

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DR. SCOTT JENSEN,

Plaintiff,

v.

MINNESOTA BOARD OF MEDICAL PRACTICE; RUTH MARTINEZ, ELIZABETH A. HUNTLEY, CHERYL L. BAILEY, JOHN M. MANAHAN, PETER J. HENRY, in both their individual and official capacities as members of the Minnesota Board of Medical Practice; BRIAN ANDERSON in his individual and official capacity as a medical regulations analysts for the Minnesota Board of Medical Practice, JANE ROES 1-12, in both their individual and official capacities as members of the Minnesota Board of Medical Practice; and JOHN DOES 1-4, in both their individual and official capacities as members of the Minnesota Board of Medical Practice,

Defendants.

Court File No. 23-cv-1689-JWB-DTS

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1. Dr. Scott Jensen has been a licensed, practicing physician in good standing in the State of Minnesota for more than 40 years. To date, he has never been the subject of any investigation brought pursuant to a complaint by any patient he treated in his professional capacity. In addition to his practice of family medicine, he served the people of Minnesota as a Republican State Senator for District 47 from 2017 through 2021. Dr.

Jensen announced in March 2021 his candidacy for Governor of the State of Minnesota and won the Republican endorsement for the same in June 2022.

2. The Minnesota Board of Medical Practice (“BMP” or “Board”) is an executive agency authorized by statute, through its Executive Director and members, to “protect the public from the unprofessional, improper, incompetent, and unlawful *practice of medicine*.” Minn. Stat. § 147.001, subd. 2 (emphasis added).

3. The Board’s investigatory power is limited to those complaints which fall within its jurisdiction and allege violations of the Medical Practice Act. As with other state regulatory agencies, the Board’s authority never extends to First Amendment protected speech.

4. Between July of 2020 and March of 2023, under the guise of “regulating professional conduct,” the Board systematically launched a series of five “investigations” comprised of 18 complaints and one “Conference” into Dr. Jensen’s license to practice medicine after he engaged in protected political speech related to COVID-19.

5. According to the BMP itself, *every* complaint and investigation litigated by the BMP against Dr. Jensen concerned public statements in one form or another, and *none* of the complaints involved patient care or treatment, nor did any involve speech incidental to a medical procedure. In other words, the Board had no jurisdiction over any of the 18 complaints it received and investigated against Dr. Jensen, with the arguable exception of three.

6. Dr. Jensen was forced to pursue nearly his entire campaign for Governor of Minnesota under a cloud of constant uncertainty, not knowing which public statements

would be improperly labeled as “the practice of medicine” and selected by the BMP as tools to chill his speech.

7. Dr. Jensen spent more than two thousand hours over nearly three years complying with the Board’s various demands to answer for his speech, under threats of penalty if he did not answer them. Depriving Dr. Jensen of his time injured him.

8. As he openly stated to the Defendants in correspondence with them, the investigations forced him to self-censor his speech. This injured Dr. Jensen. While he was addressing these improper investigations, he felt concerned that if he lost the race for Governor of Minnesota, the Defendants might illegitimately revoke his license because of his speech, and he would not be able to practice his profession and earn a living.

9. To date, Dr. Jensen feels he must guard his speech and observe caution to speak about matters of public concern, like COVID-19 vaccines and other government interventions in personal health-care decisions. Defendants’ investigations had and continue to have a chilling effect on Dr. Jensen, which is an injury to him.

10. In addition, while no patient of his has ever complained about his doctor-patient relationship with them to the BMP, because of Defendants’ actions, Dr. Jensen feels that he cannot fully and freely dispense medical advice on public health topics because doing so may lead to a further improper investigation into his license.

11. This weaponization of a government agency, which consisted of members who were appointed by Dr. Jensen’s opponent in the 2022 election, was all the more egregious because it targeted political speech on matters of great public import—the very type of speech the First Amendment was written to protect.

12. The people of Minnesota were deprived of an open debate in the marketplace of ideas by an ideologically driven, politicized government-censorship apparatus which retaliated against its opponent based on the content of the message he espoused. Other health care professionals refrained from speaking altogether, lest their own career be put in jeopardy by the Board.

13. In this Amended Complaint, the terms “investigate” and “investigation” are context-dependent. They are used to refer to either collections of Board File Numbers in the five written Complaints by the Board against Dr. Jensen, or the acts of the Board in “requesting” written responses, hearing appearances, the production of documents, and the like. “Investigate” is also referred to throughout this Complaint and by the Board as “making inquiries,” “gathering information,” and “data collect[ion].”

THE PARTIES

14. Plaintiff SCOTT JENSEN (“Dr. Jensen”) is a lifelong resident and citizen of Minnesota, currently residing in Chaska, in the District of Minnesota. He received his license to practice medicine in 1982, and his license has remained active since its issue date including at all times relevant in the instant case. Before July 2020, he had never received a complaint or had been investigated by the Minnesota Board of Medical Practice or its Complaint Review Committee (“CRC” or “Committee”).

15. From 2017 through 2021, Dr. Jensen served a four-year term as Minnesota State Senator. Dr. Jensen was vice-chair of the Senate Health and Human Services Committee during the entirety of his term. As such, he was the chief senate author of two major health-care policy bills, and he developed a reputation for questioning the official

narrative surrounding COVID-19, particularly as it applied to the executive branch government reaction thereto.

16. Defendant MINNESOTA BOARD OF MEDICAL PRACTICE (“BMP,” the “Board”) is an executive branch agency for the State of Minnesota. Its address is 335 Randolph Ave., St. Paul, Minnesota 55102. It also oversees and is responsible for the CRC, to which it has assigned the duty of determining whether to dismiss or investigate complaints within its jurisdiction against licensees. If the decision is made to investigate a complaint, it is also responsible for carrying out the investigation and for ultimately meting out various punishments within its authority under state statutes.

17. Defendant RUTH MARTINEZ was the Executive Director of the Board from at least February 21, 2018, until February 5, 2023, and a member thereof since 1988. Either she or her designated board member (or successors) is directly charged with making the decision whether a complaint falls within the authority of the Board to investigate. Upon receipt of a complaint: “The executive director or the designated board member shall determine whether the complaint alleges or implies a violation of a statute or rule which the board is empowered to enforce.” Minn. Stat. §214.103, subd. 2. Upon information and belief, Defendant Martinez determined whether the Board had jurisdiction over Dr. Jensen’s speech for one or more of the Complaints against Dr. Jensen’s license described herein.

18. Defendant ELIZABETH A. HUNTLEY is the current Executive Director of the Board and has been since February 6, 2023. She has also been a member thereof since at least 2004. Either she or her designated board member is directly charged with making

the decision whether a complaint falls within the authority of the Board to investigate. Upon information and belief, Defendant Huntley determined whether the Board had jurisdiction over Dr. Jensen's speech for one or more of the Complaints against Dr. Jensen's license described herein.

19. Defendant BRIAN ANDERSON is a Medical Regulations Analyst who works for the BMP. He wrote each letter initiating investigations into Dr. Jensen's speech, which included "requesting" information, production of documents, and attendance at a conference.

20. Defendant CHERYL L. BAILEY is and has been a member of the Board since September 19, 2018. She is the Vice President of the Board and the Chair of the CRC. As such, Defendant Bailey oversaw and participated in some or all of the investigations into Dr. Jensen's speech, and was responsible for conducting and participating in the Conference held on March 24, 2023. Upon information and belief, Defendant BAILEY was a "designated board member" who made the determination(s) as to jurisdiction over Dr. Jensen's speech within the meaning of Minn. Stat. §214.103, subd. 2 for one or more of the Complaints against Dr. Jensen's license described herein. She is also responsible for refusing to dismiss at least six complaints against Dr. Jensen for lack of jurisdiction.

21. Defendant JOHN M. MANAHAN is the President of the Board and has been a member thereof since at least September 19, 2018. He was a member of the Committee when he participated in one or more of the investigations into Dr. Jensen's speech, and participated in the Conference held on March 24, 2023. Upon information and belief, Defendant MANAHAN was a "designated board member" who made the determination(s)

as to jurisdiction over Dr. Jensen's speech within the meaning of Minn. Stat. §214.103, subd. 2 for one or more of the Complaints against Dr. Jensen's license described herein. He is also responsible for refusing to dismiss at least six complaints against Dr. Jensen for lack of jurisdiction.

22. Defendant PETER J. HENRY is and has been a member of the Board since at least June 22, 2022. He was a member of the Committee when he participated in one or more of the investigations into Dr. Jensen's speech, and participated in the Conference held on March 24, 2023. Upon information and belief, Defendant HENRY was a "designated board member" who made the determination as to jurisdiction over Dr. Jensen's speech within the meaning of Minn. Stat. §214.103, subd. 2 for one or more of the Complaints against Dr. Jensen's license described herein. He is also responsible for refusing to dismiss at least six complaints against Dr. Jensen for lack of jurisdiction.

23. Defendants JANE ROE 1-12 were Board members for at least a portion of the period between January 1, 2020, and the March 24, 2023, Conference. Upon information and belief, they were "designated board members" who were individually responsible for making the determination that jurisdiction over Dr. Jensen's speech was proper within the meaning of Minn. Stat. §214.103, subd. 2 for one or more of the Complaints against Dr. Jensen's license described herein.

24. Defendants JOHN DOE 1-4 were Board members for at least a portion of the period between January 1, 2020 and the March 24, 2023 Conference. Upon information and belief, they were "designated board members" who were individually responsible for making the determination that jurisdiction over Dr. Jensen's speech was proper within the

meaning of Minn. Stat. §214.103, subd. 2 for one or more of the Complaints against Dr. Jensen's license described herein.

JURISDICTION AND VENUE

25. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the claims arise under the Constitution and laws of the United States.

26. This Court has authority to award the requested relief pursuant to 28 U.S.C. §§ 2201 and 2202; and costs and attorneys' fees pursuant to 42 U.S.C. §§ 1983 and 1988(b).

27. This Court has both general and specific jurisdiction over the Defendants pursuant to 28 U.S.C. § 1391(c)(1) and (c)(2) because all Defendants reside within the District of Minnesota and their acts alleged herein took place in the District of Minnesota.

28. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2) because all Defendants reside in this judicial District and a substantial part of the events or omissions giving rise to the claims occurred in this judicial District.

FACTUAL ALLEGATIONS

The Role and Authority of the BMP

29. The BMP "consists of 16 residents of the state of Minnesota appointed by the governor." Minn. Stat. § 147.01, subd. 1. These are 10 licensed M.D. physicians, 1 licensed Doctor of Osteopathy, and 5 public members, each appointed to 4-year terms. *Id.*

30. "The primary responsibility and obligation of the Board of Medical Practice is to protect the public," including "from the unprofessional, improper, incompetent, and unlawful practice of medicine." Minn. Stat. § 147.001, subd. 2.

31. Minn. Stat. § 147.081, subd. 3 defines the “Practice of Medicine.” A person is “practicing medicine” if the person does any of the following:

- (1) advertises, holds out to the public, or represents in any manner that the person is authorized to practice medicine in this state;
- (2) offers or undertakes to prescribe, give, or administer any drug or medicine for the use of another;
- (3) offers or undertakes to prevent or to diagnose, correct, or treat in any manner or by any means, methods, devices, or instrumentalities, any disease, illness, pain, wound, fracture, infirmity, deformity or defect of any person;
- (4) offers or undertakes to perform any surgical operation including any invasive or noninvasive procedures involving the use of a laser or laser assisted device, upon any person; or
- (5) offers to undertake to use hypnosis for the treatment or relief of any wound, fracture, or bodily injury, infirmity, or disease.

Minn. Stat. § 147.081, subd. 3.

32. To this end, the Board has the state-created responsibility and power to issue licenses to practice medicine as well as “receiving and investigating complaints, reviewing misconduct cases, and imposing disciplinary actions.” Minn. Stat. § 147.02, subs. 1, 5.

