Docket Number: _____

IN THE
SUPREME COURT OF THE UNITED STATES

EDDISON RAMSARAN, M.D.,
Petitioner,

v.

CANDACE LAPIDUS SLOANE, M.D. AND JOSEPH P. CARROZZA, JR., M.D.,
Respondents.

On Petition for Writ of Certiorari to the Massachusetts Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In this case, the Petitioner, Eddison Ramsaran, M.D., alleges that during an investigation into his medical practice, certain non-attorney members of the Massachusetts Board of Registration in Medicine ("BORIM") fabricated evidence to assert sufficient cause existed and persuade other Board members to recommend that BORIM initiate disciplinary proceedings against Dr. Ramsaran.

As decided by this Court in its decision from Buckley v. Fitzsimmons, 509 U.S. 259 (1993):

> A prosecutor may not shield his investigative work with the aegis of absolute immunity merely because, after a suspect is eventually arrested, indicted, and tried, that work may be retrospectively described as 'preparation' for a possible trial. Buckley, 509, U.S., at 276.

Thus, in recognizing that a prosecutor may be entitled to absolute immunity only for conduct directly related to their prosecutorial function, this Court explained:

> There is a difference between the advocate's role in evaluating evidence and interviewing witnesses *as he prepares for trial*, on the one hand, and the detective's role in searching for the clues and corroboration *that might give him probable cause* to recommend that a suspect be arrested, on the other hand. Buckley, 509, U.S., at 274.

Accordingly, the test for determining whether an individual is entitled prosecutorial-based absolute quasi-judicial immunity turns on whether, at the time of the specific conduct, the individual was functioning as an advocate of the state. This advocate "function" can attach *no sooner* than the time evidence gathered during an investigation is evaluated to determine if it provides sufficient cause to initiate adversarial proceedings. When sufficient cause does not exist, purely investigatory work undertaken that continues the search for evidence which *may give rise* to

sufficient cause is not protected by absolute immunity, as "[a] prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested." Buckley, 509 U.S., at 274.

Here it is alleged that non-attorney administrative officials of a state medical licensing board manufactured and planted evidence during a pre-adjudicatory investigation of a physician licensee in order to persuade the board to initiate adjudicatory proceedings against the licensee. Simply, was it an error for the lower courts to hold that non-attorney administrative officials function as prosecutors and are entitled to absolute immunity when manufacturing and planting evidence during a pre-adjudicatory investigation of a licensee?

LIST OF THE PROCEEDINGS DIRECTLY RELATED TO THIS CASE

Pursuant to Supreme Court Rule 14 (b)(iii) (amended 2019), the following is a list of all proceedings in trial and appellate courts that are directly related to the case in this Court:

Court	Docket No.	Case Caption	Date of Judgment
Massachusetts Superior Court, Middlesex County	1881CV03571	*Eddison Ramsaran, M.D. v. Candace Lapidus Sloane, M.D., Chair, Board of Registration in Medicine, and Joseph P. Carrozza, Jr., M.D.*	October 2, 2019 *(Judgment of Dismissal)*
Massachusetts Court of Appeals	2019-P-1745	*Eddison Ramsaran, M.D. v. Candace Lapidus Sloane, M.D., Chair, Board of Registration in Medicine, and Joseph P. Carrozza, Jr., M.D.*	December 31, 2020 *(Dismissal Affirmed)*
Massachusetts Supreme Judicial Court	FAR-28053	*Eddison Ramsaran, M.D. v. Candace Lapidus Sloane, M.D., Chair, Board of Registration in Medicine, and Joseph P. Carrozza, Jr., M.D.*	March 11, 2021 *(Discretionary Review Denied)*

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Eddison Ramsaran, M.D., by and through counsel, respectfully petitions this Honorable Court for a Writ of Certiorari to review the Judgment entered by the Massachusetts Court of Appeals affirming dismissal of the Petitioner's Amended Complaint against the Respondents, Candace Lapidus Sloane, M.D. and Joseph P. Carrozza Jr., M.D., of which the Massachusetts Supreme Judicial Court has denied further appellate review.

CITATIONS TO PRIOR ORDERS

The decision and order dated October 2, 2019 by the Massachusetts Superior Court for Middlesex County (Henry, J.) allowing the Respondents' Motion to Dismiss the Amended Complaint is attached at Appendix ("Pet.App.") 1a. The Massachusetts Court of Appeals affirmed Judgment of dismissal in a Summary Decision dated December 31, 2020, which is attached at Pet.App. 3a. The Massachusetts Supreme Judicial Court denied Dr. Ramsaran's application for further appellate review on March 11, 2021, a copy of which is attached in the Appendix at 9a.

STATEMENT OF THE BASIS FOR JURISDICTION

Dr. Ramsaran's application for further appellate review was denied by the Massachusetts Supreme Judicial Court on March 11, 2021. While Supreme Court Rule 13 permits a petitioner to seek review of a lower state court decision within 90 days after the state's court of last resort denying discretionary review, the Supreme Court Order Regarding Filing Deadlines (dated March 29, 2020) extended the period of time by which this Petition must be filed to 150 days after discretionary review

was denied. Accordingly, Dr. Ramsaran invokes this Court's jurisdiction under 28 U.S.C. § 1257 (a), having timely filed this Petition for a Writ of Certiorari within 150 days of the Massachusetts Supreme Judicial Court's decision to deny further appellate review of this case.

