

ORIGINAL

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

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

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MATTERS IN REPLY

Now comes the Relator-Appellant, Dr. Terrie Sizemore RN DVM, and replies to Respondent-Appellee, the Ohio Veterinary Medical Licensing Board's (OVMLB) Brief.

Relator-Appellant apologizes if her Merit Brief was not clear. She will attempt to connect the legal argument she presented there briefly at this time. RC 2731.01 statutorily provides legal basis for Dr. Sizemore's Mandamus Action. She contended her action was for abuse of discretion by the OVMLB since they failed to re-issue her a final order pursuant to *Hughes v. Ohio Dept. of Commerce*, 147 Ohio St.3d 114. This Supreme Court ruling was included and specifically refers to Adjudication Orders issued by State agencies in compliance with ORC 119.09.

Then Dr. Sizemore referred to RC 119 et seq essentially outlining the administrative process for issuing Adjudication Orders. One aspect of RC 119 is that the decisions made by an agency must be journalized. Dr. Sizemore has not noted any document presented by opposing counsel to include such 'journaling' in November, 2007 or in the documents including Ms. Stir's Affidavit and the meeting minutes of the OVMLB's November, 2007 meeting minutes. Also, no legal basis has been presented for the decision to 'dismiss' instead of complying with the ORDER issued by the Franklin County Court of Common Pleas. RC 119 refers to ORDERS complying with 119.09 and appeals pursuant to 119.12. Also, RC 119 et seq sets forth the administrative appeal in the event 'adverse action is taken against a license.' Dr. Sizemore is overwhelmingly confused by any opposing argument apparently mocking her stupidity as to why she doesn't understand she has to do a '119 appeal.' There is no ORDER against her and the letter of dismissal is not an ORDER. Dr. Sizemore contends the Ohio Attorney General's

Office has and is perpetuating a three-ring circus act. This is not only confusing to her, she finds this conduct heinous and as far as she reads the Rules of Attorney Conduct, these acts are violations of the very standards set forth by this Supreme Court of Ohio. There is no connection of the Respondent's argument that Dr. Sizemore should take a RC 119 appeal with any facts in this case. In fact, as Dr. Sizemore will elaborate on more below, it does not appear to her opposing counsel has presented ANY argument founded in law pertaining to the facts and evidence in this action.

Next, Dr. Sizemore asserted she contends the Tenth District Court of Appeals did not make decisions in this action based on the doctrine of stare decisis and according to the facts and evidence in this case. Dr. Sizemore presented clearly well established law in Ohio and decisions made by this Supreme Court of Ohio that was ignored by the Tenth District Court of Appeals. In addition, Dr. Sizemore is presently presenting attachments regarding a separate but related decision made by the Tenth District Court of Appeals affirming a decision made in the Court of Claims she contends is in direct conflict with the decision made to dismiss this Action in Mandamus. As Dr. Sizemore understands the Rules of Evidence- Rule 102 states: 'the purpose of these rules is to provide procedures for the adjudication of causes to the end that the truth may be ascertained and proceedings justly determined..' Rule 103 states: '(A) effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected.' Dr. Sizemore contends her due process and equal protection rights have been deprived. (D) refers to plain error. Rule 201 refers to Judicial Notice of Adjudicative Facts. Dr. Sizemore contends her facts have been ignored. Rule 201 refers to the opposing party being required to present truthful and

legally based argument to prevent a matter from going forward. Rule 613 refers to Impeachment by self-contradiction. Dr. Sizemore contends that argument made by opposing attorneys and lower courts-including the Tenth District Court of Appeals contradicts in substance and legal argument and therefore is appears to her that the decisions must be impeached by this Supreme Court of Ohio.

Dr. Sizemore will elaborate here to clarify for Mr. McNamara. The Tenth accepted and ignored the agreement made in their Court, sent to the lower Court, issued by the lower Court and ignored by the OVMLB. In fact, no party has been able to demonstrate any "plain language" of any part of the agreement or ORDER that mentions 'dismissing' the charges. It appears by all the laws Dr. Sizemore viewed that the OVMLB has no legal basis to dismiss the charges and neither Mr. McNamara nor the OVMLB have presented law that she can view would support their position. The authority Mr. McNamara attached to his Respondent's Brief, *Borsuk v. City of Cleveland*, 28 Ohio St. 2d 224; 277 N.E.2d 419; 1972 Ohio LEXIS 520; 57 Ohio Op. 2d 464 is a prime example of opposing counsel doing what Dr. Sizemore contends is attempting to 'shove a square peg in a round hole.' Dr. Sizemore contends there are no matching facts in this case to hers. First of all, there was no Court ORDER to re-employ this party as in Dr. Sizemore's action. This authority is irrelevant to the issues at hand. There are Supreme Court of Ohio rulings presented by Dr. Sizemore to confirm that once an appeal is instituted the agency is divested of any jurisdiction. They never 'got jurisdiction again' when the trial Court rendered their ORDER.

Dr. Sizemore apologizes if she is making accusation of misconduct or crime, she is only aware of the law as she reads it and is attempting to present her facts honestly as she sees them.

Dr. Sizemore then asserted her Federal rights to due process and equal protection under the law. She also asserted 42 USC 1983. She contends she filed a 42 USC 1983 case in November, 2009, case no. 09-CV-17698, after she understood her charges to be dismissed-even if the words and phrases 42 USC 1983 were not specifically stated. Were they dismissed or not? Was she required to exhaust all administrative remedies or not? The confusion created by AAG Aaron Epstein regarding this filing led to Dr. Sizemore filing for immunity determination in the Court of Claims, case no. 2010-01328. Was she actually filing a 'collateral attack? Was she time-barred since she had only recently exhausted all administrative remedies? What is the actual truth and is the three-ring circus going to end here? If the charges were really dropped, and Dr. Sizemore had exhausted all required administrative remedies-as asserted in the Tenth District appeal no. 10AP-841 from Court of Claims case no. 2010-01328-then she had filed properly in these actions and was denied access to the Courts.