33. Under Minn. Stat. § 147.161, subd. 1, “[e]ach complaint filed with the board pursuant to section 214.10, subdivision 1, shall be investigated according to section 214.10, subdivision 2.”

34. However, section 214.10, subdivision 2 only “empower[s]” the Board to investigate “a violation of statute or rule” if such violation is one “which the Board is to enforce.” In other words, if there is no jurisdiction over the complaint on its face, neither the Board nor any other person is “empowered to investigate” the complaint further.

35. Additionally, Minn. Stat. § 214.103 more specifically governs the process for health-related licensing boards (of which the BMP is one, Minn. Stat. § 214.01, subd. 2) to review and investigate complaints.

36. Minn. Stat. § 214.103 lays out the complaint review, investigation, and resolution process which was used by the Board against Dr. Jensen in each of the Complaints against his license. This statute also provides the framework for the Conference held by the Board as an “attempt at resolution” of the unlawfully investigated Complaints.

37. Before investigating a Complaint against a licensee:

The executive director or the designated board member shall determine whether the complaint alleges or implies a violation of a statute or rule which the board is empowered to enforce. The executive director or the designated board member may consult with the designee of the attorney general as to a board's jurisdiction over a complaint.

Minn. Stat. § 214.103, subd. 2.

38. The Board’s investigative authority in Minn. Stat. § 214.103 is further restrained by the Supreme Court’s holding in *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371–72 (2018) (“*NIFLA*”), which limits the State’s regulation of professional conduct to speech incidental to the offer or performance of a medical procedure.

39. Along the same lines, Minn. Stat. § 214.103, subd. 1a(b)(4) requires the Board to “notify the licensee that the board has received a complaint and inform the licensee of *whether* an investigation is being conducted.” (emphasis added). This demonstrates that an investigation only occurs when the Board chooses to investigate, and only after a finding that it has jurisdiction over the complaint in the first place.

40. In other words, while the BMP has the power and responsibility, created by state law, to investigate complaints against medical professionals and to punish them for violating state law, the BMP may only investigate filed complaints which regard conduct within its jurisdiction.

41. When the Board is faced with a complaint which alleges that *political speech* violates the statutes or rules it enforces, the Board may not investigate the complaint and must dismiss it.

**“Attempts at Resolution” Are Inappropriate
Where a Complaint Concerns Political Speech**

42. Minn. Stat. § 214.103, subd. 6 provides, in relevant part:

At any time after receipt of a complaint, the executive director or the designated board member may attempt to resolve the complaint with the regulated person. The available means for resolution include a conference or any other written or oral communication with the regulated person. A conference may be held for the purposes of investigation, negotiation, education, or conciliation. Neither the executive director nor any member of a board's staff shall be a voting member in any attempts at resolutions which may result in disciplinary or corrective action. The results of attempts at resolution with the regulated person may include a recommendation to the board for disciplinary action, an agreement between the executive director or the designated board member and the regulated person for corrective action, or the dismissal of a complaint. If attempts at resolution are not in the public interest, a contested case hearing may be initiated.

43. This statute does not confer jurisdiction on the BMP to investigate the practice of medicine beyond what Minn. Stat. § 214.103 authorizes.

44. There is no authority in this statute to confer with a regulated person based on complaints which should have been dismissed for lack of jurisdiction.

The BMP's Policy Is Not to Consider Social Media in Investigations

45. In public statements in early February 2018, Executive Director Ruth Martinez addressed an audience of Bloomington residents to discuss the role and authority of the BMP. She explained to the room that she had joined the Board of Medical Practice in 1988, some 30 years earlier. Ruth Martinez, "Minnesota Board of Medical Practice," Bloomington, MN Noon Rotary, 2 February 2018, <https://www.youtube.com/watch?v=I-0h3CAXoQM&t=236s> (last accessed May 17, 2023) (hereinafter "Martinez Comments").

46. Executive Director Martinez explained the role of social media in BMP investigations:

Social Media for us as a Board is not something that we rely upon in our investigative process. There may be comments, there may be information on a social media site... and we also have very strict limitations on how we may use information that comes from social media. So we are aware, but it is not what we rely upon to really establish our fact-finding if we're in a place where we're going to take action.

Id. at 27:55

47. Therefore, it was the policy of the BMP until at least February 2018 *not* to rely on social media posts in the investigative fact-finding process for complaints.

48. Based on this information, the BMP does not consider social media posts when deciding to investigate or while investigating licensees under its jurisdiction.

COVID-19 and Dr. Jensen's Public Speech

49. In March 2020, President Donald Trump declared the COVID-19 pandemic a national emergency.

50. As one of only two practicing physicians in the Minnesota Senate at the time, Dr. Jensen played an instrumental role on the Health and Human Services Committee in creating government policies to address the pandemic across the State. In his own words, Dr. Jensen was “both critical and complimentary of various actions by the Center for Disease Control (CDC), the Minnesota Department of Health, and the State of Minnesota.”

51. On March 30, 2020, Dr. Jensen wrote an open letter to Minnesota Governor Tim Walz and state Department of Health Commissioner Jan Malcolm, questioning the decision to forcibly close much of the Minnesota economy in response to the pandemic. Peter Callaghan, “Timeline: COVID sparked Jensen’s run for Governor and remains recurring theme,” *MinnPost*, Sept. 13 2022, <https://www.minnpost.com/elections/2022/09/timeline-covid-sparked-jensens-run-for-governor-and-remains-recurring-theme/> (last accessed April 17, 2024).

52. Days later, on April 3, 2020, the Minnesota Department of Health issued an advisory to Minnesota “colleagues involved with death registration and certification.” *See* Minnesota Department of Health, “OVR Operations and COVID-19 Death Certificate Information,” April 3, 2020. The advisory described a change in the way COVID-related deaths are to be recorded. Specifically, it advised those who certify deaths in Minnesota to “Report Coronavirus Disease 2019 or COVID-19 on death certificates for all decedents where the disease caused, is assumed to have caused, or contributed, to death.” *Id.*

53. On April 8, 2020, Dr. Jensen publicly highlighted the inconsistency between this new advisory by the Minnesota Executive branch and the then-current CDC guidance on COVID-19 death certificates regarding the difference between the *cause* of death and a

contributing factor thereto. “The Ingraham Angle,” FOX News, April 8, 2020, *available at*: https://archive.org/details/FOXNEWSW_20200409_020000_The_Ingraham_Angle (last visited April 9, 2024).

54. Within days of this television appearance, the BMP received its first complaints related to Dr. Jensen’s public speech. No action was taken by the BMP until after the Minnesota Legislature adjourned in May.

Complaint and Investigation One

55. On June 22, 2020, the BMP addressed a letter to Dr. Jensen (“Complaint One”) that was signed by Brian Anderson (“Anderson”), Medical Regulations Analyst.

56. The subject line to Complaint One read “RE: Complaints regarding COVID-19 public statements” and cited to “Board Files Nos: BFA05200976, BFA05200977.”

57. Complaint One stated that the BMP “has received complaints regarding public statements you made related to COVID-19.”

58. Complaint One stated that, “[i]n accordance with Minnesota law, the Board is required to make inquiries into all complaints and reports wherein violations of the Medical Practice Act are alleged, including but not limited to Minn. Stat. § 147.091, subd. 1(g).”

59. Minn. Stat. § 147.091, subd. 1(g) addresses “any unethical or improper conduct, including but not limited to:

- (1) conduct likely to deceive or defraud the public;
- (2) conduct likely to harm the public;
- (3) conduct that demonstrates a willful or careless disregard for the health, welfare, or safety of a patient;
- (4) medical practice that is professionally incompetent; and

(5) conduct that may create unnecessary danger to any patient's life, health, or safety, in any of which cases, proof of actual injury need not be established.”

60. Complaint One “requested” that Dr. Jensen “respond, in writing, to the following complaint summary/allegations:”

- a. “It is alleged that you were ‘spreading misinformation [regarding COVID-19] on a regional tv station [i.e. KXJB-TV],’ claiming that the Minnesota Department of Health instructed providers to list COVID-19 as the cause of death on death certificates regardless of whether a patient died of COVID-19;” (brackets in original); and
- b. “It is alleged that you also provided ‘reckless advice [regarding COVID-19] over *social media*,’ stating that COVID-19 ‘is nothing more than the flu.’” (brackets in original) (emphasis added).

Complaint One is attached as **Exhibit 1**.

61. The term “misinformation” is inherently content-based, and it is not defined in the Medical Practice Act, or anywhere else in Minnesota Statutes.

62. Two separate email chains were the basis for Complaint One. The first, dated in April 2020, included an interview between Dr. Jensen and Chris Berg of Valley News Live and a Star Tribune article about his comments on how deaths are attributed to COVID-19. The second, dated in May 2020, included a tweet from Dr. Jensen and a press release about him participating in a legislative committee Zoom meeting from a golf course written by the Minnesota Democratic-Farmer-Labor (“DFL”) Party. The information upon which the BMP based Complaint One is attached as **Exhibit 2**.

63. Thus, in June 2020, the BMP affirmatively decided to investigate Dr. Jensen’s pure speech from April 2020.

64. Complaint One was not based on the practice of medicine as defined in Minn. Stat. § 147.081, subd. 3, or professional conduct, or speech merely incidental to conduct, which comprises the practice of medicine. There was no medical procedure at issue, nexus between the physician and patient, or any patient complaint which could have served as the basis for Complaint One.

65. Because no patient or medical practice is implicated in Complaint One, the Defendants must have claimed authority to investigate Complaint One under Minn. Stat. § 147.091, subd. 1(g)(1) or (2).

66. Defendants also departed from their practice and custom of not considering social media in deciding to investigate Dr. Jensen through Complaint One.

67. The BMP did not have jurisdiction or authority to investigate the statements it identified in Complaint One.

68. Upon receiving complaints from members of the public described in Complaint One, the BMP's only option consistent with its statutory authority was to dismiss the complaints and inform Dr. Jensen that they had been dismissed.

69. Instead, the BMP demanded a response from Dr. Jensen, which required him to spend hours of his time complying with the unlawful investigation under penalty of further sanctions against his license.

70. Complaint One demanded, “[w]ith your response, please include any relevant documentation you have received from the Minnesota Department of Health regarding COVID-19, and any other materials that you would like the Board to consider in its review of the matter.” **Exhibit 1.**

71. Complaint One informed Dr. Jensen that:

Once all of the information has been gathered, the complaints will be reviewed by the Board's CRC. This Committee is made up of three members of the Board, including two physicians and one public member. The CRC may decide to dismiss the complaints, request further information, or request that you appear to discuss the matter in person.

Exhibit 1.

72. Finally, Complaint One warned that “as a licensee of the Board, you are required to cooperate fully with the investigation into this matter. Failure to cooperate could result in disciplinary action by the Board.” **Exhibit 1.**

73. None of these demands on Dr. Jensen were intended to determine whether the BMP had jurisdiction to investigate Complaint One.

74. Dr. Jensen was thus forced to spend hours of his time responding to a complaint that the BMP had no authority to investigate under threat of “disciplinary action by the Board.” This is an injury to him.

75. A person of ordinary firmness in Dr. Jensen's position would have self-censored after receiving Complaint One and being required to spend hours of time to respond to it under threat to his license.

76. Dr. Jensen did, in fact, self-censor as a result of Complaint One.

77. The Board's investigation of Complaint One against Dr. Jensen is unconstitutional in its application of section 147.091, subd. 1(g) to his speech.

Dr. Jensen Responds to Complaint One

78. On July 2, 2020, Dr. Jensen responded to Complaint One (“Response One”).

79. His sixty-plus page Response One consisted of an eight-page typewritten narrative and fourteen attachments. Put in the impossible position to “justify” his speech, Dr. Jensen attempted to fully cooperate and comply with the Board’s illegal demands and reveal the rationale informing the perspective of his public statements.

