

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

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

MOTION TO DISMISS

Paul G. Gosselin, D.O., by and through his undersigned attorneys, hereby moves for immediate dismissal of this case. In support whereof, Dr. Gosselin states as follows:

I. BAD FAITH PROSECUTION

1. These proceedings constitute a malicious, bad faith prosecution of Dr. Gosselin, and must be halted and dismissed immediately.

2. "[B]ad faith 'generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction.'" *Lewellen v. Raff*, 843 F.2d 1103, 1109 (8th Cir. 1988) (quoting *Kugler v. Helfant*, 421 U.S. 117, 126 n. 6, 95 S. Ct. 1524, 44 L. Ed. 2d 15 (1975)). "Bad faith and harassing prosecutions also encompass those prosecutions that are initiated to retaliate for or discourage the exercise of constitutional rights." *Id.*

3. In *Musslewhite v. The State Bar*, 32 F.3d 942, 947 (5th Cir. Tex. 1994) citing *Trainor v. Hernandez*, 431 U.S. 434, 446, (1977) and *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), the Fifth Circuit Court of Appeals recognized two types of bad faith prosecutions: (1) a prosecution brought to deter the exercise of constitutionally protected rights (citing *Smith v. Hightower*, 693 F.2d 359 (5th Cir.1982)), and (2) a prosecution brought to harass the Appellant. The Eight Circuit Court of Appeals recognizes the same type of bad faith prosecutions. *Raff*, 843 F.2d 1103, 1109, *supra*.

4. Bad faith and harassing prosecutions also encompass those prosecutions that are initiated to retaliate for or discourage the exercise of constitutional rights. *See, e.g., Younger v. Harris*, 401 U.S. 37, 48 (1971); *Heimbach v. Village of Lyons*, 597 F.2d 344, 347 (2d Cir. 1979) (per curiam).

5. Administrative proceedings may be bad faith prosecutions. *Ohio Civil Rights Comm'n v. ...* 477 U.S. 619, 627 (U.S. 1986) citing *Gibson, v. Berryhill* 411 U.S. 564, 576-577 (1973); *Bishop v. State Bar of Texas*, 736 F.2d 292, 294 (5th Cir. Tex. 1984). Moreover, professional license disciplinary proceedings are governed by procedural due process. *Senty v. Bd. Of Osteopathic Examination & Registration* 594 A.2d 1068, 1072 (Me. 1991), citing *Watson v. State Comm'r of Banking*, 223 A.2d 834, 838 (Me. 1966).

6. The State does not have any legitimate interest in pursuing such a prosecution; "perhaps the most important comity rationale of *Younger* deference -- that of respect for the State's legitimate pursuit of its substantive interests -- is therefore inapplicable." *Wilson v. Thompson*, 593 F.2d 1375, 1383 (5th Cir. 1979).

7. Federal law related to bad faith prosecution is unequivocal and states that there is a constitutional right to be free of "bad faith prosecution." *Shaw v. Garrison*, 467 F.2d 113, 120 (5th Cir.1972); *Hand v. Gary*, 838 F.2d 1420, 1424 (5th Cir. 1988).

8. These proceedings are part of a bad faith prosecution scheme to target, harass, retaliate against and silence certain Maine physicians,¹ like Dr. Gosselin, who dare to express opinions or prescribe medications or treatments that run counter to the prevailing narrative concerning COVID-19 and the mRNA COVID-19 vaccines. They satisfy the foregoing definitions of "bad faith" prosecution.

¹ Disciplinary proceedings are also pending against Dr. Meryl Nass and Dr. Wade Hamilton, both outspoken critics of the state and federal responses to COVID-19, who have called attention to the risks of the mRNA COVID-19 vaccines.

A. Harassment; No Reasonable Expectation of Valid Conviction

9. Dr. Gosselin hereby incorporates by reference as if fully set forth herein the allegations and exhibits contained in the Motion for Recusal of Peter P. Michaud filed concurrently herewith ("Recusal Motion").

10. As set forth in the Recusal Motion, these proceedings are not really about the exemption letters, rather they are intended to target, harass and silence Dr. Gosselin as a COVID-19 dissenter, and to punish and make an example of him, so that he and others are deterred.

11. Furthermore, Board member Mr. Peter Michaud has stated that these proceedings were necessary because Dr. Gosselin had been disciplined in the past:

I'm particularly concerned by the fact that this licensee has a disciplinary history, significant disciplinary history with this Board. Um, showing basically a, uh, a refusal to abide by the same rules that other physicians abide by.²

It is impermissible harassment and in bad faith to discipline Dr. Gosselin because he has been disciplined in the past, particularly where the underlying conduct in the prior disciplinary proceedings did not involve vaccine exemption letters, COVID-19 or COVID-19 vaccines.

12. The Board can have no reasonable expectation of a valid conviction, since it knows that these proceedings, the discipline that it has already imposed on Dr. Gosselin, and any further discipline that it might impose, deprive Dr. Gosselin of his constitutional First Amendment and substantive and procedural due process rights as further set forth herein.

13. The Board can have no reasonable expectation of a valid conviction, since it knows that it has violated its own authorizing statutes and the Maine Administrative Procedure Act, 5 M.R.S.A. §§ 8001 *et seq.* ("Maine APA"), in the various ways set forth herein.

² Recusal Motion, Ex. A, ¶ 20.

B. Retaliate for or Discourage the Exercise of Constitutional Rights

14. These proceedings are intended to stifle Dr. Gosselin's First Amendment free speech rights. Both the Transcript of the Board's November 18 hearing and the Notice of Suspension make it perfectly clear that is the intent:

- *a licensee has been **acting inappropriately** regarding covid19, **promoting** covid19 as a hoax, and **spreading misinformation** both in the office and **online promoting** the use of medications not deemed appropriate for the treatment of covid19, making it known **through his website and by word of mouth**...* (Recusal Motion, Ex. A, ¶ 1)
- *last month in our packet we had some guidance from the SMB, the Federation, that's Federation of State Medical Boards, and I believe, so there's something in there that they were advising us, and giving us guidance that this is happening all across the country, and certain physicians are, uh, **calling covid** a hoax and **putting out totally incorrect information**, and their thought was that this is harmful to patients and **they should be charged** with unprofessional conduct...* (Recusal Motion, Ex. A, ¶ 23 - spoken by Mr. Peter Michaud)
- *I'm also concerned that **he discusses covid** as a hoax and that **he proposes** debunked forms of so-called treatment and prophylaxis...* (Recusal Motion, Ex. A, ¶ 25)
- *I agree with that, I think you're right on Peter.* (Recusal Motion, Ex. A, ¶ 26)
- *I agree, **this is more than just those health care professionals' letters**.* (Recusal Motion, Ex. A, ¶ 27)
- *...going forward we give him a letter to immediately cease and desist from **giving false information and inconsistent advice** to covid patients or about covid.* (Recusal Motion, Ex. A, ¶ 33)
- *...you know there's a lot of very untrue and false **statements that he made**, uh, and you know, false treatments, **he talked about**, you know which I thought was ironic was that **he talked about**, in one note, you know, letter that putting, you know the vaccine is a poison, but yet **he's talking about** some of these other drugs that are probably far more risky to take than the vaccine itself and there's really no justification for **a lot of things he said**, uh, about the virus, or, uh, about the vaccine.* (Recusal Motion, Ex. A, ¶ 38)
- *as I see it we need to **stop this licensee from issuing any further false statements**...* (Recusal Motion, Ex. A, ¶ 40)

- *So what's the easiest way for us to **stop him from issuing any other further statement**... (Recusal Motion, Ex. A, ¶ 45)*
- *We should keep in mind that his **website links to some debunked misinformation about covid treatment and prevention**. Um, could we **move forward with a complaint**? (Recusal Motion, Ex. A, ¶ 52)*
- *...in light of the fact that **misinformation** tends to encourage people not to take, uh, medically recommended steps to protect themselves from COVID-19, um, we move the **immediate suspension** of the licensee's license (Recusal Motion, Ex. A, ¶ 96)*
- *...provider reports concerned with Dr. Gosselin's **spread of misinformation regarding COVID-19**. (Notice of Suspension)*

15. These proceedings, as constructed by the Board, are also designed to strip Dr. Gosselin of both substantive and procedural due process. Mr. Michaud and the other Board members know that the requirements of 5 MRS § 10004(3), pursuant to which Dr. Gosselin's license was initially suspended without any notice or hearing, were not met, and they were clearly advised by the Board's legal counsel that they were not met.³

16. Under the duress of this illegal suspension, without adequate time to prepare his defense, without an adequate explanation of the charges against him, without a full disclosure of the evidence against him, Dr. Gosselin was forced to enter into an Interim Consent Agreement postponing the hearing that would otherwise occur 30 days from the date of the emergency suspension, and continuing the suspension in the meantime. The Supreme Court "has said in a variety of contexts that 'the government may not deny a benefit to a person because he exercises a constitutional right.'" *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594, 186 L. Ed. 2d 697 (2013) (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983)). "Those cases reflect an overarching principle,

³ Recusal Motion, Ex. A, ¶ 24.

known as the unconstitutional conditions doctrine, that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Id.*

17. While the unconstitutional conditions doctrine has been most consistently applied to protect First Amendment rights, it has also been applied by the Supreme Court to other constitutional provisions, including the Takings Clause. *R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427, 434 (6th Cir. 2005) citing *Woodard v. Ohio Adult Parole Authority*, 107 F.3d 1178, 1190 (6th Cir. 1997) (citations omitted), *rev'd on other grounds*, 523 U.S. 272, 140 L. Ed. 2d 387, 118 S. Ct. 1244 (1998). The doctrine should equally apply to prohibit the government from conditioning benefits on a citizen's agreement to surrender due process rights. *Id.* (applying the unconstitutional conditions doctrine to protect rights to due process).

