

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

LYNN E. MACK, D.D.S.
54 South State Street
Painesville, Ohio 44077

Plaintiff,

v.

OHIO STATE DENTAL BOARD
77 South High Street, 18th Floor
Columbus, Ohio 43266

and

IN THEIR OFFICIAL CAPACITIES
AS MEMBERS OF THE OHIO STATE
DENTAL BOARD AND IN THEIR
INDIVIDUAL CAPACITIES:

DONALD E. DEMKEE, D.D.S.,
President of the Board
1450 Christmas Run Boulevard
Wooster, Ohio 44691

STUART SILVERMAN, D.D.S.,
Vice President of the Board,
4464 Carver Woods Drive
Cincinnati, Ohio 45242

WILLIAM J. LIGHTFOOT, D.D.S.,
Secretary of the Board,
5151 Reed Road #127C
Columbus, Ohio 43220

ELEANORE AWADALLA, D.D.S.,
4303 Talmadge Road #101
Toledo, Ohio 43623

BENJAMIN F. MARSH,
204 West Wayne
Maumee, Ohio 43537

CASE NO.

COMPLAINT FOR
DECLARATORY JUDGMENT,
FOR RELIEF PURSUANT
TO 42 U.S.C. §§ 1983, 1985
AND 1988, AND FOR
PRELIMINARY AND
PERMANENT INJUNCTION

WITH JURY DEMAND

LYNDA L. SABAT, R.D.H., :
9320 Stover Lane :
Brecksville, Ohio 44141 :
: and :
: EDWARD HILLS, D.D.S. :
2500 Metro Health Drive :
Department of Dentistry :
Cleveland, Ohio 44109 :
: All Individual Defendants also in :
care of The Ohio State Dental Board :
77 South High Street, 18th Floor :
Columbus, Ohio 43266 :
: Defendants. :

1. The Plaintiff Lynn E. Mack, D.D.S., by and through her attorneys, Frank R. Recker & Associates Co., L.P.A., for her Verified Complaint states as follows:

2. The Plaintiff Lynn E. Mack, D.D.S. (“Dr. Mack”) is a dentist licensed to practice in the State of Ohio, with her dental office located in Lake County, Ohio.

3. The Defendant Ohio State Dental Board (“the Board”) is the state agency that regulates the practice of dentistry in the State of Ohio, pursuant to Ohio Revised Code §§ 4715 *et seq.*, and has its primary office in Franklin County, Ohio.

4. The Defendant Lili C. Kaczmarek is the Executive Director of the Ohio State Dental Board.

5. The Defendants Donald E. Demkee, D.D.S., Stuart Silverman, D.D.S., William J. Lightfoot, D.D.S., Eleanore Awadalla, D.D.S., Benjamin F. Marsh, Lynda L. Sabat, R.D.H., and Edward Hills, D.D.S., were at all relevant times herein members of the Ohio State Dental Board (hereinafter sometimes referred to collectively in their official capacities as “the Board Members”).

6. Both prior to and during May of 1999, Charles Fink (“Mr. Fink”), husband of Dr. Mack, after multiple threats to his wife that her “world is going to collapse” on her unless she does what he wants, contacted two investigators for the Board, Larry Powell and Wally McLaughlin.

7. Mr. Fink told the investigators, among other things, that Dr. Mack was an alcoholic, that she failed to communicate with him in the manner he wished, that Dr. Mack told him nothing about her dental practice, and that he was concerned about their marriage. At no time during his discussions with the Board investigators did Mr. Fink relate any history of his physical and/or emotional abuse of Dr. Mack, alleged or otherwise.

8. Subsequent to speaking with Mr. Fink, Mr. Powell and Mr. McLaughlin accompanied Mr. Fink to the office of Dr. Don Bowermaster in Newark, Ohio, a dentist-consultant to the Board in matters related to chemical dependency of dentists. Without the knowledge or consent of Dr. Mack, the above-mentioned individuals discussed Dr. Mack's personal affairs, including her purported abuse of alcohol, her marriage and her status as a mother.

9. On or about May 26, 1999, Mr. Powell and Mr. McLaughlin, acting in their official positions as investigators/agents for the Board and with the consent and purported authority of the Board, arrived, unannounced, at Dr. Mack’s dental office in Painesville, Ohio.

