

FILED

DEC 14 2015

IN THE PROBATE COURT OF STARK COUNTY, OHIO

IN RE: IVAN W. FLOHR
GUARDIANSHIP

CASE NO. 219330

JUDGE DIXIE PARK
STARK COUNTY PROBATE COURT

JUDGE R. R. DENNY CLUNK

GUARDIAN FAITH LANSHE'S
MOTION FOR AN IN-CAMERA
INSPECTION OF SUBPOENAED
DOCUMENTS FROM NON-PARTY
OHIO BOARD OF NURSING

Faith Lanshe, duly appointed Guardian of the Person of Ivan W. Flohr, an incompetent (the "Guardian"), by and through undersigned counsel, respectfully requests that this Court issue an order for in-camera inspection of any allegedly non-public, confidential investigative files that are in the possession or control of the Ohio Board of Nursing pertaining to the Guardian Faith Lanshe and/or Ruth Drouhard. Pursuant to instructions from this Court, on November 17, 2015, the Guardian issued a subpoena to the Ohio Board of Nursing (the "Board") via certified mail. A copy of this subpoena is attached hereto as **Exhibit A**. The Guardian sought (and continues to seek) the following:

Any and all letters, correspondences, and/or documents received from and/or on behalf of Jude Flohr, Theresa Flohr, Mary James, and/or sent anonymously concerning Faith Lanshe and/or Ruth Drouhard, registered nurses, and/or any and all letters, correspondences, and/or documents pertaining in any way to the above-referenced case.

In response, in a letter dated November 24, 2015, Attorney Holly R. Fischer, on behalf of the Board, provided copies of the Applications for Licensure as well as the Biennial license renewal applications for the Guardian and Ms. Drouhard. Attorney Fischer noted that the subpoenaed

records (language set forth above), “are not public record, are confidential, and not subject to discovery in a civil action. Section 4723.28(I) Ohio Revised Code.” A copy of Attorney Fischer’s response is attached hereto as **Exhibit B**.

Counsel spoke to Attorney Fischer on November 30, 2015, to discuss the Board’s response. Attorney Fischer reiterated her position set forth in her letter. In response, the Guardian sent a letter dated December 1, 2015 through counsel to Attorney Fischer. A copy of this December 1st Letter is attached hereto as **Exhibit C**.

In this December 1st Letter, the Guardian highlighted pertinent statutes that permit disclosure to a government entity (the Stark County Probate Court) under certain circumstances. Specifically, R.C. 4723.28(I) which states that “[i]nformation received by the board pursuant to a complaint or an investigation is confidential and not subject to discovery in any civil action, except that the board may disclose information to law enforcement officers and government entities for purposes of an investigation of . . . a licensed health care professional.” Accordingly, the Guardian requested disclosure of the requested documents to the Honorable Judge R. R. Denny Clunk for an in-camera inspection as any such documents are pertinent to the issues before this Court.¹

In response, in a letter dated December 4, 2015, Attorney Fischer rejected the Guardian’s position that R.C. 4723.28(I) permits disclosure of the requested documents in this instance because: (a) neither counsel or the Guardian is a government agency or law enforcement officer; and (b) counsel is not requesting the records to investigate a licensed health care professional. A copy of this December 4, 2015 Letter is attached hereto as **Exhibit D**.

¹ Within the December 1st Letter, counsel set forth a public records request separate and apart from the subpoena in this seeking “the personnel files and disciplinary records” for the Guardian and Ruth Drouhard “as well as any and all records created, received by, or coming under the jurisdiction of the Ohio Board of Nursing which serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.” Because the public records request is separate from this matter, it will not be addressed in this motion.

While the Guardian notes that the language of R.C. 4723.28(I) actually refers to a “government entity” not a “government agency,” the Board’s position is without merit. The Guardian did not request release of the records directly to counsel; rather, as set forth in the December 1st Letter, the Guardian requested release of the subpoenaed documents to “Judge R.R. Denny Clunk, presiding over the Stark County Probate Court, for an in-camera inspection.”

