

TERMINATION NO. 10  
BY: mk

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

MARK R. ROSENBERG, M.D., ] CASE NO. 06CVF12-16324  
Appellant, ] JUDGE BENDER  
vs. ]  
STATE MEDICAL BOARD OF OHIO, ]  
Appellee. ]

**FINAL APPEALABLE ORDER**

DECISION AND ENTRY DENYING "APPELLANT'S MOTION FOR ADMISSION OF NEWLY DISCOVERED EVIDENCE," FILED FEBRUARY 20, 2007

DECISION AND ENTRY ON MERITS OF REVISED CODE 119.12 ADMINISTRATIVE APPEAL, AFFIRMING ORDER ISSUED DECEMBER 1, 2006 BY STATE MEDICAL BOARD OF OHIO

Rendered this 29<sup>th</sup> day of NOV. 2007.

BENDER, J.

This case is a Revised Code 119.12 administrative appeal, by Mark R. Rosenberg, M.D. (Appellant), from an Order that the State Medical Board of Ohio issued on December 1, 2006, permanently revoking Appellant's medical license, staying the revocation, and suspending the license for a minimum of one year, with conditions for reinstatement. The record that the Medical Board has certified to the Court reflects the following facts, which are not disputed.

In 1987, Appellant graduated from the Duke University School of Medicine, in Durham, North Carolina, with a medical degree as well as a doctoral degree in cell and cancer biology. Appellant entered a residency program in psychiatry at Washington

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University School of Medicine, in St. Louis, Missouri, and he completed his residency program in psychiatry at the Duke University School of Medicine.

In 1992, the State Medical Board of Ohio issued a certificate to Appellant to practice medicine and surgery in Ohio. That same year, he received a license to practice medicine in Kentucky. Appellant is also licensed to practice medicine in Maryland, Missouri, and North Carolina. He is board-certified in psychiatry.

In 1992, Appellant formed a professional service corporation (PSC) in Kentucky, Neuropsychiatric and Counseling, P.S.C. (NCPCS), where he began practicing psychiatry as a solo practitioner. Appellant's solo practice eventually grew to encompass five offices in the greater Cincinnati, Ohio area, and employed as many as seventy people, including other psychiatrists and counselors who offered psychiatric and counseling services.

In 1998 and 1999, while Appellant was practicing psychiatry with NCPCS in Kentucky, he was a member of the management committee that was charged with the oversight of all of the corporation's activities. In 1998 and 1999, the corporation used a computer system to keep track of all the physicians in the practice, the patients who were seen by each physician, the date each patient was seen, and each patient's health insurance carrier. Two federal government health insurance programs, CHAMPUS and Tri-Health, were among the carriers who provided coverage to those patients.

In order for a patient's visit with a specific physician to be properly billed and paid for by a health insurance carrier, the treating physician had to be empanelled by the patient's carrier. The empanelling process allowed the carrier to investigate a physician who applied for billing privileges, to assure the carrier that the physician was properly

educated and licensed for the type of billing privileges being sought. If the treating physician were not empanelled by the patient's carrier, the carrier would not pay for the patient's visit.

At some point during Appellant's tenure on the corporation's management committee, the computer program was changed to route a treating physician's billings through another physician who was empanelled by a patient's health insurance carrier, if the treating physician was not empanelled by the carrier. This scheme insured that the patient's carrier would pay the treating physician's bill, even though the treating physician was not empanelled by the carrier.

At some point during Appellant's tenure on the corporation's management committee, he became aware that billings by other physicians in the practice, who were not empanelled by a patient's health insurance carrier or government program, were being billed under Appellant's name and the names of other physicians who were so empanelled. As a result of this scheme, federal insurance programs, including CHAMPUS and Tri-Health, paid \$209,435.78 to the corporation, which would not otherwise have been paid.

Appellant himself received \$159.28 pursuant to the scheme, and the corporation received \$209,435.78 pursuant to the scheme. Appellant knew that he and the corporation were not entitled to those payments. Appellant knowingly converted \$159.28 in federal funds to his own use.

In 1999, Appellant left the practice at NCPCS to work in Tennessee, but he remained the corporation's sole shareholder, and the practice continued to operate.

In January 2000, NCPSC ceased to operate, shortly after the FBI began an investigation into the practice.

On July 30, 2004, as a result of the FBI investigation, the U.S. Attorney filed an information in the U.S. District Court for the Eastern District of Kentucky, charging Appellant with two misdemeanor counts of receiving stolen property, specifically money, in violation of Section 641, Title 18, U.S. Code. The U.S. Attorney alleged in the information that, on June 2, 1998 and August 21, 1998, Appellant knowingly received \$159.28 in stolen money from the United States, with the intent to convert the money to his own use.

On August 24, 2004, as a result of the FBI investigation, the U.S. Attorney filed an additional information in the U.S. District Court for the Eastern District of Kentucky, charging NCPSC, the corporation, with one felony count of receiving stolen property, specifically money, in violation of Section 641, Title 18, U.S. Code. The U.S. Attorney alleged in the information that, from January 1998 through December 1999, the corporation willfully and knowingly received \$209,435.78 in stolen money from the United States, with the intent to convert the money to its own use.

On November 30, 2004, in the U.S. District Court for the Eastern District of Kentucky, Appellant pled guilty to both of the misdemeanor counts of receiving stolen property, for personally converting \$159.28 to his own use. As the corporation's sole shareholder, Appellant also pled guilty, on behalf of the corporation, to the felony count of receiving stolen property, for converting \$209,435.78 to the corporation's use.

Appellant was sentenced to two years of probation and the corporation was sentenced to one year of probation. Appellant was ordered to pay restitution to the

United States, on behalf of the corporation, in the amount of \$209,435.78, with \$55,000 of that amount being paid at the time of the guilty pleas. Appellant was ordered to pay the balance of \$154,435.78 as a condition of his two-year probation.

On March 9, 2006, the State Medical Board of Ohio mailed a notice-of-opportunity letter to Appellant, advising him that the Board proposed to take disciplinary action against his medical license, for one or more of the following reasons:

On or about December 1, 2004, in the United States District Court, Eastern District of Kentucky, Covington, in Case No. 04-49-WOB, you tendered a Plea Agreement in which you pleaded guilty to two misdemeanor counts that you did willfully and knowingly receive and retain stolen property, in violation of 18 U.S.C. § 641.

Further, you acknowledged in the Plea Agreement in Case No. 04-49-WOB, that in Case No. 04-55-WOB, Neuropsychiatric and Counseling, P.S.C., where you were a member of the management committee charged with oversight of all activities of the practice, had received payments to the practice by federal insurance programs. You acknowledged that you became aware that billings by other physicians in the practice, who were not empanelled with a specific insurance carrier or government program, were billed under your name and that of other empanelled physicians, resulting in \$209,435.78 in payments to the practice by federal insurance programs that would not otherwise have been paid.

Further, you agreed to pay restitution on behalf of Neuropsychiatric and Counseling, P.S.C., in the amount of \$209,435.78, and to obtain and file the appropriate corporate resolution directing you to enter a plea of guilty on behalf of that entity in Case No. 04-55-WOB. At the time of the entry of your guilty pleas in Case No. 04-49-WOB, you further agreed to enter a guilty plea on behalf of Neuropsychiatric and Counseling, P.S.C., in Case No. 04-55-WOB.

On or about December 1, 2004, in Case No. 04-49-WOB, you were found guilty of the above two misdemeanors, sentenced to probation for a term of two years, and ordered to pay criminal monetary penalties including restitution, jointly and severally with Neuropsychiatric and Counseling, P.S.C., Case No. 04-55-WOB, in the amount of \$209,435.78. Copies of the Information, Plea Agreement and Judgment in a Criminal Case in Case No. 04-49-WOB, as well as the Information and Judgment in a Criminal Case

in Case No. 04-55-WOB, are attached hereto and incorporated herein.

Pursuant to Rule 4731-13-24, Ohio Administrative Code, a certified copy of a plea of guilty to, or 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.

Your plea of guilty or the judicial finding of guilt as alleged \*\*\* 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 misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.

On April 1, 2006, Appellant's Ohio medical license lapsed due to non-renewal. He has not applied for its renewal. However, pursuant to R.C. 4731.22(M)(3), Appellant's failure to renew his license did not remove or limit the Medical Board's jurisdiction to take disciplinary action against him.

On September 18, 2006, at Appellant's request, a Medical Board Hearing Examiner conducted a hearing on the Board's charges against Appellant. Appellant testified and presented the testimony of an additional witness. Numerous exhibits were admitted into evidence. The evidence presented at the hearing is summarized above in the recitation of the undisputed facts.

On October 13, 2006, the Hearing Examiner filed a Report and Recommendation, recommending that Appellant's medical license be suspended for an indefinite period, with conditions for reinstatement. Appellant filed objections to the Report and Recommendation.

On November 8, 2006, the Medical Board met to consider Appellant's case. Appellant, his attorney, and the Assistant Attorney General addressed the Board. On November 8, 2006, the Board entered an Order permanently revoking Appellant's

medical license, staying the revocation, and suspending Appellant's license for a minimum of one year, with conditions for reinstatement. On December 1, 2006, the Board mailed a copy of its Order to Appellant.

On December 13, 2006, Appellant timely appealed the Medical Board's Order to this Court, pursuant to R.C. 119.12. On January 11, 2007, the Court denied Appellant's motion to suspend the execution of the Board's Order pending this appeal.

Before the Court may address the merits of this appeal, the Court must rule on "Appellant's Motion for Admission of Newly Discovered Evidence," filed February 20, 2007. Appellant has moved the Court to admit into evidence a three-page exhibit that Appellant contends is newly discovered and which, through the exercise of reasonable diligence, could not have been produced for the hearing before the Medical Board Hearing Examiner on September 18, 2006. The Board has opposed Appellant's motion. For the following reasons, Appellant's motion must be denied.

Revised Code 119.12 provides in pertinent part:

Unless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that such additional evidence is *newly discovered* and could not with reasonable diligence have been ascertained prior to the hearing before the agency. (Emphasis added.)

The Tenth District Court of Appeals has held that "newly discovered" evidence is evidence that was in existence at the time of the administrative hearing. *Golden Christian Academy v. Zelman* (2001), 144 Ohio App. 3d 513, 517. "Newly discovered" evidence does not refer to newly created evidence. *Id.*

The exhibit that Appellant has proffered as “newly discovered” evidence is an “Adverse Action Report,” No. 5500000044440540, from the National Practitioner Data Base (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB). This exhibit shows that, on December 19, 2006, the State Medical Board of Ohio reported to the NPDB-HIPDB that Appellant’s medical license had been sanctioned based upon Appellant’s having been found guilty of two federal misdemeanor counts of receiving stolen property related to improper billing, and based upon Appellant’s former business having been found guilty of one federal felony count of receiving stolen property. Appellant has proffered this exhibit to demonstrate to the Court that the Board sanctioned Appellant not only because of his misdemeanor convictions, but also because of the corporation’s felony conviction.

