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MONTANA DEPARTMENT OF LABOR AND INDUSTRY

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In re	)	
	)	
MARK IBSEN, M.D.,)	)	**Complaint** No. 2024-MED-00808, - 11234,
	)	-10-2, and 2025-MED-00348, Mark Ibsen, MD
	)	

EMERGENCY MOTION
TO CONTINUE SCREENING PANEL
SCHEDULED FOR AUGUST 14, 2026 FOR THIRTY DAYS
AS OTHERWISE DR. IBSEN WILL BE DENIED "DUE PROCESS;"
WE ARE RESPECTFULLY DEMANDING AN OPPORTUNITY
TO RESPOND BEFORE THE SCREENING PANEL ACTS

COMES NOW Respondent Mark Ibsen, M.D. (hereinafter "Respondent" or "Dr. Ibsen"), by undersigned counsel, John P. Flannery, II, Esq.: to move this Screening Panel to continue its Friday Meeting, August 14, 2026, until after Respondent has had an opportunity to review what staff counsel is presenting *ex parte* to the screening panel without any opportunity for Respondent to respond first; in support of this motion, Respondent Ibsen states the following:

I. STATEMENT OF MATERIAL FACTS

1. Dr. Ibsen has the right to confront his accuser.

2. In this case there are four complainants that have been reviewed by Staff Counsel.
3. Staff Counsel is going to advise a screening panel of the Board of Medical Examiners (BOME) to investigate Dr. Ibsen. But without giving Dr. Ibsen a chance to respond. That's dead wrong and unfair even without any reference to the constitutional right of due process.
4. The private question is how does one fairly "screen" a complaint or four complaints if it provides no opportunity for Dr. Ibsen to know the charge and respond before the screening panel acts.
5. The remedy is obvious and required as a matter of constitutional law. Dr. Ibsen must be assured a full and fair opportunity to respond to staff counsel's claims before the screening decision of the panel so that the panel has before it both the staff proposal and Dr. Ibsen's response.

II. WHY THE RUSH TO JUDGMENT?

6. The notice of a screening panel for August 14, 2026 arrived without further explanation as to "why now," after two years had passed.
7. At first, we were given notice of one complaint, then three more.
8. It sounds like the process is outcome determinative and staff don't want anything rocking the boat – defeating the unstated but obvious outcome that they have in mind..
9. Three of the four complaints are so sketchy, they should have been dismissed on their face.

10. This makes it all the more important that we have the Staff Report to the panel so we have notice of what exactly is going on so we can respond and inform the screening panel's discretion what we think is going on.

III. DUE PROCESS

11. This constitutional right of due process arises out of long forgotten bad practices.
12. In the Middle Ages, there was the operative force of *Maleus Maleficarum* by which if you were accused, you were guilty. There was no opportunity to confront your accusers. This hoary cruel Kafkaesque exercise, once begun, left only an opportunity for the "accused" to confess.
13. It was said that "little attention [was] given to the possibility that accusations might be made for impious purposes." Carl Sagan, *Science as a Candle in the Dark* (Ballantine Books 1997).
14. We are at that juncture where due process is critical.
15. The "screening" panel is past any "investigative stage," after two years have passed, while these complaints were pending; now Staff Counsel is talking about a "charging decision," the "findings" of this "investigation," referred to a screening panel; the panel intends to disclose to the licensee their decision but only after the matter has been decided, a *fait accompli*, without any comment or opposition by Dr. Ibsen.
16. In conversations recently had with Staff Counsel, there was some mention of a privilege for Staff Counsel but counsel has no such privilege; and privilege, if any, belongs to the Board.

17. But the Board can hardly cite a privilege to avoid disclosure when the intent of the screening exercise is to make public what the decision was.
18. This *quasi judicial* proceeding is a "critical proceeding" because Dr. Ibsen's practice and reputation are at risk, his "property" right, as a licensee, protected within the meaning of Amendments 5 and 14 of the U. S. Constitution.
19. The Board has stumbled into error in the past, the not recent past, and we must be chary of too casual a review of Dr. Ibsen's "due process" rights.
20. The Fifth Amendment provides that a person "may not be deprived of life, liberty, or property without due process of law."
21. "Due process" means what is fundamentally fair, and this star chamber proceeding, invoked in these complaints are not "fair." *Compare Lujan v. G & G Fire Sprinklers, Inc.*, 532 U.S. 189, 195 (2001)(the inquiry Justice Rehnquist raised was "whether the State has deprived the claimant of a protected property interest, and whether the State's procedures comport with due process").
22. In *Logan v. Zimmerman Brush Co.*, 455 U. S. 422, 430 (1982), the Court stated that "[t]he hallmark of property, that the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except for cause."
23. No BOME Staff nor Counsel can insist their cause is righteous if it shuts out Dr. Ibsen's participation.
24. In *Board of Regents v. Roth*, 408 US 564, 571 (1972), the Supreme Court, by Associate Justice Stewart, recognized that "liberty" and "property" are "broad and majestic terms. They are among the great [constitutional] concepts … purposely left

to gather meaning from experience ...they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged."

25. Justice Stewart stated that "the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money." Id., at 571-572.

26. In an earlier iteration, some 14 years ago, another Board basically ignored and struck the favorable findings of the Hearing Examiner toward Dr. Ibsen.

