

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

REPLY BRIEF OF THE PLAINTIFF/APPELLANT

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I. INTRODUCTION

This case concerns the most basic requirements of due process: the right to an impartial adjudicatory body and the right to not be deprived of a professional license without a fair hearing, absent a genuine emergency. Dr. Doe's Second Amended Complaint alleged in detail that the Appellees commingled investigatory, prosecutorial, and adjudicatory functions, that the Board of Dental Practice's (the "Board") process was infected by bias, and that his dental license was immediately suspended without the requisite finding of immediate jeopardy.

The Appellees' Response Brief attempts to side-step Dr. Doe's arguments by asserting that Dr. Doe failed to preserve some arguments, and by raising a defense of absolute immunity in a context that this Court has consistently refused to apply the immunity. Appellees do not merely seek to apply immunity doctrines, but rather, to expand them beyond recognition and contrary to the intentions of both this Court and the legislature. Because Dr. Doe has adequately alleged violations of clearly established constitutional law, Appellees are not entitled to qualified or absolute immunity, and the Superior Court's dismissal should be reversed.

II. ARGUMENT

A. Appellees Are Not Entitled to Qualified Immunity.

Appellees argue that Dr. Doe has not sufficiently alleged facts that demonstrate a violation of clearly established law. On the contrary, Dr. Doe's Second Amended Complaint and the Appellant's Brief delineate that the right to an

impartial adjudicator free from bias and commingling of investigatory and advisory roles was clearly established at the time of Appellee's actions. Likewise, Dr. Doe's right to maintain his professional license without suspension in non-exigent circumstances was also clearly established at the time of the Appellee's actions.

1. Dr. Doe Sufficiently Alleged that Appellees Violated Clearly Established Law When They Suspended His Dental License.

a. *Dr. Doe Preserved His Arguments Related to Appellee Vaillancourt's Actions.*

Appellees argue that Dr. Doe failed to preserve his argument that Appellees are not entitled to qualified immunity based on Appellee Vaillancourt's actions. This is an overly narrow view of issue preservation and would set an unreasonable standard for parties to adhere to in the lower courts. Dr. Doe argues on appeal, as he did in the Superior Court, that Appellees are not entitled to qualified immunity.

"An issue is raised and preserved if there was a sufficient basis in the record to alert the court and any opposing party to the existence of that issue." *Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003 (*quoting Verizon New England, Inc. v. Pub. Utils. Comm'n*, 2005 ME 16, ¶ 15, 866 A.2d 844). In opposition to Appellee Vaillancourt's Motion to Dismiss in the Superior Court, Dr. Doe argued that Appellee Vaillancourt was not entitled to qualified immunity because, acting under the color of state law, she deprived him of his clearly established due process

right to his dental license. Dr. Doe further argued that Appellee Vaillancourt improperly asserted herself into the investigatory, prosecutorial, and adjudicatory processes by selecting specific documents for the Board to review, seeking a basis upon which she could persuade the Board to suspend Dr. Doe's license, and hand selecting a hearing officer to preside over Dr. Doe's adjudicatory hearing.

Those same arguments were based upon the Second Amended Complaint, which unequivocally alleged that Appellee Vaillancourt impermissibly inserted herself into the investigation, prosecution, and presentation of the Complaints against Dr. Doe, which biased the Board's decision-making process. *See J.A. at 40.* In fact, Dr. Doe devoted five full pages of his Second Amended Complaint to summarize the improper and unconstitutional actions taken by Appellee Vaillancourt. *See J.A. at 40-44.* The record demonstrates that there was a sufficient basis in the record to alert the Superior Court and Appellees that Appellee Vaillancourt was not entitled to qualified immunity because of her role in suspending Dr. Doe's license in violation of his due process rights. *See Brown*, 2015 ME 47, ¶ 6, 114 A.3d 1003. Accordingly, Dr. Doe preserved the arguments he makes on appeal regarding Appellee Vaillancourt's actions defeating qualified immunity.

b. Appellee Vaillancourt's Actions Violated Federal Constitutional Law.

The Supreme Court has consistently held that due process is violated when a decisionmaker is biased or when the process is infected with impermissible influence. *See, e.g., In re Murchison*, 349 U.S. 133, 136 (1955) (“A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases”); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (“a biased decisionmaker [is] constitutionally unacceptable”). This Court has echoed the same principle and has held that “[a] party before an administrative board is entitled to a fair and unbiased hearing under the Due Process Clauses of the United States and Maine Constitutions.” *Lane Const. Corp. v. Town of Washington*, 2008 ME 45, ¶ 29, 942 A.2d 1202. In this case, the bias permeated the entire investigatory, prosecutorial, and adjudicatory processes.

