

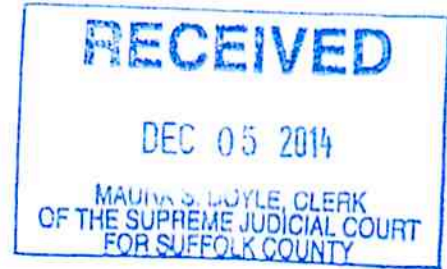
Commonwealth of Massachusetts

Supreme Judicial Court

SUFFOLK SS

Civil Action No. SJ 2014-0434

Bharanidharan Padmanabhan MD PhD)
)
v)
)
Division of Administrative Law)
Appeals)



Plaintiff's Opposition to Defendant's Motion to Dismiss
Plaintiff's Petition for Certiorari Review

PRELIMINARY STATEMENT

The Attorney General's Motion to Dismiss continues this AGO's, the Board of Registration in Medicine's and (Defendant of Record) DALA Magistrate Bresler's conscious disregard for substantive due process and the Rules of this Honorable Court. In it's Motion this AGO adversely comments on Plaintiff's legitimate choice of grammatical constructs. This level of attention to Plaintiff's Petition forces one to conclude that this AGO deliberately chose to disregard this Honorable Court's cardinal Rule ordering the exclusive use of monospaced typefaces and the explicit prohibition against proportional typefaces in all written pleadings. Even readers of the Boston Globe know

this rule. John Ruch, Ideas, Boston Globe November 2nd, 2014.
Given the close attention paid to Plaintiff's Petition there is no way the AGO's flagrant flouting of the Rules was inadvertent or unintentional. The Defendants and this AGO as always consider themselves above all laws.

In Matthews v Commissioner of Corrections 449 Mass. 1021 (2007) this Honorable Court explained in significant detail the importance of a monospaced typeface and ordered --

"Self-represented litigants are required to follow the rules of appellate procedure...("Briefs ... not in substantial compliance with these rules shall not be received unless the appellate court or a single justice shall otherwise order" [emphasis added])... ("Where [a litigant] is unable to comply with the technical requirements of Rule 20, it would be advisable to move in the appellate court in advance for leave to file a non-conforming brief rather than risk rejection of the filing at a point where time deadlines may be about to expire"). (Emphasis added.)"

These clearly apply equally to this AGO. Defendant's Petition should be rejected on this basis alone as deliberately non-conforming and untimely.

It also does not escape attention that this AGO has presented the Motion to Dismiss from the perspective of BORIM exclusively and not that of DALA Magistrate Kenneth Bresler (the Defendant of Record) whose decision is the basis of Plaintiff's Petition. This AGO deliberately avoided mention of Magistrate Bresler's stated refusal to even read Plaintiff's pro se Motion before dismissing it, a refusal that is in the official transcript. This AGO also deliberately avoided discussion of the fact that BORIM was forced to declare to Magistrate Bresler that it's anonymous alleged expert, whose opinion forms the entire statement of allegations against the Plaintiff, was unwilling to testify under oath, a declaration that had no impact on Magistrate Bresler whatsoever and gives the lie to this AGO's claim that Plaintiff is assured of credible reasonable constitutional due process within the DALA system and from BORIM. Even worse, this AGO declares that this Honorable Court has no powers of superintendency over BORIM despite glaring errors in proceedings, dismissing both G.L.c. 249, §4, and this Honorable Court's own decision in Hoffer.

Plaintiff thus files this Opposition to explain to this Honorable Court why AGO's Motion on behalf of BORIM should be denied, especially given this AGO's own dishonorable involvement

in the deliberately long-drawn-out retaliation against the Plaintiff, a public healthcare employee officially protected from whistleblower retaliation by the will of the Legislature, G.L.c. 149, §187, which fully REQUIRES this AGO to enforce that law.