The records in these actions record the legal argument presented by Dr. Sizemore in all these cases and how the Courts' ruled in accordance with argument presented by opposing counsel, however, Dr. Sizemore contended the legal argument presented by these opposing attorneys was not founded in the doctrine of stare decisis and was applied unevenly and untruthfully in the matters at hand. Dr. Sizemore is only stating what she perceived as the actions of the Courts and the attorneys.

The record in this Mandamus action reflects the briefs filed by Dr. Sizemore asserting her request to petition Court officers-whose first duty is the administration of justice- for affidavits and she was denied. There was and is no legal basis provided for this.

Then Dr. Sizemore asserted well-established contract law in Ohio that supported she and the OVMLB entered into an agreement signed by both parties that could not be modified unless mutually agreed upon. She never agreed to anything else or dismissal. Also, in March, 2011, she read law that led her to understand she was beating her head against the walls in Court so to speak because the OVMLB never had the legal authority to dismiss her charges and the Court of Claims and the Tenth District Court of Appeals were holding this against her without explanation. Dr. Sizemore can only assume they all thought she would never discover this truth. The contract made was legal and binding and no legal basis to refute this has been provided.

Then Dr. Sizemore presented well-established law in Ohio regarding contempt of Court. Mr. McNamara failed to provide any law or evidence to support an argument the OVMLB was not in contempt of Court or they were permitted to ignore the specific performance set forth in the May 19, 2009 ORDER.

Dr. Sizemore then presented the legal principle of fraud. She has provided overwhelming facts and evidence in every pleading in this action as well as all others she has filed to support her very serious allegations of this offense.

Then Dr. Sizemore presented legal argument that the Magistrate and the Tenth District Court of Appeals misused summary judgment. Basically she alleges they gave her the 'bum's rush' because she is not an attorney. Dr. Sizemore was advised by an

attorney that if there is even just ONE dispute of facts or evidence in a case, summary judgment cannot be utilized. It appears the Court and the Magistrate found Dr. Sizemore's contentions worthless, however, they have never pled facts to refute her statements made.

Then Dr. Sizemore presented argument referring to RC 109.362. Dr. Sizemore contends that at no time has any opposing counsel refuted the enormous list of merits she presented and at no time has any opposing counsel justified the acts of the OVMLB and all tortfeasors with facts and evidence and existing law. In light of that, Dr. Sizemore is uncertain as to how the Ohio Attorney General's Office can justify any representation of these parties.

MATTERS IN REBUTTAL WITH LEGAL ARGUMENT

Now comes the Relator-Appellant, Dr. Terrie Sizemore RN DVM, to rebut the argument presented by Ohio Assistant Attorney General Mr. McNamara for the OVMLB.

On page 1 under "Facts and Procedural History," line 4 of the last paragraph, it states: 'The OVMLB; again having jurisdiction over the matter, moved and approved an official dismissal of all charges in File #05-05-067...' This statement is false. The OVMLB did not 'again have jurisdiction.' There is no legal basis for this statement or the action of dismissal or defense provided by Mr. McNamara. In the absence of a legal basis, this must be construed as a defense not founded in law and therefore as Dr. Sizemore understands frivolous, frivolous.

On page 2, first paragraph, it states: '...the appellate court did not order OVMLB to issue a specific order..' Yes, it certainly did. The agreement made between the parties specifically stated *Hughes* and *Sun Refining* –both referring to RC 119.09 compliance,

the ORDER in the appeal was the March 2, 2007 ORDER, and the word dismissal never appears in any of the documents. Since Dr. Sizemore's ORDER of March 2, 2007 was not the ORDER in compliance with RC 119.09, this is the ORDER ORDERED to be re-issued in compliance. This the three-ring circus Dr. Sizemore contends has been perpetuated by the Ohio Attorney General's office and accepted by the Courts. Following this statement, Mr. McNamara then states: 'The court stated, "We do not believe that Sizemore has the right to compel the government agency to issue an order with the agency no longer feels is appropriate. The agency....has inherent power to dismiss charges against an individual who has had claims of misconduct levied against her or him.."' These statements are false and are not based on any existing law and no law has been presented by any opposing counsel or the Tenth District Court of Appeals to support this statement. This is what Dr. Sizemore contends is the Court not relying on the stare decisis principle of precedent. Dr. Sizemore presented well-established law to the contrary of this statement and she was ignored. She presented legally based argument consistent with the facts and evidence in this case and she has been ignored.

The Tenth District Court of Appeals ignored her argument in appeal 10AP841 from Court of Claims case no. 2010-01328. They relied on what Dr. Sizemore contends were non-matching authorities to side with argument presented by AAG Ms. Adair.

Also on page 2, under "Standard of Review," the second paragraph states: '...where it appears beyond doubt from the petition that the relator can prove no set of facts warranting relief.... Therefore, if Dr. Sizemore can prove no set of facts that would support the issuance of a writ of mandamus, the petition should be denied.' Dr. Sizemore considers this insanity. She has proven EVERY aspect of her Petition for Writ of

Mandamus. She contends the Courts have choked on a gnat and gulped down a camel, so to speak, and have ignored her properly presented arguments to make legal conclusions contrary to the facts and evidence in her cases. She apologizes if this appears incorrect, but she will and feels she can support EVERY statement she makes with reliable, credible, probative, and substantive evidence. She contends the State of Ohio has no matching authorities or law to support an argument opposing her. Dr. Sizemore was advised by an attorney that all attorneys use this legal defense cart blanc and she finds this offensive because no one should be able to state such a thing unless it is actually truthful. She is unaware how anyone that does not know her or what documents she possesses could possibly make such a statement to any Court.

On page 3, under "Law and Argument," the first paragraph states: '(Appellant) Sizemore does not have a clear right to force the OVMLB to issue an order...' Yes, Dr. Sizemore does have a clear right according to contract law, contempt law, mandamus provision by the RC, her Federal and, State Constitutional rights, the provisions of Civil Rule 56, and every other legal argument she presented. The Tenth District Court of Appeals ignored much too much to side with the OVMLB who has not provided one legal basis for the OVMLB 'just not having to have to' comply with the agreement made and the Court ORDER rendered.