18. Further, the Board knows that it completely failed to provide any guidance to its licensees with regard to COVID-19 "misinformation" or the provision of exemption letters in relation to the COVID-19 mRNA vaccines until January 6, 2022, *long after* the exemption letters had been written and the Board had held its November 18 meeting. *See* Communication from Susan Strout at **Exhibit A**. The Board found it necessary to issue its "Position Statement on COVID-19 Misinformation"⁴ because it knew there was no clear standard. It was issued too late for these proceedings, and cannot be applied retroactively to Dr. Gosselin, and deliberately used to crush him in the wheels of the Board's administrative machinery as an example for the rest of the profession.

19. The administrative process in license disciplinary proceedings has been held to be inadequate as a matter of law to address bad faith prosecutions. In *Bishop v. State Bar of Texas*, 736 F.2d 292, 294 (5th Cir. Tex. 1984), the Fifth Circuit Court of Appeals held that:

⁴ <https://www.maine.gov/osteo/sites/maine.gov/osteo/files/inline-files/Position%20Statement%20re%20COVID-19%20Misinformation.pdf>

Although ...disciplinary proceedings are capable of deciding constitutional challenges to specific procedures, recourse in those proceedings is not a sufficient avenue to remedy the constitutional injury done by bad faith proceedings themselves. **The right under *Shaw* is to be free of bad faith charges and proceedings, not to endure them until their speciousness is eventually recognized.** *Id.* Citing *Shaw*, supra 467 F.2d at 122 n. 11 and *Younger*, 401 U.S. at 46, 91 S. Ct. at 751; *Wilson* [v. Thompson], 593 F.2d at 1375, 1382-83 [(5th Cir., 1979)] (emphasis added).

20. In the present case, for all of the reasons set forth herein, Dr. Gosselin as a matter of law is not required to endure these disciplinary proceedings which are aimed at harassing him and carry no reasonable prospect of a valid conviction, and which stifle his First Amendment and substantive and procedural due process rights in contravention of federal and state law.

II. FIRST AMENDMENT FREE SPEECH

21. The First Amendment to the U.S. Constitution provides that “Congress shall make no law ...abridging the freedom of speech,” and this prohibition is applicable to the States by virtue of the 14th Amendment. “The freedom of speech and of the press, which are secured by the First Amendment against abridgment by the United States, are among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a State.” *Thornhill v. Ala.*, 310 U.S. 88, 95 (1940). “It is speech on ‘matters of public concern’ that is ‘at the heart of the First Amendment’s protection.’” *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978), citing *Thornhill*, 310 U.S. at 101. “Freedom of discussion, if it would fulfill its historic function in this nation, must embrace **all issues** about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.” *Thornhill*, 310 U.S. at 102 (emphasis added). COVID-19, the COVID-19 mRNA vaccines and their safety and efficacy, and the governmental response to COVID-19 including COVID-19 mRNA vaccine mandates, are all matters of intense, ongoing, medical, scientific and political debate worldwide.

22. Furthermore, “a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.” *NAACP v. Button*, 371 U.S. 415, 429 (1963). “The right of a doctor to advise his patients according to his best lights seems so obviously within the First Amendment rights as to need no extended discussion.” *Poe v. Ullman*, 367 U.S. 497, 513 (1961); *Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002) (holding that “[t]o survive First Amendment scrutiny, the government’s policy [restricting physician-patient communication] must have the requisite ‘narrow specificity’”, and then striking down a government policy intended to punish any physician who *recommended* the use of marijuana as treatment). The Law Court has observed that “[o]ccupational licensing requirements are not categorically exempt from First Amendment scrutiny...and the Supreme Court has signaled that professional speech does not fall into a unique category that is exempt from First Amendment protections...” *Gray v. Department of Public Safety*, 2021 ME 19, ¶ 19.

23. Courts distinguish between content-based and content-neutral regulations of speech. *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018). “Content-based regulations ‘target speech based on its communicative content’” and are “presumptively unconstitutional.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). Generally, a content-based regulation cannot withstand a challenge unless the government proves the law is narrowly tailored to serve a compelling state interest. *Nat’l Inst. of Family & Life Advocates*, 138 S. Ct. at 2371. Where, as here, a State mandates that physicians become mouthpieces for government dogma, where many physicians and scientists disagree with that dogma and have solid grounds for doing so, the action is unconstitutional.

24. The Board, by initiating and pursuing this action on the basis of Dr. Gosselin’s “spread” of “COVID-19 misinformation” and COVID-19 mRNA “vaccine misinformation”

(despite its strategic concealment of any such purpose in the Notice of Hearing or otherwise), has violated Dr. Gosselin's First Amendment right to free speech in an effort to silence him. As discussed above,⁵ the transcript of the Board's November 18 meeting makes this perfectly clear, exposing the Board's obsessive focus on Dr. Gosselin's statements, opinions, website and links to third party information. Even the exemption letters themselves, in these circumstances, are speech. There is very little difference between these exemption letters on the one hand, and on the other Dr. Gosselin picking up the phone, calling the employers, and stating to them: "I do not agree that the COVID-19 mRNA vaccines are safe and effective, and in my opinion individuals should not have to risk their lives with an anaphylactic reaction or other serious adverse event linked to these particular injections in order to establish their eligibility for a medical exemption."⁶ If the Board's actions were operating as a "prior restraint" on Dr. Gosselin's free speech, that certainly would be unconstitutional under the applicable case law. Here, however, the Board's actions are *even more egregious*, since it has initiated a disciplinary action under color of state law **in order to punish free speech in which Dr. Gosselin has already engaged**. The Board is attempting to silence Dr. Gosselin in order to use him as an example so that other osteopathic physicians in Maine dare not deviate, in word or in deed, from official government policy narratives. The Board is deliberately attempting to instill fear in Dr. Gosselin and all of his fellow licensees as a means of motivating compliance with public health edicts, in the process reinforcing regulatory capture by powerful and rich lobbying groups such as pharmaceutical companies. The Board must not be allowed to stifle and manipulate Dr. Gosselin and other Maine physicians, and use them as a tool for indoctrination with prevailing government orthodoxy regarding medical opinion, medical discourse and medical treatment.

⁵ See discussion in Section I of Motion.

⁶ See discussion in Section IV.B of Motion.

III. CONSTITUTIONAL DUE PROCESS

25. The Due Process Clauses of the Maine and Federal Constitutions guarantee due process before the state deprives a citizen of a property right. *Balian v. Board of Licensure in Med.*, 1999 ME 8, ¶¶ 10-11, 722 A.2d 364, 367. “What process is due will vary from case to case . . . to assure the basic fairness of each particular action according to its circumstances.” *Id.*, citing *Fichter v. Board of Env'tl. Protection*, 604 A.2d 433, 437 (Me. 1992) (quoting *Secure Env'ts, Inc. v. Town of Norridgewock*, 544 A.2d 319, 324-25 (Me. 1988)). As the Law Court noted in *Balian*, the United States Supreme Court has set forth three factors to assess whether the state violated an individual’s right to due process:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976); see also *Fichter*, 604 A.2d at 437 (Me. 1992) (applying *Eldridge* factors to due process challenge to denial of permit by Board of Environmental Protection).

26. With respect to the first *Eldridge* factor, it is well established that a professional license constitutes a property interest that is entitled to Constitutional protections. See *Balian*, 1999 ME 8, § 11, 722 A.2d 364, 367; *Board of Overseers of the Bar v. Lefebvre*, 1998 ME 24, § 15, 707 A.2d 69, 73 (due process protections implicated in hearing to suspend attorney’s license); and *Board of Registration in Med. v. Fiorica*, 488 A.2d 1371, 1375 (Me. 1985) (due process protections implicated in proceeding to revoke doctor’s license). In addition, the right

to follow a chosen profession, free from unreasonable governmental interference, constitutes a liberty interest. *U.S. v. Robel*, 389 U.S. 258, 265 n 11 (1967).⁷

27. Dr. Gosselin’s Constitutional Due Process rights have been violated in multiple ways.

A. Substantive Due Process: Arbitrariness, Bad Faith, and Oppression

28. The Law Court has noted that:

The Supreme Court has held generally that “the touchstone of [substantive] due process is protection of the individual against arbitrary action of government.” County of Sacramento v. Lewis, 523 U.S. 833, 845, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998) (quotation marks omitted). A person’s right to substantive due process is violated when the government engages in “conduct that shocks the conscience and violates the decencies of civilized conduct.” Id. at 846 (quotation marks omitted). In the context of executive action, “only the most egregious official conduct can be said to be arbitrary in the constitutional sense.” Norton v. Hall, 2003 ME 118, ¶ 19, 834 A.2d 928 (quoting County of Sacramento, 523 U.S. at 846). “[C]onduct intended to injure in some way unjustifiable by any government interest” would likely support a substantive due process claim. County of Sacramento, 523 U.S. at 849; see also Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986).

