

IN THE SUPREME COURT OF OHIO

Dr. Terrie Sizemore RN DVM	:	
	:	Case No: 12-0176
Relator-Appellant	:	
	:	
	:	On Appeal from the
The Ohio Veterinary Medical	:	Court of Appeals
Licensing Board.	:	Tenth Appellate District
	:	Case no. 11AP-298
	:	
Respondent-Appellees	:	Regular Calendar

MERIT BRIEF OF RELATOR-APPELLANT DR. TERRIE SIZEMORE RN DVM

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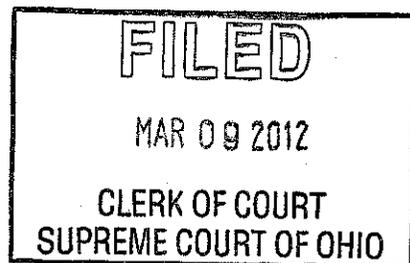


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STATEMENT OF FACTS

In 2005, private citizens Mr. and Mrs. Rohm filed complaint to the Ohio Veterinary Medical Licensing Board (OVMLB) against Relator-Appellant, Dr. Terrie Sizemore RN DVM (Dr. Sizemore). In the letter of complaint, they admitted to refusing advised and offered veterinary care for their pet as well as never filed complaint for charges the OVMLB later drafted against Dr. Sizemore. After Dr. Sizemore responded to the complaint as requested by the OVMLB and received two perfect evaluations by OVMLB experts from the Ohio Department of Agriculture, Mr. Hill and Mr. Folwarczny-both reviews confirming no deficiencies or violations of the ORC or OAC- and being found innocent of any negligence in her professional responsibilities, the OVMLB continued with malice and forethought to maliciously draft allegations of misconduct against her. On December 29, 2005:

The three false allegations of misconduct were:

1. An allegation regarding issues of rabies for a pet not presented for complaint by the private citizen as well as the issue of rabies not being brought for complaint. Rabies has been delegated to the local government in Ohio and there are no State statutes to allow jurisdiction over rabies issues by the OVMLB and no law has been presented to the contrary. This act constitutes an act outside the scope of the jurisdiction of the OVMLB as well as an attack on an innocent license in the face of no complaint being filed. In addition, the local government was satisfied with the resolution of the conflict between Dr. Sizemore and the private

citizen as well as the private citizen was satisfied with the resolution of conflict.

2. The documentation of controlled drugs and Federal regulations for the same. No violation of Federal law occurred and no specific Federal Drug Enforcement Administration (DEA) law has ever been cited as violated. The DEA law presented at the July 20, 2006 RC 119 Hearing was false and related to researchers, importer/exporters, chemical analysts, distributors, etc-and NOT Dr. Sizemore. In addition, there was no complaint made by the private citizen regarding the issues of her drug documentation, this allegation falls to the requirement of a 'five-day notice' for inspection of Dr. Sizemore's practice pursuant to RC 4741.26 and the Supreme Court of Ohio decision *Shell v. OVMLB*, 105 Ohio St.3d 420, 2005-Ohio-2423, which clarifies this issue. In addition, to attempt to substantiate this allegation, the OVMLB and their advisors the Ohio Attorney General's office invented a 'treatment record' reference which is not defined in the ORC and therefore not a legal statute upon which to rely.
3. The third allegation of misconduct revolved around 'labeling' a dispensed medication. The word 'label' does not appear in the Ohio Veterinary Practice Act-ORC Chapter 4741. It is however, the jurisdiction of the Ohio Board of Pharmacy. This allegation

was also outside the jurisdiction of the OVMLB. In addition, the OVMLB cited RC 4742-1-17(A)-which does not exist.

Even after multiple attempts by Dr. Sizemore to convey all the above information to the OVMLB and the Ohio Attorney General's office, the OVMLB still maliciously, with malice and forethought, attacked Dr. Sizemore's veterinary license. Dr. Sizemore contends they acted outside the scope of their employment by bringing these charges against her and they did so with the intent she could not fight them because she was not trained in legal matters. In so charging her, they essentially accused her of being 'inhumane' to animals when they attempted to state she had not conformed to humane standards of care by not issuing a rabies certificate. Dr. Sizemore contends these allegations, being false, constitute fraud.

On March 2, 2007, the OVMLB drafted formal charges against this Relator-Appellant for the first two allegations above at the recommendation of Hearing Examiner, Marc Myers. Dr. Sizemore attempted to gain assistance with her concerns from Ohio Inspector General, Mr. Tom Charles, her State Representative, Mr. Bob Gibbs, and former Director of Boards and Commissions, Tracy Winn.

Dr. Sizemore made formal request to the OVMLB-specifically Ms. Hissom, former acting director of the OVMLB-for specific information regarding procedure and her rights in her situation. On two occasions Ms. Hissom responded in writing the Relator-Appellant 'had no rights' and there was no procedure.

On or about March 14, 2007, Dr. Sizemore appealed the administrative decision to the Franklin County Court of Common Pleas. When doing so, she filed her notice of

appeal to the OVMLB first, obtaining a time and date stamp on her notices. She then proceeded to the Court to file her appeal and received a date and time stamp there as well. Dr. Sizemore realized she had not signed the documents and returned to both the OVMLB and the Court to sign both documents. In doing this trivial, insignificant and minor error in procedure-signing the two documents with two separate signatures, Dr. Sizemore's first appeal was defeated because she was not in compliance with the filing requirements of RC 119.12 requiring her to file an original notice to the Agency and a copy to the Court. This, in her opinion, deprived her of her Federal and State Constitutional rights to due process, equal protection, reputation, open courts, and others.

On July 20, 2007, Dr. Sizemore appealed the decision of the Franklin County Court of Common Pleas dismissing her appeal to the Tenth District Court of Appeals.

On July 31, 2007, Dr. Sizemore requested the OVMLB re-issue her an Adjudication Order in compliance with RC 119.09-a certified copy. She was advised her appeal gave all jurisdiction to the Court and the OVMLB and the Ohio Attorney General had no authority to modify or vacate the ORDER.

On August 15, 2007, a mediation conference was held between all parties and Tenth Appellate Court mediator, David Doyle. During that meeting, the OVMLB representative Mr. McKew and this Relator-Appellant entered into an agreement for the appeal to be dismissed and be remanded back to the OVMLB for them to re-issue a final order pursuant to *Hughes v Ohio Dept. of Commerce*, 114 Ohio St.3d 147. The vital issue at this 'meeting of the minds' conference was that Dr. Sizemore's appeal had been dismissed for the trivial mistake of signing the two notices of appeal with two different signatures, however, the OVMLB had not complied with RC 119.09 by failing to issue a

'certified copy' of the Adjudication Order. This non-compliance occurred prior to Relator-Appellant's non-compliance with RC 119.12 requirements and assured this Relator-Appellant the Supreme Court of Ohio affirms she is still entitled to fifteen days to appeal the decision the OVMLB was so sure they were correct in filing against her. In this meeting, there was no discussion of dismissing the charges being brought against Dr. Sizemore. The only terms of this agreement were that the OVMLB would re-issue the March 2, 2007 ORDER against her in compliance with RC 119.09 by serving Dr. Sizemore with a certified copy of that order. AAG Mr. McKew and present OVMLB Director Ms. Stir have both confirmed the Relator-Appellant's appeal divested any further jurisdiction to modify or vacate the March 2, 2007 ORDER against Dr. Sizemore.

The OVMLB changed the terms of the agreement, disregarded the Franklin County Court of Common Pleas ORDER, and decided to do whatever they wished and two times have dismissed the charges against Dr. Sizemore—once on November 21, 2007—prior to the Court's remand and the second time on June 11, 2009. At these times apparently the OVMLB realized this Relator-Appellant had smartened up enough to defend herself legally and truthfully and would prevail against them for their heinously false accusations against her. Their dropping the charges was a conscious admission of wrong doing as well as an act not founded in law. No legal basis has been presented to date by any party that the OVMLB was permitted to do whatever they wished—dismissing the charges. Relator-Appellant contends the OVMLB is in contempt of the ORDER rendered on May 19, 2009 by the Franklin County Court of Common Pleas specifically directing them to re-issue another ORDER pursuant to *Hughes* and in compliance with RC 119.09. There is no mention in this ORDER that the OVMLB may modify or vacate

the ORDER of March 2, 2007 in any way. There is no other provision made for any action other than the one Relator-Appellant filed her Petition for Writ of Mandamus for in the Tenth District Court of Appeals because to date, the OVMLB has failed to comply with the Court's ORDER.

On April 4, 2011, Relator-Appellant filed an original action for Writ of Mandamus in the Tenth District Court of Appeals. The Tenth assigned her action to a Magistrate who converted Respondent's Motion to Dismiss to summary judgment one day after Respondent's Motion was presented to the Court –conflicting with the Court's statement that conversion was not based on any motion in one breath and then in another breath stating it was in response to Respondent's Motion to Dismiss. The apparent disregard for the Relator-Appellant's response to this Motion to Dismiss-the 14 days she had to respond- draws into question the impartiality of the Magistrate. With this speed of conversion and utilizing reasons contrary to the facts and evidence in this case, and misusing summary judgment, the Magistrate declined vacating the conversion to summary judgment after the Relator-Appellant filed a motion for same. No party requested the summary judgment, all facts indicated the Relator-Appellant had the right to the Petition for Writ of Mandamus, and opposing counsel failed to meet the requirements of Civ. R. 56 to have summary judgment. Also, this Relator-Appellant was denied due process rights of obtaining affidavits from Court individuals the Magistrate stated Relator was not entitled to obtain affidavits from to support her Action. Also, there was the allegation and remaining dispute of material facts regarding fraud in the proceedings. The Magistrate based her conversion to summary judgment on a statement she made regarding 'matters outside the record' being presented, but failed to provide the

'matters outside the record.' Relator-Appellant contends there was and is no such evidence that was 'outside the record' to be considered and all information had been provided by the Relator-Appellant and substantiated her Action for Petition for Writ of Mandamus.

Relator-Appellant, Dr. Sizemore contends there is no legal basis for the lower Court to deny her Action for Writ of Mandamus. None has been provided to date. In fact, there are no findings of fact or conclusions of law contrary to the legal argument provided by this Appellant and all laws relied upon are irrelevant to this Action.

Pursuant to long standing and well established contract and contempt law in Ohio, the OVMLB was bound by the written agreement between parties to execute the specific performance requirements set forth in the agreement and have failed to do so to date. The OVMLB has provided no law to refute this as well as there is no statute of limitations on contempt.

Equal protection applies to the government offices in the State of Ohio.

The OVMLB and the Courts have ignored many things. The Relator-Appellant was denied her Administrative appeal based on one small, trivial, insignificant procedural error-signing two documents with two separate signatures-while she contended the merits of her case were outstanding and the OVMLB and all tort feasons were guilty of:

1. The OVMLB drafted false charges against Relator-Appellant-constituting fraud.
2. The OVMLB brought these false charges when a private citizen filed a complaint against Relator-Appellant documenting she refused Relator-Appellant's advised and offered veterinary care for her pet.
3. The OVMLB brought false charges after affirming Relator-Appellant was never negligent in her care for "Pete."
4. Brought charges against this Relator-Appellant in the absence of complaint by the public (complaining party) regarding rabies issues -in fact this pet was not the pet even being complained about and the OVMLB brought charges without

investigation and thus violated due process rights. This complaint was about "Dutchess" not 'Pete.'

