

MICHAEL J. HASON  
11815 Mayfield Ave., #103  
Brentwood, CA 90049  
Tel: 310-826-1684

UNITED STATES DISTRICT COURT  
NORTHERN FLORIDA, TALLAHASSEE

CASE NO.: 4:06CV105-  
RH/WCS

-----X  
MICHAEL J. HASON,

Plaintiff,

PLAINTIFF'S  
MOTION TO VACATE OR  
AMEND DISMISSAL  
ORDER AND JUDGMENT

v

FLORIDA BOARD OF BAR EXAMINERS (FBBE),  
FBBE'S CHIEF ATTORNEY AND FBBE ATTORNEY  
SIGNING CHARGES AGAINST DR. HASON,  
ELEANORE HUNTER, in her official capacity as FBBE  
Executive Director and her private and/or individual  
capacities.

Defendants.  
-----X

OFFICE OF CLERK  
U.S. DISTRICT CT.  
NORTHERN DIST. FLA.  
TALLAHASSEE, FLA.

2007 JAN -8 AM 8:44

*JW*

FILED

original

## AFFIDAVIT

1. I, the Plaintiff, Michael J. Hason, am in receipt of your recent Order dismissing my case against the Florida Board of Bar Examiners and the other Defendant, its Executive Director. Although I am surprised, I am not shocked. I consider all of this the expected routine. Although I waited for more than a year, I did not receive any copy of the Magistrate's Second Report and Recommendations and, therefore, was not given an opportunity and to evaluate or oppose it in any way. I hope you will agree that this lapse greatly vitiates the merit of your Order and that you will vacate it sua sponte and replace it with a schedule, directing that the Clerk serve me a copy of the Magistrate's Report and setting forth the time in which I have to oppose, if I deem fit to oppose. I do not think that any other course of action would be fair or just on your part. I am entitled to oppose prior to the issuance of any order of dismissal and should not be relegated to some form of post-judgment motion.

2. Immediately upon receipt of your Order of Dismissal,, I telephoned and spoke with the Clerk of your Court and confirmed that he had no evidence on file that he had served me with a copy of the Report This letter is a rapid fire missive, meant to inform you, request relief, and to request your serious investigation of this highly improper and prejudicial irregularity. I hope after a short confirming investigation, you will vacate your own Order, etc. Anything less would be to condone a glaring procedural irregularity in an important civil rights case and to join in the irregularity.

3. Your analysis of my Complaint, without the help of input from me, is welcome, but leaves much to be desired. I believe that you have made a good faith attempt to deal with the Complaint and your thoughts are quite valuable, but only if I am given a the

requested fair and proper opportunity *to evaluate and oppose* the Magistrate's second Report and Recommendations in the right procedural context. I should not be rushed to deal with all of this in a post-judgment context.

4. With respect to the merits, you have inadvertently mischaracterized the heart and most important parts of my ADA claim and left out what is most important to its sustainability. The heart of the initial part of my ADA claim was that the Board violated the ADA by asking me for *all* medical records related to my disability, without time limitation whatsoever and then, after pointed objection by me, again violated the ADA by retrenching and asking for ten years of medical records. Prior to complying with the Bar's latter request, I repeatedly objected to the illegal request which violated the clear standard of the ADA which states that the Bar should have sought only the best current objective medical evidence of fitness to practice. My objections were of no avail. I was told that the Bar knew better with respect to what the ADA required. I did object to the time lost during this back and forth with the Bar and considered the delay an aggravating factor, but the delay was not the primary theory, but rather a consequence or an ancillary issue. With respect to the consequential and inevitable delay, note that despite my repeated claims that my rights were being violated or imminently threatened, there was no particular evidence of any special effort by the Bar to deal more quickly or in any accelerated fashion with important issues I was raising and, inevitably, each cycle of discussion with the Bar took a few months. The delays did exacerbate the primary violations and, in fact, the consequential delays became important in themselves, as ultimately they led to application staleness and the breakdown of the viability of my application at the three year mark post filing the application.

