

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

In Re Paul G. Gosselin, D. O.)	
)	
Case No. CR2021-49)	MOTION FOR RECUSAL
)	OF PETER P. MICHAUD

Paul G. Gosselin, D.O, by and through his undersigned attorneys, hereby requests pursuant to 5 M.R.S. § 9063 that Board member Peter P. Michaud recuse himself from any further involvement in this matter, before, during or following the scheduled hearing, and for any purpose, with the sole exception of complying with 5 M.R.S. § 9063, and that he determine the question as a part of the record as required by 5 M.R.S. § 9063. In support whereof, Dr. Gosselin states as follows:

STATEMENT OF FACTS

I. Mr. Michaud's Role in Board Proceedings to Date

1. Undersigned counsel have obtained and transcribed a recording of the meeting convened by the Board on November 18, 2021, at which the Board voted to suspend Dr. Gosselin's license to practice medicine on an emergency basis. *See* Transcript at **Exhibit A**, Declaration of David Bauer, Esq. at **Exhibit B**. The recording is extraordinary, and exposes Mr. Michaud as an unacceptably biased Board member, who lacks the requisite impartiality to adjudicate these proceedings.

2. Mr. Michaud drove the Board's decision-making process at the November 18 meeting. Mr. Michaud abused the Board's authority and process, and ignored the advice of the Board's legal advisor, in bad faith, in order to manufacture artificial grounds for the emergency

suspension of Dr. Gosselin's license, so that he could make an immediate, highly publicized example out of Dr. Gosselin that would shut down, throughout the profession in Maine, opinion, speech and medical practice that run counter to the prevailing COVID-19 and COVID-19 mRNA vaccine narrative.

3. Mr. Michaud pressed for immediate action without a hearing:

*[H]e presents an immediate and significant **threat to public health**. Uh, I'm wondering, Ms. Wilson, if it is possible for the Board to **skip the complaint process**, and go directly to an action in court, or a temporary order, and uh, on an action by the Attorney General's office before a judge (emphasis added).¹*

4. However, 5 MRS § 10004 enumerates the limited grounds on which the Board may suspend a license without a hearing. The sole theoretically relevant ground² appears in § 10004(3), which permits suspension without a hearing *only where*:

the health or physical safety of a person ...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**

That statute simply does not contemplate some inchoate, speculative future jeopardy to future unknown persons, and the Board's legal counsel knew it.

5. Accordingly, AAG Lisa Wilson advised Mr. Michaud that there were no grounds for an emergency suspension:

*I will say in response to Mr. Michaud's question ... normally when the Board acts, wants to act immediately like that, the Board utilizes the section of the statute that authorizes immediate suspension, uh without hearing, uh those can be issued in cases where there is immediate jeopardy, and, uh, otherwise, to go through the complaint process would fail to adequately respond to a known risk to physical health or safety. Uh, I did talk with some of my colleagues in the office about whether this would be a candidate for immediate suspension, because obviously it's extremely concerning, however, **we don't think it meets that threshold**, I mean ...as you know, the deadline for healthcare providers to get the vaccine information in was the end of October, so you know they, **this is, you know, probably largely wrapped up**...so I think I would recommend that you move*

¹ Exhibit A, ¶ 20.

² The other grounds include judicial action, reciprocal license, certified inspector, gambling and horse racing,

forward probably with a complaint, with the idea that we set, you know, a relatively short deadline for a hearing (emphasis added).³

6. When AAG Wilson states "this is, you know, probably largely wrapped up" she is referring to the fact that on August 12, 2021, the Maine Department of Health and Human Services ("DHHS") imposed a COVID-19 vaccine mandate on Maine healthcare workers (the "COVID-19 Vaccine Mandate"). See **Exhibit C**. Governor Mills extended the original compliance deadline from October 1, 2021 until October 29, 2021.⁴ Healthcare workers failing to be fully vaccinated by October 29, 2021 would be fired. The Governor stated that the COVID-19 Vaccine Mandate was designed to leave unvaccinated healthcare workers with no opportunity to work in their chosen profession while remaining unvaccinated.⁵ All 12 of the individuals identified in the Notice of Hearing as having received exemption letters from Dr. Gosselin are Maine healthcare workers who sought medical exemptions from the COVID-19 Vaccine Mandate. By the November 18 Board meeting, the October 29 deadline had come and gone.

7. Mr. Michaud knew that the Board's legal advisor was right, but ignored her and continued to push his agenda, which is not truly about Dr. Gosselin's exemption letters at all, but instead about the implementation of his own personal biases and political agenda regarding COVID-19 and the mRNA COVID-19 vaccines:

*I'm also concerned that he discusses COVID as a hoax, and that he proposes debunked forms of so-called treatment and prophylaxis, uh, I think this is a serious one, I think this is a very serious one, and I would like to see us **take significant action immediately** (emphasis added).⁶*

³ Exhibit A, ¶ 24.

⁴ <https://www.wabi.tv/2021/09/02/governor-mills-extends-vaccination-deadline-health-care-workers/>

⁵ See Gov. Mills' press briefing of August 12, 2021, https://m.facebook.com/newscentermaine/videos/1005273496963785/?refsrc=deprecated&ref=watch_permalink&_rdr

⁶ Exhibit A, ¶ 20

Dr. Gosselin never referred to COVID-19 as a "hoax." Ivermectin and Hydroxychloroquine have never been "debunked". Numerous state legislatures and attorneys general are moving to create safe harbors for doctors who wish to prescribe them, without fear of the type of punitive action that has been taken against Dr. Gosselin. The Oklahoma Attorney General recently stated:

I stand behind doctors who believe it is in their patients' best interests to receive Ivermectin and Hydroxychloroquine. Our health care professionals should have every tool available to combat COVID-19. Public safety demands this. Physicians who prescribe medications and follow the law should not fear disciplinary action for prescribing such drugs.⁷

There is substantial evidence that they are effective. The effectiveness of chloroquine antimalarial drugs (chloroquine, hydroxychloroquine and mefloquine) against coronaviruses, especially SARS-1 and MERS, was known by the Center for Disease Control and Prevention ("CDC ") and National Institute of Health ("NIH") long before the current pandemic, since papers were published beginning in 2004 and continuing through 2014 about their success, *in vitro*, using acceptable doses against these viruses.⁸ The forest plot meta analysis set forth at **Exhibit P** suggests that early treatment with Hydroxychloroquine has efficacy.⁹ The NIH takes the position that it lacks sufficient evidence to recommend for or against the treatment of COVID-19 with Ivermectin.¹⁰ The forest plot meta analysis set forth at **Exhibit Q** and countless

⁷ <https://www.koco.com/article/oklahoma-attorney-general-ivermectin-covid-19-treatment/39023013>

⁸ <https://reader.elsevier.com/reader/sd/pii/S0006291X0401839X>; In vitro inhibition of severe acute respiratory syndrome coronavirus by chloroquine (2004); <https://virologyj.biomedcentral.com/track/pdf/10.1186/1743-422X-2-69.pdf>; Chloroquine is a potent inhibitor of SARS coronavirus infection and spread (CDC, 2005); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4136071/pdf/zac4875.pdf>; Screening of an FDA-approved compound library identifies four small-molecule inhibitors of Middle East respiratory syndrome coronavirus replication in cell culture (2014); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4136000/>; Repurposing of Clinically Developed Drugs for Treatment of Middle East Respiratory Syndrome Coronavirus Infection (NIAID, 2014).

⁹ <https://hcqmeta.com/>

¹⁰ <https://www.covid19treatmentguidelines.nih.gov/therapies/antiviral-therapy/ivermectin/>

studies¹¹ suggest that early treatment with Ivermectin has efficacy.¹² At the time the Board took its action, there was no binding Maine law, regulation, rule or decision categorically prohibiting the use of Hydroxychloroquine and Ivermectin in all circumstances in connection with COVID-19, and there is none today. The prescription of drugs for "off-label" use is widely accepted in the practice of medicine.¹³ The Board failed to provide any guidance to its licensees regarding COVID-19 "misinformation" and COVID-19 vaccine exemption letters until January 6, 2022, *long after* the exemption letters had been written and the Board held its November 18 meeting.

8. At least two different Board members agreed with AAG Wilson. One stated: "But that's over, he's not writing any more of those letters."¹⁴ Another stated: "Yeah, one of the concerns unfortunately is, sort of closing the barn door after the, you know, the animals have left."¹⁵

9. But Mr. Michaud again persisted with his agenda, which had nothing at all to do with Dr. Gosselin and his exemption letters, and everything to do with Mr. Michaud's unauthorized agenda:

In the State of Maine right now, we have about a thousand new cases a day; we have a handful of patients, three, four, five, dying every day from COVID, uh, 75 to 90% of those cases are people who are unvaccinated. That's a clear and present danger, and uh, I would urge the Board to act immediately. I guess I've said that 3 or 4 times now...

So what's the easiest way for us to stop him from issuing any other further statement, uh, letter, uh, so on, that could endanger people in the future? How can we do that now? (emphasis added).¹⁶

¹¹ See, e.g., https://journals.lww.com/americantherapeutics/fulltext/2021/08000/ivermectin_for_prevention_and_treatment_of.7.aspx

¹² <https://ivmmeta.com/>

¹³ <https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label>

¹⁴ Exhibit A, ¶ 37.

¹⁵ Exhibit A, ¶ 38.

¹⁶ Exhibit A, ¶¶ 39, 45.

10. AAG Wilson tried again to dissuade Mr. Michaud from his course, but then relented under his pressure:

*I mean, you have the option to issue an immediate suspension...I because of the, uh, you know, I, I, I absolutely hear you, about the ongoing concern, uh, **but, you know the letter, the letter period of time is mostly over, and on, you know, the ongoing advice, I agree it's very problematic but we would probably need an expert on that, if this is really a practice issue**, um, so you could vote for an immediate suspension...(emphasis added).*¹⁷

Note that AAG Wilson cautioned Mr. Michaud regarding another of the many fatal problems in the Board's case - the question of whether writing exemption letters for these 12 sophisticated healthcare professionals who were "not his regular patients"¹⁸ is a "practice issue." It is not. But again, Mr. Michaud simply ignored AAG Wilson's warning.

11. Under pressure from Mr. Michaud, AAG Wilson had opened the door, and seeing his opening, Mr. Michaud intervened: "Dr. Gillis would you be willing to entertain a friendly amendment to your motion?"¹⁹ Dr. Michaud then personally articulated the amendment:

*In light of the daily **risk of harm to the public** regarding the spread of COVID-19 to the public and in light of the fact that **misinformation tends to encourage** the public not to take medically recommended steps to protect themselves from the risk of COVID-19, the Board moves to suspend the licensees [sic] ability to practice for 30 days, holding a hearing as soon as possible within the 30-day period (emphasis added).*²⁰

12. 5 MRS § 10004(3) emergency suspensions require a very particularized showing that the "health or physical safety of a person...is in immediate jeopardy at the time of the agency's action", and further that the usual procedures designed to ensure due process, including a hearing, "fail to adequately respond to a known risk".

13. *Not one* of the 12 individuals receiving an exemption letter from Dr. Gosselin has complained about him. Further, these 12 sophisticated and experienced healthcare professionals

¹⁷ Exhibit A, ¶ 46.

¹⁸ Exhibit A, ¶ 13.

¹⁹ Exhibit A, ¶ 92, 96.

²⁰ Id.

had already made up their minds to avoid being injected with the mRNA COVID-19 vaccines, and were fleeing Governor Mills' Vaccine Mandate. They were not seeking and they did not receive or rely upon Dr. Gosselin's medical care or advice with respect to whether they should be injected, and nothing Dr. Gosselin said or did induced them not to be injected with the mRNA COVID-19 vaccines. The exemption letters were not intended for these individuals, but for sophisticated healthcare employers who were fully capable of independently evaluating them, contacting Dr. Gosselin for clarification as needed, and accepting or rejecting them.²¹ The exemption letters were not in fact fraudulent or deceitful,²² and were not intended to be.²³ Presumably, other healthcare professionals with medical exemptions continued in their healthcare employment, so being on the job unvaccinated with a medical exemption cannot by itself constitute a known risk to anyone. The Board has not alleged and has not presented any evidence whatsoever, either at the time of its action or since, that any of these 12 individuals was harmed by Dr. Gosselin's exemption letters, or that Dr. Gosselin or any of these 12 individuals harmed others as a result of the exemption letters.

14. The statute cannot be satisfied on these facts, and Mr. Michaud knows it. He has knowingly abused his authority and the Board's process to achieve his desired outcome. The emergency suspension and this entire proceeding have been driven by Mr. Michaud, and they are malicious and in *bad faith*.

²¹ The Notice of Hearing speaks of Dr. Gosselin "issuing vaccine exemptions". Of course, Dr. Gosselin did no such thing. Vaccine exemptions are issued by employers. Dr. Gosselin provided vaccine exemption letters to sophisticated healthcare professionals who had already determined not to be injected with the mRNA COVID-19 vaccine, and were not seeking further medical advice regarding the vaccines.

²² The Notice of Suspension states inter alia "[f]ollowing review, the Board deemed that Dr. Gosselin has engaged in conduct that constitutes fraud or deceit", however the Board chose not to proceed with an allegation of "fraud or deceit" and it is not alleged or listed as a ground in the Notice of Hearing.

²³ For example, the record reflects that when asked to revise his exemption letters to state that they were prepared in accordance with CDC guidelines, Dr. Gosselin declined to do so.

