No. _____

IN THE

Supreme Court of the United States

DR. MARGO ROMAN,

Petitioner,

v.

MASSACHUSETTS BOARD OF REGISTRATION IN VETERINARY MEDICINE,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In its coming Term, this Court will address occupational speech issues in the pending matter of *Chiles v. Salazar* (No. 24-539), *cert. granted*, 145 S. Ct. 1328 (2025).

Meanwhile, at least three other certiorari petitions in cases involving occupational speech are being held pending the decision in *Chiles* (including *Crownholm v. Moore* (No. 24-276), *360 Virtual Drone Servs. LLC v. Ritter* (No. 24-279), and *Hines v. Pardue* (No. 24-920)).

In this case raising similar legal issues as *Chiles*, the question presented is: whether a state occupational licensing board is entitled to apply a lower standard of constitutional scrutiny to speech that is neither commercial nor incidental to conduct simply because the speaker was subject to professional licensure.

PARTIES TO THE PROCEEDING

Petitioner (petitioner-appellant below) is Dr. Margo Roman.

Respondent (respondent-appellee below) is the Massachusetts Board of Registration in Veterinary Medicine.

RELATED PROCEEDINGS

Massachusetts Supreme Judicial Court for Suffolk County:

Roman v. Bd. of Registration in Veterinary Med., No. SJ-2023-0454. Judgment entered July 9, 2024.

Massachusetts Supreme Judicial Court:

Roman v. Bd. of Registration in Veterinary Med., No. SJC-13653. Judgment entered May 6, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review the judgment of the Massachusetts Supreme Judicial Court.

OPINIONS BELOW

The opinion of the full Massachusetts Supreme Judicial Court, App.1a–11a, is reported at 256 N.E.3d 1274.

The opinion of the single justice of the Massachusetts Supreme Judicial Court, App.12a–19a, is not reported but is available at 2024 WL 3490256.

The underlying decisions of the Board of Registration in Veterinary Medicine, App.20a–190a, are unreported.

JURISDICTION

The judgment of the Massachusetts Supreme Judicial Court was entered on May 6, 2025. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution, applied to the States through the Fourteenth Amendment, provides that the government "shall make no law . . . abridging the freedom of speech."

STATEMENT

This case concerns whether a content- and viewpoint-based restriction on pure, non-commercial speech is subject to lower constitutional scrutiny solely because the speaker was subject to professional licensure.

Petitioner Dr. Margo Roman ("Dr. Roman"), a dedicated veterinarian with over four decades of service, was suspended from practice for two years by Respondent Massachusetts Board of Registration in Veterinary Medicine ("Board") solely because of the content of an email sent to her existing clients in good faith in the very earliest days of the COVID-19 pandemic.

The email explained her veterinary practice's pandemic precautions (including many now-familiar practices, such as contactless pickup and barring sick clients from visiting the practice) and also offered a variety of general health suggestions relating to COVID-19 prevention and disinfection, including the use of over-the-counter ozone generators that Dr. Roman stated she viewed as a "possible" benefit to combatting the spread of the emergent, deadly disease. *See* App.191a–195a.

Based on the content of this single email alone, the Board disciplined Dr. Roman for providing "health suggestions for humans" that went "beyond general health information or recommendations." App.122a, 124a.

The Board's decision was an unconstitutional restriction on Dr. Roman's speech; and a content- and viewpoint-based restriction to boot. In such a case,

this Court's decisions in *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018), and *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), require ordinary First Amendment strict scrutiny.

But the Massachusetts Supreme Judicial Court affirmed the suspension. It held that "licensed professionals are subject to regulation" and therefore "do not come before us as citizens 'entitled to the full range of individual rights available to all citizens'" and, specifically, "may be subject to restrictions related to speech." App.9a (quoting *Schoeller v. Bd. of Registration of Funeral Directors & Embalmers*, 977 N.E.2d 524, 533 (Mass. 2012)) (alteration omitted).

This holding directly conflicts with this Court's First Amendment jurisprudence and deepens an entrenched conflict of authority. Review is warranted because this case involves occupational speech issues similar to those the Court will address in the pending matter of *Chiles v. Salazar* (No. 24-539), *cert. granted*, 145 S. Ct. 1328 (2025), and in other certiorari petitions being held pending the decision in *Chiles* (including *Crownholm v. Moore* (No. 24-276), *360 Virtual Drone Servs. LLC v. Ritter* (No. 24-279), and *Hines v. Pardue* (No. 24-920)).

A. Background

Petitioner Dr. Roman is a veterinarian licensed by the Commonwealth of Massachusetts and the owner of Main Street Animal Hospital Services of Hopkinton ("MASH"), a veterinary clinic. App.2a.

On March 10, 2020, the governor of Massachusetts declared a state of emergency due to the COVID-19 pandemic. Three days later, on March 13, 2020, the

president of the United States declared a national emergency due to the COVID-19 pandemic. And three days later, on March 16, 2020, Dr. Roman sent an email to her existing MASH clients with the subject "Update on Coronavirus Precautions at MASH." The Board later determined that this email made "health suggestions for humans" and, in so doing, constituted practice beyond the scope of Dr. Roman's license warranting a multi-year suspension. App.122a, 124a. The email stated:

> **UPDATE ON CORONAVIRUS PRECAUTIONS AT MASH**
>
> At Main Street Animal Services of Hopkinton (MASH), our mission statements for our clinic and building is:
>
> - To have a pleasant positive and comfortable place for animals and their caretakers to explore all aspects of good health and preventative medicine.
> - To encourage both client and pet to seek out alternative integrative ways to prevent disease.
> - To try to make this type of medicine the vision of all medicine.
>
> **MASH intends to stay open during this national emergency unless instructed otherwise by the government**. However, the health and safety of our patients, their caretakers, and our staff is of the highest concern during this medical crisis. Therefore, at

MASH we will take the following steps until further notice:

1. Our door will be locked at all times to minimize accidental walk-ins.

2. At this time, do not schedule routine or yearly visits that are not essential and time sensitive. If you have such an appointment scheduled, we will call to re-schedule for a later date unless tests or vaccines will cause them to be overdue.

3. If you need to pick up supplements or medicine, call in advance and provide credit card information. Orders will be packaged and left outside on the porch with your name written on the bag. All orders must be picked up by 5pm. Orders that are not picked up with be brought inside, and the shelving will be disinfected. Where time is not of the essence, we can mail your items to you.

4. Before you come to MASH, provide all information over the phone and/or by email about your pet's current condition, the reason for your visit and your pet's history. A tech will meet you outside and bring your pet in for exam and treatments. We will communicate with you via your cell phone during the appointment, while you remain in your vehicle.

5. If you are sick, please do not come to the clinic. We will take the following steps to treat your animal, if medically necessary:

    a. We will "examine" your pets from your home using Zoom or some other conferencing app.

    b. If a virtual examination is inadequate, a tech will meet you outside and bring your pet into a designated room for exam and treatments. We will communicate with you via your cell phone during the appointment, while you remain in your vehicle.

AFTER YOU LEAVE, BE AWARE THAT TECHNICIANS WILL REGULARLY WIPE ALL SURFACES WITH DISINFECTANT.

Additional information to protect yourselves:

1. Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus. There is a link on our website under "resources" to find the companies that we recommend from whom you can buy an ozone generator and ozone products. We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans. If you buy

an ozone generator, let the company know that you are a MASH client; they understand how we have tried to educate our clients to be protective.

2. Dr. Roman protects herself with the following: increased vitamin C, vitamin D, multivitamin, as well as a product called Wellness Formula by Source Naturals, which has a combination of immune supporting herbs, vitamins and garlic. One can add more probiotics, echinacea, elderberry, astragalus and try to eat a whole food healthier diet with less sugar.

3. Homeopathically many of our clients already have the homeopathic first aid kit and in it is homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus. There is also literature which states that homeopathic phosphorus and bryonia are other remedies that can be supportive during the virus outbreak, and gelsenium can also be helpful.

In particular, Dr. Roman has a unique and pressing need to be extra vigilant because she has compromised immune and respiratory systems and she is over 60. Some of her clients know that during veterinary school 42 years ago she got thrown against a fence by a cow [. . . .] Due to decreased lung function and being without a spleen, while managing asthma with acupuncture and homeopathy, she would not be

> able to survive an upper respiratory infection like the coronavirus.
>
> While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact.

App.2a–3a; *see* App.191a–195a.

After receiving a complaint about the March 16 email, the Board issued Dr. Roman an order to show cause in January 2021. App.4a. The order alleged, among other things, that Dr. Roman violated Mass. Gen. Law ch. 112, § 61(1), by practicing her profession beyond the scope of her license. *Ibid.*; *see* Mass. Gen. Law ch. 112, § 61(1) (providing that "[a] board of registration . . . may discipline the holder of a license . . . if it is determined . . . that such holder has . . . engaged in conduct which places into question the holder's competence to practice the profession including . . . practicing his profession beyond the authorized scope of his license").

On October 18, 2023, the Board issued a Final Decision and Order, App.20a, adopting an earlier Tentative Decision, App.99a, which in turn adopted an earlier hearing officer's summary decision, App.164a. The Board concluded that by sending the

March 16 email, Dr. Roman had practiced beyond the scope of her veterinary license, in violation of Mass. Gen. Law ch. 112, § 61(1), specifically by providing "health suggestions for humans" (primarily encouraging clients to consider obtaining an ozone generator as a "possible" cure for COVID-19) that went "beyond general health information or recommendations." App.122a, 124a; *see* App.135a n.23 (acknowledging that Dr. Roman's "recommendation of an ozone generator" garnered "much of the focus" in the Board proceedings).

The Board identified "no evidence that anyone had followed [Dr. Roman's] guidance" from the March 16 email, let alone obtained treatment from her, App.5a. Its decision rested solely on the statements contained in her email.

In issuing its Final Decision and Order, the Board expressly rejected that Dr. Roman's statements were protected by the First Amendment. App.73a–76a. The Board asserted: "There are limits on [Dr. Roman's] free speech as a licensed professional engaged in a regulated business activity . . . . Licensed professionals are frequently subject to ethical restrictions not applicable to ordinary citizens, including limitations upon the right to free speech." App.74a.

The Board suspended Dr. Roman's license for a period of two years, effective November 1, 2023.[1]

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[1] Although the suspension of Dr. Roman's licenses ends in November 2025, her case "fit[s] comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *See Fed. Election Comm'n v. Wis.*

B. Procedural History

Dr. Roman appealed the Board's decision to a single justice of the Massachusetts Supreme Judicial Court pursuant to Mass. Gen. Laws ch. 112, § 64. The single justice affirmed the Board. App.12a–19a.

Dr. Roman then appealed the single justice's decision to the full Supreme Judicial Court, which reviews the Board's decisions "directly." *See* App.6a; *Franchini v. Bd. of Registration in Podiatry*, 195 N.E.3d 420, 423 (Mass. 2022) (Where a licensee files a petition for review of a license suspension, revocation, or cancellation under [Mass. Gen. Laws ch.] 112, § 64, the full Supreme Judicial Court "reviews the Massachusetts board's decision directly, even though the appeal is from a decision of the single justice.").

The full court also affirmed the Board. App.11a. In so doing, the court expressly ruled on the free speech question, which had been raised in briefing, by amici,

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Right to Life, Inc., 551 U.S. 449, 462 (2007) (holding that nonprofit corporation's challenge to FEC enforcement of campaign finance law restricting issue-oriented television ads before election was not moot). "The exception applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Ibid.* (citation and quotation marks omitted). Dr. Roman has diligently pursued her claims against the Board, but the litigation process nonetheless will outlive the challenged suspension—as it likely would any future suspension imposed on similar grounds. Further, absent this Court's intervention "there is no reason to believe" that the Board will "refrain from prosecuting" Dr. Roman again in the future based on a subjective conclusion that she has made "materially similar" statements. *See id.* at 463.

and at oral argument. Specifically, the court rejected Dr. Roman's argument that "the [B]oard improperly targeted Roman because it disapproved of her speech." App.9a. According to the court, "[t]he [B]oard properly disciplined Roman for the *statements that she made while practicing her profession*." *Ibid.* (emphasis added).

In further justifying its holding, the Supreme Judicial Court relied on content-based standards never articulated or adopted by this Court. For instance, the court emphasized that "[a]ll [of Dr. Roman's offending] recommendations were targeted at human health, not at animal health," indicating that such distinction provided a valid basis for differential treatment of—and penalization of—her speech. App.8a. Moreover, the court concluded that, while Dr. Roman's sending "COVID-19 precautions" was "within the scope of her practice," her "making health recommendations for humans" went "well beyond that scope" and thus could be restricted. App.9a.

Dr. Roman's free speech argument was thoroughly and specifically rejected by the Board, App.73a–76a, and was thoroughly and specifically rejected by the state high court in its final decision, App.8a–9a.

This petition timely followed.

REASONS FOR GRANTING THE PETITION

The First Amendment free speech rights of licensed professionals is an important question of constitutional law about which there is an existing conflict of opinions. This Court will shortly be considering the issue in *Chiles v. Salazar*, *cert.*

granted, 145 S. Ct. 1328 (2025). This Court is also holding several other certiorari petitions raising similar questions presented, including *Crownholm v. Moore* (No. 24-276), *360 Virtual Drone Servs. LLC v. Ritter* (No. 24-279), and *Hines v. Pardue* (No. 24-920).

By holding that licensed professionals like Dr. Roman are not "entitled to the full range of individual rights available to all citizens," particularly free speech rights, and by punishing Dr. Roman for the content and viewpoint of an email without considering controlling First Amendment principles, the decision below not only conflicts with the decisions of this Court, most obviously *NIFLA*. It also deepens the entrenched conflict of authority that led this Court to grant certiorari in *Chiles* and hold the related cases.

I. The Board's decision is contrary to decisions of this Court.

The court below acknowledged that Dr. Roman had only engaged in speech—she simply sent an email—but then failed to apply the correct (or any) First Amendment standards.

A. The Board and the State high court departed from this Court's "professional speech" jurisprudence.

"Speech is not unprotected merely because it is uttered by 'professionals,'" and this Court has refused to dilute First Amendment scrutiny of restrictions on speech by medical practitioners outside of narrowly defined circumstances. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 767–68 (2018) ("*NIFLA*").

The reason is obvious and fundamental: "The dangers associated with content-based regulations of speech are also present in the context of professional speech," and, "[a]s with other kinds of speech, regulating the content of professionals' speech poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information." *Id.* at 771 (brackets, citation, and quotation marks omitted). Allowing the government to regulate speech without regard for controlling First Amendment precedent "by simply imposing a professional licensure requirement" "gives the States unfettered power to reduce a group's First Amendment rights." *Id.* at 773.

"Further, when the government polices the content of professional speech, it can fail to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Id.* at 772 (citation and quotation marks omitted). "Professionals might have a host of good-faith disagreements, both with each other and with the government, on many topics in their respective fields"; "[t]he best test of truth" in such instances "is the power of the thought to get itself accepted in the competition of the market, and the people lose when the government is the one deciding which ideas should prevail." *Ibid.* (citation and quotation marks omitted).

Here, the court below applied the wrong governing standard: it treated "professional speech" as its own wholly unprotected category of speech—in direct contradiction to *NIFLA*. Indeed, it cited its own prior decision, *Schoeller v. Board of Registration of Funeral Directors & Embalmers*—decided before *NIFLA*—in holding that "'because licensed professionals are

subject to regulation, they do not come before us as citizens entitled to the full range of individual rights available to all citizens,' and in particular, they may be subject to restrictions related to speech." App.9a (quoting *Schoeller v. Board of Registration of Funeral Directors & Embalmers*, 977 N.E.2d 524, 533 (Mass. 2012)) (alteration omitted).

Yet *NIFLA* emphasized that there are only two circumstances in which this Court has afforded reduced First Amendment protection to speech uttered by "professionals": *first*, where a law "require[s] professionals to disclose factual, noncontroversial information in their 'commercial speech'"; and *second*, where the government is regulating "professional conduct, even though that conduct incidentally involves speech." 585 U.S. at 768. In all other circumstances, laws that burden "professional" speech on particular subjects receive the same strict scrutiny applicable to content-based restrictions on any other kind of fully protected speech. *Id.* at 773.

This Court acknowledged while "drawing the line between speech and conduct can be difficult," "the line is long familiar to the bar" and "this Court's precedents have long drawn it." *Id.* at 769. (citations and quotation marks omitted).

Indeed, this Court clearly articulated the distinction between the regulation of speech and of conduct in *Holder v. Humanitarian Law Project*, 561 U.S. 1, 27–28 (2010). Under *Holder*, it does not matter if a law "*generally* functions as a regulation of conduct." *Id.* at 27. Instead, courts must determine whether even a generally applicable prohibition is directed at a person because of her speech or her

conduct. *Id.* at 27–28. As *Holder* explained, even when a law "may be described as directed at conduct" as a general matter, First Amendment scrutiny is needed when, "as applied to plaintiffs[,] the conduct triggering coverage under the statute *consists of communicating a message*." *Id.* at 28 (emphasis added). Accordingly, a speaker must at a minimum be engaged in some regulable conduct for the so-called "incidental regulation" exception to apply. *See NIFLA*, 585 U.S. at 770 (where the challenged licensed notice requirement was "not tied to a procedure at all" it thus "regulate[d] speech as speech").

As *NIFLA* held, "this Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'" *Id.* at 767. *NIFLA* specifically reiterated that "this Court has stressed the danger of content-based regulations 'in the fields of medicine and public health, where information can save lives.'" *Id.* at 771 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011)). In short, *NIFLA* clarified that the only places where the government may impose "incidental burdens" on speech is by regulating "commerce or conduct." *Id.* at 769.

It is important to be crystal clear on this point: Neither commerce nor conduct is at issue here. The Board did not assert that the offending statement could be regulated because it was commercial speech. Nor did the Board assert that the offending statement was noncommunicative conduct (like a medical procedure) that was only incidentally speech. To the contrary, the allegedly offending conduct *was* the speech—the sending of the email. *See NIFLA*, 585 U.S. at 770 (a rule "regulates speech as speech" when

its applicability is "not tied to a procedure" or to any other form of nonspeech conduct). As such, Dr. Roman's pure speech here *is* entitled to the "full range of individual rights available to all citizens," contrary to *Schoeller*, 977 N.E.2d at 533.

None of the state high court's reasons for its holding—including that Dr. Roman's "recommendations were targeted at human health, not at animal health," App.8a, or that certain of her recommendations "provided needed information to her clients within the scope of her practice" while others went "well beyond that scope," App.9a—justified applying a lower level of First Amendment scrutiny. Just as in *Holder*, where the regulation-triggering activity in which Dr. Roman engaged was "communicating a message," 561 U.S. at 28, the Board primarily regulated her speech, and ordinary First Amendment scrutiny therefore applies.

B. The Board improperly imposed a content-based restriction on Dr. Roman's speech.

Further compounding the constitutional violation, the Board plainly disciplined Dr. Roman because it disapproved of her specific message, thus implicating one of the core "dangers associated with content-based regulations of speech": "the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information." *NIFLA,* 585 U.S. at 771.

The core guarantee of the Free Speech Clause of the First Amendment, applicable to the States through the Fourteenth Amendment, is that the government may not "restrict expression because of its message, its ideas, its subject matter, or its

content." *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). Put more directly, "[c]ontent-based laws—those that target speech based on its communicative content—are presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Absent an exception, such laws "may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Ibid.*

A speech restriction is content-based if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Ibid.*; *see City of Austin* v. *Reagan Nat'l Advert. of Austin, LLC,* 596 U.S. 61, 73–74 (2022). In other words, if a speaker's violation of the law "depends on what they say"—their topic or message—the law is content-based. *Holder,* 561 U.S. at 27. There is no doubt that the Board's decision here was content-based: On its face, it expressly relied on Dr. Roman's giving advice "to humans," as opposed to animals (via their owners). App.47a. Accordingly, the decision clearly applied to Dr. Roman's speech "because of the topic discussed or the idea or message expressed." *See Reed*, 576 U.S. at 163.

C. The Board improperly imposed a viewpoint-based restriction on Dr. Roman's speech.

Further, a speech restriction is viewpoint-based "[w]hen the government targets not [just] subject matter, but particular views taken by speakers on a subject." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). "Viewpoint discrimination is thus an egregious form of content discrimination." *Ibid.*

Here, the Board's decision was not only impermissibly content-based, it was impermissibly viewpoint-based as well. Although the Board claimed not to have taken a position on the truth or falsity of Dr. Roman's ozone-related statements, s*ee* App.26a, 128a (asserting that Dr. Roman acted "beyond the scope of her veterinary practice" "[e]ven if what [she] said in the March 16 email about ozone is true"), its parsing of her email shows otherwise. The Board arbitrarily distinguished between what it apparently considered *acceptable* human-directed speech (statements about MASH's pandemic precautions,[2] and even certain statements about use of ozone as a disinfectant) and what it considered *unacceptable* human-directed speech (primarily her statement about use of ozone as a possible treatment for COVID-19, while also criticizing her references to her personal vitamin regimen and use of homeopathic remedies).

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[2] Notably, Dr. Roman's statements regarding MASH's pandemic precautions were not made pursuant to any "require[ment] . . . to disclose factual, noncontroversial information in [her] 'commercial speech,'" *NIFLA*, 585 U.S. at 768, nor did the Board assert in any proceeding below that they were. Indeed, it was not until over two months later, on May 18, 2020, that the Governor of Massachusetts imposed now-familiar workplace safety measures, including with respect to social distancing, hygiene protocols, staffing and operations, and cleaning and disinfecting. *See* Office of the Governor of the Commonwealth of Massachusetts, COVID-19 Order No. 33 (May 18, 2020), https://www.mass.gov/doc/may-18-2020-re-opening-massachusetts-order/download. Amid that backdrop, on March 16, 2020, Dr. Roman proactively implemented MASH's own pandemic precautions—many of which would ultimately be adopted in some form by the State, but at that time were neither universal nor required by law.

Underscoring its viewpoint-based restriction on Dr. Roman's speech, for good measure the Board even made several findings of fact specifically disparaging the efficacy of ozone therapy in relation to COVID-19. App.110a–112a. Notably, these disparaging findings were based on statements about ozone and COVID-19 from various government agencies (including the U.S. Food and Drug Administration) that were not issued until weeks (and in some cases months) *after* Dr. Roman sent the March 16 email.

In short, the Board penalized Dr. Roman not only because of the content of her speech and because it disagreed with her viewpoint. The Board also penalized Dr. Roman for an even more incredulous reason: that the viewpoint she espoused (the benefit of ozone generators) failed to predict—and failed to conform to—contrary governmental statements that were not made *until well into the future*. The Board's own decision makes clear that its concern was not the human-animal dichotomy, but rather its disagreement with Dr. Roman's particular viewpoint about the efficacy of ozone therapy.

The Board and Dr. Roman are entitled to have "good-faith disagreements" over topics like the efficacy of over-the-counter ozone generators in reducing the spread of COVID. *See NIFLA,* 585 U.S. at 771–772. Yet the proper way to handle that disagreement is by full scientific debate before the public—the "best test of truth," *see id.* at 772—not selective and *post hoc* application of licensing laws to chill Dr. Roman's speech.

Dr. Roman and her veterinarian colleagues have a right to share their views with the public. Merely offering those views—as pure speech and without

engaging in any commercial speech or any regulable conduct—cannot be a basis to deprive a person from practicing her chosen profession.

II. The decision below deepens an entrenched conflict of authority.

The circuits have split regarding whether the traditional speech-conduct standard applies to speech restricted under an occupational licensing law, and the decision below of a state high court deepens that conflict. The Fifth Circuit has strictly adhered to *NIFLA*, whereas the Ninth and Tenth Circuits have strayed from its teachings. The Eleventh Circuit has taken internally conflicting approaches in occupational speech cases, in some decisions faithfully following *NIFLA* but, in at least one other, applying a standard that *NIFLA* rejected. Finally, the Fourth Circuit has forged its own path, applying a multi-factorial approach of its own making that conflicts with the approaches of the other circuits.

a. The **Fifth Circuit** has closely hewed to the standard articulated in *NIFLA*. In *Hines v. Pardue*, 117 F.4th 769, 771–773 (5th Cir. 2024), *pet. for cert. filed*, No. 24-920 (Feb. 24, 2025)—a case very much like this one—the Texas State Board of Veterinary Medical Examiners had penalized a licensed veterinarian for allegedly violating the State's physical-examination requirement. As summarized by the Fifth Circuit, the allegedly improper conduct of Dr. Hines amounted to "giving online pet-care advice to animal lovers around the world" in the form of "send[ing] emails" in response to inquiries—what the circuit court called "pure speech." *Id.* at 771, 775.

The Fifth Circuit reversed in favor of Dr. Hines, holding that application of the state's physical-examination requirement to his emails violated the First Amendment. *Id.* at 778. As the court correctly reasoned, "[b]ecause the act in which Dr. Hines engaged that triggered coverage under the physical-examination requirement was the communication of a message, the State primarily regulated Dr. Hines's speech," and thus the First Amendment was implicated. *Id.* at 778 (quotation marks omitted) (alteration accepted). And even assuming the physical-examination veterinary requirement was content-neutral, it was unable to withstand intermediate scrutiny. *Id.* at 778–785.

b. The **Ninth Circuit** has taken an approach divergent from that of the Fifth Circuit on an issue similarly governed by *NIFLA*. In *Crownholm v. Moore*, No. 23-15138, 2024 WL 1635566, at *6 (9th Cir. Apr. 16, 2024), *pet. for cert. filed*, No. 24-276 (Sept. 9, 2024), another case involving a challenge to a state surveyor board, this time in California, the court framed the plaintiffs' unlicensed "site plans" as "unlicensed land surveying conduct" not subject to First Amendment scrutiny. According to the court, "just as the state may constitutionally ban a particular medical treatment that requires the use of speech," "so too may the state bar unlicensed persons from creating maps that have the effect of providing a 'professional opinion as to the spatial relationship between fixed works or natural objects and the property line.'" *Id.* at *7 (citing *Tingley v. Ferguson*, 47 F.4th 1055, 1073 (9th Cir. 2022), *cert. denied*, 144 S. Ct. 33 (2023)).

c. So too has the **Tenth Circuit** veered from *NIFLA*'s guidance in the occupational licensing context. In *Chiles v. Salazar*, 116 F.4th 1178, 1192, 1214 (10th Cir. 2024), *cert. granted*, 145 S. Ct. 1328 (2025), a divided panel upheld a Colorado statute banning mental health professionals from engaging in "[c]onversion therapy with a client who is under eighteen years of age."[3] In so doing, the majority concluded that the ban was "a regulation of professional conduct incidentally involving speech" under *NIFLA*. *Id.* at 1214. Yet—as recognized by the dissenting judge—"a restriction on speech is not *incidental* to regulation of conduct when the restriction is imposed *because of the expressive content of what is said*." *Id.* at 1228 (Hartz, J., dissenting) (emphasis added). And despite acknowledging *NIFLA* as the governing precedent, the majority repeatedly invoked the fact that a professional counselor carries a license to justify the Colorado statute's censorship. *See, e.g.*, *id.* at 1207 (noting that plaintiff-appellant "is a licensed professional counselor, a position earned after years of advanced education and licensure"). That distinction, however, matters only if "professional speech should be treated differently from other speech." *Id.* at 1234 (Hartz, J., dissenting). The "same rules" apply whether speech is uttered by a licensed professional or a layperson. *Id.* at 1229–

[3] The Colorado statute at issue generally defines conversion therapy as "any practice or treatment by licensee, registrant, or certificate holder that attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex." *Chiles*, 116 F.4th at 1192 (quoting Colo. Rev. Stat. § 12-245-202(3.5)).

1230 (Hartz, J., dissenting) (quoting *NIFLA*, 585 U.S. at 768) (noting that "the First Amendment *never* cares whether 'professionals were speaking'"). As with the decision below here, *Chiles*'s reliance on the professional-nonprofessional distinction as a basis to regulate speech defies *NIFLA*'s command.

d. The **Eleventh Circuit** has taken internally conflicting approaches to occupational speech, adhering strictly to *NIFLA*'s principles in some cases while straying from its teachings in others. For instance, in *Otto v. City of Boca Raton*, 981 F.3d 854, 865 (11th Cir. 2020), the court reached the exact opposite conclusion as *Chiles* on the same question of law, holding that two local ordinances prohibiting licensed therapists from engaging in conversion therapy discussions with minors constituted regulations on speech, not conduct. Noting that the activity at issue "consist[ed]—entirely—of words," the court rejected the government's attempt to "regulate speech by relabeling it as conduct." *Id.* at 865. The circuit court likewise applied similar reasoning in a case pre-dating *NIFLA*, *Wollschlaeger v. Governor, Florida*, 848 F.3d 1293, 1307, 1311 (11th Cir. 2017) (en banc) (holding that Florida statute restricting doctors from speaking to patients about firearm ownership constituted speaker-focused and content-based restriction on speech in violation of First Amendment, and rejecting "adoption of a rational basis standard for evaluating so-called professional speech").

By contrast, in *Del Castillo v. Secy, Fla. Dep't of Health*, 26 F.4th 1214, 1216 (11th Cir. 2022), the Eleventh Circuit reaffirmed verbatim a standard that the Fifth Circuit says *NIFLA* "rejected." *See Vizaline,*

LLC v. Tracy, 949 F.3d 927, 932 (5th Cir. 2020). According to the Eleventh Circuit, a "statute that governs the practice of an occupation is not unconstitutional as an abridgement of the right to free speech, so long as any inhibition of that right is merely the incidental effect of observing an otherwise legitimate regulation." *Del Castillo*, 26 F.4th at 1220 (quoting *Locke v. Shore*, 634 F.3d 1185, 1191 (11th Cir. 2011), in turn quoting *Accountant's Soc'y of Va. v. Bowman*, 860 F.2d 602, 604 (4th Cir. 1988)), *cert. denied*, 143 S. Ct. 486 (2022)). Yet *Vizaline* quoted that exact same sentence from *Bowman* as representative of the "professional speech doctrine" that this Court has "rejected." *Vizaline*, 949 F.3d at 931–932.

e. The **Fourth Circuit** has taken a divergent approach from the others. *See 360 Virtual Drone Services LLC* v. *Ritter*, 102 F.4th 263, 278 (4th Cir. 2024), *pet. for cert. filed*, No. 24-279 (Sept. 9, 2024). Although the court has applied the traditional speech/conduct analysis outside the occupational licensing context, *see, e.g.*, *PETA, Inc. v. N.C. Farm Bureau Fed'n, Inc.*, 60 F.4th 815, 826 (4th Cir. 2023), it has eschewed applying that analysis in cases involving speech regulated by occupational licensing regimes. In one such case, the Fourth Circuit conjured a "non-exhaustive list of factors" to "distinguish[] between licensing regulations aimed at conduct and those aimed at speech as speech." *360 Virtual Drone Services*, 102 F.4th at 278. That "variety of factors" included "whether the speech carries economic, legal, public-safety, or health-related consequences"; "whether the speech takes place in a traditionally public space," as opposed to on private property; and whether the law being challenged "appears to regulate

some kind of unpopular or dissenting speech." *Id.* at 274–275. The court's multi-factorial "aimed at conduct" approach deviates from the traditional speech/conduct analysis demanded by *Holder*. Indeed, at no point did the court deny that the Plaintiffs were engaged in speech, *ibid.*, nor did it identify any separately identifiable conduct in which Plaintiffs engaged.

* * *

These divergent and contradictory approaches among multiple circuits are indicative of the highly inconsistent application of this Court's First Amendment jurisprudence and the "traditional conduct-versus-speech dichotomy." *See Vizaline*, 949 F.3d at 932. The decision below exacerbates the conflict.

III. The question presented is an important constitutional one, and Dr. Roman's case presents a compelling vehicle for addressing it.

First, this case—as do the pending matters before the Court in *Chiles*, *Crownholm*, *360 Virtual Drone Services LLC*, and *Hines*—implicates a significant nationwide conflict regarding the scope of occupational licensing laws and the power of boards of registration to regulate speech as speech, as opposed to speech incidental to regulable conduct. The decision below sets a dangerous precedent, putting veterinarians ethical and legal obligations in conflict. Massachusetts law *mandates* that veterinarians like Dr. Roman adhere to professional standards set by professional organizations like the American Veterinary Medical Association (AVMA), which in

turn *require* veterinarians to not only consider the interaction of human and animal health holistically, but to use their scientific knowledge for the public benefit.

Second, this case is at the center of a major public policy debate regarding professional speech by medical professionals, especially in the wake of the COVID-19 pandemic and discourse and disagreement about the efficacy of different medical procedures and approaches. The decision below will force veterinarians to confront frequent line-drawing dilemmas about when their practices—which often entail advising clients about human health risks arising from interactions with pets and farm animals—overstep subjective *ad hoc* governmental boundaries and tread into forbidden "health suggestions for humans," *see* App.122a.

Finally, Dr. Roman's case is a compelling vehicle for resolving these issues because it is about pure speech: the contents of a single email. Neither commerce nor conduct is at issue here. The Board did not assert that the offending statement could be regulated because it was commercial speech. Nor did the Board assert that the offending statement was noncommunicative conduct (like a medical procedure) that was only incidentally speech. Instead, the Board suspended Dr. Roman from her professional livelihood for two years simply because of what she said.

A. This case implicates important ethical issues relating to the freedom of medical professionals to share their scientific knowledge.

Veterinarians in Massachusetts and around the country[4] are required by law to "conform to currently-accepted professional and scientific standards in the profession of veterinary medicine such as but not limited to the AVMA Principles." 256 Code Mass. Reg. § 7.01. Those nationally recognized principles are clear: veterinarians must consider the intersection of their practice with human health and they are required to put their scientific knowledge at the service of the general public.

Dr. Roman followed these principles and offered her own good-faith views about treatments that might be beneficial during the emerging COVID-19 pandemic. Yet the court below held that this speech violated state law—without consideration of the First Amendment's protections—and affirmed the suspension of Dr. Roman's license. That decision puts Dr. Roman and her veterinarian colleagues' ethical and legal obligations in direct conflict.

Here's why. Veterinarians' ethical obligations kick in the moment veterinarians become eligible to practice. Upon receiving their credentials, veterinarians take the Veterinarian's Oath, under which they must "solemnly swear to use [their] scientific knowledge and skills for the benefit of

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[4] *See, e.g.*, D.C. Code Mun. Regs. tit. 17, § 2813.1; N.H. Code R. Vet 501.01; Idaho Admin. Code r. 24.38.01.002; 216 R.I.C.R. 040-05-14.2; Utah Admin. Code R156-28-502(1)(c).

society through the protection of animal health and welfare, the prevention and relief of animal suffering, the conservation of animal resources, *the promotion of public health, and the advancement of medical knowledge."* AVMA, *Veterinarian's Oath,* https://tinyurl.com/yc27a756 (emphasis added). That commitment flows from well-established principles of veterinary ethics, which embrace a holistic "One Health" standard, under which "humans, animals, and the world we live in" are viewed as "inextricably linked." AVMA, *One Health,* https://tinyurl.com/yav8mdk8.

