

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. KEN-25-104

Dr. Doe

Plaintiff/Appellant,

v.

Maine Board of Dental Practice et al.

Defendant(s)/Appellee(s).

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

CORRECTIVE BRIEF OF THE PLAINTIFF/APPELLANT

Jeffrey T. Edwards, Esq., Bar No.679
Christopher S. Knight, Esq., Bar No.10488
Tiffany J. Ottenga, Esq., Bar No.10799
PRETI FLAHERTY BELIVEAU &
PACHIOS, LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
(207) 791-3000
jedwards@preti.com
cknight@preti.com
tottenga@preti.com
Attorneys for Plaintiff/Appellant

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I. INTRODUCTION

This appeal challenges the Superior Court’s erroneous dismissal of Dr. Doe’s 42 U.S.C. § 1983 claims for damages. Dr. Doe, a licensed dentist and oral surgeon, sought damages against the members of the Maine Board of Dental Practice (the “Board”), the Board’s Executive Director, and the hearing officer in their personal capacities for violating his procedural due process rights under the Fourteenth Amendment. The Superior Court dismissed Dr. Doe’s Second Amended Complaint after finding that Dr. Doe failed to allege a violation of a clearly established constitutional right, entitling Appellees to qualified immunity.

As detailed below, the Second Amended Complaint sufficiently pleaded facts demonstrating two procedural due process violations, both of which were clearly established. First, Appellee Penny Vaillancourt (“Appellee Vaillancourt”) engaged in a pattern of biasing conduct, impermissibly commingled investigatory, prosecutorial, and adjudicatory functions, and participated in *ex parte* communications that compromised the impartiality of the disciplinary proceedings. Second, the Board immediately suspended Dr. Doe’s license without a pre-deprivation hearing, despite the absence of any “immediate jeopardy” to a person’s health or safety, as required by statutory law and the United States Constitution. The Second Amended complaint adequately pleaded violations of Dr. Doe's clearly

established constitutional rights. Accordingly, the Superior Court's order of dismissal should be reversed, and the case remanded for further proceedings.

II. STATEMENT OF FACTS

Dr. Doe is a dentist and oral surgeon with an office located in Lewiston, Maine. J.A. 16.¹ On February 15, 2017, the Maine Board of Dental Practice (the “Board”) issued the Order of Immediate Suspension of Dr. [Doe’s] License to Practice Dentistry (the “Order of Immediate Suspension” or the “Board’s Order”). J.A. 70. The Board’s Order had an irreparable impact on Dr. Doe’s career, professional reputation, ability to earn a living, his standing in the community, and eliminated Dr. Doe’s ability to serve MaineCare patients, his hospital privileges, lost patients and prospective patients, and immediately and irreparably affected his employees and business. J.A. 47.

The February 2017 Order of Immediate Suspension made 23 “preliminary findings” after the results of an investigation conducted by the Board’s Complaint Committee were presented to the Board. *See* J.A. 70-73. The Complaint Committee relied upon an inspection of Dr. Doe’s office, and reviewed the complaints, Dr. Doe’s responses to the complaints, and Dr. Doe’s practice records. *Id.* The complaints against Dr. Doe dated back to early 2016. J.A. 83, 70-74. The “preliminary findings” further noted deficiencies in Dr. Doe’s administrative

¹ Citations to the Appendix refer to the Bates Numbered Appendix Pagination. Therefore, A. 46. Refers to Bates Number Appendix046.

patient records. J.A. 71. On that initial review, and without any prior notice to Dr. Doe or an opportunity for Dr. Doe to respond to the Complaint Committee's evidence, the Board issued the order that suspended his license to practice dentistry beginning at 12:01 a.m. on February 16, 2017. J.A. 74.

In response to the extraordinary and unprecedented action taken by the Board in February 2017, Dr. Doe filed the Second Amended Complaint and Petition for Judicial Review under M.R. Civ. P. 80C (the "Second Amended Complaint") in the Superior Court in Kennebec County, State of Maine.² J.A. 36-52.

Dr. Doe's Second Amended Complaint alleged the following facts. The Board's Order was issued without giving Dr. Doe an opportunity to meaningfully participate in the process, rebut the findings, or contest the allegations. J.A. 39. The Board failed to make any findings of an emergency situation that justified its decision to immediately suspend Dr. Doe's dental license or support that, by practicing dentistry and oral surgery, Dr. Doe posed an imminent threat of harm to a person. J.A. 50. Appellee Vaillancourt was the Board's Executive Director and was involved in the investigation, prosecution, and presentation of the complaints against Dr. Doe to the Board. J.A. 49.

² Dr. Doe initially filed a Complaint and Petition for Review of Final Agency Action, which was amended once before the operative Second Amended Complaint was filed. Appellant's recitation of the facts and arguments herein rely upon the Second Amended Complaint because it is the operative Complaint.

In the yearlong lead-up to the Board’s Immediate Suspension Order, Appellee Vaillancourt was involved in the investigation into Dr. Doe. J.A. 40-42. In March 2016, before any formal inspection of Dr. Doe’s office, Appellee Vaillancourt initiated and held “inspection team” meetings for the investigation into Dr. Doe. J.A. 40. In connection with the investigation into Dr. Doe, Appellee Vaillancourt coordinated and edited the content of investigatory subpoenas issued by the Assistant Attorney General (“AAG”) to Dr. Doe. *Id.* Likewise, she suggested a legal strategy for the AAG and drafted correspondence for the AAG to send to Dr. Doe’s counsel. *Id.* Appellee Vaillancourt “directed” the actions of those doing the inspection, provided instructions to them, and continuously pushed for quick and decisive action by the inspection team so that the Board could “move forward.” *Id.* In addition, Appellee Vaillancourt suggested the inspection team review certain documents in connection with the investigation, including previously unfavorable Board decisions against Dr. Doe. *Id.*