II. Mr. Michaud's Political Campaign to Shut Down Vaccine Exemptions

15. Mr. Michaud played a leading role in the political debate and process surrounding the removal of longstanding religious and philosophical exemptions to vaccine mandates applicable to certain groups of Mainers, including Maine healthcare workers. On March 13, 2019, Mr. Michaud delivered testimony to the Maine Legislature both (i) *in support of* LD 798, “An Act to Protect Maine Children and Students from Preventable Diseases **by Repealing Certain Exemptions** from the Laws Governing Immunization Requirements” (emphasis added),²⁴ and (ii) *in opposition to* LD 987, “An Act to Provide Autonomy for Health Care Providers to Practice Patient-Centered Care by Amending the Laws Governing Medical Exemptions to Immunization Requirements” (emphasis added).²⁵ Mr. Michaud’s testimony was delivered in his capacity as General Counsel for the MMA, and as the chair of the Maine Immunization Coalition Steering Committee. *See Exhibit D.*

16. LD 798 was enacted by the Legislature and signed into law on May 24, 2019, and took effect on September 1, 2021, shortly after the COVID-19 Vaccine Mandate was issued. LD 798 removed the religious and philosophical exemptions that the 12 healthcare workers identified in the Notice of Hearing might have relied upon to avoid mandatory vaccination and retain their employment. It was later the subject of a highly contentious and personalized

²⁴ LD 798 was enacted by the Legislature, and was subsequently the subject of an unsuccessful “Peoples’ veto” election. The bill repealed statutory provisions allowing for religious and philosophical exemptions for school, day care, and healthcare worker immunization requirements.

²⁵ The Legislature’s official summary of LD provides as follows: “This bill provides that a medical exemption from immunization for the purposes of attendance at a nursery school, a child care facility, a family child care provider or an elementary, secondary or postsecondary school, or for employees at certain health care facilities, is at the sole discretion of the student's or employee's health care provider. **It prohibits the adoption of rules or policies related to medical exemptions, including, but not limited to, rules or policies that establish requirements for medical exemptions and rules or policies requiring the review, acceptance or rejection of medical exemptions.** The bill also removes the authority of school boards, the governing boards of private schools and municipalities to have more stringent immunization requirements than state law” (emphasis added).

"People's veto" referendum, which failed. Mr. Michaud worked very hard to corral the 12 individuals listed in the Notice of Hearing into a mandatory COVID-19 vaccination regime. No one can reasonably rely on him to act objectively in this case.

III. Mr. Michaud's Social Media Postings Evidencing Deep Seated Bias

17. On October 23, 2019, Mr. Michaud posted the following on his Facebook page: “Those of us ‘of a certain age’ knew someone who spent time, often a short time in their tragically brief lives, in one of these. This is not a complicated issue. Maine, vote ‘No’ on March 3rd.” The post was accompanied by a photo captioned “Iron lungs in a polio ward, 1950. Society has a short memory. #vaccinate”.²⁶ See **Exhibit E**.

18. On February 5, 2020, Mr. Michaud “retweeted” a post by the MMA stating: “Absolutely amazing campaign kickoff for No on 1 yesterday at the State House.” The same day, Mr. Michaud “tweeted” the following: “Stop the anti-science, anti-public-health referendum. Protect Maine children, vote “No” on Question 1!” See **Exhibit F**. This post exposes Mr. Michaud's propensity to stereotype and denigrate those who question vaccine mandates - they are, categorically, "anti-science" and "anti-public health."

19. On February 21, 2020, Mr. Michaud “retweeted” a post by “IndivisibleSagadahoc” reading as follows: “The people’s veto to nix the vaccine bill could end lives. Voting “yes” won’t stick it to big pharma. It will put you at risk from dangerous diseases. We dipped below herd immunity status; **we can’t afford exceptions**. Vote NO on 1” (emphasis added). See **Exhibit G**. This post reveals that Mr. Michaud is deeply personally opposed to *any* exemptions to vaccine mandates, regardless of their merits.

²⁶ This “tweet” pertains to the public debate surrounding regarding the “peoples’ veto” of Public Law 154 (LD 798). The same is true for the social media posts discussed in Paragraphs 6, 7, and 10.

20. Also on February 21, 2020, Mr. Michaud “retweeted” a post by “Alfons Lopez Tena” reading as follows: “Prominent scientist @PeterHotez wants to lead a campaign against **antivaxxers**: For the first time since their movement began 20 years ago, **children are dying or in ICUs because of anti-vaxxers**. Time to speak up far more forcefully in praise of vaccines” (emphasis added). *See Exhibit H*. This hysterical and inflammatory post exposes Mr. Michaud's emotionality and personal disdain for those who question the wisdom of vaccine mandates, who he categorically dismisses with the derogatory term "anti-vaxxers".

21 On February 25, 2020, Mr. Michaud “retweeted” a post by “Ben Harder” reading as follows: “I had a conversation with a public health official last night about coronavirus, seasonal flu, pandemic response, and vaccine hesitancy. She summed up a core irony: ‘Everyone wants a vaccine. Until it’s available.’” *See Exhibit I*.

22. On February 28, 2020, Mr. Michaud “retweeted” a post by the MMA stating: “Yes on 1 Cara Sacks attacked the credibility of #NoOn1’s #Trustworthy well-respected pediatrician Dr. Blaisdell numerous times this week yet **#antivaxxers** trust disgraced British doc Wakefield – studies retracted due to fraud & financial benefits, license revoked, etc.” (emphasis added). *See Exhibit J*. Again, we see the apparent approval of the derogatory "antivaxxer" term and the stereotyping and prejudice it implies.

23. On March 1, 2020, the MMA “tweeted” the following: “Bill [Nemitz, Portland Press Herald columnist] effectively explains **the blindfolded directionless rationale of Maine anti-vaxxers**” (emphasis added). The post appears to have been made by Mr. Michaud himself, as it appeared on his Twitter page under “Tweets”. *See Exhibit K*. This post provides stunning evidence of Mr. Michaud's prejudice and lack of the requisite temperament.

24. On April 20, 2020, Mr. Michaud shared on his Facebook page a cartoon showing an individual, presumably a healthcare worker, dressed in a surgical gown and wearing both a facemask and a face shield. The healthcare worker is apparently being confronted by a group of angry protesters. The protester closest to the healthcare worker is making an obscene gesture; two others bear signs saying “SAFETY IS TYRANNY” and “THE SHUTDOWN IS SOCIALISM”. Mr. Michaud’s posted comment reads as follows: “The scene in Augusta today.” *See Exhibit L.* This is a truly insulting portrayal of the plight of hundreds of Maine healthcare workers, like the 12 individuals listed in the Notice of Hearing, who invested heavily in terms of time, energy and money in order to obtain their healthcare qualifications, and stood to lose their livelihoods and means of supporting their families as a result of the COVID-19 Vaccine Mandate. This single post shows a degree of personal hostility that disqualifies Mr. Michaud from serving on the Board in this case.

25. On May 11, 2020, Mr. Michaud “retweeted” two posts by the MMA, one regarding “the importance of vaccinations”, and the other reading as follows: “The Board of Licensure in Medicine & Board of Osteopathic Licensure says **it would be ‘unprofessional conduct’ to prescribe chloroquine, hydroxychloroquine or azithromycin** and that the drugs should not be prescribed for preventive purposes” (emphasis added). *See Exhibit M.* By Mr. Michaud's own stringent standards, that is COVID-19 misinformation, and he is spreading it. In fact, the joint statement of the Board of Licensure in Medicine and Board of Osteopathic Licensure states that (i) absent acute or emergency circumstances, prescribing for oneself or one's family members is considered unprofessional conduct, and (ii) prescribing in response to the COVID-19 outbreak "may be" considered unprofessional conduct - physicians must

"prescribe appropriately" and "exercise sound professional judgment" in making decisions.²⁷

There simply was no *categorical ban* as misrepresented by Mr. Michaud ("it would be 'unprofessional conduct' to prescribe chloroquine, hydroxychloroquine or azithromycin").

26. On May 29, 2020, Mr. Michaud posted the following on his Facebook page: “Hannaford has regressed. The employees watching the carts had their masks down around their necks, and there were vendors in the store with no masks at all. Most customers were masked, except for **the usual few aggressively ignorant jerks**” (emphasis added). See **Exhibit N**. Again, we see a disturbing willingness to stereotype and denigrate. Mr. Michaud knows nothing regarding the circumstances of these individuals, why they were unmasked or only partially masked, and whether they might qualify for one of the mask-wearing exemptions recognized by Governor Mills in her various emergency mask orders, but he is perfectly willing to condemn them nevertheless.

27. On July 24, 2020, Mr. Michaud shared on his Facebook page an article from TheGuardian.com entitled “Boris Johnson says ‘**anti-vaxxers are nuts**’” (emphasis added). See **Exhibit O**.

IV. Mr. Michaud's Role in the Maine Medical Association

28. Until recently, Mr. Michaud steered the Maine Medical Association (the “MMA”) as its General Counsel. The MMA maintains a “corporate affiliate” program, which is a mutually beneficial financial relationship aligning the interests of the MMA with those of pharmaceutical companies and other medical market participants, including major vaccine manufacturers. The MMA website states as follows:

²⁷ https://www.maine.gov/pfr/professionallicensing/sites/maine.gov/pfr/professionallicensing/files/inline-files/joint_statement_osteopathic_licensure_board_of_medicine_on_prescribing_chloroquine_hydroxychloroquine_and_azithromycin.pdf

*For several years, the Association has maintained a Corporate Affiliate program allowing companies, firms and other vendors which have been vetted by the Association to jointly market their services and products to MMA members. The Affiliates pay an annual dues to the Association for the privilege of doing so.*²⁸

Private corporations currently listed as “corporate affiliates” on the MMA website include the pharmaceutical firms Merck & Co., Inc. and Sunovion Pharmaceuticals, Inc. Past MMA “corporate affiliates” include Bristol-Myers Squibb Company, Inc.²⁹, Astellas Pharma US,³⁰ Eli Lilly & Company,³¹ Astrazeneca Pharmaceuticals (which now manufactures a COVID-19 vaccine administered outside the U.S.),³² and Takeda Pharmaceuticals North America, Inc.³³

29. Upon information and belief, past MMA “corporate affiliates” have also included Johnson & Johnson, a massive multinational pharmaceutical company with hundred of subsidiary companies, one of which, Janssen Pharmaceuticals (a wholly-owned subsidiary of Johnson & Johnson), produces one of the COVID-19 vaccines being administered in the U.S.

LAW AND ARGUMENT

30. Title 5 M.R.S. § 9063 (“Bias of presiding officer or agency member”) provides that an adjudicatory hearing held pursuant to the Maine Administrative Procedure Act “shall be conducted in an impartial manner”. Further, “upon the filing in good faith by a party of a timely charge of bias or of personal or financial interest, direct or indirect, of a presiding officer or agency member in the proceeding requesting that that person disqualify himself, that person shall determine the matter as a part of the record.”

²⁸ See <https://www.mainemed.com/node/84142>

²⁹ See <http://web.archive.org/web/20140421044405/http://www.mainemed.com:80/member-services/affiliates-list>.

³⁰ Ibid.

³¹ Ibid.

³² See <http://web.archive.org/web/20151002080014/http://www.mainemed.com:80/member-services/affiliates-list>.

³³ Ibid.

31. The statutory directive that administrative hearings be held in an impartial manner is intended to protect the right to basic due process. *See, e.g., Gashgai v. Board of Registration in Medicine*, 390 A. 2d 1080, 1086 (Me. 1978) (“Regardless of the personal feelings of Board members toward Dr. Gashgai, [or] his manner of practicing medicine...the Board must sit in impartial judgment of any allegations of misconduct.”); *Mulready v. Bd. of Real Estate Appraisers*, 2009 Me. Super. LEXIS 41 (“[B]ias exists where evidence indicates that the decision-maker has ‘prejudged’ the case.” (quoting *Cinderella Career Finishing Schs., Inc. v. FTC*, 425 F.2d 583, 589-92 (D.C. Cir. 1970))).

32. A party asserting bias on the part of an administrative agency decision maker “must present evidence sufficient to overcome a presumption that the fact-finders, as state administrators, acted in good faith.” *Friends of Maine’s Mountains v. Bd. of Env’tl. Prot.*, 2013 ME 25, ¶23, 61 A.3d 689, citing *Mallinckrodt LLC v. Littell*, 616 F. Supp. 2d 128, 142 (D. Me. 2009); see also *Mutton Hill Estates, Inc. v. Town of Oakland*, 468 A.2d 989, 991 (Me. 1983), and *Kimball v. Superintendent of Ins.*, 2014 Me. Bus. & Consumer LEXIS 2, *76.

33. The evidence presented above is more than sufficient to show that Mr. Michaud is extremely biased and cannot be relied upon to sit in impartial judgment in this matter. Each and every allegation listed in the Notice of Hearing as a ground for imposing discipline upon Dr. Gosselin’s license involves Maine healthcare workers seeking “vaccine exemptions”.³⁴ In his social media posts, Mr. Michaud has exposed his intense hostility and prejudice toward anyone who questions vaccine mandates, who he indiscriminately refers to as “directionless” and stereotypes with the pejorative term “anti-vaxxers.” He has a special problem with Maine healthcare workers opposed to vaccine mandates, and with those, like Cara Sacks and Dr.

