



State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
med.ohio.gov

October 8, 2008

Carolyn Elizabeth Johnson, M.D.
750 Chene Street, Apt. 803
Detroit, MI 48207

Dear Doctor Johnson:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on October 8, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3934 3486 2812
RETURN RECEIPT REQUESTED

Duplicate Mailing: P. O. Box 7220
Detroit, MI 48207

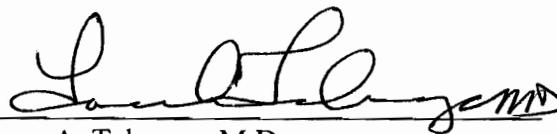
CERTIFIED MAIL NO. 91 7108 2133 3934 3486 2829
RETURN RECEIPT REQUESTED

Mailed 10-10-08

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 October 8, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Carolyn Elizabeth Johnson, 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)

October 8, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CAROLYN ELIZABETH JOHNSON, M.D.*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on October 8, 2008.

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 approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Carolyn Elizabeth Johnson, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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

(SEAL)


Lance A. Talmage, M.D.
Secretary

October 8, 2008
Date

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
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EXCERPT FROM THE DRAFT MINUTES OF OCTOBER 8, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDERS

Dr. Varyani announced that the Board would now consider the Proposed Findings and Proposed Orders appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the findings of fact, conclusions and proposed orders; and any objections filed in the matters of: Lee C. D. Hang-Fu, M.D.; Jason R. Molder, M.T.; Carolyn Johnson, M.D.; Ravi Kumar Jonnalagadda, M.D.; Mehrdad Nikfarjam, M.D.; Steven M. Oppenheimer, M.D.; Robert Rowan Summers, D.O.; Jennifer Marie Tucker, M.T.; and Mani A. Vannan, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye

Dr. Steinbergh - aye
Dr. Varyani - aye

Dr. Varyani 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 matter of Dr. Khatibi, as that case is not disciplinary in nature and concerns 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.

The original Proposed Findings and Proposed Orders shall be maintained in the exhibits section of this Journal.

.....

CAROLYN ELIZABETH JOHNSON, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF CAROLYN ELIZABETH JOHNSON, M.D. DR. MADIA SECONDED THE MOTION.

.....

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

ROLL CALL:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Dr. Madia	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

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*

CAROLYN E. JOHNSON, M.D.

*

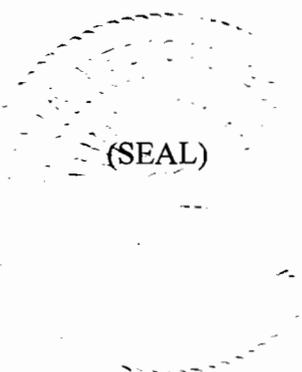
ORDER AND ENTRY

On July 9, 2008, the State Medical Board of Ohio issued a Final Order revoking the license of Carolyn E. Johnson, M.D., to practice medicine and surgery in the state of Ohio. After the issuance of the Final Order, the Board received in return mail the Report and Recommendation which had been mailed to Dr. Johnson on June 19, 2008. Because the service of the Report and Recommendation upon which the Board relied at the time it rendered its Final Order subsequently failed, the July 2008 Final Order must be vacated as a matter of law.

Accordingly, it is hereby ORDERED that the July 2008 Final Order revoking Dr. Johnson's license to practice medicine and surgery in Ohio be and is hereby VACATED.

This Order is entered by the State Medical Board of Ohio and on its behalf.

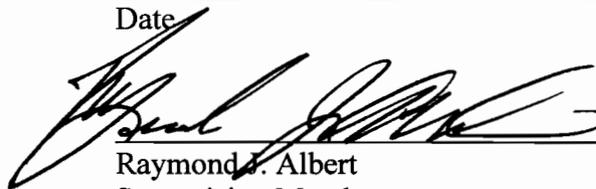
So ORDERED this 8th day of October, 2008.