Under this standard, as set forth in the version of AVMA's principles of veterinary ethics that were applicable during the time at issue here,[5] "[a] veterinarian shall continue to study, apply, and advance scientific knowledge; maintain a commitment to veterinary medical education; [and] *make relevant information available to clients, colleagues, [and] the public."* App.77a, 132a (emphasis added). Veterinarians are further "encouraged to *make their knowledge available to their communities and to*

[5] The AVMA subsequently adopted minor modifications to its principles of veterinary ethics, but the relevant substance remains materially unchanged. *See* AVMA, *Principles of veterinary medical ethics of the AVMA*, https://tinyurl.com/54vs7a7w (providing that "[a] veterinarian should continue to study, apply, and advance scientific knowledge, and remain committed to veterinary medical education," and "[v]eterinarians are encouraged to make their knowledge available to their communities to enhance their colleagues', clients', and the public's understanding of animal health and welfare, and to offer their services for activities that protect public health").

provide their services for activities that protect public health." App.132a (emphasis added).

The takeaway from these standards is clear: veterinarians bear a responsibility to educate clients on public health, epidemiological, and zoonotic matters, and to promote the good health of both human clients and their animals. Indeed, by expressly incorporating these standards, Massachusetts law *requires* veterinarians to do so. Accordingly, providing such general public health information is a mandatory element of a veterinarian's ethical and professional obligations under core principles of veterinary medicine.

These commitments are at their apex during a public health crisis involving an emergent disease like COVID. Professional organizations like AVMA recognized as much. AVMA *actively encouraged* veterinarians to speak out in public about taking measures to prevent the spread of COVID. In 2021, for example, with the support of the federal Centers for Disease Control and Prevention (CDC), "AVMA launched a nationwide education and awareness campaign . . . to encourage veterinary teams, their clients, and the general public to get vaccinated against COVID-19." AMVA, *AVMA launches campaign to encourage COVID-19 vaccinations* (Dec. 15, 2021), https://tinyurl.com/43nz5mwp. "The effort was encouraged by the [CDC] because the agency recognizes the key role of veterinarians in society and public health." *Ibid.*

The AVMA campaign "include[d] a wide range of print and digital materials available to AVMA members, such as a social media toolkit, brochures, a video, and posters," all of which veterinarians were

encouraged to use to urge clients and members of the public to vaccinate. *Ibid.* As AMVA's then-president emphasized, "[v]eterinarians are healthcare providers trusted not only by their clients but by the public at large," and so "are uniquely qualified to share the importance of *preventing and controlling disease in both animals and people*." *Ibid.* (emphasis added). From AVMA's perspective, this effort by veterinarians to encourage vaccination was not just a good idea, but an ethical imperative: "Protecting public health is part of a veterinarian's responsibility and appropriate preventive care, including vaccinations, goes a long way towards protecting public health." *Ibid.*

Since the pandemic, AVMA has reaffirmed its view that veterinarians have an affirmative *obligation* to serve the public in a health crisis. AVMA recently adopted an official policy regarding the "role of veterinary professionals in support of human health care during emergency situations," which provides that: "During a catastrophic event, the veterinarian's training and capability in emergency management, wound care/treatment, pharmaceutical and medical supplies, and knowledge of population and public health *can be used to augment the capacity of the human healthcare system*." AVMA, *Addressing the role of veterinary professionals in support of human health care during emergency situations,* https://tinyurl.com/46x5t5p3 (emphasis added).[6]

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[6] Similarly, in March 2024, AVMA issued a statement celebrating veterinarians as "essential health workers," emphasizing that "[t]he application of veterinary science contributes not only to animal well-being but also to human's physical, mental and social wellbeing." AVMA, *World Veterinary*

Dr. Roman's email was sent at the outbreak of the COVID pandemic, less than a week after the governor of Massachusetts declared a state of emergency. After informing her clients about a variety of health-related precautions MASH would be implementing during the pandemic with respect to limiting human-to-human contact (none of which the Board found improper), Dr. Roman, among other suggested precautions, "encouraged" her clients to consider use of over-the-counter ozone generators, which in her scientific view "helps both the animal and humans." App.2a, 193a. In doing so, Dr. Roman was "mak[ing her] knowledge available to [her] communit[y]" for the "promotion of public health" during an emerging crisis—*exactly* what her Veterinarian's Oath and ethical guidance from AVMA obliged her to do. *See* App.132a; AVMA, *Veterinarian's Oath,* https://tinyurl.com/yc27a756.

The decision below cannot be reconciled with these ethical principles. According to the state high court, merely "by sending the March 16 e-mail message, Roman practiced veterinary medicine" because she "provide therapeutic advice to human beings." App.7a–8a. But that cannot be right, because it would render unlawful a wide swath of conduct veterinarians are required to engage in by their oath—and, by direct extension, are *required* to engage in by regulations in Massachusetts (and other states) that codify those responsibilities into law.

Moreover, if applied consistently in other cases, the state court's reasoning here would lead to absurd results. If Dr. Roman's recommending ozone

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Day celebrates veterinarians as essential health workers (Mar. 11, 2024), https://tinyurl.com/453uc5ny.

generators as a COVID precaution for humans constituted practicing outside the scope of her veterinary license, then so would encouraging her human clients to get tested for COVID. Or when they eventually became available, getting a COVID vaccine—which is exactly what AVMA (with the federal CDC's support) *urged* veterinarians to do during the pandemic.

In other words, under the decision below, the leading national association of veterinary professionals and the federal government were actively encouraging Massachusetts veterinarians to violate Massachusetts law. Of course, no one seriously believes a veterinarian would be subject to professional discipline or license suspension by encouraging human patients to get tested or to vaccinate. But there is no logical basis to distinguish that obviously permitted speech from the speech that led to the suspension of Dr. Roman's license here.

B. This case implicates important public policy issues relating to the freedom of medical professionals to share their scientific knowledge.

The decision below also has practical consequences that extend beyond Dr. Roman's case and the emergency context of the COVID pandemic, since veterinarians routinely find it necessary to give health-related advice to their human clients in the normal course of their veterinary practices.

Some of that advice is tied to the treatments they provide animals in their practice. For example, veterinarians advise human clients on how to safely handle medication prescribed for their pets or

livestock, or may warn clients about contact with the feces and urine of pets who are ill or are being treated with powerful drugs.

Other advice is more general and may relate to how to prevent or mitigate transmission of zoonotic diseases—the scientific term for the myriad infectious diseases that are transmitted from animals to humans. These are legion, ranging from avian flu (birds) and leptospirosis (livestock) to rabies (dogs) and salmonella (reptiles), and dozens of others. And of course, COVID-19 was already suspected at the time of Dr. Roman's email of having originated in bats and then leaped to humans.

If the decision below is allowed to stand, it will be difficult for veterinarians to distinguish which of this advice is prohibited under occupational licensing laws, such as Mass. Gen. Laws ch. 112, § 61(1), and which is not. Perhaps telling a client always to use gloves when handling a certain medication prescribed for a pet is still permitted—like the COVID precautions described in Dr. Roman's email that were connected to client-pet visits to her practice, which the Board found were permissible.

But what about a client alert with recommendations for farmworkers on reducing the cross-species spread of an emergent dairy cow virus? Providing pregnant pet owners with a brochure on the risks of contracting congenital toxoplasmosis from housecats? A social media post sharing best practices for minimizing human health risks for kids at a petting zoo? Veterinarians around the country would be left making difficult line-drawing decisions on a daily basis about whether these communications could amount to forbidden "health suggestions for

humans," *see* App.122a, exposing them to possible discipline and suspension from practice.

It is essential to reiterate that Dr. Roman is *not* advocating that licensing boards be rendered standardless. Boards are (and would remain) entitled to regulate their respective professions consistent with *NIFLA*'s bright-line objective guardrails. Indeed, *NIFLA* already makes clear that speech of a licensed professional *may* be limited where a law "require[s] professionals to disclose factual, noncontroversial information in their 'commercial speech,'" or where the government is regulating "professional conduct, even though that conduct incidentally involves speech." 585 U.S. at 768. Further, *NIFLA* expressly retains the availability of "[l]ongstanding torts for professional malpractice," which "fall within the traditional purview of state regulation of professional conduct." *Id.* at 769 (citation and quotation marks omitted). Outside these scenarios, however, where a licensed professional engages in pure speech, *NIFLA* requires that the government—including boards of registration—"preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Id.* at 772 (citation and quotation marks omitted).

In short, preventing veterinarians from sharing their scientific knowledge in circumstances not restricted by the limiting principles established in *NIFLA* compromises their ethical obligations and creates preventable health risks. But that is precisely what the decision below would do: inhibit veterinarians from speaking out to safeguard the health of not only animals, but entire communities. This Court should not endorse that detrimental outcome—especially in light of *NIFLA*'s cautionary

warnings against content-based restrictions on professionals' speech. *See NIFLA*, 585 U.S. at 771–773 (noting that "regulating the content of professionals' speech poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information").

C. This case is a compelling vehicle.

This case is a compelling vehicle for resolving the question presented: whether the state high court improperly applied a lower level of constitutional scrutiny in reviewing the Board's suspension of Dr. Roman's license, based solely on the content and views expressed in her March 16 email. The case turns on a purely legal question, and there are no facts in dispute.

Moreover, this issue was addressed at length in the state court's published decision, and requiring a heighted level of scrutiny would be outcome-determinative insofar as it would bar the state court from relying on outdated or invented legal standards, premised on the false notion that licensed professionals are subject to diminished First Amendment protections on their pure speech. They are not.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, this petition should be held pending this Court's decision in *Chiles v. Salazar* (No. 24-539)—as is currently the case with petitions for certiorari in occupational speech cases including *Crownholm v. Moore* (No. 24-276), *360 Virtual Drone Servs. LLC v. Ritter* (No. 24-279), and *Hines v. Pardue*

(No. 24-920))—and then be disposed of as appropriate in light of that decision.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A

SJC-13653

MARGO ROMAN vs. BOARD OF REGISTRATION IN VETERINARY MEDICINE.

May 6, 2025.

Veterinarian. Board of Registration in Veterinary Medicine. Administrative Law, Agency, Proceedings before agency, Substantial evidence. Evidence, Administrative proceeding. Electronic Mail.

The petitioner, Margo Roman, appeals from a judgment of the county court upholding a final decision and order of the Board of Registration in Veterinary Medicine (board), which suspended, for two years, her license to practice as a veterinarian. We affirm.

Facts. In a tentative decision, which was later adopted as the final decision of the board, a hearing officer made the following findings of fact, which are not in dispute.

At all relevant times, Roman, a licensed veterinarian, owned Main Street Animal Services of Hopkinton (MASH). On March 16, 2020, after the Governor and the President had declared, respectively, a State and national emergency due to the COVID-19 pandemic, Roman authored and sent an e-mail message to MASH clients (March 16 e-mail message), titled "Update on Coronavirus Precautions at MASH."[1] In that e-mail message, Roman wrote:

> "Additional information to protect yourselves[2]: Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and [a] possible cure for the coronavirus. There is a link on our website under 'resources' to find the companies that we recommend from whom you can buy an ozone generator and ozone products. We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans. If you buy an ozone generator, let the company know that you are a MASH client; they understand

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[1] As the single justice noted, the term "clients" refers to the human owners of the animals treated by Roman and MASH.

[2] The first part of the March 16 e-mail message, not quoted here, informed clients of the precautions that would be taken at MASH during the emergency, for example, postponing routine visits and providing for contactless pickup of medicine. The March 16 e-mail message also mentioned that Roman uses various nutritional supplements and suggested "a whole food healthier diet with less sugar." These portions of the March 16 e-mail message were not addressed in the tentative decision.

> how we have tried to educate our clients to be protective.
>
> ". . . .
>
> "Homeopathically many of our clients already have the homeopathic first aid kit and in it is homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus. There is also literature which states that homeopathic phosphorous and bryonia are other remedies that can be supportive during the virus outbreak, and gelsenium can also be helpful.
>
> ". . . .
>
> "While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason[s] that we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come into contact."

The board noted that Federal regulations define "ozone" as "a toxic gas with no known useful medical application in specific, adjunctive, or preventive therapy. In order for ozone to be effective as a germicide, it must be present in a concentration far greater than that which can be safely tolerated by [humans] and animals." 21 C.F.R. § 801.415. At times after the date of the March 16 e-mail message, Federal

agencies warned marketers not to make claims that ozone therapy could treat or prevent COVID-19 because such claims were not supported by scientific evidence.

At the time Roman sent the March 16 e-mail message, she was serving a term of monitored probation by the board pursuant to a written disciplinary agreement executed on or about April 11, 2018. She had also received other disciplinary action by the board.

Procedural background. After receiving a complaint regarding the March 16 e-mail message, the board issued an order to show cause to Roman on or about January 13, 2021. The order to show cause alleged, among other things, that Roman violated G. L. c. 112, § 61 (1), by practicing her profession beyond the scope of her license. Roman responded, and motion practice ensued. In a summary decision issued on January 19, 2022, a hearing officer determined that Roman's March 16 e-mail message, by recommending a treatment for a disease in human beings, constituted practice beyond the scope of her licensure and conduct that called into question her competence to practice the veterinary profession, both in violation of G. L. c. 112, § 61 (1). Roman unsuccessfully sought reconsideration.

A formal sanctions hearing took place before a different hearing officer, who issued the tentative decision discussed supra. The tentative decision did not propose a sanction, but it did address (and reject) Roman's arguments that she did not violate G. L. c. 112, § 61 (1), and it reviewed factors in aggravation and mitigation to be considered when determining the sanction to be imposed.

Roman lodged objections to the tentative decision and filed a motion to strike. In its final decision, the board overruled each objection and denied the motion to strike. The board thus adopted the tentative decision without modification. In determining an appropriate sanction, the board considered several factors in mitigation and in aggravation. In mitigation, the board noted that there was no evidence of any bad intent on Roman's part and no evidence that she intended any harm; that there was no evidence that anyone had followed her guidance as discussed in the March 16 e-mail message; and that Roman believed she was following the American Veterinary Medical Association (AVMA) veterinarians' oath and the AVMA One Health Initiative.[3] In aggravation, the board considered Roman's disciplinary history, noting that she had been disciplined in a series of previous cases dating back to 2008 and that when she sent the March 16 e-mail message, she was serving a period of monitored probation pursuant to a consent agreement. Notably, although she had agreed to a two-year period of probation in that case, she was still on probation at the time of the final decision more than five years later due to her failure to comply with the terms of the agreement. In view of Roman's misconduct and these mitigating and aggravating factors, the board suspended her license to practice as a veterinarian for two years.

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[3] As explained in the final decision, the AVMA One Health Initiative "recognizes the interconnectedness of animals, humans and the environment and collaborative efforts to attain optimal health for all."

Roman thereafter filed a petition for review in the county court pursuant to G. L. c. 112, § 64. After a hearing, the single justice affirmed the final decision. Roman now appeals.

Discussion. "Under G. L. c. 112, § 64, a person whose license to practice medicine has been revoked may petition the court to 'enter a decree revising or reversing the decision of the board, in accordance with the standards for review provided' in G. L. c. 30A, § 14 (7)." Kippenberger v. Board of Registration in Veterinary Med., 448 Mass. 1035, 1035 (2007), quoting Weinberg v. Board of Registration in Med., 443 Mass. 679, 685 (2005). "Section 14 (7), in turn, instructs us to set aside or modify the decision only if the substantial rights of a party may have been prejudiced because the agency decision is '(1) in violation of constitutional provisions; (2) in excess of the board's authority; (3) based on an error of law; (4) unsupported by substantial evidence; or (5) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law'" (citation omitted). Welter v. Board of Registration in Med., 490 Mass. 718, 723-724 (2022), cert. denied, 143 S. Ct. 2561 (2023). Although this is an appeal from the decision of the single justice, we review the board's decision directly. Franchini v. Board of Registration in Podiatry, 490 Mass. 1015, 1017 (2022). As the party challenging the board's decision, Roman "bears 'a heavy burden,' for we 'give due weight to the [board's] expertise, as required by § 14 (7)." Welter, supra at 724, quoting Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 263- 264 (2001). Roman has not carried her heavy burden.

First, the board committed no error of law in determining that by sending the March 16 e-mail message, Roman practiced veterinary medicine. The practice of veterinary medicine is defined in G. L. c. 112, § 58:

> "Any person shall be regarded as practicing veterinary medicine within the meaning of this section who either directly or indirectly, diagnoses, makes a prognosis, treats, administers, prescribes, operates on, manipulates or applies any drug, biologic, or chemical or any apparatus or appliance for any disease, pain, deformity, defect, injury, wound or physical condition of any animal for the prevention of or to test the presence of any disease, or who cuts any tissue, muscle, organ or structure of any animal for the above described purposes or purpose or for the purpose of altering the natural condition of any animal or for any other purpose, cause or reason whatsoever or who holds himself out as being able, available or legally authorized so to do" (emphasis added).

Contrary to Roman's suggestion, G. L. c. 112, § 58, does not limit the practice of veterinary medicine to hands-on care of an individual animal, but encompasses a broad range of activities, including "hold[ing] [one]self out as being able, available or legally authorized" to do any of the listed activities. In the March 16 e-mail message, Roman "[held] [her]self out as being able, available or legally authorized" to practice veterinary medicine. She sent the e-mail message on behalf of MASH to her veterinary clients, explaining the pandemic-related policies and

protocols by which she would treat her clients' animals and provide medicine to them. This conduct fits comfortably within the broad language of § 58.

Second, the board did not commit legal error by finding that Roman practiced her profession beyond the authorized scope of her license, G. L. c. 112, § 61 (1), nor was that finding arbitrary or capricious. Her veterinary license plainly did not authorize her to provide therapeutic advice to human beings, as she did in the March 16 e-mail message. Rather, veterinary medicine is limited to the treatment of nonhuman animals. See G. L. c. 112, § 54A (defining "animal" in relevant part as "any animal other than man"); G. L. c. 112, § 58. To the extent there is any question about the boundaries between treatment of animals and of humans, we defer to the board's knowledge and expertise in drawing those boundaries. Regardless of the scientific merits of Roman's claims that, for example, ozone could provide an effective treatment for COVID-19, she was not authorized to make such medical and health recommendations to her human clients while practicing as a veterinarian. Nor was she authorized to urge her human clients to purchase particular ozone-generating devices from particular vendors, via links in her veterinary practice's website, while cloaking herself in her authority as a veterinarian. All these recommendations were targeted at human health, not at animal health. The board's determination that Roman practiced her profession beyond the scope of her licensure is well supported by the facts.

We are not persuaded by Roman's arguments to the contrary. It is doubtless true, as she states, that

she sent the March 16 e-mail message at the beginning of the COVID-19 emergency, a time of much uncertainty and confusion. The board, however, was not obligated to excuse her conduct on this basis or to give this circumstance any more weight than it did. We also reject her claim that the board drew an arbitrary distinction between the first part of the March 16 e-mail message, concerning the COVID-19 procedures at MASH, and the second part, making health recommendations for humans. Simply put, that distinction is far from arbitrary: the former provided needed information to her clients within the scope of her practice, and the latter was well beyond that scope.

Nor do we agree that the board improperly targeted Roman because it disapproved of her speech.[4] "[B]ecause licensed professionals are subject to regulation, they do not come before us as citizens 'entitled to the full range of individual rights available to all citizens,'" and in particular, they may be subject to restrictions related to speech. Schoeller v. Board of Registration of Funeral Directors & Embalmers, 463 Mass. 605, 614 (2012), quoting Weinberg v. Board of Registration in Med., 443 Mass. 679, 689 (2005). The board properly disciplined Roman for the statements that she made while practicing her profession. By making those statements, Roman was not merely sharing general scientific knowledge; she was making specific recommendations about the treatment of COVID-19 in human beings and even urging her

[4] Roman suggests that the single justice applied an overbroad standard regarding her speech. As noted supra, however, we are reviewing the board's decision directly.

clients to purchase certain products from certain vendors for that purpose. Moreover, the issue before the board was not whether the treatments she recommended were effective against COVID-19; it was whether, while practicing as a veterinarian, she could make such recommendations to her human clients. The board neither erred nor acted arbitrarily and capriciously by determining that she could not.

Finally, Roman argues that the sanction imposed by the board was arbitrary, capricious, and excessively punitive. We disagree. In reviewing the sanction, "[a] court cannot substitute its discretion for an agency's, 'nor can the reviewing court interfere with the imposition of a penalty by an administrative tribunal because in the court's own evaluation of the circumstances the penalty appears to be too harsh.'" Welter, 490 Mass. at 729-730, quoting Vaspourakan, Ltd. v. Alcoholic Beverages Control Comm'n, 401 Mass. 347, 355 (1987). "A court will interfere with the agency's discretion in this area 'only . . . in the most extraordinary of circumstances.'" Welter, supra at 730, quoting Vaspourakan, 401 Mass. at 355. See Levy v. Board of Registration & Discipline in Med., 378 Mass. 519, 528-529 (1979). No such circumstances are present here. The board's decision reflects careful consideration of Roman's conduct, as well as the aggravating and mitigating circumstances put forward by the parties. Contrary to Roman's argument, the board did not abuse its discretion by considering her prior disciplinary history in aggravation merely because her prior misconduct was different in kind from that at issue here. In the circumstances of this case, the board properly found that Roman's history evidenced a pattern of failing to comply with the requirements of her profession. The

board did not abuse its considerable discretion by suspending Roman's license for two years.

Judgment affirmed.

Martha M. Coakley (Kevin Y. Chen also present) for the petitioner.

Grace Gohlke, Assistant Attorney General, for the respondent.

William E. Evans & Kevin P. Martin, for Randy Aronson & others, amici curiae, submitted a brief.

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2023-0454

Board of Registration in
Veterinary Medicine
No.2020-000574-IT-ENF

DR. MARGO ROMAN

v.

BOARD OF REGISTRATION IN VETERINARY MEDICINE

MEMORANDUM OF DECISION AND JUDGMENT

The petitioner (Dr. Roman) seeks relief, pursuant to G. L. c. 112, § 64, from a Final Decision and Order (order) of the Board of Registration in Veterinary Medicine (board), suspending for at least

two years her license to practice as a veterinarian in the Commonwealth of Massachusetts. After hearing and consideration of the arguments raised in the parties' papers, together with the materials in the record, I conclude that the order should be affirmed.

The order rests on a limited number of undisputed facts, which I set out as follows. At all pertinent times, Dr. Roman was licensed to practice as a veterinarian in the Commonwealth of Massachusetts, and she owned and operated a veterinary clinic under the name Main Street Animal Services of Hopkinton (MASH). On March 16, 2020, shortly after Governor Charlie Baker declared a state of emergency in response to the global COVID-19 pandemic, Dr. Roman drafted and sent an email from MASH's email account to MASH's clients (email).[1] Although the email indicates it was sent from "Main St. Animal Services of Hopkinton <appointments@mashvet.com>," Dr. Roman has acknowledged that she is its author and that it was sent at her direction.

The email was entitled "UPDATE ON CORONAVIRUS PRECAUTIONS AT MASH." In addition to announcing various COVID-19 related safety protocols that MASH intended to implement at the clinic, Dr. Roman wrote:

> "Additional information to protect yourselves:
>
> [ ] Dr. Roman has encouraged MASH clients to get an ozone generator for their homes,

[1] Like the hearing officer, I use the term "client" to refer to the human owners of the animals that are treated by Dr. Roman and MASH.

> because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus. There is a link on our website under 'resources' to find the companies that we recommend from whom you can buy an ozone generator and ozone products. We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans. If you buy an ozone generator, let the company know that you are a MASH client; they understand how we have tried to educate our clients to be protective."

Dr. Roman then listed various vitamins and supplements she herself uses and identified a homeopathic kit that she stated contained "one of the recommended remedies for this coronavirus." She concluded the email by stating that "[d]ue to the evolving nature of the COVID-19 pandemic[,] clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact." At the bottom of the email appeared a statement claiming MASH's copyright and giving MASH's mailing address.

After receiving complaints that Dr. Roman had claimed ozone therapy as a possible cure for COVID-19, the board issued a show cause order. The board alleged that, by sending the email, Dr. Roman had violated G. L. c. 112, § 61(1) by practicing her profession beyond the scope of her license. A hearing officer, after several motions and a formal hearing, issued a tentative decision. Subsequently, the board

adopted the hearing officer's findings and conclusions and concluded that Dr. Roman had engaged in conduct that called into question her competence to practice veterinary medicine. Specifically, the board concluded that she had practiced beyond the scope of her veterinary license, as defined by G. L. c. 112, § 58, in violation of G. L. c. 112, § 61(1) by "telling human beings what to do for their health while practicing as a veterinarian." The board suspended Dr. Roman's license to practice veterinary medicine for a minimum of two years, effective November 1, 2023. This is the order that is before me now.

Dr. Roman, pursuant to G. L. c. 112, § 64, now seeks that the order be reversed on the ground that the board acted arbitrarily and capriciously in concluding that she practiced outside the scope of her veterinary license. She contends that the board erroneously found she practiced human medicine, ignored (or gave insufficient weight to) the fact that the email was sent during the uncertainty of the earliest days of the pandemic, and relied on irrelevant facts to support suspension (specifically, findings concerning the legitimacy of ozone therapy as a treatment for coronavirus). At the hearing in this matter, Dr. Roman also asserted that the Board's decision was improper because she was not "practicing veterinary medicine" when she sent the email, and the board therefore exceeded its authority to review conduct authorized under G. L. c. 112, § 58.

"Under G. L. c. 112, § 64, a person whose license to practice . . . has been revoked may petition the court to 'enter a decree revising or reversing the decision of the board, in accordance with the standards for review provided' in G. L. c. 30A, § 14(7)." Kippenberger v. Bd.

of Registration in Veterinary Med., 448 Mass. 1035, 1035 (2007), quoting Fisch v. Bd. of Registration in Med., 437 Mass. 128, 131 (2002). The board's decision will not be disturbed on appellate review unless it violates constitutional provisions, exceeds the agency's authority, is based on an error of law or procedure, is unsupported by substantial evidence, reflects an abuse of discretion, or is arbitrary or capricious. See id.; G. L. c. 30A, § 14(7).

I first address whether Dr. Roman was practicing veterinary medicine outside the scope of her license when she wrote and sent the email. For purposes of this case, there are two components to this inquiry: First, whether Dr. Roman was "practicing veterinary medicine" by "hold[ing] [her]self out as being able, available or legally authorized" to do so. Second, whether Dr. Roman remained within the scope of her license by only offering therapeutic advice for animals. G. L. c. 112, § 58.

Here, the board's conclusion that Dr. Roman held herself out as being able, available, or legally authorized to practice veterinary medicine was amply supported by the evidence that Dr. Roman sent the email from the veterinary practice's email account, to the practice's clients, while referring to herself within the email as a doctor. G. L. c. 112, § 58. The fact that MASH claimed copyright in the email and gave its office address lends further support to the conclusion that Dr. Roman held herself out as a veterinarian speaking on behalf of a veterinary practice.

The board's conclusion that Dr. Roman acted outside the scope of conduct permitted by § 58 was likewise fully supported by the evidence. Section 58 is limited to the care and treatment of nonhuman

animals. See G. L. c. 112, § 54A (defining "animal" as "any animal other than man including wild or domestic fowl, birds, fish or reptiles, living or dead"), and § 58 (defining the practice of veterinary medicine). Section 58 does not permit a licensed veterinarian, while holding themselves out as a veterinarian, to give therapeutic advice to humans. Here, the evidence permitted the board to find that the email contained therapeutic advice from Dr. Roman to MASH's human clients concerning the benefits to humans of ozone therapy in connection with COVID-19 prevention, treatment, and potential cure, as well as advice concerning vitamins, supplements, and homeopathic remedies.

Despite Dr. Roman's argument to the contrary, the board did not conclude that she was practicing human medicine, nor did it need to so conclude. Similarly, the board did not consider – nor did it need to consider -- the validity of ozone therapy for the prevention and treatment of COVID-19. Rather, the board only needed to determine, as it did, that Dr. Roman practiced veterinary medicine beyond the scope of her license. See G. L. c. 112, § 61(1) (authorizing board to impose suspension of license where licensee "engaged in conduct which places into question the holder's competence to practice the profession including . . . practicing his profession beyond the authorized scope of his license").

Independent of the question of whether Dr. Roman acted outside the scope of her license, Dr. Roman argues that the board abused its discretion in imposing a minimum two-year suspension. I am not free to substitute my own discretion "in reviewing the penalty imposed by an administrative body [that] is

duly constituted to announce and enforce such penalties." Levy v. Bd. of Registration & Discipline in Med., 378 Mass. 519, 529 (1979). Accordingly, I review only to determine whether the board abused its considerable discretion in fashioning an appropriate sanction.

Here, the board gave a reasoned explanation for the sanction, considering both mitigating and aggravating factors bearing on the issue. On the one hand, the board accepted that Dr. Roman believed she was fulfilling her veterinary oath to promote public health in a moment of extreme public health emergency.[2] The board also accepted that Dr. Roman had no intent to harm when she sent the email. On the other hand, the board considered that Dr. Roman had a history of disciplinary matters reflecting a failure to abide by the rules of the profession, and that she was serving an extended period of monitored probation[3] when she sent the email. In these circumstances, I cannot say that the board's sanction of a two-year suspension was arbitrary, capricious, or an abuse of discretion.

For the reasons set out above, it is hereby **ORDERED** and **ADJUDGED** that the Final

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[2] Dr. Roman argues that the confusion and panic of the early days of the COVID-19 pandemic add context for the email and, in some sense, mitigate for it. Although I accept that March 2020 was a period of fear, confusion, and misinformation concerning the coronavirus, the uncertainty of that period in time did not permit veterinarians to stray outside the scope of their license by offering therapeutic advice to humans.

[3] A period that had extended from two years to more than five years due to Dr. Roman's failure to comply with the terms of her probation.

Decision and Order of the Board of Registration in Veterinary Medicine is **AFFIRMED**.

By the Court,

/s/ Gabrielle R. Wolohojian

Gabrielle R. Wolohojian

Associate Justice

Dated: July 9, 2024

APPENDIX C

COMMONWEALTH OF MASSACHUSETIS

SUFFOLK COUNTY	BOARD OF REGISTRATION IN VETERINARY MEDICINE
In the Matter of Margo Roman License No. 2267	Docket No. 2020-000574-IT-ENF

FINAL DECISION AND ORDER, RULING ON OBJECTIONS, AND RULING ON MOTION TO STRIKE

On July 28, 2023, pursuant to the requirements of 801 CMR 1.01(11)(c), the Hearings Officer filed and served on the parties a Tentative Decision, attached hereto and incorporated by reference, in the above-captioned matter. Each party was given thirty (30) days to file written Objections to the Tentative Decision. On August 28, 2023, the Respondent, by and through counsel, filed Objections to the Tentative Decision.[1] The Respondent's Objections ("Objections") are incorporated by reference. On August 31, 2023, Prosecuting Counsel filed a Response to the

[1] Also on August 28, 2023, the Respondent filed a Renewed Motion to Recuse Hearings Officer. That motion was denied on August 30, 2023.

Respondent's Objections ("Response"), incorporated by reference.

On September 7, 2023, the Respondent, by and through counsel, filed a Motion to Strike and For Other Relief ("Motion to Strike"). That Motion to Strike is incorporated by reference. On September 14, 2023, Prosecuting Counsel filed an Opposition to the Motion to Strike ("Opposition"). That Opposition is incorporated by reference. On September 21, 2023, the Respondent filed a Reply ("Reply") to the Opposition to the Motion Strike. That Reply is incorporated by reference. On September 22, 2023, Prosecuting Counsel filed a Surreply ("Surreply") to the Reply to the Opposition to the Motion to Strike. That Surreply is incorporated by reference. For the reasons stated below, the Motion to Strike is DENIED.

Ruling on Objections[2]

Respondent's Objection No. 1:[3]

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[2] See Arthurs v. Board of Registration in Medicine, 383 Mass. 299 (1981) (Chapter JOA does not specifically require that objections to a recommended decision be answered or be accompanied by a statement of reasons); Weinbcrg v. Board of Registration in Medicine , 443 Mass. 679,687 (2005) (board is not required to address each and every legal issue and theory relied upon by [Respondent]).

[3] The Respondent did not number the objections to the Tentative Decision but presented them *seriatim* page by page in the Tentative Decision. Exhibit A. The Respondent's Objections are addressed *ad seriatim* and the Hearings Officer has assigned numbers to the objections for ease of reading and reference. In the Response, the Prosecutor did not address the objections individually, but grouped them into four broad categories. Exhibit B.

The Respondent objects to a portion of the "Procedural History" outlined in the Tentative Decision. Tentative Decision, p. 3, ¶¶ 3 and 4. The Respondent objects to the Hearings Officer having declined to accept the Respondent's second Motion for Reconsideration and second Motion to Dismiss. Objections, pp. 2-4.

The arguments presented by the Respondent in this Objection were previously raised and rejected, including but not limited to, in the Ruling on the Respondent's Demand. Administrative Notice. As stated in the Tentative Decision, these filings were not accepted because they were repetitive of prior issues-not just arguments-already resolved by prior pleadings. Id.

For the reasons stated in the Ruling on the Respondent's Demand and the Tentative Decision, the Respondent's Objection #1 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 2:

The Respondent objects to the Hearings Officer's exclusion of certain news and/or scientific articles at the Sanctions Hearing. The Respondent specifically objects to Footnote 6 of the Tentative Decision at page 5 addressing the exclusion of those documents. Objections, pp. 4-5.

At the Sanctions Hearing, the Hearings Officer excluded 32 articles about COVID-19 in general.[4] They were excluded on the basis that they: (1) are repetitive as these same articles had been filed in prior pleadings, of which the Hearings Officer took administrative notice at the Sanctions Hearing - they were excluded as redundant pursuant to 801 CMR l.01(7)(b) but marked for identification; (2) are irrelevant as they did not contain any mitigating evidence and lacked probative value as this case is not about COVID-19 generally; (3) lacked foundation as the Respondent did not present evidence that she relied on any of these articles in sending the March 16 email at issue. As most of the articles post-dated that email, the Respondent could not have relied on them in sending the email. Tentative Decision, p. 5, fn. 6.

