STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Ken-25-104

DR. DOE
Plaintiff-Appellant

v.

MAINE BOARD OF DENTAL PRACTICE, et al.
Respondents-Appellees.

On Appeal from the Superior Court
Kennebec County

BRIEF OF RESPONDENTS-APPELLEES
MAINE BOARD OF DENTAL PRACTICE, ET AL.

AARON M. FREY
Attorney General

Of counsel:
Thomas A. Knowlton
Deputy Attorney General

Paul E. Suitter
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8800
paul.suitter@maine.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

INTRODUCTION

Throughout 2016, the Maine Board of Dental Practice received 18 far-reaching patient complaints regarding Plaintiff-Appellant Dr. Doe's ("Doe") dental and oral surgery practice. While some concerns related to Doe's billing and administrative practices, others were much more alarming. Allegations included improper administration of anesthesia and sedatives, failure to address patient pain during dental procedures, performing procedures without patient consent, and restraining patients against their will, among others.

The Maine Board of Dental Practice ("Board") is tasked with protecting the public health and welfare of Maine citizens seeking dental care by establishing minimum standards of proficiency, and by examining, licensing, regulating and disciplining those who practice in the profession. In early 2017, when new patient complaints against Doe were continuing to roll into the Board, officials tasked with investigating and prosecuting any professional misconduct associated with the first 18 complaints prepared to bring disciplinary charges at a Board hearing.

In accordance with Maine statute, they also asked the Board to temporarily suspend Doe's license to practice dentistry for 30 days in advance of the disciplinary hearing, on the grounds that the health and physical safety of his patients and staff was in "immediate jeopardy." *See* 5 M.R.S.A. § 10004

(Westlaw July 28, 2025). In a temporary suspension order that made 23 preliminary findings based on evidence contained within the complaints, the Board agreed to do so.

While the procedural history of how this lawsuit evolved thereafter is long and complex, the legal issues at the heart of this appeal are not. Doe asserts that the Due Process Clause of the United States Constitution rendered the Board powerless to protect the people of Maine from potentially dangerous dental procedures on an emergency basis unless it first held a full-blown administrative trial. And despite not pointing to any caselaw from this Court or any other appellate court that supports his interpretation of the federal Constitution, Doe asserts that members of the Board knew or should have known that exercising their statutory authority to temporarily suspend his license on an emergency basis violated his due process rights.

Relying on authoritative caselaw that refutes Doe's theory, the Superior Court disagreed and dismissed the independent 42 U.S.C. § 1983 count that Doe had appended to his Rule 80C petition. Instead of pursuing any administrative remedies still available to him under his 80C petition, which may have provided him an opportunity to vacate the temporary suspension if the Board had indeed acted in error, Doe now seeks solely monetary damages against members of the Board and its staff under § 1983.

Given that neither public health—nor the law—are on his side, this Court should reject Doe's gambit and affirm the Superior Court's sound decision.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

The following facts are drawn from the Second Amended Complaint and M.R. Civ. P. 80C Petition for Judicial Review ("Second Amended Petition") and other material the Court may consider in ruling on a motion to dismiss under Rule 12(b)(6). *Id.* at 36-52, 70-248.

Throughout 2016, the Board received the 18 patient complaints against Doe that underly the basis of this suit. Joint Appendix ("J.A.") at 39, 124-67. As is standard among Maine Office of Professional and Occupational Regulation ("OPOR") licensure boards that receive consumer complaints, the Board formed a "complaint committee," which included Executive Director Vaillancourt and then-Board member Foster, who served as the complaint officer.[1] *Id.* at 39, 172. The committee performed its investigation by reviewing the complaints, soliciting and reviewing Doe's written responses to the

[1] OPOR sets forth the standard complaint process for all licensing boards under its authority, including the Board of Dental Practice. After a licensee responds to a complaint, Boards form a "complaint committee" to investigate. Complaint committees are generally comprised of "a board member who serves as complaint officer, the OPOR administrator of the board, the Assistant Attorney General assigned to the board, and frequently, an OPOR investigator." Administrative Complaint Procedures for All Other Programs, https://www.maine.gov/pfr/professionallicensing/home/file-a-complaint/administrative-complaint-procedures-all-other-programs (last visited July 28, 2025). There is no allegation that Foster voted on or participated in Board deliberations regarding the patient complaints against Doe.

complaints, reviewing Doe's practice records, and inspecting his dental office. *Id.* at 70.

On February 10, 2017, the complaint committee "made an initial presentation of the results of "[its] investigation to the full Board." *Id.* at 70. Five days later, the Board issued to Doe an "Order of Immediate Suspension of [Doe's] License to Practice Dentistry" in Maine. *Id.* at 70-75. The temporary suspension order made a number of preliminary findings regarding Doe's violations of professional standards.

Among these included findings that, on multiple occasions, Doe had failed to do the following: appropriately assess patient pain; cease painful dental procedures despite patient requests; address patient anxiety regarding pain; monitor or document significant incidents involving intravenous sedation; appropriately monitor the timing of sedation drugs; create adequate patient records for the use of anesthesia; select appropriate medication or medication dosage; perform proper evaluations before discharging patients; and wear clean gloves during procedures. *Id.* at 71-72. Additional preliminary findings included Doe's failure to properly dispose of expired medications and medical waste, exposing a pregnant patient to harmful ionizing radiation, allowing dental assistants to engage in unauthorized practice of dentistry, and inappropriately restraining patients during procedures. *Id.*

The temporary suspension order concluded that if the Board's preliminary findings were established by a preponderance of evidence, then grounds existed to discipline Doe pursuant to standards set forth by Maine statute, Board Rules, and several professional practice organizations. *Id.* at 73-74. It also stated that such conduct "is contrary to fundamental principles and standards of dentistry" and that Doe's actions "put the health and safety of his patients and staff in immediate Jeopardy." *Id.* at 74.