³⁴ See the Notice of hearing, in the “Grounds for Imposing Discipline” section, Paragraphs I(a) and (b), II(a) and (b), and III(a) and (b).

Gosselin, who assist them. Mr. Michaud worked intensely to pass LD 798 in order to shut down the religious and philosophical exemptions Maine's healthcare workers had relied upon historically, and he has told us that they should not have a medical exemption either ("we can't afford exceptions"). Driven by his bias, Mr. Michaud maneuvered at the November 18, 2021 Board meeting to manufacture grounds for emergency action in this case, against Board counsel's recommendations, in order to circumvent the statutory requirements for emergency action. This conduct is not just disturbing, it undermines the fairness of this entire proceeding. In short, the record establishes that Mr. Michaud is a personally and politically motivated zealot, and it is simply inconceivable that he is capable of setting aside his bias and acting impartially in this matter. The rest of the Board should immediately halt and step away from this proceeding, rather than persisting and compounding the serious constitutional injury to Dr. Gosselin.

CONCLUSION

WHEREFORE, Dr. Gosselin respectfully requests that Board member Peter P. Michaud recuse himself from any further involvement in this matter, before, during or following the scheduled hearing, and for any purpose, with the sole exception of complying with 5 M.R.S. § 9063, and that he determine the question as a part of the record as required by 5 M.R.S. § 9063.

Dated this 2nd day of March, 2022.

Respectfully submitted,



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EXHIBIT A

Maine Board of Osteopathic Licensure

Transcript of Meeting of November 18, 2020

[Starts at 19:13]

Speaker Key

JP – James Pisini, D.O., Board Co-Chair

LW – Lisa Wilson, Assistant Attorney General

PM – Peter Michaud

BG – Brian J. Gillis, D.O.

UM: Unidentified male

UF: Unidentified female

UFBM – Unidentified female Board member

UMBM – Unidentified male Board member

UMB – Unidentified Board member

1. **JP**: We received four separate complaints from health care providers that a licensee has been acting inappropriately regarding covid19, promoting covid19 as a hoax, and spreading misinformation both in the office and online promoting the use of medications not deemed appropriate for the treatment of covid19, making it known through his website and by word of mouth that he would provide a letter of exemption for a hundred dollars, without a visit or CDC exemption diagnosis, falsifying medical information, lying and writing fraudulent letters concerning patient-physician relationships and office visits. These were all accusations in those four complaints.

2. **JP**: Looking through this, this licensee apparently was doing predominantly online practice, uh, giving exemptions for, ah, individuals so they would not have to receive a vaccine, uh, for covid19 virus. Um, his initial exemptions were, uh, more lengthy, and contain some reasons for

the exemptions, uh, but later letters were a very short template uh giving really no, uh, reasons nor any valid diagnoses, consistent with CDC guidelines, for valid exemptions. It was also noted that there were multiple different signatures, uh, of his name, without any subsequent giving authorization for different people, uh, you know, using his signature.

3. **JP**: Um, and, I'm gonna go through some various letters and point out some of the issues, um, in one letter that was dated September 20th of this year, note, these are all quite recent, uh, just prior to the mandates by the State that all healthcare workers had to be vaccinated, in one letter dated 9/21/21, he wrote, quote, the current covid vaccine uses aborted fetal tissue and a number of other harmful constituents that have the potential to bring disorder to his, uh, it's actually a woman, health or senses, end quote. He continues, quote, the body is a unit, capable of self-healing, self-regulation and self-maintenance.

4. **JP**: He went on to claim that because this patient had quote significant reactions end quote to antibiotics this should be a reason not to get vaccinated and according to the licensee, quote, the risk of future fertility has not been established and he stated she had the quote wild-type covid infection, and quote, uh, another quote the rationale for using a vaccine for a person who has already been infected with the wild-type virus has no basis in science. She is rightfully concerned that the current experimental vaccines for SARS-CoV-2 could put her at risk for a severe, possibly life-threatening reaction, um, a severe antibody-dependent enhancement, uh, in some letters he claims that the patient's quote Christian faith end quote is a reason not to be vaccinated, and another, their Buddha lifestyle means that, uh, their spiritual wellbeing will be compromised if forced to get the vaccine, again claiming that quote allergy to an antibiotic is contraindicated end quote, and, uh, he also said that it's my understanding that both penicillin

injection and the SARS-CoV-2 vaccines both contain PPG[??], which is well-known to cause anaphylaxis.

5. **JP**: Other letters simply stated, concerning client X and vaccine exemption, I am writing a medical exemption for Client X. Uh, I firmly recommend that she be exempted from this vaccine, uh, there was some, as you probably saw an e-mail traffic, as well, and uh, some of these patients you know, gave uh, uh, little scrips for him to write that, uh, the, would be, you know, apparently approved by, uh, their employer. There's also a website that he gave at the bottom of all these for um, reference, ah, in another letter, uh, again from September 30th, in addition, again talking to a patient quote in addition she suffers from chronic migraines and SVT[??], which in themselves are major concerns for all the current covid vaccinations, which have an alarming rate of fatal and life-changing complications end quote.

6. **JP**: Another letter, my understanding is that Mr. X has serious and legitimate concerns about receiving the current covid vaccines, he has diabetes, [*unintell.*], and has a family history of diabetes and heart conditions. These are valid medical concerns for Mr. X not to receive the covid vaccines. After evaluation of Mr. X, it is my opinion that he be exempted medically from the current covid vaccines, uh, pretty much they all go on and on, and all patients are medical professionals trying to get out of, um, receiving the vaccine so, to save their employment.

7. **JP**: Uh, for most, again he gives no legitimate reason for exemption or at least none recognized by the CDC. Apparently many were denied, and patients e-mailed him back to have him change his wording or actually ...they even said, uh, they would physically see him to make it more legitimate. The reason that he was not, excuse me, the reasons that he did give or does give are completely unfounded and in fact, you know, could be advising some high-risk patients not to get it. Um, when subpoenaed to give office notes, um, really, there are only a couple, uh,

ironically he said he couldn't because his office manager was out with covid. Um, and, uh, of the few notes that were produced, um, I...again we can look through 'em but I really didn't see any that had, um, a physical exam, uh, even though on most of these notes he said that, uh, he had seen and examined these patients, uh, patients admitted in e-mails that they had never seen the licensee, but quote wanted to thank Dr. X for being one of the only providers willing to extend an exemption to people end quote, uh, this was all done online, uh, there's really no documentation, this form letter was based on what appears to be one patient's dictation to him on what was acceptable to state uh to get exemptions for approval. Um, ah, okay so that is basically in a nutshell the synopsis of the complaint and just some of the many uh, letters that were written by him, um, I think there's a lot of concerns here. Um, and maybe I'll open it up first for more comment before I continue.

8. **UBM:** What's an example of a religious exemption? Question for Lisa Wilson.

9. **LW:** I believe Maine law has been changed and no longer allows religious exemption for vaccination, and even if they were allowed that's not an appropriate subject for a medical provider to comment on. You know, a religious exemption would come from some, a clergy member.

10. **UBM:** Thank you. What's an example or guidance from the CDC for someone who should not get the exemption?

11. **UF:** Sue, do we have the CDC guidance? [...] I, I, I, I should have told you, I didn't do that. [...] A severe anaphylactic allergic reaction to a vaccine component.

12. *[Discussion ensues @28:00, consensus appears to be that anaphylactic reaction to first shot is the only valid reason for a medical exemption.]*

13. **LW**: Part of the problem here is the lack of a real physician-patient relationship. These were not his regular patients. Many of them he didn't see in person. And there's, you know, we got the records and they're incredibly minimal, there's no indication of any contact with their regular providers...or that when people claimed they had, you know, previous reaction to vaccines, or various medical conditions, there's no documentation that he got that proved whatever that condition allegedly is.

14. **JP**: And I think the other thing, if you look most of the letters were absolutely filled with spelling errors, poor grammar, misuse of his and her, so you think they're really just all a form...a cut and paste form and, I'm wondering whether he had anything to do with it, or whether it was just one of his office staff doing it, because you look at some of the notes from his office staff it was actually fairly consistent with their, uh, poor grammar. And, uh, the other thing, there's so many untrue and false claims that he makes, uh, I think it really shows his ignorance, um, of, uh, of the, of the severity and seriousness of the virus, uh, and the danger to the public, um, of, you know, particularly not, uh, not being vaccinated and I think the other thing that's very alarming is that all these were, uh, medical providers. So they're at very high risk, much higher risk themselves, not only of contracting it but then passing it on to all the potential patients that they see, um, you know, his website promotes the use of medications that are, have been deemed, uh, not appropriate by the CDC, um, and um, I think he's doing a great disservice not only to these particular patients but really to the public in general. Um....

15. **UFBM**: I also have a concern that he's selling these letters. That's really troubling, in addition to everything else, it's really troubling to me.

16. **JP**: I mean I think it's really pretty clear, all you have to do is go on this website, this is documented in the various e-mails that were sent, uh, I heard from a friend that all you have to

do is send a hundred dollars, and you send me a get out of jail free card, you know, and you don't have to do it, and it's just very disturbing. Because I think some of these, uh, were again, if you look at some of these letters, um, you know there's no real documentation of any patient, you know physician-patient relationship, or having been seen, or...

17. **UFBM**: There's also the question of this payment for covid19 care that includes...it looks like it's an upfront payment of two hundred dollars, that would include, uh, prophylaxis, and uh, treatment of long haulers, and just general measures related to Covid-19, I don't know what the, what, uh, was it called, Frontline Physician, and I don't know if that's specific to this practice, or some others because there was some reference to that by somebody else.

18. **UMBM**: In keeping with your comment on the staff, uh, doing the letters, Jim, there was one on October 18th where staff got back to the patient by e-mail as to her date of birth, and she states I try to get these letters written up for him ahead of time...doing the letters, before he even sees it. They do the letters and they come in and drop the money and walk away with the letter. There's no patient care here.

19. **UMBM**: No. And I think some were done, they appear to be just completely online, um, and you know, the, one or two, I mean they only produced one or two actual office type notes, which again really don't fulfill any of the CDC requirements for, um, exemption.

20. **PM**: I'm particularly concerned by the fact that this licensee has a disciplinary history, significant disciplinary history with this Board. Um, showing basically a, uh, a refusal to abide by the same rules that other physicians abide by. Uh, number two, he presents an immediate and significant threat to public health. Uh, I'm wondering, Ms. Wilson, if it is possible for the Board to skip the complaint process, and go directly to an action in court, or a temporary restraining

order, and uh, on an action by the Attorney General's office before a judge. Uh, I'm concerned about his continuing to practice one minute more.

21. **UMBM**: So, cease and desist, Peter, you're saying?

22. **PM**: Uh, yeah, a temporary restraining order is a court order saying that you are absolutely forbidden to do something. It's, it's, much stronger than a cease and desist letter.

23. **UMBM**: I believe last month in our packet we had some guidance from the SMB, the Federation, that's federation of state medical boards, and I believe, so there's something in there that they were advising us, and giving us guidance that this is happening all across the country, and certain physicians are, uh, calling covid a hoax and putting out totally incorrect information, and their thought was that this is harmful to patients and they should be charged with unprofessional conduct. Does anyone else remember that, from last month? [*several affirmative responses*]

24. **LW**: Yeah, I will say in response to Mr. Michaud's question, I mean, uh, normally when the Board acts, wants to act immediately like that, the Board utilizes the section of statute that authorizes immediate suspension, uh, without hearing, uh those can be issued in cases where there is immediate jeopardy, and, uh, otherwise, to go through the complaint process would fail to adequately respond to a known risk to physical health and safety. Uh, I did talk with some of my colleagues in the office about whether this would be a candidate for immediate suspension, because obviously it's extremely concerning, uh, however, we don't think it needs that threshold, I mean this is dangerous by def...as you know, the deadline for, uh, healthcare providers to get the vaccine information in was the end of October, ah, so you know they, this is, you know, probably largely wrapped up, and, um, you know these people were disclosing to their employers

that they weren't vaccinated, so I agree they continue to pose a risk to their colleagues and patients, you know, who presumably were masked, so I think I would recommend that you move forward probably with a complaint, uh, and with the idea that we set, you know, a relatively short deadline, uh, for a hearing.

25. **PM**: I'm also concerned that he discusses covid as a hoax and that he proposes debunked forms of so-called treatment and prophylaxis, um, I think this is a serious one, I think this is a very serious one, and I would like to see us take significant action immediately.

26. **UMBM**: I agree with that, I think you're right on, Peter.

27. **UFBM**: I agree, this is more than just those health care professionals' letters.

28. **UFBM**: Lisa, to have a hearing, we have to go through the complaint process first, though, right?

29. **LW**: Yeah so you would need to issue, right so you would need to issue a complaint and he would have 30 days to respond. But at the same time, you know, you could set the matter for, you know, a hearing, and a relatively short date after the 30 days, um, which you could always, you know, cancel if you love his response, which probably wouldn't happen, but you never know, and so you could in fact do both.

30. **UMBM**: Lisa is the opinion in your office that we would be, that the likelihood of prevailing on an immediate suspension is in question? Or, is the opinion in your office that you could not in good faith bring such an action forward because you think that it's such a long shot?

31. **LW**: I will be honest that I don't think we necessarily parsed that difference, but I think in all honesty it is probably, uh, more about the likelihood of being upheld. I mean, I think we all agree there are extremely serious concerns here.

