

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

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MEDICIAL PROFESSIONALS FOR  
INFORMED CONSENT, et al.

Petitioners-Plaintiffs-  
Respondents,

**Index No.: CA 23-00161**

**NOTICE OF MOTION**

-against-

MARY T. BASSETT, et al.

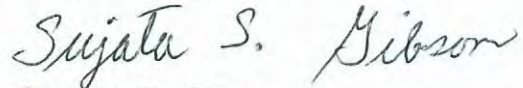
Respondents-Defendants-  
Appellants.

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PLEASE TAKE NOTICE that, upon the attached affirmation of Sujata S. Gibson, Esq., along with all the other affidavits, exhibits and evidence attached thereto, Petitioners will move this Court at the Supreme Court, Fourth Department, Appellate Division, 50 East Avenue, Rochester, New York, 14604 at 10:00 a.m. on June 20, 2023 or as soon thereafter as counsel may be heard, for an Order lifting/vacating this Court’s grant of a stay pending appeal, dated February 27, 2023, and granting any further relief that this Court deems just and proper.

Dated: June 8, 2023,  
Ithaca, NY

Respectfully submitted,



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TO: ANN DILLON FLYNN (via NYSCEF)  
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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

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MEDICAL PROFESSIONALS FOR  
INFORMED CONSENT, et al.

Petitioners-Plaintiffs-  
Respondents,

**Index No.: CA 23-00161**

**AFFIRMATION OF**  
**SUJATA S. GIBSON,**  
**ESQ.**

-against-

MARY T. BASSETT, et al.

Respondents-  
Defendants-Appellants.

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Sujata S. Gibson, Esq., an attorney licensed to practice law in New  
York, affirms the following under penalty of perjury:

1. I am the attorney for Petitioners in this matter, and as such,  
I am fully familiar with the facts and circumstances of this case.

2. I submit this affirmation in support of Petitioners' motion to  
lift the stay of the Supreme Court Onondaga County's decision vacating  
a regulation imposing a Covid-19 vaccine mandate on healthcare workers  
(the "Mandate") pending resolution of this appeal.

3. At oral arguments on May 24, 2023, Counsel announced that Respondents were repealing the Mandate, that it is no longer in effect, and thus the appeal is now moot.

4. These assertions are incorrect, as this affirmation and the attached exhibits will show.

5. However, Respondents concede through these arguments that a stay of the lower court's declaratory relief pending resolution of this appeal is no longer necessary to protect them from imminent harm or to protect the public interest.

6. Conversely, as discussed more fully below, Petitioners and their members face significant and irreparable harm if the stay is not lifted. Every day that the stay remains in place, Petitioners are forced to choose between job and faith, and some members face imminent termination and other consequences of "past" noncompliance with the Mandate, which they could contest if the lower court's ruling were in effect.

### **Background Facts**

7. On January 13, 2023, the Supreme Court, Onondaga County, issued an order declaring that 10 N.Y.C.R.R. § 2.61 (the Mandate) is null,



void, and unenforceable. [NYSCEF No. 1, attached hereto with notice of appeal as Exhibit 1].

8. The reasons were twofold. First, the court held that the New York State Department of Health (the “Department”) lacked the power to issue the Mandate. [Exhibit 1, *Decision* at 9-11]. Indeed, the Public Health Law (“PBH”) specifically forbids the Commissioner from enacting any new vaccine mandates for children or adults other than as enumerated by the Legislature in PBH § 2164 and 2165. See, PBH §§ 206 and 613.

9. As a separate basis for the decision, the court held that in any event, the Mandate is arbitrary and capricious, because it was promulgated with the stated purpose of “prevention of Covid-19 transmission by covered entities” but the Department admitted, in its own regulatory impact statement, that the vaccine could not stop transmission in any meaningful way. [Exhibit 1, *Decision* at 11-12]

10. Either way, the relief was necessarily effective retroactive to the enactment, since the law was declared invalid and unenforceable.

11. The Department appealed. On January 27, 2023, Respondents sought a stay pending appeal. [NYSCEF No. 3].

12. On February 27, 2023, this Court granted a stay, “to the extent that Supreme Court’s directive declaring 10 NYCRR § 2.61 (the Mandate), as being beyond the scope of Respondents’ authority and therefore null, void, and of no effect, so that Respondents, their agents, officers and employees are prohibited from implementing or enforcing the Mandate, is hereby stayed pursuant to CPLR 5519(c), on the condition that the appeal is perfected on or before March 20, 2023.” [NYSCEF No. 6 attached hereto as Exhibit 2].

