STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
LOCATION: Augusta
Docket No. AP-23-45

Meryl J. Nass, M.D.

Petitioner

v.

Maine Board of Licensure in Medicine

Respondent

PETITIONER'S SUPPLEMENT TO REPLY BRIEF

NOW COMES Petitioner, Meryl J. Nass, M.D., by and through counsel, and supplements the Reply Brief filed and dated November 14, 2024 as follows:

A. Dr. Nass is a Highly Qualified Doctor with Expertise in Pandemics and Biological Warfare.

The Court should not overlook Dr. Nass's accomplishments as a physician. She has practiced for over 40 years without a patient complaint. That record continues today since the three patients reviewed by the Board all testified that her medical services were exemplary. Indeed, the proceeding by the Board is the first licensing action ever commenced in her career.

Dr. Nass earned a national reputation through her involvement with Anthrax and later with the Anthrax vaccine. (A.R. 000049.) She wrote and researched extensively on Anthrax and the Anthrax vaccine. Dr. Nass testified before Congress on bioterrorism, the Anthrax vaccine, and Gulf War Syndrome. (A.R. 000049-50.) The American Journal of Public Health requested she write a paper about the Anthrax vaccine program that was published and entitled *The Anthrax Vaccine Program, An Analysis of the CDC's Recommendations For Vaccine Use,* American Journal of Public Health, Vol. 92, No. 5 May 2002. *Id.* Her research showed how normal FDA standards were not followed in the approval process for the Anthrax vaccine. Her research led the way for a landmark decision that resulted in a permanent injunction against the Department of

Defense's "Involuntary Anthrax Inoculation Program." *Doe v. Rumsfeld*, 341 F. Supp. 2d 1 (D.D.C. 2004). Dr. Nass's expertise was recognized by Congress and she was invited to testify before six different congressional committees. (A.R. 000050-51.) Her recognition spread to Maine where the Maine Legislature created a commission to improve the lives and health of members of the National Guard and Dr. Nass was appointed a member and then Chair. *Id.*

Describing her own practice, Dr. Nass testified that she is a doctor willing to take on difficult patients that other doctors avoid:

> I am a doctor who takes care of the patients . . . no other doctors want to deal with because you can't make money on them, they're hard to treat, they're hard to diagnose, and so my practice has been, a lot of it for 20 years or more, taking care of patients with chronic fatigue syndrome, fibromyalgia, Gulf War syndrome, chronic Lyme disease, et cetera[.]

(A.R. 000052.) When COVID exploded in America, Dr. Nass was practicing in Ellsworth, Maine and treated patients who had already decided that COVID vaccines were experimental and sought other forms of treatment.

B. There is No Evidence in the Record to Substantiate the Board's Findings With Respect to Dr. Nass's "Treatment Model."

The Board found:

> Patients 1, 2, and 3 found the Licensees name on a website listing physicians who would provide on-demand prescriptions for certain medications. A telemedicine visit would then occur, during which the Licensee would consistently do only two things. First, the Licensee would obtain a medication list and cross-reference it for drug interactions. The Licensee utilized the medication list as a substitute for obtaining a medical history, which was insufficient, particularly because some medications are used to treat multiple and different conditions. Second, the Licensee obtained the patient's weight, which was necessary for the dosing of one of the prescriptions. Each patient received the prescription they came to the appointment requesting.

As noted in Petitioner's Brief, there is nothing in the Third Amended Notice of Hearing putting Dr. Nass on notice that the Board was evaluating her so-called "treatment model." The first time Dr. Nass's "treatment model" was raised occurred during the Board's deliberation when Dr. Waddell asserted her "practice model" is akin to a "pill mill practice model that we have dealt with in other areas[,]." There is simply no evidence to substantiate the finding that Dr. Nass provided "on-demand prescriptions" for certain medications.

Patient 2 described his decision with respect to the COVID vaccination:

> On a personal level, I just was uncomfortable with the new technology of the vaccines and just felt like it would be better not to go that route if there were other alternatives.

(A.R. 000541.) Patient 2 testified how he found Dr. Nass as follows:

> We had come to the conclusion that we would - - we would be better served or we would like to find a doctor more local in case if there were any problems or issues. So we once again searched the site, the FLCCC site, looking to see if we could find a doctor in Maine that was in keeping with what we believe to be the best way to deal with COVID.

