

App. No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**  
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Sheldon Schwartz MD

v.

Massachusetts Board of Registration in Medicine

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ON APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION  
FOR A WRIT OF CERTIORARI  
TO THE MASSACHUSETTS SUPREME JUDICIAL COURT  
(State Supreme Court Docket # SJC-13292)  
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January 20, 2023

/s/ Sheldon Schwartz M.D.  
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App. No. \_\_\_\_\_

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In the  
Supreme Court of the United States  
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Ryan Welter M.D. Ph.D  
v.  
Massachusetts Board of Registration in Medicine  
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**PETITIONER’S APPLICATION TO EXTEND TIME TO  
FILE A PETITION FOR A WRIT OF CERTIORARI**

To Circuit Justice Ketanji Brown Jackson:

Petitioner Dr. Schwartz respectfully requests that the time to file a Petition for a Writ of Certiorari in this matter be extended for sixty days, up to and including March 26, 2023. On October 27, 2022, the Massachusetts Supreme Judicial Court issued its full opinion. Docket report enclosed. Absent an extension of time, the Petition would therefore be due on January 25, 2023. This Court has jurisdiction over this Application under 28 U.S.C. 1254 (1) and 1257, Rule 10(b), and has authority to grant the requested relief under the All Writs Act, 28 U.S.C. 1651.

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**BACKGROUND**  
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Arbour Hospital’s CEO retaliated against petitioner for his patient safety advocacy (though the CEO was opposed by the medical staff), filed a false complaint with the Massachusetts Board of Registration in Medicine, and deputed the hospital’s lawyer, Janet Barringer, to collude with board counsel James Paikos to rent the medical board’s police powers.

In 2015 the board issued a Statement of Allegations based solely on violation of Board Policy 01-01 (Disruptive Physician Behavior). A hearing was held at the Massachusetts Division of Administrative Law Appeals in 2016. The administrative magistrate issued a recommended decision in 2020 that did not recommend license suspension, because there was no patient harm

at all, let alone gross negligence. The board members indefinitely suspended petitioner's license without explaining why such a harsh sanction was chosen. The board has already officially declared to the Federal Government that petitioner did **NOT** harm any patient. The board lacks authority to indefinitely suspend a license in the total absence of harm.

Petitioner sought review in the single justice session of the Massachusetts Supreme Judicial Court and filed a brief focussed on matters of pure law. The single justice court deferentially affirmed the board decision, and never discussed the points of pure law raised by the petitioner. The full bench affirmed without public argument or a published memorandum despite Dr. Schwartz seeking both.

Arbour Hospital, a 66-bed psychiatric hospital, scheduled upgrades for its electronic medical record system for February 28, 2013 but chose to not print copies of patient charts for use on the wards that day, even though petitioner Dr. Schwartz specifically warned the executives the day before of the dangers of not doing so. Chaos reigned. Patients were harmed. One patient received a double dose of insulin that day, and others the wrong doses of various medicines. Clinical staff implored petitioner to get the executives to at least stop new admissions. The CEO forced the staff to admit all comers so that the beds would be full when the Commonwealth eventually heard about the chaos and stepped in. Under that CEO, Arbour made 33% profits every year, compared to the 2-3% average for Massachusetts hospitals.

The hospital CEO reported petitioner to the board for "disruptive behavior" though the Department of Mental Health fully agreed with everything petitioner said and ordered the hospital closed for weeks to new admissions for the very reasons identified by petitioner. Former medical board counsel Edie Rathbone testified that when a hospital terminates a physician, the medical board *automatically* acts against the physician, meaning the hospital decides the fate.

Petitioner Dr. Schwartz disagreed with the board's pretextual 'investigation' - which intentionally excluded all exculpatory evidence in favor of the CEO's false narrative - and demanded an administrative hearing to adjudicate the board's allegation.

The board sent subpoenas to witnesses for its hearing via the hospital's attorney, then claimed falsely to the magistrate that the witnesses had informed the board that they were represented by the hospital's attorney, which all the witnesses unanimously denied under oath. The magistrate expressed total disbelief over board counsel James Paikos' bald lie, and disgust over Barringer's inextricable involvement in a case required to be run exclusively by the medical board. Arbour's Barringer is who selected the medical board's prosecution witness list.

