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**ORDER DENYING MOTION TO VACATE THE
STAY OF BRIEFING AND CONTINUE
APPELLATE PROCEEDINGS, U.S. COURT OF
APPEALS FOR THE FIRST CIRCUIT
(NOVEMBER 22, 2024)**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SALLY PRIESTER,

Plaintiff-Appellant,

v.

PUERTO RICO DEPARTMENT OF HEALTH;
VICTOR RAMOS; COLEGIO DE MÉDICOS
CIRUJANOS DE PUERTO RICO; JOHN DOE;
RICHARD ROE; JOHN SMITH; PETER POE,

Defendants-Appellees,

FREDDIE ROMAN-AVILES;
VERONICA RODRIGUEZ-DE LA CRUZ,

Defendants.

No. 22-1694

ORDER OF COURT

Plaintiff-appellant Dr. Sally Priester has filed a motion seeking, *inter alia*, to vacate the stay of briefing and to continue appellate proceedings. The

motion attaches a certified translation of the Medical Discipline and Licensing Board's Resolution No. 2024-22, dated March 21, 2024, wherein the Board determined, *inter alia*, that Resolution and Order No. 2021-24 containing the cease-and-desist order was rendered moot and dismissed the disciplinary proceedings against Dr. Priester. In light of Resolution No. 2024-22, it now appears that this court lacks jurisdiction to reach the merits of this interlocutory appeal. *See Harris v. Univ. of Mass. Lowell*, 43 F.4th 187, 189, 191-92 (1st Cir. 2022) (noting that Article III of the U.S. Constitution restricts our jurisdiction to live cases or controversies; thus, when the court cannot grant any effectual relief, "we dismiss the appeal without reaching the merits"; explaining that "[u]nless an exception to the [mootness] doctrine applies, to do otherwise would be to render an advisory opinion, which Article III prohibits").

Accordingly, the parties are ordered to show cause, on or before December 6, 2024, why this appeal should not be dismissed for lack of jurisdiction. Alternatively, Dr. Priester may move for voluntarily dismissal of this appeal pursuant to Fed. R. App. P. 42(b).

By the Court:

Anastasia Dubrovsky
Clerk

cc:

Ana L. Toledo Dávila
José Rafael Dávila-Acevedo
Francisco Jose Gonzalez-Magaz
Veronica Ferraiuoli Hornedo
Colegio Médicos-Cirujanos de Puerto Rico

**ORDER SUSPENDING BRIEFING,
U.S. COURT OF APPEALS
FOR THE FIRST CIRCUIT
(JUNE 8, 2023)**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SALLY PRIESTER,

Plaintiff-Appellant,

v.

PUERTO RICO DEPARTMENT OF HEALTH;
VICTOR RAMOS; COLEGIO DE MÉDICOS
CIRUJANOS DE PUERTO RICO; JOHN DOE;
RICHARD ROE; JOHN SMITH; PETER POE,

Defendants-Appellees,

FREDDIE ROMAN-AVILES;
VERONICA RODRIGUEZ-DE LA CRUZ,

Defendants.

No. 22-1694

ORDER OF COURT

Upon consideration of appellee Puerto Rico Department of Health's motion to stay or extend the briefing schedule, appellee Víctor Ramos Otero's motion to join the motion to stay, and appellant Sally Priester's opposi-

tion thereto, appellees' motions are granted. Briefing is hereby stayed pending the court's decision on the motion for summary disposition.

By the Court:

Maria R. Hamilton
Clerk

cc:

José R. Dávila-Acevedo

Colegio de Médicos-Cirujanos de Puerto Rico

Carlos Lugo-Fiol

Veronica Ferraiuoli Hornedo

**OMNIBUS OPINION AND ORDER,
U.S. COURT FOR THE
DISTRICT OF PUERTO RICO
(AUGUST 10, 2022)**

IN THE UNITED STATES COURT
FOR THE DISTRICT OF PUERTO RICO

SALLY PRIESTER,

Plaintiff,

v.

PUERTO RICO DEPARTMENT OF HEALTH
AND VICTOR RAMOS,

Defendants.

Civ. No. 22-1035 (SCC)

Before: SILVIA CARREÑO-COLL,
U.S. District Court Judge

OMNIBUS OPINION AND ORDER

Pending before the Court are motions to dismiss filed by the Puerto Rico Department of Health (“PRDH”), *see* Docket No. 88 and Dr. Victor Ramos (“Dr. Ramos”), *see* Docket No. 91, in addition to a Motion for Preliminary Injunction filed by Dr. Sally Priester (“Dr. Priester”), *see* Docket No. 4. For the reasons set forth below, the Court: (1) GRANTS the PRDH’s Motion to Dismiss; (2) deems as MOOT Dr.

Priester's request for a preliminary injunction; (3) and STAYS the claim against Dr. Ramos.

I. Background

On April 14, 2021, the Puerto Rico Medical Licensing and Disciplinary Board (the "Board"),¹ issued Resolution and Order 2021-04. Docket No. 1 at pg. 26. The same was issued after the Board investigated certain comments made by Dr. Priester during the month of November 2020, regarding the Government of Puerto Rico's response to the Covid-19 pandemic. In the Resolution, the Board informed Dr. Priester that it would be filing a Formal Complaint against her because her comments violated canons 29, 31, 32, 33 and 38 of the Code of Ethics of the Medical Profession (the "Code of Ethics"). Further, because the evidence identified during the investigative phase "supports the likelihood of Unprofessional Conduct," and considering the danger that straying from guidelines necessary to address the Covid-19 pandemic presented, the Board issued a cease-and-desist order prohibiting Dr. Priester from speaking out against the efforts of the Government of Puerto Rico and other private entities to address the Covid-19 pandemic without any scientific basis to do so.

Dr. Priester has filed this suit against the PRDH and Dr. Ramos pursuant to 42 U.S.C. § 1983. *See* Docket No. 84.² Specifically, she seeks injunctive relief

¹ The Board is attached to the PRDH. *See* P.R. LAWS ANN. tit. 20, § 132.

² Throughout this Opinion and Order, the Court will refer to the Amended Complaint at Docket No. 84 since that is the operative complaint in this case. The original complaint can be found at

against the PRDH so that it does not enforce the cease-and-desist order and does not impose any disciplinary measures or monetary sanctions for her expressions regarding the handling of the Covid-19 pandemic by the Government of Puerto Rico or private entities. She also seeks declaratory relief for the cease-and-desist order to be declared invalid and monetary damages against Dr. Ramos, in his individual capacity, because he purportedly engaged in a conspiracy that resulted in the deprivation of her First Amendment rights.

II. PRDH's Motion to Dismiss

The PRDH has moved for dismissal on three fronts. First, it argues that the Court should abstain from entertaining Dr. Priester's claims under *Younger v. Harris*, 401 U.S. 37 (1971). Second, it contends that *res judicata* bars Dr. Priester's claims in view of certain judgments issued by the Puerto Rico state courts that pertain to the administrative proceedings launched by the Board. Lastly, it argues that the *Rooker-Feldman* doctrine strips this Court from its subject-matter jurisdiction and therefore precludes it from hearing this case. The Court begins its analysis by considering whether the *Younger* doctrine is at play here.

a. *Younger* Abstention

The *Younger* doctrine “cautions that federal courts should generally refrain from enjoining pending state court proceedings.” *Marshall v. Bristol Sup. Ct.*, 753 F.3d 10, 17 (1st Cir. 2014). The First Circuit has noted that, “[l]ike exhaustion, ‘*Younger* is not a juris-

dictional bar based on Article III requirements, but instead a prudential limitation on the court's exercise of jurisdiction grounded in equitable considerations of comity.” *Id.* (quoting *Spargo v. N.Y. State Comm’n on Judicial Conduct*, 351 F.3d 65, 74 (2d Cir. 2003)); see also *Mass. Delivery Ass’n v. Coakley*, 671 F.3d 33, 40 (1st Cir. 2012) (explaining that “*Younger* rests upon basic notions of federalism and comity, and also on a related desire to prevent unnecessary duplication of legal proceedings.”). To determine whether abstention under *Younger* is warranted, the First Circuit applies a three-part test. First, the Court must determine whether the administrative proceeding at issue here triggers *Younger*. This is so because the Supreme Court has “held that only three types of state proceedings trigger *Younger* abstention: (i) criminal prosecutions, (ii) ‘civil proceedings that are akin to criminal prosecutions,’ and (iii) proceedings that ‘implicate a State’s interest in enforcing the orders and judgments of its courts.’” *Sirva Relocation, LLC v. Richie*, 794 F.3d 185, 192 (1st Cir. 2015) (quoting *Sprint Commc’ns., Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013)).

