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January 10, 2013

VIA ELECTRONIC MAIL ONLY

Robert Harvey, Esq.
Physician Health & Compliance
Board of Registration in Medicine
200 Harvard Mill Square, Suite 330
Wakefield, MA 01880

Re: **MICHAEL LANGAN, M.D.**

***** EMERGENCY PETITION TO ALLOW
DR. LANGAN TO RETURN TO PRACTICE *****

Dear Mr. Harvey:

As you are aware, I have been asked to serve as Dr. Langan's legal representative before the Board of Registration in Medicine ("Board") related to his ongoing monitorship for substance abuse concerns.¹ Yesterday, at the Board's meeting, the Board refused to hear Dr. Langan's petition for a new monitorship through Massachusetts General Hospital which I provided to you on December 28, 2012, despite your assurances to me that the Board would be presented with such petition.

Rather, the Board focused on its penal efforts to punish Dr. Langan for an allegation made by Physician Health Services ("PHS") that Dr. Langan failed to attend the meetings of which he was required to attend under his agreement and subsequent LOA with them. Yesterday, the Board admitted that there was absolutely no evidence in their possession beyond the vague single sentence contained within one PHS report. In fact, it was conceded that the Board did not have any evidence as to which meetings Dr. Langan failed to attend, or during what time period.

¹

While I am licensed to practice law in several jurisdictions; Massachusetts is not one of them. To that end, I am not seeking to act as an attorney in the representation of Dr. Langan, just as his legal representative. It is my understanding that the laws of Massachusetts allow for such.

On the other hand, Dr. Langan presented his own sworn testimony that he had attended all required meetings. Moreover, he presented letters from various people indicated that he attended and that he has shown no evidence of relapse. He also noted that he had submitted attendance records to PHS – records which were never reported to this Board. He offered to provide those to the Board.

Rather than looking at the forest through the trees, the Board could not see past the single unsubstantiated sentence in the PHS report, which claimed, again, without any fact or support, that Dr. Langan had not attended the meetings he was required to attend. The PHS report was silent as to which meetings or when his failure to attend occurred.²

Under the guise of “fairness” to Dr. Langan, however, the Board has allowed him to present additional evidence to support his assertions that he attended the meetings.³ By 2:45 pm, I had emailed you copies of the reports which Dr. Langan turned into PHS. The Board, however, did not look at those reports and tabled this issue for a later undetermined time.

As such, the Board refused to consider any other issues involving Dr. Langan at yesterday’s meeting. They would not consider the fact that he revoked his voluntary willingness to refrain from practicing medicine on December 28, 2012. They would not consider his petition for new monitoring. Rather, it was told that his “voluntary” agreement to refrain from practice was in effect until further action of the Board – no date was fixed.

Dr. Langan entered into the “voluntary” agreement not to practice at the last Board meeting in good faith as an attempt to gain good will with the Board.⁴ As I stated in my letter of December 18, 2012, we recognized that there were several issues which may lead the Board to have

² It was conceded by the Board that, as PHS had been filing compliant reports for the preceding quarters, such non-compliance could have only occurred during the time period for which the October report was responsible for addressing.

³ As the Board acknowledged yesterday, Dr. Langan has had no notice of the specific allegations made by PHS (i.e., what meetings were missed, over what time, etc.). As such, this offer of fairness is nothing more than a rouse which is nothing more than a blatant violation of Dr. Langan’s constitutional due process rights. As Dr. Langan’s medical license is a constitutionally protected property interest, Lawrence v. Briry, 239 Mass. 424, 132 N.E. 174 (Mass. 1921), he must be afforded certain due process rights. At minimum, due process requires notice and an opportunity to be heard. Rockdale Mgm. Co. v. Shawmut Bank, N.A., 418 Mass. 596, 600, 638 N.E.2d 29 (1994); Vitale v. Planning Board of Newburyport, 10 Mass.App.Ct. 483, 487, 409 N.E.2d 237 (1980). Adequate notice is that which is reasonably calculated to inform the parties of proceedings which may directly and adversely affect their legally protected interests. LaPointe v. License Board of Worcester, 389 Mass. 454, 458, 451 N.E.2d 112 (1983). The right to be heard entails an opportunity to address the critical and determinative allegations which are at the core of a party’s claim or defense and to present evidence on the contested facts. See Highland Tap v. Commissioner of Consumer Affairs, 33 Mass.App.Ct. 559, 571, 602 N.E.2d 1095 (1992).

⁴ The fact of the matter is that the “voluntary” agreement was anything but voluntary. He was told that he

either sign it or he suspended

concerns about his safety, so, until such were addressed, he agreed not to practice. Both he and I expressed that, under no circumstances would his participation in this “voluntary” agreement extend past January 9, 2013.

