

**THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW
OF
THE SUPREME COURT OF OHIO**

| | | |
|--------------------------------|---|---------------------------------|
| TOLEDO BAR ASSOCIATION, | : | |
| | : | |
| RELATOR, | : | |
| | : | |
| v. | : | |
| | : | |
| RAYE-LYNN ABREU, | : | Case No. UPL 14-01 |
| | : | |
| RESPONDENT. | : | <u>FINAL REPORT</u> |
| | : | Recommending Approval of |
| | : | Proposed Consent Decree, |
| | : | Gov. Bar R. VII(5b)(D) |

I. INTRODUCTION

The Toledo Bar Association (“Relator” or “TBA”), filed a complaint before the Board on the Unauthorized Practice of Law alleging that Respondent Raye-Lynn Abreu (“Abreu”) engaged in the unauthorized practice of law in Ohio by holding herself out as a Medicaid Specialist to two Ohio residents and providing legal advice regarding Medicaid eligibility to one. For her services, Abreu collected \$7,975 from client Susan Heasley.

The parties filed a Proposed Consent Decree along with a Memorandum in Support on August 3, 2015. The panel considered the matter, and upon consideration, recommended approval of the Proposed Consent Decree, which included an agreement by Abreu to cease the conduct of advising on Medicaid eligibility and a provision whereby Abreu agreed to reimburse Heasley her application fee of \$7,975. Further, a Statement in Support of Joint Motion to Approve Consent Decree, filed on October 20, 2015, was filed by Abreu through her counsel, to which was attached a document entitled

“Affidavit of Compliance by Raye-Lynn Abreu,” indicating that Abreu, through her counsel has already made restitution to Ms. Heasley.

At the Board’s regular meeting on November 6, 2015, the panel presented its report and recommendations, which the Board unanimously approved.

II. PROCEDURAL BACKGROUND

The Complaint was filed by the Toledo Bar Association on January 21, 2014. In accordance with Gov. Bar R. VII, Sec. 6, a copy of the Complaint and Notice of Filing of Complaint were sent via certified mail to Ms. Abreu on or about January 22, 2014.

Abreu, through counsel, filed a request for extension of time to Answer on February 11, 2014, which was granted. An Answer was filed on February 25, 2015. By Entry dated March 3, 2014, Commissioners Robert V. Morris II (Chair), Ben E. Espy, and Edward T. Mohler were appointed as panel members to hear this matter. Mr. Mohler recused himself from the case, and on May 14, 2015, Julie P. Hubler was appointed as a panel member.

On April 11, 2014, the Toledo Bar Association filed a Motion for Authorization to Retain Expert, pursuant to Gov. Bar R. VII, Sec. 9(A). Abreu did not file any objections to the motion, and by Entry filed May 16, 2015, the motion was approved. The Toledo Bar Association retained Attorney Nirakar Thakur, a certified specialist in estate planning, trust, and probate law “to assist the Board with an understanding of the role of legal counsel in Medicaid planning and to explain how Respondent’s conduct encroaches upon that role and constitutes the unauthorized practice of law.” Mot. For Authorization to Retain Expert, p. 1.

The TBA filed the deposition of Raye-Lynn Abreu on October 3, 2014. The parties indicated that they were negotiating a proposed resolution and the hearing date was continued. On January 20, 2015, an unopposed motion for an extension of time to submit a motion to approve proposed consent decree by February 3, 2015, was filed by Abreu, which was granted. The parties submitted by email a Proposed Consent Decree (Exhibit A); Memorandum in Support of Motion to Approve Consent Decree (Exhibit B) and Relator's Statement of Costs (Exhibit C). The proposed consent decree bearing Abreu's original signature was received on August 3, 2015.¹

In the Proposed Consent Decree, Raye-Lynn Abreu agrees to cease the described conduct and reimburse the client, Ohio resident Susan Healey, \$7,975. For the following reasons, the Board recommends approval of the proposed consent decree.

