JGMO-AAG
SUBJECT: Letter of Reprimand

Received:

______________________________  ___________________
(Signature)          (Date)

ENDORSEMENT:

______ X ______ I have read and understand the unfavorable information presented against me and submit the following statement or documents on my behalf.

______________ I have read and understand the unfavorable information presented against me and elect not to make a statement.

______________________________
LTC Michael Fayette
STATEMENT ON MY BEHALF – LTC Michael Fayette
SUBJECT: Letter of Reprimand
21 February 2012 (8 PAGES TOTAL)

1. General, as per your Administrative Letter of Reprimand, dated 7 February 2012, and under the provisions of AR 600-37, I have read and understand the unfavorable information presented against me, and I elect to submit the following statement or documents on my behalf. I respectfully request you choose to not place your Letter of Reprimand in my file – temporary or permanent – for the reasons I will enumerate below. I will address each numerated submission from your Letter of Reprimand in turn:

   a. Para. 1: On behalf of the Adjutant General, you examined my allegations contained in my 5 December 2012 memorandum in which I sought redress under Section 40.435 RSMo. You found that I had “not been wronged” and that my allegations were “false/misleading and designed to wrongfully disparage a senior officer.” I respectfully disagree with your findings, as my allegations of wrong-doing against COL Hagler are/were based upon fact as supported by evidence. The evidence will and does expose the “wrongs” perpetrated by COL Hagler, a Title 10 Missouri National Guard officer, against me.

   b. Para. 2:

      (1) My statement that COL Hagler declared me AWOL on 19 July 2012 incorrectly and without proper documentation is not false. My statement is fact. COL Hagler’s decision to declare me AWOL was not based on the original, legitimate, valid and un-altered Fort Leonard Wood Army Hospital MEB clinic’s medical documentation submitted to the Army’s PEB on my behalf. COL Hagler’s cited invalid medical evidence – an altered permanent physical profile – could not and cannot be used to justify either his order for me to duty or to declare me AWOL. COL Hagler used the same form as my MEB, but his version of the form added a statement to it that was not on the original form, and he substituted the original active duty physician signatures (doctors who actually interviewed and examined me and my records in totality), with signatures from one unauthorized Missouri National Guard Family Practice Physician’s Assistant, and the other signature from a Missouri National Guard physician that never examined or interviewed me. In fact, I have never met the physician who signed COL Hagler’s cited evidence. COL Hagler’s decision to declare me AWOL was based on invalid medical evidence as provided in his June/July 2012 certified letters to me (which I presume you are in possession).

      (2) In June 2012, COL Hagler’s first order for me to return to duty and then later declare me AWOL was based upon an altered and invalid permanent physical profile as determined by Army Regulation because it contained only one signature, a Missouri National Guard Family Practice Physician’s Assistant, named CPT Jean LeGall. CPT LeGall was a Missouri National Guard service member who worked out of the Ft. Leonard Wood Family Practice Clinic in support of the Missouri National Guard’s Civil Support Team. As I stated to COL Hagler in my first letter of reply, “according to Army Regulation 40-501, dated 14 December 2007/RAR 23 August 2010, while authorized to approve temporary profiles as a family practice Physician’s Assistant, CPT Legall is not authorized to determine a permanent profile with a “3” or more designation unless approved by a physician or medical doctor. Additionally the regulation requires that any permanent physical profile with a “3” or more must be approved by an actual physician or medical doctor.” Upon receipt of COL Hagler’s first letter with an altered version of my original permanent medical profile enclosed, there was only CPT LeGall’s signature and no approval authority signature by a physician or medical doctor – the second signature, as required
by AR 40-502. Thus COL Hagler’s first attempt to utilize invalid medical evidence was unauthorized and no legal justification for my return to duty and/or any declaration of AWOL.

(3) After I received a second certified letter from COL Hagler in early July 2012 that told me to disregard his first letter, COL Hagler then provided a third certified letter to me in mid-July 2012. In the third letter, COL Hagler provided the same invalid and altered permanent profile as before; with the same unauthorized signature of CPT LeGall, a Missouri National Guard member, but this time, the latest version of COL Hagler’s profile now included a second signature from a Missouri National Guard physician, LTC (Dr) Fawks. Even with the second signature, the profile COL Hagler utilized remained invalid for the same reasons per AR 40-501 as stated above: CPT LeGall was/is not authorized (as the profiling officer) to create a permanent “3” profile for me or any one in military service. I dutifully informed COL Hagler of this fact in my second reply letter (which again General, I presume you also are in possession).