The temporary suspension order took effect on February 16, 2017, and lasted for 30 days.[2] *Id.* at 74. It also notified Doe that he would have an opportunity to contest the Board's preliminary findings at a public adjudicatory hearing during the 30-day period and that his counsel would receive formal notice of the hearing, including information about the issues to be presented.

Less than a week later, Doe filed a Rule 80C petition for judicial review of the temporary suspension on February 21, 2017. *Id.* at 3. On June 30, 2017, Doe amended his Rule 80C petition to add independent claims that alleged violations of Maine's Freedom of Access Act ("FOAA") and 42 U.S.C. § 1983. *Id.* at 6. For the next year, much of the litigation in this matter focused on the FOAA

[2] Because a hearing was not held within 30 days, the temporary suspension expired, and Doe regained the ability to practice dentistry on March 18, 2017. *See* 5 M.R.S.A. § 10004(3) (Westlaw, July 28, 2025).

count, which the Superior Court (*Murphy, J.*) severed from the others on October 4, 2017.[3]

Concurrently, the Board proceeded toward a disciplinary hearing. On March 3, 2017, the initial hearing officer (Defendant-Appellee Shaw) resigned "due to unanticipated professional and personal obligations." *Id.* at 44. After Shaw was replaced, the Board eventually held a hearing on 5 of the 18 patient complaints between September and December 2017. *Id.* at 45. On December 29, 2017, the Board concluded that the State had failed to meet its burden regarding the allegations on the five patient complaints presented at the hearing and granted Doe's renewed motion to dismiss them. *Id.* at 45. The Board subsequently opted to refer the remaining 13 patient complaints to the District Court.

The Superior Court issued judgment in favor of the Board on Doe's FOAA claim on May 5, 2018. *Id.* at 7-9. The remaining claims then sat dormant until all Defendants-Respondents filed a motion to dismiss for failure to prosecute on October 19, 2020, which Doe opposed. *Id.* Just under two years later, on September 6, 2022, the Superior Court denied the motion. *Id.* at 11. The

[3] The original Justice assigned to this matter noted a recusal on September 18, 2023, causing the matter to be reassigned. J.A. at 12. The action was again reassigned to a third Superior Court Justice between December 6, 2024 and January 24, 2025. *Id.* at 14. The procedural history set forth in this brief notes the first instance in which a new Justice acted in this matter.

following month, Doe retained new counsel, who sought to further amend the then-operative Rule 80C Amended Petition. *Id.* After the Justice who had presided over the matter during the first six years of litigation recused in September of 2023, the Superior Court (*Lipez, J.*) granted in part the motion to amend, and Doe filed the operative Second Amended Petition on February 2, 2024. *Id.* at 11-13.

All Defendant-Respondents moved to dismiss the Second Amended Petition pursuant to M.R. Civ. P. 12(b)(6) within one week of its filing, and oral argument was held on May 24, 2024. *Id.* at 13-14. On December 9, 2024, the Superior Court dismissed Doe's § 1983 claims, concluding that the Board is entitled to sovereign immunity, that all official-capacity claims for damages are barred by sovereign immunity, that any claims for injunctive relief are nonjusticiable, and that all claims for monetary damages brought against individual defendants in their personal capacity are barred by qualified immunity. *Id.* at 16-32.

No longer wishing to litigate the Rule 80C portion of this action, Doe stipulated to dismissal of Count I of the Second Amended Petition with prejudice on February 12, 2025, so that he could immediately pursue an appeal of the Superior Court's decision on his § 1983 claims. *Id.* at 33. The Superior

Court (*Mitchell, J.*) accepted the stipulation and dismissed the remaining portion of the matter on February 21, 2025. *Id.* at 15. This appeal followed. *Id.*

STATEMENT OF THE ISSUES ON APPEAL

1. Maine statute allows the Board to temporarily suspend dental licenses for up to 30 days in advance of an adjudicatory hearing. Under federal § 1983 doctrine, officials are entitled to qualified immunity unless Doe demonstrates they violated his rights in contravention of clearly established caselaw. Below, he failed to cite any holding that the federal Constitution requires pre-suspension hearings. Should this Court therefore affirm the Superior Court's conclusion that Board members and staff are shielded by qualified immunity?

2. Under § 1983 doctrine, officials who engage in quasi-judicial acts in relation to an adjudicatory proceeding are absolutely immune from suit. Could the Superior Court's decision dismissing claims against the initial hearing officer and the Board members who adjudicated Doe's temporary license suspension be affirmed on the alternative basis of quasi-judicial immunity?

   The answer to both questions is "yes."

SUMMARY OF THE ARGUMENT

Doe alleges that the Board violated his procedural due process rights under the United States Constitution when it opted to temporarily suspend his license to practice dentistry in Maine for 30 days. He asserts that that the Due Process Clause permits such action only after holding an adversarial hearing. He is mistaken.

Reams of caselaw confirm that officials may deprive an individual of a property interest consistent with the United States Constitution's Due Process Clause in advance of an adjudicatory hearing, so long as there is a sufficient post-deprivation hearing process. Because Doe's allegations do not describe a violation of his federal constitutional rights, his claims brought pursuant to 42 U.S.C. § 1983 cannot survive. Moreover, even if Doe's allegations could be construed as a plausible constitutional violation, Board members and staff are entitled to qualified immunity from such claims.

Qualified immunity shields official actors from suits for damages, unless their alleged actions violated clearly established law when the purported controversy occurred. To overcome a qualified immunity defense, a plaintiff must point to a judicial decision similar enough to the challenged conduct that would place any reasonable official on notice that their behavior violates a clearly established federal right. Doe has failed to do so, both before the Superior Court, and in his opening brief here. Each failure independently dooms this appeal.