Moreover, contrary to Attorney Fischer’s position, the ability of Faith Lanshe, a licensed health care professional (RN.207418), and, to a lesser degree, the ability of Ruth Drouhard (RN.142494), to care for the Ward, Ivan Flohr, is constantly being investigated because of Ms. Lanshe’s status as Guardian of the Person for the Ward and accusations seemingly constantly made by Jude Flohr, Mary James, and/or Theresa Flohr. The Guardian’s, and to a lesser degree Ms. Drouhard’s, ability to care for the Ward is paramount to her ability to continue as Guardian. While the Guardian vehemently denies and disputes any claims the Board may have received, the existence of such a claim made by Jude Flohr, Mary James, Theresa Flohr, and/or submitted anonymously, as well as the accusations made by Mary James under oath on November 12, 2015, require the Stark County Probate Court to investigate the allegations and the source of those allegations.²

In Attorney Fischer’s December 4, 2015 Letter, she also states:

Regarding inspection of any non-public, confidential investigative files that may be possessed by the Board, should the Board receive an order issued to the Board by the Court in Stark County Probate Case No. 219330 for the Court to inspect records in camera, that Order will be reviewed by the Attorney General’s Office who will respond on the agency’s behalf.

Accordingly, the Guardian respectfully requests that this Court issue an Order requiring an in-camera inspection of the entirety of any allegedly confidential investigative files pertaining to

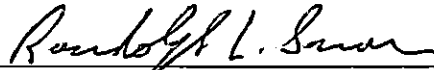
² The Guardian is unaware of any language in R.C. 4723.01, *et seq.*, that would prevent this Court from conducting its own investigation.

Faith Lanshe (RN.207418) and Ruth Drouhard (RN.142494), including, but not limited to, documents and correspondences received from or submitted on behalf of any individual, including Jude Flohr, Mary James, Theresa Flohr, and/or submitted anonymously, or received from any entity, from November 2013 to present.

WHEREFORE, for the reasons set forth herein, the Guardian respectfully requests this Court order an in-camera inspection of the requested, unredacted documents requested through subpoena from the Ohio Board of Nursing.

Respectfully submitted,

BLACK, MCCUSKEY, SOUERS & ARBAUGH



Randolph L. Snow (#0015846)

Whitney L. Willits (#0089728)

220 Market Avenue South

Suite 1000

Canton, Ohio 44702

Ph: 330-456-8341

Fax: 330-456-5756

Email: rsnow@bmsa.com

wwillits@bmsa.com

*Counsel for Faith Lanshe,
Guardian of the Person of Ivan W. Flohr*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been sent on this 14th day of December, 2015, by Regular U. S. Mail to:

Jeffrey R. Jakmides, Esq.
325 E. Main St
Alliance, OH 44601
Attorney for Ivan W. Flohr

John Prelac, Esq.
200 Market Ave. N., Suite 300
Canton, Ohio 44702
Guardian of the Estate of Ivan W. Flohr

Shawn O. Robertson, Esq.
2210 South Union Ave.
Alliance, OH 44601
Counsel for Jude Flohr

Tracey Laslo, Esq.
325 E. Main St
Alliance, OH 44601
Counsel for Mary James and Theresa Flohr

Peter Flohr
3984 Manchester Road
Akron, Ohio 44319
Son of Ward

Margaret Lehner
9229 Frazee Road
Marshallville, Ohio 44645
Daughter of Ward

Sheila Harvey
3400 Ashton
Uniontown, Ohio 44685
Daughter of Ward

Ruth Drouhard
624 Hillsdale Ave.
Akron, Ohio 44303
Daughter of Ward

Gerard Flohr
5246 Taylor Road
Norton, Ohio 44203
Son of Ward


William Flohr
2701 Oak Park Blvd.
Cuyahoga Falls, Ohio 44221
Son of Ward

Grace Demaree
827 Denshire Drive NW
Canal Fulton, Ohio 44614
Daughter of Ward

Joseph Flohr
1887 Caroline Ave.
Norton, Ohio 44203
Son of Ward

Judith Flohr
545 Barwell Street
Akron, Ohio 44303
Spouse (Estranged) of Ward

Holly R. Fischer, Esq.
17 South High Street, Suite 400
Columbus, OH 43215
General Counsel for the Ohio Board of Nursing



*Counsel for Faith Lanshe,
Guardian of the Person of Ivan W. Flohr*

**PROBATE COURT OF STARK COUNTY, OHIO
DIXIE PARK, JUDGE
SUBPOENA**

GUARDIANSHIP OF IVAN W. FLOHR (Case No. 219330)

TO: OHIO BOARD OF NURSING (Name)
17 SOUTH HIGH STREET
SUITE 400 (Address)
COLUMBUS, OHIO 43215 (City-State-Zip)

YOU ARE HEREBY COMMANDED TO:

 ATTEND AND GIVE TESTIMONY AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.

 ATTEND AND PRODUCE (DOCUMENTS)(ELECTRONICALLY STORED INFORMATION)(TANGIBLE THINGS) AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE TIME AND AT THE PLACE SPECIFIED BELOW.

 X PRODUCE AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW. ANY DESIGNATED DOCUMENTS OR ELECTRONICALLY STORED INFORMATION IN YOUR POSSESSION, CUSTODY OR CONTROL.

 PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OR ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.

 PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN CIVIL R. 34(A)(3) ON THE DATE AND AT THE TIME SPECIFIED BELOW - DESCRIPTION OF LAND OR PREMISES: _____

DAY Wednesday DATE November 25, 2015 TIME 10:00 a.m.

PLACE Black, McCuskey, Somers & Arbaugh, 220 Market Avenue S., Suite 1000, Canton, Ohio 44702

DESCRIPTION OF ITEMS TO BE PRODUCED: Any and all letters, correspondences, and/or documents received from and/or on behalf of Jude Flohr, Theresa Flohr, Mary James, and/or sent anonymously concerning Faith Lanshe and/or Ruth Drouhard, registered nurses, and/or any and all letters, correspondences, and/or documents received pertaining in any way to the above-referenced case.

THE STATE OF OHIO

Stark County, ss

TO: Ryan W. Maxwell, Esq. (Sheriff/Bailiff/Clerk of Court/Constable/Attorney/Process Server)

YOU ARE HEREBY AUTHORIZED/COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON

WITNESS MY HAND AND THE SEAL OF THIS COURT THIS 17th DAY OF November, 2015

BY: [Signature]
 Signature of (Deputy Clerk/Attorney for (Guardian of the Person)(Plaintiff)(Defendant))

REQUESTING PARTY:

NAME & ADDRESS: Whitney L. Willits, Esq., 220 Market Avenue South, Suite 1000, Canton, Ohio 44702

Attorney for (Guardian of the Person)(Plaintiff)(Defendant)

ATTORNEY REG. NO: 0089728 TELEPHONE NUMBER: (330) 456-8341 FACSIMILE NUMBER: (330) 456-5756

******RETURN OF SERVICE******

I RECEIVED THIS SUBPOENA ON 11/17/15 AND SERVED AN EXACT COPY ON THE PARTY NAMED ABOVE BY:

certified mail on an abar at an address indicated, larger and other.

I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON: _____

*IF REQUIRED: A CHECK FOR ONE DAY'S ATTENDANCE AND MILEAGE WAS ATTACHED FOR \$ 600.00

[Signature]
 (Signature of Serving Party)

Sheriff's Fees

Service _____

Mileage _____

Copy _____

Total _____

Circle One:

Deputy Sheriff Attorney

Process Server Deputy Clerk

Other _____

NOTE: READ ALL INFORMATION ON THE REVERSE SIDE OF THIS SUBPOENA

CIVIL RULE 45 (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2) (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing, or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

(a) Fails to allow person ample time to comply;

(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c) Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d) Subjects a person to undue burden.

(4) Before filing a motion pursuant to division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

CIVIL RULE 45 (D) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.

(3) A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for the discovery of the electronically stored information.

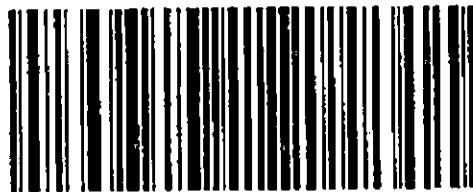
(4) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(5) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

CIVIL RULE 45 (E) SANCTIONS

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (c)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

2. Article Number



7196 9008 9115 5318 1972

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Ohio Board of Nursing
17 South High Street
Suite 400
Columbus, OH 43215

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

E. TURNER

B. Date of Delivery

C. Signature

X

☐ Agent

☐ Addressee

D. Is delivery address different from item?

If YES, enter delivery address below:

☐ Yes

☐ No

NOV 20 PM 3:24

OHIO BOARD OF NURSING
RECEIVED

PS Form 3811, January 2005

Domestic Return Receipt

100767-0001



Ohio Board of Nursing

www.nursing.ohio.gov

17 South High Street, Suite 400 • Columbus, Ohio 43215-7410 • (614) 466-3947

November 24, 2015

EXHIBIT B

Via Federal Express/Signature Required

Ryan W. Maxwell, Esq.
Black McCuskey Souers & Arbaugh
220 Market Ave. South, Suite 1000
Canton, Ohio 44702

Re: *Probate Court of Stark Co. Case No. 219330, re: Guardianship of Ivan Flohr*

Dear Attorney Maxwell:

In response to the Subpoena Duces Tecum received by the Ohio Board of Nursing (Board) on November 20, 2015 (copy attached), enclosed are the following certified copies of public records related to "Faith Lanshe" and "Ruth Drouhard" that are correspondence received from them.

