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

January 14, 2009

Andrew John Holan
235 Licking Street
Toledo, OH 43605

RE: Case No. 08-CRF-041

Dear Mr. Holan:

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 January 14, 2009, 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 MD

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 91 7108 2133 3683 6071
RETURN RECEIPT REQUESTED

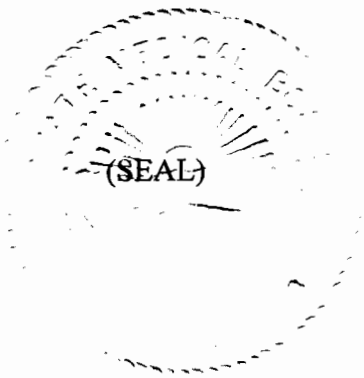
Cc: 5625 Corduroy Road
Oregon, OH 43616
CERTIFIED MAIL NO. 91 7108 2133 3683 6088
RETURN RECEPT REQUESTED
RESTRICTED DELIVERY

Mailed 1.16.09

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 January 14, 2009, 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 Andrew John Holan, Case No. 08-CRF-041, 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

January 14, 2009
Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF	*	
	*	CASE NO. 08-CRF-041
ANDREW JOHN HOLAN	*	

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on January 14, 2009.

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 application of Andrew John Holan for a certificate to practice massage therapy in Ohio is DENIED.

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

(SEAL)

Lance A. Talmage, M.D.
Secretary

January 14, 2009
Date

STATE MEDICAL BOARD

2008 DEC -4 P 3: 08

REPORT AND RECOMMENDATION
IN THE MATTER OF ANDREW JOHN HOLAN
CASE NO. 08-CRF-041

The Matter of Andrew John Holan was heard by Gretchen L. Petrucci, Hearing Examiner for the State Medical Board of Ohio, on November 14, 2008.

INTRODUCTION

Basis for Hearing

By letter dated April 9, 2008, the State Medical Board of Ohio [Board] notified Andrew John Holan that it had proposed to deny his application for a certificate to practice massage therapy in Ohio or take other disciplinary action against him. The Board based its proposed action on allegations that the Board had ordered Mr. Holan to an impairment examination in January 2008, that he was found to be impaired in his ability to practice massage therapy, and that the Board has received no information that he thereafter entered inpatient treatment as recommended. The Board further alleged that Mr. Holan's acts, conduct and/or omissions constitute impairment of ability to practice according to acceptable and prevailing standards of care, as set forth in Section 4731.22(B)(26), Ohio Revised Code. Accordingly, the Board advised Mr. Holan of his right to request a hearing in this matter. (State's Exhibit 1A)

By letter received by the Board on May 8, 2008, Mr. Holan requested a hearing. (State's Exhibit 1B)

Appearances at the Hearing[1]

Nancy H. Rogers, Attorney General, by Kyle C. Wilcox, Assistant Attorney General, on behalf of the State of Ohio.

EVIDENCE EXAMINED

Testimony Heard

Christopher Adelman, M.D.

[1]Although Mr. Holan had been served with notice of the hearing and had indicated that he would attend the hearing, neither he nor a representative appeared on his behalf at the hearing in this matter. The exhibits that Mr. Holan had provided to counsel for the State in advance of the hearing were not admitted for Mr. Holan. (Hearing Transcript [Tr.] at 5, 36)

Exhibits Examined

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

State's Exhibit 2: January 10, 2008, letter to a Board Enforcement Attorney from Christopher Adelman, M.D. [Admitted under seal.]

State's Exhibit 3: Cover letter and Mr. Holan's impairment assessment from Glenbeigh Hospital. [Admitted under seal. This exhibit was numbered post-hearing.]

State's Exhibit 4: Cover letter and Mr. Holan's discharge summary from Glenbeigh Hospital. [Admitted under seal.]

State's Exhibit 5: December 11, 2007, letter to Mr. Holan from the Board Secretary. [Redacted in part to obscure unconvicted charges.]

State's Exhibit 6: Certification and Mr. Holan's August 2007 application materials. [Redacted in part to obscure unconvicted charges and a Social Security number.]

PROCEDURAL MATTER

Shortly after the close of the hearing on November 14, 2008, the Hearing Examiner noticed that further redactions were needed on page 10 of State's Exhibit 6 in order to be consistent with the earlier redactions made during the hearing. The Hearing Examiner contacted counsel for the State, who objected to those additional redactions on the grounds that the statements were admissions by Mr. Holan and should remain unobscured. The Hearing Examiner acknowledges that the statements were made voluntarily by Mr. Holan, but the prejudicial nature of unconvicted charges is warrants the redaction. Accordingly, the Hearing Examiner reopened the record, further redacted page 10 of State's Exhibit 6, and admitted it. The record closed again on November 14, 2008.