32. **UMBM**: Because we're looking at, you know, the time to prepare the complaint, 30 days to respond, the time from there, we're looking at two or three months anyway. And uh, it concerns me greatly on behalf of the public, that this person would be allowed to continue practicing during such an extended period of time.

33. **UMBM**: Can we do two things simultaneously? I would suggest that, one, we charge him with unprofessional conduct, file that complaint, and while that's going forward we give him a letter to immediately cease and desist from giving false information and inconsistent advice to covid patients. Or about covid.

[Time check: 40:12]

34. **LW**: Uh, you really can't do that. You can, you know, issue a complaint, uh, you know, if you, if you do issue uh, an immediate suspension, that only lasts for 30 days so you also are setting a hearing in 30 days. Um, but you can't give people conditions on their practice unless you go through the disciplinary, you know, process.

35. **UMBM**: So to answer Peter's concerns, Lisa, how do we stop him? Sooner instead of later.

36. **LW**: You know, the thing you have, the authority under the statute to issue immediate suspensions where there is a health or safety...*[quotes a portion of 5 M.R.S. § 1004(3) ("Action without hearing") ending in "known risk"]*

37. **UF**: But that's over, he's not writing any more of those letters, that my fear, about...

38. **UMBM**: Yeah one of the concerns unfortunately is, sort of closing the barn door after the, you know the animals have left. You know, I think, he's certainly an embarrassment to the profession and a danger to the public, um, however, most of this like Sue mentioned is kind of, the biggest concern is sort of done, he gave all of these exemptions to healthcare providers before the deadline, the deadline's over, so now, um, you know, it's sort of, unless he can continue it if other sectors of the society decide that they have to have, they're gonna follow a mandate or you can't be a, ya know, bus driver or you can't be a waiter or waitress unless you get vaccinated, then, yeah, he could have a very flourishing business, uh, charging a hundred dollars to all of these people, and, and I think that is, uh, again, a danger to the public. And the fact that he has certainly shown his, a lot of, on his real, you know, ignorance to medicine, uh, and, um, what is known about the virus, treatment for the virus, uh, you know there's a lot of very untrue and false statements that he made, uh, and you know, very concerning about, promoting not only, uh, false information but just, you know, false treatments, he talked about, you know which I thought was ironic was that you know he talked about, in one note, you know, letter that putting, you know the vaccine as a poison, but yet he's talking about some of these other drugs that are probably far more risky to take than the vaccine itself and there's really no justification for a lot of things he said, uh, about the virus, or, uh, about the vaccine. Uh, so, ya know I think there's a lot of different statutes that he, that we could, you know, charge him with, if you will, that he's violated. Um, but, and I think, I agree Peter, we should jump into this to do as much as we can as fast as we can, that's why I asked the Attorney General, um, to, sort of, give us some guidance as to what [*unintell.*] ways to proceed.

39. **PM**: In the state of Maine right now, we have about a thousand new cases a day; we have a handful of patients, three, four, five dying every day from covid, uh, 75 to 90% of those cases are

people who are unvaccinated. That's a clear and present danger, and uh, I would urge the Board to act immediately. I guess I've said that 3 or 4 times now.

40. **UMBM** (*either John Brewer, D.O. or John F. Gaddis, D.O.*): All valid points, Peter, too. So, moving forward, as I see it we need to stop this licensee from issuing any further false statements, but is there any way that we can invalidate or rescind the prior documents that he sent, or at the very least alert the institution to say this licensee is now under uh, a complaint, an investigation to, to, uh question the validity of those forms? So that they could act on those, and stop them? Is that possible?

41. **JP**: I believe that one institution, John, is already not accepting his letters. That one that had, I think eleven of 'em.

42. **UF**: Correct.

43. **JP**: And, they're onto it after the first one or two. They said this isn't right and they're not accepting those and they have every right not to accept those, I believe. I don't know what the other institutions are doing, there's other patients at other places that we don't even know about. Employees, not patients.

44. **LW**: That's right, I mean it was actually the employers who sent us the letters, uh, so they're aware of the problem, with these, with these letters.

45. **PM**: So what's the easiest way for us to stop him from issuing any other further statement, uh, letter, uh, so on, that could endanger people in the future? How can we do that now?

46. **LW**: I mean, you have the option to issue an immediate suspension...I, because of the, uh, you know, I, I, I absolutely hear you, about the ongoing concern, uh, but, you know the letter, the

letter period of time is mostly over, and on, you know, the ongoing advice, I agree it's very problematic but we would probably need an expert of that; if this is really a practice issue, um, so you could vote for an immediate suspension, that would be in place for 30 days, if you wanna continue it you have a hearing in December, which could not be on your normal meeting day because of this schedule, our actual next meeting is in three weeks. Um, otherwise, we could probably get it out tomorrow, um, and you know he has 30 days to respond, you could, we could simultaneously offer him a consent agreement that involved his surrender of license, and, you know, and you could set a hearing date, either, any time after the 30 days. So, late in December or in January.

47. **PM**: [*unintell.*] ...options would not stop him from writing any letters at that point, uh, or...

48. **LW**: I'm sorry I didn't hear that.

49. **PM**: Yeah so and your, the latter option that you gave, to offer a consent, or a hearing in the future, does not stop him from issuing any other further letters or forms.

50. **LW**: No that's right, it doesn't immediately stop him until after a potential hearing, if you [*unintell.*] discipline at that point.

51. **PM**: Okay.

52. **UMBM**: We should keep in mind that his website links to some debunked misinformation about covid treatment and prevention. Um, could we move forward with a complaint? And setting a hearing date, and at the same time, uh, formally ask the AG's office, uh, to advise on whether immediate action could be taken? Lisa is that an appropriate...

53. **LW**: Yeah, you can always ask us for, you know, for further opinion. Yeah.

54. **JP**: How long is that gonna take?

55. **LW**: Um...I believe our provision in the general statutes for all boards that [*unintell.*] board action so I think that could be pretty quick.

56. **UFBM**: Are we also able to get more information, is it helpful to have more information, on, you know, prescribing practices for some of these treatments that have been put on the website, you know, the Ivermectin, and, um, just, to see, 'cause we don't have any information on that piece, that's if that was actually done, through the office, right, most of what we have is these letters. To me that would be helpful, in seeing what the risk is to the public, right now, too.

57. **UF**: I think we can, right Lisa? I mean we can get, well I don't know, uh, we'll work on it.

58. **UM**: That wouldn't be on the PMP[??], she'll have to go through another avenue.

59. **PM**: I believe we could subpoena records concerning the prescription of any particular drug, just as we can subpoena anything else.

60. **UF**: The trouble might be, it might not be prescription, it might be something that was obtained, then administered, or dispersed through the office, right?

61. **UF**: We can try, and get what we can.

62. **UMBM**: A lot of these people are getting Ivermectin from Tractor Supply, anyway, most of the people who believe in that sort of stuff are getting' it from Tractor Supply. Veterinary Ivermectin.

63. **UF**: Well what we've got for records from the ones, the records that we did get, we may not get a whole lot more, but we can certainly try, I've been writing a lot of subpoenas lately. So.

64. **LW**: And we've also been [*unintell.*] his office schedule, you know, I think we have pretty good proof in all these e-mails that he isn't seeing people, [that would be?] the actual schedule. He said he saw like seven people on October[?] 25...

65. **UMBM**: Well, we have the option, we should maybe think about, just for a quick discussion, maybe we should make a motion to cease and desist, even though it's not under the direct guidance of the attorney general, but that would stop him for 30 days and then we could make another motion for the complaint. Is that something that you guys would consider?

66. **UM**: It's kinda what I suggested and I thought Lisa put that down...

67. **LW**: Technically you can't do, cease and desist is not the right language, what you're talking about is an immediate suspension.

68. **UMBM**: Right, well we have the option to do that, right? I mean, you're not recommending it, but we have that option?

69. **LW**: Yes. Yes you do.

70. **UMBM**: It seems to me, just kinda listening to everybody, this debate, that's really where several of the members, at least we should take a vote, to see how many people feel that strongly about it, and if they don't feel that strongly about it then we can just file a complaint. Otherwise we're just gonna keep discussing this over and over again. So I'm going to make a motion that, what's the exact language, Lisa? To have him stop?

71. **LW**: That you, uh, immediately suspend his license for 30 days.

72. **BG**: [*Makes motion*] [*Seconded*]

73. **UMBM**: And that can be renewable, Lisa, right?

74. **LW**: No it's not renewable. Only 10 days, and then a hearing.

74. **UMBM**: Okay.

75. **UM**: OK so a motion has been made, uh, for immediate suspension of the licensee's license, and that been seconded. So not I'll take a roll call vote.

76. **UFBM**: Can I ask a question? So Lisa with your concern, if we make this, if we suspend his license, and then the hearing happens after the 30 days, ya know, I, I guess I'm curious as to the AG's office, uh, concern that, does that hearing then move to continue to suspend his license or where do we go from that 30 days after his initial suspension?

77. **LW**: Well, uh, the immediate suspension would list the grounds, on which you suspend him and I can recommend what I would think as the grounds in just a minute, and so then those would go into a notice of hearing, and he would have a hearing with the licensee and a different AAG than me would represent the Board's case, un you would then decide if there's evidence to support, uh the violation of those specific disciplinary items, you could then impose whatever discipline you are authorized to at that point, and at that point you can suspend him, you can revoke his license entirely, uh, you can take other disciplinary actions as you think are appropriate.

78. **UFBM**: So he could then have a consent decree, he could have other things at that point?

79. **LW**: Yes, you could...as we're talking about this, we've actually done this before, issuing an immediate suspension, we also, you also authorize at the same time, negotiations for a consent agreement for a surrender.

80. **UM**: Lisa, what about the licensee's due process rights?

81. **UF**: Right, I was gonna say, he'll probably get an attorney, um, then can ask for a continuance, even for that, right Lisa? For hearing?

82. **LW**: I mean it could but by statute it's limited to 30 days so I don't think we can give him, in that situation I don't think we'd give him an extension. I mean in his due process rights, right, so you can immediately suspend on a 3rd-party basis for 30 days, after that you have to go through a full administrative hearing to impose any additional or ongoing discipline.

83. **UM**: So then you've got to, um, so that will mean two different days next month, for everybody because we have a regular board meeting, and then that would mean a hearing, probably like Christmas week or the week before.

84. **UM**: That's more than 30 days.

85. **UF**: That's true.

[More discussion of scheduling]

86. **LW**: If you do this, licensees also have the ability to challenge the suspension in court, but if you issue one the AG will of course defend that.

87. **UFBM**: Can I ask probably the dumb question in the room, then? Um, what is the downside to this? What is the downside to acting this way rather than a complaint? Does doing this take away our ability to do more later? That, you know, or less, later?

88. **LW**: No, not necessarily, I mean, doing this, it is the legal risk, that this would be challenged, that it could be overturned, um, but even if that does happen, it's you know at that point you...I mean if that happens you have to issue the complaint, you know, set another hearing date, and so, no, you know ultimately if he challenges in court he could cite, you know, if he, sorry this

gets very technically legal and if you don't follow, please let me know, um, so if he challenged the immediate suspension and won, which is not a certain thing, um, you know, if he then challenged your ultimate discipline after a hearing he could cite, you know potentially some of the findings that were you know made on the suspension. But, even if that happens, no, it does not deprive you of your rights to go forward with your regular process, you know, moving probably more quickly than normal, than the regular process, but the regular process, so you know, do a complaint, and do a hearing.

89. **UFBM**: Thank you.

90. **UM**: Lisa, is there any particular language that should be included in the motion? Uh, to protect the board's action to support the goal we're trying to reach, as much as possible?

91. **LW**: Um, I would say yes that uh, you are protecting them, uh, you know, the immediate and ongoing, you know, risk of Covid-19, you know, to patients in the state, uh, also I think that your grounds for your complaint for suspension would likely be, uh, fraud or deceit, of the letters, um, unprofessional conduct, and uh incompetence in not, uh, evidencing a lack of knowledge or inability to apply, you know, principles.

92. **PM**: Dr. Gillis would you be willing to entertain a friendly amendment to your motion?

93. **BG**: Yes I would thank you.

94. **UM**: So we have a motion on the floor for suspension with amendment, right now, and then, are we going to move also to file a formal complaint at the same time? After that vote's done?

95. **LW**: Yes I would recommend that.

96. **PM**: So the amendment that I would propose to Dr. Gillis's motion would be something along these lines: um, in light of the daily risk of, um, harm to the public from the spread of Covid-19, um, and in light of the fact that misinformation tends to encourage people not to take, uh, medically recommend steps to protect themselves from Covid-19, um, we move the immediate suspension of the licensee's license for 30 days, uh, and the setting of a hearing as soon as possible within that time period. Uh...and the setting of a hearing as soon as possible within that time period. Uh...help me out here Ms. Wilson, uh, what other language am I looking for?

97. **LW**: Uh, I think that is good, probably I would say, you know, on the basis of fraud, unprofessional conduct, and incompetence.

98. **PM**: And does that suspend this licensee from any form of practice? For this time?

99. **LW**: Yes.

100. **UFBM**: Or supervising anyone?

101. **LW**: Yes.

102. **PM**: Should any mention be made of previous disciplinary issues?

103. **UF**: They're all public.

104. **LW**: I would say not in the motion because it's really about...

105. **UF**: Right...