5. I also made a claim that the Bar violated my rights under the ADA by insisting on actual session records of my several years of psychotherapy with the Jewish Family Service, about 1997-99, and also alleged that this insistent request was also a violation of my right to privacy protected by substantial due process. In the Complaint, I alleged or implied, that the Bar should have accepted a report from the practitioner and not demanded the sessions records; that would have given them sufficient information. My position here, I informed the Bar, was further supported by the fact that the Bar already had much and conclusive medical material on file about me at the time when this particular issue arose. The information which they had very clearly indicated that I had been totally well since my last depression in 1997 and that I suffered from no active illness thereafter that would impair my ability to practice law even temporarily (and note that the depressions had been temporary matters, although recurrent every couple of years, 1970, 1990, 1992 and 1997). This information that the Bar already had was composed of numerous reports from psychiatrists and psychologists who knew me well, or who had evaluated me carefully and comprehensively for other licensing Boards, California and New York.

6. My ADA claim alleged directly or implied that at all relevant times, the Bar acted in an intentional and discriminatory manner *calculated* to block my licensure. It acted in this manner, undoubtedly, due to exaggerated concerns about my disability and concerns about what it considered resulting improper behavior, my litigation and my contest of certain debts..

7. I specifically alleged or implied that the Bar's requests for information regarding

my private pro se civil rights litigation concerning medical licensure in California and New York, which was generally high in quality, was improper and none of the Bar's proper business and an intentional and discriminatory attempt to block my licensure on any feasible basis at hand, due to the Bar's improper concerns and discriminatory animus. I admit that there were some very real facts on the table that would generally be of some concern to any licensing Board or Bar (but these are no excuse for intentional discrimination): I had been denied medical licensure in California in 1998 due to disability and that the Florida Board of Medicine had announced their intent to deny me licensure in Florida in 1999, which they did in Oct., 2003. But also note that I had been granted a medical license in California in 2001 after an extensive evaluation, by a tough Board, who had previously rejected me—something that did not happen but a few times over ten years in California.

8. Also, consider the fact that the Bar's first question at my investigational hearing with them indicated their pointed concern about the fact that I had not worked during the prior seven years, a fact which we may reasonably infer caused them not only astonishment, but serious legitimate concern (but, again, was not an excuse for the intentional discriminatory behavior of the Bar). The next question asked at the investigatory hearing was why did I sue the Florida Board of Medicine which evidenced the Bar's substantial concern about the character of my lawsuits against various government licensing agencies and officials, particularly the one commenced against a Florida government agency. I alleged retaliation and believe that the Bar is not neutral, but adverse to actions against Boards and Bars, particularly when one of the Boards is a Florida licensing agency, like itself. Actually, in my opinion, the Bar had no right to even

ask such a question, "why." It was really none of their business, notwithstanding the fact that the answer to their question was before them in the Complaint of that case in very extensive detail and available to them in other papers of that lawsuit.

9. My position that the Bar was not entitled to review my personal civil rights pro se litigation with a fine tooth comb led to a drawn out back and forth with the Bar, also causing much delay, consequentially, but the Bar insisted and at cost of much time and expense hundreds of pages of litigation documents had to be delivered to the Bar in order to move my application even slightly forward.

10. I also stated in the Complaint or other papers in this case that some of specifics of the Bar's eventual charges leveled against me formally, particularly evidenced their motives. It was, for example, highly improper for the Bar, by its counsel, to charge me with asking for *too much* in damages in several of my cases, when these cases were about career and life destroying denials to license in medicine in California and New York.

11. In the Complaint or subsequent papers, I also alleged that the Bar knew that I had colorably good defenses to my admitted "debts" and that the Bar repeatedly refused to give guidance, played dumb and was unwilling to advise me to pay the debts off, without further ado, in order to facilitate my application. The total of the debts was about \$4000, while the Bar application fee alone was \$5000. It is also reasonable to assume that my lost earnings during the application period were more than \$30,000 per year; so, proportionately the Bar's concerns about the debts was about amounts of money that were relatively small in the light of what was at stake. I repeatedly asked for guidance on how to handle these debts, given that I had defenses and indicated that I was more interested in getting my license than persisting in defending the debts, but never received any



responsive reply or guidance, although I heard from the Bar on many other points. This lack of response, I alleged or implied, was a necessary part of the Bar's ploy to block my licensure and prolong its *right to investigate*. All of this behavior, I alleged, was irrational, discriminatory and directly caused and/or inflamed by the Bar's overarching, but irrational, concerns about my disability. I alleged that the Bar's discriminatory animus was inflamed by the (improper) denials of licensure that occurred before other Boards and which were based on disability rationales, as well as the Bar's understandable concern about my failure to work for seven years- which was for reasons related to my disability; actually, in fact, the licensure denials were themselves the cause of the lack of employment as I refused to work at anything less than either of my professions, medicine or law.