5. Alleged misconduct by Relator-Appellant outside the OVMLB's jurisdiction regarding label laws that are the State Board of Pharmacy's jurisdiction and the OVMLB referenced a fictitious citation regarding label laws-OAC 4742-1-17(A).
6. Drafted charges on March 2, 2007 after concluding Relator-Appellant's practice had 'no deficiencies' in June and August, 2005-including specific areas already confirmed in compliance with the law.
7. Attached money damages to false charges based on a non-enforceable Adjudication Order-a violation of 18 USC 1341, Mail Fraud.
8. Attempted to enforce laws not within their jurisdiction-i.e. label laws as above and also rabies-which is delegated to the County level in Ohio. There are NO state statutes regarding rabies. In fact, the words rabies and label do not appear in ORC 4741-the Veterinary Practice Act.
9. Threatened the Relator-Appellant three times- twice with license revocation and thirdly with calling legal parties as she exercised her right to confront her accusers.
10. When threatening Relator-Appellant above, the OVMLB attempted to coerce her to accept what she understood was an illegal settlement agreement requiring waiver of Constitutional rights.
11. Violated the law- the ORC 4741.26 and a Supreme Court of Ohio ruling-*Shell v. OVMLB*, 105 Ohio St. 3d 420, 2005-Ohio-2423, requiring a five day notice to bring a charge regarding DEA substances not in the citizen's complaint.
12. Denied Relator-Appellant constitutional rights to due process and other rights.
13. Disregarded laws of self-incrimination.
14. Made up legal references that do not exist and applied them to accusations of misconduct
15. Brought false evidence to an ORC 119 hearing
16. Altered documents in an ORC 119 hearing
17. Misapplied statutes and relied on State law that was inadequate and not independent for conclusions; and unevenly applied the rules and laws.
18. Three government lawyers came to false conclusions of DEA law; making fraudulent claims Relator-Appellant violated Federal regulations.
19. Accused Relator-Appellant of not conforming to humane standards of care for a pet without reliable, credible, or probative evidence to support.
20. Continued with a 119 hearing when there was no legal justification to do so-and refused to disclose the reason for a 119 hearing-which Relator-Appellant contends is abuse of process
21. Conducted this 119 hearing with NO witnesses against her
22. In the ORC 119 hearing, accepted testimony of parties less qualified regarding testimony of medicine and DEA law.
23. Invented 'laws' or requirements not defined in the ORC in any location or in 4741 pertaining to the practice of veterinary medicine-specifically referring to 'treatment' record references.

24. Denied Relator-Appellant the right to having all rules be forthcoming and written in a manner the average citizen may understand-she understands is an Ohio Constitutional right.
25. Attempted to utilize Ohio Health Board laws pertaining to humans to falsely apply to animals.
26. Drafted charges for pets never investigated
27. Disregarded reports created by two of the State's own expert witnesses confirming Relator-Appellant was innocent of any wrongdoing
28. Falsely accused Relator-Appellant of violating Federal DEA regulations without any evidence to support such an accusation-which could have had serious ramifications regarding her Ohio Registered Nursing License as well.
29. Relentlessly pursued a defense not founded in law against her.
30. Relator-Appellant contends the OVMLB conducted themselves in a malicious and vindictive manner by continuing to publish information on the Internet causing others to view her in a negative light and causing extreme intentional infliction of emotional distress referencing a meritless case. This information is unnecessary as well as discriminatory. The OVMLB stated they published this false and inflammatory information for 60 months to a private citizen in Ohio and consider Relator-Appellant's claims 'outdated.' Contempt of court has no statute of limitations.
31. Dismissed the charges two times-November, 2007 and June, 2009- constituting a conscious admission of wrongdoing as well as fraudulent actions because they did not possess any legal authority to dismiss the charges.
32. In addition, Relator-Appellant contends the Ohio Attorney General's office did not decline representation as required pursuant to ORC 109.362 provisions. It appears a conflict when the Ohio Attorney General's office represents the Ohio Attorney General's office.
33. In addition, the address given for former Director of the OVMLB, Heather Hissom, is the Supreme Court of Ohio; it appears they hired her. She is the party that drafted and signed the false allegations in the Notice for Hearing and the Adjudication Order against this Relator-Appellant. In this Relator-Appellant's quest for justice, she has experienced what she considers obstruction of her justice by the courts in Ohio and considers it is due to the desire of the courts to protect State actors for these heinous and malicious acts.

No party has ever refuted any of the above Relator-Appellant's merits listed. It should be no surprise why the OVMLB and others want to pretend this never happened and have the Court's find some legal theory to shield their conduct and excuse them from accountability. However, the State of Ohio and Courts all over this State, including this Supreme Court of Ohio and the United States Supreme Court, hold all private citizens accountable for their acts. In fact, this private citizen was required to utilize the Court

system to fight for herself in this matter in 2007 and Ohio AAG Mr. McKew shoved many laws at this Appellant she contends did not apply to her. In 2007, Relator-Appellant, Dr. Sizemore, found it heinous for the State departments to treat her in the malicious and heinous way she contended they were because she was unacquainted with the Court system and procedure. In the event she had nothing wrong, she was forced to study the law to protect and defend herself. In fact, she was dismissed for a trivial procedural mistake and it appeared the Courts were 'choking on a gnat and gulping down a camel.' Dr. Sizemore contends the 'pickiness' regarding her procedural issues needs to be evenly and equally applied to the OVMLB and their failure to follow procedure and even law in their case. Dr. Sizemore never violated law, she just made an innocent mistake in procedure even after she asked her government-the Ohio Attorney General and the OVMLB- for the procedure and was denied. She contends she was entitled to an answer from her government and she was informed there was no procedure twice.

The Relator-Appellant contends now the Courts are ignoring the US Constitution, the Ohio Constitution, The ORC, the legal doctrine of stare decisis, fraud, negligence, contract issues, specific performance in contracts, contempt, cases resolved on merits not pleading deficiencies in Ohio, frivolous conduct by attorneys-defense not founded in law, untruthful statements made in briefs-up to over 20 of them, ignoring issues that no law is permitted deprivation of Constitutional rights-reputation, due process, appellate rights, equal protection, right to sue-open courts, presenting evidence, misuse of summary judgment, etc. In fact the summary judgment should have gone in Relator-Appellant's favor and all facts and laws have been twisted and perverted to protect the wrong doing parties-just to suit themselves, and all the laws and rules promulgated by this Court for

the actions of Courts and attorneys-including the Civil Rules of Practice, Judicial canons, Code of Professional Conduct, etc. It appears Courts have conspired in these matters because former OVMLB Director, Ms. Hissom. is a lawyer and employed by the Supreme Court of Ohio.

As Relator-Appellant understands the rules promulgated by this Supreme Court of Ohio, it is her right to be in this Court and have her concerns judged without partiality and within the scope of well established law in Ohio. Relator-Appellant asserts she entitled to her Federally protected rights as well as her State Constitutional rights.

Pursuant to *Hughes v. Ohio Dept. of Commerce*, 147 Ohio St. 3d 114, Dr. Sizemore's fifteen days to appeal have not yet commenced and the OVMLB is required by law and contract agreement to re-issue the March 2, 2007 Adjudication Order against her so she can proceed with a RC 119 administrative appeal.

ARUGMENT IN SUPPORT OF THE PROPOSITIONS OF LAW

Proposition of Law No. I: RC 2731.01 provides for Mandamus. This Appellant contends she met all requirements set forth by this Supreme Court of Ohio for this Mandamus action, citing *State of Ohio Richard Shumway v. The Ohio State Teachers Retirement Board*, 114 Ohio App. 3d. 280, stating: 'Mandamus is available to correct abuse of discretion in administrative proceedings.'

On August 20, 2007, a journal entry was made in the Tenth District Court of Appeals with specific performance instructions to the Ohio Veterinary Medical Licensing Board to re-issue the March 2, 2007 Adjudication Order against her pursuant to *Hughes v. Ohio Dept. of Commerce*, 147 Ohio St.3d 114.

The OVMLB and the Ohio Attorney General (OAG) have failed to provide a legal basis for the dismissal of the charges. Even though Dr. Sizemore begged the OVMLB and the OAG to dismiss the charges, they refused and since the ORDER was issued, Dr. Sizemore has the right to the procedure. It appears that only when trivial procedural errors are made by parties such as Dr. Sizemore the Courts say they are obligated to follow the 'law' and the procedure and now they seem to choke on a gnat but gulp down a camel. The OVMLB claims they are just trying to 'please' Dr. Sizemore, however, that is also untruthful. If they wanted to 'please' her they would re-issue the ORDER. Dr. Sizemore is prepared to defend herself fully.

Proposition of Law No. II: RC 119 sets forth the Administrative process for parties adversely affected by an order from a State agency.

119.09 requires agencies to journal their decisions *.State, ex rel. Cole v. Lauman et al*, 69 Ohio App. 3d 464 it states 'an agency has the duty to journalize its decisions.' The decision to dismiss is absent in the November 2007 meeting minutes. A fact ignored by the Tenth District Appellate Court.

Proposition of Law No. III: This Appellant contends the Tenth District Court of Appeals abused their discretion and erred in accepting the findings of fact and legal conclusion set forth in the dismissal based on the doctrine of **stare decisis**.

Facts in this case have been ignored-they seem to acknowledge the proper ORDER issued by the Court and then proceed to pervert it. The OVMLB issued a 'letter'

they try to pass off as the intended re-issuing of a final order. This letter is not in compliance with RC 119.01.

‘Filing an appeal terminates administrative agency’s continuing jurisdiction,’ citing *State ex rel. Rodriguez v. Indus. Comm.* (Ohio 1993) 67 Ohio St.3d 210, 616 N.E.2d 929. This authority supports that the OVMLB had no authority to ‘do whatever it wished’ regarding a direct order they received.

In *Wide v. OVMLB*, 1999 Ohio App. LEXIS 4813- ‘The court ruled that the board had inherent authority to reconsider their own decisions **UNTIL the actual institution of a court appeal**, thus they had **no jurisdiction** to reopen appellant’s case at the administrative level...’ and also states: ‘... administrative agency lacked authority to reconsider once court appeal had begun..’

Supreme Court of Ohio case styled *Lorain Education Association v. Lorain City School District Board of Education*, 46 Ohio St.3d 12; 544 N.E.2d 687; 1989 Ohio LEXIS 249, states: ‘The court held that when a notice of appeal from a decision of an administrative agency has been filed, the agency is divested of jurisdiction to reconsider, vacate, or modify the decision unless there is express statutory language to the contrary.’

The doctrine of stare decisis has been ignored by the Tenth Appellate District. The laws they rely on are contrary to the facts and evidence in this action in *Mandamus*. Dr. Sizemore asserts she sees the words on the pages, however, she is stunned as to how to respond to them because they are irrelevant and misapplied to her action. She contends stare decisis is the doctrine of precedent and the Court is bound to follow those legal principles enunciated by the Ohio Supreme Court, citing *In Wurgler*, 136 Ohio Misc. 2d 1, 2005-Ohio-7139. Also, the doctrine of stare decisis is of fundamental importance to the

rule of law because it provides continuity and predictability in the legal system, citing *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546, which also states: the Supreme Court of Ohio adheres to stare decisis as a means of thwarting the arbitrary administration of justice as well as providing a clear rule of law by which the citizenry can organize their affairs.