Lance A. Talmage, M.D.
Secretary

October 8, 2008

Date



Raymond J. Albert
Supervising Member

October 8, 2008

Date

CERTIFIED MAIL NO. 91 7108 2133 3934 3688 7172
RETURN RECEIPT REQUESTED

State Medical Board of Ohio

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

Richard A. Whitehouse, Esq.
Executive Director

(614) 466-3934
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July 9, 2008

Carolyn Elizabeth Johnson, M.D.
750 Chene Street, Apt. 803
Detroit, MI 48207

Dear Doctor Johnson:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Gretchen L. Petrucci, Esq., Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on July 9, 2008, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

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

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of an original Notice of Appeal with the State Medical Board of Ohio and a copy of the Notice of Appeal with the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO



Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

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RETURN RECEIPT REQUESTED

Cc: Duplicate mailing P. O. Box 7220
Detroit, MI 48207

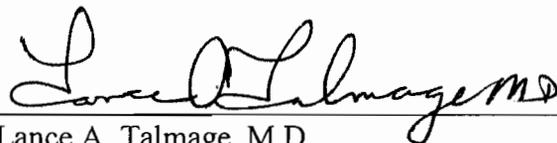
CERTIFIED MAIL NO. 91 7108 2133 3934 3690 5654
RETURN RECEIPT REQUESTED

Mailed 7-11-08

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 July 9, 2008, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of Carolyn Elizabeth Johnson, 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)

July 9, 2008

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

CAROLYN ELIZABETH JOHNSON, M.D.*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on July 9, 2008.

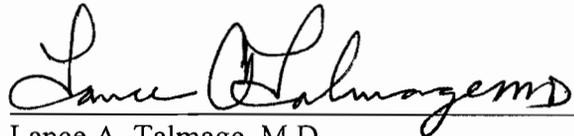
Upon the Report and Recommendation of Gretchen L. Petrucci, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the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

It is hereby ORDERED that:

The certificate of Carolyn Elizabeth Johnson, M.D., to practice medicine and surgery in the State of Ohio shall be REVOKED.

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

(SEAL)



Lance A. Talmage, M.D.
Secretary

July 9, 2008

Date

2008 APR 29 A 11: 23

**REPORT AND RECOMMENDATION
IN THE MATTER OF CAROLYN ELIZABETH JOHNSON, M.D.**

The Matter of Carolyn Elizabeth Johnson, M.D., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on February 12, 2008.

INTRODUCTION

I. Basis for Hearing

By letter dated June 14, 2007, the State Medical Board of Ohio [Board] notified Carolyn Elizabeth Johnson, M.D., that it had proposed to take disciplinary action against her certificate to practice medicine and surgery in Ohio. The Board's proposed action was based on allegations that, in the course of a Board investigation, Dr. Johnson failed to appear at a scheduled office conference in 2006 after valid service of a subpoena, and failed to respond to interrogatories in 2007 after valid service.

The Board's notice letter also stated that Dr. Johnson's acts, conduct, and/or omissions, individually and collectively, constitute "[f]ailure to cooperate in an investigation by the board under division (F) of [Section 4731.22(B)(34), Ohio Revised Code], including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold testimony or evidence in issue," as set forth in Section 4731.22(B)(34), Ohio Revised Code.

The Board advised Dr. Johnson of her right to request a hearing, and received her written request for hearing on August 21, 2007. (State Exhibits 1A, 1G)

II. Appearances at the Hearing

On behalf of the State of Ohio: Marc Dann, Attorney General, by Barbara J. Pfeiffer, Assistant Attorney General.

Neither Dr. Johnson nor anyone on her behalf was present at the hearing.

EVIDENCE EXAMINED

I. Testimony Heard

William J. Schmidt
Karen Mortland

II. Exhibits Examined

A. Presented by the State

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

State's Exhibit 2: May 25, 2006, subpoena issued by the Board's Secretary to Dr. Johnson, associated certified mail receipts, and handwritten notes.

State's Exhibit 3: June 14, 2006, letter to the Board's Supervising Member from Elaine R. Carlis, Esq., regarding her representation of Dr. Johnson.

State's Exhibit 4: June 2006 telephone message slips between Board enforcement staff.

State's Exhibit 5: June 28, 2006, e-mails between Board staff.

State's Exhibit 6: June 30, 2006, notes of the Board Enforcement Attorney.

State's Exhibit 7: July 14, 2006, letter from Dr. Johnson to the Board's Supervising Member.

State's Exhibit 8: July 27, 2006, note from the Board Enforcement Attorney.

State's Exhibit 9: July 31, 2006, letter from the Board's Supervising Member to Dr. Johnson (without referenced enclosure) and certified mail receipts.

State's Exhibit 10: January 23, 2007, letter from the Board Enforcement Attorney to Dr. Johnson, with first set of interrogatories.

State's Exhibit 11: March 30, 2007, letter from the Board Enforcement Attorney to Dr. Johnson, with second set of interrogatories.