Second, the Court must consider whether the relief requested by the movant—Dr. Priester, in this case—“would interfere (1) with an ongoing state judicial proceeding; (2) that implicates an important state interest; and (3) that provides an adequate opportunity for the federal plaintiff to advance [her] federal constitutional challenge.” *Rossi v. Gemma*, 489 F.3d 26, 34-35 (1st Cir. 2007). These three factors stem from the Supreme Court’s decision in *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982), and are referred to as the *Middlesex* factors.

Third, the Court must examine whether any of the exceptions to *Younger* apply.

As far as the first part of the test is concerned, the *Younger* doctrine has been extended to “coercive civil cases involving the state and comparable state administrative proceedings that are quasi-judicial in character and implicate important state interests.” *Maymó-Meléndez v. Álvarez-Ramírez*, 364 F.3d 27, 31 (1st Cir. 2004). Here, Dr. Priester does not dispute that the *Younger* doctrine applies to administrative proceedings such as the one being carried out by the Board.³ She does, however, reject the PRDH’s assertion that the *Middlesex* factors are satisfied in this case. The Court will therefore consider each factor in turn. Then, it will analyze whether any of the exceptions to *Younger* apply.

i. Ongoing Proceedings

According to Dr. Priester, because the cease-and-desist order went into effect once she received it, that order is final and complete. To that end, she reasons that there are no ongoing administrative proceedings before the Board, as far as the cease-and-desist order is concerned and even if she were to seek review of

³ Further, the Court notes that the administrative proceedings scheme before the Board mirror those in *Sirva Relocation, LLC v. Richie*, 794 F.3d 185, 192 (1st Cir. 2015), where the First Circuit found administrative proceedings to fall under the *Younger* “taxonomy.” There, the administrative proceedings were deemed to be “ongoing” and “judicial in nature” since the state entity “completed an investigation, issued a formal complaint, conducted a pre-hearing conference, and scheduled an adjudicative hearing.” *Id.* at 196. The administrative proceedings outlined in the Board’s Regulation 8861 (the “Regulation”) track this scheme.

what she has deemed a final order, those proceedings would be remedial and not coercive. Therefore, she contends, *Younger* abstention is inapplicable. She relies on the First Circuit's decision in *Kercado-Meléndez v. Aponte-Roque*, 829 F.2d 255 (1st Cir. 1987), in support of this proposition. But as the Court's discussion will show, *Kercado-Meléndez* can be distinguished from the facts presented in the instant case.

Chapter 10 of the “General Regulation of the Board,” Regulation No. 8861 of November 30, 2016 (the “Regulation”) lays out the administrative proceedings that can be initiated by the Board in view of any alleged violation to the Board's enabling act, to wit, Law No. 139 of August 1, 2008, as amended, *see* P.R. LAWS ANN. tit. 20, § 131 *et seq.* (“Law 139”), or the Regulation. According to the provisions found in Chapter 10, the Board's administrative proceedings may entail two phases.⁴ The first phase is the Investigative Phase. *See* Articles 10.7–10.9 of the Regulation. Upon the conclusion of that phase, the Board issues an Initial Determination whereby it sets the procedural course of the proceedings, imposes any necessary provisional remedies and/or may state that it will be filing a Formal Complaint against the doctor that is facing the administrative proceeding. *See* Article 10.10 of the Regulation. If a Formal Complaint is filed, the second phase begins and that phase entails a Formal Hearing.⁵ *See* Article 10.11 of the

⁴ The Regulation provides for the possibility that the Investigative Phase need not take place. *See* Article 10.10 of the Regulation. But because one did take place in the administrative proceedings at issue here, the Court has acknowledged that process.

⁵ The Regulation states that an Examining Officer may preside over the Formal Hearing and render a report with determinations

Regulation. Upon the conclusion of the Formal Hearing, the Board renders a final determination. *See* Article 10.12 of the Regulation.

Having generally recapitulated the Board's administrative proceedings scheme, given the procedural juncture during which the cease-and-desist order was issued, it cannot be said that the same was a final order. The administrative proceeding delineated in the Regulation is subject to the Puerto Rico Uniform Administrative Procedure Act, Law No. 38 of June 30, 2017, P.R. LAWS ANN. tit 3, § 9601 *et seq.* ("LPAU" for its Spanish acronym). The Puerto Rico Supreme Court has "repeatedly held that [pursuant to the LPAU, final orders and resolutions] 'refer to the decisions that put an end to the case before the agency and that have substantial effects on the parties.'" *P.R. Tel. Co. v. San Juan Cable, LLC*, 179 D.P.R. 177 (P.R. 2010) (citations omitted). And it is only the orders and resolutions "that put an end to an administrative proceeding [that] may be judicially reviewed." *Id.* This follows that because here the cease-and-desist order did not put an end to the administrative proceedings, the same is not a final order under the LPAU's statutory scheme and judicial review of that order is not available to Dr. Priester at this time.

As noted above, the cease-and-desist order was issued jointly with the Board's Resolution stating that it would be filing a Formal Complaint in view of Dr. Priester's alleged violations to the Code of Ethics.

of fact, conclusions of law and any other recommendations. If an Examining Officer is designated, the Regulation gives that individual ample powers when presiding over the Formal Hearing. *See* Article 10.11 of the Regulation, providing a non-exhaustive list of the Examining Officer's powers.

Docket No. 1 at pgs. 26-31. The issuance of the cease-and-desist order was predicated on the Board's understanding "that there is evidence that supports the likelihood of Unprofessional Conduct." Docket No. 1 at pg. 28. Moreover, it states that "it will remain in force until otherwise determined by the Board." *See* Docket No. 1 at pg. 29. This leads the Court to hold that the cease-and-desist order was issued as a provisional remedy—something that the Regulation allows the Board to implement—and not a final order which could be eligible for judicial review by the Puerto Rico Court of Appeals, should Dr. Priester have chosen to avail herself of that remedy.⁶ And this is precisely one of the elements that distinguishes the instant case from the decision in *Kercado-Meléndez*. The termination order in *Kercado-Meléndez* could have been a candidate for judicial review, should the plaintiff in that case have chosen to avail herself of that remedy. The plaintiff in *Kercado-Meléndez*, opted to forego that option and instead filed suit in federal court.

Furthermore, because the cease-and-desist order is a provisional remedy, that is very much a part of the ongoing administrative proceedings, the Court can apply the principles regarding ongoing orders in civil cases and the role that they play as part of the "fundamental workings of a state's judicial system," *see Rio Grande Cmty. Health Ctr. Inc. v. Rullán*, 397 F.3d 56, 69 (1st Cir. 2005). For here, the Regulation explicitly provides that as part of the Initial Determination, the Board may issue provisional remedies,

⁶ Whether the cease-and-desist order becomes a final order once the Board issues its Final Determination would be a separate issue that is not currently before this Court's consideration.

and nothing in the Regulation or Law 139 precludes the use of a cease-and-desist order as one of the tools in the Board's arsenal to provisionally safeguard the ongoing administrative proceedings and ensure compliance with the Code of Ethics.⁷ *See, e.g., Juidice v. Vail*, 430 U.S. 327, 335 (1977) (discussing how a state issued contempt order "vindicates the regular operation of its judicial system[.]"). This logic follows that the ongoing cease-and-desist order serves as a provisional mechanism to maintain the *status quo* and to prevent violations to the Code of Ethics until the Board renders a final determination regarding Dr. Priester's purported unprofessional conduct in contravention of the abovementioned canons.

In view of the ongoing nature of the cease-and-desist order, if the Court were to enjoin the enforcement of the same, it would interfere with the ongoing administrative proceeding before the Board. Interference with an ongoing proceeding is a threshold issue when discussing the applicability of *Younger* abstention. *See Rossi*, 489 F.3d at 35, 37. And the First Circuit has stated that, "[i]nterference is . . . usually expressed as a proceeding that either enjoins the state proceeding or has the 'practical effect' of doing so." *Rio Grande Cmty. Health Ctr. Inc.*, 397 F.3d at 70. If the Court

⁷ In her Surreply, Dr. Priester states that Law 139 limits the Board's ability to issue cease-and-desist orders only to when a violation of that law has occurred. *See* Docket No. 105 at pg. 4. However, Dr. Priester overlooks the fact that Law 139 is to be read in tandem with the Regulation. And as discussed, the Regulation states that as part of its Initial Determinations, the Board may issue provisional remedies or any other determinations it deems appropriate and that the Board is tasked with enforcing the Code of Ethics. *See* Article 10.10 of the Regulation and P.R. LAWS ANN. tit. 20, § 132e(aa).

were to meddle with the cease-and-desist order, such action would have the “practical effect” of interfering with the ongoing administrative proceedings started by the Board against Dr. Priester.

Further, “[t]o satisfy the [ongoing proceedings prong] in the context of a state administrative proceeding, the proceeding ‘must be coercive and in most-cases, state-initiated, in order to warrant abstention.’” *Casiano-Montañez v. State Ins. Fund Corp.*, 707 F.3d 124, 128 (1st Cir. 2013) (quoting *Guillemard-Ginorio v. Contreras-Gómez*, 585 F.3d 508, 522 (1st Cir. 2009)). The Court finds that this requirement is met since the disciplinary administrative proceedings were started by the Board and they are in fact coercive in nature.