This Court may also affirm the Superior Court's judgment on alternative grounds. Federal common law affords quasi-judicial immunity to agency officials who preside over adjudicatory proceedings. Since the decision to temporarily suspend Doe's license was part of such an adjudicatory process,

there is no question that every member of the Board who voted to temporarily suspend Doe's dentistry license, as well as the initial hearing officer hired to preside over his disciplinary hearing, are absolutely immune from suit under the doctrine of quasi-judicial immunity.

ARGUMENT

I. Because Doe failed to demonstrate how officials' alleged actions could constitute a violation of his federal constitutional rights under clearly established law, the Superior Court correctly concluded that they are entitled to qualified immunity.

A. Standard of Appellate Review.

When this Court reviews the dismissal of a complaint pursuant to Maine Rule of Civil Procedure 12(b)(6), it "review[s] the legal sufficiency of the complaint de novo, viewing the alleged facts in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief under some legal theory." *Keegan v. Estate of Bradbury*, 2025 ME 13, ¶ 6, 331 A.3d 394. The Court "may also consider documents attached to the complaint" when "their authenticity is not challenged." *Id.* ¶ 6 n.2; *see also Oakes v. Town of Richmond*, 2023 ME 65, ¶ 10, 303 A.3d 650 (noting that because exhibits attached to a complaint are "for all purposes" part of the complaint, itself, "it is not error to consider the exhibits . . . for purposes of a Rule 12(b)(6) motion").

Under Supreme Court precedent, state officials "are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *District of Columbia v. Wesby*, 583 U.S. 48, 62-63 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). To be "clearly established," the law must be "sufficiently clear" at the time of the official's conduct such that "every reasonable official would understand" their actions violate federal law. *Id.* at 63. "In other words, existing law must have placed the constitutionality of the officer's conduct 'beyond debate.'" *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011).

Although only decisions of the Supreme Court bind this Court when determining whether an official is entitled to qualified immunity for claims brought pursuant to 42 U.S.C. § 1983, this Court has consistently relied upon decisions from the United States Court of Appeals for the First Circuit as supplying persuasive guidance. *See e.g., Lyons v. City of Lewiston* 666 A.2d 95, 99 (Me. 1995) (citing First Circuit precedent); *Andrews v. Dep't of Env. Prot.*, 1998 ME 198, ¶¶ 5, 13, 716 A.2d 212 (referring to First Circuit precedent regarding interlocutory appealability of denial of qualified immunity as "persuasive" and relying on First Circuit precedent in determining whether state officials violated clearly established federal law); *cf. Clifford v.*

MaineGeneral Med. Ctr., 2014 ME 60, ¶ 55 n.17, 91 A.3d 567 (noting with approval the First Circuit's observation that qualified immunity does not differ when analyzed under § 1983 versus the Maine Civil Rights Act (citing *Hegarty v. Somerset Cnty.*, 53 F.3d 1367, 1373 n.3 (1st Cir. 1995))).

To demonstrate whether an action constitutes a violation of clearly established federal law, courts examine both the clarity of the law at the time of the alleged violation and whether a reasonable defendant would have understood that his or her conduct was unconstitutional. *MacDonald v. Town of Eastham*, 745 F.3d 8, 22 (1st Cir. 2014). This "inquiry 'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Maldonado v. Fontanes*, 568 F.3d 263, 269 (1st Cir. 2009) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004)); *see also Walden v. City of Providence, R.I.*, 596 F.3d 38, 53 (1st Cir. 2010). The Supreme Court has left it to the "sound discretion" of trial court judges "in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

Qualified immunity "sweeps so broadly that 'all but the plainly incompetent or those who knowingly violate the law' are protected from civil rights suits for money damages." *Hegarty*, 53 F.3d at 1373 (quoting *Hunter v.*

Bryant, 502 U.S. 224, 229 (1991)). Thus, "government officials" are given "breathing room to make reasonable but mistaken judgments about open legal questions." *MacDonald*, 745 F.3d at 11 (quoting *Ashcroft*, 563 U.S. at 743). The protection applies "regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" *Pearson*, 555 U.S. at 231 (quoting *Groh v. Ramirez*, 540 U.S. 551, 567 (2004) (Kennedy, J., dissenting)).

Ultimately, the "burden of demonstrating" that an official's actions constituted a violation of clearly established rests with the plaintiff. *Mitchell v. Miller*, 790 F.3d 73, 77 (1st Cir. 2015); *see also Davis v. Scherer*, 468 U.S. 183, 197 (1984) ("A plaintiff who seeks damages for violation of constitutional or statutory rights may overcome the defendant official's qualified immunity only by showing that those rights were clearly established at the time of the conduct at issue."); *Jenness v. Nickerson*, 637 A.2d 1152, 1155 (Me. 1994) (citing *Davis* to acknowledge that qualified immunity is "available to state government actors").

B. Doe failed to allege facts that amount to a procedural due process violation, much less a violation of clearly established law.

The only issue that Doe raises in this appeal is whether the Superior Court erred in determining that all the state officials who were sued for damages in their personal capacities are entitled to qualified immunity on the allegations

in his Second Amended Petition/Complaint that they violated his federal procedural due process rights. *See* Doe Br. at 15.

Below, the Superior Court stated its rationale for dismissing Doe's § 1983 count in terms that are as concise as they are clear: He did not "identif[y] any precedent that clearly establishes that the Board's temporary suspension of his license without a hearing violates due process. To the contrary, the Board's alleged actions are supported by statute and caselaw." J.A. at 9. This correct analysis is sufficient to uphold the Superior Court's decision. Though it applies equally to Doe's failure to identify any such precedent in his appellate brief.

