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**VIA E-MAIL**

Donald A. Walcott  
150 Washington Avenue, Suite 207  
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Re: AAFPO Board of Directors Meeting Scheduled for 12/10/20 at 5:30 p.m.

Dear Don:

Mark Manley has asked me to respond to your letter of today's date addressed to him. I don't understand why, on behalf of the "AAFPO Litigation Committee," you waited until 10:14 this morning to send Mr. Manley a letter questioning his participation in a 5:30 p.m. Board meeting, when it's apparent that the concerns you articulate are based on Mr. Manley's conduct at the last Board meeting almost a month and a half ago. Nevertheless, in the same spirit of eleventh-hour position statements, I've done my best to respond on the same day and in advance of tonight's meeting. The executive summary is that Mr. Manley rejects your assertion that he has "disrupted" the Board's meetings or labors under a conflict of interest.

**I. Point of Order**

Your letter lectures Mr. Manley that a "point of order" under Robert's Rules "should not be used as a platform to air grievances or as a tool to disrupt the business of the Board." The obliqueness of this reference makes a response difficult. But in emphasizing that "[a] point of order may be raised when a member believes there has been a violation of the rules during the meeting," you appear to suggest that a Board meeting is the wrong forum for the expression of concerns arising before the meeting – including, in particular, Mr. Manley's objection to the manner in which the Board is currently constituted. If that's your point, Mr. Manley is willing to refrain from voicing his doubts about the current Board's legitimacy, as long as the Board gives Mr. Manley a running objection to the Board's conduct of AAFPO business in view of the lack of a quorum at the August 13, 2020 meeting at which four elected directors purported to appoint

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four Board members to replace four other members who had attempted to resign, and as long as the Board agrees that Mr. Manley's future silence on the subject won't waive his continuing objection. If the Board will announce that agreement at the outset of tonight's meeting and memorialize it in the meeting minutes, Mr. Manley will henceforth avoid raising points of order based on what happened at the Board meeting four months ago.

But if you have some other form of "disruption" in mind, you'll need to be more specific. If you mean to suggest that falsehoods voiced by other Board members are addressed more appropriately through a "point of information" than through a "point of order," your point is probably well taken – and to the extent that Mr. Manley has ever raised the latter point when he should have raised the former, he'll strive not to use the two interchangeably in the future. But if you mean to suggest that Mr. Manley should suffer disinformation in silence and make no attempt whatsoever to correct the record, or that he should keep his objections to himself when other Board members talk over him or the chair repeatedly refuses to recognize him or the person in charge of the Zoom arrangements mutes him, then I'm afraid that neither Mr. Manley nor I can agree. The Board needs to treat Mr. Manley as a full-fledged member with all of a member's privileges other than a vote, and to accord him the courtesy and respect that his status as a Board member entails. As long as the Board does so, Mr. Manley will be able to keep his points of order to a minimum.

## **II. Conflict of Interest**

Your letter goes on to question Mr. Manley's "ability to act in the best interest of AAFPO while serving as [the Resort's] legal counsel in litigation adverse to AAFPO," "[g]iven the conflict of interest this dual agency poses." As an initial matter, Mr. Manley isn't, in fact, "serving as [the Resort's] legal counsel in litigation adverse to AAFPO"; you know from the court's service list and my recent answer that I'm the only counsel of record. But even if Mr. Manley were litigating this case on the Resort's behalf, the "dual agency" you describe – and the "conflict of interest" you allege – are characteristics that would be shared equally by anyone that the Resort might choose to place on the Board. They are unavoidable structural consequences of the facts (1) that the Amended Joint Plan of Reorganization provides that the Resort "shall hold an ex officio seat on the Board," Amended Joint Plan ¶ 4.16(n)(vii), and (2) that AAFPO has chosen to sue the Resort, despite the cooperative relationship between the two entities that the Amended Joint Plan contemplates. Yanking Mr. Manley from the Board won't solve the problem, because any agent on behalf of the Resort would have a "fiduciary duty" to the Resort. But as an ex officio member of the Board, he would also have a fiduciary duty to AAFPO. The two duties necessarily coexist, and to the extent that they clash it is up to the Resort's representative on the Board to balance them.

Your letter appears to assume that the Resort's representative on the Board owes his allegiance to the Board. That premise is erroneous. Mr. Manley owes his loyalty to AAFPO, the entity that the Board represents. And if Mr. Manley believes that the current Board is trying to

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drive AAFPO over a cliff, and to wreck the productive working relationship that AAFPO and the Resort have historically enjoyed, then he has an absolute duty to speak up. The current Board members may not agree with him; they may not like what he says. But they need to understand that he's doing his best to advance what he perceives as the best interests of AAFPO and the Resort alike, because that's the job that the Amended Joint Plan requires him to perform.

Please share this letter with your clients before tonight's meeting. I trust that if your letter is made an exhibit to the minutes of tonight's meeting, my letter will be attached as an additional exhibit. Thanks for giving Mr. Manley the opportunity, however constrained, to respond to the Board's complaints about his participation on the Board.

Sincerely,



Charles K. Purcell

cc: Mark Manley