

GENE R. LIBBY, ESQ.
glibby@lokllc.com

December 28, 2023

BY FEDEX

Kennebec County Superior Court
1 Court Street, Suite 101
Augusta, ME 04330

Re: *Meryl J. Nass, M.D. v. Maine Board of Licensure in Medicine*
Kennebec County Superior Court Docket No. AP-23-_____

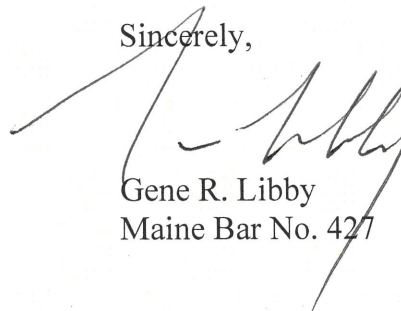
Dear Clerk:

Enclosed please find the following documents being filed with this Court on behalf of the Plaintiff in the above matter:

1. Civil Cover Sheet;
2. Petition for Review of Final Agency Action M.R. Civ. P. 80C; and
3. \$175 Check for filing fee.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Gene R. Libby
Maine Bar No. 427

GRL/eb
Enclosures

- c: Timothy Terranova, Executive Director, Maine Board of Licensure in Medicine (by Certified Mail and email)
Michael Miller, Esq., AAG (by Certified Mail and email)
Timothy Steigelman, Esq., AAG (by Certified Mail and email)
Jennifer A. Willis, Esq., AAG (by Certified Mail and email)
Lisa A. Wilson, Esq., AAG (by Certified Mail and email)
Meryl J. Nass, M.D. (by email only)
Tyler J. Smith, Esq. (by email)
Michael Saucier, Esq. (by email)

MAINE JUDICIAL BRANCH

This summary sheet and the information it contains do not replace or supplement the filing and service of pleadings or other papers as required by the Maine Rules or by law. This form is required for the Clerk of Court to initiate or update the civil docket. The information on this summary sheet is subject to the requirements of M. R. Civ. P. 11.

I. COUNTY OF FILING OR DISTRICT COURT JURISDICTION ("X" the appropriate box and enter the County or location)

- Superior Court County: KENNEBEC
- District Court Location (city/town): _____

Initial Complaint: A complaint filed as an original proceeding. A filing fee is required.
Third-Party Complaint: An original defendant's action against a third party that was not part of the original proceeding. A filing fee is required.
Cross-Claim: An original defendant's claim against another original defendant. No additional fee is required.
Counterclaim: An original defendant's claim against an opposing party. No additional fee is required.
Reinstated or Reopened Case: Money Judgment Disclosures or post-judgment motions.

II. NATURE OF THE FILING

- Initial Complaint
 - Third-Party Complaint
 - Cross-Claim or Counterclaim
 - Reinstated or Reopened case
- Docket No.: _____

If filing a second or subsequent Money Judgment Disclosure, give the docket number of the first disclosure.)

III. REAL ESTATE OR TITLE TO REAL ESTATE IS INVOLVED

IV. MOST DEFINITIVE NATURE OF ACTION

("X" in ONE box. If the case fits more than one nature of action, select the one that best describes the cause of action.)

GENERAL CIVIL

Constitutional/Civil Rights

- Constitutional/Civil Rights

Contract

- Debt Collection brought by a debt collector as defined by 32 M.R.S. § 11002 (*Contract Case Cover Sheet (CV-261) must be attached*)
- Other Contract (*Contract Case Cover Sheet (CV-261) must be attached*)

Declaratory/Equitable Relief

- Declaratory Judgment
- General Injunctive Relief
- Other Equitable Relief

Non-Personal Injury Torts

- Auto Negligence
- Libel/Defamation
- Other Negligence
- Other Non-Personal Injury Tort

Personal Injury Torts

- Assault/Battery
- Auto Negligence
- Domestic Tort
- Medical Malpractice
- Other Negligence
- Other Personal Injury Tort
- Product Liability
- Property Negligence

Statutory Actions

- Freedom of Access
 - Other Statutory Action
 - Unfair Trade Practice
- Miscellaneous Civil**
- Administrative Warrant
 - Appointment of Receiver
 - Arbitration Awards
 - Common Law Habeas Corpus
 - Drug Forfeiture
 - Foreign Deposition
 - Foreign Judgments
 - HIV Testing
 - Land Use Enforcement (80K)
 - Minor Settlements
 - Other Civil
 - Other Forfeiture/Property Libel
 - Pre-Action Discovery
 - Prisoners Transfers
 - Shareholders' Derivative Action

