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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DOUGLAS MACKENZIE, M.D., AND PHYSICIANS FOR INFORMED CONSENT, Plaintiffs, **v.** **WILLIAM J. PRASIFKA,** Defendant.	2:22-CV-01203-JAM-KJN **DEFENDANT'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION** Date: September 27, 2022 Time: 1:30 p.m. Dept: 6 Judge: The Honorable John A. Mendez

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INTRODUCTION

Plaintiffs seek preliminary injunctive relief to: (1) enjoin the Medical Board of California (hereinafter "MBC") from conducting any investigation of licensed physicians for expressing their individual views regarding the COVID pandemic and related topics such as mandates, vaccines, and treatments; (2) require the MBC to notify physicians who are the alleged subject of investigations by the MBC regarding "Covid misinformation/disinformation"[1] that those investigations are withdrawn pending a final order of this Court; and (3) require the MBC to post on its website that Board President Lawson's February MBC meeting statement regarding physicians subject to disciplinary action for "Covid misinformation/disinformation" has been enjoined by this Court.

Absent this injunctive relief, Plaintiffs assert here that they will suffer a threat of imminent, irreparable harm to their First Amendment rights. As a threshold matter, the proposed legislation Plaintiffs cite to is still engrossed in committee in the California State Senate, and is not yet law;[2] meaning that any asserted need for relief as it relates to an unpassed bill is speculative and not imminent.

Plaintiffs' allegations demonstrate they have no likelihood of success. The case is moot, Plaintiffs' claims are barred by the Eleventh Amendment, the only named defendant, William Prasifka, (hereinafter "Defendant"),[3] is entitled to immunity, and Plaintiffs lack standing. Plaintiffs' allegations do not support a finding of an imminent threat of irreparable harm in the absence of injunctive relief, and the balance of equities tips sharply in favor of denying a preliminary injunction, which would otherwise undermine the integrity of the state agency's enforcement process and severely compromise public safety. Finally, injunctive relief cannot be

[1] "Covid misinformation/disinformation" is a term used throughout Plaintiffs' Motion for Preliminary Injunction and First Amended Complaint, including Plaintiffs' proposed preliminary injunction terms, yet remains undefined by Plaintiffs.

[2] The uncodified California Assembly Bill 2098, which Plaintiffs' motion and the FAC cite over a dozen times, is not law. LegiScan Roll Call: CA AB 2098 2021-2022 https://legiscan.com/CA/rollcall/AB2098/id/1222772.

[3] Defendant is the only specifically named defendant in the FAC and he is named solely in his official capacity as the executive director of the Medical Board of California. See ECF 6, FAC, pp. 6-7.

granted when directed at third-parties who are not before the Court.[4] Therefore, for the reasons discussed in greater detail below, Plaintiffs' Motion for a Preliminary Injunction (hereinafter " the Motion")[5] must be denied.

PLAINTIFF'S ALLEGATIONS

Plaintiffs allege that, on August 10, 2021, Plaintiff, Douglas Mackenzie, M.D. (hereinafter "Dr. Mackenzie"), participated in a Zoom meeting of the Santa Barbara Unified School District for approximately two minutes, during which he identified himself as a California licensed surgeon and made several public statements regarding COVID related pandemic health issues. (ECF No. 7, MPI p. 1; ECF No. 6, FAC pp. 7-8.) Specifically, Dr. Mackenzie spoke about the nature of a respiratory virus, reinfections, virus variants, vaccinations, the overprescribing of antibiotics, resistant bacteria, and ivermectin. (ECF No. 6, FAC pp. 7-8.)

Subsequently, Dr. Mackenzie received a letter dated December 15, 2021, indicating that Defendant's office had received a complaint against him based on his August 10, 2021, statements. (ECF No. 7, MPI p. 1; ECF No. 6, FAC p. 8.) The letter requested Dr. Mackenzie provide a written response as to the allegations. (*Id*.) Dr. Mackenzie then elected to retain the services of legal counsel who drafted and sent a written response in January 2022. (*Id*.)

FACTUAL BACKGROUND

The sequence of events on which Plaintiffs base their claims are shown in the attached Declaration of Chief of Enforcement, Jenna Jones, and accompanying letter, (hereinafter "Jones Dec."), which are summarized below.

On or about August 10, 2021, after Dr. Mackenzie made his statements at the Santa Barbara Unified School District meeting, Defendant's office received an online complaint lodged against Dr. Mackenzie. (Jones Dec., p. 2.) It alleged that Dr. Mackenzie identified himself with his medical credentials at a school board meeting and proceeded to state people should just take ivermectin. (*Id*.) It also alleged Dr. Mackenzie spoke against children being tested for COVID,

[4] As the executive director, Defendant is not a board member, nor does he have the ability to control their actions/decisions.

[5] Plaintiff's Motion for Preliminary Injunction is identified by the acronym "MPI" in citations.

stated that it was all a conspiracy theory from politicians, and that ivermectin can cure COVID. (*Id*.)

On or about December 15, 2021, in response to receiving the online complaint, a staff service analyst mailed a standard form letter to Dr. Mackenzie informing him of the specific allegations lodged against him. (*Id*.; *see also* Cal. Bus. & Prof. Code § 800(c)(1).) The form letter also requested Dr. Mackenzie provide a written response to the specific allegations, pursuant to Cal. Bus. & Prof. Code § 2220.08. (*Id*.) This standard form letter is generated and sent to a licensee when an online complaint is received in order to give the subject physician the statutorily required opportunity to respond and allow a determination to be made whether a referral of the matter to an investigative field office is necessary. (*Id*.)