However, because the proffered exhibit was not in existence at the time of the administrative hearing on September 18, 2006, the Court is not permitted to admit it into evidence pursuant to R.C. 119.12. As stated above, “newly discovered” evidence refers to evidence that was in existence at the time of the administrative hearing but which was incapable of discovery by due diligence; “newly discovered” evidence does not refer to newly created evidence, such as Appellant’s proffered exhibit.

In addition, the Medical Board has presented the Court with a more recent “Adverse Action Report,” No. 5500000045215862, from the NPDB–HIPDB. This document shows that, on February 26, 2007, the Board reported to the NPDB-HIPDB that Appellant’s medical license had been sanctioned based solely upon Appellant’s having been found guilty of two federal misdemeanor counts of knowingly receiving stolen property with the intent to convert the money to his own use. In a cover letter

from the NPDB–HIPDB to the Board, the NPDB–HIPDB stated, “Please disregard and destroy the previous report and any copies of it, and replace it with the enclosed, current version.”

Accordingly, “Appellant’s Motion for Admission of Newly Discovered Evidence,” filed February 20, 2007, is hereby **DENIED**.

Turning, then, to the merits of this R.C. 119.12 appeal, the Court observes that, in such an appeal, a trial court reviews a Medical Board order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with law. *Lonergan v. State Med. Bd.*, Franklin App. No. 06AP-800, 2006-Ohio-6790, at ¶7; *Slingluff v. State Med. Bd.*, Franklin App. No. 05AP-918, 2006-Ohio-3614, at ¶7. In *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St. 3d 570, 571, the Supreme Court of Ohio held:

The evidence required by R.C. 119.12 can be defined 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. \*\*\*

Revised Code 4731.22(B)(11) provides:

§ 4731.22. Grounds for discipline \*\*\*

\*\*\*

(B) The board \*\*\* shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, \*\*\* or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

\*\*\*

(11) A plea of guilty to [or] a judicial finding of guilt of \*\*\* a misdemeanor committed in the course of practice[.]

It is undisputed that Appellant pled guilty to and was found guilty of two misdemeanors committed in the course of his practice. The record therefore contains reliable, probative, and substantial evidence that Appellant engaged in conduct that constitutes grounds for discipline pursuant to R.C. 4731.22(B)(11). Pursuant to R.C. 4731.22(B), the Medical Board was authorized to revoke Appellant's medical license or impose a lesser sanction. The Board's November 8, 2006, Order is therefore supported by reliable, probative, and substantial evidence and is in accordance with law.

Appellant contends, however, that the Medical Board violated his due process rights, by attributing the corporation's felony conviction to Appellant, without having notified Appellant that the corporation's "misdeed," as he characterizes it, would be used against him. For the following reasons, Appellant's contention is without merit.

Due process rights guaranteed by the United States and Ohio Constitutions apply in administrative proceedings. *Lonergan, supra*, at ¶9. To comply with due process in an administrative proceeding, involving the potential revocation of an individual's license to practice a profession, notice and a hearing, that is, an opportunity to be heard, are necessary. *Coleman v. State Med. Bd.*, Franklin App. No. 06AP-1299, 2007-Ohio-5007, at ¶17; *Lonergan, supra*. Due process requires the Medical Board to furnish a charged individual with sufficient information to enable such person to challenge adverse evidence and respond to the charges. *Dahlquist v. State Med. Bd.*, Franklin App. No. 04AP-811, 2005-Ohio-2298, at ¶15.

In the notice-of-opportunity letter, the Medical Board notified Appellant that he was being charged with having pled guilty to, or having been found guilty of, two federal

misdemeanors committed in the course of his practice, conduct that is sanctionable under R.C. 4731.22(B)(11). In the notice-of-opportunity letter, the Board also described, in detail, the criminal conduct of the corporation, the corporation's felony conviction, and Appellant's obligation to make restitution, on behalf of the corporation, in excess of \$200,000. The Board thereby notified Appellant that the corporation's conduct was potentially a factor to be considered by the Board, and Appellant therefore received sufficient information to enable him to challenge adverse evidence and respond to the charges against him.

At the hearing on September 18, 2006, Appellant was provided a full opportunity to present his defense to the Medical Board's charges against him. He testified extensively about his own conduct and the conduct of the corporation. Appellant's assertion, in this appeal, that he was "denied a chance to defend against the (unspoken) charge" is simply not supported by the record. In the proceedings before the Board, Appellant received the requisite notice and an opportunity to be heard. The Board did not, therefore, violate Appellant's due process rights.

In this appeal, and in the proceedings before the Medical Board, Appellant has minimized the gravity of his conduct, focusing exclusively on his conversion of \$159.28 in stolen funds, and ignoring the fact that he was the sole shareholder of a corporation that fraudulently billed the United States government for hundreds of thousands of dollars. Disregarding, for the moment, the criminal conduct of the corporation, the fact remains that Appellant pled guilty to two misdemeanors committed in the course of his practice. That fact, standing alone, gives the Board the authority to revoke Appellant's medical license. R.C. 4731.22(B)(11). Where, as here, an administrative agency has

the authority to impose the penalty it has chosen, a common pleas court is without authority to modify the penalty on the basis that it is excessive or an abuse of discretion. *Henry's Cafe, Inc. v. Bd. of Liquor Control* (1959), 170 Ohio St. 233, paragraph three of the syllabus.

Upon consideration of the entire record on appeal, the Court finds that the Order that the State Medical Board of Ohio issued on December 1, 2006, permanently revoking Appellant's certificate to practice medicine and surgery in Ohio, staying the revocation, and suspending the certificate for a minimum of one year, with conditions for reinstatement, is supported by reliable, probative, and substantial evidence and is in accordance with law. The Order is therefore **AFFIRMED**.

  
\_\_\_\_\_  
JUDGE JOHN F. BENDER

Copies mailed to:

KEVIN P. BYERS, ESQ. (0040253), Counsel for Appellant, 107 S. High St., Ste. 400, Columbus, OH 43215-3456

DAMION M. CLIFFORD, AAG (0077777), Counsel for Appellee, 30 E. Broad St., Fl. 26, Columbus, OH 43215-3428

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

HEALTH & HUMAN  
JAN 16 2007  
SERVICE SECTION

Mark R. Rosenberg, M.D.,  
:  
Appellant,  
:  
v.  
:  
State Medical Board of Ohio,  
:  
Appellee.

Case No. 06CVF-12-16324  
Judge John F. Bender

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
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CLERK OF COURTS

**DECISION AND ENTRY**  
**DENYING APPELLANT'S MOTION FOR SUSPENSION OF AGENCY ORDER**  
**Filed December 13, 2006.**

RENDERED THIS \_\_\_\_ DAY OF JANUARY 2007

BENDER, J.

On December 1, 2006, appellee the State Medical Board of Ohio mailed an order permanently revoking appellant's license to practice medicine and surgery in Ohio. The board also stayed that revocation and instead suspended his license indefinitely with a one-year minimum, and set certain conditions that appellant must meet before his license can be reinstated.

Appellant formed a professional corporation in 1992 in connection with his solo practice of medicine. The practice grew to the point where it had five offices and approximately 70 employees. Appellant did not actively work in the practice after March 1999, but at all times he remained the professional corporation's sole shareholder. The professional corporation ceased to operate in January 2000, shortly after an FBI investigation began.

In 2004, as a result of the FBI's investigation, two criminal cases were filed in federal court. In one case, appellant pled guilty to two misdemeanor counts of receiving stolen property for personally converting \$159.28 to his own use. In the other case, the FBI's investigation determined that during the time appellant was the professional corporation's sole shareholder and also a member of its management committee, the professional corporation's billing program was deliberately manipulated so that it (and ultimately, its sole shareholder) would be paid at least \$209,435.78 in federal funds for services that were rendered by physicians who were not authorized to provide the invoiced-for care. Appellant, as the professional corporation's sole shareholder, pled guilty on its behalf to one count of receiving stolen property and agreed to make restitution in the amount of \$209,435.78.

Appellee has the authority to revoke or limit a license holder's authority to practice medicine if a license holder pleads guilty to (or is found guilty of, or is judicially found to be eligible for intervention in lieu of conviction for) a misdemeanor committed in the course of practice. R.C. 4731.22(B)(11). As a result of appellant's pleas in federal court, appellee suspended the appellant's medical license, an order from which this appeal ensues.

A notice of appeal from an administrative agency's order does not automatically suspend its enforcement. Generally in an administrative appeal, the court may suspend the agency's order only if it appears that an "unusual hardship to the appellant" will result if the order is enforced while the appeal is pursued. In order to stay enforcement of an order of the state medical board, the appellee herein, the court must also find that the public's health, safety, and welfare will not be threatened if the order is not enforced

while the appeal is being pursued, in addition to the standard "unusual hardship" requirement. R.C. 119.12.

When asked to stay an order of an administrative agency, courts give significant weight to the administrative agency's expertise, and to the General Assembly's public policy determination to place these decisions with boards or commissions composed of people who have knowledge and experience in that particular field. *Bob Krihwan Pontiac-GMC Truck, Inc. v. General Motors Corporation* (10<sup>th</sup> Dist. 2001), 141 Ohio App.3d 777, 782 (citation omitted); see, also, *Borromeo v. State Medical Board* (June 1, 2000), Franklin App. No. 99AP-1219, citing *Pons v. Ohio State Medical Board* (1993), 66 Ohio St.3d 621. To determine whether it is appropriate to stay an administrative agency's order pending appeal, courts consider (1) whether the appellant has shown a strong or substantial likelihood of success on the merits, (2) whether appellant has shown that it will suffer irreparable injury, (3) whether issuing a stay will harm others, and (4) whether granting a stay would serve the public interest. *Krihwan*, at 783.

Appellant entered guilty pleas to criminal offenses that were committed in the course of his practice, which in turn authorizes appellee to suspend or revoke appellant's medical license. R.C. 4731.22(B)(11). In that light, appellant has not shown a strong likelihood of success on the merits.

Appellant holds active medical licenses in three other states, is not currently practicing medicine in Ohio and now works as a healthcare consultant. Additionally, as appellant voluntarily let his Ohio medical license lapse, there is no evidence that an active Ohio medical license is even necessary for the consulting that appellant performs. Therefore, appellant's claim that he will suffer irreparable injury to his

consulting business if a stay is not granted is unsubstantiated at this point, and is merely speculative.

