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8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

13 GUVEN UZUN, M.D.

14 Respondent.

Case No. 800-2014-008477

OAH No. 2015080224

**OPPOSITION TO RESPONDENT'S  
MOTION AND SUPPLEMENTAL  
MOTION FOR ORDER CERTIFYING  
FACTS TO THE SUPERIOR COURT FOR  
THE ISSUANCE OF CONTEMPT  
SANCTIONS AGAINST RACHEL LA-  
SOTA; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF; DECLARATIONS OF  
COLLEEN M. MCGURRIN AND ANNE  
POTTER**

Hearing: December 30, 2016

Time: 9:30 a.m.

ALJ: Honorable Ralph Dash

22 NOTICE IS HEREBY GIVEN that as soon as the matter may be heard on December 30,  
23 2016, at 9:30 a.m., at the Office of Administrative Hearings, located at 320 W. Fourth Street, Los  
24 Angeles, California, Complainant will oppose Respondent's Motion and Supplemental Motion  
25 for Order Certifying Facts to the Superior Court for the Issuance of Contempt Sanctions against  
26 Rachel LaSota.

27 This opposition is made on the grounds that: 1) the witness is unavailable due to a health  
28 issue; 2) the subpoena was improper and was not properly served; 3) the witness has not willfully

1 disobeyed the subpoena; and 4) Respondent has failed to establish that the witnesses' testimony  
2 is relevant, non-cumulative and material.

3 This opposition will be based on the attached memorandum of points and authorities,  
4 declarations of Colleen M. McGurrin and Anne Potter, exhibits and upon all other pleadings,  
5 papers, and records in this action, and on such evidence and argument as may be presented at the  
6 hearing on this motion.

7 Dated: December 9, 2016

Respectfully submitted,

8 KAMALA D. HARRIS  
9 Attorney General of California  
10 ROBERT MCKIM BELL  
11 Supervising Deputy Attorney General



12 COLLEEN M. MCGURRIN  
13 Deputy Attorney General  
14 *Attorneys for Complainant*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**ARGUMENT**

**I.**

**THE WITNESS IS UNAVAILABLE DUE TO A HEALTH ISSUE**

California Evidence Code section 240, subdivision (a), states that a witness is unavailable if they are unable to attend or testify at a hearing because of a then-existing physical or mental illness or infirmity. In this case, Ms. LaSota has been out on medical leave since March 2016, many months before Respondent sent the subpoena to the Board's Cerritos office and it not expected back anytime in the near future. (See attached Declaration of Ms. Potter.) Additionally, Ms. LaSota has been under the care of a doctor who has stated that Ms. LaSota is totally disabled at this time and will remain totally disabled for the foreseeable future. (See attached Declaration of Colleen M. McGurrin.) Her doctor has also stated that any further exposure to the patient's work environment or involvement in any litigation proceedings related to her work activities would result in further injury and harm to Ms. LaSota. (See attached Declaration of Ms. McGurrin.) As a result, Ms. LaSota is an unavailable witness and cannot be compelled to appear and testify in this matter.

**II.**

**THE SUBPOENA WAS IMPROPER AND WAS NOT PROPERLY SERVED**

Government Code section 11450.10, subdivision (a), provides that subpoenas may be issued for attendance at a hearing at any reasonable time and place. Further, section 11450.20, subdivision (b) of the Government Code, provides that a subpoena shall be served in accordance with Section 1987 of the Code of Civil Procedure. Code of Civil Procedure section 1987, subdivision (a), states, in pertinent part, that: "Except as provided in Sections 68097.1 to 68097.8, inclusive, of the Government Code, the service of a subpoena is made by delivering a copy . . . to the witness personally . . . . The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance." Government Code section 68097.1 deals with subpoenas issued to state employees. This section provides that whenever any state employee is required as a witness in any proceeding in connection with their employment, a

1 subpoena requiring their attendance may be served personally or by delivering two copies to of  
2 the subpoenas to their immediate supervisor or agent designated by that immediate superior to  
3 receive that service.

