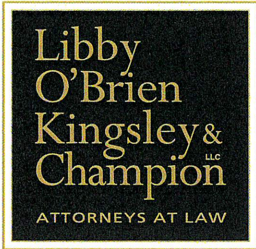


TYLER J. SMITH, ESQ.
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September 17, 2024

**VIA HAND DELIVERY**

Tamara Rueda, Clerk
Kennebec County Superior Court
Capital Judicial Center
1 Court Street, Suite 101
Augusta, ME 04330

Re: *Meryl J. Nass, M.D. v. Maine Board of Licensure in Medicine*
Docket No. AUGSC-AP-23-45

Dear Ms. Rueda:

Enclosed please find Petitioner's Brief in the above matter.

Please note that Exhibit 1 to the brief is a thumb drive containing a .mp4 video file of the fourth day of the administrative hearing. This video was offered in the adjudicatory hearing as Exhibit 1 to Licensee's Motion to Disqualify and was transmitted to the Board via a link in an email. (A.R. 011025.) However, the video itself was not downloaded into the Board's official file, and the link is no longer active. Because the link is no longer active, Exhibit 1 to the brief is offered for inclusion in the administrative record. I have conferred with the assistant attorney general representing the Board, who consents to the inclusion of Exhibit 1 as part of the record.

If you have any questions, please feel free to contact me. Thank you for your assistance.

Sincerely,

Tyler J. Smith
ME Bar No. 4526

Enclosure
c: Michael Miller, Esq., AAG (by email)
Meryl J. Nass, M.D. (by email only)

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 BRIEF


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## Background

In its Fall 2021 newsletter, the Board announced that doctors who spread COVID-19 vaccine misinformation "are risking disciplinary action . . . including the suspension or revocation of their medical license[.]" (A.R. 005226-27.) This announcement cut-and-pasted a position statement drafted by the Federation of State Medical Boards (FSMB). (A.R. 005226-27.) The Board elaborated that it "supports the position taken by the FSMB regarding Covid-19 vaccine misinformation" and "applies this standard to all misinformation regarding Covid-19[.]" (A.R. 005226-27.) The newsletter linked to resources by the American Medical Association supporting the "fight against Covid-19 misinformation." (A.R. 005226-27.) These resources provided scripts, templates, and "key messages" for doctors to spread supporting the vaccine, all consistent with the FSMB's preferred policy message. (A.R. 005233-244.)

The Board's chair, Maroulla Gleaton, M.D., is an FSMB director. (A.R. 005224-225.) While campaigning for her FSMB position, Chair Gleaton told her potential voters:

> I have a clear understanding of the mission and goals of the FSMB as well as its positive impact and support to state medical boards. I have the time, energy, enthusiasm and commitment necessary to work hard on behalf of the FSMB. My experience and qualifications will enable me to collaborate well with others in developing strategic goals for the FSMB in supporting medical regulation into the future.

(A.R. 005222-23.)

On October 6, 2021, the Board received a complaint from Stephen Demetriou that Dr. Nass was spreading misinformation. (A.R. 004742.) Demetriou qualified, "I am not her patient. I have never been treated by Meryl Nass, nor has anyone I am associated or acquainted with." (A.R. 004742; A.R. 003103-117.) Still, the Board issued a notice of complaint to Dr. Nass and demanded her response by November 6, 2021. (A.R. 003096-098.) When Dr. Nass questioned the Board's authority to regulate private speech, the Board responded:

> The basis of the Board's jurisdiction is that there is alleged unprofessional conduct, particularly where you have communicated in your capacity as a physician in the interview and on the website that could allow patient and the public to view the information you provide as misleading and/or inaccurate.

(A.R. 003121.) Interestingly, a few days after the Board received the complaint, Chair Gleaton emailed the Board's executive director, Dennis Smith, and its assistant executive director, Tim Terranova, to ask about Board policies about licensees being unprofessional if they spread misinformation about COVID-19 vaccination. (A.R. 009528.) Later, on November 5, 2021, Dr. Nass spoke to the Maine Board of Pharmacy about its statement on prescribing hydroxychloroquine and ivermectin. (A.R. 005177.[1]) The AAG attending that meeting emailed his notes to AAG Michael Miller, who acts as the Board of Licensure in Medicine's attorney. In turn, AAG Miller forwarded the notes to a Board employee "to be included in Dr. Nass's complaint file." (A.R. 5177.)

On November 7, 2021, the Board received a complaint from Katherine Moors about Dr. Nass spreading misinformation on the internet. (A.R. 003234-247.) Three days later, a Board investigator called Moors and asked her if she knew the names of any of Dr. Nass's patients. (A.R. 003248-249.) After the Board notified Dr. Nass about the complaint, Dr. Nass wrote to the Board questioning how it defines "misinformation," as well as the Board's statutory authority (or lack thereof) to regulate speech in a non-clinical setting. (A.R. 003255.) Supporting her email, Dr. Nass provided her testimony to the New Hampshire Legislature. (A.R. 003255-58.)

Later, on December 10, 2021, The Board subpoenaed Dr. Nass's patient records. (A.R. 003264-3268.) Dr. Nass tried to obtain legal representation but could not do so because the

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[1] A.R. 5177, which was Licensee Exhibit 13D in the hearing, is not legible. A better-quality version is available in the Court's record as Exhibit 1 to Petitioner's Motion to Take Evidence.

Board refused to identify the complainant, which prevented attorneys from completing a conflict check. (A.R. 003269-3282.) Eventually, the Board revealed that the complaint was from a physician at Pen Bay Medical Center concerning the patient in the subpoena. (A.R. 003283-286.) The complaint alleged that Pen Bay treated a patient, "NM," for COVID-19 and that Dr. Nass had treated NM for COVID-19 by prescribing ivermectin. (A.R. 000782-83.) In corresponding with Dr. Nass, the Board learned about another patient, "MB," whose records the Board also received. (A.R. 000974-002016.) Dr. Nass prescribed ivermectin and hydroxychloroquine to MB. (A.R. 000974-000993.) Finally, the Board received a complaint that Dr. Nass had prescribed another patient, "SB," with hydroxychloroquine (AR 02024.)

On January 11, 2022, the Board met in executive session to discuss the two misinformation complaints, and three assessment and direction matters (one for each patient). (A.R. 008708-008736.) One Board member announced that Dr. Nass's "harmful opinions" are a "gigantic problem." (A.R. 008722.) Without providing Dr. Nass with the opportunity to be heard or defend herself, the Board ordered that she undergo a neuropsychological evaluation under 32 M.R.S. § 3286. (A.R. 004491-96.) The Board also suspended Dr. Nass's medical license and issued her a "25-questions" letter, demanding substantiation for the things she said in public. (A.R. 000769, 003378-79.) Finally, the Board issued subpoenas to Dr. Nass for her patient appointment calendar for the last six months, a list of *all* patients treated within the last six months, and medical records for two more patients. (A.R. 003370, 003372.)

Later that month, the Board issued a Notice of Hearing, which appointed a hearing officer and set the complaints for an adjudicatory hearing. The Notice of Hearing recited dozens of Dr. Nass's statements to the public and, together with other alleged violations, charged her with

spreading misinformation and violating guidelines from the American Medical Association. (A.R. 009948-58, 010039-010050.) The Board took this approach, even though the Board has itself said that "policies," such as the policy on misinformation, are not enforceable for lack of APA rulemaking. (A.R. 005213-14.)

Dr. Nass moved to dismiss the misinformation counts, arguing that those counts violated her free speech rights, constituted unlawful viewpoint-based restrictions on speech, and were unconstitutionally vague because nothing defines what qualifies as "misinformation." (A.R. 010248-285.) The motion also argued that the case should be dismissed because the Board's hostility towards Dr. Nass prevented the Board from acting as a fair and impartial decision-maker. (A.R. 010248-285.) Another, related motion requested that the Board members recuse themselves, or, in the alternative, that she be permitted to voir dire the Board members. (A.R. 010286-297.) For its part, Board Staff[2] wrote that it "does not agree" that its effort to punish misinformation qualifies as viewpoint discrimination. (A.R. 010370, 010394.) But, supposedly to "narrow[] the issues for hearing and to avoid whatever arguable problems Dr. Nass may have raised in her Motion[,]" all counts alleging misinformation or violations of AMA guidelines were withdrawn. (A.R. 010370, 010394.)

The Hearing Officer denied Dr. Nass's motion to voir dire the Board members, deferred the motion to recuse for determination by each Board member, and issued a recommended decision denying the motion to dismiss (A.R. 009853-59.) The Board held the first day of hearing on October 11, 2022. (A.R. 000020.) There, it voted to adopt the recommended decision denying the motion to dismiss and to deny the motion to recuse. (A.R. 000023-26.) The Board also

2 "Board Staff" is the phrase used to refer to the assistant attorneys general acting as Board prosecutors.

considered Dr. Nass's motion to vacate the interim suspension and order directing evaluation. (A.R. 000024-25.) That motion argued that the interim suspension should be lifted because the misinformation counts had been withdrawn. (A.R. 010551-53.) The Board voted unanimously to deny it out of hand, with no deliberation. (A.R. 000025.)

Board Staff eventually called Jeremy Faust, M.D., as an expert on the efficacy of hydroxychloroquine and ivermectin. (A.R. 002868-78, 000190.) The Board's expert reviewer policy sets a "maximum" fee for experts of $125 per hour for review and $175 per hour for testimony, and the Board violated that policy by paying Dr. Faust $500 per hour. (A.R. 008795, 009452.) Normally, Dr. Faust charges $650 per hour and then $850 per hour after 3 hours of testimony. (A.R. 008979.) But the Board's medical director, Kenji Saito, explained in an email to the Board's executive director, the assistant attorney general advising the Board, and other Board employees, that he had successfully negotiated a reduction to $500 per hour in furtherance of "our cause:"

> Just spoke with Dr. Faust. He firmly believes in our cause and is willing to lower his rates just for this case to $500/hour. Is this okay with everyone? If so, please let me know and I will send Julie and copy Dr. Faust in an introductory email so we could get him the materials ASAP.

(A.R. 008978.) In response to the "our cause" email, the Board's assistant attorney general stated that she believed Dr. Saito was safe moving forward with Dr. Faust, and the executive director responded, "I agree." (A.R. 008978.) The next day, the Board's assistant attorney general—again, not the prosecuting assistant attorneys general for purposes of *Narowetz*—picked the exhibits Dr. Faust should review to assist in the prosecution. (A.R. 009734.)

To obtain State authorization for payments to experts like Dr. Faust, the Board completes a Blanket Contract (CTB) form that it files with the Division of Procurement Service. (A.R. 008795.) This form allows the Board to obtain a blanket authorization for payments to experts

over the course of a fiscal year, rather than obtaining a separate authorization for every payment to every vendor. (A.R. 008798.) But to use a blanket contract, payments to individual vendors must generally be less than $5,000 each, and if a payment exceeds this amount, the Board needs to explain why. (A.R. 008798.) When the Board filled out the Blanket Contract Justification & Amendment Form in June 2022, it identified $10,500 in invoices from Dr. Faust in fiscal year 2022. (A.R. 008795.) And because Dr. Faust charged more than $5,000, the Board needed to explain why. (A.R. 008795-96, 008798.)[3] The Board explained,

> [b]ecause vendors are found based on their specialty, numerous vendors may receive payments for the same service. Payments occur at random points during the fiscal year as evaluator services are needed. As mentioned in the policy (below), limits have been placed on the amount charged so, generally the annual payment total per vendor is less than $5,000.

(A.R. 008798.) The quoted policy, in turn, stated that

> [i]t is the policy of the Board . . . that expert medical reviewers may be compensated at a maximum of $125/hour for their time reviewing medical records and preparing a report for the Board. When required to be present at an Adjudicatory Hearing, they may be compensated up to a maximum of $175/hour for their time in attendance at the hearing. Time spent in consultation with the Board AAG or Board staff prior to a hearing will be reimbursed at an hourly rate of $125/hour maximum. . . .
>
> HISTORY: The Board utilizes outside expert medical reviewers when it determines that the details of the complaint are beyond the scope of the Board members expertise. Historically, many reviewers have not charged for their time or have submitted for a nominal reimbursement. Some reviewers however, have submitted for substantial reimbursement. The Board is a state agency whose entire funding comes from license fees. In an effort to manage costs and therefore licensing fees, the Board felt it necessary to put in place a policy regarding reimbursement for expert medical reviewers

(A.R. 008795.) Thus, the Board asserted to the Department of Procurement Services that (i) payments exceeding $5,000 are generally because the expert has worked on multiple matters at

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[3] A better-quality copy of Licensee Exhibit 224 is in the Court's record as Exhibit 2 to Licensee's Motion to Take Evidence. Please note that the three pages constituting the Blanket Contract (CTB) Justification & Amendment form are non-sequential, and are intermixed in the exhibit with Dr. Faust's invoices to the Board, but can be identified from the footer as "Page _ of _."

random points during the year, and (ii) all experts are paid an hourly rate of $125 or $175 depending on the service. But in fact, (i) all of Dr. Faust's time was attributable to just one pending matter before the Board, and (ii) Dr. Faust was being compensated at an hourly rate of $500—over three times more than what's allowed under the policy.

Retaining Dr. Faust also violated the Board's expert reviewer guide, which require that the expert have a full and unrestricted Maine license and have engaged in clinical practice in the same area as the physician being investigated (here, internal medicine) for the two years prior to reviewing the case. (A.R. 000429-30, 08986.)

On April 3, 2023, Dr. Nass moved to disqualify Chair Gleaton. (A.R. 010995-011004.) This motion incorporated the earlier arguments in the motion to recuse, but also relied on Chair Gleaton's unprofessional conduct during the fourth day of the hearing. For example, Chair Gleaton made a snide remark during counsel's cross-examination of Dr. Faust while unknowingly having her microphone unmuted, allowed Dr. Nass to be falsely blamed for the snide remark, appeared to "sleep" while Dr. Nass's counsel was cross-examining a witness, and made exaggerated facial expressions and shook her head—all for her fellow factfinders to observe. (*Id.*)

On May 19, 2023, the Hearing Officer emailed the parties to say that Dr. Gleaton had reviewed the briefing on the motion to disqualify and "determined that she will not recuse herself from continued participation in the matter." (A.R. 011118.) Dr. Nass filed a motion for disclosure of various "off-the-record" communications, including the off-the-record communication in which Dr. Gleaton apparently announced her determination. (A.R. 011127-31.) At the next hearing date, on May 30, 2023, Dr. Nass again raised that Dr. Gleaton had failed to make an on-the-record determination of the motion to recuse and requested that Dr. Gleaton articulate her

reasons for denying the motion. (A.R. 000422.) The Hearing Officer then asked Dr. Gleaton to confirm that she had reviewed the materials and statutes, and determined she would not recuse herself, to which Dr. Gleaton responded "[t]hat is correct." (A.R. 000422.) Later, the Hearing Officer issued a written decision denying the motion for disclosure. (A.R. 009901.)