APPEALS (ADR EXEMPT)

- Administrative Agency (80C)
- Governmental Body (80B)
- Other Appeal

REAL ESTATE

Foreclosures

- Foreclosure (ADR exempt)
- Foreclosure (Diversion eligible)
- Foreclosure (Other)

Title Actions

- Boundary
- Easement
- Eminent Domain
- Quiet Title

Miscellaneous Real Estate

- Abandoned Road
- Adverse Possession
- Equitable Remedy
- Mechanics Lien
- Nuisance
- Other Real Estate
- Partition
- Trespass

CHILD PROTECTIVE CUSTODY

- Non-DHHS Protective Custody

SPECIAL ACTIONS

- Money Judgment Disclosure

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

MAINE JUDICIAL BRANCH

V. M.R. Civ. P. 16B ALTERNATIVE DISPUTE RESOLUTION (ADR)

[X] I certify that pursuant to M.R. Civ. P. 16B(b), this case is exempt from a required ADR process because ("X" one box below):

- [X] It falls within an exemption listed above (it is an appeal or an action for non-payment of a note in a secured transaction).
[] The plaintiff or defendant is incarcerated in a local, state, or federal facility.
[] The parties have participated in a statutory pre-litigation screening panel process with (name of panel chair) that concluded on (date of panel finding - mm/dd/yyyy)
[] The parties have participated in a formal ADR process with (name of neutral) on (date - mm/dd/yyyy)
[] The plaintiff's likely damages will not exceed \$30,000, and the plaintiff requests an exemption.
[] The action does not include ADR pursuant to M.R. Civ. P. 16(a)(1).
[] There is other good cause for an exemption and the plaintiff has filed a motion for exemption.

VI. PARTY AND ATTORNEY CONTACT INFORMATION

If you need additional space, list additional parties on an attachment and note "see attachment" in the appropriate section.

Please note: If a party is a government agency, use the full agency name or the standard abbreviation. If the party is an official within a government agency, identify the agency first and then the official, giving both name and title.

(a) PLAINTIFF(S)

("X" the box below to indicate the party type associated with the filing)

- [X] Plaintiff(s)
[] Third-Party Plaintiff(s)
[] Counterclaim Plaintiff(s)
[] Cross-Claim Plaintiff(s)

Is the plaintiff a prisoner in a local, state, or federal facility? [] Yes [X] No

Name (first, middle initial, last): Meryl J. Nass, M.D.
Mailing address (include county): 210 Main Street
Ellsworth, ME 04065
Telephone:
Email:
Name (first, middle initial, last):
Mailing address (include county):
Telephone:
Email:

(b) ATTORNEY(S) FOR PLAINTIFF(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL plaintiffs, specify which plaintiff(s) the listed attorney(s) represents.

Name and bar number: Gene R. Libby, Esq. ME Bar No. 427
Firm name: Libby O'Brien Kingsley & Champion, LLC
Mailing Address: 62 Portland Road, Suite 17
Kennebunk, ME 04043
Telephone: (207) 985-1815
Email: glibby@lokllc.com

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MAINE JUDICIAL BRANCH

Name and bar number: _____
Firm name: _____
Mailing Address: _____
Telephone: _____
Email: _____

(c) DEFENDANT(S)

("X" the box below to indicate the party type associated with the filing)

- Defendant(s)
- Third-Party Defendant(s)
- Counterclaim Defendant(s)
- Cross-Claim Defendant(s)

Is the defendant a prisoner in a local, state, or federal facility? Yes No

Name (first, middle initial, last): Maine Board of Licensure in Medicine
Mailing address (include county): 137 State House Station, 161 Capitol Street
Augusta, ME 04333-0137
Telephone: (207) 287-3601
Email: Tim.e.terrano@maine.gov

Name (first, middle initial, last): _____
Mailing address (include county): _____
Telephone: _____
Email: _____

(d) ATTORNEY(S) FOR DEFENDANT(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: Michael Miller, Esq., Assistant Attorney General ME Bar No. 9415
Firm name: State of Maine, Office of the Attorney General
Mailing Address: 6 State House Station
Augusta, ME 04333-0006
Telephone: (207) 626-8800
Email: Michael.Miller@maine.gov

Name and bar number: _____
Firm name: _____
Mailing Address: _____
Telephone: _____
Email: _____

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MAINE JUDICIAL BRANCH

(e) PARTIES IN INTEREST

Name (first, middle initial, last): _____
Mailing address (include county): _____
Telephone: _____
Email: _____

Name (first, middle initial, last): _____
Mailing address (include county): _____
Telephone: _____
Email: _____

(f) ATTORNEY(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL parties in interest, specify which parties in interest the listed attorney(s) represents.