10. On or about May 26, 1999, the investigators informed Dr. Mack that the Board had received a complaint about her, that the Board believed she had a drinking problem, and they ordered her to immediately admit herself into Shepherd Hill Hospital

("Shepherd Hill"), a for-profit in-patient treatment center for chemical dependency, located in Newark, Ohio. At that same time, the investigators advised Dr. Mack, in front of her employees, that she had two choices in the matter: immediately admit herself into Shepherd Hill or they would physically remove her from her office, "kicking and screaming." Dr. Mack was also advised, in front of her employees, that if she refused to do what they said, she would be "flipping burgers at Denny's" because her license would be revoked.

11. At the time that the investigators made the representations stated in Paragraph 10 above, they knew, or should have known, that the Board did not have any authority to discipline Dr. Mack based on the information provided by her husband or to order, coerce or otherwise encourage her to admit herself into Shepherd Hill or any other chemical dependency center.

12. Both prior to and on May 26, 1999, the Defendants knew that the only lawful authority the Defendants possessed relative to a dentist who is alleged to be abusing alcohol was specifically prescribed by ORC § 4715.30(A)(8): i.e., to limit, revoke or suspend a dentist's license or to reprimand a dentist or place a dentist on probation because of the dentist's **"inability to practice under accepted standards of the profession because of physical or mental disability, dependence on alcohol or other drugs, or excessive use of alcohol** or other drugs."

13. At all relevant times herein, the Defendants knew that they had received no complaint concerning, nor did they have any evidence of, the Plaintiff's "inability to practice under accepted standards of the profession because of physical or mental

disability, dependence on alcohol or other drugs, or excessive use of alcohol or other drugs." (ORC § 4715.30(A)(8))

14. The Defendants had no lawful authority to take disciplinary action against Dr. Mack, threaten disciplinary action against Dr. Mack, or enter into an agreement with Dr. Mack, in which the underlying authority of the Defendants was premised on the aforementioned statutory language. The Defendants knew that they had no evidence to support any allegation of Dr. Mack's "inability to practice under accepted standards of the profession because of . . . dependence on alcohol . . . or excessive use of alcohol."

15. On or about May 27, 1999, in reliance upon the purported authority of the Board and the representations made to her by the investigators of the Defendants, and believing that the Board would institute disciplinary action against her if she did not immediately comply with the instructions of the investigators, Dr. Mack admitted herself into Shepherd Hill.

16. On June 24, 1999, Dr. Mack's therapist at Shepherd Hill informed Dr. Mack that an investigator of the Defendants would be visiting her within the next half hour.

17. On June 24, 1999, shortly after the statement by her therapist, an investigator of the Defendant Board arrived to see Dr. Mack. During this visit, the investigator represented to Dr. Mack that he had been informed by Shepherd Hill personnel that she was "doing well" and that she would shortly be released from Shepherd Hill, within the following week or so. Having been informed of the investigator's visit by her therapist, Dr. Mack believed the information about her discharge had been conveyed to the investigator by her therapist.

18. At that same time, on June 24, 1999, the investigator represented to Dr. Mack that the Board would not institute disciplinary action against her if she executed the "Consent Agreement Between Lynn E. Mack, D.D.S. And The Ohio State Dental Board" (hereinafter referred to as either "the Consent Agreement" or "the Agreement"), which he first presented to her at that time. (A copy of the Consent Agreement is attached to this Complaint as Exhibit A.)

19. At the time she met with the investigator, Dr. Mack had been a resident at Shepherd Hill for approximately 28 days, during which her "treatment" focused on, emphasized and required a patient's total compliance with those in authority.

20. As a result of her treatment at Shepherd Hill, Dr. Mack believed that her "compliance" with guidelines, instructions and directions was expected and viewed as a condition precedent to a successful recovery from alcohol dependency, and she therefore felt compelled to execute the document given to her by Mr. Powell, under the duress caused by this unforeseen and unexpected request by the Defendants.

