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Executive Office of Health and Human Services

Attn: John Polanowicz, Secretary of Health and Human Services
One Ashburton Place
11th Floor
Boston, MA 02108

Board of Registration in Medicine

Attn: Robert Harvey, Esq.
cc: Kathleen S. Meyer, Candace L. Sloane, Gerald. B. Healy, Marianne E. Felice
200 Harvard Mill Sq., Suite 330
Wakefield, MA 01880

Physician Health Services, Inc.

Attn: Luis Sanchez, Director
cc: Linda Bresnahan, Director of Program Operations,
cc: Debra A. Grossbaum,
860 Winter Street
Waltham, MA 02451

Re: BRM and PHS Must Offer Secular Alternatives to AA/NA in Disciplinary Contracts

Ladies and Gentlemen:

I am writing to alert you to a serious separation of church and state concern. It has recently come to our attention that the State Board of Registration in Medicine (“BRM”) required a doctor by the name of Michael Langan to attend 12-step substance abuse treatment programs (Alcoholics Anonymous (“AA”) and Narcotics Anonymous (“NA”)) as a condition of keeping his medical license. Both AA and NA are inherently religious programs. Mr. Langan was not offered the choice of a secular program. BRM’s failure to inform doctors in need treatment of secular alternatives to religious 12-Step programs, in the context of the coercive state power involved, unconstitutional.

The American Humanist Association (“AHA”) is a national nonprofit organization with over 10,000 members and 20,000 supporters across the country, including in Massachusetts. Our purpose is to protect one of the most fundamental principles of our democracy: the mandate requiring separation of church and state embodied in the Establishment Clause of the First Amendment.

It is our understanding that in December 2011 BRM entered into a letter of agreement (“LOA”), drafted by Physician Health Services, Inc. (“PHS”), with Langan, ordering him to participate “in a minimum of three 12-step meetings per week” and to develop an “active 12-step sponsor relationship” or lose his medical license. Langan was instructed to report his progress to PHS. In a letter dated December 22, 2011, describing the terms of the LOA, BRM warned that he “shall follow all PHS recommendations within seven (7) days and understands that, should he decline to do so

(which includes an attempt to negotiate and/or dispute PHS' recommendation), his license may be immediately suspended." Langan was never offered secular alternatives. Langan immediately objected to PHS stating that AA is not consistent with his own "beliefs and spirituality" and that admitting he is "powerless over something is the antithesis of my belief system." Langan asked for an alternative to 12-step programming. PHS denied his request. Langan reached out to a doctor who runs a local secular program and she accepted him into the physicians support group. Langan asked PHS if he could attend that program instead of AA but was told no. On November 8, 2012, BRM sent a letter to Langan's attorney indicating that Langan breached his LOA for failing to attend the 12-step meetings. On February 6, 2013, BRM suspended Langan's license for failing to attend the meetings.

The federal courts have made clear that for "the government to coerce someone to participate in religious activities strikes at the core of the Establishment Clause of the First Amendment." *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007). It is "indisputable that the 12 Steps of Alcoholics Anonymous are religious in nature." *Miner v. Goord*, 354 Fed. Appx. 489, 491 (2nd Cir. 2009). The state may only require participation in such religious treatment programs if a "secular alternative . . . is provided." *Id.* at 492 (citing *Griffin*, 88 N.Y.2d at 677). The courts have unanimously concluded that the Establishment Clause is violated when the state conditions a benefit upon attendance of AA/NA without offering secular alternatives.¹

In *Kerr v. Farrey*, 95 F.3d 472, 474 (7th Cir. 1996) the Seventh Circuit held that requiring an inmate to attend NA meetings for parole eligibility violated the Establishment Clause.² In that case, NA was the only program available and the inmate, like Langan and other physicians facing disciplinary charges in Massachusetts, was "subject to significant penalties if he refused to attend the NA meetings." *Id.* at 479.³ The Second Circuit reached a similar conclusion in *Warner*, 115 F.3d 1068 (2nd Cir. 1997), finding a probation condition requiring attendance at AA meetings violated the Establishment Clause. The court based its decision on the fact that "[n]either the probation recommendation, nor the court's sentence, offered Warner any choice among therapy programs," but "directly recommended A.A. therapy to the sentencing judge, without suggesting that the probationer might have any option to select another therapy program, free of religious content." *Id.* at 1075.