Ultimately, the adjudicatory hearing ended with a final hearing date in September 2023, with Dr. Nass having been suspended from the practice of medicine without due process since January 2022 (the Board having dragged its heels for months by refusing to set consecutive days for the hearing). The Board voted to reprimand Dr. Nass; to suspend her for a total of 39 months, staying the unserved part of the suspension during a two-year period of probation; and, to order that Dr. Nass was responsible for paying up to $10,000 in costs. (A.R. 000001-19.) This 39-month suspension dwarfed the disciplinary action implemented in the comparator cases admitted into evidence during the sanctions phase. (A.R. 010979-80; 004419-004483.)

**Standard of Review**

"We review decisions made by an administrative agency for errors of law, abuse of discretion, or findings of fact not supported by the record." *Friends of Lincoln Lakes v. Bd. of Envtl. Prot.*, 2010 ME 18, ¶ 12, 989 A.2d 1128 (quoting *Save Our Sebasticook, Inc. v. Bd. of Envtl. Prot.*, 2007 ME 102, ¶ 13, 928 A.2d 736, 740). Questions of law are reviewed de novo. *Doe v. HHS*, 2018 ME 164, ¶ 11, 198 A.3d 782. Questions of fact are reviewed "to determine whether, on the basis of all the testimony and exhibits before it, the agency could fairly and reasonably find the facts as it did." *Friends of Lincoln Lakes*, 2010 ME 18, ¶ 12 (internal quotation omitted). Factual findings must be supported by substantial evidence, defined as "competent evidence in the record to support a finding." Id. ¶ 14. Even though this standard of review is deferential, an

administrative decision cannot rest on speculation. *Hannum v. Bd. of Envtl. Prot.*, 2003 ME 123, ¶ 15 n.6, 832 A.2d 765.

## Argument

### I. The Board's finding that Dr. Nass exhibited incompetency should be vacated.

#### A. Relying on a theory of misconduct that was neither alleged in the charging instrument nor litigated by the parties violated Dr. Nass's due process rights.

A doctor's license to practice medicine cannot be revoked or restricted without due process of law. *Balian v. Board of Licensure in Med.*, 1999 ME 8 ¶ 11, 722 A.2d 364. The Law Court has described "the essence of due process as notice and an opportunity to be heard." *Bd. of Registration in Med. v. Fiorica*, 488 A.2d 1371, 1375 (Me. 1985). For example, in *Balian*, this Court held that the Board of Licensure in Medicine violated the licensee's due process rights when it sanctioned him for unprofessional conduct but failed to introduce evidence of the standards he allegedly violated. 1998 ME 8 ¶¶ 8-16. As *Balian* explained, licensees "should have the opportunity to rebut the evidence establishing a standard and the right to construct a defense based on the standard." *Id.* ¶ 12. Likewise, in *Bd. of Overseers of the Bar v. Lefebvre*, the Law Court held that an attorney was deprived of due process when the Board of Overseers of the Bar disciplined the attorney for violations beyond the scope of the hearing. 1998 ME 24, ¶ 16, 707 A.2d 69.

Contrary to *Lefebvre* and *Balian*, the Board disciplined Dr. Nass for reasons beyond the scope of the Third Amended Notice of Hearing. Count II of the Third Amended Notice of Hearing alleged that Dr. Nass could be disciplined "[p]ursuant to 32 M.R.S. § 3282-A(2)(E)(1) for incompetence by engaging in conduct that evidences a lack of knowledge or inability to apply principles and skills to carry out that practice for which the licensee is licensed in providing care

to Patients 1, 2, and/or 3." (A.R. 000757.) In its opening statement, the Board describes Count II as focusing on the state of medical science and the applicable standard of care for treatment of COVID-19. (A.R. 9737.) And months later, in its closing argument, the Board characterized Count II as focusing whether prescribing ivermectin or hydroxychloroquine to treat COVID-19 met the standard of care, and whether Dr. Nass met the standard of care in treating Patients 1, 2, and 3. (A.R. 009780-9794.) Board Staff also prepared a graphic, explaining that Count II was about (1) whether Dr. Nass relied on "inadequate science" to justify treatments with ivermectin and hydroxychloroquine, and (2) whether Dr. Nass appreciated the severity or meaning of symptoms with respect to Patient 2:

| PATIENT 1 | PATIENT 2 | PATIENT 3 |
|---|---|---|
| **COUNTS I & IV**<br>1. Prescribed ivermectin.<br>2. Failed to inquire about or track relevant symptoms to monitor COVID progression and be able to assess whether referral to acute care was required.<br>3. Failed to provide adequate risk-benefit info for treatment offered and options. | **COUNTS I & IV**<br>1. Prescribed ivermectin & hydroxychloroquine.<br>2. Failed to inquire about or track relevant symptoms to monitor COVID progression.<br>3. Failed to provide adequate risk-benefit info for treatment offered and options.<br>4. Failed to escalate care. | **COUNTS I & IV**<br>1. Prescribed hydroxychloroquine.<br>2. Failed to provide adequate risk-benefit info.<br>3. Gathered no medical history, no vital signs, conducted no examination prior to prescribing and treating. |
| **COUNTS II & IV**<br>Relied on inadequate science to justify treatment of COVID with ivermectin. | **COUNTS II & IV)**<br>1. Relied on inadequate science to justify treatment of COVID with ivermectin & hydroxychloroquine<br>2. Did not appreciate severity or meaning of symptoms. | **COUNTS II & IV**<br>Relied on inadequate science to justify treatment of COVID with hydroxychloroquine. |

(A.R. 009805 (chart included in the Board's closing argument).)

The Board, however, took a different turn when deliberating by targeting Dr. Nass's "treatment model." (A.R. 000013-14.) This treatment model, according to the BOLIM, involved letting patients do their own research and identify the medication they wanted, and then prescribing those medications. (A.R. 000013-14.) This issue was neither alleged in the Third

Amended Notice of Hearing nor litigated by the parties. Nor did the Board admit any standards applicable to the "treatment model" for issuing prescriptions. Instead, the issue first arose in deliberations when one BOLIM member announced that Dr. Nass's "practice model" is akin to a "pill mill practice model that we have dealt with in other areas[,]" and compared Dr. Nass's prescriptions here to ones for "medical marijuana cards being given out in hotel conference rooms on the weekend" and improper OxyContin prescriptions. (A.R. 000650-651.)

This approach was unlawful on two grounds. First, Dr. Nass was not given fair notice that the Board was evaluating her so-called "treatment model," in violation of due process. *See Balian*, 1999 ME 8 ¶ 11; *Lefebvre*, 1998 ME 24, ¶ 16. Instead, her presentation focused on rebutting the Board Staff's arguments that she committed professional misconduct by prescribing hydroxychloroquine or ivermectin to treat COVID-19 and failed to meet the standard of care in her treatment of three discrete patients. For example, she supplied expert testimony from 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. Nass's closing argument as to Counts I and II).) She also presented evidence, including through one of Board Staff's own experts, Dr. Thomas Courtney, that she provided appropriate care to Patients 1, 2, and 3. (A.R. 009817-9825.) But, because she did not have fair notice that she could be sanctioned for her "treatment model"—a concept and term that had never been used in the litigation—she was deprived of the opportunity to "adduce[] evidence or construct[] arguments" to refute that theory of misconduct. *Lefebvre*, 1998 ME 24, ¶ 16.

Second, the Board Staff introduced no evidence about rules or standards governing a physician's "treatment model." This failure is itself problematic in two ways. "[I]n a Board comprised of both lay persons and persons of the regulated profession, the absence of a clear standard unduly shifts power and influence to the non-lay members." *Balian*, 1999 ME 8, ¶ 13. When this happens, lay members of the Board will most likely defer to judgments of their professional counterparts, *id.*, depriving the licensee of her right to a properly constituted group of decisionmakers.[4] The independent judgment of these lay members is important, because those members serve as "representatives of the public" on the Board. *Id.*, n.7. With no introduction of a standard-based rubric by which to evaluate Dr. Nass's treatment model, these public representatives are deprived of the means to make an informed decision on whether this model was deserving of sanction. The failure to introduce standards is also problematic because it interferes with effective judicial review. *Id.* Without any explicitly defined standards, this Court similarly lacks information about what standards were applied by the Board, impairing its ability to carry out its duty to evaluate whether the Board's action was arbitrary, capricious, or otherwise unlawful. *Id.*

### B. The Board's findings about Dr. Nass's treatment model and her alleged failure to escalate care are not supported by substantial evidence.

The Board's findings on Count II are unsupported by the evidence and contradicted by the record. According to the Board, Dr. Nass (i) employed a treatment model that allowed patients to self-select their medications, and (ii) failed to timely escalate Patient 2's care when he became ill. Both conclusions are wrong.

[4] The Board consists of 11 members, including three public members acting as representatives of the public, six medical doctors, and two physicians assistants. 32 M.R.S. § 3263.

First, there was no evidence that Dr. Nass's treatment model violated any applicable standards or rules. In fact, there was no evidence of what her "treatment model" even was. Nor was there evidence that Dr. Nass deferred to patients by allowing them to self-select their prescriptions, or that she otherwise failed to apply her own independent medical judgment. These patients all sought out Dr. Nass because they were unvaccinated—as was their right (A.R. 000212 (Tr. 528:2-17 (Board Staff's patient care expert testifying that patients have the right to refuse medications if they so elect)))—and wanted a provider who would provide alternative treatments.[5] The Board did not find that either of the medications ultimately prescribed, ivermectin and hydroxychloroquine, were ineffective for treating COVID-19, or that prescribing those medications breached the standard of care. Indeed, a central theme of the prosecutorial theory at the adjudicatory hearing was that these medications were ineffective, and the prosecution failed to carry its burden of proof on that issue. And what is more, Dr. Nass explained during the hearing why she chose ivermectin or hydroxychloroquine for each patient. (A.R. 000105-107.) The Board's own patient care expert, Dr. Courtney, agreed that Dr. Nass's medical records contained sufficient information to prescribe ivermectin or hydroxychloroquine to Patients 1, 2, or 3, even though he disagreed with the effectiveness of those medications (A.R. 000220 (Tr. 565:17-22); A.R. 000225 (Tr. 580:6-581:15); A.R. 000234 (Tr. 618:24-619:6).) And crucially, Dr. Nass did not prescribe Patient 3 a medication that Patient 3 requested. Patient 3 asked Dr. Nass to prescribe ivermectin, and Dr. Nass would not do so because ivermectin was not considered safe in pregnancy. (A.R. 000106-07.) Instead, Dr. Nass prescribed Patient 3

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[5] And it is not as if the Board could legitimately discipline Dr. Nass for failing to recommend that these patients receive vaccinations, because the Board stipulated that Dr. Nass's beliefs as to the safety or efficacy of the COVID-19 vaccine were not at issue. (A.R. 000021 at Tr. 6:8-24.)

hydroxychloroquine and azithromycin. (A.R. 000107.) Similarly, Dr. Nass told Patient 2 that she could not prescribe him hydroxychloroquine prophylactically when he first consulted with him, and only prescribed him that medication after he became ill. (A.R. 000095.) This seriously undermines the contention that Dr. Nass had abdicated decision-making about what medications to prescribe to the patient's whims. Thus, the Board's conclusions about Dr. Nass's treatment model are not just unsupported by the evidence, but also directly contradicted by the record.

Second, the only evidence in the record showed that Dr. Nass escalated Patient 2's care when appropriate. Patient 2 eventually became ill with COVID-19 and had his spouse contact Dr. Nass on December 11, 2021, as Dr. Nass requested. (A.R. 000113 (Tr. 290:23-291:5); A.R. 000543 (Tr. 1353:10-1354:10); A.R. 000557 (1411:6-1413:21); A.R. 000981 (Board Staff Ex. 21).) By then, Patient 2 had been experiencing symptoms for five or six days, but thought it was a cold. (A.R. 000095 (Tr. 219:24-220:3).) But ultimately, he took a COVID-19 home test that came back positive. ((A.R. 00543 (Tr. 1355:1).) Dr. Nass's medical note from December 11, 2021 noted, "[Patient 2] is high risk + needs HCQ RX. Must ↓ diltiazem + watch for hypoglycemia." (A.R. 000981.) Dr. Nass also described that the plan was to prescribe three weeks of hydroxychloroquine and azithromycin. (A.R. 000543 (Tr. 1355:2-13); A.R. 000981.) Dr. Nass believed that those medications would benefit Patient 2. (A.R. 000095 (Tr. 220:10-221:4); A.R. 000113 (Tr. 291:6-292:8).)

Patient 2 did not take the hydroxychloroquine due to concerns about nausea. (A.R. 000558 (Tr. 1415:4-1417:4).) On December 15, 2021, Dr. Nass texted with Patient 2's spouse, who said that Patient 2 was considering monoclonal antibodies and asked, "[d]o you see any reason he shouldn't try them?" (A.R. 000983-84.) Dr. Nass responded, "Hard to say. It's

experimental and if you are injured by them there is no recourse. *But if he needs them he should get them.*" (A.R. 000983-84 (emphasis added).) No evidence was admitted disputing the accuracy of Dr. Nass's response. Later that evening, at 7:30 p.m., Dr. Nass spoke again with Patient 2's spouse about Patient 2's condition, and told her that Patient 2 needed to get a chest x-ray. (A.R. 000979.) According to Dr. Courtney's testimony, the only place to get a chest x-ray at 7:30 p.m. is the emergency room. (A.R. 000231-32 (Tr. 606:8-609:18).) And if that was indeed the advice, Dr. Courtney continued, Dr. Nass did the right thing. (A.R. 000232 (Tr. 608:19-609:13).) Patient 2's spouse testified that Dr. Nass, in fact, "advised that we go to the emergency room to get that [the chest x-ray] done because I could not get that done at urgent care or any other place without a doctor's order." (A.R. 000559-60 (Tr. 1420:12-1421:9).) Dr. Nass likewise testified that she recommended Patient 2 go to the hospital. (A.R. 000097 (Tr. 225:21-226:20).) "I told him he needed to go to the ER. I definitely wanted a chest x-ray to be done." (A.R. 000097 (Tr. 226:10-17).) Again, no evidence was suggested to the contrary.[6]

Patient 2 arrived at Mid-Coast Hospital the next morning, December 16, 2021 at 10:34 a.m. (A.R. 000995.) As Patient 2 explained, "[m]y hesitance to go to the hospital had nothing to do with Dr. Nass or any recommendation from her at that point. As a matter of fact, to go get the x-ray was her suggestion, you know, so going to the hospital ended up being something that was really motivated from her perspective." (A.R. 000545 (Tr. 1362:1-7).) Once Patient 2 arrived at Mid-Coast Hospital, Dr. Courtney agreed that the responsibility for his care shifted from Dr. Nass to Mid-Coast Hospital. (A.R. 000232-33 (Tr. 610:2-8, 613:21-614:6).)