13. As a condition of the stay, this appeal was expedited, and oral arguments were held on May 24, 2023.

14. At the start of oral argument, Respondents’ attorney stated: “I would like to advise the Court that the Department of Health has just informed me that they intend to repeal the regulation being challenged here.” Respondents argued that the appeal had therefore “gone moot” and that the lower court decision should be vacated. Oral Arguments, *MPIC v. Bassett*, NYS AD4 CR1, YouTube webcast (May 24, 2023) available at <https://www.youtube.com/watch?v=oGAQ-s1m7bE>

beginning at minute 37:43.<sup>1</sup>

15. At first, Respondent’s counsel noted that the repeal still needs to go through the notice and comment process and other procedural steps. *Id.* at minute 37:59. But when repeatedly pressed by the Court, and directly asked to confirm whether “as we speak right now, there is no vaccine requirement for healthcare workers in New York?” Counsel confirmed that this was accurate and fair to say. *Id.* at minute 41:54.

16. Later the same day, the Department sent out guidance to impacted healthcare facilities clarifying that the promises to the Court were not accurate. [NYSCEF No. 14, attached hereto as Exhibit 4].

17. The Department’s guidance stated that the Mandate was not repealed, but “is being recommended for repeal by the New York State Department of Health (the “Department”) subject to consideration by the Public Health and Health Planning Council (“PHHPC”).” [*Id.*].

18. The letter further clarified that the Department was still seeking sanctions for alleged past violations: “Effective immediately, the Department will cease citing providers for failing to comply with the

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<sup>1</sup> Petitioners were unable to get an official transcript in time but attach hereto Exhibit 3 for the Court’s convenience, which is a transcript prepared by a service that is not on the Court’s list of approved providers.

requirements of 10 NYCRR Section 2.61 while the repeal is under consideration by the PHHPC. The Department may, however, continue to seek sanctions against providers based on previously cited violations that allegedly occurred.” [Id].

19. And, though the notice stated that the Department’s enforcement of penalties for current violations will be paused, the notice also warns healthcare facilities licensed by the state that they must themselves continue to follow and enforce all applicable state and federal laws (which includes the Mandate, since it is not actually repealed). [Id].

20. This contradictory guidance created massive confusion.

21. Some hospital systems immediately began hiring back some of the 34,000 plus healthcare workers who lost their jobs because of the Mandate. But many others refuse to hire back any unvaccinated workers, despite the continuing staffing crisis in all New York healthcare facilities, because the Mandate is not technically lifted yet and they have been advised that they must still enforce the state laws.

22. Tellingly, despite Respondents’ representations that the Mandate was no longer in effect, and is thus moot, the *state-run* facilities are most apt to continue to bar any unvaccinated employees from

returning until any repeal is finalized (which could take months, if it happens at all), citing the Mandate as the reason.

23. Attached and incorporated herein is an affidavit from attorney Jamie Scher, who represents hundreds of healthcare workers in the state. [Exhibit 5, Scherr Affidavit]. Many of her clients are members of lead Petitioner Medical Professionals for Informed Consent [“MPIC”]. [*Id.*]. The day before yesterday, Attorney Scher received communication from State University of New York (“SUNY”) Stony Brook, confirming that they are still enforcing the Mandate until they get further clarification from Petitioners. [*Id.* at ¶ 18]. Stony Brook is New York’s flagship university hospital system and is under the control of the Respondents.

24. SUNY Upstate Medical, which is also a massive hospital system that is part of the SUNY state-run hospital system, takes the same position. Attached and incorporated herein is an affidavit from Petitioner Olesya Girich, who was suspended from Upstate Medical because of the Mandate. [Exhibit 6, Girich Affidavit]. Ms. Girich affirms that Upstate Medical (which also employed named Petitioner Dr. Robillard) will not rehire unvaccinated workers until the Mandate is

officially lifted, which could take months, if it occurs at all. Upstate Medical is also controlled and operated by Respondents. [Id. at ¶ 10].

25. In fact, nearly all the state-controlled facilities have adopted the same position. Attached and incorporated into these papers is an affidavit from Attorney Edward Greene, General Counsel for the New York State Public Employee's Federation, AFL-CIO ("PEF"). [Exhibit 7, Greene Affidavit].