State's Exhibit 12: DHL tracking information regarding service of State's Exhibit 11.

B. Presented by the Respondent

None

SUMMARY OF EVIDENCE

1. Carolyn Elizabeth Johnson, M.D., obtained her Ohio certificate to practice medicine and surgery on December 8, 1995. Her Ohio license lapsed for nonrenewal on October 1, 2006. At the time of the hearing in this matter, her Ohio license was considered inactive due to the nonrenewal.¹ Also, Dr. Johnson stated in her hearing request that she has held a medical license in the state of Michigan since 1977. (Hearing Transcript [Tr.] at 9; State's Exhibit [St. Exs.] 1G, 1H; Ohio ELicense Center, April 25, 2007 <<https://license.ohio.gov/Lookup>>)

Additionally, Dr. Johnson wrote in her hearing request that she lives in Michigan and works both as a math and science teacher and a pediatrician in Detroit. She indicated that she is in the process of establishing a women's health clinic in one area near Detroit where there is a large immigrant population. (St. Exs. 1G, 1H)

Board Investigation Efforts in 2006

2. William J. Schmidt, currently the Senior Counsel for Investigations, Compliance and Enforcement at the Board, was the Board's Enforcement Attorney who was initially assigned to an investigation of Dr. Johnson in 2006. (Tr. at 7, 11)
3. Mr. Schmidt testified that, in 2006, the Board had received information that suggested Dr. Johnson might be experiencing some emotional or mental issues. He stated that, on May 25, 2006, the Board issued a subpoena to Dr. Johnson requiring her to appear at the Board offices for a conference on June 28, 2006. The certified mail receipt for this subpoena was signed by Dr. Johnson. (Tr. at 11-12; St. Ex. 2)

On June 23, 2006, the Board received a letter from a Michigan attorney, Elaine R. Carlis, indicating that she represented Dr. Johnson. Ms. Carlis requested additional information regarding the nature of the complaint associated with the Board's investigation of Dr. Johnson. (St. Ex. 3; Tr. at 13-14)

4. Mr. Schmidt explained that, on June 27, 2006, Dr. Johnson telephoned him stating that she wished to retain new legal counsel and requested that the conference be rescheduled. He further testified that, in a June 30, 2006, telephone conversation he had had with Ms. Carlis, he had stated that the Board would continue the conference upon written assurance that Dr. Johnson would not practice medicine in Ohio before the Board's matter was resolved. (Tr. at 13-18; St. Exs. 4, 6)

¹Because Dr. Johnson's Ohio certificate has not been inactive for two years, she would simply have to submit an application and pay certain fees in order to automatically reinstate her certificate. No Board evaluation of fitness to practice medicine would take place under those circumstances. (Tr. at 10)

5. Mr. Schmidt next testified that, on July 20, 2006, the Board received a letter from Dr. Johnson, stating: (a) she had no plans to resume practicing medicine in Ohio; (b) Ms. Carlis was no longer representing her; and (c) Dr. Johnson needed additional time before a new conference date was set in order to obtain new counsel. Based on that request, Mr. Schmidt stated that it was decided that the conference would be rescheduled. On July 31, 2006, the Board sent Dr. Johnson a letter, via certified mail, indicating that the office conference was rescheduled for September 27, 2006.² That letter was received by Dr. Johnson on August 8, 2006, as evidenced by her signature on the certified mail receipt. (Tr. at 18-21; St. Exs. 7-9)
6. Mr. Schmidt stated that Dr. Johnson did not appear for the September 27, 2006, office conference. He further stated that neither he nor anyone at the Board was contacted by Dr. Johnson, an attorney or other individual on her behalf after the July 31, 2006, letter was sent. (Tr. at 21-22)

Board Investigation Efforts in 2007

7. Sometime after September 2006, Karen Mortland, an Enforcement Attorney with the Board, was assigned to Dr. Johnson's investigation. (Tr. at 25-26)

Ms. Mortland testified that, on January 23, 2007, she had sent a set of interrogatories to Dr. Johnson by certified mail. The cover letter and interrogatories were sent to her home address, the address of record at the Board. Ms. Mortland stated that this package was returned to the Board on February 26, 2007, and marked unclaimed. The Board received no response to the first set of interrogatories from Dr. Johnson or anyone else on her behalf. (Tr. at 29-30, 38, 40; St. Ex. 10)
8. Ms. Mortland further testified that, on March 29, 2007, she telephoned Dr. Johnson and left a voicemail message advising that she would be sending a second set of interrogatories to Dr. Johnson for response. On March 30, 2007, Ms. Mortland sent a second set of interrogatories to Dr. Johnson's home address.³ Ms. Mortland explained that this second set of interrogatories was sent via certified mail, restricted delivery, and a duplicate copy was delivered by DHL. Ms. Mortland stated that the certified mail package was returned