Regardless, the Board has unilaterally refused to allow Dr. Langan to withdraw his consent to the “voluntary” refrain of the practice of medicine. The Board is now preventing Dr. Langan from practicing medicine indefinitely, as there is no definitive date when the Board will allow him, or even consider allowing him to practice again. This will cause Dr. Langan severe economic hardship (as well as his family) and will cause him further reputational harm. At this point, we view such actions on the part of the Board as a suspension. The problem, however, is that the Board cannot meet its burden to demonstrate that Dr. Langan is a danger to the public to justify its suspension. Dr. Langan has not relapsed, however, your actions are creating a stigma that Dr. Langan has.⁵

In the alternative, the impedance with Dr. Langan’s ability to practice can be deemed a sanction because of the Board’s adjudication of the allegations that he violated the terms of his agreement by not attending the meetings, as required. If this is the case, however, the sanction is arbitrary and capricious and has been implemented without sufficient evidence to make a finding. One sentence in one report is not sufficient evidence upon which the Board can prevent a physician from exercising his constitutional property rights. Further, a prolonged suspension to practice is a bit severe considering the allegation that Dr. Langan failed to attend one meeting.

Rather than taking this to Court, we are, again, in an effort to try to move forward, are asking to resolve this amicably with the Board. Accordingly, we are filing this emergency petition to request that Dr. Langan be allowed to return to practice. We have provided lab results which show that Dr. Langan has not used any prohibited substances. We have provided letters from highly acclaimed physicians who are board certified in addiction medicine,⁶ who have opined that Dr. Langan is safe to practice medicine and has not demonstrated any signs or symptoms of relapse. Moreover, we provided, in an expedited manner, the logs which Dr. Langan gave to PHS recording the meetings at which he attended. We have also provided a comprehensive monitoring

⁵ In Massachusetts, under federal law, one may have a “stigma plus” due process claim based on reputational harm if he can prove “(1) the government made a statement about him or her that is sufficiently derogatory to injure his or her reputation, that is capable of being proved false, and that he or she asserts is false, and (2) the plaintiff experienced some governmentally imposed burden that ‘significantly altered [his or] her status as a matter of law.’” PaganiGallego v. Sabol, 2008 WL 886032, at *3 (D.Mass. Mar.27, 2008) (quoting Gwinn v. Awmiller, 354 F.3d 1211, 1224 (10th Cir.2004)). In this case, the fact that the Board’s actions infer the Dr. Langan is a danger to the public by claiming that there was a violation of his agreement with PHS is and can be demonstrated to be a defamatory comment. The refusal to allow Dr. Langan to revoke his “voluntary” agreement to refrain from practicing medicine is an undue burden which would satisfy the “plus” component of the test.

⁶ It is very concerning that few, if any, of the people associated with Dr. Langan’s care at PHS are board certified in addiction medicine, and yet, they are acting as experts in the field of addiction medicine, upon whom this Board relies in making their decisions regarding the professions of various physicians.

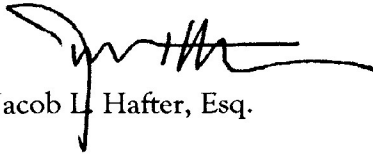
program from one of the world's most respected medical facilities to address how the Board can be assured in the future that Dr. Langan is safe to practice medicine for the people of Massachusetts.

Accordingly, we respectfully request that the Board meet in a timely manner to consider this petition in short order. Dr. Langan has worked diligently over the past five years to overcome his problem. He has overcome great adversity, including proven falsified lab reports by PHS and their affiliates, and remains sober to this day. To punish him and his family by taking away his property right - his license to practice medicine - without the proper due process rights, is unconstitutional and punitive. It would be unfortunate if the Board's refusal to true be fair to Dr. Langan would be the straw that broke the camel's back for Dr. Langan.

A prompt response as to whether the Board will consider this Emergency Petition is appreciated. If the Board is not willing to consider this matter within the next week, we will be forced to seek alternative action to protect Dr. Langan's license.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jacob L. Hafter', with a long horizontal flourish extending to the right.

Jacob L. Hafter, Esq.

cc: Michael Langan, M.D.

From: Michael Langan [mailto:mllangan1@me.com]

Sent: Wednesday, December 26, 2012 3:22 PM

To: Jacob Hafter; Wilens, Timothy,M.D.; John Knight; Wilking, Spencer,M.D.; J. Wesley Boyd

Cc: Minaker, Kenneth Lloyd,M.D.; Bierer, Michael,M.D., MGH IMA Medicine Primary Care; Wilking, Spencer,M.D.; Langan, Michael L,M.D.