106. **LW**: ...The immediate risk. But if it came to hearing, yes that would come up.

107. **PM**: So are we ready to vote? I think so, I had proposed a friendly amendment to Dr. Gillis's motion.

[Seconded/passed unanimously]

[2d Motion then made and seconded to authorize AG to offer a consent agreement regarding surrender of license – passed unanimously]

EXHIBIT B

STATE OF MAINE
BOARD OF OSTEOPATHIC LICENSURE

In Re Paul G. Gosselin, D. O.

Case No. CR2021-49

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)

DECLARATION OF
DAVID E. BAUER

COMES NOW David E. Bauer, Esq., counsel for Paul G. Gosselin, D.O, and sets forth the following under penalties of perjury:

1. I am an attorney duly licensed to practice law in the State of Maine. I represent Dr. Gosselin in this matter.
2. Upon my request, Susan Strout, Executive Secretary of the Maine Board of Osteopathic Licensure, sent to me via e-mail an electronic recording of the meeting of the Board held November 18, 2021.
3. I listened to the recording extremely carefully more than once and painstakingly made a full transcript of the recording, as shown in Exhibit A to Dr. Gosselin's Motion for Recusal of Peter P. Michaud. The transcript is accurate to the very best of my abilities.
4. I declare and swear that all of the above statements made by me are true to the best of my knowledge and belief.

Dated this 1st day of March, 2022.



David E. Bauer
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Portland, Maine 04102
(207) 400-7867
david.edward.bauer@gmail.com

EXHIBIT C

The Maine CDC will conduct periodic reviews by selecting a sample of employee health records for the purpose of comparing reported results against the criteria delineated in these rules. The results of this sample survey will be shared with the Chief Administrative Officer of the Designated Healthcare Facility, EMS Organization, or Dental Health Practice, for the purpose of identifying problem areas that may be occurring in the maintenance of their employee health records. Any published or unpublished reports of such sampling of employee health records must not identify individual employees and/or Designated Healthcare Facilities, EMS Organization, or Dental Health Practices directly or indirectly.

STATUTORY AUTHORITY: 22 MRS §§802(1), (3)

EFFECTIVE DATE:

April 16, 2002

NON-SUBSTANTIVE CORRECTIONS:

May 13, 2002 - corrected the spelling of DEPARTMENT in header, page 1

May 10, 2004 - spacing, capitalization and punctuation only

EFFECTIVE DATE:

October 6, 2009 to January 4, 2010: filing 2009-531 (EMERGENCY)

December 8, 2009 – filing 2009-644

April 14, 2021 – filing 2021-068 (ROUTINE TECHNICAL)

August 12, 2021 – filing 2021- (EMERGENCY ROUTINE TECHNICAL)

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STATE OF MAINE

IMMUNIZATION REQUIREMENTS FOR HEALTHCARE WORKERS

**10-144 CODE OF MAINE RULES
CHAPTER 264**



Maine Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
Augusta, Maine 04333-0011

EMERGENCY ROUTINE TECHNICAL RULE
Effective August 12, 2021

**10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES
 MAINE CENTER FOR DISEASE CONTROL AND PREVENTION**

Chapter 264: IMMUNIZATION REQUIREMENTS FOR HEALTHCARE WORKERS

Purpose: This rule is issued pursuant to the statutory authority of the Department of Health and Human Services to establish procedures for the control and prevention of communicable diseases as set forth in 22 MRS § 802(1)(D) in addition to its authority to require immunization of the employees of designated healthcare facilities as set forth in 22 MRS §802. This rule requires employees of Designated Health Facilities to reduce the risk for exposure to, and possible transmission of, vaccine-preventable diseases resulting from contact with patients, or infectious material from patients. It prescribes the dosage for required immunizations and defines responsibilities, exclusion periods, record keeping and reporting requirements for officials of hospitals and healthcare facilities. This rule also requires employees of Designated Health Care Facilities, Dental Health Practices, and EMS Organizations to become immunized to COVID-19.

1. Definitions

- A. **Certificate of Immunization** means a written statement from a physician, nurse, physician assistant, or health official who has administered an immunization to an employee, specifying the vaccine administered and the date it was administered. Secondary school or collegiate health records, having been compiled and maintained as an official document based on certificates of immunization, which provide at a minimum the month and year that the immunization was administered and/or which contain copies of laboratory evidence of immunity, may also be accepted as proof of immunization.
- B. **Chief Administrative Officer** means the person designated as the president, chief executive officer, administrator, director or otherwise the senior official of a Designated Healthcare Facility, Dental Health Practice, or EMS Organization.
- C. **Declination** means a formal process where an individual makes an informed choice declining Hepatitis B vaccination, following standards and procedures established by the federal Occupational Safety and Health Administration (OSHA) regulations (29 CFR § 1910.1030(f)(2)(iv) (effective July 6, 1992).
- D. **Dental Health Practice** means, for the purpose of this rule, any practice where dentists (whose scope of practice is defined in 32 MRS §18371) and dental hygienists (defined in 32 MRS §18374) provide oral health care to patients in the State of Maine.
- E. **Designated Healthcare Facility** means a licensed nursing facility, residential care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), multi-level healthcare facility, hospital, or home health agency subject to licensure by the State of Maine, Department of Health and Human Services Division of Licensing and Certification.

- F. **Disease** means the following conditions which may be preventable by immunization:
1. Rubeola (measles);
 2. Mumps;
 3. Rubella (German measles);
 4. Varicella (chicken pox);
 5. Hepatitis B.;
 6. Influenza; and
 7. COVID-19.
- G. **Employee** means any person who performs any service for wages or other remuneration for a Designated Healthcare Facility, EMS Organization or Dental Health Practice. For purposes of this rule, independent contractors for any of the listed facilities in this definition are considered employees.
- H. **Emergency Medical Services (EMS) Organization** means an EMS ground ambulance service, non-transporting EMS service, air ambulance service, EMS training center, and/or emergency medical dispatch center, as defined in the Maine Emergency Services System Rules at 16-163 CMR Chapter 2.
- I. **Exemption** means a formal procedure to procure discharge from requirement to vaccinate.
- J. **Extreme Public Health Emergency** means a state of emergency declared by the Governor of the State of Maine pursuant to 22 MRS §802(2-A) and 37-B MRS §742 based upon an occurrence or imminent threat of widespread exposure to a highly infectious or toxic agent that poses an imminent threat of substantial harm to the population of the State.
- K. **Immunization** means a vaccine, antitoxin, or other substances used to increase an individual's immunity to disease.
- L. **Public Health Emergency** means a declaration by the Department, arising from an actual or threatened epidemic or public health threat for which the Department may adopt emergency rules for the protection of the public health, pursuant to 22 MRS § 802(2).
- M. **Public Health Official** means a local health officer, the Director of the Maine Center for Disease Control and Prevention (Maine CDC), or a designated employee or agent of the Maine Department of Health and Human Services (Department).
- N. **Public Health Threat** means a condition or behavior that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a notifiable disease or condition, as defined in 22 MRS §801.

2. Immunizations Required

- A. Except as otherwise provided by law, each Designated Healthcare Facility in the State of Maine must require for all employees proof of immunization or documented immunity against:
 - 1. Rubeola (measles);
 - 2. Mumps;
 - 3. Rubella (German measles);
 - 4. Varicella (chicken pox);
 - 5. Hepatitis B;
 - 6. Influenza; and
 - 7. COVID-19.
- B. Each EMS organization and Dental Health Practice must require for all employees a Certificate of Immunization against COVID-19.
- C. In accordance with 29 CFR §1910.1030(f)(1)(i) (effective July 6, 1992) of the Occupational Safety and Health Administration (OSHA) regulations, Designated Healthcare Facilities must make available the Hepatitis B vaccine to all healthcare workers with a risk of occupational exposure, provided at no cost to the employee and at a reasonable time and place.
- D. In the event of a Public Health Emergency or Extreme Public Health Emergency declared by the Governor, the Department may impose control measures, including, but not limited to, mass vaccinations and exclusions from the workplace, and may require immunization or documented immunity to protect public health and minimize the impact from the specific communicable disease.
- E. No Chief Administrative Officer may permit any employee to be in attendance at work without a certificate of immunization for each disease or other acceptable evidence of immunity to each disease (if applicable), or documentation of authorized exemption or declination in accordance with 22 MRS § 802(4-B).

3. Exceptions and Declinations

An employee who does not provide proof of immunization or immunity for a vaccine required under this rule may be permitted to attend work if that employee is exempt in accordance with 22 MRS § 802 (4-B). Documentation for an employee's immunization exemption must be maintained in the permanent health record for that employee for a minimum of six years after termination.

4. **Certification of Immunization and Proof of Immunity**

A. **Certificate of Immunization**

To demonstrate proper immunization against each disease, an employee must present the Designated Healthcare Facility, EMS Organization, or Dental Health Practice with a Certificate of Immunization from a physician, nurse or health official who has administered the immunization(s) to the employee. Physicians within their own practice may authorize their own employees to issue a certificate of immunization on behalf of the physician. The certificate must specify the immunization(s), and the date(s), including month and year, on which it was administered. Physicians, having reviewed official patient records created by another practitioner which indicate that a particular patient has received an immunization on a specified date, demonstrating at a minimum the month and year the immunization was given, may certify that the immunization was given. Adequately prepared secondary and/or collegiate school health records will also be considered acceptable for the purpose of meeting this requirement.

B. **Proof of Immunity**

To demonstrate that an employee is immune to any of the diseases, the employee must present the hospital/facility with laboratory evidence demonstrating immunity, or other acceptable evidence of immunity. (See Section 7-B Individual Health Records.)

5. **Immunization Dosage**

A. The following schedule contains the minimally required number of doses for the immunization(s) addressed under this rule:

1. **Rubeola (Measles):** Two doses of live measles vaccine given after the first birthday, with a minimum of four weeks separating the two doses.
2. **Mumps:** Two doses of live mumps vaccine given after the first birthday.
3. **Rubella (German Measles):** Two doses of live rubella vaccine given after the first birthday.
4. **Varicella (Chickenpox):** Two doses of live varicella vaccine given after the first birthday, with a minimum of four weeks separating the two doses.
5. **Hepatitis B:** Three doses of hepatitis B vaccine, the first two given one month apart and the third given five months after the second.
6. **Influenza:** Annual dose of inactivated influenza vaccine or live attenuated influenza vaccine.
7. **COVID-19:** The number of recommended doses shall be in accordance with the COVID-19 immunization manufacturer's Emergency Use Authorization or labelling. All employees of Designated Healthcare Facilities, EMS Organizations, and Dental Health Practices must have received their final dose by September 17, 2021.

In the event of a Public Health Emergency or Extreme Public Health Emergency declared by the Governor, the Maine CDC will specify the recommended dose for any vaccination imposed as a control measure to protect public health.

- B. Any such immunization must meet the standards for biological products which are approved by the United States Public Health Service.

6. Exclusions from the Workplace

A. Exclusion by order of Public Health Official

An employee not immunized or otherwise immune from a disease must be excluded from the worksite, when in the opinion of a public health official, the employee's continued presence at work poses a clear danger to the health of others. The documented occurrence of a single case of rubeola (measles), mumps, rubella (German measles) or varicella (chickenpox) in a Designated Healthcare Facility or amongst its employees may be interpreted as a clear danger to the health of others.

The Chief Administrative Officer must exclude the employee during the period of danger or for one incubation period following immunization of the employee, when one or more cases of disease are present.

- B. The following periods are defined as the "period of danger:"
 1. **Measles:** 15 days from the onset of symptoms from the last identified case;
 2. **Mumps:** 18 days from the onset of symptoms from the last identified case;
 3. **Rubella:** 23 days from the onset of symptoms from the last identified case;
 4. **Varicella:** 16 days from the onset of symptoms from the last identified case; and
 5. **COVID-19:** The duration of the Department's declared public health emergency, effective as of July 1, 2021.
- C. Except as otherwise provided for by law, contract or collective bargaining agreement, an employer will not be responsible for maintaining an employee in pay status as a result of this rule.
- D. When a public health official determines there are reasonable grounds to believe a Public Health Threat exists, an exempted employee may be immunized or tested for serologic evidence of immunity. Employees without serologic evidence of immunity and those who become immunized against the disease in question at the time of a documented case or cases of disease must be excluded from the work site during one incubation period.

7. Records and Record Keeping

A. Designated Record Keeping

The Chief Administrative Officer in each Designated Healthcare Facility, EMS Organization, or Dental Health Practice must be responsible for the maintenance of

employee immunization records. The Chief Administrative Officer may designate a person to be responsible for record keeping.

B. Individual Health Records

Each Designated Healthcare Facility, EMS Organization, or Dental Health Practice must adopt a uniform, permanent health record for maintaining information regarding the health status of each employee. The immunization status of each employee with regard to each disease must be noted on the employee's health record. The health record of each employee must include, at a minimum, the month and year that each immunization was administered. Health records are to be retained a minimum of six years after the date the employee is no longer employed.

Where an exception has been granted for a reason authorized by law, the written request for exemption must be on file with the employee health record. Where laboratory or other acceptable evidence of immunity has been submitted, a copy of the documentation must also be on file.