²The July 31, 2006, letter (St. Ex. 9) also indicates that a subpoena requiring her attendance at that conference was enclosed with that letter. However, the exhibit does not include a copy of the subpoena. Mr. Schmidt testified that he believes that no subpoena was actually enclosed with the July 31, 2006, letter because Dr. Johnson was still under the requirements of the May 25, 2006, subpoena. (Tr. at 20-21)

³The cover letter accompanying the second set of interrogatories also indicated that Dr. Johnson had failed to claim certified mail containing a subpoena that required her to appear for an office conference. Ms. Mortland explained that that mail/subpoena involved an office conference in October 2006. (Tr. at 41-44) The Board's June 14, 2007, notice of opportunity for hearing does *not* include any allegations with respect to a failure to claim that mail/subpoena or appear in response to that subpoena. Therefore, this matter does *not* involve any issues in relation to those statements in the March 30, 2007, cover letter.

to the Board, and marked unclaimed. She further stated that the DHL tracking information confirms that that copy of the second set of interrogatories was delivered to the front door of Dr. Johnson's residence on April 2, 2007. The DHL information does not indicate that Dr. Johnson signed for the March 29, 2007, envelope; rather it indicates that the envelope was left at Dr. Johnson's home. (Tr. at 30-38, 40; St. Exs. 11, 12)

Ms. Mortland stated that the Board has received no response to the second set of interrogatories from Dr. Johnson or anyone else on her behalf. (Tr. at 38, 45)

9. Additionally, Ms. Mortland testified that she had telephoned Dr. Johnson on April 6 and 9, 2007, and left voicemail messages both times, stating that the Board had not received responses to either of the first or second set of interrogatories and that such behavior may be considered a failure to cooperate with a Board investigation. (Tr. at 39)
10. Ms. Mortland stated that the Board has received no response from Dr. Johnson until after the June 2007 notice of opportunity for hearing was issued. In August 2007, Dr. Johnson spoke with the Board's Public Services Administrator and sent in her written request for a hearing. (Tr. at 45-50)

FINDINGS OF FACT

1. On December 8, 1995, the Board issued a certificate to practice medicine and surgery in Ohio to Carolyn Elizabeth Johnson, M.D. Dr. Johnson held this license until October 1, 2006 when Dr. Johnson's Ohio license lapsed due to nonrenewal.
2. On May 25, 2006, the Board issued a subpoena to Dr. Johnson requiring her to appear at the Board offices for an office conference on June 28, 2006. The Board mailed the May 2006 subpoena to Dr. Johnson by certified mail, return receipt requested, at her address of record and Dr. Johnson accepted delivery of the subpoena.
3. On June 27, 2006, Dr. Johnson telephoned the Board and requested that her appearance at the June 2006 office conference be postponed so that she could obtain new legal counsel. By letter dated July 14, 2006, Dr. Johnson submitted a written request for a continuance of the office conference.
4. In consideration of her requests, the June 2006 office conference was rescheduled to September 27, 2006. On July 31, 2006, the Board mailed a letter to Dr. Johnson by certified mail (return receipt requested, restricted delivery) to her address of record, informing her of the September 2006 office conference. Dr. Johnson accepted delivery of the July 31, 2006, letter but failed to appear at the September 2006 office conference.

5. On January 23, 2007, the Board mailed "The State Medical Board of Ohio's First Set of Interrogatories Directed to Carolyn E. Johnson, M.D." to Dr. Johnson by certified mail (return receipt requested, restricted delivery) at her address of record. The response date for the January interrogatories was February 14, 2007. The January interrogatories were returned unclaimed.
6. On March 30, 2007, the Board mailed "The State Medical Board of Ohio's Second Set of Interrogatories Directed to Carolyn E. Johnson, M.D." to Dr. Johnson by certified mail (return receipt requested, restricted delivery) at her address of record, for response by April 27, 2007. The March interrogatories were returned unclaimed.
7. Also on March 30, 2007, the Board sent the March interrogatories to Dr. Johnson by DHL courier at her address of record. Although the tracking results show that DHL delivered the March interrogatories to Dr. Johnson's address of record on April 2, 2007, she did not respond to the March interrogatories.
8. There is no evidence that a court of competent jurisdiction has issued an order that either quashed the Board's May 25, 2006, subpoena to Dr. Johnson or otherwise permitted her to withhold testimony or evidence from the Board.

