE JURYS WERE INFALLIBLE, IF THE JURIES WERE INFALLIBLE THERE WOULD NOT BE COURT'S OF APPEALS; THE JURIES ARE MOVED BY PASSION AND PREJUDICE AND THE PROSECTORS ARE EXPERTS IN INSTILLING LIES, PASSION AND PREJUDICE IN THE JUROR'S MINDS.

[REDACTED], THE SECOND COUNT OF "HEALTH CARE FRAUD RESULTING IN DEATH" APPELLANT WAS FOUND GUILTY BY THE JURY AND SENTENCED TO LIFE IN PRISON BY THE U.S. DISTRICT JUDGE IS THE DEATH OF [REDACTED].

[REDACTED] DIED ON 9-13-01 DUE TO PNEUMONIA THAT HE DEVELOPED AFTER VOMITING AND ASPIRATING THE VOMIT INTO HIS LUNGS ON 9-7-01, WHEN HE WAS ADMITTED TO DEACONESS HOSPITAL AND REMAINED IN CRITICAL CARE, INTUBATED, IN A VENTILATOR UNTIL HE DIED ON 9-13-01.

IN THE HOSPITAL'S ADMISSION DOCUMENTS IT IS PERPETUATED THAT HIS WIFE [REDACTED] TOLD THE ADMITTING DOCTOR THAT [REDACTED] HAD TOLD HER ONE MONTH BEFORE THAT HE - [REDACTED] - HAD BEEN ADDICTED TO SMOKING HERDIN FOR THE LAST SIX (6) YEARS.

THE ADMISSION URINARY TOXICOLOGIC SCREENING DETERMINED THAT [REDACTED] HAD BEEN ABUSING COCAINE TO WHAT [REDACTED] [REDACTED] LATER TESTIFIED AS WELL (IN AUGUST 2006) THAT [REDACTED] HAD NOTIFIED HER AS WELL THAT HE USED TO ABUSE COCAINE.

[REDACTED] DID NOT NOTIFIED EVER APPELLANT ABOUT THE DRUG ABUSING ADDICTION OF [REDACTED]; INCLUDING THAT IN FATHER'S DAY 2000, THEY, [REDACTED] HAD GONE TO VISIT [REDACTED] FATHER WHO WAS DYING OF LUNG CANCER AND THAT [REDACTED] HAD STOLEN HIS FATHER'S IN LAW PAIN MEDICATION AND THAT THAT INCIDENT HAD PROMPTED [REDACTED] TO KICK [REDACTED] OUT OF HER HOUSE [REDACTED] - NOR [REDACTED] - TOLD APPELLANT THAT [REDACTED] HAD (ON OR ABOUT 2000 OR 2001) PLED GUILTY TO DOCTOR SHOPPING

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(OBTAINING DANGEROUS DRUGS BY DECEPTION) BECAUSE GOING TO TWELVE (12) DIFFERENT DOCTORS; [REDACTED], WHO HAS THEN RE-MARRIED TESTIFIED AT TRIAL THAT SHE DID NOT NOTIFIED APPELLANT ABOUT [REDACTED] DRUG ABUSING BECAUSE: "SHE DID NOT WANT TO ENDANGER [REDACTED] RELATION WITH DR. MARTINEZ" -THE APPELLANT- BY KEEPING APPELLANT DECEIVED BY OMISSION SO APPELLANT COULD CONTINUE PRESCRIBING PAIN MEDICATION TO HER HUSBAND, AIDING AND ABETTING [REDACTED] DRUG ABUSING AND ADDICTION.

THERE ARE MULTIPLE POSSIBLE EXPLANATIONS WHY [REDACTED] VOMITED AND ASPIRATE AFTER ABUSING COCAINE WHICH INCLUDES THE FACT THAT HE HAD DAMAGED HIS KIDNEYS AND WAS DIAGNOSED AS SUFFERING HEROIN INDUCED NEPHROPATHY DURING HIS LAST DAYS AND NO ONE OF THOSE EXPLANATIONS CAN LOGICALLY INCLUDE HOW ANY IMAGINARY "HEALTH CARE FRAUD" COULD HAVE INDUCED [REDACTED] TO ABUSE COCAINE, TO VOMIT AND ASPIRATE HIS VOMIT INTO HIS LUNGS AND DEVELOP PNEUMONIA AND DIE.

[REDACTED] SUFFERED OF LEGITIMATE PAIN, CONSTANT, RELENTLESS CHRONIC INTRACTABLE PAIN AFTER A TRAILOR TRACOR HE USED TO DRIVE WAS INVOLVED IN AN ACCIDENT; [REDACTED] UNDERWENT TWO (2) CERVICAL SPINE SURGERIES WITH PROGRESSIVELY WORSE RESULTS; [REDACTED] WAS RESPONSIBLE FOR HIS ACTIONS AND [REDACTED] AIDED AND ABBETED [REDACTED] IN HIS DRUG ABUSE AND TO CONCEAL [REDACTED] DRUG ABUSE FROM APPELLANT; THE APPELLANT IS NOT RESPONSIBLE FOR [REDACTED] IRRESPONSIBILITY AND RECKLESS BEHAVIOR; IF [REDACTED] WOULD HAVE FOLLOW APPELLANT'S PRESCRIPTION ORDERS HE WOULD NOT HAVE USED COCAINE.