In the next paragraph on page 3, Mr. McNamara continues: '...believe the fact that she makes no argument whatsoever for why she thinks the appellate court's decision is in error...Appellant argues everything except the issue that is actually before this court, denial of her request for a writ of mandamus... there is no relevant argument that Dr. Sizemore can make to this court.' He then goes on to state: '...since she does not now

argue how the appellate court erred as a matter of law, her arguments are irrelevant.' Dr. Sizemore has made relevant argument pertaining to her Mandamus being legitimate because the ORC permits this extraordinary writ when an agency such as the OVMLB fails to comply with a contract agreement made or a court ORDER. She has made exhaustive and relevant argument to support summary judgment was inappropriately utilized in her dismissal of her request for writ. The statement made by Mr. McNamara is false. It is he is who unable to present any legal basis for the refusal to carry out a court's ORDER by the OVMLB and dismissing charges. Dr. Sizemore did not realize in May and June, 2009 that the OVMLB lacked any legal ability to dismiss her charges. She did not discover law until March, 2011 pertaining to this –which she contends she is certain all the courts and all the lawyers already knew this and were banking on her never finding this out so she could proceed to civil litigation against the OVMLB for their acts. In fact, if Mr. McNamara is correct, then the decision made by the Court of Claims must be rendered wrongful because they concluded my action for immunity determination was a 'collateral attack' and 'time barred.' The charges were not dismissed until June, 2009, which should be the date beginning a statute of limitations after exhausting all administrative remedies. The Court of Claims and the Tenth District Court of Appeals made a decision to toll the statute based on the March 2, 2007 issuing of the ORDER against Dr. Sizemore, which tolled the statute on March 2, 2009-prior to the dismissal and exhaustion of all administrative remedies. This is inconceivable that this is founded in law. In addition, the Tenth District Court of Appeals stated Dr. Sizemore claimed the statute should run from June, 2009, however, did not state *why* it should. The Ohio AAG, Ms. Adair, claimed the statute should run from March, 2007, but did not state *why* she

claimed it should. The Tenth District ignored what Dr. Sizemore contends was and is the truth and ignored the fact that she was denied equal protection under the laws by siding with a party that was presenting false argument and not stating reasons just as the Court claimed Dr. Sizemore was not stating reasons. You see, it appears to this Appellant that it depends on the day of the week and the position of the moon and ambient temperature apparently for whatever argument the Ohio Attorney General's Office is in need of that day and that is what the Courts' seem to go with on every occasion. Now it is truthful that that does bother Dr. Sizemore. However, she contends that when they keep flipping their argument to say something completely different on a different occasion, it makes ALL their arguments null and void according to the rules of evidence and every legal principle set forth by this Supreme Court of Ohio. Dr. Sizemore has included the decisions made by the Court of Claims and the Tenth District Court of Appeals when she attempted to file for immunity determination at that time. If the charges were really permitted to be dropped, then she was entitled to immunity determination and was denied. In fact, Dr. Sizemore contends she filed correctly in her action in Franklin County Court of Common Pleas, case no. 09-CV-17698. This was an action for abuse of process, negligence, abuse of discretion, slander/libel, etc. AAG Aaron Epstein presented legal argument for the Court to dismiss her case, however, Dr. Sizemore contends this legal argument was not founded in law and ignored the principle of exhaustion of administrative remedies- required by law of Dr. Sizemore.

Dr. Sizemore contends she may not have perfectly pled a 42 USC 1983 action in her 09-CV-17698 action above, but in substance she did. She understands pursuant to *EJ v. Hamilton County, Ohio*, 707 F. Supp. 314; 1989 U.S. Dist. LEXIS 1926, which states:

‘Although the standard for Fed. R. Civ. P. 12(b)(6) dismissals is quite liberal,... **The pleader is not held to an impossibly high standard in light of the policies behind Fed. R. Civ. P. 8 and the concept of notice pleading. A Plaintiff will not be thrown out of court for failing to plead facts in support of every arcane element of his claim,**’ and *Nishiyama et al v. Dickson County*, 814 F.2d 277;1987 U.S. App. LEXIS 3568, ‘**although the Plaintiff did not use the ‘exact’ language ‘under color of state law’ It is clear to the court that Plaintiffs have alleged that the** governmental entities had specific responsibility for .. the Plaintiffs have also alleged systematic acts and statutory omissions in performance of their official duties....as required by the forgoing standard...’ Dr. Sizemore contends she understands in the event of pleading a 42 USC 1983 action, no immunity determination was necessary. Also, she contends, in the event the Franklin County Court of Common Pleas did not consider she filed a 42 USC 1983 action, the Court should have decided on a stay of the proceedings and allowed her to file in the Court of Claims simultaneously without dismissal of her civil action pursuant to *Smith v. Stempel* (1979), 64 Ohio App.2d 36 as well as *Walker v. Steinbacher* (Summit 1987) 37 Ohio App. 3d 1, 523 N.E.2d 352. And despite the successful maintenance of simultaneous causes of action presupposes that both actions are timely filed, citing *Dean v. Ohio State Highway Patrol* (10th Dist., 2003), 2003 Ohio 4505. This Appellant asserts these matters were addressed in the Franklin County Court. Dr. Sizemore contends it is the duty of her government-the Courts to protect her rights in every way-even in the event she does not know them or how to exactly protect them. There is no law that states if she is ‘stupid’ she has no rights. Dr. Sizemore has asserted over and over ‘the Court is an instrumentality and an incident to sovereignty, citing *State ex. rel. Cherrington v.*

Hutsinpillar, 112 Ohio St. 468, 3 Ohio L. Abs. 279, 147 N.E.2d 647 (1925), a public institution created as a necessary part of the process of government in maintaining order, adjudging the legal obligation, and protecting the legal rights of the people, citing *E.W. Scripps Co. v. Fulton*, 100 Ohio App. 157, 60 Ohio Op. 147, 72 Ohio L. Abs. 430, 125 N.E.2d 896 (8th Dist. Cuyahoga County 1955).