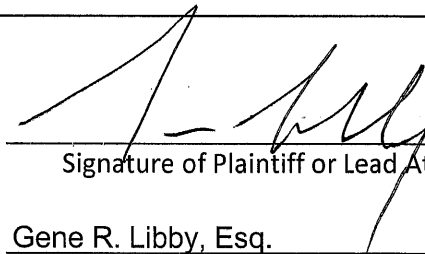
Name and bar number: _____
Firm name: _____
Mailing Address: _____
Telephone: _____
Email: _____

Name and bar number: _____
Firm name: _____
Mailing Address: _____
Telephone: _____
Email: _____

VII. RELATED CASE(S) IF ANY

Case name: _____
Docket Number: _____
Assigned Judge/Justice: _____

Date (mm/dd/yyyy): December 28, 2023

▶ 
Signature of Plaintiff or Lead Attorney of Record
Gene R. Libby, Esq.
Printed Name of Plaintiff or Attorney

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STATE OF MAINE
KENNEBEC, ss.

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

Merly J. Nass, M.D.

Petitioner

v.

Maine Board of Licensure in Medicine

Respondent

**Petition for Review of Final Agency
Action**

M.R. Civ. P. 80C

NOW COMES Petitioner, Meryl J. Nass, M.D., by and through counsel, and alleges against Respondent Maine Board of Licensure in Medicine as follows.

PARTIES

1. Meryl J. Nass, M.D. is a resident of Ellsworth, Maine, and is a medical doctor licensed to practice medicine in the State of Maine.
2. Maine Board of Licensure in Medicine (the “Board” or “BOLIM”) is an agency of the State of Maine created by the Legislature under 32 M.R.S. §§ 3263 to 3269 and is charged with professional licensing of medical doctors.

JURIDICTION AND VENUE

3. The Court has jurisdiction to hear this appeal pursuant to M.R. Civ. P. 80C (Review of Final Agency Action), 5 M.R.S. § 11001 (Superior Court review of final agency action), and 4 M.R.S. § 105(3)(A) (Superior Court jurisdiction to hear Rule 80C appeals).
4. Venue is appropriate because the Maine Board of Licensure in Medicine’s principal office is in Kennebec County. 5 M.R.S. § 11002(1)(B).

FACTS

5. On or about October 6, 2021, the BOLIM received a complaint that Dr. Nass was spreading COVID-19 misinformation in a video and on her website. The complainant qualified, "I am not her patient. I have never been treated by Meryl Nass, nor has anyone I am associated or acquainted with."

6. The next day, the BOLIM issued a notice of complaint to Dr. Nass via email and demanded her response by November 6, 2021.

7. On October 10, 2021, Dr. Nass questioned the Board's authority to investigate a complaint that has nothing to do with the practice of medicine and focused entirely on a statement made in her private life. The Board responded October 14, 2021:

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.

8. Dr. Nass timely responded with a Nebraska Attorney General Opinion Statement that physicians cannot be disciplined for prescribing ivermectin or hydroxychloroquine off-label for treatment of COVID-19.

9. In November 2021, Dr. Nass was invited to speak to the New Hampshire Legislature on pandemic management issues. A copy of her testimony was provided to the BOLIM with a request to identify any "misinformation." The BOLIM never responded to her request.

10. On November 4, 2021, Dr. Nass appeared before the Maine Board of Pharmacy and advocated for reconsideration of Maine Board of Pharmacy Statement #CI-2021 on dispensing ivermectin.

11. Statement #01-2021 indicated that ivermectin is not FDA-approved for treatment of COVID-19, that use of ivermectin creates a rise in poison control calls, and that pharmacists should take appropriate steps to verify that ivermectin prescriptions are issued for “legitimate medical purposes.”

12. The next day, Assistant Attorney General (AAG) John Nichols emailed AAG Michael Miller, stating “Below are my notes of Dr. Nass’s comments before the Board of Pharmacy last night.”