CONCLUSION OF LAW

The acts, conduct, and/or omissions of Carolyn Elizabeth Johnson, M.D., as set forth in Findings of Fact 2 through 7, individually and collectively, constitute a "[f]ailure to cooperate in an investigation by the board under division (F) of [Section 4731.22(B)(34), Ohio Revised Code], including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold testimony or evidence in issue," as set forth in Section 4731.22(B)(34), Ohio Revised Code.⁴

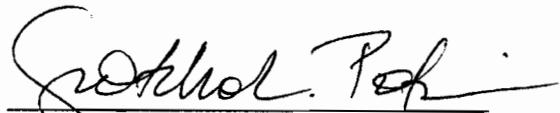
⁴Although the Board may have initiated an investigation of Dr. Johnson due to concerns about emotional or mental issues, the Board cannot impose sanctions related to any such concern because there was no psychiatric or impairment allegation made in the June 14, 2007, notice of opportunity for hearing. Accord, *In re Eastway* (1994), 95 Ohio App.3d; *Krain, M.D., v. State Med. Bd. of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Carolyn Elizabeth Johnson, M.D., to practice medicine and surgery in the State of Ohio is hereby REVOKED.

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



Gretchen L. Petrucci
Hearing Examiner

2008 APR 29 A 11: 23

**REPORT AND RECOMMENDATION
IN THE MATTER OF CAROLYN ELIZABETH JOHNSON, M.D.**

The Matter of Carolyn Elizabeth Johnson, M.D., was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on February 12, 2008.

INTRODUCTION

I. Basis for Hearing

By letter dated June 14, 2007, the State Medical Board of Ohio [Board] notified Carolyn Elizabeth Johnson, M.D., that it had proposed to take disciplinary action against her certificate to practice medicine and surgery in Ohio. The Board's proposed action was based on allegations that, in the course of a Board investigation, Dr. Johnson failed to appear at a scheduled office conference in 2006 after valid service of a subpoena, and failed to respond to interrogatories in 2007 after valid service.

The Board's notice letter also stated that Dr. Johnson's acts, conduct, and/or omissions, individually and collectively, constitute "[f]ailure to cooperate in an investigation by the board under division (F) of [Section 4731.22(B)(34), Ohio Revised Code], including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold testimony or evidence in issue," as set forth in Section 4731.22(B)(34), Ohio Revised Code.

The Board advised Dr. Johnson of her right to request a hearing, and received her written request for hearing on August 21, 2007. (State Exhibits 1A, 1G)

II. Appearances at the Hearing

On behalf of the State of Ohio: Marc Dann, Attorney General, by Barbara J. Pfeiffer, Assistant Attorney General.

Neither Dr. Johnson nor anyone on her behalf was present at the hearing.

EVIDENCE EXAMINED

I. Testimony Heard

William J. Schmidt
Karen Mortland

II. Exhibits Examined

A. Presented by the State

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State's Exhibit 11: March 30, 2007, letter from the Board Enforcement Attorney to Dr. Johnson, with second set of interrogatories.

State's Exhibit 12: DHL tracking information regarding service of State's Exhibit 11.

B. Presented by the Respondent

None

SUMMARY OF EVIDENCE

1. Carolyn Elizabeth Johnson, M.D., obtained her Ohio certificate to practice medicine and surgery on December 8, 1995. Her Ohio license lapsed for nonrenewal on October 1, 2006. At the time of the hearing in this matter, her Ohio license was considered inactive due to the nonrenewal.¹ Also, Dr. Johnson stated in her hearing request that she has held a medical license in the state of Michigan since 1977. (Hearing Transcript [Tr.] at 9; State's Exhibit [St. Exs.] 1G, 1H; Ohio ELicense Center, April 25, 2007 <<https://license.ohio.gov/Lookup>>)

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Board Investigation Efforts in 2006