In addition she understands in *Holloway v. Brush*, 220 F. 3d 767, 'absolute immunity' is discussed -although pertaining to political subdivisions, this authority claims, "the official seeking absolute immunity bears the burden of showing that immunity is justified in light of the function she was performing." Even though this is for political subdivisions, this Appellant contends it appears to apply to ALL parties claiming "absolute immunity." Neither Ms. Adair or Mr. McNamara or Ms. Worly have ever submitted argument to support the ACTUAL actions of the Defendants were founded in law and justified. In RC 2743 the law states employees/officers in Ohio will be evaluated 'just the same as private citizens.' It also states there are exemptions to the 'immunity' defense. This Appellant is certain there can be no immunity to parties that knowingly violate laws and act maliciously and outside the scope of their employment. All argument the State actors were 'just doing their jobs' has never been supported that their actions were based in law.

This Appellant contends the act of filing a lawsuit in and of itself is an assertion of Petitioner's First Amendment right to petition government for the redress of grievances. Appellant asserts the U.S. Supreme Court has made it clear in *Christopher v. Harbury*, 536 U.S. 403; 122 S. Ct. 2179; 153 L.Ed. 2d 413; 2002 U.S. LEXIS 4647, she has the right to open court. Also, in *Chambers v. Baltimore and Ohio Railroad Company*,

207 U.S. 142; 28 S. Ct. 34; 52 L.Ed. 143; 1907 U.S. LEXIS 1210; 6 Ohio L. Rep. 498, this older law states: 'the right to sue and defend in the courts is...one of the highest and most essential privilege of citizenship and must be allowed by every state to the citizens..'

Also, the Ohio Constitution states the same thing in the Bill of Rights-which guarantees that all courts shall be open, and every person, for injury done to land, goods, person, or reputation shall have remedy by due course of law, and shall have justice administered without denial or delay. See Ohio Constitution Article 1 sect. 16.

In his last paragraph on page 3, Mr. McNamara states: 'In the present case, the OVMLB has neither refused to render a judgment nor has it delayed in proceeding to judgment in response to Dr. Sizemore's appeal. To the contrary, the OVMLB devoted considerable time, energy, and resources to Dr. Sizemore's case, and, in accordance with its normal processes, duly decided to dismiss the charges...' First of all, there is no legal basis presented to allow them to dismiss the charges. The authority attached to the Appellee Brief by Mr. McNamara does not include matching operative facts-argued above. Also, Mr. McNamara paints a picture of these government employees as is they were so honorable, however, he has never justified even one moment of energy used against Dr. Sizemore or justified one tax dollar being utilized for what Dr. Sizemore has contended all along-their heinous acts. In the complete absence of all this, this Court must not ignore all the deficiencies in Mr. McNamara's defense and at the same time ignore all the legally based argument presented by Dr. Sizemore. The OVMLB has certainly NOT complied with the Court ORDER of May 19, 2009 and no document has been provided they have, therefore validating this Action in Mandamus. The OVMLB and all involved

just plain and simply do not want to be held accountable for their actions-like RC 2743 et seq states they will be judged just like private citizens. Dr. Sizemore is just not seeing it, it appears to her the Courts are protecting them unequally over her and her concerns- depriving her of her Constitutional rights as she is claiming correctly.

Also in the first paragraph on page 4, line 2, which states: 'To the contrary, a writ of mandamus is only appropriate to compel judicial action when a court has refused to render judgment or has unnecessarily delayed...' This is absolutely false and misleading. This is the type of tactic Dr. Sizemore strenuously opposes and alleges is 'slick-lawyering' but not truthful. She alleges this is exactly what she reads is a violation of all the Attorney Codes of Professional Conduct Mr. McNamara seems offended by her asserting. A Mandamus is also utilized to compel a government agency to act. He does not include this because it would be negative to his client, however, it is truthful and when Dr. Sizemore sees a lawyer do this, she wonders if any of the rules and laws apply or if the truth is even a consideration in the Courts. After a statement like this is made, Dr. Sizemore sees a Court side with it as if it were truthful and then she makes rude statements to friends such as her 'first graders would be able to see this is untruthful.' This amount of outrage at such conclusions made by a Court is disturbing to Dr. Sizemore because all she reads has to do with justice and truth and she sees none of that. For another instance, Mr. McNamara goes on to state: 'For this reason, mandamus cannot be used to interfere with a court's normal operating procedures or to compel a court to reach a particular conclusion or result.' ... Courts presume the regularity of such proceedings...since there has been no unnecessary delay and no refusal to deliberate by the OVMLB...' These are not facts pertinent to this action. Dr. Sizemore is not

interfering with any normal process by a court. A decision has been rendered. It has been almost three years, as already confirmed by Mr. McNamara-constituting delay he states is not present. In addition, Dr. Sizemore has been attempting to litigate in other Courts for civil damages she is being told she is not permitted to litigate in. These multiple failed attempts to obtain justice and compensation for the acts of these government employees has led to an attorney filing a counter-claim in her action against her mortgage company in Ashland County Court of Common Pleas, case, 11-CV-371 accusing her of being vexatious because of the number of lawsuits filed that have been defeated. Dr. Sizemore claims she has filed correctly and the Courts have ignored her because she is pro se. These actions have not been frivolous even if she was mistaken as to what she was permitted to do at the time of filing. Innocent misunderstanding does not render one vexatious. All this she finds hideous as well as she is experiencing embarrassment and damages as a result of what she contends is false argument presented by the opposing counsel in her actions here in Columbus as well as Ashland County that have led to the defeat of the filings in Columbus. In fact, a member of the public told Dr. Sizemore John Williams-Mr. McKew's supervisor made statement to her that went something like, 'Dr. Sizemore tried to sue the State and look how that turned out.' This, what Dr. Sizemore considers, mocking statement is hideous as well as unprofessional. Dr. Sizemore has made honest attempts, not attempts for pure harassment of any party. In fact, the Courts seem to ignore all the horrible effects the conduct of the State employees had on her for the years they continued to attempt to blemish her perfect record as a professional. This does not appear to be justice or equal protection or due process to anyone-even to those of average intelligence. Dr. Sizemore is certain every member of the Court system is

aware of the laws and rules and she contends they want to protect the government workers even without justifiable laws to do so. She apologizes that Mr. McNamara finds this position wrongful, however, he has failed to justify any acts by the OVMLB and the associated tortfeasors as well as the conclusions made by the various Courts, therefore, she is uncertain as to how he hold his position on the matter.

