



Commonwealth of Massachusetts Board of Registration in Medicine

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December 6, 2017

VIA ELECTRONIC MAIL ONLY

Michael Langan, M.D.
mllangan1@mac.com

Re: PRR 2017.11.22 – Langan – Unspecified request

Dear Dr. Langan:

The Commonwealth of Massachusetts, Board of Registration in Medicine (the “Board”), hereby responds to six email communications you sent to Board staff in November and early December 2017 (collectively, the “communications”). Your first communication, dated November 14, 2017, reads in full:

Will be happy to specify the records Mr. Dolan - sentence by sentence and word for word if need be. I just want to make it clear I requested that you read the statements, read the documents you confirmed are the documents referred to in the statements and that you read attorney Harvey’s “confidential work product” specific to these documents to determine Mr. Harvey presented the false statements. If he did then send them as “attorney client confidentiality” does not apply. I requested you read them. Please acknowledge that you have read these documents Mr. Dolan. Yes or no? I am requesting your immediate response- Michael Langan

Your second communication, dated November 18, 2017, and received on November 20, 2017, reads in full:

Dear Mr. Dolan,

Please let me know as soon as possible whether or not you are going to notify the tribunal (Medical Board and SJC) of Mr. Harvey’s misrepresentations and false statements. I need a response in the next 72 hours to determine next action. I have asked you to respond to this matter twice but you have avoided the question. This is a simple matter. Public Records Law has revealed Mr. Harvey made four false statements in two intentional fraudulent misrepresentations and this is 100% material to 3 board and 2 SJC

decisions. Mr. Harvey lied. This is a very serious matter and you have a legal (and ethical) duty to report the fabrications (even if there were just one false statement and it was not even directly material to the case you would have to but this is a full "fraud on the court" x5. Not sure of your motivation in covering up for severe attorney misconduct but please advise on your plan ASAP.

- Michael Langan, MD

Will be happy to specify the records Mr. Dolan - sentence by sentence and word for word if need be. I just want to make it clear I requested that you read the statements, read the documents you confirmed are the documents referred to in the statements and that you read attorney Harvey's "confidential work product" specific to these documents to determine Mr. Harvey presented the false statements. If he did then send them as "attorney client confidentiality" does not apply. I requested you read them. Please acknowledge that you have read these documents Mr. Dolan. Yes or no? I am requesting your immediate response- Michael Langan

Your third communication, dated November 21, 2017, and received on November 22, 2017, reads in full:

Dear Mr. Dolan,

This records request pertains to the undeniable perjury and forensic fraud seen in "Attachment B." These documents also show what corrupt board attorney Robert Harvey knew and when he knew it. You claim that you have provided all the records related to the February 6, 2013 Board Order suspending my license yet page 1 of "Attachment B" is nowhere to be found in the documents provided and the remainder are date -stamped long after the hearings at which they were intended to be heard. Your "explanation" that these date-stamps have nothing to do with when the documents were "received" or "reviewed" by the board is not an explanation but an excuse. Does "The Board" not follow basic record-keeping and date and sign documents when they are received and reviewed? This is common sense and your explanation is unbelievable. The post-dated date stamps undoubtedly show Mr. Harvey withheld these documents from the Board to cover up the fraud and perjury. Please provide any and all records showing that Mr. Harvey provided these documents to the Board for the February 6, 2013 Board hearing and any subsequent hearings. These were reported **as crimes** to Mr. Harvey so a "public record" necessarily exists. Please provide any and all documents showing "The Board" addressed and investigated these crimes. If they do not exist it is your legal and ethical duty to promptly report the forensic fraud and perjury to the tribunal (Board and SJC) who still maintain "no crimes have been committed." If you need me to point out the easily recognized crimes (including at least three felonies) in the attached documents I am happy to do so but they should be recognized by any "reasonable attorney." Please confirm that you have read them for this records request. In addition, If you need me to point to the rules, regulations and law that mandates you report these promptly I am happy to do so. I again request your immediate attention to this serious matter and,

again, please confirm you have read the documents and understand this request. =
Sincerely, Michael Langan, M.D.