On or about January 17, 2022, Dr. Mackenzie's then attorney mailed a letter in response to the specific allegations contained in the complaint. In that letter, Dr. Mackenzie denied making any such statements. (*Id*.) This letter was accompanied by a recording of Dr. Mackenzie's verbal statements from the August 10, 2021 meeting, which corroborated Dr. Mackenzie's written response that he made no such statements, as alleged against him. (*Id*.)

Based upon review of the January 17, 2022, letter and public meeting recording, it was determined, in January 2022, that no unprofessional conduct occurred and that the matter would be closed. (*Id*.) Unfortunately, due to severe budgetary and staffing issues, a letter advising that the matter had been closed was not issued to Dr. Mackenzie until July 14, 2022. (*Id*, Exh. 1.)

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 24 (2008). Plaintiffs requesting a preliminary injunction must establish that: (1) they are likely to succeed on the merits; (2) they will likely suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Id*. at 22. "When the government is a party, these last two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). An injunction may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Winter*, 555 U.S. at 22. Plaintiffs, as the movants, bear the burden of proving each of

these elements. *Klein v. San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009). If a movant fails to establish a likelihood of success, the court generally need not consider the other three *Winter* factors. *Garcia v. Google. Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc).

For injunctive relief, narrow tailoring requires a "'fit' between the [remedy's] ends and the means chosen to accomplish those ends." *Board of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480, (1989). "The scope of the remedy must be proportional to the scope of the violation, and the order must extend no further than necessary to remedy the violation." *Brown v. Plata*, 563 U.S. 493, 531 (2011). As noted by the Ninth Circuit, "the scope of federal injunctive relief against an agency of state government must always be narrowly tailored…" *Valdivia v. Schwarzenegger*, 599 F.3d 984, 995 (9th Cir. 2010) (internal citation omitted). "This means only that the scope of the order must be determined with reference to the constitutional violations established by the specific plaintiffs before the court." *Plata*, 563 U.S. at 531.

ARGUMENT

I. PLAINTIFFS' ALLEGATIONS ARE INSUFFICIENT TO ESTABLISH EITHER A LIKELIHOOD TO SUCCEED ON THE MERITS OR SERIOUS QUESTION GOING TO THE MERITS

Plaintiffs' allegations are inadequate to support a grant of a preliminary injunction for the following reasons discussed in turn below: Dr. Mackenzie's claims are moot; neither plaintiff can establish standing; the action is barred by the Eleventh Amendment; Defendant is entitled to absolute immunity; Plaintiff's claims of unconstitutional vagueness lack merit; neither plaintiff is likely to suffer irreparable harm sans preliminary injunctive relief; and preliminary injunctive relief cannot be granted against third parties.

A. PLAINTIFFS' CLAIMS ARE MOOT

As stated in Defendant's Motion to Dismiss in this matter, (*see* ECF No. 12), the FAC and the gravamen of arguments in the Motion challenge the initial form letter sent to Dr. Mackenzie regarding his August 10, 2021 statements, without acknowledging that the basis of that standard form letter was not the content of Dr. Mackenzie's statements made on August 10, 2021, but rather the alleged statements contained in the online complaint received against Dr. Mackenzie. After receiving and reviewing Dr. Mackenzie's written responses to the specific allegations along

with the recording of the incident at issue, Defendant's office ceased all inquiry and closed the matter without further action or referral to a field office for investigation, Jones Dec., p. 2; *see also* Cal. Bus. & Prof. Code § 2220.08; all of which occurred in January 2022 (Jones Dec, p. 2), and prior to Defendant being served with notice of this action on July 18, 2022. Plaintiffs' claims are thus moot and should be dismissed.

"If there is no longer a possibility that an appellant can obtain relief for his claim, that claim is moot and must be dismissed for lack of jurisdiction." *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003). To survive a mootness challenge, "'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Seven Words LLC v. Network Solutions*, 260 F.3d 1089, 1095 (9th Cir. 2001) (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997)); *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003). Federal courts do not have jurisdiction to hear a case where no actual or live controversy exists. *Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 989 (9th Cir. 1999). Thus, if an event occurs while the case is pending that removes the threat of injury when only prospective relief had been sought, then the case must be dismissed. *Sierra Club v. Babbitt*, 69 F.Supp.2d 1202, 1244 (E.D. Cal. 1999) (citing *Link to Fund for Animals v. Babbitt*, 89 F.3d 128, 133 (2d Cir. 1996)).

In other words, "[w]here the activities sought to be enjoined have already occurred, and the appellate courts cannot undo what has already been done, the action is moot," *Friends of the Earth, Inc. v. Bergland*, 576 F.2d 1377, 1379 (9th Cir. 1978), and it must be dismissed. *See GATX/Airlog Co. v. United States Dist. Court*, 192 F.3d 1304, 1306 (9th Cir. 1999); *see also Alvarez v. Smith*, 558 U.S. 87 (2009) (describing a moot claim as follows: "[The] dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights. Rather, it is an abstract dispute about the law, unlikely to affect these plaintiffs any more than it affects other ... citizens. And a dispute solely about the meaning of a law, abstracted from any concrete actual or threatened harm, falls outside the scope of the constitutional words 'Cases' and 'Controversies.' ").