21. Dr. Mack was not advised to seek legal counsel prior to signing Exhibit A, nor was she informed that the Board had no lawful authority to take any action against her license if she refused to sign Exhibit A. The Defendants knew prior to and on June 24, 1999 that they had no authority by which to lawfully compel Dr. Mack to sign Exhibit A, or to institute disciplinary action against her license for refusing to sign Exhibit A, or to institute disciplinary action against any licensee based solely on an abuse of alcohol.

22. Dr. Mack was led to believe, and reasonably believed, that the Defendant Board was acting within its authority, under color of state law, and that her refusal to sign

Exhibit A would result in disciplinary action against her license and an extension of her treatment time at Shepherd Hill.

23. The investigator made the above-stated representations to Dr. Mack on June 24, 1999, omitting material facts crucial to obtaining Dr. Mack's signature, with the intent that she rely upon his representations.

24. Prior to and at the time Dr. Mack met with the investigators of the Defendant Board, she had been undergoing treatment, the nature of which caused her a great deal of emotional and psychological stress, and she was experiencing, and had been experiencing for many months, severe emotional and psychological stress caused by marital strife and abuse inflicted upon her by her husband, Mr. Fink.

25. At no time on May 26, 1999, or thereafter, did the investigators or other agents of the Defendants advise Dr. Mack that they had met with her husband, and that he was the source of the sole "complaint" against her. The Defendants acted at all times under color of state law and further acted in a manner which led the Plaintiff to believe that the Board could suspend or revoke her license based on the contents of the undisclosed "complaint" filed against her.

26. Dr. Mack justifiably relied upon the representations and actions of the investigators, acting as agents for the Defendants, prior to and on June 24, 1999.

27. Dr. Mack relied upon the representations made by agents of the Defendants and did not consult legal counsel with regard to the Consent Agreement presented to her for her signature on June 24, 1999, as she was under duress and believed that such a request would place her in greater jeopardy with the Defendant Board and her therapists at Shepherd Hill.

28. Relying on the representations of the Board investigator that she would be discharged from Shepherd Hill within a short period of time; that if she signed the Consent Agreement, she could return to her practice; and that if she did not sign the Consent Agreement, the Board could, and would likely, either suspend or revoke her license to practice dentistry, Dr. Mack signed the Consent Agreement.

29. The Board ratified the Agreement at its meeting on July 29, 1999, knowing that it had no "consideration" upon which Dr. Mack was making the promises reflected in the Agreement and knowing that there had been no complaint lodged by anyone against Dr. Mack, other than the information supplied by her husband, and knowing that it had no lawful authority to take action against a licensee solely based upon alcohol abuse.

30. At the time the Defendant Board members expressly or impliedly authorized Mr. Powell and Mr. McLaughlin to make contact with Dr. Mack, the individual Board members knew that they had no authority to take disciplinary action against her based solely upon her husband's "complaint" to the Board and that they were acting beyond the scope of their lawful authority.

31. At the time the Board members authorized its investigators to make an unannounced visit to Dr. Mack's office and inform Dr. Mack that a complaint had been filed against her and that she was to immediately admit herself into treatment at Shepherd Hill, the investigators and Board members knew that they had no authority to take disciplinary action against the Plaintiff based on her husband's "complaint" and no authority to coerce, order or intimidate her into admitting herself into Shepherd Hill.

32. The Defendants failed to make reasonable inquiry into any malicious motives Mr. Fink might have in contacting agents of the Defendant Board nor did the Board or its agents make Dr. Mack aware of her husband's instigation of the Board's action or allow her the opportunity to respond to any allegations prior to the unannounced visit of the two investigators at her office on May 26, 1999.

33. At the time the Defendant Board members expressly or impliedly authorized their investigator to present the Consent Agreement to Dr. Mack for signature, both they and their investigator knew that they had no authority to take disciplinary action against Dr. Mack.

34. Contrary to the express and/or implied assurances, representations and/or statements made by the Board investigator, Dr. Mack was not released from Shepherd Hill "within the next week or so."

35. Approximately two months after Dr. Mack signed the Consent Agreement, she was unilaterally discharged from treatment at Shepherd Hill, on September 1, 1999, because she had allegedly broken rules prohibiting bringing coffee to her room after her weekend visit at home and using her cellular telephone to place calls.

