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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 be 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.