DIRECT INVOLVEMENT OF THIS AGO

- 1 In March of 2013, Plaintiff Dr Bharani respectfully requested Attorney General Martha Coakley in writing to enforce the will of the Legislature enshrined in G.L.c. 149, §187, and investigate the retaliation he continues to face from Cambridge Hospital via BORIM as well as via MassHealth, a government agency that, on behalf of Cambridge Hospital, threatened Dr Bharani with a fake audit. Petition Exhibit 1.
- 2 AG Coakley to date has consciously ignored that written criminal complaint. Receipt of this complaint was signed for by this AGO. Petition Exhibit 2.
- 3 Plaintiff Dr Bharani also reported these crimes to others within the Executive Branch including assistant attorney general Steven Hoffmann (in person on May 18th, 2013) and the Office of Governor Deval Patrick, whose aide Matthew Giancola

responded by telling Dr Bharani in person -- "Ensuring good governance is NOT the obligation of this Governor's Office."
February 25th, 2013.

- 4 This AGO then confirmed in writing to Plaintiff Dr Bharani what he already suspected; that this AGO has consciously violated the enshrined will of the Legislature and has not investigated one single act of retaliation against protected public health employees or brought charges against a single hospital for persecuting a whistleblower. Petition Exhibit 3.
- 5 Former Inspector General Gregory Sullivan issued a detailed public statement in October, 2014, documenting that AG Coakley had had actively driven away the whistleblower who documented public corruption involving Speaker DiMasi.
- 6 Despite being informed by IG Sullivan that \$1.8 Million had corruptly changed hands (14% of a \$13 Million contract), AG Coakley insisted it had not crossed "the bright line of criminality" and refused to enforce the law. Happily, unlike this AGO, the US Attorney's Office is not opposed to prosecuting public corruption, Mr DiMasi is now deservedly in

prison and Stuart Lecky, the honest whistleblower actively spurned by this AGO, has been vindicated. Petition Exhibit 4.

7 It should also be brought to the attention of this Honorable Court that this AGO refused to help yet another set of honest whistleblowers, cancer researchers funded by the National Cancer Institute to the tune of \$40 million, who formally requested enforcement action from this AGO. These honest scientists were not only pointedly spurned, this AGO actively supported the party the scientists blew the whistle about. As a result of this AGO yet again supporting corruption and consciously acting against whistleblowers, these scientists have all lost their jobs, their research has been blocked and the public interest has been deliberately harmed. Petition Exhibit 5.

8 This Honorable Court thus has before it three separate publicly documented examples from just this past year where this AGO made crystal clear it's total unwillingness to support people who blew the whistle on waste, fraud and abuse, it's blatant intent to let criminals walk free and it's undeniable continuing contempt for the enshrined will of the Legislature.

- 9 When queried by this Honorable Court, this AGO shall, by it's own written admission, be unable to point to a single case where it followed the law and enforced G.L.c. 149, §187.
- 10 This AGO has also refused to prosecute all within the Department of Public Health and the Board of Pharmacy who knowingly allowed 64 innocents to die needless preventable painful deaths from fungal meningitis.
- 11 The Boston Globe has painstakingly reported that Boards associated with DPH knowingly flouted long-established rules with nary any concern about punishment from this AGO. This AGO then proved it again by issuing a statement to the Boston Globe actually praising DPH instead of holding it responsible for violating our laws -- "Attorney General Martha Coakley's office, which is charged with enforcing the open meetings law, praised DPH for undertaking the review. "It is a positive step that DPH has taken a deeper look at this important issue," said Brad Puffer, a Coakley spokesman." Review shows health licensing boards voted improperly, Todd Wallack, Boston Globe, November 29th, 2014.

- 12 It is no different from what this AGO intended to do about the criminal actions of Speaker DiMasi -- publish a report that "did not include indictments but instead identified potential changes in law to improve future enforcement and identify "lessons learned."” Petition Exhibit 4.