In support of the Objection, the Respondent asserts that

> Anyone alive and living in that period knew what was going on in the world in the panic covid [sic] caused and the changes that occurred in our lives, including but not limited to, stores beginning to provide curbside pickup, masks, social distancing, shelves emptied of Purrell [sic] and alcohol disinfectants and limits to how much one could buy, people stockpiling these products and selling them online at exorbitant prices, etc. Objections, p. 4.

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[4] The Hearings Officer accepted 31 articles about ozone and COVID-19. Tentative Decision, Exhibits R13 to R41.

That is precisely true. "Anyone alive and living knew what was going on in the world..." There is no dispute that the COVID-19 pandemic occurred, and the Respondent does not have to establish that it did. Accordingly, the Board does not need 32 articles that are already in the record to determine what was going on in the world in spring 2020. Further, as stated in the Tentative Decision, "Even if they had been admitted into evidence, they would have been afforded no weight…In fact, by rejecting the articles rather than taking the time to admit them, the Hearings Officer actually afforded the Respondent more time to make argument at the Sanctions Hearing." Tentative Decision, p. 5, fn. 6. Thus, there is no harm to the Respondent by the exclusion of these articles.

The Respondent's argument that the Hearings Officer erroneously excluded the articles in Exhibit H for ID to the Tentative Decision is without merit. For the reasons stated herein and in the Tentative Decision, the Respondent's Objection #2 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 3:

The Respondent objects to the Hearings Officer's statement that this case is "not a referendum on ozone." The Respondent specifically objects to Footnote 8 of the Tentative Decision on page 6. Objections, pp. 5-6.

Footnote 8 addresses the Respondent's repeated accusations of professional misconduct

against Prosecuting Counsel and the Hearings Officer. Footnote 8 states in relevant part:

> The basis for the Respondent's argument [for professional misconduct] seems to be the Prosecutor and Hearings Officer are knowingly advancing a [claim] that is "false" because, they assert, ozone is helpful in battling COVID-19. Tr. at 43-46. The Respondent has flooded the administrative and sanctions hearing record with articles that claim that ozone is helpful in some fashion against COVID-19. As has been stated previously, this proceeding is not a referendum on ozone. Tentative Decision, p. 6.

The Respondent's objection is, "[i]t should have been" a referendum on ozone. The Respondent further asserts that the Board's "ignorance" has led to the findings against the Respondent. The Respondent's argument that the "truth" about ozone has been "ignored" in this proceeding means that the Hearings Officer is "incompeten[t] or bias[ed]."[5] Objections, p. 5.

In Response this Objection, Prosecuting Counsel asserts that the Respondent has not been found liable for "mistruths." Response, p. 1. As stated by the Prosecutor, "The giving of medical advice to humans who hired the Respondent to provide

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[5] See: Ruling on Respondent's Renewed Motion to Recuse Hearings Officer for a full discussion of a lack of bias by the Hearings Officer in this matter.

veterinary services to animals makes the violation." Response, p. 2.

As stated in the Tentative Decision,

> the Respondent's insistence that the March 16 email was true reflects a continuing and pervasive misunderstanding of the SD ruling and her own actions. Even if what the Respondent said in the March 16 email about ozone is true, it is still beyond the scope of her veterinary practice. That is very simply because the Respondent told human beings what to do for their health while practicing as a veterinarian. Tentative Decision, p. 20.

Other than wishful thinking and a misconception about the basis of liability, the Respondent has not identified valid legal grounds for this objection. For the reasons stated herein, and in the Tentative Decision, the Respondent's Objection #3 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 4:

The Respondent objects to the Hearings Officer's exclusion of proposed evidence about another veterinary clinic, Veterinary Centers of America (VCA), at the Sanctions Hearing. The Respondent objects to the discussion of this exclusion in Footnote 9 of the Tentative Decision on page 6. Objection, p. 6.

Footnote 9 states,

> The Respondent offered documents regarding another veterinary clinic/hospital, Veterinary Centers of America (VCA). A member of the Board is employed at that clinic. Those documents were excluded. As stated at the Sanctions Hearing, other veterinary clinics, regardless of who owns or operates or is employed by them is irrelevant. And the Respondent has not offered any evidence that some other veterinarian sent an email to clients similar to the what the Respondent did in the March 16 email to provide any mitigating evidence. Tr. at 54. The Respondent has also changed her argument as to whether she is condemning VCA or applauding VCA. Compare Tr. at 52-54 with Exhibit D for ID. Tentative Decision, p. 6.

Once again, the Respondent accuses the Hearings Officer of "an inappropriate effort to shield a member of the Veterinary Board and other veterinarians similarly situated..." Objections, p. 6. Such an accusation is false, for the reasons stated in Footnote 9.

The Respondent makes a tortured attempt to liken her conduct in sending the March 16 email to a veterinary clinic posting information on their website about whether "pets can get COVID and present

danger to humans."[6] Objections, p. 6. Quite simply, the Respondent has not presented any evidence that another veterinarian, like her, (1) provided information about ozone therapy and generators to human veterinary clients; (2) provided dietary advice to human veterinary clients after discussing her own vitamin regimen; and/or (3) suggested the use of "homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus" to human veterinary clients. Any information the Respondent has provided about another veterinary clinic is not similar or analogous to her own conduct as to be relevant mitigating evidence.[7]

For the reasons stated herein and in the Tentative Decision, the Respondent's Objection #4 is

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[6] Even if the information posted by VCA was relevant, the Respondent provided no evidence that the Board member, as an employee of VCA, had any control over information posted on the website. The crux of this objection is that the Respondent submitted irrelevant, unpersuasive, tangential evidence about a Board member, and then when it is property excluded, accuses the Hearings Officer of bias against her.

[7] The Respondent also argues that posting information on a website is worse than sending an email because the potential audience is wider and "more broadly distributed." Objections, p. 6. Respectfully, the Hearings Officer contends that sending an email is arguably "worse" because it is a pointed, direct communication at specific and identified recipients. In this matter, the Respondent sent an email to her MASH client list and told them they "need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact." Exhibit P3, SD Ruling. In any event, the substance of the Respondent's email communication establishes the Respondent's liability in this matter.

OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objections No. 5(a), (b), (c), (d), (e) and (f):

The Respondent objected to and moved to strike six Findings of Fact in the Tentative Decision, Findings of Fact #9 through #14.[8] Objections, pp. 6-8. These Findings of Fact were originally made in the SD Ruling by the predecessor Hearings Officer. Findings of Fact #9-13 recount examples of federal authorities (DOJ, FTC, FDA) warning or filing suit against entities marketing or promoting ozone therapy as a treatment, cure, or that it can prevent infection of COVID-19. Finding of Fact #14 also cites the federal regulation that states that ozone is a toxin, 21 CFR § 801.415. Tentative Decision, pp. 7-8.

The Respondent's Objections #5(a) through (e) are essentially the same. First, that either the FDA or FTC's communication "was sent after Respondent sent her email. Second, multiple clinical studies established ozone therapy can successfully treat covid. It is unethical to knowingly rely on false information." Objections, p. 7. The Respondent argues that if the articles she submitted about COVID generally were excluded because they are dated after her March 16 email, then these Findings of Fact should be excluded for the same reason. Regarding the federal regulation at Finding of Fact #14, the Respondent further argues that the Hearings Officer

[8] These objections are counted as Objection #5 with six subparts, (a) through (t).

ignored the "safe harbor" provision of the regulation. Each will be discussed in turn.

As stated above in the Ruling on Objection #2, the articles about COVID- 19 generally, not related to ozone, were excluded at the Sanctions Hearing because, *among other reasons,* they were dated after March 16, 2020, when the Respondent sent the email. The Respondent's "what's good for the goose is good for the gander" argument about the federal authorities is misplaced. As an initial matter, as also stated above, whether what the Respondent said about ozone therapy and COVID-19 is true, does not absolve her from liability in this matter for acting outside the scope of her veterinary license. Tentative Decision, pp. 19- 20. Nonetheless, considering the Respondent's objection argument on the merits, the Respondent offered numerous articles about ozone and COVID-19. Those were admitted into the record.[9] Tentative Decision, Exhibits R13 to R41. Of the articles that have dates, all but two of those are dated *after* March 16, 2020. Exhibits R20 and R40. As noted below, the Respondent certainly does not want those exhibits struck from the record. Accordingly, "what's good for the goose" has its limitations in the Respondent's own defense.

The Respondent cannot have it both ways. The Respondent wants her documents about the efficacy of ozone in the fight against COVID-19 in the record to not only absolve her of liability but also to form the

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[9] The Respondent mistakenly states that these articles about ozone and COVID-19 were excluded at the Sanctions Hearing. Objections, p. 8. Again, the Hearings Officer accepted 31 articles about ozone and COVID-19. Tentative Decision, Exhibits Rl3 to R4l.

basis for accusations of professional misconduct against the Prosecutor and Hearings Officer. However, she wants federal law and other statements by federal authorities that take a counter position excluded from the record and struck from the Tentative Decision. The Respondent's self-serving position is inconsistent.

The Respondent's argument about the "safe harbor" provision of the 21 CFR § 801.415 is not persuasive. The Respondent argues that subsection (c)(4) of the regulation shields her from liability in sending the March 16 email. Objections, p. 8. 21 CFR § 80 l.415(c)(4) states,

> A number of devices currently on the market generate ozone by design or as a byproduct. Since exposure to ozone above a certain concentration can be injurious to health, any such device will be considered adulterated and/or misbranded within the meaning of sections 501 and 502 of the act if it is used or intended for use under the following conditions: In any medical condition for which there is no proof of safety and effectiveness.

The Respondent argues that the articles that she has submitted demonstrate that ozone therapy is effective against COVID-19. Therefore, according to the Respondent, subsection (c)(4) of the regulation affords her "safe harbor" from liability. Objections, p. 8. The Respondent's argument is without merit. First, the Respondent has not established that subsection (c)(4) somehow supersedes subsection (a) which states:

> Ozone is a toxic gas with no known useful medical application in specific, adjunctive, or preventative therapy. In order for ozone to be effective as a germicide, it must be present in a concentration far greater than that which can be safely tolerated by man and animals." 21 CFR § 801.415(a).

Indeed, the Respondent downplays and characterizes subsection (a) as "precatory" or aspirational as opposed to a valid federal law. Tr. at 77. At the Sanctions Hearing, Respondent Counsel stated, "This is a medical devices regulation, so the precatory statement about ozone itself is simply a foundation." Tr. at 77. The Hearings Officer disagrees.[10]

Second, and relatedly, the subsection on which the Respondent relies addresses "adulterated and/or misbranded" ozone devices. The Respondent called it "a medical devices regulation." That is a narrower issue than the broad articles submitted by the Respondent regarding the potential benefits of ozone in fighting COVID-19. Third and most importantly, in this matter, it is the Respondent that has decided that ozone is safe and effective against COVID-19. The Respondent asserts that the federal authorities' statements about ozone are "inaccurate." Tentative Decision, p. 25 and fn. 25.

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[10] Notably, subsection (b) of21 CFR § 801.415 states, "Although undesirable physiological effects on the central nervous system, heart, and vision have been reported, the predominant physiological effect of ozone is primary irritation of the mucous membranes. Inhalation of ozone can cause sufficient irritation to the lungs to result in pulmonary edema... "

The Respondent elevates the articles that she has submitted about the effectiveness of ozone therapy against COVID-19, and her own opinion, above all else. Scientific articles, which are contrary to the present state of federal law, do not trump this Board's rules. That the Respondent's wishes it so does not absolve her from liability in sending the March 16 email. And as stated in the Tentative Decision, the Respondent had other options available to her if she disagreed with the current state of the federal law on ozone. Tentative Decision, p. 26.

For the reasons stated herein, in the Tentative Decision, and in the SD Ruling,[11] the Respondent's Objections #S(a) thorough (f) are OVERRULED. The Motion to Strike Findings of Fact #9 · #14 is DENIED. The Tentative Decision will not be modified in accordance with this Objection.

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[11] The original Hearings Officer wrote the following the SD Ruling, "It is not the role of the Board to decide that federal authorities have erred in defining ozone as set forth above. The Board cannot substitute its judgment for federal and state public health authorities and determine that ozone therapy can effectively treat or prevent the spread of COVID-19. Prosecuting Counsel has established beyond a preponderance of the evidence that beginning in late April of 2020, the FDA and FTC began advising marketers to refrain from promoting ozone as a treatment for, or means of preventing, COVID-19. Exhibits P8 through P14. In addition, Prosecuting Counsel has established as a matter of law that, on the dates Respondent sent the [email] at issue in this matter, the Code of Federal Regulations defined ozone as lacking any "known useful medical application." 21 CFR § 801.415. The question before the Hearing Officer on summary decision, however, is not whether ozone can effectively treat or prevent COVID-19."

Respondent's Objection No. 6:

The Respondent objects to Footnote 11 on page 11 of the Tentative Decision about the liability findings against the Respondent and the statutory construction of G.L. c. 112, § 61(1). The Respondent asks that this allegation be dismissed. Objections, pp. 8-10.

As stated in the Tentative Decision, "the SD Ruling held that the Prosecution established by a preponderance of the evidence that, in sending the March 16 email, the Respondent practiced beyond the scope of her veterinary license, in violation of G.L. c. 112, § 61(1). The Ruling also held that Respondent violated the same statute for engaging in conduct that calls into question her competence to practice the profession."[12] As noted at the Sanctions Hearing, and in Footnote 11, there was no finding that the Respondent engaged in gross misconduct. G.L. c. 112, § 61(1) allows the Board to discipline a licensee who has been found to have:

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[12] The SD Ruling stated, "The Board may discipline licensed veterinarians who engage in conduct which calls into question their competence to practice the veterinary profession. See G.L. c. I12, § 61 (1). The Legislature has defined said conduct as, "including, but not limited to" practicing the profession beyond the authorized scope of one's licensure. See id. For the reasons set forth in Section III, above, the Hearing Officer has found that no genuine issue of material fact exists as to whether Respondent's March 16 email constituted practice beyond the scope of her license to practice veterinary medicine. Therefore, as a matter of law, Prosecuting Counsel has established that Respondent has engaged in conduct which calls into question her competence to practice this profession." SD Ruling, Section IV, p. 16.

> engaged in conduct which places into question the holder's competence to practice the profession including, but not limited to, gross misconduct; practicing the profession fraudulently; practicing his profession beyond the authorized scope of his license, certificate, registration or authority; practicing the profession with gross incompetence; or practicing the profession with negligence on 1 or more than 1 occasion;

The Respondent argues that unless she was found liable for gross misconduct under the statute, she is not liable for "engaging in conduct which places into question the [license] holder's competence to practice the profession." The Respondent asserts that this is a matter of statutory construction -- that the phrases separated by semicolons are independent violations, and do not constitute other examples of conduct that "places into question the holder's competence to practice the profession." The Respondent cites McLeod v. Nagle, 48 F.2d 189, 190-191 (9th Cir. 1931). Objections, p. 9.

Prosecuting Counsel argues that it is simply a matter of grammar that semicolons take the place of commas when used in a list. Response, p. 3. He submits that to read the statute as the Respondent suggests would create confusion and the statute would be rendered meaningless. Id. The Prosecution's argument is persuasive.

Furthermore, as stated in the Tentative Decision at Footnote 11, "The statute includes the

phrase 'including but not limited to'[13] and is written in the disjunctive by the word 'or.' Semicolons separate the various examples of "conduct which questions the holder's competence to practice the profession." If the phrases were separated by commas and not semicolons, the statute would be difficult to read, because the words in the phrase "license, certificate, registration, or authority" are already separated by commas. Moreover, if the Legislature intended the 4 (four) phrases after "gross misconduct" to be independent violations and not examples of conduct that raises competency questions, it would have listed them separately from subsection (1) and assigned them a different number. The Legislature did that, for example, at subsection (2) for practicing while one's ability to practice is impaired by alcohol or drugs, and so on, through 7 (seven) other subsections. "A fundamental tenant of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Sullivan v. Brookline, 435 Mass. 353, 360 (2001). To read G.L. c. 112, § 61(1) as the Respondent suggests would lead to an illogical result.

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[13] It is a well-established principle of statutory interpretation that "[n]one of the words of a statute is to be regarded as superfluous, but each is to be given its ordinary meaning without overemphasizing its effect upon the other terms appearing in the statute, so that the enactment considered as a whole shall constitute a consistent and harmonious statutory provision capable of effectuating the presumed intention of the Legislature." Commonwealth v. Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, 352 Mass. 617, 618 (1967), (quoting Bolster v. Commissioner of Corps. & Taxn. 319 Mass. 81, 84-85 (1946)).

The Respondent's statutory construction argument has been rejected by in the Supreme Judicial Court in Weinberg v. Board of Registration in Medicine, 443 Mass. 679 (2005). Preliminarily, the Court wrote, "Weinberg's primary basis for appeal is premised on the mistaken assumption that the board's authority to revoke a physician's license is limited to instances of gross misconduct..." Id. at 686. The Court addressed the Respondent's argument about G.L c. 112, § 61 but focused the discussion on the similar statute, G.L. c. 112, § 5. The latter statute at subsection (c) permits the Board of Registration in Medicine to discipline a licensee who

> is guilty of conduct which places into question the physician's competence to practice medicine, including but not limited to gross misconduct in the practice of medicine or of practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions;

Although unlike G.L. c. 112, § 61(1), the phrases are separated by commas and not semicolons, the Court specifically noted the amendment to the prior version of the statute that added the phrase "including but not limited to" the bases of liability.14 The Court noted an identical amendment to a parallel board regulation, "permitting discipline for simple

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[14] As noted above, words in the phrase "license, certificate, registration, or authority" are already separated by commas in G.L. c. 112, § 61, where no such comparable phrase appears in G.L. c. 112, § 5.

'misconduct' as well." Id. at 686- 687. The Court's analysis of the statutory construction of G.L. c. 112, § 5 is applicable here. The Court found that gross misconduct was but one possible ground for discipline by virtue of the phrase "including but not limited to," and that the remaining phrases are also examples of conduct that calls into question one's competence to practice their profession.

For the reasons stated herein, in the Tentative Decision, and the SD Ruling, the Respondent's Objection #6 is OVERRULED and the motion to dismiss the allegation/finding is DENIED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 7:

The Respondent objects to the first full paragraph on page 12 of the Tentative Decision. Objections, p. 10. While the Respondent does not state her specific objection, it is seemingly about the Ruling on the Respondent's Demand and the Respondent's failure to raise arguments in prior pleadings.

As stated in the Tentative Decision, "following the Reconsideration Ruling, the Respondent submitted or attempted to file numerous pleadings in a repeated attempt to reverse or dismiss the summary decision findings against her." Tentative Decision, p. 11. Pursuant to 801 CMR 1.01(7)(a)(l), the Presiding Officer is not required to accept pleadings that are unduly repetitious of prior pleadings and issues, including allegations and violations, that have already been resolved. Id.; Demand Ruling, p. 4. The

Respondent objects to this paragraph of the Tentative Decision, which summarized the discussion in the Ruling on the Respondent's Demand:

> To the extent that the Respondent is raising a new argument that she is not liable for practicing beyond the scope of her license, it was her obligation to provide a thorough and exhaustive defense to the allegations from the outset of this case. *The Respondent's March 16 email and G.L. c. 112,§ 61(1) have not changed since the OTSC was issued*. The Respondent has not presented a reason why she could not have raised all necessary arguments in her voluminous and extensive pleadings filed prior to the Reconsideration Ruling (emphasis in original).

The Respondent objects that "The Hearings Officer is essentially stating that even if the arguments are persuasive and accurate and should lead to judgment for the Respondent, it is not error for the Hearings Officer to ignore the correct statement of the law and rule against the Respondent." Objection, p. 10. That is, of course, not what the Hearings Officer said in that paragraph. The Hearings Officer is discussing the Respondent's failure to raise arguments.

The Respondent seems to acknowledge the true meaning of the paragraph, as she also objects that she could not have raised arguments earlier because the Reconsideration Ruling provided a *de novo* basis for liability. Objections, pp. 10-11. That argument is addressed in the two sentences immediately

preceding the paragraph that is the subject of this Objection. "As stated in the Demand Ruling, the Respondent misunderstands the Reconsideration Ruling. The Reconsideration Ruling explained the broader scope of G.L. c. 112, § 61(1), and why the Respondent's arguments in the Motion for Reconsideration were not persuasive. That is not a de novo determination of liability. Demand Ruling, p. 4."

Lastly, the Respondent states, "Neither the Hearings Officer nor the Prosecutor ever even attempted to rebut said arguments and analysis." Objections, p. 11. This is untrue. The Tentative Decision provides a full and comprehensive discussion of the Respondent's arguments presented in this matter.

For the reasons stated herein, in the Tentative Decision, and in the Demand Ruling, the Respondent's Objection #7 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 8:

The Respondent objects to a statement in the Tentative Decision on page 12 regarding the Respondent's second Motion to Dismiss. This Objection raises a procedural argument previously discussed and rejected in the Demand Ruling.

As stated in the Tentative Decision, "The Respondent argues that she could not have filed her second Motion to Dismiss any earlier because she had to wait until the Prosecutor was done with the

presentation of his case. 801 CMR 1.01(7)(g)(l).” The Respondent argues that to file it earlier would have been premature. Objections, p. 11. At the Sanctions Hearing, the Prosecutor argued that he had completed the presentation of his case earlier, when summary decision was granted in the Prosecution’s favor. Therefore, from a timing standpoint, the Respondent did not have to wait to file the second Motion to Dismiss. The Hearings Officer agreed with the Prosecutor. Tentative Decision, p. 12. Therefore, the Respondent’s procedural argument in Objection #8 remains unpersuasive.

The Respondent objects to this sentence in the Tentative Decision: “Substantively, that second Motion to Dismiss, attached as Exhibit R6, contains arguments that could and should have been raised by the Respondent in earlier pleadings.” The Respondent’s objection is, “[t]he Hearings Officer acknowledges that it is her belief that even if the statement of the law in said pleadings is accurate and judgment should be entered for the Respondent, nevertheless, the Hearings Officer magically believes she is free to rule otherwise.” Objection, p. 11.

This “objection” by the Respondent is nothing more than a statement reflecting the Respondent’s displeasure because the Hearings Officer has ruled against her. Naturally, the Respondent believes her pleadings are accurate and judgment should be entered for her. But that does not automatically make it so, nor does it mean that everyone else must share that belief. The Hearings Officer does not “magically believe” the Respondent is liable for a violation of G.L. c. 112, § 61(1). As noted throughout the Reconsideration Ruling and the Tentative Decision,

the Hearings Officer carefully considered, but ultimately rejected, the Respondent's arguments.

More importantly, there is no harm to the Respondent that the second Motion to Dismiss was not accepted at the time the Respondent attempted to file it. That motion was accepted as an exhibit at the Sanctions Hearing and the arguments were addressed in the Tentative Decision. As the Respondent often accuses the Hearings Officer of doing, she eliminated the very next portion of the paragraph that is Objection #8: "In any event, these arguments are addressed herein." Again, on the very next page, the Hearings Officer stated,

> Although the undersigned did not accept the Respondent's repetitious pleadings and/or untimely arguments following the Reconsideration Ruling, at the Sanctions Hearing, the Respondent was permitted to raise her objections to the Reconsideration Ruling and present argument regarding the violations. Those arguments, and the Prosecution's response, are addressed below.

Accordingly, the Respondent's arguments against liability in this matter were ultimately received, fully considered, and rejected.

For the reasons stated herein, in the Tentative Decision, and in the Demand Ruling, the Respondent's Objection #8 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 9:

The Respondent objects to a statement by the Hearings Officer in the Tentative Decision at page 13 regarding the word "email" in the statutory definition of the practice of the profession. Objections, pp. 11-12.

As discussed in the Tentative Decision, the Respondent argues that she cannot be found in violation of G.L. c.112, § 61(1) for practicing beyond the scope of her veterinary license because she was not "practicing" in sending the March 16 email. The Respondent asserted that the statute defining that practice, G.L. c. 112, § 58, does not include the word or words "authoring or sending an email."

The Hearings Officer discussed and rejected the Respondent's argument on this issue in the Tentative Decision. The Respondent objects to this statement by the Hearings Officer: "No statutory definition of *any* profession includes 'email' because the Legislature cannot possibly define every ancillary activity that goes into the practice of a profession." Tentative Decision, p. 13. The Respondent's objection, states, "Yes, but ... " and then goes on to repeat the same argument previously presented - that the statute does not include the Respondent's conduct, which the Respondent characterizes as "authoring or sending a general distribution email.,, Objections, pp. 11, 12.

The Respondent seemingly agrees with the analysis, but then repeats the same argument previously rejected. The Respondent offers no other support in law or fact for this objection. For the reasons stated herein, and in the Tentative Decision, the Respondent's Objection #9 is OVERRULED. The

Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 10:

The Respondent objects to the discussion of Clark v. Board of Registration of Social Workers, 464 Mass. 1008 (2013). Objections, pp. 12-14. The Respondent relied on Clark in support of her argument that her March 16 email was outside of any of the enumerated activities in G.L. c. 112, § 58, and therefore, could not be "practicing the profession" pursuant to G.L. c. 112, § 61(1}. The Hearings Officer rejected the Respondent's argument in the discussion on page 14 of the Tentative Decision. In the Objection, the Respondent asserts that the Hearings Officer has "read out of section 61(1) the words 'practicing the profession.'" Based on this characterization of the Hearings Officer's discussion, the Respondent also makes additional accusations of bias. Objections, p. 12, 13.

The Respondent reads Clark and G.L. c. 112, § 58 too narrowly. Beginning with the statute, the practice of veterinary medicine is defined as follows:

> Any person shall be regarded as practicing veterinary medicine within the meaning of this section who either directly or indirectly, diagnoses, makes a prognosis, treats, administers, prescribes, operates on, manipulates or applies any drug, biologic, or chemical or any apparatus or appliance for any disease, pain, deformity, defect, injury,

> wound or physical condition of any animal for the prevention of or to test the presence of any disease, or who cuts any tissue, muscle, organ or structure of any animal for the above described purposes or purpose or for the purpose of altering the natural condition of any animal or for any other purpose, cause or reason whatsoever or who holds himself out as being able, available or legally authorized so to do.

The Respondent's conduct in sending the March 16 email falls within this definition, and the finding that the Respondent practiced outside the scope of her profession is supported by Clark and other case law.

The definition of the practice of the profession includes the listed activities if they are done "directly or *indirectly*" (emphasis added}. An individual does not have to be "hands on" engaged in those activities to be practicing the profession, as the Respondent suggests. Further, the statute includes in the practice of the profession, one "who holds himself out as being able, available or legally authorized so to do." As discussed further below, in sending the March 16 email to her clients, the Respondent was undoubtedly holding herself out as "being able, available and legally authorized" to be a veterinarian.

The first portion of the email includes references to the care of animals: yearly exams, tests, vaccines, supplements, and medication. In bold type, the email states, "MASH intends to stay open during this national emergency unless instructed otherwise by the government." The email discusses the

procedures for appointments and the continued supply of medication. The email states, "We will take the following steps to treat your animal, if medically necessary" and discusses virtual and in-person examination and treatment of pets. The Respondent wrote, "While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet ... " Exhibit P3, SD Motion; Tentative Decision, pp. 13-16. By a simple reading of the email and the application of common sense, the Respondent is practicing her profession in sending the March 16 email.

The March 16 email is, at a minimum, an "indirect" practice of the profession as the Respondent held herself out as "being able, available and legally authorized" to do the enumerated activities in G.L. c. 112, § 58. In Langlitz v. Board of Registration of Chiropractors, 396 Mass. 374 (1985}, the SJC upheld the Chiropractic Board's decision that found the respondent was offering treatment beyond the scope of his profession in an advertisement in the "yellow pages" of the telephone book in 1983. In the advertisement, Langlitz offered "complete chiropractic & holistic healthcare." Id. at 380. The decision states,

> The board found the term "holistic health care" misleading, and susceptible of falsely inducing a reader of the advertisement *to seek treatment not lawfully available in the office of the chiropractor*. In addition, the board found that Langlitz offered "acupuncture" in his advertisement,

> *when in fact he was not qualified to practice acupuncture...* (emphasis added).

In Langlitz, the chiropractor was offering treatments outside of his scope of practice to the same recipient pool- his own human patients. In this case, the Respondent is going beyond that. She offered medical suggestions to humans when her patients are animals. In the March 16 email, the Respondent is encouraging humans "to seek treatment not lawfully available" in her veterinary clinic, by using ozone, making diet adjustments, and using homeopathic remedies. The Respondent's lack of qualifications to make health recommendations to humans is discussed in the Tentative Decision and infra. Tentative Decision, pp. 20-21; Objection #16 and #17.

In Bill v. Board of Registration of Chiropractors, 394 Mass. 779 (1985), the SJC upheld the Chiropractic Board's finding that the respondent practiced outside the scope of the chiropractic profession when he advertised and used a laser device designed to remove wrinkles. It is noted that, like the ozone therapy in this case, the laser device at issue in Bill was not approved by state or federal authorities. Id. at 780-781.

In Clark, in finding that the respondent in that matter was engaged in the practice of social work, the Court stated, "she was hired to do just that." Clark, at 1010. The same sentiment applies here. The Respondent was hired to be a veterinarian and was practicing as a veterinarian, when she engaged in conduct outside the scope of that profession in the

latter half of the March 16 email, when she made health recommendations for humans.[15]

The Respondent also accuses the Hearings Officer of "distortion and omission to support her biased findings" in citation to the AVMA Ethical principles. Objections, pp. 13-14. In the section of the Tentative Decision, entitled "Arguments Presented at the Sanctions Hearing" and subsection "The Respondent argues that sending an email is not practicing the profession," the Hearings Officer wrote:

> Importantly, the AVMA Principles of Veterinary Medical Ethics ("AVMA Principles"), on which the Respondent relies; states that the practice of veterinary medicine includes, the "rendering of advice or recommendation

[15] The Prosecutor argues that the Respondent was engaged in the practice of the veterinary profession because she did certain activities listed in G.L. c. 112, § 58, but did them toward humans, not animals. Response, p, 4, citing Prosecution's Surreply to Respondent's Demand. The Prosecutor asserts that the Respondent was making a "prognosis" and discussed the "prevention of or to test the presence of any disease." The Prosecutor highlights the portion of the March 16 email that states, "We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans." Prosecuting Counsel asserts that the Respondent is expressing her opinion about the course of the disease in humans and rendering advise about prevention and treatment of COVID in humans. Demand Surreply, pp. 3-4. Prosecuting Counsel further notes that the Respondent did this while holding herself out as veterinarian. This means that the Respondent does not qualify for the exemption to practice at G.L. c. 112, § 58(7), giving advice to neighbors while not holding oneself out as a veterinarian.

> by any means including telephonic and other electronic communications..." AVMA Principles, "Useful terms." Exhibit R43.

The Respondent complains that the Hearings Officer neglected to include the phrase "with regard to any of the above." The "any of the above" refers to the "practice of veterinary medicine" in the AVMA Ethical Principles. Following that second phrase is a list of activities in the practice of the profession: "To diagnose, prognose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode..." Exhibit R43.

As the heading of the relevant section of the Tentative Decision states, and the discussion of the entire paragraph entails, the passage above was a statement made in response to the Respondent's argument that sending an email does not constitute "practicing" a profession. The Hearings Officer merely noted that the AVMA Ethical Principles includes the words "telephonic and other electronic communications" as a "method or mode" of practicing. The Respondent's accusations of bias are unfounded, as the Respondent misreads and/or distorts the discussion in this portion of the Decision.[16] For the

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[16] For the reasons stated above, and in the Tentative Decision, the Respondent was practicing as veterinarian in sending the March 16 email, pursuant to G.L. c. 112, § 58. The Respondent has not submitted any legal authority that the AVMA definition of practice supersedes the statute. In any event, using this AVMA definition of practice as well, the Respondent was engaged in the above activities, including "rendering of advice or recommendation" regarding treating, alleviating, or preventing

reasons stated herein and in the Tentative Decision, the Respondent's Objection #10[17] is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 11:

The Respondent objects to part of Footnote 15 on page 17 of the Tentative Decision. Objections, p. 14. The sentence is: "There is no legal support for any contention that the Respondent had to direct the March 16 email to one specific or identified person in order for her to be held liable." The Respondent argues that the Hearings Officer is incorrect because G.L. c. 112, § 58 requires that a veterinarian establish a relationship with one specific animal. Id.

The Respondent is conflating two different issues. The Respondent is making an argument about the Respondent's practice, pursuant to the definition of the practice at G.L. c. 112, § 58. The sentence the Respondent objects to discusses the human audience

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animal disease, illness, etc. See the Prosecutor's argument at Footnote 14.

[17] The Respondent also makes an argument at the end of this objection that "a general distribution email not targeted to a specific animal or its treatment does not fall within the AVMA's description of the practice of veterinary medicine or veterinary care nor more importantly the Commonwealth's." Objections, p. 14. This assertion that the Respondent's activity must be directed at a specific animal is repeated elsewhere in the Respondent's Objections, at Objection #11 and Objection #13. This argument is discussed *infra*.

as the basis for the violation of practicing outside the scope of her profession in G.L. c. 112, § 61(1).

On the first issue, the Respondent erroneously argues that the Respondent must have an established client relationship to be practicing the profession. Again, in the first part of the March 16 email, the Respondent held herself "out as being able, available or legally authorized" to do the veterinary activities in G.L. c. 112, § 58. That establishes her practice of the profession. On the second issue, the Respondent has not identified any legal authority that the Respondent was required to direct the second part of the email, her outside-the-scope communication, to a specific person. Indeed, the Respondent herself argues the March 16 email was a "general distribution email."

For the reasons stated herein, and in the Tentative Decision, the Respondent's Objection #11 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 12:

The Respondent cites page 18 of the Tentative Decision but does not indicate a specific objection to any content on this page.[18] The Respondent again laments the Hearings Officer's reliance on statements made by the FDA and FTC and asserts that those statements "contain no scientific backing or support and which we know contain false information and

[18] The discussion on page 18 is unrelated to the substance of the Respondent's Objection No. 12. Nonetheless, the Objection is considered on its merits.

statements." Objections, pp. 14-15. The Respondent again cites to the scientific articles she provided, and accuses the Hearings Officer, again, of "rel[ying] on statements she knows to be untrue." Objections, p. 15.

The Hearings Officer has no knowledge of the scientific basis for statements made by federal authorities, and therefore does not know them to be false. It is not the Hearings Officer's role to conduct a meta-analysis of the Respondent's scientific articles to verify the accuracy of the statements made therein.