80. In response to Complaint One (b), he provided examples of public health officials likening COVID-19 to the seasonal flu, including Dr. Anthony Fauci, Dr. Robert Redfield, and Dr. Michael Osterholm of the University of Minnesota, who stated in reference to COVID-19: “Unfortunately we now have on our hands, but it’s caused by a coronavirus which is acting very much like influenza.” Beret Leone, “Infectious disease expert talks COVID-19 in Duluth,” *KBJR* Duluth, March 14, 2020. Dr. Osterholm also had said, earlier in 2020:



81. Upon information and belief, Dr. Michael Osterholm was not investigated, nor was his Minnesota medical license threatened for these statements.

82. As part of his response, Dr. Jensen expressed his concern that the investigation was targeting his speech through public statements and that the process seemed to be politically motivated. He expressed similar frustrations in a July Star Tribune article. Mara Klecker, “State Sen. Scott Jensen says he’s being investigated by the state medical board for COVID-19 comments,” *Star Tribune*, July 6, 2020, <https://www.startribune.com/gop-legislator-under-scrutiny-over-covid-19-comments/571637602/?refresh=true> (last accessed April 10, 2024).

Dismissal of Complaint and Investigation One

83. On July 27, 2020, the BMP addressed a dismissal notice to Dr. Jensen (“Dismissal Notice One”), signed by Mr. Anderson.

84. Dismissal Notice One concerned the same subject as Complaint One.

85. Dismissal Notice One stated that the BMP “has conducted an investigation of two complaints that were filed against you in relation to public statements you made regarding COVID-19.”

86. Dismissal Notice One went on to state that, “[a]fter a thorough review of both the Medical Practice Act and the facts of the situation, including those that you have provided, the Board has decided to dismiss the complaints and close its investigation at this time.”

87. Complaint One was not dismissed for lack of jurisdiction over Dr. Jensen’s public speech.

Complaint and Investigation Two

88. Barely a month after the dismissal of Complaint One, the BMP addressed a second letter to Dr. Jensen (“Complaint Two”) that was signed by Mr. Anderson on September 1, 2020. The subject line to Complaint Two read “RE: Notice of Complaint Regarding COVID-19” and cited to “Board File No: BFA07200078.” A copy of Complaint Two is attached as **Exhibit 3**.

89. Complaint Two stated that “the Board has received a complaint alleging that you ‘[continue] to mislead’ and ‘lie’ to the public about COVID-19.” (brackets in original).

90. Complaint Two stated that, “[p]ursuant to Minn. Stat. § 214.103, the Board is required to notify licensees regarding all complaints and reports wherein violations of the Medical Practice Act are alleged, including but not limited to Minn. Stat. § 147.091, subd. 1(g) and (k).”

91. Minn. Stat. § 147.091, subd. 1(k) allows discipline for: “Conduct that departs from or fails to conform to the minimal standards of acceptable and prevailing medical practice in which case proof of actual injury need not be established.”

92. Complaint Two contained the following allegations:

- a. “On July 20 and 21, 2020, you posted Facebook videos that contain false and misleading information and conclusions;”
- b. “You falsely compare and minimize the difference between the 2009 H1N1 pandemic and COVID-19;” and
- c. “You are a ‘danger to public health.’”

Exhibit 3.

93. Complaint Two was based on a single, hand-written note submitted to the Defendants on July 23, 2020, which alleges, without any evidence, that Dr. Jensen was lying and was a “danger to public health.” The allegations were based purely on Dr. Jensen’s public speech on matters of public concern via social media. A copy of this document is attached as **Exhibit 4**.

94. Again, Defendants also departed from their practice and custom of not considering social media in deciding to investigate Dr. Jensen through Complaint Two.

95. Thus, in September 2020, the BMP affirmatively decided to investigate pure speech allegedly stated by Dr. Jensen in July 2020 and applied different standards to Dr. Jensen than to other medical professionals.

96. Complaint Two did not involve the practice of medicine as defined in Minn. Stat. § 147.081, subd. 3, or professional conduct, or speech merely incidental to professional conduct, which comprises the practice of medicine. There was no medical procedure at issue, nexus between the physician and patient, or any patient complaint which could have served as the basis for Complaint Two.

97. Because no patient or medical practice is implicated in Complaint Two, the Defendants must have claimed authority to investigate Complaint Two under Minn. Stat. § 147.091, subd. 1(g)(1) or (2), or subd. 1(k).

98. The BMP did not have jurisdiction or authority to investigate the statements identified in Complaint Two, which were pure speech on matters of public concern.

99. Upon receiving complaints from members of the public described in Complaint Two, the BMP's only option consistent with its statutory authority was to dismiss the complaints and inform Dr. Jensen that they had been dismissed.

100. Instead, the BMP demanded a response from Dr. Jensen, which required him to spend hours of his time complying with the unlawful investigation under penalty of further sanctions against his license.

101. Complaint Two made the same demands on Dr. Jensen as Complaint One, described above, and informed him that he was "required to cooperate fully with the investigation into this matter. Failure to cooperate could result in disciplinary action by the Board." **Exhibit 3.**

102. Complaint Two stated that, "[i]f [he] would like," Dr. Jensen had until September 21, 2020, "to submit a written response regarding the above-referenced allegations and any supporting materials."

103. None of the demands of Dr. Jensen to produce information were intended to determine whether the BMP had jurisdiction to investigate Complaint Two.

104. Dr. Jensen was thus forced to spend hours of his time responding to a complaint that the BMP had no authority to investigate under threat of "disciplinary action by the Board." This is an injury to him.

105. A person of ordinary firmness in Dr. Jensen's position would have self-censored after receiving Complaint Two and being required to spend hours of time to respond to it under threat to his license.

106. Dr. Jensen did, in fact, self-censor as a result of Complaint Two.

107. The Board’s investigation of Complaint Two against Dr. Jensen is unconstitutional in its application of section 147.091, subd. 1(g) and subd. 1(k) to his speech.

Dr. Jensen Responds to Complaint Two

108. Dr. Jensen responded to the BMP’s Complaint Two (“Response Two”), again expressing his concern that the process had become politicized to punish him for his public speech.

109. Nevertheless, Dr. Jensen attempted to comply with the Board’s illegal demands in his Response Two on September 7, 2020, again including a narrative response, scholarly data, and medical literature. In his Response Two, he expressly stated:

[T]hese current allegations do blur the border between an appropriate concern forwarded to the MN Board of Medical Practice and a vicious, mean-spirited effort to silence a viewpoint not supported by an accuser who hides behind a veil of protected anonymity. . . . The allegations you are now investigating are remarkably ambiguous and reveal the qualities of a personal attack. I believe your organization and mission is being abused by those who seek to silence words, ideas, and perspectives in conflict with their own.

110. Also in his Response Two, an exasperated Dr. Jensen noted that:

- a. “The allegations are nebulous and broad.”
- b. “There is no identification of what is supposedly false and misleading.”
- c. “There is no identification of what represents a minimization of differences between the 2009 H1N1 and COVID-19 pandemics.”
- d. “There is no identification of any facts supporting the inflammatory denunciation of being a ‘danger to public health.’”
- e. “Thus, there is no way I can know how to respond.”

111. Dr. Jensen emailed Mr. Anderson on Wednesday, October 21, 2020, stating, “it has been six weeks since I responded to the MN Board of Medical Practice investigation regarding complaint # BFA0720078. Is there anything else you need from me?”

112. In his email to Mr. Anderson, Dr. Jensen also stated, “I am compelled to share with you that this anonymous complaint accusing me of being a ‘danger to public health’ has an ongoing chilling and suppressing effect on my ability to candidly and honestly share my perspective and thoughts with patients and constituents.” A copy of this email is attached as **Exhibit 5**.

Dismissal of Complaint and Investigation Two

113. On October 28, 2020, Mr. Anderson emailed Dr. Jensen to say that “[t]he Board’s CRC dismissed the complaint on October 22, 2020. A hard copy of the attached dismissal notice has also been placed in the mail.” The BMP addressed a letter to Dr. Jensen (“Dismissal Notice Two”) that same day, signed by Mr. Anderson.

114. Dismissal Notice Two concerned the same subject as Complaint Two and included the statement that the BMP “has conducted an investigation of a complaint regarding your public statements about COVID-19.”

115. Dismissal Notice Two went on to state that, “[a]fter a thorough review of both the Medical Practice Act and the facts of the situation, including those that you have provided, the Board has decided to dismiss the complaints and close its investigation at this time.”

116. Complaint Two was not dismissed for lack of jurisdiction over Dr. Jensen’s public speech.

117. Dismissal Notice Two did not state that the investigation could be reopened.

Complaint Three – But No Investigation

118. By the fall of 2020, having already announced that he would not stand for reelection to the state senate that year, Dr. Jensen contemplated his political future. He had gained through his public statements a reputation as someone who was unafraid to challenge the official health care narrative, which had plainly earned him the ire of his political opponents.

119. After nearly a year of deliberation, and after the second BMP investigation into his speech had finally concluded, Dr. Jensen formally announced on March 16, 2021, that he would be running for Minnesota Governor. If he were to run and lose, he reasoned, he would still keep his medical license and continue his passion for patient care and the practice of medicine.

120. Two weeks later, on April 1, 2021, the BMP addressed a third letter to Dr. Jensen (“Complaint Three”) that was signed by Mr. Anderson. **Exhibit 6.**

121. The subject line to Complaint Three read “RE: Notice of Board Complaint” and cited to “Board File No: BFA01210500.”

122. Like Complaint Two, Complaint Three stated that, “[a]ccording to Minnesota law, the Board is required to notify all licensees of complaints and reports wherein violations of the Medical Practice Act are alleged, including but not limited to Minn. Stat. § 147.091, subd. 1(g) and (k).”

123. Complaint Three stated it was a “notice that, in January 2021, the Board received a complaint alleging that you are ‘very publicly minimizing and [sic] ‘deliberately

downplaying' COVID-19 deaths. The complaint included several social media posts purportedly made from your Twitter account since October 2020.”

124. Complaint Three was not based on the practice of medicine as defined in Minn. Stat. § 147.081, subd. 3, or professional conduct, or speech merely incidental to professional conduct, which comprises the practice of medicine. There was no medical procedure at issue, nexus between the physician and patient, or any patient complaint which could have served the basis for Complaint Three.

125. No patient or medical practice is implicated in Complaint Three.

126. The BMP did not have jurisdiction or authority to investigate the statements it identified in Complaint Three, which were pure speech on matters of public concern.

127. Upon receiving complaints from members of the public described in Complaint Three, the BMP's only option consistent with its statutory authority was to dismiss the complaints and inform Dr. Jensen that they had been dismissed.

128. The BMP dismissed Complaint Three without demanding a response, demonstrating that Defendants do, in fact, dismiss complaints without demanding responses from licensees. This includes dismissal without investigation of those complaints which allege violations of Minn. Stat. § 147.091, subd. 1(g)(1) or (2), or subd. 1(k).

129. The Board's decision not to investigate Complaint Three and dismiss it without investigation demonstrates that the investigations into Complaints One and Two, and the later investigations, were not mandatory but were intended to chill Dr. Jensen's speech.

130. Even so, Complaint Three stated that “this complaint is not public; however, it will remain on file.” **Exhibit 6.**

131. This was intended to chill Dr. Jensen’s speech.

132. The Defendants’ threat to keep the complaint on file and reserve the authority to reopen it later, when it had no jurisdiction to open an investigation in the first place related to Complaint Three, actually did cause Dr. Jensen to self-censor.

**Dr. Jensen Continues to Speak on Public Health Matters
With Threats of Investigation Constantly Hanging Over Him**

133. Throughout the spring and summer of 2021, Dr. Jensen continued to share his perspective about the government response to COVID-19 and speak as an independent voice who questioned the dominant political narrative in the State of Minnesota and nationwide.