Dr. Sizemore asserts the Courts do not even pretend to notice the law she cites that she cites that applies to her action. In fact, the facts of *Hughes* are not what the OVMLB appears to understand or consider. Dr. Sizemore is at a loss for what is thrown at her because the operative facts do not match her action and the Courts have ignored all the false statements presented by the OAG and have never once addressed the issue of the truthfulness of the statements presented by the OAG.

Proposition of Law No. IV: This Appellant contends the dismissal of her action by the Tenth District Court of Appeals deprives her of her Federally protected rights

Relator-Appellant, Dr. Sizemore asserted 14th Amendment rights to due process and equal protection and now asserts First Amendment rights to petition government for redress of grievances. 42 USC 1983 also as well as Ohio Constitutional Art. IV sect 16 were asserted as well.

In the absence of a hearing, this Relator-Appellant was denied due process rights to respond to any requirement the Magistrate and the Court may have had to reach a decision. Denying this right to bring evidence to support her claims violated her constitutional right pursuant to *Haines v. Kerner et al.* 404 U.S. 519; 92 S. Ct. 594; 30 L. Ed. 2d 652; 1972 LEXIS 99; Fed. R. Serv. 2d (Callaghan) 1, stating the petitioner sought

review of a dismissal of his action contending the 'court erred in dismissing his complaint without allowing him to present evidence on his claims.' The U.S. Supreme Court reversed the lower court's decision and remanded the case. The Tenth may have offered this Appellant 'extra time' to obtain evidence, however, they impeded justice by denying access to Court and OVMLB parties with pertinent information. There is no legal basis to shield these parties from the Appellant. All parties are officers of the Court and required to provide truthful information. I contend even Judges act outside the scope of their employment and violate the very rules promulgated by this Supreme Court of Ohio when they make decisions that are not founded in properly applied law, are contrary to the facts and evidence in a case, and have an overwhelming appearance of partiality.

Proposition of Law No. V: Well established contract law in Ohio does not allow the dismissal of Appellant's complaint and action in Mandamus.

It is this Appellant's understanding that a signed agreement between parties constitutes a 'contract' and is legally binding. She understands the definition of a contract is 'a promise...for the breach of which the law gives remedy, or the performance of which the law recognizes as a duty. A promise is an undertaking, however, expressed, either that something shall happen..., ' citing both *Shenley v. Kauth*, 96 Ohio App. 345; 122 N.E.2d 189; 1953 Ohio App. LEXIS 675; 54 Ohio Op. 349 and *Brownfield v. Sturtz et al*, Ohio App.2d 10; 381 N.E.2d 207; 1977 Ohio App. LEXIS 7080; 10 Ohio Op. 3d.

This Appellant also understands there was an 'offer' of a contract made in this Court on or about August 15, 2007 regarding these issues and authority to confirm there must be an 'offer' in a contract is *Leaseway Distribution Centers v. Department of Administrative Services et al*, 49 Ohio App.3d 99; 550 N.E.2d 955; 1988 Ohio App.

LEXIS 2318, and that the offer must be accepted, citing *Nilavar v. Osborn et al*, 127 Ohio App.3d 1; 711 N.E.2d 726; 1998 Ohio App. LEXIS 1150. In *Nilavar*, “the Court found that the (Plaintiff)- ‘1-presented sufficient evidence to raise a question as to whether the (Defendant) assented to a contract, 2- the (Plaintiff) had presented evidence showing that the (Defendant) engaged in a pattern of deception by outwardly manifesting assent without intending performance, 3-because a reasonable person could conclude from the (Plaintiff’s) evidence that a contract existed with sufficient certainty to the subject matter and consideration, ...” This Appellant contends she has provided such evidence of a contract and evidence of a breach of that contract and cannot reconcile the findings of the Tenth District Court of Appeals based on the evidence in the record. There is NO final order that has been re-issued- the Order in the Appeal-the March 2, 2007 Order- to be exact. No evidence this Relator-Appellant entered into any other agreement has been presented to the Court. She contends Mr. McKew entered into this agreement to have the Court protect him from accountability and he never intended to re-issue the March 2, 2007 Order as he and the OVMLB were ORDERED to do.

This Appellant asserts she is aware that contracts cannot be modified unless mutually agreed upon, citing *Richland Builders, Inc., v. Thome et al*, 88 Ohio App. 520; 100 N.E.2d 433; 1950 Ohio App. LEXIS 673; 45 Ohio Op. 264, *Trader v. People Working Cooperatively Inc.*, 104 Ohio App. 3d 690; 663 N.E.2d 335; 1994 Ohio App. OEXIS 5319; 11 I.E.R. Cas. (BNA) 1350 and *Synergy Mech. Constrs. V. Kirk Williams Co.* (December 22, 1998), Franklin App. No. 98AP-431, unreported, 1998 Ohio App. LEXIS 6430. This Appellant asserts she has never agreed to any other terms of this

contract-signed agreed motion and has never received any documents to state otherwise. There has been no 'order re-issued pursuant to *Hughes*.'

Appellant finds these conclusions contrary to the facts and evidence in this record/case. There has been no agreement to dismiss charges and the OVMLB lacks jurisdiction to dismiss them asserting, 'Filing an appeal terminates administrative agency's continuing jurisdiction,' citing *State ex rel. Rodriguez v. Indus. Comm.* (Ohio 1993) 67 Ohio St.3d 210, 616 N.E.2d 929.

Proposition of Law No. VI: RC 2705 et seq defines acts of contempt of Court Orders.

Pursuant to RC 2705.02 'acts in contempt of court: A person guilty of any of the following acts may be punished as for a contempt: (A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or office.' RC 2705.06 states a party may be 'Imprisoned until the Order is obeyed-when a contempt consists of the omission to do an act which the accused yet can perform, he may be imprisoned until he performs it.'

The Ohio's Revised Code provides STATUTORY authority, the power of contempt is INHERENT in a court, such power being necessary to the exercise of judicial functions- citing *Citcasters Co. v. Stop 26- Riverbend, Inc., and Esq. Communications, Inc.*, 147 Ohio App. 3d 531; 2002 Ohio 2286; 771 N.E.2d 31; 2002 Ohio App. LEXIS 2311.

Dr. Sizemore understands the Court has authority under contempt statutes and on the basis of inherent powers to punish disobedience of its lawful orders with contempt

proceedings, citing *Miller-Finocchioli v Mentor Landscapes & Supply Co., Inc; Hutson*, 90 Ohio App. 3d 815. 814. The Appellant understands civil contempt of court is the intentional failure of a party to do something the Court has ordered done to benefit the opposing party, citing *Lorain City Schools v. SERB*. 1989 SERB 4-94 (C.P. Lorain) 9-6-89.

The 'letters of dismissal' are NOT certified copy of an order, were not sent 'certified, return receipt mail,' nor were they 'adjudications' as defined in RC 119.01, nor is there indication of appellate rights/timing, etc. The 'letters' were not appealable. 119.09 specifically states: "after such order is entered on its journal, the agency shall serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected...." according to *Hughes*., No matter how one tries and tries, they cannot change the words in the authority or the ORDER rendered on May 19, 2009 by the Franklin County Court of Common Pleas. Everyone knows the State of Ohio has done everything to try.

There is no statute of limitations on contempt, citing *Storey v. Knapp, Et.* 93 N.E.2d 63; 1949 Ohio Misc. LEXIS 257; 41 Ohio Op. 200; 56 Ohio L. Abs. 545, where the issues of contempt were dealt with by this Court 20 and 40 years after the original order. THAT is a lot longer than this case.

The command of RC 119.09 is that parties be notified of agency orders by certified mail is not meant merely to ensure that affected parties are informed of their right to appeal, an agency failing to give this notice **violates due process**, and the affected party has no obligation to obey that agency's order, citing *Franklin Cty Bd. of*

Commrs v. State Employment Relations Bd. (Franklin 1989) 64 Ohio App.3d 113, 580 N.E.2d 832, 1989 SERB 4-116.

To show contempt it is necessary to establish that there is a valid court order, knowledge of the order, and a violation of it. *Evans v. Evans* (Ohio App. 12 Dist., 10-02-1995) 106 Ohio App.3d 673, 666 N.E.2d 1176.. Everyone has demonstrated understanding of all facts and ORDERS in this case.

The court has BOTH inherent and statutory authority to punish a party for contempt, citing *In re Contempt of Morris* (Ohio App. 8 Dist., 04-22-1996) 110 Ohio App.3d 475 and *Vanguard Transportation Systems, Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App.3d 786 and 105 Ohio App.3d 31, states: 'A court has authority to punish the disobedience of its orders with contempt proceedings.' The Tenth Appellate Court has completely disregarded the fact the OVMLB is in contempt of the agreement signed and the Court's ORDER to them.

Dr. Sizemore has made repeated requests for the OVMLB to re-issue the Order without success. This omission has interfered with the administration of justice through conduct disobeying the agreement made in the Tenth and the ORDER rendered in Common Pleas. This has shown disregard and disrespect for the authority and dignity of the law, see e.g. *In re Contemnor Caron*, 110 Ohio Misc. 2d 58; 744 N.E.2d 787; 2000 Misc. LEXIS 53. In *Windham Bank v. Thomaszczyk* 27 Ohio St. 2d. 55; 271 N.E.2d 815; 1971 Ohio LEXIS 475, the Supreme Court of Ohio stated: 'Noting that it appeared that the mortgager did not knowingly intend to violate the Court's order or show disrespect to the Court, it held that this absence of willfulness did not relieve him from civil contempt because the purpose of civil contempt is remedial.

Dr. Sizemore understands the party facing contempt charges has obstructed the administration of justice in some manner, citing *Martin v. Martin*, 179 Ohio App. 3d 805; 2008-Ohio-6336, 903 N.E.2d 1243; 2008 Ohio App. LEXIS 5279. Dr. Sizemore contends her Constitutional rights to due process are being deprived and the Tenth Appellate District failed to address this issue even when the joint agreement was entered into in their Court.

RC 2505.39 states: 'A court ...shall send a special mandate to the lower court for execution or further proceedings. The court to which such mandate is sent shall proceed as if the final order, judgment, or decree has been rendered in it.' There is NO language that allows a lower court to deviate from the upper court's mandate, nor is there plain language allowing an agency to deviate from the superior court's order.

When a case is remanded to a trial court from an appellate court, the mandate of that appellate court must be followed... an inferior Court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case, citing, *Kaechele v. Kaechele*, 61 Ohio App,3d 159; 572 N.E.2d 218; 1989 Ohio App. LEXIS 1288. Again, if a trial Court must follow the Order issued, then so must the Respondent-Appellee.

Regarding RC 119.09- A letter... 'is deemed moot' and does not constitute a final order of an agency issued pursuant to an adjudication as required by RC 119.12 and as defined in RC 119.01, citing the *Ohio Academy of Trial Lawyers v. Ohio Dept. of Ins.* (Ohio 1983) 4 Ohio St.3d 201, 448 N.E.2d 141 40 B.R. 519. This law confirms the legal argument of the Relator that the OVMLB's 'letters' do not constitute 'final order.'

Proposition of Law No. VII: RC 2913.01 defines fraud.

“Fraud” 2913.01(A) ‘Deception’ means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates confusion, or perpetuates a false impression as to law, value, state of mind, or other objective or subjective fact.

Dr. Sizemore contends she addressed the issue of how many false statements were made in briefs to the Tenth Appellate District by AAB Ms. Worly and how she never presented argument founded in law to justify the acts of the OVMLB and these facts were ignored. Opposing parties throw law on the page and it is nonsensical and never leads to any truthful finding of fact or conclusion of law founded in existing law. This is a crime upon a crime as well as an abuse of the Judicial system and contrary to all the Courts and Judicial system stand for.