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution, provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section 1 of the 14th Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

I. PARTIES AND BACKGROUND

Dr. Ramsaran is a physician specializing in interventional cardiology and has been licensed to practice medicine in the Commonwealth of Massachusetts since 1992. Pet.App. 32a. The Massachusetts Board of Registration in Medicine ("BORIM") is an administrative agency enacted pursuant to M.G.L. c. 112 and has the authority to regulate, investigate, and discipline physicians licensed in Massachusetts. *See* M.G.L. c. 112, § 5. Respondent Candace Lapidus Sloane, M.D. (hereinafter Sloane), is a physician licensed in Massachusetts and, at all times, served as Chair of BORIM. Pet.App. 3a. Respondent Joseph P. Carrozza, Jr., M.D. (hereinafter Carrozza) is a physician licensed in Massachusetts and, like Dr. Ramsaran, specializes in interventional cardiology. At all relevant times, Carrozza was a physician member of BORIM and served as Chair of its Complaint Committee. Pet.App. 3a.

Pursuant to 243 Code of Massachusetts Regulations ("CMR") 1.03, upon receipt of a complaint or report about a physician licensee's fitness to practice, BORIM must "conduct such preliminary investigation, including a request for an answer from the licensee, as is necessary to allow the Complaint Committee to determine whether a complaint is frivolous or lacking in either merit or factual basis." 243 CMR 1.03 (3)(a). If the preliminary investigator determines that an *anonymous*

complaint is frivolous, no further action is permitted, and the complaint will not be assigned a BORIM investigatory docket number. *See* 243 CMR 103 (3)(a). For complaints or reports *not* submitted anonymously, the complaint must be assigned an investigatory docket number and forwarded to BORIM's Complaint Committee for further investigation. *See* 243 CMR 1.03 (3)(b). If the Complaint Committee "determines that the complaint is frivolous or lacking in either legal merit or factual basis," it will close complaint and terminate the investigation. 243 CMR 1.03 (3)(b). For complaints that are not obviously frivolous, the Complaint Committee "*shall conduct*, or cause to be conducted, any reasonable *inquiry or investigation* it deems necessary to determine the truth and validity of the allegations set forth in the complaint." 243 CMR 1.03 (3)(b). In order to discover evidence during its investigation that may help corroborate or refute a complaint's allegations, "the Complaint Committee may request any person to attend a conference at any time *prior to* the commencement of an adjudicatory proceeding." 243 CMR 1.03 (4).

If, during its investigation, "the Committee determines that there is reason to believe that the acts alleged occurred and constitute a violation for which a licensee may be sanctioned by the Board, the Committee may recommend to the Board that it issue a Statement of Allegations." 243 CMR 1.03 (9). A statement of allegations ("SOA") is essentially an order to show cause. Upon receipt of a recommendation by the Complaint Committee to issue a SOA, BORIM must review the complaint and any evidence gathered by the Committee to determine, by a majority of voting members, whether to issue a SOA or close the investigative docket. If BORIM decides

that the evidence gathered by the Committee supports a finding that sufficient cause exists to issue a SOA, the matter will be assigned an adjudicatory docket number and referred to the Division of Administrative Law Appeals ("DALA") for adjudication before an administrative law magistrate. *See* 243 CMR 1.04. In essence, upon issuing a statement of allegations, BORIM simultaneously initiates an administrative adjudicatory proceeding. Prior to the issuance of a SOA, the administrative mission is purely a pre-adjudicatory fact-finding investigation.

From 2001 to 2010, Dr. Ramsaran was the Director of the Cardiac Catheterization Laboratory ("CCL") at Saint Vincent Hospital in Worcester, MA (hereinafter "SVH"). Pet.App. 32a. In January 2009, the now-defunct Massachusetts Data Analysis Center ("MassDAC") analyzed statistical data of patient mortality rates for percutaneous coronary intervention ("PCI") procedures.[1] Pet.App. 33a. MassDAC provided SVH a report in 2009 identifying SVH as a statistical outlier for high mortality rate between 2007 and 2008. Prompted by MassDAC's reporting, in September 2011, SVH decided to suspend certain privileges granted to Dr. Ramsaran, pending an internal review of a mere 15 PCI procedures performed by Dr. Ramsaran between 2009 and 2011 (approximately 1.4% of his total cases). Pet.App. 12a-15a. SVH notified BORIM of its action via statutory report and BORIM, in response, opened a preliminary investigation into Dr. Ramsaran's medical practice in December 2011, assigning the matter Investigatory Docket No. 11-259. Pet.App. 5a.

[1] MassDAC was a statutorily created agency that collected patient and health data in the Commonwealth for analytic and statistical reports, which operated from 2002 to 2017 before being terminated.

The evidence gathered during the preliminary investigation included the medical records of the 15 patients Dr. Ramsaran treated that were the subject of the 2011 statutory report, as well as an October 15, 2012 report from BORIM's cardiology expert, Paul T. Schwerdt, M.D., based on a review of the same 15 sets of medical records. Pet.App. 30a. BORIM's expert report did not recommend any practice restrictions beyond a brief probation period. *See* Amended Verified Complaint, Mass. Super. Ct. no. 1881CV03571 ("Am.Comp."), ¶ 33.

In December 2012, one year after the start of the preliminary investigation, Dr. Ramsaran agreed to be interviewed by the preliminary investigator, after which he was assured the matter would be resolved quickly. Am.Comp. ¶ 19. At that time, no evidence was obtained which warranted sanctions or initiation of disciplinary proceedings. Am.Comp. ¶ 35. Over the next few years, Dr. Ramsaran continued to provide BORIM's preliminary investigator with practice updates and accomplishments. Dr. Ramsaran strived to rebuild his practice; although he worked directly with world-recognized experts in his specialty, the lingering "open" BORIM investigation prevented him from undertaking many professional opportunities. Am.Comp. ¶ 37. While Dr. Ramsaran consistently demonstrated that he was a competent, skillful practitioner, BORIM never took action on the matter – until September 2014, when it informed Dr. Ramsaran the Complaint Committee, led by Carrozza, was taking over the investigation. Am.Comp. ¶ 29.