Subject: Alternative Monitoring Program

Jacob,

Attached is a draft of a proposal for an alternative monitoring program that is more comprehensive, evidence-based, and includes extended types of monitoring with weekly random urines as well as the opportunity for any of my monitors, etc. to request an immediate screen should they see fit. In addition a breathalyzer can be requested at the West End Clinic and I will have quarterly blood tests that include the traditional biomarkers for alcohol abuse. It also includes practice related parameters (chart completion, answering pages, etc) as well as utilizing the nurse practitioners I see every day to report back to Dr.Minaker or Dr. O'Malley.

Matt Greene, who currently does my monthly observed test, will continue to do so (I trust him completely and none of the observed urine specs collected by him were ever positive except one which was a low low level).

Although the requirements include more tests and are more comprehensive my current primary concern, dishonesty and manipulation of data, would not be an issue.

At the BORM Mr. Harvey relayed to me that he had not really looked at the litigation packet, Dr. Flood's letter, or Dr's Knight and Boyd's paper. He said he would find it hard to believe that an organization such as PHS would engage in any fraudulent behavior. Moreover, he said that even if the Board Members looked at the information they more likely than not would not have any idea what any of it means. I asked him how any sort of improper practices would be picked up since they are unmonitored and unregulated. I also mentioned that I had heard that PHS members are immune from the BORM but he said that that is not the case. A member of PHS apparently is immune from legal or BORM sanction if they are acting in good faith and that is not the case here. He asked me if there is an MRO manual or guidelines and that if the MROs did actually violate them they could be reported to the BORM. Since the PHS not only neglected to abide by the MRO Code of Ethics and guidelines but purposely went against them in an intentional act to show an invalid test as positive I think that this would suffice. The MROs would not be able to counter Dr. Flood's arguments which have recently been validated by the lab (through threat of sanction by CAP).

I would think the fact that an organization that they are using for consultation is engaging in the fabrication of toxicology tests would warrant an emergency meeting of the BORM as it is a clear and immediate danger to the public.

Mr. Harvey made it sound as if the VANP was a routine non-disciplinary action that could be reversed if needed just as easily as it was put in place. I had to either sign it or present to the BORM at that time and risk a disciplinary suspension. I had to sign it. Even though it is obvious that to everyone else that PHS is out of control the BORM apparently has no clue.

Dr. Timothy Wilens, MD (Psychiatrist) 617-726-1731

MGH Director –Center for Addiction Medicine

(Board certification: Psychiatry, American Board of Psychiatry and Neurology; Addiction Psychiatry, American Board of Psychiatry and Neurology; Child & Adolescent Psychiatry, American Board of Psychiatry and Neurology)

-Monthly visits

Dr. Michael F. Bierer, MD, MPH (Internist) 617-726-8055

MGH General Primary care, Diplomate American Board of Addiction Medicine.

--Primary Care Physician

--Physical exam every 6 months with targeted exam looking for substance use abuse

Toxicology Monitoring Program

To be overseen by Dr. Bierer and Dr. Wilens (both certified in Addiction Medicine)

--Random weekly urine toxicology screens + can request additional urine or blood toxicology screens at any time

--Random monthly observed urine toxicology screen (to be done by **Matt Greene** (Sameem Associates Outpatient Addiction Treatment) 617-630-0381

- Random monthly Breathalyzer tests at West End Clinic (MGH outpatient drug and alcohol treatment center) + additional tests if requested by any of my monitors/physicians/Chief

---Quarterly blood tests to include AST/ALT, GGT, MCV, and CDT (medium and short-term biomarkers targeted at alcohol use.

---All toxicology tests to conform to current standard of care which necessitates strict chain-of-custody processing and handling, use of evidence based cutoff levels, and careful analysis by a Medical Review

Officer (MRO). Any positive test will result in immediate cessation of clinical work and assessment by Dr.'s Bierer and Wilens and immediate referral for assessment at appropriate treatment facility within 7 days.

Work Monitors

Dr Kenneth Minaker, MD, Chief of Geriatric Medicine, MGH 617-726-4600

--Weekly face-to -face meetings

--To monitor several work/clinical related performance issues including (answering pages in a timely manner, punctuality, meeting attendance, and chart completion) Any failure to meet these goals will result in toxicology screen.

--Will ask NP I work with, **Christine Lauria**, (617-549-5863) to give periodic updates on my performance as well as report any concerns immediately and directly to him.

--**Dr. Terrence O' Malley,, MD**. Director of long term care. Work performance related issues to be monitored include patient/staff/family interactions. Will request that the Nurse Practitioners I work with **Diane Bucknill**, NP (339-927-5493) and **Jill Lacocco** 781-475-3954 give him updates on my work performance and interactions with others as well as report any concerns directly and immediately to him.

---Dr. Spencer Wilking, MD Monitor. Primary monitor who I will have both frequent telephone contact and face to face meetings with.

---Dr. Wilking will oversee 12 step support groups

----Progress reports to the BORM to conform to PHS current practice.