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ON 9-5-01 APPELLANT SAW LAST [REDACTED] WHEN HE CAME TO APPELLANT'S OFFICE IN AN EMERGENCY SITUATION AFTER SPENDING ONE MONTH IN JAIL FOR STEALING A MICROWAVE OVEN FROM A STORE; [REDACTED] SPENT THAT MONTH IN JAIL SUFFERING OF CONSTANT AGONIZING PAIN AND WITHOUT HIS MEDICATIONS NOR THERAPEUTIC NERVE BLOCKS; [REDACTED] CAME TO APPELLANT'S OFFICE SCREAMING OF PAIN, MOANING, HOLDING HIS HEAD WITH HIS HANDS AND APPELLANT TREATED [REDACTED] PAINS WITH NERVE BLOCKS THAT PROVIDED TO [REDACTED] WITH IMMEDIATE RELIEF WHO WALKED OUT ON HIS OWN, WITH CANE IN MUCH BETTER CONDITION THAN WHEN HE CAME IN AFTER RESTING FOR FOUR HOURS. ON 8-8-01 WAS THE LAST TIME APPELLANT PRESCRIBED OXYCONTIN TO [REDACTED]. ON 9-5-01 APPELLANT PRESCRIBED TO [REDACTED] KADIAN (A SLOW RELEASE MORPHINE PREPARATION MEDICATION).

ON 9-6-01 [REDACTED] WENT DOWN TOWN CLEVELAND AND [REDACTED] TESTIFIED SHE SAW HER ESTRANGED HUSBAND ON 9-6-01 AND THAT HIS RESPIRATION HAD A GURGLING SOUND RAISING THE POSSIBILITY THAT [REDACTED] DEVELOPED PNEUMONIA DUE TO OTHER REASON BUT ASPIRATING HIS VOMIT; [REDACTED] TESTIMONY WAS ON 8-12-06 HEARING BEFORE U.S. MAGISTRATE PERELMAN IN CLEVELAND.

ON 9-7-01 ON ADMISSION TO DEACONESS HOSPITAL [REDACTED] URINE WAS POSITIVE FOR COCAINE AND OPIATES; WE DONT KNOW WHAT TYPE OF OPIATES WERE IN [REDACTED] SYSTEM ONE POSSIBILITY IS HERCIN HE USED TO ABUSE AND OTHER IS THE KADIAN OR HE COULD HAVE ABUSED BOTH WE DONT KNOW; THE JURY HAD TO GUESS, THAT IS NOT JUSTICE, AND LOGICALLY, APPELLANT DID NOT TELL, NOR KNEW THAT [REDACTED] WAS ABUSING COCAINE BECAUSE [REDACTED] DID NOT TELL APPELLANT, IRONICALLY, [REDACTED] HAS BEEN AWARDED TWO HUNDRED AND EIGHTY FIVE DOLLARS (\$285,000⁰⁰) THOUSAND DOLLARS FOR THE LOST

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FUTURE EARNINGS OF [REDACTED] WHO WAS DISABLE, UNABLE TO EARN HIS OWN LIVING TO BE PAID BY THE APPELLANT'S FROZEN ASSETS BECAUSE [REDACTED] IS NOW CLAIMING THAT SHE IS A VICTIM, MOST IRONICALLY AFTER SHE AIDED AND ABETTED [REDACTED] TO CONCEAL HIS DRUG ABUSE FROM APPELLANT AND HIS COCAINE AND HEROIN ABUSE AND ADDICTION; APPELLANT HOPES ARE REASONABLE THAT THIS INJUSTICE, THIS CONVICTION WITH THE BRUTAL SENTENCE TO LIFE IN PRISON WILL BE OVERTURNED BY THE SIXTH CIRCUIT U.S. COURT OF APPEALS AND APPELLANT WILL BE ACQUITTED. HOW CAN A JURY CONVICT AN INNOCENT MAN FOR THE WILFUL CRIMINAL RECKLESS DANGEROUS OF ANOTHER MEN? BECAUSE THE JURORS ARE LAY HUMAN BEINGS AND THE PROSECUTORS ARE EXPERTS WITH MANY YEARS OF EXPERIENCE IN POISONING THE MINDS OF JURORS INSTILLING IN THEIR MINDS PREJUDICE AND IGNITING IN THEIR PASIONS TO CREATE A LYNCHING MOB MENTALITY; THE PROSECUTORS DON'T LOOK FOR THE TRUTH OR JUSTICE, THEY LOOK FOR CONVICTIONS AND TO WIN AT ALL COSTS, THEY LOOK FOR A SCAPE GOAT FOR THE CRIMINAL ACTIONS OF [REDACTED] AND [REDACTED] AND OF [REDACTED] [REDACTED] BY MULTIPLE ACTS OF PROSECUTORIAL MISCONDUCT FROM SUBORNATION OF PERJURY IN THE GRAND JURY AND AT TRIAL TO THE FABRICATION OF FALSE EVIDENCE SPECIALLY TO BE INTRODUCED IN COURT AS FALSE MISLEADING EVIDENCE COMMITTING FRAUD IN COURT AND USING THEIR YEARS OF EXPERTISE IN SENDING THE JURORS TO MAKE WILD SPECULATIONS INSTEAD OF LOGICAL DECISIONS, ALL OF THIS AND MORE WILL HAVE TO BE REVIEWED IN THE APPEAL BY THE SIXTH CIRCUIT.