Nevertheless, Doe offers two theories as to why the Superior Court should not have found qualified immunity on the allegations of his Second Amended Petition. First, he argues that the Board's Executive Director engaged in *ex parte* communications with Board members, which biased the decision-making process of the Board by comingling investigatory and advisory roles in the process. Doe. Br. at 18-26. Second, he argues that the Board violated his procedural due process rights when it temporarily suspended his dental license in advance of an adjudicatory hearing. *Id.* at 27-39. Neither theory holds water.

1. Doe fails to demonstrate how Executive Director Vaillancourt's actions and communications were inappropriate, much less a violation of federal constitutional law.

In his brief, Doe decries Executive Director Penny Vaillancourt's participation in the investigation and prosecution of the patient complaints against him, as well as her supposed advisory statements made to Board members.[4] *See id*. at 18-27. Without citation, he asserts that "[w]hen 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" and that the hearing cannot be "fair and impartial" unless the decision-maker is "free from impermissible bias" and that the process "maintains a proper separation of investigatory, prosecutorial, and adjudicatory functions." *Id.* at 20.

Appellees do not dispute that when a hearing is required under the federal Constitution, it should be conducted in a "fair" and "impartial" manner. But Doe's definition of what constitutes a "fair and impartial hearing" for purposes of federal civil rights law is grounded nowhere in precedent. Nor, as detailed below in Part I.B.2., has Doe pointed to any caselaw holding that the

[4] Executive Director Vaillancourt is represented by different counsel for purposes of the personal capacity claims made against her, but this brief addresses Doe's theory regarding her statements and actions to the extent that he also is asserting that the initial hearing officer or Board members violated his clearly established constitutional rights as a result of the allegations he makes against Vaillancourt. *See* Doe Br. at 27 (stating that his claims against "the Appellees in their individual capacities" should be restored in light of his allegations against Vaillancourt).

Board is barred from suspending his dental license on an emergency, temporary basis in advance of an adjudicatory hearing. In fact, in the entire portion of his brief that addresses his procedural due process theory regarding Executive Director Vaillancourt's actions, Doe cites to no precedent that analyzes the federal Due Process Clause's procedural requirements for when and how such a hearing must occur. *See* Doe Br. at 18-26.

He offered even less in his argument to the Superior Court. There, Doe did not even set forth this theory regarding Executive Vaillancourt's actions as a basis for defeating a qualified immunity defense, instead relying only on his mistaken belief that the Board was constitutionally barred from suspending his license in advance of a hearing. *See* Pl.'s Opp. to Mot. to Dismiss at 11-13.

"[P]roper appellate practice will not allow a party to shift his ground on appeal and come up with new theories after being unsuccessful on the theory presented in the trial court." *McMahon v. McMahon*, 2019 ME 11, ¶ 16, 200 A.3d 789 (quoting *Teel v. Colson*, 396 A.2d 529, 534 (Me. 1979)). It is therefore a "well settled universal rule of appellate procedure" that appellate courts will not entertain an appellant's novel theory for reviving a case when it was not offered to the trial court. *Id.* For this reason, alone, the Court should set aside the argument offered in Part V.B. of Doe's brief.

But even if the Court were willing to overlook Doe's preservation problem and assume wrongdoing by Executive Director Vaillancourt (which there is no indication in the record to be the case), his opening brief's failure to cite relevant caselaw under § 1983 forecloses his ability to demonstrate that his federal constitutional right to procedural due process was violated under clearly established law.

Instead, Doe points to cases such as *Narowetz v. Board of Dental Practice*, 2021 ME 46, 259 A.3d 771, and *Mallinckrodt US LLC v. Department of Environmental Protection*, 2014 ME 52, ¶ 28, 90 A.3d 428, which offer analysis of what Maine statute requires when conducting administrative hearings. *See* Doe Br. at 21-24. Yet as the Superior Court correctly explained, "a violation of state statute is not sufficient to establish a section 1983 claim."[5] J.A. at 24 n.4 (quoting *Fournier v. Reardon*, 160 F.3d 754, 757 (1st Cir. 1998)); *see also Lord v. Murphy*, 561 A.2d 1013, 1017 (Me. 1989) ("A violation of state law is not cognizable under § 1983." (quoting *Pollnow v. Glennon*, 757 F.2d 496, 501 (2d Cir. 1985))). And while *Mallinckrodt* was silent regarding constitutional

[5] Doe's citation to *Narowetz* would be problematic even if its reasoning were relevant because this Court decided *Narowetz* four years after the allegations underlying this appeal. Because the entire rationale underlying qualified immunity is to relieve government officials from having to try to predict future judicial decisions when making decisions in real time, clearly established law must exist before the events that give rise to a civil rights complaint. *See Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (per curiam) ("Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct." (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam))).

analysis, *Narowetz* was a Maine Administrative Procedure Act ("MAPA") decision where this Court took "no position" as to whether its facts could "rise to the level of a constitutional violation." 2021 ME 46, ¶ 32, 259 A.3d 771.

But even looking past the fatal deficiency that *Narowetz* was not grounded in United States Constitutional law, its facts differ significantly from Doe's allegations here. *Narowetz* concluded that it was a violation of MAPA for a prosecuting attorney to offer legal advice to the Board in the course of its decision-making. *Id.* ¶ 33. But there is no allegation that Vaillancourt acted as a legal advocate at an adjudicatory hearing or that she offered the Board advice or counsel during its deliberations. As the Superior Court pointed out, "It is even less clear whether it is unlawful for someone who does not act in an advocate capacity to commingle advisory and investigatory functions." J.A. at 28 n.7; *see also id.* ("The combination of investigative and adjudicative functions does not, without more, constitute a due process violation." (quoting *Withrow v. Larkin*, 421 U.S. 35, 58 (1975))).