Carrozza, as Chair of the Complaint Committee, instigated, directed, and supervised the Committee's investigation into Dr. Ramsaran's practice; he also

received all evidence and updates obtained during the preliminary investigation, which showed no indication of practice concerns for Dr. Ramsaran. Am.Comp. ¶ 29. Although the report which prompted the preliminary investigation was specifically limited to treatment of 15 SVH patients between 2009-2011, Carrozza expanded the Committee's investigation to include matters unrelated to Dr. Ramsaran's practice of medicine. Am.Comp. ¶¶ 39-50. The Complaint Committee's investigation refocused on seeking evidence of misconduct taking place after the SVH action. The expanded investigation, however, still revealed no evidence of misconduct at any time, either before or after the 2011 statutory report. Am.Comp. ¶ 45.

After failing to discover *any* evidence of Dr. Ramsaran's misconduct, the Complaint Committee eventually requested that Dr. Ramsaran appear for a second interview, pursuant to 243 CMR 1.03 (4), on June 18, 2015. Am.Comp. ¶ 39. In accordance with BORIM's regulations, the Committee was acting solely pursuant to its investigative authority and mandate when it initiated the conference. *See* 243 CMR 1.03 (4) (authorizing such conferences only "*prior to* the commencement of an adjudicatory proceeding").

At the Complaint Committee's June 18, 2015 conference, Carrozza, as chair, led a pervasive interrogation of Dr. Ramsaran, specifically inquiring into "political" matters among physicians in their shared specialty, interventional cardiology, and accusing Dr. Ramsaran of harboring "grudges" against a number of their colleagues. Am.Comp. ¶ 39-45. Carrozza ridiculed Dr. Ramsaran's medical opinions concerning peripheral vascular procedures – techniques which were beyond the scope of

Carrozza's grant of privileges and medical practice. Id. As the interview necessarily occurred prior to the initiation of any adjudicatory proceeding, it was not transcribed or recorded. *See* 243 CMR 1.03 (4). Recognizing insufficient cause still existed to recommend that BORIM issue a SOA, the Complaint Committee took no action following the meeting and simply decided to keep its investigation "ongoing."

On August 6, 2015, Dr. Ramsaran informed the Complaint Committee that he had accepted an invitation from the UMass Mitral Clip repair team to train in a novel trans-catheter valvular procedure. Am.Comp. ¶ 27. Following this development, Carrozza convened a meeting of the Complaint Committee that very day to "deliberate" about its investigation, which had still revealed no evidence of practice concerns. Am.Comp., at 2. Recognizing that the evidence did not give rise to sufficient cause to recommend initiating an adjudicatory proceeding against Dr. Ramsaran, Carrozza created false "expert evidence" which had not been gathered during the investigation, but instead that rested on Carrozza's own contrived musings on Dr. Ramsaran competency. Am.Comp., at 3. More specifically, Carrozza instructed the Committee to disregard the legitimate evidence gathered during the four-year investigation, including the expert report of BORIM's only retained expert, which did not support a finding to recommend sanctions or any practice restrictions, and instead accept Carrozza's covert and unsupported conclusions that Dr. Ramsaran was an incompetent, unsafe, and negligent physician. Am.Comp. ¶¶ 72-73. Unlawfully abusing his power as chair of the Complaint Committee, Carrozza decided to assign himself to the roles of both lead investigator and covert cardiology expert –

not only dictating which evidence to consider or disregard by the Committee, but also fabricating the very same covert "expert" evidence which the Committee was instructed to accept as proof of Dr. Ramsaran's misconduct. Am.Comp. ¶ 50.

Violating known parameters of his singular role as an investigator, Carrozza instructed the Committee to accept his "covert expertise" as sufficient evidence of Dr. Ramsaran's misconduct, despite lacking valid basis for the opinion. Am.Comp., at 3. This "covert expertise" was, in turn, relied on by the Complaint Committee, which notified Dr. Ramsaran on August 7, 2015 (the day after learning of the opportunity with UMass) that it would recommend to BORIM a Statement of Allegations issue against him. Id. In the months that followed, BORIM through its attorneys acknowledged the Committee's recommendation to BORIM was based on Carrozza's covert "expert" opinions.[2] Moreover, it was eventually discovered that Sloane, as Chair of BORIM, knew of, acquiesced to, and/or approved Carrozza's plan to use planted covert expert evidence to deceive the Complaint Committee, and later the voting members of BORIM, into unjustly recommending to pursue a course of sanctions against Dr. Ramsaran aimed at revoking his license. Am.Comp. ¶ 77.

II. INITIATION AND ADJUDICATION OF ADMINISTRATIVE ADJUDICATORY PROCEEDINGS AGAINST DR. RAMSARAN

[2] In a letter on November 30, 2015, BORIM's counsel even justified the decision to supplant the legitimate evidence gathered during the investigations with Carrozza's covert and unsupported accusations based on his supposed "personal knowledge of the practice of interventional cardiology."

On December 17, 2015, BORIM convened the first administrative hearing in this matter, after which it voted to issue its SOA against Ramsaran. Pet.App. 13a. Upon issuing the SOA, Dr. Ramsaran's investigative docket was immediately closed and the matter was assigned Adjudicatory Case Docket No. 2015-040. Pet.App. 49a. The matter was then transferred to the Division of Administrative Law Appeals ("DALA") for adjudication on the merits of the evidence, which, as discussed, were fictional.

After a protracted and expensive litigation stage in the adjudicatory process, four days of hearings were held between September 24 and 28, 2018 before DALA's Chief Administrative Magistrate – approximately *seven years* after BORIM opened its investigation. Pet.App. 13a-14a. Only two witnesses testified at the hearings: Dr. Ramsaran; and BORIM's purported expert, Dr. Schwerdt.[3] Dr. Schwerdt offered widely disparate opinions regarding the care provided by Dr. Ramsaran and testified, repeatedly, as to a basic misapprehension and lack of understanding of the concept of "standard of care," a concept critical to BORIM's allegations and burden of proof. Pet.App. 12a.