"This request pertains to "Attachment B." "The Board" has maintained that a July 1, 2011 positive test for an alcohol biomarker was appended as an "external chain-of-custody error" on December 10, 2012 yet the documents here show that it was appended on October 4, 2012 and that Dr. Luis Sanchez requested a "chain-of-custody" and my ID # be added to an already positive test on July 19, 2011. Pages 1 and 2 are direct evidence of perjury (that any "reasonable attorney" would clearly recognize) and the request to "update" a chain-of-custody" and change and ID # is clearly not "error." It is intentional and deliberate and any "reasonable attorney" would recognize the clear crimes. "The Board's" position is that no crimes were committed yet these documents show multiple crimes including perjury and forensic fraud not unlike the Dookhan case. Please provide any and all documents showing that attorney Robert Harvey made "The Board" aware of the attached documents and include dates."

Your fourth communication, dated November 26, 2017, and received on November 27, 2017, reads in full:

RE: Misrepresentation and False Statements in February 6, 2013 Board Order Factual Statement #12

Issue: Identification of document referred to in factual statement #12 of February 6, 2013 Board Order has uncovered that this document does not contain the factual findings presented and is a misrepresentation containing 3 verifiably and provable false statements of fact.

Materiality: February 6, 2013 suspension was for misrepresenting my attendance at required meetings (no other pretext exists) and the misrepresentation was based solely of the factual findings presented in factual statements #10 (a misrepresentation presenting 1 false statement of material fact which will be addressed separately) and factual statement #12 (a misrepresentation presenting 3 false statements of material fact). Suspension based solely on the evidence provided in these 2 documents so materiality of this misrepresentation is 50 to 75%. Multiple other false statements based on factual statement #12. (e.g. see May 7th, 2015 Board Order in which Board Vice Chair Kathleen Sullivan Meyer states "the Licensees self-reports were contradicted by the Licensee himself" and "the Licensee later stated, in writing, that he did not attend this group until September 2012." (redacted to focus on this issue). These false statements have infected decisions by both the board and Supreme Judicial Court and have become part of the public record.

History: The "Board" has refused to provide or identify the document in question since my suspension despite multiple requests to identify them. Under new Public Records Law these documents were eventually identified August 4, 2017 thanks to the attorneys at the Department of Public Record, Board attorney and Records Access Officer Dolan subsequently confirmed the attached email provided to attorney Harvey (Attachment A)

is the document that is referred to in paragraph #12. It is notable that it is date-stamped February 15, 2013 (six days after the hearing at it was supposed to be reviewed) and Mr. Dolan is unable to provide any copies that are date stamped prior to the February 6, 2013 Board hearing.

False Statements Obvious, Self-Evident Factual Statement #12 states that I made 3 statements in this document that do not exist in this document. I, in fact, make statements in this document that directly contradict the factual allegations. (red boxes). Objective determination of the truth or falsity to these statements is an axiomatic certainty as the statements are either in the document or not. They are not and any reasonable lawyer (any reasonable sixth grader for that matter) would recognize that Factual Statement #12 is a misrepresentation and that the three findings of fact are false. This is not a matter of opinion but of fact. There is nothing anyone could say that would make these false statements true. They are obvious.

Request: I am requesting the Board provide records showing precisely how the "Board, as factfinder" found that I made statements in this document that does not contain these statements and how they determined these 3 statements as factual findings when they do not, in fact, exist. Please provide records showing precisely what "facts" Mr. Harvey presented to the Board. These are false-statements and if Mr. Harvey presented them then he committed perjury and "attorney-client privilege" does not apply to perjury, crimes and frauds.

Mr. Dolan, you have refused to acknowledge reading the documents when I have asked you to do so multiple times. I am requesting you acknowledge reading the document here so that you have full knowledge of the false statements and misrepresentations. I am also requesting that you immediately disclose these false statements and misrepresentations to the Board and would like to know what remedial action you are taking. I notified you of these matters on August 4, 2017 and it is your ethical and legal duty to address them. As the damage is ongoing I request you do so with dispatch. You cannot ignore the obvious. Mr. Harvey's lies have been uncovered and they are not going away and you had a duty of candor to disclose the misrepresentation and fraud promptly which you have not.