Even after Dr. David J. Moyer, D.D.S., and Dottie Perry, an investigator from Maine’s Professional and Financial Regulation, conducted an inspection at Dr. Doe’s office on March 30, 2016, Appellee Vaillancourt edited the inspection report by deleting passages that were favorable to Dr. Doe. *Id.*

Appellee Vaillancourt also participated in a television news report that featured a complainant against Dr. Doe in April 2016. J.A. 41. There, she

encouraged the public to file complaints to the Board, citing the Board’s purpose to “protect the public.” *Id.* Notably, Appellee Vaillancourt cold-called former patients of Dr. Doe who had not yet filed complaints with the Board against Dr. Doe. *Id.* In June 2016, Appellee Vaillancourt criticized the Board for its appearance in the media as being “too lenient.” *Id.* Appellee Vaillancourt identified Dr. Doe’s case as “high-profile” for the Board. *Id.*

On multiple occasions throughout 2016 and 2017, Appellee Vaillancourt sought to turn complaints against Dr. Doe into quick action on suspension of Dr. Doe’s dental license, and she recruited AAGs to work with her toward that goal. J.A. 40. She went as far as to “predict” the Board’s focus and anticipated action at the upcoming hearing on the complaints against Dr. Doe. *Id.* For instance, Appellee Vaillancourt notified the AAGs “the complaint committee will be discussing the allegations of restraining patients against their will. I anticipate that the Board will raise the issue of patient assault — they may seek legal guidance to refer the allegations of assault to the AG’s criminal division for further investigation.” *Id.* Contemporaneously with the investigation into Dr. Doe, Appellee Vaillancourt had *ex parte* communications with Board members while she was investigating the complaints and strategizing prosecutorial tactics to use against Dr. Doe. *Id.*

Over a week before the Board's Immediate Suspension Order was entered, Appellee Vaillancourt denied Dr. Doe's timely Motion for a Stay and Motion to Reconsider the Immediate Suspension Order without bringing the Motions to the Board. J.A. 41. Appellee Vaillancourt also assisted the Board with drafting the Immediate Suspension Order. J.A. 44.

In furtherance of encouraging the Board to take immediate action against Dr. Doe, Appellee Vaillancourt hand-selected Judith Shaw as the Hearing Officer who would preside over Dr. Doe's case. J.A. 41. In the week leading up to Appellee Shaw's appointment as Hearing Officer, Appellee Vaillancourt communicated with Appellee Shaw *ex parte* and provided her with a copy of the Immediate Suspension Order. *Id.* In correspondence to Appellee Shaw, Appellee Vaillancourt predicted that Dr. Doe would file an injunction or petition in the Superior Court. *Id.*

Further, on the day the Immediate Suspension Order went into effect and before the Board held a hearing on the complaints against Dr. Doe, Appellees Vaillancourt and Shaw participated in a conference call where they discussed the complaints against Dr. Doe. *Id.* During that telephone conference, Appellee Shaw's notes demonstrated that Appellee Vaillancourt emphasized to Appellee Shaw that Dr. Doe had previous orders against him in 2002 and 2003. J.A. 41-42. Appellee Vaillancourt repeatedly communicated with Appellee Shaw regarding Dr. Doe and discussing strategies for setting hearing dates to avoid issues with

obtaining a quorum. J.A. 42. Moreover, she sent Dr. Doe’s Motion for Reconsideration to Appellee Shaw before Appellee Shaw was formally appointed as Hearing Officer. *Id.*

However, Appellees Vaillancourt and Shaw continued to communicate on an *ex parte* basis after Appellee Shaw was appointed as Hearing Officer. J.A. 43. Appellee Shaw later recused herself from the Board matter, citing “unanticipated professional and personal obligations,” but not before she first had a conference call with Appellee Vaillancourt. J.A. 44.

Ultimately, the State pursued only 5 of the 18 complaints that were originally listed in the Immediate Suspension Order and Notice of Hearing. J.A. 45. Rather than dismissing the remaining 13 complaints, the Board held them for later prosecution pending the outcome of the first 5 complaints. *Id.* Over the course of three months, the Board heard the five complaints against Dr. Doe. *Id.* The State’s expert testified that there was no evidence to suggest that Dr. Doe’s actions constituted a deviation from the applicable standard of care. *Id.*

After the State presented its case, Dr. Doe moved to dismiss all 5 complaints, and the State was unopposed to dismissing 32 of the 64 total allegations in the 5 complaints. *Id.* Of the remaining 32 allegations against Dr. Doe, the Board dismissed 28 of them, leaving only 4 allegations in 2 of the original 5 complaints. *Id.*

Thereafter, Dr. Doe presented his case. *Id.* Appellee Shaw, as Hearing Officer, refused to allow Dr. Doe to present evidence of biasing conduct by Appellee Vaillancourt. *Id.* Nevertheless, after Dr. Doe presented his case, the Board found that the State had failed to prove the remaining four allegations and dismissed all five complaints against Dr. Doe because there was no basis for disciplinary action, suspension, or revocation of his license. *Id.* The Board then referred the remaining 13 complaints to the district court, explaining that the district court was better suited to handle the voluminous record and efficiently preside over the presentation of the remaining complaints. J.A. 45. Moreover, the complaint alleged that the Board recognized the negative impact Dr. Doe's prolonged wait for an outcome on the allegations against him would have if the Board retained the 13 complaints and presided over them in the administrative adjudicatory function. J.A. 45-46. Although the Board referred the 13 complaints to the district court, it lacked the authority to do so without making the prerequisite finding that revocation or suspension of Dr. Doe's license was warranted. J.A. 46-47.