13. AAGs Nichols and Miller work for the Maine Office of the Attorney General. AAG Miller is assigned to the BOLIM.

14. AAG Miller forwarded AAG Nichols’ email to Savannah Okoronkwo, an employee of the BOLIM, writing “I am forwarding this information to be included in Dr. Nass’s complaint file. Thank you.”

15. Another complaint was filed against Dr. Nass on November 7, 2021 by a person in Dr. Nass’s hometown of Ellsworth.

16. A BOLIM investigator reached out to the complainant for an interview and asked her to identify patients who had seen Dr. Nass.

17. On December 14, 2021, Dr. Nass and other physicians appeared before a group of Maine Legislators via Zoom in a meeting organized by a legislator to discuss COVID-19.

18. The BOLIM met on January 11, 2022 in executive session to discuss Dr. Nass. Although in executive session, Dr. Nass was allowed to observe because she was the licensee being discussed. Dr. Nass recorded the meeting.

19. BOLIM-Member Defendants Gleaton, Fanjoy, Nesin, Fay-LeBlanc, Waddell, Jamison, Genova, Weinstein, and Dench appeared and participated in the executive session.

20. During the executive session, the BOLIM discussed the two misinformation complaints (identified as CR21-191 and CR21-210) against Dr. Nass, together with three new Assessment and Direction (“AD”) matters (AD21-217, AD21-220, and AD22-1).

21. BOLIM Member Fay-LeBlanc, who was designated by the BOLIM to present the complaints to the entire Board, stated that the reasons for the complaints “really focus around unprofessional conduct due to the spreading of misinformation about COVID-19 -- primarily on social media[,]” and especially Dr. Nass’s statements during an interview with Regis Tremblay that are alleged in detail in paragraph 19 of the First Notice of Hearing dated January 24, 2022.

22. During the interview, BOLIM Member Fay-LeBlanc explained, Dr. Nass said things that BOLIM Member Fay-LeBlanc believed were outside of mainstream medicine and involved conspiracy language around certain organizations.

23. The three AD matters involved (1) receipt of a report from a physician reporting the hospitalization of a patient Dr. Nass allegedly “diagnosed over the phone”; (2) Dr. Nass’s communication to the BOLIM that she had been forced to provide misinformation to a pharmacist who had demanded to know the reason she prescribed

hydroxychloroquine to Patient 2; and (3) a mandated report from a certified nurse midwife complaining about Dr. Nass having issued a prescription to a patient without consulting the certified nurse midwife.

24. During the executive session, BOLIM Member Waddell stated, “we can collectively in our profession define what qualifies as unsubstantiated information or bad information,” and that what bothers him is promoting “harmful opinions.”

25. The BOLIM ultimately consolidated the three AD matters into a new complaint, CR23-4, and issued a Notice of Hearing dated January 24, 2023 setting all three complaints for an adjudicatory hearing. The first Notice of Complaint was superseded on March 22, 2022 by an Amended Notice of Hearing. The initial notice of complaint and amended notice of complaint each alleged, among other things, that Dr. Nass had engaged in unprofessional conduct by making a number of public statements about the COVID-19 vaccine, treatment of COVID-19, and the governmental handling of the pandemic.

26. The BOLIM appointed a Hearing Officer to conduct the proceedings under the Maine Administrative Procedure Act

27. The Amended Notice of Hearing included four potential grounds for discipline based upon Dr. Nass’s speech:

I. Pursuant to 32 M.R.S. § 3282-A(2)(E)(1) for incompetence by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a patient.

II. Pursuant to 32 M.R.S. § 3282-A(2)(E)(2) for incompetence by engaging in conduct that evidences a lack of

knowledge or inability to apply principles and skills to carry out the practice for which the licensee is licensed.

...

XVI. Pursuant to 32 M.R.S. § 3282-A(2)(F) for engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine by engaging in disruptive behavior. "Disruptive behavior" means aberrant behavior that interferes with or is likely to interfere with the delivery of care.

XVII. Pursuant to 32 M.R.S. § 3282-A(2)(F) for engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine as set forth in AMACME Opinion 2.3.2 Professionalism in the Use of Social Media.

28. The Board Staff's Amended Notice of Hearing also sought to discipline Dr. Nass for allegedly violating standards or opinions issued by the American Medical Association (AMA), a private organization. The Amended Notice of Hearing alleged AMA-related violations as follows:

III. Pursuant to 32 M.R.S. § 3282-A(2)(F) for engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine as set forth in American Medical Association Code of Medical Ethics ("AMACME") AMACME Opinion 1.2.11 Ethically Sound Innovation in Medical Practice.

