

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK ss

SUPREME JUDICIAL COURT

NO. SJC-12119

BHARANIDHARAN PADMANABHAN,

Plaintiff,

v.

BOARD OF REGISTRATION IN MEDICINE  
and DIVISION OF ADMINISTRATIVE LAW  
APPEALS,

Defendants.

**DEFENDANTS' MOTION TO STRIKE BRIEF AND RECORD APPENDIX**

Defendants Board of Registration in Medicine (“board”), and the Division of Administrative Law Appeals (“DALA”), respectfully move to strike plaintiff’s brief and the record appendix, and to calculate the time for serving the defendants’ brief as beginning from the date that the appellant serves a compliant brief and appendix. In support of their motion, defendants state the following.

**BACKGROUND**

Plaintiff, acting pro se, filed a complaint in the Supreme Judicial Court for Suffolk County, styled as a writ of certiorari. This is the second such complaint arising from the same proceeding. See SJ 2014-0434. The complaint alleged various irregularities in a disciplinary proceeding which involved a hearing before a DALA magistrate. The magistrate had issued a tentative decision, and the board, pursuant to 801 CMR 1.01(11)(c)(2), issued an order of remand, requesting that the magistrate revise his decision in a number of ways. The revised

decision is pending (App. Ex. 3, pp. 2-3). Thus, the current appeal is based upon an interlocutory action by the board. The complaint was dismissed by the Court (Spina J.) for the reasons stated in defendants' motion to dismiss (App. Ex. 5. Judgment).

### ARGUMENT

Both the brief and the appendix do not comply with Mass.R.A.P. 16 and 18 in multiple ways which are both prejudicial to the defendants, and which complicate the ability of the Court and the defendants to grapple with the plaintiff's appellate arguments. The fact that the plaintiff represents himself does not excuse his noncompliance with procedural rules. *Brossard v. W. Roxbury Div. of Dist. Court Dep't*, 417 Mass. 183, 184 (1994). Indeed, plaintiff is well-acquainted with appellate litigation, as he has two appeals pending in the United States Court of Appeals for the First Circuit. See *Padmanabhan v. Ctrs. for Medicare and Medicaid, et al* (No. 15-2268), and *Padmanabhan v. Healey, et al* (No. 16-1159).

#### 1. The Record Appendix Is Noncompliant.

The record appendix does not comply with Mass.R.A.P. 18 in several ways:

- i) The plaintiff's appendix does not include "relevant docket entries in the proceedings below."
- ii) It does not include the exhibits to defendants' motion to dismiss. Since the Judgment adopted the reasoning of the defendants in their motion to dismiss, the exhibits to that motion are essential to understanding the basis for the ruling of the Single Justice.<sup>1</sup>
- iii) Although the appendix contains a Table of Contents, the actual contents of the appendix are not serially paginated. This makes any effort to refer to or review the appendix unduly burdensome. *Shawmut Cmty. Bank, N.A. v. Zagami*, 411 Mass. 807, 810 (1992) (appendix not compliant because, *inter alia*, pages were not numbered consecutively).

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<sup>1</sup> Plaintiff did not provide the defendants with a designation of the parts of the record that he intended to include in the appendix. See Mass.R.A.P. 18(b).

## **2. The Brief Is Noncompliant.**

Throughout his brief, the plaintiff refers to the record appendix without referring to the pages in the appendix in which those references appear. See, for example, Plaintiff's Brief, p. 3 (References to plaintiff's opposition to motion to dismiss, the Magistrates tentative decision, and the Board's response to the Magistrate's tentative decision). Indeed, at no point in the brief does the plaintiff make any reference to the record. See Mass.R.A.P. 16(e).

Perhaps even more egregiously, the plaintiff's brief includes an addendum of four documents that are not part of the record that was before the Single Justice, and reference is made to these documents in the brief. "[T]he reference on appeal to other facts not contained in the record was improper." *Harrington v. Costello*, 467 Mass. 720, 724 & n.6 (2014).

The plaintiff's brief also fails to include a statement of the case. In particular, there is no description of the nature of the case, and the course of proceedings. Nor is there a statement of the facts with appropriate references to the record. See Mass.R.A.P 16(a)(3).

## **CONCLUSION**

For the foregoing reasons, defendants respectfully request that the plaintiff's brief and appendix be stricken and that he be ordered to submit a brief and appendix in compliance with the Rules of Appellate Procedure. Defendants also request that the period for calculating the due date for filing an opposing brief begin from when the plaintiff serves a compliant brief and appendix.

Respectfully submitted,

By the Defendants,

BOARD OF REGISTRATION IN  
MEDICINE and DIVISION OF  
ADMINISTRATIVE LAW APPEALS

By their attorney,

MAURA HEALEY  
ATTORNEY GENERAL



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Dated: June 27, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that I served the above motion on the parties this 27<sup>th</sup> day of June, 2016, by sending a copy of the motion by first class mail, postage pre-paid, to:  
Bharanidharan Padmanabhan, 300 Gardner Road #6A, Brookline, MA 02445.



Samuel Furgang  
Assistant Attorney General