Appellant contends his professional reputation will be irreparably harmed if the stay is not granted because appellee's disciplinary order "will be submitted to at least two federal repositories of adverse health care licensing actions, \* \* \* " and "will also be sent to the Federation of State Medical Boards databank for dissemination" if a stay is not granted.<sup>1</sup> However, the possibility of disciplinary action against appellant's medical license clearly existed when appellant entered his guilty pleas more than two years ago. Even so, appellant determined at that time that it was still in his best interest to enter those pleas. Further, appellant's guilty pleas are already a matter of public record. Thus, the fact that appellant's professional reputation might be harmed was certainly foreseeable, and does not, without more, justify a stay.

Because appellant is not actively practicing medicine in Ohio, there is no indication that people will be harmed if a stay is granted. There is also no indication that granting a stay will serve the public interest.

In his motion requesting a stay of his license suspension, appellant attempts to minimize the gravity of his offenses, focusing entirely on his conversion of \$159.28 and ignoring the fact that he was the sole shareholder of a professional medical corporation that fraudulently billed the federal government for at least \$209,435.78. The fact that full restitution was made does not diminish the seriousness of these offenses; the law has not yet embraced the concept of "no harm, no foul."

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<sup>1</sup> In support, appellant cites to seven unreported trial court cases and refers to them as Exhibits A through G, along with a table of authorities he refers to as Exhibit H. Unfortunately, appellant did not file copies of any of these documents with his brief, and they are not available electronically.

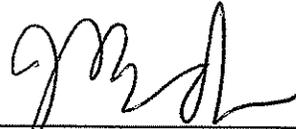
Appellee the State Medical Board "shall, to the extent permitted by law, limit, revoke, or suspend an individual's certificate to practice, \* \* \* refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate" for one or more of the following reasons, including "a plea of guilty to \* \* \* a misdemeanor committed in the course of practice." R.C. 4731.22(B)(11). Thus, even if this matter were somehow limited to appellant's receipt of \$159.28 in stolen property, he has entered a plea of guilty to a misdemeanor committed in the course of his practice. Where, as here, an administrative agency has the authority to impose the penalty it chose, a common pleas court is without authority to modify the penalty on the basis that it is excessive or an abuse of discretion. *Henry's Café, Inc. v. Ohio Liquor Commission* (1959), 170 Ohio St. 233, paragraph three of the syllabus.

In sum, appellant has not shown either that he has a strong or substantial likelihood of success on the merits or that he will suffer irreparable injury as a direct result of the suspension of his already-lapsed Ohio medical license. Although nothing indicates that others will be harmed if a stay is issued, appellant has not shown how the public interest would be served by granting a stay.

Finally, while the hardship that a license suspension imposes upon appellant as a result of the guilty pleas he entered more than two years ago for offenses that occurred more than seven years ago may be significant, it is not "unusual" when placed in its appropriate context. Appellee's authority to suspend or revoke appellant's medical license has always been present, and it is not unusual for a professional licensing board to take some disciplinary action based upon a license holder's criminal conviction.

Accordingly, appellant's motion for a stay of the enforcement of appellee's  
December 1, 2006 order is overruled.

**SO ORDERED.**



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John F. Bender, Judge

Copies to:

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107 South High Street, Suite 400  
Columbus, Ohio 43215  
Counsel for Appellant

Damion M. Clifford, Esq.  
Assistant Attorney General  
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Columbus, Ohio 43215-3428  
Counsel for Defendant

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

2007 JAN -4 P 1: 26

Mark R. Rosenberg, MD,  
17782 Hornbean Drive  
Wildwood, Missouri 63005  
Appellant,

\*

CASE NO. 06CVF 12 16324

v.

\*

State Medical Board of Ohio,  
77 South High St., 17th Floor  
Columbus, Ohio 43266-0315  
Appellee.

JUDGE \_\_\_\_\_

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Appeal from the State Medical Board of Ohio

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APPELLANT'S NOTICE OF APPEAL

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Pursuant to RC §119.12, notice is hereby given that Appellant, Mark R. Rosenberg, MD, appeals the order of the State Medical Board dated November 8, 2006, and mailed December 1, 2006, (copy attached as *Exhibit A.*) The Medical Board order is not supported by the necessary quantum of reliable, probative and substantial evidence nor is it in accordance with law.

Respectfully submitted,

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

*KBYERS*

Kevin P. Byers 0040253  
The 107 Building  
107 South High Street, Suite 400  
Columbus, Ohio 43215-3456  
614.228.6283 Fax 228.6425

Attorney for Mark R. Rosenberg, MD

Certificate of Service

I certify that the original of the foregoing document was hand-filed this 13th day of December, 2006, at the State Medical Board, 77 South High Street, 17th Floor, Columbus, Ohio 43215-0315 with a copy filed this same date in the Court of Common Pleas of Franklin County in accord with RC §119.12 and Ohio caselaw<sup>1</sup>, with a courtesy copy hand-delivered to Assistant Attorney General Damion M. Clifford, Health & Human Services Section, 30 East Broad Street, 26<sup>th</sup> Floor, Columbus, Ohio 43215-3426.

KPBYERS

Kevin P. Byers

STATE MEDICAL BOARD  
OF OHIO  
2007 JAN -4 P 11: 26

<sup>1</sup> Stultz v. Oh. Dept. of Admin. Sves. 10<sup>th</sup> Dist. No. 04AP-602. 2005-Ohio-200



# State Medical Board of Ohio

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

November 8, 2006

Mark Robert Rosenberg, M.D.  
17782 Hornbean Drive  
Wildwood, MO 63005

Dear Doctor Rosenberg:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 8, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order.

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 RW*

Lance A. Talmage, M.D.  
Secretary

LAT:jam  
Enclosures

CERTIFIED MAIL NO. 7003 0500 0002 4330 1699  
RETURN RECEIPT REQUESTED

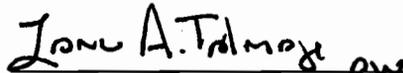
Cc: Kevin P. Byers, Esq.  
CERTIFIED MAIL NO. 7003 0500 0002 4330 1712  
RETURN RECEIPT REQUESTED

*Mailed 12-01-06*

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on November 8, 2006, including motions approving and confirming the Findings of Fact and Conclusions of the Hearing Examiner, and adopting an amended Order; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Mark Robert Rosenberg, 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)

November 8, 2006  
\_\_\_\_\_  
Date

**BEFORE THE STATE MEDICAL BOARD OF OHIO**

IN THE MATTER OF \*  
\*  
MARK ROBERT ROSENBERG, M.D. \*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on November 8, 2006.

Upon the Report and Recommendation of Gretchen L. Petrucci, 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 modification, 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:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Mark Robert Rosenberg, M.D., to practice medicine and surgery in the State of Ohio, shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Rosenberg's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Rosenberg's certificate to practice medicine and surgery until all of the following conditions have been met:
1. Application for Reinstatement or Restoration: Dr. Rosenberg shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. Certification of Compliance with any Order of the Agencies Responsible for Regulating the Practice of Medicine and Surgery in

**Kentucky, Maryland, Missouri and North Carolina:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall submit to the Board certification from the agencies responsible for regulating the practice of medicine and surgery in Kentucky, Maryland, Missouri and North Carolina (dated no earlier than 60 days prior to Dr. Rosenberg's application for reinstatement or restoration) indicating that Dr. Rosenberg has maintained full compliance with any Orders of those state agencies.

3. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide written documentation acceptable to the Board verifying that Dr. Rosenberg otherwise holds a full and unrestricted license to practice medicine and surgery in all other states in which he is licensed at the time of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.
4. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with professional 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 relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with professional 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 has learned to his practice of medicine in the future.

5. **Professional Billing Course:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with professional billing. 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 relicensure for the Continuing Medical Education period(s) in which they are required.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with professional billing, 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 has learned to his practice of medicine in the future.

6. **Office Management Course:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with office management. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval by the Board or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with office management, 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 has learned to his practice of medicine in the future.

7. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Rosenberg has not engaged in the active practice of medicine and surgery for a period in excess of two year prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

C. **PROBATION:** Upon reinstatement or restoration, Dr. Rosenberg's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:

1. **Obey the Law:** Dr. Rosenberg shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
2. **Declarations of Compliance:** Dr. Rosenberg 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 Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month

following the month in which Dr. Rosenberg's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.

3. **Personal Appearances:** Dr. Rosenberg shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which his certificate is restored or reinstated, or as otherwise directed by the Board. Dr. Rosenberg shall also appear upon his request for termination of the probationary period, and/or as otherwise requested by the Board.
  4. **Notification of Action Taken by Another State:** Dr. Rosenberg shall notify the Board of any action taken against a certificate to practice held by Dr. Rosenberg in any other state. Moreover, Dr. Rosenberg shall provide acceptable documentation verifying the other state boards' actions.
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Rosenberg's certificate will be fully restored.
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rosenberg shall provide a copy of this Order 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. Rosenberg shall provide a copy of this Order 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. This requirement shall continue until Dr. Rosenberg receives from the Board written notification of his successful completion of probation.
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within thirty days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rosenberg shall provide a copy of this Order 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. Rosenberg shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Rosenberg shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt, unless otherwise determined by the Board. This

requirement shall continue until Dr. Rosenberg's receives from the Board written notification of his successful completion of probation.

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

(SEAL)

Handwritten signature of Lance A. Talmage in black ink, written over a horizontal line.

Lance A. Talmage, M.D.  
Secretary

November 8, 2006

Date

**REPORT AND RECOMMENDATION  
IN THE MATTER OF MARK ROBERT ROSENBERG, M.D.**

2006 OCT 13 P 12: 18

The Matter of Mark Robert Rosenberg, M.D., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on September 18, 2006.

**INTRODUCTION**

I. Basis for Hearing

- A. By letter dated March 8, 2006, the State Medical Board of Ohio [Board] notified Mark Robert Rosenberg, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in Ohio. The Board based its proposed action on an allegation that Dr. Rosenberg had been found guilty of two misdemeanor counts relating to receiving and retaining stolen property and that he (on behalf of Neuropsychiatric and Counseling P.S.C.) had pled guilty to one felony count relating to receiving stolen property, both in violation of 18 United States Code Section 641.

The Board alleged that Dr. Rosenberg's conviction constituted "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 misdemeanor committed in the course of practice," as used in Section 4731.22(B)(11), Ohio Revised Code. Accordingly, the Board advised Dr. Rosenberg of his right to request a hearing in this matter. (State's Exhibit 1A)

- B. By letter received by the Board on April 5, 2006, Kevin P. Byers, Esq., requested a hearing on behalf of Dr. Rosenberg. (State's Exhibit 1B)

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Damion M. Clifford, Assistant Attorney General.
- B. On behalf of Dr. Rosenberg: Kevin P. Byers, Esq.

**EVIDENCE EXAMINED**

I. Testimony Heard

Mark Robert Rosenberg, M.D.  
Paul Coval, Esq.