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[6] In fact, Dr. Courtney agreed that Dr. Nass's records for Patient 2 provides the reader with a "reasonably good picture of what's happening" with Patient 2's illness, and that Patient 2's medical record was not missing any information. (A.R. 000230-31 (Tr. 602:24-603:10, 604:12-606:7).)

Ultimately, Dr. Nass provided excellent care to Patient 2 and directed him to go to the emergency department when appropriate. (A.R. 000112-118 (Tr. 288:11-309:1).) No evidence was offered suggesting otherwise. So, once again, the Board's finding is not only unsupported by the evidence, but also contradicted by the record.

## II. The Board and Chair Gleaton's conduct shows an unconstitutional potential for bias, in violation of Dr. Nass's due process rights.

Due process and Maine statutory law both confer a right to an impartial decisionmaker. 5 M.R.S. § 9063 ("[u]pon the filing in good faith by a party of a timely charge of bias or of personal or financial interest, direct or indirect, of a presiding officer or agency member in the proceeding requesting that that person disqualify himself, that person shall determine the matter as a part of the record"); *Jusseaume v. Ducatt*, 2011 ME 43, ¶ 12, 15 A.3d 714 (due process right to impartial decisionmaker); *see also Zegel v. Board of Soc. Worker Licensure*, 2004 ME 31 ¶ 16 (stating that an administrative process may be infirm where it "creates an intolerable risk of bias or unfair advantage"). The Law Court has cited the Supreme Court's formulation of bias in *Williams v. Pennsylvania*, 579 U.S. 1 (2016). *State v. Bard*, 2018 ME 38, ¶ 41, 181 A.3d 187 (citing *Williams*). As *Williams* explains, bias is "easy to attribute to others and difficult to discern in oneself." 579 U.S. at 8. For this reason, courts apply an objective standard to discerning bias that "avoids having to determine whether actual bias is present." *Id.* Instead, courts ask "whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias." *Bard*, 2018 ME 38, ¶ 41 (quoting *Williams*, 579 U.S. at 8). For example, a decisionmaker must recuse in situations where impartiality "might reasonably be questioned[.]" *Id.* (quoting *Charette v. Charette*, 2013 ME 4, ¶ 21, 60 A.3d 1264).

This objective standard is easily met here, because the record shows that the Board targeted Dr. Nass for publicly expressing viewpoints with which the Board disagreed:

- When Dr. Nass asked the Board why it was investigating her, the Board responded that her statements to the public at large may be misleading and inaccurate. (A.R. 003121.)
- When Dr. Nass exercised her free speech rights before the Board of Pharmacy, the Board's attorney added Dr. Nass's statements to the "complaint file." (A.R. 5177.)
- The Board cited Dr. Nass's "harmful opinions" as a "gigantic problem" when deciding how to handle the pending complaints. (A.R. 008722.)
- The Board issued Dr. Nass a 25-questions letter demanding that she justify her expressed viewpoints. (A.R. 003378-79.). For example, "Please provide documentation of the data you are using to support your claim that ivermectin and hydroxychloroquine are effective treatments against COVID 19[;]" "You asserted in your interview, that people who have already have COVID, who are then vaccinated, are at a higher risk of having long term negative consequences to their immunity. Please site [sic] the medical literature that supports this claim[;]" and "You indicated that children are receiving COVID vaccination without parental consent. Please provide supporting data for this claim." (A.R. 003378-79.) No rule, statute, or administrative practice authorizes or prescribes this type of inquiry. Instead, it appears to be an effort to punish the "harmful opinions" complained of earlier, and gather additional information to develop additional grounds for potential discipline.

- The Board subpoenaed over six months' worth of Dr. Nass's patient appointment records, despite no complaints about Dr. Nass's care of those patients. (A.R. 003369-70.) Because there was no legitimate purpose to the subpoenas, they served only to harass Dr. Nass by requesting extensive information about her practice and violating her patients' privacy.[7]
- The Board ordered that Dr. Nass undergo a neuropsychological examination under 32 M.R.S. § 3286 without even hearing from Dr. Nass, even though that statute only applies to complaints involving "mental illness, alcohol intemperance, excess use of drugs, narcotics, or ... a mental or physical condition interfering with the competent practice of medicine." No such allegation was made against Dr. Nass, and the Order Directing Evaluation publicly and falsely implied that Dr. Nass may be suffering from mental illness or substance abuse, thus justifying the Board's punitive approach to her situation.
- Almost immediately after the executive session on January 11, 2022, the Board's executive director emailed Dr. Nass to provide a copy of the 5-page single-spaced Order Directing Evaluation, the date of the Dr. Nass's appointment for the evaluation, and the identity of the evaluator (Dr. Howard Kessler). (A.R. 000798, 09910.) The fact that the order and appointment information were sent so quickly suggests that the Board predetermined that it would order that Dr. Nass undergo a neuropsychological evaluation before the meeting.

[7] There was testimony at the hearing that the Board permitted the parts of other patients charts to be reproduced in newspapers. (A.R. 000123 (Dr. Nass's testimony), 000543 (Patient 1's testimony).)

- The Board tried to directly sanction Dr. Nass's speech as "misinformation"—a violation of Dr. Nass's First Amendment rights so obvious that the Maine Office of the Attorney General did not even oppose Dr. Nass's motion to dismiss those grounds for discipline. (A.R. 009948-58, 010039-010050, 010248, 010393). This pattern of targeting Dr. Nass was consistent with the Board's own stated policy position, after its newsletter formally declared that doctors who spread "misinformation" about the COVID-19 vaccine "are risking disciplinary action . . . including the suspension or revocation of their medical license[.]" (A.R. 005226-27.)
- The Board misrepresented the amounts being paid to Dr. Faust to the Department of Procurement Services by assuring the Department that "[t]he rate [paid to an expert] cannot exceed the maximum set in Board Policy." (A.R. 008795-96, 008798.) But the Board failed to disclose that it was paying Dr. Faust $500 per hour—almost three times the amount permitted by the Board policy. The form submitted by the Board also made it appear as if Dr. Faust's exorbitant compensation may have been aggregated among different matters, when all the money was for procedures regarding just one licensee: Dr. Nass. Thus, in addition to violating the Board's policy on compensation of expert witnesses, an objective observer could also infer that the Board misrepresented material facts to another state agency to secure inordinate funding to aid in zealously prosecuting Dr. Nass.
- The Board issued a severe sanction for relatively minor misconduct, much of which went uncorroborated by any testimony, as compared to the discipline imposed in the comparator cases offered by Board Staff. (A.R. 010979-80; 004419-004483.)

In all, the record presents substantial evidence that the Board was biased against Dr. Nass, and was championing "our cause" (A.R. 008978) by making a public example of a doctor who failed to toe the line on COVID-19 treatments. Against this backdrop, "there is an unconstitutional potential for bias" that deprived Dr. Nass of a fair hearing. *Bard*, 2018 ME 38, ¶ 41 (quoting *Williams*, 579 U.S. at 8).

What is more, Chair Gleaton's individual bias was shown above and beyond that of the Board as a whole. Her role as a FSMB director and a member of the Board are inherently incompatible in this particular case, where the licensee's public statements under investigation were at odds with the FSMB's policy positions. As an FSMB director, she owes a strategic alliance to the FSMB and its policy objectives and pledged as much to her voters. (A.R. 005222-23.) In her own words:

> I have a clear understanding of the mission and goals of the FSMB as well as its positive impact and support to state medical boards. I have the time, energy, enthusiasm and commitment necessary to work hard on behalf of the FSMB. My experience and qualifications will enable me to collaborate well with others in developing strategic goals for the FSMB in supporting medical regulation into the future.

(A.R. 005222-23.) In contrast, as a Board member and adjudicator, she owes a duty of impartiality to licensees facing discipline. Considering the FSMB's advocacy of medical boards to take disciplinary action against doctors who are perceived as spreading misinformation, as reflected in its position statement that Chair Gleaton herself adopted (A.R. 005226-27.), an objective observer could "reasonably question" Chair Gleaton's capacity to impartially decide the matter. *Bard*, 2018 ME 38, ¶ 41

Chair Gleaton's bias was also revealed by her unprofessional behavior during the hearing. (A.R. 10995-11004.) At least twice during Dr. Nass's counsel's cross-examination of Dr. Faust,

Chair Gleaton pretended to be asleep. (Ex. 1 at 3:12-40 to 3:13:30; 06:20:44-21:00.)[8] *See generally State v. Robinson*, 2016 ME 24, ¶ 41, 134 A.3d 828 (stating that pretending to sleep during a closing argument was "[w]ithout question . . . sophomoric, unprofessional, and a poor reflection on the prosecutor's office"). Chair Gleaton also made exaggerated facial expressions throughout the hearing. (*See*, *e.g.*, Ex. 1 at 02:54:20 (headshaking); 04:09:40-50 (headshaking); 05:25:55 (appearing to grin and laugh when counsel directed Dr. Faust to an exhibit): 05:38:22 (holding her mouth wide open in an exaggerated look of astonishment or surprise); 05:39:15 (headshaking); 06:41:50 (headshaking); 06:44:25 (headshaking); 06:46:30 (headshaking); 06:52:30 (making a face); 07:41:30 (appearing to grin or laugh); 07:45:43 (expression of astonishment and sighing).) To be sure, an adjudicator may express dissatisfaction, annoyance, or even anger with a party without being biased. But the video speaks for itself: Chair Gleaton made animated gestures calculated to communicate her disdain for Dr. Nass and her counsel to the other participants in the hearing. Perhaps worst was pretending to sleep, which communicated to other factfinders that Dr. Faust's cross-examination was not worth watching. Moreover, Chair Gleaton resorted to openly mocking counsel by muttering, "it's the same drug," when Attorney Libby was questioning Dr. Faust about whether he knows of any doctors who were prescribing animal ivermectin[9] to humans. (A.R. 000344.) And when the Hearing Officer blamed Dr. Nass

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[8] The video was submitted to the Board via a permalink. (A.R. 011025.) Because the link is no longer available, with the consent of Respondent, a copy of the video is attached hereto as **Exhibit 1** for inclusion of the administrative record.

[9] For context, the line of questioning was about misinformation publicized by the Food and Drug Administration about ivermectin. Specifically, a tweet juxtaposing a picture of a veterinarian treating a horse and a picture of a doctor treating a person, with text reading, "You are not a horse, you are not a cow, seriously y'all, stop it." (A.R. 000343-43; *see also* A.R. 006406-12.) As noted by the Nebraska Attorney General, this graphic "is troubling not only because it makes light of a serious matter but also because it inaccurately implies that ivermectin is only for horses or cows." (A.R. 006410.)

for speaking out of turn, Dr. Gleaton stood idly by, letting Dr. Nass take the blame, until the court reporter interjected that it was Chair Gleaton who spoke. (A.R. 000344.) And it is not as if this delay was because Dr. Gleaton didn't realize she was unmuted. The video shows that Dr. Gleaton immediately muted her device after she spoke, so she obviously knew what happened. (A.R. 10998; Ex. 1 at 04:20:30.)

Ultimately, Chair Gleaton's unprofessional behavior reflects "a deep-seated favoritism or antagonism that would make fair judgment impossible." *State v. Rameau*, 685 A.2d 761, 763 (Me. 1996) (quoting *Liteky v. United States,* 510 U.S. 540 (1994)). Or, at a minimum, Chair Gleaton's conduct shows that her impartiality "might reasonably be questioned[.]" *Bard*, 2018 ME 38, ¶ 41 (quoting *Charette v. Charette*, 2013 ME 4, ¶ 21, 60 A.3d 1264).

## III. Chair Gleaton made insufficient findings on her denial of the Motion to Disqualify and violated 5 M.R.S. § 9063's requirement that charges of bias be determined on the record.

The APA requires that "[u]pon the filing in good faith by a party of a timely charge of bias or of personal or financial interest, direct or indirect, of a presiding officer or agency member in the proceeding requesting that that person disqualify himself, that person *shall determine* the matter as a part of the record." 5 M.R.S. § 9063 (emphasis added). By requiring an agency member to determine the matter as part of the record, the APA instills public confidence in administrative proceedings because it allows the public to understand why a decisionmaker can or cannot hear a particular matter.

This process also facilitates effective judicial review, which requires findings of fact and conclusions of law to the extent necessary for a reviewing court to understand a decisionmaker's reasoning. *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶ 34, 252 A.3d 504

("[t]o enable judicial review, the adjudication needs to include findings of fact and, to the extent necessary, conclusions of law explaining the municipal officers' reasoning"). As elucidated by the Law Court, factual findings serve several ends. "Such findings of fact facilitate judicial review, avoid judicial usurpation of administrative functions, assure more careful administrative consideration, help parties plan their cases for rehearings and judicial review, and keep agencies within their jurisdiction." *Gashgai v. Bd. of Registration in Med.*, 390 A.2d 1080, 1085 (Me. 1978) (citing 2 K. Davis, Administrative Law Treatise § 16.01 (1958).) They also "[a]ssure more careful administrative considerations, help parties plan cases for rehearing or judicial review and to keep agencies within their jurisdiction." *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2001 ME 16, ¶ 15, 769 A.2d 834 (quoting Maine AFL-CIO v. Superintendent of Ins., 595 A.2d 424, 428 (Me. 1991)). Ultimately, "[w]ithout adequate findings, a reviewing court cannot determine if the agency's findings are supported by the evidence." *Christian Fellowship & Renewal Ctr.*, 2001 ME 16, ¶ 15.

In contrast to these principles, Chair Gleaton privately decided the motion to disqualify off-the-record. On April 3, 2023, Dr. Nass moved to disqualify Chair Gleaton, based on her unprofessional behavior during the hearing. (A.R. 010995-011004.) This motion built on an earlier motion to recuse, filed on September 7, 2022 (A.R. 10286), addressing the Board's adoption of the FSMB's position statement on COVID-19 misinformation, and Chair Gleaton's connections to the Federation of State Medical Boards. Rather than having Chair Gleaton "determine the matter as a part of the record[,]" 5 M.R.S. § 9063, the hearing officer emailed the parties on May 19, 2023 and announced that Chair Gleaton "determined that she will not recuse herself from continued participation in the matter." (A.R. 011135.) On May 25, 2023, Dr. Nass

filed a motion for disclosure asserting that Chair Gleaton had violated Section 9063 and requested disclosure of communications between Chair Gleaton and the Hearing Officer. (A.R. 011130-31.) That motion was denied. (A.R. 009901.) At the next hearing date, Dr. Nass's counsel requested that Chair Gleaton determine the motion as a matter of record, and that she state her reasons on the record so that an appellate court can make an informed ruling on the matter. (A.R. 000422.) In response, the Hearing Officer asked Chair Gleaton a leading question about whether she determined that she does not need to recuse herself, and she confirmed "that is correct." (A.R. 000422.)