2. William J. Schmidt, currently the Senior Counsel for Investigations, Compliance and Enforcement at the Board, was the Board's Enforcement Attorney who was initially assigned to an investigation of Dr. Johnson in 2006. (Tr. at 7, 11)
3. Mr. Schmidt testified that, in 2006, the Board had received information that suggested Dr. Johnson might be experiencing some emotional or mental issues. He stated that, on May 25, 2006, the Board issued a subpoena to Dr. Johnson requiring her to appear at the Board offices for a conference on June 28, 2006. The certified mail receipt for this subpoena was signed by Dr. Johnson. (Tr. at 11-12; St. Ex. 2)

On June 23, 2006, the Board received a letter from a Michigan attorney, Elaine R. Carlis, indicating that she represented Dr. Johnson. Ms. Carlis requested additional information regarding the nature of the complaint associated with the Board's investigation of Dr. Johnson. (St. Ex. 3; Tr. at 13-14)

4. Mr. Schmidt explained that, on June 27, 2006, Dr. Johnson telephoned him stating that she wished to retain new legal counsel and requested that the conference be rescheduled. He further testified that, in a June 30, 2006, telephone conversation he had had with Ms. Carlis, he had stated that the Board would continue the conference upon written assurance that Dr. Johnson would not practice medicine in Ohio before the Board's matter was resolved. (Tr. at 13-18; St. Exs. 4, 6)

¹Because Dr. Johnson's Ohio certificate has not been inactive for two years, she would simply have to submit an application and pay certain fees in order to automatically reinstate her certificate. No Board evaluation of fitness to practice medicine would take place under those circumstances. (Tr. at 10)

5. Mr. Schmidt next testified that, on July 20, 2006, the Board received a letter from Dr. Johnson, stating: (a) she had no plans to resume practicing medicine in Ohio; (b) Ms. Carlis was no longer representing her; and (c) Dr. Johnson needed additional time before a new conference date was set in order to obtain new counsel. Based on that request, Mr. Schmidt stated that it was decided that the conference would be rescheduled. On July 31, 2006, the Board sent Dr. Johnson a letter, via certified mail, indicating that the office conference was rescheduled for September 27, 2006.² That letter was received by Dr. Johnson on August 8, 2006, as evidenced by her signature on the certified mail receipt. (Tr. at 18-21; St. Exs. 7-9)
6. Mr. Schmidt stated that Dr. Johnson did not appear for the September 27, 2006, office conference. He further stated that neither he nor anyone at the Board was contacted by Dr. Johnson, an attorney or other individual on her behalf after the July 31, 2006, letter was sent. (Tr. at 21-22)

Board Investigation Efforts in 2007

7. Sometime after September 2006, Karen Mortland, an Enforcement Attorney with the Board, was assigned to Dr. Johnson's investigation. (Tr. at 25-26)

Ms. Mortland testified that, on January 23, 2007, she had sent a set of interrogatories to Dr. Johnson by certified mail. The cover letter and interrogatories were sent to her home address, the address of record at the Board. Ms. Mortland stated that this package was returned to the Board on February 26, 2007, and marked unclaimed. The Board received no response to the first set of interrogatories from Dr. Johnson or anyone else on her behalf. (Tr. at 29-30, 38, 40; St. Ex. 10)

8. Ms. Mortland further testified that, on March 29, 2007, she telephoned Dr. Johnson and left a voicemail message advising that she would be sending a second set of interrogatories to Dr. Johnson for response. On March 30, 2007, Ms. Mortland sent a second set of interrogatories to Dr. Johnson's home address.³ Ms. Mortland explained that this second set of interrogatories was sent via certified mail, restricted delivery, and a duplicate copy was delivered by DHL. Ms. Mortland stated that the certified mail package was returned

²The July 31, 2006, letter (St. Ex. 9) also indicates that a subpoena requiring her attendance at that conference was enclosed with that letter. However, the exhibit does not include a copy of the subpoena. Mr. Schmidt testified that he believes that no subpoena was actually enclosed with the July 31, 2006, letter because Dr. Johnson was still under the requirements of the May 25, 2006, subpoena. (Tr. at 20-21)

³The cover letter accompanying the second set of interrogatories also indicated that Dr. Johnson had failed to claim certified mail containing a subpoena that required her to appear for an office conference. Ms. Mortland explained that that mail/subpoena involved an office conference in October 2006. (Tr. at 41-44) The Board's June 14, 2007, notice of opportunity for hearing does *not* include any allegations with respect to a failure to claim that mail/subpoena or appear in response to that subpoena. Therefore, this matter does *not* involve any issues in relation to those statements in the March 30, 2007, cover letter.

