

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

In Re Paul G. Gosselin, D. O.)	MOTION FOR
)	RECONSIDERATION
Case No. CR2021-49)	(Recusal of Peter Michaud)
)	

Paul G. Gosselin, D.O, by and through his undersigned attorneys, hereby requests pursuant to 5 M.R.S. § 9063 that Board member Peter P. Michaud reconsider his decision not to recuse himself in this matter, and in support whereof states as follows:¹

1. In a pre-hearing conference conducted on March 31, 2022, the Hearing Officer informed undersigned counsel verbally that Mr. Michaud had reviewed Dr. Gosselin's Motion for Recusal submitted March 2, 2022, and refuses to recuse himself. The Hearing Officer provided no explanation or grounds.

2. Since presenting the Motion, Dr. Gosselin has discovered additional evidence supporting a finding that Mr. Michaud is impermissibly biased and unfit to serve as a Board member in this particular matter.

3. Attached as **Exhibit A** is the Declaration of Ronda Snyder, presenting further evidence of Mr. Michaud's bias in the forms of (i) conversations captured from the Maine Families for Vaccines website, showing Mr. Michaud's highly personalized contempt for those who seek exemptions from vaccine mandates, (ii) as well as evidence of Mr. Michaud's substantial financial ties to pharmaceutical companies that manufacture vaccines.

¹ The Hearing Officer has denied a number of Motions presented by Dr. Gosselin. Dr. Gosselin objects to those denials and reserves all legal issues, claims and defenses arising therefrom, waiving none of them, whether or not he makes a motion for reconsideration with respect to them in this administrative proceeding.

4. Attached as **Exhibit B** is a link to a recording of testimony provided by Mr. Michaud in support of LD798, documenting Mr. Michaud's deep and extensive personal involvement in the political campaign to enact LD798, which included a carefully engineered "bait and switch" that consisted of his testifying before legislative committees regarding the broad, generous and permissive nature of the medical exemption designed to ensure physician autonomy and discretion, while planning all along, as attorney Andy Schmidt has admitted in Exhibit A, to pursue the doctors who actually exercised their purportedly preserved "autonomy" and "discretion" to provide letters in support of medical exemptions.

5. Attached as **Exhibit C** is the Declaration of Rep. Heidi Sampson confirming Mr. Michaud's deep personal involvement, what she presents as his manipulative and disingenuous testimony delivered in order to secure the passage of legislation, and the reality of the "bait and switch".

6. Attached as **Exhibit D** is the Declaration of former Rep. Justin Fecteau corroborating Rep. Sampson's Declaration.

7. The cumulative evidence, including that presented with the Motion for Recusal, more than overcomes the presumption of Mr. Michaud's impartiality, and demonstrates a real "risk of bias or prejudice in the form of a conflict of interest or some other form of partiality." *N. Atl. Secs., LLC v. Office of Secs.*, 2014 ME 67, ¶ 44, 92 A.3d 335. The primary case cited by the Attorney General as support for Mr. Michaud's continued service in this case is unpersuasive. In *New England Tel. & Tel. Co. v. Pub. Utilities Comm'n*, 448 A.2d 272, 280 (Me. 1982), a Public Utilities Commission ("PUC") staff advocate, as a part of his official duties at PUC, adopted certain positions for the purpose of advising the PUC, and then subsequently became a Public Utilities Commission hearing examiner. *Id.*

8. Mr. Michaud's conduct and statements far exceed the mere "preconceived position on law, policy or legislative facts" at issue in *New England Tel. & Tel. Co. v. Pub. Utilities Comm'n*, and they do not flow from his prior Board service, or from his prior involvement in CR2021-49. Instead, they are the result of his extra-Board involvement in numerous aggressive private advocacy groups, including Maine Families for Vaccines and the Maine Medical Association. Furthermore, they expose deep-seated personal bias rising to the level of scorn, contempt and unthinking, emotional prejudice.

9. The Attorney General's case cites and relies upon *Cinderella Career & Finishing Schools, Inc. v. FTC*, but that case holds that the hearing "must be attended, not only with every element of fairness but with the very appearance of complete fairness," 425 F.2d 583, 591, 1970 U.S. App. LEXIS 10229, *24, 138 U.S. App. D.C. 152, 1970 Trade Cas. (CCH) P73,114, 8 A.L.R. Fed. 283, citing *Amos Treat & Co. v. SEC*, 113 U.S. App. D.C. 100, 107, 306 F.2d 260, 267 (1962). Further, "[t]he test for disqualification has been succinctly stated as being whether 'a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'" *Id.*, citing *Gilligan, Will & Co. v. SEC*, 267 F.2d 461, 469 (2d Cir.), cert. denied, 361 U.S. 896, 4 L. Ed. 2d 152, 80 S. Ct. 200 (1959). No disinterested observer would conclude that Mr. Michaud is impartial.