The record is devoid of facts allowing the OVMLB to disregard the specific performance mandated in the ORDER issued by the Franklin County Court of Common Pleas on May 19, 2009. Dr. Sizemore is unable to identify facts to rely on. The Court dismissed all Dr. Sizemore’s well and properly pled arguments and knowingly and willingly sided with the wrong doers.

Well established law in Ohio does not permit attorneys to present argument not founded in law-rules of procedure and fraud. Civil rule 11. Again, rules promulgated by this Supreme Court of Ohio but apparently not enforced.

The Magistrate failed to identify the November 21, 2007 letter as fraudulent in light of the fact the matter was not remanded to the OVMLB at the time of the November

letter and the OVMLB admitting on two occasions they could not make any decisions regarding Relator's issues or dismiss charges due to Relator's filing an appeal. Both Ms. Stir and Mr. McKew acknowledge this fact pled by the Relator with no opposing facts pled by Ms. Worly of the Ohio Attorney General's office.

Another statement the Relator contends is absolute fraud is in the Magistrate's August 16, 2011 Decision on page 4 stating: 'as they indicated in a letter November, 2007' The November 21, 2007 letter NEVER says this. This issue has been argued over and over. At no time has any party been able to produce a document that actually states this-and in any event-the OVMLB had no authority to dismiss and no facts or law has been presented they could. It is actually the OVMLB and the Ohio Attorney General that have failed to provide legal entitlement to their acts. -not this Relator-Appellant. Dr. Sizemore asserts the OVMLB has never provided truthful argument founded in law to support the acts of the OVMLB.

As stated in paragraphs above, fraud in its general sense, is deemed to comprise **anything** calculated to deceive, including all acts, omissions, and concealments involving a breach of legal duty, trust, or confidence justly reposed, resulting in damage to another, see *New York Life Ins. Co. v. Nashville Trust Co.*, 200 Tenn. 513, 292 S.W.2d 749, 59 A.L.R.2d 1086(1956) (the hallmarks of fraud are misrepresentation or deceit, citing *Ed Peters Jewelry Co. Inc., v. C & J Jewelry Co. Inc.*, 215 F.3d 182 (1st Cir. 2000.) or by which an undue an unconscientious advantage is taken of another, see *New York Life Ins. Co. v. Nashville Trust Co.* 200 Tenn. 513, S.W.2d 749, 59 A.L.R.2d.

Proposition of Law No. VIII: The Tenth Appellate District abused its discretion by allowing the misuse of Civ. R. 56 for summary judgment.

This Relator-Appellant contends a genuine issue of material fact existed- specifically the fraud claimed to be present and ignored. Courts and Magistrates are not permitted to grant summary judgment to a party that has not requested it or met the filing requirements of Civ. R. 56, citing *Cohn & Son v. Kinstle*, 174 Ohio App. 3d 81; 2007 Ohio 6237; 880 N.E.2d 965; 2007 Ohio App. LEXIS 5495. Appellant contends the Appellee never met any filing requirements of Civ. R. 56 to justify the conversion to summary judgment. Nor could the decision be justifiably based on any facts pled by Ms. Worly. The Relator-Appellant is aware that Civ. R. 56 (C) states: ‘..if any, timely filed in this action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law...’ These requirements were not met. The Respondents-OVMLB and Ms. Worly failed to provide any law that they were entitled to relief as a matter of law-they just said they were allowed to change the content of the Order to be whatever they chose. This defense is not founded in law and is frivolous. The plain language of Civ. R. 56 (C) states; ‘..summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact... **show that there is no genuine issue as to any material fact**... No evidence of stipulation may be considered except as stated in this rule. A summary judgment shall NOT be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion...that party (the adverse party) being entitled to have the

evidence or stipulation construed most strongly in the party's favor.' (emphasis added). The rule itself completely supports the Relator and the Magistrate biasly demonstrated favor to the Respondents even in the absence of any law to support a decision rendered in their favor.

Appellant asserts "summary judgment is designed to provide an efficient procedure to terminate litigation at an earlier stage,...when, on the face of the pleadings, there appears to be.....no genuine issue of fact.... It is not designed to dispose of issues where the evidence may be very strong for one side and very weak for the other.....The non-moving party is entitled to have the evidence construed most strongly in their favor to avoid prejudging of the controversy.." Also, the Civil Rule states, "...the Court shall consider only such matters outside the pleadings that are specifically enumerated in Rule 56." The Magistrate did not comply with this rule when considering 'matters outside the pleadings..' Relator contends this renders the actions of the Magistrate an abuse of judicial power and Relator also contends the Magistrate misapplied the Civ. R. for the conversion of a motion to dismiss to a motion for summary judgment.

Relator asserted Local Rule 12(D) requires any motion to dismiss to state is the dismissal will dispose of the merits. There were no facts pled in Ms. Worly's Motion to Dismiss or the Magistrate's conversion to summary judgment referencing the outstanding merits to this action. These 'little' procedural issues appear unaddressed.

Dr. Sizemore understands that summary judgment is a procedural tool that must be **used with caution**, citing *Leibreich et al, v. A.J. Refrigeration Inc.*, 67 Ohio St. 3d 266; 1993 Ohio 12; 617 N.E.2d 1068; 1993 Ohio LEXIS 1833 **so a litigant's right to trial is not usurped**, citing *Doe et al, v. Kahrs et al*, 75 Ohio Misc. 2d 7; 662 N.E.2d

101; 1995 Ohio Misc. LEXIS 74. Dr. Sizemore understands Ohio Jurisprudence to state: 'summary judgment is only used in cases where the justice of its application is **unusually clear**, citing *Johnston, Amir v. Johnston et al*, 119 Ohio Misc. 2d 143; 2001 Ohio 4387; 774 N.E.2 1249; 2001 Ohio Misc. LEXIS 56.

Summary judgment is not appropriate where facts are subject to reasonable dispute when viewed in the light most favorably of the non-moving party, citing *Gardens of Bay Landing Condominiums v. Flair Builders Inc.*, 96 Ohio App. 3d 353; 645 N.E.2d 82; 1994 Ohio App. LEXIS 3351. This Relator-Appellant was the non-moving party and the Court and the Magistrate ignored this completely.

Relator-Appellant contends the Magistrate and opposing parties are not permitted to assess factual evidence itself or make conclusions that are personal, citing *Scarvelli v. Melmont Holding Co.*, 2006 Ohio 4019; 2006 Ohio App. LEXIS 3986.

The Ohio Attorney General's office claimed to be a 'non-moving' party. This is confusing because Dr. Sizemore never requested summary judgment. Also, the Magistrate contended she decided on summary judgment based on argument presented by the Appellee's Motion to Dismiss. Appellant contends this is an absolute contradiction to the use of Civ. R. 56.

Relator-Appellant additionally asserted: 'nor is summary judgment the proper method for **determination of the issues** where conflicts of factual and legal issues are present,' citing *Contennial Ins. Co. of New York et al. v. Vic Tanny International of Toledo Inc., Cricket Health Clubs of America, Inc.* 46 Ohio App. 2d 137; 346 N.E.2d 330; 1975 Ohio App. LEXIS 5838. Relator contends there were still issues of the material

facts-thus not permitting summary judgment-and constituting a clear error by the Magistrate.

Proposition of Law No. IX: RC 109.362 mandates the Ohio Attorney General's office complete and investigation and if they find the State actors have acted outside the scope of their employment, they cannot represent them. It is inconceivable that parties acting outside their jurisdiction and violating known Supreme Court of Ohio rulings and bringing false charges against an innocent party, and being in contempt of a Court ORDER and violating contract laws and committing fraud, etc, could in any way have acted within the scope of their employment. Yet, the OAG continues to utilize tax dollars to represent this party.

CONCLUSION

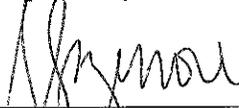
Appellant finds the conclusions of the Tenth Appellate Court contrary to the facts and evidence in this record/case. There has been no agreement to dismiss charges and the OVMLB lacks jurisdiction to dismiss them.

The decision below is fundamentally wrong in its reasoning and dangerous in its implications for equal protection under the law as well as holding government to the same standard the Court would for private citizens. The decision undermines the fundamental fairness and laws applying equally to all parties. No party has suggested an alternative legal route for dispute resolution at this time as well as the Court's are apparently shielding the government employees who decided to attack this Relator-Appellant's license to begin with. They picked a fight Dr. Sizemore contends they are certain they can no longer win and wish the Courts to ignore the agreement they made. In

fact, if Dr. Sizemore knew they were going to trick her into signing an agreement they never would be held accountable to do what was agreed to, she would have addressed the situation then. She contends the heinous acts of the government dictate they be addressed and the laws applied evenly and fairly to all parties, not just pointing out the deficiencies of Dr. Sizemore. The entire justice system condemns this sort of conduct, yet fails to address it now. The thought of covering it up more needs to be rejected. Let the accusers fight the fight they intended to fight in 2007. Dr. Sizemore is prepared for the fight at this time.

The decision below must be reversed and this Supreme Court of Ohio must instruct the Tenth District Court of Appeals to issue the requested Writ of Mandamus ordering the Ohio Veterinary Medical Licensing Board to re-issue the Order in compliance with RC 119.09 they were ORDERED to re-issue by the Franklin County Court of Common Pleas, the Tenth District Court of Appeals, and the 'meeting of the minds' agreement of August 20 , 2007 and pursuant to *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877. Relator asserts the 'fifteen day appeal period described within R.C. 119.12 does not commence until the subject board complies fully with R.C. 119.09.." AAG Mr. Mckew's confirmed, "The Board is without authority to proceed with any new action until such time as the Court of Appeals takes action on the Order issued on March 2, 2007. It is YOUR APPEAL that gives that authority to the Court. The Board cannot act while the Court is adjudicating the first order..." (emphasis added)

Respectfully submitted,



Dr. Terrie Sizemore RN DVM/Pro se
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440-241-3126
sizemore3630@aol.com

CERTIFICATE OF SERVICE

A true and accurate copy of this foregoing "MERIT BRIEF OF RELATOR-
APPELLANT DR. TERRIE SIZEMORE RN DVM" has been served, via regular U.S.
Mail on this 9th day of March, 2012 upon the following:

Mr. Walter McNamara, IV (0074570)
Ohio Assistant Attorney General
30 East Broad Street 26th Floor
Columbus, Ohio 43215

Attorney for the Respondent OVMLB



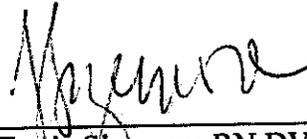
Dr. Terrie Sizemore RN DVM
Pro Se

NOTICE OF APPEAL OF APPELLANT, DR. TERRIE SIZEMORE RN DVM

Relator-Appellant, Dr. Terrie Sizemore RN DVM, gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in Court of Appeals case no. 11AP-298 on January 10, 2012.

This is an appeal of right and Relator's original action in Mandamus originated in the Court of Appeals.