Ultimately, the Board's Immediate Suspension Order destroyed Dr. Doe's reputation and functionally ended his career as a dentist. J.A. 47. The Board's Order affected Dr. Doe's ability to serve MaineCare patients (who previously comprised nearly half of his entire practice), his long-term care insurance, his

hospital privileges, and immediately and irreparably impacted his employees, business, and professional reputation. *Id.*

The Board and its members were persons acting under the color of law within the meaning of 42 U.S.C. § 1983. J.A. 91. Dr. Doe had a procedural due process property interest in his professional license, which was deprived by Appellees in violation of the United States Constitution. *Id.* Each of the Appellees acted in a manner that a reasonable person would have known violated a clear statutory or constitutional right, the effect of which resulted in impermissible bias by the adjudicatory body. *Id.* Each Appellee was biased against Dr. Doe, which violated Dr. Doe's procedural due process rights under § 1983. *Id.* The Board's, and its members', bias against Dr. Doe was evidenced by the Immediate Suspension Order, which deprived Dr. Doe of his right for notice of and an opportunity to be heard before he was deprived of his protected property interest. J.A. 49.

Furthermore, Appellee Vaillancourt impermissibly commingled the roles of investigator, prosecutor, and adjudicator, which violated Dr. Doe's procedural due process rights and 5 M.R.S. § 9055, leading to the summary suspension of his license. *Id.* Appellee Vaillancourt played an essential role in investigating, prosecuting, and presenting the complaints against Dr. Doe to the Board, and through her actions, biased the Board's decision-making process by repeatedly

exceeding her proper role through representations to the Board, the media, the public, and hearing officers. *Id.* She further assisted the Board with drafting the Immediate Suspension Order, despite also participating in the investigation and prosecution against Dr. Doe. *Id.*

Additionally, the Immediate Suspension Order failed to make the requisite finding under 5 M.R.S. § 10004 that a person's health or safety was in immediate jeopardy at the time of the Board's action, as required for an immediate suspension. J.A. 50. Ultimately, the Board's Immediate Suspension Order severely impacted Dr. Doe's livelihood and deprived Dr. Doe of his protected property interest in his dental license without affording him a pre-deprivation notice and opportunity to be heard. *Id.*

III. STATEMENT OF ISSUES

- A. Whether the Superior Court erred in dismissing Dr. Doe's 42 U.S.C. § 1983 claim for damages against individual state employees in their personal capacities by concluding that the complaint failed to allege a violation of a *clearly established* constitutional right to procedural due process, despite allegations that the Board's Executive Director, Penny Vaillancourt, engaged in *ex parte* communications with Board members and commingled investigatory and advisory roles, thereby biasing the decision-making process concerning the immediate suspension of Dr. Doe's dental license.
- B. Whether the Superior Court erred in dismissing Dr. Doe's 42 U.S.C. § 1983 claim for damages against individual state employees in their personal capacities by finding no *clearly established* constitutional right to a pre-deprivation adjudicatory hearing prior to the immediate suspension of his dental license under 5 M.R.S. § 10004(3) and 32 M.R.S. § 18325(1), and by concluding that Dr. Doe failed to identify

precedent clearly establishing such a right, even though the complaint sufficiently pleaded facts demonstrating that the statutory “immediate jeopardy” requirement for such a suspension without a hearing was not met.

IV. SUMMARY OF THE ARGUMENT

The Superior Court erred in dismissing Dr. Doe’s 42 U.S.C. § 1983 claim for damages against the individual state employees because the Second Amended Complaint pleaded ample facts demonstrating violations of Dr. Doe’s clearly established constitutional right to procedural due process before he was deprived of his protected property interest in his dental license.

First, the complaint meticulously details how Appellee Vaillancourt, in her role as the Board’s Executive Director, improperly commingled investigatory, prosecutorial, and adjudicatory functions, and engaged in extensive *ex parte* communications that biased the entire investigative and disciplinary process against Dr. Doe. Appellee Vaillancourt did not act as a neutral administrator. Instead, she actively directed the investigation, shaped the evidence, advocated for prosecution, and engaged in impermissible communications with Board members and the hearing officer outside the formal adjudicatory process. This conduct, contrary to the explicit mandates of the Maine Administrative Procedure Act and established due process principles articulated by both federal and Maine courts, fundamentally compromised the impartiality of the proceedings against Dr. Doe. A reasonable official in Appellee Vaillancourt’s position would have known that

such pervasive biasing conduct violated Dr. Doe's clearly established right to a fair and impartial administrative hearing.

Second, the Superior Court incorrectly concluded that Dr. Doe had no clearly established right to a pre-deprivation adjudicatory hearing prior to the immediate suspension of his dental license. The Second Amended Complaint pleaded facts demonstrating that the "immediate jeopardy" statutorily required for such a summary suspension was not met. Maine law, consistent with federal due process, permits suspension without a prior hearing only under truly exigent circumstances where a person's health or safety is "immediately" at risk. The alleged facts, however, reveal a lengthy investigation, the absence of any new, urgent patient harm immediately preceding the suspension, and a Board order that lacked specific findings of immediate jeopardy and based its general findings on historical issues rather than an imminent risk of harm. Given these circumstances, Dr. Doe was constitutionally entitled to an opportunity to be heard before the deprivation of his dental license. A reasonable official would have understood that imposing a summary suspension without a genuine and articulable emergency violated this clearly established right.

Because the Second Amended Complaint sufficiently pleaded facts demonstrating these dual violations of Dr. Doe's clearly established due process

rights, the Superior Court’s dismissal of the § 1983 claim was erroneous and should be reversed.

V. ARGUMENT

A. Standard of Review

“The legal sufficiency of a complaint challenged pursuant to M. R. Civ. P. 12(b)(6) is a question of law.” *Hamilton v. Greenleaf*, 677 A.2d 525, 527 (Me. 1996). Appellate courts review issues of law de novo. *See, e.g., Rieman v. Toland*, 2022 ME 13, ¶ 27, 269 A.3d 229 (“[Appellate courts] review conclusions of law de novo[.]”); *Jim’s Plumbing & Heating, Inc. v. Home Loan Inv. Bank*, 2012 ME 124, ¶ 15, 55 A.3d 419 (Appellate Courts “review the trial court’s application of law *de novo*.”); *Murch v. Nash*, 2004 ME 139, ¶ 10, 861 A.2d 645 (“Questions of law, or legal conclusions, are subject to *de novo* review.”). Appellate courts review *de novo* the trial court’s grant of a motion to dismiss. *Deane v. Cent. Maine Power Co.*, 2024 ME 72, ¶ 22, 322 A.3d 1223. In doing so, the appellate court accepts the complaint’s well-pleaded factual allegations as true and draws all reasonable inferences in favor of the plaintiff. *Moody v. State Liquor & Lottery Comm’n*, 2004 ME 20, ¶ 7, 843 A.2d 43; *see also Alrig USA Acquisitions LLC v. MBD Realty LLC*, 2025 ME 11, ¶ 10, 331 A.3d 372.