If all of this were not more than enough to defeat Doe's arguments in Part V.B. of his brief—and to be clear, it is—Doe waived these arguments by voluntarily stipulating to the dismissal of his Rule 80C petition. Doe's argument in Part V.B. is that Executive Director Vaillancourt—and potentially others as a result of her actions—violated Doe's federal procedural due process rights by

corrupting the development of his administrative case. But Doe opted not to allow the administrative process to fully play out. Had he done so, he would have had an opportunity in his Rule 80C appeal to convince the Superior Court that the Board's actions should be vacated for those reasons. Instead, he abandoned this process in favor of appealing only the § 1983 dismissal.

2. Doe's unpreserved arguments fail to demonstrate that the Board's decision to temporarily suspend his dental license on an emergency basis in advance of an adjudicatory hearing was a violation of clearly established law.

Citing to *Doe v. Board of Osteopathic Licensure*, 2020 ME 134, ¶ 16, 242 A.3d 182, 188, Doe argued below that he could overcome qualified immunity because a "government action may violate a licensee's procedural due process rights if it deprives the licensee of his license without allowing the licensee to be heard because a licensee has a property interest in his existing license." Doe Opp. to Mot. to Dismiss at 12 (emphasis added). But *Board of Osteopathic Licensure* is irrelevant. It does not say anything about if or, importantly, when the federal Due Process Clause guarantees a pre-deprivation hearing regarding a professional license suspension. Instead, the opinion noted—in the same paragraph that Doe cited in Superior Court—that the licensee in that case did "not claim to be deprived of [his] license." 2020 ME 134, ¶ 16, 242 A.3d 182.

Doe also argued below that officials are not entitled to qualified immunity in this case because he "met the pleading requirements necessary to sustain claims against Defendants in their individual capacities under § 1983 because he has sufficiently alleged that Defendants, acting under color of law and in their individual capacities, deprived him of his property right in his professional license." Doe Opp. to Mot. to Dismiss at 13. This conclusory statement does nothing to explain why the specific factual allegations he made against the Board—even assuming they are true—could constitute a violation of his federal constitutional rights. Nor does the Second Amended Petition's recitation of generic pleading standards support this proposition.[6] *Id.* at 13.

Because Doe offered no valid theory below as to why he could defeat a qualified immunity defense, that alone is enough for this Court to affirm the Superior Court's decision. But even if Doe had not forfeited the arguments he now makes in Part V.C. of his appellate brief, *see* Doe Br. at 28-39, these new arguments fare no better. He now asserts—with no citations to caselaw—that a professional license is a "protected property interest" and he therefore was entitled to "due[] process before deprivation." *Id.* at 28. He then restates this

[6] One of the cases cited by Doe below, *Gomez v. Toledo*, 446 U.S. 635 (1980), implied that defendants may need to wait until filing an answer to plead qualified immunity as an affirmative defense. However, this case predates the seminal case that established modern qualified immunity doctrine, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), by two years.

proposition, noting that procedural due process "ordinarily requires notice and an opportunity to be heard *before* the protected interest is suspended or revoked." *Id.* (emphasis in original).

Doe's problem is that the word "ordinarily" does all of the work in his argument, and the caselaw that he cites neither holds that a pre-deprivation hearing is "ordinarily" due in most circumstances, nor clearly establishes that his disciplinary matter before the Board is the type of case that required such a pre-deprivation hearing. Likewise, nothing in the cases to which he points clearly establish that the Board's review of the 18 patient complaints against him was an "ordinary" adjudicative procedure at all.

For the first time on appeal, Doe correctly acknowledges that *Mathews v. Eldridge*, 424 U.S. 319 (1976), is the foundational Supreme Court decision that supplies the framework for determining both whether and when an adjudicatory hearing is required before the government deprives an individual of a property interest. Doe Br. at 28. But his scant analysis of *Mathews*, which fails to engage with the decision's details or cite to any specific page of the opinion, is simply wrong. *See id.* at 31-34.

First, *Mathews* notes that the Supreme Court has consistently held that property holders are entitled to a hearing "before an individual is finally

deprived of a property interest." 424 U.S. at 333 (emphasis added). And here, Doe was provided with such a hearing. *See* J.A. at 45.

Moreover, *Mathews* invokes a number of situations where the Supreme Court determined that a full adjudicatory hearing could occur post-deprivation, while still satisfying the federal Due Process Clause. These include "revocation of a state-granted driver's license," *id. at* 334 (citing *Bell v. Burson*, 402 U.S. 535, 540 (1971)), and for-cause termination of federal employees, *id.* (citing *Arnett v. Kennedy*, 416 U.S. 134, 142-46 (1974)). Likewise, *Mathews* itself ultimately concluded that a pre-hearing deprivation of disability benefits, resulting in the foreclosure of the beneficiary's home and "forcing [him], his wife, and their children to sleep in one bed[,]" was nevertheless consistent with due process. 424 U.S. at 350 (Brennan, J., dissenting).

As Doe correctly notes, *Mathews* instructs that courts should consider three factors when determining whether a property interest may be stripped in advance of a hearing: (1) the private interest affected by governmental action; (2) the risk of erroneous deprivation through the procedures used; and (3) the governmental interest in acting in advance of a hearing. *Id.* at 335.

Though no one would dispute that Doe has a legitimate property interest in his dental license, his argument that the first factor "weighs heavily" in his favor, Doe Br. at 31, fails to explain how his property interest in a professional

license is greater than that of a terminated federal employee's interest in their job or a disability beneficiary's interest in their monthly stipend, both situations where the Supreme Court determined that a pre-deprivation hearing was unnecessary.