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.

Background

1. Andrew John Holan was born in 1970. From 1996 to at least 2007, Mr. Holan has worked as a baker in Toledo, Ohio. (State's Exhibit [St. Ex.] 6 at 2, 4)

2. In January 2005, Mr. Holan enrolled in the massage-therapy program at Stautzenberger College in Toledo, Ohio. In June 2007, Mr. Holan graduated from that program. (St. Ex. 6 at 3, 4, 16-17, 19)

3. On August 20, 2007, Mr. Holan filed with the Board an application for a massage-therapy certificate. In the application, he indicated that he had been "convicted or found guilty of a violation of any law, regardless of the legal jurisdiction in which the act was committed, other than a minor traffic violation." Mr. Holan later provided an explanation of his criminal history and provided a "Recidivist Report" from the Toledo Municipal Court regarding his criminal charges and convictions in that court. (St. Ex. 6 at 7, 10-12)

Mr. Holan's 2008 Impairment Examination

4. On December 11, 2007, the Board ordered Mr. Holan to submit to an examination pursuant to Section 4731.22(B)(26), Ohio Revised Code, and cited as its basis the following alcohol-related events:

   - In 1993, Mr. Holan was charged and convicted of Operating a Vehicle under the Influence of Alcohol or Drugs, in violation of Section 4511.25, Ohio Revised Code. (St. Ex. 5 at 1; St. Ex. 3 at 8)

   - In 1996, Mr. Holan was charged and convicted of Driving or Physical Control while under the Influence [DUI], in violation of Section 333.01(A)(3), Oregon Municipal Code. (St. Ex. 5 at 2)

   - Later in 1996, Mr. Holan was found guilty in the Municipal Court of Oregon, Ohio, of "Disorderly Conduct; Intoxication," in violation of Section 509.03, Oregon Codified Ordinances. (St. Ex. 5 at 2)

   - In 2007, Mr. Holan was charged with, among other things, DUI, in violation of Section 333.01(A)(1), Toledo Municipal Code. He was convicted of an amended charge of Having Physical Control of a Vehicle while under the Influence, in violation of Section 4511.194, Ohio Revised Code. (St. Ex. 5 at 2; St. Ex. 6 at 10-11)

5. The Board ordered Mr. Holan to enter Glenbeigh Hospital [Glenbeigh] on January 7, 2008, for a 72-hour examination. Glenbeigh is a Board-approved, alcohol and drug addiction treatment provider in Rock Creek, Ohio. (St. Ex. 5; State Medical Board of Ohio Website, November 14, 2008, *<http://med.ohio.gov/pdf treatment_compliance/TREATMNT.pdf>*).

6. Per the Board's requirement, Mr. Holan underwent a 72-hour inpatient examination to determine if he was in violation of Section 4731.22(B)(26), Ohio Revised Code. Christopher Adelman, M.D., reported the conclusions to the Board by letter dated January 10, 2008. (Tr. at 17; St. Ex. 2)

7. Dr. Adelman is a staff physician at: (a) Glenbeigh, (b) Rosary Hall at St. Vincent's Charity Hospital in Cleveland, Ohio; (c) Huron Hospital in East Cleveland, Ohio; and (d) Windsor-Laurelwood Hospital in Willowick, Ohio. He earned his medical degree from the University of Oklahoma. In 1979, he completed a general internship, which he termed a "flexible internship." He obtained his training in addictionology by working at the Hazelton addiction

treatment program at St. Mary's Hospital in Minnesota, by working at a hospital in Montana, and from medical seminars. Currently, 80 percent of his practice involves addicted or impaired patients. (Tr. at 12-16)

8. Dr. Adelman diagnosed Mr. Holan with chemical dependence, and found him impaired in his ability to practice massage therapy according to acceptable and prevailing standards of care. Furthermore, Dr. Adelman recommended that Mr. Holan enter a 28-day inpatient treatment program. He explained that Mr. Holan's alcohol dependence means that he is unable to consume alcohol without losing control of his consumption, his behavior and the consequences. (St. Ex. 2, St. Ex. 4 at 2; Tr. at 18, 20, 21, 23-24)

9. The Glenbeigh discharge summary states the following:

> [Mr. Holan] is in severe denial of his chemical dependency, verbally denying his alcoholism. He has a high relapse potential. Andrew was instructed to readmit himself into a 28 day inpatient program acceptable to the State Medical Board of Ohio. He was further instructed to readmit himself within 48 hours * * *. He voiced no commitment or direction on what he would choose to do.