4 In this case, Ms. LaSota was employed by the Medical Board of California, and thus was a  
5 state employee. She was never personally served with the subpoena. According to the moving  
6 papers, a copy of the subpoena was left at her home. (Supplement to Respondent's Moving  
7 papers, page 2, paragraph 4.) This is not proper service. Additionally, Respondent asserts that on  
8 August 25, 2016, "a subpoena" was sent via certified mail to Ms. LaSota at the Medical Board's  
9 office located in Cerritos, California commanding her appearance at 9:00 a.m. on September 2,  
10 2016. The certified letter, however was not received by the Cerritos office until September 2,  
11 2016, the date the witness was commanded to appear. (See Moving papers, page 2 and Exhibit ,  
12 including the signed certified mail return receipt form.) The individual who signed the certified  
13 mail return receipt form, Laura Pickard, is not Ms. LaSota's immediate supervisor nor is she  
14 authorized to accept service of any legal documents. (See attached Declaration of Anne Potter.)  
15 Ms. Pickard is an office technician who merely collects and distributes the mail which sometimes  
16 includes certified letters. (See attached Declaration of Ms. Potter.) Ms. Pickard's signing of the  
17 return receipt form does not constitute proper service of the subpoena on Ms. LaSota or Ms.  
18 LaSota's acknowledgment of receipt of the subpoena under either the Code of Civil Procedure  
19 section 1987 nor Government Code section 68097.1.

20 Further, the subpoena as issued failed to provide Ms. LaSota with any time, let alone a  
21 reasonable time for the preparation of her testimony nor time to travel to the place of attendance.  
22 This is because the letter was received on the very day the witness was commanded to appear at  
23 the hearing, namely September 2, 2016. (See Moving papers, Exhibit A.) This is a violation of  
24 both Government Code section 11450.10 and the Code of Civil Procedure section 1987. Thus, it  
25 would have been impossible for the witness to comply with the subpoena because the time for her  
26 appearance was the very day the subpoena was received by the Cerritos office. Furthermore, at  
27 the time the certified letter was mailed to the Board's Cerritos office, Respondent was well aware  
28 that Ms. LaSota had been out of the office on medical leave. (See attached Declaration of Ms.

1 McGurrin.) Respondent never delivered two copies of the subpoena to Ms. LaSota's immediate  
2 supervisor, Anne Potter as required by Government Code section 68097.1. (See attached  
3 Declaration Ms. Potter.)

4 Thus, the subpoena and its service were improper, and therefore the subpoena is invalid  
5 and Respondent's Motion must be denied.

### 6 III.

#### 7 THE WITNESS HAS NOT WILLFULLY DISOBEYED THE SUBPOENA

8 As stated above, since the issued subpoena failed to provide Ms. LaSota a reasonable time  
9 for preparation and travel to the place of attendance, she did not willfully disobey the invalid  
10 subpoena. Additionally, she was unable to comply because she is totally disabled. It has been  
11 long held that two of the essential facts for jurisdiction in a contempt proceeding are the alleged  
12 contemnor's ability to comply with the subpoena and the willful disobedience of the order. (*In re*  
13 *Liu* (1969) 273 Cal.App.2d 135, 78 Cal.Rptr. 85.) It is essential that the thing ordered to be done  
14 is within the power of the person to perform in order to constitute contempt. (*Ex parte Johnson*  
15 (1935) 9 Cal.App.2d 473, 50 P.2d 452.) Contempt is the proper sanction only for willful  
16 misconduct. (*Runnion v. Worker's Compensation Appeals Board* (1997) 59 Cal.App.4<sup>th</sup> 277, 69  
17 Cal.Rptr.2d 105.)

18 Here, Ms. LaSota has been out on medical leave from her job with the state since March  
19 2016, and is not expected to return in the near future. (See attached Declarations of Ms. Potter.)  
20 Additionally, is currently totally disabled and will remain totally disabled for the foreseeable  
21 future. (See attached Declaration of Ms. McGurrin.) According to Ms. LaSota's doctor, she  
22 would suffer further harm and injury if she were ordered to appear and testify at the hearing of  
23 this, or any other, work related matter. (See attached Declaration of Ms. McGurrin.) Therefore,  
24 even if Ms. LaSota was found to be contempt and ordered to attend the hearing and testify, she  
25 would be unable to comply with such an order due to her current state.