III. FINDINGS OF FACT

1. Relator, The Toledo Bar Association ("TBA"), is authorized to investigate and prosecute activities which may constitute the unauthorized practice of law in Ohio. Gov. Bar R. VII(4)-(5). Compl. ¶ 1.; Proposed Consent Decree ¶ 1.
2. Respondent, Raye-Lynn Abreu, is an individual who is not admitted to the practice of law in Ohio. Compl. ¶ 2; Answer ¶ 2. Proposed Consent Decree ¶ 4. Abreu has done business under the trade names "A.I.M.S.," which stands for "All Inclusive Medicaid Specialists". Compl. ¶3; Answer ¶3. Proposed Consent Decree ¶ 5. She also

¹ According to the Case Scheduling Order in *Toledo Bar Association v. Raye Lynn Abreu*, Case No. UPL 14-01, filed on March 3, 2014, "If a filing is made electronically with the Board, a signed original shall also be contemporaneously mailed to the Board's offices."

conducted business under the name “Personalized Long Term Consulting & Medicaid Applications” or “Medicaid Solutions”. Proposed Consent Decree ¶ 5.

3. Prior to operating A.I.M.S., Abreu worked for the Department of Job and Family Services in 1991 to 2003 first as an aide, then as a Medicaid eligibility specialist.

Deposition of Abreu, pp. 9-10. She then worked for the Area Office on Aging as a provider. In this position, she met with clients, helped them with Medicaid applications, and described it as “[t]he exact same thing I do now.” *Id.* 13:1-13.

4. Abreu circulated brochures of her business to approximately 17-18 Medicaid approved nursing homes in Lucas County, Ohio. Deposition of Abreu, pp. 82-83. One version of the brochure indicates, “Estate Planning At It’s [sic] Best”. *Id.* at Ex. 5.

5. On or about February 28, 2012, Susan Healey executed a Contract of Services with Raye-Lynn Abreu. Proposed Consent Decree ¶ 6. Ms. Heasley paid an application fee of \$7,975.00 to Abreu. Compl. at Ex. 4; Deposition of Abreu at Ex. 1A. The contract of service signed by Heasley states in part,

Raye-Lynn Abreu offers personal, not legal, advice with the sole purpose of obtaining eligibility for the Medicaid program. Any “advice” that is taken and/or followed will be completed through the free will of the undersigned. Raye-Lynn Abreu assumed no responsibility for any actions taken for the benefit of the future Medicaid recipient. In return for the fee agreed upon Raye-Lynn Abreu will render advice for the preparation of a Medicaid application and will complete the first initial intake appointment at the county Dept. of Job and Family Services if/when the undersigned requests this action. Deposition of Raye Lynn Abreu, Ex. 4.

6. Abreu advised Heasley with regard to Jeannette Williams’s (Heasley’s mother) application for Medicaid in Ohio, including when to apply for Medicaid benefits and advised Heasley to transfer Williams’s property to Heasley. In one email, Abreu states,

Now that the property has an official appraisal u should transfer it to your name. As soon as all the assets are in the gift acct and of her name (minus 1400) we can start running out the penalty.

We have to be under the resource limit before we can make the waiver/passport application that will allow the penalty to be assessed and begin.

That's about all I have now.

Keep me updated as to when we are all liquidated. Make sure to keep stubs, statements and receipts. You know the drill. Deposition of Abreu, Ex. 4D.

7. At one point, Heasley's mother moved from Ohio to Michigan, and Abreu advised Heasley by email, in part,

I can make the application as if she is still in the nursing home. They will eventually find out that she has [sic] discharged. By that time you may have established a friend's house or a family member's house in Ohio that we can use as an Ohio address. If she stays in her home in MI for a lengthy amount of time she will just be riding out her penalty period. The county will have no way of knowing she is not residing at this address in Ohio. If we go this route the Area Office on Aging will visit the address we will be using only once. Mom has to be there for a short while and they will ask her questions and that will be that. This is all so that the county can approve a waiver application, thus beginning the penalty period.