134. As part of his public advocacy, Dr. Jensen wrote affidavits connected to lawsuits across several states, providing his opinion on COVID-19 policies regarding subjects such as mask mandates for children and adults without exemptions, and business and church closures. His public comments and opinions in this area led to his participation in a lawsuit filed in U.S. District Court in the Northern District of Alabama.

135. *America’s Frontline Doctors, et al. v. Becerra, et al.* was filed on May 19, 2021, and assigned Case Number 2:2021cv00702. Dr. Jensen submitted an affidavit in support of the plaintiffs, testifying to his experiences as a practicing family physician for 40 years. He was initially erroneously named a plaintiff in the suit, but contacted attorneys

representing the plaintiffs in that case in June to have his name removed as it was never his intention to participate as such.

136. Despite participating in these endeavors, Dr. Jensen continued to be chilled by the Defendants' ongoing threat of investigation for his speech, and the content of his speech was therefore modified. Any person of ordinary firmness would have self-censored to a greater degree than Dr. Jensen.

Complaint and Investigation Four

137. On August 3, 2021, the BMP addressed a fourth letter to Dr. Jensen ("Complaint Four") that was signed by Mr. Anderson. **Exhibit 7.**

138. The subject line to Complaint Four read "RE: Complaint Regarding Petition for Temporary Restraining Order Filed in U.S. District Court" and cited to "Board File No: BFA06210913."

139. Complaint Four stated that the BMP "has received a complaint regarding a petition for temporary restraining order ("TRO") filed by you, America's Frontline Doctors, and other plaintiffs in the U.S. District Court for the Northern District of Alabama on May 20, 2021. The TRO was reportedly filed against the emergency use authorization permitting the use of COVID-19 vaccines in children under the age of 16."

140. Complaint Four further stated that:

According to the complaint, the TRO falsely claimed that children under the age of 16 'are at 0% risk of death, and that [children] are not at risk of harm from COVID-19.' The complaint further alleged that your 'attempt to use the legal system to not allow any children in the U.S. to receive this vaccination during the pandemic...is a gross breach of professional conduct and will lead to measurable harm.'

Exhibit 7.

141. Complaint Four alleged that “the Board is required to make inquiries into all complaints and reports wherein violations of the Medical Practice Act are alleged, including but not limited to Minn. Stat. § 147.091, subd. 1(g).”

142. The basis for Complaint Four was a single typewritten page filed in June 2021 referring to this lawsuit and the motion for a temporary restraining order therein. The allegations were thus based purely on Dr. Jensen’s public speech on matters of public concern via his right to petition the courts for redress of grievances, which is protected under the First Amendment. A copy of this document is attached as **Exhibit 8.**

143. Complaint Four was not based on the practice of medicine as defined in Minn. Stat. § 147.081, subd. 3, or professional conduct, or speech merely incidental to professional conduct, which comprises the practice of medicine. There was no medical procedure at issue, nexus between the physician and patient, or any patient complaint which could have served the basis for Complaint Four.

144. Because no patient or medical practice is implicated in Complaint Four, the Defendants must have claimed authority to investigate Complaint Four under Minn. Stat. § 147.091, subd. 1(g)(1) or (2).

145. In particular, the Defendants investigated Dr. Jensen based on the *content* of a Complaint filed in an Alabama federal court case—the “false claims” of the TRO motion—which was prepared by attorneys on behalf of many named plaintiffs.

146. The BMP did not have jurisdiction or authority to investigate the statements it identified in Complaint Four, which were pure speech on matters of public concern and the exercise of the protected right to petition the courts.

147. Upon receiving complaints from members of the public described in Complaint Four, the BMP's only option consistent with its statutory authority was to dismiss the complaints and inform Dr. Jensen that they had been dismissed.

148. Instead, the BMP demanded a response from Dr. Jensen, which expressly required him to "respond to the Board, in writing, with the following information by August 27, 2021:"

- a. "A description of your current practice situation;"
- b. "The current status of the TRO and/or the U.S. District Court's ruling on the matter; and"
- c. "Any additional information that you would like the Board to consider in its review of this matter."

Exhibit 7.

149. Complaint Four further requested that "[w]ith your response, please include a copy of the TRO and any relevant decisions filed by the U.S. District Court."

150. None of these demands of Dr. Jensen were intended to determine whether the BMP had jurisdiction to investigate Complaint Four.

151. The BMP required Dr. Jensen to spend hours of his time complying with the unlawful investigation under penalty of further sanctions against his license.

152. Complaint Four made the same demands on Dr. Jensen as Complaints One and Two, described above, and informed him that he was "required to cooperate fully with

the investigation into this matter. Failure to cooperate could result in disciplinary action by the Board.” **Exhibit 7.**

153. Dr. Jensen was thus forced to spend hours of his time responding to a complaint that the BMP had no authority to investigate under threat of “disciplinary action by the Board.” This is an injury to him.

154. A person of ordinary firmness in Dr. Jensen’s position would have self-censored after receiving Complaint Four and being required to spend hours of time to respond to it under threat to his license.

155. Dr. Jensen did, in fact, self-censor as a result of Complaint Four.

156. The Board’s investigation of Complaint Four against Dr. Jensen is unconstitutional in its application of section 147.091, subd. 1(g) to his speech and right to petition the courts.

Dr. Jensen Responds to Complaint Four

157. On August 17, 2021, Dr. Jensen responded to the BMP’s Complaint Four (“Response Four”).

158. In his dense, 62-page Response Four, Dr. Jensen provided a typewritten statement, toxicology reports, and medical journals, in an effort to “justify” to the BMP the perspective he expressed in his affidavit supporting the lawsuit.

159. As part of the typewritten statement, Dr. Jensen noted that his affidavit submitted in the lawsuit was intended to “provide support for a petition from AFLDS seeking a temporary restraining order regarding FDA approval of a policy for vaccination

of 12-15-year-olds. I feared that this age group would potentially be subject to a de facto mandate as has happened to so many other American citizens.”

160. Dr. Jensen also emailed Mr. Anderson another item of evidence to consider as part of the investigation on August 24, 2021, in the form of a declaration commenting on matters of public concern connected to the government response to COVID-19.

After a Six-Week Delay, Complaint Four Is Dismissed

161. On September 29, 2021, after nearly six weeks had elapsed without any updates from the Board on Complaint Four, Dr. Jensen emailed Mr. Anderson and asked, “what is the status of my investigation?”

162. The next day, Mr. Anderson responded via email to say that “[t]he CRC decided to dismiss the complaint. I will send you formal notice of the Committee’s decision within the next week.”

163. On September 30, 2021, the BMP addressed a letter to Dr. Jensen (“Dismissal Notice Four”), signed by Mr. Anderson. **Exhibit 9.**

164. Dismissal Notice Four concerned the same subject as Complaint Four.

165. Dismissal Notice Four stated that the BMP “has conducted an investigation of a complaint related to a petition for temporary restraining order filed by America’s Frontline Doctors in U.S. District Court in May 2021.”

166. Dismissal Notice Four went on to state that, “[a]fter a thorough review of both the Medical Practice Act and the facts of the situation, including those that you have provided, the Board has decided to dismiss the complaint and close its investigation at this time.”

167. However, Dismissal Notice Four further stated: “However, the investigation may be re-opened in the future if the Board receives information that was not previously considered during the initial investigation of the complaint, or if the Board receives *similar complaints or reports* regarding your practice of medicine.” (emphasis added).

168. This statement targeted similar speech on matters of public concern and was intended to chill Dr. Jensen’s speech.

169. Complaint Four was not dismissed for lack of jurisdiction over Dr. Jensen’s filing of an affidavit in the TRO case, as evidenced by the BMP’s threat to reopen the investigation if it receives “similar complaints or reports regarding [his] practice of medicine.”

170. Finally, Dismissal Notice Four stated that “[t]his complaint is not public, but will remain on file.”

171. Like the admonishment in Complaint Three, this statement was also meant to chill Dr. Jensen’s speech by telling him that the complaint and affidavit petitioning for the TRO would be kept by the Board for future adverse action against him.

172. The Defendants’ threat to keep the complaint on file and reserve the authority to reopen it later, when it had no jurisdiction to open an investigation in the first place related to Complaint Four, actually did cause Dr. Jensen to self-censor.

Complaint and Investigation Five

173. Although he was dealing with the constant threat of investigation for his speech, after the fourth investigation, Dr. Jensen was eager to focus on his campaign for Governor without a formal unconstitutional BMP investigation hanging over his head.

174. Throughout this time, while he felt threatened and chilled from speaking because another frivolous investigation could result from anything he said on the campaign trail, Dr. Jensen continued to campaign and discuss issues of public health.

175. For one example, in September 2021, Dr. Jensen publicly voiced his opinion on a social media video challenging a newly-announced Executive Order which would compel 100 million Americans to take a COVID-19 injection: “I’m calling on all citizens to stand up — especially I am calling on my Republican colleagues to stand up and declare where you are on this,” Jensen said. “Enough is enough, let’s meet this moment.” Steven Montemayor, “GOP candidate Scott Jensen calling for ‘civil disobedience’ of COVID policies,” *Star Tribune*, Sept. 10, 2021, <https://www.startribune.com/gop-candidate-scott-jensen-calling-for-civil-disobedience-of-covid-policies/600095847/?refresh=true>, (last accessed April 10, 2024).

176. Dr. Jensen’s statement reflected a political disagreement with federal policies related to COVID-19 vaccination.

177. Less than three weeks after Dr. Jensen received the BMP’s Dismissal Notice Four, on October 21, 2021, the BMP addressed a fifth letter regarding a “Notice of Board Complaints” to Dr. Jensen (“Complaint Five”) that was again signed by Mr. Anderson.

Exhibit 10.

178. The subject line to Complaint Five read “RE: Notice of Board Complaints” and cited to “Board File Nos: BFA09210186, BFA10210192, BFA10210193, BFA10210197, BFA10210223, BFA10210224, BFA10210225, BFA10210226, BFA10210227, BFA10210228.”

179. Complaint Five stated that “[b]etween September 14 and October 4, 2021, the Board received multiple complaints against your license related to concerns about the COVID-19 pandemic.”

180. Complaint Five stated that “[i]n accordance with Minnesota law, the Board is required to notify a licensee of all complaints and reports wherein violations of the Medical Practice Act are alleged, including but not limited to Minn. Stat. § 147.091, subd. 1(g) and (k).”

181. Complaint Five summarized the “complaint allegations” as follows:

- a. “It is alleged that you are using your position as a medical provider to *spread misinformation* regarding the COVID-19 pandemic, including ‘calling for civil disobedience’ among Minnesotans and businesses to ignore vaccine and mask guidance’ [sic]” (emphasis added);
- b. “It is alleged that you are not vaccinated and are putting patients at risk by not wearing masks in the patient care setting, and you are inappropriately recommending against children wearing masks in schools;”
- c. “It is alleged that you are inappropriately ‘politicizing public health’ at your *campaign events*. Specifically, during a *public speech* on September 20, 2021, you reportedly stated, ‘We have 19 years of data that says masks don’t do the job...They have a 10% filtration rate.’ Additionally, you reportedly compared the vaccines to ‘chemotherapy for cancer’” (emphasis added);
- d. “It is alleged that you are telling your ‘followers’ that hospitals and doctors are falsifying death certificates and changing the cause of death to COVID-19;”
- e. “It is alleged that you are inappropriately promoting the use of ivermectin to treat COVID-19 symptoms;” and
- f. “It is alleged that you are inappropriately promoting the benefits of natural immunity and over vaccines.”

Exhibit 10.

182. The basis for Complaint Five was about ten submissions from members of the public who have nothing to do with Dr. Jensen's practice of medicine or his care for patients.