1. Applications for Licensure;
2. Biennial license renewal applications.

Note that Social Security Numbers are redacted from the above records according to the Federal Privacy Act of 1974. Educational transcripts are not released according to FERPA.

Regarding any "letters, correspondences, and/or documents received from and/or on behalf of Jude Flohr, Theresa Flohr, Mary James, and/or sent anonymously *concerning Faith Lanshe and/or Ruth Drouhard, registered nurses*, and/or any and all letters, correspondences, and/or documents received *pertaining in any way to the above referenced case*", to the extent any records exist, the records are not public record, are confidential, and not subject to discovery in a civil action. Section 4723.28(I), Ohio Revised Code.

Please feel free to call me should you have any questions.

Yours truly,

A handwritten signature in black ink that reads "Holly R. Fischer".

Holly R. Fischer, JD
General Counsel
(614) 995-4934

Enclosure

cc: Henry G. Appel, Principal Assistant Attorney General



Ryan W. Maxwell
Attorney
Office: 330.456.8341
Fax: 330.456.5756
rmaxwell@bmsa.com

EXHIBIT C

December 1, 2015

Randolph L. Snow
Joel K. Dayton
Gust Callas
Bruce M. Soares
James P. Kamerer
Thomas W. Connors
C. Jason Deeds
Todd S. Bundy
Brian R. Mertes
Chrysanthé E. Vassiles
James M. Wherley, Jr.
Robert B. Preston, III
Robert J. Murphy
Daniel J. Schlue
Larry B. Donovan
Patricia S. Kramer
James D. Schweikert
Ryan A. Kuchmaner
Whitney L. Willits-Monroe
Eric T. Francis
Ryan W. Maxwell
Rod A. Moore

Of Counsel:
Gene Barnhart
Anthony E. Efremoff
Robert I. Friedman
Victor R. Marsh
Charles J. Tyburski
Arnold R. Shifman
Daniel M. Jonas
Richard D. Dodez

BMSA.COM

220 Market Ave. S
Suite 1000
Canton, OH 44702

Via Ordinary US Mail

Holly R. Fischer, JD
General Counsel
Ohio Board of Nursing
17 South High Street, Suite 400
Columbus, OH 43215-7410

Re: Subpoenaed Documents in Stark County Probate Case No. 219330
and, separately, Ohio Public Records Request

Dear Attorney Fischer:

I am in receipt of your letter dated November 24, 2015. Thank you for providing the documents. Additionally, thank you for speaking with me on November 30, 2015 regarding the same. As you stated during our conversation, you are unable to release any information pertaining to a complaint (or complaints) filed against Ms. Lanshe and/or Ms. Ruth Drouhard.

Additionally, following a voicemail I left around 11:20 AM on November 30, 2015, you advised that "absent a court order" you cannot release documents for an in-camera inspection as there is no exception for an in-camera inspection set forth in the applicable provision of the Ohio Revised Code. Respectfully, we disagree with your position.¹

As you identify in your November 24, 2015 Letter, R.C. 4723.28(I) is pertinent to this matter. As you are aware, R.C. 4723.28(I) states that "[i]nformation received by the board pursuant to a complaint or an investigation is confidential and not subject to discovery in any civil action, except that the board may disclose information to law enforcement officers and government entities for purposes of an investigation of . . . a licensed health care professional."

Further, R.C. 4723.28(I) states that "[n]o . . . government entity with knowledge of any information disclosed by the board . . . shall divulge the information to any other person . . . except for the purpose of . . . an adjudication by a court or government entity."

¹ You also indicated you were unsure who would be conducting the in-camera inspection. It would clearly fall to the presiding judge in this matter—Honorable Judge R.R. Denny Clunk.

In the case at hand, Faith Lanshe has been appointed Guardian of the Person for Ivan Flohr. During a recent lengthy contempt hearing on this matter on November 12, 2015, Mary James set forth accusations as to Faith Lanshe's inability to properly care for the Ward. The requested documents should be released to Judge R.R. Denny Clunk, presiding over the Stark County Probate Court, for an in-camera inspection prior to releasing them for the "adjudication by a court" as to the validity of the claims.

Accordingly, if, as you insist, you are unable to release the requested documents to our office, we would request that you release the documents to Judge R.R. Denny Clunk for an in-camera inspection.

Additionally, separate and apart from the subpoena issued in Stark County Probate Case No. 219330, and wholly unrelated to Stark County Probate Case No. 219330 pursuant to the Ohio Public Records Act, please provide copies of any documents, devices, or items, including, but not limited to, the personnel files and disciplinary records for Faith Lanshe and Ruth Drouhard, as well as any and all records created, received by, or coming under the jurisdiction of the Ohio Board of Nursing which serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office regarding Faith Lanshe, a nurse registered with the State of Ohio (RN.207418), and/or Ruth Drouhard, a nurse registered with the State of Ohio (RN.142494), which bear the name Ivan Flohr, Jude Flohr, Mary James, and/or Theresa Flohr to me at the above address no later than Friday, December 18, 2015.