26. PEF is a labor union representing approximately 50,000 professional, scientific, and technical public sector employees, including thousands of nurses. [Id. ¶ 2]. Some of PEF's members are also members of MPIC, lead Petitioner in this case.

27. Attorney Greene affirmed that the SUNY system and their hospitals, as well as other dangerously understaffed state-run facilities, either believe they are unable or are unwilling to rehire unvaccinated staff pending resolution of the litigation. [Id. ¶ 7].

28. Some private hospitals also refuse to reinstate unvaccinated employees. For example, Deal Hodge, who is a member of MPIC, worked at NYU Langone as a security guard and was awarded "security officer of the year" before he was terminated for his inability to get vaccinated

against Covid-19 in compliance with the Mandate. [Hodge Affidavit, Exhibit 8].

29. Mr. Hodge is well-qualified, and NYU Langone's security team is critically understaffed. However, Mr. Hodge was informed that because the Mandate is not officially repealed, and the stay is still in place, he cannot return to work despite the promises at oral arguments. [Id ¶¶ 15-16]. His family is in a financial crisis, and he desperately needs to return to work. [Id ¶ 17].

30. Attached hereto and incorporated by reference is an Affidavit from named Petitioner Margaret Florini, who was terminated from her position as a lab-scientist at Ascension-Lourdes Hospital because of the Mandate. Ms. Florini is also the President of Medical Professionals for Informed Consent. [Florini Affidavit, Exhibit 9].

31. Ms. Florini affirms that Ascension Lourdes is unwilling to rehire unvaccinated workers and takes the position that the Mandate is still in effect, despite the Respondents' representations to the Court. [Id. at 4-6].

32. One member of MPIC just wrote to Ms. Florini in a state of crisis. Her hospital is a state-run hospital that takes the position that the

Mandate is still in effect unless the stay is lifted or the Mandate officially repealed. She was just served with an eviction notice and will lose her housing if she is not reinstated this month. [Id at 11].

33. Moreover, as Ms. Florini’s affidavit details, many members face imminent harm because of the “prospective” nature of the enforcement announcement. [Id].

34. Attorney Scher also discusses this point. She represents many members of MPIC who are in settlement discussions with their employers to try to get back pensions, accrued time off and other benefits that they allege were improperly withheld from them when they were terminated over the Mandate. [Scher, Exhibit 5, ¶¶ 9-12]. When Respondents told this Court that the Mandate was rescinded, Attorney Scher reached out to some of the employers to resume settlement discussions. The response from Northwell Health, which is the biggest hospital conglomerate in the state, showed how important the lower court’s ruling is to the relief these members seek. The attorney for Northwell wrote: “We are of course aware of these developments. But neither the federal nor New York State recent repeals invalidates the respective rules *nunc pro tunc*.” [Id. ¶ 12].



35. Thus, as Northwell's attorney points out, if the lower court's decision is vacated then these employees' rights to settle improper terminations is significantly weakened as well, since the state's voluntary repeal is only prospective, not retroactive, whereas the lower court's decision held that the Department never had the authority to issue the Mandate in the first place.

36. Similarly, Attorney Scher and Ms. Florini point out that vacating the lower court's decision will also negatively impact the rights of those MPIC members who are currently being told that they need to repay their unemployment insurance benefits. At the demand of Respondent Hochul, the Department of Labor adopted a policy of refusing to provide benefits to those suspended for failure to comply with the state's Mandate. Many were denied outright. Some were mysteriously approved for benefits. But most of these healthcare workers are now being issued letters stating that the approvals were in error, and they must repay the amounts they received. They urgently need the stay to be lifted so that they can effectively and timely challenge these demands for repayment. *Id.* at 5-8.

37. Not only that, but some members of MPIC have not yet been

terminated, and their disciplinary hearings are directly impacted by the stay of the lower court's decision.

38. For example, attached hereto and incorporated by reference is a declaration from Bethany Freeman, R.N., a member of PEF and also a member of MPIC. Ms. Freeman was suspended from her position as a surgical nurse at the state-owned and operated Roswell Park Cancer Center Institute because of the Mandate. [Freeman Affidavit, Exhibit 10].