STATE MEDICAL BOARD  
OF OHIO  
2006 OCT 13 P 12: 18

II. Exhibits Examined

A. Presented by the State

State's Exhibits 1A through 1Q: Procedural exhibits.

State's Exhibit 2: Documents maintained by the United States District Court, Eastern District of Kentucky, in *United States v. Mark Rosenberg*, Case No. 04-49-WOB, and *United States v. Neuropsychiatric and Counseling P.S.C.*, Case No. 04-55-WOB. [Note: The examiner numbered the pages of this exhibit post-hearing.]

B. Presented by the Respondent

Respondent's Exhibit A: Curriculum Vitae of Mark Robert Rosenberg, M.D.

Respondent's Exhibit B: Settlement agreement proposed by the Missouri Attorney General in *State Board of Registration for the Healing Arts v. Mark Rosenberg*.

Respondent's Exhibit C: Selected portions of the U.S. Attorney's Office criminal guidelines.

### SUMMARY OF THE EVIDENCE

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

1. Mark Robert Rosenberg, M.D., graduated in 1987 from Duke University School of Medicine in Durham, North Carolina, with a medical degree and a doctorate in cell and cancer biology. He participated in a residency in psychiatry at Washington University School of Medicine in St. Louis, Missouri, and completed his residency at Duke University School of Medicine in Durham, North Carolina. (Hearing Transcript [Tr.] at 8; Respondent's Exhibit A)
2. In 1992, the State of Kentucky issued a license to Dr. Rosenberg to practice as a physician in that state. In 1993, the State of Ohio issued a certificate to Dr. Rosenberg to practice medicine and surgery. He also holds medical licenses in Maryland, Missouri and North Carolina. Dr. Rosenberg is board-certified in psychiatry. (Tr. at 12-13; Respondent's Exhibit A)

3. In 1992, he began practicing psychiatry in the State of Kentucky by opening Neuropsychiatric and Counseling P.S.C. [NCPSC] as a solo practice. Eventually, the practice grew to five offices in the greater Cincinnati area and employed roughly 70 employees. In March 1999, Dr. Rosenberg left NCPSC to work in Tennessee. However, he remained the sole shareholder of the business and the company continued to operate. (Tr. at 9, 10, 26)
4. In January 2000, the Federal Bureau of Investigation “came in” to the offices of NCPSC and the company, thereafter, ceased operations. (Tr. at 10-11, 19)
5. In July 2004, in an Information filed in the United States District Court for the Eastern District of Kentucky, the U.S. Attorney charged Dr. Rosenberg with two misdemeanor counts of receiving stolen property (money) in violation of 18 United States Code 641. *United States v. Mark Rosenberg*, Case No. 04-49-WOB [*U.S. v. Rosenberg*]. The U.S. Attorney alleged that, on two occasions in 1998, Dr. Rosenberg had knowingly received stolen money (totaling \$159.28) with intent to convert the money to his use. (State’s Exhibit 2 at 6-7)

In August 2004, in an Information filed in the United States District Court for the Eastern District of Kentucky, the U.S. Attorney charged NCPSC with one count of receiving stolen property (money) in violation of 18 United States Code 641. *United States v. Neuropsychiatric and Counseling P.S.C.*, Case No. 04-55-WOB [*U.S. v. NCPSC*]. The U.S. Attorney alleged that, between January 1998 and December 1999, NCPSC willfully and knowingly received stolen money (totaling \$209,435.78) with the intent to convert the money to its own use. (State’s Exhibit 2 at 15-16)

6. On December 1, 2004, a plea agreement was filed in *U.S. v. Rosenberg*. Dr. Rosenberg agreed to plead guilty to the two misdemeanor counts as charged in the information in that case. Also, Dr. Rosenberg agreed to plead guilty, on behalf of NCPSC, to the one count of the information in *U.S. v. NCPSC*. In the plea agreement, Dr. Rosenberg admitted to the following facts related to the offenses:

Dr. Rosenberg was a practicing psychiatrist with NCPSC and a member of the management committee charged with overseeing all activities of the practice. NCPSC employed other psychiatrists and counselors. NCPSC’s computer billing system was altered, during Dr. Rosenberg’s tenure on the management committee, to allow charges to be billed under the name of one of the practice’s insurance company/program-empanelled physicians,<sup>1</sup> even though another, non-empanelled physician

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<sup>1</sup>As admitted in the plea agreement, in order for a patient visit with a specific physician to be “properly billed and paid,” the physician who saw the patient had to be “empanelled” by the patient’s insurance program. The empanelling process allows the insurance company to investigate physicians for billing

had actually seen the patient. As a result, the alteration ensured payment although the actual billing physician was not empanelled by the insurance company/program. Those insurance companies/programs included two federal government health insurance programs (CHAMPUS and Tri-Health). Dr. Rosenberg became aware that non-empanelled physicians were billing under his name and that of other empanelled physicians. Payments in the amount of \$209,435.78 by federal insurance programs were made that would not otherwise have been paid. Dr. Rosenberg acknowledged receipt of the \$159.28 payments and that he and NCPSC were not entitled to them. Additionally, he acknowledged his intent to convert the \$159.28 payments to his own use and that he actually did convert the \$159.28 payments to his own use. Dr. Rosenberg admitted his guilt. On behalf of NCPSC, Dr. Rosenberg agreed to pay restitution in the amount of \$209,435.78.

(State's Exhibit 2 at 8-14)

7. On November 30, 2004, Dr. Rosenberg and NCPSC pled guilty. Dr. Rosenberg was sentenced to two years of probation.<sup>2</sup> Additionally, Dr. Rosenberg was required to pay: (a) restitution of \$209,435.78; (b) an assessment of \$50; and (c) a fine of \$1,000. NCPSC was sentenced to one year of probation (unsupervised) and required to pay an assessment of \$400 and restitution of \$209,435.78. (State's Exhibit 2, at 1-5, 17-22)
8. Dr. Rosenberg explained at the hearing in this matter that the federal charges were the result of improper billing, but that the billed services were actually rendered. Had NCPSC been able to correct the errors, Dr. Rosenberg stated, "we would have gotten, if not exactly the \$209,000, it would have been close to that number." He also testified that the billing issues largely occurred after he had left the company because "some services were billed under [his] name as opposed to the doctor who was actually delivering those services. They forgot to take [his] name out of the computer, the office manger." Dr. Rosenberg stated that he had not participated in a conscious attempt to defraud the government or receive stolen property. (Tr. at 19-20, 30)

Dr. Rosenberg was unable to state how many bills were improperly rendered. However, he explained that an average bill would be \$75 to \$80, with a new patient visit billed at roughly \$150. (Tr. at 27)

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purposes. If a physician is not empanelled by the insurance company, the insurance company would not pay the bill.

<sup>2</sup>Dr. Rosenberg was released from his probation in April 2006. (Tr. at 22)

9. Currently, Dr. Rosenberg is not providing any patient care. He testified that he has his own consulting business, providing solutions for streamlining operations and improving the quality of care for the behavioral health industry. (Tr. at 21; Respondent's Exhibit A)
10. Dr. Rosenberg noted that there have been no civil actions related to the billing incidents. An administrative hearing was held in Kentucky, but no other formal actions have yet been taken by the other states in which he is licensed. He also pointed out that he and the Missouri Board of Registration for the Healing Arts are in settlement discussions. (Tr. at 22-24, 26; Respondent's Exhibit B)
11. Dr. Rosenberg testified that his Ohio certificate to practice medicine and surgery has lapsed due to non-renewal.<sup>3</sup> He explained that he had requested the hearing in this matter because he wants the Board to understand the federal plea agreement and he would like the opportunity to renew his Ohio certificate if and when needed. (Tr. at 13, 24)
12. Paul Coval, Esq., testified on Dr. Rosenberg's behalf. Mr. Coval is an attorney with the law firm of Vorys, Sater, Seymour & Pease. He stated that he has represented dozens of health care providers in state and federal prosecutions, and has counseled providers so as to avoid legal problems. Mr. Coval opined that the federal charges against Dr. Rosenberg and NCPSC and the disposition of those charges are very unusual for several reasons. First, he believes that similar situations would typically include charges of health care fraud, but there were no allegations of fraud in this case. Second, he stated that it is not typical that the federal government would open and pursue misdemeanor charges. He concluded that the government's investigation started out as a "much more serious investigation and resolved itself...." Furthermore, Mr. Coval stated that, given the criminal guidelines that the U.S. Attorneys must follow, the misdemeanor charges against Dr. Rosenberg were likely the most serious, readily provable charges against him. As for corporate culpability under the federal statutes, Mr. Coval pointed out that corporations can be found guilty based upon the collective knowledge of several individuals, even if their individual knowledge would not amount to personal culpability. (Tr. at 35-37, 41-43; Respondent's Exhibit C)

### **FINDINGS OF FACT**

1. In July 2004, in an Information filed in the United States District Court for the Eastern District of Kentucky, the U.S. Attorney charged Mark Robert Rosenberg, M.D., with two misdemeanor counts of receiving stolen property (money) in

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<sup>3</sup>The Board's licensee database reflects that Dr. Rosenberg's Ohio certificate lapsed on April 1, 2006, which is after this proceeding began. See, <https://license.ohio.gov/Lookup/SearchDetail.asp?ContactIdnt=3020450&DivisionIdnt=78&Type=L>

violation of 18 United States Code 641. *United States v. Mark Rosenberg*, Case No. 04-49-WOB. The U.S. Attorney alleged that, on two occasions in 1998, Dr. Rosenberg had knowingly received stolen money (totaling \$159.28) with intent to convert the money to his use.

2. In August 2004, in an Information filed in the United States District Court for the Eastern District of Kentucky, the U.S. Attorney charged Neuropsychiatric and Counseling P.S.C. with one felony count of receiving stolen property (money) in violation of 18 United States Code 641. *United States v. Neuropsychiatric and Counseling P.S.C.*, Case No. 04-55-WOB. The U.S. Attorney alleged that, between January 1998 and December 1999, NCPSC willfully and knowingly received stolen money (totaling \$209,435.78) with the intent to convert the money to its own use. The basis of the allegations in both cases was that non-empanelled physicians at NCPSC billed for services under certain empanelled physicians' names (including Dr. Rosenberg's name) and received payment for services that would not otherwise have been paid. In November 2004, Dr. Rosenberg personally pled guilty of two misdemeanor counts of receiving stolen property in violation of 18 United States Code Section 641. He also pled guilty, on behalf of NCPSC, to one felony count of receiving stolen property in violation of 18 United States Code Section 641.
3. In November 2004, the United States District Court found Dr. Rosenberg and NCPSC guilty and imposed sentences against them. Dr. Rosenberg was found guilty of two misdemeanors, sentenced to probation for a term of two years, and ordered to pay criminal monetary penalties including restitution, jointly and severally with NCPSC, in the amount of \$209,435.78.