Abreu further states, "Either way I cannot get the penalty period started until she is in a long term care facility in Ohio or she is residing in Ohio (wink wink)." Deposition of Abreu, Ex. 4D.

8. Heasley's mother passed away, and Abreu does not recall if the 10-page strategy she created was provided to Heasley. Deposition of Abreu, 36:14-16. Further, Abreu indicates she has shredded everything she has from this case. *Id.* It is unclear whether the application for Medicaid benefits was filed by or on behalf of Jeannette Williams.

9. On or about September 8, 2012, Howard Williamson, Jr., acting as Power of Attorney for his sister, executed a Contract of Services with Abreu, and mailed to Abreu

an application fee in the amount of \$8,975. Proposed Consent Decree ¶ 7. When Mr. Williamson elected to terminate the relationship, Abreu returned his check. *Id.* at Ex. E.

10. Abreu admits that she engaged in the unauthorized practice of law when she marketed and represented to Susan Heasley and Howard Williamson, Jr. that she was a Medicaid Specialist who could create a strategy for the appropriate way to reduce resources in order to become Medicaid eligible. Proposed Consent Decree ¶ 9.

11. Abreu agrees to cease all activities that constitute the unauthorized practice of law, and further agrees to revise “[a]ll websites, advertisements, brochures, contracts, business cards, and any other marketing material” that reflect she is a Medicaid specialist and is able to provide a strategy for meeting Medicaid eligibility requirements. Proposed Consent Decree ¶ 11.

IV. CONCLUSIONS OF LAW

A. The Supreme Court of Ohio has original jurisdiction regarding admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law. Section 2(B)(1)(g), Article IV, Ohio Constitution; *Royal Indemnity Co. v. J.C. Penney Co.* (1986), 27 Ohio St.3d 31, 501 N.E.2d 617; *Judd v. City Trust & Sav. Bank* (1937), 133 Ohio St. 81, 12 N.E.2d 288. Accordingly, the Court has exclusive jurisdiction over the regulation of the unauthorized practice of law in Ohio. *Greenspan v. Third Fed. S. & L. Assn.*, 122 Ohio St.3d 455, 2009-Ohio-3508, 912 N.E.2d 567, at ¶ 16; *Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, at ¶ 16.

B. Abreu admits to have engaged in the unauthorized practice of law with regard to marketing and representing to Heasley and Williamson that she was a “Medicaid

specialist who could create a strategy for the appropriate way to reduce resources in order to become Medicaid eligible.” Proposed Consent Decree ¶ 9. Therefore, the Court has jurisdiction over Abreu.

C. The Supreme Court of Ohio regulates the unauthorized practice of law in order to “protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40. Abreu gathered information regarding Heasley’s mother’s assets and made recommendations regarding submitting an application for Medicaid benefits in Ohio. The record indicates Abreu suggested that a Medicaid application for Heasley’s mother be submitted even though she lived in Michigan. Abreu further suggested using a friend’s or family member’s house in Ohio as an Ohio address. In order to be eligible for Medicaid in Ohio, an applicant must be an Ohio resident. Further, R.C. 2913.401(B) states, “No person shall knowingly do any of the following in an application for enrollment in the medicaid program or in a document that requires a disclosure of assets for the purpose of determining eligibility for the Medicaid program:

- (1) Make or cause to be made a false or misleading statement;
- (2) Conceal an interest in property;...

The Board notes that the Supreme Court of Ohio disbarred an attorney for several infractions, including charging a couple \$3,500 for assistance in processing their Medicaid applications and failing to prepare the Medicaid the application. *Toledo Bar Ass'n v. Zerner*, 87 Ohio St. 3d 226 (Ohio 1999). When the application was ultimately prepared by an employee of the nursing home where the couple resided, and approved by