The specific and narrow circumstances surrounding the online allegations regarding Dr. Mackenzie's August 10, 2021 statements, the issuance of the standard form letter, and subsequent

closure of the matter, are also not capable of repetition while evading review. "[T]he capable-of-repetition doctrine applies only in exceptional situations," *City of Los Angeles v. Lyons,* 461 U.S. 95, 109, 103 (1983), "where the following two circumstances [are] simultaneously present: ' "(1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again," ' " *Lewis Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 481 (1990), (quoting *Murphy v. Hunt*, 455 U.S. 478, 482, (1982) (per curiam), in turn quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (per curiam)); *see also Norman v. Reed*, 502 U.S. 279, 288 (1992). Plaintiffs' allegations satisfy neither of these conditions. Plaintiffs have not and cannot show that the time between the utterance of statements by a physician and the closure of any inquiry regarding the alleged statements will always be so short as to evade review. Nor have Plaintiffs demonstrated a reasonable likelihood that they or any other licensed physician in the state has previously, currently, or will ever be investigated for similar alleged statements as contained in the online complaint against Dr. Mackenzie. Plaintiffs' allegations allude to "two other physicians" without identifying the individuals or their respective circumstances with any specificity. (ECF No. 7, MPI p. 1; ECF No. 6, FAC pp. 3, 9.) The court need not "accept as true allegations that contradict matters properly subject to judicial notice" or "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Sciences Securities Litigation*, 536 F.3d. 1049, 1055 (9th Cir. 2008) (internal quotations omitted). For the purposes of determining mootness, the court is not in a position to determine the merits of Plaintiffs' claims upon which they request preliminary injunctive relief, but rather may only determine whether a case or controversy exists (or whether a cognizable claim has even been stated). *Barrett v. Belleque,* 544 F.3d 1060 (9th Cir. 2008). Given these facts, Plaintiffs' moot claims remain an abstract dispute about the law that falls outside the jurisdictional requirement of a case or controversy.

B. Plaintiffs Cannot Establish Standing

To establish Article III standing for injunctive relief, a plaintiff must show both "that he has suffered or is threatened with a 'concrete and particularized' legal harm" and that there is "a real

and immediate threat of repeated injury." *Bates v. United Parcel Serv*., 511 F.3d 974, 985 (9th Cir. 2007) (en banc) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). In a suit for prospective injunctive relief, a plaintiff is required to demonstrate a real and immediate threat of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–02 (1983) (holding that the threat must be " 'real and immediate' " as opposed to " 'conjectural' or 'hypothetical' "). The key issue is whether the plaintiff is "likely to suffer future injury." *Id*. at 105; *see also O'Shea v. Littleton*, 414 U.S. 488, 496, 498 (1974). In the context of injunctive relief, the plaintiff must demonstrate a real or immediate threat of an irreparable injury. *See Lyons*, 461 U.S. at 110–11. "We do not mean to suggest that any plaintiff may challenge the constitutionality of a statute on First Amendment grounds by nakedly asserting that his or her speech was chilled by the statute." *California Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1095 (9th Cir. 2003). The mere existence of a 'chilling effect,' even in the area of First Amendment rights, is not a sufficient basis, in and of itself, for prohibiting state action. *Younger v. Harris*, 401 U.S. 37, 51 (1971).

Plaintiffs fail to and indeed cannot establish that they suffered an injury in fact that is concrete and particularized, or that there is an imminent threat of future injury as a result of the standard form letter to Dr. Mackenzie requesting a written response and the subsequent letter sent to Plaintiff Mackenzie closing the matter regarding his alleged August 10, 2021 statements. As explained above, besides the initial standard form letter requesting a response from Dr. Mackenzie to the alleged online statements, which is dispersed each time an online complaint is received, Jones Dec., p. 2, it also informed Dr. Mackenzie that if no written response was received and a violation of law was confirmed to have occurred, future action could be taken. This conditional advisement and the plain meaning of the word "could" did not presumptively conclude or assert that Dr. Mackenzie had violated the law on August 10, 2021; nor did it state that any subsequent action *would* occur as result. Rather, it merely informed Dr. Mackenzie of the possibility that additional action might ensue, without specifying what that action might be if the condition precedent was met. Consequently, the matter relating to the allegations of Plaintiff Mackenzie's August 10, 2021 statements was closed after receiving Dr. Mackenzie's responsive letter and media file; finding that no unprofessional conduct occurred, which resulted in no

additional or future action as to Plaintiff Mackenzie's August 10, 2021 statements. Thus, Plaintiffs suffered no injury, and no immediate threat of repeated injury based on Dr. Mackenzie's August 10, 2021 statements will occur.

The Motion also attempts to seek injunctive relief on behalf of all physicians, yet fails to identify these individuals as plaintiffs or even the specific circumstances upon which any physician is currently and allegedly being investigated or subjected to discipline. (ECF No. 7, MPI p. 1; ECF No. 6, FAC pp. 3, 9.)

"In addition to these Article III requirements of injury in fact, causation, and redressibility, prudential standing concerns require that we consider, for example, ... whether the plaintiff is asserting her own rights or the rights of third parties ...." *Alaska Right to Life Political Action Comm.*, 504 F.3d 840, 848 (9th Cir. 2007); *see also Hollingsworth v. Perry*, 570 U.S. 693, 708 (2013) ("It is, however, a 'fundamental restriction on our authority' that 'in the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.' " (quoting *Powers v. Ohio*, 499 U.S. 400, 410 (1991))).

"[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499, (1975) (citing *Tileston v. Ullman*, 318 U.S. 44 (1943); *United States v. Raines*, 362 U.S. 17 (1960); and *Barrows v. Jackson*, 346 U.S. 249 (1953)). The reason for this rule is twofold. The limitation "frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy," *United States v. Raines*, 362 U.S., at 22, and it assures the court that the issues before it will be concrete and sharply presented. *See Baker v. Carr*, 369 U.S. 186, 204, (1962).

Plaintiffs fail to establish that any unidentified third party potential plaintiff has incurred substantial obstacles that prevent the third party physician(s) from asserting their rights on behalf of themselves, *see, e.g., Barrow v. Jackson*, 346 U.S. 249, 255-56 (1953); *Secretary of State v. J.H. Munson Co.*, 467 U.S. 947, 956 (1984), or even whether the unnamed third party physician(s) can reasonably be expected properly to frame the issues and present them, *see, e.g.*,

Craig v. Boren, 429 U.S. 190, 193–194 (1976). Plaintiffs also have no basis to assert standing or secure an adjudication on behalf of another's alleged constitutional right, which they have not asserted on their own behalf. *See Tileston v. Ullman*, 318 U.S. 44, 46 (1943). Nor does Plaintiff Physicians for Informed Consent (hereinafter "PIC") establish, based on the standard form letter and subsequent closing letter to Dr. Mackenzie, that there is an injury in fact to any member of its organization that would give individual members a right to sue on their own behalf. *See Sierra Club v. Morton* 405 U.S. 727, 735 (1972).