LeGrand v. York Cnty. Judge of Probate, 2017 ME 167, ¶ 38, 168 A. 3d 783, 794. Substantive due process “prevents governmental power from being used for purposes of oppression, or abuse of government power that shocks the conscience, or action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests.” *Windham Props. LLC v. Town of Windham*, 2007 Me. Super. LEXIS 174, *6.⁸

⁷ “The right to practice a profession has been called a property right, but it is more. To obtain a license and proficiency requires the expenditure of money and years of preparation, attended by toil and self-denial. Such right is the capital stock of its possessor from which dividends are expected sufficient to protect him from the infirmity of old age, and to provide his family with the comforts of life. There is moreover a prestige and good name and should be a pride attached to the practice of an honorable profession superior to any material possessions. To cancel a professional license is to take the entire capital stock of its possessor and to leave him in most instances the equivalent of a bankruptcy. But it does much more than this; it takes from him his professional standing in a manner whatever good name he has, which leaves him poor indeed.” *Waller v. State*, 68 S.W.2d 601, 605 (Tex. Civ. App. 1934).

⁸ See also the First Circuit’s opinions in *Cruz-Eraza v. Rivera-Montanez*, 212 F.3d 617, 622 (1st Cir. 2000); *Licari v Ferruzzi*, 22 F.3d 344, 347 (1st Cir. 1994); *Amsden v. Moran*, 904 F.2d 748, 753-54 (1st

29. Here, the Board clearly initiated this proceeding against Dr. Gosselin on the grounds that he was “spreading misinformation”, but recognizing that it had no lawful authority to do so, cynically changed the grounds midstream to “issuing vaccine exemptions”. The Board is persecuting Dr. Gosselin for having exercised his right to free speech, and to prevent him and other osteopathic physicians in the State from exercising that right in the future. The Board proceeded in an arbitrary and capricious manner, and its actions constitute bad faith prosecution and oppression of Dr. Gosselin and represent an abuse of government power that shocks the conscience. Singling out an individual professional for prosecution, based on the retroactive application of a newly articulated policy position, in order to make an example of him that will stifle free speech across the State, is the type of oppressive government misconduct ordinarily observed in authoritarian communist and socialist regimes. And since the State of Maine has no legitimate interest in suppressing any citizen’s free speech, including that of a licensed physician, or in rigidly enforcing medical dogma, or in intimidating its licensees into obeying the Board’s groundless, industry-driven dictates, its actions are legally irrational and unsupportable.

B. Substantive Due Process: Vagueness

30. A statute is considered unconstitutionally vague when “it ‘fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.’”

Cobb v. Bd. of Counseling Prof’ls Licensure, 2006 ME 48, ¶ 26, 896 A.2d 271, 278 (citing *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S. Ct. 839, 31 L. Ed. 2d 110

(1972) (quoting *United States v. Harriss*, 347 U.S. 612, 617, 74 S. Ct. 808, 98 L. Ed. 989

(1954))). “A law . . . may . . . be challenged on its face as unduly vague, in violation of due

Cir. 1990) (substantive due process ensures that state action is not arbitrary and capricious); and *Fichter*, 604 A.2d at 436 (state and federal due process requirements are identical).

process.” *Vill. of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982). “Concepts of due process flowing from both the Fourteenth Amendment of the United States Constitution and Article I, § 6-A, of the Maine Constitution, require that **those subject to sanction by law be given fair notice of the standard of conduct to which they can be held accountable.**” *Town of Baldwin v. Carter*, 2002 ME 52, ¶ 10, 794 A.2d 62, 67 (quotation marks omitted). A law is improperly vague “when its language either forbids or requires the doing of an act in terms so vague that people of common intelligence must guess at its meaning.” *City of Portland v. Jacobsky*, 496 A.2d 646, 649 (Me. 1985). “Although the void-for-vagueness doctrine receives its commonest application in the criminal law context, “[t]he doctrine has [also] been applied in instances where one must conform his conduct to a civil regulation.” *Kelby*, 360 A.2d at 531 (quoting *Shapiro Bros. Shoe Co., Inc. v. Lewiston-Auburn Shoeworkers Protective Ass’n*, 320 A.2d 247, 253 (Me. 1973)) (alteration in original); *Cobb v. Bd. of Counseling Prof’ls Licensure*, 2006 ME 48, P57, 896 A.2d 271, 286-287, 2006 Me. LEXIS 48, *40-41 (Dana, J., dissenting).

31. No person of ordinary intelligence in Dr. Gosselin's position at the time that he prepared the COVID-19 mRNA vaccine exemption letters in October 2021 could be expected to know that the provisions of 32 M.R.S. § 2591-A would be construed by the Board in light of the “Board Position Statement on COVID-19 Misinformation” which it would not adopt until January 2022.

32. Even if Dr. Gosselin had been clairvoyant, the “Board Position Statement on COVID-19 Misinformation” is intrinsically vague. Substantively, the "Position Statement" is inadequate to provide reasonable notice, or to create or constitute an enforceable standard. It completely fails to define the term "COVID-19 vaccine misinformation." It states that

physicians "must share information that is factual, scientifically grounded and consensus-driven" but omits to further define these terms. Which facts, identified and validated by whom, are required before "misinformation" becomes information? What if the facts are mixed, some of them supporting one conclusion, and others supporting a different conclusion? Which facts are entitled to greater weight, and which to less weight, and in what circumstances? What is the meaning of "scientifically grounded"? Scientists do not always agree regarding their hypotheses, methodologies and conclusions. Which scientists are to be followed and credited, which acknowledged but with caution, and which ignored? When the relevant science is evolving, with new data emerging that constitutes a "signal" that prior hypotheses might be wrong, how much of such new data, generated by whom, and in what manner, must exist before new opinions can be based on it without constituting "misinformation"? How many people, and which people, must agree in order to form "consensus"? How much support must exist in medical and scientific studies, medical literature and official public health statements? Is there a difference between "misinformation" and "disinformation" (both terms are used in the "Position Statement") in the context of COVID-19? If so, what is it?

33. Public health officials are bureaucrats appointed and paid by elected officials, serving at their pleasure, and subject to both political pressure and financial inducements and conflicts of interest. They are not necessarily medical doctors, do not have individual doctor-patient relationships, and do not think in terms of what is in the "best interests" of an individual patient. Are such public health officials to be considered "experts" for the purposes of the requirement in the "Position Statement" that medical treatments and recommendations for individual patient care meet a standard of care established by unnamed "experts"? To what extent is it possible to identify established expertise with respect to a novel and constantly

changing virus? Does it matter whether the "misinformation" is delivered orally, or published in writing with citations? Does it matter whether the "misinformation" is presented as an alternative, and is accompanied by additional information that represents a countervailing point of view that does not constitute misinformation?

34. Assuming that particular information can be classed as "misinformation" or "disinformation," the "Position Statement" still fails to define what it means for a physician to "generate", "spread" or disseminat[e]" it. Does forming an opinion based on a conclusion that is actually stated in medical and scientific studies, medical literature and public health official pronouncements constitute "generating" "misinformation"? What if the ultimate conclusion is not stated, but there are facts, analysis or results that support the conclusion, and a physician independently reaches the conclusion and articulates an opinion? To whom, to how many, and by what means must a physician express "misinformation" in order for that act to constitute "spread[ing]" or "disseminat[ing]" it?

35. Is there a distinction between expressing to other physicians and physician assistants, versus expressing to patients? Is there a further distinction between expressions made in a healthcare setting to medically trained professionals or patients, versus expressions made outside that setting to the lay public? Is there a further distinction that can be made between different kinds of lay audiences, say between legislatures, regulators and attorneys on the one hand, and general members of the public on the other? Again, is the number of lay listeners hearing the expression relevant? Does it matter whether the remarks are being broadcast, or recorded and capable of being broadcast at a later date? Does it matter whether they are spoken or in print? The "Position Statement" addresses a licensee who **"issues a vaccine exemption"**. Physicians do not have the legal authority to "issue" any exemptions. They simply provide

exemption letters, which are presented to employers responsible for administering vaccine mandates applicable to their employees, and those employers decide whether to accept or reject the letter, whether to issue or grant a medical exemption to their employees. Is the phrase "**issues a vaccine exemption**" intended to capture the physician who prepares an exemption letter, the employer's in-house physician⁹ who received the letter and actually issues or declines to issue the medical exemption based on the letter, or both? The Federation of State Medical Boards and joint American Board of Family Medicine-American Board of Internal Medicine-American Board of Pediatrics statements cited in the Position Paper do nothing to correct these fatal vagaries.