For the reasons stated herein, and at Objections #3 and #5, and in the Tentative Decision, the Respondent's Objection #12 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 13:

The Respondent objects to Footnote 18 and a discussion on page 18 of the Tentative Decision. Objections, p. 15. Without providing context, the Respondent objects to the Hearings Officer's focus on the Respondent's statement in the March 16 email that clients "need to follow our suggestions" to protect "everyone." The Respondent accuses the Hearings Officer of "distorting" the Respondent's suggestions at the end of the March 16 email. The Respondent provides the full passage, which has been addressed in prior pleadings. The last paragraph of the March 16 email states:

> While it is comforting that the World Health Organization has established

> that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason that we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact. Objections, p. 16; Exhibit P3.

The Respondent's argument is that the last sentence about clients "need[ing] to follow her suggestions" and that the suggestions pertain to "everyone," does not apply to all the suggestions in the March 16 email. Objections, p. 16. The Respondent argues that the suggestions refer only to the COVID protection procedures at MASH. The Respondent's argument is that this is the purpose and title of the email, "UPDATE ON CORONAVIRUS PRECAUTIONS AT MASH." She emphasizes the phrase "we are trying to practice extra hygiene." The Respondent's objection is that regarding this paragraph and the last sentence, "It is not directed at everyone and does not concern all of the information in the email, as the Hearings Officer would like it to be, but rather is limited to the procedures at MASH." Objections, p. 16.

The Respondent's argument is not persuasive. This is the last paragraph of the March 16 email. It is the conclusion. By plain reading, it reasonably applies to the whole email. The Respondent stated that clients "need to follow our suggestions." That is broad, and

the Respondent does not limit her suggestions to only the first half of the March 16 email. The Respondent's argument that a reader should think that the last paragraph refers only to the first half of the email, and the reader should conveniently just skip over the second half of the email, is without merit.

A closer look at the language used in the two sections of the email supports the determination that the last paragraph applies to the suggestions the Respondent made for humans. The first part of the March 16 email is not suggestions. It is the Respondent flat-out informing the clients of the updated procedures. Apart from stating, "If you are sick, please do not come to the clinic," the rest of the language about procedures is instructive in nature: "do not," "call in advance," "provide all" and the like. These are not suggestions; they are directions. By contrast, the conclusory paragraph cited above comes after the Respondent's three part "Additional information to protect yourselves." The very next sentence says, "Dr. Roman has *encouraged* MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and a possible cure for the coronavirus." The part of the email about diet says "one can add more probiotics, echinacea..." The part of the email about homeopathic remedies talks about them being "*helpful*" (emphasis added to all). These are suggestions. Therefore, when the last paragraph of the email insists that clients heed her suggestions, it can only be referring to her medical suggestions for

humans, or the entire email, but not only the first half.[19]

The Respondent makes a curious argument that because the case was decided (purportedly improperly) on summary decision there is no evidence about the Respondent's "intent or target audience" regarding the suggestions. Objections, p. 16. The Respondent's target audience is her MASH clients, because they are to whom she sent the March 16 email. The Respondent's intent is irrelevant to the issue of liability under G.L. c. 112, § 61(1), but the Respondent could have offered evidence of her intent at the Sanctions Hearing. She did not.

The Respondent also protests the Hearings Officer's statement about a "referral" regarding the link to purchase an ozone generator. In Footnote 18, the Hearings Officer wrote: "The Respondent was not musing on the attributes of ozone when she 'encouraged' her clients to get an ozone generator and referenced a link on the MASH website to purchase one. She also told her clients to mention MASH, seemingly like a referral, if they did purchase an ozone generator." The Respondent asserts that the significance of a referral is not discussed in the Tentative Decision.

The clear significance of the link to purchase an ozone generator is that it directly connects the Respondent's veterinary clients and clinic to the

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[19] It bears noting that any confusion is the Respondent's own doing. Had she not included information about medical care for humans in the fight against COVID, with an email about COVID procedures at her veterinary practice, there would be no issue as to what the last paragraph was referring to earlier in the email.

purchase of an ozone generator for human use. As highlighted in the Reconsideration Ruling at Footnote 8, the March 16 email states, "If you buy an ozone generator, *let the company know you are a MASH client; they understand how we have tried to educate our clients to be protective*" (emphasis added). Through the link and the statement above, the Respondent is telling her veterinary clients to mention her veterinary clinic when they purchase an ozone generator to protect themselves. That is evidence of the Respondent acting outside the scope of her veterinary license.

For the reasons stated herein, the Reconsideration Ruling, and in the Tentative Decision, the Respondent's Objection #13 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 14:

The Respondent "objects" to the discussion of the Principles of Veterinary Ethics on page 19 of the Tentative Decision. The Respondent accuses the Hearings Officer of "cutting off' the last part of a cited quotation.

On page 19, the Hearings Officer stated, "The AVMA Principles say that a veterinarian 'shall respect the law.' AVMA Principles 4, Exhibit R43. At the time the Respondent sent the March 16 email, ozone was defined as a 'toxic gas' by federal law. See: Finding of Fact #14." The Respondent complains that the Hearings Officer eliminated the remainder of AVMA Principle which states that, in addition to

respecting the law, the veterinarian shall, "also recognize a responsibility to seek changes to laws and regulations which are contrary to the best interests of the patient and public health." Exhibit R43.

The Respondent is incorrect. The Hearings Officer engaged in a discussion of the second part of the ethical principle on page 26 of the Tentative Decision. The Hearings Officer wrote,

> Again, this case is not a referendum on ozone. If the Respondent wants to change the laws, that is what she should do. That is what the AVMA Ethical Principles, on which the Respondent relies, call for: Principle 4 states, "A veterinarian shall respect the law and also recognize a responsibility to seek changes to laws and regulations which are contrary to the best interests of the patient and public health." Exhibit R43. If the Respondent believes the federal regulation and federal authorities are mistaken about ozone and ozone therapy, the Respondent should take the appropriate steps to bring about a change in the law. What the Respondent should not do is email her veterinary clients with medical advice for humans. Unless and until the law changes, the Respondent is required to "conduct all professional activities in accordance with federal, state, local and Board statutes and regulations." 256 CMR 7.01(2).

For the reasons stated herein, and in the Tentative Decision, the Respondent's Objection #14 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 15:

The Respondent objects to the Hearings Officer's analogy on page 20[20] of the Tentative Decision. The Hearings Officer wrote: "If the Respondent told her veterinary clients how to correctly re-wire their house for electricity, it would still be beyond the scope of her veterinary license." The full paragraph reads:

> More importantly, the Respondent's insistence that the March 16 email was true reflects a continuing and pervasive misunderstanding of the SD ruling and her own actions. Even if what the Respondent said in the March 16 email about ozone is true, it is still beyond the scope of her veterinary practice. That is very simply because the Respondent told human beings what to do for their health while practicing as a veterinarian. If the Respondent told her veterinary clients how to correctly re- wire their house for electricity, it would still be beyond the scope of her veterinary license. Tentative Decision, p. 20.

[20] The Respondent incorrectly cites page 19 of the Tentative Decision.

The Respondent characterized the Hearings Officer's analogy as "ridiculous," "outlandish," "silly," "wrong-headed" and accuses the Hearings Officer of "being devilishly committed to assaulting the Respondent's license and livelihood." Objections, pp. 19 and 20. The castigations aside, the Respondent maintains the same argument that she was not practicing her profession when she sent the March 16 email and would not be practicing using the electrician analogy.

The Respondent misunderstands the analogy. The Respondent has argued that the information she provided in the March 16 email is true and accurate. The point of the analogy is to demonstrate that even if the content of the Respondent's email was true, she still violated G.L. c. 112, § 61(1) for practicing beyond the scope of her license. The important part of the analogy is the word "correctly," and what it communicates is that the specific content, whether it is ozone or electricity, does not change the outcome. Put another way, there is no exemption from practicing beyond the scope of a license because the activity outside the scope of the license is true and accurate.

As stated in the Tentative Decision, the Respondent's objection reveals her prevalent and extensive misunderstanding of her conduct and liability findings against her. She writes, "There can be no doubt that the Hearings Officer is wrong to hold that any communication targeted at veterinary clients that does not concern veterinary medicine is practicing beyond the scope of a veterinary license even if the act of so communicating is not practicing veterinary medicine as defined by Massachusetts law." Objections, pp. 19-20. Again, the Respondent

was practicing as veterinarian in sending the March 16 email, and her "communication" *to her veterinary clients* was to make health recommendations for humans at the very beginning of a pandemic.

As noted by the Prosecutor, the Respondent tries to manipulate the electrician analogy by arguing that "a correctly structured analogy would not be to a detailed instructional email on how to re-wire a house." Response, p. 4. The Respondent argues that the March 16 email was comparable to a "general mention" but did not "contain all of the tools and raw material needed to re- wire one's house." The Respondent asserts that she "did not provide instructions in the March 16 email on how to treat covid, nor even identify all the raw materials necessary to do so."[21] Objections, p. 20. See also: Objection #13, p. 17, 18.

While it is assumed the Respondent is referring to ozone therapy, again, the Respondent made two other recommendations for human health that do not require instructions, "tools" or "raw materials." The Respondent said that in the "homeopathic kit" that

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[21] The Respondent states, "Because no specific instructions on how to treat covid are contained in the four corners [of the email] it cannot be said that the Respondent prescribed, recommended or even suggested a treatment for covid. Objections, p. 18. As stated above, the Respondent provides no legal support for this position. In any event, the Respondent's own words betray this argument. In the March 16 email, "Dr. Roman has encouraged MASH clients to get an ozone generator for their homes because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus." Exhibit P3. The Respondent flat out recommended and suggested an ozone generator and touted it as a disinfectant, preventative measure, and a possible cure for COVID.

many of her clients had, is "homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus." The Respondent also suggested the increased use of "probiotics, echinacea, elderberry, astragalus and try to eat a whole food healthier diet with less sugar" to protect against COVID infection. Exhibit P3.

Regarding ozone, this "incomplete" argument -- that the Respondent cannot be liable because she did not provide, according to her, all the necessary information for ozone therapy-- was raised at the Sanctions Hearing and rejected by the Hearings Officer in the Tentative Decision. Part of Footnote 18 on page 18 states,

> The Respondent argues that she cannot be held liable because, "The Respondent provided no specific information that would be necessary to allow anyone to follow any such recommendation, that is: Should the ozone be delivered in an aqueous or gaseous form? At what setting should the oxygen tank be opened? At what setting should the ozone machine be set? Should the ozone be injected, infused, or taken intravenously? Or applied topically, perhaps? No rational human being could read the email as anything more than a general thought illuminating a 'possible' pathway for exploration." This is a distorted reading of the email and no

> "rational" reading of the email would generate these questions.[22]

The Respondent does not cite any legal authority for her position. The Respondent does not provide any support for her argument that full-fledged instructions or the supply of "raw materials" are required before she can be found to be practicing beyond the scope of her veterinary license.

For the reasons stated herein, and in the Tentative Decision, the Respondent's Objection #15 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 16:

The Respondent objects to the finding that her certificate as a Certified Ozone Therapist (COT) does not absolve her liability for practicing beyond the scope of her "certificate" pursuant to G.L. c. 112, § 61(1). Tentative Decision, pp. 20-23. The Respondent repeats arguments previously rejected in the Reconsideration Ruling and the Tentative Decision.

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[22] The second part of Footnote 18, with regard to the Respondent's argument that she was merely "wondering aloud" in the March 16 email reads: "The Respondent was not musing on the attributes of ozone when she 'encouraged' her clients to get an ozone generator and referenced a link on the MASH website to purchase one. She also told her clients to mention MASH, seemingly like a referral, if they did purchase an ozone generator. Again, when the Respondent told her clients they 'need to follow our suggestions' to protect 'everyone' she was not simply 'thinking out loud' about ozone helping to prevent or fight COVID-19 infection." See: Footnote 21.

The Respondent makes a jurisdictional argument that her conduct in sending the March 16 email was within the scope of her certificate. The Respondent argues, "if the statements she made were within the scope of her certification as a Certified Ozone Therapist, then it is not a violation to be sanctioned by the Veterinary Board." Objections, p. 20.

As stated in the Tentative Decision, the Board has jurisdiction over the Respondent by virtue of her license. See: Finding of Fact #1 and Conclusion of Law # 1. And, again, in addition to the ozone advice, the Respondent gave dietary and homeopathy advice in the March 16 email (discussed further below), that could not fall under the umbrella of the Respondent's COT certificate.

Regarding the Respondent's COT certificate, using the Hearings Officer's "silly" electrician analogy in Objection # 15, the Respondent states, "if she [Respondent] were a licensed electrician and offered advice in a general distribution email to her veterinary clients about wiring their houses, the Board could make no effort to sanction her." Objections, p. 20. The Respondent is incorrect, and once again, misses the point: making suggestions and recommendations about electrical wiring, whether licensed or not, in an email about veterinary care is beyond the scope of the veterinary license. The same goes for making suggestions and recommendations about ozone in an email about veterinary care.

In addition, the Respondent fails to note the distinction between a license issued by a government regulatory authority and a certificate issued by a non-government, private entity. The Respondent did not provide a copy of her Certified Ozone Therapy

certificate, so the issuing entity of her certificate is unknown. The Respondent's resume is also devoid of this information. Exhibit R45. The Respondent did provide information about "The American Academy of Ozonotherapy (AAO). "The AAO is an academy of health professionals dedicated to establishing standards for the art and science of Ozonotherapy..." It is described as a "professional academy" which has members. Exhibit R46. The Respondent's argument that a certificate, likely issued by a private organization, trumps her veterinary license, issued by a regulatory board, is without merit. See: G.L. c. 112, §§ 54, 61-65E; G.L. c. 13, §§ 26-28.

The Respondent further argues that "the recipients of the email do not establish whether she was practicing her profession or acting beyond the scope of a veterinary license even if the act of so communicating is not practicing veterinary medicine as defined by Massachusetts law." Objections, pp. 20-21. The Respondent asks the Board to ignore the fact that the Respondent sent the March 16 email to her veterinary client list. The identity of the recipients of the email as the Respondent's veterinary clients is but one factor in the determination that the Respondent engaged in conduct outside the scope of her veterinary license. As stated in the Tentative Decision at page 21,

> The Respondent disseminated her ozone therapy "advice" as a veterinarian, from her veterinarian email account, to her veterinary clients. In the March 16 email, the Respondent did not identify herself as a COT. As Prosecuting Counsel noted, "She provided this medical advice to people who were

> employing her to provide veterinary services, and she sent this from veterinary platforms, email. She was holding herself out as a veterinarian, as able [sic] to provide veterinary services to these people, and in that email, she provides medical advice." Tr. at 101. To that end, when the Respondent chose to disseminate ozone therapy advice to her veterinary clients, from her veterinary email account, she created a direct connection between that advice to her veterinary license.

As noted above, the Respondent did not identify herself as a COT in the March 16 email. By repeated use of "Dr. Roman," the Respondent is identifying herself as a veterinarian. The Respondent did not send the email from a non-veterinary platform, like a private email account, to non-veterinary recipients. As discussed in the Reconsideration Ruling, the Tentative Decision, and *supra* at Objection #10, the substance of first part of the March 16 email satisfies the definition of the practice of the veterinary profession. The second part of the March 16 email constitutes practicing outside the scope of the veterinary profession in violation of G.L. c. 112, § 61(1).

For the reasons stated herein and in the Tentative Decision, the Respondent's Objection #16 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 17:

The Respondent objects that the Hearings Officer "dismisses the Respondent's training in herbs and homeopathy, including treating humans with homeopathy because she is not a certified homeopath or naturopath." Objections, p. 21. In the Tentative Decision, at Footnote 23, the Hearings Officer wrote: "There is no evidence that the Respondent is a certified homeopathic practitioner or a licensed naturopathic doctor. Id.; Exhibit R45. Even if she were, that does not protect her from liability for a violation of G. L. C. 112, § 61(1)."

In the Objection, the Respondent does not indicate how, legally, the Respondent's training in herbs and homeopathy absolves her from liability for practicing outside the scope of her veterinary license in violation of G.L. c. 112, § 61(1) in sending the March 16 email. The rationale for this determination was explained in the Ruling on the Respondent's Motion for Reconsideration:

> That the Respondent has some knowledge or training in homeopathy, and is certified in ozone therapy, does not absolve her of liability for practicing beyond the scope of her veterinary license. Certainly, it would be highly unlikely and very curious if the Respondent sent the March 16 email having *zero* basis to make the statements therein. The problem is that the Respondent failed to maintain the boundary between her veterinary practice and her homeopathy / ozone knowledge. The Respondent did not send

> the March 16 email as a "private citizen," i.e., to only her friends or family, or publish it on a personal website or blog, or the like (emphasis in original). Reconsideration Ruling, pp. 8-9.

For the reasons stated herein, in the Tentative Decision, and in the Reconsideration Ruling, the Respondent's Objection #17 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 18:

The Respondent objects that the Hearings Officer did not find the Respondent's argument, that she followed the AVMA Veterinarian's oath, to be persuasive in absolving her of liability pursuant to G. L. c. 112, § 61(1). The Respondent's specific objection cites the following sentence from the Tentative Decision: "First, the veterinary oath is just that-an oath." The Respondent then goes on to discuss the Hearings Officer's "cavalier attitude towards a professional oath" and accuses her of professional misconduct. Objections, pp. 21-22.

In this Objection, the Respondent does again what she frequently accuses the Hearings Officer of doing, which is cutting off a citation and distorting it. The full relevant passage is: "First, the veterinary oath is just that -- an oath. It is not a law and does not have the force of law. The same is true of the AVMA One Health Initiative. It is just that- an initiative. Neither the veterinary oath nor the One Health Initiative trump this Board's rules, specifically G.L. c.

112, § 61(1)." Tentative Decision, p. 23. As stated above, the AVMA oath "is not a law and does not have the force of law." The Respondent has not, because she cannot, provided any legal authority to contradict that statement. Rather than either accept or challenge that statement on its merits, the Respondent debases this process by recounting and accusing the Hearings Officer of violating the Commonwealth's attorney's oath. Objections, pp. 21-22.

Contrary to the Respondent's assertion, the Hearings Officer did not dismiss the Respondent's assertion that she was following the AVMA oath in sending the March 16 email. The Hearings Officer wrote, "The undersigned takes the Respondent's arguments that she believed she was following these 'authorities' in sending the March 16 email as mitigating evidence. However, they do not absolve the Respondent of liability." The Board is free to consider this mitigating evidence in determining a sanction against the Respondent.

For the reasons stated herein and in the Tentative Decision, the Respondent's Objection #18 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 19:

The Respondent objects to the discussion on page 25 and Footnote 24. The Respondent argues that the Hearings Officer "fundamentally misapprehends the concept of preemption. She inartfully [sic] says the Respondent cannot preempt federal law because she disagrees with it. One might find it interesting to hear

the Hearings Officer's theory of how a private individual like the Respondent could indeed preempt federal law by some reason other than disagreement." Objections, p. 22.

The Respondent raised the issue of preemption. At the Sanctions Hearing, counsel for the Respondent said, "In a state administrative hearing, this notion that somehow a regulation in the CFR is a federal preemption of state law, which I think it implicit in what you said, makes no sense at all." Tr. at 77. Each of the three sentences in the Respondent's objection stated above is considered.

First, it is the Respondent who misunderstands federal preemption.[23] The Respondent has not identified what state law was purportedly preempted by 21 CFR § 801.415. Specifically, the Respondent has not identified a state law that establishes that ozone is not a toxin, such that it conflicts and must yield to the federal regulation. The Prosecution never relied on, and neither of the 2 (two) Hearings Officer ever discussed federal preemption in citing to CFR. The federal regulation at 21 CFR § 801.415 is the current state of federal law. The Prosecution and any fact finder are entitled to cite federal law in a state administrative proceeding. That has nothing to do with the legal doctrine of preemption based on the U.S. Constitution. Second, the Hearings Officer made a play on the word "preemption" by saying that the

[23] "Under the Supremacy Clause, from which our pre-emption doctrine is derived, any (S]tate law, however clearly within a State's acknowledged power, which interferes with or is contrary to [F]ederal law, must yield." Dunn v. Genzyme, 486 Mass. 713 (2021), citing Gade v. National Solid Wastes Mgt. Ass'n, 505 U.S. 88, 108, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992).

Respondent cannot ignore federal law because she disagrees with it.[24] The third sentence of the Objection confirms the Hearings Officer's analysis and is revelatory-the Respondent does not dispute that she "preempted" or disregarded or failed to heed the federal regulation because she disagreed with it. Again, the Respondent appoints her own opinion as the controlling authority in this matter instead of Board rules and federal regulations.

For the reasons stated herein, in the Tentative Decision, and in the Reconsideration Ruling, the Respondent's Objection #18 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 20:

The Respondent objects to Footnote 26 on page 26 of the Tentative Decision. The Respondent accuses the Hearings Officer of "purposeful distortion" of the Respondent's reference to Galileo and Copernicus in prior pleadings. The Respondent outlines the procedural history of how that reference was used in the Respondent's argument. Objections, pp. 23-25.

Footnote 26 reads:

> In a grandiose acknowledgement that the Respondent was not conforming to

[24] Footnote 24 and the analysis on page 25 were part of the discussion of the Board's regulation, 256 CMR 7.01(1) which requires a licensee to conform their practice to currently-accepted professional and scientific standards in the profession of veterinary medicine... "

> "currently accepted professional and scientific standards," she likened herself to Galileo and Copernicus in that she is ahead of her time with her scientific knowledge of ozone: "Perhaps the Board and the Prosecutor, operating from their ignorance, would have conspired to prosecute Copernicus and Galileo today because, at the time of their statements, those two scientific icons had in fact advanced scientific knowledge but nevertheless their scientific knowledge had not yet been commonly understood and recognized - that the sun was the center of the solar system around which the earth and other planets revolved. But for centuries now, it has been taught in grade school. Like the Inquisition, the Board is using its power and the prospect of penalties in order to stifle free speech and chill innovation." Reconsideration Motion, p. 24. The Board is neither "stifl[ing] free speech nor chill[ing] innovation." The Board is simply exercising its authority to regulate the profession and hold the Respondent accountable for her misconduct. G.L. c. 13, § 26. (The Respondent's First Amendment argument was previously rejected. Ruling on Respondent's Motion to Dismiss, issued May 6, 2021.)

This footnote was part of a discussion that the Respondent had not complied with Board regulation 256 CMR 7.01(1) for failing to conform to *currently-accepted* professional and scientific

standards in the profession of veterinary medicine... (emphasis added). The Hearings Officer wrote the following immediately before Footnote 26: "The Respondent submits that scientific knowledge is dynamic, not static. Reconsideration Motion, p. 23. But at the time the Respondent sent the March 16 email, 21 CFR § 801.415 defined ozone as lacking any 'known useful medical application.'" Tentative Decision, pp. 25- 26.

The Respondent's objection is without a legal basis.-The bulk of Footnote 26 is a direct quote from the Respondent. The Respondent discusses this Board and Prosecutor "conspiring to prosecute Galileo and Copernicus" which is a reference to her and her present prosecution. That is not a "purposeful distortion." That the Respondent does not like how the Hearings Officer has used the Respondent's analogy is not a legal basis to sustain the objection.

Moreover, as previously stated in the Tentative Decision and herein, it is irrelevant if the Respondent's assertions in the March 16 email about ozone, diet, and homeopathic remedies are, in fact, true. The Respondent is not a medical doctor. She is a veterinarian. She disseminated human medical information and recommendations to her veterinary clients. Therein lies the violation, whether the Respondent accurately likens herself to Galileo and Copernicus, or not.

For the reasons stated herein, in the Tentative Decision, and in the Reconsideration Ruling, the Respondent's Objection #20 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 21:

The Respondent makes another objection regarding a parenthetical sentence in Footnote 26. Objections, p. 25. Without specific citation to it, the Respondent seemingly objects to the last sentence of Footnote 26. The relevant part of Footnote 26 is:

> Like the Inquisition, the Board is using its power and the prospect of penalties in order to stifle free speech and chill innovation." Reconsideration Motion, p. 24. The Board is neither "stifl[ing] free speech nor chill[ing) innovation." The Board is simply exercising its authority to regulate the profession and hold the Respondent accountable for her misconduct. G.L. c. 13, § 26. (The Respondent's First Amendment argument was previously rejected. Ruling on Respondent's Motion to Dismiss, issued May 6, 2021.)

The Respondent laments that the Hearings Officer dismisses the First Amendment argument without discussion, noting parenthetically that the argument was previously rejected by the prior Hearing Officer. Though the Respondent does not make a First Amendment or free speech argument in the Objections, that argument is addressed below.

The Respondent argues, "There are clear limits on the power of the Veterinary Board and this Hearings Officer to police, censor and sanction Respondent's speech." Exhibit R7, p. 10. The

Respondent has it backwards. There are limits on her free speech as a licensed professional engaged in a regulated business activity. As stated in the Ruling on the Respondent's first Motion to Dismiss, a professional license is a privilege, not a constitutional right. Regulated business activity, which is the purpose of G.L c. 112, § 61(1), can include limitations on speech. As stated by the prior Hearings Officer,

> Licensed professionals are frequently subject to ethical restrictions not applicable to ordinary citizens, including limitations upon the right to free speech. See In Re Cobb, 445 Mass. 452, 467 68 (2005) (licensed attorney is subject to limits upon public speech). "Obedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected speech." In Re Sawyer, 360 U.S. 622, 646 647 (1959) (Stewart, J., concurring). Ruling on Respondent's Motion to Dismiss, p. 4.

By seeking to enforce G.L. c. 112 , § 61(1), the Board is upholding its legislative mandate to regulate the veterinary profession; to protect the public, health, safety, and welfare; and to uphold the image and the integrity of the profession. G.L. c. 13, §§ 26-28; G.L. c. 112, §65A; Kvitka v. Board of Registration in Medicine, 407 Mass. 140, (1990); Raymond v. Board of Registration in Medicine, 387 Mass. 708, (1982); Levy v. Board of Registration and Discipline in Medicine, 378 Mass. 519, 528 (1979).

The Respondent makes much ado about the Hearings Officer's statement in the Reconsideration Ruling, "[t]he Respondent is confined to speak

exclusively on veterinary matters on her veterinary platforms."[25] Objections, p. 25; Reconsideration Ruling, p. 9. The Ruling on Reconsideration upheld the prior Hearings Officer's rejection of the Respondent's "free speech" argument. In the SD Ruling, the prior Hearings Officer wrote:

> Finally, Respondent argues, "And as a veterinarian, Dr. Roman is not confined to speak out only as a veterinarian. She is entitled to speak as an individual but also broadly as a professional." R Motion, p. 7. ...However, the undisputed facts surrounding Respondent's March 16 email demonstrate that said email constituted "speaking out" as a veterinarian and not as an individual or a general "professional." This email was sent to Respondent's MASH clients. Exhibit P3. These clients only received this email because they also received Respondent's veterinary services. In addition, Respondent placed her recommendations for treatment of COVID-19 in humans in an email setting forth information about the COVID-19 precautions being taken at MASH, such as advising clients that veterinary

[25] The Respondent makes an unpersuasive analogy about being prosecuted for putting up political signs on the lawn of her veterinary clinic. That situation does not remotely resemble the Respondent's conduct in sending the March 16 email and is therefore, unpersuasive. The Respondent also argues that the Hearings Officer's statement is "un- American and illegal" and accuses the Hearings Officer of disdain for the U.S. and MA Constitutions. Exhibit R7, p. 9. Objections, p. 25. See: Exhibit RS, p. 11.

> technicians would retrieve pets for treatment from clients' cars. Id. Prosecuting Counsel has established as a matter of law that Respondent's March 16 email constitutes practicing beyond the scope of her veterinarian license in violation of the Massachusetts General Laws. See G.L. c. 112 § 61 (1). SD Ruling, pp. 15 and 16.

Again, the Respondent argues, "Under [this] Hearings Officer's faulty analysis, although [an] act doesn't fall within the definition of practicing veterinary medicine, because the licensee's veterinary practice is the method chosen to communicate the message, said act subjects the licensee to sanction." Objections, p. 25-26. And again, for the reasons stated in the SD Ruling, Reconsideration Ruling, Tentative Decision, and herein, the Respondent's act of sending the March 16 email *does* fall within the definition of practicing veterinary medicine pursuant to G.L. c. 112, § 58. That her veterinary practice was "the chosen method to communicate" is part of the basis of liability for practicing outside the scope of her veterinary license.

For the reasons stated herein, in the Ruling on the Respondent's Motion to Dismiss, and in the Tentative Decision, the Respondent's Objection #21 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 22:

The Respondent objects to the statement in the Tentative Decision at page 27, "The Respondent's

wound is self-inflicted. She did not have to send the March 16 email ..." Objections, p. 26. The full passage is:

> The Respondent's wound is self-inflicted. She did not have to send the March 16 email to proclaim her opinion of the virtues of ozone therapy or homeopathy in the fight against COVID-19, in an email issued from her veterinary email account. The argument that she was required to do so because of her oath or the AVMA is not persuasive. By that logic, the converse would also have to be true-the Respondent could be charged with violating the AVMA Principles of Ethics for NOT sending the email if she possessed some sort of scientific knowledge. That would be absurd. The Board does not prosecute cases against veterinarians who have scientific knowledge and do not disseminate it. This was a volitional act by the Respondent, outside the scope of her veterinary practice, and the AVMA Principles do not afford her shelter. Tentative Decision, p. 27.

In support of this Objection, the Respondent relies on AVMA Principle 6 which states,

> A veterinarian shall continue to study, apply, and advance scientific knowledge; maintain a commitment to veterinary medical education; make relevant information available to clients, colleagues, and the public; and obtain

> consultation or referral when indicated." Objections, p. 26; See: Tentative Decision, p. 22.

The Respondent also cites to AVMA Principle 1 that states, "A veterinarian shall be influenced only by the welfare of the patient, the needs of [sic] the client and the public..."[26] The Respondent argues that "medical education" is modified by the word "veterinary" but "scientific knowledge" and "relevant information" are not. The Respondent also notes that the use of the word "shall" means it was mandatory.

As stated in the Tentative Decision, the substance of the Respondent's March 16 email exceeds sharing "scientific knowledge" and "relevant information." The Respondent gave diet/nutrition advice to humans. The Respondent suggested homeopathic remedies to and for humans. The Respondent endorsed the use of an ozone generator and provided a link for human clients to purchase one. A reasonable interpretation of the cited sections of the AVMA Principles cannot possibly be that it gives veterinarians free reign to make medical and health recommendations for humans.

For the reasons stated herein, and in the Tentative Decision, the Respondent's Objection #22 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

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[26] The full text of Principle 1 is, "A veterinarian shall be influenced only by the welfare of the patient, the needs of the client and the public, and the need to uphold the public trust vested in the veterinary profession and shall avoid conflicts of interest or the appearance thereof." Exhibit R43.

Respondent's Objection No. 23:

As a continuation of Objection #22, the Respondent objects to this statement in the Tentative Decision: "The Board does not prosecute cases against veterinarians who have scientific knowledge and do not disseminate it." Tentative Decision, p. 27. The Respondent's specific "objection" is a fake, sarcastic newspaper headline that she imagines would read: "The Massachusetts Veterinary Board favors unethical veterinarians who violate their veterinary oaths and fail to conform their behavior to the Principles of Veterinary Ethics, but seeks to punish those who live by the Oath and Principles." Objections, p. 27.

As stated above in the ruling on Objection #22, this was part of the discussion that the Respondent chose to send the March 16 email. The Respondent's argument that she was required, under some sort of penalty, to send the March 16 email is without merit. For the reasons stated above, the Respondent's conduct in sending the March 16 email goes beyond the cited AVMA Principles. As discussed herein, above, and in the Tentative Decision, the Respondent's Objection #23 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 24:

At the time of the March 16 email, the Respondent was on probation with the Board. In the

Consent Agreement for Docket Nos. VT-15-15 and VT-15- 1361, executed on or about April 11, 2018, the Respondent agreed to a 2 (two) year probationary period. As stated in the Tentative Decision, "[t]he Respondent is presently still on probation, approximately 5 (five) years after the execution of the Consent Agreement for Docket Nos. VT-15-15 and VT-15-1361. The Respondent's probation has been extended because she has failed to comply with the conditions required for probation to be terminated." Tentative Decision, p. 28.

The Respondent objects by stating, "The Hearings Officer repeats the lie proffered by the Prosecutor that the Respondent is still on probation because she failed to comply with the conditions of probation in a previous matter, that is VT-15-15 and VT-15-1361." Objections, p. 27. The Respondent asserts that the Prosecutor is lying because "Either the Prosecutor was not aware of the true facts and made no effort to investigate, or he knew that the Board and not the Respondent was to blame for her continuing probation[27] and the Prosecutor knowingly and intentionally lied so that the Hearings Officer would utilize the false information as an aggravating factor." Id.[28]

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[27] As an initial matter, the bulk of the discussion on page 33 recounts the Respondent's argument that she remains on probation after the period called for in the Consent Agreement because of the Board's actions, not her failure to comply.

[28] The Respondent continues this sentiment by accusing the Prosecutor of unethical behavior and encourages the Prosecutor to "recant his lies." The Respondent then asserts that the Hearings Officer has demonstrated (additional) bias by the way that she has resolved this dispute among the parties. Objections,

In the Response, the Prosecutor denies lying and indicates that he made legal argument, not testimony, about documents that are in the record. "The Consent Agreement and the fact of the Respondent's on-going probation speak for themselves.,, Response, p. 5.

The Respondent asserts that the Prosecution's exhibits do not indicate *why* the Respondent is still on probation years after the probation should have ended. Objections, p. 28. On that issue, the Respondent is correct when she states, "the sequence of events is important." Id. That sequence is as follows: At the Sanctions Hearing, the Respondent did not offer any exhibits as to why the Respondent is still on probation. Instead, at the Sanctions Hearing, the Respondent offered, like the Prosecutor, argument about the Respondent's probationary status.[29] The Respondent then asked for the hearing record to be left open for her to submit documents about the Respondent's disciplinary history. The Hearings Officer declined that request in part because the parties had ample time to submit documents for proposed exhibits at the Sanctions Hearing. See: Response, p. 5.

Approximately 2 (two) weeks after the Sanctions Hearing, the Respondent submitted an Offer of Proof, pursuant to 801 CMR 1.01(10)(f)(2).

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p. 28. It is unclear what specifically the Respondent is referring to regarding the Hearings Officer's handling of the dispute.

[29] At the Sanctions Hearing, Attorney Auerhahn, who is also the Respondent's husband, offered to testify at the Sanctions Hearing. The Hearings Officer did not permit Attorney Auerhahn to testify, for the reasons stated in Footnote 29 of the Tentative Decision.