the Department of Human Services, the attorney advised the couple he would refund them \$1,000 of his fee but keep it for a certain period so they would not run afoul of resource limits for allocation purposes. *Id.* The attorney was found to have violated the disciplinary rules prohibiting lawyers from engaging “in conduct involving dishonest, fraud, deceit, or misrepresentation.” While clients who are financially harmed by attorneys can apply for reimbursement from the Lawyers’ Fund for Client Protection, those harmed from by Abreu and others who engage in the unauthorized practice of law do not have that option. Further, an attorney’s client may seek damages in a malpractice action for incorrect Medicaid-planning advice from an attorney. See, *Brisette v. Ryan* (MA), 2015 BL 354137, Mass.App. Ct., No. 14-P-919 (Jury verdict reinstated for client who proved lawyer’s advice prevented her from getting a life estate in the house where she lived.)

D. “Persons not licensed to practice law in Ohio are also prohibited from holding themselves out ‘in any manner as an attorney at law’ or from representing that they are authorized to practice law ‘orally or in writing, directly or indirectly.’” *Disciplinary Counsel v. Pratt*, 27 Ohio St.3d 293, 2010-Ohio-6210, 939 N.E.2d 170, at ¶ 18. As the record indicates, Abreu distributed brochures for her company A.I.M.S, which stands for “All Inclusive Medicaid Specialists,” and indicates that she provides “personalized” Medicaid strategies as well as estate planning.

E. Abreu’s acts are found to constitute the unauthorized practice of law based on an admissions that contain sufficient information to demonstrate the specific activities upon which the conclusions are drawn in compliance with Gov. Bar R. VII(7)(H) and

Cleveland Bar Assn. v. CompManagement, Inc., 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶ 24-26.

V. ANALYSIS OF PROPOSED CONSENT DECREE

A. Review of Principal Terms of the Revised Proposed Consent Decree

The Board is responsible for ensuring the Proposed Consent Decree is in compliance with Gov. Bar R. VII(5b). In its review of the Proposed Consent Decree, the Board considered the following factors, in accordance to Gov. Bar R. VII, Sec. 5b(C):

- (1) The extent to which the public is protected from future harm and any substantial injury is remedied by the Proposed Consent Decree and whether it contains an agreement to cease and desist the alleged activities.

In the Proposed Consent Decree, Ms. Abreu agrees to cease “all activities that constitute the unauthorized practice of law” and further agrees to cease marketing “...herself as a Medicaid specialists who can provide a strategy for the appropriate way to reduce resources in order to achieve Medicaid, and shall cease to conduct an market herself as a Medicaid specialist who can provide a strategy for spending down and arranging assets and income to meet Medicaid eligibility requirements.” Proposed Consent Decree ¶ 11. Ms. Abreu also agrees to delete any reference to being a Medicaid specialist from all websites, advertisements, brochures, and any other marketing material. *Id.*

Ms. Abreu agrees to reimburse Susan Heasley \$7,275, the amount paid by Heasley to Raye-Lynn Abreu. Consent Decree, p. 4. By Statement in Support of Joint Motion to Approve Consent Decree and attached “Affidavit of Compliance” filed October 20, 2015, Ms. Abreu indicates she has reimbursed Ms. Heasley. The Board notes that the affidavit is not notarized.

- (3) The admission of the Respondents to material allegations of the unauthorized practice of law as stated in the complaint.

Abreu admits she engaged in the unauthorized practice of law with respect to the services she provided or offered to provide to Heasley and Williamson (Proposed Consent Decree ¶ 10) and by marketing herself as “Medicaid specialist who could create a strategy for the appropriate way to reduce resources in order to become Medicaid eligible” to both Heasley and Williamson. Consent Decree, ¶ 9.

- (4) The extent to which the agreement involves public policy issues or encroaches upon the jurisdiction of the Supreme Court to regulate the practice of law.

The relief proposed furthers public policy by enjoining future activities that involve the unauthorized practice of law and takes steps to remedy past conduct. Further, the proposed consent decree does not encroach upon the Supreme Court’s jurisdiction to regulate the practice of law.