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TO TAKE ONE TWICE A DAY; BESIDES THE SURVEILLANCE VIDED DEMONSTRATES APPELLANT INJECTING ON THE UPPER DORSAL PARAVERTEBRAL NERVES; INCREDIBLE IS THAT FOR THIS MEDICAL WORK, APPELLANT WAS FOUND GUILTY OF ONE COUNT OF DRUG DISTRIBUTION AND SENTENCED TO FOUR (4) YEARS IN PRISON; TIMELY APPELLANT POINTED TO THE MEDICAL BOARD THESE AN MANY FACTS TO OUTLINE THE INJUSTICE BUT THE BOARD DID NOT EVEN LOOK TO VERIFY THE FACTS BY REVIEWING THE TRIAL'S TRANSCRIPT, THE MEDICAL BOARD DOES NOT CONSIDER THAT INJUSTICE IS COMMON IN CRIMINAL TRIALS; THIS HONORABLE COURT, AT LEAST CAN ORDER THE MEDICAL BOARD TO REVIEW THE TRIALS TRANSCRIPT AND COME UP WITH ITS INDEPENDENT FINDINGS BEFORE ADOPTING THE JURORS' DECISION BLINDLY STILL CAUSING MORE INJUSTICE TO APPELLANT.

LIKEWISE IN ALL THE OTHER COUNTS OF DRUG DISTRIBUTION, [REDACTED] AND [REDACTED] ABOVE ADDRESSED HAD MEDICAL NECESSITY OF RECEIVING PAIN MEDICATION AS WELL AS [REDACTED] WHO HAD SEVEN (7) SURGERIES IN ONE KNEE AND FIVE (5) SURGERIES IN THE OTHER KNEE AND IN HIS EARLY 30s NEEDED BILATERAL KNEE REPLACEMENT AND NEEDED HIS PAIN MEDICATION TO WORK; [REDACTED] WITH A SEVERE L5/S1 LUMBAR DISC HERNIATION THAT WAS INOPERABLE; ALL APPELLANT'S PATIENTS HAD MEDICAL REASONS TO RECEIVE THE PAIN MEDICATION APPELLANT PRESCRIBED TO THEM, INCLUDING [REDACTED] WHO IN 1999 WAS INVOLVED IN A SERIOUS MOTOR VEHICLE ACCIDENT THAT CAUSED AN INOPERABLE DISC HERNIATION AT L4/L5; APPELLANT SENT HIM TO CLEVELAND CLINIC WHO DECIDED THAT SURGERY WOULD BE WORSE THAN CONSERVATIVE TREATMENT BY NERVE BLOCKS AND EPIDURALS APPELLANT PROVIDED TO HIM; [REDACTED] IMPROVED AND MOVED ON TO BECOME A GREAT DOCTOR SHOPPER GOING TO DECEIVE TWENTY EIGHT (28) DOCTORS UNTIL HE WAS CAUGHT BY THE POLICE

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AND THE F.B.I. SENT HIM TO ENTRAPT APPELLANT, LYING TO APPELLANT TELLING HIM THAT HE HAD BEING WELL UNTIL A COUPLE WEEKS BEFORE AFTER MORE THAN ONE YEAR OF BEEN DOING WELL; APPELLANT ADVISED HIM TO HAVE ANOTHER EPIDURAL AND IN THREE OCCASIONS [REDACTED] GAVE THE EXCUSES THAT HE HAD BEEN INSTRUCTED TO GIVE BY THE F.B.I. AND IN THREE OCCASIONS APPELLANT ORDERED A NEW MRI WHICH THE F.B.I. INSTRUCTED HIM NOT TO HAVE DONE; APPELLANT PRESCRIBED [REDACTED] 10mg OF OXYCONTIN THREE (3) TIMES A DAY IN FOUR (4) OCCASIONS - WEEKLY - WELL [REDACTED] PRESCRIPTIONS CAUSED APPELLANT TO BE GUILTY OF FOUR (4) COUNTS OF DRUG DISTRIBUTION WITH SIXTEEN (16) YEARS IN PRISON AS SENTENCE; NOTWITHSTANDING THAT TWENTY EIGHT (28) MEDICAL DOCTORS HAD CONCLUDED THE SAME THAN APPELLANT THAT BECAUSE [REDACTED] [REDACTED] HAD POSITIVE FINDINGS BY MRI OF A LARGE, INOPERABLE DISC HERNIATION AT L4/L5, HE HAD LEGITIMATE MEDICAL REASONS TO HAVE PAIN MEDICATION PRESCRIBED TO HIM.

THE F.B.I. SENT AS WELL A DECOY UNDERCOVER AGENT, A HEALTHY PATIENT REQUESTING OXYCONTIN FROM APPELLANT'S AND APPELLANT IN THREE DIFFERENT OCCASIONS DECLINE TO PRESCRIBE ANY PAIN MEDICATION TO [REDACTED] AS THE AGENT CAME TO LIE, REQUESTING OXYCONTIN FOR A FAKE BACK PAIN THAT APPELLANT COULD IDENTIFIED AS "THE HEALTHIEST PERSON TO WALK IN THIS OFFICE IN THE LAST FIVE YEARS"; THIS SHOULD BE THE PROOF TO THE MEDICAL BOARD THAT A GRAVE INJUSTICE IS BEEN DONE BY THE FEDERAL GOVERNMENT TO A GOOD DOCTOR AND THE MEDICAL BOARD IS SIMPLY COMPOUNDING THAT INJUSTICE WITHOUT LOOKING FOR THE FACTS OF THE MATTER, IF APPELLANT WAS REALLY PRACTICING GOOD MEDICINE TREATING PATIENTS IN SEVERE PAIN OR IF APPELLANT WAS TRAFFICKING IN DRUGS.