183. The following statements and exhibits reflect the submissions received by the BMP during the September 14 – October 4, 2021, time period the BMP identified:

- a. A letter from a Nurse Practitioner dated September 9, 2021, alleging, in part, that "he is not wearing masks when practicing medicine or at the State Fair . . . He promotes children not needing to wear masks in school. . . . [H]e is promoting natural immunity over the Pfizer vaccine. . . . The vaccine is extremely safe and effective, and his misinformation is causing people to refuse the vaccine and refuse to wear masks." **Exhibit 11.**
- b. A letter from an individual dated September 11, 2021, objecting to Dr. Jensen's call to make Minnesota a "health freedom sanctuary state" contrary to federal vaccine requirements. **Exhibit 12.**
- c. A letter from an individual dated September 16, 2021, parroting a Star Tribune headline and objecting to Dr. Jensen "calling for civil disobedience regarding the use of masks and who questions the efficacy of vaccinations." **Exhibit 13.**
- d. A typewritten form dated September 22, 2021, alleging that Dr. Jensen "made several dubious statements that appear to be prohibited" and then repeating selected quotes from a newspaper article including "We have 19 years of data that says masks don't do the job... They have 10% filtration efficiency," and "A vaccine is not like a penicillin shot. It's a lot more like chemotherapy for cancer," and "He said said [sic] natural immunity is superior to a two-shot vaccine." **Exhibit 14.**
- e. Another typewritten form dated September 21, 2021, attaching an article making the same statements. **Exhibit 15.**
- f. A handwritten form dated September 24, 2021, attaching an email that quotes from a Star Tribune article and asserts that Dr. Jensen claimed natural immunity is superior to vaccination immunity, a screenshot of Minn. Stat. § 147.091, subd. 1(g), a copy of the above-cited September 10, 2021, Star Tribune article, and an opinion piece published in the Star Tribune about masking. **Exhibit 16.**

- g. A typed letter from a “pharmacist in a small, rural Minnesota hospital” dated September 15, 2021, in which the author references Dr. Jensen’s run for Governor and his “support of using ivermectin to treat symptoms of COVID-19” and “encourag[ing] people to not get vaccinated against COVID-19.” The complainant then states, without evidence, that “Dr. Jensen wants to practice medicine. He also wants to practice politics. But he is harming patients by trying to practice both.” **Exhibit 17.**
- h. A handwritten form dated September 27, 2021, claiming that Dr. Jensen is not following “science,” without explanation, and attaching a New Ulm newspaper article referenced in Exhibits 14 and 15 above. **Exhibit 18.**
- i. A handwritten form received by the BMP on October 4, 2021, asserting, without evidence, that “Dr. Jensen has spread (and continues to spread) misinformation about the COVID-19 pandemic and vaccines. (I could list more detail, but the fact that a medical doctor spreads lies about a serious public health threat should be enough.)”. **Exhibit 19.**

184. Every complaint made which led to Complaint Five was based on Dr. Jensen’s public statements about public health issues, which are of great public concern.

185. Complaint Five was not based on the practice of medicine as defined in Minn. Stat. § 147.081, subd. 3, or professional conduct, or speech merely incidental to conduct, which comprises the practice of medicine. There was no medical procedure at issue, nexus between the physician and patient, or any patient complaint which could have served the basis for Complaint Five.

186. Because no patient or medical practice is implicated in Complaint Five, the Defendants must have claimed authority to investigate Complaint Five under Minn. Stat. § 147.091, subd. 1(g)(1) or (2), or subd. 1(k).

187. The BMP did not have jurisdiction or authority to investigate the statements it identified in Complaint Five, which were pure speech on matters of public concern.

188. Upon receiving complaints from members of the public described in Complaint Five, the BMP's only option consistent with its statutory authority was to dismiss the complaints and inform Dr. Jensen that they had been dismissed.

189. Instead, the BMP demanded a response from Dr. Jensen, which required him to spend hours of his time complying with the unlawful investigation under penalty of further sanctions against his license.

190. Complaint Five made the same demands on Dr. Jensen as Complaint One, described above, and informed him that he was "required to cooperate fully with the investigation into this matter. Failure to cooperate could result in disciplinary action by the Board." **Exhibit 10.**

191. Complaint Five stated that, "[i]f [he] would like," Dr. Jensen had until November 12, 2021, "to submit a written response for the Committee's review, . . . and any supporting materials."

192. This "invitation" to submit a response and documents was not intended to determine whether the BMP had jurisdiction to investigate Complaint Five.

193. Dr. Jensen was thus forced to spend hours of his time responding to a complaint that the BMP had no authority to investigate under threat of "disciplinary action by the Board." This is an injury to him.

194. A person of ordinary firmness in Dr. Jensen's position would have self-censored after receiving Complaint Five and being required to spend hours of time to respond to it under threat to his license.

195. Dr. Jensen did, in fact, self-censor as a result of Complaint Five.

196. The Board's investigation of Complaint Five against Dr. Jensen is unconstitutional in its application of section 147.091, subd. 1(g) and subd. 1(k) to his speech.

Dr. Jensen Responds to Complaint Five

197. On November 9, 2021, Dr. Jensen responded to the BMP's Complaint Five ("Response Five").

198. In his Response Five, Dr. Jensen provided a written response and similar scholarly and medical studies to those he had submitted in response to the prior complaints. A copy of the written response is attached as **Exhibit 20**.

199. Dr. Jensen sharply criticized the investigation and observed that "I have seen no clear evidence that you are being asked to adjudicate a situation whereby patient healthcare services provided by me have been problematic."

200. Dr. Jensen objected to the investigation and stated, "I am offended because my rights as a citizen and as a gubernatorial candidate are being called into question by politically motivated persons."

201. Dr. Jensen noted that these investigations raised "serious concerns that an appointed executive branch agency holds the power to revoke a citizen's right to work in his chosen profession because he exercised his right of free speech."

202. Dr. Jensen noted that "[t]his is the fifth time you have investigated me in the last 17 months."

203. Dr. Jensen provided no information from which the Defendants could reasonably conclude that he had engaged in any patient-facing procedure that would justify

an investigation. His only statement related to patient care was his statement that “if patients ask me if they can use it [i.e., ivermectin], I consider such requests on an individual basis in light of clinical situations and indications.”

204. The Defendants knew Dr. Jensen’s statement related to the “off-label” prescription of ivermectin, and the Defendants knew that such prescription was not and has never been forbidden by any Minnesota medical licensing board or the FDA.

The Board Doubles Down on Complaint Five

205. On December 21, 2021, the BMP addressed a follow-up letter to Dr. Jensen’s Response Five that was signed by Mr. Anderson. **Exhibit 21.**

206. The subject line to the BMP’s follow-up letter read “RE: Investigation of Board Complaints — Additional Information Requested” and cited to the same Board file numbers as in Complaint Five.

207. In its follow-up letter, the BMP acknowledged receipt of Dr. Jensen’s Response Five and “requested” that, “[p]ursuant to the Board’s investigation of this matter, please provide the following records: Copies of medical records for the most recent 3-5 patients to whom you prescribed ivermectin to treat COVID-19.”

208. The BMP’s follow-up letter “requested” these records by January 12, 2022.

209. This “request” was not made to determine whether the BMP had jurisdiction over the complaint.

210. Finally, as with Complaint One, Two, Four, and Five, the BMP’s follow-up letter warned that “as a licensee of the Board, you are required to cooperate fully with the

investigation into this matter. Failure to cooperate could result in disciplinary action by the Board.”

211. In early January 2022, Dr. Jensen sent to the BMP the information requested in its follow-up letter, including medical journals and supporting documents.

212. The only reason Dr. Jensen ever mentioned his off-label prescription of ivermectin was because of the unconstitutional investigations into his license intended to chill his speech. The Defendants’ follow-up letter was thus the product of a pure “fishing expedition.”

213. In addition, because the off-label prescription of ivermectin depending on clinical situations and indications, on an individualized basis, is not forbidden by the BMP or FDA, and Defendants knew that, there was no basis for further investigation into Dr. Jensen via the December 21, 2021, letter.

214. The Defendants thus intended to chill Dr. Jensen’s speech and retaliate against him for his speech on matters of public concern via the December 21, 2021, letter.

**The Defendants Intentionally Hold the Investigation Open as a
“Sword of Damocles” Over Jensen Throughout His Campaign**

215. For more than one year, from the date Dr. Jensen submitted the follow-up information for Complaint Five, until January 25, 2023, Dr. Jensen received no further communications from the BMP regarding the status of Complaint Five.

216. Director Martinez, the Board, and the CRC used Complaint Five and its ever-present threat of further investigation to chill Dr. Jensen’s speech for the entirety of 2022,

which included the full year of his campaign leading up to the November election for Minnesota Governor.

217. Two statutes were enacted by the Legislature to safeguard licensee physicians from long, protracted periods of uncertainty while the BMP carries out its statutory process. Both were disregarded by the BMP in order to chill Dr. Jensen's speech and to retaliate against him for comments he made which were critical of the Board and inconsistent with the preferred narrative surrounding COVID-19.

218. First, Minn. Stat. § 214.103, subd. 1a (c) requires that “[t]he Board shall periodically, but no less than every 120 days, notify the licensee of the status of the complaint consistent with section 13.41.”

219. Second, Minn. Stat. § 214.103, subd. 1a (e) requires that “[n]o more than one year after receiving a complaint regarding a licensee, the board must resolve or dismiss the complaint unless the board determines that resolving or dismissing the complaint cannot reasonably be accomplished in this time and is not in the public interest.”

220. Here, in its October 21, 2021, Notice of Board Complaints (Complaint Five), the BMP alleged that it “received multiple complaints” against Dr. Jensen's license “between September 14 and October 4, 2021.” As with Complaints One through Four, the allegations outlined in Complaint Five all involved his public speech, including social media posts and a speech at a campaign event.

221. The previous complaints were all resolved by dismissal well within the 120-day period required by Minnesota Statute § 214.103, subd. 1a(c). Notably, Complaint Three was reviewed by the CRC in March 2021 pursuant to a January 2021 allegation

involving social media posts. It was dismissed on April 1, 2021, before Dr. Jensen was notified of its existence.

222. But as applied to Complaint Five, the Defendants intentionally failed to comply with the 120-day notice requirement in section 214.103, subd. 1a(c).

223. Defendants made the decision to withhold status updates in order to chill Dr. Jensen's speech, and it did chill his speech.

224. Defendants failed to provide Dr. Jensen with the required 120-day notice no fewer than three times for the allegations in Complaint Five.

225. The Defendants also disregarded the provision in section 214.103, subd. 1a (e) requiring resolution or dismissal of any complaints within a year of their receipt by the Board.

226. Based on the failure to notify Dr. Jensen of the status of the investigation every 120 days and resolve Complaint Five within a year, Defendants intended to and did hold Complaint Five open during the entirety of election year 2022 to chill Dr. Jensen's speech during the campaign and to retaliate against him based on the content of his speech, which was sharply critical of the BMP and the government's response to COVID-19.

Dr. Jensen Repeatedly Said His Speech Was Chilled, It Actually Was Chilled, His Speech Continues to Be Chilled, and He Has Been Injured by Defendants' Actions

227. The BMP's series of unlawful investigations had a profound effect on Dr. Jensen's ability to communicate his political message during the campaign.

228. Beginning in early 2020, Governor Tim Walz's responses to COVID-19 included forced-masking of children and adults, business closures, restrictions on movement, and other unprecedented affronts to individual liberty.

229. Many Minnesotans opposed these government actions as unnecessary and harmful. Many such Minnesotans supported Dr. Jensen politically for this reason during his run for Governor in 2021-2022.

230. Defendants' repeated investigation of Dr. Jensen both before and during his gubernatorial campaign put him in the position of speaking to Minnesotans knowing that bad-faith actors could trigger investigations against him for pure speech, and Defendants would willingly enable their bad-faith tactics by using investigatory power to punish Dr. Jensen for saying what he believed to be true.