Id. There is no evidence in the record that FLCCC (Front Line COVID-19 Critical Care Alliance) listed physicians who would provide "on-demand" prescriptions.

Patient 1 testified that she obtained Dr. Nass's name through the Association of American Physicians and Surgeons, a well-recognized national organization. Patient 2 testified as follows:

> I first learned about Dr. Nass through the Association of American Physicians and Surgeons, and they had a directory of physicians that would provide treatment and she was in the State of Maine so that's how I came to know her and contact her.
>
> Q. And what attracted you to the Association of Physicians and Surgeons? I assume this is their website?
>
> A. Yes, it is. Well, they are a longstanding association as I understood it with credential providers, so that was my main criteria.

(A.R. 000525.) Patient 2 was also unvaccinated. *Id.* There is no evidence that the Association of American Physicians and Surgeons listed Dr. Nass as a provider who would prescribe "on-demand prescriptions for certain medications." The Board's contrived finding is simply a brazen attempt to justify the conclusion the Board desired to reach.

Patient 3 was also unvaccinated. (A.R. 000563.) Patient 3 was 6 months pregnant and at the time there was no approved vaccination for pregnant women. Patient 3 described how she located Dr. Nass:

> After I got off the phone with her, my husband and I began looking at the FLCCC alliance website and we sought out a doctor who would be able to see me via teleconference or over the phone, audio call, to get help with treating COVID before it got more severe. Where I was pregnant, we were worried about that.

(A.R. 000564.) Again, there is no testimony by Patients 1, 2, or 3 to support the Board's finding that Dr. Nass would provide "on-demand prescriptions for certain medications." This is a blatant fabrication by the Board. Patient 3 was prescribed Hydroxychloroquine and Azithromycin. Further, there is no evidence in the record that any of the 3 patients requested a specific prescription, as opposed to Dr. Nass's advice on what alternative treatment would be best for them.

The Board made no findings with respect to the effectiveness of Ivermectin or Hydroxychloroquine as alternative treatments for COVID-19. Nor could they. Dr. Nass presented as an expert Dr. Harvey Risch, a professor emeritus of epidemiology at the Yale School of Public Health who created Yale's pharmacoepidemiology course and trained generations of epidemiologists. (*See generally,* A.R. 009809-9825.) Dr. Risch published more than 400 peer-reviewed papers that have been cited by researchers in scientific papers over 50,000 times. (A.R. 000453.) In addition to publishing a copious number of peer review papers, Dr. Risch served as a reviewer for the Canadian Medical Association, the British Journal of Cancer, the Annals of

Oncology, and the New England Journal of Medicine. (A.R. 000452.)

In 2020, Dr. Risch, along with 50 co-authors, published a paper entitled *Multifaceted Highly Targeted Sequential Multi-Drug Treatment of Early Ambulatory High Risk SARS-CoV-2 Infections*. (A.R. 000454.) The paper described treatment protocols for clinicians to use with Hydroxychloroquine for early outpatient COVID-19 care. *Id.* Dr. Risch testified there have been 9 other controlled clinical trials of early Hydroxychloroquine treatment, all showing patient benefit. (A.R. 000456.)

Dr. Risch also testified about his research involving Ivermectin, Ivermectin-based prophylaxis and risk of COVID-19. (A.R. 000468.) His Ivermectin research (L.E. 151-A) concluded that prophylactic Ivermectin appears to reduce the risk of COVID-19 between 71% and 82%. His second report concluded that when Ivermectin is used for outpatient treatment, it reduces hospitalization 42-45% and reduces mortality 28-46%. (A.R. 000470.) Thus, there is no basis on the record to conclude that the prescription of either Ivermectin or Hydroxychloroquine did not meet the standard of care. Indeed, the Board made no findings with respect to the effectiveness of treatment using either drug. The compelling testimony of Dr. Risch is demonstrated by the fact that neither the Attorney General's Office or the Board chose to cross-examine him. Thus, his testimony is undisputed and clearly supported Dr. Nass's treatment of Patients 1, 2, and 3 met the standard of care.