to the Board, and marked unclaimed. She further stated that the DHL tracking information confirms that that copy of the second set of interrogatories was delivered to the front door of Dr. Johnson's residence on April 2, 2007. The DHL information does not indicate that Dr. Johnson signed for the March 29, 2007, envelope; rather it indicates that the envelope was left at Dr. Johnson's home. (Tr. at 30-38, 40; St. Exs. 11, 12)

Ms. Mortland stated that the Board has received no response to the second set of interrogatories from Dr. Johnson or anyone else on her behalf. (Tr. at 38, 45)

9. Additionally, Ms. Mortland testified that she had telephoned Dr. Johnson on April 6 and 9, 2007, and left voicemail messages both times, stating that the Board had not received responses to either of the first or second set of interrogatories and that such behavior may be considered a failure to cooperate with a Board investigation. (Tr. at 39)
10. Ms. Mortland stated that the Board has received no response from Dr. Johnson until after the June 2007 notice of opportunity for hearing was issued. In August 2007, Dr. Johnson spoke with the Board's Public Services Administrator and sent in her written request for a hearing. (Tr. at 45-50)

FINDINGS OF FACT

1. On December 8, 1995, the Board issued a certificate to practice medicine and surgery in Ohio to Carolyn Elizabeth Johnson, M.D. Dr. Johnson held this license until October 1, 2006 when Dr. Johnson's Ohio license lapsed due to nonrenewal.
2. On May 25, 2006, the Board issued a subpoena to Dr. Johnson requiring her to appear at the Board offices for an office conference on June 28, 2006. The Board mailed the May 2006 subpoena to Dr. Johnson by certified mail, return receipt requested, at her address of record and Dr. Johnson accepted delivery of the subpoena.
3. On June 27, 2006, Dr. Johnson telephoned the Board and requested that her appearance at the June 2006 office conference be postponed so that she could obtain new legal counsel. By letter dated July 14, 2006, Dr. Johnson submitted a written request for a continuance of the office conference.
4. In consideration of her requests, the June 2006 office conference was rescheduled to September 27, 2006. On July 31, 2006, the Board mailed a letter to Dr. Johnson by certified mail (return receipt requested, restricted delivery) to her address of record, informing her of the September 2006 office conference. Dr. Johnson accepted delivery of the July 31, 2006, letter but failed to appear at the September 2006 office conference.

5. On January 23, 2007, the Board mailed “The State Medical Board of Ohio’s First Set of Interrogatories Directed to Carolyn E. Johnson, M.D.” to Dr. Johnson by certified mail (return receipt requested, restricted delivery) at her address of record. The response date for the January interrogatories was February 14, 2007. The January interrogatories were returned unclaimed.
6. On March 30, 2007, the Board mailed “The State Medical Board of Ohio’s Second Set of Interrogatories Directed to Carolyn E. Johnson, M.D.” to Dr. Johnson by certified mail (return receipt requested, restricted delivery) at her address of record, for response by April 27, 2007. The March interrogatories were returned unclaimed.
7. Also on March 30, 2007, the Board sent the March interrogatories to Dr. Johnson by DHL courier at her address of record. Although the tracking results show that DHL delivered the March interrogatories to Dr. Johnson’s address of record on April 2, 2007, she did not respond to the March interrogatories.
8. There is no evidence that a court of competent jurisdiction has issued an order that either quashed the Board’s May 25, 2006, subpoena to Dr. Johnson or otherwise permitted her to withhold testimony or evidence from the Board.

CONCLUSION OF LAW

The acts, conduct, and/or omissions of Carolyn Elizabeth Johnson, M.D., as set forth in Findings of Fact 2 through 7, individually and collectively, constitute a “[f]ailure to cooperate in an investigation by the board under division (F) of [Section 4731.22(B)(34), Ohio Revised Code], including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold testimony or evidence in issue,” as set forth in Section 4731.22(B)(34), Ohio Revised Code.⁴

⁴Although the Board may have initiated an investigation of Dr. Johnson due to concerns about emotional or mental issues, the Board cannot impose sanctions related to any such concern because there was no psychiatric or impairment allegation made in the June 14, 2007, notice of opportunity for hearing. Accord, *In re Eastway* (1994), 95 Ohio App.3d; *Krain, M.D., v. State Med. Bd. of Ohio* (Oct. 29, 1998), Franklin App. No. 97APE08-981, unreported.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Carolyn Elizabeth Johnson, M.D., to practice medicine and surgery in the State of Ohio is hereby REVOKED.