Dr. Doe’s Second Amended Complaint alleged that Appellee Vaillancourt’s conduct went far beyond routine administration. J.A. at 40-44. Appellee Vaillancourt altered inspection reports, solicited additional complainants by directly contacting patients, drafted correspondence for use in the prosecution of the complaints against Dr. Doe, and repeatedly engaged in *ex parte* communications with the hearing officer and Board members. *See* J.A. at 40-44. Thus, Appellee Vaillancourt biased the Board’s decision-making process by investigating, prosecuting, and presenting complaints to the Board and by making

statements and representations about Dr. Doe to the Board, the media, the public, and multiple hearing officers. *See* J.A. at 40. Her conduct rose to the very level of bias the Supreme Court warned against in *Murchison*, 349 U.S. at 136, and *Withrow*, 421 U.S. at 47. As such, Appellee Vaillancourt is not entitled to qualified immunity.

2. Appellees' Immediate Suspension of Dr. Doe's Dental License without a Pre-Deprivation Hearing Violated Clearly Established Law.

Appellees insist that they acted within the confines of federal constitutional law when they suspended Dr. Doe's dental license without first providing him an adjudicatory hearing, but their arguments are unpersuasive.

First, Appellees take issue with Dr. Doe's arguments in the Superior Court that he met the pleading requirements necessary to sustain claims against Appellees in their individual capacities, and that he failed to argue why his factual allegations constituted a federal constitutional violation. Resp. Br. at 28. Dr. Doe's Second Amended Complaint can hardly be a "recitation of generic pleading standards" as Appellees assert. Rather, Dr. Doe's Second Amended Complaint had 77 detailed paragraphs with allegations against Appellees. *See* J.A. at 36-52.

In Count II, Dr. Doe alleged that Appellees immediately suspended Dr. Doe's license without the requisite finding that the health or safety of a person was in immediate jeopardy. *See* J.A. at 50. His allegations sufficiently overcame the qualified immunity defense because he alleged that he had a protected property

interest in his dental license, he was deprived of his dental license without a pre-deprivation hearing, the Board failed to make the requisite finding of immediate jeopardy, the Board was intolerably biased against him based, in part, on the actions of Appellee Vaillancourt, and Appellee Vaillancourt commingled the roles of investigator, prosecutor, and adjudicator. *See* J.A. at 40-49. Therefore, the Second Amended Complaint alleges sufficient factual allegations against Appellees to sustain Dr. Doe’s claim under 42 U.S.C. § 1983, and defeat any qualified immunity defenses asserted by Appellees.

Second, Appellees rebuke Dr. Doe for not providing a citation that a professional license is a “protected property interest” for which he was entitled to due process before deprivation but, just two pages later, they acquiesce that Dr. Doe has a legitimate property interest in his dental license. *Resp. Br.* at 28, 30. Dr. Doe’s opening brief cited *Munjoy Sporting & Athletic Club v. Dow*, 2000 ME 141, ¶ 8, 755 A.2d 531, and *Barry v. Barchi*, 443 U.S. 55, 64 (1979), in support of his argument that a professional license is a protected property interest that requires due process before he may be deprived of that interest. To the extent that there remains a question that a professional license is a protected property interest, the First Circuit has also held that a license that allows a professional to earn his livelihood is a constitutionally protected property interest. *See Gonzalez-Droz v. Gonzalez-Colon*, 660 F.3d 1, 13 (1st Cir. 2011).

Third, the right to due process is—and has been—clearly established since well before Dr. Doe’s dental license was suspended. Indeed, due process forbids deprivation of a protected property interest without a pre-deprivation adjudicatory hearing absent a genuine emergency. *See Bell v. Burson*, 402 U.S. 535, 542 (1971). This is not a novel case wherein Dr. Doe is requesting the Court to create a new rule of law. Dr. Doe is simply requesting the opportunity to litigate his legitimate claims against Appellees for violating his federal constitutional right to due process.

Moreover, *Gonzalez-Droz* is distinguishable from Dr. Doe’s case, and Appellees’ reliance on its holding is misleading. *See Gonzalez-Droz*, 660 F.3d at 13. In *Gonzalez-Droz*, the physician did not challenge the Board’s key finding that he was practicing medicine in violation of a regulation regarding the practice of cosmetic medicine. *Id.* The First Circuit relied upon that fact, as well as the low risk of an erroneous deprivation, the fact that a hearing was afforded to the physician only two weeks later, and the provisional suspension was not enacted immediately when it held that the physician’s due process rights had not been violated. *Id.* at 14. Here, however, the risk of erroneous deprivation was exceedingly high in Dr. Doe’s case, the hearing did not occur for over six months, and the complaints against Dr. Doe were ultimately found to be meritless.