In view of this analysis, the Court determines that the cease-and-desist order is not a final order and is part of the Board’s ongoing disciplinary administrative proceedings. The first *Middlesex* factor is met here.

ii. Important State Interest

Law 139 states that the Board is authorized to amend, reject or approve the Code of Ethics. P.R. LAWS ANN. tit. 20, § 132a(j); *see, also id.* § 132b (stating that the Board will have 180 days to develop and approve the Code of Ethics). By the same token, it is called upon to apply the Code of Ethics. *Id.* at § 132e(aa). Further, the Board may investigate and subsequently discipline any licensed doctor who has incurred in “non-professional conduct.” *Id.* at §§ 135b(e) and 134(e)(14). Law 139 defines “non-professional conduct” as, *inter alia*, violating the laws and regulations that were approved by the Board by virtue of Law 139. *Id.* at § 134(f). More fundamentally, a complete reading of Law 139 confirms that it is intended to regulate and

ensure that all licensed doctors are competent in both the technical aspect required to practice medicine and the ethical norms that govern the medical profession.

As described above, Law 139 and the Regulation vest the Board with the authority to, as part of its regulatory powers, discipline licensed doctors who have committed ethical violations. Because the cease-and-desist order is ongoing and directly tied to the Board's administrative inquiry as to whether one of its licensed doctors, to wit, Dr. Priester violated the Code of Ethics, the Court finds that whether a licensed doctor complied with his or her ethical duties, and any provisional remedy that may have been implemented to prevent violations, constitutes an important state interest.

iii.Opportunity to Advance Federal Constitutional Challenge

The question that the Court must answer here is whether plaintiff has or has had “an opportunity to present [her] federal claims,” in the ongoing administrative proceedings, for “no more is required” to satisfy this third prong. *See Juidice*, 430 U.S. at 337. In *Sirva Relocation, LLC*, 794 F.3d at 196, the First Circuit stated that this third prong “is generally deemed satisfied as long as no state procedural rule bars the assertion of a federal defense and the state affords a fair opportunity to raise that defense.” But while it stated that extreme agency delay could justify federal-court intervention, it added, however, that “a federal plaintiff’s failure to pursue potentially available state judicial remedies undermines that plaintiff’s ability to demonstrate that it had no meaningful opportunity to asserts its federal defense.” *Id.* Here,

Dr. Priester has argued that the Board has dragged its feet when it comes to adjudicating her case. *See* Docket No. 105. But she has not informed the Court, and the Court is not aware of, any attempts by her to question the validity of, modify or terminate, the ongoing cease-and-desist order within the ongoing administrative proceedings, or any prohibition that would preclude her from doing so. As such, the Court finds that the third and final *Middlesex* is satisfied.

iv. Exceptions to the *Younger* doctrine

Dr. Priester contends that, even if the *Middlesex* factors are met, because the cease-and-desist order and the administrative disciplinary proceedings launched by the Board were brought in bad faith by a biased Board, that should override the applicability of the abstention principles outlined in *Younger* to this case. *See* Docket No. 92 at pgs. 9-13 and Docket No. 105.

Indeed, even after all three *Middlesex* factors are checked off, there are a host of exceptions that render abstention under *Younger* inapplicable. *See Esso Standard Oil Co. v. López-Freytes*, 522 F.3d 136, 143 (1st Cir. 2008) (“*Esso II*”). Such is the case when (1) a state proceeding is launched with the intent to “harass” and in “bad faith,” (2) the *Gibson*⁸ exception is invoked to show extreme bias in the state proceedings, or (3) a statute is blatantly unconstitutional. *Sirva Relocation, LLC*, 794 F.3d at 192. The First Circuit has noted that “the common thread that links the various *Younger* exceptions is that, in particular situations, closing the door of federal court to a federal question will result

⁸ Derived from *Gibson v. Berryhill*, 411 U.S. 564 (1973).

in irreparable harm.” *Id.* at 200. But here, the Court is not persuaded by Dr. Priester’s argument that her case falls within one of these exceptions.

Regarding Dr. Priester’s claims that the administrative proceedings were initiated in bad faith to harass her, the Court begins by noting that administrative proceedings were launched by the Board in view of what it deems to be purported violations to the Code of Ethics. There is nothing in the Regulation or Law 139 that precludes the Board from doing so. As fully discussed above, the cease-and-desist order here is a provisional remedy that can be employed by the Board and was issued bearing in mind the alleged violations to the Code of Ethics. If anything, the practical effect of contesting the ongoing cease-and-desist order, and the ongoing administrative proceedings for that matter, *see* Docket No. 92 at pg. 9, is that Dr. Priester is challenging the reach and scope of the Code of Ethics. Interestingly, though, neither the Amended Complaint nor her filings raise specific challenges against the reach and scope of the Code of Ethics, which purported violations prompted the Board to initiate the ongoing administrative proceedings and issue the cease-and-desist order.

Dr. Priester has also alleged that the administrative proceedings were not properly brought against her because Dr. Ramos did not comply with the Puerto Rico Medical Physicians and Surgeons Association’s (“Association”) procedure to refer her case to the Board. However, a partial judgment from the Puerto Rico Court of First Instance and a judgment from the Puerto Rico Court of Appeals affirming that partial judgment, state that the Board was within its right to begin the disciplinary administrative proceedings—

which are still ongoing—that the Board could have begun the investigation into Dr. Priester’s alleged ethical misconduct *sua sponte*, and, in any event, Dr. Priester’s constitutional challenges regarding how the process began could be raised before the Board.⁹ In short, the mere fact that the Board initiated the disciplinary administrative proceedings against her, again, when it was well within its authority to do so, is not enough to show that it did so in bad faith with the intent to harass her.

⁹ The Partial Judgment entered by the Puerto Rico Court of First Instance states that “regarding the validity of Dr. Ramos’s referral and the ongoing administrative process, we believe that these can be resolved in the very proceedings before the [Board]. That is, Dr. Priester has a forum at her disposal where she can raise the claims or defenses that are available to her and obtain any remedies that may be legally in order.” Docket No. 46-2 at pg. 14. It also states that “even if it were determined that [Dr. Ramos’s referral] did not meet all the formalities that arise from the [Puerto Rico Medical Physicians and Surgeons Association’s] organic act to be formally considered a referral from the College and even if it were determined that the College does not even have legal personality on the grounds set forth [by] the plaintiff, it is unquestionable that the [Board] has jurisdiction to begin an administrative investigation into matters related to the medical profession and the protection of health in Puerto Rico.” *Id.* The Puerto Rico Court of Appeals affirmed this Partial Judgment and added that “it arises from the facts that it was [Dr. Ramos] who sent a letter to the Board so that they would ‘exercise *motu proprio* their power and duty to investigate and take the disciplinary actions that were warranted against the physicians who attempted against the public health by inciting the people to become infected with COVID-19.’” Docket No. 46-4 at pg. 15. It added that “the hearings before the Board have not been held and, in that sense, the appellant has an adequate remedy at law for said forum to resolve her claims appropriately.” *Id.* at pg. 16.

She also invokes the *Gibson* bias exception to *Younger* to argue that there can be no guarantees that the Board will be an impartial adjudicator because its members are biased. The First Circuit discussed the *Gibson* bias exception at length in both *Esso Standard Oil Co. v. Cotto*, 389 F.3d 212 (1st Cir. 2004) (“*Esso I*”), and *Esso II*. However, here, the Amended Complaint does not advance any allegations to the effect that the Board, the Investigative Officer or the Examining Officer, have a financial interest in the ongoing administrative proceedings, such that a showing of structural bias would be confirmed. Further, as far as the alleged expressions made by various Board members when deciding to issue the cease-and-desist order are concerned, the Court acknowledges that at first glance the statements attributed to certain Board members regarding Dr. Priestester’s First Amendment rights that were included in the Amended Complaint may be concerning. But ultimately, the ongoing cease-and-desist order was framed in such a way that it would only limit her speech to prevent Code of Ethics violations—not bar it altogether. The cease-and-desist order still allows her to talk about the ongoing Covid-19 pandemic. Having considered the allegations described in the Amended Complaint regarding the Board’s purported bias, the Court does not find that they rise to the type of bias described in the *Esso* cases such that the *Gibson* bias exception would apply.