This perfunctory denial of the motion to disqualify impairs judicial review. As the record stands now, the Court cannot know if Chair Gleaton applied the appropriate standard to determine whether she can remain fair and impartial. Nor can the Court review the facts that were applied against whatever standard Chair Gleaton applied to herself. Considering the Supreme Court's observation that bias is "easy to attribute to others and difficult to discern in oneself[,]" *Williams*, 579 U.S. at 8, specific findings are especially important to effective judicial review. Plus, as the Law Court has made clear, courts cannot assume that an agency has made all necessary findings to support its decisions. *Christian Fellowship & Renewal Ctr.*, 2001 ME 16, ¶ 16; *see also Narowetz v. Bd. of Dental Prac.*, 2021 ME 46, ¶ 22, 259 A.3d 771 (ordering remand for lack of adequate findings); *Fair Elections Portland, Inc. v. City of Portland*, 2021 ME 32, ¶¶ 37-38, 252 A.3d 504 (same); *Comeau v. Town of Kittery*, 2007 ME 76, ¶ 13, 926 A.2d 189 (same). For example, Respondent may argue that Chair Gleaton was not mocking counsel, feigning sleeping, making faces, or committing other unprofessional behavior during the hearing. But this Court does not have the luxury of accepting those assertions, because the Board made no such

findings.[10] *Id.* The Court should, at a minimum, remand for findings of fact and conclusions of law on Dr. Nass's motion to disqualify Chair Gleaton.

## IV. The order directing Dr. Nass to undergo a neuropsychological examination should be vacated.

In response to complaints that Dr. Nass was spreading misinformation about COVID-19, the Board ordered Dr. Nass to undergo a neuropsychological evaluation under 32 M.R.S. § 3286. As explained below, the Court should vacate the Order Directing Evaluation.

### A. Dr. Nass's challenge to the Order Directing Evaluation is not moot.

Whether the Board erred by ordering that Dr. Nass undergo a neuropsychological examination is not moot. In *Hamilton v. Bd. of Licensure in Med.*, 2024 ME 43, 315 A.3d 762, the Board ordered a doctor to undergo a neuropsychological examination after the doctor disparaged the COVID-19 vaccine. *Id.* ¶¶ 3-4. The Law Court held that the controversy became moot once the doctor allowed his license to practice medicine lapse, because the Board no longer can pursue the evaluation. *Id.* ¶ 8. And rejecting the doctor's argument that the stigma of being ordered to a neuropsychological examination qualified him for the collateral order exception, the Law Court wrote that the doctor's "avenue for redress was to proceed through the complaint process and, if dissatisfied with that result, to appeal from the Board's final ruling." *Id.* ¶ 11.

This case is different. Unlike the doctor in *Hamilton*, Dr. Nass's license to practice medicine has not lapsed and she remains subject to the Board's jurisdiction. She also suffers the stigma of being implicitly found by the Board of being "unable to practice medicine with reasonable skill and safety to patients by reason of mental illness, alcohol intemperance, excessive

[10] To be clear, Dr. Nass contends that any such findings would be unsupported by the evidence. But even so, this Court does not need to reach that question because Dr. Gleaton made no findings explaining her behavior.

use of drugs, narcotics or as a result of a mental or physical condition interfering with the competent practice of medicine." 32 M.R.S. § 3286. The Order Directing Evaluation is a public document: it is currently posted on the Department of Professional and Financial Regulation's licensee database as an adverse action (**Exhibit 2**), identified in the Board's Spring 2022 online newsletter as an adverse action (**Exhibit 3** at 5), and posted on the Board's Adverse Licensing Actions database (**Exhibit 4** at 5).[11] Adding to this, federal law requires the Board to report the Order Directing Evaluation to the National Practitioner Databank, which the Board in fact did. 45 C.F.R. § 60.3; *see also* 42 U.S.C. § 1396r-2. (**Exhibit 5** (portion of NPDB report pertaining to the Order Directing Evaluation).) In doing so, the Board flagged the basis of its action as "immediate threat to public." (Ex. 5 at 2.)

In sum, there are significant consequences flowing from the Order Directing Evaluation. Plus, Dr. Nass did precisely what Hamilton says a licensee should do when seeking to challenge an order directing evaluation: "proceed through the complaint and process and, if dissatisfied with that result, to appeal the Board's final ruling." *Hamilton*, 2024 ME 43 ¶ 11.

### B. The Board denied Dr. Nass due process when entering the Order Directing Evaluation.

The Board entered the Order Directing Evaluation without affording Dr. Nass due process. "[T]he fundamental requirement of due process is that a party must be given notice and an opportunity to be heard." *Citibank, N.A. v. Moser*, 2024 ME 19, ¶ 8, 314 A.3d 194 (quoting *Doe v. Dep't of Health & Hum. Servs.*, 2018 ME 164, ¶ 15, 198 A.3d 782). The Law Court has

[11] Exhibits 2 to 5 may be considered as to the limited issue of whether the appeal is moot. *Regents of the Univ. of Cal. v. FEMA*, No. 17-cv-03461-LB, 2019 U.S. Dist. LEXIS 219274, at *62 (N.D. Cal. Dec. 20, 2019) (explaining that a court is not limited to the administrative record when evaluating mootness).

adopted the "*Eldridge* factors" to determine if 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.

*Balian v. Bd. of Licensure in Med.*, 1999 ME 8, ¶ 10, 722 A.2d 364 (quoting *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976)).

First, the Order Directing Evaluation implicates a substantial private interest. As the Law Court has recognized, a doctor's property interest in her professional license and her financial resources are at stake in a licensure proceeding. *Id.* ¶ 11. Moreover, an order directing a neuropsychological evaluation implicates privacy interests because it subjects the licensee to a medical examination, penalizes a failure to comply by construing it as an admission of the allegations, and stigmatizes the licensee as someone suffering from substance misuse or a physical or mental condition. 32 M.R.S. § 3286.

Second, the procedure used here poses a substantial risk of erroneous deprivation. The Board failed to provide Dr. Nass with notice that it was considering ordering a neuropsychological examination, the opportunity to offer evidence or argument in opposition, or the opportunity to challenge evidence before the Board. Instead, the Board simply announced its decision in the Order Directing Evaluation in an executive session in which Dr. Nass was not allowed to speak. Considering that notice and opportunity to be heard is a "fundamental requirement" of due process, *Citibank, N.A.*, 2024 ME 19, ¶ 8, this factor is easily met where the Board simply orders an evaluation without any adjudicatory procedure or safeguards. *See Balian*,

1999 ME 8 ¶ 12 ("[a] *licensee should have the opportunity to rebut the evidence establishing a standard and the right to construct a defense based on the standard").*

Finally, providing a licensee with notice and opportunity to be heard does not entail an unreasonable administrative burden. All the Board had to do was tell Dr. Nass reasonably in advance that she may face an order directing evaluation under 32 M.R.S. 3286, and offer her the opportunity to offer evidence in opposition. And time was obviously not of the essence, considering that the Board (i) chose to not enforce the Order Directing Evaluation, (ii) immediately suspended Dr. Nass from the practice of medicine, apart from the Order Directing Evaluation (A.R. 000769), and (iii) scheduled the adjudicatory hearing dates in a protracted, non-consecutive manner.

### C. The Order Directing Evaluation was arbitrary and capricious.

The Order Directing Evaluation (A.R. 009910-14) should be vacated for two reasons. First, the order is unsupported by the evidence. An order directing a neuropsychological evaluation may be entered when a licensee "may be unable to practice medicine with reasonable skill and safety to patients by reason of mental illness, alcohol intemperance, excessive use of drugs, narcotics or as a result of a mental or physical condition interfering with the competent practice of medicine." 32 M.R.S. § 3286. There was no evidence offered to the Board establishing any one of the several criteria listed in section 3286, and no specific findings by the Board identifying the factual predicate for its finding that "[t]he information received by the Board demonstrates that Dr. Nass is or may be unable to practice medicine with reasonable skill and safety to her patients by reason of mental illness, alcohol intemperance, excess use of drugs,

narcotics, or as a result of a mental or physical condition interfering with the competent practice of medicine." (A.R. 009913.)

Second, the Order Directing Evaluation was improperly motivated, for the reasons identified above in Part II. Indeed, as noted in Part II, the fact that the Board's executive director almost immediately notified Dr. Nass of the time and place of the evaluation and provided a copy of the 5-page single spaced order itself, suggests that the Board predetermined the outcome before the executive session. (A.R. 000778, 009910.) The Order Directing Evaluation is therefore arbitrary and capricious, and in violation of Dr. Nass's due process right to an impartial decisionmaker.

## V. The proceedings before the BOLIM were tainted because the Maine Office of the Attorney General violated this Court's decision in *Narowitz*.

The record establishes that the Maine Office of the Attorney General violated *Narowetz v. Bd. of Dental Prac.*, 2021 ME 46, 259 A.3d 771, 781. In *Narowetz*, the Law Court mandated that the Maine Office of the Attorney General segregate its advisory function from its investigative and advocacy functions when participating in a licensing proceeding before a state occupational licensing agency. *Id.* ¶¶ 32-35. In short, this means that the AAG *advising* the Board regarding a licensing proceeding cannot also assist in the *investigation* or *prosecuting* the licensee. This separation is important to instill public confidence in a proceeding: "[a] licensee coming before a board to face potentially severe discipline might question the legitimacy of an adjudicatory proceeding where the lawyer presenting the prosecution's case is the same lawyer who acted in an advisory capacity to the board in the same matter." *Id.* ¶ 30. Although the Board may receive legal advice, *Narowetz* requires that the assistant attorney general giving that advice be isolated from the prosecutorial and investigative effort. *Id.* ¶¶ 31-32.

Contrary to *Narowetz*, the AAG advising the Board supported the prosecution and investigation. Indeed, the AAG advising the Board was included in the email thread confirming the proposed expert's firm belief in "our cause" and agreed with moving forward with the prosecution expert; revised the prosecution expert's retention letter; and even selected the exhibits the prosecution expert should review to form his opinions against Dr. Nass. (A.R. 008978, 009734.) That AAG also corresponded with another AAG when Dr. Nass spoke to the Maine Board of Pharmacy and directed that information "be included in Dr. Nass's complaint file." (A.R. 5177.) Although this AAG may not have presented witnesses in the hearing, she still gave direct support to the prosecution. As the Law Court has observed, "[a] licensee coming before a board to face potentially severe discipline might question the legitimacy of an adjudicatory proceeding" in which the AAG advising the Board was also working hand in glove with Board Staff prosecuting the case. *Id.* ¶ 30.

Finally, this argument is not to assert misconduct by the Board's counsel, as was implied in the Board's Opposition to Petitioner's Motion to Take Evidence. The argument is instead about following the rules. As the Law Court explained, these rules are important in instilling public confidence in the integrity of the proceedings. *Id.* ¶¶ 31-32; *see also Evans v. State*, 2020 ME 36, ¶ 6, 228 A.3d 156 (vacating a decision on a petition for post-conviction review when circumstances "tarnished the appearance of fairness" in the proceeding); *Bard*, 2018 ME 38 ¶ 50 (vacating judicial rulings following an ex parte conference "[t]o ensure public trust and confidence in the fairness of the proceedings"). The Law Court elaborated, "[w]ithout impugning the integrity of any member of the Office of the Attorney General, who we have no reason to suspect was not performing in accordance with the highest ethical standards, this

multiplicity of roles can undermine the confidence of the parties and the public in the regulatory process." *Narowetz*, 2021 ME 46, ¶ 30. Thus, the question for this Court is not whether there was misconduct by the Office of the Attorney General, but whether procedure below deviated from *Narowetz*.

## VI. The Board failed to support its award of costs with adequate findings.

The Board awarded itself $10,000 in costs. (A.R. 000018.) The Board's findings state that Dr. Nass has the ability to pay costs, that the Board imposed half of the costs of hearing, up to a maximum of $10,000, and that the Board was imposing costs of $10,000 because the total cost of the hearing exceeded $20,000. (A.R. 000018.)

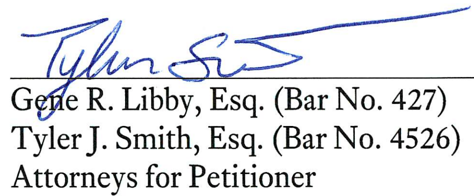
As explained above in Part III, the Board has a duty to support its decision with findings of fact and conclusions of law that are detailed enough to permit the Court to understand the Board's reasoning. *Fair Elections Portland, Inc.*, 2021 ME 32, ¶ 34. The Board's findings here fail to identify why the Board imposed $10,000 in costs against Dr. Nass. This failure is especially notable because much of the adjudicatory hearing related to issues on which Dr. Nass prevailed. For example, Board Staff failed to prove its claim that prescribing ivermectin and hydroxychloroquine evidences incompetency. Expert testimony on that issue alone consumed nearly three days of hearing time. Dr. Nass also prevailed in prompting the dismissal of two counts alleging that she was spreading misinformation, and two counts alleging that she violated American Medical Association (AMA) standards. To enable meaningful judicial review, the Board needed to support its award of costs with findings explaining its reasoning, including the impact of the counts and issues on which Dr. Nass prevailed.

## Conclusion

WHEREFORE, the Court should vacate the Board's Decision & Order and Order Directing Evaluation.