...

X. Pursuant to 32 M.R.S. § 3282-A(2)(F) for engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine as set forth in AMACME Opinion 3.3.1 Management of Medical Records.

...

XV. Pursuant to 32 M.R.S. § 3282-A(2)(F) for engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine by violating her ethical responsibility to be honest in all professional interactions as set forth in the American Medical Association Code of Medical Ethics ("AMACME") Principle II.

...

XVII. Pursuant to 32 M.R.S. § 3282-A(2)(F) for engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine as set forth in AMACME Opinion 2.3.2 Professionalism in the Use of Social Media. (*Id.* ¶¶ III, X, XV, XVII.)

29. On August 8, 2022, Dr. Nass filed a Motion to Apply the Clear and Convincing Evidence Standard, requesting that the Hearing Officer direct the BOLIM that it must find the facts by clear and convincing evidence. The motion was later denied.

30. On September 7, 2022, Dr. Nass moved to dismiss the complaint, arguing that disciplining Dr. Nass for “misinformation” violated her free speech and due process rights, that the AMA guidelines and opinions are not enforceable laws upon which a doctor can be disciplined, and that the BOLIM suffered from partiality in violation of state and federal due process.

31. In response, Board Staff withdrew grounds for discipline expressly based on Dr. Nass’s speech or AMA guidelines or principles, i.e., Grounds III, X, XV, XVI, and XVII. Board Staff then amended Grounds I and II to pseudonymously identify three of Dr. Nass’s patients, Patients 1, 2 and 3, whose medical records the BOLIM had obtained, and indicated it was not proceeding on a misinformation theory with respect to those grounds.

32. Also on September 7, 2022, Dr. Nass filed a Motion to Recuse or, in the Alternative, Permit Voir Dire of the Members of the BOLIM, which Board Staff opposed. The motion argued that the BOLIM was biased in general, and specifically with respect to its chair, Dr. Gleaton.

33. As explained in the motion and in the administrative record, Dr. Gleaton is a director of the Federation of State Medical Boards (FSMB), a private organization that has advocated for punishing doctors like Dr. Nass who express viewpoints about COVID-19 related issues contrary to the FSMB's preferred viewpoint. In fact, under Dr. Gleaton's leadership, the BOLIM adopted an FSMB "position statement" stating that doctors risk their license by spreading COVID-19 vaccine misinformation.

34. Shortly before the hearing, on October 5, 2022, the Hearing Officer issued a recommended decision denying the motion to dismiss. Then, on October 7, 2022, the Hearing Officer then issued an order effectively denying the motion to recuse and for voir dire, adding that the Board members will be individually asked the customary questions at the beginning of the proceeding about conflicts of interest.

35. The Third Amended Notice of Hearing included 10 grounds for potential discipline. Grounds I, II, IV, V, VI, VIII, and IX dealt with patient care and practice issues with respect to Patients 1, 2, and 3; Ground XIV dealt with truth telling and misrepresentation; and Grounds XVIII and XIX dealt with timeliness of Dr. Nass's response to a complaint notification and decision to not respond to two subpoenas issued by the BOLIM.

36. None of the grounds for discipline involved any patient complaints. In fact, each patient testified at the adjudicatory hearing in support of Dr. Nass.

37. The Board held a 7-day adjudicatory hearing over eleventh months, spanning from October 2022 through September 2023, and did not issue a decision until December 2023. Meanwhile, Dr. Nass was suspended from practicing medicine under an interim suspension. One motion to lift the suspension was denied without deliberation; the other was ignored and never ruled upon.

38. Day #1 of the adjudicatory hearing was October 11, 2022, for a half day only. Before testimony began, the Hearing Officer asked some preliminary yes/no questions concerning conflicts of interest. Board Staff began its case in chief by calling Dr. Nass, and the hearing adjourned shortly after Dr. Nass's counsel began cross-examination.

39. Dr. Nass testified, in part, regarding the background and development of her COVID-19 practice in Ellsworth, Maine;

- a. From the beginning of the pandemic in March 2020, there were no effective out-patient treatments for patients experiencing symptoms of COVID-19.
- b. The prevailing practice at the time was to advise patients with symptoms of COVID-19 to remain in their home until they had difficulty breathing, at which time they were advised to report to the local emergency room.