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SELECTIVE PROSECUTION THE FEDERAL GOVERNMENT DID NOT PROSECUTE ANY OF THE OTHER TWENTY EIGHT (28) DOCTORS [REDACTED] DUPPED NOR [REDACTED] WHO PRESCRIBED THE VALIUM (DIAZEPAM) TO [REDACTED] BUT ONLY PROSECUTE APPELLANT; WITH THE INTENTION OF TAKING AWAY APPELLANT'S ASSETS WHICH THEY HAVE DONE; ALL APPELLANT'S PRIVATE PROPERTY HAS BEEN FROZEN READY FOR FOREFEITURE BY THE FEDERAL GOVERNMENT, THAT IS THE REAL GOAL OF THE GOVERNMENT, THEY DONT CARE ABOUT [REDACTED] [REDACTED] CRIMINAL CONDUCT, THEY GAVE [REDACTED] FOUR (4) YEARS OF PROBATION.

FRAUD, MAIL, WIRE AND HEALTH CARE FRAUD APPELLANT WAS FOUND GUILTY OF FOURTY SIX (46) COUNTS OF FRAUD WHERE APPELLANT COMMITTED NO FRAUD OF ANY KIND; APPELLANT ONLY BILLED FOR MEDICAL SERVICES APPELLANT PROVIDED; APPELLANT ONLY PROVIDED MEDICAL SERVICES TO PATIENTS THAT HAD REAL LEGITIMATE MEDICAL NECESSITY OF RECEIVING THOSE PROCEDURES APPELLANT PROVIDED; NO EVER, APPELLANT PROVIDED AN UNNECESSARY MEDICAL SERVICE; THERE WAS NO ONE SINGLE CASE OF GHOST BILLING, ALL THE PATIENTS THAT RECEIVED THERAPEUTIC NERVE BLOCKS BY APPELLANT REFERRED IMMEDIATE RELIEF OF THEIR PAINS WHICH IS THE SCIENTIFIC VERIFICATION THAT THE LOCAL ANESTHETIC SOLUTION INJECTED REACHED THE NERVE THAT WAS TRANSMITTING OR CAUSING THE PAIN; WHEN APPELLANT SAYS ALL MEANS ALL; NO ONE PATIENT REFERRED NO RELIEF. FOR 5 (FIVE) YEARS THE FEDERAL AGENTS INVESTIGATED APPELLANT AND FOUND NO ONE PATIENT THAT DID NOT HAVE RELIEF OF THEIR PAINS.

IN ORDER TO MAKE THEIR CASE OF FRAUD SINCE THE INDICTMENT, THE PROSECUTORS COMMITTED COUNTLESS ACTS OF PROSECUTORIAL MISCONDUCT, THEY INVENTED THE FALSE MEDICAL STANDARD THAT

APPELLANT NEEDED FLUOROSCOPY TO PERFORM NERVE BLOCKS PROCEDURES CODED 64479 TO 64484; IF THE MEDICAL BOARD HAD ANY CURIOSITY IT WOULD HAVE TAKEN THEM A FEW MINUTES TO FIND OUT THAT FLUOROSCOPY IS OPTIONAL TO PERFORM THOSE PROCEDURES AND FOR ALL FORTY SIX (46) COUNTS OF FRAUD SIMPLY ARE REDUCED TO THE FOLLOWING: IF FLUOROSCOPY IS MANDATORY TO PERFORM THERAPEUTIC NERVE BLOCKS PROCEDURES 64479 TO 64484, APPELLANT COMMITTED MEDICAL, MAIL AND WIRE FRAUD; IF FLUOROSCOPY IS OPTIONAL TO PERFORM THOSE TNBS PROCEDURES ABOVE, THEN APPELLANT HAS BEEN WRONGFULLY CONVICTED AND SENTENCED TO ~~10~~ (TEN) YEARS (OR ELEVEN) OF PRISON FOR FALSE ACCUSATIONS MADE BY THE WORSE KIND OF MALICIOUS PROSECUTION; THE MEDICAL BOARD AS A FACT FINDING BODY MUST BE ORDER BY THIS HONORABLE COURT TO FIND AND CLARIFIED IN THIS RECORD THE ISSUE OF FLUOROSCOPY REQUIREMENT FOR THOSE NERVE BLOCKS PROCEDURES 64479 TO 64484.-

THE PROSECUTOR, IN ORDER TO MISLEAD THE JURY FABRICATED SOME VIDEOS OF A DOCTOR PERFORMING THOSE PROCEDURES AND OTHER TWO (2) OTHER PROCEDURES AND INTRODUCED THEM AT TRIAL CLAIMING THAT THAT WAS THE ONLY WAY THAT THOSE PROCEDURES COULD BE DONE AND THAT BECAUSE APPELLANT DID NOT USE FLUOROSCOPY TO PERFORM THOSE PROCEDURES, APPELLANT HAD COMMITTED ALL THOSE COUNTS OF FRAUD; THE JURY HAS THE TENDENCY TO BELIEVE THE GOVERNMENT AND TO BELIEVE THAT THE GOVERNMENT ALWAYS STANDS ONLY BEHIND THE TRUTH, FURTHERMORE, THE JURY WAS SENT TO DELIBERATIONS TO MAKE THE DECISION, IF AN ACCEPTED MEDICAL STANDARD (I.E. THAT FLUOROSCOPY IS OPTIONAL)

TO BE CHANGED BY THE JURY TO BECOME THAT FLUOROSCOPY IS REQUIRED TO PERFORM THOSE PROCEDURES; THE JURY CAN NOT CHANGE AN ACCEPTED MEDICAL STANDARD BUT IN THIS CASE, THE JURY WAS SENT TO DELIBERATIONS TO ANSWER THE QUESTION OF FACT IF THE FLUOROSCOPY IS REQUIRED OR OPTIONAL BY THE MISLEADING PROSECUTORS.