In this vein, it is also worth noting that the allegations of bias made throughout the Amended Complaint do not mention how the second phase of the proceedings, which is currently underway, has been purportedly marred by any bias. This is important to highlight because this stage of the proceedings provides for

the appointment of an Examining Officer. *See* Article 10.11 of the Regulation. That Examining Officer was not in the mix during the first phase of the proceedings. And the Examining Officer may, *inter alia*, preside over the Formal Hearing, review the evidence, and prepare a Final Report and Draft Final Resolution with conclusions of law and determinations of fact. *Id.* And as previously discussed, because the Regulation must comply with the LPAU, the Formal Hearing guarantees the following: (a) “the right to timely notice of the charges or complaints or claims against one of the parties,” (b) “the right to introduce evidence,” (c) “the right to an impartial adjudication,” and (d) “the right to have the decision based on the record of the case.” P.R. LAWS ANN. tit. 3, § 2151.¹⁰ Moreover, pursuant to the LPAU, the Formal Hearing will be taped or steno-typed. *Id.* at § 2163.¹¹ The parties will also be provided “the necessary time for a complete statement of all the facts and questions in dispute, the opportunity to answer, introduce evidence and argue, to cross-examine, and submit refuting evidence, except as it may be restricted or limited by the stipulations in the pre-hearing conference.” *Id.*¹² The Court agrees that because Dr. Priester has not identified any type of bias or intent to harass in the second phase

¹⁰ The Court notes that, P.R. LAWS ANN. tit. 3, § 2151 was repealed by Law No. 38 of June 30, 2017, and replaced by P.R. LAWS ANN. tit. 3, § 9641. The Court, however, has cited to the section previously in place since there is no English translation of the new section. Further, the Court notes that there are no substantive differences between § 2151 and § 9641.

¹¹ Tracks the contents of P.R. LAWS ANN. tit. 3, § 9653.

¹² *Id.*

of the ongoing administrative proceedings and she will be afforded numerous procedural safeguards there, the Board is capable of remaining impartial and moving forward with the administrative proceedings.

Lastly, Dr. Priester argues that the cease-and-desist order has resulted in the loss of her First Amendment rights and that such loss constitutes an irreparable harm that has had a significant “chilling effect,” for she has been unable to appear on various television and radio shows in view of the cease-and-desist order. But as the First Circuit has recognized, “[t]he *Younger* Court declared that “a ‘chilling effect,’ even in the area of First Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting state action.” *Brooks v. N.H. Sup. Ct.*, 80 F.3d 633, 641 (1st Cir. 1996) (quoting *Younger*, 401 U.S. at 51). The Court acknowledges Dr. Priester’s reliance on the Supreme Court’s decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020), regarding the implications of the loss of First Amendment rights. The Court does not turn a blind eye to the importance of those rights. However, that Supreme Court decision was not made under the *Younger* rubric. Moreover, it is “only when it is crystal clear that the state tribunal either lacks the authority to proceed or can provide no meaningful relief can a party hope to demonstrate the degree of irreparable harm needed to justify federal-court intervention.” *Sirva Relocation, LLC*, 794 F.3d at 200. Here, Dr. Priester has not made such a showing. Accordingly, the Court will abstain under *Younger* and DISMISS WITHOUT PREJUDICE the claims against the PRDH. The Court need not consider the PRDH’s other grounds for dismissal.

III. Dr. Ramos' Motion to Dismiss

Dr. Ramos has moved for dismissal on the grounds that Dr. Priester's claim against him is barred by *res judicata* and because she has failed to set forth a plausible § 1983 conspiracy claim for damages. Dr. Priester, in turn, alleges that Dr. Ramos and his co-conspirators entered into a conspiracy with the end goal of having the Board issue the cease-and-desist order and begin formal disciplinary proceedings against her. She adds that the issuance of the cease-and-desist order resulted in the deprivation of her constitutional right to free speech.

Although Dr. Ramos did not move for dismissal based on *Younger*, the Court finds that abstention under *Younger* is also warranted here. Currently pending before the Board is a motion to dismiss which raises various constitution challenges regarding the ongoing administrative proceedings.¹³ Moreover, as the Court already pointed out, the cease-and-desist order is not a final order, is still ongoing, and Dr. Priester has not shown that she is precluded from challenging the validity of the same in the administrative proceedings before the Board. Here, Dr. Priester's § 1983 damages claim directly hinges on the validity of the ongoing state proceedings and the ongoing cease-and-desist order. If the Court were to entertain this claim at this procedural juncture, such action could entail "a ruling in support of an award of money damages [that] 'would embarrass, and could even intrude into, the state proceedings.'" *Bettencourt*

¹³ See Docket No. 46-6. In her Surreply, Dr. Priester confirmed that this motion was still pending adjudication by the Board. See Docket No. 105 at pg. 9 n. 5.

v. Bd. of Registration in Med. of Com. of Mass., 904 F.2d 772, 777 (1st Cir. 1990) (quoting *Guerro v. Mulhearn*, 498 F.2d 1249, 1253 (1st Cir. 1974)).

However, this is not the end of the road for Dr. Priester, for “[w]hen a court orders abstention on a damages claim, it ordinarily may only stay the action, rather than dismiss the action in its entirety.” *Rossi*, 489 F.3d at 38 (1st Cir. 2007). Accordingly, the Court will STAY Dr. Priester’s claim for money damages pending the resolution of the ongoing administrative proceedings before the Board. Moreover, Dr. Priester is ORDERED to file a status report once the administrative proceedings before the Board conclude.

IV. Conclusion

In view of the above, the claims against the PRDH are hereby DISMISSED WITHOUT PREJUDICE, therefore rendering Dr. Priester’s Motion for Preliminary Injunction as MOOT. Further, the claim against Dr. Ramos is STAYED and Dr. Priester is ORDERED to file a status report once the administrative proceedings before the Board conclude.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 10th day of August 2022.

/s/ Silvia Carreño-Coll
U.S. District Court Judge

**APPELLANT MOTION REQUESTING
PROCEDURAL ORDER TO VACATE
STAY OF PROCEEDINGS AND
CONTINUATION OF THE CASE
(OCTOBER 21, 2024)**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SALLY PRIESTER,

Plaintiff-Appellant,

v.

PUERTO RICO DEPARTMENT OF HEALTH;
VICTOR RAMOS; COLEGIO DE MÉDICOS
CIRUJANOS DE PUERTO RICO; JOHN DOE;
RICHARD ROE; JOHN SMITH; PETER POE,

Defendants-Appellees,

FREDDIE ROMAN-AVILES;
VERONICA RODRIGUEZ-DE LA CRUZ,

Defendants.

No. 22-1694

**MOTION REQUESTING PROCEDURAL
ORDER TO VACATE STAY OF PROCEEDINGS
AND CONTINUATION OF THE CASE**

Dated: October 21, 2024

Ana L. Toledo Davila
Court of Appeals Bar No.: 65679
5324 Boreas Drive
Alvin, TX 77511
Tel. 832-247-3046
ana@anatoledo.com

TO THE HONORABLE COURT:

Comes now Plaintiff-Appellant Dr. Sally Priester (Dr. Priester), through the undersigned counsel, and respectfully states and requests:

In the midst of the COVID-19 turmoil, no medical licensing board in the nation has curtailed a physician's constitutional rights as PRDH did to Dr. Priester. The agency started an investigative process devoid of any ethics complaint from a patient. PRDH adjudicated Appellee Ramos' (Ramos) non-patient complaint among its member doctors that admitted their bias and unwillingness to respect Dr. Priester's First Amendment or due process rights.

In this context, Dr. Priester expressed in her opening brief at page 12 that:

Specifically, a member of the Licensing Board said that "because Dr. Priester is a licensed physician, her freedom of speech is irrelevant, and therefore, if at any point she intends to question the establishment publicly, she

must submit proof to partake on such challenge.” Another member pointed out that Dr. Priester did not offer expert testimony to rebut the experts who declared on behalf the Association, although she was never made aware of the “expert testimony” that she was required to rebut. And that the same member said that “he wanted to make clear that while a physician has freedom of speech, a medical doctor cannot speak against the recommendations of the CDC, FDA, and accrediting colleges during a pandemic. Then, a third member intimated that Dr. Priester had to submit evidence that she was capable of publicly expressing her opinion regarding Covid-19 and that, because she was unsuccessful in a challenge to the investigative proceedings in state court, the Licensing Board could censor Dr. Priester’s speech without repercussions. A fourth member said that because Dr. Priester is a medical physician, she must face the consequences of providing opinions contrary to the standards of care promulgated by the FDA, AMA, infectious disease experts, the CDC, and the whole world. The last member said that Dr. Priester did not show that she had knowledge on how to manage Covid and that she could not demonstrate that she did not violate the Code of Ethics. In short, there should be no doubt that every single member illegally imposed upon Dr. Priester the burden of proving that her expressions were protected by the First Amendment. App. 249-251.

In light of these undisputed facts, PRDH's Medical Licensing Board could not even allege to be an objective forum for the adjudication of a Appellee Ramos' complaint against Dr. Priester. *See App. 249-251, ¶¶ 70-79.*

The PRDH's Medical Licensing Board presided over a kangaroo court against Dr. Priester, resulting in the continued deprivation of her most fundamental constitutional right to free speech.