B. Applicability of Civil Penalties Based on Factors in Gov. Bar R. VII (8)(B) and UPL Reg. 400

Relator does not recommend the imposition of civil penalties in this matter. Proposed Consent Decree ¶ 12. In the Memorandum In Support of Motion to Approve Consent Decree, the parties provide the following reasons:

1. Degree of Cooperation Provided by Respondent in the Investigation. Ms. Abreu cooperated in the investigation, made herself available for a deposition, and provided requested documents.

2. Number of Occasions that UPL was committed. Relator has indicated there is no evidence that Abreu engaged in the unauthorized practice of law other than in the two occasions identified in the Complaint and Proposed Consent Decree.

3. Flagrancy of the violation. Relator avers that the violations are not flagrant, as Abreu operated her business on the good faith belief she was not engaged in the unauthorized practice of law when providing Medicaid strategies. The parties cite Advisory Opinion UPL 11-01. While the opinion states that the preparation and filing of an application for Medicaid on behalf of another is not the unauthorized practice of law, “Medicaid planning, which consists of arranging assets and income to meet Medicaid eligibility requirements, is outside the scope of nonattorney assistance permitted by federal law.”

VI. BOARD RECOMMENDATION

The Board formally considered this matter on November 6, 2015, and unanimously adopted the Panel’s findings of fact, conclusions of law, consent decree and civil penalty analyses, and recommendation that the proposed consent decree be submitted to the Supreme Court for approval. Accordingly, the Board hereby recommends that the Supreme Court approve the proposed consent decree and issue the appropriate order pursuant to Gov. Bar R. VII(5b)(E)(2)

VII. COSTS

Respondent to pay costs in this matter in the amount of \$1,877.90 (Exhibit C).

**FOR THE BOARD ON THE UNAUTHORIZED
PRACTICE OF LAW**

s/ Robert V. Morris, II
Robert V. Morris II, Chair
Board on the Unauthorized Practice of Law

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Final Report was served by certified mail upon the following this 8th day of December 2015: Gregory Denny, Bugbee & Conkle, LLP, 405 Madison Ave., Suite 1900, Toledo, Ohio 43604; Michael Bonfiglio, Toledo Bar Association, 311 North Superior St., Toledo, Ohio 43604; Laurie J. Avery, Reminger & Co., LPA, One Sea Gate, Suite 1600, Toledo, Ohio 43604; Raye-Lynn Abreu, 2733 106th Street, Toledo, Ohio 43611; Eugene Whetzel, Ohio State Bar Association UPL Committee, PO Box 16562, Columbus, Ohio 43216; Amy Stone, Office of Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215.

s/ Minerva B. Elizaga
Minerva B. Elizaga, Secretary

5. At all times relevant hereto Respondent is or was doing business under the trade name of either "A.I.M.S.", an acronym for "All Inclusive Medicaid Specialists", or "Personalized Long Term Consulting & Medicaid Applications" or "Medicaid Solutions".

6. On or about February 28, 2012, Susan Heasley executed a Contract of Services with Respondent and paid to Respondent an application fee in the amount of \$7,975.00.

7. On or about September 8, 2012, Howard Williamson, Jr., as POA for his sister, executed a Contract of Services with Respondent and mailed to Respondent an application fee in the amount of \$8,975.00. (When Mr. Williamson elected to terminate the relationship, Respondent returned his check.)

8. In exchange for the fees referenced in paragraphs 6 and 7 above, Respondent represented that she would provide "Personalized Medicaid Strategies and Asset Protection", "create a strategy specific to your family's needs", and that "the strategy will define the exact amount of resources you will be able to retain and the date Medicaid eligibility will exist". Respondent further represented that Ms. Heasley and Mr. Williamson, Jr., would "be informed not only of the amount of assets you will be keeping, but the appropriate way to reduce your resources."

9. Respondent admits that she engaged in the unauthorized practice of law when she marketed and represented to Susan Heasley and Howard Williamson, Jr., that she was a Medicaid specialist who could create a strategy for the appropriate way to reduce resources in order to become Medicaid eligible.