39. As further detailed in her affidavit, Ms. Freeman suffers from Bechet's Syndrome, a rare and serious autoimmune disorder that causes severe inflammation of blood vessels throughout the body, often leading to blindness, debilitating disability and pain, and other severe consequences. Her specialists agreed that she cannot safely take the Covid-19 vaccine, as she has had severe adverse reactions to multiple vaccines and even milder interventions such as a tuberculosis test. [Id. ¶¶ 7-9].

40. Initially, Roswell Park granted Ms. Freeman a medical exemption. However, in January 2022, they revoked the exemption, stating that New York State's Mandate only allows medical exemptions

for those who have had a severe anaphylactic shock reaction to the Covid-19 vaccine, and that they could not consider medical exemptions issued for any other reason, even if the applicants could show that they were at risk of severe harm, which was clearly the case in Ms. Freeman's case. [Id. ¶¶ 4-10].

41. Ms. Freeman has been suspended without pay since January 2022 and is still awaiting a disciplinary hearing to determine if the adverse employment action was warranted. If this Court lifts the stay, then Ms. Freeman is likely eligible for back pay and reversal of her original suspension. If the stay is not lifted, Ms. Freeman will likely be terminated.

42. Ms. Freeman is not the only member of MPIC in this position. I have spoken to other MPIC members who are not yet terminated and are still awaiting their disciplinary hearings. Upon information and belief, if the stay is not in place when their hearing takes place, they should be eligible for reinstatement with back pay, because if the Mandate is unlawful, the suspensions for failure to comply with it are as well.

43. Similarly, when this case commenced, named Petitioner Ms.

Girich was also suspended, not terminated. Though a disciplinary hearing was held and she was terminated during the pendency of this litigation, she may be able to reverse this determination after the stay is lifted. At the very least, she still has claims under the New York State Human Rights Law that will be negatively impacted if the declaratory relief issued by the lower court is vacated. Employers have taken the position that the Mandate absolves them of the statutory responsibility to prove undue hardship under the statutory factors, which is one of the reasons that Petitioners assert that the Mandate violates the Separation of Powers Doctrine and is preempted by the New York State Human Rights Law.

44. Whether the declaratory relief is upheld thus actively impacts Petitioners and is not a moot or academic concept.

45. Lastly, as the May 24, 2023, notice clarifies, the Department is still seeking penalties and fines for past alleged violations of the Mandate.

46. This lays to rest any claim that the case is moot. Attached and incorporated by reference as Exhibit 11 is an affidavit from named Petitioner Elizabeth Storelli, whose employer allowed her to work

unvaccinated until October 24, 2022, when the Department began threatening them with massive fines if they did not rescind her religious accommodation.

47. Petitioner Storelli was forced to get vaccinated to try to keep her job. But since filing this lawsuit, she has faced severe harassment and retaliation from her employer. Ms. Storelli's employer themselves asserted that they faced retaliation from the Department as a result of this lawsuit and is being fined for past noncompliance. Ms. Storelli is also potentially liable for fines and punishment for having worked unvaccinated if the lower court's ruling were to be vacated. *Id.*

48. In sum, all Petitioners face imminent harm if the stay is not lifted. Some face imminent termination hearings, that could be challenged if the stay were lifted. Some are unable to return to work until the stay is lifted or the Mandate officially repealed (whenever that happens). Others cannot defend their rights effectively without the declaratory relief, and some, like Petitioner Storelli, still face the prospect of punishment since the Department is still seeking penalties for past noncompliance.

49. These harms cannot be remedied with money damages. This

action does not seek monetary damages, and those who are unable to work because their employer is not willing to risk violating the stay or because they have had to waive their right to back-pay pending resolution of the stay will never be made whole, even if they prevail.

50. Moreover, these harms show that this case is not moot. The rights and interests of thousands of people, including Petitioners and members of organizational Petitioner MPIC, are at stake.

### **Legal Standard**

51. Respondents bear the burden of “demonstrating, by clear and convincing evidence, (1) a likelihood of success on the merits; (2) irreparable injury in the absence of injunctive relief; and (3) a balance of the equities in its favor.” *Eastview Mall, LLC v. Grace Holmes, Inc.*, 182 A.D.3d 1057, 1058 (4<sup>th</sup> Dep’t 2020).

### **Respondents Conceded Irreparable Injury and Public Interest**

52. Respondents’ announcement that they are repealing the Mandate and have stopped enforcing it eviscerates any claim that they face imminent harm requiring a stay, or that the public interest requires one to be in place.