36. Following her discharge from Shepherd Hill, Dr. Mack learned that the "complaint" lodged with the Board was actually made by Dr. Mack's husband, Mr. Fink. The information provided by Mr. Fink did not provide the Defendant Board and its members any lawful basis for taking any disciplinary action against the license of Dr. Mack.

37. The “complaint” purportedly lodged by Dr. Mack’s husband contained no information to support any allegation that Dr. Mack lacked the ability to practice under accepted standards of the profession because of a dependence on alcohol.

38. Following her discharge from Shepherd Hill, Dr. Mack also learned that the Board investigators had interviewed her dental office employees on or shortly after May 26, 1999, and that the investigators found no evidence that her alleged “drinking problem” had ever been reflected in her behavior, much less any evidence to support an allegation of an "inability to practice under accepted standards of the profession because of . . . dependence on alcohol or other drugs, or excessive use of alcohol or other drugs.”

39. Section 4715.30(A)(8) of the Ohio Revised Code provides, in pertinent part, that the Board can discipline a licensee for the following reasons:

Inability to practice under accepted standards of the profession because of physical or mental disability, dependence on alcohol or other drugs, or excessive use of alcohol or other drugs

40. The above quoted statute grants the Board authority to discipline a licensee for dependence on alcohol **only if it affects his or her ability “to practice under accepted standards of the profession.”**

41. Contrary to the representations of the Board investigators, the Board had no authority whatsoever to compel Dr. Mack to admit herself into Shepherd Hill.

42. Contrary to the representations of the Board investigators, made to Dr. Mack prior to and on June 24, 1999, the Board could not institute disciplinary action against her because they had no evidence that her alleged abuse of alcohol had resulted in her inability to practice under accepted standards of the profession.

43. Acting under color of state law, wrongfully and unlawfully, the Defendant Board members, through their agents, threatened and coerced Dr. Mack into signing the Consent Agreement, violating her Constitutional and other legal rights in so doing.

44. The Board investigators knew, or should have known, that the representations, both express and implied, were false at the time that they were made to Dr. Mack.

45. The Board Members knew, or should have known, that their employee/agent's representations, both express and implied, were false at the time that they made them.

46. The Board investigators intended for Dr. Mack to rely upon the representations at the time that they made them.

47. The Board Members intended for Dr. Mack to rely upon their employee/agent's representations at the time that they made them.

48. Dr. Mack justifiably relied upon representations of the investigators of the Defendant Board at the time that they made them.

49. No consideration was given for the Consent Agreement, which was wrongfully obtained under color of state law. Forbearance cannot constitute consideration when the Board had no lawful authority to threaten to take disciplinary action, or to take disciplinary action, against Dr. Mack.

50. At the time that Dr. Mack signed the Consent Agreement, she was under duress, caused by the Board investigators, her environment and the totality of the circumstances.

51. At the time that Dr. Mack signed the Consent Agreement, the Board investigator exerted undue influence over her.

52. In early September, 1999, after her discharge from Shepherd Hill, Dr. Mack contacted and retained legal counsel.

53. On or about September 17, 1999, one of Dr. Mack's attorneys, Frank R. Recker, contacted Mary K. Crawford, Assistant Attorney General and legal counsel for the Board.

54. In order to avoid any further confrontation between Dr. Mack and the Board, Mr. Recker faxed documentation to the Board about Dr. Mack's activities following her discharge, including but not limited to her attendance at Alcoholics Anonymous meetings and continued counseling sessions, as well as documentation of her treatment at Shepherd Hill and her recent admission to the Caduceus Program at the Cleveland Clinic. Mr. Recker further made known to counsel for the Board his serious legal concerns surrounding the Board's actions in this matter, as more fully stated herein.

55. Mr. Recker explained to Ms. Crawford the circumstances of Dr. Mack's discharge from Shepherd Hill, that she had not "successfully completed" treatment at Shepherd Hill, as required in Paragraph 2 of Exhibit A, but instead had been discharged for drinking coffee and using her cellular telephone.