Also on page 4, Under section C- it states: 'Mandamus will not issue where, as here, an appeal provides an adequate remedy at law... she understood she had a clear and adequate She took advantage of her appeal rights in case no. 07CVF03-3669.' This makes no sense at all. What appeal? Of what ORDER? There are no appeal directions in the 'letter of dismissal' and what in the world would Dr. Sizemore be appealing? She is required to have an Adjudication Order against her that is adverse to take a RC 119 administrative appeal. This argument makes absolutely NO sense whatsoever. There is Court ORDER regarding that appeal that has yet to be complied with. Dr. Sizemore cannot take another appeal until the OVMLB actually complies with the ORDER. Mr. McNamara intentionally confuses issues here and Dr. Sizemore contends there is no truthfulness to his argument here. In the absence of the OVMLB re-issuing an ORDER in compliance with RC 119.09, Dr. Sizemore is unable to pursue civil litigation because she is thwarting an administrative process she is not entitled to thwart. She must have the proper steps of completion to file for civil damages. If this is not correct, then she was truly entitled to be in the Court of Claims and the decision rendered by the Court of Claims and confirmed by the Tenth District Court of Appeals is false. It has to be one way or the other to be truthful. Both arguments and conclusions made cannot be truthful when they conflict on every level of law and reasoning. This Appellant contends this

Supreme Court of Ohio will need to conclude what is the actual truth of this entire matter. Was she presenting a collateral attack-an issue not addressed by the Tenth in appeal no 10AP841- or was she not presenting a collateral attack because the charges were dismissed? This Court needs to decide the truth here.

On page 5, Under D- it states: ‘..Dr. Sizemore herself recognizes that the trial court’s May 20, 2009 order vacated its own original order of June 26, 2007, and remanded the matter to the OVMLB for disposition, divesting the appellate courts of jurisdiction, and mooted the agreement reached in the appeals court.’ This is hogwash. Mr. McNamara has perverted the facts and any statements made by Dr. Sizemore. The lower Court vacated their ‘dismissal of Dr. Sizemore’s appeal,’ but then remanded the issues back to the OVMLB and rendered an ORDER that the OVMLB has not complied with as they were ORDERED to do by the Tenth. There is no law or contract agreement that states the government can make a promise, have the Courts confirm that promise, they ignore it and it is legal. This is what Dr. Sizemore contends is yet another violation of the Attorney Code of Professional Conduct. This Supreme Court of Ohio is going to have to make it clear to all citizens in Ohio exactly what laws and rules you are going to go by, because it is apparent the Courts do not go by any of them unless they are using them against parties such as her.

Going on under D on page 5- it states: ‘The trial court directed the OVMLB to ‘issue *an* order.’ This is misleading and therefore false. The ORDER at hand was the March 2, 2007 ORDER appealed by Dr. Sizemore and IT was not in compliance with RC 119.09 and pursuant to *Hughes* and *Sun Refining*, that is the ORDER being ORDERED to comply. There is no plain language that states, ‘if you –the OVMLB- decide Dr.

Sizemore has become educated enough to fight your heinous acts, you can drop them and have everyone pretend you never did what you did.' In fact, it appeared to Dr. Sizemore that Mr. McKew only felt that the appeal to Franklin County was to verify if he had given a 'fair and procedural' 119 hearing to Dr. Sizemore. It appeared to her that the issues of truthfulness were not his plan in her first appeal. The law Dr. Sizemore discovered stated exactly the opposite. It appeared the trial court was bound by law to examine every part of what the OVMLB had accused her of and the actions of the government against her. When this was presented, that is when the State actors decided they wanted to run from it. They were truly not permitted to do what they did. In fact, Mr. McNamara never states WHY they decided to dismiss the charges even though every person with any brain power whatsoever can come to the logical conclusion as to why.

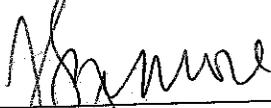
Also on page 5, under D- Mr. McNamara makes false argument that the OVMLB may disregard the trial court's ORDER and do whatever they wish. He does not provide a legal basis and the case he attached is not relevant because there are no matching facts to this Mandamus. All argument has been pled sufficiently in this Relator-Appellant's Merit Brief regarding that all ability to vacate or modify a decision made is divested when an appeal is filed. All evidence in this case supports this Mandamus as well as the legal counsel Dr. Sizemore has received was that she is and was entitled to file an Action for Petition of a Writ of Mandamus in this exact situation.

CONCLUSION

As all argument above supports, there is no legal basis presented by opposing counsel for the acts of the OVMLB and associated tortfeasors. Also, Dr. Sizemore is

unaware of the entire ramifications of her allegations, however, she has made every good faith attempt to present her argument truthfully and based on existing law as she has understood it. She reasserts her allegations are truthful and just because they are unpleasant does not negate the seriousness or the validity of them. She contends she has rights as an American and Ohio citizen and these rights have been denied her and she is seeking this Court to hear her argument and provide justice. She requests an oral hearing for these serious matters even though oral hearing is not customary in appeals of right. Dr. Sizemore asserts that opposing counsel has not presented a defense founded in law – or a defense warranted by existing law and cannot be supported by good faith argument. Dr. Sizemore approached the Governor's office for financial compensation for the acts of the OVMLB and others and was sent a letter stating the Governor's office was not responsible for any acts nor did they supervise any acts of the OVMLB. Dr. Sizemore contends this information is false and the Governor's office declined providing her with a job description for the State position of Director of Boards and Commissions. This refusal confirms that the Governor is the Executive Branch of the government and oversees all Boards and Commissions in the State. Dr. Sizemore states the late and former President, John F. Kennedy stated, 'secrecy is repugnant in a democratic society.' When reasons are known, it is not burdensome to provide the same. Dr. Sizemore contends all she has ever done is assert her rights and she has been denied these in every way and in every attempt to obtain justice for herself. Since there is no statute of limitations on contempt, she concludes her Petition for Writ of Mandamus is valid and based on existing law. Dr. Sizemore is entitled to everything she has asked of her government.