Respectfully submitted,

Dated: September 17, 2024



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Regulatory Licensing & Permitting

# DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
# BOARD OF LICENSURE IN MEDICINE
# 2021-191

Date Opened: 10/06/2021
Date Closed:
Respondent Name: MERYL J. NASS, MD
Respondent License: MD14575

## Adverse Action

Resolution Date: 01/11/2022
Documents: Immediate Suspension Order.pdf
Order Directing Evaluation.pdf

### Basis for Action (1 record) hide

| Description |
|---|
| Unprofessional Conduct: Other |

### Action Details (1 record) hide

| Description | Value |
|---|---|
| Public Action | 01/11/2022 |

## External Order

Resolution Date: 02/02/2022
Document: Conference Order Nass 2.1.22.pdf

### Basis for Action (1 record) hide

| Description |
|---|
| Unprofessional Conduct: Other |

### Action Details (1 record) hide

| Description | Value |
|---|---|
| Public Action | 02/02/2022 |

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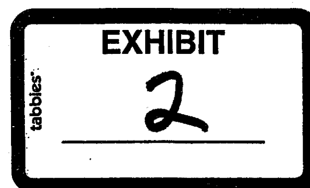
**Date: 09/10/2024 01:31:34 PM**



STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

| | | |
|---|---|---|
| IN RE: | ) | ORDER DIRECTING EVALUATION |
| MERYL J. NASS, M.D. | ) | |
| CR21-191, CR21-210, AD21-217, | ) | |
| AD21-220, and AD22-1 | ) | |

On January 11, 2022, the Maine Board of Licensure in Medicine ("the Board") met and reviewed materials submitted in connection with complaints and investigations regarding Meryl J. Nass, M.D., license number MD14575 ("Dr. Nass"). On the basis of its review of these materials, the Board issues this Order directing Dr. Nass to submit to a neuropsychological evaluation by a Board-selected psychologist on February 1, 2022. This formal interim Order is issued pursuant to 32 M.R.S. § 3286.

PRELIMINARY FINDINGS

Specifically, the Board preliminarily finds for purposes of this Order Directing Evaluation and pursuant to the materials submitted as follows:

1. Dr. Nass was first issued a license to practice medicine in Maine on August 22, 1997 (license number MD14575). Dr. Nass specializes in internal medicine in Ellsworth, Maine.

2. On October 26, 2021, the Board received a complaint alleging that Dr. Nass was engaging in the public dissemination of "misinformation regarding the SARS CoV2 pandemic and the official public health response calling for vaccinations" via a video interview and on her website, and that the information that Dr. Nass was disseminating was a "danger to the public." Dr. Nass's comments in the interview and on her website include, but are not limited to: a) she "did not intend to comply with masking and vaccine orders"; b) that the federal government "won't let us find out" how many people are immune from less severe or asymptomatic COVID cases and the federal government has "basically prohibited the use of normal tests of immunity, normal antibody, T-cell tests, etc., or some pattern of those", and "instead we all have to be vaccinated" and that "doesn't make scientific or medical sense"; c) "so the FDA was forced to issue a license for the Pfizer vaccine for certain people and yet there is no comirnaty vaccine in the United States, so there are no vials of licensed Pfizer vaccines in the United States. The FDA did a bait and switch"; d) "why is the federal government so interested in getting everyone vaccinated? It seems that one probable reason is unless you get people vaccinated and you have to give them boosters every so often there is no logical

justification for vaccine passports ... which is probably going to be your electronic ID, and probably will mediate your financial transactions, will identify where you are any time, etc., you know will have broad uses for increased control and surveillance. There may be other reasons. I mean there may be things in these vaccines that the government wants to inject in us"; e) "the governments seem to think they own our children because they are vaccinating children age 12 and up without parental permission in many parts of the United States"; f) "children have the worst side effect profile, and they get the least benefit from the vaccines. So you are either vaccinating them to try and, you know, stop it spreading in children so adults don't get it, because if children are getting a cold, you don't vaccinate kids against colds, we never have before, or you are vaccinating them for some other nefarious reason"; g) "the DNA from the adenovirus could potentially become a part of our DNA ... the human beings we're the guinea pigs for these vaccines"; h) Operation Warp Speed is the result of an agenda that "seems to be the same one that has been in play since 2001, you know, the 9/11. Which is increased surveillance, right, increased central control, and some blurring of national borders and national sovereignty, which we haven't seen much of yet but the close collusion of many countries with the same program indicates that there is international collusion going on at high levels"; and i) "if you did not know that the CDC was a criminal agency by now, this ought to get you going. Remember COVID vaccines are associated with high rates of miscarriages."

3. In response to the notice of the complaint, Dr. Nass questioned the Board's authority. She stated "[p]lease inform me how the board of registration in medicine is authorized to investigate my private life." Board staff responded: "The basis here for the Board's jurisdiction is that there is alleged unprofessional conduct, particularly where you have communicated in your capacity as a physician in the interview and on the website that could allow for patients and the public to view the information you provide as misleading and/or inaccurate. Please refer to the American Medical Association (AMA) Code of Medical Ethics for provisions that apply in contexts other than a patient clinical setting. ...In addition to responding to the complaint, please confirm that the attached screen shots and website pages are maintained by you and state whether you have provided any of this information or access to the website to any of your patients...." Dr. Nass and Board staff continued to email several more times without Dr. Nass providing a response to the complaint.

4. On November 7, 2021, the Board received a complaint that Dr. Nass was spreading COVID and COVID vaccination misinformation on Twitter, which included a link to an interview with Dr. Mercola, and include, but are not limited to: a) stating that a patient informed consent form for hydroxychloroquine used at a hospital was a form "designed to scare patients from using a safe drug that works well for COVID by making false claims. The form therefore can only result in injuries and possibly deaths"; and b) "you're

the guinea pigs, and they're not collecting the data. Nobody should have these shots".

5. On December 9, 2021, Dr. Nass emailed and stated: "Please consider this my response. Everything I say in public is accurate. It is astonishing that 2 people that I have never met are filing complaints against me for misinformation. It is even more astonishing that the Board has reviewed these complaints (which is what is done according to the board's website) and decided to proceed with them. As I answered you earlier (and wrote to the two attorneys who work for the Board) I would like for you to inform me what constitutes misinformation or disinformation. I have not heard back regarding that request."

6. On December 11, 2021, Dr. Nass wrote to Board staff and stated " [t]here is something else I would like you to provide to the Medical Board ... one of my complex, high risk patients for Covid just got Covid. The patient and I wanted him treated with hydroxychloroquine. I reviewed his dozen or so medications and discussed all potential drug interactions and how to ameliorate them, and we decided to proceed. But the problem was finding a pharmacist willing to dispense the drug. I was eventually forced, when the pharmacist called a few minutes ago and asked me for the diagnosis, to provide misinformation: that I was prescribing the drug for Lyme disease, as this was the only way to get a potentially life-saving drug for my patient." Dr. Nass posted her communication to Board staff on her website/blog. In addition, Dr. Nass referred to her interaction with a pharmacist during a ZOOM meeting with members of the Maine State Legislature. She stated, "I lied and said the patient had Lyme disease and so the pharmacist dispensed the medication only because I lied ... ." She also texted with the patient's spouse thereby directly involving the patient in her deception of the pharmacist: "[t]he pharmacy called me back and question [sic] me for the reason for the prescription and I told him Lyme disease." Patient 2's spouse replied "Thank you for letting us know. We picked up the medication." Dr. Nass texted back "Good. And I wrote a letter to the board of medicine telling them they had forced me to miss inform [sic] a pharmacy today in order to get a life-saving medicine to a patient. Let's see what they do with that".

7. Dr. Nass was sent three subpoenas for individual patient records on December 20, 2021, December 21, 2021, and January 3, 2022. Dr. Nass acknowledged the first subpoena and questioned the Board's authority to issue it. Board staff responded and provided the statutory authority for the Board to issue subpoenas. Thereafter Board staff engaged in several additional email communications with Dr. Nass seeking her compliance with the subpoenas. On December 29, 2021, Dr. Nass communicated that she thought there was only one patient whose records had been subpoenaed. When Dr. Nass produced the patient medical records, she incorrectly attached phone text communications and identified them for one of the patients and it required two

more clearly stated communications informing her of the error before she sent the correct records. The patient medical records produced by Dr. Nass consisted of text messages with individuals who were not the patient and sparse handwritten notes that do not comply with applicable standards of practice as reflect in Board Rules Chapter 6 Telemedicine Standards of Practice.

8. In an email producing one of the patient's medical records Dr. Nass stated, "[t]his is the gentleman for whom I prescribed hydroxychloroquine and was forced to inform the pharmacist was for a non-Covid diagnosis. That is because I was following the ethical principles of the AMA and other ethical codes of my profession."

9. With another patient's medical records, Dr. Nass produced text messages with the patient's son that included the following exchange - Patient's son: " It is so upsetting how you are being harassed and persecuted for your work. For prescribing FDA approved drugs. Are you accepting donations for your legal support?" Dr. Nass: "Does she have a diagnosis yet? How is she struggling? I only got the email about 4:30 today. But I know some crack attorneys. I certainly was hoping to make a public spectacle of an investigation. Hopefully the attorneys will allow that. I haven't even thought about details like payment. Let's see where this is going."

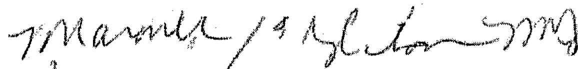
10. In the interests of public health and safety, the Board may compel a physician to submit to a mental or physical examination upon a complaint or allegation that the physician is or may be unable to practice medicine with reasonable skill and safety to patients by reason of a mental illness, alcohol intemperance, excessive use of drugs, narcotics, or as a result of a mental or physical condition interfering with the competent practice of medicine. 32 M.R.S. § 3286. By practicing medicine in this State, every physician licensed is deemed to have given consent to a mental or physical examination when directed in writing by the Board. *Id.*

11. The information received by the Board demonstrates that Dr. Nass is or may be unable to practice medicine with reasonable skill and safety to her patients by reason of mental illness, alcohol intemperance, excessive use of drugs, narcotics, or as a result of a mental or physical condition interfering with the competent practice of medicine.

## ORDER DIRECTING EVALUATION

NOW THEREFORE pursuant to 32 M.R.S. § 3286 and upon consideration of the information presented and considered, and based upon the preliminary findings identified above, the Board hereby ORDERS Dr. Nass to submit to a

neuropsychological evaluation by a Board selected psychologist to occur on February 1, 2022. The Board ORDERS Dr. Nass to timely communicate and cooperate with Board staff regarding the scheduling of the evaluation and respond to Board staff within the time specified in communications from Board staff. Failure of Dr. Nass to undergo the evaluation as directed constitutes an admission of the allegations against her.



Dated: January 11, 2022

MAROULLA S. GLEATON, M.D.,
CHAIR

# Spring 2022 Newsletter

Downloadable PDF Version

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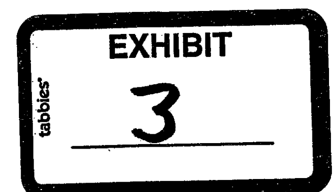
## FROM THE CHAIR

### Implicit Bias in Health Care

*Maroulla S. Gleaton, M.D., Chair*




According to the Perception Institute:

*Thoughts and feelings are "implicit" if we are unaware of them or mistaken about their nature. We have a bias when, rather than being neutral, we have a preference for (or aversion to) a person or group of people. Thus, we use the term "implicit bias" to describe when we have attitudes towards people or associate stereotypes with them without our conscious knowledge.*

*The mind sciences have found that most of our actions occur without our conscious thoughts, allowing us to function in our extraordinarily complex world. This means, however, that our implicit biases often predict how we'll behave more accurately than our conscious values.*

**Implicit bias is a universal phenomenon, not limited by race, gender, or even country of origin. Take this test to see how it works for you: Implicit Bias Test**

-oOo-

As we in Maine enter the transition month of March, when winter's waning grip surges but is slowly yet steadily melted away by the warming sun in the lengthening days, it seems appropriate to reflect upon previous years while looking hopefully towards the future. The long winter of Covid-19 has significantly impacted health care and the people who deliver it, and has re-exposed some endemic deficiencies in patient care, especially those brought about by implicit bias.

Disparity in health care has been studied for many years and much remediation has been accomplished; however, the Covid-19 pandemic has high-lighted its pernicious existence once again. We have clearly seen the stark reality of inequalities in our healthcare system during the pandemic. For example, where vaccination rates were very different (lower) in marginalized communities, morbidity and mortality was higher as a result. Other areas of concern are infant mortality and maternal pregnancy-related mortality, as well as heart disease rates, which are much higher when correlated with race, ethnic background, or poverty. The American Medical Association's website includes information regarding this subject, including studies and recommendations for reducing disparities in health care. See https://www.ama-assn.org/delivering-care/patient-support-advocacy/reducing-disparities-health-care.

The bottom line is that disparities in health care exist and are associated with worse health outcomes for certain predictable patient populations. One of the major factors contributing to this disparity is bias and stereotyping, primarily but not exclusively implicit, that is, without conscious knowledge or intent.

Maine's population demographic for 2022 shows that it is predominantly White (94.31%), but with multiple other ethnic minorities: Two or more races (2.23%); Black or African American (1.38%); Asian (1.13%); Native American (.65%); Other (.27%); Native Hawaiian or Pacific Islander (.03%). https://worldpopulationreview.com/states/maine-population.

In this context, Maine physicians, physician assistants, other health care providers, and health care systems generally have an obligation to be aware of and attuned to the potential of implicit bias and stereotyping of patients. Implicit bias and stereotyping can be based upon race, ancestry, gender, age, weight, and financial status. The Board urges you to educate yourselves about this issue, and to reflect upon its impact in the clinician-patient relationship and health care outcomes.

On the other side of the same coin, while Maine's general population is fairly homogenous, it's physician population is much more diverse. In 2019 approximately 21% of physicians licensed in Maine were foreign-educated, coming from over 65 countries from all over the world – including but not limited to Argentina, Brazil, Chile, China, Columbia, Ghana, Haiti, Iraq, Israel, Japan, Kenya, Mexico, Nigeria, South Africa, South Korea, Spain, Syria, Taiwan, Thailand, and Zimbabwe.

While the Board does not track the ethnic or racial demographics of its licensees, it is certain that the body of licensees is significantly more diverse than the general Maine population, which may pose an issue of implicit bias and stereotyping for patients regarding their providers. One example is a complaint reviewed and dismissed by the Board filed by a patient against a physician that included pejorative statements about the physician's race.

Recognizing the importance and negative impact of this issue of patients' implicit bias and stereotyping against Maine physicians and physician assistants, the Board recently voted to collaborate with the

Maine Medical Association to develop a free educational module concerning implicit bias towards clinicians and how to support colleagues when they are abused or discriminated against by patients and their families/caregivers. Once the free educational module has been developed, the Board will post a link to it on its website. https://www.maine.gov/md/.

In April 2021, the Board and its staff had a joint training session that included the issue of implicit bias. The Board welcomes physicians and physician assistants of all races, genders, and ancestries, and will continue to be sensitive to the issue of implicit bias and its negative impact on both patients and clinicians. As we look forward to spring in Maine with its resurgence of dormant life, warming sunshine, and the emergence of new life, we are hopeful for the end of the pandemic and the elimination of implicit bias in health care, and we are committed to addressing this issue, which will support both patients and licensees and result in the overall betterment of healthcare for all.

## WHAT EVERYONE SHOULD KNOW

## Veterans Health Administration Free Community Training

The Veterans Health Administration is continuing its free online training series for community providers caring for veterans. The most recent offering is **Caring for the Women Veterans in the Community**.