B. The Superior Court erred in dismissing Dr. Doe’s 42 U.S.C. § 1983 claim against the state employees in their personal capacities based on its finding that the Second Amended Complaint failed to allege a violation of clearly established constitutional right to procedural due

process, despite allegations that the Board of Dental Practice's Executive Director engaged in ex-parte communications with Board Members and commingled investigatory and advisory roles, which biased the Board's decision making process concerning the immediate suspension of Dr. Doe's dental license.

The Superior Court erred when it dismissed Dr. Doe's 42 U.S.C. § 1983 claim against Appellees in their personal capacities. The Second Amended Complaint sufficiently articulates a violation of Dr. Doe's clearly established constitutional right to procedural due process, including an impartial administrative proceeding. Appellee Vaillancourt, acting under color of state law as the Executive Director of the Board, engaged in a pattern of conduct that fundamentally biased the decision-making process concerning the immediate suspension of Dr. Doe's dental license. *See* J.A. 40-44. Specifically, this bias manifested through improper *ex parte* communications with Board members and an unlawful commingling of investigatory, prosecutorial, and advisory roles. *See* J.A. 40, 41, 43, 49. As a direct result of these actions, Dr. Doe was deprived of his constitutional right to a fair and impartial administrative proceeding, warranting a claim for damages under § 1983.

1. Procedural Due Process Requires Impartiality in Administrative Proceedings.

The Due Process Clause of the Fourteenth Amendment guarantees that no State shall “deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, § 1. A professional license constitutes a

protected property interest. *See Doe v. Bd. of Osteopathic Licensure*, 2020 ME 134, ¶ 16, 242 A.3d 182 (holding that “Doe has a property interest in his existing license.”); *see also Munjoy Sporting & Athletic Club v. Dow*, 2000 ME 141, ¶ 8, 755 A.2d 531 (distinguishing between an existing license, which creates a due process requirement of the licensee’s right to have notice and an opportunity to be heard at a hearing, from an application for a new license, which does not create a right in the applicant for a hearing); *Barry v. Barchi*, 443 U.S. 55, 64 (1979) (holding that a veterinarian had a property interest in his license that invoked the Due Process Clause.).

When a state agency takes an action that could result in the suspension or revocation of an existing license, due process requires a fair and impartial hearing. Crucially, a “fair and impartial hearing” includes a decision-maker free from impermissible bias and a process that maintains a proper separation of investigatory, prosecutorial, and adjudicatory functions.

The Maine Administrative Procedure Act prohibits communication between

agency members authorized to take final action or presiding officers designated by the agency to make findings of fact and conclusions of law may communicate directly or indirectly in connection with any issue of fact, law or procedure, with any party or other persons legally interested in the outcome of the proceeding, except upon notice and opportunity for all parties to participate.

5 M.R.S. § 9055.

The Court has emphasized the importance of impartiality and the separation of functions in administrative decision-making. In *Narowetz v. Board of Dental Practice*, 2021 ME 46, 259 A.3d 771, which directly concerned the Board of Dental Practice, the Law Court declined to interpret the constitutional argument because it found that the Board had violated the doctor’s due process rights under 5 M.R.S. § 9055 by impermissibly commingling the roles of investigator, prosecutor, and adjudicator. *Narowetz*, 2021 ME 46, ¶¶ 32-33, 259 A.3d 771.

The *Narowetz* Court explained that licensees appearing before an administrative adjudicatory board faced the potential for severe discipline and were entitled to transparency in the proceedings. *Id.* ¶¶ 30-31. “[W]here the lawyer presenting the prosecution’s case is the same lawyer who acted in an advisory capacity to the board in the same matter,” the licensee “can only speculate as to the scope and content of prior communications . . . and the effect such communications might have when that same assistant attorney general appears at the evidentiary hearing in the role of advocate against the licensee’s position.” *Id.* ¶ 30.

The Law Court further held that in any case before the Board, the Board members “shall not be advised by the same legal counsel who will subsequently act in an advocate capacity in the same matter.” *Id.* ¶ 25. Importantly, the Law Court clarified that the intent of the Legislature in enacting the statute was “to

segregate the advisory function from the investigatory and advocacy functions in adjudicatory matters before state agencies.” *Id.* ¶ 33. While *Narowetz* was not decided until 2021, the principles upon which it relied were not new or novel. The *Narowetz* Court held that the language of § 9055 was plain, not complex, and demonstrated the Legislature’s intent was to “promote both the appearance of fairness and the absence of even a probability of outside influence on administrative hearings” *Id.* ¶¶ 28-29. Therefore, the right to an impartial administrative proceeding, including the separation of the adjudicatory, prosecutorial, and investigative functions, has been clearly established since 1977 when § 9055 was enacted. *See* 5 M.R.S. § 9055.

The Law Court’s emphasis on separating the investigative, prosecutorial, and adjudicative functions of administrative adjudicatory boards is further underscored by *Mallinckrodt US LLC v. Dep’t of Env’tl. Prot.*, 2014 ME 52, ¶ 28, 90 A.3d 428 (explaining that “The Board is permitted by statute to have ‘the aid or advice of those members of his own agency staff, counsel or consultants retained by the agency who have not participated and will not participate in the adjudicatory proceeding in an advocate capacity.’”).

During an investigation by a professional board, “all complaints and investigative records of the licensing boards, commissions and regulatory functions

within or affiliated with the Department of Professional and Financial Regulation are confidential during the pendency of an investigation.” 10 M.R.S. § 8003-B(1).