10. The fact that Mr. Michaud is only one member of the Board, and that his vote may not ultimately be necessary to form a majority, is immaterial. In this context, one bad apple spoils the bunch.

Additionally, a majority of the circuits to address the question have held that a decision issued by a multi-member panel must be vacated if a biased member participated in the decision. See Berkshire Employees Ass'n of Berkshire Knitting Mills v. N.L.R.B., 121 F.2d 235, 239 (3rd Cir. 1941) (stating "[l]itigants are entitled to an impartial tribunal whether it consists of one man or twenty and there is no way which we know of whereby

the influence of one upon the others can be quantitatively measured"); Cinderella Career and Finishing Schools v. Federal Trade Comm'n, 138 U.S. App. D.C. 152, 425 F.2d 583, 592 (D.C. Cir. 1970) (vacating and remanding agency decision "despite the fact that former Chairman Dixon's vote was not necessary for a majority and stating there is no way of determining the extent to which one biased member's views affect the deliberations of a supposedly impartial tribunal); Hicks v. City of Watonga, 942 F.2d 737, 748 (10th Cir. 1991) (concluding that the plaintiff could make out a due process claim by showing bias on the part of only one member of the tribunal); Wilkerson v. Johnson, 699 F.2d 325, 328-29 (6th Cir. 1983) (finding that license applicants were denied due process based on the bias of one member of a four person application board); Antoniu v. Sec. Exch. Comm'n, 877 F.2d 721, 726 (8th Cir. 1989) (vacating commission decision and remanding for de novo reconsideration, even though biased commissioner belatedly recused himself and did not vote on final decision); Stivers v. Pierce, 71 F.3d 732, 748 (9th Cir. 1995) (vacating unanimous decision because of bias of one panel member; "plaintiff need not demonstrate that the biased member's vote was decisive or that his views influenced those of other members"); but see, Bradshaw v. McCotter, 796 F.2d 100, 101 (5th Cir. 1986) (denying habeas relief and finding no prejudice as a result of the state appellate judge's alleged appearance of bias).

*Howell v. Marion Sch. Dist. One, 2009 U.S. Dist. LEXIS 22723, *22-24, 2009 WL 764445.*

11. The injury already inflicted by Mr. Michaud's bias, the risks presented by his ongoing involvement, and the presumption of contamination of the entire Board, have been compounded by the summary denials of Dr. Gosselin's Motion for Voir Dire and Motion for Discovery, both of which would have enabled Dr. Gosselin to further exfoliate bias and protect against damage to fairness and due process.

CONCLUSION

WHEREFORE, Dr. Gosselin respectfully requests that Board member Peter P. Michaud reconsider his decision not to recuse himself from presiding in this matter, and that he determine the question as a part of the record as required by 5 M.R.S. § 9063.

Dated this 13th day of April, 2022.

Respectfully submitted,



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EXHIBIT A

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

In Re Paul G. Gosselin, D. O.)	
)	
Case No. CR2021-49)	DECLARATION OF
)	RONDA SNYDER

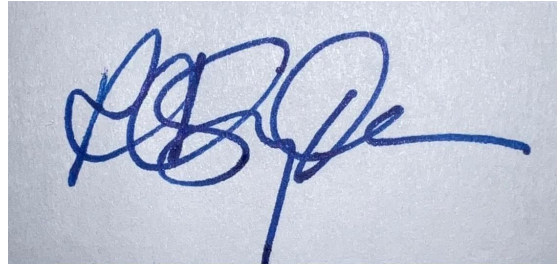
COMES NOW Ronda Snyder and declares and states the following under the penalties of perjury:

1. I am over the age of 18, of sound mind, and make this Declaration freely and voluntarily. I am a journalist and entrepreneur and reside in Sidney, Kennebec County], Maine.
2. I was involved in the lobbying efforts surrounding LD 798, *An Act to Protect Maine Children and Students from Preventable Diseases by Repealing Certain Exemptions from the Laws Governing Immunization Requirements*, and LD 987, *An Act to Provide Autonomy for Health Care Providers to Practice Patient-Centered Care by Amending the Laws Governing Medical Exemptions to Immunization Requirements*.
3. Attached as **Exhibit 1** are true and accurate screenshots of a conversation involving Board of Osteopathic Licensure member Peter Michaud, which occurred on the Facebook pages belonging to Maine Families for Vaccines, an organization promoting LD 798. I downloaded the conversation from Facebook. The conversation occurred in early 2019. It is my understanding that Peter Michaud is a member of Maine Families for Vaccines.
4. Attached as **Exhibit 2** are true and accurate screenshots of a conversation involving MJ Benson and Andy Schmidt, which occurred on the Facebook pages belonging to Maine Families for Vaccines, an organization promoting LD 798. I downloaded the conversation from Facebook. The conversation occurred in January or February 2019, in the run up to the enactment of LD 798. Andy Schmidt was one of the most vocal members of Families for Vaccines establishing a huge social media presence and arguing their position online. He was responding to a question regarding how doctors who issued vaccine exemptions would be dealt with.
5. It is my understanding that Maine Families for Vaccines was funded by hundreds of thousands of dollars in donations by major pharmaceutical companies. Pfizer (which produces a COVID-19 vaccine), Merck and Sharp and Dohme contronuted \$250,000 each.¹

¹ [https://ballotpedia.org/Maine_Question_1,_Religious_and_Philosophical_Vaccination_Exemptions_Referendum_\(March_2020\)](https://ballotpedia.org/Maine_Question_1,_Religious_and_Philosophical_Vaccination_Exemptions_Referendum_(March_2020))

6. I declare and state under the penalties of perjury that all of the above statements made by me are true and correct to the best of my knowledge and belief.

Dated this 1st day of April, 2022.

A handwritten signature in blue ink, appearing to be 'R. Snyder', written on a light-colored background.

Ronda Snyder

Exhibit 1



Peter Michaud

So, since you're not allowed to question my religious beliefs (Establishment Clause), my grade depends entirely on whether my lies are consistent rather than whether I learned the stuff. Would you want me doing your surgery? This is crazy. The inmates have taken over the asylum.



on Thu Like Reply More



Andy Schmidt

The Church of the Straight A. I believe that all answers I give are correct.



Brandie Rubin

If these people are THAT religious, then they should be in a religious school.





Andy Schmidt

I can just see the 7th grade biology test. True or false: A whale is a mammal. False- See Jonah 1:17 ESV. (And the Lord appointed[b] a great fish to swallow up Jonah. And Jonah was in the belly of the fish three days and three nights.)



Exhibit 2



Andy Schmidt

M.J. Benson well that's another issue. I think we don't fight that fight until we pass the law and then we go to DHHS and crack down hard on any providers that are violating the standards. I think that's what happened in California after this passed. There were a few doctors that did tons of questionable exemptions but they got stopped.

9 mos Like Reply More

EXHIBIT B

<https://www.youtube.com/watch?app=desktop&v=LUYaQWs04Hw&feature=youtu.be>

Public Hearings on LDs 798, 987

March 13, 2019

Augusta, Maine

Testimony of Peter Michaud

7:45-8:00

Confirmation of roles as General Counsel of Maine Medical Association, Chairman of the Maine Immunization Coalition Steering Committee

8:45-8:50

"The bill was written in part by Rep Tipping, and in part by me."

9:20-10:23

"As far as the medical questions, I will leave those to the physicians. May I suggest that doctors are in a much better position to say what doctors can and cannot do. You've heard testimony and in that floor sheet it was stated that doctors can't do this and can't do that with regard to medical exemptions. The practice of school nurses has been to accept a physician's written statement that immunization against one or more of the diseases may be medically inadvisable. That's the language of the statute, that's the language of the rule. The rule goes on to include a list of exemptions that may be used. I checked with the DHHS, I checked with the Department of Education, I checked with school nurses, I checked with pediatricians, they all told me the same thing: that list is not exclusive. **Physicians may write simply 'In my medical opinion, Child X should not be immunized for Disease Y, or for any diseases because it is medically inadvisable.' That's good enough. That's accepted by the school nurses.**"

11:30-12:00

"On behalf of the Maine Medical Association, on behalf of the Maine Immunization Coalition, and on behalf of my uncle Camille Michaud, who in 1955 was a 30 year old widower with two young children, after the potato harvest thought he had strained his back so he went to the doctor, four days later he was dead of polio."