53. To establish “irreparable harm,” the moving party must

demonstrate immediate, specific, nonspeculative and nonconclusory significant harms. *Matter of New York State Inspection, Sec. & Law Enforcement Empls. V. Cuomo*, 64 N.Y.2d 233, 240 (1984).

54. Respondents themselves concede that it is not necessary to keep enforcing the Mandate, and they have recommended that it be repealed.

55. As further proof, attached hereto as Exhibit 12 and incorporated by reference is the Affidavit of Dr. Harvey Risch, M.D., PhD. Dr. Risch is a Professor Emeritus of Epidemiology at Yale School of Public Health, a practicing academic epidemiologist with more than forty years' experience in epidemiologic methods, both in research and teaching, and a widely published expert in the field of infectious disease. [Id. at ¶ 3]. The Court is respectfully referred to his affidavit, which explains that the scientific consensus establishes, beyond a reasonable doubt, that vaccination with the primary series cannot meaningfully stop transmission and in fact, appears to be making infection *more likely* in those who were vaccinated than those who were not. [Id.].

56. Thus, even if the Department wanted to, they cannot claim “irreparable harm” if this Court were to vacate the stay.

57. Meanwhile, the balance of equities strongly favors vacating the stay. While the Department concedes it does not need the Mandate, the Petitioners and members of Petitioner MPIC face imminent, urgent and irreparable harm from the continued stay, as described more fully above.

### **Likelihood of Success**

58. Based on the foregoing points alone, this Court can and should lift the stay, since Respondents bear the burden of showing that all three factors support a stay of lower court relief pending appeal. *Eastview Mall.*, 182 A.D.3d at 1058-59.

59. However, the last point, likelihood of success, also cuts in Petitioners' favor.

60. As addressed more fully in Petitioners' briefing in this appeal, incorporated herein by reference [NYSCEF No. 12], the Supreme Court correctly held that the Mandate is not supported by adequate proof or rationality, pointing out that "[i]n true Orwellian fashion, the Respondents acknowledge then-current COVID-19 shots do not prevent transmission" of COVID-19 and yet, the NYSDOH nonetheless adopted the Mandate, entitled "Prevention of COVID-19 Transmission by



Covered Entities” [R. 565] for the stated purpose of attempting to prevent transmission of COVID-19 in healthcare facilities [*Id.*].

61. This is not a question of dueling science. The regulatory impact statement itself acknowledges that the Mandate does not stop transmission [R. 525, R. 596-598], and Respondents conceded the point at oral argument.

62. To the extent that Respondents wished to contest this point, they could not do so in any event. Pursuant to the State Administrative Procedures Act (“SAPA”), the regulatory impact statement must set forth in the “Needs and Benefits” section a citation for and summary “of each scientific or statistical study, report or analysis that served the basis for the rule, an explanation of how it was used to determine the necessity for and benefits derived from the rule, and the name of the person that produced each study, report or analysis.” SAPA § 202(a)(3)(b). This must be updated when new information arises that needs to be addressed. [*Id.*]

63. Because the Needs and Benefits section of the regulatory impact statement [R. 574-575] fails to set forth *even a single study* or any data to support their reasoning, and then even later acknowledged in the FAQ that vaccination with the primary series cannot stop transmission,

the lower court did not abuse its discretion in making its factual finding that the Mandate is arbitrary and capricious. *See, Med. Soc. of State of N.Y., Inc. v. Levin*, 185 Misc. 2d 536, 546 (Sup Ct, New York County, 2000), *aff'd sub nom., Med Soc'y of State of New York, Inc. v. Levin*, 280 A.D.2d 309 (2001) (reversal under article 78 is appropriate where agency failed to publish an updated regulatory impact statement providing adequate and complete support for regulation).

64. In fact, it would have been an abuse of discretion to find otherwise. While courts will uphold an agency decision that demonstrates a rational basis for the determination, the record must provide sufficient detail to give rise to a determination of rationality, as courts cannot affirm an agency determination by "substituting what it deems a more appropriate or proper basis" to save a deficiently reasoned decision. *Matter of Pell v. Bd. of Union Free Sch. Dist.*, 34 N.Y. 2d 222, 231 (1974). Accordingly, if the agency's decision is not supported in the original record "by proof sufficient to satisfy a reasonable [person], of all the facts necessary to be proved in order to authorize the determination" then the decision should be vacated. *Ador Realty, LLC v. Division of Housing and Community Renewal*, 25 AD.3d 128, 139-140 (2d Dept 2005)

(quoting *Pell*, 34 N.Y. 2d at 231).