After BORIM rested, Dr. Ramsaran moved to dismiss the SOA based on the complete lack of expert evidence against him. The Chief Magistrate agreed with Dr. Ramsaran and issued a recommendation on October 22, 2018 to BORIM to dismiss

[3] Dr. Schwerdt testified during the hearings that his grant of practice privileges is personally overseen by Carrozza, only further illustrating the extent of Carrozza's undue influence and involvement in this frivolous disciplinary proceedings.

the SOA. Concerning Dr. Schwerdt, the Magistrate wrote, "I find that he did not know the applicable standard of care and *I give his testimony no weight*." Pet.App. 12a. BORIM's inability to set forth *the requisite* evidence to support its case, after seven years, strongly demonstrates the Committee's investigation, Carrozza's fabricated covert evidence, and the prolonged litigation effort that followed BORIM's decision to initiate adjudicatory proceedings on December 17, 2015, was a baseless charade concocted by Carrozza and Sloane aimed at destroying Dr. Ramsaran's career and livelihood. Pet.App. 48a.

BORIM declined to consider whether to accept or deny the Magistrate's Recommended Decision for three months, until January 10, 2019.[4] Although Sloane admitted knowing that Dr. Ramsaran had initiated the underlying lawsuit against her "through the grapevine," she refused to recuse herself from BORIM's decision on whether to accept DALA's recommended decision or remand the proceeding back for further findings. Am.Comp., at 3-4. Notwithstanding that BORIM's own regulations prohibit disturbing a Magistrate's findings on credibility, such as those in the Recommended Decision, Sloane *personally* signed an Order on January 24, 2019,

[4] Pursuant to 801 CMR 1.01 (11)(c)(2), if BORIM initiates an administrative proceeding and refers it to DALA for adjudication, a DALA magistrate is required to preside at the hearings and ultimately issue a recommended or "tentative" decision at the end of adjudication. Once the DALA magistrate issues a recommended decision, BORIM "may affirm and adopt the tentative decision in whole or in part, and it may recommit the tentative decision to the Presiding Officer for further findings as it may direct." 801 CMR 1.01 (11)(c)(2).

declining to adopt the Recommended Decision and baselessly remanding the matter back to DALA for additional litigation. Pet.App. 22a-23a.

After Sloane inappropriately refused to recuse herself and baselessly remanded the matter, the Supreme Judicial Court ("SJC") granted Dr. Ramsaran a hearing in an action he had previously initiated against BORIM in September 2017 for bad-faith discovery and litigation practices. Pet.App. 25a. Recognizing the devastating impacts of defending himself against BORIM for nearly eight (8) years, on March 22, 2019, the SJC issued an Order stating "[i]n view of the protracted nature of the disciplinary proceedings, the Court *strongly encourages* the BORIM to prioritize its consideration and final determination of the proceedings." Pet.App. 26a.

On April 30, 2019, DALA issued its Response to BORIM's Order of Remand, confirming that Dr. Schwerdt lacked any credibility to support a finding of Dr. Ramsaran's misconduct or negligence in medicine. Specifically, the Chief Magistrate wrote: "[t]o meet its burden of proof, the Petitioner had to produce *reliable* expert medical testimony and, since it failed to do so, I recommended dismissal." Pet.App 29a. The Response further elaborates that "*no evidence* was offered during the hearing that would support a finding that the Respondent engaged in conduct that undermines the public confidence in the integrity of the medical profession." Pet.App. 48a.

On May 30, 2019, after 93 months of expending significant time, money, and resources to defend himself against a baseless, malicious, and bad faith prosecution instigated by manufactured and planted covert expert evidence, BORIM adopted

DALA's Response and formally dismissed the baseless SOA, thereby fully exonerating Dr. Ramsaran.[5] Pet.App. 49a.

III. DR. RAMSARAN'S ALLEGATIONS AND THE DECISIONS OF THE LOWER COURTS CONCERNING TREATMENT OF FEDERAL QUESTION ISSUES

Dr. Ramsaran commenced this case against the Respondents by filing a verified complaint with the Middlesex County Superior Court of Massachusetts on December 14, 2018. On March 11, 2019, Dr. Ramsaran filed his First Amended Verified Complaint that included counts for violations of 42 U.S.C. §1983, tortious interference with advantageous relationships, and malicious prosecution. Pet.App. 3a. Dr. Ramsaran asserted, *inter alia*, improper conduct committed by the Respondents *during the investigative stage* of an administrative inquiry into his

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[5] As demonstrated in this case, even when a physician prevails, the deliberately protracted and oppressive nature of the adjudicatory process employed often results in irreparable and extreme harms to the licensee's reputation and livelihood. BORIM tirelessly pursued discipline against Dr. Ramsaran over the course of ***eight years*** – with all the unlimited strength, resources, attorneys, and funding made available to it as an agency of the Commonwealth of Massachusetts. Armed with such powerful resources, BORIM has earned a reputation for overzealously targeting physicians in the Commonwealth, often by prolonging litigation efforts and draining resources until they are no longer able to afford defense costs. Since these are not criminal matters, the Courts have been unwilling to find due process violations as a result of the protracted nature of the disciplinary proceedings and BORIM's abuse of its own regulations; however, the Courts are cognizant of the devastating harms. Intentional delay and unbearable defense costs often allows BORIM to strongarm physicians into accepting onerous disciplinary sanctions, destroying their livelihood and any chance for due process. *See generally* Kris Olson, *Decisions Show Overreach Pattern by M.D. Licensing Board*, MASSACHUSETTS LAWYERS WEEKLY, (Jul. 30, 2020). .

medical practice, which took place between September 2011 and December 2015, violated his constitutional rights. Am.Comp. ¶ 80. The Respondents' wrongful conduct during the investigatory stage directly resulted in violations of Dr. Ramsaran's constitutional rights and due process rights, as well as various tort damages. Am.Comp., at 13-16.