C. PLAINTIFFS' CLAIMS ARE BARRED BY THE ELEVENTH AMENDMENT

The Eleventh Amendment prohibits federal courts from hearing suits brought against an un-consenting state. *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); *see also Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh Amendment bars suits against state agencies as well as actions where the state itself is named as a defendant. *See Natural Resources Defense Council v. California Dep't of Tranp.*, 96 F.3d 420, 421 (9th Cir. 1996); *Brooks*, 951 F.2d at 1053; *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a state agency entitled to Eleventh Amendment immunity); *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989).

The Eleventh Amendment does not "bar actions for prospective declaratory or injunctive relief against state officers in their official capacities for their alleged violations of federal law." *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012). However, pursuant to *Ex parte Young*, "[t]he individual state official sued 'must have some connection with the enforcement of the act.'" *Id*. (quoting *Ex parte Young*, 209 U.S. 123, 157 (1908)). "[T]hat connection must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." *Coalition to Defend Affirmative Action*, 674 F.3d at 1134 (citing *L.A. Cnty. Bar Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992)). Furthermore, the Supreme Court has refused to

extend *Ex Parte Young* to claims of retrospective relief. *Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 102–103 (1984); *Quern v. Jordon,* 440 U.S. 332, 337 (1979).

Here, Defendant Prasifka in his official capacity[6] working for the MBC as a healthcare oversight agency of the State of California, is immune from suit. Congress has not abrogated California's sovereign immunity and California has neither consented to nor waived its sovereign immunity regarding the legal theories alleged in the FAC and asserted in the Motion. Defendant's duties are far too attenuated and do not fall under the exception set forth in *Ex parte Young* for Plaintiffs to be allowed to proceed on basis of the standard form letter and closing letter sent by staff pertaining to Plaintiff Mackenzie's August 10, 2021 alleged statements. Nor have Plaintiffs' alleged with any particularity any other physician(s) that are, or might be, currently investigated under similar circumstances.[7]

The Motion also seeks injunctive relief specifically directed at MBC President, Kristina Lawson, (ECF No. 7, MPI p. 15), who is not a named defendant in this action. Despite this, Plaintiffs allege that she acted in her official capacities after it had been determined, in January 2022, that Dr. Mackenzie had not engaged in unprofessional conduct and that the matter would be closed. (ECF No. 7, MPI p. 2; Jones Dec. p. 2.) As alleged by Plaintiffs, neither the July 2021 Federation of State Medical Board (hereinafter "Federation") press release, nor Ms. Lawson's statements contained in the minutes of the MBC's February 2022 meeting, cited to by Plaintiffs, articulate with any specificity what California statute would or could be implemented to pursue possible future disciplinary actions. Ms. Lawson's brief and opaque two-sentence statement on its face is a reiteration of the Federation press release,[8] rather than a formalized MBC policy.[9]

[6] Plaintiffs have named the Defendant only in his official capacities. (*See* ECF No. 7, MPI; ECF No. 6, FAC pp. 6, 16, 20.)

[7] As previously noted, the Motion and FAC allegations only mention "two other physicians" without identifying the individuals or their respective circumstances. (ECF No. 7, MPI p. 1; ECF No. 6, FAC pp. 3, 9.)

[8] Ms. Lawson's statement does not give rise to Plaintiffs' standing in this matter since neither the mere existence of a proscriptive statute nor a generalized threat of prosecution suffices to establish Plaintiffs' standing for injunctive relief. *See Thomas v. Anchorage Equal Rights Com'n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc); *Younger v. Harris*, 401 U.S. 37, 41-42 (1971). Moreover, "general threat[s] by officials to enforce those laws which they are charged to administer" does not create the necessary injury in fact. *Lopez v. Candaele*, 630 F.3d at 787.

[9] Of note, according to the MBC's February 10-11, 2022 meeting minutes cited to by Plaintiffs (ECF No. 7, MPI p. 2), this specific topic was not even identified as an agenda item.

Moreover, as a matter of law, Ms. Lawson could not unilaterally set MBC policy. The MBC is a 15-member state body and state law requires that a majority of the members at a meeting must vote in favor of enacting any measure, which did not happen here. Cal. Bus. & Prof. Code §§ 2001, 2013. Consequently, without waiving any defenses, and for arguments sake, even if Ms. Lawson was a party to this action, just as the circumstances and facts surrounding Defendant show he is immune from suit, so too Ms. Lawson, acting in her official capacity, is immune from suit.

D. Defendant Is Entitled to Absolute Immunity

Judges and prosecutors functioning in their official capacity are accorded absolute immunity, including for claims under 42 U.S.C. §1983. *Olsen v. Idaho State Bd. of Med*., 363 F.3d 916, 922 (9th Cir. 2004) (internal citations omitted); *see also Imbler v. Pachtman*, 424 U.S. 409 (1976). "Absolute immunity may also be extended to state officials who are not traditionally regarded as judges or prosecutors if the functions they perform are similar to those performed by judges or prosecutors." *Butz v. Economou*, 438 U.S. 478, 513–17 (1978); *Mishler v. Clift*, 191 F.3d 998, 1002 (9th Cir. 1999); *Olsen*, 363 F.3d at 923.