The state cannot put the anyone in the position of having to ask for the secular alternatives. Rather, the duty is on the State (or its agents) to make the option known and available. See *Bausch v.*

¹ See *Inouye*, 504 F.3d at 710 (9th Cir. 2007); *Warner v. Orange County Dep't of Probation*, 115 F.3d 1068, 1074-75 (2nd Cir. 1997) (unconstitutional to impose participation in AA/NA as a probation condition); *affirmed*, 173 F.3d 120, 121 (2nd Cir. N.Y. 1999), *cert. denied sub nom.*, 528 U.S. 1003 (1999); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7th Cir. 1996); *Alexander v. Schenk*, 118 F. Supp. 2d 298, 301-02 (N.D.N.Y. 2000); *Warburton v. Underwood*, 2 F. Supp. 2d 306, 318 (W.D.N.Y. 1998); *Ross v. Keelings*, 2 F. Supp. 2d 810, 817-18 (E.D. Va. 1998); *Messere v. Dennehy*, 2007 U.S. Dist. LEXIS 65529, *17-18 (D. Mass. Aug. 8, 2007); *Arnold v. Tenn. Board of Paroles*, 956 S.W.2d 478, 484 (Tenn. 1997) (where program is religious and is the only one available, forced participation violates Establishment Clause); *Griffin*, 88 N.Y.2d at 691-92 (same); See also, *Armstrong v. Beauclair*, 2007 U.S. Dist. LEXIS 24008 (slip op.) (D. Idaho 2007) (striking down AA/NA requirement as parole condition where no secular alternatives were offered); *Turner v. Hickman*, 342 F. Supp. 2d 887, 895-97 (E.D. Cal. 2004) (same); *Nusbaum v. Terrangi*, 210 F. Supp. 2d 784, 789-91 (E.D. Va. 2002); *Bausch v. Sumiec*, 139 F. Supp. 2d 1029 (E.D. Wis. 2001); *Rausser v. Horn*, 1999 U.S. Dist. LEXIS 22583, at *19-*20 (W.D. Pa. Nov. 2, 1999) (coerced participation in NA/AA violated Establishment Clause), *rev'd on other grounds*, 241 F.3d 330 (3d Cir. 2001); *Pirtle v. Cal. Bd. of Prison Terms*, 611 F.3d 1015, 1024 (9th Cir. 2010) (noting that requiring prisoner to attend AA as a condition of parole would violate the First Amendment). Cf. *In re Garcia*, 106 Wn. App. 625, 634-635 (Wash. Ct. App. 2001) (agreeing that "mandating attendance at [A.A.] classes" violates the Establishment Clause but finding no violation where "alternative classes without religious-based content were provided").

² Like Langan, the inmate regarded NA's "deterministic view of God to be in conflict with his own belief about free will."

³ Specifically, Langan faced suspension of his medical license and was warned by BRM that disputing or even attempting to negotiate the terms of his contract forcing him to attend such meetings alone could result in immediate suspension.

Sumiec, 139 F. Supp. 2d 1029, 1034 (E.D. Wis. 2001) (ruling that the Establishment Clause was violated when the state presented a 12-step program as a condition of parole, even though plaintiff may not have objected, because the religious program “was presented to plaintiff as the only available and feasible alternative to revocation, he faced the ‘force of law’ and the ‘threat of penalty.’”).⁴ As the court in *Bausch* noted, an individual cannot “be considered to have a choice when the available options are unknown to him.” *Id.* at 1035. Indeed, it is the “government’s obligation always to comply with the Constitution, rather than to do so only upon request.” *Id.* As is the case here, the court emphasized the unequal bargaining power of the respective parties, noting that a parolee is “in no position to request concessions or to propose alternatives.” *Id.*

In light the clear command of law that those who may coerce anyone into substance abuse treatment must inform them of secular alternatives, BRM clearly needs to change its policies and practices to bring them in line with the Constitution. Secular programs must be presented on equal footing with 12-Step ones in every regard, including discussions with doctors and in all BRM materials presented or made available to them.⁵

If you not aware of local secular programs, I can recommend SMART Recovery’s group-based program. It is a resource for addiction recovery recognized by the American Academy of Family Physicians, the Center for Health Care Evaluation, the National Institute on Drug Abuse (NIDA), U.S. Department of Health and Human Services, and the American Society of Addiction Medicine.⁶ SMART Recovery offers group-based meetings throughout Massachusetts and the greater New England area on a frequent basis.⁷

In the interest of avoiding any potential litigation, please notify me in writing about the steps you are taking to remedy this constitutional violation. Thank you for your time and attention to this matter.

Sincerely,

William J. Burgess, Esq.
Appignani Humanist Legal Center
American Humanist Association

⁴ See also *Warner*, 115 F.3d at 1075 (finding it coercive to sentence probationer to AA “without suggesting that the probationer might have any option to select another therapy program, free of religious content”); *Rausser*, 1999 U.S. Dist. LEXIS 22583, at *19 (W.D. Pa. 1999); *Griffin*, 88 N.Y.2d 674; *Arnold*, 956 S.W.2d at 484 (Tenn. 1997).

⁵It is our understanding that none of the programs currently listed on the PHS website are secular. See http://www.massmed.org/Content/NavigationMenu6/HelpingYourselforaColleague/Physician_Peer_Supp.htm. Additionally, the State Health and Human Services website, which provides a list of “substance abuse services,” is comprised solely of AA/NA programs and does not list any secular alternatives. See <http://www.mass.gov/eohhs/consumer/disability-services/services-by-type/deaf-hh/substance-abuse-services/recovery-support-meetings.html>

⁶ See <http://www.smartrecovery.org/>

⁷ See <http://www.smartrecovery.org/meetings.html>