C. List of Non-Immunized Employees

The Chief Administrative Officer or his/her designee in each Designated Healthcare Facility, EMS Organization, or Dental Health Practice, must keep a listing of the names of all employees within the facility who are not currently immunized or do not have documented serological immunity against each disease. This list must include the names of all employees with authorized exemptions from immunization as well as any who are otherwise not known to be immune and must state the reason that the employee is not immune. The purpose of the list is to provide an efficient means to rapidly contact non-immunized employees in the event of disease outbreaks and exclude them from the workplace as necessary.

D. Required Reports

1. Routine Reporting

The Chief Administrative Officer of each Designated Healthcare Facility, EMS Organization, or Dental Health Practice is responsible for submitting a summary report on the immunization status of all employees by December 15 of each calendar year, on a form prescribed by the Maine CDC. The summary report will include the following information at a minimum: specific contact information identifying the facility; the name of the Chief Administrative Officer; the total number of employees; the number of employees born on or after January 1, 1957; and the number of employees identified by vaccine type as either immunized, serological proof of immunity, exempt in accordance to law, having declined hepatitis B vaccine, or out of compliance. The summary report may be constructed so as to reflect meaningful data by groupings within the facility (e.g., pediatric unit). Each report must be signed by the Chief Administrative Officer as a certification that the information is accurate.

2. Maine CDC Sample Survey

The Maine CDC will conduct periodic reviews by selecting a sample of employee health records for the purpose of comparing reported results against the criteria delineated in these rules. The results of this sample survey will be shared with the Chief Administrative Officer of the Designated Healthcare Facility, EMS Organization, or Dental Health Practice, for the purpose of identifying problem areas that may be occurring in the maintenance of their employee health records. Any published or unpublished reports of such sampling of employee health records must not identify individual employees and/or Designated Healthcare Facilities, EMS Organization, or Dental Health Practices directly or indirectly.

STATUTORY AUTHORITY: 22 MRS §§802(1), (3)

EFFECTIVE DATE:

April 16, 2002

NON-SUBSTANTIVE CORRECTIONS:

May 13, 2002 - corrected the spelling of DEPARTMENT in header, page 1

May 10, 2004 - spacing, capitalization and punctuation only

EFFECTIVE DATE:

October 6, 2009 to January 4, 2010: filing 2009-531 (EMERGENCY)

December 8, 2009 – filing 2009-644

April 14, 2021 – filing 2021-068 (ROUTINE TECHNICAL)

August 12, 2021 – filing 2021- (EMERGENCY ROUTINE TECHNICAL)

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BASIS STATEMENT EMERGENCY ROUTINE TECHNICAL RULE

IMMUNIZATION REQUIREMENTS FOR HEALTHCARE WORKERS

10-144 CMR CH 264

In accordance with 5 MRS § 8054, the Department is amending 10-144 CMR chapter 264, *Immunization Requirements For Healthcare Workers* on an emergency basis to immediately add COVID-19 to the list of vaccine-preventable diseases for which employees of a licensed nursing facility, residential care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), multi-level healthcare facility, hospital, or home health agency subject to licensure by the State of Maine, Department of Health and Human Services Division of Licensing and Certification must be immunized. In addition, the Department is also requiring Emergency Medical Services Organizations and Dental Health Practices to require all employees to provide proof of immunization against COVID-19. Employees who do not provide proof of immunization must be excluded from the workplace for the duration of the Department's declared public health emergency, which began on July 1, 2021 and is currently in effect.

Findings of Emergency

Cases of COVID-19 have increased over 300% nationally between June 19, 2021 and July 23, 2021. This increase has been driven by the highly transmissible B.1.617.2 (Delta) variant of SARS-CoV-2, the virus that causes COVID-19. The Delta variant is now believed to be the predominant variant of the virus in the country. Like the rest of the nation, Maine is experiencing a rapid increase in the number of COVID-19 infections as a result of the Delta variant, which is significantly more contagious than previous versions of the virus and more likely to cause serious illness, hospitalization, and death. The Delta variant represented more than 86% of positive COVID-19 samples sequenced in Maine in July 2021. Across the United States, only a very small amount of transmission can be traced to individuals who have been fully vaccinated against COVID-19. Virtually all hospitalizations and deaths caused by COVID-19 are occurring among the unvaccinated. In Maine, less than 2% of all confirmed cases since January 18, 2021 have been among fully vaccinated individuals; less than 4% of COVID-related hospitalizations and less than 6% of COVID-related deaths have been among fully vaccinated people. Since July 21, 2021, Maine has opened outbreak investigations associated with two hospitals and three long-term care facilities. As of August 11, 2021, outbreak investigations associated with hospitals and long-term care facilities account for just more than one third of all open outbreak investigations in Maine.

The Department finds that getting vaccinated against COVID-19 prevents severe illness, hospitalization, and death, and that it helps to reduce the spread of the virus, including the Delta variant, in communities. The presence of the highly contagious Delta variant in Maine constitutes an imminent threat to public health, safety, and welfare. The Department finds that immediate adoption of this rule is necessary to avoid further spread of COVID-19 in those healthcare settings within this rule in order to prevent infection, illness, hospitalization, and death. The Department further finds that immediate adoption of this rule on an emergency basis is necessary to prevent further strain on the state's healthcare system as a result of increased COVID-19-related hospitalizations, as well as reduced capacity caused by illnesses among members of the workforce.

STATUTORY AUTHORITY: 22 MRS §§ 802(1), 802(3)

EFFECTIVE DATE: August 12, 2021

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Commissioner's Office
11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011
Tel.: (207) 287-3707; Fax: (207) 287-3005
TTY: Dial 711 (Maine Relay)

August 5, 2021

Jane Gregory, Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006

Dear Ms. Gregory:

I will be out-of-state at a conference on the afternoon of Wednesday, August 11, and Thursday, August 12, 2021. Additionally, I will be working out of town on Friday, August 13, 2021.

I, hereby, authorize Sara Gagné-Holmes, Deputy Commissioner to sign in my absence -- administrative hearing decisions, all rules, adoptions, do-not-resuscitate orders, cease and desist orders, settlement agreements, and any other official documents of the Department of Health and Human Services requiring the Commissioner's signature during this period of time.

Sincerely,

A handwritten signature in cursive script, reading "Jeanne M. Lambrew".

Jeanne M. Lambrew, Ph.D.
Commissioner

JML/klv

cc: Sara Gagné-Holmes, Deputy Commissioner

Wismer, Don

From: Pare, Tera
Sent: Thursday, August 12, 2021 11:22 AM
To: Wismer, Don
Cc: Bagley, Bridget
Subject: Emergency Rule Adoption Filing
Attachments: Basis Statement Final 8-12-21 .docx; MAPA-4 HCW Immun Rule- Emergency Final 8-12-21.docx; Marked Rule HCW Imm Rule Ch 264- Emergency Final 8-12-21.docx; Clean Rule HCW Imm Rule Ch 264 Emerg Final 8-12-21.docx; Fact Sheet c.264 HCW Immun Emergency Rev 8-12-21.docx; MAPA Rulemaking Checklist Emerg Adoption.doc; MAPA-1 Rev 8-11-21.docx

Good morning, Don,

Please find attached the electronic versions of the rule and MAPA documents associated with this emergency rule adoption. I just dropped off the hard copies to your office, which also contain the signed MAPA-1 and the letter from Commissioner Lambrew granting her Deputy Commissioner Sara Gagne-Holmes authority to sign rules during her absence at this time.

Please let me know if we're missing anything.

I may be reached by email or my office telephone # below. Thank you.

Tera R. Pare, J.D.

Manager, Policy and Compliance

Department of Health and Human Services

Maine Center for Disease Control and Prevention – Preserve ~ Promote ~ Protect

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Rulemaking Fact Sheet

Emergency Rule Effective August 12, 2021

(5 MRS §8057-A)

AGENCY: DHHS Maine Center for Disease Control and Prevention

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON: Bridget Bagley, 11 SHS, 286 Water St., Augusta, ME 04330, 207-287-9394; bridget.bagley@maine.gov

CHAPTER NUMBER AND RULE TITLE: Chapter 264 - Immunization Requirements For Healthcare Workers

TYPE OF RULE (*check one*): ☒ Routine Technical ☐ Major Substantive

STATUTORY AUTHORITY: 22 MRS §§802(1), (3)

DATE, TIME AND PLACE OF PUBLIC HEARING: None pursuant to 5 MRS §8054 (1)

COMMENT DEADLINE: None pursuant to 5 MRS § 8054 (1)

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A) & (C)]

The Department finds that vaccination against COVID-19 prevents severe illness, hospitalization, and death, and that it helps to reduce the spread of the virus, including the Delta variant, in communities. The presence of the highly contagious Delta variant in Maine constitutes an imminent threat to public health, safety, and welfare. The Department finds that immediate adoption of this rule is necessary to avoid further spread of COVID-19 in all healthcare settings in order to prevent infection, illness, hospitalization, and death. The Department further finds that immediate adoption of this rule on an emergency basis is necessary to prevent further strain on the state's healthcare system as a result of increased COVID-19-related hospitalizations, as well as reduced capacity caused by illnesses among members of the workforce.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? X YES NO [§8056(1)(B)]
Occupational Safety and Health Administration (OSHA) regulations (29 CFR §1910.1030(f)(2)(iv))

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

The Department is requiring Maine healthcare workers, including employees of Designated Health Care Facilities, EMS Organizations, and Dental Health Practices, receive their final dose of COVID-19 immunization by September 17, 2021, to ensure enough time for unimmunized employees in these settings receive their COVID-19 immunization or obtain a medical exemption. If these employee remain unimmunized for COVID-19 after September 17, 2021 and do not qualify for an approved exemption, they are required to be excluded from the workplace for the period of the Department's public health emergency.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE
(including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]
US CDC COVID-19 Guidance; and experience and knowledge of Maine CDC staff.

Administrative Procedure Act

CHECKLIST

Agency: Maine Center for Disease Control & Prevention, Department of Health & Human Services

Chapter Number and Title of Rule: Immunization Requirements for Healthcare Workers, 10-44 CMR, Ch. 264

PROPOSED RULE:

1. Was this rule listed on the last regulatory agenda? Yes
2. Date of notification of: Anyone on mailing list N/A
Any trade, industry or professional group N/A
Any trade publications N/A
3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: N/A
4. Date Fact Sheet sent to Executive Director of Legislative Council: N/A
5. Date of publication in Secretary of State's rule-making ad: N/A
6. Date of hearing(s): N/A
7. Comment deadline(s): N/A

ADOPTED RULE:

8. Was comment deadline extended or comment period reopened? No
If yes, date of second notice publication in Secretary of State's rule-making ad: _____
9. Is adopted rule consistent with what was proposed? N/A
(If not, please address the changes in the comments and responses section of your filing.)
10. Is the person signing the Certification Statement (MAPA-1) authorized to do so as stated in your statutes or in 5 MRS, c.71? Yes
11. Was the rule adopted within 120 days of the comment deadline? N/A
12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? N/A
13. Is a Basis Statement included? Yes
Is a copy of the Fact Sheet included? Yes
Are comments, with names and organizations, and your responses included? N/A

Blank

Notice of Agency Rule-making Adoption Emergency Rule Effective August 12, 2021

AGENCY: Department of Health and Human Services, Maine Center for Disease Control and Prevention

CHAPTER NUMBER AND TITLE: Ch. 264 - Immunization Requirements For Healthcare Workers

TYPE OF RULE (check one): Emergency Routine Technical

ADOPTED RULE NUMBER: **2021-166 (Emergency)**

CONCISE SUMMARY: In accordance with 5 MRS § 8054, the Department is amending 10-144 CMR chapter 264, *Immunization Requirements For Healthcare Workers* on an emergency basis to immediately add COVID-19 to the list of vaccine-preventable diseases for which employees of a licensed nursing facility, residential care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), multi-level healthcare facility, hospital, or home health agency subject to licensure by the State of Maine, Department of Health and Human Services Division of Licensing and Certification must be immunized. In addition, the Department is also requiring Emergency Medical Services Organizations and Dental Health Practices to require all employees to provide proof of immunization against COVID-19. Employees who do not provide proof of immunization must be excluded from the workplace for the duration of the Department's declared public health emergency, currently in effect, which started July 1, 2021. Requiring healthcare workers to be immunized against COVID-19 is necessary to avoid or mitigate the spread of COVID-19, including, in particular, the Delta variant, which is significantly more contagious than past versions of the virus and poses an immediate threat to public health, safety, and general welfare. Specifically, this requirement will slow the spread of COVID-19, protecting both healthcare workers and the public from infection, serious illness, hospitalization, and/or death. Additionally, this requirement will help to prevent strain on the healthcare system both by limiting the number of hospitalizations as a result of COVID-19 and by protecting individual members of the workforce. The emergency routine technical rule remains in effect for up to ninety (90) days pursuant to 5 MRS § 8054(3). To avoid any lapse in this new immunization requirement, the Department will engage in the standard rulemaking process, which will, in addition to other non-emergency changes, propose these changes to become permanent.

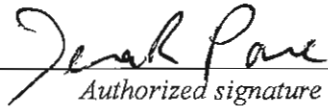
EFFECTIVE DATE: **AUG 12 2021**
(TO BE FILLED IN BY SECRETARY OF STATE)

AGENCY CONTACT PERSON:

NAME: Bridget Bagley
ADDRESS: 286 Water St., 11 SHS, Augusta, ME 04333
TELEPHONE: 287-9394
E-MAIL ADDRESS: Bridget.Bagley@maine.gov

AGENCY WEBSITE: <http://www.maine.gov/dhhs/mecdc/rules/>

Please approve bottom portion of this form and assign appropriate **AdvantageME** number.