THE STAY

On March 16, 2023, former counsel for Dr. Priester, Jose Davila, filed the opening brief in this case.

On May 17th, 2023, Appellee Puerto Rico Department of Health (PRDH) filed a "*Motion for Summary Affirmance*" alleging that the appeal did not present a substantial question, requesting to be exempted from filing a reply brief.

Although not a government employee or institution, Appellee Victor Ramos (Ramos) adopted by reference PRDH's motion, requesting to be exempted from filing his reply brief.

On June 8, 2023, this Court granted both motions and stayed the case until it adjudicated the motion for summary disposition presented by PRDH.

During the time that this case has been pending both before the district court and this Court, Dr. Priester has continued to suffer irreparable harm due to PRDH's unconstitutional gag order.

For the reasons and arguments set forth below, Dr. Priester requests that this Court:

- a) Deny PRDH's "Motion for Affirmance"
- b) Lift the stay of the proceedings;
- c) Order Appellees to file their briefs; and
- d) Schedule the oral arguments after she files her reply brief.

ARGUMENT

This case does not just present a substantial question worthy of adjudication. It presents a matter of exceptional importance: a medical licensing board's lack of authority to limit and curtail a physician's First Amendment rights that include the exercise of her Hippocrates' Oath.

The adjudication of the merits of this case should not be delayed any further to prevent the continuing irreparable harm that Dr. Priester has suffered and continues to suffer as a result of PRDH's violation of her fundamental right to Freedom of Speech.

The district court's decision to apply the *Younger* abstention doctrine in this case should be reversed without further delay. The crucial defect in the district court's analysis lies in its failure to meet the third prong of the test adopted in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423 (1982). Namely, the due process requirement of an impartial state forum capable of a) objectively adjudicating the complaint against Dr. Priester and b) with the authority to pass judgment over her First Amendment rights.

The stakes for Dr. Priester have increased as she has become a permanent hostage of PRDH's unconstitutional whims. Enabled by the courts' failure to expe-

ditionously prohibit its unconstitutional conduct with the urgency it requires, the PRDH's Medical Licensing Board has now reiterated and perpetuated its violation of Dr. Priester's rights by issuing yet another troublesome order against her, attached hereto as Exhibit 1.

Most importantly, the Supreme Court's recent holding in *Loper Bright Enterprises. v. Raimondo*, 144 S. Ct. 2244 (2024), supports the reversal of the district court's decision to abstain from declaring illegal the gag order against Dr. Priester. PRDH is an administrative agency that is not vested with the legal authority to adjudicate anyone's constitutional rights.

PRDH'S FIRST AMENDMENT VIOLATIONS

Absent the third prong of the test that the Supreme Court adopted in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, *supra*.—the adequacy of the opportunity to raise federal defenses in the state proceeding—the district court erred in abstaining from adjudicating Dr. Priester's challenge to PRDH's authority to curtail her freedom of speech. *See Sirva Relocation, LLC v. Richie*, 794 F.3d 185, 196 (1st Cir.2015).

Operating from a dictatorial mentality repugnant to Dr. Priester's basic constitutional rights, on April 22, 2021 the PRDH notified the Gag order 2021-04 object of this case that sentenced:

. . . Dr. Sally Priester, is ordered to CEASE AND DESIST from making, expressing, communicating, disseminating, publishing, supporting, sharing and/or endorsing, by any means of communication or in person, messages without any legitimate scientific basis

against the health efforts being carried out by government or private authorities recognized and respected by the scientific and medical community to alert and protect the society with respect to the spread and propagation of the SARS-CoV-2 virus, the Coronavirus Pandemic and/or Covid-19, as well as any of its variants.

IT IS HEREBY NOTIFIED that this Resolution and Order will enter into force upon service hereof on . . . Dr. Sally Priester . . . and it will remain in force until otherwise determined by the Board.

Failure to comply with this Order may entail severe monetary and disciplinary penalties and/or even judicial contempt, Art. 28 (g) Law 139, *supra*. So resolved by the Puerto Rico Board of Medical Licensure and Discipline, in its regular meeting on April 14, 2021. App. 028-029 & 252; Opening brief at p. 13, emphasis added.

Federal courts have a “virtually unflagging obligation . . . to exercise the jurisdiction given them.” *Sirva Relocation, LLC v. Richie, supra*, 794 F.3d at 191 (cleaned up). Abstention is inappropriate, for example, when a state proceeding is brought in bad faith, that is, for the purpose of harassment. *Id.*, 794 F.3d at 192. A federal court need not stay its hand if the state forum provides inadequate protection of federal rights. *Id.*, quoting *Gibson v. Berryhill*, 411 U.S. 564, 575, 578-79 (1973).

The complaint specifically alleged the PRDH’S board members’ bad faith, persecution and inclination

to engage in viewpoint discrimination against Dr. Priester. App. 249-251. The district court's disregard of PRDH's undisputed violations to Dr. Priester's basic constitutional rights as set forth above warrants an urgent adjudication of the merits of this case.

The district court's closing of the door to a federal question caused, and continues to cause Dr. Priester irreparable harm. *See New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI)*, 491 U.S. 350, at 366-67.

THE RIGHT SIDE OF HISTORY

It has become an accepted fact that medical boards and authorities around the world and in the United States were wrong in the handling of the COVID emergency.

The past three years have proven Dr. Priester right. Her opinions on the COVID-19 emergency and imminent vaccination campaigns were not only correct, but significantly understated the degree of mishandling of the situation by the *authorities*. While the Courts have yet to adjudicate Appellees' violations of Dr. Priester's First Amendment rights, the medical community has vindicated her, recognizing that the "standards" promulgated at a national and international level were not grounded on sound science, thus hurting instead of helping patients.

Dr. Priester's November 20, 2020 public expressions about the COVID Plandemic that gave way to the unconstitutional gag order were grounded on sound, scientific facts whose suppression by Appellees has likely being responsible for illness, disability, and

even the death of tens of thousands of innocent victims in Puerto Rico.

A simple internet search for the term “Plandemic” reveals that it has gone mainstream to the point of having a documentary named that way. Each passing day pierces more the “conspiratorial” veil that Appellees attempted to cover the term with.

The narratives have fallen apart. Even lead epidemiologist Dr. Anthony Fauci has admitted before Congress to having made up the six-foot distancing rule that prompted the demise of businesses and the useless floor stickers to keep free individuals at bay.¹ In Puerto Rico, over 15,000 business had to close because of these futile and unscientific policies.

During the September, 2024 Global Covid Summit that grouped 17,000 Scientists and Physicians, its speakers confirmed that Governments around the world and corporations willfully and deliberately lied to humanity about the Covid vaccine. This was precisely one of the topics that Dr. Priester tried to warn Puerto Ricans about, and the PRDH would not have any of it.

In the recent Global Covid Summit conference, the inventor of the MRNA vaccine, Dr. Robert Malone, expressed the following:

“We must acknowledge that the genetic COVID-19 genetic injections cause far more harm

¹ See The Editorial Board, Anthony Fauci Fesses Up, Opinion, THE WALL STREET JOURNAL (Jan. 11, 2024), <https://www.wsj.com/articles/anthony-fauci-covid-social-distancing-six-feet-rule-house-subcommittee-hearing-44289850> (“Anthony Fauci Fesses Up It turns out the six-feet social-distancing rule had no scientific basis.”)

than good and provide zero benefit relative to risk for the young and healthy. They do not reduce COVID-19 infection which is treatable and not terminal. Furthermore, the most recent data demonstrates that you are more likely to become infected, or have disease, or even death if you have been vaccinated compared to the unvaccinated people.

This is shocking to hear, but it is what the data are showing us.

The data now show that this experimental gene therapy treatments can damage your children as well as yourself. They can damage your heart, your brain, your reproductive tissue, and your lungs. This can include permanent damage and disablement of your immune system.”²

Yet, beyond the waters that surround the kingdom of Puerto Rico where Appellees control the COVID /vaccination narrative among a predominantly Spanish-speaking population that is not privy to the chilling discoveries about the handling of the COVID-19 virus that are published in the mainland, it is an accepted fact that it is dangerous to vaccinate children and adolescents because they are prone to developing and dying from myocarditis. Yet, within the U.S. Territory where citizens such as Dr. Priester have been forbidden to exert their First Amendment rights on matters of significant public interest, PRDH continues to push the COVID vaccination in children under the age of 16, including babies, mandating it as a requirement to

² <https://x.com/itsTheDr/status/1846345226551500986>

allow children, adolescents and even university students to enroll in school.

In order to guarantee seamless success in endeavors such as testing, lockdowns, and vaccination campaigns, PRDH had to silence Dr. Priester to prevent her from speaking the Truth to the detriment of those that blindly trusted the government narrative.