The documents in that Offer of Proof included a series of emails generally among the Board, the Respondent, Attorney Auerhahn, and the monitor for the Board. In the Consent Agreement for VT-15-15 -and VT-15-1361, the Respondent agreed to a professional veterinary monitor of her practice. The monitor would make quarterly written reports to the Board of the Respondent's veterinary practice. Those emails about the monitoring were marked for Identification (ID) as Exhibit I, over the Prosecutor's objection. Tentative Decision, fn. 29, p. 34; Response, fn. 2, p.5. Accordingly, as the emails were submitted *after* the Sanctions Hearing, *when the hearing record was closed*, the documents in Exhibit I for ID are an offer of proof, and not admitted exhibits, and therefore were not considered in the Tentative Decision. That situation is the product of the Respondent's shortcoming by not submitting the documents at the Sanctions Hearing or otherwise in a timely fashion. The Respondent should have reasonably anticipated that her prior discipline and current probationary status would be an issue at the Sanctions Hearing.

Regarding the accusations of lying by the Prosecutor, the Respondent assumes that the Prosecutor knew or should have known of the contents of the Offer of Proof at Exhibit I. The Respondent offers no basis for that assumption. The Respondent untimely provided information, then chastises others for not knowing the information she failed to timely provide. As is customary for the Respondent, when someone offers a contrary position to what she argues, or she believes are "true facts," then that person is condemned and belittled in an ad hominem manner. More importantly, it has seemingly not occurred to the Respondent that the Board is in a far better position

than either the Prosecutor or the Hearings Officer to address the Respondent's prior discipline and the circumstances regarding her continued probation. The Board and the Respondent are the parties to the prior Consent Agreement. The Prosecutor and the Hearings Officer are assigned to this particular matter, and as the Respondent has pointed out, neither one is the original one in their respective positions as regards this matter, nor was either one involved in the prior cases. Accordingly, as stated in the Tentative Decision *the Board* is free to consider the Respondent's arguments about her prior disciplinary history. Tentative Decision, fn. 29, p. 34.

As discussed herein and in the Tentative Decision, the Respondent's Objection #24 is OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Respondent's Objection No. 25:

As a continuation of Objection #24, the Respondent objects to this statement by the Hearings Officer in Footnote 29 on page 24. "The Hearings Officer is not in a position to dispute his [Attorney Auerhahn's] subjective opinion about the disciplinary history, so it is minimally persuasive." Objections, p. 30. See: Objections, p. 29. The Respondent, through her counsel, asserts that her statement that the Board is at fault for the Respondent's continued probation is not a "subjective opinion" but factual, based on her submission in the Offer of Proof. The relevant portion of the footnote is:

> In any event, Attorney Auerhahn's arguments about prior discipline are afforded minimal weight. The arguments are Attorney Auerhahn's perception of the events described. The Hearings Officer is not in a position to dispute his subjective opinion about the disciplinary history, so it is minimally persuasive. However, the fact of the disciplinary history does remain, regardless of Attorney Auerhahn's opinion about how the discipline came to be (i.e., she did not want to waste resources contesting it), or whether it was unfair, etc. Accordingly, in fashioning a sanction, if any, to be imposed, the Board is free to consider the Respondent's disciplinary history and Attorney Auerhahn's opinion about that disciplinary history.

As stated above, because of the Respondent's untimely submission of the documents at Exhibit I for ID that she maintains demonstrates that the Board is at fault for her on-going probation, those documents were not considered in the Tentative Decision. What was submitted and properly considered was Respondent's Counsel's argument about that prior discipline. The Respondent does not provide a valid legal basis for this objection because she dislikes that her counsel's argument was afforded minimal weight as compared to the undisputed fact that the Respondent is still on probation.

As discussed herein, above, and in the Tentative Decision, the Respondent's Objection #25 is

OVERRULED. The Tentative Decision will not be modified in accordance with this Objection.

Ruling on Motion to Strike[30]

1. The Parties' Arguments in the Pleadings

In the Motion to Strike, the Respondent argues that the Prosecutor failed to rebut many of the Respondent's Objections. Motion to Strike, p. 1. The gravamen of the Respondent's argument is that because the Prosecutor failed to dispute portions of the Objections, the Hearings Officer should strike those portions of the Tentative Decision. The "other relief' the Respondent requests appears to be that "the arguments made by the Respondent that were not rebutted or about which the Prosecutor offered no argument in rebuttal, should be accepted as conceded and proven." Motion to Strike, p. 7. The Respondent also argues that the Prosecutor conceded that an allegation in the Order to Show Cause, that was later dismissed without prejudice, should never have been charged.[31] Motion to Strike, pp. 2-3. The Respondent

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[30] The procedural history of the Motion to Strike pleadings is outlined above.

[31] The Order to Show Cause contained an allegation that the Respondent violated G. L. c. 112, § 59(7) which permits discipline against a veterinarian for "false or misleading advertising having for its purpose or intent deception or fraud." The prior Hearings Officer denied summary decision for both parties on this allegation. SD Ruling, pp. 10-12. That allegation was later dismissed at the Prosecution's request. The Respondent asked that it be dismissed with prejudice. The Hearings Officer denied that request as the Respondent failed to provide adequate legal

maintains that the Prosecutor should have filed an objection to the Hearings Officer's Tentative Decision because her analysis of G.L. c. 112, § 58 is different than his argument. Motion to Strike, pp. 4-5. And finally, the Respondent repeats her accusations that the Prosecutor lied at the Sanctions Hearing by contending that the Respondent is at fault (and not the Board) for remaining on probation with the Board. Motion to Strike, pp. 5-7.

In the Opposition, the Prosecutor submits that the Respondent's Motion is "duplicative of the Objections." Opposition, p. 1. Prosecuting Counsel argues that in those instances where he declined to provide a specific response to an Objection, his silence is not a "concession" that the Respondent is correct, as the Respondent asserts. Id. The Prosecutor states that the arguments made in the Objections were made in previous filings and had been addressed by the Hearings Officer in the Tentative Decision. Accordingly, the Prosecutor argues that he does not have "to add to the analysis of the Hearings Officer... " Opposition, p. 2. Prosecuting Counsel submits the Respondent has not demonstrated that the content to be stricken is "insufficient, redundant, immaterial, impertinent or scandalous" pursuant to 801 CMR 1.01(7)(c). Regarding the dismissed allegation, Prosecuting Counsel argues that the Respondent has twisted his words, and the charge remains unproven, not disproven. Opposition, p. 3. Regarding the Hearings Officer's analysis of G.L. c. 112, § 58, the

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support for the motion, and failed to identify how her due process rights had been violated, to justify dismissal with prejudice. Accordingly, the a\legation was dismissed without prejudice. Ruling on Prosecution's Motion to Dismiss Paragraphs 20, 21, and 23 of the Order to Show Cause.

Prosecutor states that he does not disagree with Hearings Officer, nor does he insist she adopt his analysis of the statute. Id.

In the Reply, the Respondent argues that the Prosecutor failed to file a substantive opposition to her Motion to Strike. The Respondent submits that her arguments have been ignored by the Prosecutor throughout this case. Reply, pp. 1-2. The Respondent asserts that the Hearings Officer directed the Prosecutor to submit a "point by point" response to the Motion to Strike. Reply, p. 2. The Respondent argues that the Prosecutor is burden-shifting to say that the dismissed charge is "disproven." Reply, p. 3. The Respondent also submits that "it would be helpful to know" if the Prosecutor agrees with several of the Hearings Officer's determinations in this case, that the Respondent feels are erroneous. Lastly, the Respondent states that, "The arguments ignored by the Prosecutor were ignored out of recognition that he does not have a rational rebuttal."[32] Reply, p. 5.

In the Surreply, the Prosecutor contends that he is not obligated "to entertain every argument made by the Respondent, no matter how untimely, irrelevant, redundant, or baseless." Surreply, p. 1. Prosecuting Counsel denies that he was instructed to file a "point by point" response to the Motion to Strike. Surreply, pp. 2-3. On the fraud allegation, the Prosecutor asserts that the Respondent is arguing that her statements are true in mitigation of any sanctions. The burden is on the Respondent at the mitigation stage of the proceeding to put forth her

[32] In the Reply, the Respondent indicates that she filed an "Opposition" to the Tentative Decision, Reply, pp. 1 and 3. This is construed to mean "Objections" to the Tentative Decision.

evidence. Surreply, pp. 2-3. On the accusation of lying, the Prosecutor responds again that the record speaks for itself and cites the Tentative Decision wherein the Hearings Officer said that the Board is free to consider Attorney Auerhahn's arguments about Respondent's probation. Surreply, p. 3-4.

II. Discussion and Ruling on the Motion

The Respondent's Motion to Strike is without merit. The Respondent does not cite to any legal authority in support of the Motion. The Respondent does not even make a passing reference to 801 CMR 1.01(7)(c} or any of the words used in that regulation. On its face, the Motion should be denied. Nonetheless, the Respondent's arguments will be considered on the merits.

A. The Prosecutor has not conceded the Respondent's arguments.

As an initial point, the Respondent's Motion to Strike, as noted by the Prosecution, is repetitive of the Objections. The body of the Respondent's Motion is presented seriatim mirroring the Objections. More importantly, the Respondent offers no basis for the foundation of the Motion to Strike: her assertion that the Prosecutor's silence in response to any of her arguments is a concession that the argument is correct. The Respondent is mistaken. An argument for which there is no response is just that- an argument without a response. There is no further meaning. Much as the Respondent wishes it to be so, it is not a tacit admission or acknowledgement of the correctness of the Respondent's claims. Even if it was somehow, that does not meet the threshold for content

to be stricken from the Tentative Decision pursuant to 801 CMR 1.01(7}(c).

The Respondent's statement that it "would be helpful" to know the Prosecutor's position on a particular argument is, again, not a valid legal basis for content to be stricken from the Tentative Decision.[33] The Prosecutor is not required by law to respond to all the Respondent's arguments. Indeed, "The board is not required to address each and every legal issue, theory, and case citation relied on by the respondent..." Weinberg v. Board of Registration in Medicine, 443 Mass. 679, 687 (2005). If the Board is not required to address every legal argument made by the Respondent, the Prosecutor is not required to as well.

B. The Prosecutor did not admit that a violation of G.L. c. 112, § 59(7) should never have been alleged in the Order to Show Cause.

The Respondent claims that the Prosecutor conceded that the contents of the March 16 email are true when the Prosecutor stated at the Sanctions Hearing, "The Respondent has not been found to be responsible for any mistruths in this matter."[34] Motion to Strike, p. 2. The Respondent goes on to say the Prosecutor is "now conceding that the charge [a violation of G.L c. 112, § 59(7)] should never have been

[33] The Hearings Officer did not direct the Prosecutor to provide a "point by point" response to the Respondent's Motion to Strike. Email correspondence, September 11-September 12, 2023. But even if so, that does not establish the Respondent's assertions in the motion.

[34] The Respondent does not cite to this statement, but it appears on page I of the Response to the Objections.

made - an admission of overreach by the Veterinary Board and Office of the Prosecutor, not grounded in law or facts." Id., p. 3. The Respondent further laments that it is unethical for the Prosecutor to have sought dismissal of this allegation without prejudice.

It is the Respondent who overreaches with these claims. For context, this was part of a discussion in the Response about the Respondent's repeated insistence that the "truth" of the March 16 absolves her of liability for a violation of G.L. c. 112, § 61(1). That argument was rejected in the Tentative Decision, Ruling on Objections, and Reconsideration Ruling. The Prosecutor entitled this section of his Response, "The Respondent continues to overstate the significance of the supposed truth of the Respondent's statements in the March 16, 2020 email." Response, p. 1. What the Prosecutor said is true - the Respondent has not been found liable for any mistruths. That she has not been found liable for violating any Board rule about mistruths does not mean that the content of the March 16 email *is true*. As stated repeatedly in the prior pleadings in this matter, the "truth" does not absolve the Respondent of liability for her conduct in sending the March 16 email by practicing outside the scope of her veterinary license.

The Prosecutor did not say that the G.L c. 112, § 59(7) allegation should never have been levied against the Respondent in the Order to Show Cause. This is another example of the Respondent extrapolating from a simple statement and distorting it into a self-serving declaration, this one presented as a "Gotcha!" moment against the Prosecutor. An Order to Show Cause contains allegations that will be resolved in some form or fashion throughout the life of

a case. That an allegation is ultimately dismissed, unproven, disproven, or otherwise disposed of, does not mean that it should never have been charged. And of course, the failure to establish one allegation does not affect findings regarding other allegations.

It bears noting that the Respondent is displeased with an allegation against her that was dismissed. The Respondent also complains that this allegation was dismissed without prejudice. As stated in the Ruling on the Prosecution's Motion to Dismiss the G.L. c. 112, § 59(7) and other allegations, the Respondent offered no legal authority in support of her contention that the allegations be dismissed with prejudice.[35] Ruling on Prosecution's Motion to Dismiss Paragraphs 20, 21, and 23, p. 3.

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[35] In Footnote 1 of the Reply, the Respondent adds to this argument that "it was error for the [prior] Hearings Officer to deny Respondent's motion for summary judgment on the allegation of false statement with the intent to defraud because no evidence of mistruth was presented and therefore no false statement was found." Reply, p. 3. This statement by the Respondent comes close to capturing why summary decision was denied *for the Prosecution,* at that stage of the proceeding. Summary Decision was denied because the [prior] Prosecutor had not presented any evidence of an intent to deceive, which is required by the statute. SD Ruling, pp. 10-12. In any event, that statement does not reflect why summary decision was denied *for the Respondent*. See: Reconsideration Ruling, pp. 10-12.

C. The Prosecutor is not required to file an objection to the Tentative Decision and the Hearings Officer's analysis of G.L. c. 112. § 58.

It is not the role of the Respondent or her counsel to tell the Prosecutor that he should have filed an objection to the Tentative Decision. As stated in the Ruling on the Respondent's Demand, "Respondent's Counsel cannot direct the Hearings Officer and Prosecutor to conform to his will." Demand Ruling, p. 6. Substantively, the Hearings Officer does not have to adopt the Prosecution's theory about G. L. c. 112, § 58 or any other rule. Both Hearings Officers found that the Respondent practiced the veterinary profession. SD Ruling; Reconsideration Ruling; Tentative Decision; Ruling on Objections. That finding is beneficial to the Prosecutor.[36] On what basis he would object when the finding was made ultimately made in his favor? Simply because the Respondent assuredly believes that the Hearings Officer is incorrect with her findings, the Prosecutor is not required to either join the Respondent in her dissatisfaction with the Tentative Decision nor bolster the Hearings Officer's findings if he agrees with them. The Respondent's argument that the Prosecutor should object to the finding that establishes the Prosecution's case is nonsensical and another example

[36] The Respondent states, "If he [Prosecuting Counsel] disagreed with the Hearings officer [sic] analysis in reading out of 61(I) the requirement to prove 'practicing his profession' as the Commonwealth's statute defines 'practicing veterinary medicine,' he should not have stated that he had no objection to the Hearings Officer's Tentative Decision." For the reasons stated in the Tentative Decision and the Ruling on Objections, the Hearings Officer did not "read out" any phrase of G.L. c. 112, § 61(1).

of the Respondent creating unnecessary turmoil in this proceeding.

D. The accusations that the Prosecutor lied at the Sanctions Hearing.

The Respondent is clearly displeased with the Board over the Respondent's past disciplinary history, and is attempting to ensnare the Prosecutor, and to a lesser extent, the Hearings Officer, in that theatre.

The Respondent has not identified the specific statement that she asserts is the Prosecutor's lie. The Prosecutor assumes that the "lie" is this statement at the Sanctions Hearing, during which he said, "[T)he respondent has apparently not complied with the terms of an agreement she herself signed and executed with the board." Tr. at 71. Despite the Respondent's assertion otherwise, the Prosecutor has no duty to "investigate" prior cases for a Sanctions Hearing. Objections, p. 27. If the Respondent wanted the Prosecutor to investigate prior cases in advance of the Sanctions Hearing, she could and should have made that request and provided the supporting documents well in advance of that Sanctions Hearing -- not two(2) weeks after the Sanctions Hearing concluded. For the reasons stated in the Tentative Decision and Ruling on Objections No. 24 and 25, the Respondent's argument is not persuasive.

Conclusion

The Respondent's Motion to Strike is DENIED.[37] The Tentative Decision will not be modified pursuant to the Respondent's Motion to Strike.

ORDER

The Board adopts the findings of facts and conclusions of law set forth in the Tentative Decision and concludes that the Respondent's license is subject to discipline. The Board **ORDERS**: that the Respondent's license to practice as a veterinarian in the Commonwealth of Massachusetts, License No. 2267, be suspended for a period of at least two (2) years, effective on November 1, 2023.

In determining an appropriate sanction, the Board considers its mission to protect the public's health, safety and welfare as well as the Respondent's interest in continuing to practice in the veterinary medicine profession. Mindful of its obligation to

[37] As far as the "other relief' the Respondent requested that, "The arguments made by the Respondent that were not rebutted or about which the Prosecutor offered no argument in rebuttal, should be accepted as conceded and proven." Motion to Strike, p. 7. The Respondent's objections, Motion to Strike, and request for other relief reveal a fundamental misunderstanding of a basic legal rule: Arguments are either persuasive or not, as their purpose is to assist the factfinder in evaluating the evidence. Legal arguments are not something to be "proven." Facts are to be proven; legal argument is not evidence. Model Jury Instruction 2.120. For the reasons stated in this Ruling and the prior rulings and decisions, the Respondent's arguments in this matter are not persuasive.

refrain from imposing sanctions in an arbitrary and capricious manner, the Board reviews sanctions meted out in similar matters, available analogous case law and the record before it, including aggravating and mitigating evidence submitted by the Parties.

In arriving at the sanction described above, the Board does take into consideration the mitigating factors discussed in the Tentative Decision. The Board takes into consideration that there was no evidence presented that the Respondent had any mal intent in sending the March 16, 2020 email nor did she intend to hurt anyone. See Tentative Decision at p. 29-30. There was further no evidence presented that any clients followed the Respondent's guidance as discussed in the email. Id. at p. 17, fn. 15. The Board also takes into consideration the Respondent's argument that, in providing information to her clients in the March 16, 2020 email, she believed that she was following the AVMA Veterinarian's oath to promote public health and advance medical knowledge as well as the AVMA One Health Initiative which recognizes the interconnectedness of animals, humans and the environment and collaborative efforts to attain optimal health for all. However, as the Hearings Officer notes, this does not absolve the Respondent of liability for sending an email containing health recommendations for humans when she is a licensed veterinarian and trained by education and experience to treat animals, not humans. Neither the veterinary oath nor the AVMA One Health Initiative have the force of law and do not trump the Board's statues or regulations in regard to the practice of veterinary medicine. See Tentative Decision at p. 22-23.

Despite these mitigating factors, the Board also takes into consideration aggravating evidence presented in the matter, including the Respondent's disciplinary history. See Tentative Decision at p. 27-29. The Respondent has been disciplined by the Board in a series of previous cases dating back to 2008, including payment of fines, probationary periods and requirements to take additional continuing education, most of which was voluntarily agreed to by the Respondent in her execution of Consent Agreements with the Board. This disciplinary history evidences the Respondent's continued failure to abide by the Board's rules and regulations. Most significantly, at the time that the Respondent sent the March 16, 2020 email, the Respondent was serving a period of monitored probation in connection with a Consent Agreement she entered into with the Board in April 2018 in resolution of two (2) docketed complaints. The Respondent voluntarily agreed to serve a two (2) year period of probation to be supervised by a professional veterinary monitor who would submit quarterly reports to the Board of the Respondent's practice. However, the Respondent remains on probation, now more than five (5) years after the effective date of said agreement, due to her failure to comply with the terms of the agreement, evidencing a continued pattern of failure to comply with Board requirements. The Respondent acknowledged that she remains on probation despite her stated reasons therefore. Id. at p. 33.

Accordingly, the Board hereby suspends the Respondent's license to practice as a veterinarian for a period of two (2) years. The suspension of the Respondent's license shall be effective on November 1, 2023 to allow the Respondent to transition, transfer

and/or terminate any patients under her care. During the suspension period, the Respondent shall not engage in or offer to engage in any acts which require licensure as a veterinarian in Massachusetts. The Respondent must submit a written petition upon completion of the two (2) year suspension period to terminate the probation period and reinstate the license to a current status. Upon receipt and Board review of such a petition, the Board may terminate the two (2) year suspension period and reinstate the license to current status provided that the Board determines, in its sole discretion, that the Respondent has complied with the terms of this Order and termination of the suspension period is in the best interest of the public's health, safety and welfare.

The Board voted in favor of a motion to issue this Order on October 12, 2023.

RIGHT TO APPEAL

This is a Final Decision and Order of the Board pursuant to G.L. c. 30A, § 11 (8). The Respondent is hereby notified of her right to appeal this Final Decision and Order by timely filing a written petition for judicial review within thirty (30) days after entry of this Order, pursuant to G.L. c. 112, § 64 and/or G.L. c. 30A, §§ 14 and 15. The Order and sanctions issued herein shall remain in full force and effect during the pendency of any appeal of this Final Decision and Order.

BOARD OF REGISTRATION IN
VETERINARY MEDICINE:

By: */s/ Keith Gleason*
Keith Gleason, Executive
Director

Dated: October 18, 2022

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APPENDIX D

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY	BOARD OF REGISTRATION IN VETERINARY MEDICINE
In the Matter of Margo Roman License No. 2267	Docket No. 2020-000574-IT-ENF

TENTATIVE DECISION

This matter comes before the Board of Registration in Veterinary Medicine (the "Board") on its notice for a Sanctions Hearing after a Hearings Officer issued a Ruling on Prosecuting Counsel's Motion for Partial Summary Decision ("SD Ruling"). The SD Ruling is incorporated by reference. Based on the findings of fact and conclusions of law herein, the Respondent's conduct should be considered together with the aggravating circumstances and the mitigating evidence presented in this case when determining any sanction to be imposed.[1]

[1] 801 CMR 1.01(11)(c), the rule establishing the procedures as to Tentative Decisions, provides that where, as in this case, the Board did not preside at the reception of evidence, the presiding officer or designated employee who did shall issue a Tentative

Procedural Background

On or about January 13, 2021, the Board issued to the Respondent an Order to Show Cause (OTSC) in the above-captioned matter. The Respondent, by and through counsel, filed an Answer to the OTSC on or about March 3, 2021 ("Answer"). On or about May 6, 2021, the Hearings Officer[2] issued a Ruling denying Respondent's Motion to Dismiss ("Dismissal Ruling"), which had been filed on March 3, 2021. On the same date, the original Hearing Officer issued rulings denying Respondent's Motion for Particulars and Respondent's Motion for Discovery. A status conference was held on July 1, 2021. Following this conference, the Hearings Officer issued a Scheduling Order on July 15, 2021, establishing Adjudicatory Hearing dates of March 1 through 4, 2022, and a deadline for dispositive motions of December 1, 2021.

On or about August 10, 2021, Prosecuting Counsel[3] filed a Motion for Partial Summary Decision ("PC Motion"). On September 30, 2021, the

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Decision. The parties are entitled to an opportunity to "file written objections to the Tentative Decision...which may be accompanied by supporting briefs." 801 CMR 1.01(11)(c)(1). The Board then considers the record, including the Tentative Decision and any objections and responses filed thereto and either modifies, reverses, or affirms and adopts the Tentative Decision, "making appropriate response to any objections filed...." 801 CMR 1.01(11)(d).

[2] On or about June 15, 2022, Hearings Officer Uhing-Luedde left the agency and is no longer available. As such, pursuant to 801 CMR 1.01(11)(e), a successor Presiding Officer, Annemarie Gallop-Belle, was assigned to this matter.

[3] The initial Prosecutor assigned to the case was Julie Brady, Esq. On October 17, 2022, Attorney Salvatore Ciulla filed a Notice of Appearance as the newly assigned Prosecutor as Attorney Brady left the agency and became unavailable.

Respondent filed a Motion for Summary Decision ("R Motion"). On October 7, 2021, Prosecuting Counsel filed an Opposition to the R Motion ("PC Opposition"). On October 14, 2021, the Respondent filed a Response to the PC Opposition ("R Response"). On January 19, 2022, the Hearings Officer issued her Ruling on the SD (Cross) Motions ("SD Ruling"). In the SD Ruling, the Hearings Officer granted partial summary decision for both the Prosecution and the Respondent on certain allegations in the OTSC.

On January 26, 2022, the Respondent filed a "Motion to Set Date for Filing of Reconsideration and to Continue Prehearing Memo Deadline and Hearing Dates" ("Motion to Continue"). On February 2, 2022, the Prosecutor filed an Opposition to the Motion to Continue ("Continuance Opposition"). While the Hearings Officer did not issue a formal ruling on the Motion to Continue, she granted the request to postpone the March 2022 Hearing dates in a series of email exchanges with the parties, that appears to have culminated in a final email on February 16, 2022.[4]

On April 1, 2022, the Respondent filed a Motion for Reconsideration ("Reconsideration Motion"). The Prosecutor filed an Opposition thereto on April 8, 2022 ("Reconsideration Opposition"). The Respondent filed a Reply ("Reconsideration Reply") on April 15, 2022, and the Prosecutor filed a Surreply ("Reconsideration Surreply") on April 22, 2022. On

[4] In the February 16 email, the Hearings Officer set out deadlines for the various Reconsideration pleadings. She also discussed setting new deadlines for the filing of Prehearing Memoranda and rescheduling the Adjudicatory Hearing dates. Administrative Notice.

January 5, 2023, the undersigned issued a Ruling on the Motion for Reconsideration ("Reconsideration Ruling"), denying the Respondent's Motion for Reconsideration.

On January 9, 2023, the Prosecution filed a Motion to Dismiss Paragraphs 20, 21, and 23 of the OTSC. That motion sought dismissal of the remaining claims of the OTSC that were not resolved by the SD Ruling (and the Reconsideration Ruling). On January 31, 2023, the Respondent filed a Reply to the Motion to Dismiss the remaining claims, asking that the claims be dismissed with prejudice. On February 2, 2023, the Hearings Officer issued a ruling granting the Prosecution's Motion to Dismiss Paragraphs 20, 21, and 23 without prejudice.

On January 31, 2023, the Respondent attempted to file a Second Motion for Reconsideration. By email the same day, the Hearing Officer declined to accept that Second Motion for Reconsideration for filing. The Second Motion for Reconsideration is duplicative of the issues raised in the first Reconsideration Motion and the summary decision pleadings.

On April 4, 2023, the Respondent attempted to file the following: (1) Respondent's Motion, Pursuant To 801 CMR 1.01(7)(g)(1), to Dismiss Allegations of Two Violations of G.L. C. 112, § 61(1); (2) Respondent's Memorandum of Law in support of that Motion; (3) Motion For Reconsideration To Reverse and Correct Erroneous Rulings and To Grant Summary Decision For Respondent; and (4) Motion For Reconsideration of The Hearing Officer's *De Novo* Decision on Motions for Summary Judgment. In an email dated the same day, the Hearings Officer

declined to accept these documents for filing, as they were repetitious of prior pleadings and issues and had been resolved by prior rulings.

On April 14, 2023, the Respondent filed a Demand ("Demand"). The Demand insisted that the Hearings Officer issue a ruling on the Respondent's Motion to Dismiss, that was submitted, but not accepted for filing, on April 4, 2023. Prosecuting Counsel filed an Opposition to the Respondent's Demand ("Demand Opposition") on April 21, 2023. On April 24, 2023, the Respondent filed a Reply to the Opposition to the Demand ("Demand Reply"). On April 28, 2023, the Respondent filed a Response to Hearings Officer's "Position" stated in an email, dated April 24, 2023 ("Response"). The Prosecutor filed a Surreply on May 1, 2023 ("Demand Surreply"). On May 2, 2023, the Respondent attempted to file a "Response to Surreply" which was not accepted for filing. That same day, the undersigned issued a Ruling on the Respondent's Demand, which was denied.

A hearing on sanctions ("Sanctions Hearing") was convened on May 31, 2023, pursuant to the Massachusetts General Laws ("G.L.") Chapter 30A, Sections 10 and 11 and 801 CMR 1.01 et seq. The Sanctions Hearing was conducted via Microsoft Teams videoconferencing software pursuant to 801 CMR 1.01(12). Annemarie Gallop-Belle, Esq., Hearings Officer, acted as the Presiding Officer, as delegated by the Board pursuant to G.L. c. 30A, § 10 and 11 and 801 CMR 1.01 et. seq. The Respondent did not appear at the Sanctions Hearing but was represented by Attorneys Dane Keller Rutledge and Jeffrey Auerhahn. Attorney Salvatore Ciulla served

as Prosecuting Counsel. Board Member, Dr. David Tubman, was present at the Sanctions Hearing.[5]

Witnesses

The following witnesses testified at the hearing on sanctions:

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[5] The Sanctions Hearing was scheduled from 10:00 a.m. to 2:00 p.m. and concluded before 2:00 p.m. Administrative Notice. At the Sanctions Hearing, the Respondent objected to stopping at 2:00 p.m. and to taking a ten (10) minute break halfway through the hearing. These objections were overruled. Tr. at 62-64. Despite her objections, the Respondent did not fully use her allotted time. The parties were notified on February 1, February 8, and May 22, 2023, that the Sanctions Hearing would last no more than four (4) hours. Administrative Notice; Tr. at 62-63. This is ample time for both parties to make their arguments. Prior to the Sanctions Hearing, neither party objected to the 4-hour timeframe nor asked for more time. It is routine for courts and administrative agencies to limit the time allotted for argument at a hearing. See, e.g., Mass. R.A.P. 22(b), allowing fifteen (15) minutes for oral argument; For example, the Department of Public Health (DPH) limits each party to twenty (20) minutes at a sanctions hearing. Administrative Notice. The Respondent argued that the Hearings Officer "very, very, very slowly went through each of the exhibits" which used up the Respondent's time. Tr. at 63. The undersigned disagrees. First, the Respondent sought to introduce 112 exhibits at the Sanctions Hearing, the overwhelming majority of which were already part of the administrative record. Administrative Notice. Despite this, the Hearings Officer attempted to move efficiently, stating, "I'm not reading the full titles" of the numerous articles the Respondent submitted, to save time. The Respondent submitted more than 75 news and scientific articles. The Sanctions Hearing record contains examples of the undersigned moving expeditiously thorough the admission of exhibits. E.g., Tr. at 12, 20, 22, 29, 59, 64-66. The Respondent is not prejudiced by seeking to admit over 100 exhibits and then lamenting that it takes time to discuss, accept, or reject that volume of exhibits.

For the Prosecution:

None.

For the Respondent:

None.

Exhibits

The exhibits[6] entered into the record at the

[6] Although there was no "specific objection" from the Prosecutor, and he gave deference to the undersigned, the Hearings Officer declined to accept the news and/or scientific articles offered by the Respondent that discussed COVID-19 generally. Tr. at 40. The Hearings Officer accepted articles that referred to ozone, as that issue is relevant to the issue of sanctions, insofar as it indicates that the Respondent did not send the March 16 email in bad faith. As stated on the record at the Sanctions Hearing and expounded on here, these documents were excluded for the following reasons: First, these documents are repetitive. The Respondent has inundated the record with repetitive materials. The overwhelming majority of these documents are already in the administrative record with the summary decision pleadings. At the Sanctions Hearing, the Hearings Officer took administrative notice of all the pleadings in the case. Tr. at 4. Accordingly, there was no need to admit the documents into evidence, again. The Hearings Officer is permitted to *sua sponte* strike material that is "redundant, immaterial, impertinent, or scandalous." 801 CMR 1.01(7)(b). Second, these documents are irrelevant to the issue of sanctions as they do not contain persuasive mitigating evidence. Further, they are lacking probative value as this case is not about COVID-19 generally. Third, these documents have a lack of foundation as there is no evidence that the Respondent knew of these news articles and/or relied on them in sending the March 16 email. Indeed, the Respondent could not have relied on the bulk of them, as the majority are dated *after* the March 16, *2020*, email (at least 25 of 32 articles are dated after March 16, 2020, and some are undated). As a result of the exclusion of these

Sanctions Hearing are listed on Attachment A hereto.[7] The Board takes administrative notice of all pleadings, documents contained within the case file, as well as Board statutes, regulations, rulings,

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documents, the Respondent made a motion for the Hearings Officer to recuse herself as "bias[ed]" which was denied. Tr. at 42 [sic], 47; Administrative Notice. These documents have been marked for identification at Exhibit H for ID. Even if they had been admitted into evidence, they would have been afforded no weight for the reasons stated above. In fact, by rejecting the articles rather than taking the time to admit them, the Hearings Officer actually afforded the Respondent more time to make argument at the Sanctions Hearing.

[7] The Respondent offered proffers as cover sheets to her 8 (eight) sets of proposed exhibits. Some of the proffers contained additional legal argument. These proffers were excluded over the Respondent's objection but marked for identification. Tr. at 17, 74. Though they did not ultimately do so, Respondent's Counsel repeatedly indicated that they wished to read the contents of the proffers into the record in lieu of making oral argument at the Sanctions Hearing. Tr. at 6, 25-28, 61, 63-64, 74. The parties were repeatedly notified prior to the Sanctions Hearing that they would be permitted to make oral argument on adverse rulings at the Sanctions Hearing. Administrative Notice; Tr. at 6, 13. As stated at the Sanctions Hearing, the exhibit proffers themselves are not evidence. Tr. at 29. At best, they are argument about exhibits that are already in the record. The Respondent had already been permitted to file written motions in lieu of oral argument, in a more comprehensive format, than the proffers. Tr. at 24-25, 28. 801 CMR 1.01(7)(b).

policies, and rules.[8] [9]

[8] The Respondent offered proposed exhibits citing the rules of professional conduct for lawyers and judges. The Respondent has repeatedly argued that the Prosecutor and the Hearings Officer have committed misconduct in pursuing and presiding over, respectively, this case. Tr. at 30. (Respondent's Counsel was previously warned to stop such accusations. Demand Ruling.) Respondent's Counsels stated at the Sanctions Hearing that they wished to fulfill their ethical obligation to report misconduct. Id. The basis for the Respondent's argument seems to be the Prosecutor and Hearings Officer are knowingly advancing a that it is "false" because, they assert, ozone is helpful in battling COVID-19. Tr. at 43-46. The Respondent has flooded the administrative and sanctions hearing record with articles that claim that ozone is helpful in some fashion against COVID-19. As has been stated previously, this proceeding is not a referendum on ozone. See: Sections V.0 and V.E of this decision. The allegations of professional misconduct are meritless. The documents containing the rules of professional misconduct were excluded at the Sanctions Hearing. 801 CMR 1.01(7)(b).