The Ninth Circuit held that state medical boards and their officers are entitled to absolute immunity for the non-ministerial acts they commit in performing their duties. *See Mir v. Kirchmeyer*, No. 12-CV-2340-GPC-DHB, 2016 WL 2745338 at *11-12 (S.D. Cal. May 11, 2016). The "decision to initiate administrative proceedings against an individual or corporation is very much like the prosecutor's decision to initiate ... criminal prosecution." *Butz v. Economou*, 438 U.S. 478, 515. Other courts agree. *Yoonessi v. Albany Med. Ctr*., 352 F. Supp. 2d 1096, 1100 n.2 (C.D. Cal. 2005) (providing examples of other court opinions). Under California law, the MBC has delegated to its Executive Director its power and discretion to initiate, review and prosecute such accusations. *See* Cal. Bus. & Prof. Code, § 2224(a) ("The board may delegate the authority under this chapter to conduct investigations and inspections and to institute proceedings to the executive director of the board. . ."); Cal. Code Regs., tit. 16, § 1356 ("the division [of Medical Quality] delegates and confers upon the executive director of the board . . . all function necessary to the dispatch of business of the division in connection with investigative and

administrative proceedings under the jurisdiction of the division"). Defendant is the Executive Officer of the MBC and Plaintiffs have sued him in his official capacity. Hence, he is entitled to absolute immunity for his non-ministerial acts performing his duties.

Plaintiffs allege that Defendant is the final decision-maker on whether to investigate physicians, such as Dr. Mackenzie, for violations of MBC laws and rules. (ECF No. 6, FAC p. 6.) Plaintiffs also allege that Ms. Lawson acted in her official capacity as MBC President at the MBC's February 2022 meeting. (ECF No. 7, MPI p. 2.) Assuming *arguendo*, that Defendant and Ms. Lawson's duties are not far too attenuated and do not fall under the exception set forth in *Ex parte Young*, Plaintiffs' allegations that Defendant is the final decision-maker whether to investigate physicians and that Ms. Lawson has the alleged ability to unilaterally implement disciplinary actions, necessitates the finding that Defendant and Ms. Lawson are entitled to absolute immunity in this matter.

E. Plaintiffs' Claims of Unconstitutional Vagueness Are Without Merit

In the Motion, Plaintiffs argue that the events at issue here constitute a misuse of California Business and Professions Code section 2234, tantamount to an underground regulation, which renders section 2234 vague. (ECF No. 7, pp.10-12.) In general, the void-for-vagueness doctrine requires that a statute define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). "The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan v. DeGeorge*, 341 U.S. 223, 231-32 (1951). "[P]erfect clarity and precise guidance have never been required" of a statute. *Holder v. Humanitarian Law Project*, 561 U.S. 1, (2010). When reviewing a statute for vagueness, the court must "indulge a presumption of constitutionality." *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964).

A vagueness challenge is upheld only if the challenged law is impermissibly vague in all of its applications, or specifies "no standard of conduct . . . at all." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494-495, 489 n.7 (1982). "Where a statute's literal

scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts." *Smith v. Goguen*, 415 U.S. 566, 573, (1974).

Section 2234 specifies a standard of conduct as unprofessional, which has been interpreted and narrowed by state court case law as conduct which breaches the rules of the ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. *Shea v. Board of Medical Examiners*, 81 Cal.App.3d 564, 575 (1978). Section 2234 also specifically identifies unprofessional conduct which can include, but is not limited to acts of negligence, incompetence, or dishonesty.[10] The provision of section 2234 which states that "unprofessional conduct" includes, but is not limited to, certain enumerated conduct is also not invalid for failing to define sufficiently what constitutes unprofessional conduct; nor is the term "unprofessional conduct" vague and overly broad.[11] *Shea v. Board of Medical Examiners*, 81 Cal.App.3d 564 (1978).

Additionally, as clearly shown above and in Defendant's Motion to Dismiss (*see* ECF No. 12), it cannot be said that the mere events which occurred here (receipt of allegations against Dr. Mackenzie, sending a form letter for him to respond, reviewing his response, and closing the matter) constitutes proceedings against Dr. Mackenzie under section 2234. Further, the timing of the events alleged show that any statements by Ms. Lawson were not a factor in the events at issue here. Finally, any vagueness claims regarding California Assembly Bill 2098, cannot possibly lie because it is not the law. It is proposed legislation that may never be codified in law, which is a fundamental prerequisite to vagueness challenges, and it may go through many edits and changes before being codified.

[10] "The word "dishonesty" is not unconstitutionally vague. *Wayne v. Bureau of Private Investigators & Adjusters*, 201 Cal.App.2d 427, 440 (1962) ("It would be almost impossible to draft a statute which would specifically set forth every conceivable act which might be defined as being dishonest.")." *Canatella v. Stovitz*, 365 F.Supp.2d 1064, 1075 (N.D. Cal. 2005).

[11] Plaintiffs rely on *Potts v. Cty. of Trinity*, No. 2:12-CV-01793 JAM-CMK, 2012 U.S. Dist. LEXIS 119920 (E.D. Cal. Aug. 22, 2012), which is not reported in Fed. Supp., but *Potts* is inapposite and distinguishable for several reasons: the findings and orders did not explicitly specify the agency's internal regulations were unconstitutionally vague, the court's order was narrowly tailored to the single plaintiff who had been reprimanded by the agency, and the factual and legal analysis weighed heavily on the aspect of disruption by a public employee of the agency.

F. Plaintiffs Are Not Likely To Suffer Irreparable Harm In The Absence Of Preliminary Relief

Plaintiffs have not established that they will suffer irreparable harm in the absence of preliminary injunctive relief. As previously stated, besides the January 2022 closed matter concerning Dr. Mackenzie's alleged August 2021 statements, Plaintiffs have not alleged or identified with any specificity any other California licensed physician(s) who is currently being investigated strictly on the basis of public statements relating to the COVID pandemic. Nor have Plaintiffs articulated anything more than the mere naked assertion that Dr. Mackenzie, or any other physician's, speech was chilled by Dr. Mackenzie's receipt of the single standard form letter that all licensees the subject of a complaint receive in due course from an analyst.