I also request you notify Board Chair Sloane and Board Vice Chair Meyer of Mr. Harvey's misrepresentation and false statements as they have made false statements, in writing, based on accepting Mr. Harvey's false statements as undisputable fact. Please provide any documentation where I contradict myself and where I state in writing "I did not attend this group until September 2012." These documents do not exist and Dr. Sloane and Mrs. Meyer need to be made aware that they were deceived by Mr. Harvey. They too, have a duty to correct and remediate this.

I note that you did not include my emails in your last response to my records request but only the online text limited to 1000 characters. Please consider this as part of the current online records request, include my text in your response and address the issues presented herein.

-Sincerely, Michael Langan, M.D.

Your fifth communication, dated November 26, 2017, and received on November 27, 2017, reads in full:

RE: Misrepresentation and False Statements in February 6, 2013 Board Order factual statement #12.

See "Attachment A" identified and confirmed as the document referred to in #12 by attorney Dolan 8/4/2017 (theretofore unknown). It does not contain any of 3 factual findings presented rendering them obvious false statements of material fact. Suspension due to misrepresentation of meetings based on factual findings found in this document and #10 so 50% material to suspension. Board Order states I make 3 statements "contradictory to" self reports that do not exist in document (unsupported) and are in fact directly contradicted (appended in red). False statements obvious. Only explanation is intentional fraudulent misrepresentation. Please provide records that show how the board, as "factfinder" determined false findings of fact and what Harvey presented. If these false facts where then it is perjury and "attorney client privilege" does not apply.

Your sixth communication, dated December 4, 2017, and received on December 5, 2017, which appears to be an appeal to the Supervisor of Public Records ("Supervisor") and contains several forwarded emails, reads in full (excluding forwards):

Please forward to the Supervisor of Records,

Today marks four-months since new Public Records Law revealed the suspension of my medical license was due to egregious and condemnable attorney misconduct. Specifically board attorney Robert Harvey covered up an October 4, 2012 correction of a fabricated alcohol test by fabricating evidence that I failed to attend and never reported the forensic fraud, documents confirming the fraud by expert opinion or the correction of the test (after an outside investigation) to the board then falsely created evidence that I misrepresented my attendance at support group meetings (required as a direct result of the fabricated test) to get my license suspended. In other words board attorney Robert Harvey committed a crime to cover up a crime.

Records Access Officer Gerard Dolan has been made aware that the documents provided under public records requests show clear and undeniable forensic fraud, perjury, false statements and misrepresentations. These have been pointed out to him time and time again but he has chosen to ignore the obvious in violation of multiple Rules of Professional Conduct and ethical guidelines. I have asked him to disclose attorney Harvey's misconduct to both the Board of Registration in Medicine and the Supreme Judicial Court as both have relied on Mr. Harvey's false statements and misrepresentations in their decisions (as well as his concealment of the forensic fraud and its correction.) Mr. Dolan has refused to acknowledge what would be obvious to any reasonable person and has ignored my multiple requests to disclose the perjury and presentation of false evidence to the board and SJC as would be required by basic ethics as well as the law. The law is clear on false statements and misrepresentations; they must

be corrected and remediated and Mr. Dolan's failure to address these issues for the past 4-months has caused ongoing harm to me and my family. In light of the clear facts here his behaviour is inexcusable. As an officer of the court he has a clear duty of candor in this matter.

It has also been two weeks since I filed a public records request for documents pertaining to the obvious forensic fraud and perjury (see below) but to date I have received no response. It is my understanding a response must be received within 10-days. I want to make it clear that this records request is for **any documentation** that the documents showing fraud and perjury **were ever presented to the board by Mr. Harvey or before the board prior to or at the February 6, 2013 hearing suspending my medical license.**

I believe it is clear that Mr. Harvey concealed these documents and am asking for documents that either proves or disproves this. I believe this to be a rather straightforward and simple request.

Sincerely,

Michael Langan

Most of your communications do not articulate requests for records or reasonably describe a public record sought.