(St. Ex. 4)

10. Dr. Adelman testified that three factors had caused him to conclude that Mr. Holan is chemically dependent: (a) Mr. Holan had built-up a tolerance to alcohol based upon his reports of consuming six to ten beers per day prior to the 2007 DUI and his report that he was still able to function at that level of consumption; (b) Mr. Holan had reported instances when he had consumed more alcohol that he had planned; and (c) Mr. Holan had multiple DUI convictions and those events did not deter his consumption of alcohol or his decision to drive after drinking. (Tr. at 24-26)

11. In particular, Dr. Adelman explained:

> The experience of getting arrested and everything that follows from that is not an experience that anyone would chose to have. So if a person has two or three DUIs, that means they have been arrested. They have experienced that, had that whole experience.
>
> And they have not chosen to get arrested again, but they have gotten arrested again because they're out of control, because they have been drinking too much to be a safe driver. Their judgment has been affected.
>
> So they have gotten in the car and driven. And so, again, no one [chooses] to get arrested. So anyone who gets arrested two or three times is sort of, by definition, out of control with their drinking.

(Tr. at 22)

12. The Glenbeigh assessment report also contains the following statements made by Mr. Holan regarding his alcohol-related history:

- Mr. Holan's first consumption of alcohol was at 17 years of age, and alcohol became a problem for him at 23 years of age. Mr. Holan was 37 years of age at time of assessment. (St. Ex. 3 at 8)

- Mr. Holan admitted drinking six to 10 beers, three to four times per week for the three or four years prior to his third DUI in 2007. (St. Ex. 3 at 8)

- Mr. Holan does not consider himself to be an alcoholic. (St. Ex. 3 at 8)

- Mr. Holan has been convicted of DUI on three occasions. (St. Ex. 3 at 6, 8)

- Mr. Holan attended a three-day intervention program, and he had believed that no recommendations were made at that time for him to obtain further treatment. However, he later learned that the program wanted him to obtain further treatment. (St. Ex. 3 at 9; see also Tr. at 26)

- Mr. Holan obtained an assessment in September 2007 from a physician who is not "Board-approved," and that physician made no recommendations.[2] (St. Ex. 3 at 9; see also St. Ex. 6 at 10)

- Mr. Holan had not consumed alcohol for the four months prior to his evaluation at Glenbeigh, and he had been wearing an alcohol-detecting anklet at the time of the assessment per court order. (St. Ex. 3 at 7, 8; see also Tr. at 26)

Mr. Holan's Written Statements to the Board

13. In a September 2007 letter to the Board, Mr. Holan stated the following:

> I would like you to take into account that between 1-23-1998 and 5-6-2007 I have been in no trouble. I have had the same job for 11 years. I went back to school, studied hard and graduated with honors so that I can start a career that will allow me to make a good living to support my future family.

(St. Ex. 6 at 10)

[2]Mr. Holan explained in a September 2007 letter to the Board that part of the 2007 DUI sentence required him to complete a drug and alcohol assessment, and he had passed it. (St. Ex. 6 at 10)

14. In his May 2008 hearing request, Mr. Holan stated:

> I feel that the Board's recommendations are unfair to my situation * * * I am in fact not chemically dependant and I can perform my duties in the practice of massage therapy without putting my clients in harms way. However, I would like the Board to make any suspensions temporary if they should rule against me, I would not even be opposed to being put on probation for as long as the Board wishes, as long as I can start trying to make a decent living and continue to improve my life. I've made mistakes, but I've paid my debt to society and don't feel that that should be held against me, I'm just trying to better myself and my place in life.

(St. Ex. 1B)

FINDINGS OF FACT

1. On August 20, 2007, Andrew John Holan submitted an "Application for Certificate to Practice a Limited Branch – Massage Therapy." Mr. Holan's August 2007 application remains pending.

2. On December 11, 2007, the Board notified Mr. Holan that it had reason to believe that he is in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered him to submit to a 72-hour inpatient examination to determine if he is in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board's determination was based upon convictions for multiple alcohol-related offenses.

3. Mr. Holan appeared at Glenbeigh Hospital, a Board-approved treatment provider, in Rock Creek, Ohio, on January 7, 2008, for the 72-hour Board-ordered examination. By letter dated January 10, 2008, Christopher Adelman, M.D., of Glenbeigh Hospital, explained that Mr. Holan was diagnosed with chemical dependence, determined to be impaired in his ability to practice massage therapy according to acceptable and prevailing standards of care, and 28 days of inpatient treatment was recommended.

4. No evidence was presented that establishes that Mr. Holan has entered an inpatient treatment program since his January 2008 examination at Glenbeigh.

CONCLUSION OF LAW

The acts, conduct, and/or omissions of Andrew John Holan, as set forth in Findings of Fact 2 through 4, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice" as set forth in Section 4731.22(B)(26), Ohio Revised Code.