Respectfully submitted,



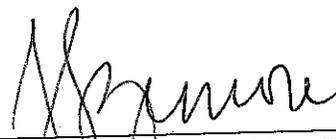
Dr. Terrie Sizemore RN DVM/Pro se
PO Box 23
Sullivan, Ohio 44880
440-241-3126
sizemore3630@aol.com

CERTIFICATE OF SERVICE

A true and accurate copy of this foregoing "REPLY BRIEF OF RELATOR-
APPELLANT DR. TERRIE SIZEMORE RN DVM" has been served, via regular U.S.
Mail on this 23rd day of April, 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



FILED
COURT OF CLAIMS
OF OHIO

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

2010 AUG 23 AM 10:39

DR. TERRIE SIZEMORE, R.N., D.V.M.

Plaintiff

v.

THE OHIO VETERINARY MEDICAL
LICENSING BOARD, et al.

Defendants

Case No. 2010-01328

Judge Alan C. Travis

ENTRY OF DISMISSAL

On February 17, 2010, defendants filed a motion to dismiss plaintiff's complaint pursuant to Civ.R. 12(B)(1) and (6). On February 22, 2010, plaintiff filed a response.

In construing a motion to dismiss pursuant to Civ.R. 12(B)(6), the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling her to recovery. *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242. Additionally, dismissal under Civ.R. 12(B)(6) based upon a statute of limitations is proper only when the face of the complaint conclusively shows that the action is time-barred. *Leichliter v. Natl. City Bank of Columbus* (1999), 134 Ohio App.3d 26.

According to her complaint, plaintiff is a doctor of veterinary medicine. On December 29, 2005, the Ohio Veterinary Medical Licensing Board issued plaintiff a Notice of Opportunity for Hearing in accordance with R.C. Chapter 119 regarding veterinary care that she had rendered on May 1 and 8, 2005, to two pets owned by the Rohm family. On July 20, 2006, a hearing was held to determine whether the allegations merited any action by the board regarding plaintiff's license. On March 2, 2007, the board found that plaintiff had violated both the Ohio Revised Code and the Ohio Administrative Code and imposed a civil penalty against her. Plaintiff filed a notice of appeal to the Court of Common Pleas

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Case No. 2010-01328

- 2 -

ENTRY

in Franklin County, Ohio. Plaintiff's appeal was dismissed in August 2007. Plaintiff appealed the dismissal to the Tenth District Court of Appeals. On August 28, 2007, the Court of Appeals dismissed plaintiff's appeal and remanded the claim to the trial court.

Plaintiff alleges several causes of action in her complaint and she requests an immunity determination pursuant to R.C. 9.86 and 2743.02(F) for various state employees who were involved in the board hearing.

Defendant asserts that the court lacks subject matter jurisdiction over plaintiff's claims, or, in the alternative, that plaintiff's claims are barred by the two-year statute of limitations found in R.C. 2743.16.

Although plaintiff attempts to set forth various causes of action and legal theories in her complaint, plaintiff's claims arise solely out of the actions taken by the board in connection with her administrative penalty. Inasmuch as plaintiff's claims are no more than a collateral attack upon the license action that was subject to the procedures set forth in R.C. 119, the Court of Claims lacks subject matter jurisdiction over those claims. See *Avon Lake City School Dist. v. Ohio Dept. of Taxation* (1989), 55 Ohio App.3d 171.

Moreover, R.C. 2743.16(A) states, in part: "civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." At the very latest, plaintiff's claims accrued on March 2, 2007, when the board imposed a civil penalty against her. Plaintiff filed her claim on January 15, 2010, more than two years after the board's action.

Therefore, making all reasonable inferences in favor of plaintiff, it appears beyond doubt that she can prove no set of facts entitling her to recovery. Accordingly, defendant's motion to dismiss is GRANTED and plaintiff's complaint is DISMISSED. Court costs are

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COURT OF CLAIMS
OF OHIO

2010 AUG 23 AM 10: 39

Case No. 2010-01328

- 3 -

ENTRY

assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.



ALAN C. TRAVIS
Judge

cc:

Jennifer A. Adair
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Dr. Terrie Sizemore, R.N., D.V.M.
P.O. Box 23
Sullivan, Ohio 44880

HTS/cmd

JOURNALIZED

FILED
IN APPEALS
COURT

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

2011 MAY 12 PM 12:48
CLERK OF COURTS

Dr. Terrie Sizemore, R.N., D.V.M.,

Plaintiff-Appellant,

v.

The Ohio Veterinary Medical Licensing
Board et al.,

Defendants-Appellees.

No. 10AP-841
(C.C. No. 2010-01328)

(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 12, 2011

Dr. Terrie Sizemore, R.N., D.V.M., pro se.

*Michael DeWine, Attorney General, and Jennifer Anne Adair,
for appellees.*

APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶1} Plaintiff-appellant, Dr. Terrie Sizemore, R.N., D.V.M., appeals from the judgment of the Court of Claims of Ohio granting the motion to dismiss filed by defendants-appellees, the Ohio Veterinary Medical Licensing Board ("OVMLB"), the Office of the Governor, the Ohio General Assembly, the Office of the Attorney General, and the Office of the Inspector General, collectively referred to as appellees.

