Michael Langan, M.D.
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June 26, 2017

RE: SJ-2015-0267

SJ-12242

11 pages total

By Hand

The Honorable Presiding Chief Justice Ralph D. Gants
Supreme Judicial Court for the County of Suffolk

Petition for Rehearing Due to Factual Errors Inconsistent with the Court Record

Dear Chief Justice Gants,

Pursuant to Appellate Procedure Rule 27, petitioner Michael Langan, M.D. respectfully requests a rehearing due to matters of fact and law that were not addressed in the opinion issued June 13, 2017 and wishes to draw attention to dispositive facts in the record before this Court that were overlooked including documentation of fraud and perjury pointed out in the original request for judicial review and multiple subsequent motions (SJ-2015-0267, # 19, 22, 31, 36, 42, 45).

HARMFUL ERRORS INCONSISTENT WITH THE COURT RECORD

1

"In 2008, after he tested positive for various controlled substances..."

This statement is false and gives the impression that the monitoring contract signed with Physician Health Services (PHS) March 18, 2008 was the result of poly-substance abuse detected by random drug and alcohol tests. Petitioner voluntarily sought

PHS services after having difficulty tapering off a legitimately prescribed medication for painful neuropathy due to adult onset chicken pox that was being used as directed not abused (SJC-2915-0267, #3, #21 pages 44-55). The "various controlled substances" are metabolites of this medication detected during this period of discontinuing the medication and also immaterial to this matter which was the result of two alleged violations of a letter of agreement to abide by a five-year contract signed March 18, 2008. No other issues of material fact are involved.

2

"After Langan entered into the letter of agreement, PHS reported three positive tests, at low levels, for ethylglucuronide (EtG) and ethyl sulfate (EtS), two alcohol biomarkers. The board took no action at that time."

These positive results were expected due to prescribed inhalers needed to prevent severe asthma attacks. This Court has been provided with documentation acknowledging these medications, acknowledging they caused positive tests and advising they be continued. Multiple documents confirm full compliance with the contract. That is why no action was taken. It is not as if the board was lenient towards non-compliance.

3

"In June and July, 2011, however, Langan tested positive for the same biomarkers, at higher levels."
"In addition, in July, 2011, a test for a different biomarker, phosphatidylethanol, came back positive. This test, however, was tainted by a chain of custody issue and played no part in the board's decisions."

The July 2011 test was consciously FABRICATED by PHS and the Board, namely Dr. Sanchez and Debra Stoller, whose knowledge of this fact is documented by Dr. Sanchez's consciously false claim that he became aware of the FABRICATION only two (2) months after and that he was unaware that the board took any action based on that test. This false claim is in Docket #13 before this Court. That false narrative, aimed at misdirecting the Court from his conscious forensic fraud, was then peddled to this Court by AAG Bertram, even though the file stamps and dates evidence clearly that the board knew before the date of the suspension that the test had been consciously, willfully, deliberately, FABRICATED and that Petitioner had caught them at it!

This is not merely "a chain of custody issue" but a case of CONSCIOUS, MALICIOUS, DELIBERATE, KNOWING, PRE-MEDITATED, WILLFUL, FABRICATION and FORENSIC FRAUD by state employees that must be publicly commented on and condemned by this Court.

The record demands the Court reject the board's post-hoc false assertion that the FABRICATED result played no part in the suspension of Petitioner's license.

"As a result of these positive tests, PHS requested that Langan undergo an inpatient evaluation, and the board asked him to enter into a voluntary agreement not to practice pending completion of such an evaluation."

""As a result of these positive tests" is entirely false and parrots the defendants' false narrative. Sanchez and Stoller contrived FABRICATED test results in order to COERCE Petitioner, using the police power of the board, to spend thousands of dollars more on PHS (in addition to $600 PER WEEK), the state's no-bid vendor, that he did not need to spend at all.

Had Petitioner not objected to Sanchez and Stoller both FABRICATING a false test result and then using that test to COERCE concessions from him, the board would not have needed to peddle its false narrative that the FABRICATED test played no role at all.