36. In sum, as written, the "Position Statement", which in any event is untimely in this case, amounts to little more than this: a statement that a physician in Maine may engage in "generating", "spread[ing]" or "disseminat[ing]" COVID-19 vaccine "misinformation" or "disinformation" whenever the Board in its discretion determines - applying standards that it alone is conscious of and which it may create *ad hoc* as individual cases arise using hired gun experts - that the physician has done so.

C. Substantive Due Process: Institutional Bias

37. 5 M.R.S. § 9063 ("Bias of presiding officer or agency member") provides that an adjudicatory hearing held pursuant to Maine APA "shall be conducted in an impartial manner". The holder of a professional license has a property interest in that license. *Balian v. Bd. of Licensure in Med.*, 1999 ME 8, ¶ 11, 722 A.2d 364. Thus, the license may not be revoked or restricted without complying with the requirements of constitutional due process. See *Id.*, ¶¶ 10-11. This includes the right to an impartial decision maker. "An administrative process may be

⁹ Many large corporations, healthcare-oriented and otherwise, and schools, employ in-house healthcare professionals.

infirm if it creates an intolerable risk of bias or unfair advantage.” *Zegel v. Bd. of Soc. Worker Licensure*, 2004 ME 31, ¶ 16, 843 A.2d 18. The principle underlying the statutory directive that hearings be held in an impartial manner is inherent in the right to basic Constitutional due process. *See, e.g., Gashgai v. Board of Registration in Medicine*, 390 A. 2d 1080, 1086 (Me. 1978) (“Regardless of the personal feelings of Board members toward Dr. Gashgai, [or] his manner of practicing medicine...the Board must sit in impartial judgment of any allegations of misconduct.”); *Mulready v. Bd. of Real Estate Appraisers*, 2009 Me. Super. LEXIS 41 (“[B]ias exists where evidence indicates that the decision-maker has ‘prejudged’ the case.” (quoting *Cinderella Career Finishing Schs., Inc. v. FTC*, 425 F.2d 583, 589-92 (D.C. Cir. 1970))).

38. A party asserting bias on the part of an administrative agency decision maker “must present evidence sufficient to overcome a presumption that the fact-finders, as state administrators, acted in good faith.” *Friends of Maine’s Mountains v. Bd. of Env’tl. Prot.*, 2013 ME 25, ¶23, 61 A.3d 689, citing *Mallinckrodt LLC v. Littell*, 616 F. Supp. 2d 128, 142 (D. Me. 2009); see also *Mutton Hill Estates, Inc. v. Town of Oakland*, 468 A.2d 989, 991 (Me. 1983), and *Kimball v. Superintendent of Ins.*, 2014 Me. Bus. & Consumer LEXIS 2, *76.

39. An entire group of adjudicators cannot be disqualified wholesale solely on the basis of an alleged institutional bias in favor of a rule or policy promulgated by that group. *Brooks v. New Hampshire Supreme Court*, 80 F.3d at 640 (citing *Doolin Sec. Sav. Bank v. FDIC*, 53 F.3d 1395, 1407 (4th Cir. 1995)). Claims of general institutional bias must be harnessed to a further evidentiary showing. *Id.* Dr. Gosselin has already submitted incontrovertible proof - a transcript of the Board meeting at which his license was summarily suspended, and other evidence - of the extreme bias of one Board member, Mr. Peter Michaud, who clearly drove the discussion of this matter at the Board’s meeting of November 18. The transcript shows that Mr.

Michaud has contaminated the Board with his bias. The other Board members repeatedly agreed with Mr. Michaud, invoked the FSMB's "Position Statement" and in connection therewith discussed the need to restrict Dr. Gosselin's speech, stated that the case was about "more than just those health care professionals' letters", and adopted Mr. Michaud's amendment to the motion focusing on Dr. Gosselin's free speech.

D. Procedural Due Process: Lack of Identified Enforceable Standard of Unprofessional Behavior; Ex Post Facto

40. The Board failed to publish any guidance regarding COVID-19 "misinformation" and medical exemptions to the mRNA COVID-19 vaccines until January 6, 2022, when it posted its "Board Position Statement on COVID-19 Misinformation" on its website.¹⁰ This "Position Statement" was published nearly two months after the November 18 meeting at which the Board suspended his license without any notice or hearing, and nearly three months after he prepared the medical exemption letters at issue in this case. At the time of the events that form the factual matrix of the Board's complaint, Dr. Gosselin had *no reasonable advance notice* of the BOLIM's position.

41. In its "Position Statement", the Board cites to both (i) the COVID-19 misinformation statement published by the FSMB¹¹ on the FSMB website, and (ii) a similar joint statement published by ABFM-ABIM-ABP¹² on their respective websites. However, the Board's citation to these statements does not cure the fundamental defect in notice. FSMB, ABFM, ABIM and ABP are private organizations with no jurisdiction or legal authority whatsoever to regulate physicians in Maine. The FSMB exists only to serve state boards, not to impose policies

¹⁰ EX A; <https://www.maine.gov/osteo/sites/maine.gov/osteo/files/inline-files/Position%20Statement%20re%20COVID-19%20Misinformation.pdf>.

¹¹ Published July 2021.

¹² Published September 9, 2021.

which no government officials issued or voted on. When the FSMB statement was issued, its website stated:

The Federation of State Medical Boards (FSMB) is a national non-profit organization representing the medical boards within the United States and its territories that license and discipline allopathic and osteopathic physicians and, in some jurisdictions, other health care professionals. The FSMB serves as the voice for state medical boards, supporting them through education, assessment, research and advocacy while providing services and initiatives that promote patient safety, quality health care and regulatory best practices. The FSMB serves the public through Docinfo.org, a free physician search tool which provides background information on the more than 1 million doctors in the United States.

42. Since then, the FSMB has changed its mission statement, apparently in an attempt to manufacture the appearance of some authority to issue its COVID-19 vaccine misinformation warning:

States are authorized under the United States Constitution to establish laws and regulations protecting the health, safety, and general welfare of their citizens. To protect the public from the unprofessional, improper, unlawful or incompetent practice of medicine, each of the states and territories making up the United States has formally adopted a Medical Practice Act, which defines the requirements for the practice of medicine within their borders and gives authority to a medical board to enforce the act's provisions. The Federation of State Medical Boards (FSMB) represents the 71 medical boards within the United States, its territories, and the District of Columbia. It assists these boards as they go about their mandate of protecting the public's health, safety and welfare through proper licensing and discipline of physicians and, in many jurisdictions, physician assistants and other health care professionals. The FSMB offers relevant policy, programs, education, and services to state medical boards that result in improved patient care and safety through effective and fair medical regulation. The FSMB also strives to enhance the role of state medical boards in an evolving health care environment by leading, anticipating, and responding to trends in medical regulation at the federal and state government level.

43. Since the Board's "Position Statement" was not published until *after* the events that gave rise to this case, and after its vote to suspend Dr. Gosselin's license, Dr. Gosselin did not have an opportunity to consult the Board for guidance with respect to its meaning. That is especially problematic, given the "Position Statement's" vagueness (discussed above).

44. Prior to January 6, 2022, the requirements for COVID-19 mRNA vaccine medical exemptions were unwritten and unpublished to Maine licensees. If physicians are not advised in writing of these specific requirements, they cannot be expected to follow them. Having failed to advise physicians of these requirements in writing, the Board has abused its authority and created a *post hoc* "justification" of its otherwise unknown policy and prior disciplinary actions. This *post hoc* "justification" does not comply with due process and fundamental fairness. Further, it is not written anywhere that a physician in Maine *must follow* CDC guidelines as a requirement of any Maine statute applicable to Dr. Gosselin. Is it the Board's position that a person must risk death (having suffered a severe anaphylactic reaction specifically to a COVID-19 mRNA vaccine) to qualify for a medical exemption?

45. The Board lacked the power to enact and apply the "Position Statement" retroactively. *Sampieri v. State Emples. Ret. Comm'n*, No. HHBCV146024554S, 2015 Conn. Super. LEXIS 1353, at *1-3 (Super. Ct. May 21, 2015) ("The law, however, presumes that administrative agencies lack power to enact retroactive regulations without statutory authorization."), citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208-09, 109 S. Ct. 468, 102 L. Ed. 2d 493 (1988) ("a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms . . ."); *Royal Indemnity Co. v. King*, 512 F.Supp.2d 117, 130-31 (D.Conn. 2007) (citing *Bowen* to hold that the Connecticut insurance department lacked the statutory authority to promulgate an interpretive rule having retroactive effect), *aff'd sub nom. Arrowood Indemnity Co. v. King*, 699 F.3d 735, 740 (2d Cir. 2012).