56. Dr. Mack executed authorizations for the release of her confidential medical and psychological records from Shepherd Hill to the Board and authorized her counselors to communicate with the Board regarding her treatment and recovery. (See Letter dated September 20, 1999, from Frank R. Recker to Mary Crawford, attached as Exhibit B.)

57. After a full explanation of the circumstances surrounding the execution of the Consent Agreement, Dr. Mack's stay and treatment at Shepherd Hill, her discharge from Shepherd Hill, and repeated requests made to the Board to allow Dr. Mack to return to practice, the Board has refused to authorize her to return to practice, contending that she has not complied with the terms of Exhibit A.

58. Counsel for Dr. Mack has repeatedly attempted to resolve this matter with counsel for the Board, to no avail. (See Letters dated September 20, 1999, September 28, 1999, October 1, 1999 and October 21, 1999, from Frank R. Recker to Mary Crawford, attached as Exhibits B, C, D and E, respectively.)

59. Counsel for the Board asserted that the Board's concern is Dr. Mack's chemical dependence and further stated, "Notably missing [from the documentation provided to the Board] is any statement from a treating practitioner that Dr. Mack is no longer chemically dependent." (See Letter dated September 30, 1999, from Mary Crawford to Frank R. Recker, attached as Exhibit F.)

60. Notwithstanding the Board's lack of lawful jurisdiction in this matter, Dr. Mack has agreed to daily/weekly/random drug screening and has provided assurances to the Board that she has not had an alcoholic beverage since May 26, 1999.

61. The Board has continued to refuse to authorize Dr. Mack to return to her practice, acting unlawfully, under color of state law.

62. The earliest the Board will consider the matter is December 2, 1999.

63. Dr. Mack's attorney informed the Board's attorney, by telephone, on October 20, 1999, that Dr. Mack would be returning to her practice immediately, due to the facts and circumstances then known to Dr. Mack surrounding her husband's

instigation of Board action, and the facts and circumstances surrounding her "promise" not to practice dentistry as reflected in Exhibit A, and because the Board advised, through counsel, that it would not consider the matter until December 2, 1999. Counsel for the Board reiterated the Board's position that Dr. Mack would be violating her Agreement if she unilaterally returned to her dental practice and that the Board could decide to institute formal disciplinary action against her for violating the terms of Exhibit A. (See Letter dated October 21, 1999 from Mary Crawford to Frank R. Recker, attached as Exhibit G.)

64. On October 21, 1999, Dr. Mack returned to her dental practice.

65. On October 21, 1999, an investigator of the Defendant Board made an unannounced visit to Dr. Mack's office, on behalf of the Board, to confirm that Dr. Mack was again practicing dentistry. (See attached Exhibit E.)

66. On October 26, 1999, an investigator of the Defendant Board called another dentist from whom Dr. Mack rents space and in whose office she treats patients several days per month. The investigator, on behalf of the Board, inquired as to whether or not Dr. Mack was also practicing dentistry in his office. (See Letter dated October 26, 1999, from Frank R. Recker to Mary Crawford, attached as Exhibit H.)

67. On October 26, 1999, an investigator/agent of the Board, told the dentist referenced in paragraph 66 that Dr. Mack was violating her Consent Agreement with the Defendant Board and was not allowed to practice dentistry. (See attached Exhibit H.)

68. The investigator/agent of the Board called the dentist referenced in Paragraph 66 above and made the above-described statements to him about Dr. Mack in order to injure Dr. Mack's professional relationship with that dentist and to injure Dr. Mack's professional reputation.

69. The Defendants have willfully and maliciously violated, under color of state law, and continue to violate, Dr. Mack's civil rights and her rights under both the United States Constitution and the Constitution of the State of Ohio, and, additionally, have caused Dr. Mack severe emotional and financial damages and have damaged her reputation in the dental community.

COUNT I

Declaratory Judgment

70. The Plaintiff restates the allegations contained in Paragraphs 1-69 as if fully rewritten.

71. Count I of the Plaintiff's Complaint is brought against the Defendant Ohio State Dental Board and all of the remaining Defendants, in their official capacities only.

72. The Consent Agreement, signed by Dr. Mack on June 24, 1999, is invalid and unenforceable as a matter of law because no consideration was given by the Board for the "promise" made by Dr. Mack reflected therein.

