

COMMONWEALTH OF MASSACHUSETTS

The Trial Court

Middlesex, SS.

SUPERIOR COURT

DOCKET NO. 2381CV01263

MARY KELLY SUTTON, M.D. , )  
PLAINTIFF )

v. )

BOARD OF REGISTRATION IN )  
MEDICINE, DIVISION OF )  
ADMINISTRATIVE LAW APPEALS, )  
JOHN WHEATLEY, individually and in his )  
official capacity as Magistrate of DALA, )  
JAMES ROONEY, only in his official capacity )  
as Acting Chief Administrative Magistrate of )  
DALA, DEBRA STOLLER, individually and )  
in her official capacity as Senior Board Counsel )  
of BORIM, RACHEL SHUTE, individually )  
and in her official capacity as Complaint )  
Counsel of BORIM, VITA BERG, individually )  
and in her official capacity as General Counsel )  
of BORIM, and DOES 1 to 20, inclusive, )  
DEFENDANTS )

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

The plaintiff, based on information and belief except for information based on personal knowledge, hereby alleges as follows:

**THE PARTIES**

1. Plaintiff Mary Kelly Sutton, M.D. ("Plaintiff") resides in the state of Massachusetts and is a Massachusetts licensed physician practicing medicine in North Attleboro, MA. She is a pro se litigant in the above-captioned action and her mailing address is P.O. Box 885, North Attleboro, MA 02760.

2. Defendant Board of Registration in Medicine ("BORIM") is a state agency of the Commonwealth of Massachusetts, organized within the Department of Public Health. BORIM's principal office is at 178 Albion Street, Suite 330, Wakefield, MA 01880.

3. Defendant Debra Stoller (“Stoller”) is a senior board counsel of BORIM. Her contact information is 178 Albion Street, Suite 330, Wakefield, MA 01880, (617) 939-3335, [debra.g.stoller@state.ma.us](mailto:debra.g.stoller@state.ma.us).

4. Defendant Rachel Shute (“Shute”) is a complaint counsel of BORIM. Her contact information is 178 Albion Street, Suite 330, Wakefield, MA 01880, (781) 876-8224, [rachel.n.shute@mass.gov](mailto:rachel.n.shute@mass.gov).

5. Defendant Vita Berg (“Berg”) is a general counsel of BORIM. Her contact information is 178 Albion Street, Suite 330, Wakefield, MA 01880, [vita.berg@state.ma.us](mailto:vita.berg@state.ma.us).

6. Defendant Division of Administrative Law Appeals (“DALA”) is a state agency of the Commonwealth of Massachusetts, under oversight of the Executive Office for Administration and Finance. DALA’s principal office is at 14 Summer Street, 4<sup>th</sup> Floor, Malden, MA 02148.

7. Defendant John Wheatley (“Wheatley”) is a magistrate at DALA. His contact information is 14 Summer Street 4<sup>th</sup> Floor, Malden, MA 02148, (781) 397-4700, [john.wheatley@state.ma.us](mailto:john.wheatley@state.ma.us).

8. Defendant James Rooney (“Rooney”) is the acting chief administrative magistrate at DALA. His contact information is 14 Summer Street 4<sup>th</sup> Floor, Malden, MA 02148, (781) 397-4700, [james.rooney@state.ma.us](mailto:james.rooney@state.ma.us).

## INTRODUCTION

***“The rights of every man are diminished when the rights of one man are threatened.”***  
(John F. Kennedy, the 35<sup>th</sup> U.S. president and among other public positions held, a Massachusetts senator.)

***“Do not withhold good from those who deserve it, when it is in your power to act.”***  
(Proverbs 3:27.)

9. Plaintiff respectfully petitions this Court for protection from continuous harm and oppression directed at her by the defendants. There is a compelling interest for this Court to uphold the rule of law and to set aside the administrative decisions and proceedings discussed herein. Fairness and law and order of this Court will restore justice to the aggrieved one, the plaintiff. Defendants BORIM and DALA opened an administrative case against Plaintiff and her Massachusetts medical license (BORIM Docket No. 21-0618, BORIM Adjudicatory Case No. 2022-033, and/or DALA Docket No. RM-22-0421) (“Illegal MA Admin Case”) for a very specific purpose and that is to silence Plaintiff and her medical work products and to retaliate against her for exercising her constitutionally and statutorily vested right to engage in legislatively encouraged activities. While Plaintiff did not violate any medical standard of care

in the lawful medical conducts at issue, the defendants violated over 45 statutes and regulations and five statutes carrying penal penalties in their prosecution of the Illegal MA Admin Case, among violating other numerous legal principles and rules. Also, they endorsed the stealing of minor patients' private medical records at issue from school campuses to seek out Plaintiff's identity, requested Plaintiff to surrender her license early on before conducting a mandated independent investigation, waived mandatory investigations of the underlying facts, refused to uphold the only applicable statutory medical standard of care, created and applied their own medical standard of care opined by defendant attorneys without involving the legislature and medical professionals, blocked Plaintiff from introducing her evidence, denied to Plaintiff due process, statutory and regulatory charging papers, a notice of hearing, discovery, and a full and fair hearing even though more than one triable and disputable material fact existed, and abdicated their own duty to meet the burden of proof to establish each legal element in a cause of action. BORIM's charging papers failed to plead a prima facie case and a conduct which would place into question the doctor's competency to practice medicine as required by law. The defendants also concealed facts and pertinent information from BORIM board members and leaders, made intentional misrepresentations to Plaintiff, breached oral and written agreements with Plaintiff, discriminated against Plaintiff in the proceedings by infringing on her various constitutional basic and fundamental rights discussed herein. Also, they failed to exercise their independent professional legal judgment to handle and prosecute the Illegal MA Admin Case. BORIM refused to engage in a dialog with Plaintiff to discuss medical and legal issues to resolve differences to promote justice and judicial economy for no apparent reason. DALA abdicated from its function as a neutral arbiter and joined BORIM to prosecute Plaintiff. Both aggressively obstructed justice and enabled and emboldened each other to oppress Plaintiff. In bad faith, BORIM refused to communicate with Plaintiff to resolve any and all numerous outstanding issues and evaded to discuss the medical work products at issue with Plaintiff and the patients' parents, even in its dispositive motion. The exhibits to the dispositive motion also did not include any of Plaintiff's work products. The defendants probably had not reviewed or even seen her work products at issue. Yet, final recommendations were made by both BORIM and DALA to revoke Plaintiff's license. Moreover, pursuant to 801 CRM 1.3(5), officers who have bias must be precluded from participating in decision making in an adjudicatory proceeding. All of the defendant officers and other officers of BORIM and DALA were biased against Plaintiff

so their decisions, recommendations, motion rulings, orders, conclusions, and dispositions in the Illegal MA Admin Case must be set aside or made null and void. The defendants' violation of numerous counts of law and legal principles and rules is likened their use of the guerrilla warfare tactic to highly prejudice Plaintiff and to load on her undue burden to identify, understand, analyze, and react to them quickly and timely in a short period of time while due process was being obstructed by these red-herring-violations from resolving the merits of the case. The law required the defendants to report their own employees and officers' misdeeds but they did not do so, even upon Plaintiff notifying them of the misdeeds. They harbored each other's civil and penal violations as enumerated in this First Amended Complaint ("FAC"). All of their decisions and activities at issue must be set aside and declared null and void. Pursuant to 243 CMR 1.02(10), their internal communications made in bad faith or for a malicious reason regarding Plaintiff are also not privileged and are subject to public disclosure and disclosure to Plaintiff without objections. Should the defendants continue to seek to discipline Plaintiff, they must start afresh by creating a new complaint themselves or wait until a real victim files a real complaint with BORIM. In Plaintiff's decades of medical practice, no patient of hers filed a complaint with a medical board against Plaintiff.

10. The legitimacy of a state medical board and a state administrative tribunal depends on making legally principled decisions free from bias, corruption, and compromises with social and political pressures. State agencies must take care to speak and act in ways that are truly grounded in principle to maintain and reinforce public trust. Here, BORIM and DALA subvert the legitimacy of public prosecution and administrative hearing and actively destroy doctors, patients, and the public's confidence in the central functions of their existence. Their licensed attorneys, individually and together, stepped outside of the law to maintain a sham public prosecution and a sham neutral forum to exert unsanctionable prosecutorial aggression on one law-abiding pro se litigant and to intrude on and deprive of her basic rights to due process and administrative procedures. They repudiated the important principles of innocence until proven guilty, stare decisis, collateral estoppel, and choice of law in order to evade looking at the underlying facts for truth, to suffocate Plaintiff's voice, and to dictate how administrative proceedings should proceed as they secretly pre-planned unilaterally without Plaintiff's knowledge.

11. The facts of this FAC will show that there was no breach of a duty on the part of the doctor. There was no causation of an injury. And there was no injury. What we have here were competent, professional, evidence-based, good quality, legislatively authorized, and legislatively specified medical services provided by the doctor to her eight minor patients at health risk whose parents have been happy with the doctor's professional medical judgment and her services rendered to all of the children. Nationally known medical experts in the relevant field retained by the doctor also endorsed the services at issue. What we also have here are about 2,000 signatures and numerous pages of positive comments from Plaintiff's patients and the public showing Plaintiff's excellent medical services and reflecting stellar public support for her medical practice. (Attached herewith as **Exhibit 4 of No. 11 in Exhibit M** is a true and correct copy of two letters and the positive comments.) The ones who are not happy here are the state agencies. From their view, they may have been put between a rock and a hard place. The doctor was already targeted and identified by others and the defendant agencies are now expected to work up a case to censor her medical work products, probably without having seen or read them, and to completely destroy the medical practice and livelihood of the innocent without any applicable law and facts on their side. To achieve this daunting task, the agencies must employ illegal means to achieve the illegal end. They knew they did not plead a prima facie case. They knew they could not fulfill their burden of proof to prove each and all legal elements of their alleged causes of action, repeated negligence and gross negligence. They knew there were many triable and disputable material facts warranting a trial or a fair and full hearing. They also stayed away from approaching the parents for facts because they could not afford to reveal the truth that the medical services at issue have been provided appropriately to the children under their physical condition and their medical circumstances. In bad faith and falsehood, the defendants proceeded onto prosecuting and persecuting the doctor, put her in a severely unlevel and muddy playing field to gain the upper hand, raised illegality and chaos into merit, evaded law, medicine, and science, enabled among themselves to make sure they had the opportunity to have access to procedures or legal recourses while Plaintiff had not, made cloudy a vista that was actually crystal clear that the doctor was engaging in a legally protected conduct, and gave the doctor a run around among seven attorneys, in Massachusetts alone, on basic issues such as fulfilling their mandatory job duty to release records which Plaintiff was entitled to for her pro se defense.

12. The Massachusetts agencies also evaded discovery and skirted around the fact that Plaintiff was declared competent by a medical board of another state—to discipline a doctor under Massachusetts law, a conduct which places into question the doctor’s competence to practice medicine under the circumstance must be present and such conduct is absent here. BORIM’s complaint against Plaintiff does not allege any conduct of Plaintiff while its statement of allegations only alleges the three following conducts of Plaintiff (“Three Conducts”) and none of them places into question her competence to practice medicine: conduct regarding the filing of a petition for reconsideration twice and the filing of appeals to an out-of-state court.

13. This case is not about defendants carrying out their public duty to ensure safety in individual and public health. The defendants have no interest in that. They criticized Plaintiff’s medical work products but may not have seen or read them. They never informed Plaintiff of their analysis of her work products. Facts in this case show they have no interest in the health and safety of the patients and the medical and health care topics at issue. The facts also show they have no respect for medicine, medical ethics, and the rule of law. As a result, free speech in medicine, citizen’s liberty, privacy, and property, patient’s bodily autonomy, professional medical judgement, physician-patient confidentiality, physician-patient relationship, and medical ethics suffer.

14. BORIM and DALA placed Plaintiff simultaneously and unlawfully on two separate administrative tracks and jumped between these two tracks on different issues to gain the upper hand in their illegal prosecution; and the two tracks are as follows: 1) the reciprocal discipline track (“Reciprocal Discipline Track”) allegedly based on 243 CMR 1.03(5)(a)(12) for DALA and BORIM to avoid a fair and full hearing and 2) the formal hearing rules track (“Formal Track”) allegedly based on 801 CMR 1.01 which guarantees a fair and full hearing. Neither track is applicable to Plaintiff, let alone placing her under both. BORIM and DALA jumped between the two tracks as they saw fit on different occasions to exclusively favor BORIM to Plaintiff’s detriment. For example, they did not want a hearing/trial to reveal facts so they used the Reciprocal Discipline Track to claim that there was no need to “relitigate” the case based on the collateral estoppel doctrine in the *Haran v. BORIM* case under this track but also jumped over to use the Formal Track to calendar BORIM’s dispositive motion against Plaintiff under a “litigation” schedule to “litigate” whether triable material facts existed. So DALA could carry out its premeditated plan under the Formal Track to grant the dispositive motion regardless of the

quality of the content of the motion, to confirm that no trial/hearing was needed, and to authorize BORIM to go ahead to revoke Plaintiff's license. While many triable and disputable material facts existed and, still exist, DALA and BORIM falsely claimed they did not exist. Eventually, DALA did grant BORIM's request to file a dispositive motion prematurely before the start of litigation and discovery, did grant the grossly deficient dispositive motion which did not identify which facts were material to BORIM, and did issue a recommended decision simultaneously in one document to do away with a fair and full hearing guaranteed to Plaintiff by law and to authorize BORIM to revoke Plaintiff's license with no proper due process ("Illegal Recommended Decision"). The defendants also intentionally misused the *Haran* case by taking out the essential part of the court's decision to claim that collateral estoppel/issue preclusion applied for this case while it did not and does not because all relevant and essential facts and issues in this case had or have never ever been tried in another jurisdiction. These facts and issues should not have been precluded from litigation or being tried. (Attached as **Exhibit P** is a true and correct copy of a correspondence from Plaintiff to Rooney dated March 28, 2023 regarding the agencies' misuse of the *Haran* case.) On different occasions, Plaintiff asked if the Reciprocal Discipline Track seemed to be more attractive to the agencies, why didn't they simply adhere to it and revoke the license in the first place instead of playing litigation under the Formal Track. Neither agency answered.

15. About one and a half years ago, BORIM started to engage in a monologue with Plaintiff, asking Plaintiff to give up her medical practice in Massachusetts. Plaintiff rejected BORIM's resignation offer. Recently, Defendant Stoller at BORIM also engaged in a monologue with Plaintiff, advising her that BORIM would hold an illegal public board meeting permitting Plaintiff to speak for a "brief" moment and to hold an illegal back-to-back private board meeting attended only by BORIM's officers and board members for the purpose to vote on whether to revoke her medical license. Plaintiff asked Stoller for legal authority in support of these activities and the legal authority provided by Stoller was in direct contradiction to what she claimed. The legal authority she provided prohibits BORIM from holding these illegal meetings. Plaintiff followed up on the issues with Stoller but Stoller did not respond. The law requires many condition precedents to first occur before BORIM can place itself in a position to vote on such matter but BORIM flagrantly did away with all of them. State law mandated condition precedents include, but not limited to, the following: 1) a person or a victim complaining to

BORIM about a conduct which places into question a licensee's competence to practice medicine; 2) BORIM investigating a complaint; 3) BORIM notifying Plaintiff of any meetings held concerning her license and inviting her to participate in them; 4) BORIM issuing a statement alleging a respondent's violation of a statute, regulation, or good and accepted medical practice; 5) parties meeting and conferring in good faith to resolve issues; 6) BORIM and/or DALA issuing a notice of hearing with time and location of a hearing; 7) BORIM and/or DALA affording a full and fair hearing; 8) BORIM disclosing a respondent's entire board file and pertinent records and engaging in discovery; 9) trying disputable material facts; 10) DALA issuing a statement of reasons to include a determination of each issue of fact or each issue of law necessary to its decision; 11) BORIM contacting a victim and involving victim's participation at relevant events such as board meetings and at a full hearing; and 12) DALA and BORIM advising Plaintiff her rights and time limits to review or appeal a decision before state agencies and before the courts.

16. DALA and its magistrates abdicated their duty as neutral arbiters, prosecuted the Illegal MA Admin Case as lead counsel alongside with BORIM, concealed the reality that they would not suffer Plaintiff to have a hearing and to have access to evidence for her defense, covered up the secret lift with BORIM, censored pre-hearing conference attendance, scheduling a premature dispositive motion in bad faith in favor of BORIM to Plaintiff's detriment before the start of litigation and discovery, and misled Plaintiff to anticipate a full and fair hearing and discovery while actively blocking such events from happening right after the first and only discussion took place among DALA, BORIM, and Plaintiff at a pre-hearing conference by setting the conference up as a decoy to subject Plaintiff to its and BORIM's jurisdiction without proper legal authority and to evade a fair and full hearing, falsely inviting Plaintiff to bring issues to Wheatley's attention to induce Plaintiff's case participation, renege on promises to discuss discovery and other pertinent issues to highly prejudice Plaintiff's defense, renege on the promise to schedule a continued pre-hearing conference, denying or ignoring all of Plaintiff's discovery and non-discovery motions, and stonewalling all procedural and substantive issues raised by Plaintiff.

17. On February 24, 2023, Defendant Magistrate Rooney wrote to Board Chair Julian Robinson, M.D. of Defendant BORIM ("Dr. Robinson") advising him that DALA issued the Illegal Recommended Decision and that parties had thirty days to file with BORIM objections to the decision. On March 24, 2023, Plaintiff disputed and objected to the Illegal Recommended



Decision by filing it with BORIM and copied it on Rooney and Wheatley (“Response to Illegal Recommended Decision”). On March 24, 2023, Plaintiff also wrote to Wheatley and Rooney requesting them to withdraw the Illegal Recommended Decision based on about six grounds (“Illegal Recommended Decision Withdrawal Request”) because the Illegal MA Admin Case had been closed for two months, DALA’s involvement in the case had not been lawful, no notice of hearing nor hearing was provided, Medical Board of California (“MBC”) decided Plaintiff was competent, and DALA never resolved conflict of law issues. On or about April 4, 2023, Wheatley committed an identity fraud and filed and published a false motion and a false order by making an 11-day-late motion for reconsideration secretly in Plaintiff’s name with his own terms without Plaintiff’s consent and knowledge (“Fraudulent Motion”) and then denied his own Fraudulent Motion to signal BORIM that it was the right time for BORIM to revoke Plaintiff’s license (“Fraudulent Order”). This way, DALA gambled and played on Plaintiff being a pro se respondent who may not have known enough to discover the crimes. Even if she did discover them, DALA may reason, what could she do. By then, she could not have possibly objected to the Fraudulent Motion and requested a motion hearing because DALA did not leave any time for her to object to the Fraudulent Motion before the Fraudulent Motion was denied by the Fraudulent Order, which were both drafted together in one order.

18. Then, DALA also strategically ended its handling of the illegal MA Admin Case permanently and immediately after issuing the Fraudulent Motion and Fraudulent Order. It could have permanently ended its handling of the case over a month earlier right after Wheatley issued the Illegal Recommended Decision. But DALA chose not to exit the case at that time until it could put its final nail in the coffin of Plaintiff’s medical career by carrying out a final scam. Procedurally, filing the Fraudulent Motion and issuing the Fraudulent Order were improper and unnecessary because DALA made the Fraudulent Motion 11 days late and, by that time, Plaintiff had already timely filed with BORIM her Response to Illegal Recommended Decision. On April 6, 2023, Rooney wrote Plaintiff a moot letter which took days for Plaintiff to receive it in the regular mail (“Fraudulent Letter”). Rooney fraudulently offered Plaintiff the following two choices: “[R]aise objections with Board of Registration in Medicine before it acts on [the Illegal Recommended Decision] or  file with DALA request for reconsideration.” The first choice was moot. On February 24, 2023, Rooney himself already wrote to Dr. Robinson advising Dr. Robinson that the parties only had thirty days to object to the Illegal Recommended

Decision. By April 6, 2023, the thirty-day objection deadline had passed for 13 days. Also, on March 24, 2023, 13 days before April 6, 2023, Plaintiff had already written to him/Rooney asking DALA to withdraw the Illegal Recommended Decision and gave him a courtesy copy of Plaintiff's Response to Illegal Recommended Decision filed with BORIM, objecting and disputing the Illegal Recommended Decision. The second choice was also moot for the reasons that the thirty-day objection deadline had passed for 13 days and that Wheatley had already filed his Fraudulent Motion as a motion for reconsideration two days before. The Fraudulent Letter continues to state, "You have requested that DALA withdraw Magistrate Wheatley's decision. I take that as a request for reconsideration. Magistrate Wheatley will act on it. Once he does, that will end DALA's involvement in this matter." Not only did this communication rescind the two moot choices offered to Plaintiff immediately above in the same letter, it also converted Plaintiff's Illegal Recommended Decision Withdrawal Request into a request for reconsideration without her consent. Plaintiff did not need to request a reconsideration because she had already filed her Response to Illegal Recommended Decision with BORIM. Rooney just made this decision for her while Wheatley had already made the same decision for her, but two days later. By then, Wheatley had already acted on it by having filed the Fraudulent Motion and having issued the Fraudulent Order. Both magistrates' separate decisions served to achieve the same end—wrapping up DALA's final scam to put the final nail in the coffin of Plaintiff's medical career and handing Plaintiff back to BORIM to face BORIM's unjust punishment, the revocation of her license, while having full knowledge that she would be left alone to face BORIM, the abusive adversary which had already been emboldened by DALA to completely reject any communication with Plaintiff except for a plan to revoke her license and the law-breaking adversary which had been ratified by DALA to completely abdicate its duty to meet its burden of proof to establish all legal elements of its alleged causes of action against Plaintiff. DALA calculated the timing so that it would never reopen the forum to entertain the Illegal MA Admin Case. On April 14, 2023, Rooney advised Plaintiff that the case was out of DALA's hands and the ball was in BORIM's court. On April 24, 2023, Plaintiff again requested DALA to withdraw the Illegal Recommended Decision and the Fraudulent Order but DALA did not respond to her. (Attached herewith as **Exhibit P**, without exhibits, is a true and correct copy of the Illegal Recommended Decision, Shute's email regarding no objection dated March 15, 2023, Response to Illegal Recommended Decision, Illegal Recommended Decision Withdrawal Request,

correspondence from Plaintiff to Mr. Zachos and BORIM board members and leaders requesting a board meeting to decide on removing Shute and Stoller from public office, Fraudulent Order, Fraudulent Letter dated April 6, 2023, and the correspondence between Plaintiff and Rooney dated March 28, 2023, April 6, 2023, April 14, 2023, and April 24, 2023, and a letter dated April 24, 2023 from Plaintiff to Mr. Matthew Gorzkowicz at Massachusetts Executive Office for Administration and Finance (“EOAF”) requesting EOAF to remove both Rooney and Wheatley from their public office and employment at DALA.)

### STATEMENT OF FACTS

19. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this Statement of Facts section of this FAC and further alleges as follows.

20. Plaintiff resided in the state of California and practiced medicine there from about 2005 to 2020. She had many long-term and happy patients there. In her entire medical career of decades, she also resided and practiced medicine in other states in good standing and had many long-term and happy patients in various states. As a primary care physician, she routinely administered childhood vaccines and did not have parents requesting her to write vaccine medical exemptions for their children until 2015. In 2015, Massachusetts had a population of about 6.8 million and California had a population of about 39 million (about 9 million was the population of children alone). In that year, a new medical exemption law passed in California (“SB 277”). Under SB 277, schools would no longer accept personal belief exemption and religious exemption to waive childhood vaccines. This caused the demand for medical exemption to surge. SB 277 vested the right to physicians to write a statement to the effect that “the **physical condition** of the child is such, **or** medical circumstances relating to the child are such, that immunization is not considered safe, **indicating the specific nature and** probable duration of the of medical condition **or circumstances**, including, but not limited to, **family medical history.**” (*Emphasis added.*) Plaintiff read this standard of care (“SB 277 Standard of Care”), worked with parents to assess and evaluate their children’s physical conditions and medical circumstances, considered safety issues on childhood vaccines, and wrote medical exemptions based on the SB 277 Standard of Care (“MEs”). (Attached herewith as **Exhibit A** is a summary of the physical conditions and medical circumstances of each of the eight minor patients at issue and scientific materials relevant to each of them.)