{¶2} According to the complaint, on June 14, 2005, the OVMLB received a complaint regarding veterinary care rendered by appellant in May 2005 to pets owned by Mr. and Mrs. Rohm. The matter was investigated, and on January 4, 2006, appellant received from the OVMLB a Notice of Opportunity for Hearing in accordance with R.C. Chapter 119. Appellant was afforded a hearing on July 20, 2006, and on March 2, 2007, the OVMLB issued an adjudication order finding violations of both the Ohio Revised Code and the Ohio Administrative Code and imposing civil penalties. Appellant appealed the order to the Franklin County Court of Common Pleas, which in turn dismissed the appeal due to a pleading deficiency. Appellant sought further review from this court; however, the parties agreed to dismiss the appeal and have the matter remanded back to the OVMLB to re-issue a final order pursuant to *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007-Ohio-2877. The matter was remanded to the OVMLB on May 21, 2009, and on June 11, 2009, the OVMLB dismissed appellant's case.

{¶3} Appellant filed the present action against appellees in the Court of Claims of Ohio on January 15, 2010, alleging abuse of process, abuse of discretion, and negligence. The complaint sought damages in excess of \$25,000 and contained a claim for punitive damages.¹ Appellees filed a motion to dismiss on February 17, 2010 arguing that: (1) appellant's claims were barred by the two-year statute of limitations contained in R.C. 2743.16(A), (2) all named appellees were entitled to immunity, and alternatively (3) appellant failed to state a claim upon which relief could be granted.

¹ Pursuant to an entry filed on January 20, 2010, the trial court struck the claim for punitive damages.

{¶4} On August 23, 2010, the trial court granted the motion to dismiss finding that appellant's claims were not only barred by the statute of limitations, but also that it lacked subject matter jurisdiction over appellant's claims because the claims consisted of a collateral attack upon the action taken with respect to her license pursuant to R.C. Chapter 119.

{¶5} Appellant filed an appeal and brings the following assignment of error for our review:

The Court of Claims erred in dismissing Plaintiff-Appellants filing for immunity determination for individuals employed by/or are officers with State Departments in the State of Ohio and the departments' responsible for the individuals' actions. The Court of Claims dismissed the Appellant's action on August 23, 2010 for reasons stating the Appellant's claims are 'no more than a collateral attack upon the license action that was subject to the procedures set forth in RC 119' and 'time barred claims' and also because the Court of Claims stated 'it appears beyond doubt she can prove no set of facts entitling her to recovery.' The Appellant alleges these reasons are in error.

{¶6} In this assignment of error, appellant contends (1) the trial court erred in finding her claims consisted of a collateral attack on the actions taken against her license to practice veterinary medicine, (2) the trial court erred in finding her claims were barred by the statute of limitations, and (3) the trial court erred in failing to address her request for an immunity determination. However, appellant does not separately argue the "collateral attack" issue. An appellate court is required to address only those issues that are both assigned as error and briefed, and "'App.R. 12(A)(2) permits a court of appeals to disregard any issue that is assigned, but not separately argued.'" *Columbus v. Flowers*, 10th Dist. No. 10AP-32, 2010-Ohio-5081, ¶6, quoting *Catalano v. Pisani* (1999),

134 Ohio App.3d 549, 552. Accordingly, we will not address the "collateral attack" issue referenced by appellant in her assignment of error. With respect to the two remaining issues, because it is dispositive, we will first address appellant's arguments made in regard to the statute of limitations.

{¶7} In deciding whether to dismiss a complaint, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief can be granted, the trial court must presume all factual allegations in the complaint are true and construe the complaint in the light most favorable to the plaintiff, drawing all reasonable inferences in favor of plaintiff. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Before the court may dismiss the complaint, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling the plaintiff to recovery. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus. We review de novo the dismissal of a complaint pursuant to Civ.R. 12(B)(6). *Shockey v. Wilkinson* (1994), 96 Ohio App.3d 91, 94.

{¶8} In this case, the trial court determined the applicable statute of limitations bars appellant's complaint. A complaint may be dismissed, pursuant to Civ.R. 12(B)(6), as failing to comply with the applicable statute of limitations if the face of the complaint makes clear that the action is time-barred. *Steiner v. Steiner* (1993), 85 Ohio App.3d 513, 518-19; *Swanson v. Boy Scouts of Am.*, 4th Dist. No. 07CA663, 2008-Ohio-1692, ¶6, quoting *Doe v. Robinson*, 6th Dist. No. L-07-1051, 2007-Ohio-5746, ¶17, citing *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, ¶11. Only where the complaint shows conclusively on its face that the action is time-barred should a Civ.R. 12(B)(6) motion to dismiss based upon the statute of limitations be granted. *Swanson*, quoting *Jackson v. Sunnyside Toyota, Inc.*, 175 Ohio App.3d 370, 2008-Ohio-687, ¶15.

{¶9} The applicable statute of limitations is found in R.C. 2743.16(A), which provides, in relevant part, "civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." "Ordinarily, a cause of action accrues and the statute of limitations begins to run at the time the wrongful act was committed." *DiNozzi v. Ohio State Dental Bd.*, 10th Dist. No. 08AP-609, 2009-Ohio-1376, ¶15, quoting *Collins v. Sotka* (1998), 81 Ohio St.3d 506, 507, 1998-Ohio-331 (internal quotation marks omitted). The trial court found that based on appellant's complaint, her claims accrued at the very latest on March 2, 2007, rendering her January 15, 2010 complaint untimely.

{¶10} Appellant's asserted causes of action concern the Notice of Opportunity for Hearing issued on December 29, 2005, the R.C. Chapter 119 hearing held on July 20, 2006, the adjudication order issued on March 2, 2007, and the notification of November 21, 2007, wherein the OVMLB informed appellant that it would not re-issue an adjudication order and instead was dismissing the matter. Utilizing any one of these dates as the date in which appellant's causes of action accrued, it is clear that appellant's January 15, 2010 complaint is time-barred for failing to be filed within two years of the date of accrual. Though appellant makes the conclusory statement in her appellate brief that she was not able to file a complaint in the court of claims until June 11, 2009, she offers neither factual nor legal support as to why this is so.