Loyal to her Hippocrates Oath, Dr. Priester attempted to alert the people of Puerto Rico about the unsound science surrounding the handling of the COVID-19 situation. Although she acted from an informed perspective and a genuine concern for her patients and the public in general, she could never fathom at the time how the nefarious practices and consequences associated to the COVID-19 phenomenon would cause such irreparable harm to so many.

Unfortunately, due to medical authorities such as PRDH's unrestrained abuse of power, too many victims have died as a result of the "recommended" treatment by the authorities that have been now discontinued, such as the case for the use of respirators that has been entirely debunked after tens of thousands of patients died using them.

Likewise, PRDH subjected many victims to the cruelty of not even being able to hold the hands of their loved ones because of Dr. Fauci's now-debunked, fake 6-foot distancing rule.

No one will ever know how many lives Dr. Priester's exercise of her unrestricted right to free speech—curtailed for over three years—could have saved. Dr. Priester's is exactly the kind of constitutional violation that courts should make sure to prevent.

PRDH'S LATEST UNCONSTITUTIONAL ORDER

On July 10, 2024 attorney Davila filed before this Court the Motion to Withdraw as Counsel for Dr. Priester. [ECF No. 00118164715]. Eerily coincidental, on the same date that Mr. Davila filed his motion withdrawing as counsel before this Court, PRDH's Medical Licensing Board notified Dr. Priester yet another threatening Order curtailing her speech prospectively that it had issued more than three months before, on March 21, 2024. *See* certified translation of Resolution 24-22 included as Exhibit 1 of this motion.

The new order reiterated PRDH's position that the prior violations to Dr. Priester's First Amendment rights were permissible under the Constitution of the United States. This time, the order went further in violation Appellant's rights imposing an indefinite Damocles' Sword upon her by declaring the following:

The Board understands and forewarns Dr. Sally Priester that there should be any national crisis or emergency arising in the future from the COVID-19 pandemic, she should abide by the safety measures that the organizations in charge of healthcare should then recommend and adopt for the benefit of the citizenship as a whole.³ *See* Exhibit 1 at page 8.

³ Just as the first gag order, it was served on persons and entities that were not part of the process with the intent of intimidating, defaming and intending to continue its improper control Appellant's right to free speech through implied threat of renewed retaliation. *See* Exhibit 1, page 10.

This order is equally problematic at a constitutional level, as it perpetuates the threat and future prohibition on Dr. Priester’s free speech as contained in the first gag order object of this Appeal.

It is time for the courts to declare unconstitutional the orders issued in violation of Dr. Priester’s due process and First Amendment rights and allow her to have her day in court.

DR. PRIESTER’S FIRST AMENDMENT RIGHTS

“The First Amendment gives freedom of mind the same security as freedom of conscience . . . and the rights of free speech and free press are not confined to any field of human interest.” *Thomas v. Collins*, 323 U.S. 516, 531 (1945). “[G]overnment has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. A.C.L.U.*, 535 U.S. 564, 573 (2002). “Debate on public issues should be uninhibited, robust, and wide-open.” *Id.*

A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more.” *Packingham v. North Carolina*, 127 S. Ct. 1730, 1735 (2017). “[W]here a speaker exists . . . , the protection afforded is to the communication, to its source and to its recipients both.” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976).

The First Amendment’s purpose is to prevent the government from stifling speech that might cause citizens to question government’s actions. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421

(2022) (the First Amendment “is a natural outgrowth of the framers’ distrust of government attempts to regulate religion and suppress dissent. *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). A person’s right to receive information is “an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution” because “the right to receive ideas follows ineluctably from the sender’s First Amendment right to send them.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982).

The First Amendment precludes viewpoint discrimination. *Matal v. Tam*, 137 S. Ct. 1744 (2017). Discrimination based on viewpoint is an “egregious form of content discrimination” and therefore “presumptively unconstitutional.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829-30 (1995). The prohibition on viewpoint discrimination reflects the fundamental principle that governments have “*no power to restrict expression because of its message, its ideas, its subject matter, or its content.*” *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018).

Since 2018, the Supreme Court has recognized that “[t]hroughout history, governments have manipulated the content of doctor-patient discourse to increase state power and suppress minorities[.]” *Id.*, 138 S. Ct. at 2371. “Professional speech” does not have a reduced level of protection under the First Amendment. “[T]his Court has never recognized ‘professional speech’ as a separate category of speech” subject to different rules and “speech is not unprotected merely because it is uttered by professionals.” *Id.*, 138 S. Ct. at 2371-72.)

INAPPLICABILITY OF YOUNGER ABSTENTION DOCTRINE

The district court erred in applying the Supreme Court's *Younger v. Harris*, 401 US 37 (1971), abstention doctrine to dismiss the claims against PRDH defendants. The administrative proceeding before PRDH's licensing board never guaranteed Dr. Priester "an adequate opportunity to raise federal defenses" as required under the three-prong test adopted in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, *supra*.

The uncontested, outrageous statements regarding Dr. Priester's First Amendment rights made by the PRDH's members vested with the responsibility of investigating and adjudicating the complaint against her dispel any possibility that they would honor her due process rights. Although the district court admitted that it "... *acknowledges that at first glance the statements attributed to certain Board members regarding Dr. Priester's First Amendment rights that were included in the Amended Complaint may be concerning*," it relinquished its duty to protect Dr. Priester's constitutional rights. See p. 23 of the "Omnibus Opinion and Order," Op. Br. at p. 58.

The Supreme Court's reversal of the *Chevron* Rule,⁴ makes the district court's decision even more problematic.

In *Loper Bright Enterprises. v. Raimondo*, *supra*, the Supreme Court expressed that it "embraced the Framers' understanding of the judicial function early

⁴ Contained in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984).

on as expressed in the foundational decision of *Marbury v. Madison* where. Chief Justice Marshall famously declared that “[I]t is emphatically the province and duty of the judicial department to say what the law is.” *Loper Bright Enterprises. v. Raimondo, supra*, 144 S. Ct. at 2257 quoting *Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L. Ed. 60 (1803).

“[T]he judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws.” *Perez v. Assn.*, 575 U. S. 92, 119 (2015) (opinion concurring in judgment).

After *Loper Bright Industries v. Raimondo, supra*, administrative agencies such as PRDH no longer enjoy the discretion to interpret the law beyond the statutes and the law they were called to apply.

The Supreme Court has now specifically instructed the courts to “exercise their independent judgment in deciding whether an agency has acted within its statutory authority” and “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enterprises. v. Raimondo, supra*, 144 S. Ct. at 2273.

The district court has an obligation to interpret the law and assess the unconstitutionality of a gag order issued to curtail protected speech. The district court lacked the legal power to refuse to decide the federal questions presented. The district court’s failure to fulfill its obligation to protect Dr. Priester constitutional rights warrants a full and prompt adjudication of the instant appeal.

CONCLUSION

This case presents a question of extreme and urgent importance that warrants expedited adjudication. PRDH's 2021 gag order against Dr. Priester coupled with the most recent one it notified weeks ago violate her due process and First Amendment rights. Both were issued for improper motives, by an agency that lacks the legal authority and expertise to adjudicate anyone's constitutional rights.

The failure to declare PRDH's gag order unconstitutional for three years has perpetuated the irreparable harm that Dr. Priester has suffered. It is time for this Court to exert its legal responsibility of protecting Dr. Priester's fundamental rights under the First, Fifth, and Fourteenth Amendments of the Constitution of the United States, reversing the District Court's Omnibus Opinion and Order, declaring the 2021 gag order unconstitutional and ordering the continuation of the proceedings at the district court level.

Dr. Priester thus urges this Court to DENY PRDH's "*Motion for Affirmance*" and proceed with the adjudication of the case.

WHEREFORE, Appellant requests that this Court GRANT this motion, and consequently:

- a) Deny PRDH'S "Motion for Affirmance";
- b) Lift the stay of the proceedings;
- c) Order Appellees to file their briefs; and
- d) Schedule the oral arguments after she files her reply brief.

App.41a

Respectfully submitted.

/s/ Ana L. Toledo Davila
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Dated: October 21, 2024

**RECOMMENDATION AND FINDINGS
OF FACT, THE MEDICAL DISCIPLINE
LICENSING BOARD OF PUERTO RICO,
CERTIFIED TRANSLATION
(JULY 10, 2024)**

DEPARTMENT OF HEALTH LEGAL
COUNSELING OFFICE

THE MEDICAL DISCIPLINE AND LICENSING
BOARD OF PUERTO RICO

THE MEDICAL DISCIPLINE AND LICENSING
BOARD OF PUERTO RICO,

Plaintiff,

v.

DR. SALLY PRIESTER, LIC. No. 16480,

Defendant.

Case No. QF-JLDM-2020-270

IN RE: NON-PROFESSIONAL CONDUCT

RESOLUTION 2024-22

The Medical Discipline and Licensing Board of Puerto Rico, at a regular meeting held on January 18, 2024, with the quorum duly constituted, after the Examiner Official's recommendation has been evaluated in the case of Dr. Sally Priester, resolved, unanimously, to render this Resolution on the basis of the following:

FINDINGS OF FACTS

1. The Medical Discipline and Licensing Board (JLDM, as per its acronym in Spanish) is vested by law with the power to regulate the practice of the medical profession in Puerto Rico.