Nor is it true, as he argues, that the Board acted "without permitting Dr. Doe notice and opportunity to be heard before the suspension." Doe Br. at 32. While he was not provided an opportunity to present live evidence or cross-examine witnesses in advance of the temporary suspension, the Second Amended Petition reflects that he was both provided notice of each patient complaint, along with an opportunity to provide a written explanation in response. J.A. at 39.[7]

On the second *Mathews* factor, Doe mischaracterizes the Board's decision as "based on conclusory findings," citing to his Second Amended Petition. Doe Br. at 32. But the actual temporary suspension order reveals it was not at all conclusory. J.A. at 70-75. It sets forth 23 preliminary factual findings, *id.* at 71-73, and is grounded in both Maine statute and professional medical association standards of care, *id.* at 73-74, which inform the temporary suspension order's

[7] Doe attached to his Second Amended Petition a 47-page affidavit (Exhibit B, *see* J.A. at 124-168), which itself contained 8 attached exhibits. Among them are the 18 patient complaints underlying this action (Exhibit A attached to Exhibit B, *see* J.A. at 76-123), as well as 50 pages of Doe's responses to them (Exhibit B attached to Exhibit B, not included in the Joint Appendix due to space constraints).

conclusion that Doe's actions "put the health and safety of his patients and staff in immediate jeopardy," *id.* at 74.

On the third *Mathews* factor, Doe acknowledges the Board's "legitimate interest in protecting the public health and welfare," but implies that the Board chose not to hold a pre-deprivation hearing due to cost concerns. Doe Br. at 33-34. Even assuming this were true—and as explained below, the materials attached to the Second Amended Petition indicate the opposite—Doe fails to explain why the Board's interest "in conserving scarce fiscal and administrative resources" is illegitimate here, when the Supreme Court in *Mathews* relied in part on this rationale in permitting a pre-hearing deprivation of disability benefits. 424 U.S. at 348.

In any event, the materials attached to the Second Amended Petition reveal that cost was not a motivating factor in the Board's decision to temporarily suspend Doe's license on an emergency basis. Doe argues that the Board's decision could not have truly been grounded in an urgent need to protect public health because the investigation into his practice "had been ongoing for nearly a year," implying that the Board's concerns related mostly to "certain alleged deficiencies" in his administrative practices. Doe Br. at 34.

While it is true that the Board's preliminary findings noted such "administrative deficiencies" as improper storage and disposal of expired

medications and biological waste, it also made several preliminary findings constituting obvious direct threats to public health and safety, such as improper restraint of patients, substandard management of fear and pain, and failure to properly administer sedatives and anesthesia. J.A. at 71-72. Doe's theory seems to be that it is not possible to place the public in immediate jeopardy if it takes too long (in his view) for a regulatory agency to take corrective action.

His logic is faulty. Doe's argument is akin to arguing that if a bridge has a growing crack in its foundation, travelers cannot be in immediate danger if officials wait too long to address it. Such flawed reasoning is self-evident. Doe may disagree with the Board's decision to temporarily suspend his license, but the patient complaints and Board preliminary findings attached to his Second Amended Petition, J.A. at 70-168, cannot accurately be described as lacking "objective indicia of immediate and ongoing danger." Doe Br. at 35.

Moreover, the materials attached to Doe's Second Amended Petition likewise indicate that the Board was prepared to shoulder the cost of a hearing within one month of his temporary suspension. *See, e.g.*, J.A. at 231 (considering scheduling the hearing on Sundays during the 30-day temporary suspension period). Doe's criticism that the Board's investigation "had been ongoing for nearly a year" and "involved complaints and issues that were not sudden or new in nature," *id.* at 34, seem to imply that he thinks the Board should have

temporarily suspended his license much more quickly, perhaps without giving him an opportunity to respond in writing to the growing number of patient complaints. But the United States Constitution imposes no such requirement.

And perhaps it is true that Doe was unaware of the existence of additional patient complaints in early 2017, Doe Br. at 34, but that is certainly not the case when he filed his Second Amended Petition, as indicated in the exhibits that Doe attached to that pleading. *See, e.g.*, J.A. at 172 (January 25, 2017 email from Executive Director Vaillancourt encouraging the complaint committee to convene to discuss immediate [B]oard action due to receiving "another complaint" that day.).

As set forth above, the Board's decision to temporarily suspend Doe's license cannot plausibly be construed as a violation of his procedural due process rights, at least on the allegations contained in the Second Amended Petition. But even if this Court disagrees, Doe has failed to demonstrate how any individual affiliated with the Board could have known at that time that issuing the temporary suspension order violated his federal constitutional rights under clearly established law.

The Supreme Court has "repeatedly" cautioned courts "not to define clearly established law at a high level of generality." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (per curiam) (quoting *San Francisco v. Sheehan*, 575 U.S. 600,

613 (2015)). And this Court has applied that principle to cases brought pursuant to § 1983 for decades. *See, e.g.*, *Creamer v. Sceviour*, 652 A.2d 110, 113 (Me. 1995) (underscoring that a mere "general declaration of the legal right allegedly violated" is not sufficient) (quoting *Maguire v. Old Orchard Beach*, 783 F. Supp. 1475, 1480 (D. Me. 1992)). Although the Supreme Court does not demand "a case directly on point for a right to be clearly established," a plaintiff seeking to overcome a qualified immunity defense must point to a decision that places the constitutional validity of an official's actions "beyond debate." *Kisela*, 584 U.S. at 104 (quoting *White v. Pauly*, 580 U.S. 73, 79 (2017) (per curiam)); *see also Creamer*, 652 A.2d at 113. In both the Superior Court and before this Court, Doe has failed to do so.

Nor has Doe attempted to address the caselaw raised in the decision below. *See* J.A. at 9-10. As the Superior Court noted, this Court held in *In re J.* that Maine's "Yellow Flag" law does not violate the right to due process when the government seizes an individual's firearms in advance of holding an adjudicatory hearing. 2022 ME 34, ¶ 20, 276 A.3d 510. Presumably, disarming an individual of his property interest in a firearm is at least as serious as depriving an individual's interest in an occupational license.