{¶11} After review, we find it is clear from the complaint that appellant's claims were filed beyond the statute of limitations set forth in R.C. 2743.16, as they were not filed

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within two years of their accrual date. Consequently, we find the trial court did not err in dismissing appellant's complaint pursuant to Civ.R. 12(B)(6).

{¶12} Appellant also contends the trial court erred in dismissing this matter without addressing her request for an immunity determination. Appellant's complaint lists five state entities as defendants, and we have concluded that the trial court was correct in its determination that appellant's claims against those five state entities are barred by the applicable statute of limitations. Because appellant's claims against the named defendants are time-barred, we find no error in the trial court's failure to address immunity with respect to those defendants.

{¶13} For the foregoing reasons, appellant's assignment of error is overruled, and the judgment of the Court of Claims of Ohio is hereby affirmed.

Judgment affirmed.

BRYANT, P.J., and DORRIAN, J., concur.



TED STRICKLAND
GOVERNOR

July 9, 2009

Dr. Terrie Sizemore
P.O. Box 23
Sullivan, OH 44880

Dear Dr. Sizemore:

Thank you for your recent letter regarding the Ohio Veterinary Medical Licensing Board.

The various boards and commissions in the state of Ohio were created by the General Assembly as independent entities. The Governor does have the constitutional authority to appoint members to some of the boards and commissions when a vacancy occurs; however, the administrative authority within the respective board or commission rests with the staff which is not appointed by the Governor.

I appreciate your taking the time to write. Please feel free to contact this office for additional assistance.

Sincerely,

A handwritten signature in black ink that reads "Wade A. Rakes II". The signature is written in a cursive style with a large, stylized "W" and "R".

Wade A. Rakes II
Director of Public Liaison

WR/deu

APP 5

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**Terrie Sizemore RN DVM
PO Box 23
Sullivan, Ohio 44880
419-736-3559**

The Ohio Veterinary Medical Licensing Board
77 S. High Street
16th Floor
Columbus, Ohio 43215

Via Certified Mail - Return Receipt Requested

To Whom It May Concern:

Upon further review and inspection of the document styled "ADJUDICATION ORDER", File # 05-05-067, Journal No DVM-07-01, dated March 2, 2007, it is apparent that service of the subject order is void, unenforceable and contrary to R.C. 119.09.

R C. 119.09 provides in part that:

"After such order is entered on its journal, the agency shall serve by certified mail, return receipt requested, upon the party affected thereby, certified copy of the order and a statement of the time and method by which an appeal may be perfected" (emphasis added)

R.C. 119.09 has been judicially reviewed by the Ohio Supreme Court and in the case of *Sun Refining & Marketing Co. v. Brennan* (1987), 31 Ohio St.3d 306, 308, the Court determined that the subject agency did not comply with the provisions of this statute since it failed to send the affected party a "certified copy" of the relevant Order. The Order found in Journal No. DVM-07-01 that was mailed to the undersigned was not a "certified copy".

The impact of the Veterinary Medical Board's failure to comply with R.C. 119.09 is two-fold, i.e., (1) the Order as it exists is invalid and unenforceable as it impacts the due process rights of the affected party and (2) 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. Should this procedural irregularity not be corrected within five (5) days of receipt of this correspondence, a motion will be filed with the appropriate court seeking the vacation of the subject order.

In the interim, should you have any questions, please do not hesitate in contacting the undersigned.

The Ohio Veterinary Medical Licensing Board
July 31, 2007
Page 2 of 2 pages

Sincerely yours,

Dr. Terrie Sizemore RN DVM

Cc: Barry McKew, AAG
Governor Strickland
Attorney David Doyle-Appellate Mediator

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20761 - S57



STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

Executive Agencies Section
30 E Broad St, 26th Floor
Columbus, OH 43215-4200
Telephone: (614) 466-2900
Facsimile: (614) 728-9470
www.ag.state.oh.us

APP 6

August 6, 2007

Dr. Terre Sizemore
P.O. Box 23
Sullivan, Ohio 44880

Re: Case No. 07-APE-07-577

Dear Dr. Sizemore:

I am in receipt of your letter mailed on July 31, 2007. In your correspondence you ask the Veterinary Board to issue a new order in your case within a particular time frame, however, you do not understand that at present, control of the above referenced case rests with the 10th District Court of Appeals, exclusively. 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. I cannot advise you what action needs to be taken, you need to seek advice from outside counsel.

Sincerely yours,

Barry McKew
Assistant Attorney General

20761



53 STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

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October 30, 2007

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APP 11

Mr. Michael Thomas
Attorney at Law
1154 Linda Street
Suite 250
Rocky River, Ohio 44116

Re: Sizemore v. Vet Brd, Case No. 07 APE 577

Dear Mr. Thomas:

As you may recall, I am the Assistant Attorney General representing the Ohio Veterinary Medical Board ("Board") in the above referenced case. On August 28, 2007, the 10th District Court of Appeals issued an Entry of Dismissal in this case remanding the matter to the trial court for further action (I have attached a copy of this entry for your convenience). This action was taken per our Agreed Motion and Entry of August 20, 2007. As of today's date, the Board has not received any order from the Franklin County Court of Common Pleas; and until the Board does receive an order from the trial court it has no jurisdiction to take further legal action on this case.

In the meantime, your client has contacted the Board concerning her case. I have attached her letter, received by the Board on October 30, 2007, and sent to the Executive Director. In her letter Dr. Sizemore discusses various aspects of her case, but also threatens the members of the Board, the Board's former Executive Director, the Hearing Officer who issued the Report and Recommendation in her case, and me with various forms of legal harassment. This conduct is uncalled for behavior. Please discuss the contents of this letter with your client and please inform her of the legal status of her case.

I thank you for your time.

Sincerely yours,

A handwritten signature in cursive script that reads "Barry McKew".

Barry McKew
Assistant Attorney General

Cc: Theresa Stir, Executive Dir.