10. Respondent further admits that she engaged in the unauthorized practice of law when she either provided or offered to provide Susan Heasley and Howard Williamson, Jr., with

Medicaid planning which involved creating a strategy for the appropriate way to reduce resources in order to achieve Medicaid.

11. Respondent shall cease all activities that constitute the unauthorized practiced of law, and shall take the following specific steps within the time specified:

(i) Respondent shall immediately cease to conduct and market herself as a Medicaid specialist who can provide a strategy for the appropriate way to reduce resources in order to achieve Medicaid, and shall cease to conduct and market herself as a Medicaid specialist who can provide a strategy for spending down and arranging assets and income to meet Medicaid eligibility requirements.

(ii) All websites, advertisements, brochures, contracts, business cards, and any other marketing material that reflect Respondent is a Medicaid specialist who can provide a strategy for the appropriate way to reduce resources in order to achieve Medicaid, or that reflect that Respondent is a Medicaid specialist who can provide a strategy for spending down and arranging assets and income to meet Medicaid eligibility requirements, shall be immediately revised with said representations being deleted.

(iii) Respondent, individually or as a business, shall not, in the future, represent that she is a Medicaid specialist who can provide a strategy for the appropriate way to reduce resources in order to achieve Medicaid, or that she is a Medicaid specialist who can provide a strategy for spending down and arranging assets and income to meet Medicaid eligibility requirements.

12. Relator does not recommend imposition of civil penalties pursuant to Gov. Bar Rule VII(8)(B).

IT IS HEREBY ORDERED:

A. Respondent is enjoined from all activities that constitute the unauthorized practice of law, including:

(i) Rendering advice or providing a strategy for the appropriate way to reduce resources in order to achieve Medicaid, including rendering advice or providing strategy for spending down and arranging assets and income to meet Medicaid eligibility requirements;

(ii) Marketing or advertising in any fashion that Respondent will provide advice or strategy for the appropriate way to reduce resources in order to achieve Medicaid, including marketing or advertising in any fashion the Respondent will provide advice or strategy for spending down and arranging assets and income to meet Medicaid eligibility requirements;

B. Respondent shall make restitution to Susan Heasley in the amount of \$7,275.00 by December 15, 2014.

16. Respondent shall be assessed all costs of this matter pursuant to Gov. Bar Rule VII(8)(A).

IT IS SO ORDERED.

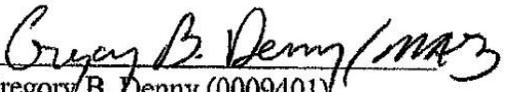
Date: _____

Agreed to:



Michael A. Bonfiglio (0029478)
Toledo Bar Association

311 N. Superior Street
Toledo, OH 43604
Phone: (419) 242-9363
FAX: (419) 242-3614
mbonfiglio@toledobar.org


Gregory B. Denny (0009401)
Bugbee & Conkle, LLP
405 Madison Avenue
Suite 1300
Toledo, OH 43604-1238
Phone: (419) 244-6788
FAX: (419) 244-7145
gdenny@bugbeelawyers.com

Counsel for Relator

Laurie J. Avery (0069029)
REMINGER CO., L.P.A.
One SeaGate, Suite 1600
Phone: (419) 254-1311
FAX: (419) 243-7830
lavery@reminger.com

Counsel for Respondent

Raye-Lynn Abreu
2733 106th Street
Toledo, OH 43611

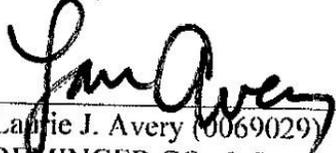
Respondent

Agreed to:

Michael A. Bonfiglio (0029478)
Toledo Bar Association
311 N. Superior Street
Toledo, OH 43604
Phone: (419) 242-9363
FAX: (419) 242-3614
mbonfiglio@toledobar.org