According to Dr. Mackenzie, he only felt reluctance to speak "about pandemic related issues because of the hassle and aggravation" due to the single standard form letter (*see* ECF No. 7-1, Mackenzie Dec., p. 2), and PIC's general counsel represented that they received questions and inquiries from California physician members about the law (*see* ECF No. 7-2, Glaser Dec., p. 2).[12] However, neither Dr. Mackenzie nor his legal representatives contacted Defendant's office inquiring as to the status of the matter after January 17, 2022. (Jones Dec., p.2.) The mere existence of a 'chilling effect,' even in the area of First Amendment rights, is not a sufficient basis, in and of itself, for prohibiting state action (*Younger v. Harris*, 401 U.S. 37, 51 (1971)); especially as in this case, where it is based merely on one standard form letter that merely asked for more information.

It is well established that delay in seeking preliminary injunctive relief, although not necessarily dispositive, is "nonetheless relevant in determining whether relief is truly necessary" because a delay before seeking injunctive relief "implies a lack of urgency and irreparable harm." *N.L.R.B. v. Cal. Pac. Med. Ctr*., 991 F.2d 536, 544 (9th Cir. 1993); *accord Garcia*, 786 F.3d at 746; *see Dahl v. Swift Distrib*., *Inc*., 2010 WL 1458957, at *4 (C.D. Cal. Apr. 1, 2010) (court can

[12] Defendant objects to the hearsay statements contained therein (Declaration of Gregory Glaser at pp. 2-4), specifically in reference to individual statements other than those of Mr. Glaser, as well as cited to and attached exhibit articles to the declaration. Fed. R. Evid. § 801.

infer lack of urgency when, despite being on notice for the need for relief for months, a plaintiff fails "to explain why [they were] unable to seek relief 'earlier by a motion'"). In this matter, as noted above, Defendant received no contact from Dr. Mackenzie or his attorney after their submitted response, until served with this suit. Further, Plaintiffs waited until July and August 2022, over seven months after receiving the standard form letter in December 2021, to file the FAC and the Motion. This unexplained delay thoroughly diminishes any argument that an injunction is needed to prevent irreparable harm, *Garcia*, 786 F.3d at 746; *N.L.R.B.*, 991 F.2d at 544, such that the Motion must be denied.

G. Injunctive Relief Cannot Be Granted Against Third Parties

As previously noted, Plaintiffs' motion seeks to: (1) enjoin the MBC from conducting any investigation of licensed physicians for expressing their individual views regarding the COVID pandemic and related topics such as mandates, vaccines, and treatments; (2) require the MBC to notify physicians who are the alleged subject of investigations by the MBC regarding "Covid misinformation/disinformation" that those investigations are withdrawn pending a final order of this Court; and (3) require the MBC to post on its website that Board President Lawson's February MBC meeting statement regarding physicians subject to disciplinary action for "Covid misinformation/disinformation" has been enjoined by this Court. *See* ECF 7, FAC 21:20-22:6.

However, the pendency of this action does not give the Court jurisdiction over Defendant's personnel, employer, or others associated with Defendant and/or his work/employment in general. *See Summers v. Earth Island Institute*, 555 U.S. 488, 492-93 (2009); *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010). "A federal court may issue an injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the rights of persons not before the court." *Zepeda v. United States Immigration Service*, 753 F.2d 719, 727 (9th Cir. 1985). The Court's jurisdiction is thus limited to the parties in this action and to the cognizable legal claims upon which it proceeds. *Summers*, 129 S.Ct. at 1148-49; *Mayfield*, 599 F.3d at 969. The Motion does not seek to enjoin or force action by Defendant; rather it seeks to compel action and inaction by the MBC and other non-parties. Since

The Motion seeks to enjoin/direct actions other than by Defendant, it must be denied for lack of jurisdiction.

II. THE BALANCE OF EQUITIES DOES NOT TIP IN PLAINTIFFS' FAVOR AND AN INJUNCTION IS AGAINST PUBLIC INTEREST

In exercising sound discretion, a district court "must balance the competing claims of injury and consider the effect of granting or withholding the requested relief," paying "particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter,* 555 U.S. at 24.

Defendant is the Executive Director for the MBC, which is an administrative health care oversight agency within the California Department of Consumer Affairs. Cal. Bus. & Prof. Code §§ 101(b) and 2001(a). The MBC, acting under various names, has been a "key instrument" in the regulation of the practice of medicine since its statutory creation in 1876. *Arnett v. Dal Cielo* 14 Cal.4th 4, 7 (1996). "Since the earliest days of regulation the Board has been charged with the duty to protect the public against incompetent, impaired, or negligent physicians, and, to that end, has been vested with the power to revoke medical licenses on grounds of unprofessional conduct [citation]." (*Ibid*.) Consistent with its overall mission, the MBC is statutorily responsible for, among other things, "enforcement of the disciplinary and criminal provisions of the Medical Practice Act" and "[r]eviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the [B]oard." Cal. Bus. & Prof. Code § 2004, subds.(a), (e).

To enable the MBC to carry out its enforcement responsibilities, the Medical Practice Act "broadly vests" the MBC with investigative powers. *Arnett, supra,* 14 Cal.4th at pp. 7–8; *see also* Cal. Bus. & Prof. Code § 2220 [defining MBC's investigative powers]. "Such investigatory powers have been liberally construed." *Shively v. Stewart* 65 Cal.2d 475, 479 (1966). The MBC's investigative powers with respect to disciplinary actions "relating to" physicians licensed by the MBC are exclusive. Cal. Bus. & Prof. Code § 2220.5 (a); *see Lorenz v. Board of Medical Examiners* 46 Cal.2d 684, 687–688 (1956); *PM & R Associates v. Workers' Comp. Appeals Bd*.