231. Thus, Dr. Jensen expressly told the BMP in October 2020 that its unconstitutional investigations into his protected speech had "an ongoing chilling and suppressing effect" on his ability to message to his constituents and patients.

232. Dr. Jensen knew that he could lose his license to practice his profession if he continued to say what he believed to be true about public health issues, and he tailored his message accordingly. Even more specifically, Dr. Jensen took great care to make certain that people understood when he was speaking as a candidate and when he was speaking as a family doctor. His speech was chilled.

233. That tailoring of his message was still not enough for the bad-faith actors who continued to make complaints against his license even after the Defendants sent him the December 2021 follow-up letter to Complaint Five. *E.g.*, **Exhibit 22**.

234. That Dr. Jensen observed additional caution for fear of prosecution by the Defendants, yet still faced further complaints against him, simply demonstrates that Minn. Stat. § 147.091, subd 1(g)(1) & (2) and (k) pose a credible threat of prosecution for protected speech.

235. To date, based on all of the allegations herein, and because of the Defendants' use of their investigatory power against Dr. Jensen, he continues to tailor his speech to avoid potential prosecution by the Defendants. His speech continues to be chilled even as he maintains a public presence. Any person of ordinary firmness would be chilled by the Defendants' actions.

236. The Defendants' own admissions at the hearing in this matter in December 2023 provide further reason Dr. Jensen's speech has been and continues to be chilled. At oral argument, Defendants' counsel said as follows in response to the Court:

THE COURT: Sure. But if you know that a statement has been made on some news program or it's in social media, then you certainly know it's not being made in the context of a doctor-patient relationship. So why isn't that the beginning and the end of the inquiry even from a jurisdictional point of view that you know this does not pertain to any doctor-patient relationship. You heard it, and you saw the context?

MR. LIENESCH: Well, I do think the Board has a valid interest in following up to see if the same statements are being made to the licensee's patients directly. That's an important thing to clarify. Are these being – is information being spread to patients as well.

237. In other words, Defendants admit that they use pure speech as pretext to fish for possible violations of the law that might relate to doctor-patient relationships. This demonstrates a credible threat of prosecution for any doctor in Minnesota who speaks publicly about public health matters.

238. Further, even beyond the chilling of his speech, Dr. Jensen was directly injured by the Defendants’ repeated investigations:

- a. Merely complying with the BMP investigations consumed thousands of hours of his time, time which was therefore not available to spend communicating with voters on the campaign trail. He therefore suffered the harm of lost opportunities to appeal to voters across the state.
- b. The BMP investigations caused him to decline invitations to public speaking events which would have benefited his campaign because he sought to avoid saying anything that would further jeopardize his ability to practice medicine.
- c. Because he was forced to spend thousands of hours responding to the Defendants’ unconstitutional investigations, he lost revenue because he took on fewer patients as a direct result.
- d. Dr. Jensen resigned his position as part of the University of Minnesota Family Practice Department faculty after the first investigation in 2020 because of Defendants’ investigation into his license.
- e. As part of his certification by the American Board of Family Medicine (“ABFM”), Dr. Jensen is required to forward any documentation of disciplinary action taken against his license to practice medicine. Because of Defendants’ unlawful investigations, Dr. Jensen was subject to further investigation by the ABFM. **Exhibit 23.**
- f. Responding to ABFM’s investigation required Dr. Jensen to spend additional time and effort in responding to its inquiries as to his certification by that group. Had he lost his certification with that group, he would have suffered significant financial loss because he would not have been able to serve certain patients who had certain types of insurance, including loss of access to nursing homes and hospitals and possibly more than 50% of his patients. The ABFM investigation remains open.
- g. Dr. Jensen’s opponent in the race for Governor of Minnesota, who had appointed some or all of the Defendants to the BMP, exploited the illegal investigations for political gain through his own use of social media. **Exhibit 24.**
- h. Because of the investigations and the thousands of hours spent responding to them, Dr. Jensen lost sleep and suffered emotional distress.

- i. Dr. Jensen, the Minnesota Family Physician of the Year in 2016, was repeatedly investigated by the BMP for spreading “misinformation” or “disinformation.” But he did not speak either of these things; Dr. Jensen spoke the truth based on his forty (40) years of observations, training, and experience as a Minnesota doctor, and based on careful review of scholarly journals and trusted sources. These accusations and the repeated unconstitutional investigations by the BMP caused an injury to Dr. Jensen’s dignity.

239. The investigations against Dr. Jensen culminated in Dr. Jensen being called before the BMP for a conference to “defend” his speech as though it were medical practice, because the Defendants obliterated any difference between these two things.

**The BMP Summons Dr. Jensen to a Conference to Investigate
Complaint Five and All Previously Dismissed Complaints**

240. The CRC voted 2-1 to approve an in-person conference to compel Dr. Jensen to answer for his protected speech. A copy of the “Triage Ballot” is attached as **Exhibit 26** and the votes of approval are reflected as “NOC” for Notice of Conference.

241. This vote was taken by members of the CRC on December 3, **2021**, well over a year before Dr. Jensen was actually made aware of an impending conference before the CRC.

242. Defendants disregarded the notice and resolution requirements in Minnesota Statutes § 214.103, subd. 1a(c) and (e) by holding the investigation open throughout calendar year 2022 to use the pending investigation to continuously chill Dr. Jensen’s speech during his campaign for Governor, causing him harm.

243. On January 25, 2023, nearly 14 months after the decision to hold a conference was made, the BMP sent Dr. Jensen a “Notice of Conference” letter (“Notice”),

that was signed by Kathryn Van Etta-Olson, the BMP's Complaint Review Unit Manager, on behalf of Ruth M. Martinez, the Executive Director of the BMP.

244. The Notice was addressed, "In the Matter of the Medical License of Scott M. Jensen, M.D." A copy of the Notice is attached as **Exhibit 25**.

245. The Notice notified Dr. Jensen that the Board "through its CRC will hold a conference to discuss the above-entitled matter on February 24, 2023."

246. The Conference date was subsequently moved to March 24, 2023, to allow additional time for Dr. Jensen to arrange for counsel and prepare for the event.

247. Even though the allegations against him had nothing to do with the practice of medicine as defined in Minn. Stat. § 147.081, subd. 3 or patient care, the Notice stated that "[t]he purpose of the conference is to discuss [Dr. Jensen's] ability to practice medicine and surgery with reasonable skill and safety to patients."

248. The Notice demanded that Dr. Jensen "**provide the CRC, no later than ten days before the date of the conference, with a written response to the allegations herein. Failure to provide a written response may be viewed as a failure to cooperate under Minnesota Statutes sections [sic] 147.131 (2020).**" (Bold in original).

249. Thus, if Dr. Jensen did not respond in writing to the BMP's extra-jurisdictional investigations into his protected speech, he could be found in violation of the Medical Practice Act.

250. The purpose of the conference was not to determine whether the BMP had jurisdiction over Dr. Jensen's speech; neither was the demand for a written response.

251. The Notice stated that “[b]etween April 2020 and June 2022, the Board received 18 complaints related to [Dr. Jensen’s] public statements on COVID-19 and patient care.”

252. As detailed above, however, none of the allegations was from a patient or from anyone with any knowledge of Dr. Jensen’s patient care.

253. The Notice thus included years of previously dismissed allegations and even allegations arising after Dr. Jensen had already responded to Complaint Five, with no amended complaint or other notice that new allegations were being considered against Dr. Jensen.

254. Minn. Stat. §214.103, subd. 8(b) provides that “The board may reopen a dismissed complaint if the board receives newly discovered information that was not available to the board during the initial investigation of the complaint, or if the board receives a new complaint that indicates a pattern of behavior or conduct.”

255. There was no new information or pattern of conduct with any nexus to the practice of medicine or patient care that justified resurrecting formerly dismissed complaints or the allegations therefrom. Yet the Board resurrected and incorporated in the Notice all the complaints previously investigated by the Board—Complaints One, Two, Four, and Five.

256. The allegations rehearsed in the Notice were:

- a. “[Dr. Jensen] promulgated disinformation regarding the COVID-19 pandemic, advised against vaccines and masks, including calling for civil disobedience among Minnesotans and businesses to ignore vaccine and mask guidance, and gave advice that promotes the transmission of COVID-19.” (See Complaint Five.)

- b. “[Dr. Jensen] claimed that COVID-19 is nothing more than the flu and falsely compared and minimized the difference between the 2009 H1N1 pandemic and COVID-19.” (See Complaint One and Two.)
- c. “[Dr. Jensen] promoted conspiracy theories alleging the Minnesota Department of Health instructed providers to falsify death certificates to list COVID-19 as the cause of death, whether or not the patient’s underlying or contributing cause of death was COVID-19, when Minnesota was following federal guidance as a measure to better define the scope of the pandemic. [Dr. Jensen] was also ‘very publicly minimizing’ and ‘deliberately downplaying’ COVID-19 deaths.” (See Complaint One, Three, and Five.)
- d. “[Dr. Jensen] was not vaccinated and was putting patients at risk by not wearing masks in the patient care setting, and he recommended against children wearing masks in school.” (See Complaint Five.)
- e. “[Dr. Jensen] attempted to benefit himself by misconstruing medical information to the public in a manner inconsistent with the recommendations of public health officials during a pandemic. Specifically, during a speech on September 20, 2021, [Dr. Jensen] stated, ‘We have 19 years of data that says masks don’t do the job...They have a 10% filtration rate.’ Additionally, [Dr. Jensen] compared the vaccines to ‘chemotherapy for cancer.’” (See Complaint Five.)
- f. “[Dr. Jensen] advised patients to take ivermectin without scientific data to support their use in the treatment of patients with COVID-19.” (See Complaint Five.)
- g. “[Dr. Jensen] promoted the benefits of natural immunity over vaccines.” (See Complaint Five.)
- h. “On May 20, 2021, [Dr. Jensen] filed a temporary restraining order (“TRO”) in the U.S. District Court for Alabama. The TRO was filed against the emergency use authorization permitting the use of COVID-19 vaccines in children under the age of 16. The TRO claimed that children under the age of 16 ‘are at 0% risk of death, and that [children] [sic] are not at risk of harm from COVID-19.’” (See Complaint Four.)
- i. “[Dr. Jensen] falsely claimed to have been a professor at the University of Minnesota medical school for over 30 years when [he] was a clinical associate.”

Exhibit 25.

257. None of these allegations were made by patients of Dr. Jensen or concern patient-care complaints or the offer or performance of a medical procedure, and they all therefore lacked the necessary nexus between doctor and patient.

258. Dr. Jensen's "off-label" prescription of ivermectin is not now and has never been a violation of any rule of professional conduct, and neither has it been forbidden by the BMP, the FDA, or any other medical licensing agency with jurisdiction over Minnesota medical doctors.

259. Defendants knew or should have known that prescribing ivermectin "off label" did not violate any rules of conduct for a medical doctor such as Dr. Jensen.

260. All of these allegations concern public statements made by Dr. Jensen, which are speech protected by the First Amendment, and which the BMP has no jurisdiction to investigate or punish.

261. The Notice went on to rehearse some of the written responses Dr. Jensen previously submitted in response to the Board's requests for additional information for the previous complaints.

262. The Notice stated that "[a] review of [Dr. Jensen's] patient medical records where [he] prescribed Ivermectin revealed the following:"

- a. "[Dr. Jensen's] medical record documentation was often illegible."
- b. "In addition to Ivermectin, [Dr. Jensen] prescribed other medications off-label to treat COVID-19."
- c. "[Dr. Jensen] did not document rationale for treating patients with specific medications and did not document any informed consent discussion regarding using medications off-label."

Exhibit 25.

263. The Notice stated that the subject conference was called at the recommendation of the CRC “to discuss the allegations above” after the CRC “reviewed the matter.”