- 13 Despite this clear and documented history of total bad faith and corruption on the part of this AGO and the Boards it is required to police, this AGO actually demands that this Honorable Court fully ignore it's powers of superintendency over government Boards, including the Board of Registration in Medicine, despite the legislated mandate that this Honorable Court step in when there is clear evidence of proceedings not in accordance with the common law and the Constitution and where the safety of the people is at proven risk from leaving government Boards to the nonexistent oversight of this AGO.

- 14 Given that this AGO is hand in glove with the corrupt and lawless it is not a surprise that the last thing this AGO desires is sunlight.

15 Given that this AGO has consciously supported for at least 2 years the unlawful retaliation against Plaintiff Dr Bharani by Cambridge Hospital via BORIM and MassHealth, and refused to act against Cambridge Hospital, BORIM and MassHealth despite the explicit wish of the Legislature, it is also not a surprise that this AGO has now acted to prevent oversight by this Honorable Court.

THIS AGO DELIBERATELY MISLED THIS HONORABLE COURT

16 In it's Motion to Dismiss, this AGO states that Plaintiff Dr Bharani has failed to state a claim upon which relief may be based. This AGO further states in a footnote that -- 'Dr Padmanabhan contends that Dr Rachel Nardin, Chief of Neurology at Cambridge Health Alliance, "retaliated" against him and used "false charges" to have him terminated'-- without mentioning to this Honorable Court that Cambridge Hospital's own Fair Hearing Panel had heard the evidence under oath over three days, exonerated Plaintiff Dr Bharani of Dr Rachel Nardin's false charges and officially declared there was NO CREDIBLE EVIDENCE to support his termination. Defendant's Motion to Dismiss p2.

17 Deliberately withholding that fact, which this AGO has officially known for two years now, and using quotation marks around “retaliated” and “false charges,” was intentionally misleading and fully intended to impugn the credibility and character of Plaintiff Dr Bharani in order to deliberately give this Honorable Court the impression that he is part of the tin foil hat brigade. It is in keeping with the absolute bad faith that characterizes this AGO.

18 There is no way this AGO can truthfully claim to this Honorable Court that it was unaware that Plaintiff Dr Bharani had already been exonerated and that Dr Nardin’s “false charges” had already been proven false. This AGO cannot claim that it inadvertently misspoke.

19 Furthermore, this AGO wrote to this Honorable Court that “The Board initiated disciplinary proceedings based on the same “false charges” of patient harm made against him at Cambridge Health Alliance. The Board referred the matter to DALA for an adjudicatory hearing.” Defendant’s Motion to Dismiss p2.

20 Once again this AGO has deliberately misled this Honorable Court. Cambridge sent the false charges to BORIM first in November 2010. In November 2011, after Plaintiff Dr Bharani had been exonerated, Cambridge Hospital further perjured to a government Board that Plaintiff Dr Bharani had “voluntarily resigned in order to avoid an investigation” when he had not resigned at all. Resignation implies guilt. This false charge may still be seen on Dr Bharani’s public profile on the BORIM website. Petition Exhibit 6.

21 BORIM held it’s first Complaints Committee Hearing on this Docket (2010-426) under oath in January 2013, 2 years 2 months and 13 days after the Docket was opened, despite Plaintiff Dr Bharani repeatedly requesting a speedy resolution of the matter given that the charges had already been proved false and that the public pendency of the Docket at BORIM blocked him from earning a living. The vast majority of people do not know that as long as the Docket is open and the false charge displayed on the Board’s website, Dr Bharani may be refused when he applies to join a hospital or get credentialed with an insurance company because he is considered damaged goods. Each such refusal will trigger a fresh complaint to the Board. The Board has kept Docket

2010-426 open for 4 years now, waiting for that to happen,
given that at some point Dr Bharani should run out of cash
and would have to apply somewhere. This is a massive corrupt
abuse of the Board's power and directly blocks Plaintiff Dr
Bharani's right to earn a living. While his License remains
unmolested 4 years out, he cannot get paid. This Honorable
Court is the sole route to remedy. Plaintiff Dr Bharani has
continued to treat his patients without any charge for 4
years.