Without the FABRICATED test Petitioner could not have been COERCED into agreeing to attendance at thrice-weekly Alcoholics Anonymous sessions and the defendants would not have been able to falsely claim a "lack of candor" regarding attendance.

This Court cannot and must not consider the false "lack of candor" claim without first considering the FABRICATED test that led directly to the board's order to attend AA meetings which was the fruit of the poisonous tree.

Stoller and Ottina COERCED Petitioner into a modified Letter of Agreement that COERCED him to not treat his severe asthma, COERCED out-of-pocket payments for increased non-FDA-approved drug and alcohol testing (up to $600 per week to the same lab willing to produce FABRICATED results), COERCED him to

attend thrice-weekly 12-step meetings and COERCED him to provide the names and phone numbers of anonymous attendees at expressly anonymous AA meetings as proof of attendance, all under threat of medical license suspension and presented as "in lieu of sanctions." (SJC-12242, Dkt #15)

MGH Chief Toxicologist Dr. James Flood stated that FABRICATING the "confirmatory positive" PEth test was a "purposeful and intentional act" and that anything following the test should be "reversed, rectified and remediated." This was pointedly ignored at the January 9, 2013 hearing and the board instead chose to peddle a false narrative. SJ-2015-0267, Dkt #12, attachment 5

Given that the test was consciously, corruptly, willfully FABRICATED by Sanchez and Stoller, justice demands that any declarations by these individuals be automatically deemed to portray a "lack of candor" and not accorded any deference whatsoever.

5

"Langan entered into a voluntary agreement not to practice and was asked to produce documentation that he had attended all required meetings. He did not do so [...] The board therefore suspended his license."

The requirement to attend AA meetings thrice a week when one is not and has never been an alcoholic is onerous in and of itself but this mandate was faithfully complied with and the record of attendance at ALL the required meetings is in the

record before this Court. Petitioner is totally mystified by the Court declaring that he did not produce documentation that he had attended all required meetings.

Noted expert Dr. Patricia Recupero, M.D. J.D. concluded in her 87-page report in December 2013 that Dr. Langan is "safe to return to the practice of medicine without supervision," "has not had an alcohol use, abuse or dependence problem" and that "it is clear that Dr. Langan complied with the request of PHS" in attending the support group meetings has also been completely ignored. SJ-2015-0267, #21, page 10 Her appendix documents the harm associated with the inappropriate discontinuation of medication required for treating severe asthma. On December 21, 2012, his physician, Dr. Michael Bierer, wrote:

"Other than the stress related to the professional issues and licensure that is weighing heavily, the only major problem is shortness of breath and the wheezing I detected on exam that may relate to your abstaining from (asthma inhalers) that you report has been mandated." Again in a January 30, 2013 note he documents "Dr. Langan's wheeze (in the context of his inability to exercise), presumably due to his abstaining from his prescribed inhaler as recommended by PHS." SJ-2015-0267, #21, pages 103-104

Petitioner deserves to have this false claim corrected as the conscious misrepresentation that has been legitimized by this Court defames him by claiming he is an alcoholic who dodged AA meetings causing stigma and reputational harm SJ-2015-0267#21, page 22-25 Petitioner respectfully requests this Court take judicial notice of the documentary facts in the

Court's possession as they show beyond any reasonable doubt that he did not misrepresent attendance at meetings, did not violate his Letter of Agreement and that there is ZERO factual basis for the suspension of his license on February 6, 2013 ((SJC-2915-0267, #48, attachment 2).

6

"However, he failed to submit the necessary worksite and substance use monitoring plans."
"Finally, on January 15, 2015, Langan again petitioned the board for a stay of his suspension. He did not include any records, such as test results, demonstrating that he had abstained from alcohol and controlled substances. He also did not include worksite and substance use monitoring plans, as required by the 2013 order as a condition of reinstatement."