264. Complaint Five alleged “18 complaints related to [Dr. Jensen’s] public statements on COVID-19 and patient care.” Adding up all the alleged “violations of professional conduct” in the prior complaints only produces 13, not 18. Even after adding the three new alleged “violations” of the Medical Practice Act concerning medical record documentation, Ivermectin, and documentation of rationale for off-label prescriptions, the sum total does not reach 18.

265. This means that there were at least two, and as many as five, complaints that were received *and investigated* by the BMP that Dr. Jensen was never notified existed until the Notice.

266. The Notice stated that the conduct alleged therein “would constitute a violation of Minn. Stat. § 147.091, subd 1 (g), (k), (o), and (s) (2020).”

267. Minn. Stat. § 147.091, subd. 1(o), addresses the “[i]mproper management of medical records, including failure to maintain adequate medical records, to comply with a patient's request made pursuant to sections 144.291 to 144.298 or to furnish a medical record or report required by law.”

268. Minn. Stat. § 147.091, subd. 1(s), addresses the “[i]nappropriate prescribing of or failure to properly prescribe a drug or device, including prescribing a drug or device

for other than medically accepted therapeutic or experimental or investigative purposes authorized by a state or federal agency.”

269. The Notice stated that “[p]ursuant to Minnesota Statutes section 147.131 (2020), [Dr. Jensen] is required to cooperate fully with the Board. Cooperation includes responding fully and promptly to any questions raised by or on behalf of the Board relating to the subject of the investigation, executing all releases requested by the Board, providing copies of client records, and appearing at conferences or hearings scheduled by the Board or its staff.”

270. The Notice stated that “[a]ny one or a combination of the following actions could be taken as a result of or following the conference:”

- a. “The CRC could conclude the matter based upon its determination that there are insufficient grounds for discipline;”
- b. “The CRC could enter into an agreement with [Dr. Jensen] for corrective action;”
- c. “The CRC and [Dr. Jensen] could enter into a stipulation permitting the full Board to issue a mutually agreed upon disciplinary order or remedy; or”
- d. “The CRC could determine that the matter will be satisfactorily resolved only by a contested case hearing conducted in accordance with the Minnesota Administrative Procedure Act.”

271. The Notice stated that “the conference is designed to permit the CRC to seek and clarify information, to provide [Dr. Jensen] with an opportunity to clarify a possible misunderstanding, and to allow the CRC and [Dr. Jensen] to seek resolution and remedy of any possible problems without the necessity of instituting a formal case.”

The Conference

272. Dr. Jensen's conference with the CRC occurred on March 24, 2023. For more than an hour and a half, he was repeatedly compelled by a panel of Defendant Board members, BMP officials, and a representative from the OAG, to answer questions about his public statements which ran contrary to the narrative advanced by Dr. Jensen's political opponents.

273. Defendant Henry, during the conference, admitted: "by statute we have the ability to oversee the professional conduct of physicians licensed in Minnesota, and the issues around free speech, we are not in that position."

274. This demonstrates that the Defendants knew or should have known, and it was clearly established law, that the investigations into Dr. Jensen's speech were unlawful.

275. Yet throughout the Conference, Defendants repeatedly asserted that they were investigating pure speech as if it were the practice of medicine, which demonstrates that Minn. Stat. § 147.091, subd. 1(g)(1) & (2) and (k) sweeps in protected speech uttered not just by Dr. Jensen, but by all medical doctors practicing medicine in Minnesota when they speak publicly about any public health issue.

276. Defendant Henry stated, in reference to Dr. Jensen's public comments: "Going back to professional conduct... you said in your response that what you were doing was exercising your Constitutional right to free speech. And for us, we oversee the conduct of when you're acting as a physician. And what I need to understand is when do you feel you're acting as a physician? Is it only in a patient encounter in a clinic or hospital or are you acting as a physician outside of those settings?"

277. Defendant Bailey stated that comments made by Dr. Jensen “not in a professional way, but just speaking” were also considered to come within the purview of the BMP’s authority. For example, Bailey said, in disbelief: “You’re commenting on medical issues and diseases but it’s not practicing medicine because it’s just talking?” And similarly: “does that strike you as medical *practice*, when you’re going to such detail with a stranger about a medical condition?”

278. Defendant Henry, in reference to the difference between speech and the practice of medicine, said: “for me personally, this line between... just because I don’t have a face-to-face or a direct relationship with somebody as a physician, I still ethically and morally have an obligation to portray myself and my comments as to what will they do to impact the health of the people I’m charged to be overseeing... it could mean anybody that’s listening to me.”

279. As alleged above, Defendants admitted to the contrary in other statements at the conference, and clearly established law holds that “a doctor who publicly advocates a treatment that the medical establishment considers outside the mainstream, or even dangerous, is entitled to robust protection under the First Amendment—just as any person is—even though the state has the power to regulate medicine.” *Pickup v. Brown*, 740 F.3d 1208, 1227 (9th Cir. 2014).

280. Defendant Bailey was asked about whether doctors should be allowed to express viewpoints different from that of the medical establishment including the department of health. She replied that she felt the minimum standard of care, and thus the

only allowable speech for a physician under the Medical Practice Act, was “what a doc in that field with that level of education *would assume is the facts*, is the truth.”

281. She also stated: “You guys (Dr. Jensen and counsel) have made a lot of ‘action vs. speech,’ but you know, medicine is *all* speech – our action *is* speech, unless you’re operating on someone.”

282. Defendant Bailey, who was the chair of the CRC during the relevant periods, thus demonstrated that Defendants’ intent is to regulate all public speech by physicians under the Medical Practice Act.

283. The Medical Practice Act, and particularly Minn. Stat. § 147.091, subd. 1(g)(1) & (2) and (k), therefore sweeps in licensee speech beyond the patient-care setting, and in fact in every public arena.

284. These examples are not unique. Further discussion among Defendants Bailey and Henry during the conference reveals that neither individual recognized a limit to Defendants’ investigatory power, so long as the content of Dr. Jensen’s speech was connected to medicine somehow.

285. The comments made during the conference demonstrate that the Defendants intentionally investigated Dr. Jensen’s speech *as speech*, even absent any connection to the actual practice of medicine.

286. The conference discussion also demonstrates that Dr. Jensen suffered the direct and irreparable harm of being subjected to a conference based on complaints that the BMP was never empowered to enforce or investigate. This harm includes the attendant hours and days spent preparing for that conference, the cost and burden of hiring counsel,

time away from work, and the harm to Dr. Jensen's dignity based on the violation of his First Amendment rights.

287. The investigations into Dr. Jensen's license and the conference itself, based only on his speech, were expressly designed to retaliate against Dr. Jensen for engaging in protected First Amendment speech and not for the practice of medicine or conduct which the Board was empowered to regulate.

288. The investigations and the conference also show that Defendants believe, to the present date, that the Medical Practice Act empowers them to investigate Minnesota medical licensees for their speech unrelated to patient care, and Defendants may therefore prosecute Dr. Jensen and any other Minnesota medical licensee in the future for their speech unrelated to patient care.

289. Dr. Jensen is still a practicing physician in Minnesota. He is still active in the media. He still speaks with patients and members of the public every day. Because the Defendants have asserted and continue to assert that they may prosecute medical licensees for speech on public health not directly tied to patient care, Defendants continue to pose a credible threat of prosecution to Dr. Jensen and other Minnesota medical licensees.

290. The facially unconstitutional Minn. Stat. § 147.091, subd. 1(g)(1) & (2) and (k) are still on the books. Dr. Jensen therefore continues to be under constant threat of investigation by the Board of Medical Practice for his protected speech.

**The Investigations of Dr. Jensen's License Chill
Protected Speech Beyond Dr. Jensen Himself**

291. Minn. Stat. § 147.091, subd. 1(g)(1) and (2) are facially unconstitutional because they are overbroad and sweep up protected speech which is not incidental to conduct and does not have a nexus to a patient or the practice of medicine.

292. Medical professionals under the BMP's jurisdiction across Minnesota practice and live in a daily state of fear of reprisal from the BMP, lest they utter a statement which could be used against them later. Dr. Jensen and other like-minded individuals self-censor, not only in public forums but also in patient examination rooms because they can be investigated for speech under Minn. Stat. § 147.091, subd. 1(g)(1) or (2).

293. The facial unconstitutionality of the statute, as well as its abuse by the BMP, directly interferes with the doctor-patient relationship and prevents effective treatment by subjecting physicians to restrictions on their speech and not their professional conduct.

294. Beyond Dr. Jensen, other medical professionals in Minnesota have self-censored because of the unconstitutional statute and the abusive investigations into Dr. Jensen's license.

295. Among those Minnesota physicians is Dr. Robert Zajac, who practices medicine in constant fear of being targeted by the BMP for his protected speech on matters of public concern not connected to patient care.

296. Dr. Zajac has also been investigated for public statements posted to social media concerning COVID-19 which were classified by the BMP as "practicing medicine."

In this context, Dr. Zajac alleged in a verified Complaint against members of the Board of Medical Practice as follows:

Even if [Dr. Zajac] did make such statements in online interviews, they constitute pure speech and expression of opinion which are protected by the First Amendment of the United States Constitution. Such statements are not subject to the Boards' and defendants' muzzling attempts through the wrongful application of the license disciplinary process while depriving the Plaintiff of constitutional rights under the color of Minnesota Law.

Zajac v. Statton, et al. 0:20-cv-02148-JRT-DTS, *Doc. 1*, 2021 U.S. App. LEXIS 28920, 2021 WL 4301286 (D. Minn. 2020).

297. As a result of the BMP's unlawful investigations against Dr. Jensen and its use of the unconstitutional Minn. Stat. § 147.091 subd. 1(g)(1) and (2) and 1(k), Dr. Zajac's speech is chilled because he fears retaliation and punishment by the BMP for espousing speech on matters of public concern.

CAUSES OF ACTION

Count One

42 U.S.C. § 1983

Violation of the U.S. Constitution,

First Amendment – Abuse of Investigatory Power and Chilling Effect

298. Plaintiff reincorporates the foregoing as if fully written herein.

299. Minnesota and federal statutory and constitutional law specifically limit the authority of the Board of Medical Practice and its members to investigation related to professional conduct, not speech on matters of public concern, including public health. Political speech may not be investigated by Defendants.

300. Plaintiff has made many statements about COVID-19 and the government response thereto over the course of several years, as a Minnesota Senator, as a private citizen, and as a major-party nominee for Governor of Minnesota.

301. In addition, Plaintiff petitioned the government when he became a plaintiff and submitted an affidavit in support of a lawsuit that sought a temporary restraining order against the U.S. government's emergency use authorization permitting the use of COVID-19 vaccines in children under the age of sixteen ("TRO Lawsuit").

302. The legitimacy of the government response to COVID-19, the efficacy of vaccines and the propriety of recommending them or mandating them for use in children, and the other related matters on which Plaintiff has opined are all broad issues of social and political concern to society at large.

303. Defendants initiated all five Complaints related to Plaintiff based entirely on his speech on matters of public concern. Only in the follow-up to Complaint Five was there any mention of items which could be considered "conduct": the alleged prescription of ivermectin, Dr. Jensen's handwriting being difficult to read, and documentation of informed consent. But each of these allegations were brought to bear against him *only* as a result of the unlawful investigations into Dr. Jensen's speech. They are the fruit of the poisonous tree.

304. Plaintiff's speech was a substantial or motivating factor for Defendants' investigations under Minn. Stat. § 147.091, subd. 1(g)(1) & (2) & (k), and § 147.161, subd. 1.

305. Defendants had no authority to initiate an investigation into Plaintiff based on his speech on matters of public concern.

306. Defendants had no authority to initiate an investigation into Plaintiff based on his participation in the TRO Lawsuit.