The Board is unable to provide responsive records because many of your communications do not articulate requests for records and those that do articulate requests contain leading language. To the extent that you make reference to certain records, some of which you attached to your communications, the Board provided these records to you on August 25, 2017, pursuant to the Fair Information Practices Act, G.L. c. 66A. Please note that the Supervisor of Public Records has already addressed the Board's production of August 25, 2017. See Determination of the Supervisor of Public Records in Docket No. SPR17/1273 (September 25, 2017) ("In light of the Board's September 14th response in which it demonstrates which responsive records have been provided, as well as its explanation regarding the Board's role as factfinder, I will consider this appeal closed").

Pursuant to G.L. c. 66, § 10(a), an agency need not furnish a copy of a public record in response to a request unless "the request reasonably describes the public record sought[.]" Your first and second communications do not articulate any requests for records. Your third communication contains only the request "Please provide any and all records showing that Mr. Harvey provided these documents to the Board for the February 6, 2013 Board hearing and any subsequent hearings." These records were previously provided to you on August 25, 2017, pursuant to the Fair Information Practices Act ("FIPA"), G.L. c. 66A. Your fourth communication contains only the request "I am requesting the Board provide records showing precisely how the 'Board, as factfinder' found that I made statements in this document that does not contain these statements and how they determined these 3 statements as factual findings when they do not, in fact, exist. Please provide records showing precisely what 'facts' Mr.

Harvey presented to the Board. . . . Please provide any documentation where I contradict myself and where I state in writing I 'did not attend this group until September 2012.'" Your fifth communication contains only the request "Please provide records that show how the board, as 'factfinder' determined false findings of fact and what Harvey presented." Your sixth communication contains only the request "I want to make it clear that this records request is for any documentation that the documents showing fraud and perjury were ever presented to the board by Mr. Harvey or before the board prior to or at the February 6, 2013 hearing suspending my medical license." The Board cannot respond to these requests because they contain leading language. However, on August 25, 2017, you were provided with copies of all records available to you pursuant to FIPA which were presented to the Board at the February 6, 2013, adjudicatory session in which your license suspension was discussed.

The Board has properly responded to your requests.

Each of your communications concerns your appearance at an adjudicatory session held on February 6, 2013. Following your appearance at this adjudicatory session, the Board issued an Order indefinitely suspending your license to practice medicine. Your license remains suspended at this time. Because an adjudicatory session of the Board is "a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it," it does not constitute a "meeting" as defined in the Open Meeting Law, G.L. c. 30A, § 18. Consequently, the adjudicatory session on February 6, 2013, was closed to the public and any documents provided to the Board at the adjudicatory session are not public records. Nevertheless, on August 25, 2017, in response to a request you filed on August 24, 2017, the Board provided you a copy of all non-privileged records presented to the Board at or in preparation for the February 6, 2013, adjudicatory session. These records were provided to you pursuant to your unique right of access under FIPA. In addition to this, on July 31, 2017, in response to a request you filed on July 28, 2017, you were provided with the minutes of the February 6, 2013, adjudicatory session. There are no further records in the Board's possession, custody, or control relating to the February 6, 2013, adjudicatory session that are available to you under the Public Records Law or FIPA. The Supervisor has already determined that the Board properly responded to your previous requests for the same records. *See* Determination of the Supervisor of Public Records, Docket No. SPR17/1273 (September 25, 2017).

The records provided to you in the Board's August 25, 2017, production were copied from the official "Board package" for February 6, 2013. The Board package is the set of documents presented to the Board for review at a meeting or adjudicatory session held on a particular date. Each Board member in attendance is provided with a copy of the Board package for that date. Thus, all records provided to you in the August 25, 2017, production were before each Board member in attendance at the February 6, 2013, adjudicatory session.

Please be advised that pursuant to G.L. c. 66, § 10(c), "[i]f the supervisor of records determines that [a] request is part of a series of contemporaneous requests that are frivolous or designed to intimidate or harass, and the requests are not intended for the broad dissemination of information to the public about actual or alleged government activity, the supervisor of records may grant a longer extension or relieve the agency or municipality of its obligation to provide copies of the records sought." *See also* 950 CMR 32.06(4)(f). Because the Board has already

provided you with all records available to you regarding the February 6, 2013, adjudicatory session, and the Supervisor has previously determined that the Board properly responded to your requests, continued requests for these same records may be deemed frivolous and/or designed to intimidate or harass.