The magistrate refused to rule on whether the board had jurisdiction to charge petitioner under the Disruptive Behavior Policy in the total absence of patient harm. The Policy itself requires that the board must show patient harm before the matter rises to the level of board discipline. The board must have standing for the magistrate to have subject matter jurisdiction. *HSBC Bank USA, N.A. v. Matt*, 464 Mass. 193, 199 (2013) ("standing is a question of subject matter jurisdiction"). No patient harm = no standing = no jurisdiction.

Dr. Schwartz proved by a preponderance of evidence that each and every allegation was either untrue or untrue and inaccurate as to person and place.

The magistrate found petitioner guilty based on a false claim in one unsworn interview summary written by board staff that three live witnesses testified had never happened, including the board's own witness. And a fourth witness (Ms. Moran) for whom the board had written a very similar interview summary, recanted the summary in live testimony.

The magistrate, however, did question why the instigator of that day's event, Dr. Gajaraj, who nurses testified was louder and unstable, was never charged by the board. The board did

nothing because Dr. Gajaraj was the CEO's right hand man, and the board sees itself as the hospitals' proxy. The board's counsel, Paikos, actively defended and supported Dr. Gajaraj, his main prosecution witness.

The board's members indefinitely suspended petitioner's medical license without written justification as required by Mass. G.L.c. 30A § 11 (8) and *Bloomstein v. Dept. of Public Safety*, 96 Mass. App. Ct. 257 (2019), and without proving **gross negligence**, per 243 CMR and *DeCosmo v. Blue Tarp*, 487 Mass. 690 (2021)

This is a fundamental violation of Dr. Schwartz's liberty rights.

### **REASONS FOR GRANTING AN EXTENSION OF TIME**

The time to file a Petition for a Writ of Certiorari should be extended for sixty days for these reasons:

This case documents defiance by a state court of bedrock American principles and respect for statutory law. It is unacceptable and unconstitutional that a physician's medical license can be indefinitely suspended in the total absence of patient harm, and when multiple live witnesses testified that the medical board's unsworn interview summaries were untrue. It is equally intolerable that a hospital's own lawyer was allowed to direct the medical board's prosecution and inform the witnesses (hospital employees) that she would be there when they testified. It is testament to the integrity of the witnesses that they testified truthfully despite the blatant intimidation by the hospital's lawyer.

It is crucial to note that the official narrative put forth by the board ran totally counter to actual testimony. The Massachusetts Supreme Court did not read the actual testimony and simply repeated the board's narrative. In addition, after the original accusations were proved false at the hearing, through actual testimony, the board turned around and convicted Dr.

Schwartz of something that was never presented at the hearing and he was not allowed to rebut. This bait and switch was wholly unacceptable.

The board had to report under oath to the federal government in writing that there was absolutely no patient harm. Thus Dr. Schwartz could NOT have been guilty of violating the Disruptive Behavior policy that was the initial charge, because conviction requires patient harm.

The board's action meets established standards for arbitrary decisions contrary to law, and the state supreme court declared that the medical board has carte blanche to do whatever it desires. This decision makes the hospital, via the board, the new King.

Review by the Court is thus essential. All Dr. Schwartz seeks is a court that, for the first time, evaluates the actual evidence and hears him. In fact, the SJC actively suppressed Dr. Schwartz's speech by denying oral argument in open court. There is at minimum a substantial prospect that this Court will grant certiorari, and a substantial prospect of reversal given the severe blow to foundational American principles that the state court's opinion presents.

The Petitioner is working diligently to retain counsel with Supreme Court expertise to prepare the Petition. The extension sought shall assist greatly in locating appropriate counsel.

No meaningful prejudice to any party would arise from the extension.

### **CONCLUSION**

Based on the facts and legal arguments presented herein, this Application for extension of time to file a petition for certiorari must be granted and the time to file should be extended sixty days up to and including March 26, 2023, which is what the petitioner respectfully requests.

Respectfully submitted,

January 20, 2023

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