2. As a part of its institutional duties, the JLDM has the ministerial duty to review and investigate the complaints and reports received from the state security agencies, health maintenance organizations, governmental agencies, insurance companies and any other entities that have information relevant to the practice of the medical profession and then to decide and take action in respect thereof as appropriate.

3. In turn, Section 33 (e), of Law No. 139 dated August 1st, 2008, grants authority to the Board to initiate investigations on any information concerning any acts involving non-professional conduct.

4. Also, Section 33(e), of Law No. 139, *supra* provides that the Board may suspend, cancel or revoke a license prior to a hearing when the physician has been involved in an non-professional conduct. The definitions of non-professional conduct include the violation of rules and regulations adopted by the Board to regulate the practice of the medical profession.

5. Also, Section 26, subsection (g) provides that the Board may impose an administrative fine, that shall not exceed five thousand (\$5,000) dollars, in addition to any disciplinary action.

6. In this case in particular, the Board received a communication (complaint) from the College of Medical Surgeons of Puerto Rico, hereinafter referred to as “the College”, whereby it has submitted some alleged conducts and expressions referring to Dr. Sally Priester offered in public last November 29, 2020. The Board issued an order to initiate an informal investigation about those allegations and held some investigative hearings on February 17 and March 3, 2021, which were respectively attended by the College, by means of its Chairman, Dr. Victor Ramos and its legal representatives; and Dr. Sally Priester, both by herself and legally represented by her attorney, Humberto Cobo Estella, Esq. As can be concluded from the report submitted by the Board’s investigator attorney, the parties had ample opportunity to submit their allegations and documentary evidence and/or expert witness reports. Dr. Priester also filed additional motions requesting the dismissal of the complaint which is at its investigative stage. The evidence obtained during the hearings held and submitted by the parties indicate that Dr. Priester made some public statements that, according to her, are protected by her constitutional right to the freedom of speech and assembly, related to the pandemic, but in our opinion, they are strictly groundless from the scientific point of view, as they are neither a part of a constructive criticism, nor that those expressions may be pondered as of a greater interest than the efforts to protect public healthcare and security. The expressions

attributed to Dr. Priester and that she sustains are protected by the Constitution were:

“To refer to the pandemic as the “plandemic”; “how dare they launch a terror and impotence campaign . . .”; “It is a lack of respect from us in the medical community and that doctors are lending themselves for this kind of things, let’s put an end to this sham . . .”

“I can’t understand why health centers like CDTs are closed and thus force patients to turn to just emergency rooms for receiving healthcare. It is incredible to know that they cannot communicate with primary care physicians. Don’t let them scare you any more because there will come the time when those 14 days of incubation do NOT exist and the Department of Health will have to explain, on trial, from where it has taken so much data that has not been scientifically proven worldwide.”

“We do not have to wait for any vaccine . . .”
“No child will get vaccinated . . .”

7. Said expressions made by Dr. Priester were spread by the mass media in Puerto Rico, even though she sustains that the press lacked the power to tell the truth to society. Dr. Priester held, based on the evidence produced, that her expressions were not only protected by the Constitution, and that she made them within a context which was unrelated to her professional performance, nor had they been made in the treatment of her patients or when providing any medical advice at a hospital. She also mentioned that she has received multiple acknowledgments for her human-

itarian, civil, and social work, and besides she claimed to have published multiple papers concerned with medicine and science.

8. The Board ordered to conduct an investigative process which was carried out and as a result thereof it rendered Resolution and Order No. 2021-04, thereby ordaining the commencement of a formal complaint proceeding. It also issued a cease-and-desist order. Once the documents on file have been evaluated, the JLDM found that Dr. Sally Priester may have committed the following offenses:

Count 1

Violation of CANON 29: “A physician shall have the duty to promote, both with their example and word, such highest ethical standards of integrity of behavior and intellectual and professional honesty as to serve as an example for their workmates, their family, their profession and their people”; and they shall be entitled to receive respect for their dignity, personal integrity, physical intimacy and courteous treatment.

Count 2

Violation of CANON 31: “in their behavior, a physician shall abide by the ethical principles and controls incorporated in this code not only within the clinical setting but also within any such other context where they are to perform their medical profession. The undertaking of offices or the performance of duties in the public or private sector shall not release any physician from their duty to comply with

the ethical principles that give shine to the medical profession.”

Count 3

Violation of CANON 32: “By reason of the principle of civic solidarity, a physician shall have the duty to educate the population in line with the promotion of health and the prevention of diseases. They shall contribute to improve the quality of life of the Puerto Rican society as a whole, thus remaining attentive to the people’s health conditions, and with their professional and civic performance, they shall collaborate with the improvement of public health.”

Count 4

Violation of CANON 33: “A physician shall show respect for the civil and human rights of each one of the members of society, especially in relation to the preservation of life, physical and mental health.”

Count 5

Violation of CANON 38: “A physician shall exert an ethical influence on society in order to promote those causes pursuing the common good, such as: the donation of organs and tissues for transplantation, the defense of actions taken to preserve ecological systems, the cleaning of waters, and other initiatives intended to protect human health and biodiversity.”

9. Hence, under Resolution No. 2021-04 and subject to the powers granted by Law No. 139, *supra*, and its regulatory decree, the Board issued this complaint and administrative proceeding, thereby forewarning the defendant that she would be exposed to a penalty of no more than \$ 5,000.00 and to be ordered to take some training courses on ethics and professional conduct for the number of credits to be determined by the Board as necessary and prudent, as well as any such other penalty as the Board may deem appropriate.

10. On May 11, 2023, by virtue of the Federal Declaration of the Honorable President of the United States of America signed a law to put an end to the national emergency of COVID-19 virus, the Joint Resolution of Chamber 7. Likewise, the Honorable Governor of Puerto Rico signed an Executive Order whereby he declared the official end of the State of Emergency for COVID-19 in Puerto Rico (Administrative Bulletin No. 2023-012). Dr. Carlos Mellado Lopez, MD, Secretary of Health of Puerto Rico, followed suit by means of the Administrative Order No. 571, whereby it repealed, among others, the Administrative Order No. 533 dated March 8, 2022, and with it all of the memorandums and Administrative Orders previously issued by any Secretary of Health insofar as their provisions are incompatible with the terms of the Administrative Order number 571.

11. After multiple conversations and administrative hearings, on November 14, 2023, we held an administrative hearing which was attended by the legal representatives of the Board: Madeline Torres Santiago, Esq. and Luis Hernandez Cardona, Esq. and the legal representative of the defendant, Jose R. Davila Acevedo, Esq. During this hearing, both parties

requested the desist of this administrative case with prejudice on the grounds that the subject matter giving rise thereto is nowadays an academic one. The parties understand that, given the fact that the COVID-19 emergency has been terminated by the federal and governmental authorities of Puerto Rico, it has become moot to uphold Resolution and Order No. 2021-04 issued against the defendant, wherefore it is now admissible and appropriate for the Board to set it aside, since it has become a moot case and without any reason to prevail in law.

12. The defendant has also requested, with no opposition from the Board's legal representatives, by filing a motion on September 27, 2023, which was repeated at the hearing held on November 14, 2023, that in order to prevent any kind of confusion and thus keep it clear what has been alleged in the administrative case record that the aforementioned healthcare professional was only to be known as "Dr. Sally Priester", thereby deleting any other name stated in the records of this administrative case file.

13. On December 27, 2023, the Board's legal representative, Luis Hernandez Cardona, Esq., filed a motion entitled "Motion requesting the desist with prejudice", wherein he alleged that, by virtue of the Order rendered by the Board against the defendant, the cease-and-desist order was issued for her to refrain from making any statements, communications, releases, publications, promotions, exchanges and/or endorsements by any mass media or in person, any messages without any legitimate scientific foundation against the sanitary efforts made by governmental or private authorities, both acknowledged and respected by the scientific and medical community to alert and

protect society from the contagion and spreading of the SARS-COV-2 virus, the coronavirus pandemic and/or COVID-19, as well as any of its variants . . . and she is hereby forewarned that the Order shall remain in effect until otherwise decided by the Board. The breach of the Order might lead to harsh economic and disciplinary penalties and/or including contempt of court, as per Section 28(g) of Law No. 139-2008, as amended. Notice of the aforementioned Resolution and Order was served on April 14, 2021 and the defendant has complied with the Order.