More specifically, Dr. Ramsaran alleged that between September 2014 and August 2015, Carrozza, as the chair of BORIM's Complaint Committee, overtook and spearheaded a pervasive investigation to find any evidence upon which he could use to justify a recommendation to BORIM that sufficient cause existed to initiate disciplinary proceedings aimed at revoking Dr. Ramsaran's medical license. Am.Comp. ¶ 2-3. Apparently frustrated that he could find no legitimate basis to recommend sanctions and unwilling to allow Dr. Ramsaran to further advance his career, Carrozza fabricated evidence against Dr. Ramsaran during the Complaint Committee's investigation. Id. The covert "expert" evidence consisted of rank accusations of alleged misconduct and incompetence as a physician and was presented to the Committee as proof, veiled in implied credibility as a purported "interventional cardiology expert." Id.

Dr. Ramsaran has maintained the allegation that Sloane, as Chair of BORIM throughout the subject events, knew that Carrozza was presenting covert expert evidence during the investigation for the purpose of supplanting the BORIM retained expert's evidence in order justify a recommendation that BORIM issue a Statement of Allegations. Am.Comp. ¶ 80. Moreover, armed with the knowledge that the

authorized evidence failed to support a finding of sufficient cause, Sloane permitted Carrozza to present his "covert expertise" to the BORIM members on the occasion of a vote on whether to issue the SOA, thereby eventually leading to the initiation of an adjudicatory proceeding on December 17, 2015. Am.Comp. ¶ 77.

Respondents filed the Motion to Dismiss on April 12, 2019, asserting that Dr. Ramsaran's claims were barred by various theories; namely, absolute immunity, claim preclusion, and/or qualified immunity. Pet.App. 1a. In Opposition to the Motion, Dr. Ramsaran stated that absolute immunity was not available for the Respondents because, *at the time* Carrozza fabricated evidence against him, no adjudicatory proceeding had been initiated, no statement of allegations had been issued, BORIM had not determined that sufficient cause existed to pursue sanctions, the Complaint Committee had not recommended that BORIM issue a SOA, and the investigation had not led to the discovery of sufficient evidence of misconduct. Simply, Carrozza was neither acting as an advocate of the state nor serving any prosecutorial function when he fabricated and planted expert evidence against Dr. Ramsaran *during the investigation* between September 2014 and August 2015. *See* Transcript of Hearing on Motion to Dismiss, Mass. Super. Ct. no. 1881CV03571, p. 7, lines 13-15 (Aug.14, 2019) (hereinafter "Motion Transcript").

During the August 14, 2019 trial court motion hearing, the Superior Court Judge specifically inquired about the alleged conduct and the impact of Carrozza's investigatory function:

> And let me ask you, while you're still standing, well, Mr. Kelley, the -- this investigatory -- you talked about this not really being an

> adjudicatory or a prosecutorial function but more along the lines of an investigatory function. Is there some case law that says if it's simply at an investigatory stage that this immunity does not apply?
>
> Motion Transcript, p.11, line 25 – p.12, line 6.

In response, Dr. Ramsaran's counsel explained that absolute immunity only protects conduct that is a judicial function or a prosecutorial function. Investigative work or fabricating evidence during a pre-adjudicatory investigation, before sufficient cause exists to pursue discipline, *is not* protected by absolute immunity. Specifically citing to the controlling authority, Dr. Ramsaran's counsel explained:

> Dr. Carrozza, in the initial stages, *was investigating* as a member of the complaint committee with Attorney DeRensis. They were investigating whether this should go forward. They were *not* adjudicating. They were *not* prosecuting. So if they fall out of those categories, then absolute immunity does not attach. And I'd cite to Buckley v. Fitzsimmons in talking about the distinction in functions or roles.
>
> Motion Transcript, p. 12, lines 13-20.

On October 3, 2019, the lower court entered its Order and Final Judgment allowing the Defendants' Motion to Dismiss. By way of finding, the decision stated, *in its entirety*, that the Motion to Dismiss was:

> ALLOWED as I find that the Defendants are entitled to absolute immunity *in the performance of their roles* at the Board. I am not convinced that the Claims are barred by Claim preclusion or by qualified immunity. Final Judgment shall enter dismissing the Plaintiffs' Complaint.

Pet.App. 1a. The court provided *no* analysis for its finding or guidance for its decision to grant absolute immunity. The Court also failed to discuss how the alleged conduct (fabricating illegitimate and covert expert evidence to use as false proof of misconduct

against a physician) at the time it was taken (during an investigation, before sufficient cause existed to initiate adjudicatory proceedings) was a function of a prosecutor or judge that is protected by absolute immunity. Pet.App. 1a. Rather, the Court simply accepted that BORIM members are absolutely immune from civil liability, merely by virtue of their positions as board members, regardless of the nature or function of the alleged conduct. Dr. Ramsaran filed a timely notice of appeal on October 29, 2019.

Oral arguments were held before the Appeals Court on November 12, 2020. In both brief and argument, Dr. Ramsaran precisely identified the timing and nature of the Appellees' unlawful conduct and argued absolute immunity cannot apply because the Appellees were acting, *at best*, as investigators, not prosecutors, when Carrozza fabricated covert expert evidence to use against him. Indeed, Carrozza's unsubstantiated and planted expert evidence served as the only basis permitting BORIM to escalate the "fact-finding" investigation into an adjudicatory proceeding.

On December 31, 2020, the Court of Appeals issued an Order and Memoranda, pursuant to Rule 23.0, affirming the Judgment of the Superior Court. Pet.App. 3a. The Decision is based on inaccurate application of the timing and nature of Dr. Ramsaran's allegations, which ought to be adopted in favor of Dr. Ramsaran for the purposes of a motion to dismiss. Pet.App. 4a. Most concerning, the Decision *tremendously* expands the protections of absolute immunity far beyond judicial precedent. Pet.App.6a.