### CONCLUSIONS OF LAW

1. The plea of guilty of Mark Robert Rosenberg, M.D., as set forth in the Findings of Fact, constitutes a "plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice" as used in Section 4731.22(B)(11), Ohio Revised Code. The State has met its burden of establishing a legal basis for taking action against the Ohio certificate issued by the Board to Dr. Rosenberg, pursuant to Section 4731.22(B)(11), Ohio Revised Code.
2. Section 4731.22, Ohio Revised Code, allows the Board to: limit, revoke, or suspend an individual's certificate to practice; refuse to register an individual; refuse to reinstate a certificate; reprimand; or place the holder of a certificate on probation. At the time of the underlying events and at the time the Board initiated this disciplinary proceeding, Dr. Rosenberg held a certificate to practice medicine and surgery in Ohio. Although that certificate has since lapsed, the Board retains authority to take action pursuant to Section 4731.22(M)(3), Ohio Revised Code.

Moreover, Dr. Rosenberg does not challenge the Board's authority to take disciplinary action.

\* \* \* \* \*

Dr. Rosenberg's misdemeanors occurred in the course of his practice of medicine. Although Dr. Rosenberg stated that the billings were simply administrative error for which corrections would have nevertheless resulted in full (or near full) payment of the services rendered, there is nothing in the record to support that claim. Although the dollar value associated with the crimes against Dr. Rosenberg personally was minimal, the erroneous billing activity at NCPSC did amount to hundreds of thousands of dollars. Additionally, the situation did not involve a few erroneous bills. Rather, it involved a large number of bills.<sup>4</sup> Moreover, the erroneous billing activity took place over a two-year period, during most of which Dr. Rosenberg was still actively employed at NCPSC and was part of its management team. Upon review of what transpired at NCPSC, Dr. Rosenberg should be disciplined by the Board.

The examiner does not agree with Dr. Rosenberg that "no further action" is warranted in this situation. Moreover, the examiner is convinced that an indefinite suspension is warranted because: (1) Dr. Rosenberg's Ohio certificate has recently lapsed; (2) the Board is obligated under Section 4931.281(D), Ohio Revised Code, to reinstate Ohio certificates that lapsed in the prior two-year period when an applicant fulfills three minor requirements; and (3) Dr. Rosenberg does not have definite plans to practice in Ohio in the near future or otherwise. Additionally, Dr. Rosenberg should be required to take several remedial steps before his Ohio certificate to practice medicine and surgery is reinstated or restored.

### **PROPOSED ORDER**

It is hereby ORDERED, that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Mark Robert Rosenberg, M.D., to practice medicine and surgery in the State of Ohio, shall be **SUSPENDED** for an indefinite period of time.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Rosenberg's certificate to

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<sup>4</sup> If you assume all involved bills were at the highest rate identified by Dr. Rosenberg (\$150), then 1,396.2 bills would have been issued to reach \$209,435.78. If you assume all involved bills were at the lowest rate identified by Dr. Rosenberg (\$75), then 2,792.5 bills would have been issued to reach \$209,435.78.

practice medicine and surgery in Ohio until all of the following conditions have been met:

1. **Application for Reinstatement or Restoration**: Dr. Rosenberg shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
2. **Certification of Compliance with any Order of the Agencies Responsible for Regulating the Practice of Medicine and Surgery in Kentucky, Maryland, Missouri and North Carolina**: At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall submit to the Board certification from the agencies responsible for regulating the practice of medicine and surgery in Kentucky, Maryland, Missouri and North Carolina (dated no earlier than 60 days prior to Dr. Rosenberg's application for reinstatement or restoration) indicating that Dr. Rosenberg has maintained full compliance with any Orders of those state agencies.
3. **Evidence of Unrestricted Licensure in Other States**: At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide written documentation acceptable to the Board verifying that Dr. Rosenberg otherwise holds a full and unrestricted license to practice medicine and surgery in all other states in which he is licensed at the time of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.
4. **Professional Ethics Course**: At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with professional 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 relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with professional 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 has learned to his practice of medicine in the future.

5. **Professional Billing Course**: At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with

professional billing. 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 relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with professional billing, 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 has learned to his practice of medicine in the future.

6. **Office Management Course:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with office management. 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 relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with office management, 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 has learned to his practice of medicine in the future.

7. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Rosenberg has not been engaged in the active practice of medicine and surgery for a period in excess of two year prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.

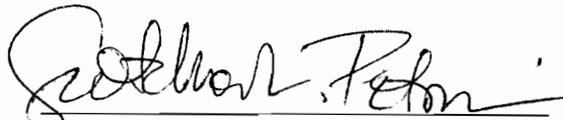
- C. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rosenberg shall provide a copy of this Order to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. Rosenberg shall provide a copy of this Order 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. This requirement shall continue until Dr. Rosenberg receives from the Board written notification of the reinstatement or restoration of his certificate to practice medicine and surgery in Ohio.

**D. REQUIRED REPORTING TO OTHER STATE LICENSING**

**AUTHORITIES:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rosenberg shall provide a copy of this Order 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. Rosenberg shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration of any professional license. Further, Dr. Rosenberg shall provide this Board with a copy of the return receipt as proof of notification within 30 days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Rosenberg receives from the Board written notification of the reinstatement or restoration of his certificate to practice medicine and surgery in Ohio.

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

  
Gretchen L. Petrucci  
Hearing Examiner



# State Medical Board of Ohio

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

## EXCERPT FROM THE DRAFT MINUTES OF NOVEMBER 8, 2006

### REPORTS AND RECOMMENDATIONS

Dr. Robbins announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing records, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Fred Andrew Brindle, M.D.; Sudheera Kalepu, M.D.; Kimberly Ann Lee, M.T.; Praveen Menon, M.D.; Charles M. Momah, M.D.; Kolli Mohan Prasad, M.D.; Mark Robert Rosenberg, M.D.; and Mary Mei-Ling Yun, M.D. A roll call was taken:

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

Dr. Robbins 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. Varyani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

Dr. Robbins 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. They may, however, participate in the matters of Dr. Menon and Dr. Kalepu, as those cases are disciplinary in nature and concern only the doctors' qualifications for licensure. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

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

.....  
MARK ROBERT ROSENBERG, M.D.

Dr. Robbins directed the Board's attention to the matter of Mark Robert Rosenberg, M.D. He advised that objections were filed to Hearing Examiner Petrucci's Report and Recommendation and were previously distributed to Board members.

Dr. Robbins continued that a request to address the Board has been timely filed on behalf of Dr. Rosenberg. Five minutes would be allowed for that address.

Dr. Rosenberg was accompanied by his attorney, Kevin P. Byers.

Mr. Byers stated that, as he and Dr. Rosenberg had the benefit of sitting and watching the Board deliberate the prior six cases, they were talking about how significant it is the way this Board works so hard to "separate the wheat from the chaff". He stated that in the fourteen years he's been representing physicians, he's dealt with 35 other State Medical Boards, and this Board has the reputation of doing this kind of work.

Mr. Byers stated that he hopes that the Board members have looked at the objections and the totality of this record, and as part of that "separating wheat from chaff," realizes that there are many grains of wheat in this case and a little bit of chaff that could be taken out of context and given more weight than it should be given. That chaff, obviously, is the restitution that Dr. Rosenberg paid for the corporate and the joint and several liability imposed. It was the corporate defendant that was convicted of a felony. Dr. Rosenberg is not sitting here as a felon. He's sitting here having admitted to \$159.28 of money he shouldn't have received because of two misbillings. The record is clear about the chronology, and Dr. Rosenberg should touch on that a bit once he speaks to the Board. Mr. Byers stated that he needs to make it clear to the Board that Dr. Rosenberg is not here on a health care fraud case. He's not even here having been convicted of theft. He admitted culpability in criminal court for receiving stolen property. As ironic as it is, this record shows no one ever took the property, but it was two receiving stolen property convictions that bring Dr. Rosenberg here.

Mr. Byers stated that other significant factors that are grains of wheat that distinguish Dr. Rosenberg from other physicians who have had the misfortune to have some kind of billing issues brought before this Board are that he was not pursued civilly by the Government, by the Office of the Inspector General, which typically the Board is familiar with the treble damages division. Mr. Byers stated that Dr. Rosenberg has not been excluded by any provider, even the ones who were involved in this misbilling. The government didn't use the extrapolated figure against him. Mr. Byers stated that Dr. Rosenberg's criminal culpability was clearly set at two charges totaling \$159.28. The government did not choose to criminally pursue Dr. Rosenberg for the corporate misdeeds. Mr. Byers stated that he is concerned that the Report and Recommendation, as it is on the table, blurs the line between the corporate entity, which is a person under law, and this person, sitting here breathing, who will now address the Board.

Dr. Rosenberg thanked the Board for taking the time to meet with him. Dr. Rosenberg stated that he can't apologize enough about the \$159.00 error in billing that he made. That's something that will follow him the rest of his life, and it's pretty horrible. Dr. Rosenberg stated that he was the president of the corporation, but it was a large corporation. It wasn't him, by himself, with one employee. They had 70 employees. There were five physicians. About a year after he left the corporation – he wasn't actively practicing anymore, but he was still a shareholder – the government came in and did an extensive investigation. They heard nothing for years and years. He stated that he and his attorneys spent a lot of time looking through everything, and they really felt that the corporation did everything right. They thought they were clear. Four years after the fact, they came to his attorney and offered the plea of a \$159 misdemeanor, basically. Dr. Rosenberg struggled with it because he knew, as little as that dollar amount is, he's admitting to having stolen property, whether it's a penny or \$159. Through his discussions with his attorneys and with his family, he chose to accept the plea. One of the big reasons is that he would spend way more money defending that \$159 than the restitution, potentially even double that amount. Obviously, he didn't have that money and he doesn't have it now.

Dr. Rosenberg stated that they also spent a little bit of time talking about Board implications, and understanding that he just never thought it was going to springboard into what's happening currently. Dr. Rosenberg stated that he appreciates the Board's obligation to look into this matter on his status, and just because of the process of going through this, a permanent record is being made. The public has, obviously, been put on notice about his wrongdoing.

Dr. Rosenberg asked that the Board have a fair and proportionate outcome. He stated that he will answer any questions the Board members may have.

Dr. Robbins asked whether the Assistant Attorney General wished to respond.