- c. Dr. Nass began receiving numerous requests from patients who wanted to explore the use of FDA licensed medications ivermectin and hydroxychloroquine.
- d. Dr. Nass's solo practice became so busy that she needed to hire a nurse to assist her.
- e. Most of Dr. Nass's patient encounters were by telemedicine, consistent with Governor Mills' Executive Order that provided for the expansion of telehealth care during the pandemic.
- f. After taking careful prescription / medical history, including the patient's weight and possible comorbidities, Dr. Nass would prescribe ivermectin to be taken by the patient immediately upon experiencing the first symptoms of COVID-19.
- g. The initial consultation with the patient included consultation with the patient after COVID-19 symptoms were experienced.
- h. For all of these services, Dr. Nass charged a flat rate of \$60.00 per patient. The \$60.00 fee covered the initial consultation and prescription, as well as a follow up consultation if the patient experienced COVID-19 symptoms.
- i. Both ivermectin and hydroxychloroquine have been licensed by the FDA for over 50 years and are known world-wide as safe and effective medications.

- j. Dr. Nass legally prescribed off-label prescriptions to Patients 1, 2, and 3 of ivermectin and hydroxychloroquine.

40. Day #2 of the adjudicatory hearing was October 25, 2022. Dr. Nass completed her testimony, and Board Staff called Thomas Courtney, M.D. Dr. Courtney was Board Staff's "patient care" expert, opining primarily about Dr. Nass's treatment of Patients 1, 2, and 3 for COVID-19.

41. According to the guidelines published by BOLIM with respect to medical experts, a doctor appearing before the Board as an expert was required to have at least two (2) years of clinical experience in the same field as Dr. Nass. Dr. Courtney conceded he did not meet these qualifications and thus was unqualified to appear as an expert.

42. During cross-examination, Dr. Courtney testified, in part, as follows:

- a. Dr. Courtney reviewed the medical records and text messages submitted by Dr. Nass with respect to her consultation with Patients 1, 2, and 3.
- b. Dr. Nass's consultation with the patient occurred in two phases. The first phase involved a telehealth consultation when the patient was healthy, but seeking out-patient medication if COVID-19 symptoms were experienced. The second phase involved consulting with the patient after symptoms were identified.
- c. Dr. Courtney was asked during cross-examination whether Dr. Nass's medical records for phase one were missing any essential medical information in order for her to prescribe either ivermectin or

hydroxychloroquine. In all instances he conceded there was no missing information.

43. Day #3 of the adjudicatory hearing was January 31, 2023. Dr. Courtney completed his testimony, and Board Staff called Jeremy Faust, M.D. Dr. Faust was called as an expert witness on whether Dr. Nass's decision to prescribe hydroxychloroquine and ivermectin evidence incompetence to practice medicine.

44. Day #4 of the adjudicatory hearing was March 2, 2023, during which Dr. Faust continued with his testimony.

45. On April 3, 2023, Dr. Nass moved to disqualify Dr. Gleaton and bar her from further participation. The motion built on Dr. Nass's pre-hearing motion by pointing out that Dr. Gleaton was engaging in misconduct during the hearing such as falling asleep during the hearing (or at least feigning doing so), making faces, and speaking out of turn. The motion further explained that Dr. Gleaton's continued participation violated the Department of Professional and Financial Regulation's conflict of interest policy considering her role as an FSMB director, and that her "pledge" to her electorate in the FSMB that she would uphold the organization's strategic goals was inconsistent with her duty of independence.

46. On May 19, 2023, the Hearing Officer emailed the parties,

To the parties:

Dr. Gleaton, who has the sole authority to recuse herself from presiding over the matter involving Dr. Nass pending before the Board of Licensure in Medicine, has reviewed Licensee's Motion to Disqualify, Board Staff's Response, and Licensee's Reply Memo.

She has considered the standard in 5 M.R.S. § 9063 and determined that she will not recuse herself from continued participation in the matter.

Rebekah Smith, Esq.
Hearing Officer

47. On May 25, 2023, Dr. Nass filed a Motion for Disclosure. As to Dr. Gleaton, the Motion for Disclosure observed that 5 M.R.S. § 9063 requires that an agency member subject to a request to disqualify decide the request “as a part of the record.” The motion then requested that the hearing officer make a direct and full disclosure of the timing, substance, and attendant circumstances to any communications with Dr. Gleaton about her off-the-record determination that she will not be recusing herself.