22 Despite Plaintiff Dr Bharani presenting hard evidence under
oath at the Hearing in January, 2013, and proving that BORIM
was unlawfully relying verbatim on a report commissioned and
paid for by Cambridge Hospital (whose anonymous author is
unwilling to testify under oath), BORIM did not act till May,
2014, when it simply repeated the Complaints Committee
Hearing, 16 months after the first one, with nothing to show
for the delay. Board Counsel James Paikos was forced to admit
BORIM maintained direct communications with Dr Rachel Nardin
at Cambridge Hospital but not with a single patient.

23 It was only in May, 2014, after BORIM satisfied itself that
Plaintiff Dr Bharani had not been broken sufficiently by

being forced to live without any income for 4 years, had still not hanged himself (as Dr Ellen Malsky was hounded by BORIM into doing, leaving behind two young children) and was steadfastly refusing to sign a secret Plea Agreement, that it finally referred the matter to DALA.

(Dr Malsky hanged herself after capitulating to BORIM's secret Plea Agreement just as Elizaveta Voronyanskaya hanged herself after giving up the Gulag manuscript to the KGB.)

24 At DALA, Magistrate Bresler, despite an obligation to remain impartial and uphold justice, refused to dismiss the false case despite BORIM being forced to declare that the alleged expert, anonymous to this day, whose testimony underlies BORIM's allegations, was unwilling to testify under oath in open court. Magistrate Bresler also declared he could not bother to read Plaintiff Dr Bharani's pro se Motions.

25 If Plaintiff Dr Bharani had capitulated to BORIM's administrative thuggery (on behalf of a hospital and without any complaints from patients) and had signed the offered secret Plea Agreement, BORIM would not have had to declare in open court that their hitherto anonymous alleged expert was unwilling to testify under oath.

26 This blatant thuggery is the administrative proceeding that this AGO now wishes this Honorable Court to defer to. This corrupt show trial is the administrative proceeding that this AGO is promoting as a credible “alternate remedy.”

SJC’S OWN RULING

27 In support of it’s argument, this AGO has quoted numerous cases none of which applies because they involve other Boards where corrupt bad faith and lawlessness is not assured as in the case of BORIM. Only one of the listed cases specifically relates to BORIM and was a case where BORIM was defended by this same AGO. That case, Hoffer v. Board of Registration in Medicine, 461 Mass 451, 456 (2012), lays out the causes that a plaintiff relying on the Certiorari statute must sufficiently allege, namely ‘(1) a judicial or quasi judicial proceeding, (2) from which there is no other reasonably adequate remedy, and (3) a substantial injury or injustice arising from the proceeding under review.’

28 This Honorable Court has already declared that BORIM proceedings are quasi judicial. The Hearings held at BORIM and DALA had testimony elicited under oath. BORIM refused to identify it’s alleged witness at 3 such Hearings over 1351

days and instead attempted to coerce Plaintiff Dr Bharani to sign a secret Plea Agreement. Magistrate Bresler has already shown this Honorable Court that at DALA even an anonymous government witness worried about a perjury conviction and the total absence of evidence is not enough to prevent the perversion of the course of justice. It is thus assured that the DALA and Board proceedings that this AGO writes about so glowingly as a credible 'alternate remedy' would end in a guilty verdict after a classic show trial regardless of the evidence, as irreparable harm to whistle-blowing Plaintiff Dr Bharani has been BORIM's sole goal. There is no legitimate reason this Docket should have been sent to DALA 1351 days after it was begun, given BORIM's (false) claim that Plaintiff Dr Bharani presents an IMMINENT danger to the public and should be driven out of medicine completely. The delay by BORIM was intentional. The reality is Plaintiff Dr Bharani did and continues to do the right thing for the people of Massachusetts and is being crushed for it.