21. On June 30, 2015, SB 277 was chaptered in California State Legislation and the relevant provisions were codified as California Health and Safety Code (“H&S Code”) section 120370(a), as stated above as the SB 277 Standard of Care. On January 1, 2016, the SB 277 Standard of Care became effective and later codified as H&S Code section 120370(a)(1), which is the current version. The current H&S section 120370(a)(1) states as follows:

Prior to January 1, 2021, if the parent or guardian files with the governing authority a written statement by a licensed physician and surgeon to the effect that the physical condition of the child is such, **or** medical circumstances relating to the child are such, that immunization is not considered safe, **indicating the specific nature and** probable duration of the medical condition **or** circumstances, including, but not limited to, **family medical history**, for which the physician and surgeon does not recommend immunization, that child shall be exempt from the requirements of this chapter. (*Emphasis Added.*)

22. Transcripts of the relevant ME law legislation show MEs are intended by the California State Legislature to be readily made available to children, not to burden families, to be written under the complete and entire professional judgment of California physicians as codified in H&S Code section 120370(a)(1), which can be written for an indefinite period of duration without time limitation, and which can be issued for health reasons such as genetic dispositions, autoimmune diseases, and a link to autism. Relevant excerpts of SB 277 and SB 276 legislative hearing transcripts are as follows with emphasis added:

Co-author Ben Allen: [There are legislative amendments which] relate to expanding the medical exemption and that’s something that I’m very interested in and one of the things we’ve talked about over and over again is how important it is that there be a strong and robust medical exemption so that anybody who had a legitimate medical concern – **genetic predisposition, some sort of immunological problem – they can go to a doctor anywhere in the state and get an exemption from that doctor. That’s very important to me.** (See the transcript of the Assembly Health Hearing (June 9, 2015) Page 15 Lines 13-21 as **Exhibit B** attached herewith.)

Chairman Rob Bonta: However, I have asked the author to take an amendment to clarify that a **medical exemption is entirely within the professional judgment of a physician. And we have agreement on that amendment?**

Senator Richard Pan: **Yes.** (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 32 Lines 6-10 as **Exhibit B** attached herewith.)

Senator Richard Pan: So the – what the – what the law – the bill and the law clearly states is is that **the medical exemption is at the professional judgment of the physician. We took amendment to absolutely clarify that point.** And

so what that means is is that **if the physician feels that a sibling of a child, because the condition may be genetic, it may be family related, that therefore that child is also at increased risk even though that child has not yet suffered harm, then they can exercise to professional judgment to provide an exemption.** That is – it's the professional judgment of the physician in term of what they believe that if the risk of the immunization is going to be such that it's going to put that child at certain or near – you know, basically at increased harm then they can provide that exemption. And so that's to the judgment of the – of actually any licensed physician in the state of California. There's no requirement that you even have to go to a physician that you've seen multiple times in the past. The law clearly states that any licensed physician in the state of California can provide a medical exemption. **What they have to do is document the reason. They document the duration, which can – and there's no limitation. That could be indefinite.** And they have to sign it, of course, saying that they're – as a licensed physician and you get a medical exemption. (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 116 Lines 19-25 to Page 117 Lines 1-19 as **Exhibit B** attached herewith.)

Senator Richard Pan: So I would say – first of all, there's **no restrictions in both current law or in the bill that prevents a physician from [exempting vaccines based on a sibling or a family member has had an adverse reaction or genetic dispositions]. There are none. There are none.** So now that we're doing is you're – my concern is we're now adding language to tell a physician to do something that may be necessary. If a physician feels that a test is necessary to perform to be sure that a vaccine is safe they can perform that test. If a physician feels that there's a genetic association in a sibling, a cousin, some other relative, it's not safe for a vaccine, they can provide a medical exemption for that vaccine. **There is no limitation on a physician from doing that other than their own professional judgment, their own knowledge and expertise about what they believe is safe for the patient. I think that when we craft our laws it's best that we try not to direct, unless we have strong scientific evidence and we believe – direct the physician that they now must do something that they have the ability to already do.... [W]e have left that discretion to licensed physicians in the state of California including either to your own physician, the specialist you're seeing, another physician, we have left that discretion open. We've just heard from the medical board. There – we are not aware of any physician who's been disciplined and investigated because they provided a medical exemption. So there's no cloud hanging over them to be able to do this.** Certainly, they have to look at their own expertise and conscience and knowledge and be sure that they're fulfilling their oath to do the best they can for their patient. That is what we expect of our licensed physicians. **But there is no legal barrier if they believe that a sibling that needs to have an exemption that they will – can not grant that exemption. There is no legal barrier at all.** (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 129 Lines 2-20 and Page 131 Lines 2-18 as **Exhibit B** attached herewith.)

Senator Richard Pan: **But in the end, the medical exemptions between that health care professional doctor and that child and their parents or guardian and that's where that decision will be made.** (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 132 Lines 8-11 as **Exhibit B** attached herewith.)

Chairman Rob Bonta: Thank you, Mr. Nazarian. And let me just jump in on that point. This is an issue that we worked very closely with the office on. This -- the amendments that we took -- one of the four amendments that we took and we went over together earlier today was specifically designed to address this issue, to make it clear that we took... to make it clear that **the physician can act within his or her professional judgment and discretion based on all sorts of medical factors without limitation including family history.** And when we were discussing this amendment we specifically discussed the scenarios of a parent or an older sibling who had an adverse reaction to a vaccine and if that could be an appropriate factor to lead to the decision by a doctor to provide a medical exemption. And so that's what this amendment does. It addresses exactly your issue and I just want to for additional clarification I want to ask the representative from the state medical board, Ms. Simos (phonetic) to confirm that it would be appropriate in your judgment for a doctor to provide a medical exemption based on an adverse reaction of a parent or an older sibling to a vaccine.

**Ms. Simoes (MBC):** So I'm not a doctor but a doctor would use their clinical judgment...we have to get a complaint to actually look at a case. So we don't track medical exemptions...they would look at that patient's medical records including family history and the doctor would opine on that -- on the decision that that other physician made. And so it's -- I mean, I'm not a doctor but as Dr. Pan said, **it's safe to assume that all that family history and everything would be considered.** (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 132 Lines 12-25 and Page 133 Lines 1-11 and 16-21 as **Exhibit B** attached herewith.)

Chairman Bonta: Okay. That concludes public comment. Thank you very much. I appreciate everyone who came up to provide their input and their position on this bill. Fantastic showing of civic engagement and participation in the process. (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 215 Lines 17 to 21 as **Exhibit B** attached herewith.)

There's going to be an additional amendment taken before the Assembly floor. Not right now but between now and going to the assembly floor should the bill get out of this committee. And that amendment will add additional clarity about the medical exemption component of the bill and the fact that **a physician can consider family medical history.** And we're going to run the technical language by the California Medical Board to get their approval on the technical components to make sure it's up to snuff and I want to just make sure

that we have from our author a commitment that that is your understanding of what will be happening going forward. (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 216 Lines 6 to 18 as **Exhibit B** attached herewith.)

Member Bonilla: I just wanted to make it clear that in working together and working with my constituents and I wanted to make sure that they received credit for bringing forward two of the amendments that I think have improved the bill, the special education amendment and also just some clarity around the medical exemption and **striking the language of contra indication**. And so I think sometimes we get cast in very oppositional postures when we aren't in complete agreement. But I really believe that the amendments that we've seen come into the bill show that there is a possibility of exchanging information, working towards a better outcome and I do think the bill will leave this committee stronger, more -- as a stronger policy statement, that it does provide extra protections for families. I also want to comment other committee members and Assembly Member Nazarian for also looking at the issue of family indications and just being really clear on that issue and thank you for being willing to take those issues. **The other concern I had raised earlier around particularly childcare and the flexibility around the schedule. Again, I want to thank you for making it clear that we are trusting that doctors will use the flexibility that I think it's many of us are expressing it's our desire to see doctors use their discretion, use their judgment and use the flexibility we're trying to put into this bill for the benefit of families and children here in our state.** So thank you for speaking on those issues and going on the record on those issues. I appreciate that and working with us and working with the community at large. Thank you very much and I will be supporting the bill. (See the transcript of the Assembly Health Committee Hearing (June 9, 2015) Page 219 Lines 7 to 25 and Page 220 Lines 1 to 17 as **Exhibit B** attached herewith.)

[SENATOR RICHARD PAN:] **[I]f a child really is, you know, at increased risk for getting a vaccine, they can get an exemption from any licensed physician in the state of California, even if they -- so that -- that is what the law says.** (See the transcript of the Floor Session of the California Legislature Senate Committee on the Judiciary (April 28, 2015) Page 46 as **Exhibit C** attached herewith.)

SENATOR RICHARD PAN: I mean it is at the professional judgment of the physician. So if a physician is acting in a way that's unprofessional in making their decisions, they could be, you know, I guess assumed liable, or be at risk for the Medical Board. **But if they can demonstrate that they used due care and exercised appropriate medical judgment, and then the physician would -- basically, the law says the physician is free to do so.** (See the transcript of the Senate Health Committee hearing (April 8, 2015) Pages 113-114 as **Exhibit D** attached herewith.)

SENATOR RICHARD PAN: Informed consent is still necessary to get your child vaccinated. There is a medical exemption. I believe my fellow pediatricians -- I have to say that I'm a little disappointed in what Dr. Sears said, because I believe **my fellow pediatricians, we're very sympathetic to what happens to our patients. In fact, we probably lean more toward saying that, okay, we'll give the exemption, than the other way around if we think there's any possibility that they're at risk for the vaccination.** (See the transcript of the Senate Health Committee hearing (April 8, 2015) Page 121 as **Exhibit D** attached herewith.)

SENATOR RICHARD PAN: So the exemption that's in statute basically says that any licensed physician -- any licensed physician in the state of California can grant a medical exemption. There are -- and that's basically at their professional judgment. **So there is no specific list of things that they can or cannot exempt for.** All it takes is for a physician, like myself or even the witness here -- I assume you're licensed in the state of California -- **to simply write a note to the school** saying that this child should not be vaccinated for either X vaccine or several vaccines for X period of time or **for the rest of their life and simply write a note, and then that will be accepted by the school.** You would have conditions where if there's uncertainty about -- so a child who may be perhaps **allergic to something that may be a component of vaccine or if they've developed allergic reaction to a vaccination, we would then do a medical exemption as well because it would be dangerous for them to receive the vaccine.**

SENATOR LENO: Right. And then lastly -- thank you, Madam Chair -- I know that -- or **I understand that the way the bill is written, that a physician would not be liable for writing an exemption note. So there's no disincentive for the physician to write the note.**

SENATOR RICHARD PAN: **Exactly. Basically --**

SENATOR LENO: **There's no -- no threat.** Do you believe that there's any way that the wording could be massaged that might morph -- provide greater allowance within your concern for public safety for physicians to write that exemption?

SENATOR RICHARD PAN: I -- I would say is that I think it's ready -- and I said it's at the judgment of the physician. I have not yet heard of -- although I have not asked the medical board. **I'm not knowledge of any physician who's either been called up before the medical board or lost their license -- or certainly even called up for the medical board for writing a medical exemption. So I -- I -- I -- I -- I have not heard such a case to my knowledge.**

SENATOR LENO: So not to put words in your mouth, you don't think that there -- **it's going to be too difficult for physicians to be able to write this --**

SENATOR RICHARD PAN: **No, no.** (See the transcript of the Floor Session of the California Legislature Senate Committee on the Judiciary (April 28, 2015) Pages 128 -131 as **Exhibit C** attached herewith.)

Member Waldron: Okay. Thank you. I will -- I have three questions but I'll be as quick as I can with them. With the amendment regarding the physician's



professional knowledge recommendation being added, I -- after we had our talk yesterday, Dr. Pan, I continued to do some research and I was on the CDC website and, you know, trying to figure out, okay, the -- you know, you got personal belief exemptions. We have the religious exemption. There's also the medical exemption, which is still now within SB-277. So what I'm -- I was finding was with this amendment it -- **would you say that SB-277 would still conform to the CDC guidelines regarding a medical exemption?**

Senator Pan: **There is no -- there is requirement in the law -- and I challenge you to find any text in the existing code or in the bill -- that states that the physician has to exercise any more than their own professional judgment -- that professional judgment, of course, subject to review by the medical board, and I mentioned the medical board has never investigated or removed the license from someone for granting a medical exemption for immunizations. So this is -- the law of very clearly states it is up to the physician's judgment -- the existing law. We've taken an amendment to clarify that point. There is -- the Department of Public Health doesn't review the exemption and have -- and has to approve it or review it. It's simply the physician writes a note to the school saying that there is -- what's the reason, duration which could be indefinite -- could be forever if that's an ongoing condition and they sign it and the child now has a medical exemption. It is very straight forward, very simple and it's really to -- again, the physician exercising their professional judgment about that the -- about if the immunization could cause a harm to the patient.**

Member Waldron: Well, the question is really about the CDC, what they're requesting-- not really --

Senator Pan: Well, the CDC has guidelines but those are guidelines from the CDC. The CDC has guidelines for a lot of things and so they're helped -- they're used by physicians to help us be able to be sure we're applying the best science and knowledge, right. They take theirs-- and that's what they provide. **But it's not a mandate or a requirement that physicians -- there's nothing, again, in the bill or existing code -- I challenge you to find it -- that says that we -- that a physician has to apply only the CDC guidelines.** (See the transcript of the Assembly Health Committee hearing of the California Legislature (June 9, 2015) Page 84 L5 to Page 86 Line 2 as **Exhibit B** attached herewith.)

Member Bonta: Thank you, Mr. Speaker. **And members, I rise in support of SB-277.** Members, as many of you know, the Assembly Health Committee had an **unprecedented debate on this bill [SB 277].** We had a five-hour hearing which included nearly an hour of testimony from expert witnesses on both sides of the debate. Witnesses addressed the impacts on health and also addressed educational and legal implications of the bill. **I'm confident that the bill came out of Health Committee stronger thanks to the careful consideration and work of my colleagues.** Amendments to the bill included clarifying the exemption provided to independent study students clarifying the rights of special education students to access special education services related to a student's individualized education program. **Clarifying that a medical exemption is**

**entirely within the professional judgment of a physician and that a physician may consider family medical history when deciding if a medical exemption is appropriate.** (See the transcript of the Assembly Floor Session of the California Legislature (June 25, 2015) Page 34 Lines 5 to 23 as **Exhibit E** attached herewith.)

[Senator Richard Pan:] **The actual review of vaccinations and the need to protect the public is the venue is the charge of the Department of Public Health.** And so again, those are just some examples. I'm sure we can come with many other examples as well of reasons why someone would get a medical exemption. And again, that's why we have a Department of Public Health who does contain, you know do have experts, there are physicians and nurses who are knowledgeable about public health, infectious disease. In fact, we entrust them to follow people with HIV, with STD's, other kinds of infectious diseases, they are the ones who are called out to help out in outbreaks. Whether it's hepatitis A, measles, typhoid, anything else, they are very knowledgeable about that. **And if we don't like their decision, it goes to a board of practicing physicians. It will say, is this a reasonable thing to do. And if it is, then the exemption will be approved.** And so I think that that we actually create a fairly broad opportunity for people to get medical exemptions if they genuinely need one. (DPH and the board of physicians are the proper forum to review medical exemptions; see video archive at 52:01 to 53:03 of the California Senate Floor Session on September 4, 2019 at <https://www.senate.ca.gov/media-archive/default?title=&startdate=9%2F4%2F2019&enddate=9%2F4%2F2019>.)

[Senator Richard Pan:] I would point out that I actually believe that the board will essentially say that if there's any question, if there's any question someone needs a medical exemption and that... **there's an issue that basically a rule in favor of the family, right? I mean, so you know, let's be blunt, if someone says, well, I want a medical exemption because my child has autism, that's not going to happen** because we have considerable research to show that there's no association between the two. **However, if you have any, if there's even a question that there might be an association between the two, I'm sure the...I think the inclination would be to say, you know what, that's what we we'll we'll want to operate in the benefit of the parent and the child.** (A parent's questioning the association between autism and vaccines would allow a child to be medically exempted from childhood vaccines; see video archive at 53:03 to 53:42 of the California Senate Floor Session on September 4, 2019 at <https://www.senate.ca.gov/media-archive/default?title=&startdate=9%2F4%2F2019&enddate=9%2F4%2F2019>.)

[SENATOR BILL MONNING:] Let me start with a question. Maybe through the author, Dr. Pan, but maybe also for the doctor. And it picks up on what Senator Hall asked. Several of the people who testified in opposition said they were opposed because they have an autoimmune disease or disorder. **Would your bill permit -- would the medical exception allow somebody with an autoimmune**

**disease not require vaccination?**

SENATOR RICHARD PAN: **Yes. Existing law, which we do not touch** – (See the transcript of the Senate Health Committee hearing of the California Legislature (April 8, 2015) Page 94 as **Exhibit D** attached herewith.)

[SENATOR BILL MONNING:] Because this bill still protects those of you who share a concern that your child may have an **autoimmune deficiency, or some other susceptibility, where you will be eligible for that child to exercise the right under that exemption.** (See the transcript of the Floor Session of the California Legislature Senate Committee on the Judiciary (April 8, 2015) Page 108 as **Exhibit D** attached herewith.)

23. Unbeknownst to Plaintiff and most Californians, a public scam was devised by the California Conference of Local Health Officers (“CCLHO”), spearheaded by the former Santa Barbara County Public Health Officer and later former Assistant Director of the California Department of Public Health (“CDPH”) Charity Dean, M.D. (“Dr. Charity Dean”) to “identify” and “smoke out” ME writing doctors preemptively without cause for discipline (“Smoking Out Doctor Campaign”) and to eventually terminate MEs with no full and fair hearing afforded to parents while knowing that exempted children relied on MEs to prevent or mitigate health risks. On July 7, 2016, CCLHO met for the Smoking Out Doctor Campaign and the attending officers shared the sentiment that they had no fear for “whack job” parents to file lawsuits against them for committing an ongoing statewide data breach to seek out and retaliate against doctors, parents, and children who chose to opt out of childhood vaccines under SB 277. The campaign directed underground agents to search for MEs on campuses throughout the state, seize MEs from school records and files, and secretly transferred MEs to state agencies such as public health offices and the MBC. Many MEs were also released along with students’ unredacted school records showing children’s name, birth date, age, birthplace, home address, parents’ phone numbers, and/or race, etc. (Attached herewith as **Exhibit F** is a true and correct copy of some records regarding the Smoking Out Doctor Campaign.) From June 2016, within one year, Sacramento County Public Health Officer (“SCDPH”) Olivia Kasirye, M.D., former Fairfield-Suisun Unified School District (“School District”) Lead Nurse Renee Welsh, R.N., and former California Department of Public Health (“CDPH”) Karen Smith, M.D. separately falsely complained to MBC alleging that Plaintiff wrote inappropriate MEs even though they did not know Plaintiff, her practice, her medical work products, and her patients’ physical conditions and medical circumstances. Then, the California Department of Consumer Affairs (“DCA”), the

entity overseeing MBC, allegedly cooperated and proceeded to investigate Plaintiff (“Illegal CA Admin Case”) without giving her an opportunity to explain her side of the story as required by law. From around June 2016 to March 2019, many public employees and officers placed Plaintiff under unlawful and secret surveillance for about two years and nine months. DCA used at least four investigators and about 1,550 days to drag out the investigation—almost 9 times longer than an average 180-day-investigation. Later, in bad faith, MBC also put high pressure on Plaintiff and parents to release children’s medical charts by issuing subpoenas against them without good cause.

24. Former California Senator Richard Pan (“Senator Pan, M.D.”), who authored SB 277 and was acquainted with Dr. Charity Dean, singled Plaintiff out by name on the news (e.g. CBS News) to falsely accuse her for writing inappropriate MEs. Plaintiff and Senator Pan, M.D. had never interacted before. By doing so, he may not have put two and two together that, at the time, all doctors in California were required to write MEs according to the SB 277 Standard of Care which he wrote into law and Plaintiff did follow the SB 277 Standard of Care which he wrote into law to write the MEs at issue appropriately. He also falsely accused Plaintiff and a “small” group of doctors of monetizing medical licenses by selling MEs without knowing how much Plaintiff charged for writing one ME. After defaming Plaintiff and the “small” group of doctors, Senator Pan, M.D. used this propaganda in his legislative analysis to legislate another bill, SB 276, to later place stringent measures on ME writing. Underground agents also falsely accused Plaintiff of charging double and more than what she actually charged her patients for issuing MEs. SB 276 was passed and the bill, for the most part, became effective on January 1, 2021. By then, Plaintiff stopped writing MEs. SB 276, among other restrictions, prohibits doctors to charge patients for issuing MEs, authorizes an investigation on doctors who write more than four MEs per year, and mandates MEs to be approved by CDPH online. After all the drama, MBC was after all not interested in looking into whether Plaintiff monetized her license or not after she produced patient payment records as clinical and administrative hours being put into issuing an ME for a minimal charge paid out-of-pocket by patients was more than reasonable compared to a charge made associated with time spent on administering one dose of childhood vaccine. CDC’s current childhood vaccine schedule recommends about 80 doses to children from conception to age 18. Preparing and writing one ME took a lot more time, work, health assessment, thoughts, and efforts on the part of both parent and physician than administering one dose of vaccine.

25. Also, in the midst of the pandemic, MBC offered Plaintiff to give up “vaccine-related care and consultations” in exchange for a three-year probation along with other restrictions and penalties. Plaintiff rejected the offer and chose to contest at a hearing because she did no harm to her patients, wrote the MEs according to all requirements of the law, and felt compelled to do as much as she could within her power to protect her patients’ MEs, health, and welfare.

26. The California Department of Justice (“DOJ”) and a privately retained expert witness (“MBC Expert”) represented MBC. MBC Expert had no experience in writing a ME. She also made unchecked legal conclusions to override the California medical exemption law (the SB 277 Standard of Care), to retroactively apply SB 276 on Plaintiff, and to create a brand-new ME writing standard of care just for Plaintiff without involving the legislature. To the contrary, Plaintiff’s experts had experience with writing MEs and had a wealth of experience on medical topics at issue, including, but not limited to, mitochondrial dysfunction, vaccine injury risk factors, and identification and treatment of vaccine injuries. (Attached herewith as **Exhibit G** is an Expert Credibility Table.) DOJ and MBC both did not observe the SB 277 Standard of Care. Instead, they unlawfully crafted a standard of care custom-made just for Plaintiff based on information obtained without good cause from the children’s medical charts, information created out of thin air, and a retroactive application of certain provisions set forth in SB 276 which never existed in the history of California ME law until after Plaintiff had stopped writing MEs. (Attached herewith as **Exhibit H** is a CA ME Law History Table.) The administrative law judge (“ALJ”) went along with DOJ and MBC to use the custom-made standard of care and discarded the law, the SB 277 Standard of Care. The investigation on Plaintiff was dragged out too long and MBC and DOJ ran the three-year statute of limitations to file a formal accusation against Plaintiff. Nevertheless, they filed one about four months late to, also, intimidate Plaintiff while she was testifying at a medical board hearing for another doctor who was also accused to have written “inappropriate MEs.”

27. MBC and DOJ accused Plaintiff of incompetence, repeated negligence, and gross negligence for writing the eight MEs but would not and did not litigate any legal elements of the negligence and gross negligence causes of action. MBC also failed to plead relevant law and facts to support the negligence and gross negligence causes of action. California Business & Professions Code section 2234(d) states, “The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article,

unprofessional conduct includes, but is not limited to, the following: (d) Incompetence.” ALJ decided that Plaintiff was competent and MBC adopted this decision of hers that Plaintiff was competent. Page 20 of MBC’s Decision states, “**no cause for discipline was established for incompetence.**” (*Emphasis added.*) So MBC and ALJ ruled out incompetence and unprofessionalism associating with incompetence in Plaintiff writing the MEs at issue. However, ALJ, contradictorily, decided that Plaintiff “fell far outside of the standard of care” by having “elicited an extensive [‘irrelevant’] family history” on the children. This decision was made in direct defiance of the law, the SB 277 Standard of Care, which specifically spelled out that family medical history was relevant and was an important factor in writing MEs. Plaintiff’s conduct precisely fell right within the standard of care. ALJ also decided that Plaintiff was grossly and repeatedly negligent even though MBC evaded litigating these causes of actions and did nothing to meet its burden of proof by clear and convincing evidence under California’s administrative law’s burden of proof to establish the legal elements of duty, breach, causation, and injury in a negligence cause of action against Plaintiff. So for about six years, numerous underground agents and public officers and employees at and for CCLHO, School District, DCA, MBC, and DOJ and ALJ, Senator Pan, M.D., and Dr. Charity Dean achieved to “smoke out” Plaintiff and eventually revoked her California medical license for writing eight legally authorized and appropriate MEs. At first, MBC agreed for Plaintiff to file a petition for reconsideration for the board to reconsider its revocation decision (“Petition”). After Plaintiff filed a Petition, MBC reneged its promise. Plaintiff, twice, filed a petition for reconsideration (“Petition”) with MBC along with 2,000 signatures and numerous pages of positive comments from her patients and the public on Plaintiff’s excellent medical services provided to the medical patient community. MBC discarded the Petition twice by illegally refusing to process it by merely issuing two undated, unsigned, and unexplained denials to the Petition. Both denials state, “No action having been taken for the petition for reconsideration, filed by Respondent... and the time for action having expired..., the petition is deemed denied by operation of law.” MBC made it sound like Plaintiff did not take action timely so her Petition was denied by MBC. It was the other way around. It was MBC which did not take any action on the Petition twice so it denied the Petition. MBC could have worked with Plaintiff to give itself more time to process the Petition under the law but it chose not to. It preferred to revoke her California medical license to destroy her livelihood over keeping its promise to process her Petition. Plaintiff is

appealing MBC's wrongful revocation of her California medical license in a California state court. To date, MBC is still unlawfully withholding a statutory central file from Plaintiff to conceal and suppress facts.