The Supervisor may not review your appeal.

To the extent that any of your communications constitutes an appeal to the Supervisor, the Supervisor may not review your appeal because you have not requested public records. As discussed above, the records provided to you relate to an adjudicatory session that did not constitute a “meeting” as defined in the Open Meeting Law and, consequently, are not public records because they are “specifically or by necessary implication exempted from disclosure by statute.” G.L. c. 4, § 7(26)(a); *see also* G.L. c. 30A, § 18. Moreover, the February 6, 2013, adjudicatory session was held to determine whether you had violated your previous Letter of Agreement with the Board and, if so, what action the Board should take as a result of said violation. The documents provided to the Board for its consideration at this adjudicatory session contained personal information about you, including but not limited to drug and alcohol use testing results, records of your attendance or non-attendance at substance addiction support groups, and psychological evaluation reports. These are all exempt from production as public records because they constitute “medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.” G.L. c. 4, § 7(26)(c). These records therefore are not available to members of the public who may request them pursuant to the Public Records Law, G.L. c. 66, § 10.

Although the records relating to the February 6, 2013, adjudicatory session are not public records as defined in G.L. c. 4, § 7(26), the Board provided them to you on August 25, 2017, pursuant to FIPA because they contain personal data for which you are the data subject. *See* G.L. c. 66A, § 2(i). FIPA provides you a unique statutory right of access to these records separate from the Public Records Law. Pursuant to 950 CMR 32.06(1)(g), “a request for records in which an individual, or representative of the individual has a unique right of access by statutory, regulatory, judicial or other applicable means, shall not be considered a request for public records” and, pursuant to 950 CMR 32.08(1)(a), the appeals process to the Supervisor “shall not apply to records in which an individual, or a representative of the individual, has a unique right of access to the record through statutory, regulatory, judicial or other applicable means.” Therefore, due to your unique right of access to these records through FIPA, your requests do not constitute requests for public records and the Supervisor may not review your appeal of the Board’s response.

Your appeal is not ripe for review.

Notwithstanding the above, your appeal to the Supervisor is not ripe for review at this time. The first of your communications to articulate a request was your third communication, which you sent on November 21, 2017 at 10:34 p.m. Pursuant to 950 CMR 32.06(2)(e), “a written request for records, regardless of the form of delivery, will be deemed received on the first business day following receipt the request by the records access officer[.]” Your request was

therefore deemed received on November 22, 2017. Pursuant to G.L. c. 66, § 10(a), an agency must respond to a request “not later than 10 business days following the receipt of the request[.]” Accounting for the Thanksgiving holiday on November 23, the tenth business day following the receipt of your request is December 7, 2017. To the extent that your sixth communication, dated December 4, 2017, constitutes an appeal of a non-response to a records request, this appeal is not ripe because the statutory response time has not yet expired.

Records access officers are not required to answer questions.

Although you refer to each of your communications as a “public records request,” most of what you have written does not actually articulate requests for records. Instead, a large portion of your communications consists of demands for responses to questions. As the Supervisor has previously informed you, “a public employee is not required to answer questions, or do research, or create documents in response to questions.” Determination of the Supervisor of Public Records, Docket No. SPR17/1273 (September 25, 2017). *See also* G.L. c. 66, § 10(a); 32 Opp. Atty. Gen. 157, 165 (May 18, 1977).

You are reminded once again that you were personally present at the February 6, 2013, adjudicatory session and had the opportunity both to address the Board directly and to submit your own documentation into the record before the Board made findings or issued an Order. You are also reminded that you had the right to appeal the Board’s findings and Orders to the courts and that you in fact did so. You are further reminded that the courts have consistently upheld the Board’s Orders relevant to your matter.

The Board now considers your requests closed.

If you believe the agency has violated G.L. c. 66, § 10, pursuant to G.L. c. 66, § 10A, and 950 CMR 32.08(1), you may submit an appeal to the Supervisor of Public Records in the Office of the Secretary of the Commonwealth or seek judicial review by commencing a civil action in Suffolk Superior Court.

Sincerely,



Gerard F. Dolan
Assistant General Counsel
Records Access Officer

cc: Supervisor of Public Records (by email)