[9] The Respondent offered documents regarding another veterinary clinic/hospital, Veterinary Centers of America (VCA). A member of the Board is employed at that clinic. Those documents were excluded. As stated at the Sanctions Hearing, other veterinary clinics, regardless of who owns or operates or is employed by them is irrelevant. And the Respondent has not offered any evidence that some other veterinarian sent an email to clients similar to the what the Respondent did in the March 16 email to provide any mitigating evidence. Tr. at 54. The Respondent has also changed her argument as to whether she is condemning VCA or applauding VCA. Compare Tr. at 52-54 with Exhibit D for ID.

Findings of Fact

The Board finds the following facts by a preponderance of the evidence, as set forth in the SD Ruling and herein:[10]

1. The Board has issued to Respondent a license to practice as a veterinarian in the Commonwealth of Massachusetts, License No. 2267. SD Ruling Attachments P1 and P2.

2. At all relevant times, Respondent owned Main Street Animal Services ("MASH") located in Hopkinton, MA. SD Ruling Attachments P1 and P2.

3. On March 10, 2020, then Governor Charles Baker declared a state of emergency to respond to COVID-19 in the Commonwealth of Massachusetts pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the Massachusetts General Laws. SD Ruling Attachment P7.

4. On or about March 13, 2020, then President Donald Trump declared a national emergency as a result of the COVID-19 pandemic pursuant to Sections 201 and 301 of the National Emergencies Act. SD Ruling Attachment P6.

5. On or about March 16, 2020, the Respondent authored and sent an email to MASH clients

[10] Findings of Fact made in the SD Ruling that do not form the basis of liability or conclusions of law have not been included in this Tentative Decision.

("March 16 email"). SD Ruling Attachments P1, P2, and P3.

6. In the March 16 email, the Respondent wrote:

> Additional information to protect yourselves: Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus. There is a link on our website under "resources" to find the companies that we recommend from whom you can buy an ozone generator and ozone products. We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans. If you buy an ozone generator, let the company know that you are a MASH client; they understand how we have tried to educate our clients to be protective. SD Ruling Attachment P3.

7. In the March 16 email, the Respondent wrote:

> Homeopathically many of our clients already have the homeopathic first aid kit and in it is homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus. There is also literature which states that homeopathic phosphorus and bryonia are other remedies that can be supportive during the virus outbreak, and gelsenium can also be helpful. SD Ruling Attachment P3.

8. In the March 16 email, the Respondent wrote:

> While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason [sic] that we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact. SD Ruling Attachment P3.

9. On or about June 9, 2020, the United States Department of Justice ("DOJ") announced that, on April 23, 2020, the Purity Health and Wellness Center ("Purity") had agreed to be bound by a permanent injunction banning them from representing that their "ozone therapy" could be used to treat or prevent COVID-19. The DOJ had filed suit against Purity to enjoin the company from fraudulently promoting ozone therapy as a treatment for COVID-19. SD Ruling Attachments P8, P9, P13, P14.

10. On or about April 23, 2020, the United States Food and Drug Administration ("FDA") warned marketers in the United States to stop "making unsubstantiated claims that their products and therapies, including ozone therapy, can treat or prevent coronavirus." In these letters, the FDA informed marketers that claims that ozone therapy can treat and prevent coronavirus violated the Federal Trade Commission ("FTC")

Act because they are not supported by scientific evidence. SD Ruing Attachment P9.

11. On or about May 21, 2020, the FTC warned marketers in the United States to stop promoting ozone therapy as a treatment for COVID-19 because "currently there is no scientific evidence that these, or any, products or services can treat or cure COVID-19" and therefore said promotion of ozone therapy violates the FTC Act. SD Ruling at Attachment P10.

12. On or about November 12, 2020, the FTC warned marketers in the United States to stop promoting ozone therapy as a treatment for COVID-19 because "currently there is no scientific evidence that these, or any, products or services can treat or cure COVID-19" and therefore said promotion of ozone therapy violates the FTC Act. SD Ruling at Attachment P11.

13. On or about April 29, 2021, the FTC warned marketers in the United States to stop promoting ozone therapy as a treatment for COVID-19 because "currently there is no scientific evidence that these, or any, products or services can treat or cure COVID-19" and therefore said promotion of ozone therapy violates the FTC Act. SD Ruling at Attachment P12.

14. The Code of Federal Regulations defines "ozone" as, "a toxic gas with no known useful medical application in specific, adjunctive, or preventative therapy. In order for ozone to be

effective as a germicide, it must be present in a concentration far greater than that which can be safely tolerated by man and animals." 21 CFR § 801.415; SD Ruling at Attachment P14.

15. At the time Respondent sent the March 16 email, the Respondent was serving a term of monitored probation by the Board pursuant to a written disciplinary agreement executed on or about April 11, 2018. Docket Nos. VT-15.15 and VT-15-1361. Exhibit P4.

16. The Respondent has previously received disciplinary action by the Board: Docket Nos. VT-15-15 and VT-15-1361; VT-08-017; VT-10-020; VT-11-050. Exhibits P1, P2, P3, P4.

17. On or about January 13, 2021, the Board issued an Order to Show Cause in the Matter of Margo Roman Docket No. 2020-000574-ENF. Administrative Notice; SD Ruling Attachment P1.

18. On or about March 3, 2021, the Respondent filed an Answer to the Order to Show Cause. Administrative Notice. SD Ruling Attachment P2.

19. On or about August 10, 2021, Prosecuting Counsel filed the PC Motion. Administrative Notice.

20. On or about September 30, 2021, the Respondent filed the R Motion. Administrative Notice.

21. On or about October 7, 2021, Prosecuting Counsel filed the PC Opposition. Administrative Notice.

22. On or about October 14, 2021, the Respondent filed the R Response to the PC Opposition. Administrative Notice.

23. On January 19, 2022, the Hearings Officer issued a Ruling on the SD Cross Motions. Administrative Notice.

24. On April 1, 2022, the Respondent filed the Reconsideration Motion. Administrative Notice; Exhibit R4.

25. On April 8, 2022, Prosecuting Counsel filed the Reconsideration Opposition. Administrative Notice.

26. On April 15, 2022, the Respondent filed the Reconsideration Reply. Administrative Notice.

27. On April 22, 2022, the Prosecutor filed the Reconsideration Surreply. Administrative Notice.

28. On January 5, 2023, the Hearings Officer issued the Ruling on the Reconsideration Ruling. Administrative Notice.

Conclusions of Law

1. Based on Findings of Fact 1, the Board has jurisdiction to hear this disciplinary matter.

2. Based on Findings of Fact 17 through 28, the Respondent has received notice of the disciplinary action and the charges against her licenses.

3. Based on Findings of Facts 2 through 16, the Respondent is subject to discipline by the Board for violating G.L. c. 112, § 61(1).

Discussion

I. Board's Authority to Discipline

In granting the Board the authority to license veterinarians, the Legislature intended the Board to make rules that would be "instrumental in fixing and maintaining high standards of integrity and dignity in the profession..." Gurry v. Board of Public Accountancy, 394 Mass. 118, 124 (1985). Pursuant to G.L. c. 112, § 61, the Board has the authority to discipline licensees for violations of its rules and regulations. In addition to its disciplinary powers granted under G.L. c. 112, § 61, the Board is charged with protecting the integrity of this profession and the public's confidence in said professionals. The Massachusetts legislature has also granted the Board the authority to discipline individuals for practicing this profession without a valid license. G.L. c. 112, § 65A. The Board's statutory mandate to protect the public and to ensure that this profession is performed in a competent and professional manner, provides broad power for the Board to discipline and sanction the Respondent. See: Kvitka v. Board of Registration in Medicine, 407 Mass. 140 (1990) ("The [B]oard has the authority to protect the image of the profession").

See also: Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979).

II. The Ruling on Summary Decision

In the instant matter, the SD Ruling held that the Prosecution established by a preponderance of the evidence that, in sending the March 16 email, the Respondent practiced beyond the scope of her veterinary license, in violation of G.L. c. 112, § 61(1). The Ruling also held that Respondent violated the same statute for engaging in conduct that calls into question her competence to practice the profession.[11]

III. The Ruling on the Motion for Reconsideration

The Reconsideration Ruling upheld the prior Hearings Officer's SD Ruling. The Reconsideration

[11] The Respondent argues that she did not commit "gross misconduct." Tr. at 92, 102. Exhibit R5, p. 13-14. Although that phrase appears in G.L. c. 112, § 61(1), there has not been a finding that the Respondent committed gross misconduct. See: SD Ruling; Tr. at 100, 104. Gross misconduct is one basis by which a licensee can be found to have "engaged in conduct which questions the holder's competence to practice the profession." G.L. c. 112, § 61(1). The statute lists conduct "including but not limited to, gross misconduct; practicing the profession fraudulently; practicing his profession beyond the authorized scope of his license, certificate, registration or authority...or practicing the profession with negligence on 1 or more than 1 occasion." The statute includes the phrase "including but not limited to" and is written in the disjunctive by the word "or." Semicolons separate the various examples of "conduct which questions the holder's competence to practice the profession." The prior Hearings Officer made no finding of gross misconduct in the SD Ruling. SD Ruling, pp. 16-17. The only basis for the finding that the Respondent engaged in conduct that calls into question her competence to practice the profession is the finding that she practiced beyond the scope of her license. Id.

Ruling specifically stated that it was not necessary to find that the Respondent practiced a specific profession beyond the scope of her veterinary license, in violation of G.L. c. 112, § 61(1). The Reconsideration Ruling also echoed the SD Ruling's determination that, in sending the March 16 email, the Respondent failed to maintain the boundary between her veterinary practice and her homeopathy/ozone knowledge.

IV. The Demand

Following the Reconsideration Ruling, the Respondent submitted or attempted to file numerous pleadings in a repeated attempt to reverse or dismiss the summary decision findings against her. Administrative Notice. As stated in the Demand Ruling, the Presiding Officer is not required to accept pleadings that are unduly repetitious of prior pleadings and issues, including allegations and violations, that have already been resolved. 801 CMR 1.01(7)(a)(1). Demand Ruling, p. 4.

The Respondent argues that the Second Motion to Dismiss, Second Motion for Reconsideration, and/or any other pleadings that the Respondent attempted to file after the Reconsideration Ruling contain new arguments not previously raised. Demand Reply, p. 1. The Respondent asserts that this is because the basis for liability in the Reconsideration Ruling was "de novo" from the predecessor Hearings Officer's liability determination. As stated in the Demand Ruling, the Respondent misunderstands the Reconsideration Ruling. The Reconsideration Ruling explained the broader scope of G.L. c. 112, § 61(1), and why the Respondent's arguments in the Motion for

Reconsideration were not persuasive. That is not a *de novo* determination of liability. Demand Ruling, p. 4.

To the extent that the Respondent is raising a new argument that she is not liable for practicing beyond the scope of her license, it was her obligation to provide a thorough and exhaustive defense to the allegations from the outset of this case. *The Respondent's March 16 email and G.L. c. 112, § 61(1) have not changed since the OTSC was issued*. The Respondent has not presented a reason why she could not have raised all necessary arguments in her voluminous and extensive pleadings filed prior to the Reconsideration Ruling.

The Respondent argues that she could not have filed her second Motion to Dismiss any earlier because she had to wait until the Prosecutor was done with the presentation of his case. 801 CMR 1.01(7)(g)(1). Tr. at 10; Exhibit R6. The Prosecutor argues that his presentation was closed prior to that: when summary decision was initially granted. The Prosecutor asserts that the second Motion to Dismiss is really a second or third reconsideration motion but under a different name. Tr. 10-11. The Hearings Officer agrees. Curiously, the Respondent says, "calling it something else doesn't mean it's something else." Tr. at 11. That is precisely true. Procedurally, the Respondent makes this argument that she had to wait to file this particular motion because the undersigned declined to accept the repeated motions to perpetually argue issues that were already resolved by prior pleadings. Substantively, that second Motion to Dismiss, attached as Exhibit R6, contains arguments that could and should have been raised by the Respondent

in earlier pleadings. In any event, these arguments are addressed herein.

The Respondent has had ample notice that the March 16 email is the subject of this case and has had an extensive opportunity to present a comprehensive defense to the allegations in the OTSC. As stated in the Demand Ruling, "the current determinations of liability will not be reversed because the Respondent neglected to raise an argument, is changing her argument, or misunderstands the basis for [those] liability determinations." Demand Ruling, p. 6.

Although the undersigned did not accept the Respondent's repetitious pleadings and/or untimely arguments following the Reconsideration Ruling, at the Sanctions Hearing, the Respondent was permitted to raise her objections to the Reconsideration Ruling and present argument regarding the violations. Those arguments, and the Prosecution's response, are addressed below.

V. Arguments presented at the Sanctions Hearing

A. The Respondent argues that sending an email is not practicing the profession.

The Respondent asserts that she cannot be found in violation of G.L. c.112, § 61(1) for practicing beyond the scope of her veterinary license because she was not "practicing" in sending the March 16 email. Exhibit R1. The Respondent makes a tortured argument that an email cannot be part of a practice of the veterinary profession because the statute defining that practice, G.L. c. 112, § 58, does not include the word "authoring or sending an email." See: Exhibit

R2. Demand Reply, p. 1; Exhibit R7, Final Memorandum, pp. 5, 14. The Respondent relies on Clark v. Board of Registration of Social Workers, 464 Mass. 1008 (2013), in support of her argument.

The Respondent's argument is meritless. No statutory definition of arty profession includes "email" because the Legislature cannot possibly define every ancillary activity that goes into the practice of a profession. When a real estate agent calls a client on the phone about a real estate transaction, that agent is practicing their profession, even though the statutory definition of practicing as a real estate professional does not say "phone calls." G.L. c. 112, § 87PP. If a plumber texts a customer an estimate for a plumbing job, the plumber is practicing his profession, even though the statutory definition of plumbing does not say "texting." G.L. c. 142, § 1. Email is a modern tool that is used every day by all kinds of professionals. As noted by the Prosecution, G.L. c. 112, § 58 was enacted in 1974, well before the invention of email. Demand Surreply, p. 4. The Respondent seemingly argues that the Legislature should be required to amend every statute to ensure that it specifically enumerates all possible modes of communication. Such a suggestion is meritless and unpersuasive. Importantly, the AVMA Principles of Veterinary Medical Ethics ("AVMA Principles"), on which the Respondent relies, states that the practice of veterinary medicine includes, the "rendering of advice or recommendation by any means including telephonic and other electronic communications..." AVMA Principles, "Useful terms." Exhibit R43.

Furthermore, it is unclear how the Clark case helps the Respondent. As an initial matter, there was

no allegation in that case that the social worker was practicing beyond the scope of her license. The issue was whether a client-social worker relationship had been established between that respondent and a particular individual. Clark, 464 Mass. at 1008. That is different than the issue in this case, as this case is not about whether the Respondent established a veterinarian-patient relationship with respect to a particular animal. Secondly, the language of the decision hurts the Respondent's argument. In discussing the Board regulation that defines the practice of social work, the Court wrote, "Clark points to no law that supports her argument that a social worker only provides social work services if she does all of the things listed in the regulation...The only sensible reading of the regulation, as the Board suggests, is that it simply provides the range of services that a social worker might provide." Clark, 464 Mass. at 1010. Therefore, the Respondent in this matter does not have to be specifically engaged in one of the enumerated activities in G.L. c. 112, § 58, to be "practicing the profession" under G.L. c. 112, § 61.

The Respondent's argument that the Prosecution has never proven that the Respondent practiced her profession is incorrect. Exhibit R7, p. 5. The first half of the Respondent's March 16 email was about the COVID-19 procedures at MASH. It discussed pet visits, pet exams, and pet medications. This portion of the email is practicing the veterinary profession. The Respondent then states, "Additional information to protect yourselves." She goes on to discuss the ozone generators, vitamin and diet recommendations, and items in a homeopathic kit. After discussing whether dogs can get COVID-19, the very last sentence tells clients that they "need to

follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come into contact." PC Motion, Exhibit 3; Administrative Notice. This second portion of the email has been found to be practicing outside the scope of the Respondent's veterinary license. As stated in the Reconsideration Ruling, "The Respondent did not send the March 16 email as a "private citizen," i.e., to only her friends or family, or publish it on a personal website or blog, or the like. Instead, the Respondent sent it to her entire MASH client list." Reconsideration Ruling, p. 9.[12]

The Respondent makes a circular argument that if the Respondent was engaged in conduct outside the scope of her license, then she was not practicing the profession. Exhibit R7, p. 6. Again, in the first part of the March 16 email the Respondent is practicing her profession—she is talking about animal care. The second part of the March 16 email is outside the scope of the Respondent's veterinary license as she provides health recommendations for humans. The Respondent cannot divorce the second half of her email from the first in an attempt to claim that she was not practicing her profession.

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[12] The Respondent asks, "Is her use of DVM after her name really the sole linchpin in the Board's attacks on her? Is that really the basis upon which the Board and its employees seek to enforce a gag order on Dr. Roman by threatening her license without legitimate legal basis to do so?" Exhibit R5, pp. 12-13. The answer is, of course, "no" and the questions posed are another example of the Respondent's misunderstanding of her conduct and the reasons for the liability determination. The basis for the Respondent's liability have been discussed in the SD Ruling, Reconsideration Ruling, and herein.

In this matter, the Respondent, as a veterinarian, emailed her veterinary clients,[13] at the onset of the COVID-19 pandemic, with health suggestions for humans. This matter is simple - the March 16 email contained health recommendations for *humans*, and the Respondent is licensed as a *veterinarian*. Accordingly, the Respondent practiced outside the scope of her veterinary license in violation of G.L. c. 112, § 61(1). No reasonable argument can be made that the March 16 email was not part of her practice, because the word "email" does not appear in the defining statute.

B. <u>The Respondent argues that the March 16 email is not advice. It is a "general email."</u>

The Prosecutor argues that the Respondent practiced beyond the scope of her veterinary license because, in the substance of the March 16 email, the Respondent "directly or indirectly" made a "prognosis" for the "prevention of or to test the presence of any disease" for humans, not animals. G.L. c. 112, § 58. As stated by the Prosecution, in the Demand Surreply, "In addition to providing advice[14] for the protection of animals from this disease, the Respondent is quite clearly stating her opinion as to the likely course of the disease in humans and is advising her human

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[13] The term "client" is used to refer to the human owners of the animals. The term "patients" is used to refer to the animals.

[14] The definition of "advice": (1) "recommendation regarding a decision or course of conduct." https://www.merriam-webster.com/dictionary/advice#dictionary-entry-1; retrieved June 14, 2023. (2) "An opinion or a suggestion about what somebody should do in a particular situation." https://www.oxfordlearnersdictionaries.com/definition/english/advice; retrieved June 14, 2023.

clients as to how to best prevent acquiring or being seriously affected by said disease." Demand Surreply, p. 4.

The Prosecution further argues that the Respondent does not meet the exemption from practicing offered in G.L. c. 112, § 58(7), of "giving advice." The statute allows a veterinarian to give advice so long as they do not hold themselves out as a veterinarian. The Prosecution asserts that the Respondent did that here when she gave advice—to humans—from her position as a veterinarian: her MASH client list; her MASH email account, etc. Demand Surreply, pp. 4-5.

The Respondent argues that the subsections of G.L. c. 112, § 58 apply to non-licensed veterinarians who may be accused of practicing as veterinarians. As such, the Respondent argues those sections are inapplicable to the Respondent. The Respondent further argues that the Respondent was not offering a prognosis. She characterizes the March 16 email as "general thoughts" or a "general statement by a scientist sharing scientific knowledge."[15] Exhibit R8, Response to Surreply, p. 2.

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[15] The Respondent also characterizes the March 16 email as a "general distribution email." Tr. at 90-91, 93, 94. It's unclear if this is an attempt to minimize the violative nature of the email in terms of the size of the audience receiving the email. If so, that characterization is not persuasive. There is no legal support for any contention that the Respondent had to direct the March 16 email to one specific or identified person in order for her to be held liable. It is unknown how many MASH clients received the Respondent's March 16 email advocating the use of ozone. If it was a "general distribution" email, then it likely was received by more than one person, which does not minimize the Respondent's

This issue was addressed in the SD Ruling. The prior Hearings Officer wrote,

> Respondent encouraged her MASH clients to rely upon her advertised treatment for COVID-19 in the event they, as humas, became infected with the disease. Exhibit P3. In the email, Respondent specifically states that the World Health Organization ("WHO"), at the time, "established that dogs are not likely to get sick from and transmit COVID-19..."; therefore, her recommendations that readers treat COVID-19 with ozone could only reasonably be expected to pertain to human beings. *The statements contained within this email fall well outside "general health information."* Through the language of her March 16 email, Respondent encouraged her human readers to rely upon her knowledge in the maintenance of *human* health by the prevention or treatment of COVID-19 with ozone therapy and homeopathic remedies. See 243 CMR 2.01 (4). (emphasis added). SD Ruling, p. 14.

As stated above and emphasized herein, the Respondent's March 16 email goes beyond general health information or recommendations.[16] The

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violation of G.L. c. 112, § 61(1). There is no evidence that anyone followed the Respondent's suggestions in the March 16 email. The Board may consider that as mitigating evidence in fashioning a sanction against the Respondent, but it does not absolve the Respondent of liability.

[16] Definition of "recommend: (1) "to tell somebody that something is good or useful, or that somebody would be suitable for a particular job, etc.," https://www.oxfordlearnersdictionaries.com/definition/english/r

Respondent directed the reader to the MASH website for a link to purchase an ozone generator and/or ozone products. The Respondent told the reader that if they do purchase those products, "let the company know that you are a MASH client." PC Motion, Exhibit 3. As stated in the Reconsideration Ruling, "The March 16 email does not contain any disclaimer that the Respondent is not a medical doctor, or homeopath, or naturopathic doctor, nor does the Respondent suggest that the email recipients consult with any of those types of professionals prior to engaging in ozone therapy."[17] Reconsideration Ruling, fn. 9. The language of the email indicated that the reader "needed to follow" the Respondent's suggestions. PC Motion, Exhibit 3. The Respondent insists that "All

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ecommend, retrieved June 15, 2023; (2) "to present as worthy of acceptance or trial" https://www.merriam-webster.com/dictionary/recommend, retrieved June 15, 2023.

[17] Regarding a disclaimer and consultation with a medical doctor, in the March 16 email, the Respondent wrote, "Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus." Administrative Notice; PC Motion, Exhibit 3. The Respondent argues that she used the word "possible" as a sort of disclaimer. Exhibit R5, p. 12. That singular word does not save the Respondent from this, or the other violative portions of the email as discussed in the SD Ruling, Ruling on the Motion for Reconsideration and herein. The Board may consider the Respondent's use of the word "possible" as mitigating in fashioning a sanction against the Respondent, but it does not absolve the Respondent of liability. The Respondent's other argument, that suggesting the MASH clients consult with their medical doctor would have been practicing outside the scope of her license, is nonsensical and not persuasive. Suggesting that clients consult with their doctor about the human medical advice she was providing in the March 16 email would not have made the Respondent *more* liable for practicing outside the scope of her veterinary license. Exhibit R5, pp. 12-13.

[she] did was to send helpful thoughts to people she cared about." Exhibit R5, p. 10. This is a gross minimization. The totality of the March 16 email is beyond a "general statement," beyond educating clients, and the insistent nature of the email should not be overlooked.[18]

C. The Respondent argues that the March 16 email is "true."

The Respondent argues that everything in the March 16 email is "factually correct" and therefore, it cannot be the basis for a determination of conduct that calls into question her competence to practice the profession. Exhibit R8, p. 2. This has been addressed before. As stated in the SD Ruling,

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[18] The Respondent argues that she cannot be held liable because, "The Respondent provided no specific information that would be necessary to allow anyone to follow any such recommendation, that is: Should the ozone be delivered in an aqueous or gaseous form? At what setting should the oxygen tank be opened? At what setting should the ozone machine be set? Should the ozone be injected, infused, or taken intravenously? Or applied topically, perhaps? No rational human being could read the email as anything more than a general thought illuminating a 'possible' pathway for exploration." This is a distorted reading of the email and no "rational" reading of the email would generate these questions. The Respondent was not musing on the attributes of ozone when she "encouraged" her clients to get an ozone generator and referenced a link on the MASH website to purchase one. She also told her clients to mention MASH, seemingly like a referral, if they did purchase an ozone generator. Again, when the Respondent told her clients they "need to follow our suggestions" to protect "everyone" she was not simply "thinking out loud" about ozone helping to prevent or fight COVID-19 infection.

> It is not the role of the Board to decide that federal authorities have erred in defining ozone as set forth above. The Board cannot substitute its judgment for federal and state public health authorities and determine that ozone therapy can effectively treat or prevent the spread of COVID-19. Prosecuting Counsel has established beyond a preponderance of the evidence that beginning in late April of 2020, the FDA and FTC began advising marketers to refrain from promoting ozone as a treatment for, or means of preventing, COVID-19. Exhibits P8 through P14. In addition, Prosecuting Counsel has established as a matter of law that, on the date[s] Respondent sent the [March 16 email] at issue in this matter, *the Code of Federal Regulations defined ozone as lacking any "known useful medical application."* 21 CFR § 801.415. The question before the Hearing Officer on summary decision, however, is not whether ozone can effectively treat or prevent COVID-19. SD Ruling, pp. 9-10 (emphasis added.)

The AVMA Principles say that a veterinarian "shall respect the law." AVMA Principles 4, Exhibit R43. At the time the Respondent sent the March 16 email, ozone was defined as a "toxic gas" by federal law. See: Finding of Fact #14. The SD Ruling found that the Prosecution established as a matter of law, that on March 16, federal law defined ozone as "a toxic gas with no known useful medical application in specific, adjunctive, or preventative therapy. For ozone to be effective as a germicide, it must be present in a concentration far greater than that which can be

safely tolerated by man and animals." 21 CFR § 801.415; SD Ruling, pp. 8, 9-10.[19] The Respondent's argument that her March16 email is correct is not persuasive and not relevant to the issue of liability. See also: Findings of Fact #9-13.

More importantly, the Respondent's insistence that the March 16 email was true reflects a continuing and pervasive misunderstanding of the SD ruling and her own actions. Even if what the Respondent said in the March 16 email about ozone is true, it is still beyond the scope of her veterinary practice. That is very simply because the Respondent told human beings what to do for their health while practicing as a veterinarian. If the Respondent told her veterinary clients how to correctly re-wire their house for electricity, it would still be beyond the scope of her veterinary license.[20]

All the Respondent's evidence about ozone being useful against COVID is a red herring insofar as it does not alleviate the Respondent of liability in sending the March 16 email. It only matters insofar as to establish that the Respondent did not seek to harm anyone by sending the email. Accordingly, this evidence is afforded no weight with regard to liability but moderate weight with regard to the issue of sanctions. Again, the Respondent could have told her

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[19] In the March 16 email, the Respondent wrote, "We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans." PC Motion, Exhibit 3.

20 Again, it is not necessary for the Prosecution to establish what, if any, specific profession the Respondent was arguably engaged in for her conduct to be outside the scope of the veterinary profession. Reconsideration Ruling.

clients that eating two (2) pounds of sunflower seeds would cure COVID. Regardless of the specific advice, the Respondent cannot tell humans what to do for their health while she is publicly practicing as a veterinarian.

D. The Respondent argues that she is qualified to make the statements in the March 16 email.

Similarly, the Respondent has already raised the argument that she cannot be disciplined for the March 16 email because she is a Certified Ozone Therapist (COT). The Respondent asserts that "[s]he received training as a human homeopath and certification as a certified ozone therapist (COT), and thus was acting within the scope of her training, certifications and experience in offering advice to her clients." Reconsideration Motion, pp. 15-16. She argues that she was not practicing beyond the scope of her certified ozone therapist certificate. Tr. at 91-92.

That argument has already been rejected in the Reconsideration Ruling. See: Section II.2., pp-8-9.[21] Nonetheless, the Respondent asserts that the ozone part of her "'advice' has nothing to do with her license as a veterinarian and cannot subject her to sanction

[21] The Ruling stated, "That the Respondent has some knowledge or training in homeopathy, and is certified in ozone therapy, does not absolve her of liability for practicing beyond the scope of her veterinary license. Certainly, it would be highly unlikely and very curious if the Respondent sent the March 16 email having *zero* basis to make the statements therein. The problem is that the Respondent failed to maintain the boundary between her veterinary practice and her homeopathy, ozone knowledge."

by the veterinary board." Exhibit R8, Response to Surreply, p. 3.

Again, the Respondent misunderstands the liability finding against her. The Respondent disseminated her ozone therapy "advice" as a veterinarian, from her veterinarian email account, to her veterinary clients. In the March 16 email, the Respondent did not identify herself as a COT. As Prosecuting Counsel noted, "She provided this medical advice to people who were employing her to provide veterinary services, and she sent this from veterinary platforms, email. She was holding herself out as a veterinarian, as able [sic} to provide veterinary services to these people, and in that email, she provides medical advice." Tr. at 101. To that end, when the Respondent chose to disseminate ozone therapy advice to her veterinary clients, from her veterinary email account, she created a direct connection between that advice to her veterinary license.

The Board has jurisdiction over the Respondent by virtue of her license as a veterinarian. See: Finding of Fact #1 and Conclusion of Law #1. The Respondent's ozone certificate does not shield her from liability for the misconduct in the March 16 email. In addition, the Respondent did other things in the March 16 email that were beyond the scope of her veterinary license that do not pertain to ozone (dietary and homeopathy suggestions). PC Motion, Exhibit 3. See: fn. 23.

E. The Respondent cannot be found liable because she followed the veterinary oath and American Veterinary Medical Association (AVMA) Principles of Ethics and One Health Initiative.

The Respondent argues that she cannot be found liable for violating G.L. c. 112, § 61(1) because the March 16 email complied with the veterinary oath, and AVMA Principles, including the One Health Initiative. Exhibit R5, p. 15. Exhibit R8, pp. 2-3. For the reasons discussed below, the Respondent's argument is not persuasive.

First, the Respondent submitted the AVMA Veterinarian's oath. Exhibit R47. That oath states in relevant part,

> Being admitted into the profession of veterinary medicine, I solemnly swear to use my scientific knowledge and skills for the benefit of society through the protection of animal health and welfare, the prevention and relief of animal suffering, the conservation of animal resources, the promotion of public health, and the advancement of medical knowledge.

The Respondent argues that in keeping with the last two (2) phrases, by sending the March 16 email, she was promoting public health and advancing medical knowledge. Exhibits R5, R8.

Second, the Respondent relies on the AVMA Principles of Veterinary Ethics in support of her contention that she did not violate the statute. Exhibit

R43. The Respondent cites to these portions of the AVMA Principles:

> "6. A veterinarian shall continue to study, apply, and advance scientific knowledge; maintain a commitment to veterinary medical education; make relevant information available to clients, colleagues, and the public; and obtain consultation or referral when indicated."
>
> "8.1. The responsibilities of the veterinary profession extend beyond individual patients and clients to society in general. Veterinarians are encouraged to make their knowledge available to their communities and to provide their services for activities that protect public health."

The Respondent asserts that only the phrase "medical education" is limited to "veterinary" education, whereas the other phrases such as "relevant information" and "their knowledge" are not so limited. Exhibit R5, p. 17; R8, pp. 2-3.

Third, the Respondent submitted information on the AVMA One Health Initiative. Exhibits R42 and R48. The Respondent asserts that she followed the One Health initiative in sending the March 16 email. Exhibit R5, p. 18. According to the AVMA website:

> One Health is the integrative effort of multiple disciplines working locally, nationally, and globally to attain optimal health for people, animals and the environment. Because of their expertise, veterinarians play critical roles in the health

> of animals, humans, and even the environment, but these roles are often overlooked or unrecognized... As the human population continues to increase and expand Across our world, the interconnection of people, animals, And our environment becomes more significant and impactful. Exhibit R42.
>
> One Health refers to two related ideas: First, it is the concept that humans, animals, and the world we live in are inextricably linked. Second, it refers to the collaborative effort of multiple disciplines working locally, nationally, and globally to attain optimal health for people, animals, and the environment. Exhibit R48.

The undersigned takes the Respondent's arguments that she believed she was following these "authorities" in sending the March 16 email as mitigating evidence. However, they do not absolve the Respondent of liability.

First, the veterinary oath is just that—an oath. It is not a law and does not have the force of law. The same is true of the AVMA One Health Initiative. It is just that—an initiative. Neither the veterinary oath nor the One Health Initiative trump this Board's rules, specifically G.L. c. 112, § 61(1). The prior Hearings Officer did not find the Respondent's arguments about the One Health Initiative persuasive. She wrote, "Respondent has produced no evidence demonstrating that the AVMA One Health Initiative encourages *veterinarians* to propose treatments for human beings infected with zoonotic

diseases." SD Ruling, p. 15.[22] No rational reading of an oath for veterinarians can be interpreted to mean that a veterinarian can make health recommendations for *humans*.

The AVMA Principles are different than the oath and the One Health Initiative. The Board has adopted the AVMA Principles of Ethics. 256 CMR 7.01(1) states, "A licensee's practice shall conform to currently-accepted professional and scientific standards in the profession of veterinary medicine such as but not limited to the AVMA Principles." However, the undersigned is not persuaded by the Respondent's argument that the Ethical Principles protect her from liability.

Much like the discussion above in Section V.B., that the Respondent did more than send a "general email," the Respondent also did more than share "scientific knowledge." In the March 16 email, the Respondent advocated for the purchase of an ozone generator and products to her human veterinary clients. The email referenced a link on her website to purchase an ozone generator. The Respondent discussed probiotics and nutrition advice. The

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[22] In the SD Ruling, the prior Hearings Officer granted summary decision for the Respondent on two (2) emails that were sent to a veterinary colleague and found that those emails were not outside the scope of the practice of the profession. The Hearings Officer explained the difference: "Promoting ozone for the disinfection of personal protective equipment ("PPE") and the treatment of COVID-19 to a veterinary colleague cannot be found to constitute practice beyond the scope of veterinary licensure. Respondent did not advise O'Connor [colleague] to treat herself with ozone or homeopathic remedies in the event she acquired COVID-19." SD Ruling, p. 15.

Respondent also discussed a "homeopathic kit."[23] The Respondent took several affirmative steps beyond sharing "scientific knowledge" or "relevant information" in violation of G.L. c. 112, § 61(1). The AVMA Ethical Principles cannot be reasonably interpreted to mean that a veterinarian has "carte blanche" to espouse on human medical conditions under the guise of following the AVMA Principles. To allow that interpretation would blur the lines between human and veterinary medicine, and would render G.L. c. 112, § 61(1) meaningless.