73. The Consent Agreement is invalid and unenforceable as a matter of law because the Board exerted undue influence over Dr. Mack to obtain her signature.

74. The Consent Agreement is invalid and unenforceable as a matter of law because Dr. Mack's signature was obtained under duress.

75. The Consent Agreement is invalid and unenforceable as a matter of law because the Board, by its employee/agents engaged in deceptive and misleading conduct, and/or fraud in order to obtain Dr. Mack's signature on the Agreement.

76. The Consent Agreement is invalid and unenforceable as a matter of law

because the Board has no lawful authority to impose sanctions upon a licensee for dependence on alcohol unless the Board has evidence of the licensee's inability to practice under accepted standards of the profession because of dependence on alcohol or other drugs; the Board knew it did not have any evidence to support any allegation of Dr. Mack's inability to practice under accepted standards of the profession at the time its investigators acted on behalf of the Board and at the time the Board Members "ratified" the Agreement.

COUNT II

42 U.S.C. § 1983

77. The Plaintiff restates the allegations contained in Paragraphs 1-76 as if fully rewritten.

78. Count II of the Plaintiff's Complaint is directed against the Defendants Demkee, Silverman, Lightfoot, Awadalla, Marsh, Sabat and Hills in their individual capacities (collectively referred to in their individual capacities as "the Individual Defendants").

79. In Count II of this Complaint, Dr. Mack seeks to recover compensatory and punitive monetary damages for the deprivation, under color of state law, of her rights guaranteed by the United States Constitution, the Ohio Constitution and of equal protection and due process and privileges and immunities guaranteed by the Constitution.

80. The above-described actions of the Individual Defendants, and/or the employee/agents of the Individual Defendants under the direction of the Individual Defendants, constitute conduct that is manifestly outside of the scope of their

employment or official responsibilities or lawful authority as members of the Ohio State Dental Board.

81. The Individual Defendants acted with a malicious purpose, in bad faith or in a wanton and reckless manner under color of state law, without lawful authority.

82. The Individual Defendants knew or should have known that Mr. Fink sought the intervention of the Board, for what he described as “marital problems,” for his own personal reasons and/or motives.

83. The Individual Defendants knew or should have known that Mr. Fink sought the intervention of the Board, into his “marital problems,” as potential leverage against his wife in an imminent marital dissolution and child custody matter.

84. The Individual Defendants have violated Dr. Mack’s protected property interest in her license to practice dentistry and in her good name and reputation.

85. The Individual Defendants, by failing to treat Dr. Mack in a manner similar to other similarly-situated licensees and in the manner prescribed by the Ohio Revised Code, have denied Dr. Mack equal protection under the laws, the United States Constitution and the Ohio Constitution. The consequences of these acts have resulted in damages to the Plaintiff to date in excess of \$50,000. The Individual Defendants have further caused damage to the Plaintiff’s well-being by denying her equal protection under the laws and the United States and Ohio Constitutions, for which the Plaintiff should be compensated in an amount exceeding \$50,000.

86. The above-described actions of the Individual Defendants have, both substantively and procedurally, deprived Dr. Mack of a constitutionally-protected property interest without due process of law. The consequences of these acts have

resulted in damages to the Plaintiff to date in excess of \$50,000. The Individual Defendants have further caused damages to the Plaintiff's well-being by denying her due process under the law and under the United States and Ohio Constitutions, for which the Plaintiff should be compensated in an amount in excess of \$50,000.

87. The above-described actions of the Individual Defendants establish a reckless disregard and indifference to the Plaintiff's constitutional guarantee of equal protection, for which punitive damages of \$10,000,000 should be awarded.

88. The above-described actions of the Individual Defendants establish a reckless disregard and indifference to the Plaintiff's constitutional guarantee of due process under the law, for which punitive damages of \$10,000,000 should be awarded.

89. The actions of the Individual Defendants were under color of law as officers of the State, acting manifestly outside of their official capacities, with a malicious purpose, in bad faith and in a wanton and reckless manner, and without lawful authority.

