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**IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO**

DR. TRUDY BOND, et. al.,

Relators,

vs.

OHIO STATE BOARD OF PSYCHOLOGY,

Respondent.

Case Number: 11CV-004711

Judge Beatty

Magistrate Skeens

**THE OHIO STATE BOARD OF PSYCHOLOGY'S
RESPONSE TO RELATORS' OBJECTIONS TO MAGISTRATE'S DECISION**

After carefully considering the parties' arguments and reviewing the applicable case law, the Magistrate crafted a well-reasoned opinion finding that Relators did not have standing and failed to state a claim. Therefore, the Magistrate properly concluded that the Board's Motion to Dismiss should be granted. Unable to rebut the Magistrate's legal reasoning, Realtors instead in their objections simply escalated their rhetoric. Such a tactic cannot obscure the fact that Relators legal arguments are flawed and without any basis. Accordingly, the Common Pleas Court should accept the Magistrate's Decision in its entirety.

In its comments to the Relators' objections the Board will not repeat all the arguments made in its Motion to Dismiss (filed on May 18, 2011), Motion to Stay Discovery (filed on May 18, 2011), Reply Brief (filed on August 17, 2011), Reply Memorandum on Board's Motion to Stay Discovery (filed August 17, 2011), Board's Memorandum Contra on Relator's Request for Oral Argument (filed August 29, 2011).

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Standing

The Magistrate correctly noted “that before an Ohio court can consider the merits of a legal claim, the person seeking relief must establish standing to sue” *State ex. rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St. 3d 451, 469 (1999). Contrary to Relators’ assertion the Magistrate then accurately recited, with specific references to the Complaint, the basis for the Relators’ claim that they had standing (Magistrate’s Decision p. 4). After reviewing their allegations the Magistrate correctly concluded that Relators “have not alleged direct and concrete injury as required for private litigant standing” (Magistrate’s Decision p. 4). Moreover, the Magistrate correctly commented that Relators failed to cite one case in which under similar circumstances a court found that a party had private litigant standing. Relators have never been able to dispute this fact. Further, the cases cited by the Magistrate support his conclusion.

The Magistrate also recognized that Relators’ argument that they had standing under the “public right” exception was similarly lacking and contrary to established case law. The narrow public right exception carved out by Supreme Court in *State ex. rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St 3d 451 (1999), *State ex. rel. Ohio AFL-CIO v. Ohio Bureau of Workers’ Compensation* 97 Ohio St. 3d 504 (2002) and *State ex. rel. United Automobile Aerospace & Agric. Implement Workers of Am. v. Ohio Bureau of Workers’ Comp.*, 108 Ohio St. 3d 432, 2006-Ohio-1327 applies in only rare and extraordinary circumstances. This case does not fit within this narrow exception.

Recently, Franklin County Common Pleas Court Judge Laurel Beatty issued a decision dismissing a purported “public action” suit on grounds that are relevant here. *ProgressOhio.org, Inc. v. JobsOhio* (Dec.2, 2011), Case No. 11-cv-010807 (Decision attached as Exhibit 1). Judge Beatty recognized that Sheward suits are limited to “rare cases” of extreme magnitude. *Id.* at p.

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21 (quoting *Sheward*, 86 Ohio St.3d at 504). Judge Beatty determined that the case before her – a constitutional challenge to the privatization of economic development activities performed by the Department of Development – did not rise to the same level as *Sheward*. *Id.* at pp. 20-24.

The decision in *ProgressOhio.org* is consistent with a long line of Tenth District cases in which “public right” complaints were deemed of insufficient magnitude. See *Smith v. Hayes* (10th Dist.), 2005-Ohio-2961, ¶ 11 (Desertion of Child Under 72 Hours Old Act, allowing person to surrender newborn to a safe haven without fear of criminal prosecution, was not legislation of magnitude sufficient to invoke public interest exception); *Brown v. Columbus City Schools, Bd. Of Educ.* (10th Dist.), 2009-Ohio-3230, ¶ 14 (challenge to public school funding allocation methods not of sufficient magnitude); *Bowers v. State Dental Bd.* (10th Dist. 2001), 142 Ohio App.3d 376, 381 (licensure examinations for dentists not of sufficient public import). The decision by the Psychology Board not to initiate disciplinary proceedings against a licensed psychologist does not impact the citizenry at large and it is not of great importance and interest to the general public. Based upon the established legal precedent, the Magistrate properly concluded the Relators did not have standing under the public right exception.

Failure to State a Claim

Not only do Relators lack standing to pursue this action, but they also failed to state a claim for Relief for Mandamus. The Magistrate correctly cited the proper standard for reviewing a Motion to Dismiss. As a threshold matter Relators failed to cite any case which required a regulatory board to initiate disciplinary action against a licensee or to provide an explanation of its decision not to pursue a formal action. Moreover, Relators are unable to distinguish the series of cases cited by the Board in which the Court refused to order a regulatory board to initiate disciplinary action based upon a complaint. See *Talwar v. State Medical Board* (2004), 104

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Ohio St. 3d 290, 2004-Ohio-6410; *State ex. rel. Westbrook v. Ohio Civil Rights Commission* (1985), 17 Ohio St. 3d, 215; *State ex. rel. MacDonald v. Cook* (1966), 15 Ohio St. 2d 85; *Robinson v. Office of Disciplinary Counsel* (10th Dist. 1999), No. 98AP-1431; 1999 Ohio App. Lexis 3928.

The Magistrate was correct when he concluded that Relators cannot establish a clear legal right to the relief sought or show that the Board has a clear legal duty to provide the requested relief. Therefore, it also was appropriate to dismiss Relators' Complaint for failure to state a claim.

Also, the Magistrate was correct in deciding that oral argument was unnecessary in this case because the legal issues were sufficiently addressed in the briefs. Further supporting the decision in this case not to conduct an oral argument, the Board previously stated that the legal issues in this case are neither novel nor complex.

Finally, since the Motion to Dismiss was granted the request for discovery is moot. (See also Board's Reply Memorandum to Stay Discovery filed on August 17, 2011).

For the foregoing reasons the Board requests the Court reject Relators' objections and adopt the Magistrate's Decision in its entirety and grant the Board's Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *State Board's Response to Relator's Objections to the Magistrate's Decision* was sent by regular U.S. mail on January 9, 2012 to the following:

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