The Board's regulation, 256 CMR 7.01(1), also states, "A licensee's practice shall conform to *currently-accepted* professional and scientific standards in the profession of veterinary medicine... (emphasis added). As stated previously, "It is not the role of the Board to decide that federal authorities

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[23] While much of the focus of the pleadings and arguments has been on the Respondent's recommendation of an ozone generator, it is important to remember that the original Hearings Officer also found that two (2) other portions of the Respondent's March 16 email were beyond the scope of her veterinary license. First; in the second paragraph under "Additional Information to protect yourselves," the Respondent provided dietary advice after discussing her own her own vitamin regimen. Second, the SD Ruling highlighted the third paragraph of the same section where the Respondent wrote, "Homeopathically many of our clients already have the homeopathic first aid kit and in it is *homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus* (emphasis added)." SD Ruling, p. 13. According to the Respondent, "Dr. Roman is trained in herbs, nutrition and both veterinary and human homeopathy and ozone therapy." Reconsideration Motion, p. 15. There is no evidence that the Respondent is a certified homeopathic practitioner or a licensed naturopathic doctor. Id.; Exhibit R45. Even if she were, that does not protect her from liability for a violation of G.L. c. 112, § 61(1).

have erred in defining ozone as set forth above. The Board cannot substitute its judgment for federal and state public health authorities and determine that ozone therapy can effectively treat or prevent the spread of COVID-19." SD Ruling, pp. 9-10. However, the Respondent is asking the Board to substitute her judgment for that of the FTC and FDA. The Respondent called FDA and FTC statements about ozone "inaccurate."[24] Reconsideration Motion, pp. 25, 26. The Respondent wrote the following in the Motion for Reconsideration:

> Based on her knowledge, training and experience with ozone, Respondent did not have to wait for the results of studies in order for her to hypothesize on March 16, 2020, at the very beginning of the pandemic, that ozone could possibly be effective in disinfecting against COVID and in treating COVID. p. 28.

The Respondent is wrong, because she is required to conform her practice to the "currently

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[24] At the Sanctions Hearing, the Respondent attempted to draw a distinction between ozone and ozone therapy. Tr. at 76-77. However, the federal regulation addressed ozone therapy: "a toxic gas with no known useful medical application in specific, adjunctive, or preventative therapy. 21 CFR § 801.415. Findings of Fact #9-13 recount examples of federal authorities warning or filing suit against entities marketing or promoting ozone therapy as a treatment, cure, or can prevent infection of COVID-19. Legally, this is not a matter of federal preemption of a state law or "safe harbor" provisions as the Respondent suggests. Tr. at 76-78. The Respondent calls the federal regulation "inaccurate" based on the exhibits she has submitted. Tr. at 77. The Respondent cannot preempt federal law because she disagrees with it.

accepted professional and scientific standards." 256 CMR 7.01(4 The Respondent submits that scientific knowledge is dynamic, not static. Reconsideration Motion, p. 23. But at the time the Respondent sent the March 16 email,[25] 21 CFR § 801.415 defined ozone as lacking any "known useful medical application."[26]

Again, this case is not a referendum on ozone. If the Respondent wants to change the laws, that is what she should do. That is what the AVMA Ethical Principles, on which the Respondent relies, call for: Principle 4 states, "A veterinarian shall respect the law and also recognize a responsibility to seek changes to laws and regulations which are contrary to the best interests of the patient and public health." Exhibit R43. If the Respondent believes the federal

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[25] Neither party has indicated that 21 CFR § 801.415 has been amended or repealed during the pendency of this matter.

[26] In a grandiose acknowledgement that the Respondent was not conforming to "currently accepted professional and scientific standards," she likened herself to Galileo and Copernicus in that she is ahead of her time with her scientific knowledge of ozone: "Perhaps the Board and the Prosecutor, operating from their ignorance, would have conspired to prosecute Copernicus and Galileo today because, at the time of their statements, those two scientific icons had in fact advanced scientific knowledge but nevertheless their scientific knowledge had not yet been commonly understood and recognized that the sun was the center of the solar system around which the earth and other planets revolved. But for centuries now, it has been taught in grade school. Like the Inquisition, the Board is using its power and the prospect of penalties in order to stifle free speech and chill innovation." Reconsideration Motion, p. 24. The Board is neither "stifl[ing] free speech nor chill[ing] innovation." The Board is simply exercising its authority to regulate the profession and hold the Respondent accountable for her misconduct. G.L. c. 13, § 26. (The Respondent's First Amendment argument was previously rejected. Ruling on Respondent's Motion to Dismiss, issued May 6, 2021.)

regulation and federal authorities are mistaken about ozone and ozone therapy, the Respondent should take the appropriate steps to bring about a change in the law. What the Respondent should not do is email her veterinary clients with medical advice for humans. Unless and until the law changes, the Respondent is required to "conduct all professional activities in accordance with federal, state, local and Board statutes and regulations." 256 CMR 7.01(2).

The Respondent argues that the information that she provided about ozone "was consistent with the veterinary oath about promoting public health, consistent with the principles of veterinary ethics requiring her to share important scientific information to clients." Tr. at 38-39. The Respondent argues that what she did was "praiseworthy and not subject to sanction." Tr. at 39. This argument is not persuasive. The AVMA Ethical Principles say nothing about offering "general health recommendations" or "scientific knowledge" in contravention of existing federal law. The AVMA Ethical Principles say nothing about "general health recommendations" at the start of a pandemic. The Respondent's attempts to shoehorn the March 16 email into compliance with the AVMA Ethical Principles fail.

The Respondent's wound is self-inflicted. She did not have to send the March 16 email to proclaim her opinion of the virtues of ozone therapy or homeopathy in the fight against COVID-19, in an email issued from her veterinary email account. The argument that she was required to do so because of her oath or the AVMA is not persuasive. By that logic, the converse would also have to be true—the Respondent could be charged with violating the

AVMA Principles of Ethics for NOT sending the email if she possessed some sort of scientific knowledge. That would be absurd. The Board does not prosecute cases against veterinarians who have scientific knowledge and do not disseminate it. This was a volitional act by the Respondent, outside the scope of her veterinary practice, and the AVMA Principles do not afford her shelter.

VI. Aggravating and Mitigation Evidence

A. Aggravating Evidence Presented at the Sanctions Hearing.

Prosecuting Counsel stated that the Respondent was found in violation of G.L. c. 112, § 61(1) for practicing the profession beyond the scope of her license. Accordingly, that conduct places into question her competence to practice the profession. Tr. at 68-69.

The Prosecution offered evidence of prior discipline against the Respondent as follows:

1. In the Consent Agreement for Docket No. VT-08-017, executed on or about October 23, 2008, the Respondent agreed to pay a $100 (one hundred dollar) fine for failing to properly store and secure controlled substances in violation of 256 CMR 7.01(2). Exhibit P1.

2. In the Consent Agreement for Docket No. VT-10-020, executed on or about November 30, 2009, the Respondent agreed to a $100 (one hundred dollar)

fine for failing to properly separate expired controlled substances in violation of 256 CMR 5.02(5). Exhibit P2.

3. By the Amended Final Decision and Order in Docket No. VT-11-050, issued on or about December 12, 2016, the Respondent's license was placed on probation for a period of 6 (six) months. During the probationary period, the Respondent was required to successfully complete 6 (six) units of continuing education in record keeping, in addition to any continuing education requirements to maintain licensure. The Respondent was ordered to pay a civil administrative penalty/fine of $1,000 (one thousand dollars). Exhibit P3.

4. In the Consent Agreement for Docket Nos. VT-15-15 and VT-15-1361, executed on or about April 11, 2018, the Respondent agreed to a 2 (two) year probationary period for an unspecified violation of 256 CMR 5.01 or 7.01(1). The Respondent agreed to a professional veterinary monitor of her practice. The monitor would make quarterly written reports to the Board of the Respondent's veterinary practice. The Respondent was required to successfully complete 6 (six) units of continuing education in dentistry, in addition to any continuing education

> requirements to maintain licensure. The Respondent agreed to pay a civil administrative penalty/fine of $2,000 (two thousand dollars). After the first 18 (eighteen) months of probation, if receiving positive monitoring reports, the Respondent was able to petition to end the monitoring. Exhibit P4.

Discussed further below, the Prosecution challenged the Respondent's characterization of "a pattern harassment and unfair treatment by the Board and its staff." Tr. at 69. Prosecuting Counsel noted that the Respondent voluntarily executed three (3) Consent Agreements with the Board, meaning that the Respondent willingly accepted discipline in those matters. Prosecuting Counsel argued that the more accurate pattern that exists is that the Respondent repeatedly failed to comply with the Board rules.

Prosecuting Counsel noted that at the time the Respondent sent the March 16, 2020, email, she was on probation with the Board. Exhibit P4. The Respondent is presently still on probation, approximately five (5) years after the execution of the Consent Agreement for Docket Nos. VT-15-15 and VT-15-1361. The Respondent's probation has been extended because she has failed to comply with the conditions required for probation to be terminated. The Prosecution submitted that the Respondent has demonstrated a pattern of failure to comply with the Board's regulations and has failed to comply with the terms of a Consent Agreement that she signed. Tr. at 70-71.

Prosecuting Counsel argued that the Respondent's insistence, through her counsel, that

liability has not been established in this matter, is a denial of reality. He noted that while the Respondent is welcome to vigorously defend herself, and no point has the Respondent taken accountability for her actions or even allowed for the possibility of wrongdoing on her part. The Prosecution argued that "no licensee has the right to substitute their judgment for that of the Board." Tr. at 72. Prosecuting Counsel noted that in the Respondent's statement to the Board, she indicated that she would abide by the principles of veterinary ethics. Exhibit R50. However, the Respondent's statement does not indicate that she will abide by the Board's rules and regulations. Id.

B. Mitigating Evidence Presented at Sanctions Hearing.

In fashioning a sanction against an individual, the Board may use its "experience, technical competence, and specialized knowledge." G.L. c. 30A, § 11(5). In doing so, the Board must consider many factors, including any extenuating circumstances presented by the Respondent.

The Respondent asserts that a Sanctions Hearing is improper as the Respondent did not violate Board rules in sending the March 16 email. The Respondent disputed that liability has been established. Tr. at 18, 19, 35-36, 75. The Respondent's theme for the Sanctions Hearing was, "What's more mitigating than no violation occurred?" Tr. at 19, 20, 75. The Respondent asserts that "there is no fact, no law that supports a violation in this case." The Respondent asserted that ozone and ozone therapy are not the same thing. Tr. at 76-77. The Respondent argues that her exhibits demonstrate the medical usefulness of ozone therapy. Tr. at 77. The

Respondent also insists that the CFR on ozone does not trump state law and there is a "safe harbor" provision. Id.

The articles about ozone were admitted into the record as evidence of the Respondent's lack of mal intent in sending the March 16 email. Exhibits R9 and 10; R13-41; R46; R52. There is no evidence that the Respondent was trying to hurt anyone in sending the March 16 email.

1. The Respondent's resume, Exhibit R45.[27]

The Respondent is the owner of MASH in Hopkinton, MA. She established that hospital in 1988. The Respondent's resume says the following about her veterinary hospital:

> An integrative veterinary clinic with both conventional and holistic approaches to health, preventative medicine and well-being. Providing Complementary and Alternative modalities including acupuncture, functional medicine and nutrition, herbal medicine, medical ozone, ultraviolet blood therapy, homeopathy, chiropractic, MicroBiome Restorative Therapy (MBRT), hyperbaric oxygen (HBOT) and others. We blend integrative medicine to bring a collaboration to support the patient. Our goal is to support the immune system so that the animal can have its own body to help heal the individual.

[27] As the Respondent's career has spanned decades, not everything can be recounted here. The Respondent did not pinpoint any areas of emphasis in this exhibit.

> Hence, we want to choose supportive methods to control infection and inflammation and be judicious and have good stewardship about the use of antibiotics and pain medications and other microbiome damaging medications. Exhibit R45, p.1.

The Respondent notes that she has [l]ectured at over 50 conferences and universities on integrative topics both nationally and internationally." Exhibit R45, p. 2. The Respondent has future lectures scheduled in 2023 and 2024. The resume recounts the Respondent's appearances on television and radio. Exhibit R45, p. 8. The Respondent provides a partial list of her publications as well as a list of her "members in professional and other organizations present and past." Exhibit R45, pp. 7, 8. The Respondent's resume notes her "awards and recognitions." Most recently, in 2021, the Respondent was awarded AHVMA "Holistic Practitioner of Year." She described this as "[a] distinguished honor from my peers." Exhibit R45, p. 6.

On a personal note, the Respondent has been married for 44 years. She has three (3) grown children and three (3) grandchildren. She has eight (8) Standard Poodles and two (2) Siamese cats. Exhibit R45, p. 8.

2. Letters of Support/Acknowledgement.

- The Respondent offered a letter of support from Dr. Dan R. Kirby, DVM. Exhibit R11. Dr. Kirby is a veterinarian in Texas. In this letter, he recounts becoming ill with COVID in August 2020. He writes:

> I received ozone after mixing with my blood, also glutathione, vitc, minerals iv. Dr. Guillery said I should feel better the next day if I followed his other Covid patients results. I felt 80% better in 24 hours and was recovered 90 percent in 2 additional days. This letter is written as anecdotal evidence of the possibility of ozone being used as an additional treatment to the treatments that already exist for Covid. Because of this response, which I personally had no prior knowledge or any preconception of what it could do, I never expected such needed support. I have now added medical ozone to my veterinary clinic and seen such positive health benefits. As a veterinarian, I feel that I am an individual whose medical understanding of response to a viral disease needs to have respect. We need to have this therapy available to more patients immediately.

- The Respondent offered a letter of support from Dr. Deborah Viglione, MD. Exhibit R12. Dr. Viglione works at "Living Waters Regenerative Medicine" in Florida. Dr. Viglione states in part:

> This letter is in support of Dr. Roman's use of medical ozone in her practice. Medical ozone use in the United States dates back to 1885. It was extensively used in the preantibiotic era. It is used now as an adjuvant therapy in infectious diseases, cardiovascular disease, limb ischemia, orthopedic injections, dentistry, and commonly as a disinfectant. Due to the current COVID pandemic, its use

> as a possible adjuvant to traditional management has received a great deal of interest and attention around the world. Several recent papers have been published showing its efficacy. In fact, there are multiple groups working on protocols and IRB's for continued research in COVID-19.

Dr. Viglione concludes her letter by discussing use of ozone in her practice for 14 years.

- "Acknowledgements" article about Respondent from the website, "Regeno3ne Vet", 2023. Exhibit R44. The article states:

> Dr. Margo Roman has been a pioneer in the ozone therapy industry for over 20 years. She has been instrumental in my personal and professional journey to learn about and teach the benefits of ozone therapy to others. Dr. Roman's support has helped to enhance my skills, competencies, achievements, and continual success for healing patients and educating other veterinarians. I am eternally grateful to Dr. Roman for upholding such high standards and for being an excellent counsellor and teacher. The ability for my patients to survive and live an improved lifestyle through ozone therapy has been obtained because of Dr. Roman's willingness to serve as a true mentor. Her kindness, direction, and insightful leadership have allowed me to gift my knowledge to others and to change the way veterinary medicine will be practiced successfully through ozone therapy

in the future. I can never thank Dr. Roman enough.[28]

3. Prior Discipline.

The Respondent addressed the cases of prior discipline. Regarding the first disciplinary case, VT-08-017, the Respondent, through her counsel, indicated that it was not worth the effort to contest the matter. She claims that the investigator was confused about her name, i.e., "Roman" as opposed to "Roman-Auerhahn." She further asserts that initially no violation was found for storage of medicine at an initial investigation, but the investigator returned a short time later and at the second inspection found a violation. It is unclear if Respondent Counsel was referring to VT-10-020, the second disciplinary matter. Tr. at 79-81.

For the third case, VT-11-050, the Respondent asserts that there were multiple days of hearing with testimony by the Prosecution's expert who was not versed in homeopathy. The Respondent appealed the Board's two (2) year suspension of her license. The Respondent indicated that the case was remanded to the Board and the suspension was converted to a probationary period. Tr. at 81-83.

Regarding the last cases, VT-15-15 and VT-15-1361, the Respondent argues that the Board has violated the Consent Agreement. Tr. at 84. The Respondent asserts that the case was "overcharged" with the Respondent "accused of all kind [sic] of

[28] It is unclear who the author of this article is. Exhibit R44. The Respondent is photographed with a woman, but she is not identified.

heinous things." Id. The Respondent submits that the case was reduced to a records matter and the Respondent was required to have a "record monitor." Id. The record monitor's job was to submit a report to the Board that identified any deficiencies in the Respondent's record-keeping and would include any corrective actions taken by the Respondent. The Respondent insists that after a year and half into the two (2) year probationary period, the Board "changed the rule." Tr. at 84. The Respondent argues that the Board had a meeting or hearing with the record monitor and neither the Respondent, nor her counsel, were permitted to attend. Tr. at 84-85. The Respondent submits that the Board rejected the monitor's reports without explanation. Tr. at 85. The Respondent argues that the record monitor quit. The Respondent has asked that the probation be terminated but the Board has refused. Tr. at 86. Accordingly, the Respondent submits that she is still on probation because the Board has violated the Consent Agreement.[29] Id.

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[29] Attorney Auerhahn stated the following while discussing the Respondent's disciplinary history, "So, you know, this statement that, you know, almost 2 (two) decades of abuse by the board is a statement of fact, and I know it's a fact because I participated, because as you know, I'm not just her counsel, I'm also her husband, and I've been advising her on these matters since—you know, since the beginning." Tr. at 86-87. Prosecuting Counsel argued that Attorney Auerhahn's arguments about the Respondent's prior discipline were not arguments, but unsworn testimony, and should be afforded no weight. The Prosecutor asserted that his "testimony" was not consistent with any information in the record about the Respondent's discipline and should be afforded no weight. Tr. 99. Attorney Auerhahn then offered himself up for cross-examination by Prosecuting Counsel. That was not permitted by the Hearings Officer because Attorney Auerhahn was not sworn in as a witness. Tr. at 108.

In sum, in this matter, the Respondent contends that she has always acted in concert with the

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Attorney Rutledge then offered Attorney Auerhahn as a witness. Tr. at 111. Prosecuting Counsel objected and the Hearings Officer did not allow Attorney Auerhahn to testify as a witness. Tr. at 111-112. The Respondent's objection was overruled. Tr. at 112. The Respondent then asked to have the hearing record left open to allow her to submit documents that addressed the substance of Attorney Auerhahn's statements about her being treated unfairly by the board. Tr. at 112-116. The Hearings Officer declined to keep the hearing record open after the close of the hearing. The parties had ample opportunity to submit exhibits in the weeks and days leading up to the Sanctions Hearing. Tr. at 116. Further, there was no need to "corroborate" Attorney Auerhahn's statements about prior discipline as it is not considered testimony, and therefore, is not evidence. It is argument made by an attorney. As stated at the Sanctions Hearing, Attorney Auerhahn's official role in this matter is her attorney, and that role cannot be changed during a hearing to become a witness. Tr. at 116. The Respondent did not provide notice to the Prosecution that Attorney Auerhahn could be a witness at the Sanctions Hearing. On June 15, 2023, 2 (two) weeks after the Sanctions Hearing, the Respondent submitted an "Offer of Proof" pursuant to 801 CMR 1.01(10)(f)(2) with documents about the Respondent's probation and record monitor. On June 22, 2023, the Prosecutor objected to the Offer of Proof being admitted into the record. On June 26, 2023, the Respondent responded to that objection. The objection is overruled, and the Offer of Proof is marked as Exhibit I for identification. In any event, Attorney Auerhahn's arguments about prior discipline are afforded minimal weight. The arguments are Attorney Auerhahn's perception of the events described. The Hearings Officer is not in a position to dispute his subjective opinion about the disciplinary history, so it is minimally persuasive. However, the fact of the disciplinary history does remain, regardless of Attorney Auerhahn's opinion about how the discipline came to be (i.e., she did not want to waste resources contesting it), or whether it was unfair, etc. Accordingly, in fashioning a sanction, if any, to be imposed, the Board is free to consider the Respondent's disciplinary history and Attorney Auerhahn's opinion about that disciplinary history.

veterinary oath, the principles of ethics, within the scope of her license, and her certificate as an ozone therapist. The Respondent insists that there is no evidence she committed any violations. Tr. at 87.

4. Respondent's Affidavit, Exhibit R49.

The Respondent submitted an affidavit to the Board. The Respondent states in relevant part:

- In authoring and sending the March 16 email, I was acting in a manner consistent with my Veterinary Oath requiring me to use my "scientific knowledge and skills for the benefit of society through the . . . promotion of public health and advancement of medical knowledge."

- Authoring and sending the March 16 email was mandated by the AVMA's Principles of Veterinary Ethics requiring me to "make relevant information available to clients, colleagues [and] the public."

- I believe in the AVMA's mandate to "study . . . and advance scientific knowledge," and have, therefore, been a lifelong learner.

- I did not stop once receiving my DVM, but have studied, inter alia, acupuncture, chiropractic, herbs, homeopathy (for animals and humans), ozone therapy (for animals and humans),

prolozone (for animals and humans), as well as, keeping up with my CE in many conventional veterinary medical studies which took me to large conventions as both a speaker and attendee.

- I have received certifications in some of these treatments, including ozone and prolozone therapy for humans.

- I have developed new treatment methodologies, including Microbiome Restorative Therapy (MBRT), as well as many techniques in Veterinary Ozone such as the use of Subcutaneous Ozonated Saline in combination with acupuncture, abdominal lavage, and the use of Ultraviolet light to treat septic infection, and the use of ozonated gas as an intraperitoneal injection for sepsis and cancer. In addition to using these methodologies at my clinic, I also teach these treatments at conferences.

- I have participated in and lectured at a number of conferences that follow the One Health concept and therefore have involved doctors, veterinarians, dentists, chiropractors and other healthcare professionals. Attending many ozone conferences around the world has given me the science to understand the potential of ozone therapy and professional connections with my physician and dental counterparts to learn more and more. I applied this knowledge as well as information I

received from colleagues conducting clinical studies, in crafting the statements in the March 16 email.

- I have introduced the use of ozone in treatments; inter alia, to veterinarians in Brazil, Japan, India and Thailand, as well as veterinary schools in the United States and Canada.

- In order to obtain my certification to treat humans with ozone, I took the ozone certification course.

- My certification in Medical Ozone Therapy and Prolozone was done through the American Association of Ozonotherapy (www.AAOT.us). Each was three intensive days with practical procedures.

- I also took the advanced Prolozone course that was an additional two days.

- After completing the coursework, we then had to practice for a year and write up cases and pass a written examination.

- It took about two years to get my prolozone certification through the AAOT, and about the same to obtain my ozone therapy certificate.

- Both the COT and CPT certifications also included a practical examination that required me to perform treatments.

- Subsequent to my obtaining my certification as a Certified Ozone Therapist (COT) I participated in teaching parts of the courses available through the AAOT. The courses in which I participated are based on "One Medicine" in that it trains Physicians both Surgeons and Internists, Chiropractors, Dentists and Veterinarians and other medical professionals.

- Everything stated in the March 16, 2020 email was true and accurate based on my knowledge, training, experience, and certification, and within the scope of same. I reviewed relevant research sources as preparation to compose the March 16 email. I very carefully qualified the statement I made about potentially how a "coronavirus" might be addressed. I stated only that ozone was a "possible" cure for coronavirus. It is a scientific fact that there are other coronaviruses that occurred in the human and animal populations prior to COVID-19. I had successfully treated a prior coronavirus in a feline patient several years before. It was based on that relevant specific experience, as well as my comprehensive general knowledge, training, experience, and certification in ozone therapy, and considering the broad applicability of ozone therapy as an indication for viral infections in general, and supported by the opinions of other

> experts in the field, that I concluded ozone therapy would have a "possible" benefit. As exhibits submitted with the Third Proffer attest, the testing and treatments published by multiple sources have confirmed the accuracy of the information provided in the March 16, 2020 email. Similarly, the exhibits submitted with the Fourth Proffer confirmed the statements about the disinfecting value of ozone against coronavirus and COVID.

5. The Respondent's Statement to the Board, Exhibit R50.

The Respondent made the following statement to the Board which is recounted here in its entirety:

> I want to address the Veterinary Board with the following statement.
>
> I begin with the Veterinary Oath all of us as veterinarians pledge to uphold. Our oath has been my guiding motivation throughout my entire career, and I believe I have always been allegiant to this oath.
>
> *Being admitted to the profession of veterinary medicine, I solemnly swear to use my scientific knowledge and skills for the benefit of society through the protection of animal health and welfare, the prevention and relief of animal suffering, the conservation of animal resources, the promotion of public health, and the advancement of medical knowledge.*

I will practice my profession conscientiously, with dignity, and in keeping with the principles of veterinary medical ethics.

I accept as a lifelong obligation the continual improvement of my professional knowledge and competence.

I am grateful that I have been able to be a veterinarian for 45 years and counting. I am grateful that as a woman I could get into a man's profession when my admission application was one out of 200. I am grateful I survived a near-fatal encounter with a cow during veterinary school in 1977. I had major thoracic surgery and exploratory abdominal surgery, losing my spleen; both surgeries could have been avoided if the doctors had listened to me about what happened. I was told I would not survive and, even if I did survive, for protection of my health - being asplenic, I should not practice as a veterinarian working with live animals. I survived, and I persisted, and I am grateful I have kept my love and compassion for animals throughout my career. Those precious creatures and my dedication to their well-being have motivated me to investigate far and wide for useful tools to improve veterinary outcomes. I am grateful for my parents, siblings, children, husband and grandchildren, friends and all my animals that have taught me lessons over the past 70 years. I am grateful to my clients who had the trust in me to allow me to help their animals and learn every single day from things that I

did to support their animals' health. I am grateful that I was able to experience acupuncture in 1975 as the first woman to take the veterinary acupuncture course in the United States. I am grateful that when I taught at Tufts Veterinary School, I was able to teach acupuncture to students. Many of those students continued on and became certified in acupuncture and more. I am grateful that with my eyes wide open I was able to not only learn the basic medications and surgeries, but also to seek and find other safe and effective therapies. I am grateful that I have spent thousands of hours studying homeopathy, herbology, acupuncture, chiropractic, nutritional supplements, ozone therapy, Microbiome Restorative Therapy (MBRT), restorative dentistry, energy medicine, essential oils and other integrative topics to add to my continuing education as well as all of the basic subjects. I am grateful that my Town of Hopkinton has relied on me to help them with emergencies involving injured animals, strays and helping with the Boston Marathon bomb-sniffing dogs. I am grateful that I have had my veterinary clinic since 1983 in my town of Hopkinton. I am grateful that my clients are not only coming from local towns in Massachusetts but also come from way beyond the borders of New England. These pet caretakers have put their trust in my care of their pets and they want integrative modalities to support their animals' immune systems and help prevent them from getting cancer. I am grateful that I am considered a pioneer, educator, leader,

and innovator in the world of veterinary medicine. I am grateful that I had a chance to teach at Tufts University, and for the past 37 years have had the privilege of teaching at other universities all over the world. I am grateful that I have been able to have continuing education credits awarded for my lectures at large medical, veterinary and research conferences, so that I can share the knowledge I have learned. I am grateful to be part of the "One Health, One Medicine" group of doctors, dentists, veterinarians, chiropractors, and other healthcare professionals who are trying to figure out a way to help all of our living beings. I am grateful for the opportunity to have expressed interest in nutrition for my entire life. My parents were very much into health and nutrition, and that expanded into my career. I am grateful that I was able to look at a whole food organic raw-based diet very early and find ways to help animals' immune systems work more effectively. I am grateful that I was able to learn ozone therapy to be able to treat my own dear horse Champ in 2003. He was able to live another eight years with integrative veterinary medicine for his cancer, passing at 28 years old. I was told by a doctor at Tufts that Champ would be dead in three days, yet he lived 2 ½ more years after that, jumping in horse shows—because of integrative modalities I had learned, in particular ozone therapy. I am grateful that I had him all those years to enjoy his wonderful company. I am grateful that I stood up to Tufts University when their recommendation

was to euthanize my horse immediately. Instead, I stood up for him, and he lived those additional years. I am grateful that the idea of feeding animals a diet composed of fresh, raw food has become a mainstream form of feeding internationally. I am grateful that I stood up and asked questions about gut, microbiome and flora at a lecture sponsored by the Massachusetts Veterinary Medical Association in 2005 and now the microbiome is one of the hottest topics in 2023. I am grateful that I have the vision to understand how valuable the gut flora and the microbiome are to the immune system. I am grateful that now the big companies like Purina and Hills that opposed my thinking for 30 years are now spending millions of dollars promoting the microbiome. I am grateful that I have had family support to stand up for freedom of speech. I am grateful that the American Civil Liberties (ACLU) thought my case to the state Supreme Court was worthy of support because of how Tufts treated me in 2003. I am grateful that I achieved the highest honor from the American Holistic Veterinary Medical Association (AHVMA) in 2021 for "Practitioner of the Year." I am grateful that my peers appreciate all the dedication and hard work that I have done in my 45 years of practice. I am grateful that other veterinarians come to my practice to learn techniques and be mentored so that they can add these modalities into their practice. I am grateful that I am following the AVMA's 2020 declaration on judicious use of antibiotics. With the use of ozone therapy, I

have been able to treat MRSA and an array of fungal, bacteria viral infections that could not be treated with antibiotics. I am grateful that ozone therapy does treat conditions that are resistant to pharmaceutical antibiotics, because over 700,000 humans die from antibiotic resistance. I am grateful that I am trying to help the "one health of our world" by allowing other modalities to help treat bacterial and fungal and viral infections. I am grateful that ozone therapy can control pain and inflammation, avoiding opiates and other pain medications.

I am disappointed in the Massachusetts Veterinary Medical Association for not standing up more for leaders like myself. I am disappointed that the Massachusetts Veterinary Board will fight and protect Tufts, even when they are truly at fault. When I presented relevant information to the Board, the science behind my defense was never examined. It was marginalized by a 5-minute internet search by their so-called expert, who in fact had no experience in integrative healthcare. I am saddened to see our Commonwealth's resources expended in unwarranted attacks. I am frustrated and stressed by the time, energy, and other losses, and the waste of finances and lawyers' time, consumed by these complaints and appeals. I am very sad that the members of the Board have not had the simple curiosity to read the scientific and clinical literature I have sent to them. I am saddened that during a pandemic, when we needed everyone's knowledge and

experience to protect our population – both humans and animals, that I was attacked instead of supported. Shame on the vilification of truth, when we were in the depths of the pandemic and the science was coming out of Europe about how to support people that had come down with Covid. Looking at what veterinarians had done in the past with other coronaviruses, was a very important issue, as was looking at hospitals in Italy and Spain that were closing down COVID wards by using ozone therapy and other integrative healthcare support.

I had had experience in treating a pre-COVID coronavirus case: a cat that was eight weeks old from a cattery in Maine, where 30 cats died from coronavirus. The only one that survived was the one I was able to treat with ozone therapy, and this was almost 20 years ago. Seeing what ozone therapy can do for serious viral and bacterial infections gave me an opportunity to share that with my clients, so that they also had an opportunity to know that, if their animals came down with some kind of coronavirus, we had options at my clinic for their pets. And if they themselves came down with coronavirus, they would know to seek out a medical professional who could treat them with ozone therapy. I never offered and never did treat any human for covid, nor did I provide information so that anyone could treat themselves or others. In addition, knowing that ozone disinfects coronavirus, rather than washing their food and packages with alcohol, bleach or Purell,

they could learn how to use ozone to keep their families safe, and first responders could disinfect their PPEs, to alleviate the PPE shortages and save lives, including their own. I sent the same information to colleagues, and politicians, including a state healthcare official who should have learned more about this option and helped the first responders; instead, my information was ignored and a complaint filed with the Veterinary Board: shame on her.

With that, I want you to re-read the Veterinary Oath and see I have lived that oath and instead of condemning me you should be honoring a member of the Massachusetts Veterinary Medical Association and Member of the AVMA for 45 years of doing good work.

Being admitted to the profession of veterinary medicine, I solemnly swear to use my scientific knowledge and skills for the benefit of society through the protection of animal health and welfare, the prevention and relief of animal suffering, the conservation of animal resources, the promotion of public health, and the advancement of medical knowledge.

I will practice my profession conscientiously, with dignity, and in keeping with the principles of veterinary medical ethics.

I accept as a lifelong obligation the continual improvement of my professional knowledge and competence.

[Remainder of page left intentionally blank]

Conclusion

Accordingly, based on the findings of fact and conclusions of law herein, the Respondent's conduct should be considered together with the aggravating circumstances and the mitigating evidence presented in this case when determining the sanction to be imposed.

BOARD OF REGISTRATION
IN VETERINARY MEDICINE,

By: */s/Annemarie Gallop-Belle*
Annemarie Gallop-Belle, Esq.
Administrative Hearings Officer

Dated: July 28, 2023

cc:

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ATTACHMENT A

The following exhibits were entered into the record at the hearing on sanctions by the Prosecution as Exhibits P1 to P5:

[Exhibit List Intentionally Omitted]

The following exhibits were entered into the record at the hearing on sanctions by the Respondent as Exhibits R1 to R52:

[Exhibit List Intentionally Omitted]

The following exhibits were marked for INDENTIFICATION at the heating on sanctions as Exhibits A through I for ID:

[Exhibit List Intentionally Omitted]

APPENDIX E

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY	BOARD OF REGISTRATION IN VETERINARY MEDICINE
In the Matter of Margo Roman License No. 2267	Docket No. 2020-000574-IT-ENF

RULING ON PROSECUTING COUNSEL'S MOTION FOR PARTIAL SUMMARY DECISION, RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, and RESPONDENT'S MOTION TO DISMISS

This matter comes before a Hearing Officer designated by the Board of Registration in Veterinary Medicine ("Board") on Prosecuting Counsel's Motion for Partial Summary Decision ("PC Motion") filed on August 10, 2021, in the Matter of Margo Roman, DVM ("Respondent" or "Roman"). The PC Motion asks the Board to issue a Summary Decision Ruling for the Prosecution on the grounds that no genuine issue of material fact exists as to certain allegations set forth in the Order to Show Cause ("OTSC") issued in this matter and the Prosecution is entitled to judgement as a matter of law. On September 30, 2021, Respondent filed her Response and Opposition to Office of Prosecution's Motion for Partial Summary

Judgment, Respondent's Motion for Summary Judgment, and Respondent's Motion to Dismiss ("R Motion"). Prosecuting Counsel filed an Opposition to the Respondent's Motion to Dismiss and Motion for Summary Decision on October 7, 2021. ("PC Opposition"). On October 14, 2021, Respondent filed a Response to Prosecuting Counsel's Opposition to Respondent's Motion to Dismiss and Motion for Summary Judgment[1] ("R Response"). For the reasons set forth below, the PC Motion is granted in part and denied in part. The R Motion is granted in part and denied in part.