Respectfully submitted,



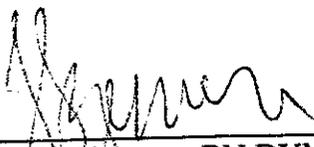
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CERTIFICATE OF SERVICE

A true and accurate copy of this foregoing "Notice of Appeal of Relator-Appellant Dr. Terrie Sizemore RN DVM" has been served, via regular U.S. Mail on this 26th day of January, 2012 upon the following:

Ms. Mindy Worly (0037395)
Ohio Assistant Attorney General
30 East Broad Street 26th Floor
Columbus, Ohio 43215

Attorney for the Respondent OVMLB



Dr. Terrie Sizemore RN DVM
Pro Se

FILED
APPEALS

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

2012 JAN 10 PM 12:37
CLERK OF COURTS

State ex rel. Terrie Sizemore, D.V.M.,
Relator,
v.
Ohio Veterinary Medical Licensing Board,
Respondent.

No. 11AP-298
(REGULAR CALENDAR)

DECISION

Rendered on January 10, 2012

Terrie Sizemore, pro se.

Michael DeWine, Attorney General, and Mindy Worly, for respondent.

IN MANDAMUS
ON OBJECTIONS TO MAGISTRATE'S DECISION

TYACK, J.

{¶1} Terrie Sizemore filed this action in mandamus, seeking a writ to compel the Ohio Veterinary Medical Licensing Board ("OVMLB") to "re-issue the Order of March 2, 2007 properly and in compliance with RC 119.09 requirements." She also seeks an order that OVMLB reimburse her "for this action and all other actions she has failed to perfect due to the [board's] failure to comply with the agreed journal entry and the Court's decision to remand this matter back to [the board]."

No. 11AP-298

{¶2} In accord with Loc.R. 12, the case was referred to a magistrate to conduct appropriate proceedings.

{¶3} OVMLB filed a motion to dismiss this case, which the magistrate converted to a motion for summary judgment because the motion raised issues outside the four corners of the complaint.

{¶4} Sizemore next filed a motion requesting that the magistrate recuse herself and return the case to a panel of judges.

{¶5} The magistrate did not recuse herself, but granted Sizemore an extension of time to file evidentiary material pertaining to the motion for summary judgment. A panel of this court overruled Sizemore's motion regarding recusal or removal of the magistrate.

{¶6} Sizemore next filed a motion requesting sanctions against a member of the Ohio Attorney General's staff, alleging that the attorney had stated certain facts inaccurately in the motion to dismiss which was subsequently converted. No sanctions were granted.

{¶7} Sizemore also filed a motion requesting "Clarification of Issues" and "Reconsideration to Vacate the April 26, 2011 Order for Summary Judgment." The clarification of issues request was based upon Sizemore's belief that a magistrate cannot rule on a motion for summary judgment. Magistrates do not rule on such motions, but routinely generate magistrate's decisions with recommendations to the appropriate court on how the motion for summary judgment should be considered. Sizemore also failed to understand that the magistrate had not ruled on the merits of any motion when she converted the motion to dismiss to a motion for summary judgment.

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{¶8} The parties eventually filed evidentiary material and the magistrate rendered a magistrate's decision including detailed findings of fact and conclusions of law which is appended to this decision. The magistrate's decision includes a recommendation that we refuse to issue the writ and the orders requested by Sizemore.

{¶9} Sizemore has objected to the magistrate's decision. The case is now before the court for a full, independent review.

{¶10} The OVMLB originally issued a finding adverse to Terrie Sizemore in 2007, but did not serve it correctly. After the Supreme Court of Ohio decided *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877, this became clear. After Sizemore had appealed the adverse finding to the common pleas court and obtained no relief satisfactory to her, she appealed to this court.

{¶11} The mediator of this court, Sizemore and a representative of the Ohio Attorney General's Office, all understood that the original adverse finding needed to be appropriately served to have full legal effect. Thus, the appellate case was sent back to the trial court with instructions to remand the case to OVMLB. This was eventually done.

{¶12} OVMLB decided not to reissue the original adverse finding, but instead to drop the charges against Sizemore. Apparently Sizemore is discontented with the dismissal of the charges. Instead, she wants the adverse order, the order finding she had been guilty of misconduct, reissued.

{¶13} We do not believe that Sizemore has the right to compel a governmental agency to issue an order which the agency no longer feels is appropriate. The agency, especially an agency which serves as an adjudicating authority, has the inherent power to

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dismiss charges against an individual who has had claims of misconduct levied against her or him.

{¶14} Stated more specifically, Sizemore does not have a clear right to force OVMLB to issue an order finding her guilty of misconduct. Since she has no such clear legal right, she has no right to a writ of mandamus. Since she has no right to a writ of mandamus, she is not entitled to the other relief she requests.

{¶15} The objections to the magistrate's decision are overruled.

{¶16} The findings of fact and conclusions of law in the magistrate's decision is adopted. The request for a writ of mandamus is denied.

Objections overruled; writ denied.

BROWN, P.J., and DORRIAN, J., concur.

8A

No. 11AP-298

APPENDIX
IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Terrie Sizemore, D.V.M., :

Relator, :

v. :

Ohio Veterinary Medical Licensing Board, :

Respondent. :

No. 11AP-298

(REGULAR CALENDAR)

MAGISTRATE'S DECISION

Rendered on August 16, 2011

Terrie Sizemore, pro se.

Michael DeWine, Attorney General, and Mindy Worry, for respondent.

IN MANDAMUS
ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

{¶17} Relator, Dr. Terrie Sizemore ("Dr. Sizemore"), has filed this original action requesting that this court issue a writ of mandamus ordering respondent, the Ohio Veterinary Medical Licensing Board ("the board"), "to re-issue the Order of March 2, 2007 properly and in compliance with RC 119.09 requirements."

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Findings of Fact:

{¶18} 1. On February 21, 2007, the board met to determine whether or not disciplinary action should be taken against relator's veterinary medical license for violations of "R.C. 4741.22(AA) and O.A.C. 4741-1-21(1) and (3) and O.A.C. 4741-1-03(B)(6)(a)." Ultimately, the board concluded that relator did violate the provisions and found against her in an order dated March 2, 2007. That order provides:

*** The Board hereby orders that Dr. Sizemore receive pay a fine of \$250.00 for the first violation and \$1,000.00 for the second violation for a total of \$1,250.00 within sixty days of the date of this Order. The Board further orders that Dr. Sizemore pay the costs of the hearing pursuant to R.C. 4741.22 in the amount of \$1,458.50 within sixty days of the date of this Order.

{¶19} 2. Relator appealed the board's decision to the Franklin County Court of Common Pleas.

{¶20} 3. The board filed a motion to dismiss relator's appeal for her failure to comply with the requirements of R.C. 119.12 in the filing of the appeal.

{¶21} 4. In a decision and entry dated June 25, 2007 and filed June 26, 2007, the court granted the board's motion and dismissed relator's appeal for lack of subject-matter jurisdiction.

{¶22} 5. Relator filed a notice of appeal from the trial court's entry in this court.

{¶23} 6. After participating in mediation, the parties agreed to dismiss the appeal, vacate the trial court's decision and remand the matter back to the board.

{¶24} 7. This court's journal entry of dismissal, filed August 28, 2007, states:

The parties having filed on August 20, 2007, what is construed as an agreed motion to dismiss and remand, this appeal is hereby dismissed and the matter remanded to the

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trial court for consideration of the parties' joint request that its decision be vacated and the matter remanded to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Ohio Supreme Court's decision in *Hughes v. Ohio Dept. of Commerce* (2007), 114 Ohio St.3d 47.

{¶25} 8. Thereafter, in a letter dated November 21, 2007, Theresa Stir, Executive Director of the board, informed relator of the following:

The Ohio Veterinary Medical Licensing Board ("Board") reviewed your recent correspondence received October 30, 2007 at their November 14, 2007 board meeting. The Board has directed me to send you this letter advising you that after much deliberation they are dismissing the charges against you as filed in case #05-05-067.

{¶26} 9. In spite of her receipt of the November 21, 2007 letter notifying her that the charges against her had been dismissed, relator filed a motion with the trial court's magistrate informing the court that it had not yet acted on this court's judgment entry. Relator asserted that the trial court had not yet remanded the matter back to the board.

{¶27} 10. In an order dated May 19, 2009 and filed May 20, 2009, the trial court vacated its June 26, 2007 order and remanded the matter to the board so that the board could "re-issue a final order."

{¶28} 11. After the board received the trial court's judgment entry and following a hearing, the board again agreed to dismiss the charges against relator and, in a letter dated June 11, 2009, informed relator that:

On or about May 21, 2009, the Ohio Veterinary Medical Licensing Board ("Board") received notification that your case #05-05-067 before the Court of Common Pleas of Franklin County was dismissed with prejudice and the case was remanded back to the Board. At the June 10, 2009 Board meeting, since the Board now had jurisdiction over the matter, the Board moved and approved the dismissal of case #05-05-

No. 11AP-298

067 as they indicated to you they would in a letter dated November 21, 2007.

{¶29} 12. Thereafter, relator filed the instant mandamus action asking this court to order the board to:

* * * [R]e-issue the Order of March 2, 2007 properly and in compliance with RC 119.09 requirements.

Order [the board] to reimburse [her] for this action and all other actions she has failed to perfect due to the [board's] failure to comply with the agreed journal entry and the Court's decision to remand this matter back to [the board] for the re-issuing of the Order against her.

{¶30} 13. Respondent filed a motion to dismiss which the magistrate converted to a motion for summary judgment.

Conclusions of Law:

{¶31} A motion for summary judgment requires the moving party to set forth the legal and factual basis supporting the motion. To do so, the moving party must identify portions of the record which demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. Accordingly, any party moving for summary judgment must satisfy a three-prong inquiry showing: (1) that there is no genuine issue as to any material facts; (2) that the parties are entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, which conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶32} The Supreme Court of Ohio has set forth three requirements which must be met in establishing a right to a writ of mandamus: (1) that relator has a clear legal right to the relief prayed for; (2) that respondent is under a clear legal duty to perform the act

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requested; and (3) that relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28.

{¶33} Relator cannot demonstrate that she has a clear legal right to have the board "re-issue the Order of March 2, 2007," because the board was not ordered to issue any specific order. Instead, this court ordered the board to "re-issue an order." (Emphasis added.) Here the board dismissed all charges against relator in a letter and not in an order. Relator could be entitled to writ of mandamus ordering the board to formalize its decision by issuing an order instead of a letter, but relator is not entitled to any specific order.

{¶34} Because relator cannot demonstrate that she has a clear legal right to have any specific order issued, it is this magistrate's decision that this court should grant respondent's motion for summary judgment and this case should be dismissed.

/s/Stephanie Bisca Brooks
STEPHANIE BISCA BROOKS
MAGISTRATE

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

FILED
COURT OF APPEALS
FRANKLIN COUNTY OHIO
2012 JAN 10 PM 11:57
CLERK OF COURTS

State ex rel. Terrie Sizemore, D.V.M., :
Relator, :
v. :
Ohio Veterinary Medical Licensing Board, :
Respondent. :

No. 11AP-298

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on January 10, 2012, the objections to the decision of the magistrate are overruled, the decision of the magistrate is approved and adopted by the court as its own, and it is the judgment and order of this court that the requested writ of mandamus is denied. Costs shall be assessed against relator.

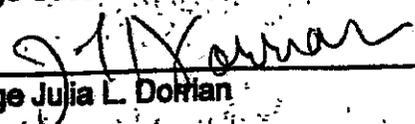
Within three (3) days from the filing hereof, the clerk of this court is hereby ordered to serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.



Judge G. Gary Tyack



Judge Susan Brown, P.J.