The Appeals Court decision woefully miscategorized alleged conduct that occurred *well before* the SOA and adjudicatory proceeding as general conduct "undertaken in a prosecutorial, or quasi-judicial, capacity." Pet.App. 6a. Moreover, despite the alleged conduct occurring prior to August 7, 2015, more than *four months* before BORIM sat to vote on whether the evidence demonstrated sufficient cause for a SOA, the Court concluded the conduct occurred "during board proceedings." Pet.App. 4a. In so deciding, the Court concluded Carrozza acted as a prosecutor and, thus, absolute immunity attached from the moment he directed the investigation in September 2014, despite that BORIM did not determine that sufficient cause existed until December 17, 2015, fifteen (15) months later. Pet.App. 5a. While the Court would "express no opinion about whether anything that Carrozza is alleged to have done would have been wrongful," it nevertheless decided fabrication and planting of expert evidence while conducting a pre-adjudicatory fact-finding investigation was "properly considered part of the exercise of Carrozza's prosecutorial function," and therefore conduct protected by absolute immunity. Pet.App. 6a. Notably, the Appeals Court decision fails to explain how Carrozza could have possibly been functioning as a prosecutor, particularly as he had no formal role in the adversarial proceedings that followed the SOA.

Dr. Ramsaran pursued further appellate review by the Supreme Judicial Court of Massachusetts, following the Appeals Court's misapplication of absolute immunity. Dr. Ramsaran's Application for Further Appellate Review was timely filed on January 21, 2021. The Supreme Judicial Court declined to grant Dr. Ramsaran's

request for review of the Appeals Court decision, by means of its Order dated March 11, 2021. Pet.App. 9a.

Following the Massachusetts Court of last resort's denial of Dr. Ramsaran's application for further appellate review, Dr. Ramsaran now respectfully submits this Petition for Writ of Certiorari. Due to the main question in this case concerning applicability of absolute quasi-judicial immunity as a bar to suit against non-attorney administrative officials for violating a physician's due process rights during an investigation, *prior* to any adjudicatory proceedings, jurisdiction is appropriate for this Honorable Court. This issue has been raised at each stage of the proceedings in this case.

The Decisions entered by the Superior Court and the Massachusetts Appeals Court directly conflict with the well-established holdings in this Court's cases, *see, e.g.*, Buckley v. Fitzsimmons 509 U.S. 259 (1993) and Burns v. Reed, 500 U.S. 478 (1991), and impermissibly expand the *limited* protections available to administrative officials for performing prosecutorial functions, as first identified in Butz v. Economou, 438 U.S. 478 (1977). The decisions create a perilous rule in Massachusetts, contrary to legal precedent, that all administrative officials who act in roles other than prosecutorial or adjudicatory functions are *per se* entitled to absolute immunity for actions taken at any time, merely by virtue of their position. The Decisions in this case effectively eliminate the functional-approach test to determine whether an administrative official's specific conduct, at the time it was taken, is protected by absolute immunity in Massachusetts; justice requires reversal.

REASONS FOR GRANTING WRIT OF CERTIORARI

I. THIS CASE INVOLVES AN IMPORTANT FEDERAL QUESTION WITH RESPECT TO WHETHER ADMINISTRATIVE OFFICIALS OF THE MASSACHUSETTS BOARD OF REGISTRATION IN MEDICINE ARE ENTITLED TO ABSOLUTE IMMUNITY FOR CONSTITUTIONAL VIOLATIONS COMMITTED BY FABRICATING COVERT EXPERT EVIDENCE WHILE INVESTIGATING A PHYSICIAN.

After the enactment of 42 U.S.C. § 1983, courts addressed cases which called into question the implication of governmental immunity for specific types of conduct. *See, e.g.*, Bradley v. Fisher, 80 U.S. 335, 347 (1872); Imbler v. Pachtman, 424 U.S. 409 (1976); Burns v. Reed, 500 U.S. 478 (1991). In all but the most exceptional cases, officials receive a limited standard of "qualified" or good-faith immunity. The Supreme Court has "recognized, however, that some officials perform 'special functions' which, because of their similarity to functions that would have been immune when Congress enacted § 1983, deserve absolute protection from damages liability." Buckley v. Fitzsimmons, 509 U.S. 259, 268-269 (1993), *citing* Butz v. Economou, 438 U.S. 478, 508 (1977).

Recognizing that administration of justice is a vitally important function of government, courts have extended absolute immunity to conduct that is "intimately associated with the judicial process" of legal proceedings. Imbler, 424 U.S. at 430. To this end, the Supreme Court ruled in Bradley v. Fisher that because the function of a judge is so vitally important and the very nature of the position likely to expose judges to suit from aggrieved parties, judges deserve absolute immunity for acts taken within their judicial capacity, in order to preserve integrity of the judiciary. *See* Bradley, 80 U.S. at 349. Officials other than judges have received absolute

immunity when their actions are "intimately associated with the judicial process." For example, the Imbler Court held that prosecutors were entitled to absolute immunity for conduct taken as "advocates for the state." Imbler, 424 U.S. at 431. As with judges, absolute immunity does not shield a prosecutor for all actions, but rather *is limited* to those actions taken as advocates for the state in adversarial proceedings. *See* Burns, 500 U.S. at 478; Buckley, 509 U.S. at 259.

In the administrative context, courts have identified two "quasi-judicial" roles that are closely akin to the judicial functions protected by absolute immunity: adjudicatory functions and prosecutorial functions. *See* Butz v. Economou, 438 U.S. at 513. Thus, an administrative official claiming absolute immunity must establish that the challenged conduct was "functionally comparable" to that of a judge or a prosecutor who would normally be entitled to absolute immunity for taking the same actions, at the time and under the circumstances as alleged. Id., at 513. If the administrative official's conduct fails to satisfy the test warranting the extension of absolute immunity to a judge or a prosecutor in similar situations, the official's claim must also fail. *See* Butz, 438 U.S. at 514.