EXHIBIT C

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

In Re Paul G. Gosselin, D. O.)
)
Case No. CR2021-49)

**DECLARATION OF
HEIDI H. SAMPSON**

COMES NOW Heidi H. Sampson and declares and states the following under the penalties of perjury:

1. I am a resident of Alfred, Maine. I am 63 years of age. I am of sound mind and make the Declaration freely and voluntarily.
2. During multiple hearings and work sessions before the Education and Cultural Affairs Committee, where I was and still am a member legislator, Mr. Peter Michaud clearly led the efforts in 2019 for the passage of LD 798 *An Act To Protect Maine Children and Students from Preventable Diseases by Repealing Certain Exemptions from the Laws Governing Immunization Requirements*. He claimed he wrote the language of the bill, to remove religious and philosophical exemptions for required vaccinations.
3. Mr. Michaud stated multiple times, verbally and in print, to the many challenges and objections, that medical exemptions were to be the only way for parents to opt their children out of receiving vaccinations in order to attend school.
4. Mr. Michaud stated in testimony March 13, 2019 : “LD 798 is very simple and limited in its scope. It repeals the religious and philosophical exemptions to the school, day care, and healthcare immunization requirements. It does not touch the medical exemption part of the statute. This bill does not change the DHHS and DoE rules. The practice of school nurses has been to accept a physician’s written statement that immunization against one or more of the diseases may be medically inadvisable, as stated in the statute and rules. They have not treated the list in Section 3 (B) as exclusive. I have checked my understanding with both the DHHS and the DoE, with school nurses, and with physicians who issue medical exemptions. You will hear from some of them. Their statements are general in nature and do not track the list of examples in the rules.”
5. Amidst a lengthy series of questions during the legislative hearing and work session, the use of medical exemptions was reiterated and reinforced by Mr. Michaud as being an easily attained form of exemption.

6. Mr. Peter Michaud aggressively challenged concerned parents on several occasions within my earshot, rebuffing parent's deep-seated concerns with a dismissive attitude stating they could easily get medical exemptions. The parents knew this was not true.
7. Mr. Peter Michaud effectively persuaded many reluctant supporters of this bill into believing medical exemptions would be left to the discretion of properly credentialed medical professionals. This was a major selling point he and all those under his direction used.
8. We legislators were told repeatedly physicians would have full autonomy and discretion with medical exemptions.
9. I declare and state under the penalties of perjury that all of the above statements made by me are true and correct to the best of my knowledge and belief.

Dated this 6th day of April, 2022.

A handwritten signature in black ink, reading "Heidi H. Sampson". The signature is written in a cursive style with a long, sweeping underline.

Heidi H. Sampson

EXHIBIT D

**STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE**

In Re Paul G. Gosselin, D. O.)
)
Case No. CR2021-49)
)

**DECLARATION OF
JUSTIN FECTEAU**

COMES NOW **JUSTIN FECTEAU** and declares and states the following under the penalties of perjury:

1. I am a resident of Wake Forest, North Carolina. I am 36 years of age. I am of sound mind and make the Declaration freely and voluntarily.
2. I was a member of the Maine House of Representatives during the 129th Legislature. I was a member of the Joint Standing Committee on Education and Cultural Affairs and voted on L.D. 798 when it came before the committee and the House of Representatives.
3. It is my understanding that the medical exemption portions of the bill were being widened and loosened. On top of hundreds of testimonies, my own research, and assistance from non-partisan offices, Sections 2, 5, and 8 of the public law explicitly widen the types of medical professionals who can provide a written statement.
4. The co-author of the bill, Mr. Peter Michaud, who at the March 13, 2019 public hearing stated he was general counsel of the Maine Medical Association and the chair of the Maine Immunization Coalition steering committee, stated that a note from a physician concerning that an immunization was inadvisable was perfectly fine and the list of exemptions that may be used is “not exclusive.” In his next statements he stated, “physicians may write simply, “In my medical opinion Child X should not be immunized for disease Y or for any diseases, because it is medically inadvisable.” That’s good enough. That’s accepted by the school nurses.”
5. During the People’s Veto campaign and during a statewide televised debate on WGME CBS 13 News on February 17, 2020, Dr. Laura Blaisdell, the chief proponent and spokesperson in support of L.D. 798, stated, “Under the old law, for instance, there was a finite list of reasons that I, as a physician, could grant a medical exemption. Under this law, it says that if I think that it’s medically inadvisable to give a vaccine. that I could grant a medical exemption. That’s about as wide a definition as we could possibly create. I wanted that, because I really wouldn’t like the government telling me what I can and cannot do with my patients; particularly, if they shouldn’t receive a vaccine.”
6. All of this leads me to believe that the L.D. 798, which became public law, would give the listed medical professionals within the law full discretion to write medical exemptions.

7. I declare and state under the penalties of perjury that all of the above statements made by me are true and correct to the best of my knowledge and belief.

Dated this 6th day of April, 2022.

A handwritten signature in black ink, appearing to read "Justin Fecteau", written in a cursive style.

Justin Fecteau