14. Hence, Luis Hernandez Cardona, Esq. has requested through his motion that the end for which Resolution No. 2021-04 has been issued, has become moot, for the COVID-19 emergency has come to an end and terminated by the federal and governmental authorities of Puerto Rico. As a result, there is no real controversy or case warranting to be adjudicated, and therefore it is hereby requested that these administrative proceedings should be dismissed, closed and placed on the archives with prejudice. *See ELA v. Aguayo*, 80 D.P.R. 552 (1958); *L.P.C. v Autoridad de Carreteras*, 2012 T.S.P.R. 74; *JG Builders Corp. v. 577 Headquarters Corp.*, 2012 T.S.P.R. 66; *Baez Diaz v. ELA*, 179 D.P.R. 605 (2010).

15. Given these circumstances, we understand that the case is now complete and ready to be settled.

CONCLUSIONS OF LAW

Our legal system has recognized the power of the State to regulate the practice of professions as a part of its power of reason of State, so much so with the major aim to protect public health and well-being. *Marcano v. Department of State*, 163 D.P.R. 778 (2005); *Perez v.*

Junta Dental, 116 D.P.R. 218, 233 (1985). The requirements and conditions reasonably imposed for such purposes by the State in the exercise of its regulating power for the benefit of the society as a whole, do not take the effect of depriving citizens of their professions, but to regulate the same by reason of the eminent public interest they are vested with. *Asociacion de Doctores en Medicina al Cuidado de la Salud Visual, Inc. v. Morales*, 132 D.P.R. 567 (1993); *Infante v. Tribunal Examinador de Medicos*, 84 D.P.R. 308 (1961).

In *Torres Acosta v. Junta Examinadora de Ingenieros, Arquitectos y Agrimensores del Estado Libre Asociado de Puerto Rico*, 161 D.P.R. 696 (2004), the Supreme Court of Puerto Rico pointed out, among others:

In our legal system there is no absolute right to the practice of licensed professions or occupations. Said exercise is subject to the State's power of regulation (*i.e.* police power) for the purposes of protecting public health and well-being and thus prevent fraud and incompetence *San Miguel Lorenzana v. E.L.A.*, 134 D.P.R. 405, 413 (1993); *Col. Ing. Agrim. P.R. v. A.A.A.*, 131 D.P.R. 735, 763 (1992); *see also Rodriguez Casillas v. Colegio de Tecnicos y Mecanicos Automotrices*, 2019 TSPR 87, 201 DPR (2019); *Alonso v. Tribunal Examinador de Medicos*, 74 D.P.R. 158 (1952). The State has broad discretion as to the fixation of rules and procedures concerning the admission to the practice of licensed professions and occupations. *Asoc. Drs. Med. Cui. Salud v. Morales, supra*.

Law No. 139, dated August 1, 2008, of the Medical Discipline and Licensing Board of Puerto Rico, which regulates the medical profession within the highest ethical standards, states, in its articles of purposes, the following:

The society as a whole has an interest of highest hierarchy in the integrity of the medical profession. In order to watch over said social interest, the State is entitled to regulate the practice of the medical profession. One of the most important mechanisms to achieve this aim is the licensing process to practice the medical profession. The purpose of the licensing is the protection of the general public from possible damages and abuses that may expectedly arise from the practice of medicine by incompetent persons.

In turn, in *TEM v. Canas Rivas*, 154 D.P.R. 29 (2001), it has been repeated that the rule that governmental entities are the ones in charge of regulating healthcare professionals and performing the duty to make sure that they should have the necessary capacity and proficiency to practice their profession within the excellence parameters for which the State has granted broad powers.

In spite of the potential implications, both of ethical and legal nature, involved herein, we have to admit that Dr. Sally Priester has abode in full by the Resolution and Order of cease-and-desist notified on April 14, 2021. Likewise, on May 11, 2023, by virtue of the Federal Declaration, the Honorable President of the United States of America signed a law to put an end to the national emergency of COVID-19 virus, the Joint Resolution of Chamber 7. Likewise, the Honor-

able Governor of Puerto Rico signed an Executive Order whereby he declared the official end of the State of Emergency for COVID-19 in Puerto Rico (Administrative Bulletin No. 2023-012) and Honorable Dr. Carlos Mellado Lopez, MD, Secretary of Health of Puerto Rico, followed suit by means of the administrative Order No. 571. Thus, there is no room for any doubt whatsoever that the purpose of Resolution and Order No. 2021-24 ceased to exist, thus rendering the issue a moot one and without any public *raison d'être* in view of the declaration that the pandemic at issue has come to an end. *See, for instance, ELA v. Aguayo*, 80 D.P.R. 552 (1958); *L.P.C. v Autoridad de Carreteras*, 2012 T.S.P.R. 74; *JG Builders Corp. v. 577 Headquarters Corp.*, 2012 T.S.P.R. 66; *Baez Diaz v. ELA*, 179 D.P.R. 605 (2010).

In spite of that, the Board understands and forewarns Dr. Sally Priester that there should be any national crisis or emergency similar to that caused by the COVID-19 pandemic in the future, she should abide by the safety measures that the organizations in charge of healthcare should then recommend and adopt for the benefit of the citizenship as a whole. Thus, the Board does hereby grant approval to the parties' petition, thus ordaining the dismissal, closure and archive of these administrative proceedings.

On the other hand and in order to maintain the clarity of the administrative proceedings conducted before the Board, it is hereby ordained that from today onwards the defendant should only be known by the name "Dr. Sally Priester" until otherwise requested by the defendant and/or ordained by the Board.

CONCLUSION

In harmony with both the findings of fact and the conclusions of law outlined above, the Medical Discipline and Licensing Board of Puerto Rico does hereby ordain the dismissal, closure and archive of this administrative proceeding.

The Board understands and forewarns Dr. Sally Priester that there should be any national crisis or emergency arising in the future from the COVID-19 pandemic, she should abide by the safety measures that the organizations in charge of healthcare should then recommend and adopt for the benefit of the citizenship as a whole.

On the other hand, it is hereby ordained that from today onwards the defendant should only be known by the name “Dr. Sally Priester” until otherwise requested by the defendant and/or ordained by the Board.

WARNINGS

The party adversely affected by this decision may, after having exhausted the administrative remedies before the Board, file a motion for judicial review of this decision with the Court of Appeals of Puerto Rico, within the period of thirty (30) days, starting from the placing in the archive of these court records of the copy of service of notice of this Resolution. Said motion for judicial review shall be served upon the Board and all of the parties involved in this case, within the time period established to request such proceeding.

The time period of thirty (30) days to appeal for judicial review may be interrupted by the timely

submission of a motion for reconsideration to this Board, within the time period of twenty (20) days, starting from the date of archive on file of the copy of the service of notice of this Resolution. Should a motion for reconsideration be filed against this Resolution, the Board shall consider it within twenty (20) days after the filing thereof. If the Board should dismiss it outright, or fail to render a decision within the aforementioned period of twenty (20) days, the term of thirty (30) days to file a motion for judicial review shall begin to run again either as from the service of notice of said dismissal, or from the date of expiry of said twenty (20) days, as the case may be. If the Board should take a decision on such reconsideration, the term of thirty (30) days to file a motion for judicial review shall begin to run as from the date when a copy of the service of notice of the Board's resolution whereby the motion for reconsideration is finally settled was placed on the file archives. Such resolution shall be rendered and placed on the file archives within ninety (90) days following the filing of the motion for reconsideration. If the Board should admit the motion for reconsideration, but fails to take any action in relation to this motion within ninety (90) days after the filing thereof, it shall forfeit its jurisdiction over the issue and the term of thirty (30) days to file a motion for judicial review shall begin to run as from the expiry of said time period of ninety (90) days; unless the Board should, for just cause and within said period of ninety (90) days, extend the term to settle the case for a period that shall not exceed thirty (30) additional days.

Failure to take any action to request the reconsideration or judicial review of this decision within the

time periods indicated above, shall result in the fact that this Resolution shall become final, enforceable and unappealable, after thirty (30) following the date of placing on the file archives of the copy of the service of notice of this Resolution.

It has been so resolved by the Medical Discipline and Licensing Board of Puerto Rico, in the city of San Juan, Puerto Rico, at its regular meeting held on March 21, 2024.

**DUE RECORD AND NOTICE OF THIS ORDER
BE DULY TAKEN AND SERVED.**

**BY THE MEDICAL DISCIPLINE AND
LICENSING BOARD OF PUERTO RICO**

/s/ Ramon Mendez

Dr. Ramon Mendez
Sixth President

/s/ Jose Fuentes Inguanzo

Dr. Jose Fuentes Inguanzo
Secretary

[. . .]

JR LANGUAGE
Translation Services, Inc.

CERTIFICATE OF ACCURACY

This is to CERTIFY that the attached translation from Spanish into English is a true, accurate and faithful representation of a copy of the original that was submitted, to the best of our translator's training and ability, who is fluent in the language and qualified to translate.

To which we set our hand and seal.

/s/ Yuisa Gonzalez-Rivera
Date: 09/26/2024

Signed by: JR Language Translations

Time: 2024-09-26 20:56:22 UTC

— SEAL —