28. On December 8, 2021, MBC decided to revoke Plaintiff's California license. 12 days later, on December 20, 2021, Enforcement Investigator Susan Dye at BORIM ("Ms. Dye") made a complaint against Plaintiff and the entire content of the complaint is as follows:

The Massachusetts Board of Registration in Medicine (Board) has learned that you have been disciplined by the state of Michigan [*sic*] and thus has **docketed a complaint against you**. Complaint Counsel Jim Paikos and I have been assigned **to investigate**. Since you are currently licensed in Massachusetts, the Board retains **jurisdiction to impose disciplinary action** upon your license. **Ordinarily**, we would intend to present this matter to the Complaint Committee, a committee of the Board that reviews all complaints and makes recommendations to the full Board. **However**, if you prefer to sign a **resignation**, I have enclosed one for your consideration. **It is a disciplinary action**. You are required by 243 CMR 2.07(12) to **respond to this complaint** within 30 days of the date of this letter. You are welcome to have an attorney represent you in this matter. If you retain an attorney, he or she should send a notice of appearance. If you do not retain an attorney and would like to discuss this matter further, please call me at 617.892.5127. (*Emphasis Added.*)

The complaint did not allege a misconduct as required by law ("Illegal Complaint").

Nevertheless, Ms. Dye offered Plaintiff to be disciplined by resigning from practicing medicine in Massachusetts. Plaintiff did not accept the offer. On December 20, 2021, Dr. Robinson at BORIM also served on Plaintiff a subpoena requesting her to produce documents regarding MBC's investigation resulting in the California discipline. Plaintiff complied and did not hear from him again regarding the subpoena. (Attached herewith as **Exhibit I** is a true and correct copy of the Illegal Complaint, subpoena, proposed resignation agreement, and the accompanying correspondence; the Illegal Complaint erroneously states "Michigan" instead of "California.")

29. On or about May 6, 2022, Ms. Dye telephoned Plaintiff offering her the news that the proceeding at BORIM against her Massachusetts medical license was or would be stayed because BORIM had learned that Plaintiff had filed an appeal with a California state court challenging MBC's decision to revoke her California license. Plaintiff gladly accepted BORIM's offer to stay and thanked Ms. Dye for that. However, on July 18, 2022, BORIM wrote to Plaintiff informing her that BORIM's complaint committee had recommended BORIM to issue a statement of allegations against her and that Stoller at BORIM would notify Plaintiff

when the matter had been scheduled for consideration by BORIM. Plaintiff never heard from Stoller about this matter. (Attached herewith as **Exhibit J** is a true and correct copy of BORIM's letter to Plaintiff dated July 18, 2022.)

30. On September 8, 2022, Dr. Robinson at BORIM issued to Plaintiff a statement of allegations and an order to show cause as one document under a new adjudicatory case no. 2022-033 asking Plaintiff to show cause why BORIM should not discipline her ("Illegal Order to Show Cause"). (Attached herewith as **Exhibit K** is a true and correct copy of the statement and the order.) The Illegal Order to Show Cause only stated one issue as follows: "Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein." The only Three Conducts described in the accompanying statement of allegations ("Illegal Statement of Allegations") were as follows:

6. On February 7, 2022, no timely petition being filed by the Respondent, the petition for reconsideration was denied by operation of law.

7. On March 2, 2022, the Respondent filed two writs of mandate in the Superior Court of California, Sacramento.

10. On March 25, 2022, no timely petition being filed by the Respondent, the petition for reconsideration was denied by operation of law again. The Respondent's license to practice medicine was formally revoked by the California Board.

Plaintiff timely complied with the Illegal Order to Show Cause in writing by requesting BORIM respectfully not to discipline her, among other facts, explaining in detail that she did file the Petition timely on both occasions at issue, explaining the reasons for seeking leave of court at the Superior Sacramento County Superior Court in California, and submitting supporting documents for BORIM to review. On September 30, 2022, Plaintiff also wrote to BORIM's General Counsel Vita Berg, Defendant Berg, ("Berg") requesting BORIM to dismiss the Illegal MA Admin Case because BORIM erred on alleging that Plaintiff was incompetent and erred on alleging that she filed the Petition twice untimely. Berg did not respond to Plaintiff. (Attached herewith as **Exhibit L** is a true and correct copy of Plaintiff's Answer to BORIM's Illegal Statement of Allegations dated October 20, 2022 which was done in compliance with the Illegal Order to Show Cause and the September 30, 2022 letter to Berg.) Dr. Robinson did not request further information from Plaintiff and the only issue he stated in the Illegal Order to Show Cause was fully complied with by Plaintiff and the order was moot. Plaintiff also informed BORIM



that its Illegal Statement of Allegations had various factual errors and did not allege applicable law and facts to establish a prima facie case of a cause of action. Plaintiff requested BORIM and/or DALA to dismiss the statement or to strike various words, clauses, and sentences therein to no avail. BORIM and/or DALA ignored Plaintiff on this. On multiple occasions, Plaintiff requested BORIM to conduct its own investigation and not to solely rely on MBC's license revocation decision. BORIM and DALA ignored Plaintiff on that. For example, a November 28, 2022 correspondence from Plaintiff to Shute and Stoller, also copied onto Wheatley, alerted BORIM not to ratify and endorse MBC's illegal activities in the guise of protecting public health and states, "Ms. Shute said she intended to file a motion to revoke my license in December 2022. I hope the reasons for her intention to revoke my license are independent from and not substantially the same as the reasons played out in the California board's revocation of my license. Otherwise, this board would be deemed to be in agreement with the California board in ratifying and endorsing the stealing of private medical records of children on school campuses, the evasion from enforcing the only proper standard of care under SB 277, and the curtailing of due process, burden of proof, and discovery all done in the guise of protecting public health." Shute and Stoller never responded to Plaintiff's request for BORIM to exercise independent professional legal judgment and to conduct independent investigation. (Attached herewith as **Exhibit O** is a true and correct copy of the November 21, 2022 and November 28, 2022 correspondence from Plaintiff to Shute and Stoller.)

31. On or about January 17, 2023, Plaintiff left a voicemail with BORIM Executive Director George Zachos ("Mr. Zachos") requesting BORIM to put an agenda item on a board meeting to discuss the Illegal MA Admin Case. Plaintiff also requested the same on other multiple occasions. Mr. Zachos, and possibly Stoller, ignored her requests. On January 23, 2023, about three months after Plaintiff fully complied with the Illegal Order to Show Cause, Plaintiff wrote to Berg at BORIM and all BORIM's board members and copied the email on Wheatley, Shute, and Stoller informing all defendants that she fully complied with Dr. Robinson's order, that there was no outstanding action left to be processed in the order, and that all activities related to the Illegal MA Admin Case were moot. She also invited BORIM to contact her immediately should it wanted to discuss the case with her ("Case Closed Correspondence"). But no one from BORIM contacted her regarding the closing of the case. (Attached herewith as **Exhibit M** is a true and correct copy of the Case Closed Correspondence with Exhibits 1 to 14.) The

correspondence also requested BORIM to advise how many doctors had been disciplined by BORIM for writing MEs for children since the establishment of BORIM and to provide Plaintiff with guidance on how to write MEs for Massachusetts and out-of-state children. No one from BORIM addressed these two issues.

32. BORIM did not plead any conduct that placed into question Plaintiff's competence to practice medicine as required by law in its Illegal Statement of Allegations. Also, BORIM refused at all costs and stayed far away from an attempt to meet its burden of proof to prove any conduct that placed into question Plaintiff's competence to practice medicine. BORIM also refused at all costs and stays far away from an attempt to prove Plaintiff having violated a statute, a regulation, or a good and accepted medical practice as required by law. BORIM alleged that Plaintiff was negligent repeatedly and grossly negligent but refused at all costs and stayed from pleading and proving the legal elements of duty, breach, causation, and injury. BORIM also refused to venture into discussing and litigating triable and disputable material facts such as the choice of law, the conflict of law between California ME law and Massachusetts ME law, the material difference of the pertinent regulation at issue between the two states regarding the definition of competence, the underlying facts about the illegal search and seizure of Plaintiff's medical work products at issue, and MBC and BORIM both did nothing to meet their respective burden of proof to prove negligence and gross negligence. Massachusetts' regulation on disciplining doctors equates a gross negligent conduct or repeated negligent conducts as incompetent conduct(s). Whereas California's regulation on disciplining doctors excludes gross negligent and repeated negligent conducts from incompetent conduct(s). Moreover, BORIM ignored Plaintiff's request for a notice of hearing and a full and fair hearing, reneged on its promise to stay proceedings against her, lifted the stay secretly without her knowledge and participation in board meetings in violation of open meeting law, misrepresented the fact that there was no stay, defaulted on discovery, open meeting law, and public records law responses, defaulted on producing discovery documents, canceled discovery and a full and fair hearing in violation of the law, concealed and withheld pertinent evidence to prevent Plaintiff from adequately defending her MEs and license, reneged on a promise made by opposing counsel, Shute, to meet and confer by the telephone, endorsed and acted upon DALA's Illegal Recommended Decision, Fraudulent Motion, Fraudulent Order, and Fraudulent Letter, and fraudulently gave a choice to Plaintiff to file a memorandum on disposition ("Illegal Memo on

Disposition”) without proper legal authority while Plaintiff had already filed with BORIM her Response to Illegal Recommended Decision with objections and disputing points. Also, BORIM continues to prosecute Plaintiff in bad faith. BORIM is now illegally planning to schedule one illegal brief open board meeting and one illegal closed board meeting to prejudice Plaintiff and her license. (Attached herewith as **Exhibit N** is a true and correct copy of the following: correspondence between Stoller and Plaintiff, correspondence from Plaintiff to Stoller, Mr. Zachos, Shute, and Dr. Robinson regarding an Illegal Memo on Disposition, the illegal board meetings, and/or other matters dated in April and May of 2023, and Shute’s memorandum on disposition dated May 4, 2023 which also failed to state an incompetent conduct.)

33. On DALA’s current website, it states as follows:

DALA was purposely established as an independent agency, to help ensure that decisions would be rendered free from the appearance of conflicts of interest or undue influence by personnel within the agency whose decisions are under review.

This statement is far from the truth when it comes to DALA handling the Illegal BORIM Adjudicatory Case and the Illegal DALA Docket. Each of many decisions made by DALA was calculated to inhibit and reduce Plaintiff’s ability to defend her MEs and license. DALA was funded by the state to assign neutral arbiters for the benefit of the public. It assigned Wheatley to be a neutral arbiter but he was not at all neutral. He carried four roles in the Illegal MA Admin Case—1. a magistrate, 2. a prosecutor, 3. a respondent as Plaintiff, and 4. an unsolicited attorney for Plaintiff. Rooney and/or DALA endorsed, ratified, and approved all of Wheatley’s work done in flagrant violation of California and Massachusetts law. The Illegal MA Admin Case was stayed and the stay was secretly lifted. DALA assisted BORIM to conceal facts regarding the secret lift in order to force the case to progress quickly without discovery and a hearing even though Plaintiff requested DALA and/or BORIM on multiple occasions to provide her with discovery and a hearing. DALA prosecuted the Illegal MA Admin Case as lead counsel of BORIM and, while acting as a neutral arbiter, it denied all of Plaintiff’s motions and defaulted on ruling about 12 motions. With DALA’s assistance, BORIM did not serve on Plaintiff a notice of hearing, did not afford Plaintiff a mandated full and fair hearing, but served on Plaintiff a grossly deficient dispositive motion, motion for summary decision against her (“Grossly Deficient MSD”). Among other deficiencies, the Grossly Deficient MSD failed to attach a statement of material facts or specify facts that were material to BORIM. DALA assisted

BORIM so it did not need to cure the gross deficiency. Without knowing what facts BORIM considered as material facts, Plaintiff was unable to oppose the Grossly Deficient MSD but only to object to it on January 20, 2023 and informed BORIM that the Grossly Deficient MSD was taken off calendar due to the case was moot as the Illegal Order to Show Cause was fulfilled. On February 24, 2023, knowing the case was closed, DALA did BORIM's legal work to cure the deficiency at the same time when drafting an order granting the Grossly Deficient MSD. In an order granting the Grossly Deficient MSD, DALA selected and wrote material facts for BORIM and commented on them in favor of BORIM. Essentially, DALA filed a brand-new MSD on behalf of BORIM and granted it all in one document, one order—the Illegal Recommended Decision. DALA also ratified BORIM's total evasion from meeting and conferring with Plaintiff on procedural, substantive, and discovery issues. Moreover, DALA enabled BORIM to completely default on responding to six sets of written discovery propounded by Plaintiff, to completely default on producing the entire board file, discovery documents, and documents mandated by regulations, open meeting law, and public records law. With DALA's aide, BORIM also did not have to try triable and disputable material facts which were not tried or litigated at MBC, to plead and prove law and facts to present a prima facie case, or to meet its burden of proof to prove all legal elements in BORIM's gross and repeated negligence claims against Plaintiff. Eventually, DALA issued the Fraudulent Order, using Plaintiff's name to make a secret motion for reconsideration without her consent and without the opportunity for the parties to file a written response to the order and to request a hearing regarding the order. DALA then falsely denied its self-created motion and recommended BORIM to revoke Plaintiff's Massachusetts license all in one document, one order.

34. On October 18, 2022, Wheatley issued a notice of pre-hearing conference, set a pre-hearing conference for November 15, 2022 ("Pre-hearing Conference"), and, in the notice, cited 801 CMR 1.01(10)(a) but changed the regulation to add "discovery and other motions" as items to be discussed at the conference and to delete "if the case is to be heard." (Attached herewith as **Exhibit O** is a true and correct copy of the notice of Pre-hearing Conference ("Notice of Pre-hearing Conference").) These modifications serve to premeditatedly deprive Plaintiff of a mandatory fair and full hearing, to mislead Plaintiff to anticipate discovery in preparation for a hearing, to provide a forum just for DALA and BORIM to prematurely set a dispositive motion on the calendar before the start of discovery to prejudice Plaintiff, and to conceal DALA's and

BORIM's intention that there would be no fair and full hearing and no discovery because, even though there were many disputable material facts rendering BORIM's Grossly Deficient MSD being filed prematurely and in bad faith, Wheatley would and did put the dispositive motion on the litigation calendar and would and did grant the Grossly Deficient MSD so BORIM and DALA could evade discovery and a hearing. Plaintiff did not know of the evasion at that time and proceeded onto propounding written discovery on BORIM, requesting BORIM to release the entire board file as required by law, and requesting depositions. Shute and Stoller at BORIM ignored all of the requests and more and evaded meet and confer communication with Plaintiff from after the Pre-hearing Conference on November 15, 2022 to January 23, 2023, when the case was closed, and beyond.

35. In preparation for the Pre-hearing Conference, former Chief Administrative Magistrate Edward McGrath at DALA ("Chief Magistrate McGrath") and Plaintiff had a telephone conversation on or about November 3, 2022. Chief Magistrate McGrath did not inform Plaintiff of his position at DALA and worked with Plaintiff to collect email addresses from her to set up the Pre-hearing Conference online via Webex. All along, Plaintiff thought he was an IT assistant. On the telephone conversation, Chief Magistrate McGrath informed Plaintiff that the conference would be informal, be one hour in duration, and be about how the case would move forward. He also stated that parties could file a summary decision motion. At that time, Plaintiff did not know what the motion was but she found out later that such motion was a motion for summary decision which was routinely filed in litigation usually after discovery when a party in good faith believed there was no triable/disputable material fact left to be tried in a case. So for Chief Magistrate McGrath to bring that up before the start of the case and before the start of discovery was done prematurely. On November 7, 2022, Plaintiff left a voicemail with Chief Magistrate McGrath, still thinking he was an IT assistant, asking, among other items, about the timing to file a motion to dismiss. He responded and informed Plaintiff that Pre-hearing Conference attendees may not testify at a hearing, that the conference was for scheduling and logistics, and that no drop-ins were allowed at the conference. Regarding whether a motion to dismiss could be filed early on in a case, there was no clear answer.

36. On November 15, 2022, at Pre-hearing Conference, right off the bat, Shute said she was ready to file a motion for summary decision in bad faith because discovery had not begun, many triable and disputable material facts existed, and the parties had not begun to discuss them and

the items listed in Wheatley's Notice of Pre-hearing Conference. Nevertheless, Wheatley gladly and quickly granted Shute's request to file a motion for summary decision and set dates for the motion on the litigation calendar. Plaintiff brought up several issues and was prepared to discuss many other items in a proposed agenda she had emailed to DALA and BORIM prior to the conference ("Proposed Agenda") but they both ignored it so all of the issues therein were ignored to date. (Attached herewith as **No. 11 in Exhibit M** is a true and correct copy of the Proposed Agenda.) Shute misrepresented to Plaintiff that there had been no stay on the case while there was. (Attached herewith as **Exhibit O** is a true and correct copy of an email dated November 15, 2022 from Plaintiff to Wheatley, Stoller, and Shute providing proof that BORIM did stay the case.) She also interfered with Plaintiff's right to conduct discovery by defining that whatever information she would provide in or with her motion for summary decision would be all the information Plaintiff would get. Wheatley then told Plaintiff to bring to his attention upon reviewing Shute's motion for summary decision when feeling that she was not in a position to respond to the motion due to the lack of information. But upon reviewing Shute's Grossly Deficient MSD and informed Wheatley that she needed Shute to identify material facts for her to respond to the motion and needed BORIM to release her full board file on many occasions, Wheatley ignored Plaintiff. Also, Shute never addressed any requests raised by Plaintiff to date. For example, Shute never identified which facts were material or important to BORIM in her Grossly Deficient MSD and Wheatley stepped up to fill in the blank for her to do her legal work and granted "her" motion for summary decision, all done in one document in the Illegal Recommended Decision. On March 15, 2023, Shute emailed Stoller informing her that she had no objection to Wheatley's Illegal Recommended Decision.

37. In preparation for the Pre-hearing Conference, Chief Magistrate McGrath required the public to RSVP in order to attend the conference online and required Plaintiff to work for DALA to contact those who would attend by collecting their email addresses for DALA and Plaintiff did. After the conference, Plaintiff learned that the Open Meeting Law did not authorize this arrangement. The law required DALA to post a link on its website for the public to click onto to sign in for the online conference at the start time without having to RVSP and without having to provide attendees' email addresses to the state agency. The law also did not restrict drop-in attendance like DALA did. At the conference, DALA claimed it experienced technical issues and could not resolve them. For about 25 minutes, about 20 online attendees from the public

were waiting for the Pre-hearing Conference to start. Plaintiff requested Wheatley to postpone the Pre-hearing Conference to another date because some attendees may have had to leave for work in different time zones but Wheatley refused. Instead, he changed the online Pre-hearing Conference to a telephonic conference but about half of the attendees had problem attending. Plaintiff was helping the attendees to dial in and emailed the ones who could not dial in after all to update them on what happened at the conference after the Pre-hearing Conference. At the end, many attendees missed listening in. Wheatley also never scheduled a continued pre-hearing conference as promised. (Attached herewith as **Exhibit O** is a true and correct copy of an email dated November 15, 2022 from Plaintiff to Wheatley, Stoller, and Shute following up on having Wheatley schedule a continued pre-hearing conference.) So DALA placed unnecessary burden on Plaintiff to take away her time from the Pre-hearing Conference and to censor public attendance. Plaintiff spent a lot of time before, during, and after the Pre-hearing Conference to contact and email attendees. On information and belief, DALA did not require BORIM to comply with the RSVP effort.

38. On the day before the Pre-hearing Conference, November 14, 2022, Wheatley emailed Plaintiff twice to prepare for the conference, emphasizing that any potential witnesses should not attend the conference. In the first email, he emphasized the importance of not having potential witnesses to attend in italics. At 3:38 p.m., he wrote as follows:

I received a list of people/email addresses for individuals that you would like to receive invitations to attend tomorrow's pre-hearing conference. Those people will soon receive a message from Webex with instructions for attending the conference. Please note, however, that *any potential witnesses should not attend the conference*. The discussions between the parties and counsel during the conference could affect witness testimony, and such witnesses could therefore be precluded from testifying at the evidentiary hearing. The pre-hearing conference is procedural in nature, and I will not be taking any evidence, hearing any testimony, or making any findings of fact during the conference. The purpose of the conference is to determine the status of the case, address any current issues/disputes with respect to discovery and other procedural matters, and to set the schedule for the appeal including the evidentiary hearing. Please refer to the pre-hearing conference notice for a list of common topics discussed/raised during the conference. (Attached as **Exhibit O** as a true and correct copy of Wheatley's email to Plaintiff dated November 14, 2022 at 3:38 p.m.)

At 7:04 p.m., Wheatley wrote to Plaintiff as follows:

I will issue the appropriate orders at the appropriate time. I would suggest, however, that if you intend to call certain witnesses to testify at the evidentiary hearing, it would be better if they did not attend the pre-hearing conference, in order to avoid the possibility that they may overhear discussions or statements from other potential witnesses that could affect (and provide grounds for excluding) their testimony at the hearing. Exclusion is not automatic. But the regulations governing this proceeding grant DALA broad authority over admitting and excluding evidence, and motions to sequester witnesses are routinely allowed. (Attached as **Exhibit O** as a true and correct copy of Wheatley's email to Plaintiff dated November 14, 2022 at 7:04 p.m.)

On the same day, Plaintiff responded to Wheatley and asked, "Would you please provide me with the statute regarding people attending the hearing being excluded as witnesses? Thank you." Wheatley never responded to Plaintiff's inquiry. Plaintiff also followed up on this question with Wheatley but Wheatley never responded. Between November 7, 2022 and November 15, 2022, Chief Magistrate McGrath also informed Plaintiff that Pre-hearing Conference attendees may not testify at a hearing.

39. On November 28, 2022, Plaintiff propounded six sets of discovery on BORIM. The six sets are as follows: two sets of Request for Special Interrogatories, two sets of Request for Admissions, and two sets of Request for Production of Documents. BORIM did not respond to them. Plaintiff filed motions to compel against BORIM for discovery responses and production of documents with Wheatley but Wheatley denied and ignored the motions. (Attached herewith as **Exhibit R** is a true and correct copy of six sets of discovery propounded on BORIM by Plaintiff on November 28, 2022 and an accompanying cover letter.)

40. On June 29, 2023 and June 30, 2023, BORIM notified Plaintiff that it would hold an open board meeting and a closed board meeting on July 13, 2023 at an unknown start time. These board meetings would be held for the illegal purpose to vote pursuant to Wheatley's and Shute's illegal recommendations to revoke Plaintiff's Massachusetts medical license. On July 2, 2023, Plaintiff emailed Stoller requesting her to cancel the illegal board meetings to avoid a motion for preliminary injunction and copied the same email onto email addresses for other defendants and BORIM's board members and leaders. (Attached hereto as **Exhibit T** is a true and correct copy of correspondence between BORIM and Plaintiff dated June 29, 2023 and June 30, 2023 showing that BORIM set the illegal board meetings for July 13, 2023 and a true and correct copy of the email correspondence from Plaintiff to Stoller dated July 2, 2023 requesting BORIM to



cancel the illegal board meetings. On July 3, 2023, Plaintiff also wrote to Stoller and copied the same email to Stoller on other defendants and board members and leaders.)

### **STATEMENT OF CLAIMS**

41. Provisions of the legal authority cited and quoted in this Statement of Claims section of this FAC are relevant to this action and some provisions are omitted on purpose as they may not be relevant to the action at this time. Should they become relevant at any stage of this action, Plaintiff reserves the right to seek to include them. Certain words and provisions of the legal authority and correspondence are bolded for emphasis.

### **CAUSE OF ACTION NO. 1 DEFENDANTS' VIOLATION OF CIVIL, CRIMINAL LAW, RULES FOR ATTORNEYS AND NEUTRAL ARBITERS (NEGLIGENT PER SE)**

42. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows.

43. The defendants violated many statutes and regulations as alleged in this cause of action. The violations caused Plaintiff's harm. The acts or omissions caused the kind of harm the statutes and regulations were designed to prevent. Plaintiff was a member of the statute's or the regulation's protected class.