As this request for public records is separate and apart from any civil action ongoing in the Stark County Probate Case No. 219330, the identified exception in R.C. 4723.28(I) that applies to civil actions does not apply to this request. Moreover, there is no exception provided by the Ohio Public Records Act to prevent disclosure of the requested documents. Therefore, please provide the aforementioned documents requested pursuant to the Ohio Public Records Act no later than Friday, December 18, 2015.

Additionally, please identify a date and time when you will be available for an in-camera inspection of the documents requested in the subpoena dated November 17, 2015.

Upon receipt of this letter, should you like to discuss this matter further, please do not hesitate to contact me. Thank you.

Very truly yours,

BLACK, McCUSKEY, SOUERS & ARBAUGH



Ryan W. Maxwell



Ohio Board of Nursing

www.nursing.ohio.gov

17 South High Street, Suite 400 • Columbus, Ohio 43215-7410 • (614) 466-3947

December 4, 2015

EXHIBIT D.

Via Federal Express, Signature Required

Ryan W. Maxwell, Esq.
Black McCuskey Souers & Arbaugh
220 Market Ave. South, Suite 1000
Canton, Ohio 44702

Re: Probate Court of Stark Co. Case No. 219330, re: Guardianship of Ivan Flohr

Dear Attorney Maxwell:

You wrote to the State of Ohio Board of Nursing (Board) on December 1, 2015 (*attached*), in response to my letter to you dated November 24, 2015 (*attached*). You indicate that Section 4723.28(I)(1), ORC, authorizes the Board to release records to you as attorney for Faith Lanshe, who you state is the guardian of Mr. Flohr. You indicate the records are needed in a civil matter in order for Ms. Lanshe to defend her actions as a guardian.

The language you cite to support your release of confidential investigative files to you is based on an exception within Section 4723.28(I)(1), ORC. This exception provides that the Board "may" release confidential records to: (a) "law enforcement officers and government entities" (b) "for purposes of an investigation of . . . a licensed health care professional." Neither you, nor Ms. Lanshe: (a) are a government agency or law enforcement officer, and (b) you are not requesting the records to investigate a licensed health care professional. Thus, I respectfully disagree with your position based on the plain language of the statute.

Regarding inspection of any non-public, confidential investigative files that may be possessed by the Board, should the Board receive an order issued to the Board by the Court in Stark County Probate Case No. 219330 for the Court to inspect records in camera, that Order will be reviewed by the Attorney General's Office who will respond on the agency's behalf.

In your letter, you also submit a public records request.

- You request copies of various records that are "personnel files and disciplinary records for Faith Lanshe and Ruth Drouhard." Neither of these individuals have ever been employed by the Board, and the Board has no "personnel records."
- To the extent that "personnel records" from a private employer exist in an investigation file of the Board, the records are not public records, are confidential, and are not subject to release to you. Section 4723.28(I)(1), ORC.
- There are no disciplinary records of public action taken by the Board regarding Ms. Lanshe or Ms. Drouhard.
- You request copies of records that document the organization, functions, policies, decisions, procedures, operations, or other activities of the [Board] regarding Ms. Lanshe or Drouhard which bear the names of-specified individuals. Any records that exist related to a Board



Ohio Board of Nursing

www.nursing.ohio.gov

17 South High Street, Suite 400 ♦ Columbus, Ohio 43215-7410 ♦ (614) 466-3947

investigation regarding Ms. Lanshe, or Ms. Drouhard are not public records, are confidential, and are not subject to release to you. Section 4723.28(I)(1), ORC.

- The only public, non-investigative records in the Board's possession related to Ms. Lanshe or Ms. Drouhard are license records, which were provided to you via Federal Express delivery, November 24, 2015.
- Copies of public records that *generally* document organization, functions, policies, decisions, procedures, operations, or other activities of the [Board] applicable to all Board investigations are enclosed:
 - Disciplinary Complaint Protocol, May 14, 2105
 - Discipline Priorities and Guidelines Protocol, May 14, 2015
 - Settlement Conference Protocol, May 14, 2015

Yours truly,

A handwritten signature in cursive script that reads "Holly R. Fischer".

Holly R. Fischer, JD
General Counsel
(614) 995-4934

Enclosure

cc: Henry G. Appel, Principal Assistant Attorney General