IN CONCLUSION, THE APPELLANT REQUEST TO THIS HONORABLE COURT TO ORDER THE APPELLEE MEDICAL BOARD TO REVIEW ALL THE EVIDENCE IN THIS TRIAL AND VERIFY THE FINDINGS OF GUILT OF APPELLANTS IN ALL THOSE COUNTS BEFORE PERMANENTLY SUSPENDING APPELLANT'S MEDICAL LICENSE OR IN ITS ALTERNATIVE, SUSPEND APPELLANT'S MEDICAL LICENSE TEMPORARY PENDING THE OUTCOME OF THE APPEAL THAT WILL BE FILED TIMELY BY APPELLANT IN THE SIXTH CIRCUIT U.S. COURT OF APPEALS.

THIS REQUEST WILL HURT NO ONE AND WILL BE FAIR TO APPELLANT WHO HAS LOST HIS FREEDOM, HIS ASSETS AND HIS MEDICAL LICENSE FOR THE WITCH HUNT THE FEDERAL GOVERNMENT IS CARRYING OUT AS A MONEY MAKING BUSINESS REGARDING LESS THE DOCTORS THAT TREAT PAIN SUFFERING PATIENTS AND THE POOR PATIENTS A LEFT TO SUFFER AS COLLATERAL DAMAGE.

ALL STATED UNDER OATH.


JORGE A. MARTINEZ MD
APPELLANT PRO-SE

STATE MEDICAL BOARD
OF OHIO

2007 SEP 28 P 1:31

CERTIFICATE OF SERVICE

THIS WILL CERTIFY THAT I HAVE SENT BY REGULAR
MAIL AN EXACT COPY OF THIS APPEAL TO THE
STATE MEDICAL BOARD OF OHIO TO THEIR
ADDRESS IN COLUMBUS TODAY 9-14-2006
DATE

Melissa Kunder
MELISSA KUNDER.


FOR JORGE A. MARTINEZ, MD

STATE MEDICAL BOARD
OF OHIO
2006 SEP 28 P 1:31



State Medical Board of Ohio

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

August 9, 2006

Jorge Arturo Martinez, M.D.
Registration No. 39798-060
Northeast Ohio Correctional Center
2240 Hubbard Road
Youngstown, OH 44505

Dear Doctor Martinez:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Christopher B. McNeil, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 9, 2006, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal 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, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

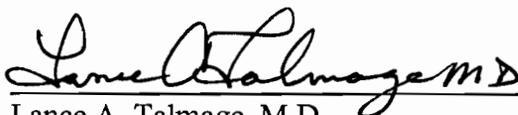
CERTIFIED MAIL NO. 7003 0500 0002 4329 9330
RETURN RECEIPT REQUESTED

Mailed 8-11-06

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Christopher B. McNeil, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on August 9, 2006, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Jorge Arturo Martinez, M.D., as it appears in the Journal of the State Medical Board of Ohio.

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



Lance A. Talmage, M.D.
Secretary

(SEAL)

August 9, 2006

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

JORGE ARTURO MARTINEZ, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on August 9, 2006.

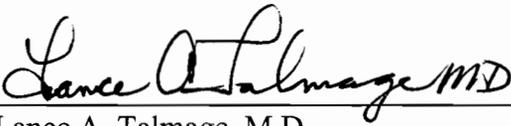
Upon the Report and Recommendation of Christopher B. McNeil, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of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

It is hereby ORDERED that:

The certificate of Jorge Arturo Martinez, M.D., to practice medicine and surgery in the State of Ohio is PERMANENTLY REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

August 9, 2006

Date

2006 JUL 14 P 2:19

**REPORT AND RECOMMENDATION
IN THE MATTER OF JORGE ARTURO MARTINEZ, M.D.**

The Matter of Jorge Arturo Martinez, M.D., was heard by R. Gregory Porter, Esq., Hearing Examiner for the State Medical Board of Ohio, on June 6, 2006. On July 7, 2006, this matter was reassigned to Hearing Examiner Christopher B. McNeil, Esq.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 8, 2006, the State Medical Board of Ohio [Board] notified Jorge Arturo Martinez, M.D., that it intends to determine whether to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board's proposed action was based on a report it received that Dr. Martinez was convicted of felony criminal offenses. Based on this information, the Board alleged that Dr. Martinez's conviction constitutes "a judicial finding of guilt of . . . a felony," as that clause is used in Section 4731.22(B)(9), Ohio Revised Code. (State's Exhibit 1A)

Accordingly, the Board advised Dr. Martinez of his right to request a hearing in this matter. (St. Ex. 1A).

- B. On March 8, 2006 Dr. Martinez submitted a written request for a hearing on these charges. (St. Ex. 1C).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Damion M. Clifford, Assistant Attorney General.
- B. Dr. Martinez did not appear in person at the time of the hearing, but prior to that time he did provide the Board with an unsworn written statement in support of his cause.

EVIDENCE EXAMINED

I. Testimony Heard

Neither the State nor Dr. Martinez presented testimony during the administrative hearing in this matter.

II. Exhibits Examined

A. Presented by the State:

1. State's Exhibits 1A-1H: Procedural exhibits. [Note: State's Exhibit 1C is a 7-page unsworn statement by Dr. Martinez addressed to the Board, in lieu of his personal appearance.]
2. State's Exhibit 2: Certified copy of the Amended Judgment in US v. Martinez.