The record before the Court contains multiple copies of both negative test results as well as "the necessary" worksite and substance use monitoring plans, plans that exceeded the board's requirements and were put forth by genuine, recognized, accomplished experts in the field of addiction medicine who themselves remain baffled at the need to monitor a person with no substance abuse history or concerns. Again, Petitioner remains mystified by this Court's one-sided declaration despite the documents being before this Court and his having filed motions for judicial notice that specifically called this Court's attention to them.

AAG Bryan Bertram falsely claimed the latest Petition to invalidate the suspension was LOST due to "being left off the internal docket." It was sent to Stoller by both e-mail and

Certified Mail on January 20, 2015 (USPS signature confirmation number 2301 3460 0000 4892 1366) but the copy AAG Bertram submitted as the "corrected administrative record" was a copy that Dr. Langan provided him (SJ-2015-0267,#21) and the petitionary arguments and documents contained therein have never been addressed (SJ-2015-0267, #22) AAG Bertram engaged in this conscious sleight of hand to CONCEAL the board's date stamp.

It is an immitigable conscious FRAUD on the court for the defendants to then claim that the worksite monitoring plans and long term test results were never submitted.

This Court abdicated its duty to examine the filed record properly prior to supporting the defendants' consciously false claims. "The rule there is that it is the duty of this court to examine the evidence and decide the case according to its judgment[.]" Swan v. Justices of the Superior Court, 222 Mass. 542 (1916). See Codispoti v. Pennsylvania, 418 U.S. 506 (1974)(if constitutional rights are affected, the court is "duty bound to make an independent examination of the evidence in the record"), cited in Commonwealth v. Brunnell, 65 Mass. App. Ct. 423 (2006). Concealing the documentary record must not be rewarded by the Court as it has done here.

THIS COURT ABDICATED ITS DUTY TO PROTECT INDIVIDUALS FROM COERCION BY THE STATE

Coercion by the state through abuse of its police and regulatory powers is a circumstance that ALL courts in these United States are required to protect the individual from. This has been a MANDATORY requirement from the time of the creation of this republic and confirmed by the Supreme Court. Schneckloth v. Bustamonte, 412 U.S. 218 (1973) Even acknowledging the fact that courts in the 1970s cared more about protecting individuals from the state than they do now, this precedent has not been overturned, even after Thompkins. Berghuis v. Thompkins, 560 U.S. 370 (2010)

It is BINDING upon this Court to comply with Supreme Court rulings. County of Berkshire v. Frank Cande. 222 Mass. 87 (1915)

This Court ruled that Dr. Langan waived his rights and consented to the board's actions and therefore certiorari is unavailable to him. In Bustamonte the Supreme Court ruled that the Fourth and Fourteenth Amendments REQUIRE that the state "demonstrate that the consent was in fact, voluntary; voluntariness is to be determined from the totality of the surrounding circumstances."

THIS COURT DID NOT PERFORM THAT REQUIRED MANDATORY ANALYSIS AT ALL. Petitioner has already proved that the test result was consciously FABRICATED by the state and he was COERCED into an expensive and unneeded inpatient psychiatric evaluation. COERCING him into that inpatient stay and the new letter of

agreement involving attendance at AA meetings was the direct intended desired result of the FABRICATED test.

The record is undeniable that Petitioner was COERCED by the state into signing an agreement with the state under the threat of loss of his livelihood. This COERCION also led to him agreeing to attend a religious program chosen for him by the state. The record before this Court is clear that Petitioner strenuously objected to this state's conscious willful violation of the Establishment Clause. Not a single document exists in the record to support the claim "alternatives" to 12-step were offered. No agreement COERCED by the state must be allowed to stand by this Court. This Court's decision violates Petitioner's First and Fourteenth Amendment rights as well as Supreme Court precedent. It must be reversed! This Court abdicated its duty to evaluate for and protect against coercion by the state and erred by not addressing documentation that both board judgments were dishonestly procured by falsely created evidence and false statements of fact. The documentary evidence disproves the state's false narrative. This petition for rehearing must be granted and this Court must perform the mandatory analysis for coercion.

Respectfully submitted June 26, 2017,

Michael Langan, M.D., pro se

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