44. The defendants' flagrant violations of numerous constitutional principles, statutes, regulations, caselaw, and rules and obstruction of the execution of law, performance of public duties, and exercise of Plaintiff's rights alleged in this cause of action and FAC caused and continue to cause harm to Plaintiff. The large volume of work Plaintiff produced in the Illegal MA Admin Case and in this action shows Plaintiff lost an extraordinary amount of time from her medical practice, her personal schedule, and from working on the California appeal(s) so she could spend time to identify, analyze, understand, and timely respond to the defendants' numerous violations. The defendants caused Plaintiff to lose the following, including, but not limited to: income, time to practice medicine, time to work on the California appeal(s), personal time, time with family, due process, a valid complaint owed to her by BORIM, a full and fair hearing (trial), a notice of hearing, a statutory statement of allegations owed to her by BORIM, a neutral arbiter, a regulatory pre-hearing conference, a Litigation Plan, a discovery stage, discovery responses and documents owed to her by BORIM, open meeting records owed to her by BORIM, her full board file

owed to her by BORIM, public records owed to her by BORIM and DALA, participation in any and all open meetings concerning her and her license, effective defense, and an opportunity to resolve any of the numerous procedural and substantial issues in the Illegal MA Admin Case to advance her defense. Plaintiff's numerous hours spent on the Illegal MA Admin Case were wasted on handling and managing the defendants' abuse of state power and/or public office. Should BORIM revoke Plaintiff's license as recommended by Shute at BORIM and Wheatley and Rooney at DALA, Plaintiff would then be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

45. **Rights Interference.** Massachusetts authorizes no one to interfere with, attempt to interfere with, or oppress another person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Under the Illegal MA Admin Case, the defendants and BORIM's and DALA's other officers and employees, negligently, intentionally, fraudulently, and/or maliciously, interfered with, attempted to interfere with, and oppressed Plaintiff, and continue to so, in the free exercise or enjoyment of her rights and privileges secured to her to practice medicine and to have substantive and procedural due process, free speech, equal protection, and protection against unusual punishment and the taking of property for public use without just compensation in violation of M.G.L. c. 265 section 37 subjecting them and each of them to penal penalties. The violation of statutory, regulatory, and constitutional rights secured to Plaintiff will be discussed more fully in this cause of action below and in other causes of action in this FAC.

M.G.L. c. 265 section 37: **No person**, whether or not acting under color of law, **shall** by force or threat of force, willfully injure, intimidate or **interfere with**, or **attempt to injure**, intimidate or **interfere with**, or **oppress** or threaten **any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States.** Any person convicted of violating this provision shall be fined not more than one thousand dollars or imprisoned not more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both.

46. **Non-privileged Communications.** Rooney, Wheatley, Magistrate McGrath, Stoller, Shute, Dr. Robinson, Mr. Zachos, Berg, Ms. Dye, and Mr. Paikos did not meet the legal requirement to make privileged communications with BORIM in or regarding the Illegal MA Admin Case in violation of 243 CMR 1.02(10) because their communications were made in bad faith or for a malicious reason. All such communications were not privileged and any and all objections to the disclosure of them are waived.

**243 CMR 1.02(10) states:** Conditional Privilege of Communications with the Board. All communications with the Board charging misconduct, or reporting or providing information to the Board pursuant to M.G.L. c. 112, §§ 5 through 5I, or assisting the Board in any manner in discharging its duties and functions, are privileged, and **a person making a communication is privileged from liability based upon the communication unless the person makes the communication in bad faith or for a malicious reason.** This limitation on liability is established by M.G.L. c. 112, §§ 5 and 5G(b).

47. **Decision Making Preclusions.** Rooney, Wheatley, Berg, Stoller, Shute, and Dr. Robinson did not meet the legal requirement to be free from conflicts or bias and participated in decision-making in the Illegal BORIM Adjudicatory Case and the Illegal DALA Docket in violation of 801 CMR 1.03(5). They shall not or should not have participated in decision-making in the MA Illegal Admin Case.

**801 CMR 1.03(5) states:** Conflicts. No Presiding Officer who has a direct or indirect interest, personal involvement or **bias** in an Adjudicatory Proceeding **shall** conduct a hearing or **participate in decision-making for the relevant Adjudicatory Proceeding.**

48. **Reporting Mandate Violations.** BORIM's and DALA's officers and employees did not report to BORIM about the Illegal Complaint in violation of M.G.L. c. 112 section 5D. They also did not report to BORIM about all violations under M.G.L. c. 112 section 5 and all violations of regulations of the board cited and discussed in this FAC in violation of M.G.L. c. 112 section 5D.

**M.G.L. c. 112 section 5D:** Any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof which is engaged in the provision or oversight of medical or health services, **shall report** to the board of registration in medicine **any person** who there is reasonable basis to believe is in violation of **section five, or any of the regulations of the board** except as otherwise prohibited by law.

49. **Grossly Deficient Complaint.** BORIM did not meet all required legal elements to make a complaint in violation of 243 CMR 1.03(1) and 243 CMR 1.03(6). A complaint and a statement of allegations are two different document types. 243 CMR 1.05(5)(b) distinguishes them as follows:

If a complaint, investigation, or Statement of Allegations arises solely out of a disciplinary action in another jurisdiction, within the meaning of 243 CMR 1.03(5)(a)12., then the registrant may submit a resignation pursuant to 243 CMR 1.05(5)(a)....

243 CMR 1.03(1) states any person, organization, or member of BORIM may make a complaint to BORIM which **charges a licensee with misconduct** and a complaint may be filed in any form. Here, the Illegal Complaint made by Ms. Dye in the form of a letter to Plaintiff and it did not charge Plaintiff with a misconduct. It only stated that BORIM learned of Plaintiff's out-of-state discipline. Ms. Dye and BORIM may not have even seen or read Plaintiff's medical work products (papers and MEs) when making the Illegal Complaint. Pursuant to 243 CMR 1.03(6), BORIM shall assign a docket number to a complaint and all subsequent papers relating to the particular complaint shall be marked with the same docket number and shall be placed in a file (the docket) with all other papers bearing the same number. Since the Illegal Complaint was made without a charge of misconduct, Ms. Dye should not have assigned a docket number to the Illegal Complaint. Nevertheless, she assigned a docket number to the Illegal Complaint as Docket No. 21-0618 ("Illegal BORIM Docket Number"). Pursuant to 243 CMR 1.03(7), BORIM's complaint committee may order Plaintiff to answer a complaint within ten days and such an order shall describe the acts alleged in a complaint. BORIM did not issue such an order to Plaintiff.

50. **Grossly Deficient Complaint.** BORIM did not meet any and all required legal elements to make a complaint in violation of 243 CMR 1.03(5)(a)(3). The Illegal Complaint does not allege any specific grounds against Plaintiff.

243 CMR 1.03(5)(a)(3) and (12): Specific Grounds for Complaints Against Physicians. A complaint against a physician **must allege that a licensee is practicing medicine in violation of law, regulations, or good and accepted medical practice and may be founded on any of the following:...**3. Conduct which places into question the **physician's competence** to practice medicine, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on

repeated occasions;...12. Having been disciplined in another jurisdiction in any way by the proper licensing authority **for reasons substantially the same** as those set forth in M.G.L. c. 112, § 5 or 243 CMR 1.03(5).

**51. Open Meeting Law Violations.** For the Pre-hearing Conference attendance, DALA screened and censored attendance by requiring Plaintiff to collect email addresses from the public in order for the public to attend the conference via Webex and advising potential witnesses not to attend the conference. Also, BORIM did not meet any and all required legal elements to hold meetings and to disclose meeting records in their entirety to Plaintiff concerning Plaintiff, her license, and her professional competence in violation of Massachusetts Open Meeting Law (M.G.L. c. 30A sections 20, 21, 22(e), 22(f), and 22(g)(2) and M.G.L. c. 112 section 65C). BORIM illegally met in closed or executive sessions secretly without Plaintiff's and the public's knowledge and did not respond to Plaintiff within 10 days illegally upon her request for meeting records. (Attached herewith as **Exhibit S** is a true and correct copy of correspondence regarding DALA's and BORIM's open meeting law violations.) Stoller also scheduled and coordinated an illegal open meeting and an illegal closed meeting set for July 13, 2023 at an unspecified start time to mislead BORIM board members and leaders to vote pursuant to Wheatley's and Shute's illegal recommendations to revoke Plaintiff's license. Plaintiff provided legal authority to Stoller, BORIM, BORIM's board members and leaders and requested BORIM and Stoller not to schedule the illegal board meetings and/or to cancel them to no avail. BORIM and Stoller acted with specific intent to violate various provisions of the Open Meeting Law.

940 CMR 29.02: Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, that the public body or public body member: (a) **acted with specific intent to violate the law;** (b) **acted with deliberate ignorance of the law's requirements;** or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

M.G.L. c. 112 section 65C: Meetings of the boards held for the purpose of conducting investigative conferences prior to the issuance of an order to show

cause or for purposes of discussing the terms of a negotiated settlement of a complaint against a licensee shall not be considered open meetings within the meaning of section 11A.5 of chapter 30A [repealed in 2009], **but a licensee shall have access to records of any meetings concerning the licensee as may be necessary for the defense of his license at an adjudicatory proceeding.**

M.G.L. c. 30A section 21: (a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, **rather than professional competence**, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. **The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session;** provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. **If an executive session is held, such individual shall have the following rights:**

- i. **to be present** at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. **to speak** on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source....

(b) **A public body may meet in closed session** for 1 or more of the purposes enumerated in subsection (a) **provided that:**

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have **voted to go into executive session** and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, **the chair shall state the purpose for the executive session**, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair **shall publicly announce** whether the open session will reconvene at the conclusion of the executive session; and
5. **accurate records of the executive session shall be maintained pursuant to section 23.**

M.G.L. c. 30A 22(e): The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, **shall be public records in their entirety and not exempt from disclosure** pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4.

M.G.L. c. 30A 22(f): When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session **shall be disclosed** unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

M.G.L. c. 30A 22(g)(2): Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body **shall respond to the request within 10 days** following receipt and shall release any such minutes not covered by an exemption under subsection (f).

BORIM met at least in, on, or around December 2021, April or May 2022, July 15, 2022, September 8, 2022, and January 2023. At any and all board meetings, attending members and officers may not have even seen or read Plaintiff's medical work products (papers and MEds). On July 18, 2022, BORIM wrote to Plaintiff informing her that BORIM's complaint committee had recommended BORIM to issue a statement of allegations against her and that Stoller at BORIM would notify Plaintiff when the matter had been scheduled for consideration by BORIM. Plaintiff never heard from Stoller about this matter. BORIM deprived Plaintiff of the right to be present and to speak at any and all board meetings concerning her and failed to meet in open session, notify Plaintiff in writing at least 48 hours prior to the closed or proposed executive sessions, vote to go into closed or executive session in an open session, state purpose of the closed or executive session by the chair in an open session, and announce whether the open session would reconvene at the conclusion of a closed or executive session. On November 15, 2022, at the Pre-hearing Conference, Shute made two statements falsely asserting that the Illegal MA Admin Case had never been stayed. On or about the same day, Plaintiff gave evidence to Shute and Wheatley verifying that Ms. Dye had informed her of the stay around May 2022. Shute did not retract her false statements and Wheatley did not facilitate the parties to resolve the stay and lift issues but assisted BORIM to continue to prosecute Plaintiff. Plaintiff asked BORIM and DALA for her to depose Ms. Dye but both did not cooperate to provide a deposition opportunity. Later, on information and belief, Ms. Dye was no longer working for BORIM. Plaintiff also propounded written discovery asking BORIM about the lift and stay but BORIM defaulted discovery responses and production of documents to date. (Attached herewith as **Exhibit R** is a true and correct copy of six sets of discovery propounded on BORIM by Plaintiff on November 28, 2022 and an accompanying cover letter.) Plaintiff has been blocked by the

defendants from finding out why the stay was lifted. Berg at BORIM produced some board meeting minutes and records but she redacted them rendering the disclosure useless and illegal. To date, BORIM continues to default on the production of unredacted board meeting minutes and records in violation of open meeting law. Plaintiff is still being kept in the dark as to when and why the stay was lifted.

**52. Failure to Investigate Complaint; Failure to Dismiss Case.** Under BORIM Docket No. 21-0618, BORIM did not meet all required legal elements to process a complaint in violation of M.G.L. c. 112 section 5.

M.G.L. c. 112 section 5: The board **shall investigate all complaints** relating to the proper practice of medicine by any person holding a certificate of registration under sections two to twelve A, inclusive, or of section sixty-five so far as it relates to medicine and report the same to the proper prosecuting officers...If a physician is found not guilty the board **shall** forthwith order a **dismissal** of the charges and the **exoneration** of the accused.

Ms. Dye and Complaint Counsel Jim Paikos (“Mr. Paikos”) did not investigate the Illegal Complaint as mandated by M.G.L. c. 112 section 5 because the Illegal Complaint did not charge Plaintiff with a misconduct and did not allege any specific grounds (“Grossly Deficient Investigation”). Plaintiff also asked Shute and Stoller whether BORIM had investigated complaints in the Illegal CA Admin Case and they did not respond to Plaintiff. Ms. Dye, Mr. Paikos, Shute, Wheatley, and Stoller may not have even seen or read Plaintiff’s medical work products (papers and MEs). With the Illegal Complaint made as is, BORIM failed to dismiss the Illegal MA Admin Case and exonerate the accused. Plaintiff also filed motions to dismiss case with Wheatley based on other reasons but Wheatley denied and ignored the motions. (Attached herewith as **Exhibit O** is a true and correct copy of an email dated November 15, 2022 from Plaintiff to Wheatley, Stoller, and Shute asking Wheatley to dismiss the case.)

**53. Grossly Deficient Complaint; Plaintiff Was Competent; Wrongful Initiation of Adjudicatory Hearing.** BORIM did not meet all legal elements to require a disciplinary adjudicatory hearing against Plaintiff and to refer the matter to DALA in violation of 243 CMR 1.03(10).

243 CMR 1.03(10): Disposition by the Board. The Board shall review each recommendation which the Committee forwards to it within a reasonable time and **shall require an adjudicatory hearing if it determines that there is reason to believe that the acts alleged occurred and constitute a violation of any provision of 243 CMR 1.03(5) or M.G.L. c. 112, § 5.** The Board may take such infor-



mal action as it deems a **complaint** warrants. **If the Board requires an adjudicatory hearing, it may refer the matter to a hearing officer.**

There was no reason for BORIM and its employees, officers, or board members to believe that any act alleged in the Illegal Complaint or in any recommendation prepared by BORIM's complaint committee occurred and constituted a violation of law, regulations, and good and accepted medical practice or placed into question Plaintiff's competence to practice medicine because no such act or conduct of Plaintiff was stated or described in the Illegal Complaint. Also, there was no reason for BORIM and its employees, officers, or board members to believe that Plaintiff was disciplined in another jurisdiction for reasons substantially the same as those set forth in M.G.L. c. 112, § 5 or 243 CMR 1.03(5) because, under the circumstance, Massachusetts law could only subject Plaintiff under a disciplinary adjudicatory hearing if a conduct of Plaintiff would place into question her competence to practice medicine and MBC had already ruled out incompetency and unprofessionalism associating with incompetency on the part of Plaintiff in writing the MEs. BORIM erroneously or in bad faith required an adjudicatory hearing and referred the matter to DALA.

**54. Proceedings Were Conducted Illegally.** BORIM and DALA proceeded onto illegally prosecuting Plaintiff and her license under two new and additional case numbers, BORIM Adjudicatory Case No. 2022-033 ("Illegal BORIM Adjudicatory Case") and DALA Docket No. RM-22-0421 ("Illegal DALA Docket"). While prosecuting Plaintiff under the Illegal Complaint (as specified on the first page of the Illegal Statement of Allegations), BORIM and DALA also did not meet all required legal elements to conduct all hearings in violation of 243 CMR 1.04.

243 CMR 1.04: After the Board issues a Statement of Allegations, the Board **shall** conduct all hearings in accordance with 801 CMR 1.00: Standard Adjudicatory Rules of Practice and Procedure.

**55. Grossly Deficient Statement of Allegations.** BORIM did not meet any and all legal elements to issue a statement of allegations in violation of law, including, but not limited to, M.G.L. c. 30A, M.G.L. c. 112 sections 5, 61, and 62, 243 CMR 1.03(5)(a)(3), 243 CMR 1.03(5)(a)(12), 243 CMR 1.05(7), and 801 CMR 1.01. The following excerpts with emphasis taken from the Illegal Statement of Allegations show BORIM issued the statement illegally:

The Board of Registration in Medicine (Board) has determined that **good cause exists** to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. (Page 1.)

The **investigative** docket number associated with this order to show cause is **Docket No. 21-0618**. (Page 1.)

6. On February 7, 2022, **no timely petition being filed by the Respondent**, the petition for reconsideration was denied by operation of law.

7. On March 2, 2022, **the Respondent filed two writs of mandate** in the Superior Court of California, Sacramento.

10. On March 25, 2022, **no timely petition being filed by the Respondent**, the petition for reconsideration was denied by operation of law again. The Respondent's license to practice medicine was formally revoked by the California Board. (Page 2.)

A. Pursuant to 243 CMR 1.03(5)(a)12, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has been discipline [*sic*] in another jurisdiction in any way by the proper licensing authority **for reasons substantially the same** as those set forth in G.L. c. 112, § 5 or 243 CMR 1.03(5), specifically:

1. **The Respondent engaged in conduct which places into question his competence to practice medicine**, including but not limited to gross misconduct in the practice of medicine, or practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence or with **gross negligence** on a particular occasion **or negligence on repeated occasions**. See 243 CMR 1.03(5)(a)3.

B. ...[T]he Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician **lacks good moral character** and has engaged in **conduct that undermines the public confidence** in the integrity of the medical profession. (Page 3.)

The Board **has jurisdiction over this matter** pursuant to G.L. c. 112, §§ 5, 61 and 62. This adjudicatory proceeding will be conducted in accordance with the provisions of G.L. c. 30A and 801 CMR 1.01. (Page 3.)

**56. Imposition of Medical Practice Restrictions Not Warranted Because No Conduct Undermined Public Confidence.** BORIM and DALA did not have good cause to believe that the Three Conducts constituted a violation for which Plaintiff may be sanctioned by BORIM because the Three Conducts were not related to the practice of medicine. They were related to conducts of proper legal defense to file the Petition with MBC and to appeal MBC's illegal activities to a California state court. The defendants ratified and adopted the Grossly Deficient Investigation under the Illegal BORIM Docket Number and the Illegal Complaint. Based on them, Dr. Robinson issued the Illegal Order to Show Cause. The defendants and Dr. Robinson may not have even seen or read Plaintiff's medical work products (papers and MEs). BORIM

was not authorized to discipline Plaintiff because of the following reasons, including, but not limited to: MBC ruled out incompetency and unprofessionalism associating with incompetency in Plaintiff's writing of the MEs at issue; M.G.L. c. 112 section 5 or 243 CMR 1.03(5)(a)3 and 243 CMR 1.03(5)(a)12 were alleged against Plaintiff for incompetency; the reasons in both states to discipline Plaintiff were in direct opposition; and such reasons could never be possible to be substantially the same. Also, BORIM did not allege a lack of good moral character. It did not allege a conduct undermining public confidence. 243 CMR 1.05(7) would also not authorize the defendants to restrict Plaintiff's medical practice because Plaintiff did not engage in a pattern or practice which called into question her competence to write MEs as confirmed and decided by MBC. Plaintiff has not written a ME in Massachusetts and would do so in compliance with Massachusetts ME law should she ever write one in the future. Restricting Plaintiff from writing MEs in Massachusetts preemptively is not warranted because Plaintiff's writing of MEs did not undermine public confidence in California. She wrote the MEs at issue properly in compliance with California ME law and over 2,000 signatures from her patients and the public petitioned MBC to reverse its decision to revoke Plaintiff's California license which demonstrated that Plaintiff's conduct in writing the MEs did not undermine public confidence in the integrity of the medical profession.

**57. Imposition of Complete Restriction to Practice Medicine is Not Warranted.**

243 CMR 1.05(7) states as follows:

Consistent with 243 CMR 1.00 and M.G.L. c. 30A or otherwise by agreement with the licensee, the Board may impose restrictions to prohibit a licensee from performing certain medical procedures, or from performing certain medical procedures except under certain conditions, if the Board determines that: (a) The licensee has engaged in a pattern or practice which calls into question **her competence to perform such medical procedures**, or (b) The restrictions are otherwise warranted by the **public health**, safety and welfare.

Under this regulation, BORIM may not impose a complete restriction to prohibit Plaintiff from practicing medicine in the entirety, yet it plans to do so. Plaintiff did not engage in a pattern or practice which called into question her competence to perform a particular medical procedure. MBC already decided that Plaintiff was competent. Also, the defendants did not allege restrictions were warranted by the public health, safety and welfare.

**58. Failure to Investigate Complaint; No Victim; Plaintiff Was Competent.** Under the Illegal BORIM Adjudicatory Case and the Illegal DALA Docket, the defendants did not meet any and all legal elements to have jurisdiction over Plaintiff and her license in violation of M.G.L. c. 112 section 5. They did not investigate all complaints relating to the proper practice of medicine by Plaintiff, did not schedule a hearing, did not dismiss the Three Conducts, did not dismiss the Illegal Statement of Allegations, did not exonerate Plaintiff, did not identify a victim, did not allow victim participation, and did not attempt to meet the burden of proof of a conduct which would place into question Plaintiff's competence to practice medicine, including but not limited to gross negligence and repeated negligence. The defendants may not have even seen or read Plaintiff's medical work products and/or the MEs at issue.

M.G.L. c. 112 section 5: The board **shall investigate all complaints** relating to the proper practice of medicine by any person holding a certificate of registration under sections two to twelve A, inclusive, or of section sixty-five so far as it relates to medicine and report the same to the proper prosecuting officers...If a physician is found not guilty the board **shall** forthwith order a **dismissal** of the charges and the **exoneration** of the accused.

112 M.G.L. c. 5[(c)]: **The board may, after a hearing pursuant to chapter thirty A, revoke...the certificate of registration...upon proof satisfactory to a majority of the board that said physician:... (c) is guilty of conduct which places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine or of practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions....**

M.G.L. c. 112 section 5: Notwithstanding section 11 of chapter 30A, **the victim or his representative shall be entitled to attend all meetings of the board convened for the purpose of making a decision required in an adjudicatory proceeding, or for the purpose of reviewing a proposed consent order presented by the parties, concerning that victim's alleged injuries, at which the licensee or board complaint counsel are present... Upon final consideration of a disciplinary matter before the board, and before the board's vote on final disposition, the board shall provide the victim or his representative an opportunity to be heard through an oral or written victim impact statement, at the victim's or his representative's option, about the impact of the injury on the victim and his family and on a recommended sanction.** For purposes of this paragraph and the preceding paragraph, **representatives of the victim shall include his family members and such other affected parties as might be so designated by the board's complaint counsel upon request.** If the respondent physician is present for any portion of the board's meeting upon the final consideration of a

disciplinary matter, the victim or his representative **shall** have the opportunity to make an oral victim impact statement **in the presence of the physician**. If the respondent physician is absent from the board's meeting upon the final consideration of a disciplinary matter for a reason acknowledged by the board to be legitimate, the victim's or his representative's impact statement **shall be communicated to the defendant physician in writing and the physician shall certify to the board that he has received and read it. The board shall make all reasonable efforts to ensure that the victim has the opportunity to make any oral impact statement in the presence of the physician.**

59. **No Full and Fair Hearing.** Under the Illegal BORIM Adjudicatory Case and the Illegal DALA Docket, the defendants did not meet the legal elements to subject Plaintiff under their jurisdiction to revoke her license in violation of M.G.L. c. 30A section 13 and M.G.L. c. 112 section 61.

M.G.L. c. 30A section 13: **[N]o agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with sections ten, eleven and twelve.**

M.G.L. c. 112 section 61: **Except as otherwise provided by law the board of registration in medicine each board of registration or examination in the department of public health in the executive office of health and human services and, each board of registration or examination in the division of professional licensure in the office of consumer affairs and business regulation, after a hearing, may, by a majority vote of the whole board, suspend, revoke or cancel any certificate, registration, license or authority issued by it.**

DALA, Wheatley, Rooney, BORIM, Shute, and Stoller refused to hold a hearing. DALA illegally authorized and recommended BORIM to act on its Illegal Recommended Decision and Fraudulent Order to revoke Plaintiff's license before a full and fair hearing could take place. DALA also put in writing about twice stating that even if Plaintiff would lose her license now, she could simply reapply for a license with BORIM in the future without citing to legal authority. In April 2023, Stoller informed Plaintiff that she would schedule and coordinate a closed board meeting for board members to vote regarding Plaintiff's license without a hearing and without her presence. Stoller also informed Plaintiff that she would schedule and coordinate an open board meeting, right before the closed board meeting, for Plaintiff and the public to attend and Plaintiff would be given a "brief" moment to speak. Plaintiff requested Stoller for more information about this arrangement and for legal authority in support of her scheduling and coordinating of the closed and open meetings. Stoller did not respond to address numerous outstanding issues. On May 4, 2023, Shute issued her Illegal Memo on Disposition ratifying

DALA's Illegal Recommended Decision and recommended BORIM's board members to adopt the Illegal Recommended Decision and her recommendation to revoke Plaintiff's license. On May 7, 2023, Plaintiff wrote to Shute requesting her to withdraw her Illegal Memo on Disposition and to address various outstanding issues. Shute did not respond.

**60. No Notice of Hearing; No Witnesses Allowed.** Under the Illegal BORIM Adjudicatory Case and the Illegal DALA Docket, the defendants did not meet all legal elements to have jurisdiction over Plaintiff and her license in violation of M.G.L. c. 112 section 62.