B. Presented by the Respondent:

1. Respondent's Exhibit A: Copy of Dr. Martinez's 56-page filing with the U.S. District Court, Northern District of Ohio in US v. Martinez, 4:04CR430.

C. Admitted on the Hearing Examiner's Own Motion:

Board Exhibit A: July 7, 2006 entry reassigning this matter to Christopher B. McNeil, Esq.

SUMMARY OF THE EVIDENCE

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

1. The State Medical Board of Ohio issued a Certificate to Practice Medicine and Surgery to Jorge Arturo Martinez, M.D., the Respondent in this administrative action. The Certificate was suspended by the Board effective February 8, 2006 upon sufficient evidence that Dr. Martinez had been convicted of eight felony

counts of distribution of a controlled substance, and it has not been reinstated.
(State's Exhibit [St. Ex.] 1A)

Evidence of the Felony Criminal Convictions

2. Dr. Martinez was the defendant in a criminal trial conducted before the United States District Court for the Northern District of Ohio that ran from December 5, 2005 to January 5, 2006. The trial included testimony from thirty-two witnesses for the prosecution and nineteen witnesses for the defense. (St. Ex. 2)
3. After deliberating from January 5 to January 12, 2006, the jury acquitted Dr. Martinez of three charges and found him guilty of the remaining fifty-eight felony charges, including eight counts of distribution of a controlled substance in violation of 21 U.S.C. § 841, ten counts of wire fraud in violation of 18 U.S.C. § 1343, fifteen counts of mail fraud in violation of 18 U.S.C. § 1341, twenty-three counts of health care fraud in violation of 18 U.S.C. § 1347, and two counts of health care fraud resulting in death, in violation of 18 U.S.C. § 1347. (St. Ex.2)

Evidence and Claims Made in Mitigation by Dr. Martinez

4. Writing on his own behalf and through an unsworn letter to the Board, Dr. Martinez asserted that he is "innocent of all the charges simply because there is no evidence that these crimes ever occurred." (St. Ex. 1C, p. 1) He states he is seeking post-conviction relief (i.e., he is seeking a new trial or an order of acquittal from the trial court), and asks that the Board defer these administrative proceedings until the trial court has ruled upon his motions. (*Id.*)
5. In his explanation of the bases for his challenges to the criminal convictions, Dr. Martinez asserts that his convictions cannot be sustained, in part because of the decision by the United States Supreme Court in *Oregon v. Ashcroft*, which (according to Dr. Martinez) holds that the federal government does not regulate the practice of medicine. Dr. Martinez asks that the Board review the trial record and "verify if this honorable Medical Board agrees with the verdict of my guilt" as part of this administrative action. (*Id.*, p. 2)
6. According to Dr. Martinez, he was prosecuted "for being vulnerable and not for having committed any crimes, vulnerable for being a foreigner, minority – Spanish, independent solo practitioner with a large pain practice, with high volume and no hospital affiliation and substantial assets." (*Id.*) He denied ever conspiring to distribute drugs, and denied ever causing anybody's death, despite the guilty verdicts to the contrary. (*Id.*)

7. Specifically with respect to the deaths, Dr. Martinez wrote that his prosecution was the result of “blatant abuse of prosecutorial discretion” and explained that the deaths were “self-inflicted” by the decedents, who “took it upon themselves to overdose with pain medication I prescribed to them plus some other drugs, legal and illegal [that] they acquired by other means and took them concealed and unbeknownst to me.” (*Id.* at p. 3) According to Dr. Martinez, these convictions were secured by the prosecutor “paying sham expert witnesses to testify ‘within a reasonable degree of medical certainty’ – a civil standard of proof – and confusing it with the criminal standard of proof ‘beyond a reasonable doubt’ after prejudicing the jury with many unrelated accusations to get me convicted for the reckless actions of these adult men.” (*Id.*)
8. Dr. Martinez explains in some detail his treatment of the two decedents, noting their criminal backgrounds and the medical bases he relied upon when prescribing pain medication to them. He added that “drug abusers know that what they do is wrong but they don’t care, their responsibility for their illegal behavior cannot be shifted; criminal responsibility is personal and requires bad criminal intention to cause that precise crime. The demagoguery of the prosecutors swayed the lay jury to find me criminally guilty for the reckless conduct of [the decedent] which is simply illogical and an objective court will clear my name soon.” (*Id.* at p. 4)
9. With respect to prescriptions issued to other patients leading to the nine counts of drug distribution, Dr. Martinez provided brief summaries of the treatments and prescriptions for these patients, asserting his innocence of any criminal conduct in the course of this practice. (*Id.* at p. 5) In each case he claims to have “relied on the Ohio laws to prescribe pain medication to patients with legitimate intractable pain”. (*Id.*)
10. Similarly, Dr. Martinez asserts that, despite being found guilty of health care fraud and mail fraud, he is innocent of these charges. (*Id.* at p. 6) He contends that “I only billed for patients I saw, I only billed for nerve block procedures I performed and I only performed nerve block procedures to patients that had medical necessity for these procedures” and “all the patients had relief by the nerve block procedures I performed, which is the only scientific verification that the nerve blocks were performed properly.” (*Id.*)
11. Dr. Martinez also criticized prosecutors for seeking orders of forfeiture, arguing that “a close review of the trial’s record will demonstrate to any impartial body of medical doctors that I have broken no laws, that I am a good doctor and that the prosecutors and their expert witnesses’ statements were false and not based on any factual evidence but were bias[ed] opinions mainly when all the five patients from the indictment and many other patients all stated that I was the doctor that most

had helped them with their pain and no one witness accused me of breaking any laws.” (*Id.* at p. 7)