46. The prohibition against retroactive laws applies equally to rules and regulations promulgated by administrative bodies like the Board. *Cosby v. Franklin Cty. Dep't of Job &*

Family Servs., 2007-Ohio-6641, ¶ 15 (Ct. App.) ("Any prohibition against retroactive laws pertaining to legislative enactments applies to rules and regulations that administrative agencies promulgate."), citing *Martin v. Ohio Dept. of Human Serv. (1998)*, 130 Ohio App. 3d 512, 720 N.E.2d 576 (addressing retroactivity of regulation regarding Medicaid eligibility); *Murphy v. Ohio Dept. of Highway Safety (1984)*, 18 Ohio App. 3d 99, 18 Ohio B. 462, 481 N.E.2d 648 (subjecting an agency's regulation to retroactivity analysis); *Fraternal Order of Police v. Hunter (1975)*, 49 Ohio App.2d 185, 360 N.E.2d 708 (finding rule that administrative agency promulgated was subject to prohibitions against retroactive laws).

47. The Maine Constitution states that "[t]he Legislature shall pass ...no ex post facto law..." Me. Const. Art. I § 1.

A purely remedial statute does not violate Ohio Constitution, Article II, Section 28, even if applied retroactively. A statute is substantive, and therefore unconstitutionally retroactive under Section 28, Article II of the Ohio Constitution, if it 'impairs vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction.'

Cosby, ¶ 23.

48. Under this *Cosby* analysis, appropriate in this administrative context, the Board's January 6, 2022 "Position Statement" is an unlawful *ex post facto* law. It is not purely "remedial" but instead very clearly a substantive regulatory action that "affects an accrued substantive right", because it was adopted for the purpose of laying a predicate for a new range of discipline, for spreading COVID-19 "misinformation" and failing to adhere to requirements for COVID-19 mRNA vaccine exemption letters. Further, it "imposes new or additional burdens, duties, obligations, or liabilities" to comply with the proscriptions on COVID-19 "misinformation" and the requirements for COVID-19 mRNA vaccine exemption letters "as to a

past transaction" (the COVID-19 mRNA exemption letters prepared by Dr. Gosselin in October 2021).

E. Procedural Due Process: Damage to Reputation

49. Dr. Gosselin has a due process right to be free from damage to his reputation under the “stigma-plus test” articulated by the Supreme Court in *Paul v. Davis*, 424 U.S. 693, 709 (1976) (adopted by the First Circuit in, e.g., *Silva v. Worden*, 130 F.3d 26, 32 (1st 1997)):

Despite the "drastic effect of the 'stigma' which may result from defamation by the government in a variety of contexts, . . . reputation alone, apart from some more tangible interests such as employment, is neither 'liberty' nor 'property' by itself sufficient to invoke the procedural protection of the Due Process Clause." Paul v. Davis, 424 U.S. 693, 701, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976). Rather, the reputational injury must be accompanied by a change in the injured person's status or rights under substantive state or federal law. See Id. at 710-12.

“Fourteenth Amendment ‘liberties’ include ‘the right of the individual. . . to engage in any of the common occupations of life. . . . Reputational injury may be relevant to an alleged deprivation of a liberty interest to the extent that the resulting stigma prevents a plaintiff from successfully gaining other employment opportunities.” *Temple v. Inhabitants of the City of Belfast*, 30 F. Supp. 2d 60, 66 (D. Maine 1998) (citing *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572-73 (1972). *See also Doe v. Williams*, 2013 ME 24, ¶ 62, 61 A.3d 718; and *Doe v. Bd. of Osteopathic Licensure*, 2020 ME 134, ¶ 18, 242 A.3d 182, 188.

50. The Board has launched a very highly publicized,¹³ malicious, bad faith prosecution against Dr. Gosselin with the intent of crushing him, as an example to the rest of his

¹³ <https://www.pressherald.com/2021/11/29/waterville-doctor-suspended-for-pushing-covid-19-misinformation/>; <https://www.pressherald.com/2021/11/29/waterville-doctor-suspended-for-pushing-covid-19-misinformation/>; <https://www.wmtw.com/article/license-suspension-extended-for-maine-doctor-accused-of-spreading-covid-19-misinformation/38453267>; <https://www.centralmaine.com/2021/12/06/waterville-doctors-license-suspension-extended-until-hearing-in-february/>; <https://www.miamiherald.com/news/nation-world/national/article256223127.html>; <https://bangordailynews.com/2021/12/01/news/gofundme-yanks-suspended-waterville-doctors-fundraiser-for-covid-19-misinformation/>; <https://www.medpagetoday.com/special->

profession. The Board's public action has destroyed his reputation, and rendered him unemployed and unemployable in Maine.

IV. MAINE APA

The Board is proceeding in bad faith, has exceeded its authority, abused its discretion, and acted in an arbitrary, capricious and unlawful manner in contravention of Maine law¹⁴ in *inter alia* the following ways:

A. **These Proceedings are Unlawful Because the Board Has Allowed Its Objective to Censor What it Perceives to be COVID-19 "Misinformation" to Supersede its Sole Statutory Purpose**

51. Title 10 M.R.S. § 8008 states as follows:

*The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. **Other goals or objectives may not supersede this purpose**¹⁵ (emphasis added).*

The Board's discussion at its meeting of November 18th, and the Motion that initiated this entire case, make it crystal clear that the Board's true "goal or objective" is to implement the directives of the FSMB, an external private organization with no statutory authority in Maine, by censoring

<https://www.mainebiz.biz/article/waterville-physician-suspended-from-practice-over-covid-19-misinformation>; <https://www.centralmaine.com/2021/12/01/tell-us-should-a-waterville-doctor-have-had-his-license-suspended-for-spreading-covid-19-misinformation/>; <https://www.newscentermaine.com/article/news/health/coronavirus/citing-covid-misinformation-maine-medical-board-suspends-doctors-license-paul-gosselin-waterville-patriots-health-coronavirus/97-227cd2b0-c73a-4c78-aa83-273a36ef93aa>; <https://bangordailynews.com/2021/12/01/news/central-maine/maine-doctor-wont-comment-on-his-suspension-for-covid-19-claims/>; <https://www.beckershospitalreview.com/hospital-physician-relationships/maine-board-suspends-physician-s-license-over-alleged-covid-19-misinformation.html>; <https://www.msn.com/en-us/news/us/citing-covid-misinformation-maine-medical-board-suspends-doctor-s-license/ar-AARm89h>; <https://spectrumlocalnews.com/me/maine/news/2021/11/29/doctor-suspended-over-covid-19-misinformation>.

¹⁴ Including, without limitation, the provisions of 32 M.R.S. Ch. 36, 5 M.R.S. Ch. 375, and 10 M.R.S. Ch. 901.

¹⁵ The Notice of Hearing cites § 8008 on Page 1 but paraphrases only the first sentence and part of the second; the last sentence is not mentioned.

what it perceives to be COVID-19 "misinformation" throughout the medical profession in the State. The Motion passed on November 18, 2021 is based solely on spreading COVID-19 "misinformation" and does not cite to exemption letters.¹⁶ The Notice of Hearing issued by the Board on December 23, 2021 omits any reference to spreading COVID-19 "misinformation", and instead is predicated solely on a different ground - the writing of exemption letters. This about-face reeks of subterfuge.

B. These Proceedings are Unlawful Because the Board Has Exceeded its Statutory Jurisdiction to Regulate Medical "Practice", Which Does Not Extend to Dr. Gosselin's Exemption Letters

52. Each and every allegation in the Notice of Hearing is grounded upon the assumptions that Dr. Gosselin "issued vaccine exemptions", and that he issued them to 12 of his "patients". If the assumptions are correct, that might possibly render his actions a "practice issue" to quote the Board's legal advisor, but she openly doubted and warned the Board explicitly about this during the Board's November 18 hearing, after acknowledging that these were not in fact Dr. Gosselin's patients: "Part of the problem here is the lack of a real physician-patient relationship. ...we would probably need an expert of that, if this is really a **practice issue**" (emphasis added).¹⁷ The Board's website states that its mission is "regulating **the practice** of its licensees" (emphasis added).¹⁸

53. The assumptions underlying the Board's Notice of Hearing are entirely incorrect. First, Dr. Gosselin does not have any legal authority whatsoever to "issue" a medical exemption and has never purported to do so. Rather, he merely prepared letters supporting the requests of

¹⁶ It states: "*In light of the daily **risk of harm to the public** regarding the spread of COVID-19 to the public and in light of the fact that **misinformation tends to encourage** the public not to take medically recommended steps to protect themselves from the risk of COVID-19, the Board moves to suspend the licensees [sic] ability to practice for 30 days, holding a hearing as soon as possible within the 30-day period*" (emphasis added). Recusal Motion, Ex. A, ¶ 96.

¹⁷ Recusal Motion, Ex. A, ¶ ¶ 13, 46.

¹⁸ <https://www.maine.gov/osteo/home>

the 12 healthcare professionals named in the Notice of Hearing for medical exemptions. The healthcare employers of those individuals, and their corporate employer's in-house medical advisors, had the authority to "issue" the medical exemptions, not Dr. Gosselin. Arguably, then, the "Position Statement" does not apply to Dr. Gosselin at all, since it purports to regulate "a licensee who issues a vaccine exemption" (*see* discussion of vagueness above).

54. Secondly, Dr. Gosselin has never established a doctor-patient relationship with the 12 healthcare professionals listed in the Notice of Hearing (see **Exhibit C**).