26 Thus, there is no evidence that she willfully disobeyed the subpoena as she is currently out  
27 on medical leave and has been determined to be totally disabled by her doctor. Therefore,  
28 Respondent's motion should be denied.

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IV.

**RESPONDENT HAS FAILED TO ESTABLISH THAT THE WITNESSES  
TESTIMONY IS RELEVANT, NON-CUMULATIVE AND MATERIAL**

Respondent has failed to establish that Ms. LaSota would have any relevant or material testimony in this case that is not cumulative and would assist the court in determining the issues in this case, namely whether Respondent violated the terms of his probation and if his care and treatment fell below the standard of care. Government Code section 11513, subdivision (c), states that only relevant evidence shall be admitted in Administrative Hearings. Further, the California Appellate court stated, in *Parris v. Zolin* (1996) 12 Cal.4<sup>th</sup> 831, that since the right to offer evidence at an administrative hearing is limited to relevant evidence, the hearing officer can require the party to make an offer of proof or showing that the evidence is relevant and potentially necessary to satisfy the party's persuasion in the hearing.

In this case, Ms. LaSota's prior supervisor, Catherine Hayes has testified regarding the duties and responsibilities of the probation unit, inspectors and supervisors. Additionally, Respondent's prior probation inspector, Kevin Morris, testified at length regarding Respondent's probationary history, compliance, non-compliance and status. Dr. Sean Evans has testified concerning his contacts, communications, review and reports as Respondent's Professional Enhancement Program (PEP) monitor. Likewise, Dr. Michael Ament has testified as to his opinion, subsequent review and reports of his review of Respondent's medical records in his capacity of Respondent's subsequent PEP monitor. Thus, Ms. LaSota would have no new relevant evidence or testimony to offer in this case which has not already been testified to.

In an attempt to create some relevance to Ms. LaSota's testimony, Respondent's falsely states that Ms. LaSota "issued the Request for Issuance of An Accusation in this matter." (Supplemental papers, page 1, paragraph 1 citing Complainant's Tab 23, page 2.) This is false and is not supported by the evidence in the case. The evidence clearly shows that Ms. LaSota merely performed a ministerial act when she filled out and completed a "Request to Initiate A New Case" form on April 16, 2012, as a result of the University of California of San Diego Professional Enhancement Program monitor's reports to the Board concerning Respondent's

1 practice. (Complainant's Tab 8, page 1.) Catherine Hayes, Ms. LaSota's prior supervisor, has  
2 testified that filling out and completing this form was a part of Ms. LaSota's job duties and  
3 responsibilities as the Supervising Probation Inspector. There is absolutely no evidence that Ms.  
4 LaSota ever requested the filing of an Accusation in this matter as that is not her function. She  
5 merely, in compliance with her job duties and responsibilities, requested that an investigation be  
6 opened to determine if Respondent was in violation of the terms of his probation. There is no  
7 evidence that Ms. LaSota requested or even contemplated the filing of an Accusation. The  
8 decision to file any action based upon the evidence collected during an investigation is a legal  
9 determination made by Complainant's counsel. (See attached Declaration of Ms. McGurrin.) Ms.  
10 LaSota has no authority to request the filing of a legal action and has no input into whether an  
11 action will be filed or not as this is strictly a legal determination. (See attached Declaration of  
12 Ms. McGurrin.)

13 Thus, Respondent's motion should be denied.

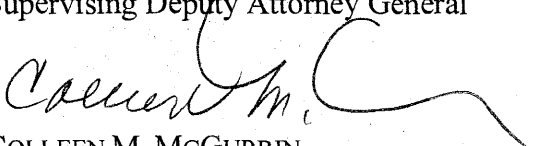
14 **CONCLUSION**

15 Based upon the foregoing, it is respectfully requested that Respondent's Motion to  
16 Certifying Facts to the Superior Court for a Finding of Contempt should be denied in its entirety.