80 Cal.App.4th 357, 363 (2000). "[S]uch investigations often do not result in formal charges or hearings." *Arnett v. Dal Cielo,* 14 Cal. 4th 4, 8 (1996).

Specifically, the MBC is statutorily required to investigate complaints that a physician "may be guilty of unprofessional conduct" (Cal. Bus. & Prof. Code § 2220, subd. (a)). *See Griffiths v. Superior Court* 96 Cal.App.4th 757, 768 (2002) [noting MBC's authority to investigate unprofessional conduct by physician]; *Bradley v. Medical Board* 56 Cal.App.4th 445, 457 (1997) [noting MBC's obligation to investigate complaints that physician may be guilty of unprofessional conduct].) This authority is derived from "the state's inherent power to regulate the use of property to preserve the public health, morals, comfort, order, and safety." *Griffiths v. Superior Court* 96 Cal.App.4th 757, 768-769 (2002); citing *Arnett v. Dal Cielo* 14 Cal.4th 7 (1996).

When a government agency is involved, it must "be granted 'the widest latitude in the dispatch of its own internal affairs,'" *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th Cir. 2001) (quoting *Rizzo v. Goode*, 423 U.S. 362, 378-79 (1976)), and "[w]hen a state agency is involved, these considerations are, in anything, strengthened because of federalism concerns," *Gomez*, 255 F.3d at 1128. "[A]ny injunctive relief awarded must avoid unnecessary disruption to the state agency's 'normal course of proceeding.'" *Id*. at 1128 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 501 (1974)).

This statutory basis for Defendant, as Executive Director of the MBC to investigate complaints is distinguishable from the narrow holding in *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002) cited in Plaintiffs' motion. In *Conant*, the court interpreted the specific injunctive relief sought to "mean only that the government may not initiate an investigation of a physician solely on the basis of a recommendation of marijuana within a bona fide doctor-patient relationship, unless the government in good faith believes that it has substantial evidence of criminal conduct." *Conant, supra,* 309 F.3d at pp. 636. Furthermore, the content-based law at

issue in *Conant* is not present in the currently codified[13] statutory scheme of Cal. Bus. & Prof. Code § 2234, which is content-neutral.

Unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules of the ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. *Shea v. Board of Medical Examiners*, 81 Cal.App.3d 564, 575 (1978). Unprofessional conduct can include, but is not limited to, acts of negligence, incompetence, or dishonesty. Cal. Bus. & Prof. Code § 2234.

The standard of care by which a medical professional's conduct is determined to be unprofessional or substandard is that level of skill, knowledge, and care, in diagnosis and treatment ordinarily possessed and exercised by other reasonably careful and prudent physicians in the same or similar circumstances at the time in question. *Landeros v. Flood*, 17 Cal.3d 399, 408 (1976); *see also Brown v. Colm*, 11 Cal.3d 639, 642–643 (1974); *Mann v. Cracchiolo*, 38 Cal.3d 18, 36 (1985). Only medical professional experts, not a judge or jury, can opine as to this level of skill, knowledge, and care. *N.N.V. v. American Assn. of Blood Banks*, 75 Cal.App.4th 1358, 1385 (1999).

As previously stated, the MBC received the online complaint alleging Dr. Mackenzie had made conclusory and sweeping medical quality of care statements such as everyone should just take ivermectin, that ivermectin can cure COVID, that children should not be tested for COVID, and that COVID was a conspiracy theory. The MBC then sent Dr. Mackenzie a standard form letter requesting a response to these allegations to better ascertain the circumstances and context of these alleged statements prior to determining if a referral of the matter to an investigative field office was necessary. Independent of that investigative purpose, the MBC was also statutorily required to seek Dr. Mackenzie's response to the allegations of the online complaint, which

[13] Distinguishable from the uncodified California Assembly Bill 2098 that is still engrossed in committee in the California State Senate and not yet law, which Plaintiffs' FAC cites to over a dozen times. *LegiScan Roll Call: CA AB 2098 2021-2022* https://legiscan.com/CA/rollcall/AB2098/id/1222772.

potentially implicated Dr. Mackenzie in unprofessional conduct exhibited by a departure from the standard of care. Cal. Bus. & Prof. Code § 2220.08.

The MBC's highest priority is the protection of the public. Cal. Bus. & Prof. Code, § 2001.1. As previously stated, in fulfilling its enforcement responsibilities, the MBC is obligated to investigate complaints from the public. Cal. Bus. & Prof. Code, § 2220. The MBC can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. *Stiger v. Flippin,* 201 Cal. App. 4th 646 (2011), rehearing denied, review denied. Such MBC investigations are confidential, *see* Cal. Bus. & Prof. Code, § 2225(a), and the MBC's investigative file is exempt from public disclosure under the California Public Records Act. Cal. Gov. Code, § 6254(f).

Once Dr. Mackenzie's written response and media file providing further explanation and context to his August 10, 2021 statements were received, which refuted the allegations contained in the online complaint, no further action was taken other than to inform Dr. Mackenzie that no unprofessional conduct occurred and that the matter would be closed.