APPROVED FOR PAYMENT 
Authorized signature

DATE: 8/12/21

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	10A	2064		4946				

EXHIBIT D



Maine Medical Association

EXHIBIT D

Robert J. Schlager, MD, President | Amy Madden, MD, President-Elect | Karen Saylor, MD, Chair, Board of Directors
Andrew B. MacLean, JD, Interim CEO | Peter P. Michaud, JD, RN, General Counsel

TESTIMONY OF THE MAINE MEDICAL ASSOCIATION
IN SUPPORT OF LD 798,
AN ACT TO PROTECT MAINE CHILDREN AND STUDENTS FROM PREVENTABLE DISEASES BY
REPEALING CERTAIN EXEMPTIONS FROM THE LAWS GOVERNING IMMUNIZATION REQUIREMENTS
AND IN OPPOSITION TO LD 987,
AN ACT TO PROVIDE AUTONOMY FOR HEALTH CARE PROVIDERS TO PRACTICE
PATIENT-CENTERED CARE BY AMENDING THE LAWS GOVERNING
MEDICAL EXEMPTIONS TO IMMUNIZATION REQUIREMENTS

Joint Standing Committee on Education and Cultural Affairs
Room 208, Cross State Office Building
Wednesday, March 13, 2019

Good afternoon Senator Millett, Representative Kornfield, and Members of the Joint Standing Committee on Education and Cultural Affairs. I am Peter Michaud, General Counsel for the Maine Medical Association (MMA), chair of the Maine Immunization Coalition Steering Committee, and a registered nurse licensed to practice in Maine. I live in Readfield, and I am speaking in support of LD 798, An Act to Protect Maine Children and Students from Preventable Diseases by Repealing Certain Exemptions from the Laws Governing Immunization Requirements and in opposition to LD 987, An Act to Provide Autonomy for Health Care Providers to Practice Patient-centered Care by Amending the Laws Governing Medical Exemptions to Immunization Requirements.

The MMA is a professional association representing more than 4,300 physicians, residents, and medical students in Maine whose mission is to support Maine physicians, advance the quality of medicine in Maine, and promote the health of all Maine citizens. We represent physicians from all medical specialties, as well as pediatrics, public health and primary care.

The Maine Immunization Coalition is a group of Maine healthcare organizations that includes:

American Academy of Pediatrics – Maine Chapter
Cary Medical Center
Maine Association of Health Plans
Maine Family Planning
Maine General
Maine Hospital Association
Maine Medical Association
Maine Nurse Practitioner Association
Maine Osteopathic Association
Maine Pharmacy Association
Maine Primary Care Association

MaineHealth
Martin's Point Health Care
Nasson Health Care
Northern Light Health Care
Planned Parenthood of Northern New England
Medical providers
Public health experts

You have heard a great deal about these bills and about the issue of school immunization requirements. Much of what you have heard is not accurate. For example, I understand the claim has been made in a floor sheet that "LD 798 is a vaccine sales bill sponsored by the pharmaceutical industry." I can testify that the pharmaceutical industry had nothing whatsoever to do with the drafting or sponsorship of this bill. There is much more, but I will leave the medical questions to the experts who will testify after me. May I suggest that doctors are in a much better position to say what doctors can and cannot do, and what they do in practice, than are the authors of the floor sheet in question or the lay persons testifying on these bills.

LD 798 is very simple and limited in its scope. It repeals the religious and philosophical exemptions to the school, day care, and healthcare immunization requirements. It does not touch the medical exemption part of the statute. This bill does not change the DHHS and DoE rules. The practice of school nurses has been to accept "a physician's written statement that immunization against one or more of the diseases may be medically inadvisable," as stated in the statute and rules. They have not treated the list in Section 3 (B) as exclusive. I have checked my understanding with both the DHHS and the DoE, with school nurses, and with physicians who issue medical exemptions. You will hear from some of them. Their statements are general in nature and do not track the list of examples in the rules.

This is not a bill about the medicine and the science of vaccines; yet, those opposing LD 798 have made and, I anticipate, will make today a variety of claims on that issue. For that reason, it is incumbent on the bill's supporters to respond. You will hear pediatricians, the physicians who care for children and administer the vast majority of childhood immunizations, testify about the science and medicine of vaccines, vaccine side-effects, vaccine ingredients, and other medical issues. You will hear testimony from families about why it is a bad idea to have numbers of unimmunized children in public spaces like public schools. You will hear legal discussions about whether it is constitutional to require immunization for school attendance (it is). You will hear about the experience of those who are, for medical reasons, immunosuppressed and at risk from those around them.

I ask you to consider the knowledge, education, training, and experience of the various witnesses who will testify about the effects of vaccines.

On behalf of the MMA and the Maine Immunization Coalition, and on behalf of my uncle Camille Michaud who died of polio in 1959 at the age of 30, I respectfully ask you to vote LD 798 "Ought to Pass" and LD 987 "Ought Not to Pass." I would be happy to respond to any questions you may have.

EXHIBIT E



Search

EXHIBIT E



Peter Michaud



Oct 23, 2019 ·

Those of us “of a certain age” knew someone who spent time, often a short time in their tragically brief lives, in one of these. This is not a complicated issue. Maine, vote “No” on March 3rd.

Iron lungs in a polio ward, 1950.
Society has a short memory.
#vaccinate



23

7 Comments • 7 shares

EXHIBIT F



https://mobile.twitter.



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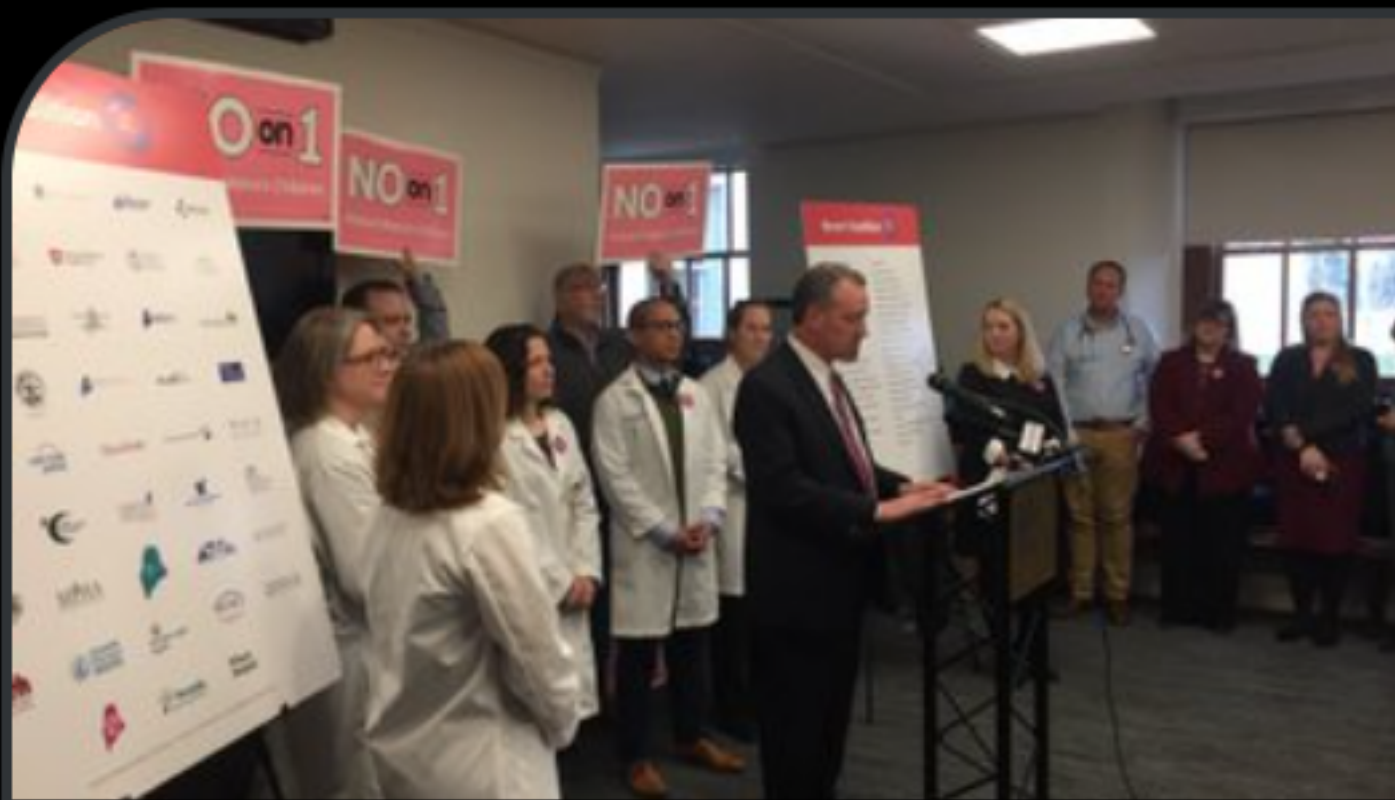
Sign up



Peter Michaud Retweeted

**Maine Medica...** · Feb 5, 2020

Absolutely amazing campaign kickoff for No on 1 yesterday at the State House. Thx @mainefamilies @MeHosps @MainePHA @MainePCA & others #mepolitics #truth #loveyourcommunity #neighbors

**Peter Michaud** @ · Feb 5, 2020

Stop the anti-science, anti-public-health referendum. Protect Maine children, vote "No" on Question 1!

EXHIBIT G

Peter Michaud

84 Tweets

Tweets

Tweets & replies

Media

Likes

Peter Michaud Retweeted

**IndivisibleSagadahoc** @In... · 2/21/20 ...

The people's veto to nix the vaccine bill could end lives. Voting "yes" won't stick it to big pharma. It will put you at risk from dangerous diseases. We dipped below herd immunity status; we can't afford exceptions. Vote NO on 1
[#mepolitics](#) [#VaccinesWork](#)

[bangordailynews.com](#)

Vote no on Question 1. Don't let preventable diseases make a come...



8

15

**Promoted Tweet****State of Survival Official** @state... ...

Collect, build, find other survivors!
How long can you last in this ZOMBI world?



EXHIBIT H

**Peter Michaud**

84 Tweets



Tweets

Tweets & replies

Media

Likes

 Peter Michaud Retweeted**Alfons López Tena**  @alf... · 2/21/20 ...

Prominent scientist [@PeterHotez](#) wants to lead a campaign against anti-vaxxers: For the first time since their movement began 20 years ago, children are dying or in ICUs because of anti-vaxxers. Time to speak up far more forcefully in praise of vaccines



economist.com

Anger in a time of autism



9



67



109

 Peter Michaud Retweeted**Bangor Daily News**  @b... · 2/21/20 ...

Opinion: A 'no' vote on Question 1 will protect vulnerable children like my daughter bit.ly/2HHJS2j



EXHIBIT I

**Peter Michaud**

84 Tweets




Tweets

Tweets & replies



Media

Likes

 Peter Michaud Retweeted**Ben Harder #BlackLiv...**  · 2/25/20 ...

I had a conversation with a public health official last night about coronavirus, seasonal flu, pandemic response, and vaccine hesitancy. She summed up a core irony:

"Everyone wants a vaccine. Until it's available."

 12 491 1,219 Peter Michaud Retweeted**Senator Angus King**  @... · 2/27/20 ...

Funding the battle against coronavirus by taking money from LIHEAP, which helps Maine people afford to heat their homes in the cold of winter, is unconscionable. We'd be robbing Peter to pay Paul — either way, public health would suffer.

pressherald.com

EXHIBIT J

Peter Michaud

84 Tweets

Tweets

Tweets & replies

Media

Likes

Peter Michaud Retweeted

**Maine Medical Assn** @M... · 2/28/20 ...

Yes on 1 Cara Sacks attacked the credibility of [#NoOn1's](#) [#Trustworthy](#) well-respected pediatrician Dr. Blaisdell numerous times this week yet [#antivaxxers](#) trust disgraced British doc Wakefield-studies retracted due to fraud & financial benefits, license revoked, etc., [#mepolitics](#)



INDEPENDENT



Andrew Wakefield is a former British doctor and researcher, who birthed the modern anti-vaccination movement with widely discredited research. since



2

2



Peter Michaud Retweeted

**Maine Medical Assn** @Mai... · 3/1/20 ...Vote [#NoOn1](#)

Bill effectively explains the blindfolded directionless rationale of Maine anti-vaxxers.

[#NoMeasles](#) [#NoMumps](#)[#NoWhoopingCough](#) [#NoDintheria](#)

EXHIBIT K

Peter Michaud

84 Tweets

Tweets

Tweets & replies

Media

Likes



Maine Medical Assn @Mai... · 3/1/20 ...
Vote [#NoOn1](#)

Bill effectively explains the blindfolded
directionless rationale of Maine anti-
vaxxers.

[#NoMeasles](#) [#NoMumps](#)
[#NoWhoopingCough](#) [#NoDiphtheria](#)
[#NoPolio](#) [#NoChickenPox](#)
[#NoMeningitis](#)



[pressherald.com](#)

Bill Nemitz: The truth is vaccines
save Maine kids' lives. Let's keep it...



Peter Michaud Retweeted



Maine Families for Vaccini... · 2/27/20 ...