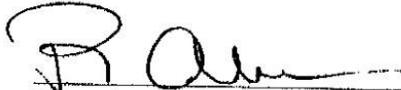
Gregory B. Denny (0009401)
Bugbee & Conkle, LLP
405 Madison Avenue
Suite 1300
Toledo, OH 43604-1238
Phone: (419) 244-6788
FAX: (419) 244-7145
gdenny@bugbeelawyers.com

Counsel for Relator



Laffie J. Avery (0069029)
REMINGER CO., L.P.A.
One SeaGate, Suite 1600
Phone: (419) 254-1311
FAX: (419) 243-7830
lavery@reminger.com

Counsel for Respondent



Raye-Lynn Abreu
2733 106th Street
Toledo, OH 43611

Respondent

THE SUPREME COURT OF OHIO
BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW

TOLEDO BAR ASSOCIATION,
311 N. Superior Street
Toledo, Ohio 43604

RELATOR,

v.

RAYE-LYNN ABREU,
2733 106th Street
Toledo, Ohio 43611

RESPONDENT.

: Case No. UPL 14-01

:

:

:

:

:

:

:

:

:

:

:

:

:

MEMORANDUM IN SUPPORT OF
MOTION TO APPROVE CONSENT
DECREE

INTRODUCTION

Relator, Toledo Bar Association, seeks to enjoin Respondent, Raye-Lynn Abreu, from all activities that constitute the unauthorized practice of law. Respondent, while providing services as a “Medicaid Specialist”, engaged in the unauthorized practice of law when she provided strategies for the appropriate way to reduce resources in order to achieve Medicaid, and strategies for spending down and arranging assets and income to meet Medicaid eligibility requirements. The parties have agreed to a Proposed Consent Decree and request its approval by the Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court of Ohio (the “Board”).

ARGUMENT

Rule VII, Section 5b(C) of the Rules for the Government of the Bar identifies several factors that the Board may consider in determining whether to approve a proposed resolution. Ohio R. Gov’t B. VII, Section 5b(C). Here, several of these factors support the approval of the Proposed Consent Decree:

EXHIBIT B

(1) *The extent the agreement is submitted in the form of a proposed consent decree.*

The Parties have submitted their proposed resolution in the form of a proposed consent decree.

(2) *The admission of the respondent to material allegations of the unauthorized practice of law as stated in the complaint.* Respondent admits to the unauthorized practice of law (Proposed Consent Decree) and all material allegations concerning her business practice of providing strategies for the appropriate way to reduce resources in order to achieve Medicaid and her strategies for spending down and arranging assets and income to meet Medicaid eligibility requirements.

(3) *The extent the public is protected from future harm and any substantial injury is remedied by the agreement.* Respondent has agreed not only to cease representing herself as a Medicaid specialist who can provide a strategy for the appropriate way to reduce resources or spend down and arrange assets and income to meet Medicaid eligibility requirements, but has also agreed to cease marketing herself as such and has agreed to immediately delete such references from all websites, advertisements, brochures, contracts, business cards and any other marketing material. (*Id.* 3.) The public is further protected from future harm because the Proposed Consent Decree enjoins respondent from all activities that constitute the unauthorized practice of law. (*Id.* 4.)

(4) *Any agreement by the respondent to cease and desist the alleged activities.* Respondent has agreed to cease all activities that constitute the unauthorized practice of law, including rendering advice or providing strategy for the appropriate way to reduce resources in order to achieve Medicaid or rendering advice or providing strategy for spending down and arranging assets and income to meet Medicaid eligibility requirements. Respondent has further agreed to immediately revise all websites, advertisements, brochures, contracts, business cards,

and any other marketing material and delete any and all representations that she is a Medicaid specialist who can provide strategies either for the appropriate way to reduce resources in order to achieve Medicaid or strategies for spending down and arranging assets and income to meet Medicaid eligibility requirements.

(5) *The extent the agreement involves public policy issues or encroaches upon the jurisdiction of the Supreme Court to regulate the practice of law.* This case involves how best to protect consumers from the unauthorized practice of law. The relief proposed here furthers that policy by enjoining future activities that involve the unauthorized practice of law, and by remedying past conduct by ordering restitution in the amount of \$7,275.00. Nothing in the proposed consent decree encroaches upon the jurisdiction of the Ohio Supreme Court to regulate the practice of law.