The brief and confidential good faith inquiry was pursuant to the MBC's duty to protect the public, in compliance with its statutory responsibility and requirements, and within its codified legal authority. An injunction prohibiting the MBC's ability to initially contact physicians that are the subjects of complaints impedes the MBC to fully disclose any information to the subject physicians that could be detrimental, disparaging, or threatening to the physician's reputation, rights, benefits, privileges, or qualifications. Cal. Bus. & Prof. Code § 800(c)(1). It also violates the MBC's statutory requirement to investigate complaints that a physician "may be guilty of unprofessional conduct." Cal. Bus. & Prof. Code § 2220(a). By forestalling the MBC's investigative abilities, a state administrative agency vested with the duty to protect the public, an injunctive prohibition endangers and compromises the compelling interest to maintain public welfare and safety by foreclosing oversight of medical licensees.

Balancing this compelling public interest against Plaintiffs' claimed harm in which they assert their speech was chilled by the single standard form letter to Plaintiff Mackenzie, it is clear that the equities swing away from Plaintiffs in Defendant's favor as well as the MBC's favor.

III. PLAINTIFFS ARE NOT EXEMPT FROM POSTING BOND

Plaintiffs request that no bond be required of them under the Motion. (ECF No. 7, MPI p. 14.) Federal Rule of Civil Procedure 65(c), states unequivocally that the court may issue a preliminary injunction or a temporary restraining order *only if* the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The only exceptions are the United States, its officers, and its agencies. Fed. R. Civ. P. 65(c). Plaintiffs are not the United States, its officer, or its agency and cite to no legal precedential authority that provides an exemption for them. Consequently, Plaintiffs are not exempt and must be required to post bond before any preliminary injunction may issue.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that the Court deny Plaintiffs' Motion for Preliminary Injunction.

Pursuant to Local Rule 231(d)(3), Defendant does not intend to present oral testimony at the hearing, and anticipates that approximately thirty (30) minutes to conduct the hearing should be sufficient.

Dated: August 23, 2022

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DOUGLAS MACKENZIE, M.D., et al., Plaintiffs, **v.** **WILLIAM J. PRASIFKA,** Defendant.	2:22-CV-01203-JAM-KJN **DECLARATION OF JENNA JONES**

I, Jenna Jones declare:

1. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently to those facts.

2. Since 2019 I have been employed as Chief of Enforcement for the Medical Board of California ("MBC"). My duties as Chief of Enforcement for the MBC include overall administration and oversight of the activities of the MBC's enforcement unit.

3. As the MBC's Chief of Enforcement, I am personally familiar with the procedures and case history regarding Douglas Mackenzie, M.D. occurring in August 2021 through July 2022.

4. On or about August 10, 2021, the MBC received an online complaint lodged against Douglas Mackenzie, M.D., which alleged that on August 10, 2021, at a Santa Barbara Unified School District meeting, Douglas Mackenzie, M.D. introduced himself and his credentials and stated that people should just take ivermectin. The online complaint also alleged Douglas Mackenzie, M.D. spoke against children being tested for COVID, stated that it was all a conspiracy theory from politicians, and that ivermectin can cure COVID.

5. On or about December 15, 2021, in response to receiving the online complaint, a staff service analyst on behalf of the MBC mailed a MBC standard form letter to Douglas Mackenzie, M.D. informing him of the allegations of the online complaint lodged against him. The MBC's form letter also requested Douglas Mackenzie, M.D. provide the MBC with a written response to the allegations contained in the online complaint pursuant to Cal. Bus. & Prof. Code § 2220.08. This standard form letter is generated and sent to the subject of a complaint when the MBC receives an online complaint to give the subject physician an opportunity to respond and allow the MBC to determine if a referral of the matter to an investigative field office is necessary.

6. On or about January 17, 2022, a legal representative on behalf of Douglas Mackenzie, M.D. mailed a letter to the MBC in response to the allegations contained in the online complaint. In that letter, Douglas Mackenzie, M.D. denied making any such statements against children being tested for COVID, that it was all a conspiracy theory from politicians, or that ivermectin can cure COVID. This letter was accompanied by a recording of Douglas Mackenzie, M.D.'s verbal statements from the August 10, 2021 Santa Barbara Unified School District meeting which corroborated that he made no such statements, as alleged in the online complaint.

7. Upon receipt and review of the January 17, 2022 letter and accompanying recording, the MBC promptly determined, in January 2022, that no unprofessional conduct violation(s) occurred in relation to the online complaint allegations and that the matter would be closed. Unfortunately, due to severe budgetary and staffing issues, the MBC staff service analyst did not transmit a closing letter to Douglas Mackenzie, M.D. conveying the MBC's action to close the matter until July 14, 2022. A true and correct copy of that correspondence is attached hereto as Exhibit 1.

8. To the best of my knowledge, neither Douglas Mackenzie, M.D., nor his legal representatives contacted the MBC inquiring as to the online complaint after January 17, 2022.

9. On July 18, 2022, the MBC was served with a summons and complaint in the above-entitled matter 2:22-CV-01203, *Mackenzie v. Prasifka*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed in Sacramento, California on August 9, 2022.

Jenna Jones

JENNA JONES
Medical Board of California
Chief of Enforcement
Declarant

Exhibit 1

MEDICAL BOARD
OF CALIFORNIA

Protecting consumers by advancing high quality, safe medical care.

Enforcement Program
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-5401
Phone: (916) 263-2528
Fax: (916) 263-2435
www.mbc.ca.gov

Gavin Newsom, Governor, State of California | Business, Consumer Services and Housing Agency | Department of Consumer Affairs

July 14, 2022

Douglas Joseph Mackenzie, M.D.
1722 State St., Ste.102
Santa Barbara, CA 93101-2522

Re: Raeanne Napoleon
Control #: 8002021080491

Dear Dr. Mackenzie:

This is to advise you the Medical Board of California has concluded its review of the complaint filed against you alleging unprofessional conduct. No further action is anticipated and the complaint file has been closed.

Thank you for your cooperation in this matter.

Sincerely,

Akisha Marshall

On behalf of Jackie Byrnes
Staff Services Analyst
jackie.byrnes@mbc.ca.gov