M.G.L. c. 112 section 62: Any person against whom charges are filed **shall be notified of the hearing** thereof, **and may appear with witnesses** and be heard by counsel.

The defendants did not notify Plaintiff of a hearing and did not provide an opportunity for Plaintiff to appear with witnesses.

**61. No Notice of Hearing; No Full and Fair Hearing; Failure to Involve a Victim.** Under the Illegal BORIM Adjudicatory Case and the Illegal DALA Docket, the defendants did not meet any and all legal elements to conduct an adjudicatory proceeding in violation of M.G.L. c. 30A.

M.G.L. c. 30A section 10: In conducting adjudicatory proceedings, as defined in this chapter, **agencies shall afford all parties an opportunity for full and fair hearing.**

M.G.L. c. 30A section 11: [T]he **victim** or his representative **shall be entitled to attend all meetings of the board convened for the purpose of making a decision** required in an adjudicatory proceeding....

M.G.L. c. 30A section 11: In addition to other requirements imposed by law and subject to the provisions of section ten, agencies **shall** conduct adjudicatory proceedings in compliance with the following requirements: (1) **Reasonable notice of the hearing shall be accorded all parties and shall include statements of the time and place of the hearing.** Parties shall have **sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument.** If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues... (3) **Every party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence.** (4) **All evidence, including any records, investigation reports, and documents in the possession of the agency of which it desires to avail itself as evidence in making a decision, shall be**

**offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in paragraph (5) of this section...(6) Agencies shall make available an official record, which shall include testimony and exhibits...(7) If a majority of the officials of the agency who are to render the final decision have neither heard nor read the evidence, such decision, if adverse to any party other than the agency, shall be made only after (a) a tentative or proposed decision is delivered or mailed to the parties containing a statement of reasons and including determination of each issue of fact or law necessary to the tentative or proposed decision; and (b) an opportunity is afforded each party adversely affected to file objections and to present argument, either orally or in writing as the agency may order, to a majority of the officials who are to render the final decision...(8) Every agency decision shall be in writing or stated in the record. The decision shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision...Parties to the proceeding shall be notified in person or by mail of the decision; of their rights to review or appeal the decision within the agency or before the courts, as the case may be; and of the time limits on their rights to review or appeal.**

...

The defendants refused Plaintiff an opportunity for a full and fair hearing. No victim was notified to attend all BORIM's meetings convened for the purpose of making a decision. The defendants withheld from Plaintiff a notice of hearing with a time and hearing place. The defendants withheld from Plaintiff a notice of issues and refused to afford her a reasonable opportunity to prepare and present evidence and argument. The defendants deprived Plaintiff the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence. The defendants withheld all pertinent evidence, including, but not limited to, testimony, board meeting records, investigation reports, six sets of discovery responses, discovery documents, responses to public records law requests, documents requested under the open meeting law and public records law, and/or the entire licensee board file. DALA and its officers did not decide on various motions filed by Plaintiff. DALA and its officers did not accompany motion decisions, Illegal Recommended Decision, and Fraudulent Order by a statement of reasons to include a determination of each issue of fact or each issue of law necessary to a decision. DALA deprived Plaintiff her rights and time limits to review or appeal motion decisions, including its order granting BORIM's Grossly Deficient MSD, before DALA itself and before the courts. The defendants deprived Plaintiff her rights and time limits to review or appeal the Illegal Recommended Decision and Fraudulent Order before DALA and before the courts.

**62. Deprivation of Entire Board File.** The defendants did not meet the legal elements to give Plaintiff adequate access to the entire content of her case file in violation of 801 CMR 1.02(8)(b).

Pursuant to 801 CMR 1.02(8)(b): **Examination of File.** At any time after an Adjudicatory Proceeding has been requested, **a Party** and its Authorized Representative **shall have adequate access to** and an opportunity to examine and copy or photocopy **the entire content of his or her case file** and all other documents to be used by Agency... at the hearing....

On different occasions, Plaintiff requested Shute and Stoller and filed motions with Wheatley for BORIM to release an entire content of Plaintiff's board file for Plaintiff to examine and for her defense. But they continued to withhold it from Plaintiff to date. For example, Plaintiff asked them for it on November 15, 2022. (Attached herewith as **Exhibit O** is a true and correct copy of an email dated November 15, 2022 from Plaintiff to Wheatley, Stoller, and Shute requesting the entire content of Plaintiff's board file.)

**63. Deprivation of Plaintiff's Rights and Privileges & Waiving Public Duties Without One Agency Hearing; BORIM Shall Not Meet to Vote on License Revocation Without Prior Hearing.** The defendants took away many rights and privileges from Plaintiff and waived many of their own public duties as alleged in this FAC with no opportunity for one single agency hearing.

M.G.L. c. 30A section 1(1): "Adjudicatory proceeding" means a proceeding before an agency in which the **legal rights, duties or privileges** of specifically named persons are required by constitutional right or by any provision of the General Laws to be **determined after opportunity for an agency hearing.**

M.G.L. c. 30A section 18(d): "Meeting", a deliberation by a public body with respect to any matter within the body's jurisdiction; provided, however, "meeting" **shall not include...**(d) a meeting of a quasi-judicial board or commission held for the **sole purpose** of making a decision required in an **adjudicatory** proceeding brought before it.

For example, without an opportunity for a single agency hearing, the defendants took away Plaintiff's right to have the following and waived their duties to provide Plaintiff of the same, including, but not limited to: federal and state constitutional due process, at least 12 fair motion rulings, a basic legally sufficient board complaint, a complaint investigation, a basic legally sufficient statement of allegations, a statutory and regulatory administrative case dismissal, a notice of hearing, a regulatory pre-hearing conference, a



discovery stage and discovery, responses and documents to discovery, open meeting law, and public records law requests, board meeting participation and records, participation of a victim, an opportunity to present a witness and to confront a witness face to face, Plaintiff's entire board file, and a full and fair hearing. Also, on April 25, 2023, Stoller informed Plaintiff that her scheduling and coordinating of a "closed adjudicatory session" for the Illegal MA Admin Case was based on M.G.L. c. 30A section 1(1) and M.G.L. c. 30A section 18(d). Her reliance on these statutes was misplaced because 1) she and other attorneys and officers of DALA and BORIM had prevented an opportunity for an agency hearing in violation of M.G.L. c. 30A section 1(1) and 2) a meeting for the sole purpose of making a decision required in an adjudicatory proceeding violates M.G.L. c. 30A section 18(d).

**64. Fraudulent Motion.** The defendants made and/or ratified Wheatley's Fraudulent Motion in violation of 801 CMR 1.01(7)(1).

**801 CMR 1.01(7)(1): Motion for Reconsideration.** After a decision has been rendered and **before the expiration** of the time for filing a request for review or appeal, a **Party** may move for reconsideration. The motion **must identify** a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. **A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A, § 14(1)** for the purposes of tolling the time for appeal.

Wheatley was the magistrate presiding over the Illegal DALA Docket and was not a party so he had no standing to move to reconsider his own Illegal Recommended Decision. He created many conflicts of interest by filing the Fraudulent Motion in his own initiation, as Plaintiff, and as a way to solicit illegal support from Rooney, Stoller, and Shute to proceed onto setting up illegal meetings for BORIM board members to attend for the purpose to decide on revoking Plaintiff's license. Wheatley's Fraudulent Motion was untimely, 11 days late. By then, Plaintiff had already disputed or objected to his Illegal Recommended Decision. The Fraudulent Motion was made in secret so Wheatley deprived Plaintiff an opportunity to object to it before it was granted to BORIM to Plaintiff's detriment. The Fraudulent Motion did not identify a clerical error of his or a significant factor he himself had overlooked in his Illegal Recommended Decision. DALA did not notify Plaintiff of her rights and time limits for an appeal to or a review by DALA or a superior court regarding the Illegal Recommended Decision.

**65. Fraudulent Order; Failure to Notify Proper Appeal Process.** The defendants made and/or ratified Wheatley's Fraudulent Order granting the Fraudulent Motion in violation of 801 CMR 1.01(7)(1) as referenced immediately above. Plaintiff requested the defendants to withdraw or disregard the Fraudulent Order. Not only that they did not respond to her request, they acted on the Fraudulent Order to support a revocation of Plaintiff's license by Stoller creating an unnecessary process for Shute and Plaintiff each to submit an Illegal Memo on Disposition without legal authority, Shute filing the Illegal Memo on Disposition, the defendants ignoring Plaintiff's objections or disputes to the Illegal Recommended Decision, and DALA failing to advise Plaintiff time limits and her rights to appeal the Fraudulent Order to a superior court according to 801 CMR 1.01(13) and M.G.L. c. 30A section 14(1).

801 CMR 1.01(13): Further Appeal. After the issuance of a final decision, except so far as any provision of law expressly precludes judicial review, any person or appointing authority aggrieved by a final decision of **any** Agency in an Adjudicatory Proceeding shall be entitled to a judicial review thereof in accordance with M.G.L. c. 30A, § 14.

M.G.L. c. 30A section 14(1): Where no statutory form of judicial review or appeal is provided, judicial review shall be obtained by means of a **civil action**, as follows: (1) Proceedings for judicial review of an agency decision shall be instituted in the **superior court** for the county (a) where the plaintiffs or any of them reside or have their principal place of business within the commonwealth, or (b) where the agency has its principal office, or (c) of Suffolk. The court may grant a change of venue upon good cause shown. **The action shall**, except as otherwise provided by law, **be commenced in the court within thirty days** after receipt of notice of the final decision of the agency or if a **petition for rehearing** has been timely filed with the agency, **within thirty days** after receipt of notice of agency denial of such petition for rehearing. Upon application made within the thirty-day period or any extension thereof, the court may for good cause shown extend the time.

**66. Deprivation of Public Records.** The defendants did not meet the legal element by cooperating with Plaintiff for her to inspect public records in 10 business days in violation of M.G.L. c. 66 section 10(a).

M.G.L. c. 66 section 10(a): A records access officer...**shall** at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record...not later than 10 business days following the receipt of the request....

Plaintiff requested the defendants for pertinent records and information for her defense to no avail. She resorted to requesting them to produce records and documents through public records

law requests, also, to no avail. (Attached as **Exhibit R** is a true and correct copy of Plaintiff's public records law requests to the defendants.)

**67. Failure to Strike Improper Allegations.** The defendants did not strike or did not grant Plaintiff's motions to strike the following highly prejudicial, insufficient, scandalous, and/or false facts of the Illegal Statement of Allegations in violation of 801 CMR 1.01(7)(c).

1. "has practiced medicine in violation of law, regulations, or good and accepted medical practice" ( The second sentence of Paragraph 1 on Page 1);
2. "; and/or Cal. Bus. & Prof. Code, § 2234(d) (incompetent conduct)" and "the standard of care in California" (Paragraph 3 on Page 2) ;
3. "On February 7, 2022, no timely petition being filed by the Respondent;" (Paragraph 6 on Page 2);
4. "On March 25, 2022, no timely petition being filed by the Respondent;" (Paragraph 10 on Page 3); and
5. "The Board has jurisdiction over this matter pursuant to G.L. c. 112, §§ 5, 61 and 62." (The Second to the Last Sentence on Page 3). (Attached herewith as **Exhibit K** is a true and correct copy of the Illegal Statement of Allegations.)

801 CMR 1.01(7)(c): Motion to Strike. A Party may move to strike from any pleading, or the Agency or Presiding Officer may on its own **motion strike, any insufficient allegation or defense, or any redundant, immaterial, impertinent or scandalous matter.**

The defendants did not meet any and all legal elements to meet and confer with Plaintiff in violation of 801 CMR 1.03(10)(e) and 801 CMR 1.01(7)(g)(2). By then, they may not have even seen or read Plaintiff's medical work products (papers and MEds). On October 6, 2022, before the Pre-hearing Conference, in an email, Shute told Plaintiff that she would be happy to speak with her on the phone. But she reneged on her promise and, about two months later, she stated in a motion related paper that she did not need to communicate with her unless she was ordered to do so by the magistrate. Wheatley ratified and encouraged the violations by, upon Plaintiff's motion, not ordering Shute and Stoller to show cause why they failed to respond to Plaintiff's voice messages and correspondence dated November 17 and 28, 2022. By not issuing such an order, Shute and Stoller could evade communication and Wheatley could prevent a dismissal of the case down the road should Shute and Stoller fail to show cause. Shute never met and conferred with Plaintiff to resolve any of the numerous procedural and substantive issues. Stoller as well, except inviting Plaintiff to submit an Illegal Memo of Disposition to pave her way to schedule and coordinate two illegal board meetings aiming to revoke Plaintiff's license. But when Plaintiff inquired further about the legality of her invitation and the two board meetings

and other issues, Stoller did not respond. In April 2023, Stoller requested Shute and Plaintiff to file with BORIM an optional second paper regarding Wheatley's Illegal Recommended Decision without proper legal authority and, at the same time, attempted to lead Shute and Plaintiff to participate in an illegal open board meeting to speak briefly at the meeting and attempted to schedule and coordinate a back-to-back illegal closed board meeting for BORIM board members, and possibly other BORIM officers, to attend, out of the presence of Shute and Plaintiff, and to vote, out of the presence of Shute and Plaintiff, regarding the revocation of Plaintiff's license.

801 CMR 1.03(10)(e): Dismissal for Failure to Prosecute. The Agency or the Presiding Officer may **order dismissal for failure to prosecute** in accordance with the provisions of 801 CMR 1.01(7)(g)2.

801 CMR 1.01(7)(g)(2): Failure to Prosecute or Defend. When the record discloses the **failure of a Party ... to respond to... correspondence...** a Party may move for an order requiring the Party to show cause why the claim **shall** not be dismissed for lack of prosecution. **If a Party fails to respond to such order within ten days, or a Party's response fails to establish such case, the Presiding Officer may dismiss the claim with or without prejudice.**

68. **Identity Fraud.** Wheatley satisfied all of the legal elements of identity fraud when filing with himself the Fraudulent Motion as Plaintiff to move himself to deny the Fraudulent Motion to reconsider the Illegal Recommended Decision, also issued by himself, in violation of M.G.L. c. 266 section 37E. Rooney, Stoller, and Shute also ratified the Fraudulent Motion and Fraudulent Order by acting upon them to work toward having BORIM board members to vote regarding Plaintiff's license.

M.G.L. c. 266 section 37E (Identity Fraud): (a) For purposes of this section, the following words shall have the following meanings:—

"Harass", willfully and maliciously engage in an act directed at a specific person or persons, which act seriously alarms or annoys such person or persons and would cause a reasonable person to suffer substantial emotional distress.

"Personal identifying information", any name or number that may be used, alone or in conjunction with any other information, to assume the identity of an individual, including any name, address, telephone number....

"Pose", to falsely represent oneself, directly or indirectly, as another person or persons.

(b) Whoever, with **intent to defraud, poses as another person without the express authorization of that person and uses such person's personal identifying information...to harass another** shall be guilty of **identity fraud** and shall be punished by a fine of not more than \$5,000 or imprisonment in a

house of correction for not more than two and one-half years, or by both such fine and imprisonment.

Wheatley filed the Fraudulent Motion and drafted the Fraudulent Order to deny the Fraudulent Motion with an intent to defraud Plaintiff and DALA's and BORIM's officers and employees, posed as Plaintiff without the express authorization of her and used her name to harass Plaintiff, aiming to destroy her medical practice and livelihood by appealing to authority and misleading BORIM to rely on his false motion, order, and ruling to take away her property, her license.

**69. False Public Statements.** Wheatley and Shute satisfied all of the legal elements of each of them writing a false report to BORIM in violation of M.G.L. c. 268 section 6A.

M.G.L. c. 268 section 6A (False written reports by public officers): Whoever, **being an officer or employee** of the commonwealth or of any political subdivision thereof or of any authority created by the general court, **in the course of his official duties executes, files or publishes any false written report, minutes or statement, knowing the same to be false** in a material matter, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or by both such fine and imprisonment.

Wheatley being an officer of DALA in the course of his official duty as a magistrate filed the Fraudulent Motion with DALA and himself, executed the Fraudulent Order, and published them to Plaintiff, DALA, and BORIM, knowing them to be false in a material matter, including, but not limited to, the following: He did not respond to Plaintiff's position that his use of the reciprocal discipline doctrine to evade a hearing was not supported by caselaw; he prematurely scheduled Shute to file a Grossly Deficient MSD before the start of discovery; he cured Shute's gross deficiency in her Grossly Deficient MSD; he erred in granting the Grossly Deficient MSD; he issued the Illegal Recommended Decision knowing DALA and BORIM had no jurisdiction over Plaintiff; Plaintiff was a pro se litigant; Wheatley did not discuss with Plaintiff about his intention to file the Fraudulent Motion and issued the Fraudulent Order to deny the Fraudulent Motion; Wheatley did not get Plaintiff's consent to file the Fraudulent Motion on her behalf or as her; Plaintiff could be subject to his appeal to authority as a magistrate and could cooperate with him, after the fact, to have filed a motion on her behalf or as her; DALA's and BORIM's officers and employees could be subject to his appeal to authority as a magistrate, accept the Fraudulent Motion and Fraudulent Order as proper legal documents, and/or act upon the documents to work toward revoking Plaintiff's license. Shute being an attorney of BORIM in the course of her official duty as a complaint counsel filed the Illegal Memo of Disposition with BORIM reporting

to BORIM board members incomplete law and facts recommending BORIM to revoke Plaintiff's license, aiming at illegally revoking Plaintiff's license while she knew the facts and/or as a participant of the facts stated immediately above in this paragraph of the FAC. As a result of Stoller's leadership providing an opportunity for Shute to file an Illegal Memo on Disposition as the final step for Stoller herself to schedule and coordinate an illegal closed board meeting and an illegal open board meeting aiming to revoke Plaintiff's license, Shute filed her Illegal Memo on Disposition with BORIM. By this time, Wheatley and Shute may not have even seen or read Plaintiff's medical work products (papers and MEs).

**70. Obstruction of Due Execution of Law.** In violation of M.G.L. c. 268 section 34, Wheatley, Rooney, Berg, Stoller, and Shute disguised themselves with intent to obstruct the due execution of law by violating, respectively, the statutes, regulations, and constitutional provisions cited and discussed in this FAC. They also, each working separately and working together, intimidated, hindered or interrupted each other, other people, and Plaintiff in the lawful performance of his/her duty and in the exercise of his/her rights. Plaintiff's duty includes, but not limited to, defending her medical work products (papers and MEs) and license (property) as a pro se litigant, conducting discovery, and preparing for a hearing. Plaintiff's rights include, but not limited to, having a fair and full hearing including discovery, a notice of hearing with a hearing date and a hearing location, accessing to her entire board file, and accessing to board meeting records concerning her and her license.

M.G.L. c. 268 section 34 (Disguises to obstruct execution of law, performance of duties, or exercise of rights): Whoever disguises himself with intent to **obstruct** the due execution of the law, or to **intimidate, hinder or interrupt** an officer or **other person in the lawful performance of his duty, or in the exercise of his rights** under the constitution or laws of the commonwealth, whether such intent is effected or not, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year and may if imprisoned also be bound to good behavior for one year after the expiration of such imprisonment.

**71. Unauthorized Practice of Medicine by Public Attorneys.** Wheatley and Shute were not licensed physicians. However, they opined that Plaintiff should have followed the Massachusetts medical standard of care in writing the MEs at issue in California. In the Illegal CA Admin Case, MBC retained a licensed physician to testify to what and how medical standard of care would be used under the facts at issue. BORIM and DALA did not retain a licensed physician to opine on such medical issues. By default, two attorneys opined on medical issues in

an attempt to practice medicine without a medical license in violation of M.G.L. c. 268 section 34. Also, they may not have even seen or read Plaintiff's medical work products (papers and MEs).

M.G.L. c. 268 section 34 (Unauthorized or unregistered practice of medicine; penalties): Whoever, not being lawfully authorized to practice medicine within the commonwealth...practices or **attempts to practice medicine** in any of its branches,... shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than one year, or both.

**72. Violation of Rules for Attorneys and Neutral Arbiters.** Wheatley, Rooney, Berg, Shute, and Stoller were and are licensed attorneys in Massachusetts and they violated the various rules of the Massachusetts Rules of Professional Conduct as briefly stated below in this paragraph. Wheatley prosecuted the Illegal MA Admin Case along with BORIM and Rooney ratified his work in violation of the principles of the Code of Judicial Conduct of fair, neutral, and impartial arbiters. Plaintiff notified Wheatley, Rooney, Berg, Shute, and Stoller and other attorneys, employees, officers, and/or board members at BORIM and DALA concerning these violations directly and/or indirectly. No one from DALA and BORIM contacted Plaintiff to properly resolve the violations.

1. Massachusetts Rules of Professional Conduct Rule 4.4(b): Respect for rights of third persons to notify senders of inadvertently sent electronic emails. Plaintiff inadvertently sent a private email to Magistrate Kenneth Bressler at DALA. He republished it to Rooney and Rooney republished it to Stoller without notifying Plaintiff immediately. Plaintiff asked all of them who else did they share and republish the private email to and they never responded.
2. Massachusetts Rules of Professional Conduct, Rule 1.1: Competence in legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
3. Massachusetts Rules of Professional Conduct, Rule 1.3: Represent a client zealously **within the bounds of the law.**
4. Massachusetts Rules of Professional Conduct, Rule 1.4(a)(5): A lawyer shall communicate with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
5. Massachusetts Rules of Professional Conduct, Rule 3.1: Meritorious Claims and Contentions. A lawyer **shall not** bring, continue, or defend a proceeding, or assert or

controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.

6. Massachusetts Rules of Professional Conduct, Rule 3.3(a): Candor toward the tribunal. A lawyer **shall not** knowingly: (1) **make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer**; (2) **fail to disclose to the tribunal legal authority** in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or (3) **offer evidence that the lawyer knows to be false**, except as provided in Rule 3.3(e). If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, **the lawyer shall take reasonable remedial measures**, including if necessary, disclosure to the tribunal.
7. Massachusetts Rules of Professional Conduct 3.4: Fairness to opposing party and counsel. A lawyer **shall not**: (a) **unlawfully obstruct** another party's access to evidence or unlawfully alter, destroy, or **conceal** a document or other material having potential evidentiary value, or **counsel or assist another** person to do any such act; (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law; (c) **knowingly disobey an obligation** under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; (d) in pretrial procedure, make a frivolous discovery request **or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party**; (e) in appearing before a tribunal on behalf of a client: (1) **state or allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence....** (2) **the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.**
8. Massachusetts Rules of Professional Conduct 3.5: Impartiality and decorum of the tribunal A lawyer **shall not**: (a) seek to influence a judge, juror, prospective juror **or other official by means prohibited by law**; (d) engage in conduct intended to disrupt a tribunal.
9. Massachusetts Rules of Professional Conduct Rule 8.4: Misconduct. **It is professional misconduct for a lawyer to**: (a) **violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another**; c) **engage in conduct involving dishonesty, fraud, deceit or misrepresentation**; (d) **engage in conduct that is prejudicial to the administration of justice**; (e) **state or imply an ability (1) to influence improperly a government agency or official or (2) to achieve results by means that violate the Rules of Professional Conduct or other law**; (f) **knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law**; (h) **engage in any other conduct that adversely reflects on his or her fitness to practice law.**



10. Massachusetts Rules of Professional Conduct Rule 4.1: Truthfulness in statements to others In the course of representing a client a lawyer **shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person** when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.
11. Massachusetts Rules of Professional Conduct Rule 4.4: Respect for rights of third persons. (a) In representing a client, a lawyer shall not (1) use means that have no substantial purpose other than to embarrass, **harass**, delay, or **burden** a third person.
12. Massachusetts Rules of Professional Conduct Rule 5.2: Responsibilities of a subordinate lawyer. Comment [2]... (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, **shall inform the Bar Counsel's office of the Board of Bar Overseers.** (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the Commission on Judicial Conduct. Comment [1] This Rule **requires** lawyers to report serious violations of ethical duty by lawyers and judges. Even an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.
13. Code of Judicial Conduct. DALA's website states, "Under DALA's current enabling legislation, its key role is to provide a **neutral** forum for **due process** hearings required by other agencies as prerequisites of final agency actions or to hear appeals of other agencies' decisions. DALA was **purposely established** as an independent agency, to help ensure that decisions would be rendered **free from the appearance of conflicts of interest or undue influence** by personnel within the agency whose decisions are under review." (Emphasis added. Please see the webpage at <https://www.mass.gov/service-details/about-the-division-of-administrative-law-appeals>.) Below are codes from the Code of Judicial Conduct. They may not be applicable to DALA's magistrates but one would expect a magistrate and a state court judge would possess similar traits as being neutral and fair.
14. Supreme Judicial Court Rule 3:09: Code of Judicial Conduct. Canon 2, Rule 2.2. Impartiality and fairness. A judge shall **uphold and apply the law**, and shall perform all duties of judicial office **fairly and impartially**. Comment [1] To ensure impartiality and fairness to all parties, a judge must be **objective** and **open-minded**. [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. [3] When applying and interpreting the law, a judge sometimes may make good faith errors of fact or law. Errors of this kind do not violate this Rule. **In the absence of fraud, corrupt motive, or clear indication that the judge's conduct was in bad faith** or otherwise violates this Code, it is not a violation for a judge to make findings of fact, reach legal conclusions, or apply the law as the judge understands it.