While the First Circuit may have found that the physician's due process rights were not violated in *Gonzalez-Droz*, that finding is not binding on this Court. *See Gonzalez-Droz*, 660 F.3d at 14; *see also Bell*, 402 U.S. at 540 ("A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case."); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("Once it is determined that due process applies, the question remains what process is due. It has been said so often by this Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands."). Rather, the Court must consider the facts of this case as they were alleged in the Second Amended Complaint to determine whether Appellees are entitled to a defense of qualified immunity. *See Bell*, 402 U.S. at 540; *Morrissey*, 408 U.S. at 481. That analysis should result in a holding in favor of Dr. Doe.

Fourth, Appellees disagree with Dr. Doe's analysis of the *Mathews v. Eldridge*, 424 U.S. 319 (1976), factors. Appellees emphasize that *Mathews* does not apply because Dr. Doe was provided a hearing before a final decision on his license was issued. This argument ignores the irreversible and irreparable damage Dr. Doe suffered as a result of the constitutionally infirm suspension of his dental license. As Dr. Doe alleged in the Second Amended Complaint, when Appellees suspended his license, he lost his ability to provide care to patients who receive

MaineCare, he lost hospital privileges, and countless patients and prospective patients based on allegations that were disproven. *See* J.A. at 50-51. The impact of the suspension on Dr. Doe’s license was effectively a “final” decision when considered in this light.

Applying *Mathews*, the balance tips heavily in Dr. Doe’s favor: (1) his interest in his livelihood is substantial; (2) the risk of erroneous deprivation was high, as confirmed by the Board’s later dismissal of the charges; and (3) the government’s interest in bypassing a hearing was minimal because the complaints were months old, and no new emergency existed. *See Mathews*, 424 U.S. 319. Under these circumstances, due process required a pre-deprivation hearing.

B. Appellees Are Not Entitled to Absolute Immunity For Claims Brought Under 42 U.S.C. § 1983.

Appellees argue in the alternative that even if qualified immunity does not apply, they are absolutely immune under the doctrine of quasi-judicial immunity. Resp. Br. 37-42. Appellees are not absolutely immune because the quasi-judicial absolute immunity does not apply in cases brought under § 1983.

This Court has repeatedly and consistently held that the absolute immunity provided to governmental employees under the Maine Tort Claims Act (“MTCA”) applies only to tort claims of negligence or careless conduct. *See Mueller v. Penobscot Valley Hosp.*, 538 A.2d 294, 297 (Me. 1988) (“When viewed in its entirety, the Act clearly indicates that the Legislature intended its provisions to

apply only to actions arising in tort.”); *see also Clifford v. MaineGeneral Med. Ctr.*, 2014 ME 60, ¶ 47, 91 A.3d 567 (explaining that the MTCA provides governmental employees absolute immunity from personal liability for performing discretionary functions within the scope of their employment). This Court has further held “[t]here is also nothing in the Act or its legislative history to indicate that its notice provisions were intended by the Legislature to apply to civil rights actions brought under 42 U.S.C. § 1983.” *Mueller*, 538 A.2d at 298. As such, the absolute immunity afforded to judicial and quasi-judicial governmental employees is “inapplicable to actions brought pursuant to § 1983.” *Id.*

Furthermore, this Court has made it clear that the legislature enacted the MTCA in response to this Court’s abolition of the common law doctrine of sovereign immunity. *Darling v. Augusta Mental Health Inst.*, 535 A.2d 421, 424 (Me. 1987). The legislature intentionally limited governmental immunity exceptions to those set forth by statute. *Id.*

Here, Dr. Doe has alleged that his due process rights were violated under § 1983. This Court’s longstanding precedent to limit absolute immunity to claims against governmental employees arising in tort law does not apply to Dr. Doe’s § 1983 claims against Appellees. Appellees have not identified any reason to uproot decades of precedent to broaden the limited immunity. Accordingly, Appellees are not entitled to absolute immunity.

III. CONCLUSION

For the foregoing reasons, Dr. Doe respectfully requests that the Court reverse the Superior Court's order of dismissal of Dr. Doe's § 1983 claims.

DATED at Portland, Maine this 25th day of August 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2025, I filed the foregoing Reply Brief of the Appellant 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.

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