307. Defendants used their investigative power to chill Dr. Jensen's speech on matters of public concern, and they intended to chill Dr. Jensen's speech because Defendants were not required to investigate frivolous complaints and demand written responses and production of documents based only on speech, which is beyond the Defendants' jurisdiction.

308. Defendants could not have been required to "investigate" every Complaint related to a medical professional because, unlike their conduct in Complaints One, Two, Four, and Five, they did not demand written responses and production of documents connected to Complaint Three.

309. If Defendants *were* required to "investigate" Complaints One, Two, Four, and Five, including demanding written responses and production of documents, then Minn. Stat. § 147.091, subd. 1(g)(1) & (2) & (k), and § 147.161, subd. 1 are unconstitutional, both facially and as-applied.

310. Defendants refused to dismiss Complaints One, Two, Four, and Five against Dr. Jensen without subjecting him to further inquiry in order to chill his speech, and the notices of dismissal post-investigation were also designed to chill his speech.

311. Defendants' actions would chill a person of ordinary firmness from petitioning or continuing to petition the government.

312. Defendants have neither a substantial nor a compelling interest to justify investigating Plaintiff for petitioning the government.

313. Defendants' actions are not narrowly tailored to any claimed government interest in regulating the medical profession because political speech is not within the ambit of Defendants' jurisdiction.

314. Defendants' investigations subjected Plaintiff to the present harm of expending time and money to respond to the investigations as well as the potential future harm of disciplinary or corrective action, including adverse action against his medical license.

315. Plaintiff asks the Court to declare that Defendants violated his constitutional rights, and to award him nominal, actual, general, and compensatory damages for damage to his personal dignity, reputation, and constitutional rights. Plaintiff also seeks punitive damages because Defendants' actions were willful or with reckless indifference to Plaintiff's constitutional rights. To the extent Defendants may argue that they were required by law to undertake their investigations into Plaintiff's speech, those portions of the statute are unconstitutional, both facially and as-applied.

Count Two
42 U.S.C. § 1983
Violation of the U.S. Constitution,
First Amendment Free Speech Clause
Retaliation

316. Plaintiff reincorporates the foregoing as if fully written herein.

317. The First Amendment prohibits the government from "abridging the freedom of speech." U.S. Const., Amend. 1.

318. Plaintiff engaged in protected speech when he spoke at or through public forums, such as campaign rallies, news interviews, and online social media platforms, on matters of public concern.

319. Defendants initiated multiple investigations into Plaintiff on the basis of his exercising his right to free speech.

320. Defendants initiated their investigations against Plaintiff in retaliation for his exercising his right to free speech.

321. Plaintiff's speech was a substantial or motivating factor for Defendants' investigation, which investigation was premised on Plaintiff's speech constituting "unethical or improper conduct" and/or "depart[ing] from or fail[ing] to conform to the minimal standards of acceptable and prevailing medical practice." Minn. Stat. 147.091, subd. 1(g), (k).

322. Defendants' actions chilled Dr. Jensen's speech, and he self-censored because of their retaliation against his speech. He continues to tailor his speech carefully to avoid potential prosecution by Defendants for speech on matters of public concern, such as public health.

323. Defendants' actions would chill a person of ordinary firmness from exercising or continuing to exercise his right to freely express his opinions on matters of public concern.

324. Defendants maintain that they can and intend to use the Medical Practice Act to investigate licensees for pure speech on matters of public concern, which demonstrates that Minn. Stat. § 147.091, subd. 1(g)(1) & (2) & (k), and § 147.161, subd. 1 pose a credible

threat of prosecution, and thus an ongoing chilling effect, to licensees like Dr. Jensen and others such as Dr. Robert Zajac.

325. Defendants have no compelling interest to justify investigating Plaintiff for protected speech.

Count Three
42 U.S.C. § 1983
Violation of the U.S. Constitution,
First Amendment Free Speech Clause
Viewpoint Discrimination

326. Plaintiff reincorporates the foregoing as if fully written herein.

327. The First Amendment prohibits the government from “abridging the freedom of speech.” U.S. Const., Amend. 1.

328. Plaintiff engaged in protected speech when he spoke at and through public forums, such as campaign rallies, television and radio interviews, and online social media platforms, on matters of public concern.

329. Defendants initiated multiple investigations into Plaintiff’s speech, including but not limited to demanding written responses and production of documents under threat of further sanctions for failure to cooperate because of the viewpoint he expressed in his speech.

330. Defendants’ investigations purported to scrutinize Plaintiff’s viewpoint as constituting either “unethical or improper conduct” or “depart[ing] from or fail[ing] to conform to the minimal standards of acceptable and prevailing medical practice.” Minn. Stat. 147.091, subd. 1(g), (k).

331. Upon information and belief, Defendants have not initiated any investigations into medical doctors who have publicly made statements about the government response to COVID-19 with a viewpoint which called for *greater* restrictions on individuals, contrary to Dr. Jensen's political message.

332. To the extent Defendants may argue that they were required by law to undertake their investigations into Plaintiff's speech pursuant to Minn. Stat. § 147.091, subd. 1(g)(1) & (2) & (k), and § 147.161, subd. 1, the statutes are unconstitutional, both facially and as-applied.

333. Defendants' actions would chill a person of ordinary firmness from exercising or continuing to exercise his right to freely express his viewpoint on matters of public concern.

334. Defendants' actions actually did chill Dr. Jensen's speech: he tailored his speech to avoid potential prosecution by the Defendants, and he continues to do so.

335. Defendants have no compelling interest to justify investigating Plaintiff for the content of his protected speech.

336. Defendants' investigation subjected Plaintiff to the present harm of expending time and money to respond to the investigation as well as the potential future harm of disciplinary or corrective action, including adverse action against his medical license.

Count Four
Class-of-One Equal Protection Violation
U.S. Const. amend. XIV; Minn. Const. art. I, § 2
42 U.S.C. § 1983; 28 U.S.C. § 2201, *et seq.*; Minn. Stat. § 555.01, *et seq.*

337. Plaintiff reincorporates the foregoing as if fully written herein.

338. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides, in relevant part, that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

339. The Equal Protection Clause applies to states and their subdivisions and municipalities.

340. By launching a series of investigations based on the content of Dr. Jensen’s speech where the Board lacked jurisdiction, the Defendants intentionally treated Dr. Jensen differently than they treat others similarly situated to him.

341. Upon information and belief, no licensees subject to regulation by the Board were investigated for spreading information on a television station about COVID-19 contrary to Dr. Jensen’s political message, or for claiming that the Minnesota Department of Health *did not* instruct providers to list COVID-19 as the cause of death on death certificates regardless of whether a patient died of COVID-19.

342. Upon information and belief, no licensees subject to regulation by the Board were investigated for speaking about COVID-19 if their views were contrary to those espoused by Dr. Jensen.

343. Upon information and belief, no licensees subject to regulation by the Board were investigated for posting Facebook videos containing information and conclusions

about COVID-19 and the government response to it contrary to Dr. Jensen's political message.

344. Upon information and belief, no licensees subject to regulation by the Board were investigated for emphasizing the differences between the 2009 H1N1 pandemic and COVID-19.

345. Upon information and belief, no licensees subject to regulation by the Board were investigated for becoming involved in a lawsuit that advocated in favor of the emergency use authorization permitting the use of COVID-19 vaccinations in children under the age of 16.

346. There is no rational basis for treating Dr. Jensen differently than any other physician who wishes to engage in speech protected by the First Amendment.

347. The Defendants' actions are irrational and arbitrary.

348. Upon information and belief, the Defendants also treat other individuals who might speak to the public about actions taken by the government differently than they have treated Dr. Jensen, with no rational basis for any such distinction.

349. The Defendants' violation of Dr. Jensen's Fourteenth Amendment rights has caused him actual, nominal, and general damages, including damages related to his personal dignity because of the violation of his constitutional rights.

350. Should Dr. Jensen prevail in this matter, Dr. Jensen is entitled to costs and disbursements incurred in this matter.

351. Should Dr. Jensen prevail in this matter, the Court should award attorney fees to Dr. Jensen and against Defendants pursuant to an appropriate post-judgment motion for the same.

Count Five
Unconstitutional Conditions
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201, et seq.

352. Plaintiff incorporates the preceding paragraphs by reference.

353. Medical professionals cannot be forced to trade their constitutional rights for the benefit of their government-issued license: “[The government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests -- especially, his interest in freedom of speech.” *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S. Ct. 2694, 2697 (1972).

354. Further, because expression on “public issues has always rested on the highest rung of the hierarchy of First Amendment values,...mandating that [individuals] affirmatively espouse the government's position on a contested public issue where the differences are both real and substantive” runs afoul of the unconstitutional conditions doctrine. *All. for Open Soc'y Int'l, Inc. v. United States Agency for Int'l Dev.*, 651 F.3d 218, 236 (2d Cir. 2011).

355. This is especially true where the government “compels [individuals] to voice the government's viewpoint and to do so as if it were their own.” *Id.* at 237.

356. Dr. Jensen cannot be forced to give up his beliefs or rights in order to keep his medical license.

357. Dr. Jensen cannot be forced to respond, over and over, expending his own time and resources, to illegitimate investigations of his license based on his exercise of constitutional rights.

358. Defendants' repeated illegal investigations of Dr. Jensen create unconstitutional conditions for his retention of his medical license because they force him to remain silent on issues of public concern or else face discipline or punishment by process at the hands of the BMP.

359. Defendants' repeated illegal investigations of Dr. Jensen caused him financial harm, loss of sleep, emotional distress, and harm to his dignity, as alleged herein.

360. The Defendants' actions thus violate the unconstitutional conditions doctrine.

361. Absent injunctive and declaratory relief against the Defendants' application of their investigatory power against Dr. Jensen because of his political speech, Dr. Jensen has been and will continue to be irreparably harmed, so Plaintiff asks for that relief.

362. Plaintiff asks the Court to award nominal, actual, compensatory, general, and punitive damages for the Defendants' intentional and illegal investigations of his political speech.

363. Plaintiff also asks the Court to award Plaintiff reasonable attorney fees under 42 U.S.C. § 1988, and all taxable costs and disbursements, after appropriate motions or applications for the same.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dr. Scott Jensen respectfully requests that the Court enter judgment against Defendants and provide him with the following relief:

- A. A declaratory judgment that the Defendants violated Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution; Article I, sections 2 and 3 of the Minnesota Constitution; and the unconstitutional conditions doctrine;
- B. A declaratory judgment that Minn. Stat. § 147.091, subd. 1(g)(1) & (2) & (k) are facially unconstitutional because they are overbroad and sweep in far more protected speech than their legitimate application;
- C. A declaratory judgment that Minn. Stat. § 147.091, subd. 1(g)(1) & (2) & (k) are also unconstitutional as applied to Dr. Jensen through an investigation under Minn. Stat. § 147.161, subd. 1 and § 214.10 or 214.103.
- D. An award of nominal damages in favor of Plaintiff because of Defendants' violations of Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution; Article I, sections 2 and 3 of the Minnesota Constitution; and the unconstitutional conditions doctrine;
- E. An award of injunctive relief prohibiting Defendants from using Minn. Stat. § 147.091, subd. 1, and any statutes providing investigate power for violations of the same, to investigate speech on matters of public concern made outside of a specific doctor-patient relationship by Plaintiff or any other Minnesota licensee;

- F. An award of actual, general, and compensatory damages in an amount to be proven at trial, including any damages or penalties available at law; for the damages incurred by Plaintiff as alleged herein, including damages to his dignity for the violation of his constitutional rights;
- G. Reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 42 U.S.C. § 1988 and upon proper post-judgment application for the same;
- H. An award of punitive damages in favor of Plaintiff for the intentional deprivation of, or deprivation with callous disregard to, Plaintiff's constitutional rights.
- I. All and any further relief to which Plaintiff may be entitled; and
- J. A trial by jury of all such matters properly tried as such is requested.

Respectfully submitted,

Dated: April 18, 2024

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