Mr. Clifford stated that he keeps hearing this dollar amount coming up, the \$159.00, and the other dollar amount, which is what the corporation paid. He stated that, honestly, Mr. Byers is a little bit right in the fact that the dollar amounts don't matter. Mr. Clifford stated that the Board should look at what actually occurred. Dr. Rosenberg committed two misdemeanor convictions in the course of practice. That is the focus. Dr. Rosenberg admitted to knowingly receiving stolen property with the intent to convert the money

for his own use. Mr. Clifford stated that, to him, the characterization that this was simply a billing error is insulting. He added that he thinks that the Hearing Examiner's recommendation is a gift, considering that the Board's Disciplinary Guidelines lists a minimum penalty of a stayed revocation, indefinite suspension for a minimum of one year, with five years' probation for a misdemeanor in the course of practice. The Hearing Examiner recommended an indefinite suspension. Mr. Clifford stated that he doesn't think that there should be anything saying that the Proposed Order is disproportionate or that consideration was incorrectly given to the amount that the corporation paid. He would agree that that is not relevant. The relevant portion is two guilty pleas in the course of practice. That's the proper focus. The \$159 should be immaterial. What is relevant is what Dr. Rosenberg was convicted of, i.e., two counts of receiving stolen property in the course of practice. Mr. Clifford stated that, therefore, the appropriate remedy is, at a minimum, what the Hearing Examiner proposed and, in fact, that may be below the Disciplinary Guidelines.

**DR. MADIA MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER IN THE MATTER OF MARK ROBERT ROSENBERG, M.D. DR. STEINBERGH SECONDED THE MOTION.**

Dr. Robbins stated that he would now entertain discussion in the above matter.

Dr. Egner stated that she looked at this case differently from the way it was presented today. She looks at Dr. Rosenberg, who is a graduate of Duke Medical School's M.D./Ph.D. program, a board-certified psychiatrist. Dr. Rosenberg was found guilty of improper billing, stating that services were rendered by impaneled physicians when services were rendered by somebody else. She understands exactly what he did. Dr. Rosenberg was the sole shareholder in the corporation and was responsible for how they were billing. Dr. Rosenberg was the recipient of the receipts for services rendered. She commented that she does not know why he wasn't charged with fraud. She questioned it. Dr. Egner stated that Dr. Rosenberg has two misdemeanors and then one felony. She stated that she's not sure that she makes the distinction that this was a felony by the corporation and not by Dr. Rosenberg. Dr. Egner stated that she takes exception with Mr. Byers' objections, stating that he minimizes all of this down to \$159 when there is this felony out there that she doesn't ignore. Dr. Rosenberg was charging for services and receiving payment for services he did not render.

Dr. Egner stated that the other issue she has with the Proposed Order is that it's way outside the Disciplinary Guidelines. She stated that, generally speaking, when the Board goes outside the Disciplinary Guidelines, she likes to see something within the Report and Recommendation explaining the reason why the Hearing Examiner is going outside of it, giving the mitigating circumstances. She's not sure that the two paragraphs below the stars after the Conclusions of Law really tell her the reason. The minimum penalty says that Dr. Rosenberg should have a stayed revocation, a one-year suspension and five years of probation. The Proposed Order is for an indefinite suspension, no minimum time, requirements to show proof of an unrestricted license, taking courses in ethics, management and billing, and no probation. She stated that she thinks that that is way too light for what Dr. Rosenberg has done. She stated that she would like to make an amendment, but she would first like to hear what other Board members say.

Dr. Steinbergh and Dr. Varyani agreed with Dr. Egner.

Dr. Steinbergh stated that the Board has seen this before – the physician makes this decision; it's not a billing error. When a physician puts his name on a bill and sends it out, and signs it, essentially, it means that the physician has provided the service. He didn't provide the service. Not only did he not provide the services being discussed, but he had other physicians who were not appropriately credentialed by the insurance company. Those physicians were not on the insurance company's list of panel physicians, and he was billing for them as a panel physician. Dr. Steinbergh stated that she appreciates that Dr. Rosenberg pled guilty. She stated that she listened to Dr. Rosenberg's reason for pleading guilty and that's a reason the Board hears all the time. The bottom line is that she would guess that he had no defense; this is what it was. He had to plead guilty to it. Dr. Steinbergh agreed that this particular order is clearly outside the Board's guidelines. She stated that the Board could craft another Order and suggested tabling the matter. She added that she would first like to hear what other Board members have to say.

Dr. Varyani stated that when someone sits down and tells him that it's only \$159, two bills, and that he had discussions and conferences with his attorney, and he did mention today that they talked about the Board, why would someone with an M.D./Ph.D. sign two misdemeanors. This confirms what Dr. Egner just said.

Ms. Sloan also agreed with Dr. Egner, stating that she would like to see an amendment with no less than the minimum guidelines.

Dr. Egner suggested an Order that would include a stayed permanent revocation, a one-year license suspension, with the same things being asked in the other portions of the proposed order to be accomplished prior to reinstatement of his license, and a five-year probation. She stated that the probationary term doesn't need to be onerous. He would have to submit quarterly affidavits saying that he's complied with the probationary terms, and he would be required to notify people about the Board Order, and he would have to stay out of trouble for five years. That's basically all she wants to know.

Dr. Steinbergh suggested tabling the matter for preparation of an alternative order so that Board members are clear on the newly proposed order.

**DR. STEINBERGH MOVED TO TABLE THE MATTER OF MARK ROBERT ROSENBERG, M.D. MS. SLOAN SECONDED THE MOTION. A vote was taken:**

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye

Dr. Steinbergh - aye

The motion carried.

Following the Personal Appearances held later in the meeting, Dr. Robbins removed this matter from the table for further discussion.

While copies of her alternative order were being distributed, Dr. Egner again stated that she is offering this amendment because she feels that this is a case that should be within the Disciplinary Guidelines. She does not see mitigating circumstances that would make it fall outside of those Guidelines. This alternative is within the minimum amount, and she feels it is a compromise solution. What Dr. Rosenberg did was serious, and the Board needs to take it seriously.

**DR. EGNER MOVED TO AMEND THE PROPOSED ORDER IN THE MATTER OF MARK ROBERT ROSENBERG, M.D., BY SUBSTITUTING THE FOLLOWING.**

It is hereby ORDERED, that:

- A. **SUSPENSION OF CERTIFICATE:** The certificate of Mark Robert Rosenberg, M.D., to practice medicine and surgery in the State of Ohio, shall be PERMANENTLY REVOKED. Such revocation is STAYED, and Dr. Rosenberg's certificate shall be SUSPENDED for an indefinite period of time, but not less than one year.
- B. **CONDITIONS FOR REINSTATEMENT OR RESTORATION:** The Board shall not consider reinstatement or restoration of Dr. Rosenberg's certificate to practice medicine and surgery in Ohio until all of the following conditions have been met:
  1. **Application for Reinstatement or Restoration:** Dr. Rosenberg shall submit an application for reinstatement or restoration, accompanied by appropriate fees, if any.
  2. **Certification of Compliance with any Order of the Agencies Responsible for Regulating the Practice of Medicine and Surgery in Kentucky, Maryland, Missouri and North Carolina:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall submit to the Board certification from the agencies responsible for regulating the practice of medicine and surgery in Kentucky, Maryland, Missouri and North Carolina (dated no earlier than 60 days prior to Dr. Rosenberg's application for reinstatement or restoration) indicating that Dr. Rosenberg has maintained full compliance with any Orders of those state agencies.

3. **Evidence of Unrestricted Licensure in Other States:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide written documentation acceptable to the Board verifying that Dr. Rosenberg otherwise holds a full and unrestricted license to practice medicine and surgery in all other states in which he is licensed at the time of application or has been in the past licensed, or that he would be entitled to such license but for the nonpayment of renewal fees.
4. **Professional Ethics Course:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with professional 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 relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with professional 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 has learned to his practice of medicine in the future.

5. **Professional Billing Course:** At the time he submits his application for reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with professional billing. 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 relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with professional billing, 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 has learned to his practice of medicine in the future.

6. **Office Management Course:** At the time he submits his application for

reinstatement or restoration, Dr. Rosenberg shall provide acceptable documentation of successful completion of a course or courses dealing with office management. 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 relicensure for the Continuing Medical Education period(s) in which they are completed.

In addition, at the time Dr. Rosenberg submits the documentation of successful completion of the course or courses dealing with office management, 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 has learned to his practice of medicine in the future.

7. **Additional Evidence of Fitness To Resume Practice:** In the event that Dr. Rosenberg has not been engaged in the active practice of medicine and surgery for a period in excess of two year prior to application for reinstatement or restoration, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of his fitness to resume practice.
- C. **PROBATION:** Upon reinstatement or restoration, Dr. Rosenberg's certificate shall be subject to the following PROBATIONARY terms, conditions, and limitations for a period of at least five years:
1. **Obey the Law:** Dr. Rosenberg shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in the state in which he is practicing.
  2. **Declarations of Compliance:** Dr. Rosenberg 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 Order. The first quarterly declaration must be received in the Board's offices on or before the first day of the third month following the month in which Dr. Rosenberg's certificate is restored or reinstated. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
  3. **Personal Appearances:** Dr. Rosenberg shall appear in person for an interview before the full Board or its designated representative during the third month following the month in which his certificate is restored or

reinstated, or as otherwise directed by the Board. Dr. Rosenberg shall also appear upon his request for termination of the probationary period, and/or as otherwise requested by the Board.

4. **Notification of Action Taken by Another State:** Dr. Rosenberg shall notify the Board of any action taken against a certificate to practice held by Dr. Rosenberg in any other state. Moreover, Dr. Rosenberg shall provide acceptable documentation verifying the other state boards' actions.
  
- D. **TERMINATION OF PROBATION:** Upon successful completion of probation, as evidenced by a written release from the Board, Dr. Rosenberg's certificate will be fully restored.
  
- E. **REQUIRED REPORTING TO EMPLOYERS AND HOSPITALS:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rosenberg shall provide a copy of this Order 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. Rosenberg shall provide a copy of this Order 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. This requirement shall continue until Dr. Rosenberg receives from the Board written notification of his successful completion of probation.
  
- F. **REQUIRED REPORTING TO OTHER STATE LICENSING AUTHORITIES:** Within 30 days of the effective date of this Order, or as otherwise determined by the Board, Dr. Rosenberg shall provide a copy of this Order 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. Rosenberg shall also provide a copy of this Order by certified mail, return receipt requested, at the time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement or restoration or restoration of any professional license. Further, Dr. Rosenberg shall provide this Board with a copy of the return receipt as proof of notification within 30 days of receiving that return receipt, unless otherwise determined by the Board. This requirement shall continue until Dr. Rosenberg receives from the Board written notification of his successful completion of probation.

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

**DR. MADIA SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

**DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS, AND PROPOSED ORDER, AS AMENDED, IN THE MATTER OF MARK ROBERT ROSENBERG, M.D. DR. EGNER SECONDED THE MOTION.** A vote was taken:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Varyani	- aye
	Mr. Browning	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Madia	- aye
	Dr. Steinbergh	- aye
	Dr. Robbins	- aye

The motion carried.