(4) As I have learned during my leadership and command periods over the past 30 years dealing with ill or injured Soldiers, per AR 40-501, if a supervisor, in my case COL Hagler, had concerns about my or any other service member’s ability to perform within the limits of a valid permanent profile, he should have directed the STB, JFHQ Commander to “request reconsideration of the profile by the profiling physician. Reconsideration must be accomplished by the profiling officer, who will either amend the profile or revalidate the profile as appropriate.” My original and valid permanent physical profile which was created and signed by an active duty profiling physician and a second medical doctor were both active duty medical professionals assigned to the General Leonard Wood Army Community Hospital at Ft. Leonard Wood (an active duty Military Treatment Facility). My original permanent physical profile from Ft. Leonard Wood has never been amended by any physician(s) at Ft. Leonard Wood, as per Army Regulation, from the time of its creation in 2011 to now. This is evidenced by the fact that my original, un-amended permanent physical profile was utilized throughout the entire active-duty MEB/PEB process which ultimately determined my unfitness for military duty. As you know Sir, I was ordered into the MEB/PEB process by the Secretary of the Army with the concurrence of the Adjutant General. (The MONG Director of Personnel, Human Resources Officer, Deputy State Surgeon and/or Commander, STB should have a copy of these orders. If not, I have my copy to share.)

(5) General, I also respectfully draw your attention to the Missouri National Guard’s own AGR Handbook, dated August 2012 which states, “[AGR] Soldiers must be permanently profiled at an AD MTF.” (The evidence will support that I was permanently profiled by an AD MTF at Ft. Leonard Wood for which proof exists now and existed before 19 July 2012.) The handbook goes on to state, “If the Soldier is profiled by an MTF other than Army, the AO must forward the original DA Form 3349 [physical profile] with two physicians' signatures and photocopy of all supporting medical documentation to NGMO-HRA-M. NGMO-HRA-M will forward the profile to NGB for review and approval authority signature. The profile is not considered valid until the NGB surgeon approves it.” (Emphasis added.) If COL Hagler wanted his new Missouri National Guard profile cited in his letters to me to be valid and authoritative for me (or any other MONG AGR service member), then he would have needed NGB’s approval after a thorough examination by two authorized physicians. The physical profile COL Hagler cited as medical evidence to support his order to return me to duty did not meet this criteria. Therefore, COL Hagler’s cited medical evidence to return me to duty and declare me AWOL
STATEMENT ON MY BEHALF – LTC Michael Fayette
SUBJECT: Letter of Reprimand
21 February 2012 (8 PAGES TOTAL)

violated both Army regulation and the MONG’s own policy with regard to AGR service
members and valid medical profiling for Soldiers. COL Hagler’s cited medical evidence was, is,
and remains invalid and unauthorized.

(6) As evidenced by his certified letters to me in June/July 2012, COL Hagler ordered me to
personally report to him and supply any additional medical evidence to support why I could not
return to duty. COL Hagler never offered or allowed me the opportunity to send, have delivered,
or otherwise convey any medical information to him other than from my own person to him prior
to 19 July 2012. (General, I believe it is important to note here that according to AR 40-501, and
as explained to me by the MONG Medical Detachment, no Soldier is obliged or should be
directed to provide any medical documentation to a supervisor, i.e., COL Hagler in my case, but
to a commander or qualified medical professional only.)

(7) Sir, AR 40-501 notwithstanding, I still never refused to supply any documentation to
COL Hagler or any legitimate authority in the MONG at any time. You are correct Sir, when you
state that I did refuse COL Hagler’s order to personally bring to him medical evidence or
documentation. I refused COL Hagler’s order because it was an illegal order, and I informed
COL Hagler of this fact, as evidenced by email communication with him. Per my oath, law, and
regulation, I could not/cannot follow an illegal order. My decision was/is based on the
information cited above, AND was/is based on my physician’s own medical order for me to
remain at home. (A personal statement from one of my physicians was ultimately hand-carried
to COL Hagler on the evening of 19 July 2012 by the State Chaplain, COL (CH) Gilmore, who
interceded on my behalf but not at my request.) I am, have been, and remain fully compliant
with providing any and all medical documentation as evidenced by my complete support with the
MEB/PEB process at Ft. Leonard Wood, and my own voluntary submission of medical
documentation to the Missouri National Guard’s Deputy State Surgeon’s office, the MONG IG,
the STB, JFHQ-MO Commander, and COL Hagler via Chaplain Gilmore.