17  
18 Dated: December 9, 2016

Respectfully submitted,

19 KAMALA D. HARRIS  
20 Attorney General of California  
21 ROBERT MCKIM BELL  
22 Supervising Deputy Attorney General

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24 COLLEEN M. MCGURRIN  
25 Deputy Attorney General  
26 *Attorneys for Complainant*

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1 **DECLARATION OF COLLEEN M. McGURRIN**

2 I, COLLEEN M. McGURRIN, HEREBY DECLARE AS FOLLOWS:

3 1. I am an attorney at law duly licensed to practice law in the State of California and am the  
4 Deputy Attorney General assigned to the investigation and prosecution of this matter. I have  
5 personal knowledge of the facts contained in this declaration, and if call upon as a witness to  
6 testify, I could and would competently testify to the following.


7 2. On December 6, 2016, I spoke with Ms. LaSota's doctor who informed me that Ms.  
8 LaSota is currently totally disabled and that she will remain totally disabled for the foreseeable  
9 future. Ms. LaSota's doctor also informed me that requiring Ms. LaSota to have any further  
10 exposure to her work environment or any involvement in any litigation proceedings related to her  
11 work activities would result in further injury and harm to Ms. LaSota.

12 3. I have informed counsel for Respondent, Mr. Kaplan, several times that Ms. LaSota has  
13 been out on medical leave from her job with the Board since March 2016 and is not anticipated to  
14 return anytime in the near future.

15 4. The determination of whether or not to file any disciplinary action based upon the  
16 evidence collected during the course of an investigation is a legal determination of Complainant's  
17 legal counsel. Neither the probation unit, the probation supervisor nor the probation inspector  
18 have any authority or input into whether or not a disciplinary action is filed.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed this 9<sup>th</sup> day of December 2016 at Los Angeles, California.

22   
23 COLLEEN M. MCGURRIN  
24 Declarant  
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**DECLARATION OF ANNE POTTER**

I, ANNE POTTER, HEREBY DECLARE AS FOLLOWS:

1. I am an employee of the Medical Board of California (Board) and am the Staff Services Manager I for the Board and am Ms. LaSota's immediate supervisor. I have personal knowledge of the facts contained in this declaration, and if call upon as a witness to testify, I could and would competently testify to the following based upon personal knowledge.

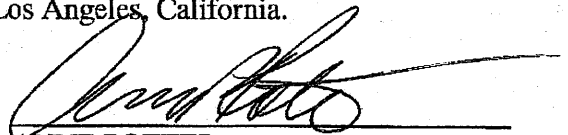
2. Ms. LaSota has been out on medical leave since March 2016, and is not expected to return to her job duties any time in the near future.

3. Laura Pickard is an office technician in the Cerritos office. She is not authorized to accept service of process of any legal documents. Ms. Pickard merely collects the mail which is delivered to the office daily, which sometimes includes certified mail.

4. I, as Ms. LaSota's immediate supervisor, have never been served with two copies of the subpoena Respondent was attempting to serve on Ms. LaSota.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of December 2016 at Los Angeles, California.

  
ANNE POTTER  
Declarant

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **In the Matter of the Accusation Against: GUVEN UZUN, M.D.**

No.: **2015080224**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

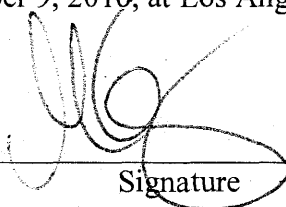
On December 9, 2016, I served the attached **OPPOSITION TO RESPONDENT'S MOTION AND SUPPLEMENTAL MOTION FOR ORDER CERTIFYING FACTS TO THE SUPERIOR COURT FOR THE ISSUANCE OF CONTEMPT SANCTIONS AGAINST RACHEL LA-SOTA; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATIONS OF COLLEEN M. McGURRIN AND ANNE POTTER** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Alan I. Kaplan  
Law Offices of Alan I. Kaplan  
11111 Santa Monica Blvd., Suite 620  
Los Angeles, CA 90025

Rachel LaSota  
6507 Temple City Blvd  
Los Angeles, CA 91780

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 9, 2016, at Los Angeles, California.

\_\_\_\_\_  
M. Carey  
Declarant

  
\_\_\_\_\_  
Signature