12. In his closing remarks to the Board, Dr. Martinez writes:

Therefore, respectfully, in the name of Justice, I humbly request to this honorable Medical Board to conduct its own objective investigations in the accusations and trial’s evidence before following blindly the road to my complete destruction as a doctor and as a person that unjustifiably the prosecutors tried to mark for me with the only purpose of taking my assets away for crimes they invented and never happened, disregarding the pain that my untreated patients now suffer. As well, I respectfully request a continuance for the hearing until after the Honorable Judge Nugent has ruled on the above-mentioned post-trial motions which will encompass these same issues before this honorable Medical Board.
(*Id.*)

ANALYSIS

The record in this administrative action includes uncontradicted evidence establishing that Dr. Martinez has been convicted of multiple felony charges arising out of his practice, charges that include health care fraud resulting in the death of two of his patients. Thus, the evidence now before the Board amply supports Board action based on the fact that Dr. Martinez had been convicted of felony offenses.

In his statement to the Board, Dr. Martinez asks that these administrative proceedings be stayed until the federal trial court considers Dr. Martinez’s post-trial motions. Such a delay is unwarranted, given there has been a sufficient showing that a jury has found Dr. Martinez guilty and given the Board’s express statutory authority (at R.C. 4731.28(B)(9)) to act upon proof of such convictions without regard to pending post-trial motions or appeals. Accordingly, Dr. Martinez’s motion to delay this administrative action is without merit and is denied.

Ultimately, Dr. Martinez asks that the Board engage in a review of the evidence presented to the federal court jury in his criminal case. That request is without merit: under Board regulations, a certified copy of a judicial finding of guilt of any crime in a court of competent jurisdiction “is conclusive proof of the commission of all of the elements of that crime.” See O.A.C. 4731-13-24. The record contains the certified record showing Dr. Martinez’s guilt on the felony charges, and constitutes conclusive proof of the commission of all of the elements of those crimes for which he stands convicted.

Upon reviewing the character of the offenses, including the seriousness of the risk of harm and the actual harm inflicted, the pervasive amount of criminal conduct attributed to

Dr. Martinez, and the misuse of his license in perpetrating these offenses, and in the absence of any meaningful evidence in mitigation, permanent revocation is warranted.

FINDINGS OF FACT

1. The Respondent, Jorge Arturo Martinez, M.D., holds a certificate to practice medicine and surgery in Ohio issued by the State Medical Board of Ohio. That certificate was suspended effective February 8, 2006 upon the Board's receipt of a sufficient showing that Dr. Martinez was convicted of illegal distribution of controlled substances, and has not been reinstated.
2. The Respondent has been convicted of fifty-eight felony criminal counts in proceedings conducted by the United States District Court for the Northern District of Ohio, in proceedings conducted under case caption United States of America v. Jorge A. Martinez, case no. 1:04 CR 430. The entry in which the court accepted the jury's verdicts establishing Dr. Martinez's guilt is dated January 24, 2006, and its contents are incorporated into this finding by this reference.
3. Upon finding cause to believe grounds existed to take action with respect to his certificate to practice medicine and surgery in Ohio, the Board set forth its charge against the Respondent in a notice dated February 8, 2006. In a written response dated March 3, 2006 and received by the Board on March 9, 2006, the Respondent invoked his right to have an administrative review of the charge, and in a letter dated March 10, 2006 the Board acknowledged its receipt of the Respondent's request for a hearing. The Board then set the matter for a hearing to commence on March 22, 2006, continued the hearing, appointed an administrative hearing examiner, and provided the parties with an opportunity to be heard on the charges in an evidentiary hearing conducted on June 6, 2006.

CONCLUSIONS OF LAW

1. Because he holds a certificate to practice medicine and surgery in Ohio, the Respondent Jorge Arturo Martinez, M.D., is subject to the jurisdiction of the State Medical Board of Ohio in actions taken pursuant to R.C. Chapter 4731.
2. Upon sufficient cause to believe the holder of a certificate issued by the State Medical Board of Ohio has violated a provision of R.C. Chapter 4731 or regulations promulgated thereunder, the Board is authorized to take action with respect to that certificate. Upon his receipt of the Board's charging document, the Respondent timely requested an evidentiary hearing before the Board took any final action based upon the Board's charge. Upon its receipt of the Respondent's

request for a hearing, the Board set the matter for hearing in the manner provided for by R.C. 119.07 and 119.09 (the Administrative Procedure Act), and provided the Respondent with an opportunity to be heard, all in the manner provided for by law and in accordance with all statutory and constitutional protections afforded to persons possessing such a certificate.

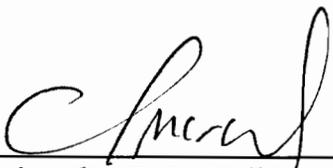
3. The Board may take disciplinary action against a certificate-holder upon sufficient proof that the person has been convicted of a felony. The convictions entered by the federal court in the matter of U.S. v. Martinez, as described in Finding of Fact No. 2 constitute "a judicial finding of guilt . . . of a felony" as that clause is used in Section 4731.22(B)(9), Ohio Revised Code.
4. Upon sufficient proof that the Respondent has violated any provision of R.C. 4731.22(B), as has been demonstrated in the foregoing findings of fact and conclusions of law, the Board, by an affirmative vote of not fewer than six of its members, shall to the extent permitted by law limit, revoke or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate, all pursuant to section 4731.22(B) of the Revised Code. Further, when the Board revokes an individual's certificate to practice, it may specify that the action is permanent. An individual subject to 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. See R.C. 4731.22(L) (2005).