This web-based course is designed to provide community providers an overview of the unique characteristics of women Veterans that may require different assessments, care and resources compared to non-Veteran patients. Community providers need knowledge about mental and physical health diagnoses common in women Veterans.

Community providers will gain a basic understanding of mental and physical health diagnoses common in Veterans, military culture, trauma-sensitive care principles, suicide awareness and prevention, as well as resources that are available.

The training is eligible for 1 credit hour and is accredited by ACCME, ANCC, ASWB, AAPA, NYSED, ACCME-NP, JA IPCE.

Interested clinicians can register at https://www.train.org/vha/course/1096557

## Deadline nears for public comment on CDC's draft: "Clinical Practice Guideline for Prescribing Opioids"

For more information see:

https://www.federalregister.gov/documents/2022/02/10/2022-02802/proposed-2022-cdc-clinical-practice-guideline-for-prescribing-opioids

## Rural Medical Access Program Opportunity

I, Erica Dyer, am writing to you from the State Office of Rural Health regarding the Rural Medical Access Program (RMAP). The program promotes obstetrical and prenatal care in federally designated Medically Underserved Areas/Populations and Primary Care Health Professional Shortage Areas of Maine through assistance with insurance premiums for eligible obstetricians and family or general practice physicians.

To be considered, physicians must be practicing in Maine, have performed deliveries and/or provided prenatal care and have malpractice insurance for prenatal care and/or obstetrical services, all for at least the period of July 1, 2021, through December 31, 2021.

Attached you will find the **application** and the **application cover letter** for the 2022 RMAP applications. Please spread the word however and to whomever you see fit. The applications are due back by 5/3/2022.

Please feel free to reach out to us if you have any questions or concerns.

Erica Dyer (She/Her)
Office Associate II
Department of Health and Human Services
Maine Center for Disease Control and Prevention
*Preserve ~ Promote ~ Protect*
Division of Public Health Systems
Rural Health & Primary Care Program
286 Water Street, 5th Floor
11 State House Station
Augusta, ME 04333-0011
Tel: (207) 287-5562
Fax: (207) 287-5431
TTY: Call 711 (Maine Relay)
www.mainepublichealth.gov/ruralhealth

# ADVERSE ACTIONS

## Adverse Actions

In 2021 the Board reviewed 305 complaints and investigative reports – an average of 25 per meeting. While the number of complaints received by the Board remains consistently large, the number of complaints that result in adverse action is quite small. In most cases, the conduct resulting in adverse action is egregious or repeated or both.

The Board's complaint process is relatively straight-forward. FAQs about the complaint process are available on the Board's website: https://www.maine.gov/md/complaint/discipline-faq. Brochures regarding the complaint process are also available on the Board's website: https://www.maine.gov/md/resources/forms.

Upon receipt of a complaint, it is forwarded to the licensee for a written response and a copy of the medical records. In general, the licensee's response is shared with the complainant, who may submit a reply. The Board reviews the complaint file once completed, and may take any of the following actions:

- Dismiss
- Dismiss and issue a letter of guidance
- Further investigate
- Invite the licensee to an informal conference
- Schedule an adjudicatory hearing

The following adverse actions are being reported for the purpose of educating licensees regarding ethical and/or legal issues that can lead to discipline, and to inform licensees of any limitations or restrictions imposed upon scope of practice.

**Gerald R. Keenan Jr., P.A. License #PA549 (Date of Action 3/9/22)**
On March 9, 2022, Gerald R. Keenan, Jr., P.A. entered into a Consent Agreement with the Board of Licensure in Medicine for the permanent revocation of his physician assistant license effective September 1, 2016 for sexual misconduct, unprofessional conduct, incompetence, and August 2021 criminal convictions for unlawful sexual contact with a person under the age of 14 and sexual abuse of a minor based upon conduct that occurred while licensed as a physician assistant in Maine.

**Jarrod R. Daniel, M.D. License #MD21511 (Date of Action 2/23/22)**
On February 23, 2022, Jarrod Ryan Daniel, M.D.'s Maine medical license was immediately suspended in accordance with paragraph 10(c) of his November 16, 2021, Consent Agreement, following a confirmed positive toxicology result. Dr. Daniel's license suspension shall continue so long as determined by the Board, in its sole discretion.

**David B. Robinson, M.D. License #MD18360 (Date of Action 1/24/22)**
On January 24, 2022, the Maine Board of Licensure in Medicine denied David B. Robinson, M.D.'s application to reinstate his expired Maine medical license following a preliminary denial issued on

November 9, 2021, based on Dr. Robinson not meeting the qualifications for license reinstatement by failing to demonstrate continuing clinical competency as required by Board rules.

**Meryl J. Nass, M.D. License #MD14575 (Date of Action 1/12/22)**
On January 12, 2022, the Maine Board of Licensure in Medicine issued an Immediate Suspension Order suspending Dr. Nass's license to practice medicine in Maine for a thirty day period ending on February 11, 2022 based on preliminary findings that Dr. Nass engaged in the practice of fraud, deceit or misrepresentation in connection with services rendered within the scope of the license issued, engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a patient or that evidences a lack of knowledge or ability to apply principles or skills to carry out the practice for which the licensee is licensed, engaged in unprofessional conduct, and violated Board rules which constituted an immediate jeopardy to the health and physical safety of the public who might receive her medical services.

**Meryl J. Nass, M.D. License #MD14575 (Date of Action 1/11/22)**
On January 11, 2022, the Maine Board of Licensure in Medicine issued an Order directing Meryl J. Nass, M.D. to submit to a neuropsychological evaluation by a Board-selected psychologist on February 1, 2022, pursuant to 32 M.R.S. 3286 based on preliminary findings that Dr. Nass is, or may be, unable to practice medicine with reasonable skill and safety to her patients.

**Jarrod Ryan Daniel, M.D. License #MD21511 (Date of Action 11/16/2021)**
On November 16, 2021, the Board and Dr. Daniel entered into a Consent Agreement for misuse of alcohol and unprofessional conduct. Dr. Daniel's license is placed on probation for a period of at least five years with requirements including maintaining enrollment and completion of an intensive outpatient treatment program, maintaining enrollment in the Medical Professional Health Program, continuing in individual therapy, engaging a Board-approved physician practice monitor who will report to the Board, a 40 hour patient contact hour limitation, and a requirement to have a physician colleague on staff within 6 months or, alternatively, a Board approved patient coverage plan within 6 months and a physician colleague on staff within 12 months.

# LICENSING ISSUES

## Important Notice to Licensees: Ensure Your Contact Information with the Board is Current

Today's health care work force is mobile, which includes physicians and physician assistants licensed with the Board. licensees should ensure that their contact information on file with the Board is current for several reasons:

- The law requires that licensees provide the Board "with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number." https://legislature.maine.gov/statutes/32/title32sec3300-A.html
- Board rules Chapters 1 & 2 require licensees to "notify the Board in writing within ten (10) calendar days of any change in work or home address, e-mail, phone, or other contact information." https://www.maine.gov/md/laws-rules-updates/rules
- Violating the Board's statute or rules cited above constitutes grounds for disciplinary action and/or the issuance of citations and civil penalties.

Apart from the potential adverse consequences to licensees for failing to update their contact information, there are other reasons for licensees to ensure their contact information on file with the Board is current; namely, to ensure receipt of important information from the Board, including notification of a complaint to which licensees are required by law to respond.

The Board encourages physicians and physician assistants who relocate to new places of employment and/or new places of residence to update your contact information on file with the Board immediately.

You can update your contact information online using the Board's website: https://www.maine.gov/md/. Just go to the Board's website and click on the "Update My Contact Information" link in the "I Want To" Box.

Maine.gov Maine Board of Licensure in Medicine https://www.maine.gov/md/ Search Maine.gov Select Language

Contact Us | Sitemap

Maine Board of Licensure in Medicine

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Find a licensee in our database of licensed physicians and physician assistants.

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| I WANT TO... | WHAT'S HAPPENING | LAWS/RULES UPDATES |
|---|---|---|
| Renew My License | Instructions for Applying to the Interstate Compact | Free Opioid CME |
| Complete the Addendum | Alzheimer's Disease Resources | Board Announces 3 New Free CME Learning Modules |
| Check the Status of my Application | Joint Statement on Prescribing Chloroquine Hydroxychloroquine and Azithromycin | Free AMA Category 1 CME |
| Update My Contact Information | Opioid Response Summit & Seminars 2/5/21 | |
| Find a Licensee in our Database | | |
| Verify My License for Another State | | |
| File a Complaint | | |

Click on the "Update My Contact Information" and it will take you to the following link, which will allow you to select the option "Update Contact Information" and then follow the prompts. https://licensing.web.maine.gov/cgi-bin/online/licensing/begin.pl?board_number=376

Maine.gov A secure, online service provided by the State of Maine

Regulatory Licensing & Permitting

BOARD OF LICENSURE IN MEDICINE « Go Back to Regulator

Main Menu

Please select from the following options:

- **Online Exam**
  Select this option to take the exam or download your exam certificate.
- **Submit Maine License Application Addendum**
  Select this option if you have already completed the Uniform Application through FSMB and would like to complete the Maine Application Addendum...
  View more +
- **Check the Status of an Application**
  Check the status of outstanding application items and submit additional documentation online.
- **Renewal, Withdrawal, and Conversion Options**
  Renew or withdraw your Physician or Physician Assistant license, or convert your Physician license to Emeritus or Administrative status.
  **Effective in 2011**, the...
  View more +
- **Update Contact Information**
  Change your address, phone or email contact information. You will need your license number (e.g. MD12345, PA12345) and access code to continue....
  View more +
- **Request a Copy of Your License**
  Select this option to retrieve a copy of your license.
- **Change Account Information**
  *Individual Licensees Only* Change your password or secret question. This option is not available for companies.

Continue

If you have any questions regarding updating your contact information, remember Board staff are available to assist you.

Thank you!

## Important Notice to Licensees: Ensure to Select the Correct Status When Renewing Your License Online

Each month 93-95% of licensees renew their licenses online using the Board's website. Online renewal is intended to provide licensees with flexibility and 24/7 ability to renew their licenses. **The Board notifies licensees by email 60 days prior to the expiration of their licenses that their license expiration date and renewal date are approaching. Licensees should ensure that their contact information on file with the Board, including their email, is up to date.**

Occasionally when renewing their licenses online, licensees select the "renew my license in inactive status" option – which results in complications for them and the Board staff. **Licensees who select "inactive status" when renewing their licenses no longer have a license to engage in clinical practice and cannot practice medicine or render medical services.** Recently, Board staff have had to assist a number of licensees who showed up to work to see patients without the appropriate license.

There may be several reasons why licensees incorrectly select "inactive status." One of those reasons is to avoid having to take the Board's jurisprudence examination – which all licensees are required to successfully complete for initial licensure – and every four years thereafter. **If you are a licensee who attempts to renew a license online and you are prompted to take the jurisprudence examination – please do so.** The jurisprudence examination is available online (you will be prompted to take it during your renewal). The study guide for the jurisprudence examination is available on the Board's website as a PDF entitled "Exam Review Materials": https://www.maine.gov/md/resources/forms.

Attempting to avoid taking the jurisprudence examination by renewing your license in "inactive status" will result in the inability to practice, and delay in re-licensure – as you will have to successfully complete the examination before staff can convert your license back to "active status."

If you have any questions regarding renewing your license, Board staff are available to assist you.

Thank you!

# BOARD NEWS

## 2021 Annual Reports

Each year Board staff prepares reports of activities that have happened during the past year. The attached Annual Report (PDF)* includes licensing trends statistics from 2021 and trends over the past five years.

2021 Annual Licensing Report

## Board Staff Member Receives National Award of Merit

On February 24, 2022, the Board of Licensure in Medicine ("Board") received notification from the Federation of State Medical Boards ("FSMB") that its Board of Directors had selected a member of the Board staff, Maureen Lathrop, to receive the Award of Merit for her many years of dedicated service and contributions to the profession of medical licensure and regulation and the protection of the public.

For over 26 years Ms. Lathrop has diligently and conscientiously served the Board in a variety of positions – excelling at each – in support of its mission to protect the public. Gifted with courtesy, self-discipline, attention to detail, and commitment to teamwork, Ms. Lathrop consistently analyzed and improved the Board's processes in each area within which she worked.

As the Secretary for Renewal Applications from 1995 to 1998 Ms. Lathrop developed ideas to improve the license renewal process. From 1998 to 2014 Ms. Lathrop served as the Board's Investigative Secretary and assisted significantly in the improvement of the Board's complaint and investigation processes, including the transition from paper to electronic complaint and investigative files. In April 2014 Ms. Lathrop became the Administrative Assistant to the Board, a position in which she continues to excel by preparing of all "public" Board meeting materials, preparing the Board meeting minutes, administering the Board's records retention policies and procedures, preparing reports to the

Legislature, preparing and filing Board rulemaking documentation, and coordinating the Board's monthly meeting agendas. Ms. Lathrop's conscientious work was noticed by both BOLIM staff and BOLIM members alike. One BOLIM member commented on Ms. Lathrop's preparation of the minutes of the monthly BOLIM meetings:

> This is absolutely the best set of Board minutes I have ever reviewed. The format is consistent, faultless, and clean; the often tangled language of the motions has been untangled and corrected... I have an inkling that your excellent work is going to put me out of a job. Thank you.

As the Covid-19 pandemic began to sweep the country in early 2020, Ms. Lathrop helped the Board develop the processes for conducting remote (virtual) monthly meetings, including the preparation of a script for Board members and staff in addition to an "expanded agenda" that identifies the subject matter being reviewed and space for recording motions and votes. Her efforts ensured the continuation of monthly meetings of the Board that are vital to its ability to protect the public.

In addition to her assigned duties, Ms. Lathrop is a team player who volunteers to assist whenever needed and is a mentor and resource for other Board staff. Indeed, there is no other Board staff member who has served in every area of the Board's operations (licensing, complaints and investigations, rulemaking), or for as long as Ms. Lathrop. Through her significant contributions to the Board's mission for over a quarter of a century, Ms. Lathrop has contributed greatly to the protection of the public.

Maureen Lathrop, Administrative Assistant, was born and raised in central Maine and resides in Sidney with her husband, Cory, and their golden retriever, Ranger. She enjoys reading, going for motorcycle rides, and spending time at camp.

The FSMB represents 70 state medical and osteopathic regulatory boards within the United States, its territories, and the District of Columbia. It provides support to medical boards as they fulfill their mandate to protect the public health, safety and welfare through the proper licensing, disciplining, and regulation of physicians and physician assistants. More information regarding the FSMB can be found at https://www.fsmb.org/about-fsmb/.