One case that is relatively similar to Doe's is *Gonzalez-Droz v. Gonzaelz-Colon*, 660 F.3d 1 (1st Cir. 2011); J.A. at 10. There, a physician pursued a § 1983

challenge against members of the Puerto Rico medical licensure board for voting to strip him of his medical license in advance of an adjudicatory hearing. *Gonzalez-Droz*, 660 F.3d at 6. In confirming that the physician's due process rights had not been violated, the First Circuit noted that "the need for a pre-deprivation hearing is further diminished by the state's strong interest in upholding 'the integrity of a state-licensed profession.'" *Id.* at 13 (citation modified) (quoting *Amsden v. Moran*, 904 F.2d 748, 755 (1st Cir. 1990). The Court went on to reason that neither the "risk of an erroneous deprivation nor the possible benefit of additional safeguards" changes this calculus because "[e]specially in cases involving public health and safety and the integrity of professional licensure, the force of these factors is significantly diminished by the ready availability of prompt post-deprivation review." *Id.*

Even in light of the Superior Court's decision underscoring these holdings, Doe's brief does not attempt to distinguish them from his situation, much less point to more comparable circumstance where an appellate court recognized a violation of procedural due process. Because he "has not identified a clearly established right to a pre-suspension adjudicatory hearing," J.A. at 10, the Superior Court's decision should be affirmed.

II. This Court could affirm the dismissal of Doe's § 1983 count on the alternative grounds of quasi-judicial immunity.

A. Standard of Appellate Review.

This Court "may affirm a trial court's judgment 'on a ground not relied upon by the trial court.'" *Deutsche Bank Nat. Trust Co. v. Wilk*, 2013 ME 79, ¶ 19, 76 A.3d 363 (quoting *Mortg. Elec. Reg. Sys., Inc. v. Saunders*, 2010 ME 79, ¶ 18, 2 A.3d 289); *see also Express Scripts, Inc. v. State Tax Assessor*, 2023 ME 68, ¶¶ 19-20, 304 A.3d 239 (affirming summary judgment in Assessor's favor in part on alternative grounds); *Schlear v. James Newspapers, Inc.*, 1998 ME 215, ¶ 6, 717 A.2d 917 ("a court order, even if entered for an erroneous reason, will be affirmed if there is a valid basis for the order"). The First Circuit applies the same rule in cases brought under § 1983. *See, e.g.*, *Decotiis v. Whittemore*, 635 F.3d 22, 28 (1st Cir. 2011) ("The Court is not 'wedded to the lower court's rationale' and may affirm the district court's order of dismissal 'on any grounds made manifest by the record.'" (quoting *Roman-Cancel v. United States*, 613 F.3d 37, 41 (1st Cir. 2010))). Thus, no aspect of federal civil rights law prevents this Court from applying its own procedural rule to this case.

For example, this Court could determine that Defendant-Appellees Schneider, Howard, Davis, Dunbar, Kasprak, Rowan Morse, Stephen Morse, and Young are entitled to an affirmance since Doe's Second Amended Petition does

nothing more than allege their various municipal residencies and name them as defendants in their official and personal capacities. *See* J.A. at 38-39. It does not allege any specifics about any of their actions in the underlying events. In fact, it does not even allege whether these individuals are members of the Board, members of the Board's staff, or complaint committee members employed by OPOR or the Office of Attorney General.[8] But where merely most Defendant-Appellees would be entitled to affirmance on this basis, the Court could affirm dismissal of the suit against all parties represented by the Office of Attorney General under the doctrine of quasi-judicial immunity.

When officials are sued in their personal capacities under § 1983, absolute immunity bars "certain 'quasi-judicial' agency officials who, irrespective of their title, perform functions essentially similar to those of judges or prosecutors, in a setting similar to that of a court." *Bettencourt v. Bd. of Reg. in Med*, 904 F.2d 772, 782 (1st Cir. 1990). Likewise, agency officials "responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision." *Butz v. Economou*, 438 U.S. 478, 516 (1978).

[8] For this reason, each of these individuals' qualified immunity defenses grow exponentially, since qualified immunity defenses are assessed individually as to the allegations against each defendant. *See Segrain v. Duffy*, 118 F.4th 45, 58-70 (1st Cir. 2024) (performing individualized, qualified immunity analyses where multiple defendants were accused of different conduct).

This doctrine promotes the "strong need to insure that individual Board members perform their functions for the public good without harassment or intimidation." *Bettencourt*, 904 F.2d at 783. (quoting *Horwitz v. Bd. of Med. Exam. of Colo.*, 822 F.2d 1508, 1515 (10th Cir. 1987)).

Quasi-judicial immunity applies if an agency's members: 1) "perform a traditional 'adjudicatory' function, in that they decide facts, apply law, and otherwise resolve disputes on the merits;" 2) decide cases "sufficiently controversial that, in the absence of immunity they would be subject to numerous damages actions" by disappointed parties; and 3) act against a "backdrop of multiple safeguards designed to protect a [dentist's] constitutional rights." *Guzman-Rivera v. Lucena-Zabala*, 642 F.3d 92, 96 (1st Cir. 2011) (citation modified). Because it is absolute, once quasi-judicial immunity is triggered, it applies even if an official acted in bad faith or "maliciously and corruptly." *Wang v. N.H. Bd. of Reg. in Med.*, 55 F.3d 698, 702 (1st Cir. 1995) (quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)).

Although this Court has not yet commented on this doctrine grounded in federal common law, it is similar to the statutory immunity found in the Maine Tort Claims Act for government employees undertaking any "quasi-judicial act, including . . . revocation of any license." *See* 14 M.R.S.A. § 8104-B(2) (Westlaw July 28, 2025); *see also Carey v. Bd. of Overseers of the Bar*, 2018 ME 119, ¶ 22,

192 A.3d 589 (noting that there is no "bad faith" exception to a quasi-judicial immunity defense under the Maine Tort Claims Act.").