*The essence of the doctor-patient relationship is the undertaking by a physician to **diagnose and/or treat** the person being diagnosed or treated with reasonable professional skill.” Lambley v. Kameny, 43 Mass. App. Ct. 277, 283, 682 N.E.2d 907, 912 (1997). “The acceptance or undertaking of **treatment** of a patient by a physician creates the relationship.” Garcia v. City of Boston, 115 F. Supp. 2d 74, 78 (D. Mass. 2000), *aff’d*, 253 F.3d 147 (1st Cir. 2001).*

Delong v. Nelson, 2019 U.S. Dist. LEXIS 150585, *33-34.¹⁹ The Board does recognize and license “Administrative Physicians”. That category seems to include insurance medical directors, hospital based physician administrators that do not directly treat patients, and the like. This appears to be a “lesser” license than the full license, but implies that there are “administrative functions” of a physician that do not require a full “physician-patient relationship.” Presumably, a fully licensed physician in Maine can also act in this manner. In other words, the restrictions of function only apply with the “administrative license” and a fully licensed physician may do both administrative duties and patient care duties. The American Medical Association cites with approval cases that have held that "examinations conducted at the behest of a third party, such as an exam for an employer, insurance company, or court (independent medical examination) do

¹⁹ See also Blake, Valarie, JD, MA, “When Is a Patient-Physician Relationship Established?”, American Medical Association Journal of Ethics, May 2021, Volume 14, Number 5: 403-406 (“[A] patient-physician relationship is generally formed when a physician affirmatively acts in a patient’s case by **examining, diagnosing, treating, or agreeing** to do so”) (emphasis added).

not typically entail the establishment of a patient-physician relationship because the intent is to inform the third party, not to treat or diagnose the patient."²⁰

55. The absence of a doctor-patient relationship is not a matter of oversight; rather the individuals listed in the Notice of Hearing simply were not seeking and did not consent to forming such a relationship. These 12 sophisticated and experienced healthcare professionals had already made up their minds to avoid being injected with the mRNA COVID-19 vaccines, and were fleeing the State's COVID-19 mRNA vaccine Mandate.²¹ They were not seeking, Dr. Gosselin did not provide, and they did not receive or rely upon, Dr. Gosselin's medical care, diagnosis, treatment or advice with respect to COVID-19, the COVID-19 mRNA vaccines, or whether or not they should be injected, and nothing Dr. Gosselin said or did induced them not to be injected. The exemption letters were ultimately not intended for these individuals, but for sophisticated healthcare employers who were fully capable of independently evaluating them, contacting Dr. Gosselin for clarification as needed, and fully legally authorized to accept or reject them. The exemption letters are devoid of any fraud or deceit.²²

C. These Proceedings are Unlawful Because the Board Has Never Adopted a Code of Ethics for Osteopathic Physicians as Required by Law

56. Title 32 § 2562 states that “As part of the biennial relicensure process, the board shall prepare and distribute to each licensed osteopathic physician practicing in the State **a copy of its code of ethics...**” (emphasis added). Counsel for Dr. Gosselin asked Board staff for a

²⁰ <https://journalofethics.ama-assn.org/article/when-patient-physician-relationship-established/2012-05>

²¹ See Recusal Motion, ¶ 6 and accompanying footnotes and Exhibits.

²² The Notice of Suspension states inter alia “[f]ollowing review, the Board deemed that Dr. Gosselin has engaged in conduct that constitutes fraud or deceit”, however the Board chose not to proceed with an allegation of “fraud or deceit” and it is not alleged or listed as a ground in the Notice of Hearing. The record reflects that when asked to revise his exemption letters to state that they were prepared in accordance with CDC guidelines, Dr. Gosselin declined to do so.

copy of the Board's required Code of Ethics, and proof of the required distribution. The Board responded (*see Exhibit A*):

The Board always sent copies when it was still mailing paper renewals, which last occurred in 2013. The Board did not keep copies of the mailings to licensees. When the Board began using the electronic ALMS licensing system, it did not include the Code of Ethics; The Code of Ethics is the American Osteopathic Association Code of Ethics, which is widely available including on it's website. A copy is attached;

57. Counsel have not been able to locate any evidence of the Board's formal adoption, or the Legislature's adoption, of the American Osteopathic Association ("AOA") Code of Ethics. Similarly, counsel have not been able to locate any evidence of the Board's communication to its licensees regarding the adoption of the AOA Code of Ethics. Codes of Ethics have been promulgated as formal rules pursuant to the Maine APA by the Maine boards governing psychologists, dentists, chiropractors, veterinarians, complementary health care providers, occupational therapists, counseling professionals, physical therapists, alcohol and drug counselors, nursing home administrators, dietetic practitioners, and respiratory care practitioners.²³

58. Arguably, unless and until it formally adopts a code of ethics, the Board should not be permitted to take any disciplinary action against any licensee in any case involving an alleged violation of 32 M.R.S. § 2591-A(2)(F) (unprofessional conduct). But at the very least, in a case such as this one, where there is no allegation of, and not even any hint of any evidence of, any danger to the health or safety of even one individual, either in the Notice of Hearing or in the complaints submitted to the Board that gave rise to it, the Board should not be permitted to continue with disciplinary action.

²³ See also C.M.R. 02-380, Ch. 4 promulgated by the State Board of Nursing, which, while not called a "code of ethics", nevertheless provides an extensive definition of "unprofessional conduct", with a long non-exclusive list of examples. Similarly, the Maine Board of Pharmacy rule devotes more than 50 pages to "License Denial and Professional Discipline", with 5 pages devoted to "Unprofessional Conduct" and the "Practice of Fraud and Deceit"; 02-392 C.M.R. Part 5.

59. It is not enough to say that no code of ethics could possibly encompass all the possible varieties of unprofessional conduct. That goes *without* saying; of course it could not. But osteopathic physicians in Maine, including Dr. Gosselin, are entitled to rely upon the Board's good faith effort at putting into writing at least the basics of the ethical principles with which they are expected to comply, with as much detail as reasonably possible. In fact, there is no reason that an Osteopathic code of ethics could not address the subject of vaccine exemptions that is so critical to this case. In any event, the importance of adopting a formal code of ethics was recognized by the Maine Legislature when it enacted the requirement in the first place; and it has also been recognized by the vast majority of Maine healthcare-related licensing boards (with the notable exception of this Board and the Board of Licensure in Medicine).

D. These Proceedings are Unlawful Because the Board has not Alleged any Conduct Constituting Incompetence That Would Support the Imposition of Discipline

60. Each and every "fact" alleged in the Notice of Hearing is untrue.²⁴ As noted in Section IV.B above, each allegation is grounded upon the assumption that Dr. Gosselin "issued vaccine exemptions" and for a variety of reasons did so improperly. But Dr. Gosselin "issued" no vaccine exemptions. Indeed, neither Dr. Gosselin nor any other physician in Maine is capable of issuing, or legally empowered to issue, vaccine exemptions. Exemptions from vaccinations mandated by statute or rule in Maine are granted (or "issued") by *employers* or schools. The 12 healthcare professionals listed in the Notice of Hearing were all subject to the COVID-19 vaccination mandate imposed by 10-144 C.M.R. Ch. 264, § 2(A)(7) (2021). Section 3 of that Rule provides that "[a]n employee who does not provide a Certificate of Immunization or Proof of Immunity...for a vaccine required under this rule may be permitted to attend work if that

²⁴ With the sole exception of Paragraph 1, which identifies the number of Dr. Gosselin's osteopathic medical license and the date on which it was issued.

employee is exempt in accordance with 22 MRS § 802 (4-B).” 22 M.R.S. § 802(4-B)(A), in turn, provides as follows:

*A medical exemption is available to an employee who provides a written statement **from a licensed physician**, nurse practitioner or physician assistant that, in the physician's, nurse practitioner's or physician assistant's professional judgment, immunization against one or more diseases may be medically inadvisable. (Emphasis added)*

The statute **does not** state that a medical exemption is available only to an employee who provides a written statement “from the employee’s physician”, or similar language. It would have been easy for the Legislature to write the statute in this way. It did not do so, but instead simply required that the written statement be provided by a licensed physician. Therefore, a licensed physician clearly need not have established a doctor-patient relationship with the individual healthcare worker seeking an exemption from the vaccine mandate as a precondition for providing a written statement recommending that the employer grant the exemption.

61. In the absence of any rule or other enforceable Board guidance to the contrary, Dr. Gosselin demonstrated no incompetence or unprofessional conduct by exercising his best professional judgment to determine that receiving a COVID-19 vaccine was not medically advisable for any of the 12 healthcare professionals in question.²⁵ He was not required to serve as the primary care provider of these individuals, to examine them in person, to formally diagnose them, to speak with their primary care providers, to familiarize himself with their prior medical history, or to keep any records of his interaction with them. The statute places no other limitations on the availability of vaccine exemptions beyond producing a written statement from a licensed physician.²⁶ It does not limit the exemption to individuals who have experienced and

²⁵ Indeed Dr. Gosselin is entirely within his rights to form a professional opinion that receiving a COVID-19 vaccine is not medically advisable for **anyone**, and to express that opinion to his patients and to anyone else.