2. The Right to an Impartial Decision-Maker and Against Impermissible Commingling of Investigatory, Prosecutorial, and Adjudicatory Functions in a Professional Licensing Suspension Hearing was Clearly Established at the Time of Appellee’s Conduct.

Section 1983 provides a cause of action against state actors who, acting “under color of state law,” deprive individuals of their constitutional rights. Although government officials performing discretionary functions are generally shielded from liability for civil damages by qualified immunity, the right to qualified immunity is not absolute. Indeed, if a state actor performing under color of law deprives an individual of a “clearly established statutory or constitutional rights of which a reasonable person would have known,” the state actor is not entitled to the qualified immunity shield. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Nor, then, is the public official shielded from liability for civil damages. *Id.*

A right is clearly established when “the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Andrews v. Dep’t of Env’tl. Prot.*, 1998 ME 198, ¶ 12, 716 A.2d 212 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). “The unlawfulness

must be apparent in light of preexisting law.” *Id.* (quoting *Parsons v. Wright*, 649 A.2d 1108, 1111 (Me.1994)).

Applying this standard, the right to an impartial decision-maker and the protection against impermissible commingling of investigatory, prosecutorial, and adjudicatory functions in a professional licensing suspension proceeding, particularly in the absence of a genuine emergency finding, was a clearly established constitutional right at the time of Appellee Vaillancourt’s conduct. *See* 5 M.R.S. § 9055; *Mallinckrodt US LLC*, 2014 ME 52, ¶ 28, 90 A.3d 428; J.A. 48-49. A reasonable official in her position would have understood that the alleged actions described in the Second Amended Complaint violated Dr. Doe’s fundamental right to procedural due process.

Here, Dr. Doe’s Second Amended Complaint methodically detailed how Appellee Vaillancourt, in her role as Executive Director and acting under color of state law, engaged in a systematic effort to facilitate and encourage the Board to immediately suspend Dr. Doe’s license, which violated Dr. Doe’s clearly established right to procedural due process. *See* J.A. 40-44. The allegations in the Second Amended Complaint demonstrate a fundamental divergence from the purpose of the impartial adjudicatory process required by the Fourteenth Amendment.

- a. Appellee Vaillancourt's improper involvement in the investigation of Dr. Doe went beyond her neutral administrative role and violated Dr. Doe's right to procedural due process.

Appellee Vaillancourt encouraged Board action against Dr. Doe and improperly inserted herself into the investigative process beyond any reasonable interpretation of her role as Executive Director. As alleged in the Second Amended Complaint, Appellee Vaillancourt proactively managed and directed the investigation of the complaints against Dr. Doe from the earliest stages and well beyond the typical role of administrative oversight. *See* J.A. 40. Specifically, Appellee Vaillancourt scheduled, facilitated, and held "inspection team" meetings with AAG LaRoche and Dr. Moyer before the inspection formally began. *See id.*

Appellee Vaillancourt also had *ex parte* communications with Board members while investigating and prosecuting the complaints against Dr. Doe, and she "anticipated" the Board's intentions before the complaints were presented to the Board. *See id.* She also directed the investigation and focused the investigators' efforts on specific allegations against Dr. Doe. *See id.* Appellee Vaillancourt repeatedly encouraged the Board, investigators, and AAG to take quick and decisive action. *See* J.A. 40-41.

Most blatantly, Appellee Vaillancourt cold-called former patients of Dr. Doe who had not yet filed formal complaints with the Board. *See* J.A. 41. This action

is not only a violation of Dr. Doe's clearly established right to have an impartial decision-making Board preside over complaints filed against him without outside influence improperly asserted by an individual in an administrative role, but it is also a violation of the clearly established right in 10 M.R.S. § 8003-B(1) to confidentiality of complaints and investigative records of the Board during the pendency of an investigation.

Applying this standard, the right to an impartial decision-maker and the protection against impermissible commingling of investigatory, prosecutorial, and adjudicatory functions in a professional licensing suspension proceeding, particularly in the absence of a genuine emergency finding, was a clearly established constitutional right at the time of Appellee Vaillancourt's conduct.

- b. Appellee Vaillancourt's improper communications with Board members and the Hearing Officer unlawfully influenced the adjudicatory process in violation of Dr. Doe's right to procedural due process.

Appellee Vaillancourt vigorously advocated for immediate action by the Board against Dr. Doe's license, which was prosecutorial in nature. *See* J.A. 40. Outside the scope of her administrative role as Executive Director, Appellee Vaillancourt encouraged the Board to move forward quickly with action against Dr. Doe's license. *See id.* She also advocated for the Board to discuss immediate action concerning Dr. Doe's license after the Board received another complaint about Dr. Doe. *See id.*

Throughout the investigation and prosecution, Appellee Vaillancourt engaged in *ex parte* communications with Board members regarding the merits of Dr. Doe's case and spoke about the Board's intentions before complaints were formally presented, and without notice or opportunity for Dr. Doe to participate. *See* J.A. 40, 41, 43. Finally, Appellee Vaillancourt participated in a news media interview discussing Board processes, during which Dr. Doe's name was mentioned by the reporter, further indicating her active role in shaping the public narrative surrounding the case. *See* J.A. 41.

Based on the Second Amended Complaint, Dr. Doe sufficiently stated a claim against the Appellees in their individual capacities. Therefore, the Superior Court erred when it dismissed Dr. Doe's 42 U.S.C. § 1983 claim because the Second Amended Complaint alleged a violation of a clearly established constitutional right to procedural due process that was free from bias and the impermissible commingling of investigatory, advisory, and adjudicatory roles.