C. Dr. Nass's Statement to a Pharmacist to Obtain Hydroxychloroquine for Patient 3 Does Not Constitute Ethical Misconduct.

On April 11, 2020, the Maine Board of Pharmacy issued a "Statement" urging pharmacists to take steps to verify a physician's diagnosis for prescriptions for Chloroquine, Hydroxychloroquine, and Azithromycin and prohibiting their use for prophylactic treatment unless consistent with FDA guidelines. The Statement was never adopted as a Rule and was thus

unenforceable. The Board, however, recognizing that Dr. Nass could not be disciplined for violating an unenforceable Rule of the Maine Board of Pharmacy, did an end-around and found Dr. Nass violated telemedicine standards of practice involving the "standard of care and professional ethics." However, the Board has never adopted by rule the American Medical Association Standards of Professional Ethics and they are not enforceable. Further, the Board has never adopted any rules of professional ethics or rule-based standards of care.

It is important to note that at the time Dr. Nass prescribe Hydroxychloroquine to Patient 2, he had active COVID and thus there was no violation of the Statement of the Board of Pharmacy that limited use for prophylactic purposes. (A.R. 000059.)

When Dr. Nass learned that Patient 2 had active COVID symptoms, she made a medical judgment to prescribe Hydroxychloroquine and Azithromycin. She described her thought process as follows:

> I thought he would benefit from Hydroxychloroquine and possibly from Azithromycin as well. Since both of these cause an increase in the QT interval and I felt he was at high risk potentially for an arrythmia, I did not want to give both at the same time. He was on many other drugs and supplements, and so I - - and I also wanted him to be able to obtain the drug, and so I had to do a couple of things that I normally would never do. I had - - I tried to avoid conflict and let him get the prescription. I prescribed a Lyme disease dose of Hydroxychloroquine and Azithromycin by phone to the pharmacist on a Saturday, three weeks of each which is not what I use for COVID, hoping the pharmacist would just fill the goddamn prescriptions and leave us alone and let the patient get his medicines.

(A.R. 000095-96.) She described the pharmacist's response.

> The pharmacist wouldn't fill it and called me back and said what's the diagnosis, and so then it was either lie to the pharmacist or - - because I knew the State had scared these pharmacists so they wouldn't dispense the legally appropriate medicine because they're worried about their license, there's no rule saying they shouldn't and, in fact, there's a standing rule from this Board as well as from DHS that Hydroxychloroquine could be prescribed and dispensed

> for acute COVID. So that rule exists. We've gone over it, and yet everybody pretended that it didn't exist and there was some other rule saying you couldn't dispense it for COVID but nobody had written that other rule down in black and white, but all the pharmacists and almost all the doctors knew they better not write the prescription or dispense it.

(A.R. 000096.) When asked how she evaluated her obligation to her patient, Dr. Nass testified:

> It was very clear to me at the time that I could either do my best for the patient and put myself at risk, even though everything I was doing was legal, or I could withhold the drug and I'd be safe and the patient would be more at risk. Now, I know what I'm supposed to do, I remember the oath I took when I graduated from medical school. I didn't like having to make that decision, I've never had to make it before, but this Board put me in the position where I had no choice, and I immediately notified the Board about it. I said don't do this to any other doctors.

Id. The day after the prescription was obtained, Dr. Nass self-reported to the Board, substantially ameliorating any perceived ethical violation. The Board glances over the life and death decisions confronting Dr. Nass and Patient 2's high-risk classification. Dr. Nass put her patient's interest over her own. She violated no rule of the Board, no telemedicine standard, and no ethical obligation. Indeed, she courageously obtained the medication that pharmacists had been intimidated from dispensing.

CONCLUSION

Dr. Nass requests this Court to fairly and objectively review the findings by the Board and the actual evidence upon which the Board relied. There is simply no ethical or substantive rule violation where Hydroxychloroquine could legally be dispensed for active COVID. The contrived "pill mill" finding is unsupported by the record and was never alleged in the Third Notice of Hearing. In fact, Dr. Nass was blindsided by this false allegation in an attempt to color the findings to support the foregone conclusion the Board reached when it found that it could not discipline her for alleged "misinformation."

Dated: January 5, 2025

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