



June 6, 2013

**Executive Office of Health and Human Services**

Attn: John Polanowicz, Secretary of Health and Human Services  
One Ashburton Place  
11<sup>th</sup> 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: Request for PHS Policy Change to Explicitly Make Secular Alternatives Known and Available**

Ladies and Gentlemen:

In response to our letter to you dated April 8, 2013, a copy of which is attached for your convenience, we received a letter from PHS, dated April 16, 2013, indicating that PHS agrees that it must make secular programs available to those facing disciplinary action by the BRM. We appreciate these efforts to ensure that substance abuse treatment programs for physicians operate in compliance with the Constitution, which requires that no one be coerced into participating in any religious program, such as AA, NA or other 12-Step programs.

In order to improve this system as it operates in Massachusetts, however, this letter proposes a few changes that will bring the system fully in line with best practices. We request that PHS amend its official policy as to this issue to make it more explicitly clear to participants that secular programs, *expressly identified as such*, are available.

According to the PHS letter, it is PHS' policy to include the following provision in PHS Substance Use Monitoring Contracts:

**9. SUPPORT GROUPS**

I will attend Alcoholics Anonymous, Narcotics Anonymous, or other support

groups throughout the term of this contract. My choice of support group is subject to the approval of the director of PHS.

While the above language does leave open the possibility that one need not attend an AA or NA program, it does not make it clear to someone who is unaware of the nature of those programs that they are indeed inherently religious in nature. It also does not explain that “other support groups” includes specifically non-religious groups. SMART Recovery groups, for example, have already been approved by PHS, but this is not expressly stated in the contract language in the way that AA and NA are.

Given this lack of specificity in the policy’s language, especially in light of the unequal bargaining power of the doctor facing suspension and the PHS and the BRM provisions discouraging any sort of negotiating with the PHS, the current policy does not adequately solve the coercion problem discussed in our previous letter. It should be clear to the reader both that AA and NA are religious in nature and that secular alternatives are approved and available.

We feel that the change to the language of the policy shown below in bold red text would solve this problem:

#### 9. SUPPORT GROUPS

I will attend Alcoholics Anonymous, Narcotics Anonymous, **or a secular alternative to these faith-based programs, such as SMART Recovery and Rational Recovery,** or other **approved** support groups throughout the term of this contract. My choice of support group is subject to the approval of the director of PHS.

In addition, the “independent evaluation” list given to physicians should not be limited to Marworth Treatment Center, Hazeldon, and Bradford Health Services, all of which are expressly and exclusively 12 Step facilities. This list should include a facility that operates in a completely secular manner, also explicitly identified as one that does so.

We thank you for your time and attention to this matter. Please inform us of any policy changes you make in response to this letter.

Sincerely,

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

April 8, 2013

**Executive Office of Health and Human Services**

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One Ashburton Place  
11th Floor  
Boston, MA 02108

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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 (2<sup>nd</sup> 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.<sup>1</sup>

In *Kerr v. Farrey*, 95 F.3d 472, 474 (7<sup>th</sup> Cir. 1996) the Seventh Circuit held that requiring an inmate to attend NA meetings for parole eligibility violated the Establishment Clause.<sup>2</sup> 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.<sup>3</sup> The Second Circuit reached a similar conclusion in *Warner*, 115 F.3d 1068 (2<sup>nd</sup> 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.*

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<sup>1</sup> See *Inouye*, 504 F.3d at 710 (9<sup>th</sup> Cir. 2007); *Warner v. Orange County Dep't of Probation*, 115 F.3d 1068, 1074-75 (2<sup>nd</sup> Cir. 1997) (unconstitutional to impose participation in AA/NA as a probation condition); *affirmed*, 173 F.3d 120, 121 (2<sup>nd</sup> Cir. N.Y. 1999), *cert. denied sub nom.*, 528 U.S. 1003 (1999); *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7<sup>th</sup> 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 (9<sup>th</sup> 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").

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

<sup>3</sup> 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.’”).<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> SMART Recovery offers group-based meetings throughout Massachusetts and the greater New England area on a frequent basis.<sup>7</sup>

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

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<sup>4</sup> 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).

<sup>5</sup>It 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](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>

<sup>6</sup> See <http://www.smartrecovery.org/>

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