- C. Whether the Superior Court erred in dismissing Dr. Doe's 42 U.S.C. § 1983 claim for damages against individual state employees in their personal capacities by finding no *clearly established* constitutional right to a pre-deprivation adjudicatory hearing prior to the immediate suspension of his dental license under 5 M.R.S. § 10004(3) and 32 M.R.S. § 18325(1), and by concluding that Dr. Doe failed to identify precedent clearly establishing such a right, even though the complaint sufficiently pleaded facts demonstrating that the statutory "immediate jeopardy" requirement for such a suspension without a hearing was not met.

The Superior Court erred when it dismissed Dr. Doe’s § 1983 claim against Appellees in their individual capacities because Dr. Doe’s Second Amended Complaint sufficiently pleaded facts demonstrating the absence of “immediate jeopardy” to necessitate the immediate suspension of Dr. Doe’s license without a prior hearing. Significantly, the individual Appellees, by participating in the Board’s decision to suspend Dr. Doe’s license without a true emergency, violated Dr. Doe’s clearly established Constitutional right to a pre-deprivation adjudicatory hearing.

The Law Court reviews “claims regarding procedural due process de novo.” *Citibank, N.A. v. Moser*, 2024 ME 19, ¶ 8, 314 A.3d 194. At its core, the fundamental right to due process “is that a party must be given notice and an opportunity to be heard.” *Id.* “The notice and opportunity for a hearing must be granted at a meaningful time and in a meaningful manner.” *Doe v. Dep’t of Health & Human Services*, 2018 ME 164, ¶ 15, 198 A.3d 782; *see also Mutton Hill Estates, Inc. v. Town of Oakland*, 468 A.2d 989, 992 (Me. 1983) (holding that a party has a right to procedural due process in that he has a right to notice and “opportunity to be heard at proceedings in which his property rights are at stake.”).

A professional license is a protected property interest that requires due process before deprivation. Procedural due process ordinarily requires notice and an opportunity to be heard *before* the protected interest is suspended or revoked.

See Doe, 2018 ME 164, ¶ 15, 198 A.3d 782; *see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (“the root requirement of the Due Process Clause . . . [is] that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.” (quotation marks omitted)).

Following Supreme Court precedent, the Law Court analyzes procedural due process claims in two steps. *Doe*, 2018 ME 164, ¶ 16, 198 A.3d 782. First, the Court determines “whether the governmental action has resulted in a deprivation of life, liberty, or property.” *Id.* Second, the Law Court has adopted the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976) for assessing the second step of procedural due process. *Id.* ¶ 17.

Mathews requires that the Court assess three factors to determine whether an administrative procedure sufficiently protects an individual’s due process rights, including (1) identifying the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation through the administrative procedures utilized coupled with additional procedural safeguards; and (3) the Government’s interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirement would entail *Id.*

Section 10004 governs when an agency may take immediate action to revoke, suspend, or renew a license without a prior hearing. *See* 5 M.R.S. § 10004.

Relevant here, an agency may only summarily suspend a professional license without a procedural due process hearing when “[t]he health or physical safety of a person or the continued well-being of a significant natural resource is in immediate jeopardy at the time of the agency’s action, and acting in accordance with subchapter 4 or 6 would fail to adequately respond to a known risk, as long as the revocation, suspension or refusal to renew does not continue for more than 30 days.” *Id.*

The Board’s authority to take action under § 10004 is also codified in § 18325. 32 M.R.S. § 18325. More specifically, § 18325 permits the Board to suspend, revoke, or refuse to issue a license for “incompetence” if the licensee has engaged in “conduct that evidences a lack of ability or fitness to perform the duties owed by the licensee to a client or patient or the general public,” is “conduct that is unprofessional,” “fail[s] to provide supervision as required under this chapter or a rule adopted by the [B]oard,” or violates “this chapter or a rule adopted by the [B]oard.” *Id.* § 18325(1), (D), (E), (H), (O).

These provisions lay the groundwork for disciplinary action, but crucially, any *immediate* suspension without a pre-deprivation hearing must still satisfy the stringent “immediate jeopardy” standard of 5 M.R.S. § 10004. Thus, Maine law, consistent with federal due process principles, demands that absent a compelling, articulable finding that “immediate jeopardy” imperatively requires emergency

action, a licensee is entitled to a pre-deprivation adjudicatory hearing before their professional license can be suspended. The failure to provide such a hearing when no true emergency exists constitutes a constitutional injury. *See Bell v. Burson*, 402 U.S. 535, 542 (1971) (holding that the Due Process Clause is fundamental “except in emergency situations.”).

Here, the allegations in the Second Amended Complaint establish that the Board’s immediate suspension of Dr. Doe’s dental license deprived Dr. Doe of his property right in his dental license. *See Doe*, 2020 ME 134, ¶ 16, 242 A.3d 182 (holding that “Doe has a property interest in his existing license.”); *see also* J.A. 48. As such, the Court’s analysis turns on whether Dr. Doe was afforded the procedural due process rights guaranteed to him, including a prior adjudicatory hearing without a finding of genuine “immediate jeopardy” to public health or safety as strictly required by 5 M.R.S. § 10004 and 32 M.R.S. § 18325. The facts pleaded demonstrate that the Board’s action violated Dr. Doe’s clearly established constitutional right to due process in a non-emergency context.

1. The *Mathews* balancing test weighs in favor of Dr. Doe.

Under the *Mathews* balancing test, Dr. Doe’s due process rights were not adequately protected by the Board’s administrative process. *See Doe*, 2020 ME 134, ¶ 16, 242 A.3d 182; *see also Mathews*, 424 U.S. 319. The first *Mathews* factor weighs heavily in Dr. Doe’s favor. Immediately suspending Dr. Doe’s

license without permitting Dr. Doe notice and an opportunity to be heard before the suspension deprived Dr. Doe of his procedural due process rights. *See* J.A. 49. The Second Amended Complaint clearly identifies the consequences that Dr. Doe faced as a result of the immediate suspension, including severe financial hardship, reputational damage in the community, loss of hospital privileges, and substantial difficulties regaining insurance coverage. *See* J.A. 47, 51. Dr. Doe has demonstrated that his dental license and procedural due process right to a pre-deprivation hearing are substantial private interests that demand robust protection. *See* J.A. 48-50.