Dr. Robbins stated that this type of situation is a slippery slope for physicians, and he suggested that an article warning physicians about it in a future newsletter would be appropriate. He stated that he would guess that there are a lot of physicians who fall into this slope, not to this extent. If the Board highlights the problem, maybe it can keep someone out of trouble.

Dr. Steinbergh stated that when a physician signs contracts for insurance companies, it's clear what they can do and what they can't do. She stated that she doesn't see that as a defense.

Dr. Robbins agreed that there is no defense.

Dr. Steinbergh indicated that she doesn't see how anyone wouldn't understand that.

Following further discussion, the Board agreed that a newsletter article would be appropriate.



# State Medical Board of Ohio

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

March 8, 2006

Mark Robert Rosenberg, M.D.  
17782 Hornbean Drive  
Wildwood, Missouri 63005

Dear Doctor Rosenberg:

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 December 1, 2004, in the United States District Court, Eastern District of Kentucky, Covington, in Case No. 04-49-WOB, you tendered a Plea Agreement in which you pleaded guilty to two misdemeanor counts that you did willfully and knowingly receive and retain stolen property, in violation of 18 U.S.C. § 641.

Further, you acknowledged in the Plea Agreement in Case No. 04-49-WOB, that in Case No. 04-55-WOB, Neuropsychiatric and Counseling, P.S.C., where you were a member of the management committee charged with oversight of all activities of the practice, had received payments to the practice by federal insurance programs. You acknowledged that you became aware that billings by other physicians in the practice, who were not empanelled with a specific insurance carrier or government program, were billed under your name and that of other empanelled physicians, resulting in \$209,435.78 in payments to the practice by federal insurance programs that would not otherwise have been paid.

Further, you agreed to pay restitution on behalf of Neuropsychiatric and Counseling, P.S.C., in the amount of \$209,435.78, and to obtain and file the appropriate corporate resolution directing you to enter a plea of guilty on behalf of that entity in Case No. 04-55-WOB. At the time of the entry of your guilty pleas in Case No. 04-49-WOB, you further agreed to enter a guilty plea on behalf of Neuropsychiatric and Counseling, P.S.C., in Case No. 04-55-WOB.

*Mailed 3-9-06*

On or about December 1, 2004, in Case No. 04-49-WOB, you were found guilty of the above two misdemeanors, sentenced to probation for a term of two years, and ordered to pay criminal monetary penalties including restitution, jointly and severally with Neuropsychiatric and Counseling, P.S.C., Case No. 04-55-WOB, in the amount of \$209,435.78. Copies of the Information, Plea Agreement and Judgment in a Criminal Case in Case No. 04-49-WOB, as well as the Information and Judgment in a Criminal Case in Case No. 04-55-WOB, are attached hereto and incorporated herein.

Pursuant to Rule 4731-13-24, Ohio Administrative Code, a certified copy of a plea of guilty to, or 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.

Your plea of guilty or the judicial finding 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 misdemeanor committed in the course of practice,” as that clause is used in Section 4731.22(B)(11), 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,

A handwritten signature in cursive script, appearing to read "Lance A. Talmage, M.D.", with a small circular mark at the end of the signature.

Lance A. Talmage, M.D.  
Secretary

LAT/blt  
Enclosures

CERTIFIED MAIL # 7003 0500 0002 4330 4119  
RETURN RECEIPT REQUESTED

Burton H. Shostak, Esq.  
Moline, Shostak & Mehan, LLC  
The Berkley Building  
8015 Forsyth Boulevard  
St. Louis, Missouri 63105

CERTIFIED MAIL #7003 0500 0002 4330 4102  
RETURN RECEIPT REQUESTED

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON

Eastern District of Kentucky  
**FILED**

JUL 30 2004

AT COVINGTON  
LESLIE G. WHITMER  
CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

INFORMATION NO. 04-49-WO.13

MARK ROSENBERG

\* \* \* \* \*

THE UNITED STATES ATTORNEY CHARGES:

COUNTS 1-2  
18 U.S.C. § 641

On or about the following dates, in the Eastern District of Kentucky,

**MARK ROSENBERG**

wilfully and knowingly did receive and retain stolen property of the United States, that is, money, in the following amounts:

COUNT	DATE	AMOUNT
1	6/2/98	\$85.26
2	8/21/98	\$74.02

all of a value of less than \$1000.00, with intent to convert said property to his own use, then knowing said property to have been stolen, all in violation of 18 U.S.C. § 641.

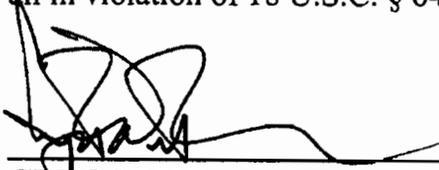
I certify that this is a true and correct copy of the original filed in my office on:

7-30-2004

LESLIE G. WHITMER, CLERK

By: Joyce Marie Jm  
Deputy Clerk

Date: 1-26-2006

  
GREGORY F. VAN TATENHOVE  
UNITED STATES ATTORNEY

**PENALTIES**

**Counts 1-2:** Not more than 1 year imprisonment, a\$100,000.00 fine and 1 year  
Supervised release

**PLUS:** Mandatory special assessment of \$25 per count

**PLUS:** Restitution, if applicable.

Eastern District of Kentucky  
**TENDERED**  
Date: 8-24-04  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON**

Eastern District of Kentucky  
**FILED**  
DEC 1 2004  
COVINGTON  
LESLIE G. WHITMER  
CLERK, U.S. DISTRICT COURT

**CRIMINAL ACTION NO. 04-49-WOB**

**UNITED STATES OF AMERICA**

**PLAINTIFF**

**V.**

**PLEA AGREEMENT**

**MARK ROSENBERG**

**DEFENDANT**

\* \* \* \* \*

1. Pursuant to Federal Rule of Criminal Procedure 11, the Defendant will enter a guilty plea to Counts 1 and 2 of the Information, charging misdemeanor violations of 18 U.S.C. § 641.

2. The essential elements are:

*18 U.S.C. § 641*

(a) Whoever steals, purloins or converts to his own use or the use of another;

(b) Any money or thing of value to the United States.

3. The United States could prove the following facts that establish the essential elements of the offense beyond a reasonable doubt and the Defendant admits these facts:

On the dates mentioned in the Information, Defendant was a physician practicing psychiatry in Boone and Kenton Counties, Kentucky. The practice with which Defendant

was associated was known as Neuropsychiatric and Counseling, P.S.C. Neuropsychiatric and Counseling, P.S.C. also employed a number of other psychiatrists and counselors offering counseling and psychiatric services. Defendant was a member of the management committee charged with oversight of all activities of the practice.

During the course of the time period set forth above, the corporation had a computer system installed to keep track of the various physicians, the patients seen by each physician, the date the patient was seen and the patients' insurance coverage which included CHAMPUS and Tri-Health, two federal government health insurance programs. In order for a patient visit with a specific physician to be properly billed and paid, the physician who saw the patient had to be empaneled by the patient's insurance program. The empaneling process allowed the insurance carrier to investigate physicians applying for billing privileges to assure themselves that the physician was properly educated and licensed for type of billing privilege(s) sought. If the physician was not empaneled by the patient's insurance carrier, the carrier would not pay the bill.

At some point during Defendant's tenure on the management committee, the computer program was changed to route physicians' billings through a physician empaneled with a specific insurance program if the physician who saw the patient was not empaneled by that specific carrier. This insured payment though the billing physician was not empaneled by the carrier. At some point during Defendant's tenure of the management committee, Defendant became aware that billings by other physicians in the

practice who were not empaneled with a specific insurance carrier or government program, were being billed under his name and that of other physicians who were empaneled. This resulted in \$209,435.78 in payments to the practice by federal insurance programs that would not otherwise have been paid.

Defendant acknowledges that he received the payments set forth in the Information knowing that he and the practice were not entitled to them. He further acknowledges that he intended to convert to his own use and converted to his own use, the payments set forth in the Information. Defendant admits that he did so knowingly and that he is pleading guilty solely because he is guilty and for no other reason.

4. The maximum statutory punishment for each count is imprisonment for not more than 1 year, a fine of not more than \$100,000.00 per count, or both, and a term of supervised release of not more than 1 year. A mandatory special assessment of \$25.00 per count applies, and the Defendant will pay this assessment to the U.S. District Court Clerk at the time of the entry of the plea.

5. The United States and the Defendant recommend the following sentencing guidelines calculations, and they may object to other calculations. This recommendation does not bind the Court.

(a) United States Sentencing Guidelines (U.S.S.G.), November 1, 1998, manual, will determine the Defendant's guideline range.

(b) Pursuant to U.S.S.G. § 2B1.1(a), the base offense level is 4 .

(c) Pursuant to U.S.S.G. § 2B1.1(b)(1)(B), increase the base offense level by 1 because the loss is greater than \$100.00 but less than \$1,000.00.

(d) Pursuant to U.S.S.G. § 2B1.1(b)(4)(A), increase the offense level by 2 levels because the instant offense involved more than minimal planning.

(e) Pursuant to U.S.S.G. § 3B1.3, increase the offense level by 2 levels for the abuse of a position of trust or use of a special skill.

(f) Pursuant to U.S.S.G. § 3E1.1, decrease the offense level by 2 levels for the Defendant's acceptance of responsibility.

(g) Pursuant to U.S.S.G. § 5E1.1, personal restitution is the cumulative dollar figure of the 2 Counts of the misdemeanor Information, and the victim is United States Treasury.

6. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4.

7. The Defendant will not file a motion for a decrease in the offense level based on a mitigating role pursuant to U.S.S.G. § 3B1.2 or a departure motion pursuant to U.S.S.G. Chapter 5, Parts H or K.

8. The Defendant waives the right to appeal and the right to attack collaterally the guilty plea, conviction, and sentence, including any order of restitution.

9. The Defendant will obtain and file the appropriate corporate resolution directing him to enter a plea of guilty on behalf of Neuropsychiatric and Counseling, P.S.C. Further, at the time of the entry of his plea in this case, Defendant will enter a guilty plea on behalf of Neuropsychiatric and Counseling, P.S.C..

10. The Defendant will pay restitution to the United States on behalf of Neuropsychiatric and Counseling, P.S.C. in the amount of \$209,435.78. The restitution shall be paid as follows: \$55,000.00 at the entry of his plea of guilty and the plea of guilty on behalf of the corporation; \$55,000.00 shall be paid at sentencing; the balance shall be paid in full during any term of probation granted by the Court. Payment shall be made in the form of a cashier's check made payable to the United States Treasury. Defendant further agrees that he is to be personally responsible for the above debt of the Corporation.