27. Dr. Ibsen sought relief from that adverse finding in the State Court.

28. The State Court found the Board reviewed the Hearing Examiner's report inappropriately, in violation of due process; the Court reversed the Board's decision to suspend Dr. Ibsen's license to practice.

29. The Court directed that there needed to be a second Hearing Examiner, considered to be "objective, detached and [a] qualified hearing examiner."

30. In response the Board found an examiner deemed competent and qualified to endorse the 1st Examiner's findings of fact, to assess the Experts, and the past conclusions of law. In the end the original favorable finding of the Hearing Examiner was upheld.

31. BOME Staff and Counsel have resurrected some old complaints, dormant for two years. That by itself raises serious questions about the "urgent" timing of the screening panel review.

IV. FREE SPEECH

32. We regret to say that the timing of this proceeding appears calculated to chill Dr. Ibsen's first amendment constitutional right to disagree with this Board on the underlying policies it espouses.

33. There have been complaints lodged against Dr. Ibsen and too often this has occurred after he has made a public address on the plight of chronic pain patients seeking relief.

34. In recent days, Dr. Ibsen met with members of Congress to discuss the abandonment of chronic pain patients. There was some coverage of this effort to lobby the members.

35. Shortly after these appearances on the Hill, first one and then four complaints were added to this panel's docket for screening.

36. Dr. Ibsen has spoken continuously about what he insists is broken in the process and the policy in which he finds himself engulfed.

37. I have not seen what has been forwarded to BOME by interested third parties, many suffering from chronic pain.

38. Staff Counsel said there has been some strong sentiments expressed in anticipation of August 14, 2026.

39. I have no control over how citizens may respond to public proceedings.

40. Montana has rightly created an access point for citizens to be heard.

41. We find with experience the true value of free speech is that it protects robust speech.. That means it can be rough to hear what's said. But it is better to have free speech, than not. The Founders made free speech the first right in the Constitution. Some

persons may show more emotion – and believe they suffer because of a wrong-headed public policy of how to "handle" chronic pain patients. The public's appeals may not be "comfortable" but the access is important and necessary. It is a constitutional right of access to our government to comment.

42. In my more public pursuits, I've seen some strong language when people feel they've been hurt and are suffering.

43. It is part of our task as public servants to find a way to make those who care know and feel that they are heard and are being treated fairly.

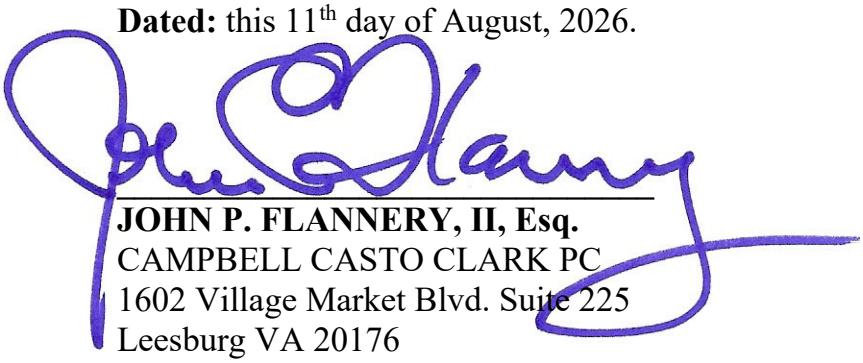
44. In fact and truth, in this case, that's all we are asking for Dr. Ibsen.

V. RELIEF REQUESTED

We respectfully request (1) that staff reports submitted *ex parte* to the screening panel be made available to Dr. Ibsen, (2) that we be permitted to respond to what is presented to the panel, (3) we be granted the time to respond, 30 days, so we may inform the discretion of the screening panel, and (4) such other relief as this panel deems fit and just; lastly, in the past, when we have appeared before the BOME; staff counsel has conveyed our submissions to the panel; we ask that this motion be circulated to members of the panel in this instance.

RESPECTFULLY SUBMITTED,

Dated: this 11th day of August, 2026.



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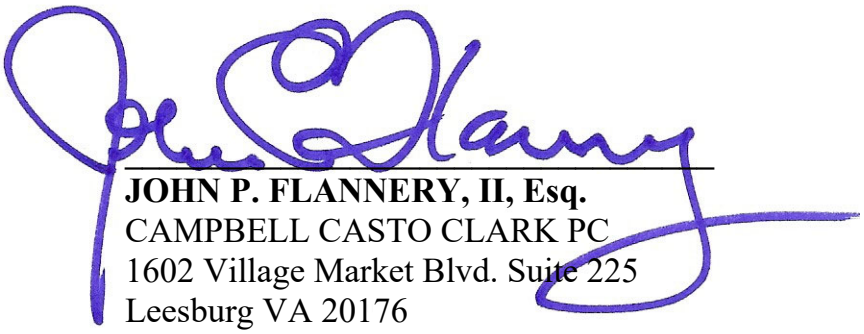
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that today, on August 11, 2026, I have caused the enclosed emergency motion to continue the screening panel for August 14, 2026, and to permit Dr. Ibsen to respond to the material presented to screening panel, forwarded via e-mail to::

Taylor.Dugan@mt.gov , Jennifer.Lane2@mt.gov , Sam.Hunthausen@mt.gov , Jeffrey.Sealey@mt.gov , Peter.Delmoe@mt.gov , DLibsdcomplaints@mt.gov



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