Judge Julia L. Dorian

App 9

14A

IN THE TENTH DISTRICT COURT OF APPEALS
FRANKLIN COUNTY, OHIO

COURT
FRANKLIN COUNTY
OHIO
ALSO
2007 AUG 20 PM 3:21
CLERK OF COURT

TERRIE SIZEMORE,
Plaintiff-Appellant,

CASE NO. 07APE-577

REGULAR CALENDAR

OHIO VETERINARY MEDICAL
LICENSING BOARD,

Appeal from Franklin County Court of
Common Pleas, Case No. 07CVF-03-3669

Defendant-Appellee.

MOTION AND AGREED ENTRY

Counsel for Appellant Terrie Sizemore and counsel for Appellee Ohio Veterinary Medical Licensing Board hereby agree to dismiss this appeal, vacate the lower court's decision and to remand this matter back to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Supreme Court's decision in *Hughes v. Ohio Department of Commerce* (2007), 114 Ohio St.3d 47, 2007-Ohio-2877.

JUDGE

Approved

Approved

Michael Thomas (per 8/17/07 email)
MICHAEL THOMAS (0005844) *anthony@...*
Counsel for Plaintiff-Appellant
Terrie Sizemore

MARC DANN (0039425)
Attorney General
Barry McKew
BARRY MCKEW (0008576)
Counsel for Defendant-Appellee
Ohio Veterinary Medical Licensing Board

TENTH APPELLATE DISTRICT

APP 10

Terrie Sizemore, D.V.M., :

Appellant-Appellant, :

v. :

No. 07AP-577

Ohio Veterinary Medical Licensing Board, :

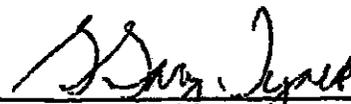
(REGULAR CALENDAR)

Appellee-Appellee. :

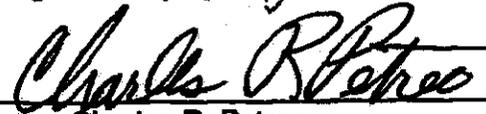
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2007 AUG 28 PM 3:14
CLERK OF COURTS

JOURNAL ENTRY OF DISMISSAL

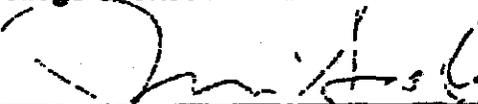
The parties having filed on August 20, 2007, what is construed as an agreed motion to dismiss and remand, this appeal is hereby dismissed and the matter remanded to the trial court for consideration of the parties' joint request that its decision be vacated and the matter remanded to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Ohio Supreme Court's decision in *Hughes v. Ohio Dept. of Commerce* (2007), 114 Ohio St.3d 47.



Judge G. Gary Tyack



Judge Charles R. Petree



Judge Patrick M. McGrath

ON COMPUTER 12

10e A

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

TERRIE SIZEMORE, D.V.M.,

Appellant,

vs.

OHIO VETERINARY MEDICAL
LICENSING BOARD,

Appellee.

CASE NO. 07CVF03-03669

JUDGE REECE

FILED
CLERK OF COURTS
MAY 20 AM 10:17
FRANKLIN COUNTY, OHIO

**AGREED ORDER VACATING JUNE 26, 2007 DECISION AND REMANDING
CASE TO OHIO VETERINARY MEDICAL LICENSING BOARD**

Issued this 19th day of May 2009.

REECE, J.

On June 26, 2007, upon Appellee's motion, this Court dismissed this Revised Code 119.12 administrative appeal, with prejudice, for lack of subject-matter jurisdiction. On July 21, 2007, Appellant appealed this Court's decision to the Court of Appeals of Ohio, Tenth Appellate District. On August 20, 2007, the parties filed the following "Motion and Agreed Entry" in the Court of Appeals:

Counsel for Appellant Terrie Sizemore and counsel for Appellee Ohio Veterinary Medical Licensing Board hereby agree to dismiss this appeal, vacate the lower court's decision and to remand this matter back to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Supreme Court's decision in *Hughes v. Ohio Department of Commerce* (2007), 114 Ohio St. 3d 47, 2007-Ohio-2877.

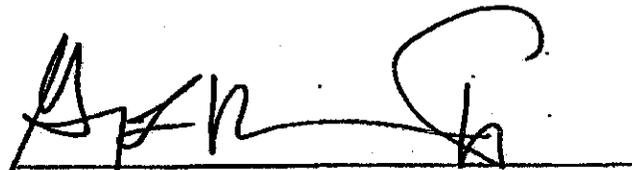
On August 28, 2007, the Court of Appeals journalized the following "Journal Entry of Dismissal":

The parties having filed on August 20, 2007, what is construed as an agreed motion to dismiss and remand, this appeal is hereby dismissed and the matter remanded to the trial court for consideration of the parties' joint request that its decision be vacated and the matter remanded to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Ohio Supreme Court's decision in *Hughes v. Ohio Dept. of Commerce* (2007), 114 Ohio St. 3d 47.

On May 14, 2009, Appellant notified this Court's Magistrate that this Court had not yet acted on the parties' joint request to vacate and remand.

Accordingly, upon the joint request of the parties and for good cause shown, this Court's June 26, 2007 decision is hereby **VACATED**, and this case is hereby **REMANDED** to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the decision of the Supreme Court of Ohio in *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St. 3d 47, 2007-Ohio-2877.

It is so **ORDERED**.



JUDGE GUY L. REECE II

Copies to:

MICHAEL A. THOMAS, ESQ. (0005844), Counsel for Appellant, 1154 Linda St., Ste. 250, Cleveland, OH 44116-1876

BARRY D. MCKEW, AAG (0008576), Counsel for Appellee, 30 E. Broad St., Fl. 26, Columbus, OH 43215-3428

[Cite as *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877.]

**HUGHES, APPELLANT, v. OHIO DEPARTMENT OF COMMERCE,
DIVISION OF FINANCIAL INSTITUTIONS, APPELLEE.**

**[Cite as *Hughes v. Ohio Dept. of Commerce*,
114 Ohio St.3d 47, 2007-Ohio-2877.]**

Administrative appeal — An administrative agency must strictly comply with the procedural requirements of R.C. 119.09 for serving the final order of adjudication upon the party affected by it before the 15-day appeal period prescribed in R.C. 119.12 commences. (R.C. 119.09; Sun Refining & Marketing Co. v. Brennan (1987), 31 Ohio St.3d 306, 31 OBR 584, 511 N.E.2d 112, followed.) — A party aggrieved by an administrative agency’s order must file the original notice of appeal with the agency and a copy with the court of common pleas. R.C. 119.12.

(No. 2006-0107 – Submitted January 24, 2007 – Decided June 27, 2007.)

APPEAL from the Court of Appeals for Franklin County,
No. 04AP-1386, 2005-Ohio-6368.

SYLLABUS OF THE COURT

1. An administrative agency must strictly comply with the procedural requirements of R.C. 119.09 for serving the final order of adjudication upon the party affected by it before the 15-day appeal period prescribed in R.C. 119.12 commences. (R.C. 119.09; *Sun Refining & Marketing Co. v. Brennan* (1987), 31 Ohio St.3d 306, 31 OBR 584, 511 N.E.2d 112, followed.)
2. A party aggrieved by an administrative agency’s order must file the original notice of appeal with the agency and a copy with the court of common pleas. R.C. 119.12.

SUPREME COURT OF OHIO

LANZINGER, J.

{¶ 1} This case poses two questions concerning jurisdictional requirements for appeal of an agency’s final adjudication order. First, must an agency strictly comply with the requirements of R.C. 119.09 before the 15-day appeal period prescribed in R.C. 119.12 commences; and second, must the original notice of appeal be filed with the agency rather than the common pleas court. Answering both questions in the affirmative, we reverse and dismiss this case.

Background

{¶ 2} Natalie Hughes, a director of the United Telephone Credit Union in Rocky River, Ohio, appeals from a decision by the Tenth District Court of Appeals that failure to file the original notice of appeal with the agency required dismissal for lack of jurisdiction. On May 28, 2003, the Ohio Department of Commerce, Division of Financial Institutions (“the agency”), had issued a notice of intent to remove Hughes as a director. She did not request a hearing,¹ and the agency issued a final order removing her from office and prohibiting her further participation (“removal order”) on July 23, 2003. The removal order contained a “Notice of Appeal Rights,” which explained that Hughes had a right to appeal by filing a notice of appeal with the agency and a copy with the Franklin County Court of Common Pleas within 15 days from the mailing of the removal order.

{¶ 3} Hughes filed her original notice of appeal with the Court of Common Pleas of Franklin County and a photocopy of the notice of appeal with the agency. The agency filed a motion to dismiss on grounds that R.C. 119.12 requires that the original notice of appeal be filed with the agency rather than the court of common pleas. Hughes responded with several arguments: first, that the

1. Hughes alleges that she was never served with a copy of the notice of intent.

removal order was void because it was not signed by the superintendent as required by R.C. 1733.181; second, that the agency invited any alleged error in filing the notice when it rejected the tender of an original notice of appeal,² third, that the agency failed to comply with R.C. 119.09 because it did not send her a certified copy of the removal order; and fourth, that the removal order failed to correctly state the method for perfecting an appeal.

{¶ 4} The common pleas court initially granted the motion to dismiss on the ground that the original notice of appeal was not filed with the agency. On reconsideration, however, the court determined that R.C. 119.12 does not specify that the original notice of appeal must be filed with the agency. Nevertheless, because the order was not signed by the superintendent, and thus was not final or appealable, the common pleas court remanded the matter to the agency for issuance of a final, appealable order.

{¶ 5} The agency appealed to the Tenth District Court of Appeals and argued that because Hughes had not properly filed the original notice of appeal with the agency, the common pleas court lacked jurisdiction over the administrative appeal. Hughes disputed the agency's claim that the failure to file an original with the agency was a jurisdictional defect and once again raised issues of deficiencies in the notice of appeal rights, as well as the remainder of the removal order.

{¶ 6} The Tenth District determined that compliance with R.C. 119.09 was not raised in the assignments of error and was not germane to its review. *Hughes v. Ohio Dept. of Commerce, Div. of Fin. Institutions*, Franklin App. No.

2. There are dueling affidavits on this point. Hughes's attorney states that he talked with someone at the agency and asked if the original notice had to be filed with the agency. The agency representative's affidavit states that the timing of the filing (where the attorney should file first) rather than where the original had to be filed was discussed. Hughes's attorney also states in his affidavit that he tried to tender a second original to the agency but that the agency representative insisted that a copy of the document filed with the court be filed with the agency. The agency denies that this occurred.

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04AP-1386, 2005-Ohio-6368, ¶ 7. Observing that parties must strictly adhere to the filing requirements of R.C. 119.12 to properly perfect an administrative appeal and to invoke the jurisdiction of a common pleas court, the court of appeals held that Hughes’s filing of a copy of her notice of appeal with the agency was a jurisdictional defect because the filing did not strictly comply with R.C. 119.12. Id. at ¶ 12, 15. The court of appeals reversed and instructed the common pleas court to dismiss the case for lack of jurisdiction. Id. at ¶ 16.

{¶ 7} We accepted Hughes’s discretionary appeal. Both parties argue that the common pleas court lacked jurisdiction over the administrative appeal, but for different reasons. Hughes contends that there was no final, appealable order from which to appeal because the agency failed to strictly comply with R.C. 119.09. The agency asserts that Hughes failed to properly perfect her appeal under R.C. 119.12; by filing the original notice of appeal with the agency, the common pleas court did not have jurisdiction to consider whether the removal order complied with R.C. 119.09. There are two statutes to address.