c. Para. 3:

(1) My statement that COL Hagler had “oversight responsibility” for Active-Service
Management Boards was correct. As the former full-time Joint Chief of Staff, and former full-
time Chief of Staff-Army of the Missouri National Guard, he is the full-time supervisor for all
full-time employees of the Missouri National Guard and is responsible for all personnel actions
pertaining to all full-time employees of the Missouri National Guard. I did NOT state, imply or
infer that COL Hagler exercised “undue command influence” over the ASMB that resulted in my
non-retention. My statement about COL Hagler’s oversight responsibility for the ASMB was
meant to convey that since the January 2012 ASMB non-retained me for medical reasons, then
certainly COL Hagler had to have been keenly aware of my medical conditions at that time
which prevented me from performing my duties well before the 19 July 2012 date that he
ordered me to duty. If not, then what evidence would a board of “outsiders” have utilized to
make their determination that I was no longer medically fit for full-time employment?

(2) General, your exposure and discussion of my protected communication with the Missouri
Commission on Human Rights (MCHR) in your Letter of Reprimand is particularly troubling to
me. Sir, I made NO mention of the complaint I filed with the MCHR, or their
investigation/inquiry into COL Hagler in my 5 December 2012 allegations of wrong-doing that I
provided to the Adjutant General. I do not understand why you would not only broach this subject, but also accuse me of making false statements to the MCHR. I also do not understand why you allege that I perjured myself with my statements to the MCHR. Sir, I believe my communication with the MCHR is protected by federal statute, law, Army regulation and multiple policies. The Missouri Commission on Human Rights is an agency of the State of Missouri charged to “develop, recommend, and implement ways to prevent and eliminate discrimination and to provide fair and timely resolutions of discrimination claims through enforcement of the Missouri Human Rights Act.” I do not believe I can or should be disciplined, punished, or otherwise reprimanded for exercising my right to communicate alleged acts of discrimination perpetrated by members of the Missouri National Guard. Because you draw the MCHR into this Letter of Reprimand against me, I feel compelled to defend myself and so I will answer your charges.

(3) General, I made no false statements to the MCHR as you state. Secondly, I did not perjure myself with my statements to the MCHR as you state. I will voluntarily relate now that what I stated to the MCHR was that I was non-retained in the AGR program, i.e. my full-time employment, for medical reasons as evidenced by the Adjutant General’s memorandum to me which stated exactly such. Sir, the date the ASMB convened was January 2012. The date my medical boards, the Army’s MEB/PEB, ultimately determined my unfitness for military duty was April 2012. This would make the January 2012 ASMB decision to non-retain me for “medical reasons” almost three (3) months BEFORE any lawful and binding decision on my medical condition could have even been available to the ASMB.

(4) In April 2012, the Army’s MEB/PEB process was complete and forwarded to the VA for their determination. The Army determined that I was unable to perform the duties of a Soldier due to terminal illness, and complications from wounds received in Iraq. (In November 2012, the VA concurred, and determined that I was 100% permanently and totally, service-connected; combat-related, disabled.) Therefore, in my opinion, my non-retention from full-time employment by the 2012 January ASMB decision made before any legitimate and required evidence was even completed or available to anyone or any agency, suggests that I may have been the victim of the denial of certain rights under the law. And Sir, for the record, the MCHR ultimately validated and characterized my allegations of discrimination as a violation of the Americans with Disabilities Act and certain provisions of the Civil Rights Act of 1964. As you may be aware, the MCHR granted me the right to sue the Missouri National Guard for these very violations and for which I did not do, due to my physical, mental and financial inability.

(5) General, with all due respect, I am quite concerned that you would reprimand me for speaking up and making allegations of wrong-doing against COL Hagler in the MONG. Your Letter of Reprimand to me suggests that again, I am being punished for exercising my legal rights as a U.S. citizen. Your allegation that I made false statements and perjured myself with regard to my complaint with the MCHR is absolutely incorrect and particularly unsettling to me. I believe your statements with regard to my protected communication with the MCHR, and a perception of a pattern of continued reprisal against me for what I believe to be the duty of every military leader are a violation of law, regulation and/or policy, and I believe I now have an obligation to report them to the appropriate authorities.
d. Para. 4:

(1) My statements that COL Hagler’s incorrect declaration of AWOL caused harm to my “immediate financial well-being” are not overstated as you say, Sir. I believe any reasonable person would have to conclude that if the most senior full-time employee of the MONG could act so maliciously and seemingly without impunity to a subordinate employee from my perspective - in spite of the overwhelming and compelling proof of otherwise - then what can/will he do to me next? Couple COL Hagler’s actions with my then and now-current medical/health state; my anxiety over my one-income household (my wife had to quit her job to become my full-time caregiver), and apparently only one Missouri National Guard member’s willingness to take a stand on my behalf (Chaplain Gilmore), I was completely overwhelmed and as my medical records will attest, and had to receive additional medical treatment as a result of the mental anguish, stress and strain. I ask you Sir, if you were terminally ill; could no longer work and were facing an uncertain future, would the sudden and without merit interruption of your only income and source of health insurance for a family of five (5) distress you? It did so to me and my family, Sir.

(2) My statement that my “prescription medication alone exceeds my net monthly pay” is fact. First, COL Hagler’s AWOL declaration immediately caused my TRICARE Prime insurance (health and prescription) to cease. I had no idea on 19 July 2012 if I would be able to receive or recapture my rightfully earned benefits due to COL Hagler’s incorrect actions. I had no idea if COL Hagler would continue to illegally declare me AWOL or what would happen to me and my family! General, it is true what you say about the advantages of the TRICARE health and prescription care programs with regard to AGR Soldiers for the most part, however Sir, even with TRICARE Prime and the new TRICARE Pharmacy Program as administered by Express Scripts, I have non-formulary prescription medications NOT covered by the program, and I have out-of-service physician specialists NOT covered by TRICARE as well. There are no qualified disease specialists in Columbia that are considered TRICARE in-service physician specialists that can adequately care for me at this time. Thus, I pay out of pocket for these services and for one very necessary medication so far. TRICARE does NOT cover 100% of costs of the certain and specific medical services/prescription medications, and I have the medical bills and the TRICARE reimbursement checks that prove there is a deficit between what TRICARE pays and what the provider/pharmacy charges. I must pay this difference so that I can continue to receive necessary medical treatments and medicine.

(General, I would like to state again as I stated in my 5 December 2012 letter to the Adjutant General and the governor, I have evidentiary support for all of my accusations of wrong-doing against COL Hagler and my statements to that effect, and I will provide them if requested or required. To date, no one has asked me for them.)

(3) You state in your Letter of Reprimand that my one day of AWOL resulted in a loss of pay of $340.07. General, I believe you failed to take into account in addition to base pay, the loss of partial BAH and BAS pay which I incurred as well. Sir, I believe you also failed to mention my 5 December 2012 statement that included the information that a financial institution turned down my loan request for $5,000 to modify my home for wheelchair access as a direct result of my July 2012 LES indicating I was AWOL. So yes sir, COL Hagler’s actions did adversely affect my immediate financial well-being. (The denied loan because of COL Hagler’s
erroneous declaration of AWOL has had a significantly negative bearing on my ability to secure a future loan at an affordable cost to me as well.)

e. Para. 5:

(1) In February 2011, the Adjutant General, COL Hagler and I discussed my inability to remain at my duty station while I was undergoing medical treatments, i.e., chemotherapy and other treatments, thus the Adjutant General stated that he would allow me to go home, and as he put it, “take care of yourself and your family.” Later, on/about March 2011, both COL Hagler and COL Surles (the MONG IG) related to me separately via telephone that the both of them and COL Dayringer (the then full-time MONG Director of Personnel), and some representatives from the MONG Human Resources office convened at ISTS to ensure the proper procedures would be met with regard to my participation in the IDES (MEB/PEB) process. (There should be evidence to support this fact in the MONG IG office at the very least.) With regard to proper duty status, for 16 months prior to COL Hagler’s first certified letter, I was never made aware that I was NOT in a proper duty status. In fact, during the time between my release to be home and COL Hagler’s letters, I requested and was granted ordinary leave on two occasions by COL Hagler. Sir, please help me understand, why didn’t he say something to me then or at any other time?