B. All individuals represented by the Attorney General are absolutely immune from suit under the doctrine of quasi-judicial immunity.

The Second Amended Petition makes no substantive allegations against any individual represented by the Office of Attorney General ("OAG"), except for the initial hearing officer, Shaw. Even under an extremely liberal reading of the Seconded Amended Petition, the strongest inference that one could draw is that Doe is alleging that all named officials except for Shaw and Vaillancourt are members of the Board that voted to temporarily suspend his dental license. In light pf these sparse allegations, every individual represented by the OAG satisfies each prong of the test and is therefore entitled to absolute, quasi-judicial immunity.

First, members of the Board and the initial hearing officer both perform traditional adjudicatory functions. As outlined by Maine statute, Board members and the hearing officer participating in adjudicatory hearings decide facts, apply laws, rule on the admissibility of evidence, set hearing and briefing schedules, resolve disputes on the merits, issue a decision and order with findings of fact and conclusions of law, and—if a violation is found after all evidence is presented—impose sanctions. *See* 5 M.R.S.A. §§ 9057, 9059, 9061,

9062 (Westlaw July 28, 2025); *see also Bettencourt*, 904 F.2d at 783 (describing these types of state agency roles as "'functionally comparable' to that of a judge." (quoting *Horwitz*, 822 F.2d at 1511)); *Forest Ecology Network v. Land Use Regul. Comm'n*, 2012 ME 36, ¶ 45 n.20, 39 A.3d 74 ("A basic tenet of administrative law is that rulemaking is a quasi-legislative act, and that adjudication is a quasi-judicial act.").

Second, like the Massachusetts officials in *Bettencourt*, the hearing officer and Board members decide controversial matters involving individuals' practice of healthcare within the state, which in the absence of immunity, would likely subject them to damages lawsuits by disappointed parties.[9] 904 F.2d at 783. To ensure and protect public health and safety, Boards must be able to function and perform their statutory responsibilities without harassment or intimidation caused by angry or disappointed licensees such as Doe suing them for damages. This remains true "even where they are accused of deciding the case due to improper motives." *Guzman*, 642 F.3d at 96.

Third, sufficient safeguards exist under Maine law, including the judicial review process contained in MAPA, to protect against Board members engaging

[9] In recognition of this rationale, the Maine Legislature has provided to Board members and all those who assist them in performing their duties and functions with broad and absolute civil immunity under state law. 24 M.R.S.A. § 2511 (Westlaw July 28, 2025); *see also Argereow v. Weisberg*, 2018 ME 140, ¶ 21, 195 A.3d 1210 (immunity provided by section 2511 for dentists and others enumerated not forfeited even when the "otherwise protected conduct is accompanied by malice.").

in unconstitutional conduct. Chapter 375 of MAPA mandates requirements for agency adjudicatory proceedings when statute or constitutional law requires an opportunity for hearing. Any Board decision may be appealed to the Superior Court and further reviewed by appealing to this Court. 5 M.R.S.A. §§ 11001-11008 (July 20, 2025). If the Board acts in violation of either state or federal law, the Maine judiciary serves as a backstop. *See, e.g.*, *Narowetz*, 2021 ME 46, ¶ 33, 259 A.3d 771 (vacating Board decision for failure to abide by MAPA procedures).

There can be no question that MAPA "sufficiently ensures the impartiality of the decisionmaking process" and "provides protection against" any potential "wrongful actions" from the Board. *Guzman*, 642 F.3d at 97, 98 (citation modified); *see also Bettencourt*, 904 F.2d at 783-84 (same). That Doe opted to abandon the Rule 80C process for a speedier appeal of his dismissed claims for monetary damages does not undercut the safeguards provided by MAPA and the Maine judiciary.

For these reasons, the initial hearing officer and all Board members are entitled to absolute immunity on Doe's § 1983 claims for damages. This Court is free to affirm the Superior Court's decision on this alternative ground.[10]

[10] When undersigned counsel presented argument at the Superior Court's hearing on the motion to dismiss, he raised the issue of absolute, quasi-judicial immunity, providing oral citations to the line of cases cited herein, such as *Bettencourt*. In response to these and undersigned's additional oral

CONCLUSION

For the foregoing reasons, the Board respectfully requests that the Court affirm the Superior Court's dismissal of Doe's § 1983 claims.

Respectfully submitted,

July 28, 2025

AARON M. FREY
Attorney General

/s/ Paul E. Suitter
Paul E. Suitter, Maine No. 5736
Assistant Attorney General
6 State House Station
Augusta, Maine 04333–0006
(207) 626-8800
paul.suitter@maine.gov

Counsel for Appellee Maine Board of Dental Practice, all Appellees named in their official capacity, and all Appellees named in their personal capacity, except Vaillancourt and Foster

citations to qualified immunity caselaw raised at oral argument, the Superior Court provided Doe an opportunity to supplement his opposition to the Board's motion to dismiss, but he opted not to do so. J.A. at 18. In any event, absolute immunity for judicial or quasi-judicial acts cannot be waived or forfeited by failing to advance the defense in a written motion to dismiss. Although a defendant may successfully move to dismiss an action "when the facts establishing the defense appear within the four corners of the complaint," *Zenon v. Guzman*, 924 F.3d 611, 616 (1st Cir. 2019), a party can also choose to plead absolute immunity as an affirmative defense with the option of filing a Rule 12(c) motion for judgment on the pleadings or a Rule 56 motion for summary judgment. *See, e.g.*, *Destek Grp., Inc. v. N.H. Pub. Util. Comm'n*, 318 F.3d 32, 41 (1st Cir. 2003) (affirming district court's grant of summary judgment in favor of state commissioners on the grounds of quasi-judicial immunity).