The second *Mathews* factor also strongly favors Dr. Doe. The risk of erroneous deprivation of Dr. Doe's license and due process rights cannot be overstated. When the Board immediately suspended Dr. Doe's license, it did so based on conclusory findings that left Dr. Doe without recourse to challenge, advocate for himself, or argue that less drastic measures were appropriate. *See* J.A. 50-51, 70. A pre-deprivation hearing would have been a vital safeguard against an erroneous deprivation of Dr. Doe's license because it would have allowed Dr. Doe to examine the nature of the allegations and the Board to appropriately assess whether any of the allegations created an immediate risk of harm, which is the standard required for a suspension under § 10004. *See* 5 M.R.S. § 10004; *Munjoy*, 2000 ME 141, ¶ 8, 755 A.2d 531.

Without a pre-deprivation hearing, the Board relied upon unsubstantiated information that was influenced and curated by the Board's Executive Director. *See* J.A. 41-43. Had Dr. Doe been given the opportunity to present evidence, cross-examine witnesses, and confront the allegations against him *before* the Board suspended his license, the risk of erroneous deprivation would have been significantly reduced. *See Mathews*, 424 U.S. 319. Unfortunately, Dr. Doe was not given that opportunity, and an erroneous deprivation did in fact occur. *See* J.A. 47, 50. Namely, after Dr. Doe finally had a chance to present evidence to the Board, months after the immediate pre-deprivation suspension of his license, all 64 allegations against Dr. Doe were either dismissed or found to be without merit by the Board. *See* J.A. 50.

The third and final *Mathews* factor, which balances the Government's interest against the cost that additional procedural requirements would entail, does not support the Board's deviation from a pre-deprivation hearing in this case. Although the State has a legitimate interest in protecting the public health and welfare, the cost to the Board of conducting a hearing before it suspended Dr. Doe's license does not weigh in the Board's favor. *See* 5 M.R.S. § 10004; 32 M.R.S. § 18325; *see also Mathews*, 424 U.S. 319. Therefore, the *Mathews* balancing factors weigh in favor of Dr. Doe and demonstrate that the Board's

administrative procedure failed to protect Dr. Doe's clearly established right to procedural due process *before* his license was suspended.

Nevertheless, even if the *Mathews* balancing factors weighed in favor of the Board, the Superior Court still erred in dismissing Dr. Doe's § 1983 claim because the Board's actions violated § 10004 insofar as the Board improperly relied upon the "immediate jeopardy" provision in the absence of a true imminent risk to a person's health or safety.

2. There was no "immediate jeopardy" that justified the Board's decision to suspend Dr. Doe's license without a pre-deprivation hearing, which was a violation of Dr. Doe's procedural due process rights.

The Second Amended Complaint alleges that the circumstances surrounding Dr. Doe's case, at the time of the immediate suspension, did not present an urgent or rapidly developing situation that posed an immediate threat to public health or safety. *See* J.A. 50. Instead, the facts pleaded demonstrate that the Board's investigation into Dr. Doe had been ongoing for nearly a year and involved complaints and issues that were not sudden or new in nature. *See* J.A. 40-43. For example, certain alleged deficiencies pertained to administrative practices, record-keeping, or past incidents that had been known to the Board for months, if not longer. *See* J.A. 71-73. As far as Dr. Doe was aware at the time of the Immediate Suspension Order, the Board was not acting upon new incidents or complaints

against Dr. Doe’s license, and certainly not any complaints that would trigger an exigent need for immediate action. *See* J.A. 50.

Unlike situations presented in cases such as *Macey v. Montrym*, 443 U.S. 1, 18 (1979), where the Supreme Court held that Massachusetts’ interest in summarily suspending driver’s licenses for drivers who refuse to take a breath-analysis test substantially serves public health and safety, or *Hodel v. Virginia Surface Min. & Reclamation Ass’n, Inc.*, 452 U.S. 264, 300 (1981), where the Supreme Court held that an immediate cessation order issued to a mine operator was justified because there was a high risk to public health and safety from the devastating effects of a mining disaster, Dr. Doe’s situation lacked any comparable objective indicia of immediate and ongoing danger. *See* J.A. 50. The alleged issues, as pleaded, were amenable to resolution through the regular pre-deprivation hearing process, which would have afforded Dr. Doe the fundamental opportunity to be heard before his livelihood was summarily suspended. *See id.* The absence of truly exigent circumstances meant that the Board was under no constitutional or statutory compulsion to dispense with the ordinary requirements of due process. *See* 5 M.R.S. § 10004; 32 M.R.S. § 18325; *see also* J.A. 50.

- a. The Board failed to make specific findings of immediate jeopardy.

First, the Board’s Order of Immediate Suspension did not make any specific findings that the health and safety of Dr. Doe’s patients were in “immediate

jeopardy.” *See* J.A. 50, 70-73. Indeed, the Board’s conclusory finding that Dr. Doe’s “failures to treat his patients in a manner worthy of society’s trust have put the health and safety of his patients and staff in immediate jeopardy” was insufficient to satisfy the strict requirements of 5 M.R.S. § 10004. *See Bell*, 402 U.S. at 542; J.A. 70-74. The suspension order failed to identify any single “person” whose health and safety was at risk and impermissibly found that the health and safety of the general public was at risk. *See* J.A. 70-74. Moreover, the conduct the Board relied upon in its Order was not new or escalating in urgency. *See id.*

As Dr. Doe alleged in the Second Amended Complaint, there is no evidence that the circumstances surrounding the complaints against Dr. Doe were any more urgent than they had been in early 2016 when the investigation began. *See* J.A. 50. Without any imminent threat to the health and safety of any person, Dr. Doe was entitled to procedural due process in the form of notice and an opportunity to be heard before he was deprived of his protected interest in his license. *See Bell*, 402 U.S. at 542; J.A. 50. As such, the Board violated a fundamental procedural safeguard intended to prevent against the very type of arbitrary deprivation the Board employed against Dr. Doe.