12. I note, also, that in your opinion, you did not comment at all on the highly specific claim I made under 42 U.S.C. 1983 against the Executive Director Ms. Hunter. The claim was for requesting ten years of medical records, a violation of the controlling federal statute, the Americans With Disabilities Act from which all 11<sup>th</sup> Amendment defenses have clearly been stripped by the U.S. Supreme Court in *U.S. v. Georgia*. I doubt that it can be reasonably argued, despite the extremely wide birth of the good faith defense in 1983, that the Executive Director acted in good faith as a matter of law, when she persisted in the face of my strenuous and time consuming objections and that her request for the ten year review of my medical records meets the statutory criteria of the ADA and is not significantly outside the proscribed statutory limit. That limitation is clear and well known law. The licensing agency lawfully can evaluate only the best current or most recent objective medical evidence of the candidate's fitness to practice,

in relationship to and as affected by the candidate's disability, and nothing more.

Defendant Hunter's demand for the production of ten years of medical records is not permitted and any reasonable official in a similar position to her position would be expected and required to know this. Don't think she is innocent. Go ahead and protect her, but it is not lawful. Don't think anyone with half a brain will be fooled. When you, the Judge, violate the law, you bring an end to the real power of the law and the authority of the government. The law becomes a thing of lesser importance, a mere show, a cloud of abominable force.

13. I do appreciate your initial thoughts which are welcome and will be helpful, as long as I am given the opportunity, which I am procedurally entitled to, to oppose the Magistrate's Report in a proper procedural framework, i.e., *before* the order dismissing my case.

14. I am drawn to inform you that I have been involved in this professional licensing ADA civil rights litigation for more than ten years in more than a half dozen cases and do have enough material to write a book and I will write the book. I plan to heavily indict the federal judiciary as I have known it. Any further impropriety or error by this Court (although it was probably the Clerk's error in the first place), will be a further and unnecessary disgrace to the reputation of this Court and the reputation of the State of Florida.

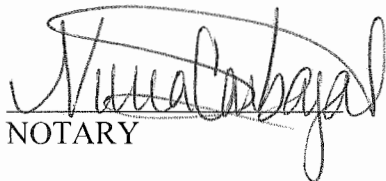
15. Another important purpose for my writing is to urge you to make sure that this does not happen to any other litigants. I hope that you will agree that it is disgraceful to wait a year and then have a final order in a civil rights licensing case come down, without at least an opportunity to be heard at all appropriate stages of the proceedings and that this

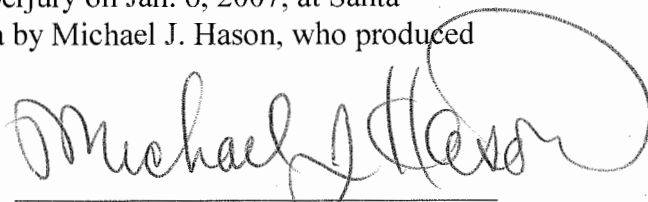
case now stands in a horribly unacceptable poise. One wonders if this was just negligence, or if there was calculation on somebody's part. I strongly suspect the latter.

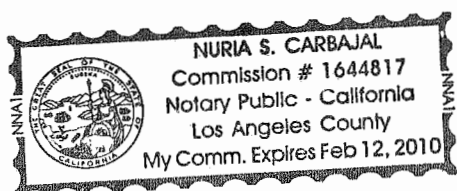
16. I still at a great disadvantage, not having seen the Magistrate's Second Report and Recommendations. Clearly, this Plaintiff, Michael J. Hason, needs a better opportunity to review and oppose the Magistrate's Second Report and this Court definitely needs an opportunity carefully review the nature of the claims that it considered dismissable, after understanding the number and kind of claims more fully.. The recent dismissal of the case is improper on both procedural and substantive grounds and should be vacated forthwith, so that the case might be reviewed in the proper procedural framework without any gross appearance of impropriety. The Order of Dismissal must be vacated and a the Court should direct a schedule to complete the evaluation of the case in a proper manner, befitting the dignity of the process..