{¶ 8} Adjudication hearings for certain state agencies, including appellee, are governed by R.C. 119.09. The last paragraph of R.C. 119.09 explains how an agency must notify a party affected by an administrative order: “After such order is entered on its journal, the agency shall serve by certified mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of such order shall be mailed to the attorneys or other representatives of record representing the party.”

{¶ 9} The rights of a party who wishes to appeal from an administrative order are found in R.C. 119.12: “Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party's appeal. A copy of such notice of appeal shall also be filed by the appellant with the court. Unless otherwise provided by law relating to a particular

January Term, 2007

agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section.”

{¶ 10} We have already addressed whether an agency must fully comply with the procedural requirements of R.C. 119.09 before the time for appeal in R.C. 119.12 begins to run. *Sun Refining & Marketing Co. v. Brennan* (1987), 31 Ohio St.3d 306, 31 OBR 584, 511 N.E.2d 112. In *Sun Refining*, the board of building appeals upheld an order to shut down an unfired pressure vessel. The board never sent a copy of the order to the company but sent an uncertified rather than certified copy of the order to the company's attorney. The common pleas court denied both the board's motion to dismiss, which was based on the company's failure to perfect the appeal within the time allowed, and the company's motion to dismiss, which was based on the board's failure to comply with R.C. 119.09. The court of appeals held that the common pleas court did not have jurisdiction over the appeal because the company had failed to file a notice of appeal with the board within the 15-day period set forth in R.C. 119.12. We reversed and dismissed the case, holding that the procedural requirements of R.C. 119.09 are a condition precedent to the running of the 15-day appeal period. We stated, “The fifteen-day appeal period provided in R.C. 119.12 does not commence to run until the agency whose order is being appealed fully complies with the procedural requirements set forth in R.C. 119.09.” *Sun Refining*, 31 Ohio St.3d 306, 31 OBR 584, 511 N.E.2d 112, syllabus.

{¶ 11} The agency argues that *Sun Refining* does not apply, because the same due process concerns do not exist since the agency did send a copy of its decision to Hughes. A similar issue was presented to us in *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160. In *Cleveland Elec. Illum.*, a certified copy was sent to the aggrieved party, but the board of revision did not certify notice of its action to the tax commissioner, as required by R.C. 5715.20. We stated that compliance with the

SUPREME COURT OF OHIO

statutory requirement for the board to certify notice of its action to the tax commissioner was mandatory. *Cleveland Elec. Illum.* at ¶ 13. We also held that “as long as R.C. 5715.20 requires a board of revision to certify notice of its action to the Tax Commissioner, notices must be mailed to the Tax Commissioner before the R.C. 5717.01 appeal time will begin to run.” *Id.* at ¶ 18.

{¶ 12} We see no reason to depart from *Sun Refining’s* holding that the time for appeal does not begin to run until the agency complies with R.C. 119.09. The plain language of the statute informs an agency what it must do when it issues a final order. We will, therefore, examine whether the agency strictly complied so as to trigger Hughes’s time for appeal.³

{¶ 13} R.C. 119.09 requires an agency to serve, by certified mail, return receipt requested, a certified copy of the order upon the affected party. The order must include a statement of the time for appeal and the method for perfecting an appeal. Hughes contends that the agency failed to send her a certified copy of its decision and also failed to inform her of the correct method for perfecting an appeal because it did not state that R.C. 119.12 requires the original notice of appeal to be filed with the agency. Certification of the administrative order and the content of the notice of appeal rights are two separate issues.

Certified Copy

{¶ 14} R.C. 119.01, the definitional section for the chapter on administrative procedure, does not define the term “certified copy.” Unless words are otherwise defined or a contrary intent is clearly expressed, we give words in a statute their plain and ordinary meaning. *Ohio Assn. of Pub. School Emps., Chapter No. 672 v. Twin Valley Local School Dist. Bd. of Edn.* (1983), 6 Ohio St.3d 178, 181, 6 OBR 235, 451 N.E.2d 1211; *Coventry Towers, Inc. v.*

3. The agency urges that if we decide that the R.C. 119.09 analysis should precede the R.C. 119.12 issue, then remand would be appropriate because neither court has reviewed Hughes’s R.C. 119.09 objections.

Strongsville (1985), 18 Ohio St.3d 120, 122, 18 OBR 151, 480 N.E.2d 412. Black’s Law Dictionary (8th Ed.2004) defines “certified copy” as “[a] duplicate of an original (usu. official) document, certified as an exact reproduction usu. by the officer responsible for issuing or keeping the original.” *Id.* at 360. This definition is similar to the definitions of “certified copy” the General Assembly has used in R.C. 305.31,⁴ 731.32,⁵ and 3705.23.⁶

{¶ 15} The agency argues that the removal order was certified by the attestation statement “Witness my hand” which appeared at the end of the order after the notice of appeal rights. This attestation, however, is on the original order and therefore does not serve as a certification that the document sent to Hughes is an exact reproduction of the original. Because the removal order served on Hughes does not contain a signed statement that it is a true and exact reproduction of the original document, the agency failed to comply with R.C. 119.09.

Content of Removal Order

{¶ 16} We next consider Hughes’s contention that the removal order was deficient because it did not properly explain the method of appeal. The notice of appeal rights contained in the removal order stated: “Respondent is hereby notified that this Order may be appealed pursuant to Revised Code Section 119.12 by filing a Notice of Appeal with the Division setting forth the Order appealed from and the grounds of the appeal. A copy of such Notice of Appeal shall also

4. R.C. 305.31 provides, “As used in this section, ‘certified copy’ means a copy containing a written statement attesting that it is a true and exact reproduction of the original resolution or rule.”

5. R.C. 731.32 provides, “As used in this section, ‘certified copy’ means a copy containing a written statement attesting that it is a true and exact reproduction of the original proposed ordinance or measure or of the original ordinance or measure.”

6. R.C. 3705.23(A)(2) provides, “A certified copy of a vital record may be made by a mechanical, electronic, or other reproduction process. It shall be certified as a true copy by the director, state registrar, or local registrar who has custody of the record and shall include the date of issuance, the name of the issuing officer, the signature of the officer or an authorized facsimile of the signature, and the seal of the issuing office.”

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be filed with the Court of Common Pleas of Franklin County. Such Notice of Appeal must be filed within fifteen (15) days after the date of the mailing of this Order.” This statement tracks the language of R.C. 119.12 and sufficiently alerts Hughes that she must file the original notice of appeal with the agency and a copy with the court of common pleas. The failure to use the word “original” in the notice of appeal rights and in R.C. 119.12, when describing the notice of appeal to be filed with the agency, does not create an ambiguity in the statute. R.C. 119.12 clearly states that “A copy of such notice of appeal shall also be filed by the appellant with the court.” (Emphasis added.) We have recognized that the notice of appeal filed with the agency and the notice of appeal filed with the common pleas court are distinct documents. *Nibert v. Ohio Dept. of Rehab. & Corr.* (1998), 84 Ohio St.3d 100, 702 N.E.2d 70. There, we held that the 15-day filing requirement expressed in the statute applies both to the notice of appeal filed with the agency and to the copy of the notice filed with the court. *Id.* at 102, 702 N.E.2d 70. We also determined that applying the 15-day deadline to each filing simplifies the requirements of R.C. 119.12 and promotes procedural efficiency. *Nibert*, 84 Ohio St.3d at 102-103, 702 N.E.2d 70. The content of the notice explaining the method of appeal to Hughes was sufficient.

{¶ 17} Just as we require an agency to strictly comply with the requirements of R.C. 119.09 a party adversely affected by an agency decision must likewise strictly comply with R.C. 119.12 in order to perfect an appeal. As the proverb states, what is good for the goose is good for the gander. Because the agency’s description of Hughes’s appeal rights tracks the language of the statute, Hughes was properly informed that the original notice of appeal was to be filed with the agency and that a copy of the notice of appeal was to be filed with the common pleas court.

Conclusion

{¶ 18} The common pleas court lacks jurisdiction over this administrative appeal because a certified copy of the final order was never served on Hughes. If a certified copy had been served, and the appeal time had started to run, the common pleas court still would have lacked jurisdiction because Hughes did not properly file her notice of appeal.

{¶ 19} We hold that an administrative agency must strictly comply with the procedural requirements of R.C. 119.09 for serving the final order of adjudication upon the party affected by it before the 15-day appeal period prescribed in R.C. 119.12 commences. A party aggrieved by an administrative agency’s order must file the original notice of appeal with the agency and a copy with the court of common pleas. Here, since the agency failed to properly serve Hughes with a certified copy of the removal order, her appeal period never started to run. Once Hughes is properly served, she may perfect an appeal by filing the original notice of appeal with the agency and a copy of the notice with the court of common pleas.

{¶ 20} The judgment of the Tenth District Court of Appeals is reversed and the cause is dismissed.

Judgment reversed
and cause dismissed.

MOYER, C.J., LUNDBERG STRATTON and O’CONNOR, JJ., concur.

PFEIFER, J., concurs in part and dissents in part.

O’DONNELL and CUPP, JJ., dissent.

PFEIFER, J., concurring in part and dissenting in part.

{¶ 21} I concur in judgment and in paragraph one of the syllabus. I write separately to dissent from paragraph two of the syllabus because it and the concomitant discussion elevate procedure over substance.

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{¶ 22} The whole point of a notice of appeal is to put the opposing party on notice that an appeal has been filed. In this case, it is incontrovertible that the agency was on notice that an appeal had been filed. Yet a majority of this court focuses on a distinction without a difference – whether a copy or an original had been filed with the court or the agency. Either way, both are on notice that an appeal was filed.

{¶ 23} To support its foray into undue legalism, the court states that “what is good for the goose is good for the gander.” But “[w]hat is sauce for the goose may be sauce for the gander but is not necessarily sauce for the chicken, the duck, the turkey or the guinea hen.” Toklas, *The Alice B. Toklas Cookbook* (1954) 5. In this case, the fowls are not the same. R.C. 119.09’s requirement to serve a “certified copy” of its order serves a legitimate purpose: to inform the affected party of the agency’s determination; R.C. 119.12’s requirement to file an “original” notice of appeal with the agency serves no purpose. Further, the word “original” does not appear in R.C. 119.12, though it has been inserted into the statute by a majority of this court in contravention of the most basic precept of statutory construction. *Rice v. CertainTeed Corp.* (1999), 84 Ohio St.3d 417, 419, 704 N.E.2d 1217. The majority opinion justifies inserting “original” into the statute by acknowledging that the word isn’t in the statute. That is a strange rationalization. I concur in judgment and dissent in part.

O’DONNELL, J., dissenting.

{¶ 24} Respectfully, I dissent.

{¶ 25} Two propositions of law have been presented to the court in this appeal. The first concerns the requirements for filing an administrative appeal pursuant to R.C. 119.12, which is jurisdictional, and the second concerns agency compliance with R.C. 119.09, which affects the validity of the agency’s action.

{¶ 26} R.C. 119.12 sets forth the requirements for perfecting an appeal from the decision of an administrative agency: “Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party’s appeal. A copy of such notice of appeal shall also be filed by the appellant with the court. Unless otherwise provided by law relating to a particular agency, such notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency’s order as provided in this section.”