48. The hearing officer refused to make any disclosure whatsoever about the communications with Dr. Gleaton about the motion to disqualify.

49. Day #5 of the adjudicatory hearing was May 30, 2023.

50. In a prehearing conference on May 30, 2023, Dr. Nass’s counsel objected to the fact that Dr. Gleaton made no on the record determination of the motion to disqualify. Once the adjudicatory hearing convened, the Hearing Officer announced that Dr. Gleaton had been presented with the motion to disqualify and determined that she did not need to recuse herself.

51. Dr. Nass’s counsel again raised that Dr. Gleaton needed to make her determination on the record and needed to make sufficient findings to enable effective judicial review. The only “on the record” determination of the motion to disqualify later followed:

HEARING OFFICER: Okay.

Dr. Gleaton, I'm going to ask you to turn on your audio, and I'm just going to ask you to confirm for the record that you reviewed the materials I indicated that you reviewed and you reviewed the statute that applies and you determined that you do not need to recuse yourself under the statutory standards; is that correct?

CHAIR GLEATON: That is correct.

52. Day #5 then continued with Dr. Faust completing his testimony and Board Staff resting. Dr. Nass began her case in chief by calling Dr. Harvey Risch, a professor emeritus of epidemiology and senior research scientist in epidemiology at Yale School of Public Health. Board Staff chose not to challenge Dr. Risch on cross-examination and asked no questions.

53. Day #6 of the adjudicatory hearing was July 28, 2023. Dr. Nass called Patients 1, 2, and 3, Patient 2's spouse, and three expert witnesses: Paul Marik, M.D., Steven Katsis, M.D., and Pierre Kory, M.D. Dr. Nass then rested.

54. Day #7 of the adjudicatory hearing was September 19, 2023—about three weeks shy of the one-year mark since the Hearing Officer swore the first witness. Between Day #6 and Day #7, the parties were allowed to submit written closing arguments as to whether violations occurred.

55. On Day #7, the Board voted to find violations on Grounds II (2), IV (4), V (5), VIII (8), XI (11), XII (12), XIII (13), and XIV (14). It then voted to sanction Dr. Nass with (1) a reprimand; (2) a suspension to April of 2025, i.e., 39 months since she began serving her immediate suspension; (3) two years of probation, with various conditions; and (4) \$10,000 in hearing costs. The BOLIM's vote further indicated that Dr.

Nass's suspension could be lifted after she completed certain probation conditions, including continuing medical education courses, submitted a telemedicine plan, and participated in a clinical competency evaluation.

56. The BOLIM's determination on Ground II was premised on Dr. Nass's "practice model" in treating Patients 1, 2, and 3. This "practice model" criticism was raised for the first time during the Board's deliberations, depriving Dr. Nass of fair notice and an opportunity to defend against it.

57. In determining costs, the BOLIM found that the total cost of the hearing exceeded \$20,000 and elected to award itself half of those costs.

58. The BOLIM delegated the task of preparing a draft decision to the Hearing Officer. Dr. Nass's counsel asked the Hearing Officer if the parties would have the opportunity to review the draft decision before it is offered to the BOLIM, and the Hearing Officer denied that request.

59. On December 8, 2023, the BOLIM's executive director emailed the parties to state that the BOLIM will be reviewing the draft Decision & Order at its December 12, 2023 meeting. Dr. Nass's counsel asked for a copy. The executive director responded via email, "The parties do not have access to the draft before the board signs it. Nor will they be allowed to speak during the Board's review of the document."

60. The BOLIM issued a final Decision & Order on December 12, 2023, representing final agency action.

**Count 1: Petition for Review of Agency Action
(M.R. Civ. P. 80C; 5 M.R.S. §§ 11001 et seq.)**

61. Petitioner incorporates all other paragraphs of this petition by reference.

62. The BOLIM's decisions, both at the violations stage and the sanctions phase, were arbitrary and capricious, based upon multiple errors of law, and findings unsupported by substantial evidence.

63. The Hearing Officer and/or the BOLIM erred by denying Dr. Nass's motions filed over the course of the proceeding and adjudicatory hearing, including Dr. Nass's Motion to Apply the Clear and Convincing Evidence Standard, Motion to Dismiss, Motion to Recuse or, in the alternative, Permit Oral Voir Dire, Motion to Disqualify, and Motion for Disclosure.

64. The BOLIM, through Chair Gleaton, erred by first determining the Motion to Disqualify "off the record," and then failing to make sufficient findings to enable effective judicial review of her decision.