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Jorge Arturo Martinez, M.D., to practice medicine and surgery in the State of Ohio is PERMANENTLY REVOKED.

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



Christopher B. McNeil, Esq.
Hearing Examiner



State Medical Board of Ohio

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EXCERPT FROM THE DRAFT MINUTES OF AUGUST 9, 2006

REPORTS AND RECOMMENDATIONS

Dr. Kumar announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He advised that the Board has been unable to achieve service in the matter of Suzanne A. Haritatos, D.P.M. The Report and Recommendation in her case will therefore be considered at a future meeting. Also, the Board has granted Terri Lynne Savage, M.D.'s request for a postponement of consideration of her case until the September meeting. Dr. Savage has signed an agreement to continue her summary suspension until such time as the Board takes final action on her case.

Dr. Kumar asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Cynthia Y. Alston, M.D.; Richard C. Gause, M.D.; Jorge Arturo Martinez, M.D.; Chijioke Victor Okoro, M.D.; and Jose Raul Quintana, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Kumar	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Mr. Browning	- aye

Ms. Sloan - aye
Dr. Davidson - aye
Dr. Madia - aye
Dr. Steinbergh - aye
Dr. Kumar - aye

Dr. Kumar noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters. Dr. Kumar advised that Dr. Talmage and Mr. Albert were the Secretary and Supervising Member and must abstain in the matters of: Dr. Martinez, Dr. Okoro, Dr. Quintana and Dr. Savage. They may participate in the discussion and vote in the matters of Dr. Alston and Dr. Gause. The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

.....

JORGE ARTURO MARTINEZ, M.D.

.....

DR. MADIA MOVED TO APPROVE AND CONFIRM MR. MCNEIL'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF JORGE ARTURO MARTINEZ, M.D. MR. BROWNING SECONDED THE MOTION.

.....

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

ROLL CALL:

Mr. Albert - abstain
Dr. Egner - aye
Dr. Talmage - abstain
Mr. Browning - aye
Ms. Sloan - aye
Dr. Davidson - aye
Dr. Madia - aye
Dr. Steinbergh - aye
Dr. Kumar - aye

The motion carried.



State Medical Board of Ohio

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

NOTICE OF IMMEDIATE SUSPENSION AND OPPORTUNITY FOR HEARING

February 8, 2006

Jorge Arturo Martinez, M.D.
3773 Mapleleaf Hill
Akron, Ohio 44333

Dear Doctor Martinez:

In accordance with Sections 2929.42 and/or 3719.12, Ohio Revised Code, the United States Attorney's Office for the Northern District of Ohio, reported that on or about January 12, 2006, in the United States District Court, Northern District of Ohio, Eastern Division [U.S. District Court], the duly impaneled and sworn jury in the matter of United States of America v. Jorge A. Martinez [*U.S. v. Martinez*], returned eight unanimous verdicts of guilt against you for felony violations of 21 U.S.C. § 841, Distribution of a Controlled Substance.

Therefore, pursuant to Section 3719.121(C), Ohio Revised Code, you are hereby notified that your license to practice medicine and surgery in the State of Ohio is immediately suspended. Continued practice after this suspension shall be considered practicing medicine without a certificate in violation of Section 4731.41, Ohio Revised Code.

Furthermore, 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 January 12, 2006, in U.S. District Court, the duly impaneled and sworn jury in the matter of *U.S. v. Martinez* returned fifty-eight unanimous verdicts of guilt against you for felony violations. On or about January 24, 2006, an Amended Judgment was filed in U.S. District Court in the matter of *U.S. v. Martinez*, setting forth the charges for which the jury rendered verdicts of guilt against you, and documenting the Court's acceptance of such verdicts of guilt. A copy of the Amended Judgment is attached hereto and fully incorporated herein.

Mailed 2-9-06

In particular, the jury found you guilty of, and the court accepted the verdicts of guilt against you, for:

- Eight counts of violation of 21 U.S.C. § 841, Distribution of a Controlled Substance;
- Ten counts of violation of 18 U.S.C. § 1343, Wire Fraud;
- Fifteen counts of violation of 18 U.S.C. § 1341, Mail Fraud;
- Twenty-three counts of violation of 18 U.S.C. § 1347, Health Care Fraud;
- Two counts of Health Care Fraud resulting in death, in violation of 18 U.S.C. § 1347.

Your pleas of guilty or the judicial findings of guilt as alleged in paragraph (1) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony,” as that clause is used in Section 4731.22(B)(9), Ohio Revised Code, to wit: 21 U.S.C. § 841; 18 U.S.C. § 1343; 18 U.S.C. § 1341; and 18 U.S.C. § 1347.

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

Immediate Suspension
Jorge Arturo Martinez, M.D.
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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 # 7003 0500 0002 4330 3723
RETURN RECEIPT REQUESTED

Duplicate: Jorge Arturo Martinez, M.D.
Marshal Registration Number 39798-060
Lake County Jail
104 East Erie Street
Painesville, Ohio 44077

BY PERSONAL SERVICE

cc: Larry Zukerman, Esq.
Attorney for Jorge Arturo Martinez, M.D.
Zukerman, Daiker & Lear Co., L.P.A.
2000 E. 9th Street
Suite 700
Cleveland, OH 44115

CERTIFIED MAIL # 7003 0500 0002 4330 3716
RETURN RECEIPT REQUESTED