{¶ 27} As this court stated in *Ramsdell v. Ohio Civil Rights Comm.* (1990), 56 Ohio St.3d 24, 27, 563 N.E.2d 285, “We have always considered it to be fundamental that when the right to appeal is conferred by statute, the appeal can be perfected only in the mode prescribed by statute.” See, also, *Zier v. Bur. of Unemp. Comp.* (1949), 151 Ohio St. 123, 38 O.O. 573, 84 N.E.2d 746, and *Proctor v. Giles* (1980), 61 Ohio St.2d 211, 15 O.O.3d 227, 400 N.E.2d 393. Furthermore, we emphasized in *Lake Hosp. Sys., Inc. v. Ohio Ins. Guar. Assn.* (1994), 69 Ohio St.3d 521, 525, 634 N.E.2d 611, that “[t]here is no need to liberally construe a statute whose meaning is unequivocal and definite.”

{¶ 28} The Tenth District Court of Appeals has regularly reviewed cases involving R.C. 119.12 appeals and has consistently held appellants to a standard of strict statutory compliance in order to perfect such an appeal. See, e.g., *Harrison v. Ohio State Med. Bd.* (1995), 103 Ohio App.3d 317, 659 N.E.2d 368; *In re Namey* (1995), 103 Ohio App.3d 322, 659 N.E.2d 372; *Colonial, Inc. v. Ohio Liquor Control Comm.*, Franklin App. No. 02AP-1019, 2003-Ohio-3121; *Berus v. Ohio Dept. of Adm. Servs.*, Franklin App. No. 04AP-1196, 2005-Ohio-3384.

{¶ 29} In this instance, Hughes filed her notice of appeal with the court and a copy with the agency, thereby failing to adhere to the statutory requirements

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of R.C. 119.12. Accordingly, the trial court never obtained jurisdiction over her appeal. The appellate court said as much in its opinion and ruled accordingly.

{¶ 30} The predicate issue therefore presented to this court is one of jurisdiction: Did Hughes properly file her notice of appeal, or, stated differently, did the trial court obtain jurisdiction over this administrative appeal? I am not able to join my colleagues who appear to reach behind this jurisdictional issue to consider a different issue — that of agency compliance with R.C. 119.09 — which the appellate court declined to address because its ruling with respect to R.C. 119.12 rendered the R.C. 119.09 issue moot. It is therefore reviewed for the first time in this court.

{¶ 31} Regardless of whether or not the agency has complied with R.C. 119.09 in removing Hughes from her position as a director of the United Telephone Credit Union, courts cannot exercise jurisdiction unless procedural requisites are satisfied. The threshold issue before this court concerns whether the trial court ever obtained jurisdiction over the parties in this case. After Hughes filed the notice of appeal with the common pleas court, and a copy with the agency, the agency moved to dismiss the appeal for failing to comply with R.C. 119.12. The common pleas court granted that motion, thereby dismissing the appeal. Hughes subsequently moved to reconsider, claiming that the agency failed to comply with R.C. 119.09 in attempting to remove her from her position, and further claiming that R.C. 119.12 does not require the filing of an original notice of appeal with the agency. The court granted the motion to reconsider and remanded to the agency with instructions to issue a final, appealable order in compliance with R.C. 119.09. The agency then appealed, asserting that the trial court lacked jurisdiction because of noncompliance with R.C. 119.12. The question of the proper filing of a notice of appeal pursuant to R.C. 119.12, however, should not be clouded with allegations of noncompliance regarding R.C. 119.09.

{¶ 32} The legislature has prescribed the manner of filing a R.C. 119.12 appeal. No challenge has been presented in this appeal to the legislative authority in that regard, such as is made pursuant to the Modern Courts Amendment; further, whether or not the legislature should revisit R.C. 119.12 is a policy question not before us. The practicality of the appellant’s argument is appealing; nevertheless, a body of case law has developed in Ohio that compels a strict interpretation of statutory requirements for filing an administrative appeal pursuant to R.C. 119.12.

{¶ 33} In my view, today’s decision will further confuse the body of case law that has existed in this field for at least a dozen years. This is a relatively routine case of failing to strictly comply with statutory directives necessary to vest a court with jurisdiction. I believe the appellate court correctly adjudicated the issue consistent with its own precedent and rulings from this court. The trial court never obtained jurisdiction over these parties because Hughes filed the notice of appeal with the court instead of the agency and filed a copy with the agency instead of the court. Accordingly, the judgment of the appellate court should be affirmed, and the question of agency compliance with R.C. 119.09 was not properly presented to the court.

CUPP, J., concurs in the foregoing opinion.

Jones Day and Fordham E. Huffman; and Sidley Austin L.L.P., Scott Mendeloff, and Gabriel Aizenberg, for appellant.

Marc Dann, Attorney General, and Stephen Carney, Senior Deputy Solicitor; and Porter Wright Morris & Arthur, Kathleen Trafford, and Polly Harris, for appellee.



APP. 1 312

The Ohio Veterinary Medical Licensing Board

77 South High Street, 16th Floor, Columbus, Ohio 43215-6108



Adjudication Order
Terrie Sizemore, DVM

BEFORE THE OHIO VETERINARY MEDICAL BOARD

ADJUDICATION ORDER

In Re:
Terrie Sizemore, DVM

File # 05-05-067
Journal No. DVM-07-01

FINDING AND ORDER

The above matter was presented to the Ohio Veterinary Medical Licensing Board at its February 21, 2007, meeting. The meeting was rescheduled from February 14, 2007 due to weather. The members of the Board present were: Dr. Janet Small, Dr. Darrell Gitz, Dr. David Koncal, and Renee Jessen RVT. Dr. James Burt recused himself on this matter.

The question before the Board was whether or not disciplinary action should be taken against the veterinary medical license of Terrie Sizemore, DVM for violations of R.C. 4741.22(AA) and O.A.C. 4741-1-21(1) and (3) and O.A.C. 4741-1-03(B)(6)(a) as cited in the Notice of Opportunity for Hearing (NOH) issued on December 29, 2005. .

Ohio Revised Code 4741.22(AA) states the following:

The state veterinary medical licensing board may refuse to issue or renew a license, registration, or a temporary permit to any applicant, may issue a reprimand, or suspend or revoke the license, registration, or the temporary permit of, or impose a civil penalty pursuant to this section, upon any person licensed to practice veterinary medicine or any person registered as a registered veterinary technician who:

(AA) Fails to maintain medical records as required by rule of the board.

O.A.C 4741-1-03(B)(6)(a) states the following:

The board shall, pursuant to section 4741.22 of the revised code and to the extent permitted by law, take action against the license of any veterinarian, for a violation of any of the following regulations:

(B) Failure to keep the facility at which the practice is conducted in conformity with the following standards:

(6) Pharmacy

The pharmacy shall be neat, clean and orderly and meet, but not be limited to, the following requirements:

(a) Maintain an inventory and records and dispense in compliance with all state and federal requirements.

O.A.C. 4741-1-21(1) and (3) state the following:

1. Every veterinarian performing any act requiring a license pursuant to the provisions of Ohio Revised Code Chapter 4741 shall prepare, or cause to be prepared, a record documenting the health status of the animal(s) treated and any necessary data such that another veterinarian may follow the rationale and continue therapy if necessary. The record shall be dated and shall include all pertinent medical data such as vaccinations, drug types and doses and all relevant medical and surgical procedures performed. The records shall identify the owner of the animal(s) and provide an address and telephone number or other means of contact.
3. All regulated substances shall be recorded as required by federal and/ or state regulations.

A hearing on the charges in the NOH was held July 20, 2006 before hearing examiner Marc Myers. The Hearing Examiner's Report and Recommendation was submitted to the Board on January 19, 2007 and served on the parties' by certified mail in accordance with R.C. 119.

The Board reviewed the Hearing Examiner's Report and Recommendation, exhibits submitted at the hearing and the objections of Dr. Sizemore at the February 21, 2007 meeting. The Board found that Dr. Sizemore violated R.C. 4741.22(A) and (AA), O.A.C. 4741-1-03(B)(6)(a) and O.A.C. 4741-1-21(1) and (3) in accordance with the Hearing Examiner's Report and Recommendation.

The Board finds that Dr. Sizemore failed to provide a rabies certificate and tag to "Dutchess" Rohm when she was vaccinated. The Rohm's requested the tag and certificate in writing from Dr. Sizemore who did not provide the required tag and certificate. Dr. Sizemore returned the fee charged for the rabies vaccine with a note to "go elsewhere." The Board does not find that refunding the fee at a later date negates the act of giving the vaccine thus relieving Dr. Sizemore of her obligation. See. O.A.C. 4741-1-03(B)(6)(a).

The Board finds that Dr. Sizemore did not maintain proper records. Dr. Sizemore did not record the name of the drug or amounts administered of Valium and Ketamine in the treatment record for "Pete" Rohm. Dr. Sizemore did keep a controlled substance log where these amounts are recorded. The Board finds that the controlled substance log is not part of a treatment record. Dr. Sizemore did not comply with the requirements of the recordkeeping rule, O.A.C. 4741-1-21(1) and (3).

After discussion and deliberation, and upon motion duly made, seconded and approved by a unanimous vote, the Board adopted the findings of fact and conclusions of law and modified the recommendation of the hearing examiner. The Board hereby orders that Dr. Sizemore receive pay a fine of \$250.00 for the first violation and \$1,000.00 for the second violation for a total of \$1,250 00 within sixty days of the date of this Order. The Board further orders that Dr. Sizemore pay the costs of the hearing pursuant to R.C. 4741.22 in the amount of \$1,458.50 within sixty days of the date of this Order.

RATIONALE

The Board thoughtfully read and considered the report and recommendation of the hearing examiner and evidence presented at the hearing. After thoughtful consideration and deliberation, the

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20761 Adjudication Order
Terrie Sizemore, DVM

Board adopts the findings of fact and conclusions of law and modifies the recommendation of the hearing examiner.

Accordingly, it is ORDERED:

That Terrie Sizemore, DVM is found to have violated R.C. 4741.22(A) and (AA) and O.A.C. 4741-1-21(1 and (3) and O.A.C. 4741-1-03(B)(6)(a). Dr. Sizemore shall pay a fine in the amount of \$1250.00 within sixty days of the date of this Order. Dr. Sizemore shall pay the costs of the hearing pursuant to R.C. 4741.22 in the amount of \$1,458.50 within sixty days of the date of this Order.

BY ORDER OF THE OHIO VETERINARY
MEDICAL LICENSING BOARD


Heather Hissom
Executive Secretary

Dated: March 2, 2007

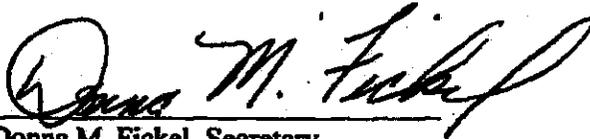
Cc: Barry McKew, AAG

Certified Mail # 7004 2510 0001 7350 6294
Return receipt requested

Terrie Sizemore, DVM, take notice:

You may appeal the Order pursuant to R.C. 119.12, by filing a Notice of Appeal with the Ohio Veterinary Medical Licensing Board, 77 South High Street, 16th Floor, Columbus, OH 43215-6108, and also a copy with the Court of Common Pleas in Franklin County, Ohio. Such Notice of Appeal shall contain the Order appealed from and the grounds of said appeal. Such Notice of Appeal shall be filed within fifteen (15) days after the mailing of the Adjudication Order.

I hereby certify that the Adjudication Order of the Ohio Veterinary Medical Licensing Board was mailed to Terrie Sizemore, DVM, PO Box 23, Sullivan, Ohio 44880, via United States Postal Service Certified mail number 7004 2510 0001 7350 6294, return receipt requested, by the undersigned on March 2, 2007.


Donna M. Fickel, Secretary