Procedural Background

On or about January 13, 2021, the Board issued to Respondent the OTSC in the above-captioned matter. Respondent filed an Answer to the OTSC on or about March 3, 2021 ("Answer"). On or about May 6, 2021, the Hearing Officer issued a Ruling denying Respondent's Motion to Dismiss ("Dismissal Ruling") which she had filed on March 3, 2021. On the same date, the Hearing Officer issued Rulings denying Respondent's Motion for Particulars and Respondent's Motion for Discovery. A status conference was held on July 1, 2021. Following this conference, a scheduling order issued on July 15, 2021 setting hearing dates of March 1 through 4 of 2022

[1] On October 14, 2021, Prosecuting Counsel objected to the filing of R Response, She argued that the pleading should be entitled a "reply" as opposed to a "response" and noted that Respondent had not sought leave to file a reply. The Code of Massachusetts Regulations, which governs disciplinary proceedings before the Board, does not explicitly permit the filing of reply briefs. See 801 CMR *et. seq*. However, the Hearing Officer finds that the Prosecution will suffer no prejudice from the Hearing Officer's acceptance of the R Response.

and a deadline for dispositive motions of December 1, 2021.

On or about August 10, 2021, Prosecuting Counsel filed the PC Motion. On September 30, 2021, Respondent filed R Motion. Prosecuting Counsel filed the PC Opposition on October 7, 2021. On October 14, 2021, Respondent filed R Response.

Exhibits

Prosecuting Counsel's exhibits submitted in support of the PC Motion are entered into the record on summary decision as Exhibits P1 through P15. Respondent's exhibits submitted in support of R Motion are entered into the record on summary decision as Exhibits R1 through R94. All exhibits are hereby incorporated by reference and listed on Attachment A to this Ruling.

Findings Of Fact

The Hearing Officer finds the following undisputed material facts by a preponderance of the evidence:

1. The Board has issued to Respondent a license to practice as a veterinarian in the Commonwealth of Massachusetts, License No. 2267. Exhibits P1 and P2.

2. At all relevant times, Respondent owned Main Street Animal Services ("MASH") located in Hopkinton, MA. Id.

3. On March 10, 2020, Governor Charles Baker declared a state of emergency to respond to

COVID-19 in the Commonwealth of Massachusetts pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the Massachusetts General Laws. Exhibit P7.

4. On or about March 13, 2020, then President Donald Trump declared a national emergency as a result of the COVID-19 pandemic pursuant to Sections 201 and 301 of the National Emergencies Act. Exhibit P6.

5. On or about March 16, 2020, Respondent authored an email to MASH clients ("March 16 email"). Exhibits P1, P2, and P3.

6. In the email referenced in Paragraph 5, above, Respondent wrote:

> Additional information to protect yourselves: Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus. There is a link on our website under "resources" to find the companies that we recommend from whom you can buy an ozone generator and ozone products. We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans. If you buy an ozone generator, let the company know that you are a MASH client; they understand how we have tried to educate our clients to be protective. Exhibit P3.

7. In the email referenced in Paragraph 5, above, Respondent wrote:

> Homeopathically many of our clients already have the homeopathic first aid kit and in it is homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus. There is also literature which states that homeopathic phosphorus and bryonia are other remedies that can be supportive during the virus outbreak, and gelsenium can also be helpful. Id.

8. In the email referenced in Paragraph 5, above, Respondent wrote:

> While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason that we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact. Id.

9. On or about March 24, 2020 ("March 24 email"), Respondent authored an email to Dr. Lorraine O'Conner, State Veterinarian with the Commonwealth of Massachusetts Division of Animal Health ("O'Connor") with the subject line: "PLEASE READ WE NEED OXONE FOR PPE and treatment for CORONA." Exhibit P4.

10. In the email referenced in Paragraph 9, above, Respondent wrote:

> Please read both of this attachments (sic) and see how Medical Ozone is will kill viruses like corona on contact. I have done over 70,000 treatments in my hospital as medical ozone over the past 17 years and we are using it now to sterilize and reuse our PPE. It will help treat the pneumonia and help disinfect the hospital. Simple and inexpensive and it works. It works. Id.

11. Two attachments discussing the use of ozone in the treatment and prevention of COVID-19 were attached to the email referenced in Paragraph 9, above. Id.

12. On or about April 1, 2020 ("April 1 email"), Respondent authored an email to O'Conner with the subject line, "Ozone approved to treat COVID." Exhibit P5.

13. In the email referenced in Paragraph 12, Respondent wrote, "Ozone therapy can be used to treat people who tested positive at Covid-19." Exhibit P5.

14. In the email referenced in Paragraph 12, Respondent wrote, "I wanted to talk to you ASAP. Medical Ozone is the magic Bullet that can stop Corona... I have successfully done 70,000 treatments for an array of infectious (sic) both viral and bacterial in animals." Id.

15. On or about June 9, 2020, the United States Department of Justice ("DOJ") announced that,

on April 23, 2020, the Purity Health and Wellness Center ("Purity") had agreed to be bound by a permanent injunction banning them from representing that their "ozone therapy" could be used to treat or prevent COVID-19. The DOJ had filed suit against Purity to enjoin the company from fraudulently promoting ozone therapy as a treatment for COVID-19. Exhibits P8, P9, P13, P14.

16. On or about April 23, 2020, the United States Food and Drug Administration ("FDA") warned marketers in the United States to stop "making unsubstantiated claims that their products and therapies, including ozone therapy, can treat or prevent coronavirus." In these letters, the FDA informed marketers that claims that ozone therapy can treat and prevent coronavirus violated the Federal Trade Commission ("FTC") Act because they are not supported by scientific evidence. Exhibit P9.

17. On or about May 21, 2020, the FTC warned marketers in the United States to stop promoting ozone therapy as a treatment for COVID-19 because "currently there is no scientific evidence that these, or any, products or services can treat or cure COVID-19" and therefore said promotion of ozone therapy violates the FTC Act. Exhibit P10.

18. On or about November 12, 2020, the FTC warned marketers in the United States to stop promoting ozone therapy as a treatment for COVID-19 because "currently there is no scientific evidence that these, or any, products or services can treat or cure COVID-19" and

therefore said promotion of ozone therapy violates the FTC Act. Exhibit P11.

19. On or about April 29, 2021, the FTC warned marketers in the United States to stop promoting ozone therapy as a treatment for COVID-19 because "currently there is no scientific evidence that these, or any, products or services can treat or cure COVID-19" and therefore said promotion of ozone therapy violates the FTC Act. Exhibit P12.

20. The Code of Federal Regulations defines "ozone" as, "a toxic gas with no known useful medical application in specific, adjunctive, or preventative therapy. In order for ozone to be effective as a germicide, it must be present in a concentration far greater than that which can be safely tolerated by man and animals." 21 CFR § 801.415; Exhibit P14.

21. At the time Respondent sent the emails referenced in Paragraphs 5, 9, and 12, Respondent was serving a term of monitored probation by the Board pursuant to a written disciplinary agreement executed on or about April 11, 2018. Pursuant to said Agreement, the Board also formally reprimanded Respondent and required Respondent to pay an administrative penalty and complete additional continuing education. Exhibits P1, P2.

22. Pursuant to a Final Decision and Order issued by the Board on or about December 12, 2016, Respondent served a term of probation, paid an

administrative penalty, and completed additional continuing education. Id.

23. On or about January 13, 2021, the Board issued to the Respondent the OTSC. Exhibit P1.

24. On or about March 3, 2021, the Respondent filed the Answer. Exhibit P2.

Conclusions Of Law

1. Based on Finding of Fact 1, the Board has jurisdiction to hear this matter.

2. Based on Findings of Fact 23 and 24, the Respondent had notice of this matter and the charges against her license.

3. Based on Findings of Fact 5 through 8, the Respondent is subject discipline by the Board for violation of G.L. c. 112, § 61 (1) for practicing outside the scope of her licensure and engaging in conduct which calls into question her competence to practice as a veterinarian.

4. Based upon Findings of Fact 9 through 14, Respondent is not subject to discipline by the Board for violation of G.L. c. 112, § 61 (1) for practicing outside the scope of her licensure.

Summary Decision Standard

Summary decision is authorized "[w]hen a party is of the opinion there is no genuine issue of fact relating to all or part of a claim or defense and he is entitled to prevail as a matter of law, the party may move, with or without supporting affidavits, for

summary decision on the claim or defense." 801 Code of Massachusetts Regulations ("CMR") 1.01(7) (h). Underlying the "summary" decision procedure is the notion that when no genuine issues of fact exist, and the sole issues to be decided are questions of law, the law does not require a meaningless hearing. See Massachusetts Outdoor Advertising Counsel v. Outdoor Advertising Board, 9 Mass. App. Ct. 775, 782-83 (1980).

The standards governing "summary decision" in an administrative proceeding parallel those applicable in a civil action. See Catlin v. Board of Registration of Architects, 414 Mass. 1, 7 (1992) (citing Mass. R. Civ. P. 56) (holding, *inter alia*, that "[I]n making a summary decision, the board must determine that there is no genuine issue as to any material facts and then rule as a matter of law"). Accordingly, a party moving for summary decision must offer competent evidence showing that all facts material to a board's decision are not genuinely in dispute. *Cf.* Community National Bank v. Dawes, 369 Mass. 550, 554 (1976); Mass. R. Civ. P. 56(e). Moreover, "the inferences to be drawn from the underlying facts contained in [affidavits, attached exhibits and depositions] must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, 369 U.S. 654, 655 (1962).

If the moving party demonstrates that there are no real factual disputes, then the motion for summary decision must be allowed unless it is countered with competent evidence establishing a genuine, triable issue. A motion for summary decision cannot be defeated by hypothetical facts, general denials, bare assertions of inferences, or vague and

general allegations of expected proof. See Community National Bank, 369 Mass. at 554. Moreover, a responding party cannot defeat a properly supported summary decision motion simply by controverting an "immaterial" fact (that lacks probative effect on some controlling issue), or by positing a "non-genuine" dispute (that is conjectural or otherwise lacking in competent evidentiary foundation). See generally 9 Mass. Civ. Pac. (Nolan), Section 414, n. 18 (text and authorities cited).

DISCUSSION

I. Factual Background

The facts in this matter are largely undisputed. On or about March 16, 2020, Respondent authored an email to MASH clients. Exhibits P1, P2, and P3. In the March 16, 2020 email, Respondent wrote the following statements:

> Additional information to protect yourselves: Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus. There is a link on our website under 'resources' to find the companies that we recommend from whom you can buy an ozone generator and ozone products. We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans. If you buy an ozone generator, let the company know that you are a

MASH client; they understand how we have tried to educate our clients to be protective.

Homeopathically many of our clients already have the homeopathic first aid kit and in it is homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus. There is also literature which states that homeopathic phosphorus and bryonia are other remedies that can be supportive during the virus outbreak, and gelsenium can also be helpful.

While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason that we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact. Exhibit P3.

On or about March 24, 2020, Respondent authored an email to O'Conner with the subject line: "PLEASE READ WE NEED OXONE FOR PPE and treatment for CORONA." Exhibit P4. In the March 24 email, Respondent wrote:

Please read both of this (sic) attachments and see how Medical Ozone is will kill viruses like corona on contact. I have done over 70,000 treatments in my hospital as medical ozone over the past 17 years and we are using it now to sterilize and reuse our PPE. It will help treat the pneumonia and help disinfect

> the hospital. Simple and inexpensive and it works. It works. Id.

Two attachments discussing the use of ozone in the treatment and prevention of COVID-19 were attached to this email. Id.

On or about April 1, 2020, Respondent authored an email to O'Conner with the subject line, "Ozone approved to treat COVID." Exhibit P5. In the April 1 email, Respondent wrote, "Ozone therapy can be used to treat people who tested positive at Covid-19." Id. Respondent also wrote, "I wanted to talk to you ASAP. Medical Ozone is the magic Bullet that can stop Corona... I have successfully done 70,000 treatments for an array of infectious (sic) both viral and bacterial in animals." Id.

Respondent has admitted to sending the three emails referenced above. Exhibit P2. The emails, contained within the record, demonstrate that only the March 16 email was sent to MASH clients. Exhibits P3, P4, and P5. The remaining two emails were sent to O'Connor, who serves as the State Veterinarian with the Commonwealth of Massachusetts Division of Animal Health. Exhibits P4 and P5.

The record contains evidence establishing that beginning on April 23, 2020, the FDA and FTC began warning marketers within the United States that promoting ozone therapy to treat or prevent COVID-19 violated the FTC Act because "currently there is no scientific evidence that these, or any, products or services can treat or cure COVID-19." Exhibits P8 through P14. The Code of Federal Regulations defines "ozone" as, "a toxic gas with no known useful medical

application in specific, adjunctive, or preventative therapy. For ozone to be effective as a germicide, it must be present in a concentration far greater than that which can be safely tolerated by man and animals." 21 CFR § 801.415; Exhibit P14.

It is not the role of the Board to decide that federal authorities have erred in defining ozone as set forth above. The Board cannot substitute its judgment for federal and state public health authorities and determine that ozone therapy can effectively treat or prevent the spread of COVID-19. Prosecuting Counsel has established beyond a preponderance of the evidence that beginning in late April of 2020, the FDA and FTC began advising marketers to refrain from promoting ozone as a treatment for, or means of preventing, COVID-19. Exhibits P8 through P14. In addition, Prosecuting Counsel has established as a matter of law that, on the dates Respondent sent the three emails at issue in this matter, the Code of Federal Regulations defined ozone as lacking any "known useful medical application." 21 CFR § 801.415. The question before the Hearing Officer on summary decision, however, is not whether ozone can effectively treat or prevent COVID 19, To prevail on summary decision, either Party must demonstrate that no genuine issue of material fact exists as to whether Respondent has violated the statutes and regulations cited in the Order to Show Cause.

II. A factual dispute remains as to whether Respondent engaged in false or misleading advertising having for its purpose or intent deception or fraud in violation of G.L. c. 112, § 59 (7).

Pursuant to the Massachusetts General Laws, the Board may discipline a veterinarian who engages in "false or misleading advertising having for its purpose or intent deception or fraud." G.L. c. 112, § 59 (7). In the PC Motion, Prosecuting Counsel argues that Respondent's emails violate this statute as a matter of law. Respondent, in her Motion, argues that because a factual dispute exists as to the efficacy of ozone as a COVID treatment or preventative, the Prosecution cannot prevail as a matter of law on this allegation.

To prevail on the PC Motion, the Prosecution must demonstrate that Respondent promulgated false advertising *having for its purpose or intent deception or fraud*. See G.L. c. 112, § 59 (7) (emphasis added). The enactment of the relevant federal regulation predates Respondent's sending of the emails. See 21 CFR § 801.415. However, the exhibits presented by the Prosecution indicate that federal authorities began warning marketers that the advertisement of ozone therapy to prevent or treat COVID-19 violated the FTC Act beginning on April 23, 2020. Exhibits P8 through P14. Respondent sent the emails in question on March 16, March 24, and April 1 of 2020 – several weeks prior to the FDA and FTC warnings contained within the record. Exhibits P3, P4, P5.

The Hearing Officer cannot determine that Respondent violated Section 59 (7) without evidence regarding Respondent's intent at the time she sent the emails in question. Similarly, Respondent has introduced no evidence regarding her intent. The statute explicitly requires evidence that the purpose of the false advertising was to deceive or defraud. See G.L. c. 112, § 59 (7). In support of the PC Motion,

Prosecuting Counsel notes a prohibition on false advertising contained within the Code of Ethics of the Principles of Veterinary Medical Ethics ("PVME"), put forth by the American Veterinary Medical Association ("AVMA"). The PVME reads:

> Advertising by veterinarians is ethical when there are no false, deceptive, or misleading statements or claims. A false, deceptive, or misleading statement or claim is one which communicates false information or is intended, through a material omission, to leave a false impression. Testimonials or endorsements are advertising, and they should comply with applicable law and guidelines, such as the Federal Trade Commission guide and regulations relating to testimonials, endorsements, and other forms of advertising. AVMA Code of Ethics, Principle III, Note 3 (11).

This standard defines a false statement as "one which communicates false information" with no mention of intent. See id. In addition, it explicitly requires that all advertisements comply with FTC regulations regarding advertising. See id. However, the Prosecution has not alleged a violation of this portion of the PVME in either the OTSC or the PC Motion. Exhibit P1; Administrative Notice. The Prosecution is bound to Section 59 (7) which does require intent.

The plain wording of Section 59 (7) requires intent to deceive on the part of Respondent. G.L. c. 112, § 59 (7). "In cases where motive, intent, or other state of mind questions are at issue, summary judgment is often inappropriate." Flesner v. Technical Communications Corp., 410 Mass. 805, 809 (1991). The Commonwealth of Massachusetts Supreme

Judicial Court ("SJC") has held that, at times, intent can be inferred from conduct. See Nashua Corp. v First State Ins. Co., 420 Mass. 196, 204 (1995) (citing cases). However, the Hearing Officer cannot infer intent in the present matter based upon the record on summary decision. The existence of the federal regulation defining ozone, alone, is insufficient to allow an inference of intent to deceive by a preponderance of the evidence given the uncertainty surrounding COVID-19 in March and April of 2020.

To establish a violation of Section 59 (7), the Prosecution must establish that, at the time Respondent sent the emails in question, Respondent promoted the use of ozone therapy for the prevention and / or treatment on COVID-19 for the purpose or intent of deception or fraud. A factual question remains as to Respondent's intent. Therefore, both PC Motion and R Motion are denied

III. Prosecuting Counsel has established as a matter of law that Respondent's March 16 email constitutes practicing beyond the scope of her licensure in violation of G.L. c. 112, § 61 (1).
Respondent has established as a matter of law that her March 24 and April 1 emails do not violate G.L. c. 112, § 61 (1) for practicing beyond the scope of her licensure.

Prosecuting Counsel argues that by sending the three emails at issue in this matter, Respondent practiced beyond the scope of her licensure because, "It is a public health threat when people who are not trained to provide medical treatment or care to humans openly give consumers health

recommendations..." PC Motion, p. 19. The Massachusetts Legislature has forbidden veterinarians from practicing beyond the authorized scope of their licensure. See G.L. c. 61 (1). Respondent is licensed to practice as a veterinarian. Exhibits P1 and P2. This license does not authorize her to treat human beings. G.L. c. 112, § 54A. Respondent argues that the statements made within her emails fell within the scope of veterinary practice because the information conveyed "benefitted both animals and humans." R Motion, p. 6. For the following reasons, the Hearing Officer finds that the March 16 email, which Respondent sent to her veterinary clients, constitutes practice beyond the scope of her licensure.

Respondent characterizes her March 16, 2020 email as, "sharing health information useful to humans," and providing her clients with information on "general health issues" relating to pets. R Motion, pp. 29, 30. By analogy, Respondent compares statements made in the March 16 email to those made by a veterinarian advising a client to use a particular product because it is better for the environment. R Motion, p. 29. Significant portions of the March 16 email fall well outside the practice of veterinary medicine because they explicitly direct Respondent's veterinary clients, themselves, as humans, to utilize ozone to treat a then-novel virus.

The March 16 email begins with a description of COVID-related changes to operations at MASH, including advising consumers that MASH would leave packages of needed medication on its porch and asking clients to remain in their vehicles while MASH examines their pets. Exhibit P3. This portion of the

email does not constitute practicing beyond the scope of a veterinary license.

Respondent then states, "Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) *and possible cure for the coronavirus* (emphasis added)." Exhibit P3. The email then directs readers to a link on the MASH website through which they could buy an ozone generator. Respondent states that ozone, "helps both the animal and humans" by flooding the "body with life-saving oxygen." Next, Respondent informs her clients of her current vitamin regimen and provides dietary advice. This dietary advice is framed as advice to humans. Id.

In Paragraph 3 of the email, Respondent writes, "Homeopathically many of our clients already have the homeopathic first aid kit and in it is *homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus* (emphasis added)." Exhibit P3. Respondent then describes her preexisting conditions and states that because of said conditions, she must be "extra vigilant" regarding the COVID-19 virus. Finally, Respondent writes:

> While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire

> MASH family, and everyone with whom we come in contact. Id.

The Massachusetts Legislature has defined "the practice of medicine" to mean:

> ...the following conduct, the purpose or reasonably foreseeable effect of which is to encourage the reliance of another person upon an individual's knowledge or skill in the maintenance of human health by the prevention, alleviation, or cure of disease, and involving or reasonably thought to involve an assumption of responsibility for the other person's physical or mental well-being: diagnosis, treatment, use of instruments or other devices, or the prescribing, administering, dispensing or distributing of drugs for the relief of diseases or adverse physical or mental conditions. Exhibit R65; 243 CMR 2.01 (4),

The language contained within the March 16 email satisfies the above definition. Respondent encouraged her MASH clients to rely upon her advertised treatment for COVID-19 in the event they, as human, became infected with the disease. Exhibit P3. In the email, Respondent specifically states that the World Health Organization ("WHO"), at the time, "established that dogs are not likely to get sick from and transmit COVID-19..."; therefore, her recommendations that readers treat COVID-19 with ozone could only reasonably be expected to pertain to human beings[2]. The statements contained within this

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[2] Respondent has provided numerous articles dated after March 16, 2020, which discuss COVID-19 infection in animals. Exhibits R14, R16, R87, R88, R89, R92. Scientific knowledge regarding the susceptibility of animals to coronavirus has

email fall well outside "general health information." Through the language of her March 16 email, Respondent encouraged her human readers to rely upon her knowledge in the maintenance of *human* health by the prevention or treatment of COVID-19 with ozone therapy and homeopathic remedies. See 243 CMR 2.01 (4).

Respondent provided the readers of the March 16 email with a link through which they could purchase an ozone generator. Exhibit P3. Furthermore, Respondent referred to "the homeopathic first aid kit" which "many of our clients already have." Id. These statements indicate that Respondent is dispensing, or attempting to dispense, both ozone generators and homeopathic remedies for the treatment of COVID-19 in humans[3]. See 243 CMR 2.01 (4).

In R Motion, Respondent argues that other veterinarians provided their clients with information regarding COVID-19. R Motion, p. 6; Exhibit R20. This argument, however, is irrelevant as similar

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changed since March 16, 2020. However, as set forth in Section II, Respondent's statements are viewed in the light of the prevailing scientific knowledge on March 16, 2020. Furthermore, the direct language of the March 16, 2020 email specifically recites the WHO statement at the time leaving no doubt that Respondent intended her human readers to utilize ozone therapy as a treatment for coronavirus infection in humans. Exhibit P3.

[3] In R Motion, Respondent persuasively argues that her statements regarding the use of ozone therapy as a disinfectant do not fall outside the scope of veterinary practice because pets are a surface on which the COVID-19 virus could live. Therefore, the Hearing Officer does not find that statements relating to the use of ozone as a disinfectant fall outside the scope of veterinary practice in violation of G.L. c. 112, § 61 (1).

conduct by another veterinarian cannot excuse Respondent from liability for a violation of Section 61. In addition, Respondent argues that the AVMA's promotion of the One Health Initiative demonstrates that Respondent's emails did not lie outside the scope of veterinary medicine. R Motion, pp. 7, 31-32. The One Heath Initiative refers to the interrelations between all species on Earth and the benefits derived from veterinarians working collaboratively with epidemiologists and physicians to research zoonotic diseases such as COVID-19. Exhibits R3, R67. Respondent has produced no evidence demonstrating that the AVMA One Health Initiative encourages veterinarians to propose treatments for human beings infected with zoonotic diseases.

Finally, Respondent argues, "And as a veterinarian, Dr. Roman is not confined to speak out only as a veterinarian. She is entitled to speak as an individual but also broadly as a professional." R Motion, p. 7. This argument is persuasive as to Respondent's March 24 and April 1 emails. The undisputed facts establish that Respondent did not send the March 24 and April 1 emails to MASH clients. Exhibits P4 and P5. The documents contained within the record demonstrate that Respondent sent these emails to O'Conner. Id. Promoting ozone for the disinfection of personal protective equipment ("PPE") and the treatment of COVID-19 to a veterinary colleague cannot be found to constitute practice beyond the scope of veterinary licensure. Respondent did not advise O'Connor to treat herself with ozone or homeopathic remedies in the event she acquired COVID-19. Id. Therefore, Respondent is entitled to summary decision regarding whether the March 24

and April 1 emails constitute practicing beyond the scope of her veterinary license.

However, the undisputed facts surrounding Respondent's March 16 email demonstrate that said email constituted "speaking out" as a veterinarian and not as an individual or a general "professional." This email was sent to Respondent's MASH clients. Exhibit P3. These clients only received this email because they also received Respondent's veterinary services. In addition, Respondent placed her recommendations for treatment of COVID-19 in humans in an email setting forth information about the COVID-19 precautions being taken at MASH, such as advising clients that veterinary technicians would retrieve pets for treatment from clients' cars. Id. Prosecuting Counsel has established as a matter of law that Respondent's March 16 email constitutes practicing beyond the scope of her veterinarian license in violation of the Massachusetts General Laws. See G.L. c. 112 § 61 (1). Therefore, she is entitled to summary decision on this allegation.

IV. Prosecuting Counsel has established as a matter of law that Respondent's March 16 email constitutes conduct that calls into question her competence to practice the veterinary profession in violation of G.L. c. 112, § 61 (1).

The Board may discipline licensed veterinarians who engage in conduct which calls into question their competence to practice the veterinary profession. See G.L. c. 112, § 61 (1). The Legislature has defined said conduct as, "including, but not limited to" practicing the profession beyond the

authorized scope of one's licensure. See id. For the reasons set forth in Section III, above, the Hearing Officer has found that no genuine issue of material fact exists as to whether Respondent's March 16 email constituted practice beyond the scope of her license to practice veterinary medicine. Therefore, as a matter of law, Prosecuting Counsel has established that Respondent has engaged in conduct which calls into question her competence to practice this profession. See G.L. c. 112, § 61 (1). However, the Hearing Officer does not find that Respondent's March 24 or April 1 emails violate this statute at this summary decision phase of these proceedings. Prosecuting Counsel is entitled to summary decision on this allegation as to the March 16 email only.

V. Prosecuting Counsel has not established as a matter of law that Respondent has engaged in conduct which reflects unfavorably on the practice of veterinary medicine in violation of G.L. c. 112, § 59 (8).

Pursuant to the Massachusetts General Laws, the Board may levy discipline upon a veterinarian who engages in "conduct reflecting unfavorably on the practice of veterinary medicine." G.L. c. 112, § 59 (8). In the PC Motion, Prosecuting Counsel argues that Respondent violated this statute by sending the March 16, March 24, and April 1 emails. PC Motion p. 13. The Prosecution contends that:

> It is also hard to imagine a more flagrant example of conduct reflecting unfavorably on the profession of veterinary medicine than a Veterinarian who stated – among other things – during a deadly, global pandemic that she had identified a 'magic

> bullet' to stop the disease that was wreaking havoc on the community." Id. at pp. 16-17.

In support of this argument, the Prosecution cites several Principles of the PVME which require veterinarians to "uphold the standards of professionalism", "speak responsibly and conscientiously", and avoid "misleading others or making false and deceptive statements." PC Motion, p. 13. In R Motion, Respondent argues that "It is therefore a matter of indisputable proof on this record that Dr. Roman in fact reflected *favorably* on the practice of veterinary medicine in the Commonwealth." R Motion, pp. 34-35.

Prosecuting Counsel has not yet introduced sufficient evidence to demonstrate that Respondent's sending of the three emails in question constitutes conduct reflecting unfavorably on the practice of veterinary medicine. "If an agency wishes to rely on a fact, that fact must be established by evidence in the record. An agency may introduce technical or specialized facts in the record through expert witnesses, or by taking official notice of facts." Arthurs v. Board of Registration of Medicine, 383 Mass. 299 at 310 (1981) (citations omitted). Neither party can establish as a matter of law that Respondent's emails do or do not constitute conduct reflecting unfavorably on this profession without citing to legal authority or introducing expert testimony. Based upon the record on summary decision, the Hearings Officer cannot conclude as a matter of law whether Respondent's actions violate Section 59 (8). Summary decision is therefore denied on this allegation.

VI. Prosecuting Counsel has not established as a matter of law that Respondent engaged in unprofessional conduct which undermined public confidence in the integrity of the profession.

Conduct that is unprofessional, which undermines the public confidence in the integrity of the veterinary profession, is an independently sufficient ground to sanction the Respondent. See Kvitka v. Board of Registration in Medicine, 407 Mass. 140, cert. denied, 498 U.S. 823 (1990); Raymond v. Board of Registration in Medicine, 387 Mass. 708, 713 (1982). The Board is vested with the power to protect the image of the profession in the eyes of both the public and other members of the profession. See Levy v. Board of Registration in Medicine, 378 Mass. 519, 528 (1979). The profession is negatively impacted when veterinarians fail to comply with the laws established to govern their profession.

Prosecuting Counsel argues that Respondent's emails constitute conduct which undermines the public confidence in the integrity of this profession, therefore subjecting the Respondent to discipline for unprofessional conduct. See Kvitka, 407 Mass. 140; 387 Mass. 708. However, as set forth in Section V, above, Prosecuting Counsel has not introduced sufficient evidence to demonstrate that Respondent's conduct constitutes unprofessional conduct. "If an agency wishes to rely on a fact, that fact must be established by evidence in the record. An agency may introduce technical or specialized facts in the record through expert witnesses, or by taking official notice of facts." Arthurs, 383 Mass. at 310. Without expert testimony or relevant legal precedent, the Hearings

Officer cannot conclude as a matter of law that Respondent's actions do or do not rise to the level of unprofessional conduct. Summary decision is therefore denied on this allegation.

BOARD OF REGISTRATION OF VETERINARY MEDICINE,

By: */s/ Jessica Uhing Luedde, Esq.*
Jessica Uhing-Luedde, Esq.
Hearings Officer

Dated: January 19, 2022

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APPENDIX F

From: Main St. Animal Services of Hopkinton <appointments@mashvet.com>

Sent: Monday, March 16, 2020, 05:53:24 PM EDT

Subject: UPDATE ON CORONAVIRUS PRECAUTIONS AT MASH

UPDATE ON CORONAVIRUS PRECAUTIONS AT MASH

At Main Street Animal Services of Hopkinton (MASH), our mission statements for our clinic and building is:

- To have a pleasant positive and comfortable place for animals and their caretakers to explore all aspects of good health and preventative medicine.
- To encourage both client and pet to seek out alternative integrative ways to prevent disease.
- To try to make this type of medicine the vision of all medicine.

MASH intends to stay open during this national emergency unless instructed otherwise by the government. However, the health and safety of our patients, their caretakers, and our staff is of the highest concern during this medical crisis. Therefore,

at MASH we will take the following steps until further notice:

1. Our door will be locked at all times to minimize accidental walk-ins.

2. At this time, do not schedule routine or yearly visits that are not essential and time sensitive. If you have such an appointment scheduled, we will call to re-schedule for a later date unless tests or vaccines will cause them to be overdue.

3. If you need to pick up supplements or medicine, call in advance and provide credit card information. Orders will be packaged and left outside on the porch with your name written on the bag. All orders must be picked up by 5pm. Orders that are not picked up with be brought inside, and the shelving will be disinfected. Where time is not of the essence, we can mail your items to you.

4. Before you come to MASH, provide all information over the phone and/or by email about your pet's current condition, the reason for your visit and your pet's history. A tech will meet you outside and bring your pet in for exam and treatments. We will communicate with you via your cell phone during the appointment, while you remain in your vehicle.

5. If you are sick, please do not come to the clinic. We will take the following steps to treat your animal, if medically necessary:

a. We will "examine" your pets from your home using Zoom or some other conferencing app.

b. If a virtual examination is inadequate, a tech will meet you outside and bring your pet into a designated room for exam and treatments. We will communicate with you via your cell phone during the appointment, while you remain in your vehicle.

AFTER YOU LEAVE, BE AWARE THAT TECHNICIANS WILL REGULARLY WIPE ALL SURFACES WITH DISINFECTANT.

Additional information to protect yourselves:

1. Dr. Roman has encouraged MASH clients to get an ozone generator for their homes, because ozone is important for prevention (because it disinfects) and possible cure for the coronavirus. There is a link on our website under "resources" to find the companies that we recommend from whom you can buy an ozone generator and ozone products. We know that ozone is antiviral, antibacterial, anti-fungal, and reduces pain and infection. Medical ozone then floods the body with life-saving oxygen and helps both the animal and humans. If you buy an ozone generator, let the company know that you are a MASH client; they understand how we have tried to educate our clients to be protective.

2. Dr. Roman protects herself with the following: increased vitamin C, vitamin D, multivitamin, as well as a product called Wellness Formula by Source Naturals, which has a combination of immune supporting herbs, vitamins and garlic. One can add more probiotics, echinacea, elderberry, astragalus and try to eat a whole food healthier diet with less sugar.

3. Homeopathically many of our clients already have the homeopathic first aid kit and in it is homeopathic arsenicum 30 C that is one of the recommended remedies for this coronavirus. There is also literature which states that homeopathic phosphorus and bryonia are other remedies that can be supportive during the virus outbreak, and gelsenium can also be helpful.

In particular, Dr. Roman has a unique and pressing need to be extra vigilant because she has compromised immune and respiratory systems and she is over 60. Some of her clients know that during veterinary school 42 years ago she got thrown against a fence by a cow. The farmer was too cheap to put up new fencing, so he put five-inch nails through planks and there were over 1000 nails protruding into the pen. One of the nails went through her back and hit her pericardium and sternum, missing her heart by millimeters. Through acts of medical malpractice, surgeon removed her totally normal spleen looking for a mass the size of a cantaloupe. The traumatic hematoma was in her chest, necessitating thoracic surgery which caused a paralyzed diaphragm on the left side. Due to decreased lung function and being without a spleen, while managing asthma with

acupuncture and homeopathy, she would not be able to survive an upper respiratory infection like the coronavirus.

While it is comforting that the World Health Organization has established that dogs are not likely to get sick from and transmit COVID-19, the virus can stay on the surfaces of the hair of a pet and that is one of the big reason we are trying to practice extra hygiene. Due to the evolving nature of the COVID-19 pandemic clients need to follow our suggestions in order to protect themselves and their friends and loved ones, as well as our entire MASH family, and everyone with whom we come in contact.