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May 19, 2017

By Hand

Francis V. Kenneally
Clerk of the Supreme Judicial Court
for the Commonwealth
John Adams Courthouse
One Pemberton Square - Suite 2500
Boston, MA 02108

Re: **The Board of Registration in Medicine's Response to
Petitioner's Motion for Judicial Notice (Dkt. # 17),
Michael L. Langan, M.D. v. The Board of Registration in
Medicine, SJC-12242**

Dear Clerk Kenneally:

This Office represents the Appellee Board of Registration in Medicine (Board) in the above-referenced appeal. I enclose for docketing and filing The Board of Registration in Medicine's Response to Petitioner's Motion for Judicial Notice (Dkt. # 17). I also enclose a certificate of service for the same.

Thank you for your attention to the enclosed.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bryan F. Bertram".

Bryan F. Bertram
Assistant Attorney General
Government Bureau
617-963-2107

cc: Michael L. Langan, M.D. (pro se) (by mail)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-12242

MICHAEL L. LANGAN, M.D.,
Plaintiff-Appellant,

v.

THE BOARD OF REGISTRATION IN MEDICINE,
Defendant-Appellee.

**THE BOARD OF REGISTRATION IN MEDICINE’S RESPONSE TO
PETITIONER’S MOTION FOR JUDICIAL NOTICE (DKT. # 17)**

The Board of Registration in Medicine (Board) responds to a single point in Appellant, Dr. Langan’s, post-argument Motion for Judicial Notice (Dkt. # 17) (Motion).

Dr. Langan asserts that he (through counsel) filed a worksite monitoring plan with this Court, while the case was pending before the Single Justice. Motion at p. 5. The document that Dr. Langan cites, (SJ-2015-0267, dkt. # 35), is a two-page document that: (1) proposes a three-month term for future worksite monitoring and substance and alcohol testing; (2) identifies two doctors willing to administer that monitoring and testing; and (3) makes several additional demands upon the Board, not relevant here. That document, however, fails to set forth an actual “plan” for either monitoring or testing because it does not contain any of the specifics necessary to implement a monitoring or testing proposal. For example, it does not discuss the frequency or form of reports to Board’s staff, the types of substance and alcohol tests to be used, the specifics of how Dr. Langan’s worksite performance will be monitored, or any provisions governing what happens if future tests are positive or if the monitor becomes concerned about worksite performance. In other words, the document is no more than two proposed aspects of what must be a more comprehensive set of terms and agreements to qualify as a suitable “plan.”

Shortly after Dr. Langan filed this document, the Board’s counsel forwarded to Dr. Langan’s counsel Microsoft Word templates to create actual plans—documents with the necessary

level of detail to allow for their implementation. See SJ-2015-0267, dkt. # 40. The Board's counsel also organized conference calls with Dr. Langan's counsel to catalyze the process and to provide assistance from the Board's staff to develop a proposal. See id. Each of these actions was taken with the goal of generating worksite monitoring and testing plans susceptible of review by the Board and implementation by the parties. But Dr. Langan refused to engage; through counsel he instead demanded that his document be provided to the Board for an immediate vote. See id. The Board considered the document at a subsequent meeting and voted to reject it as a viable proposal. See SJ-2015-0267, dkt. # 47.

Thus, Dr. Langan's Motion only underscores the Board's position in this appeal. Dr. Langan's continuing license suspension is not a result of the Board's or its staff's refusal to help him develop suitable plans for the Board's consideration. Rather, the suspension continues because Dr. Langan has eschewed any assistance in constructing plans (one of the preconditions of his reinstatement) with the necessary level of detail to govern the parties' relationship should Dr. Langan return to practice. Given Board staff's willingness and attempts below to help Dr. Langan, those omissions are attributable to Dr. Langan.

Finally, the Board's rejection of Dr. Langan's two-page proposal as lacking the necessary detail was not an abuse of discretion. Previously, Dr. Langan: tested positive for unprescribed Oxycodone or Oxymorphone multiple times (2005, 2007, 2008); submitted an invalid urine specimen during testing (2007); tested positive multiple times for alcohol biomarkers during the term of his letter of agreement (five times from 2009 to 2011); and after testing positive for those biomarkers at higher levels in July 2011, delayed undergoing an inpatient evaluation, forcing the Board to suspend his license. (See Br. of the Appellee Bd. of Registration in Med., Add:33-34 (2015 Board Order)). Dr. Langan never completed the testing and monitoring period specified in the addendum to his letter of agreement and he has not been tested under Board-approved plans since 2013. The Board requires only that, if Dr. Langan is to resume his practice, he is to do so

Respectfully submitted,

THE BOARD OF REGISTRATION IN MEDICINE,

By and through its attorney,

MAURA HEALEY,
ATTORNEY GENERAL



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Dated: May 19, 2017

¹ At argument, the Court inquired about procedures for the testing of doctors who are indigent and thus cannot pay for testing. The Massachusetts Medical Society does have a "Benevolent Fund" which is available to physicians' in need, which includes payment of mandatory drug testing. Should Dr. Langan engage in discussions to develop a testing plan and presents evidence of indigence to the Board, the Board acknowledges an obligation for its staff to explore and develop options to alleviate any financial burden, which includes assisting Dr. Langan to apply for assistance from the Massachusetts Medical Society.