ANALYSIS OF CIVIL PENALTY

Rule VII, Section 8(B) of the Rules for the Government of the Bar identifies five factors that the Board may consider in determining whether to recommend a civil penalty:

(1) *The degree of cooperation provided by the respondent in the investigation.* Respondent has cooperated with the investigation, including making herself available for a deposition and providing requested documents during the investigation.

(2) *The number of occasions that unauthorized practice of law was committed.* Since 2004 respondent has had a private business in which she is hired to assist individuals with applying, and qualifying, for Medicaid. During her deposition she testified that in her best year she had six clients, and that she has had no clients in 2014. Relator has no evidence of any occasions when respondent engaged in the unauthorized practice of law other than in the

occasions involving the two clients that were identified in the Complaint and in the Proposed Consent Decree.

(3) *The flagrancy of the violation.* The violations do not appear to be flagrant. Respondent had conducted her business under the good-faith belief that she was not engaged in the unauthorized practice of law when providing Medicaid strategies. Advisory Opinion UPL 11-01 acknowledges that whether nonattorney involvement in Medicaid planning constitutes the unauthorized practice of law must be determined on a case-by-case basis.

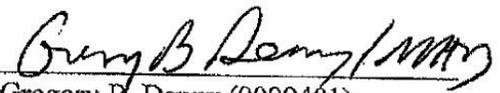
(4) *Harm to third parties arising from the offense.* The two clients identified in the complaint suffered no harm other than the amount of fees paid to respondent. One of the clients has already received full reimbursement from respondent, and, as part of the Proposed Consent Decree, respondent has promised to make full restitution to the other client by December 15, 2014.

(5) *Any other relevant factors.* Respondent did not believe or understand that her actions did constitute the practice of law, since they were learned from her previous employer, the Department of Job & Family Services. Respondent does now understand, however, that certain aspects of the advice she was providing, did constitute the unauthorized practice of law and she has not provided any such advice since she receipt the underlying complaint in this matter.

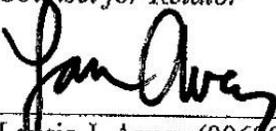
Based on analysis of the above five factors, Relator agrees that a civil penalty should not be imposed, in exchange for Respondent's agreement to cease and desist the unauthorized practice of law and to submit this joint motion for a Consent Decree.

Respectfully submitted,


Michael A. Bonfiglio (0029478)
Toledo Bar Association
311 N. Superior Street
Toledo, OH 43604
Phone: (419) 242-9363
FAX: (419) 242-3614
mbonfiglio@toledobar.org


Gregory B. Denny (0009401)
Bugbee & Conkle, LLP
405 Madison Avenue
Suite 1300
Toledo, OH 43604-1238
Phone: (419) 244-6788
FAX: (419) 244-7145
gdenny@bugbeelawyers.com

Counsel for Relator


Laurie J. Avery (0069029)
REMINGER CO., L.P.A.
One SeaGate, Suite 1600
Phone: (419) 254-1311
FAX: (419) 243-7830
lavery@reminger.com

Counsel for Respondent

**THE SUPREME COURT OF OHIO
BEFORE THE BOARD ON THE UNAUTHORIZED PRACTICE OF LAW**

RELATOR'S STATEMENT OF COSTS

Toledo Bar Association v Raye-Lynn Abreu

Case No. UPL 14-01

| | |
|--|-------------------|
| Wozniak Reporting Service (Abreu deposition appearance and transcript) | \$411.40 |
| Wozniak Reporting Service (Heasley deposition transcript) | \$151.90 |
| Wozniak Reporting Service (Williamson Jr. and Williams III deposition transcripts) | \$127.10 |
| Nirakar Thakur, Esq. (Expert witness fees) | <u>\$1,187.50</u> |
| TOTAL | \$1,877.90 |

EXHIBIT C