## Retiring Public Board Member Susan Dench

After five and a half years of dedicated service to the Maine Board of Licensure in Medicine ("Board"), Public Board Member Susan Dench has retired from her membership on the Board. The Board and Board staff will miss her.

Ms. Dench, a corporate veteran, and owner of Success & Co., serves on the Board of the Maine Policy Institute, the President's Council of the Portland Symphony Orchestra, the New England Board of the Fellowship of Christian Athletes, as a volunteer at the Preble Street Teen Resource Center, as a mentor for the Maine Center for Entrepreneurial Development, and is a business judge for Greenlight Maine. She is also the founder and president of the non-profit Informed Women's Network.

A dual citizen (UK/US) now a resident of Portland, she is an enthusiastic gardener, Boston Bruins fan, and keen soprano. Susan and her husband Bryan share five children, three grandchildren, and two canines, who spread joy to others as therapy dogs.

During her tenure on the Board, Ms. Dench brought her unique public member perspective, educational and work experience and insight to all matters reviewed by the Board. She contributed greatly towards the Board's mission of protecting the public by preparing for and attending monthly Board meetings, which entailed the review of hundreds of complaints and many license applications, and by participating in important updates to the Board's rules, policies, and guidelines. Ms. Dench's gracious and convivial nature was always conveyed in her communications and interactions with Board members, Board staff, and licensees.

The Board and Board staff deeply thank Ms. Dench for her professionalism and service, and her significant contributions towards the Board's mission of protecting the public.

# BOARD OPPORTUNITIES

## Board Opportunities

The Board has an opening for a **Public Member**, who is a Maine resident but is not a professional health care provider.

In June the Board will have an opening for a **Physician Assistant Member**.

Readers of the newsletter are encouraged to pass on this information to qualified individuals who might wish to apply.

For information about the terms and conditions of these positions, please contact:

Dennis E. Smith, Esq., Executive Director
Maine Board of Licensure in Medicine
137 State House Station
Augusta, ME 04333-0137
(207) 287-3605
dennis.e.smith@maine.gov

Or

Timothy E. Terranova, Assistant Executive Director
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# FROM THE EDITOR

## Recommended Reading

Amy Gutmann and Jonathan D. Moreno. *Everybody Wants to Go to Heaven But Nobody Wants to Die: Bioethics and the Transformation of Health Care in America*. 2019.

This collaboration from two members of President Obama's bioethics commission (Amy as Chair and Jonathan as Senior Advisor) is intellectually rich bioethics content presented in conversational style. This is a book of timely, incisive, pragmatic thinking that is historically grounded and future oriented. It is a practically perfect volume for anyone interested in the core ethical issues in modern health care, and in the story of how bioethics has evolved in an era of tremendous medical progress.

(Dr. Gutmann founded Princeton's University Center for Human Values and later served as president of the University of Pennsylvania for 18 years. She is now the U. S. Ambassador to Germany. Dr. Moreno is a philosopher and historian who holds an endowed chair in the University of Pennsylvania's Department of Medical Ethics and Health Policy.)

Editor-in-Chief David Nyberg, Ph.D. Graphic Design Ann Casady

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137 State House Station

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Augusta, Maine 04333-0143

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**Fax:** (207) 287-6590

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File a Personnel Complaint

Mandated Reporting

Adverse Licensing Actions

Archive

Non-Disciplinary Actions

Press Releases

Discipline Frequently Asked Questions

# Adverse Licensing Actions

Adverse actions taken by the Board within the past 15 years are listed in these pages. Adverse actions are listed here within two weeks of the Board's final decision regarding an action. All discipline information is held permanently at the Board's offices. An adverse licensing action may be either modifications or conditions attached to a license at the time it is issued or the discipline of an already existing license. The adverse licensing actions are listed below by year.

Actions taken against physicians who are now deceased are removed from this listing upon notification of their death. To search by name go to http://www.pfr.maine.gov/ALMSOnline/ALMSQuery/SearchIndividual.aspx?Board=376

The Board assumes no responsibility for any errors in the information provided, nor assumes any liability for any damages incurred as a consequence, directly or indirectly, of the use and application of any of the contents of the Board of Licensure in Medicine website. It is suggested that you obtain a copy of the full text of a Consent Agreement or a Decision and Order listed on this website by contacting the Board at (207) 287-3601.

**Adverse Actions 2024 +**

**Adverse Actions 2023 +**

**Adverse Actions 2022 +**

## Adverse Actions 2022

### PHYSICIAN/LICENSEE, EFFECTIVE DATE, DESCRIPTION

**John Anthony Califano, M.D. #25999 (Date of Action 12/13/2022)** On December 13, 2022, the Board of Licensure in Medicine reviewed Dr. Califano's compliance and request to terminate the Consent Agreement dated July 13, 2022 and voted to terminate the Consent Agreement effective December 21, 2022 following receipt of a written representation regarding use of chaperones.

CA Termination

**Timothy J. Richardson, M.D. #9418 (Date of Action: 11/28/2022)** On November 28, 2022 Dr. Richardson and the Board entered into a First Amendment to Consent Agreement for Conversion to Active Status amending the July 13, 2022 Consent Agreement with the Board. The First Amendment converts Dr. Richardson's license to active status and requires his compliance with all terms of the reentry to practice plan submitted to the Board on October 28, 2022 including supervision by an approved physician mentor/preceptor.

Richardson Amendment

**Jarrod Ryan Daniel, M.D. License #MD21511 (Date of Action 11/30/2022)** On [illegible] Dr. Daniel failed to renew his medical license while under investigation for noncor[illegible] Consent Agreement.

EXHIBIT 4

Daniel Failure to Renew

**Wade T. Hamilton, M.D. #MD13045 (Date of Action 11/08/2022)** On November 8, 2022, the Board issued an Order Directing Evaluation requiring Dr. Hamilton to undergo a neuropsychological evaluation.

Evaluation Order

**Amanda E. Buzzell, P.A. #PA1384 (Date of Action 10/13/2022)** On October 13, 2022, Ms. Buzzell and the Board entered into a Second Amendment to Consent Agreement ("Second Amendment")regarding her September 14, 2020 Consent Agreement. The Second Amendment imposes a $500 Civil Penalty for her noncompliance with paragraph 8(c) of the Consent Agreement.

Buzzell Amendment

**Cameron R. Bonney, M.D. #20582 (Date of Action 10/13/2022)** On October 13, 2022, the Board of Licensure in Medicine and Dr. Bonney entered into a First Amendment to Consent Agreement ("First Amendment") regarding his May 12, 2021 Consent Agreement with the Board. The First Amendment renews and converts Dr. Bonney's license to active status and imposes a restriction of no more than twenty (20) hours of clinical medicine per calendar week at a specific practice location and under the supervision of a Board-approved Physician Practice Monitor who shall submit monthly reports to the Board.

Bonney Amendment

**Farhaad Rahman Riyaz, MD #23600 (Date of Action 10/13/2022)** On October 13, 2022, Farhaad R. Riyaz, M.D. and the Board entered into a Consent Agreement following Dr. Riyaz's federal felony conviction and disciplinary action taken by several state licensing boards. The Consent Agreement requires that, at all times that Dr. Riyaz holds a Maine license, he shall cause all health care providers that provide treatment or counseling for his health condition submit written quarterly reports to the Board confirming his continued treatment and ability to safely practice medicine. Dr. Riyaz must also inform the Board of the physical location(s) at which he practices medicine and notify the Board of any changes.

Riyaz Consent Agreement

**Alan S. Black, M.D. #MD22160 (Date of Action September 30, 2022)** On September 30, 2022 Dr. Black failed to renew his license while under investigation for allegations relating to unprofessional conduct.

Black Letter

**Bruce G. Manley, P.A. #PA599 (Date of Action 09/13/2022)** On September 13, 2022, the Board of Licensure in Medicine ("the Board") reviewed Mr. Manley's compliance with his November 12, 2015 Consent Agreement, as amended, and voted to terminate all remaining requirements effective September 13, 2022.

Manley CA Termination

**Scott S. Foxworth, P.A. #PA1081 (Date of Action 09/01/2022)** On September 1, 2022, the Board issued a Decision and Order following an adjudicatory hearing on the preliminary denial of Mr. Foxworth's application to convert his physician assistant license to active status. The Board granted Mr. Foxworths application to convert to active status but imposed a Reprimand and civil penalties totaling $1,000, upon finding that Mr. Foxworth had engaged in misrepresentation in connection with two license applications by denying that he had been subject to practice limitations, had been subject to investigation, or had been subjected to discipline by another licensing jurisdiction, and that he failed to provide required notifications to the Board of a termination of employment and disciplinary action or restriction by the Texas Physician Assistant Board.

Foxworth Order

**Kara Duffy, P.A. (Date of Action 08/09/2022)** On August 9, 2022 the Board voted to terminate the requirements imposed by the Consent Agreement for Active License dated March 10, 2021.

Termination of Requirements

**Bart J. DeCristoforo, P.A. #PA734 (Date of Action 08/09/2022)** On August 9, 2022 the Board voted to terminate the physician practice monitor requirement, which was the final remaining requirement of the June 9, 2021 Consent Agreement. Mr. DeCristoforo has now fully complied with and successfully completed all requirements of the June 9, 2021 Consent Agreement.

Termination of Practice Monitor

**Anthony Perrone M.D. #MD19910 (Date of Action 08/09/2022)** On August 9, 2022, the Maine Board of Licensure in Medicine ("the Board") issued an Order directing Anthony Perrone M.D. to submit to a comprehensive psychiatric and substance misuse evaluation at the Vanderbilt Comprehensive Assessment Program (VCAP) at such time and place as designated by the Board which is to occur at the soonest available time offered by VCAP. This formal interim Order is issued pursuant to 32 M.R.S. 3286.

Perrone Order

**John A. Califano, M.D. #MD25999 (Date of Action 07/13/2022)** Effective July 13, 2022, John A. Califano, M.D. and the Board entered into a Consent Agreement for Licensure requiring that Dr. Califano 1) comply with all terms, conditions and limitations of an August 13, 2018 Order of the Louisiana State Board of Medical Examiners so long as that Order remain in effect; and 2) designate one or more licensed medical providers that are pre-approved by the Board Chair or Secretary ("Chaperone"), in whose presence & under whose direct observation he shall conduct the entirety of any and all visits, examinations & surgical procedures or operations of females patients in any practice setting located in Maine.

Califano Consent Agreement

**Timothy J. Richardson, M.D. License #MD9418 (Date of Action July 13, 2022)** On July 13, 2022 Timothy J. Richardson, M.D. and the Board entered into a Consent Agreement for Conversion to Active Status requiring that Dr. Richardson comply with all terms of the reentry to practice plan; included but not limited to 1)completion of a period of direct supervision of at least 240 clinical hours with written reports to the Board, and following successful conclusion of the period of direct supervision: 2) completion of a period of general supervision by the Board-approved mentor/preceptor for at least 12 months with quarterly reports to the Board.

Richardson Consent Agreement

**Richard Evan Caesar, M.D. #MD20302 (Date of Action 07/12/2022)** On July 12, 2022, the Board considered the request for termination of the Surgical Proctor requirement contained in the November 9, 2021 Consent Agreement. Following its review of the request and information regarding the licensee's compliance with the terms of the Consent Agreement, the Board voted to terminate the Surgical Proctor requirement required by paragraph 7(b). As a result, the licensee has completed the requirements contained in the November 9, 2021 Consent Agreement and is no longer subject to monitoring in accordance with its terms.

**Emily C. Kumagae, P.A. #PA1283 (Date of Action July 12, 2022)** On July 12, 2022 the Maine Board of Licensure in Medicine reviewed the licensee's request to terminate her April 14, 2021 Consent Agreement. Following review of the request, her compliance, and additional information, the Board voted to terminate the therapy requirement contained in paragraph 8(b) of the Consent Agreement dated April 14, 2021. All other conditions and terms of the Consent Agreement remain in place.

**Elmer H Lommler, M.D. License #MD9862 (Date of Action 07/15/2022)** On July 15, 2022, the Maine Board of Licensure in Medicine (Board) lifted the stay of the suspension of Dr. Lommler's medical license imposed by the March 12, 2021 Decision and Order for noncompliance with the June 15, 2022 Decision and Order.

Lommler Letter

**Elmer H. Lommler M.D. License #MD9862 (Date of Action 06/16/2022)** Effective June 16, 2022, the Maine Board of Licensure in Medicine ("Board") stayed the September 15, 2021 suspension of Dr.

Lommler's license to practice medicine imposed for noncompliance with the March 12, 2021 Decision and Order.

Lommler Stay

**Elmer H. Lommler M.D. License #MD9862 (Date of Action 06/15/2022)** On June 15, 2022, the Board issued a decision and order on Dr. Lommler's appeal of the preliminary denial of his license renewal. The Board found that Dr. Lommler failed to comply with several provisions of the Board's March 12, 2021 Decision and Order and imposed: a ten year probation with the following conditions: a) Dr. Lommler must engage in counseling with a psychologist and have his medications managed by a psychiatrist with reports to be submitted to the Board; b) Dr. Lommler's practice is limited to four days a week; c) Dr. Lommler must establish a colleague to be available when he is not present if his office is open; d) Dr. Lommler must have a Board approved physician practice monitor working in his office at least one day who will submit reports to the Board; e) Dr. Lommler must share call with two other providers proportionate to the providers' full- time equivalent time in the practice; and f) Dr. Lommler may not provide medical care to his employees. In addition the suspension imposed in accordance with the March 12, 2021 Decision and Order was stayed and Dr. Lommlers renewal application was granted.

Lommler Decision and Order

**Marc DeBell, M.D. License #20244 (Date of Action 06/14/2022)** On June 14, 2022, Dr. DeBell entered in to a First Amendment to Consent Agreement with the Board which granted Dr. DeBell's application to convert from inactive to active status, imposed a warning for his failure to comply with all terms of the June 12, 2019 Consent Agreement, required that he comply with all provisions of the reentry to practice plan submitted to the Board that includes a Preceptor submitting reports to the Board, and imposed a requirement that he maintain enrollment in and comply with a monitoring agreement with the Maine Professionals Health Program (MPHP) for a period of not less than five years.

DeBell Amendment

**Morris S. Minton, Jr., M.D. License #MDE21968 (Date of Action 05/10/2022)** On May 10, 2022 the Maine Board of Licensure in Medicine determined that Dr. Minton allowed his license to expire while under investigation for allegations relating to unprofessional conduct.

Minton Expiration

**James F. Gillen Jr. P.A. License #578 (Date of Action 05/10/2022)** On May 10, 2022 the Maine Board of Licensure in Medicine terminated the requirement that Mr. Gillen participate in and be monitored by the Maine Professionals Health Program as set forth in paragraph 11(a) of the Consent Agreement dated April 16, 2021.