²⁶ Of course, the statute should be read to include a “good faith” requirement applicable to the physician. That is, the physician writing the exemption letter in support of a request for medical exemption must

survived anaphylactic reactions to the proposed vaccinations in the past, for example; and it certainly does not require that written statements recommending vaccine exemptions be provided only after consideration of guidance published by the CDC, as suggested in ¶¶ 5 and 6 of the “Alleged Facts” portion of the Notice of Hearing.

62. Again, every allegation in the Notice of Hearing is grounded upon the assumption that Dr. Gosselin “issued vaccine exemptions”, which he did not do and had no power to do. Rather, he provided written statements to healthcare workers in support of their requests for medical exemption. Those written statements were then submitted by each healthcare worker to his or her employer for *the employer's* consideration in deciding whether to “issue” a vaccine exemption to the employee, all as provided by the applicable law. But even if the Notice of Hearing were to be read as alleging that Dr. Gosselin “provided multiple written statements supporting vaccine exemptions for individual healthcare workers”, it is still unlawful because the provision by Dr. Gosselin of those statements was not improper in any way and therefore cannot support the imposition of disciplinary action against his license based upon allegations of “incompetence”.

E. These Proceedings are Unlawful Because the Board Has Not Identified any Standard of Professional Behavior Violated by Dr. Gosselin

63. The Board has not identified any standard of professional behavior regarding either COVID-19 “misinformation” (the true focus and purpose of the Board’s action against Dr. Gosselin in this matter) or the “issuance of vaccine exemptions” (the subject that is the focus of the Notice of Hearing). While the Board has issued a “Board Position Statement on COVID-19 Misinformation” that addresses vaccination exemptions (and thus might arguably furnish the “standard of professional behavior” mentioned in Section III of the Notice of Hearing), it is not

believe in good faith that it is warranted. Dr. Gosselin meets this requirement and will testify accordingly.

applicable in this case for several reasons. Furthermore, the summary of the anticipated testimony of the State's expert witness regarding standards applicable to vaccine exemptions cannot remedy this problem.

1. The "Position Statement" was not promulgated as a rule pursuant to the provisions of the Maine APA

64. A document such as the "Position Statement", which involves important questions of public health, purports to regulate the entire profession, and purports to restrict not only the way in which licensed physicians practice medicine but also their exercise of the constitutional right to freedom of speech, can have no legal effect without being promulgated as a formal rule pursuant to the provisions of the Maine APA, which allows for notice and public comment, and in this case, since the rule would clearly qualify as a "major substantive rule" as defined by 5 M.R.S. § 8071(2)(B), for input from the Maine Legislature. The Board did not go through this process before issuing the "Position Statement", and it is therefore unlawful.

2. The "Position Statement" Provided No Reasonable Advance Notice, and Cannot be Enforced Retroactively

65. The Board published its "Position Statement" on January 6, 2022, well after the events giving rise to this case. The Board did not publish any guidance regarding either "COVID-19 misinformation" or the writing of COVID-19 mRNA vaccine exemption letters prior to publishing its Position Statement. Therefore, Dr. Gosselin had no reasonable advance notice of the Board's position on either of these subjects. The Board cannot apply its "Position Statement" *ex post* to administer discipline with respect to events transpiring well before its publication. "The notice of a hearing of a license revocation, suspension proceeding, or **the complaint against the licensed professional must include not only the facts, but also the legal criteria by which the licensee's conduct will be measured**" (emphasis added). *Madden*

v. Texas Board of Chiropractic Exam'rs, 662 S.W. 2d 622, 627 (holding that the agency violated an applicant's procedural due process rights by failing to give the applicant notice of a new statutory interpretation that the agency applied for the first time in the course of the applicant's hearing); *Marrie v. S.E.C.*, 374 F.3d 1196, 1206 (D.C. Cir 2004) (explaining that in a proceeding to bar accountants from practicing before the SEC because they had allegedly engaged in "improper professional conduct," fair notice required the SEC to articulate an intelligible standard for what constitutes "improper professional conduct" and to specify the state of mind necessary for finding that an accountant had engaged in such conduct.) Adequate notice includes notice of new statutory interpretations used for the first time, specificity of professional conduct and requisite state of mind for violation. Moreover, "the law will not tolerate after-the-fact, in fact retroactive, imposition of standards." *United Gas Pipe Line Co. v. Fed. Energy Regulatory Comm'n*, 597 F.2d 581, 586-587 (5th Cir 1979)

3. The "Position Statement" Was Inspired By, Relies Upon, and Enforces Statements issued by Private Organizations that Have No Authority to Regulate Maine Physicians

66. The "Position Statement" adopts and enforces the earlier statements and public policy positions of the FSMB, ABFM, ABIM and ABP. However, the citation to these statements does not cure the fundamental defect in time notice. Furthermore, none of these private organizations, unaccountable to the Maine Legislature or executive branch, has any authority whatsoever to regulate physicians in Maine. Maine law does not permit these private, agenda-driven organizations, who are clearly set on intimidating physicians into submission to the prevailing COVID-19 narrative, to "**guide the Board** as it executes its duty to protect the public, investigate complaints, and regulate its professional licensees" (emphasis added).²⁷ The

²⁷ <https://www.maine.gov/osteo/sites/main.gov.osteo/files/inline-files/Position%20Statement%20re%20COVID-19%20Misinformation.pdf>

Board is a creature of statute, and its duties have been explicitly set forth in Title 32, Chapter 36. But nowhere in Maine law is there the slightest mention of these organizations or their authority to guide Maine's agencies and officials. In Maine, the rule of law must guide the evaluation of physician conduct, not private third party agendas.

4. The "Position Statement" Provided No Substantive Notice and is Unlawfully Vague

67. Substantively, for all of the reasons set forth above,²⁸ the "Position Statement" is inadequate to provide reasonable notice, or to create or constitute an enforceable standard of professional behavior. In particular, as discussed in Sections III.B, IV.B and IV.D, the language "a licensee who **issues** a vaccine exemption" is at best ambiguous, at worst nonsensical and impossible to apply.

F. These Proceedings are Unlawful Because the Board Failed to Satisfy the Requirements of 5 MRS § 10004(3)

68. For all of the reasons set forth in the Recusal Motion, the Board failed to satisfy the requirements of 5 MRS § 10004(3), knew that it had not satisfied the statute, and proceeded to launch this disciplinary action anyway. Having first ignored the statutory requirement for a finding that "the health or physical safety of a person ...is in immediate jeopardy", the Board then leveraged its requirement for a hearing within 30 days to force Dr. Gosselin into an Interim Consent Agreement. Dr. Gosselin required additional time to learn about the Board's case and evidence against him, conduct legal research, find his own expert, and prepare a defense. These are basic, minimum requirements of fundamental fairness and due process. The Board cannot force Dr. Gosselin to waive his right to challenge its prior suspension actions, as a condition to allowing him adequate time to prepare (*see* discussion of unconstitutional conditions above in

²⁸ See Section III.B above.

Section I.B). These deliberate violations of 5 MRS § 10004(3) remain live issues, and were preserved for adjudication in this proceeding by the language of the Interim Consent Agreement (*see Exhibit B*) ("until these matters can be resolved in an adjudicatory hearing").

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Dr. Gosselin respectfully requests that the Board immediately halt and dismiss these proceedings.

Dated this 2nd day of March, 2022.

Respectfully submitted,




F. R. Jenkins (Maine Bar. No. 4667)
Meridian 361 International Law Group,
PLLC
97A Exchange Street, Suite 202
Portland, Maine 04101
Telephone: (202) 361-4944
www.meridian361.com
Jenkins@Meridian361.com



David E. Bauer (Maine Bar No. 3609)
443 Saint John Street
Portland, ME 04102
Telephone: (207) 400-7867
david.edward.bauer@gmail.com

EXHIBIT A

From: Strout, Susan E Susan.E.Strout@maine.gov 
Subject: RE: Dr. Paul GOSSELIN, D.O., Case No. CR 2021-49
Date: February 10, 2022 at 5:35 PM
To: david.edward.bauer david.edward.bauer@gmail.com
Cc: Wilson, Lisa A Lisa.A.Wilson@maine.gov, F. R. Jenkins, Esq. jenkins@meridian361.com

SS

Good Afternoon:

I am writing in response to your letter and to answer a couple of additional questions you had which were received via e-mail.