(2) In the late March/early April timeframe, and in a face-to-face follow-on conversation with myself and both COL Hagler and COL Dayringer at the Columbia Armory, it was reaffirmed that I would be allowed to remain at home through the IDES process, which would and did include multiple surgeries, procedures, recoveries, and rehabilitations. Therefore, COL Hagler’s orders for me to return to duty WERE in direct contravention to the Adjutant General’s orders. Also, as per AR 40-501, since neither my supervisor (COL Hagler) prescribed any duties for me at the time of my meeting with himself and COL Dayringer in Columbia, or any other time since March 2011 to July 2012, then I believe I had no obligations or duties other than the Adjutant General’s as stated in (1) above. (Sir, I believe it is important to note here, that the JFHQ-MO Commander’s required statement with regard to my fitness for duty forwarded to the MEB/PEB also during this same period reflected that I was “to remain at home.”)

f. Para. 6. My statements in my 5 December 2012 letter and my statements with regard to your Letter of Reprimand were not and are not false, respectively. As stated then and now, I have the evidence to support them. Therefore General, I believe you must conclude that COL Hagler did sign documents with the intent to deceive, i.e., the DA 4187 declaring me AWOL based on invalid and illegitimate medical documentation; COL Hagler did engage in conduct unbecoming an officer by his illegal order for me to report to duty in spite of his knowledge of the overwhelming and compelling evidence to the contrary; and COL Hagler did bring discredit to the state military service through his failure to follow established regulations and the orders of the Adjutant General.

2. General, as you state, as a commissioned officer, I recognize that I am expected to set the highest example of integrity, leadership, and high moral standards. I believe I am and have, especially given the circumstances from which I am under currently. Even though I have confronted him professionally, COL Hagler has not once denied any of the accusations I have brought against him. And the evidence indeed concludes that I am correct. From my perspective
STATEMENT ON MY BEHALF – LTC Michael Fayette  
SUBJECT: Letter of Reprimand  
21 February 2012 (8 PAGES TOTAL) 

General, I believe I am one of the few commissioned officers involved in this issue that is behaving appropriately. I do not believe my credibility is or will be at stake once a proper and comprehensive investigation of my accusations of wrong-doing against COL Hagler are executed. General, I hope you will agree that as I now believe, it is extremely necessary for an entity or investigative body outside the Missouri National Guard conduct a proper investigation into this matter. I believe this is the only way to properly and fairly resolve the matter.

3. Lastly General, you make mention in paragraph 8 of your Letter of Reprimand of a previous admonishment from you for “inappropriate social media postings which demonstrated…previous lack of integrity, leadership and high moral standards.”

   a. Sir, with all due respect, I do not believe it is appropriate to draw any reference to any previous administrative or non-judicial disciplinary action taken by you against me into this Letter of Reprimand due to its potential to prejudice anyone’s acceptance of my statements above which are counter to your conclusions. I consider it especially prejudicial and biased given the fact that you signed the Letter of Admonishment you reference, as well as this Letter of Reprimand to me.

   b. However General since you did mention your Letter of Admonishment to me in this Letter of Reprimand, in my opinion, the conclusions drawn in your admonishment to me, as well as the conclusions as contained in your Letter of Reprimand to me are incorrect, without merit and part of a pattern of reprisal against me. Sir, I believe that our Army values support my belief that getting to the truth is a first responsibility, while protecting the reputation of the organization or one of its senior leaders should be last. In my experience leading Soldiers during peacetime and in combat, when we fail as leaders to examine any situation, no matter how difficult or problematic for fear of discovering a weakness, error, flaw, or failure, then we fail as leaders. If an organization professes professionalism, transparency, integrity, etc., then it must also practice it. Anything less will allow or embolden others to believe that they too can do wrong and expect no consequences.

   c. General, I hope you understand the need for an outside, objective agency/investigative body must actually examine the evidence and merits of my allegations of wrong-doing against COL Hagler, or those within the MONG who are watching will learn the wrong lesson. There is value in standing up and saying when something or someone is wrong, and there would be no shame if the organization encouraged, allowed, and supported it. Sir, I did not act hastily when I made my accusations against COL Hagler. Indeed, I directly accused COL Hagler of violating elements of Chapter 40 of the RSMo in my allegations of his wrong-doing first. Upon his uncharacteristic silence, I took my allegations of wrong-doing to the STB, JFHQ-MO Commander. Without appropriate action by the Commander (as per AR 600-20), I had no choice but to bring them to the Adjutant General. Now, based upon your reprimand to me on behalf of the Adjutant General for making legal and appropriate allegations against COL Hagler with evidentiary merit on my behalf; along with your Letter of Reprimand which I believe may be representative of a pattern of reprisal against me, I must now communicate this entire situation to others with more authoritative powers to not only cease the wrongs being perpetrated upon me, but in the best interest of the future of the organization.

-------------------------------------------------------------------------------------------------------------------------------------NOTHING FOLLOWS-------------------------------------------------------------------------------------------------------------------------------------