Gillen Requirement Termination

**David R. Austin, MD License #MD12687 (Date of Action 4/12/22)** On April 12, 2022, the Board of Licensure in Medicine voted to accept Dr. Austin's request to permanently surrender his license while under investigation for allegations of substance misuse and unprofessional conduct.

Austin Letter

**Amanda E. Buzzell PA License #PA1384 (Date of Action 4/12/22)** On 4/12/2022 Ms. Buzzell's Consent Agreement was amended to terminate the CBT requirement contained in paragraph 8(b).

Buzzell CA Amendment

Kristin H. Coleman, M.D. License #MD15593 (Date of Action 3/23/22) On March 23, 2022 Kristin H. Coleman, M.D. and the Board entered into a Consent Agreement for Conversion to Active Status. Dr. Coleman last practiced clinical medicine in 2008. The consent agreement incorporates a reentry to practice plan that includes completion of a reentry program, a physician mentor/preceptor who will provide reports to the Board, and a period of observation/supervision and review of clinical care.

Coleman Consent Agreement

**Frank Richter, M.D. License #21365 (Date of Action 3/8/22)** On March 8, 2022, the Board voted to suspend the monitoring and counseling requirements contained in paragraphs 11(a) and 11(b) of Frank Richter, M.D.'s July 13, 2021 Consent Agreement based upon his compliance to date and his intent to take a position outside of the United States. Dr. Richter must notify the Board when he resumes the practice of medicine in Maine, at which time toxicology testing shall occur and the Board will review whether to reinitiate or terminate the requirements of paragraph 11(a) or 11(b).

**Gerald R. Keenan Jr., P.A. License #PA549 (Date of Action 3/9/22)** On March 9, 2022, Gerald R. Keenan, Jr., P.A. entered into a Consent Agreement with the Board of Licensure in Medicine for the permanent revocation of his physician assistant license effective September 1, 2016 for sexual misconduct, unprofessional conduct, incompetence, and August 2021 criminal convictions for unlawful sexual contact with a person under the age of 14 and sexual abuse of a minor based upon conduct that occurred while licensed as a physician assistant in Maine.

Keenan Consent Agreement

**Jarrod Ryan Daniel, M.D. License #MD21511 (Date of Action 2/23/2022)** On February 23, 2022, Jarrod Ryan Daniel, M.D.'s Maine medical license was immediately suspended in accordance with paragraph 10(c) of his November 16, 2021 Consent Agreement, following a confirmed positive toxicology result. Dr. Daniels license suspension shall continue so long as determined by the Board, in its sole discretion.

Daniel Suspension

**David B. Robinson, M.D. License #MD18360 (Date of Action 1/24/22)** On January 24, 2022, the Maine Board of Licensure in Medicine (Board) denied David B. Robinson, M.D.'s application to reinstate his expired Maine medical license following a preliminary denial issued on November 9, 2021 based on Dr. Robinson not meeting the qualifications for license reinstatement by failing to demonstrate continuing clinical competency as required by Board rules.

Robinson Denial

**Meryl J. Nass, M.D. License #MD14575 (Date of Action 1/12/22)** On January 12, 2022, the Maine Board of Licensure in Medicine ("the Board") issued an Immediate Suspension Order suspending Dr. Nass's license to practice medicine in Maine for a thirty day period ending on February 11, 2022 based on preliminary findings that Dr. Nass engaged in the practice of fraud, deceit or misrepresentation in connection with services rendered within the scope of the license issued, engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a patient or that evidences a lack of knowledge or ability to apply principles or skills to carry out the practice for which the licensee is licensed, engaged in unprofessional conduct, and violated Board rules which constituted an immediate jeopardy to the health and physical safety of the public who might receive her medical services.

Nass Order

**Meryl J. Nass, M.D. License #MD14575 (Date of Action 1/11/22)** On January 11, 2022, the Maine Board of Licensure in Medicine ("the Board") issued an Order directing Meryl J. Nass, M.D. to submit to a neuropsychological evaluation by a Board-selected psychologist on February 1, 2022, pursuant to 32 M.R.S. 3286 based on preliminary findings that Dr. Nass is, or may be, unable to practice medicine with reasonable skill and safety to her patients.

Nass Evaluation Order

**Frank Richter, M.D. License #21365 (Date of Action 1/11/22)** On January 11, 2022, the Board voted to convert Frank Richter, M.D.'s medical license to active status in accordance with paragraph 11(f) of his July 13, 2021 Consent Agreement.

**Sarah P. Greven-Chaousis P.A. License # PA1109 (Date of Action 1/11/22)** On January 11, 2022, the Board of Licensure in Medicine terminated Sarah P. Greven-Chaousis, P.A.'s Consent Agreement dated December 11, 2020. Ms. Greven-Chaousis completed the requirements of her Consent Agreement.

Greven-Chaousis CA Termination

**Adam W. Grasso, M.D. License #MD21359** (Date of Action 1/11/22) On January 11, 2022, the Board reviewed Adam W. Grasso, M.D.'s compliance with his March 10, 2020 Consent Agreement. The Board voted to terminate the requirement that he maintain and comply with a Monitoring Agreement with the Medical Professionals Health Program (MPHP).

Grasso Letter

**Adverse Actions 2021 +**

**Adverse Actions 2020 +**

**Adverse Actions 2019 +**

**Adverse Actions 2018 +**

**Adverse Actions 2017 +**

**Adverse Actions 2016 +**

**Adverse Actions 2015 +**

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National Practitioner Data Bank
Health Resources and Services Administration
U.S. Department of Health and Human Services
P.O. Box 10832
Chantilly, VA 20153-0832

5500000246757455
Process Date: 09/10/2024


NASS, MERYL JAE

45 BEALS AVE

ELLSWORTH, ME 04605-1701

**From:** National Practitioner Data Bank
**Re:** Response to Your Self-Query

---

This self-query response is released by the National Practitioner Data Bank (NPDB) for restricted use under the provisions of Title IV of Public Law 99-660, the Health Care Quality Improvement Act of 1986, as amended; Section 1921 of the Social Security Act; and Section 1128E of the Social Security Act.

Title IV established the NPDB as an information clearinghouse to collect and release certain information related to malpractice payment history and professional competence or conduct of physicians, dentists, and other licensed health care practitioners.

Section 1921 of the Social Security Act expanded the scope of the NPDB. Section 1921 was enacted to protect program beneficiaries from unfit health care practitioners, and to improve the anti-fraud provisions of federal and state health care programs. Section 1921 authorizes the NPDB to collect certain adverse actions taken by state licensing and certification authorities, peer review organizations, and private accreditation organizations, as well as final adverse actions taken by state law or fraud enforcement agencies (including, but not limited to, state law enforcement agencies, state Medicaid Fraud Control Units, and state agencies administering or supervising the administration of a state health care program), against health care practitioners, health care entities, providers and suppliers.

Section 1128E of the Social Security Act was added by Section 221(a) of Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996. The statute established a national data collection program (formerly known as the Healthcare Integrity and Protection Data Bank) to combat fraud and abuse in health care delivery and to improve the quality of patient care. Section 1128E information is now collected and disclosed by the NPDB as a result of amendments made by Section 6403 of the Affordable Care Act of 2010, Public Law 111-148. Section 1128E information includes certain final adverse actions taken by federal agencies and health plans against health care practitioners, providers, and suppliers.

Regulations governing the NPDB are codified at 45 CFR part 60. Responsibility for operating the NPDB resides with the Secretary of the U.S. Department of Health and Human Services (HHS), and HRSA, Division of Practitioner Data Banks.

Reports from the NPDB contain limited summary information and should be used in conjunction with information from other sources in granting privileges, or in making employment, affiliation, contracting or licensure decisions. NPDB responses may contain more than one report on a particular incident, if two or more actions were taken as a result of a single incident (e.g., an exclusion from a federal or state health care program and an adverse licensure action). The NPDB is a flagging system, and a report may be included for a variety of reasons that do not necessarily reflect adversely on the professional competence or conduct of the subject named in the report.

The response received from a self-query belongs to the subject of the self-query. Subjects may share the information contained in their own self-query responses with whomever they choose.

If you require additional assistance, visit the NPDB web site (https://www.npdb.hrsa.gov) or contact the NPDB Customer Service Center at 1-800-767-6732 (TDD: 1-703-802-9395). Information Specialists are available to speak with you weekdays from 8:30 a.m. to 6:00 p. m. (5:30 p.m. on Fridays) Eastern Time. The NPDB Customer Service Center is closed on all Federal holidays.

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# NASS, MERYL J

## *MAINE BOARD OF LICENSURE IN MEDICINE*

**STATE LICENSURE OR CERTIFICATION ACTION** **Date of Action: 01/11/2022**

| Initial Action | Basis for Initial Action |
|---|---|
| - OTHER LICENSURE ACTION, SEE SECTION C. OF THE REPORT FOR DETAILS | - IMMEDIATE THREAT TO PUBLIC |

**A. REPORTING ENTITY**

| | |
|---|---|
| Entity Name: | MAINE BOARD OF LICENSURE IN MEDICINE |
| Address: | 161 CAPITOL ST<br>137 STATE HOUSE STATION |
| City, State, Zip: | AUGUSTA, ME 04330-6211 |
| Country: | |
| Name or Office: | JULIE BEST |
| Title or Department: | COMPLAINT COORDINATOR |
| Telephone: | (207) 287-6931 |
| Entity Internal Report Reference: | |
| Type of Report: | INITIAL |

**B. SUBJECT IDENTIFICATION INFORMATION (INDIVIDUAL)**

| | |
|---|---|
| Subject Name: | NASS, MERYL J |
| Other Name(s) Used: | |
| Gender: | FEMALE |
| Date of Birth: | |
| Organization Name: | |
| Work Address: | 210 MAIN ST STE 13 |
| City, State, ZIP: | ELLSWORTH, ME 04605-1949 |
| Organization Type: | |
| Home Address: | 45 BEALS AVE |
| City, State, ZIP: | ELLSWORTH, ME 04605-1701 |
| Deceased: | UNKNOWN |
| Federal Employer Identification Numbers (FEIN): | |
| Social Security Numbers (SSN): | ***-**-4450 |
| Individual Taxpayer Identification Numbers (ITIN): | |
| National Provider Identifiers (NPI): | 1487625828 |
| Professional School(s) & Year(s) of Graduation: | UNIVERSITY OF MISSISSIPPI, JACKSON, MISSISSIPPI (1980) |
| Occupation/Field of Licensure: | PHYSICIAN (MD) |
| State License Number, State of Licensure: | MD14575, ME |
| Specialty: | INTERNAL MEDICINE |
| Drug Enforcement Administration (DEA) Numbers: | |
| Unique Physician Identification Numbers (UPIN): | |
| Name(s) of Health Care Entity (Entities) With Which Subject Is Affiliated or Associated (Inclusion Does Not Imply Complicity in the Reported Action): | |
| Business Address of Affiliate: | |
| City, State, ZIP: | |
| Nature of Relationship(s): | |

National Practitioner Data Bank
Health Resources and Services Administration
U.S. Department of Health and Human Services
P.O. Box 10832
Chantilly, VA 20153-0832
https://www.npdb.hrsa.gov



## C. INFORMATION REPORTED

| | |
|---|---|
| Type of Adverse Action: | STATE LICENSURE OR CERTIFICATION |
| Basis for Action: | IMMEDIATE THREAT TO PUBLIC (F1) |
| Name of Agency or Program That Took the Adverse Action Specified in This Report: | MAINE BOARD OF LICENSURE IN MEDICINE |
| Adverse Action Classification Code(s): | OTHER LICENSURE ACTION - NOT CLASSIFIED, SPECIFY (1199) |
| Other, as Specified: | ORDER DIRECTING EVALUATION |
| Date Action Was Taken: | 01/11/2022 |
| Date Action Became Effective: | 01/11/2022 |
| Length of Action: | INDEFINITE |
| Total Amount of Monetary Penalty, Assessment and/or Restitution: | |
| Is the subject automatically reinstated after the adverse action period is completed?: | |
| Description of Subject's Act(s) or Omission(s) or Other Reasons for Action(s) Taken and Description of Action(s) Taken by Reporting Entity: | On January 11, 2022, the Maine Board of Licensure in Medicine ("the Board") issued an Order directing Meryl J. Nass, M.D. to submit to a neuropsychological evaluation by a Board-selected psychologist on February 1, 2022, pursuant to 32 M.R.S. 3286 based on preliminary findings that Dr. Nass is, or may be, unable to practice medicine with reasonable skill and safety to her patients. |
| Is the adverse action specified in this report based on the subject's professional competence or conduct, which adversely affected, or could have adversely affected, the health or welfare of patient(s)?: | YES |

☐ Subject identified in Section B has appealed the reported adverse action.

## D. SUBJECT STATEMENT

If the subject identified in Section B of this report has submitted a statement, it appears in this section.

## E. REPORT STATUS

Unless a box below is checked, the subject of this report identified in Section B has not contested this report.

☐ This report has been disputed by the subject identified in Section B.

☐ At the request of the subject identified in Section B, this report is being reviewed by the Secretary of the U.S. Department of Health and Human Services to determine its accuracy and/or whether it complies with reporting requirements. No decision has been reached.

☐ At the request of the subject identified in Section B, this report was reviewed by the Secretary of the U.S. Department of Health and Human Services and a decision was reached. The subject has requested that the Secretary reconsider the original decision.

☐ At the request of the subject identified in Section B, this report was reviewed by the Secretary of the U.S. Department of Health and Human Services. The Secretary's decision is shown below:

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☐ At the request of the subject identified in Section B, this report is being reviewed by the Secretary of the U.S. Department of Health and Human Services to determine its accuracy and/or whether it complies with reporting requirements. No decision has been reached.

☐ At the request of the subject identified in Section B, this report was reviewed by the Secretary of the U.S. Department of Health and Human Services and a decision was reached. The subject has requested that the Secretary reconsider the original decision.

☐ At the request of the subject identified in Section B, this report was reviewed by the Secretary of the U.S. Department of Health and Human Services. The Secretary's decision is shown below:

Date of Original Submission: 01/28/2022
Date of Most Recent Change: 01/28/2022

**This report is maintained under the provisions of:** Title IV; Section 1921

The information contained in this report is maintained by the National Practitioner Data Bank for restricted use under the provisions of Title IV of Public Law 99-660, as amended, Section 1921 of the Social Security Act, and 45 CFR Part 60. All information is confidential and may be used only for the purpose for which it was disclosed. Disclosure or use of confidential information for other purposes is a violation of federal law. For additional information or clarification, contact the reporting entity identified in Section A.

**END OF REPORT**