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


Gretchen L. Petrucci
Hearing Examiner

State Medical Board of Ohio

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



Richard A. Whitehouse, Esq.
Executive Director

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EXCERPT FROM THE DRAFT MINUTES OF JULY 9, 2008

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Varyani announced that the Board would now consider the Reports and Recommendations appearing on its agenda. He asked whether each member of the Board had received, read and considered the hearing record; the Findings of Fact, Conclusions of Law and Proposed Orders; and any objections filed in the matters of Paula Clark Adkins, M.D.; Carolyn Elizabeth Johnson, M.D.; W. Scott Nekrosius, M.D.; and Bradley Rex Wolf, M.D.; and the Proposed Findings and Proposed Order in the matter of Kenneth Lester Drews, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

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

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Suppan	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- aye
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

Dr. Varyani 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. In the matters before the Board today, Dr. Talmage served as Secretary and Mr. Albert served as Supervising Member.

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

.....

Mr. Albert left the meeting during the previous discussion.

.....

CAROLYN ELIZABETH JOHNSON, M.D.

.....

MR. BROWNING MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF CAROLYN ELIZABETH JOHNSON, M.D. MR. HAIRSTON SECONDED THE MOTION.

.....

A vote was taken on Mr. Browning's motion to approve and confirm:

ROLL CALL:	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Suppan	- aye
	Mr. Browning	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Mahajan	- abstain
	Dr. Steinbergh	- aye
	Dr. Varyani	- aye

The motion carried.



State Medical Board of Ohio

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

June 14, 2007

Carolyn Elizabeth Johnson, M.D.
9244 Continental Drive
Taylor, Michigan 48180

Dear Doctor Johnson:

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) In furtherance of an investigation by the Board of a possible violation by you of Chapter 4731., Ohio Revised Code, and/or any rule adopted thereunder, the Board took the following actions:

(a) On or about May 25, 2006, the Board issued a subpoena to you [May 2006 subpoena], requiring that you appear at an office conference at the offices of the Board on June 28, 2006, at 1:45 p.m. [June 2006 office conference]. On or about May 25, 2006, the Board mailed the May 2006 subpoena to you by certified mail, return receipt requested, to your address of record, and you accepted delivery.

On or about June 27, 2006, you telephoned the Board and requested that your appearance at the June 2006 office conference be postponed so that you could obtain new legal counsel. By letter dated July 14, 2006, you requested a continuance of your investigatory conference for four to six weeks.

(b) In consideration of your requests, the June 2006 office conference was rescheduled to September 27, 2006, at 1:00 p.m. [September 2006 office conference]. On or about July 31, 2006, the Board mailed a letter to you by certified mail, return receipt requested, restricted delivery, to your address of record, informing you of the September 2006 office conference. You accepted delivery of the July 31, 2006 letter. Despite the foregoing, you failed to appear at the September 2006 office conference.

Mailed 6-14-07

- (c) On or about January 23, 2007, the Board mailed "The State Medical Board of Ohio's First Set of Interrogatories Directed to Carolyn E. Johnson, M.D." [January interrogatories] to you by certified mail, return receipt requested, restricted delivery, to your address of record. The response date for the January interrogatories was February 14, 2007. The January interrogatories were returned unclaimed.
- (d) On or about March 30, 2007, the Board mailed "The State Medical Board of Ohio's Second Set of Interrogatories Directed to Carolyn E. Johnson, M.D." [March interrogatories] to you by certified mail, return receipt requested, restricted delivery, to your address of record, for response by April 27, 2007. The March interrogatories were returned unclaimed.

Further, on or about March 30, 2007, the Board sent the March interrogatories to you by DLH courier to your address of record. Although tracking results show that DHL delivered the March interrogatories to your address of record on April 2, 2007, you did not respond to the March interrogatories.

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "[f]ailure to cooperate in an investigation by the board under division (F) of this section, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board at a deposition or in written interrogatories, except that failure to cooperate with an investigation shall not constitute grounds for discipline under this section if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold the testimony or evidence in issue," as that clause is used in Section 4731.22(B)(34), 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

Carolyn Elizabeth Johnson, M.D.

Page 3

revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand you or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s certificate to practice, refuses to register an applicant, or refuses to reinstate an individual’s certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate.”

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink that reads "Lance A. Talmage MD". The signature is written in a cursive style with a large initial "L".

Lance A. Talmage, M.D.
Secretary

LAT/KHM/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3931 8318 3640
RETURN RECEIPT REQUESTED