COUNT III

42 U.S.C. § 1985

90. The Plaintiff restates the allegations contained in Paragraphs 1-89 above as if fully rewritten.

91. The above-described actions of the Individual Defendants are part of a pattern establishing a reckless disregard and indifference to Dr. Mack's rights and constitute an unlawful conspiracy, pursuant to 42 U.S.C. § 1985, to deny Dr. Mack her constitutionally-protected property interest in her professional license, her guarantee to

due process and equal protection under the Fourteenth Amendment of the United States Constitution and under the Ohio Constitution.

92. The Individual Defendants acted in concert with one another to deny Dr. Mack her constitutionally-protected property interest in her professional license, her good name and reputation, and her guarantee to due process and equal protection under the law, guaranteed by the United States Constitution and the Ohio Constitution.

93. As a result of the conspiracy of the Individual Defendants, Dr. Mack has been damaged in excess of \$50,000.

94. As a result of the above-described actions, which establish a reckless disregard and indifference to Dr. Mack's rights under the laws and the Constitutions of the United States and Ohio, Dr. Mack is entitled to punitive damages of \$10,000,000.

COUNT IV

42 U.S.C. § 1988

95. The Plaintiff restates the allegations contained in Paragraphs 1-94 as if fully rewritten.

96. The above-described actions of the Individual Defendants have caused Dr. Mack to incur attorney's fees and other relevant expenses in an amount to be determined by the Court.

COUNT V

Preliminary and Permanent Injunction

97. The Plaintiff restates the allegations contained in Paragraphs 1-96 as if fully rewritten.

98. The Board must be enjoined from threatening enforcement of, and from enforcing, the terms of the Consent Agreement because the Agreement is void and unenforceable as a matter of law.

THEREFORE, the Plaintiff respectfully requests that this Court grant her the following relief:

- A. as to Count I, an order declaring that the Consent Agreement is invalid and unenforceable and, therefore, is void; and
- B. as to Count II, judgment for the Plaintiff and against the Individual Defendants, jointly and severally, for damages in excess of \$50,000; and
- C. as to Count II, judgment for the Plaintiff and against the Individual Defendants, jointly and severally, for punitive damages of \$10,000,000; and
- D. as to Count III, judgment for the Plaintiff and against the Individual Defendants, jointly and severally, for damages in excess of \$50,000; and
- E. as to Count III, judgment for the Plaintiff and against the Individual Defendants, jointly and severally, for punitive damages of \$10,000,000; and

- F. as to Count IV, judgment for the Plaintiff and against the Individual Defendants, jointly and severally, for attorney's fees and other relevant expenses in an amount to be determined; and
- G. as to Count V, an Order enjoining the Board from threatening enforcement of, and from enforcing, the terms of the Consent Agreement against Dr. Mack; and
- H. judgment for the Plaintiff and against the Defendant Board and the Defendant Board Members in their official capacities for attorney's fees and other relevant expenses in an amount to be determined; and
- I. all other relief to which the Plaintiff may be entitled.

Respectfully submitted,

FRANK R. RECKER (0015013)
NANCY A. SCHELL (0063189)
Frank R. Recker & Associates Co., L.P.A.
7809 Laurel Avenue, Suite 10
Cincinnati, Ohio 45243-2673
(513) 561-9600

ATTORNEYS FOR PLAINTIFF

JURY DEMAND

The Plaintiff demands a jury on all issues triable by jury.

Respectfully submitted,

FRANK R. RECKER (0015013)
NANCY A. SCHELL (0063189)

LIST OF EXHIBITS

- A: Consent Agreement Between Lynn E. Mack, D.D.S. And The Ohio State Dental Board
- B: Letter Dated September 20, 1999, from Frank R. Recker to Mary Crawford
- C: Letter Dated September 28, 1999, from Frank R. Recker to Mary Crawford
- D: Letter Dated October 1, 1999, from Frank R. Recker to Mary Crawford
- E: Letter Dated October 21, 1999, from Frank R. Recker to Mary Crawford
- F: Letter Dated September 30, 1999, from Mary Crawford to Frank R. Recker
- G: Letter Dated October 21, 1999, from Mary Crawford to Frank R. Recker
- H: Letter Dated October 26, 1999, from Frank R. Recker to Mary Crawford