15. Supreme Judicial Court. Rule 3:09: Code of Judicial Conduct. Canon 2. Rule 2.6.

**Ensuring the right to be heard.** (A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, **the right to be heard** according to law. A judge may make reasonable efforts, consistent with the law, to facilitate the ability of all litigants, **including self-represented litigants, to be fairly heard.** (B) A judge may encourage parties and their lawyers to resolve matters in dispute and, in accordance with applicable law, may participate in settlement discussions in civil proceedings and plea discussions in criminal proceedings, but shall not act in a manner that **coerces any party into settlement or resolution of a proceeding.** Comment [1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. [1A] The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of **ensuring fairness and access to justice,** judges may make reasonable accommodations that **help self-represented litigants to understand the proceedings and applicable procedural requirements,** secure legal assistance, and be heard according to law. The judge should be careful that accommodations do not give self-represented litigants an **unfair advantage** or **create an appearance of judicial partiality.** In some circumstances, particular accommodations for self-represented litigants are required by decisional or other law. In other circumstances, potential accommodations are within the judge's discretion. By way of illustration, a judge may: (1) construe pleadings liberally; (2) provide brief information about the proceeding and evidentiary and foundational requirements; (3) **ask neutral questions to elicit or clarify information;** (4) modify the manner or order of taking evidence or hearing argument; (5) attempt to **make legal concepts understandable;** (6) **explain the basis for a ruling;** and (7) make referrals as appropriate to any resources available to assist the litigants. For civil cases involving self-represented litigants, the Judicial Guidelines for Civil Hearings Involving Self-represented Litigants (April 2006) provides useful guidance to judges seeking to exercise their discretion appropriately so as to ensure the right to be heard. [2] **A judge may encourage parties and their lawyers to resolve matters in dispute.** A judge's participation in settlement discussions in civil proceedings and plea discussions in criminal proceedings must be conducted in accordance with applicable law. Judicial participation may play an important role, but the judge should be careful that the judge's efforts do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation may have not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if these efforts are unsuccessful and the case remains with the judge. Other factors that a judge should consider when deciding upon an appropriate practice for a case include: (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge; (2) whether the parties and their counsel are relatively sophisticated in legal matters; (3) whether the case will be tried by the judge or a jury; (4) whether the parties participate with their counsel in the discussions; (5) **whether any parties are self-represented;** (6) whether the matter is civil or criminal; and (7) whether there is a history of physical or emotional violence or abuse between the parties. See Rule 2.9(A)(4).

**CAUSE OF ACTION NO. 2**  
**BREACH OF CONTRACT**

73. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

**Number One: BORIM Breached Its Promise to Stay the Administrative Proceeding**

74. In or around May 2022, Ms. Dye at BORIM and BORIM and Plaintiff entered into an agreement for BORIM to stay an administrative proceeding, possibly under BORIM Docket No. 21-0618. Ms. Dye was on the phone with Plaintiff to offer her that BORIM would stay the administrative proceeding against her and her license because BORIM had learned that Plaintiff filed court action(s) in California regarding the underlying case and that the underlying case was pending. Plaintiff accepted BORIM's offer and promise and thanked Ms. Dye on the phone for BORIM to stay the administrative proceeding against her and her license.

75. BORIM breached the promise on an unknown date in or around July 2022. Without Plaintiff's knowledge, BORIM lifted the stay and prosecuted Plaintiff and her license, possibly under a new case number assigned as BORIM Adjudicatory Case No. 2022-033. BORIM also breached the promise to Plaintiff by asking DALA to work on the administrative proceeding as the neutral arbiter between Plaintiff and BORIM. DALA agreed with BORIM and started to work on the administrative proceeding under DALA Docket No. RM-22-0421 and/or BORIM Adjudicatory Case No. 2022-033.

76. BORIM's breach of promise to Plaintiff to stay the administrative proceeding caused loss of income to Plaintiff and harm to her medical practice and livelihood for which BORIM and/or all defendants should pay. Unexpectedly and unlawfully, after the stay was secretly lifted, DALA and its magistrates took on multiple roles not solely as neutral arbiters but also as prosecutors against Plaintiff, her work products (papers and MEs), and her license. Together, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she

produced in the Illegal MA Admin Case and in this action shows she lost many hours from working on the California appeals and from practicing medicine to support her livelihood. Should BORIM revoke Plaintiff's license before the resolution of the California case(s) as the result of BORIM's breach of the agreement to stay, it would also be a direct result of BORIM not continuing to stay the administrative proceeding. Plaintiff would then be ostracized from her medical community and sustain additional harm, including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights. Plaintiff also asked to take the deposition of Ms. Dye regarding the lift and stay of the administrative proceeding. DALA and BORIM prevented discovery so Plaintiff could not depose Ms. Dye. On information and belief, Ms. Dye is no longer working for BORIM.

**Number Two: Shute Breached Her Promise to Discuss Discovery, Stipulations, Potential Resolutions, and the Merit of the Case with Plaintiff**

77. On or about October 6, 2022, Plaintiff emailed Shute offering an opportunity to discuss the Illegal MA Admin Case for about 30 minutes and stated, "As I will be representing myself, please advise me with whom I can speak regarding the procedural and merits of my case. I would like to have a 30-minute discussion in person as soon as possible. Thank you." On the same day, Shute replied in an email accepting Plaintiff's offer and stated, "During our yet-to-be scheduled pre-hearing conference, we will discuss discovery, stipulations, potential resolutions, and anticipated procedural steps with the yet-to-be assigned Magistrate. After the pre-hearing conference, I would be happy to discuss the same via telephone." (Attached herewith as **Exhibit O** is a true and correct copy of correspondence between Plaintiff and Shute dated October 6, 2022.)

78. BORIM and Shute breached their promise to discuss discovery, stipulations, potential resolutions, and the merit of the case with Plaintiff. Shute did not discuss the same with Plaintiff at the Pre-hearing Conference or thereafter upon Plaintiff further requests on multiple occasions. Shute also did not respond to all emails and two voicemails from Plaintiff to her regarding the merit of the case and procedural and substantial issues. Plaintiff also filed motions with Wheatley requesting Shute and Stoller at BORIM to show cause why both of them would not respond to Plaintiff's two phone calls and emails. On December 16, 2022, Shute further

breached her promise to communicate with Plaintiff when opposing Plaintiff's motions by stating on the top of Page 2 that, "[She] is not obligated to comply with requests from the [Plaintiff] until so ordered by DALA." (Attached herewith as **Exhibit R** is a true and correct copy of Petitioner's Objection to Respondent's Urgent Motion.) BORIM, Shute, DALA, and Wheatley ignored or denied Plaintiff's motions for communication and communication requests.

79. BORIM and Shute's breach of the promise to communicate with Plaintiff caused harm to Plaintiff for which Shute, BORIM, Wheatley, DALA, and/or all defendants should pay. The breach prevented Plaintiff from defending herself, her medical work products (papers and MEs), and her license (property) effectively and caused the following, including, but not limited to: Plaintiff's loss of effective defense, a regulatory pre-hearing conference, a fair and full hearing, discovery, board file, pertinent records, information about the lift and stay, and due process; Plaintiff's loss of time to work on the California appeal(s) regarding the underlying case; Plaintiff's loss of patients and income as a result of loss of time to practice medicine; and loss of due process to litigate the merit of the case regarding the legal elements of negligence as the defendants evaded the merit by feeding the case with various red herrings such as "reciprocal discipline," the premature Grossly Deficient MSD, Shute's false claim on no stay was placed on the case, etc. Plaintiff had no opportunity, not once, to discuss or to resolve outstanding and pertinent issues with the opposing counsel to mitigate both sides' damages and to promote judicial economy, like any respondent or defendant could meet and confer with an opposing party in a regular civil or criminal case to discuss and resolve issues. BORIM and Shute's breach required Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand BORIM's and/or DALA's violations. The large volume of work Plaintiff produced in the Illegal MA Admin Case and in this action shows Plaintiff lost many hours of work regarding the California appeal(s) and medical related work to support her livelihood over defending herself, her medical work products (papers and MEs), and her license (property) against Shute's refusal to communicate and to meet and confer. Should BORIM revoke Plaintiff's license as recommended by Shute, it would also be a direct result by BORIM and Shute's breach of the promise to meet and confer. Plaintiff would then be ostracized from her medical community and sustain additional harm, including, but not limited to, the following: losing patients permanently,

medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**Number Three: Wheatley Breached His Promise to Discuss a Litigation Plan for Both Parties at the Pre-Hearing Conference**

80. DALA and Wheatley's Notice of Pre-hearing Conference, as attached herewith as **Exhibit O**, advised Plaintiff and Shute to be prepared to discuss the following matters at the Pre-hearing Conference ("Litigation Plan"): a) the simplification or clarification of the issues; b) the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already on record or similar agreements which will avoid unnecessary proof; (c) the limitation of the number of witnesses so as to avoid cumulative evidence; (d) the possibility of agreement disposing of all or any of the issues in dispute; and (e) other matters including discovery and other motions. Plaintiff accepted the offer by emailing Wheatley and Shute the Proposed Agenda, as attached herewith as **No. 11 in Exhibit M**, and attending the Pre-hearing Conference. The Proposed Agenda addressed the matters stated in DALA and Wheatley's Notice of Pre-hearing.

81. At the Pre-hearing Conference, DALA and Wheatley breached the promise to discuss a neutral litigation plan for both parties. Setting up the Pre-hearing Conference was DALA and Wheatley's way to only discuss a game plan for itself, himself, and/or for BORIM, intending to place Plaintiff on a fast track for license revocation. There was no plan for her to have a full and fair hearing. Out of numerous outstanding and pertinent issues raised by Plaintiff at the conference and in her Proposed Agenda, DALA and Wheatley only granted BORIM to file a motion for summary decision prematurely so he and DALA could grant it prematurely and quickly so BORIM could revoke Plaintiff's license prematurely and quickly. Wheatley at DALA also cut the conference short even though the conference started half an hour late due to "technical issues." He allowed the conference to last just enough time for him to schedule a motion for summary decision for Shute to file and for Plaintiff to respond and avoided discussing a neutral litigation plan to provide Plaintiff with a full and fair hearing. He ended the conference by misleading Plaintiff to rely on his words that that he would schedule a continued pre-hearing conference to discuss a Litigation Plan for both parties but he and DALA never did upon Plaintiff's numerous requests.

82. DALA and Wheatley's breach of promise to discuss a Litigation Plan for both parties at the Pre-hearing Conference caused harm to Plaintiff for which Wheatley, Shute, Stoller, BORIM, DALA, and/or all defendants should pay. The breach prevented Plaintiff from defending herself, her medical work products (papers and MEs), and her license (property) effectively and caused the following, including, but not limited to: Plaintiff's loss of effective defense, a regulatory pre-hearing conference, a fair and full hearing, discovery, board file, pertinent records, information about the lift and stay, and due process; Plaintiff's loss of patients and income as a result of loss of time to practice medicine; and loss of time to litigate the merit of the case regarding the legal elements of negligence as the defendants evaded the merit by feeding the case with various red herrings such as "reciprocal discipline," the premature Grossly Deficient MSD, no stay was placed on the case, etc. Plaintiff had no opportunity, not once, to discuss or to resolve outstanding and pertinent issues with the opposing counsel to mitigate both sides' damages and to promote judicial economy, like any respondent or defendant could. DALA and Wheatley intentionally stayed out of facilitating Shute and Plaintiff to resolve legal issues by reneging on the promise to discuss a Litigation Plan at the Pre-hearing Conference and not fulfilling other duties as neutral arbiters. Eventually, Wheatley at DALA put his final touch in an order to identify material facts therein for Shute to cure her Grossly Deficient MSD, granted the Grossly Deficient MSD, and recommended BORIM to discipline Plaintiff. DALA and Wheatley's breach required Plaintiff to navigate a one-of-a-kind and uncharted path of a respondent due to no Litigation Plan having been put in place to model after discretionary and mandatory requirements set forth in statutes and regulations. Plaintiff then had to take an extraordinary amount of time away from working on her California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the defendants' violations and to write to them about their violations. The large volume of work Plaintiff produced in the Illegal MA Admin Case and in this action shows she lost many hours to work on the California appeal(s) in her medical practice to support her livelihood over defending herself, her medical work products (papers and MEs), and her license (property) against DALA's and Wheatley's refusal to discuss a Litigation Plan. Should BORIM revoke Plaintiff's license as recommended by Wheatley at DALA, it would be a direct result of DALA and Wheatley's breach of the promise to discuss a Litigation Plan. Plaintiff would then be ostracized from her medical community and sustain additional harm, including, but not limited to, the following: losing

patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**Number Four: Wheatley Breached His Promise to Schedule a Continued Pre-Hearing Conference**

83. At the Pre-hearing Conference, Wheatley at DALA cut the conference short even though the conference started half an hour late due to “technical issues.” He and DALA allowed the conference to last just enough time (about 25 minutes) for them to schedule a motion for summary decision Shute to file and for Plaintiff to respond and avoided discussing a neutral litigation plan for both parties. Before the conference, Chief Magistrate McGrath informed Plaintiff that the conference was scheduled for an hour. Wheatley and DALA ended the conference by misleading Plaintiff to rely on Wheatley’s words that he would schedule a continued pre-hearing conference to discuss a Litigation Plan for both parties.

84. DALA and Wheatley breached the promise to schedule a continued pre-hearing conference upon Plaintiff writing to Wheatley at DALA on numerous occasions asking Wheatley to schedule one. Wheatley did not schedule one.

85. DALA and Wheatley’s breach caused harm to Plaintiff for which Wheatley, DALA, and/or all defendants should pay. The breach prevented Plaintiff from defending herself, her medical work products (papers and MEs), and her license (property) effectively and caused the following, including, but not limited to: Plaintiff’s loss of effective defense, a regulatory pre-hearing conference, a fair and full hearing, discovery, board file, pertinent records, information about the lift and stay, and due process; Plaintiff’s loss of patients and income as a result of loss of time to practice medicine; and loss of time to litigate the merit of the case regarding the legal elements of negligence as the defendants evaded the merit by feeding the case with various red herrings such as “reciprocal discipline,” the premature Grossly Deficient MSD, no stay was placed on the case, etc. Plaintiff had no opportunity, not once, to discuss or to resolve outstanding and pertinent issues with the opposing counsel to mitigate both sides’ damages and to promote judicial economy, like any respondent or defendant could. DALA and Wheatley’s breach required Plaintiff to navigate a one-of-a-kind and uncharted path of a respondent due to no Litigation Plan having been put in place to model after discretionary and mandatory requirements set forth in statutes and regulations. Plaintiff then had to take an extraordinary



amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the defendants' violations and to write to them about their violations. The large volume of work Plaintiff produced in the Illegal MA Admin Case and in this action shows she lost many hours of work on the California appeal(s) and medical related work to support her livelihood. Should BORIM revoke Plaintiff's license as recommended by Wheatley, it would be a direct result of DALA and Wheatley's breach of the promise to schedule a continued pre-hearing conference to discuss a Litigation Plan. Plaintiff would then be ostracized from her medical community and sustain additional harm, including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**CAUSE OF ACTION NO. 3**  
**INJUNCTIVE AND DECLARATORY RELIEF**  
**PROMISSORY ESTOPPEL**

86. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

**Number One: BORIM Breached Its Promise to Stay the Administrative Proceeding**

87. BORIM and Ms. Dye at BORIM made a representation to Plaintiff intended to induce reliance on the part of Plaintiff regarding BORIM would stay its administrative proceeding, BORIM Docket No. 21-0618, BORIM Adjudicatory Case No. 2022-033, and/or DALA Docket No. RM-22-0421 during the pendency of her California appeal(s) and intended for Plaintiff to rely on the representation during the pendency of the California appeal(s).

88. Plaintiff thanked Ms. Dye at BORIM on the phone for BORIM staying an administrative proceeding against her and her license during the pendency of the California appeal(s) in reasonable reliance on BORIM's representation.

89. Detriment on Plaintiff was, is, and/or will be a consequence of BORIM lifting the stay without Plaintiff's knowledge. She lost time to work on the California appeal(s) and in her medical practice. Unexpectedly and unlawfully, after the stay was secretly lifted, DALA and its

magistrates took on multiple roles not solely as neutral arbiters but also prosecuted Plaintiff and her license. Together, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours from working on the California appeals and from practicing medicine to support her livelihood. Should BORIM revoke Plaintiff's license before the resolution of the California case(s) as the result of BORIM's breach of the agreement to stay, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights. Plaintiff also asked to take the deposition of Ms. Dye regarding the lift and stay of the administrative proceeding. DALA and BORIM prevented discovery so Plaintiff could not depose Ms. Dye. On information and belief, Ms. Dye is no longer working for BORIM.

**Number Two: Shute Breached Her Promise to Discuss Discovery, Stipulations, Potential Resolutions, and the Merit of the Case with Plaintiff**

90. On or about October 6, 2022, Shute at BORIM made a representation to Plaintiff intended to induce reliance on the part of Plaintiff that Shute would discuss with Plaintiff at the Pre-hearing Conference and thereafter on the phone regarding discovery, stipulations, potential resolutions, and the merit of the case and intended for Plaintiff to rely on her written statement.

91. Later, when objecting to Plaintiff's motion(s) to show cause why Shute would not respond to Plaintiff's emails and voicemails, Shute at BORIM confirmed that she had reneged her promise to communicate with Plaintiff by stating that she was not obligated to do so unless ordered by DALA. And DALA ignored such motions by Plaintiff and did not rule on having Shute and Stoller to show cause why each and both of them did not respond to Plaintiff's emails and voicemails. On multiple occasions, Plaintiff contacted Shute requesting communication in reasonable reliance on Shute's representation that she would discuss discovery, stipulations, potential resolutions, and the merit of the case with Plaintiff but Shute did not once respond to Plaintiff.

92. Detriment on Plaintiff was, is, and/or will be a consequence of BORIM and Shute's refusal to communicate with Plaintiff. Plaintiff lost income, time to work on the California appeal(s), and time to practice medicine. Under BORIM and Shute's unilateral decision to refuse communication, the parties had no opportunity to resolve any of the numerous procedural and substantial issues. This also paved the way for BORIM and DALA working together to highly prejudice Plaintiff's defense. Together, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and in her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours from working on the California appeals and from practicing medicine to support her livelihood. Should BORIM revoke Plaintiff's license as recommended by Shute and Wheatley, Plaintiff would then be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**Number Three: Wheatley Breached His Promise to Discuss a Litigation Plan for Both Parties at the Pre-Hearing Conference**

93. DALA and Wheatley made a representation to Plaintiff intended to induce reliance on the part of Plaintiff that they would discuss a Litigation Plan for both parties at the Pre-hearing Conference. They requested the parties to be prepared to discuss a variety of issues at the conference.

94. In reasonable reliance on DALA and Wheatley's representation, Plaintiff was prepared to discuss the variety of issues at the conference and emailed Wheatley, Shute, and Stoller a Proposed Agenda corresponding to the variety of issues.

95. Detriment on Plaintiff was, is, and/or will be a consequence of DALA and Wheatley's failure to discuss a Litigation Plan for Plaintiff. Plaintiff was made ineffective in her defense due to Wheatley only scheduled a motion for summary decision for BORIM to file but permanently ignored all triable and disputable material facts, issues which had not been litigated, and issues proposed by Plaintiff. Unexpectedly and unlawfully, DALA and its magistrates took on multiple roles not solely as neutral arbiters but also prosecuted Plaintiff and her license. Together,

BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours from working on the California appeals and from practicing medicine to support her livelihood. Should BORIM revoke Plaintiff's license as recommended by DALA and Wheatley, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**Number Four: Wheatley Breached His Promise to Schedule a Continued Pre-Hearing Conference**

96. DALA and Wheatley made a representation to Plaintiff intended to induce reliance on the part of Plaintiff that they would schedule a continued pre-hearing conference to discuss a Litigation Plan for both parties. They requested the parties to be prepared to discuss a variety of issues at the conference but, at the Pre-hearing Conference on November 15, 2022, there was no opportunity for Plaintiff to discuss various issues and the procedural and substantive issues stated in her Proposed Agenda.

97. In reasonable reliance on DALA and Wheatley's representation, Plaintiff contacted DALA and Wheatley after and on the same day of the Pre-hearing Conference and subsequently on multiple occasions but DALA and Wheatley never scheduled a continued pre-hearing conference. (Attached herewith as **Exhibit O** is a true and correct copy of an email dated November 15, 2022 from Plaintiff to Wheatley, Stoller, and Shute following up on having Wheatley schedule a continued pre-hearing conference.)

98. Detriment on Plaintiff was, is, and/or will be a consequence of DALA and Wheatley's refusal to schedule a continued pre-hearing conference to discuss a Litigation Plan for Plaintiff. Plaintiff was made ineffective in her defense due to Wheatley only scheduled a motion for summary decision for BORIM to file but permanently ignored all triable and disputable material facts, issues which had not been litigated, and issues proposed by Plaintiff. Unexpectedly and unlawfully, DALA and its magistrates took on multiple roles not solely as neutral arbiters but

also prosecuted Plaintiff and her license. Together, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours from working on the California appeals and from practicing medicine to support her livelihood. Should BORIM revoke Plaintiff's license as recommended by DALA and Wheatley, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**CAUSE OF ACTION NO. 4**  
**INJUNCTIVE AND DECLARATORY RELIEF**  
**EQUITABLE ESTOPPEL**

99. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

**Number One: BORIM Breached Its Promise to Stay the Administrative Proceeding**

100. BORIM made a statement to stay an administrative proceeding, BORIM Docket No. 21-0618, BORIM Adjudicatory Case No. 2022-033, and/or DALA Docket No. RM-22-0421 and intended for Plaintiff to rely on the statement.

101. Plaintiff relied on the statement when and after thanking Ms. Dye at BORIM on the phone for BORIM's promise to stay an administrative proceeding against her and her license due to Plaintiff's pending California appeal(s) of the underlying case.

102. Plaintiff's reliance on the statement was reasonable because Ms. Dye was a public employee or officer representing the government to promote justice and fairness and to protect citizens, Plaintiff gave good will to the government and public officers to uphold their representation, Ms. Dye found out about Plaintiff's appealing MBC's decision and/or the MBC

underlying case to a California court, and Plaintiff indeed appealed MBC's decision and/or the underlying MBC case to a California state court.

103. Because BORIM lifted the stay later, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours of work in her California appeal(s) and in her medical practice to her disadvantage. Should BORIM revoke Plaintiff's license before the resolution of the California case(s) as the result of BORIM's breach of the agreement to stay, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights. Plaintiff also asked to take the deposition of Ms. Dye regarding the lift and stay of the administrative proceeding. DALA and BORIM prevented discovery so Plaintiff could not depose Ms. Dye. On information and belief, Ms. Dye is no longer working for BORIM.

**Number Two: Shute Breached Her Promise to Discuss Discovery, Stipulations, Potential Resolutions, and the Merit of the Case with Plaintiff**

104. On or about October 6, 2022, Shute at BORIM made a statement to talk to Plaintiff at the Pre-hearing Conference and on the phone to discuss discovery, stipulations, potential resolutions, and the merit of the case and intended for Plaintiff to rely on the statement.

105. Plaintiff relied on the statement by contacting Shute for communication on the phone and in writing.

106. Plaintiff's reliance on the statement was reasonable because Shute was a public officer representing the government to promote justice and fairness and to protect citizens, Plaintiff gave good will to the government and public officers to uphold the law and their representation, Shute confirmed her intention in writing to discuss various case issues with Plaintiff, and that there were numerous violations of BORIM in prosecuting the case justifying the resolution of them, or at least some of them, to promote justice and administrative judicial economy.

107. Because BORIM and Shute refused to communicate to Plaintiff, Plaintiff was unable to meet and confer with Shute at BORIM at all. Plaintiff was highly prejudiced and made ineffective by Shute to defend herself, her medical work products (papers and MEs), and her license (property). As a result of no reasonable communication between the parties, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours of work in her California appeal(s) and in her medical practice to her disadvantage. Should BORIM revoke Plaintiff's license as recommended by Shute, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**Number Three: Wheatley Breached His Promise to Discuss a Litigation Plan for Both Parties at the Pre-Hearing Conference**

108. DALA and Wheatley issued the Notice of Pre-hearing Conference listing various issues to be discussed at the November 15, 2022 Pre-hearing Conference. The notice also requested the parties to be prepared to discuss the various issues. They intended for Plaintiff to rely on the content of the notice.

109. Plaintiff relied on the content of the Notice of Pre-hearing Conference by preparing to discuss the various issues, attending the conference on November 15, 2022, and emailing Wheatley, Shute, and Stoller a Proposed Agenda before the conference to bring up and address various issues as categorized in the notice.