Huge thanks to Dr. Laura Blaisdell for
her consistent, professional, and
thoughtful energy in three live deb
Your passion for public health and love



EXHIBIT L

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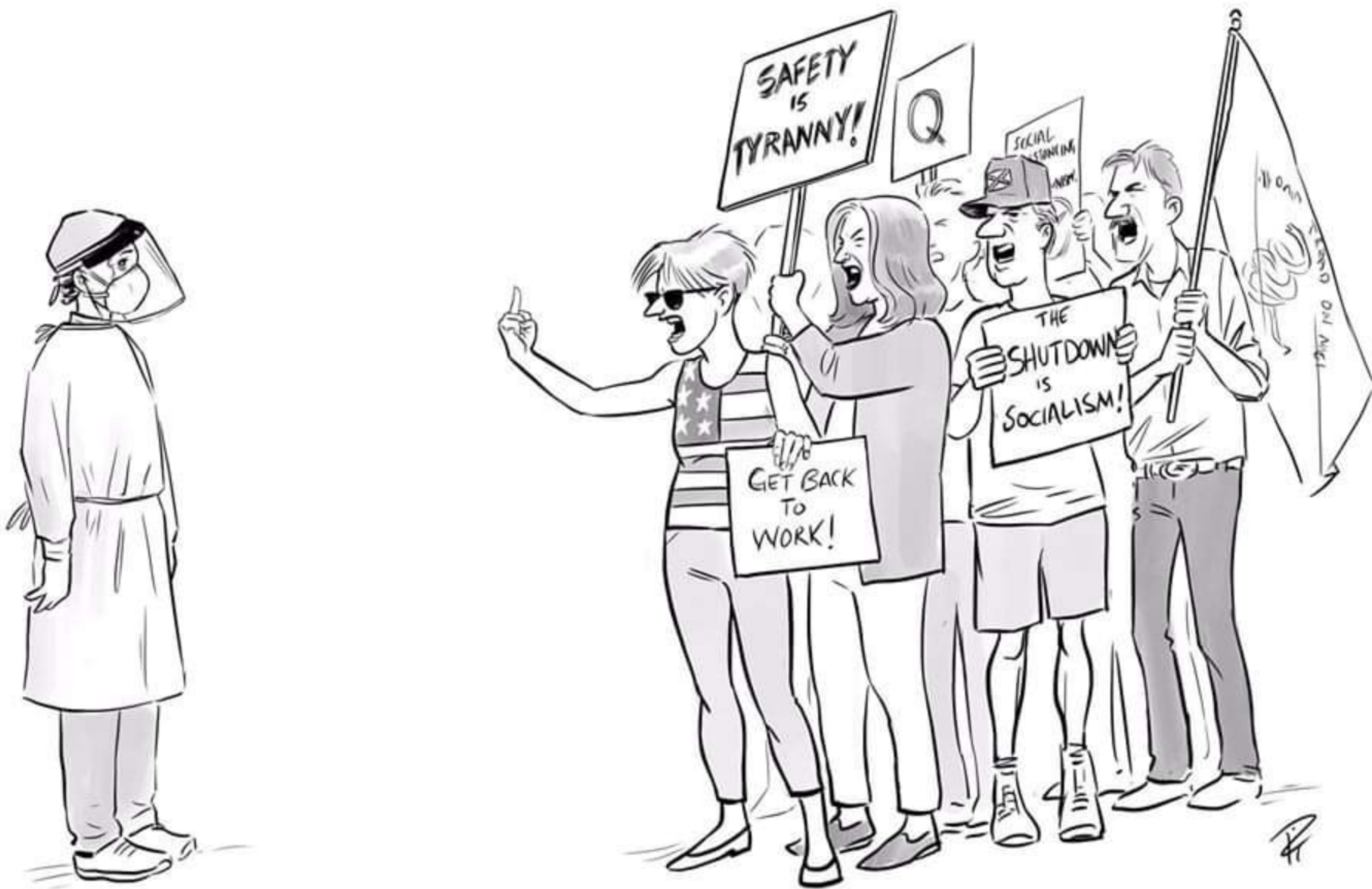
Peter Michaud
Apr 20, 2020 ·

The scene in Augusta today.



Refutations to Anti-Vaccine Memes

Apr 20, 2020 ·



10

4 Comments

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Peter Michaud updated his profile picture.
Apr 19, 2020 ·

EXHIBIT M

Peter Michaud

84 Tweets

Tweets

Tweets & replies

Media

Likes

Peter Michaud Retweeted



Maine Medical Assn @Ma... · 5/11/20 ...

#COVID19 is a reminder of the importance of vaccinations. Unfortunately, as a result of delayed care for routine appointments, childhood immunizations have declined. Please call your pediatrician or primary care physician and keep up-to-date #MainePhysicians #WeWantYouHealthy

#PedsPutKids1st During COVID-19

“

Our office visits have decreased by about 85%. We need to continue vaccinating and providing care to our patients. We must avoid the health-related collateral damage from this pandemic.

”

Gary Edmonson, MD, FAAP
New York City, NY

American Academy of Pediatrics
Member of the American Academy of Pediatrics



Peter Michaud Retweeted



Maine Medical Assn @Ma... · 4/16/20 ...

The Board of Licensure in Medicine & Board of Osteopathic Licensure says it would be 'unprofessional conduct' to prescribe chloroquine, hydroxychloroquine or azithromycin and that the drugs should not be prescribed for preventive purposes. #COVID19



EXHIBIT N



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EXHIBIT N

LATIMES.COM

Op-Ed: Kareem Abdul-Jabbar: Don't understand the protests? What you're see...



6

1 Comment



Like



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Peter Michaud



May 29, 2020 · 

Hannaford has regressed.

The employees watching the carts had their masks down around their necks, and there were vendors in the store with no masks at all. Most customers were masked, except for the usual few aggressively ignorant jerks.



16

14 Comments



Like



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Peter Michaud



May 28, 2020 · 

Those people trump is calling the “radical left,” you know what we called them in the 1960s? Mainstream republicans.



21



1 Comment · 1 share

EXHIBIT O



Search

EXHIBIT O

   144

44 Comments



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Peter Michaud



Jul 24, 2020 · 

Even Boris Johnson disagrees!



THEGUARDIAN.COM

Boris Johnson says 'anti-vaxxers are nuts'

 11



Like



Comment



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Peter Michaud



Jul 22, 2020 · 

<https://www.businessinsider.com/trump-campaign-ad-police-officer-attacked-2014-ukraine-protests-2020-7>



EXHIBIT P

All 32 hydroxychloroquine COVID-19 early treatment studies

hcqmeta.com Oct 1, 2021

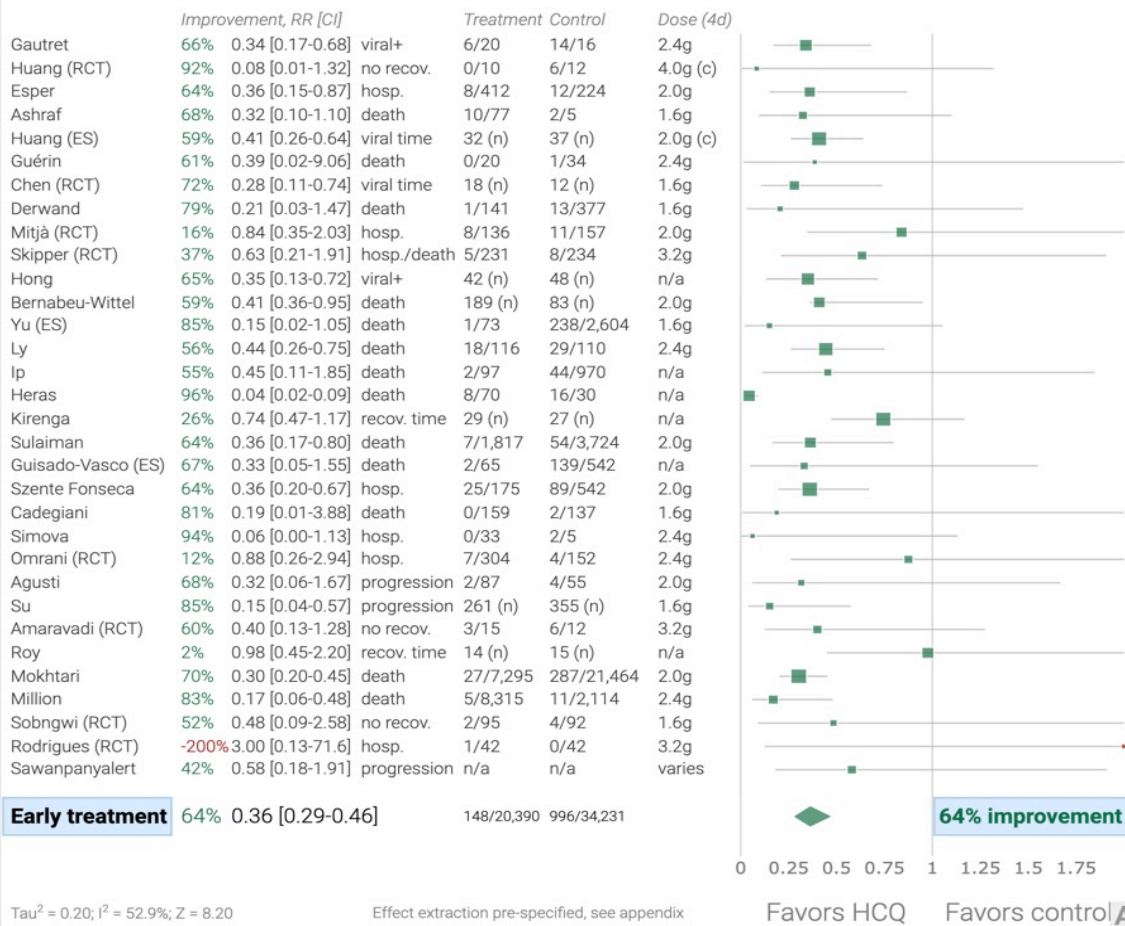


EXHIBIT Q

ivmmeta.com Sep 22, 2021

	Improvement, RR [CI]			Treatment	Control	Dose (4d)
Chowdhury (RCT)	81%	0.19 [0.01-3.96]	hosp.	0/60	2/56	14mg
Espitia-Hernandez	70%	0.30 [0.16-0.55]	recov. time	28 (n)	7 (n)	12mg
Carvalho	85%	0.15 [0.02-1.28]	death	1/32	3/14	36mg
Mahmud (DB RCT)	86%	0.14 [0.01-2.75]	death	0/183	3/183	12mg
Szente Fonseca	-14%	1.14 [0.75-1.66]	hosp.	340 (n)	377 (n)	24mg
Cadegiani	78%	0.22 [0.01-4.48]	death	0/110	2/137	42mg
Ahmed (DB RCT)	85%	0.15 [0.01-2.70]	symptoms	0/17	3/19	48mg
Chaccour (DB RCT)	96%	0.04 [0.00-1.01]	symptoms	12 (n)	12 (n)	28mg
Afsar	98%	0.02 [0.00-0.20]	symptoms	0/37	7/53	48mg
Babalola (DB RCT)	64%	0.36 [0.10-1.27]	viral+	40 (n)	20 (n)	24mg
Ravikiran (DB RCT)	89%	0.11 [0.01-2.05]	death	0/55	4/57	24mg
Bukhari (RCT)	82%	0.18 [0.07-0.46]	viral+	4/41	25/45	12mg
Samaha (RCT)	86%	0.14 [0.01-2.70]	hosp.	0/50	3/50	12mg
Mohan (DB RCT)	62%	0.38 [0.08-1.75]	no recov.	2/40	6/45	28mg
Biber (DB RCT)	70%	0.30 [0.03-2.76]	hosp.	1/47	3/42	36mg
Elalfy	87%	0.13 [0.06-0.27]	viral+	7/62	44/51	36mg
López-Me... (DB RCT)	67%	0.33 [0.01-8.11]	death	0/200	1/198	84mg
Roy	6%	0.94 [0.52-1.93]	recov. time	14 (n)	15 (n)	n/a
Chahla (CLUS. RCT)	87%	0.13 [0.03-0.54]	no disch.	2/110	20/144	24mg
Mourya	89%	0.11 [0.05-0.25]	viral+	5/50	47/50	48mg
Loue (QR)	70%	0.30 [0.04-2.20]	death	1/10	5/15	14mg
Merino (QR)	74%	0.26 [0.11-0.57]	hosp.	population-based cohort		24mg
Faisal (RCT)	68%	0.32 [0.14-0.72]	no recov.	6/50	19/50	48mg
Aref (RCT)	63%	0.37 [0.22-0.61]	recov. time	57 (n)	57 (n)	n/a
Krolewiecki (RCT)	-152%	2.52 [0.11-58.1]	ventilation	1/27	0/14	168mg
Vallejos (DB RCT)	-33%	1.33 [0.30-5.72]	death	4/250	3/251	24mg
Together... (DB RCT)	18%	0.82 [0.44-1.52]	death	18/677	22/678	84mg
Buonifrate (DB RCT)	-600%	7.00 [0.39-126]	hosp.	4/58	0/29	336mg

Intervention	Relative risk	95% CI	Events/No. of patients	Events/No. of patients
Early treatment	68%	0.32 [0.22-0.48]	56/2,657	222/2,669

² CT: study uses combined treatment
Tau² = 0.49; I² = 63.2%; Z = 5.73

Effect extraction pre-specified, see appendix