65. The BOLIM and Hearing Officer violated Dr. Nass's due process rights and the Maine APA by having private, ex parte communications with each other; in particular, Chair Gleaton and the Hearing Officer private communications about the disposition of Dr. Nass's Motion to Disqualify.

66. The BOLIM violated Dr. Nass's due process rights under the United States Constitution and the Maine Constitution, and violated the Maine Administrative Procedure Act, by acting with partiality and in the absence of an impartial decisionmaker.

67. The BOLIM violated the First Amendment of the United States Constitution, article I, section 4 of the Maine Constitution, and the due process clauses of the state and federal constitution, because the BOLIM's decision to find violations and impose sanctions was motivated by a desire to retaliate against Dr. Nass for her speech.

68. The BOLIM violated Dr. Nass's due process rights under the United States Constitution and the Maine Constitution, and her rights under the Maine Administrative Procedure Act, because it imposed discipline on theories not alleged or raised in the Third Amended Notice of Hearing or during the hearing, thereby depriving Dr. Nass of fair notice, opportunity to be heard, and a reasonable opportunity to offer rebuttal evidence and argument.

69. The BOLIM violated Dr. Nass's due process rights under the United States Constitution and the Maine Constitution, and her rights under the Maine Administrative Procedure Act, because it imposed multiple discipline for the same alleged conduct for failing to obtain an adequate medical history of each patient (Count II, Count IV, Count V, Count VII). These findings were inconsistent with the testimony of BOLIM's own expert, Dr. Courtney, as well as Plaintiff's experts Dr. Marik and Dr. Kory. Findings and sanctions are therefore arbitrary and capricious.

70. The BOLIM's determination on all grounds was arbitrary and capricious to the extent they ignored and failed to take into consideration the testimony of patients 1, 2, and 3 who were highly complementary of Dr. Nass's medical services.

71. The BOLIM's determination in Count II and Count VIII assert Dr. Nass should be sanctioned for failure to escalate patients to care in a timely manner. The

finding is arbitrary and capricious since Patient 2 testified that his delay in going to the hospital was based upon his own personal decision and preferences. The Board's decision is therefore arbitrary and capricious and unsupported by substantial evidence.

72. The BOLIM found violations and imposed discipline against Dr. Nass without admitting sufficiently clear standards against which Dr. Nass's conduct would be judged. This absence (i) violated Dr. Nass's due process rights by depriving her of a fair opportunity to defend herself and offer rebuttal evidence; (ii) shifted power and influence among the BOLIM to the professional members because, in the absence of clear standards, the lay member most likely had to defer to the BOLIM's professional members; and (iii) deprives the Court of the ability to engage in effective judicial review.

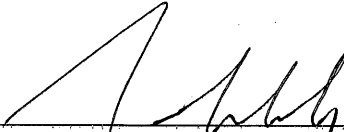
73. The decision to award costs against Dr. Nass was arbitrary and capricious, based upon multiple errors of law and process, and findings unsupported by substantial evidence. Dr. Nass prevailed on 10 of the 18 grounds for discipline alleged during the proceedings, and most of the adjudicatory hearing was devoted to discussion about whether a competent medical practitioner could believe that ivermectin and hydroxychloroquine are safe and effective medications—an issue Dr. Nass won.

74. The BOLIM made insufficient findings to enable effective judicial review of its award of costs.

75. The sanctions imposed against Dr. Nass were unreasonable, disproportionate to her alleged violations, unduly harsh as compared to the type of sanctions imposed in cases involving far more serious alleged violations, and unsupported by substantial evidence.

WHEREFORE, Petitioner requests that the Court vacate and reverse the decision,
and award such further and other relief as the Court deems appropriate.

Dated: December 28, 2023



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12/28/2023

PAY TO THE
ORDER OF Kennebec County Superior Court

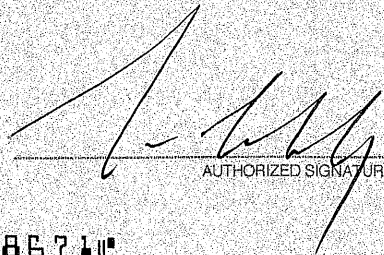
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One Hundred Seventy-Five and 00/100***** DOLLARS

Kennebec County Superior Court
1 Court Street, Suite 101
Augusta, ME 04330

MEMO

Filing fee - Nass



AUTHORIZED SIGNATURE

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