110. Plaintiff's reliance on the statement was reasonable because Wheatley was a public officer representing the government to promote justice and fairness and to protect citizens, Plaintiff gave good will to the government and public officers to uphold their representation, and there were numerous issues rendering BORIM and Shute's prosecution of Plaintiff and her license in violation of the law and resolving them or, at least, some of them would promote justice and administrative judicial economy.

111. Because DALA and Wheatley refused to set up a Litigation Plan for both parties to have a full and fair hearing, Plaintiff was highly prejudiced and made ineffective to defend herself, her medical work products (papers and MEs), and her license (property). As a result of not having a reasonable Litigation Plan, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours of work in her California appeal(s) and in her medical practice to her disadvantage. Should BORIM revoke Plaintiff's license as recommended by DALA and Wheatley, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**Number Four: Wheatley Breached His Promise to Schedule a Continued Pre-Hearing Conference**

112. Wheatley at DALA made statement(s) to schedule a continued pre-hearing conference and he intended for Plaintiff to rely on the statement(s).

113. Plaintiff relied on the statement(s) to request Wheatley to schedule a continued pre-hearing conference on multiple occasions. DALA and Wheatley ignored Plaintiff's requests.

114. Plaintiff's reliance on the statement(s) was reasonable because Wheatley was a public officer representing the government to promote justice and fairness and to protect citizens, Plaintiff gave good will to the government and public officers to uphold their representation, and there were numerous issues rendering BORIM and Shute's prosecution in violation of the law so resolving them or, at least, some of them would be reasonable to promote justice and administrative judicial economy.

115. Because DALA and Wheatley refused to schedule a continued pre-hearing conference, Plaintiff was highly prejudiced and made ineffective to defend herself, her medical work products (papers and MEs), and her license (property). As a result of not having a continued pre-hearing conference to discuss a Litigation Plan for both parties, BORIM and DALA prosecuted Plaintiff and her license in violation of numerous statutes and regulations as



evident in this pleading, requiring Plaintiff to take an extraordinary amount of time away from working on the California appeal(s) and from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours of work in her California appeal(s) and in her medical practice to her disadvantage. Should BORIM revoke Plaintiff's license as recommended by DALA and Wheatley, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**CAUSE OF ACTION NO. 5**  
**INTENTIONAL MISREPRESENTATION**

116. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

117. The following false statements were made to Plaintiff: 1) BORIM stated it had jurisdiction over Plaintiff and her license under an administrative proceeding; 2) DALA and Wheatley stated the word "pre-hearing" on the Notice of Pre-hearing Conference and the notice advised Plaintiff to be prepared to discuss the items listed therein at the Pre-hearing Conference; 3) on November 14, 2022, Wheatley advised Plaintiff that witnesses could testify at an evidentiary hearing; 4) at the Pre-hearing Conference, Shute stated twice that there was no hold on BORIM's administrative case against Plaintiff and her license; 5) at the Pre-hearing Conference, Wheatley told Plaintiff that he could or would schedule a continued pre-hearing conference; 6) Wheatley told Plaintiff he could facilitate in getting information needed by Plaintiff for her to respond to BORIM's motion for summary decision; 7) Stoller invited Plaintiff to file an Illegal Memo on Disposition with BORIM regarding the Illegal Recommended Decision issued by Wheatley; and 8) on July 18, 2022, BORIM wrote to Plaintiff informing her that Stoller at BORIM would notify Plaintiff when the matter had been scheduled for consideration by BORIM.

118. The false statements listed in the order immediately above were and are of important concern to Plaintiff's decisions as follows: 1) BORIM stated it had jurisdiction over Plaintiff and her license under an administrative proceeding so Plaintiff relied on BORIM to have taken necessary legal steps to ensure that it truly had jurisdiction over her and her license and would afford her with due process so she was getting herself ready to defend herself, her medical work products (papers and MEds), and her license (property) as a pro se litigant; 2) Based on the title, "Notice of Pre-hearing," Plaintiff relied on it for BORIM and DALA to provide her with a regulatory pre-hearing conference, a full and fair hearing, and due process. The notice advised Plaintiff to be prepared to discuss the items listed therein so Plaintiff relied on the advice by emailing Wheatley and Shute a detailed Proposed Agenda clarifying numerous procedural and substantive issues, anticipating to work up the case for a full and fair hearing, and was prepared to discuss various issues at the Pre-hearing Conference; 3) It was important to Plaintiff for her to put witnesses of her choice on the stand at a hearing to present facts and Wheatley confirmed that by advising Plaintiff on November 14, 2022 that witnesses could testify at an evidentiary hearing; 4) at the Pre-hearing Conference, Shute stated twice that there was no hold on BORIM's administrative case against Plaintiff and her license so Plaintiff went along with BORIM and DALA and their position that there was no stay on the case at the conference and watched them scheduling BORIM's motion for summary decision prematurely to her detriment. After the conference and on the same day, Plaintiff offered Wheatley and Shute evidence to show that the case was indeed stayed. (Attached herewith as **Exhibit O** is a true and correct copy of an email dated November 15, 2022 from Plaintiff to Wheatley, Stoller, and Shute providing proof that BORIM did stay the case.) By then, Wheatley and Shute ignored Plaintiff and continued to assert jurisdiction over her, her medical work products, and her license and aggressively prosecuted the case illegally on a fast track to a point where DALA could accomplish issuing a formal recommendation to BORIM for BORIM board members to vote to revoke Plaintiff's license; 5) at the Pre-hearing Conference, Wheatley told Plaintiff that he could or would schedule a continued pre-hearing conference after insisting on cutting the Pre-hearing Conference short in half so Plaintiff contacted him to schedule a continued pre-hearing conference on multiple occasions; 6) Wheatley told Plaintiff he could facilitate in getting information Plaintiff needed for her to respond to BORIM's motion for summary decision so, on multiple occasions, when Plaintiff filed motions with and requested Wheatley to facilitate to get

missing records and documents and for Shute to identify material facts in the motion, Wheatley would not, in order to weaken her defense; 7) Stoller invited Plaintiff to file a memorandum on disposition with BORIM regarding the Illegal Recommended Decision issued by Wheatley and informed Plaintiff that she was working on setting up an open meeting for Plaintiff and Shute to present briefly and a closed meeting for BORIM's board members and leaders to vote on whether to revoke the license without Shute's, the Public's, and Plaintiff's presence. At first, Plaintiff believed Stoller's representations may have been supported by legal authority. Later, Stoller provided legal authority upon Plaintiff's request, but to Plaintiff's surprise, the legal authority did not support Stoller's representations. To the contrary, the legal authority Stoller provided prohibited her from planning for the meetings. Stoller devised the plan for Plaintiff to file an Illegal Memo of Disposition in support of her own public scam to set up an illegal open meeting and an illegal closed meeting and to mislead Shute, Plaintiff, and BORIM's board members and leaders to participate in illegal activities aiming to revoke Plaintiff's license without a prior full and fair hearing; and 8) it was important for Plaintiff to know whether BORIM had scheduled the MA Illegal Admin Case for consideration because board meetings may have been scheduled by Stoller under Open Meeting Law for Plaintiff's attendance and participation concerning the following, including, but not limited to: Plaintiff's medical work products (papers and MEs), Plaintiff's license, the stay, and a lift of the stay.

119. 1) When BORIM made the false statement about having jurisdiction over Plaintiff and her license, it knew the statement was false or recklessly disregarded the statement's falsity. At the time, BORIM did not have a valid complaint, a victim, a reasonable investigation into facts, and a legal board meeting about lifting the stay which would warrant an invitation to Plaintiff and a victim for them to attend and speak; 2) When DALA and/or Wheatley made the false statements, they knew the statements were false or recklessly disregarded the statements' falsity. When issuing the Notice of Pre-hearing Conference, Wheatley knew that the content of the notice was false or recklessly disregarded the content's falsity. Wheatley deleted the words, "if the case is to be heard," when quoting 801 CMR 1.01(10)(a). So from the beginning of the case, DALA and Wheatley did not intend for Plaintiff to have a hearing and for Plaintiff to address the issues listed in the notice. Nevertheless, they misled her to think she would have a hearing and a discovery stage because Wheatley also added discovery language in the notice when quoting the regulation to advise the parties that they should be prepared to discuss

“discovery and other motions.” 3) When Wheatley advised Plaintiff that witnesses could testify at an evidentiary hearing on November 14, 2022, he knew that his statement was false or recklessly disregarded the statement’s falsity because of the following, including, but not limited to: he prevented the discussion of a Litigation Plan, including witness issues, the next day at the Pre-hearing Conference, scheduled BORIM’s motion for summary decision the next day intending to grant it to do away with a trial even there were anticipated disputed material facts, cut the Pre-hearing Conference short, and reneged on his promise to schedule a continued pre-hearing conference; 4) When BORIM and/or Shute made the false statements regarding there was no hold on the case, BORIM and/or Shute knew that the statements were false or recklessly disregarded the statement’s falsity. Plaintiff offered ample opportunity for Shute to retract the statements but Shute rejected the offer and never corrected her statements even though Plaintiff provided her with evidence that BORIM did put a hold on or stay the case right after the Pre-hearing Conference; 5) at least, at the Pre-hearing Conference, Wheatley told Plaintiff that he would schedule a continued pre-hearing conference, he knew his promise to schedule a continued pre-hearing conference was false or recklessly disregarded the promise’s falsity because he ignored Plaintiff’s immediate request for scheduling a continued pre-hearing on the same day and on many other occasions; 6) At the Pre-hearing Conference, when Wheatley told Plaintiff he could facilitate in getting information needed by Plaintiff for her to respond to BORIM’s motion for summary decision, he knew his statement was false or recklessly disregarded his statement’s falsity because when Plaintiff requested records and documents and needed Shute to cure her Grossly Deficient MSD by identifying BORIM’s material facts in order for Plaintiff to respond to the motion and needed BORIM to provide Plaintiff with her entire board file and discovery responses and documents, Wheatley did not and refused to facilitate; 7) When BORIM and/or Stoller wrote to Plaintiff inviting her to file an Illegal Memo of Disposition and informing her of the two board meetings, they knew the invitation and the meetings were illegal and of a false pretense aiming at revoking Plaintiff’s license without a full and fair hearing or recklessly disregarded the falsity of the invitation, the advice of the meetings, and/or Stoller’s statements concerning them. Plaintiff requested Stoller to provide information concerning the three invitations and other related matters. She responded once and her response was primarily not on point but actually revealed that the legal authority she cited would prohibit her and BORIM from inviting people to attend the two illegal board meetings. Plaintiff wrote to

her again requesting information to address the illegal board meeting issues and other issues but Stoller did not respond a second time; 8) When BORIM wrote to Plaintiff on July 18, 2022 informing her that Stoller at BORIM would notify Plaintiff when the matter had been scheduled for consideration by BORIM, it knew that it was false or recklessly disregarded the statement's falsity. Plaintiff never heard from Stoller about the matter.

120. DALA, Wheatley, Rooney, DALA's other officer(s) and/or employee(s), BORIM, Shute, Stoller, and/or BORIM's other officer(s) and/or employee(s) intended Plaintiff to rely on each of their own false statements in making her decisions.

121. Plaintiff reasonably relied on each and all of DALA's, Wheatley's, Rooney's, DALA's other officer(s) and/or employee(s), BORIM's, Shute's, Stoller's, and/or BORIM's other officer(s) and/or employee(s)' false statements for a period of varying time.

122. By relying on each and/or all of DALA's, Wheatley's, BORIM's, Shute's, and Stoller's false statements, Plaintiff suffered, suffers, and/or will suffer from loss of an effective defense on the Illegal MA Admin Case, loss of a full and fair hearing including discovery, loss of time to work on the California appeal(s), loss of time in her medical practice to support her livelihood. Should BORIM revoke Plaintiff's license as recommended by DALA, Wheatley, and Shute, Plaintiff would be ostracized from her medical community and sustain additional harm including, but not limited to, the following: losing patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and numerous statutory, regulatory, and constitutional rights.

**CAUSE OF ACTION NO. 6**  
**INFRINGEMENT OF FREE SPEECH**

123. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

124. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers, negligently, deliberate indifferently, intentionally, fraudulently, and/or maliciously, denied/deny/denies,

suppressed/suppress/suppresses, and/or censored/censor/censors Plaintiff's medical work products, the MEs at issue, the pre-hearing conference attendance, and who could be witnesses at an evidentiary hearing, retaliated against Plaintiff for writing the MEs, participated in a process to revoke or not to revoke the license, recommended the revocation of Plaintiff's license, and/or deprived Plaintiff of the following, including, but not limited to: a regulatory pre-hearing conference for public attendance and to address issues stated in Plaintiff's Proposed Agenda, good faith meet and confer effort to resolve issues, a notice of hearing, a full and fair hearing, discovery, and/or pertinent information and documents in the Illegal MA Admin Case.

125. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers each was acting or purporting to act in the performance of his or her official duties.

126. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts, stated in this cause of action, in this FAC, and to be discovered in the above-captioned action, deprived, deprive(s), and/or will deprive Plaintiff's right to free speech in writing MEs and/or the MEs at issue and violated and/or continue to violate the following, including, but not limited to: M.G. L. c. 265 section 27, Article LXXVII of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, 42 United States Code section 1983, and the First Amendment Free Speech Clause of the United States Constitution.

127. Plaintiff was, is, and/or will be harmed.

128. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts in denying, suppressing, and/or censoring Plaintiff's medical work products, MEs, and free speech and the pre-hearing conference attendance, in retaliating against Plaintiff for writing the MEs, in recommending the revocation of her license, in participating in a process to revoke or not to revoke the license, and/or in depriving Plaintiff of, including, but not limited to, a regulatory pre-hearing conference, good faith meet and confer effort to resolve issues, a notice of hearing, a full and fair hearing, discovery, and/or pertinent information and documents for her defense in the Illegal MA Admin Case were, are, and/or will be a substantial factor in causing Plaintiff's harm.

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**CAUSE OF ACTION NO. 7**  
**VIOLATION OF EQUAL PROTECTION**

129. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

130. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers, negligently, deliberate indifferently, intentionally, fraudulently, and/or maliciously, singled and/or single(s) Plaintiff out from all other Massachusetts ME writing doctors for prosecution and deprived, deprive(s), and/or will deprive Plaintiff of, including, but not limited to, an opportunity to be in contact with a school doctor under the Massachusetts medical exemption law ("MA ME law"), an opportunity for the department of public health to review and decide on opinions regarding the MEs at issue, a notice of hearing, a full and fair hearing, discovery, and/or pertinent information and documents for her defense in the Illegal MA Admin Case. Plaintiff has not written one ME in Massachusetts for a Massachusetts resident. Also, on DALA's information and belief, Plaintiff was the first doctor whom Rooney at DALA knew of whose MEs were being made the subject for prosecution in the history of DALA. BORIM did not answer Plaintiff's question on whether BORIM had prosecuted MEs cases in its history before prosecuting Plaintiff. BORIM also evaded Plaintiff's question as to how she should issue MEs in Massachusetts going forward. Wheatley and Shute made medical opinions concerning how the California MEs at issue should have been written under the MA ME law but they did not extend the protection of the same law to Plaintiff. Under the MA ME law, M.G.L. c. 76 section 15, a child's physician can write an ME opining that "the physical condition of the child is such that his health would be endangered by such vaccination or by any of such immunizations." If the child's school physician does not "agree with the opinion of the child's physician, the matter shall be referred to the department of public health, whose decision will be final." This MA ME law applies to all MA ME issuing doctors except Plaintiff in violation of the equal protection law. No school doctor contacted Plaintiff and there was no referral to the department of public health to render a final decision short of assigning BORIM the task to prosecute Plaintiff right away without first resolving any

different medical opinions in good faith by the department of public health under the MA ME law. No school doctor, parent, and public health department was involved as mandated by the MA ME law. What we have here so far are only licensed attorneys from BORIM and DALA prosecuting and persecuting Plaintiff. On the face of the MA ME law, the law protects MA ME issuing doctors' opinions from being censored and punished right away without a good faith dialog or evaluation of her opinions and does not scare doctors away from writing MEs so children's health issues could be appropriately advocated by doctors without the fear of losing medical license and livelihood. The defendants prevented Plaintiff from being protected under this law. Also, differing from California, the MA ME law also spells out that parents can submit religious exemptions to schools without the need to obtain an ME. This could reduce the need for Massachusetts doctors to write MEs.

131. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers each was and/or is acting or purporting to act in the performance of his or her official duties.

132. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts, stated in this cause of action and/or in this FAC and to be discovered in the above-captioned action, denied, deny/denies, and/or will deny equal protection of the laws to Plaintiff within the jurisdiction of the state of Massachusetts and violated and/or continue to violate the following legal authority, including, but not limited to: M.G.L. c. 76 section 15, M.G.L. c. 265 section 27, Massachusetts Declaration of Rights Article XII, 42 United States Code section 1983, and the Fourteenth Amendment Equal Protection Clause of the United States Constitution. The relevant provision of Massachusetts Declaration of Rights Article XII states, "And no subject shall be...put out of the protection of the law." M.G.L. c. 76 section 15 states as follows:

No child shall, except as hereinafter provided, be admitted to school except upon presentation of a physician's certificate that the child has been successfully immunized against diphtheria, pertussis, tetanus, measles and poliomyelitis and such other communicable diseases as may be specified from time to time by the department of public health.

A child shall be admitted to school upon certification by a physician that he has personally examined such child and that in his opinion the physical condition of the child is such that his health would be endangered by such vaccination or by any of such immunizations. Such certification shall be submitted at the beginning of each school year to the physician in charge of the school health program. **If the**



**physician in charge of the school health program does not agree with the opinion of the child's physician, the matter shall be referred to the department of public health, whose decision will be final.**

In the absence of an emergency or epidemic of disease declared by the department of public health, no child whose parent or guardian states in writing that vaccination or immunization conflicts with his sincere religious beliefs shall be required to present said physician's certificate in order to be admitted to school.

133. Plaintiff was, is, and/or will be harmed.

134. DALA's, Wheatley's, Rooney's, DALA's other officer(s) and/or employee(s)', BORIM's, Berg's, Shute's, Stoller's, and/or BORIM's other officer(s) and/or employee(s)' conduct(s) and each of their conducts in denying Plaintiff equal protection the laws within the jurisdiction of the state of Massachusetts, singling Plaintiff out from all other MA ME issuing doctors for prosecution, having attorneys as non-medical experts to opine on medical standard of care issues, denying an opportunity to be in contact with a school doctor under the MA ME law, denying an opportunity for the department of public health to review and decide on opinions regarding the MEs at issue and depriving Plaintiff of, including, but not limited to, a regulatory pre-hearing conference, good faith meet and confer effort to resolve issues, a notice of hearing, a full and fair hearing, discovery, and/or pertinent information and documents for her defense in the Illegal MA Admin Case are a substantial factor in causing Plaintiff's harm.

**CAUSE OF ACTION NO. 8**  
**UNUSUAL PUNISHMENT**

135. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

136. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers, negligently, deliberate indifferently, intentionally, fraudulently, and/or maliciously, inflict(ed) unusual punishment on Plaintiff, offered Plaintiff to resign her license to practice medicine in Massachusetts without good faith investigation and the existence of a proper complaint, a victim, an injury/harm caused by Plaintiff, and a medical-based public health reason, subjected Plaintiff to illegal administrative proceedings, conceal(ed) from Plaintiff public meetings and information discussed therein about

her, obstruct(ed) Plaintiff's defense, decided and/or recommended to revoke Plaintiff's license without requiring the accuser to meet the burden of proof to prove any and all legal elements of a cause of action, and deprive(d) Plaintiff of the following, including, but not limited to: a regulatory pre-hearing conference, good faith meet and confer effort to resolve issues, a notice of hearing, a full and fair hearing, discovery, and/or pertinent information and documents for defense.

137. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers each was and is acting or purporting to act in the performance of his or her official duties.

138. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts, stated in this cause of action and/or in this FAC and to be discovered in the above-captioned action, inflict(ed) unusual punishment on Plaintiff and violated and/or continue to violate the following, including, but not limited to: M.G. L. c. 265 section 27, Article XXVI of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, 42 United States Code section 1983, and the Eighth Amendment Unusual Punishment Prohibition Clause of the United States Constitution. The eighth amendment of the U.S. Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Article XXVI of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts states, "No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments."

139. Plaintiff was, is, and/or will be harmed.

140. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts stated in this cause of action and/or in this FAC were, are, and/or will be a substantial factor in causing Plaintiff's harm.

**CAUSE OF ACTION NO. 9**  
**VIOLATION OF PROCEDURAL DUE PROCESS**

141. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause

of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

142. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers, negligently, deliberate indifferently, intentionally, fraudulently, and/or maliciously, deprive(d) Plaintiff of procedural due process, deprived Plaintiff of a regulatory pre-hearing conference opened to the public without hinderance, deprive(d) Plaintiff of a hearing before formally deciding that Plaintiff should not have the liberty to write the MEs at issue, to produce medical work products regarding the MEs at issue, and to practice medicine, that Plaintiff's property, the license, should be taken without compensation, and that Plaintiff should resign her license to practice medicine in Massachusetts without good faith investigation and the existence of a proper complaint, a victim, an injury/harm caused by Plaintiff, and a medical-based public health reason, subject(ed) Plaintiff to illegal administrative proceedings, prosecute(d) Plaintiff without a complaint and a statement of allegations describing fully and plainly, substantially and formally, a violation of law, regulations, or good and accepted medical practice or a conduct which placed into question Plaintiff's competence to practice medicine, deprive(d) Plaintiff's right to meet witnesses against her face to face, deprive(d) Plaintiff's right to be fully heard in her defense by herself, reject(ed) all proofs produced by Plaintiff which were favorable to her, conceal(ed) from Plaintiff public meetings and information discussed therein about her, obstruct(ed) Plaintiff's defense, decide(d) and/or recommended to revoke Plaintiff's license without requiring the accuser to meet the burden of proof to prove any and all legal elements of a cause of action, and deprive(d) Plaintiff of the following, including, but not limited to: a regulatory pre-hearing conference, good faith meet and confer effort to resolve issues, a notice of hearing, a full and fair hearing, discovery, and/or pertinent information and documents for defense. DALA and Wheatley also denied and/or ignored all of Plaintiff's motions, including, but not limited to the following: motion to compel BORIM to release Plaintiff's entire board file; motion to dismiss for lack of subject matter jurisdiction; motion to quash BORIM's motion for summary decision as the MSD was grossly deficient without stating which facts were material facts to BORIM; motion to take depositions by Plaintiff; motion to strike insufficient and scandalous allegations; motion to dismiss for failure to state a claim; motion to dismiss for pendency of prior and related action;

motion to stay proceedings; motion to show cause why BORIM failed to communicate; and motion to show cause why BORIM breached its promise to stay proceeding(s).

143. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers each was or is acting or purporting to act in the performance of his or her official duties.

144. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts, stated in this cause of action and/or in this FAC and to be discovered in the above-captioned action, deprive(d) Plaintiff of procedural due process and violated and/or continue to violate the following, including, but not limited to: M.G. L. c. 265 section 27, Article XII of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, 42 United States Code section 1983, and the Fifth Amendment Due Process Clause and the Fourteenth Amendment Section 1 Due Process Clause of the United States Constitution. Massachusetts Declaration of Rights Article XII states with emphasis as follows:

**No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his council at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.**

The relevant part of the Fifth Amendment of the U.S. Constitution states, "[N]or [shall any person] be deprived of life, liberty, or property, without due process of law." The relevant provision of the Fourteenth Amendment Section 1 states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

145. Plaintiff was, is, and/or will be harmed.

146. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts stated in this cause of action and/or in this FAC are, were, and/or will be a substantial factor in causing Plaintiff's harm.

**CAUSE OF ACTION NO. 10**  
**VIOLATION OF SUBSTANTIVE DUE PROCESS**

147. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

148. Without a law/standard of care on point to address whether the MEs at issue were written properly, without a proper application of a law/standard of care, without a legitimate state interest rationally related to a law/standard of care relied on by the defendants, without an important state interest substantially related to a law/standard of care relied on by the defendants, and/or without a narrowly tailored law/standard of care relied on by the defendants necessary to achieve a compelling state interest, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers, negligently, deliberate indifferently, intentionally, fraudulently, and/or maliciously, decided and/or will decide to deprive Plaintiff of the following, including, but not limited to: liberty to defend self against state prosecution free from state government obstruction of the due execution of law and justice, liberty to write statutorily complied MEs and/or MEs under independent professional medical judgment, liberty to practice medicine, Plaintiff's medical work products (papers and MEs), property (Plaintiff's license), papers (Plaintiff's entire board file, open meeting records, public records law records, and/or discovery documents), liberty to pursue and obtain Plaintiff's entire board file, open meeting records, public records law records, and/or discovery documents, substantive due process for defense, free speech to write MEs (at issue), equal protection of the laws, unusual punishment prohibition, and/or procedural due process (having a regulatory pre-hearing conference, good faith meet and confer effort to resolve issues, a notice of hearing, a full and fair hearing, discovery, and/or pertinent information and document for defense).

149. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers each was and is acting or purporting to act in the performance of his or her official duties.

150. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts, stated in this cause

of action and/or in this FAC and to be discovered in the above-captioned action, deprive(d) Plaintiff of substantive due process and violated and/or continue to violate the following, including, but not limited to: M.G. L. c. 265 section 27, Article XII of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, 42 United States Code section 1983, and the Fifth Amendment and Fourteenth Amendment Section 1 Due Process Clause of the United States Constitution. The relevant provision of the Massachusetts Declaration of Rights Article XII states, "No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him." The relevant part of the Fifth Amendment of the U.S. Constitution states, "[N]or [shall any person] be deprived of life, liberty, or property, without due process of law." The relevant provision of the Fourteenth Amendment Section 1 states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

151. Plaintiff was, is, and/or will be harmed.

152. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts stated in this cause of action and/or in this FAC are, were, and/or will be a substantial factor in causing Plaintiff's harm.

**CAUSE OF ACTION NO. 11  
TAKING FOR PUBLIC USE WITHOUT JUST COMPENSATION**

153. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

154. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers, negligently, deliberate indifferently, intentionally, fraudulently, and/or maliciously, decided or will decide to take Plaintiff's property, her Massachusetts medical license, by recommending BORIM to revoke the license. One of Wheatley's, Shute's, and/or the other defendant's reasons and/or decision to take Plaintiff's private property, her MA license, was and/or is for the benefit of public health. They did not give

a medical-based reason in support of this claim and did not offer any compensation for the taking. In the Illegal Statement of Allegations, BORIM states as follows:

Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the medical profession.

On Page 4 of Wheatley's Illegal Recommended Decision states as follows:

The [ALJ in the CA Illegal Admin Case] found that [Plaintiff's] conduct was "egregious" and that it "posed a serious risk to her patients' health and the public health." She concluded that revocation of [Plaintiff's] medical license was appropriate discipline under the circumstances. (Attached herewith as **Exhibit P** is a true and correct copy of the Illegal Recommended Decision.)

On Page 2 of Shute's Illegal Memo on Disposition dated May 4, 2023, it states, "The California Board found the Respondent's conduct to be "egregious and posed a serious risk to her patients' health and the public health."

The defendants did not allege a conduct that undermined the public confidence in the integrity of the medical profession in the Illegal Complaint and the Illegal Statement of Allegations. They, Shute, Wheatley, ALJ, and MBC did not explain how Plaintiff's conduct in writing the statutorily complied MEs at issue would pose a serious risk to the public health. Yet ALJ and MBC worked together to take by revoking Plaintiff's California's license for public use without just compensation. Plaintiff is appealing their decisions in California. Wheatley at DALA and Shute at BORIM each made his and her final recommendation to take Plaintiff's private property for public use without just compensation by revoking Plaintiff's Massachusetts' license without just compensation.

155. Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other employees and/or officers, and/or DALA's other employees and/or officers each was acting or purporting to act in the performance of his or her official duties.

156. Wheatley's, Rooney's, Berg's, Shute's, Stoller's, BORIM's other employees' and/or officers', and/or DALA's other employees' and/or officers' conducts, stated in this cause of action and/or in this FAC and to be discovered in the above-captioned action, decided or will decide to take Plaintiff's private property, her Massachusetts' license, for public use and did not offer her just compensation violated the following, including, but not limited to: M.G. L. c. 265

section 27, 42 United States Code section 1983, and the Fifth Amendment Takings Clause of the United States Constitution. The relevant provision of the Fifth Amendment of the U.S. Constitution states, “[N]or shall private property be taken for public use, without just compensation.”

157. Plaintiff was, is, and/or will be harmed.

158. Wheatley’s, Rooney’s, Berg’s, Shute’s, Stoller’s, BORIM’s other employees’ and/or officers’, and/or DALA’s other employees’ and/or officers’ conducts stated in this cause of action and/or in this FAC are, were, and will be a substantial factor in causing Plaintiff’s harm.

**CAUSE OF ACTION NO. 12**  
**NEGLIGENCE**

159. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

160. DALA, Wheatley, Rooney, DALA’s other officer(s) and/or employee(s), BORIM, Berg, Shute, Stoller, and/or BORIM’s other officer(s) and/or employee(s), each of them, owed Plaintiff a duty of care to uphold the law and constitutions of Massachusetts and the United States, the Massachusetts Rules of Professional Conduct, and/or the principles of a fair, impartial, and neutral arbiter in the Code of Judicial Conduct stated in this FAC and to be discovered and ascertained in the above-captioned action in handling, processing, working on, participating in any way in, investigating in, preparing for and conducting the Pre-hearing Conference in, scheduling or coordinating any meetings in, prosecuting, and/or making analysis, opinions, recommendations, and/or decisions in the Illegal MA Admin Case regarding Plaintiff, her medical work products (papers and MEs), her license, and records and documents relating to Plaintiff, her medical work products, and her license.

161. DALA, Wheatley, Rooney, DALA’s other officer(s) and/or employee(s), BORIM, Berg, Shute, Stoller, and/or BORIM’s other officer(s) and/or employee(s), each of them, breached its/his/her duty of care owed to Plaintiff and failed to use reasonable care under all of the circumstances in handling, processing, working on, participating in any way in,



investigating in, preparing for and conducting the Pre-hearing Conference in, scheduling or coordinating any meetings in, facilitating in, prosecuting, and/or making analysis, opinions, recommendations, and/or decisions in the Illegal MA Admin Case.

162. Plaintiff was, is, and/or will be harmed.

163. DALA's, Wheatley's, Rooney's, DALA's other officer(s) and/or employee(s)', BORIM's, Berg's, Shute's, Stoller's, and/or BORIM's other officer(s) and/or employee(s)', each of their negligence and failure to use reasonable care caused harm to Plaintiff.

**CAUSE OF ACTION NO. 13**  
**GROSS NEGLIGENCE**

164. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

165. DALA, Wheatley, Rooney, DALA's other officer(s) and/or employee(s), BORIM, Berg, Shute, Stoller, and/or BORIM's other officer(s) and/or employee(s), each of them, owed Plaintiff a duty of care to uphold the law and constitutions of Massachusetts and of the United States and/or the Massachusetts Rules of Professional Conduct stated in this FAC and to be discovered and ascertained in the above-captioned action in handling, processing, working on, participating in any way in, investigating in, preparing for and conducting the Pre-hearing Conference in, scheduling or coordinating any meetings in, prosecuting, and/or making analysis, opinions, recommendations, and/or decisions in the Illegal MA Admin Case regarding Plaintiff, her medical work products (papers and MEs), her license, and records and documents relating to Plaintiff, her medical work products, and her license.

166. DALA, Wheatley, Rooney, DALA's other officer(s) and/or employee(s), BORIM, Berg, Shute, Stoller, and/or BORIM's other officer(s) and/or employee(s), each of them, failed to use even slight care or was indifferent to its/his/her duty to use reasonable care to avoid harm to Plaintiff, her medical work products (papers and MEs), and/or her license. Each of them extremely departed from what a reasonably careful person or entity would do under similar circumstances. Each of them violated the law and constitutions of Massachusetts and of the United States and/or the Massachusetts Rules of Professional Conduct stated in this FAC and

to be discovered and ascertained in the above-captioned action when handling, processing, working on, participating in any way in, investigating in, preparing for and conducting the Pre-hearing Conference in, scheduling or coordinating any meetings in, facilitating in, prosecuting, and/or making analysis, opinions, recommendations, and/or decisions in the Illegal MA Admin Case.

167. Plaintiff was, is, and/or will be harmed.

168. DALA's, Wheatley's, Rooney's, DALA's other officer(s) and/or employee(s)', BORIM's, Berg's, Shute's, Stoller's, and/or BORIM's other officer(s) and/or employee(s)', each of their gross negligence and extreme departure from what a reasonably careful person or entity would do under similar circumstances caused harm to Plaintiff.

**CAUSE OF ACTION NO. 14**  
**NEGLIGENCE INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**

169. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

170. Plaintiff and her patients in Massachusetts were in the doctor-patient relationship which included an economic relationship that probably would have resulted in an economic benefit to Plaintiff.

171. DALA, Wheatley, Rooney, DALA's other officer(s) and/or employee(s), BORIM, Berg, Shute, Stoller, and/or BORIM's other officer(s) and/or employee(s), each of them, knew Plaintiff was a licensed physician in Massachusetts practicing medicine in the state. Plaintiff knew or should have known Plaintiff had patients and had an economic relationship with her patients.

172. DALA, Wheatley, Rooney, DALA's other officer(s) and/or employee(s), BORIM, Berg, Shute, Stoller, and/or BORIM's other officer(s) and/or employee(s), each of them, engaged in wrongful conducts. The wrongful conducts include, but not limited to, the following: violation of the law and constitutions of Massachusetts and of the United States and/or the Massachusetts Rules of Professional Conduct stated in this FAC and to be discovered and ascertained in the above-captioned action regarding the handling, processing, working on,

participating in any way in, investigating in, preparing for and conducting the Pre-hearing Conference in, scheduling or coordinating any meetings in, facilitating in, prosecuting, and/or making analysis, opinions, recommendations, and/or decisions in the Illegal MA Admin Case.

173. By engaging in these wrongful conducts, DALA, Wheatley, Rooney, DALA's other officer(s) and/or employee(s), BORIM, Berg, Shute, Stoller, and/or BORIM's other officer(s) and/or employee(s), each of them, intended to disrupt the relationship or knew that disruption of the relationship was certain or substantially certain to occur.

174. The economic relationship was disrupted. Plaintiff had to take an extraordinary amount of time away from her medical practice so she could spend time to timely identify, analyze, and understand the violations. The large volume of work she produced in the Illegal MA Admin Case and in this action shows she lost many hours from practicing medicine to provide medical services to her existing and new patients. Should BORIM revoke Plaintiff's license, Plaintiff would then be ostracized from her medical community and sustain additional harm, including, but not limited to, the following: losing her patients permanently, medical license as property, medical practice, professional reputation, livelihood, prospective patients and income, and constitutional and statutory contractual right with patients.

175. Plaintiff was, is, and/or will be harmed.

176. Each of DALA's, Wheatley's, Rooney's, DALA's other officer(s) and/or employee(s)', BORIM's, Berg's, Shute's, Stoller's, and/or BORIM's other officer(s) and/or employee(s)' conducts were a substantial factor in causing harm to Plaintiff.

**CAUSE OF ACTION NO. 15**  
**ABUSE OF PUBLIC OFFICE**  
**(VIOLATION OF M.G.L. c. 265 § 37 and 42 USC § 1983)**

177. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

178. Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or DALA's other officer(s) and/or employee(s), and each of them, violated many statutes and regulations as alleged in Cause of Action No. 1 in this FAC. Massachusetts authorizes no one to interfere with, attempt to interfere with, or oppress another person in the

free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Under the Illegal MA Admin Case, the defendants and BORIM's and DALA's other officers and employees, negligently, intentionally, fraudulently, and/or maliciously, interfered with, attempted to interfere with, and oppressed Plaintiff, and continue to do so, in the free exercise or enjoyment of Plaintiff's rights and privileges secured to her to practice medicine and to have substantive and procedural due process, free speech, equal protection, and protection against unusual punishment and the taking of property for public use without just compensation in violation of M.G.L. c. 265 section 37 subjecting them and each of them to penal penalties.

179. The relevant provisions of 42 United States Code Section 1983 states:

Every person who, **under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. (*Emphasis Added.*)**

Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or DALA's other officer(s) and/or employee(s), and each of them, subjected, subject, and/or will subject Plaintiff to the deprivation of numerous rights, privileges, and immunities secured by the Constitution and laws, shall be liable to Plaintiff injured in the above-captioned action, both in legal damages and in equitable relief.

180. The violations alleged in this FAC and to be discovered and ascertained in the above-captioned action caused, cause, and/or will cause harm to Plaintiff.

181. The acts or omissions caused, cause, and/or will cause the kind of harm the statutes and regulations were and are designed to prevent.

182. Plaintiff was and is a member of the statute's or the regulation's protected class.

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**CAUSE OF ACTION NO. 16**  
**VICARIOUS & AGENT-PRINCIPAL LIABILITY**

183. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

184. BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, was and/or is a/an/the agent, principal, employer, employee, supervisor, subordinate, representative, co-worker, volunteer, advisor, attorney, board member, magistrate, and/or officer of BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other officer(s) and/or employee(s), DALA's other officer(s) and/or employee(s), other person(s), and/or other entity/entities.

185. BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, was and is acting within the scope of its/his/her agency, representation, volunteer work, advisement, employment, work, contract, legal work, decision making, written and non-written duty, vote, office, facilitation, management, term of service, contract, assignment, project, and/or case, when it/he/she harmed, harm, and/or will harm Plaintiff.

186. BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, although not authorized to do so, purported to act, ratify, endorse, grant, recognize, affirm, confirm, approve, offer, accept, uphold, certify, authorize, decide, censor, withhold, omit, decline, deny, reject, abstain, and/or abdicate on behalf of BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other officer(s) and/or employee(s), DALA's other officer(s) and/or employee(s), other person(s), and/or other entity/entities.

187. BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other officer(s) and/or employee(s), and/or DALA's other officer(s) and/or employee(s) learned of the unauthorized and/or unlawful conduct(s) of BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other officer(s) and/or employee(s), DALA's other officer(s) and/or

employee(s), other person(s), and/or other entity/entities and all of the material facts involved after the unauthorized and/or unlawful conduct(s) occurred.

188. BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, then approved, acted upon, encouraged, ratified, endorsed, acknowledged, agreed, granted, recognized, affirmed, confirmed, upheld, and/or authorized the unauthorized and/or unlawful conduct(s) of BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other officer(s) and/or employee(s), DALA's other officer(s) and/or employee(s), other person(s), and/or other entity/entities, continue(s) to do so, and/or will do so.

189. Also, BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, had a duty to carry out its/his/her independent professional judgment to investigate the Illegal MA Admin Case and/or the Illegal CA Admin Case, but it/he/she chose not to and refused to do so. It/he/she illegally gave full faith and credit to MBC's illegal decision to revoke Plaintiff's California license in recommending BORIM to revoke Plaintiff's Massachusetts license in violation of the law and the collateral estoppel legal doctrine and related caselaw. It/he/she claimed it/he/she sought to discipline Plaintiff solely based on MBC's decision after Plaintiff informed DALA and BORIM in her Proposed Agenda that MBC's decision was made illegally. Nevertheless, subsequently, it/he/she would not consider the facts showing MBC's illegal conducts by canceling discovery, a hearing, and Plaintiff's requests to depose witnesses from the underlying case and by, prematurely and illegally, submitting, processing, and/or granting the Grossly Deficient MSD to sidestep and evade discovery.

190. BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, hired, retained, delegated, supervised, oversaw, managed, assigned, entrusted BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other officer(s) and/or employee(s), DALA's other officer(s) and/or employee(s), other person(s), and/or other entity/entities to handle, process, work on, participate in any way in, investigate in, prosecute, and/or make analysis, opinions, recommendations, and/or decisions in the Illegal MA Admin Case involving nondelegable duty, e.g., supervising subordinates or working with peers and supervisors to oversee or ensure reasonable quality in legal and non-legal work products to be in compliance

with the law and ethical rules, making reasonable inquiries and investigation regarding conflicts of law and facts, abuse of process, and questionable ethical behaviors to mitigate damages to be suffered by either side of the parties, and training, disciplining, and reporting subordinates and peers who violate or habitually violate the law and ethical rules.

191. BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, BORIM's other officer(s) and/or employee(s), DALA's other officer(s) and/or employee(s), other person(s), and/or other entity/entities, and/or each of them, violated regulations, statutes, Massachusetts Professional Rules of Conduct, the Massachusetts Constitution, the United States Constitution alleged in this FAC and to be discovered and ascertained in the above-captioned action.

192. Plaintiff was, is, and/or will be harmed.

193. The conduct(s) of BORIM, DALA, Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, was or were, is or are, and/or will be a substantial factor in causing harm to Plaintiff.

**CAUSE OF ACTION NO. 17**  
**SUPERVISOR LIABILITY FOR ACTS OF SUBORDINATES**  
**(VIOLATION OF 42 USC § 1983)**

194. Plaintiff hereby realleges and incorporates by reference each and every allegation contained in the preceding paragraphs of this FAC as though fully set forth herein in this cause of action and further alleges as follows. Plaintiff hereby realleges and incorporates by reference in this cause of action the harm caused to her by the defendants as alleged in Cause of Action No. 1 in this FAC.

195. Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s), and/or each of them, was and/or is a or the supervisor, and each knew and/or knows or in the exercise of reasonable diligence should have known the wrongful conducts of each of Wheatley, Rooney, Berg, Shute, Stoller, DALA's other officer(s) and/or employee(s), and/or BORIM's other officer(s) and/or employee(s) as alleged in this FAC and to be discovered and ascertained in the above-captioned action. Besides the wrongful conducts are alleged in this FAC and to be discovered and ascertained in the above-captioned action, Plaintiff also previously informed some or all of the wrongful conducts alleged in this FAC in writing to the following defendants and others, including, but not limited to:

Wheatley, Rooney, Shute, Stoller, Berg, Dr. Robinson, Mr. Zachos, Magistrate McGrath, and BORIM board members and leaders (Dr. Holly Oh, Dr. Nawal M. Nour, Dr. Booker T. Bush, Mr. Frank M. O'Donnell, Mr. John P. McGahan, Mr. Michael Sinacola, Mr. Steven Hoffman, and Ms. Eileen A. Prebensen).

196. The supervisors knew and/or know that the wrongful conducts created, create, and/or will create a substantial risk of harm to Plaintiff.

197. The supervisors disregarded and/or disregard that risk by expressly approving, impliedly approving, or failing to take adequate action to prevent the wrongful conducts.

198. The supervisors' conduct(s) was or is, were or are, and/or will be a substantial factor in causing harm to Plaintiff.

### **REQUEST FOR RELIEF**

WHEREFORE, based on the content of this FAC and the exhibits in support of this FAC filed herewith, the files and records in this action of the above caption, and upon such oral and/or documentary evidence or argument as may be presented at any hearings or at trial of this action of the above caption, Plaintiff respectfully requests that the Court grant the following relief:

1. Adjudge, decree, and declare that BORIM and DALA did not and/or do not have personal and subject matter jurisdictions over Plaintiff and her Massachusetts medical license in Administrative Case Nos. 21-0618, 2022-033, RM-22-0421 since the inception of these three proceedings due to the absence of a complaint alleging a misconduct, a victim, a misconduct alleged in a complaint or in the statement of allegation which places into question Plaintiff's competence to practice medicine, a notice of hearing, a charging document showing a prima facie case, a production of the entire board file for Plaintiff's defense, a full and fair hearing, a valid board meeting concerning Plaintiff and her license, a valid lift of the stay, a burden of proof of all legal elements of a cause of action, and/or a valid administrative proceeding (including, but not limited to, a discovery stage);
2. Adjudge, decree, and declare that BORIM's complaint and statement of allegations against Plaintiff and her Massachusetts medical license are hereby dismissed because they are deficient in failing to allege a prima facie case and/or one conduct which places into question Plaintiff's competence to practice medicine;
3. Adjudge, decree, and declare that the Order to Show Cause issued on September 8, 2022 by Board Chair Julian Robinson, M.D. of Defendant BORIM was fulfilled and therefore the matters ordered therein are moot;
4. Set aside or make null and void all decisions, recommended decisions, recommendations, orders, motion rulings, conclusions, and dispositions in Administration Case Nos 21-0618, 2022-033, RM-22-0421;



5. Command DALA and BORIM to resolve the conflict of law on medical professional competency should they institute a new and separate proceeding against Plaintiff. Based on the same set of facts, MBC ruled out incompetence under California Business & Professions Code § 2234(d) whereas BORIM ruled in incompetence under Title 243 of the Code of Massachusetts Regulations, chapter 1.03(5)(a)(3);
6. Command DALA and BORIM to resolve the conflict of law on vaccine exemption to apply either California childhood vaccine exemption law (SB 277) or Massachusetts childhood vaccine exemption law should they institute a new and separate proceeding against Plaintiff. SB 277 sets forth the proper law and standard of care but neither MBC nor BORIM followed the law;
7. Command DALA and BORIM to produce to Plaintiff all complaints filed with BORIM against Plaintiff within 30 calendar days of the issuance of an order;
8. Compel DALA and BORIM to respond to all written discovery, open meeting law, and public records act requests propounded or served on both of them, respectively, by Plaintiff between November 2022 to May 2023 within 30 calendar days of the issuance of an order;
9. Compel DALA and BORIM to produce all documents requested by Plaintiff through discovery, open meeting law, and public records act requests propounded or served on both of them, respectively, by Plaintiff between November 2022 to May 2023 within 30 calendar days of the issuance of an order;
10. Compel BORIM to produce the entire board file under and referencing Plaintiff's medical license and her name as requested by Plaintiff through discovery, open meeting law, and public records act requests propounded or served on BORIM in November 2022 to May 2023 within 30 calendar days of the issuance of an order;
11. Adjudge and decree that Defendants BORIM, Debra Stoller, Rachel Shute, DALA, John Wheatley, James Rooney have engaged in acts or practices complained of herein, and that such constitute deceptive and fraudulent acts and practices;
12. Command BORIM to coordinate with Plaintiff to schedule an open board meeting to decide whether to remove Defendants Debra Stoller and Rachel Shute from employment as public officers and counsel at BORIM. (Attached herewith as **Exhibit P** is a true and correct copy of a correspondence from Plaintiff to BORIM dated March 28, 2023 requesting a forum to decide on removing the counsel from their public office and employment. BORIM did not respond to Plaintiff.);
13. Command DALA to coordinate with Plaintiff to schedule an open board meeting to decide whether to remove Defendants John Wheatley and James Rooney from employment as public officers and magistrates at DALA. (Attached herewith as **Exhibit P** is a true and correct copy of correspondence from Plaintiff to DALA and Massachusetts Executive Office for Administration and Finance ("EOAF") dated March 28, 2023 and April 24, 2023 requesting a forum to decide on removing the magistrates from their public office and employment. According to DALA, no such forum can be accommodated (please see

Rooney's correspondence to Plaintiff dated April 6, 2023 in **Exhibit P**) and EOAF did not respond to Plaintiff.);

14. Enter a declaratory judgment in Plaintiff's favor on any and all counts and/or causes of action of this First Amended Complaint not tried by jury;
15. Order any and all defendants to pay legal damages, compensatory damages, civil penalties, and punitive damages as the Court and/or a jury may deem just and proper;
16. Award Plaintiff's all costs and reasonable attorney's fees; and
17. Grant such other and further relief as the Court may deem just and proper.

### **JURY DEMAND**

Plaintiff demands trial by jury as to all counts, all causes of action, and all issues alleged in this FAC and following issues, including, but not limited to:

1. Whether BORIM, another third party, or other third parties initiated and/or contributed to the effort to issue the Illegal Complaint;
2. Whether DALA and BORIM intended not to afford Plaintiff with a full and fair hearing before BORIM's motion for summary decision was granted on February 24, 2023;
3. Whether DALA censored witnesses-to-be and Pre-hearing Conference's attendance and scope of discussion;
4. Whether officers at BORIM and DALA communicated to each other without Plaintiff's knowledge regarding her and her license and the proceedings at issue (e.g. BORIM's filing a dispositive motion early on in the case);
5. Whether defendants each violated the statutes and regulations alleged in Cause of Action No. 1;
6. Whether the MEs at issue and/or related information were first illegally and/or unconstitutionally searched and seized at schools before MBC approached Plaintiff about the MEs at issue;
7. Whether the subpoenas for medical charts and records issued to Plaintiff and parents of Plaintiff's minor patients were issued with good cause in the Illegal CA Admin Case;
8. Whether MBC, DOJ, and BORIM, and each of them, meet their burden of proof to establish each and all legal elements of repeated negligence and gross negligence causes of action against Plaintiff;

9. What standard of care did MBC, DOJ, ALJ, BORIM, and DALA, and each of them, used to decide on how should the MEs at issue be written and why did they, and each of them, choose to use such standard(s) of care;
10. Whether MBC, DOJ, ALJ, BORIM, and DALA, and/or each of them, are consistent in using same standard(s) of care in handling, process, and/or prosecuting any and all other childhood vaccine medical exemption cases within their respective jurisdiction(s);
11. Whether MBC used SB 277 to revoke Plaintiff's license;
12. Whether each of the eight MEs at issue was written in compliance with SB 277; and
13. At all relevant times, whether physical examination was required under California law for a doctor to issue an ME.

**VERIFIED FIRST AMENDED COMPLAINT**

I declare under penalty of perjury under the laws of the State of Massachusetts that I believe the foregoing is true and correct to the best of my personal knowledge, information, and belief.

Dated: July 4, 2023

Respectfully submitted,

By: 

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