In all cases, most important to the determination of absolute immunity is application of the functional-approach test to the *specific alleged conduct*, centering on the "the nature of the function performed, not the identity of the actor who performed it." Forrester v. White, 484 U.S. 219, 229 (1988). The analysis does not ask if the official *ever* acts "quasi-judicially," but rather whether, at the time of the conduct, the official was acting "functionally comparable" to a judge or prosecutor.

See Butz, 438 U.S. at 513; and Burns v. Reed, 500 U.S., at 486 ("the official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question.").

In the context of prosecutorial absolute immunity, this Court explained in Buckley that the question "is whether the prosecutors have carried their burden of establishing that they were functioning as 'advocates' *when*" the challenged conduct occurred. Buckley, 509 U.S., at 274 (emphasis added). The Buckley Court found that the defendant prosecutor attorneys were not acting as advocates because, at the time of the challenged conduct (similar to this case, fabricating unreliable expert evidence), probable cause to arrest or initiate charges against the plaintiff did not exist (also similar here). *See* id., at 273. Absent sufficient cause to initiate judicial proceedings, the "mission at that time was entirely investigative in character. A prosecutor neither is, nor should consider himself to be, an advocate before he has probable cause to have anyone arrested." Id., at 274.

As such, this case involves an important federal question concerning the availability of absolute immunity for conduct committed by administrative officials. While there is no dispute that certain government officials are entitled to absolute immunity for actions taken while functioning as a prosecutor or judge, the lower court decisions advance the incorrect position that administrative officials deserve absolute immunity for *all conduct based on position or title*, regardless of the precise function under scrutiny. In doing so, the decisions afford far greater protections to non-attorney administrative officials than ought to be granted.

II. *THE MASSACHUSETTS APPEALS COURT DECIDED AN IMPORTANT FEDERAL QUESTION IN A MANNER WHICH SIGNIFICANTLY CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, FINDING THAT THE RESPONDENTS WERE ENTITLED TO ABSOLUTE IMMUNITY BECAUSE FABRICATING AND PLANTING EXPERT EVIDENCE DURING A PRE-ADJUDICATORY INVESTIGATION IS A FUNCTION OF A PROSECUTOR.*

In the present matter, the Respondents argue that, even if Carrozza planted covert expert evidence in order to justify recommending that BORIM issue a SOA against Dr. Ramsaran, such conduct is shielded from liability. Respondents claim that Carrozza is entitled to absolute immunity because, by fabricating false evidence during his investigation to later serve as the basis for recommending that BORIM initiate adjudicatory proceedings, he was functioning as a prosecutor. Thus, Respondents wish to extend absolute immunity to include any and all activities of administrative officials while conducting investigations or fact-finding missions, in complete conflict with well-established principles and precedent. This unavailing argument disregards this Court's analysis in Buckley, that:

> There is a difference between the advocate's role in evaluating evidence and interviewing witnesses *as he prepares for trial*, on the one hand, and the detective's role in searching for the clues and corroboration that *might give him probable cause to recommend* that a suspect be arrested, on the other hand. Buckley, 509 U.S., at 274.

The critical factor, according to Buckley, is that once the prosecutor *determines* that the evidence gives rise to sufficient cause to initiate charges, they become the state's advocate in preparation of *imminent* adversarial proceedings. Conversely, when a prosecutor or other official is conducting investigative work in order to discover or create evidence that *may give rise* to sufficient cause, the official functions not as an advocate – but as a detective or investigator, and is not protected by

absolute immunity. *See* Buckley, 509 U.S., at 274; and Burns, 500 U.S., at 494-496 (defendant prosecutor was not absolutely immune for legally advising police to obtain confession through hypnosis).

Once determined that the challenged conduct occurred prior to having sufficient cause to initiate legal proceedings, the official's role can only be that of an investigator. Even if the unlawful pre-adjudicatory investigatory conduct eventually leads to the initiation of adjudicatory proceedings, the

> prosecutor *may not shield his investigative work* with the aegis of absolute immunity merely because, after a suspect is eventually arrested, indicted, and tried, that work may be retrospectively described as 'preparation' for a possible trial. Buckley, 509 U.S., at 276.

Accordingly, the Respondents cannot retroactively shield their involvement in fabricating planting covert expert evidence prior to having sufficient cause under the guise of "trial preparation work," merely because adjudicatory proceedings were eventually initiated months later.

The Appeals Court erred in accepting the Respondents' legally defective argument that fabricating and planting evidence during the Complaint Committee's investigation between September 2014 and August 2015 amounted to "evaluating evidence" and other general trial preparation. Notwithstanding the fact that Carrozza is not an attorney and had *no involvement* in the actual prosecution of

adjudicatory proceedings,[6] the ruling affirmatively grants any and all BORIM members unfettered power to engage in investigatory misconduct at any point following BORIM's receipt of a complaint about a physician. Allowing BORIM members to violate the constitutional rights of its licensees without accountability would only promote further abuse and contravene the principles for absolute immunity.

The lower decision also greatly ignores the character of Dr. Ramsaran's particular allegations. While it aptly describes some general conduct that could be seen as a prosecutorial function, such as "making inquiry at a *regulatorily authorized hearing* of the plaintiff himself, [and] obtaining information about the plaintiff from third parties *following the completion* of the investigator's investigation," these acts *are not* what has been alleged in this case, as the challenged conduct occurred before Carrozza could have functioned as an advocate.[7] *See* Buckley, 509 U.S., at 273

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[6] In the Respondents' lower court filings, Carrozza asserts he had no further involvement beyond August 2015, months before BORIM considered whether the evidence gathered during the investigation gave rise to sufficient cause to issue the SOA and initiate the adjudicatory proceeding.