11. If the Defendant is unable to pay a personal fine, a mandatory special assessment, or restitution immediately, the Defendant will complete and sign a Form OBD-500 (Financial Statement of Debtor), or will submit to a Deposition in Aid of Collection, or both, at times and places that the United States directs.

12. If the Defendant violates any part of this Agreement, the United States may void this Agreement and seek an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.

13. This document contains the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky and the Defendant. The United States has not made any other promises to the Defendant.

14. This Agreement does not bind the United States Attorney's Offices in other districts, or any other federal, state, or local prosecuting authorities.

15. Defendant understands that he has the following rights and that he is giving up these and other rights by pleading guilty:

- right to remain silent;     - right to cross examine the government's witnesses;
- right to have a jury trial;   - right not to testify;
- right to present a defense and call witnesses in his own behalf;
- right to have his case heard by a grand jury and to proceed by indictment.

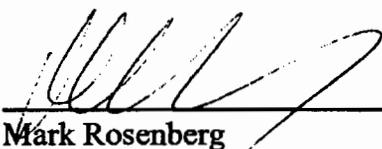
He agrees that he has read the Information and had it explained to him and understands that by signing this plea agreement and pleading guilty he is giving up these and any and all other constitutional rights which have been explained to him. By signing this agreement, defendant agrees that he is guilty.

16. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

GREGORY F. VAN TATENHOVE  
UNITED STATES ATTORNEY

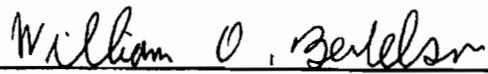
Date: 5/7/04

By:   
Fred A. Stine, V  
Assistant United States Attorney

Date:   
Mark Rosenberg  
Defendant

Date:   
Burton H. Shostak  
Attorney for Defendant

APPROVED, this 10<sup>th</sup> <sup>1st</sup> day of January <sup>10<sup>th</sup></sup>, 2004.

  
UNITED STATES DISTRICT JUDGE

I certify that this is a true  
and correct copy of the original  
filed in my office on:

12-4-2004  
LESLIE G. [unclear], CLERK  
By: Joyce Maxie gm  
Deputy Clerk

Date: 1-26-2006

UNITED STATES DISTRICT COURT Eastern District of Kentucky

EASTERN

District of

KENTUCKY

FILED

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE 056 1 2004

V.

MARK ROSENBERG

AT COVINGTON

Case Number:

2: 04-49 LESLIE G. WHITMER

CLERK U.S. DISTRICT COURT

USM Number:

09524-032

BURTON H. SHOSTAK

Amy Blosser - Court Reporter

Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) Counts 1 and 2 of Information

pleaded nolo contendere to count(s) which was accepted by the court.

was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense	Count
18USC§641	Defendant did willfully and knowingly receive and retain stolen property	6/2/98	1
		8/21/98	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 30, 2004

Date of Imposition of Judgment

I certify that this is a true and correct copy of the original filed in my office on:

12-1-2004

LESLIE C. WHITMER, CLERK

By: Joyce Maxie Jm

Deputy Clerk

Date: 1-26-2006

William O. Bertelsman

Signature of Judge

WILLIAM O. BERTELSMAN, JUDGE

Name and Title of Judge

December 1, 2004

Date

DEFENDANT: **ROSENBERG, Mark**  
CASE NUMBER: **2:04-49**

## PROBATION

The defendant is hereby sentenced to probation for a term of : **Two (2) Years**

**The defendant shall provide the probation officer with access to any requested financial information.**

**The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless he is in compliance with the installment payment schedule.**

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: **ROSENBERG, Mark**  
CASE NUMBER: **2:04-49**

**SPECIAL CONDITIONS OF SUPERVISION**

**Any unpaid restitution that remains at sentencing, shall become a condition of the defendant's probation supervision (\$154,435.78 is currently outstanding and shall be paid during his two year term of probation.) The defendant shall pay quarterly restitution payments (each year) in quarterly installment payments of \$19,000, unless the defendant becomes able to make a lump sum payment. Jointly and severally with Corporation.**

**The defendant shall pay a fine in the amount of \$500, per count, for a total amount of \$1,000. His fine payments shall be paid in monthly installments of \$50.00, unless the defendant becomes able to afford to make a lump sum payment during probation.**

*ACKNOWLEDGMENT*

*Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.*

*These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.*

(Signed) \_\_\_\_\_  
(Defendant)

\_\_\_\_\_ Date

\_\_\_\_\_ U. S. Probation Officer/Designated Witness

\_\_\_\_\_ Date

DEFENDANT: **ROSENBERG, Mark**  
CASE NUMBER: **2:04-49**

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 50.00	\$ 1,000.00	\$ 209,435.78

- The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
<b>"SEE ATTACHED SHEET"</b>			

TOTALS \$ \_\_\_\_\_ \$ 209,435.78

- Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  fine  restitution.
  - the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

<u>Victim</u>	<u>Loss</u>
TRICARE Tax ID No. 84-1357943 Audrey C. Duvall Chief Finance & Accounting 16401 East Centertech Parkway Aurora, Colorado 80011 Make check payable to: U.S. Treasury/TMA	\$19,548.00
MEDICAID MFAC Regina Grubbs 1024 Capital Center Driver Frankfort, Kentucky 40601 Make check payable to: Kentucky State Treasurer	\$94,943.89
MEDICARE P.O. Box 7520 Baltimore, Maryland 21207 Make check payable to: Medicare Trust Fund	\$94,943.89
Restitution payments made:	(-\$55,000.00)
<b>Total amount of restitution owed:</b>	<b>\$154,435.78</b>

DEFENDANT: **ROSENBERG, Mark**  
CASE NUMBER: **2:04-49**

### SCHEDULE OF PAYMENTS

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

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
- not later than \_\_\_\_\_, or  
 in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

**The defendant shall pay to the United States a special assessment of \$50, which shall be due immediately.**

**The defendant shall pay a fine in the amount of \$500, per count, for a total amount of \$1,000.**

**Criminal monetary penalties are payable to: Clerk, U.S. District Court - Eastern District of Kentucky Post Office Box 1073, Covington, Kentucky 41012-1073**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

Joint and Several **with Neuropsychiatric and Counseling, P.S.C.**

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

Eastern District of Kentucky  
**FILED**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON**

**AUG 24 2004**

AT COVINGTON  
LESLIE G. WHITNER  
CLERK U.S. DISTRICT COURT

**UNITED STATES OF AMERICA**

**V.**

**INFORMATION NO. 04-55-6003  
18 U.S.C. § 641**

**NEUROPSYCHIATRIC AND  
COUNSELING, P.S.C.**

\* \* \* \* \*

**THE UNITED STATES ATTORNEY CHARGES:**

From on or about January, 1998, through on or about December 31, 1999, in the Eastern District of Kentucky,

**NEUROPSYCHIATRIC AND  
COUNSELING, P.S.C.**

wilfully and knowingly did receive and retain stolen property of the United States, that is, money, in the amount of \$209,435.78, with intent to convert said property to its own use, then knowing said property to have been stolen, all in violation of 18 U.S.C. § 641.



**GREGORY F. VAN TATENHOVE  
UNITED STATES ATTORNEY**

I certify that this is a true and correct copy of the original filed in my office on:

8-24-2004

LESLIE G. WHITNER, CLERK

By: Joyce Maxie *JM*  
Deputy Clerk

Date: \_\_\_\_\_

**PENALTY**

**Count 1:** Not more than 10 years imprisonment, a\$500,000.00 fine or not more than twice the gross loss and 3 years supervised release

**PLUS:** Mandatory special assessment of \$100.00 per count

**PLUS:** Restitution, if applicable

# UNITED STATES DISTRICT COURT

EASTERN

District of

KENTUCKY

UNITED STATES OF AMERICA

V.

NEUROPSYCHIATRIC AND COUNSELING,  
P.S.C.

**JUDGMENT IN A CRIMINAL CASE**  
(For Organizational Defendants)

CASE NUMBER: **2: 04-55**

**BURTON H. SHOSTAK** Amy Blosser Court Reporter  
Defendant Organization's Attorney

*Eastern District of Kentucky*

**FILED**

**DEC 3 2004**

AT COVINGTON

LESLIE G. WHITNER

CLERK U.S. DISTRICT COURT

**THE DEFENDANT ORGANIZATION:**

pleaded guilty to count(s) Count 1 Of Information

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 641	Defendant wilfully and knowing did receive and retain stolen property	12/31/1999	1

The defendant organization is sentenced as provided in pages 2 through 4 of this judgment.

The defendant organization has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's  
Federal Employer I.D. No.: 611219521

November 30, 2004  
Date of Imposition of Judgment

Defendant Organization's Principal Business Address:  
\_\_\_\_\_  
N/A

William O. Bertelsman  
Signature of Judge

WILLIAM O. BERTELSMAN, JUDGE  
Name and Title of Judge

Defendant Organization's Mailing Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

December 3, 2004  
Date

I certify that this is a true and correct copy of the original filed in my office on:

12-3-2004

LESLIE G. WHITNER, CLERK  
By: Joyce Maxie  
Deputy Clerk

Date: 1-26-2006

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DEFENDANT ORGANIZATION: NEUROPSYCHIATRIC AND COUNSELING, P.S.C. Judgment—Page 2 of 4  
CASE NUMBER: 2: 04-55

### PROBATION

The defendant organization is hereby sentenced to probation for a term of :

Unsupervised probation for a term of One (1) Year

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

### STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.



**Victim**

**Loss**

TRICARE

\$19,548.00

Tax ID No. 84-1357943

Audrey C. Duvall

Chief Finance & Accounting

16401 East Centertech Parkway

Aurora, Colorado 80011

Make check payable to: U.S. Treasury/TMA

MEDICAID

\$94,943.89

MFAC

Regina Grubbs

1024 Capital Center Driver

Frankfort, Kentucky 40601

Make check payable to: Kentucky State Treasurer

MEDICARE

\$94,943.89

P.O. Box 7520

Baltimore, Maryland 21207

Make check payable to: Medicare Trust Fund

Restitution payments made:

(-\$55,000.00)

**Total amount of restitution owed:**

**\$154,435.78**

DEFENDANT ORGANIZATION: NEUROPSYCHIATRIC AND COUNSELING, P.S.C. Judgment — Page 4 of 4  
CASE NUMBER: 2: 04-55

### SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C or  D below; or
- B  Payment to begin immediately (may be combined with  C or  D below); or
- C  Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Special instructions regarding the payment of criminal monetary penalties:

The defendant corporation shall pay to the United States a special assessment of \$400, which shall be due immediately.

All criminal monetary penalties are made to the clerk of the court.

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

Joint and Several **with Mark Rosenberg**

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant organization shall pay the cost of prosecution.
- The defendant organization shall pay the following court cost(s):
- The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

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