- b. The Board's year-long delay in action undermines its claim of emergency.

Critically, the Second Amended Complaint alleges significant delays between the Board's awareness of the underlying complaints and the ultimate decision to impose an immediate suspension without a hearing. *See* J.A. 39-40. For example, some of the complaints the Board relied upon in its suspension order against Dr. Doe dated back to early 2016, which was more than a year before the Board suspended Dr. Doe's license, and alleged conduct dating back even farther into 2015. *See* J.A. 39-43. In fact, many of the findings the Board made about Dr. Doe's practice and office were based on the Consultation Report of Inspection based on an inspection conducted by Dr. Moyer on March 30, 2016, which was nearly eleven months prior to the Order of Immediate Suspension. *See* J.A. 39, 70-73.

The prolonged investigation into Dr. Doe contradicts the Board's conclusory finding of "immediate jeopardy." *Compare Bell*, 402 U.S. 535 (holding that the Due Process Clause is fundamental except in emergency situations); *with Macey*, 443 U.S. 1 (holding that the immediate suspension of a driver's license was justified because it substantially served public health and safety), and *Hodel*, 452 U.S. 264 (holding that the high risk of the devastating effects of a mining disaster outweighed the immediate suspension order delivered upon a mining operator). If the alleged harm was truly so immediate and imperative as to bypass Dr. Doe's

pre-deprivation due process rights, the Board's own protracted response timeline belies that claim. The passage of substantial time without an intervening "emergency" suspension order demonstrates that the Board was not acting upon a known risk. Accordingly, Dr. Doe's immediate suspension was unwarranted and an unconstitutional deprivation.

3. The Board violated Dr. Doe's clearly established right to a pre-deprivation hearing.

Based on the facts sufficiently pleaded in the Second Amended Complaint, the Board's immediate suspension of Dr. Doe's dental license occurred without the constitutionally and statutorily mandated showing of "immediate jeopardy." *See* 5 M.R.S. § 10004; J.A. 50. The suspension was imposed without a pre-deprivation adjudicatory hearing. *See* J.A. 39, 70-74. Dr. Doe's right to a pre-deprivation hearing, absent truly exigent circumstances, was clearly established under the Fourteenth Amendment and applicable Maine statutes at the time of the Board's action. *See* U.S. CONST. amend. XIV, § 1; 5 M.R.S. § 10004. A reasonable state official in the position of those involved in the immediate suspension decision would have understood that summarily suspending a professional license without a prior hearing, and without demonstrably satisfying the high bar of "immediate jeopardy" as defined by both federal and state law, violated the licensee's clearly established right to procedural due process. Thus, the Superior Court erred when it found that Dr. Doe failed to identify precedent establishing such a right, when the

complaint sufficiently pleaded facts demonstrating the absence of the statutory predicate for an emergency suspension.

The Superior Court erred in dismissing Dr. Doe's 42 U.S.C. § 1983 claim for damages against individual state employees in their personal capacities concerning the immediate suspension of his dental license. As the Second Amended Complaint sufficiently pleaded, the immediate suspension was imposed without a pre-deprivation adjudicatory hearing, despite the absence of any genuine and imperative "immediate jeopardy" to public health or safety as strictly required by 5 M.R.S. § 10004(3) and 32 M.R.S. § 18325(1). The facts alleged demonstrate that the governmental interest did not outweigh Dr. Doe's fundamental right to a pre-deprivation hearing under the *Mathews* balancing test. The right to such a hearing, in circumstances not involving a true emergency, was clearly established at the time of the Board's action. Therefore, the complaint adequately alleged a violation of Dr. Doe's clearly established constitutional right to procedural due process, and the Superior Court's dismissal of this claim was erroneous.

VI. CONCLUSION

For the foregoing reasons, Dr. Doe respectfully requests this Court reverse the Superior Court's order of dismissal. The Second Amended Complaint pleaded facts demonstrating that Appellees violated Dr. Doe's clearly established right to procedural due process free from biasing conduct by the Executive Director,

including the impermissible commingling of investigatory, prosecutorial, and adjudicatory functions. Furthermore, Dr. Doe's Second Amended Complaint sufficiently alleged that the Board of Dental Practice immediately suspended Dr. Doe's license without a pre-deprivation hearing, despite the absence of any "immediate jeopardy" to a person's health or safety as required by Maine law and constitutional due process.

Dr. Doe was deprived of his fundamental constitutional rights by state actors, and the Second Amended Complaint provides a sufficient factual and legal basis for his 42 U.S.C. § 1983 claim for damages. Therefore, Dr. Doe respectfully requests that this Court reverse the Superior Court's dismissal of the Second Amended Complaint and remand this case for further proceedings consistent with this Court's opinion.

DATED at Portland, Maine this 9th day of June 2025.

/s/ Jeffrey T. Edwards

Jeffrey T. Edwards, Esq. Bar No. 679
Christopher S. Knight, Esq., Bar No. 10488
Tiffany J. Ottenga, Esq., Bar No. 10799
Attorneys for Plaintiff/Appellant Dr. Doe
Preti Flaherty Beliveau & Pachios LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
207.791.3000
jedwards@preti.com
cknight@preti.com
tottenga@preti.com

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2025, I filed the foregoing Corrective Appellant Brief with the Maine Supreme Judicial Court, Sitting as the Law Court by Electronic Mail. I certify that the following parties or their counsel of record were served by Electronic Mail.

Paul E. Sutter, Esq. paul.sutter@maine.gov
Office of the Maine Attorney General
Six State House Station
Augusta, ME 04333
Counsel for Maine Board of Dental Practice

Martin J. Ridge, Esq. mjr@beagleridge.com
Beagle, Thomas & Ridge, LLC
10 Moulton Street
Portland, ME 04101
Counsel for Foster and Vaillancourt

Date: June 26, 2025

/s/ Tiffany J. Ottenga
Tiffany J. Ottenga
Bar No. 10799