[7] The Appeals Court Decision appears to have also seriously misconstrued the claims in this case, incorrectly stating that Dr. Ramsaran alleges "*an investigation of the plaintiff was undertaken by a board investigator between 2011 and 2014*," and Carrozza's involvement occurred exclusively "*following the completion of the investigator's investigation.*" The entire crux of Dr. Ramsaran's allegations is that Carrozza fabricated illegitimate expert evidence *while leading* the Committee's fact-gathering investigation between September 2014 and August 2015. With respect to the purported "regulatory authorized *hearing*," referenced by the Court, Dr. Ramsaran can only assume the Court was referring to the June 18, 2015

(finding that an official cannot function as an advocate before having sufficient cause to prosecute in an adversarial proceeding).

As such, the decision improperly decided the issue of absolute immunity by asking whether *any part* of Carrozza's position as a BORIM member could ever be seen as a prosecutorial function, instead of distinguishing the *specific conduct* alleged to determine if Carrozza was acting as an advocate of the state at the time of the challenged conduct. Pet.App. 6a. The Appeals Court failed to appropriately ask whether the alleged conduct, fabricating and planting evidence during a pre-adjudicatory investigation and prior to the existence of sufficient cause, constitutes a protected prosecutorial function. Clearly, the answer to that question is no; thus, the decision completely disregards the rulings of this Court. In all cases, it is the function of the conduct in question *at the time* it was taken, not the position of the official, that is essential for absolute immunity. *See* Burns v. Reed, 500 U.S. at 486.

The decision in Burns is of particular guidance here. The defendant prosecutor in Burns engaged in some activity which was clearly prosecutorial in nature, and some conduct which was plainly not. *See* Burns, 500 U.S., at 478. The plaintiff alleged that the defendant prosecutor should not be entitled to absolute immunity for *any* conduct, but this Court reasoned that the plaintiff was only half correct.

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investigatory conference of Dr. Ramsaran, which necessarily occurred "*prior to*" any adjudicatory hearing or proceeding. See 243 CMR 1.03 (4). Accordingly, all of the alleged challenged conduct occurred during this investigation, prior to the recommendation by the Complaint Committee to issue a SOA.

Specifically, this Court ruled that although the defendant prosecutor *was* entitled to absolute immunity for presenting evidence during a probable cause hearing, the same prosecutor *was not* entitled to absolute immunity for advising police that it was acceptable to obtain the plaintiff's confession by means of hypnosis – even though said confession was later used as evidence at the very same probable cause hearing. *See* id., at 478.

Almost identical to the circumstances in Burns and Buckley, while the Respondents may have been entitled to absolute immunity for the act of voting as a member of BORIM to initiate adjudicatory proceedings against Dr. Ramsaran on December 17, 2015, the same cannot be true with respect to the *earlier* fabrication and planting of covert expert evidence while investigating Dr. Ramsaran. *See* Burns, 500 U.S., at 478; Buckley, 509 U.S., at 274 ("When a prosecutor performs the investigative functions normally performed by a detective or police officer, it is 'neither appropriate nor justifiable that, for the same act, immunity should protect the one and not the other'"). In this case, Carrozza was functioning *only* as a detective between the time when he took over the investigation (September 2014) and the time when the Complaint Committee decided to recommend that BORIM issue a Statement of Allegations based on his illegitimate covert expert evidence (August 2015). Merely because he was later involved as a member of BORIM to vote to initiate adjudicatory proceedings in December 2015, Carrozza is not entitled to absolute immunity for his prior wrongful conduct during the pre-adjudicatory fact-finding investigation between September 2014 and August 2015. *See* id.

The fact that the Appeals Court based its decision on a misapplication of the basic and fundamental test to determine absolute immunity establishes the need for further review. While the Court correctly concluded that the "question before us is whether Carrozza was discharging a prosecutorial or adjudicative function when undertaking the allegedly wrongful acts," the Court disregarded the timing, nature, and character of the specific "wrongful acts" alleged by Dr. Ramsaran. Instead, and in direct conflict with the well-established rulings of this Honorable Court, the Decisions in this case advance the inequitable position that if a non-attorney state administrative official sometimes can be seen to function as a prosecutor or a judge, the official is *per se* "entitled to absolute immunity *in the performance of their roles* at the Board," regardless of when the actions took place or the function of the particular challenged conduct. Pet.App. 1a. In deciding that administrative officials are entitled to absolute immunity based on the title of their position, as opposed to the precise function served by the specific challenged conduct, the lower Courts have ignored the fundamental concepts and limitations of absolute immunity set forth in Butz v. Economou, Burns v. Reed, and Buckley v. Fitszimmons.

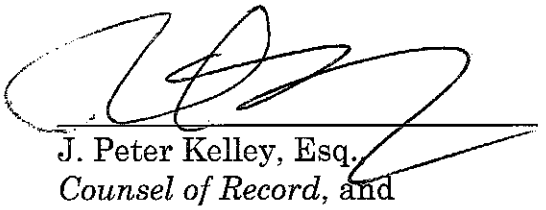
CONCLUSION

In light of the issues of public concern and the devastating impact on interests of justice present in this case, Dr. Ramsaran respectfully requests that this Honorable Court allow this Petition and grant a Writ for Certiorari to further examine and reverse the state court decisions issued in direct conflict with the rulings of this Court. As sound public policy, unelected bureaucrats should not wield such unfettered power

and authority to exert against a class of citizens in the Commonwealth without any accountability. Although Dr. Ramsaran agrees that certain members of BORIM are absolutely immune for conduct taken in a prosecutorial function, justice requires that they enjoy no more immunity than is necessary to protect the integrity of the role in which they were truly functioning, which, in this case, is that of an investigator searching for and fabricating evidence that may give rise to sufficient cause in order to recommend that adjudicatory proceedings be initiated. Absolute immunity is neither required to preserve the integrity of BORIM investigations nor appropriate to protect BORIM members for committing constitutional violations at any and all times.

DATED this 6th day of August, 2021.

Respectfully submitted,
On behalf of the Petitioner,
Eddison Ramsaran, M.D.



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