29 From all the evidence presented -- the deliberate malfeasance by BORIM over the past 4 years, BORIM's clear intention to ensure Plaintiff Dr Bharani is fully crushed financially and professionally, the use by BORIM of consciously fake charges

and a report commissioned and paid for by Cambridge Hospital, it's 4-year-long pursuit of an already exonerated physician whose patients have NOT complained to BORIM, as well as the prior involvement of this AGO itself in this case in flagrant contravention of the explicit will of the Legislature -- there is absolutely no doubt that refusing Certiorari would cause substantial irreparable injury and injustice and there indeed is no reasonable adequate alternate remedy. All three causes specified in Hoffer are fully met for a review by this Honorable Court.

30 It remains fascinating that this AGO has declined to specify why it feels the present Petition for Certiorari does not meet the specific causes defined by this Honorable Court in a case this AGO should know intimately, a case that established G.L.c. 249, §4, as a valid route available to physicians when BORIM procedures are 'so egregious, so outrageous it may fairly be said to shock the contemporary conscience' and given that Plaintiff has relied on this specific law.

31 This Honorable Court has already ruled that physicians may avail of G.L.c. 249, §4, to seek it's superintendency. It is yet another example of pure bad faith on the part of this AGO

for it to then claim that Plaintiff Dr Bharani may not avail of this route without being crushed by BORIM first, despite the blatant violations of procedure at BORIM and DALA that are repugnant to both the common law and the founding principles of this Republic and relief from which is part and parcel of the route provided by G.L.c. 249, §4.

SUMMARY

32 Refusing Certiorari would hand the very life of Plaintiff Dr Bharani back to the people who have been pressuring him to capitulate to corruption in the dark. Refusing Certiorari would send a chilling message to other honest physicians that when they blow the whistle on waste, fraud and abuse within Massachusetts hospitals, BORIM and this AGO shall certainly crush them on behalf of corrupt hospitals regardless of the evidence, regardless of the explicit will of the Legislature, and that even this Honorable Court shall not help.

33 BORIM at present is also attempting to crush Dr Sheldon Schwartz, the honest physician who blew the whistle at Arbour Hospital about the very high risk of patient death due to inadequate staffing in pursuit of 30% profit levels. Arbour and DPH consciously ignored Dr Schwartz as a result of which

a patient - Lori Ann Durant - died a needless preventable death in exactly the manner Dr Schwartz warned DPH about, a year prior. It should come as no surprise by now to this Honorable Court that how much DPH staff received as backhanders from Arbour is still unknown as this AGO will never investigate it. BORIM (on behalf of Arbour) is now hounding Dr Schwartz in order to drive him out of medicine and warn other physicians from blowing the whistle on waste, fraud and abuse. Unlike BORIM's alleged expert, Dr Schwartz is ready to testify under oath to this Honorable Court.

34 This Honorable Court should not share BORIM's and this AGO's repugnant and well-proven penchant for harming honest whistleblowers while protecting the blatantly corrupt from the law.

Wherefore Plaintiff Dr Bharani respectfully requests this Honorable Court to grant his pending Motion for Certiorari and to immediately Stay the improper proceedings at DALA.

Dated: 12/05/2014

Respectfully submitted,

Bharani

pro se

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Commonwealth of Massachusetts

Supreme Judicial Court

SUFFOLK SS

Civil Action No. SJ-2014-434

Bharanidharan Padmanabhan MD PhD)
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Appeals)

Certificate of Service

I, Bharanidharan Padmanabhan MD PhD, hereby certify that on Friday the 5th of December 2014 I served via postage-prepaid First Class Certified Mail a copy of the Plaintiff's Opposition to Defendant's Motion to Dismiss, to AAG Amy Spector at the correct address - AGO, One Ashburton Place, Boston MA 02108.

Date:

12/05/2014

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