WHEREFORE, Dr. Hason requests that this Court vacate its Order of Dismissal, direct the Clerk of the Court to serve Dr. Hason with a copy of the Magistrate's Second Report and Recommendations and direct Dr. Hason to file objections, if any, in the appropriate time frame and grant any other or different relief just in the premises.

Sworn to and signed before me under penalties of perjury on Jan. 6, 2007, at Santa Monica, County of Los Angeles, State of California by Michael J. Hason, who produced his California Driver's License with photo.

  
NOTARY

  
MICHAEL J. HASON, M.D.



## MEMORANDUM OF LAW

1. Plaintiff, Michael J. Hason, has not received yet a copy of the Magistrate's Second Report and is pressed for time in order to stay within ten days of service of the Court's recent Order of Dismissal. Therefore, this Memo will be simple.
2. The posture of the case before this Court was a motion to dismiss for failure to state a cause of action. In their moving papers the Defendants relied heavily and exclusively on the 11<sup>th</sup> Amendment and various inapposite abstention doctrines. The Defendants did not indulge in any substantial consideration of the facts or produce any affidavits from Bar officers familiar with the facts of the case. The Plaintiff did discuss the facts of the case to a limited extent.
3. The Plaintiff was not given an opportunity to review the Magistrate's Second Report prior to the Court's recent Order of Dismissal and this alone should cause the Court to reconsider and vacate its Order.
4. The Court, in analyzing the Plaintiff's claims as claims for "delay" has not understood the heart of the claims which are about trumped up investigation due to discriminatory animus related to disability and the seeking of the Bar to block Dr. Hason's licensure in any trumped up way to hand. Whether the Bar's concerns about Dr. Hason's prior litigation "errors" or his "debts" was serious enough to merit the Bars sustained inquiry and stances, without being seen as trumped up is clearly a question of fact for a jury and can also be heard on a motion for summary judgment after discovery. Since the Defendants did not rely on the facts much in their moving papers, the Plaintiff did not have to discuss them in depth either. It is therefore improper for this Court to try to guess the facts and describe them as merely a claim for delay, at least without having

understood, in depth, Dr. Hason's presentation of the facts and any support he could provide for his argument that the Bar was really acting with intent to discriminate and its so called "investigation" was in fact an attempt to trump up resistance to licensing Dr. Hason. These fact intensive issues cannot properly be decided in the context of the moving papers of the Defendants which do not invite an intensive evaluation and of the facts that suggest that the Bar's actions were about discrimination, not routine investigation or not the usual procedures applied to all candidates.

5 It should be impossible for this Court to say as a matter of law that the Plaintiff will not be able to discover enough evidence to avoid dismissal after discovery. It is impossible that the Court understood the Plaintiff's concept of the claim, being something beyond just extensive delay and this Court should take a fresh look at the facts and explanatory information that the Plaintiff has begun to provide, particularly since this case is already marred by the very serious irregularity-the Clerk did not even serve the Magistrate's Second Report on the Plaintiff.

#### IN CONCLUSION

The Court should vacate its Order of Dismissal and grant any further or different relief necessary to an orderly and fair hearing of the Plaintiff's claims.

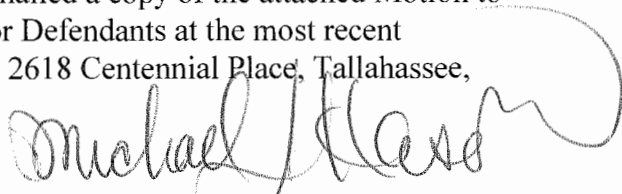
Dated: Jan. 6, 2007

  
MICHAEL J. HASON, M.D..

CERTIFICATE OF SERVICE

I, Michael J. Hason, certify that on Jan. 6, 2007, I mailed a copy of the attached Motion to Vacate Dismissal on James Dean, Esq., Counsel for Defendants at the most recent address provided by said Counsel for such purpose 2618 Centennial Place, Tallahassee, FL 32308, c/o law firm Messer, Capparello & Self

Dated: Jan. 6, 2007

A handwritten signature in cursive script that reads "Michael J. Hason". The signature is written in black ink and is positioned to the right of the main text block.

MICHAEL J. HASON, M.D.