1. Can I confirm that the materials related to CR2021 49 have been provided and nothing is missing? [Yes](#)
2. Can you confirm the initials from the NOH correspond to the full names we indicated below? [Yes and this was addressed by AAG Andrew Black as well;](#)
3. Re Title 32 and the Board 'shall' prepare and distribute...can I provide documentary proof? [The Board always sent copies when it was still mailing paper renewals, which last occurred in 2013. The Board did not keep copies of the mailings to licensees. When the Board began using the electronic ALMS licensing system, it did not include the Code of Ethics; The Code of Ethics is the American Osteopathic Association Code of Ethics, which is widely available including on it's website. A copy is attached;](#)
4. Can I provide an idea of when the remainder of the licensee file will be provided? [Dr. Gosselin's entire licensing file has been provided. The only remaining files are those regarding complaints and investigations which resulted in prior Board actions. Those cases have been previously adjudicated. The only material from those files that the Board members can consider are the final Board decisions, which have been provided to you.](#)

[I have begun the copying process and hope to finish within 2 weeks or so; I will then turn the material over to AAG Wilson for her review. Please confirm that you still seek those materials. If you determine you do not need it, please let either AAG Wilson or me know;](#)

5. Can you tell us on what day the 'Board Position Statement on COVID-19 Misinformation' was first published on the Board's website? [The Board's Position Statement on COVID-19 Misinformation', based in part on information released by the Federation of State Medical Boards in July 2021, was published on the Board's website on January 6, 2022.](#)

In a separate e-mail, you asked if materials from the Medical Professionals Health Program would be included. [Yes, materials from MPHP will be part of the materials provided.](#)

I hope this information will be helpful. Please direct any questions you may have to AAG Wilson.

Sincerely,

Susan E. Strout, Executive Secretary
Maine Board of Osteopathic Licensure
142 State House Station
Augusta ME 04333-0142
Tel: 207/446-4205 or 207/287-2480
Fax: 207/536-5811
Web: www.maine.gov/osteo

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy/delete all copies of the original message.

From: David Bauer <david.edward.bauer@gmail.com>
Sent: Friday, January 14, 2022 5:10 PM
To: Strout, Susan E <Susan.E.Strout@maine.gov>
Cc: Wilson, Lisa A <Lisa.A.Wilson@maine.gov>; F. R. Jenkins, Esq. <jenkins@meridian361.com>
Subject: Dr. Paul GOSSELIN, D.O., Case No. CR 2021-49

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Strout: Please see the attached.

Regards,

David E. Bauer, Esq.



Code of Ethics -
Americ...ion.pdf

EXHIBIT B

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

In re:) INTERIM CONSENT AGREEMENT
PAUL GOSSELIN, D.O.)
Complaint Nos. CR 2021 32,)
CR 2021 37, CR 2021 41)
and CR 2021 43)

This document is an Interim Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice osteopathic medicine in the State of Maine held by Paul Gosselin, D.O. The parties to the Consent Agreement are: Paul Gosselin, D.O. (“Dr. Gosselin”), the State of Maine Board of Osteopathic Licensure (“the Board”), and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 2591-A.

STATEMENT OF FACTS

1. Dr. Gosselin has held a license to practice medicine in the State of Maine since July 15, 1999 (license number DO1631) and specializes in family/general practice medicine.
2. On November 18, 2021, the Board issued an Order of Immediate Suspension of Dr. Gosselin’s license pursuant to 5 M.R.S. § 10004(3).
3. The Board at its meeting on November 21, 2021, authorized the entry of an interim consent agreement to continue the suspension of Dr. Gosselin’s license beyond that authorized pursuant to 5 M.R.S. § 10004(3) until these matters can be considered and resolved in an adjudicatory hearing.
4. The parties to this Interim Consent Agreement are attempting to schedule an adjudicatory hearing in these matters for February 10, 2022.

5. This Interim Consent Agreement has been negotiated by legal counsel to Dr. Gosselin and legal counsel to the Board. Absent Dr. Gosselin's acceptance of this Consent Agreement by signing and dating it in front of a notary and returning it to Board of Osteopathic Licensure, 142 State House Station, Augusta, Maine 04333-0137 on or before December 2, 2021, the Board and the State of Maine Office of the Attorney General will proceed to an adjudicatory hearing around December 18, 2021, over Dr. Gosselin's stated objections as to the adequacy of notice and timing.

COVENANTS

6. Dr. Gosselin agrees to the continued SUSPENSION of his license to practice as an osteopathic physician in the State of Maine effective upon the execution of this Interim Consent Agreement, which suspension shall remain in effect until such time as the Board takes further action regarding these matters.

7. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto.

8. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Gosselin or any other matter relating to this Consent Agreement.

9. This Interim Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408-A.

10. This Interim Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Federation of State Medical Boards (FSMB), and other licensing jurisdictions.

11. Nothing in this Interim Consent Agreement shall be construed to affect any right or interest of any person not a party hereto. If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Interim Consent Agreement.

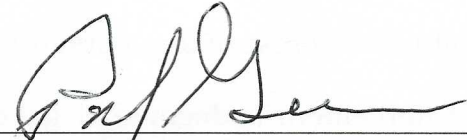
12. Dr. Gosselin acknowledges by his signature hereto that he has read this Interim Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

13. Dr. Gosselin has been represented by F. R. Jenkins, Esq. and David Bauer, Esq., who have participated in the negotiation of the terms of this Interim Consent Agreement.

14. For the purposes of this Interim Consent Agreement, the terms “execution” and “effective date” mean the date on which the final signature is affixed to this Consent Agreement.

I, PAUL GOSSELIN, D.O., HAVE READ AND UNDERSTAND THE FOREGOING INTERIM CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, THAT I WAIVE CERTAIN RIGHTS. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

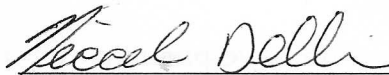
DATED: 12/2/21


PAUL GOSSELIN, D.O.

STATE OF Maine
Kennebec, S.S. (County)

Personally appeared before me the above-named Paul Gosselin, D.O., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

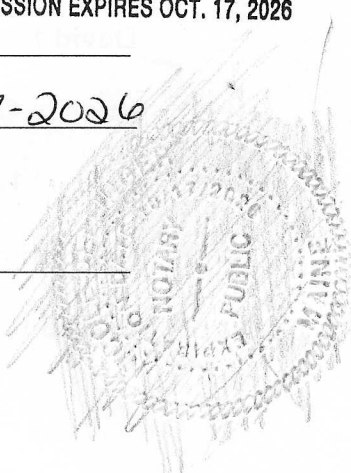
DATED: 12-2-21


NOTARY PUBLIC
MY COMMISSION ENDS: 10-17-2026

NICOLE DELLINGER
NOTARY PUBLIC, STATE OF MAINE
MY COMMISSION EXPIRES OCT. 17, 2026

DATED: _____

F. R. JENKINS, Esq.
Counsel for Paul Gosselin, D.O.



I, PAUL GOSSELIN, D.O., HAVE READ AND UNDERSTAND THE FOREGOING INTERIM CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, THAT I WAIVE CERTAIN RIGHTS. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: _____
PAUL GOSSELIN, D.O.

STATE OF _____,
S.S. (County)

Personally appeared before me the above-named Paul Gosselin, D.O., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: _____
NOTARY PUBLIC
MY COMMISSION ENDS: _____

DATED: 11/2/2021

F. F. JENKINS, Esq.
Counsel for Paul Gosselin, D.O.

EXHIBIT C

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

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

DECLARATION OF
PAUL GOSSELIN D.O.


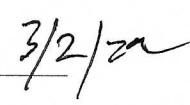
COMES NOW Paul Gosselin D.O. and declares and states the following to the best of his knowledge and belief, under the penalties of perjury:

1. To the best of my knowledge and belief, none of the 12 individuals (the "12") identified by the Board in the Notice of Hearing it has issued in this matter contacted our office for the purpose of obtaining medical advice or treatment of any kind from me, none of them requested medical advice or treatment from me, and none of them obtained medical advice or treatment from me. None of them were seeking diagnosis or treatment for COVID-19, and I did not agree to diagnose or treat them. None of them were seeking medical advice regarding the COVID-19 vaccines or potential treatments for COVID-19.
2. To the best of my knowledge and belief, all of the 12 are experienced healthcare professionals who were subject to the COVID-19 vaccine mandate issued by Maine DHHS on August 12, 2021. All of the 12 came to us after they had already made up their minds that they would not be injected with the COVID-19 vaccines, and they were simply seeking to preserve their employment, and wanted COVID-19 vaccine exemption letters that they could present to their healthcare employers in support of their request for a medical exemption. We made sure that all of the 12 understood that I had no authority whatsoever to "issue" or "grant" a medical exemption, and that only their employers had that ultimate authority.
3. On more than one occasion, one of the 12 requested that I modify the initial exemption letter that I had provided to them, after it had been rejected by their employer, in order to strengthen it, by stating that the letter had been prepared in accordance with guidelines issued by the Center for Disease Control and Prevention. I always refused to make this modification.
4. To the best of my knowledge and belief, none of the 12 has complained about me, and none of them has been harmed by the exemption letters. All of them are happy with me and appreciate my willingness to try to assist them in their effort to obtain a medical exemption from their employers.

 3/2/22

5. I am aware that some members of the Board have alleged or believe that I was "selling" exemption letters as a kind of business model. That is simply untrue. I frequently charged nothing at all for exemption letters. When I did charge for them, the charge was only a nominal administrative charge to cover some part of our time. The exemption letters interfered with and distracted from my actual medical practice. I turned away many who were seeking exemption letters.
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 2nd day of March, 2022.

Paul Gosselin D.O.