* * * * *

Mr. Holan denies his alcohol dependency and has not sought the treatment recommended in order for him to practice massage therapy according to acceptable and prevailing standards of care. For those reasons, a denial of Mr. Holan's application for a massage-therapy certificate is warranted. However, it is recommended that he not be permanently foreclosed from obtaining a certificate. In the future, Mr. Holan may complete the required treatment successfully and may then be able to meet all requirements for licensure.

PROPOSED ORDER

It is hereby ORDERED, that:

The application of Andrew John Holan for a certificate to practice massage therapy in Ohio is DENIED.

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

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EXCERPT FROM THE DRAFT MINUTES OF JANUARY 14, 2009

REPORTS AND RECOMMENDATIONS AND PROPOSED FINDINGS AND PROPOSED ORDER

Dr. Madia announced that the Board would now consider the Reports and Recommendations and the Proposed Findings And Proposed Order appearing on its agenda. He noted that the Report and Recommendation in the Matter of Lary R. Korn, D.O., has been pulled from this month's agenda.

Dr. Madia 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 Haroon Akhtar, M.D.; Glenn A. Bollard, M.D.; Mark Owen Henson, M.D.; Andrew John Holan; Kymberly L. Jacobs; Randall Lewis Knox; and John Fred Sylvester, Jr. A roll call was taken:

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

Dr. Madia 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. Jacobson	- aye
	Mr. Hairston	- aye
	Dr. Amato	- aye
	Dr. Stephens	- aye
	Dr. Mahajan	- aye

Dr. Steinbergh	- aye
Dr. Madia	- aye

Dr. Madia 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. Akhtar, Dr. Bollard, as that case is not disciplinary in nature and concerns only the doctor's qualifications for licensure. 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.

.....

ANDREW JOHN HOLAN

.....

DR. SUPPAN MOVED TO APPROVE AND CONFIRM MS. PETRUCCI'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PROPOSED ORDER IN THE MATTER OF ANDREW JOHN HOLAN. DR. MAHAJAN SECONDED THE MOTION.

.....

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

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

The motion carried.

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

April 9, 2008

Case number: 08-CRF-041

Andrew John Holan
235 Licking Street
Toledo, OH 43605

Dear Mr. Holan:

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 massage therapy, or to reprimand you or place you on probation for one or more of the following reasons:

(1) In or about August 2007, you caused to be submitted to the Board an Application for Certificate to Practice a Limited Branch – Massage Therapy [2007 Application], which remains pending at this time.

(2) By letter dated December 11, 2007, the Board notified you of its determination that it had reason to believe that you are in violation of Section 4731.22(B)(26), Ohio Revised Code, and ordered you to undergo a 72-hour inpatient examination to determine if you are in violation of Section 4731.22(B)(26), Ohio Revised Code. The Board's determination was based upon convictions for multiple alcohol-related offenses.

(3) By letter dated January 7, 2008, Glenbeigh Hospital [Glenbeigh], a board-approved treatment provider in Rock Creek, Ohio, advised the Board that you appeared at Glenbeigh on Monday, January 7, 2008, for your 72-hour Board-ordered evaluation. By letter dated January 10, 2008, Christopher Adelman, M.D., of Glenbeigh, explained that you were diagnosed with chemical dependence, you were determined to be impaired in your ability to practice massage therapy according to acceptable and prevailing standards of care, and twenty-eight days of inpatient treatment was recommended. Further, the Board has not received information that you have entered inpatient treatment.

Your acts, conduct, and/or omissions as alleged in paragraphs (2) and (3) above, individually and/or collectively, constitute "[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice," as that clause is used in Section 4731.22(B)(26), 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

Mailed 4-10-08

and must be received in the offices of the State Medical Board within thirty days of the time of mailing this notice.

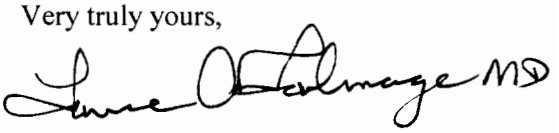
You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at 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, suspend, refuse to register or reinstate your certificate to practice massage therapy or to reprimand you or place you on probation.

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

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Lance A. Talmage, M.D.
Secretary

LAT/DPK/flb
Enclosures

CERTIFIED MAIL #91 7108 2133 3934 3685 0497
RETURN RECEIPT REQUESTED

cc: Joseph R. Torda, Esq.
1701 Woodlands Drive
Maumee, OH 43537-4092

CERTIFIED MAIL #91 7108 2133 3934 3685 0503
RETURN RECEIPT REQUESTED