65. Since the regulatory impact statement fails to comply with SAPA and make a record capable of withstanding review, the Supreme Court properly held that the Mandate is arbitrary.

66. Moreover, since it was beyond dispute when the Mandate was issued in late June 2022 that vaccinated and unvaccinated people are equally (if not more) likely to get and spread COVID-19, a fact which was even acknowledged by Respondents themselves, the decision to bar only unvaccinated persons from any job where they can interact with a colleague or patient whom they could spread COVID-19 to if infected is irrational and capricious. *Matter of Italian Sons & Daughters of Am.-Amici Lodge No. 255 v Common Council of Buffalo*, 89 AD2d 822, 823 (4th Dept 1982).

67. The Supreme Court's other basis for relief should also be upheld. As more fully discussed in Petitioners' brief, incorporated by reference herein, the Supreme Court also properly held that the Mandate violates the Public Health Law ("PBH"), exceeds the Department's authority, and violates the Separation of Powers Doctrine.

68. As the Court of Appeals already confirmed, though local

health boards are not necessarily so constrained, the New York State Department of Health cannot issue any vaccine mandates other than as set forth in PBH §§ 2164 and 2165 by the Legislature. *Garcia v. New York City Dept. of Health & Mental Hygiene*, 31 N.Y.3d 601, 620 (2018).

69. The Legislature never added Covid-19 vaccines to the lists of permissibly mandated vaccines in §§2164 and 2165, and the PBH prohibits the Department from doing that for them.

70. Specifically, in the section defining the powers of the Commissioner, the PBH gives the Commissioner the power to create programming and regulations to increase vaccine uptake. However, the same paragraph clarifies that nothing in that paragraph authorizes the Department to enact any vaccine mandate for adults or children other than as set forth in §§ 2164 and 2165. [PBH § 206(1)(l)]. Notably, no carve out is made for adults that work in healthcare.

71. The same limitation is placed on the Department in PBH § 613, entitled “State Aid; Immunizations”, which is the only other section that mentions vaccines outside of §§ 2164 and 2165. This section further defines the Commissioner’s powers to pass regulations to increase vaccine uptake for adults and children, including those in healthcare.

There too, the statute reads that “nothing in this subdivision shall authorize mandatory immunization of adults or children except as provided in sections [2164] and [2165] of this chapter.”

72. Respondents argue that other generalized powers in the PBH given them authority to override the clear language of PBH §§ 206 and 613. But if the legislature intended that other generalized powers were meant to allow the Department to issue vaccine mandates, they would have had to add them to the list of exceptions— for example, they could have added to their statement that “nothing in this subdivision shall authorize mandatory immunization of adults or children except as provided in sections [2164] and [2165] of this chapter” so that the other sections Respondents’ cite for authority also provided an exception to the rule. They did not, and thus, since an enumerated list must be deemed exclusive, the only exceptions to the prohibition on vaccine mandates for adults or children are as set forth in PBH §§ 2164 and 2165.

73. Additionally, as the lower court pointed out, principles of statutory construction also require that the specific govern the general. Reading the Public Health Law in the manner suggested by Respondents would render PBH § 206(1)(l), and the laws only other section that deals

with vaccines (PBH § 613), meaningless. [Exhibit 1, Decision, at 9] [Citing *Morales v. TWA*, 504 U.S. 374, 384 (1992) (“It is a commonplace of statutory construction that the specific governs the general.”)].

74. Respondents argued that PBH § 225 overrides the specific statutory limitation on the Commissioner’s power against issuing new vaccine mandates, because the Council has the general power to consider (“at the Commissioner’s request”) “any matter relating to the preservation and improvement of public health.” [Respondents’ Brief at 8, citing PBH § 225(1)].

75. But this argument is irrational and tautological. According to PBH §225, the Council’s powers are strictly advisory, and they cannot issue any regulation without authorization of the Commissioner. PBH § 225(1)-(4). Since the Commissioner is prohibited from “authoriz[ing] mandatory immunization of adults or children” outside of those set forth by the legislature in §§ 2164-2165, she cannot authorize the Council to issue a new vaccine mandate, no matter how broad its powers are to “consider” and make recommendations on matters she requests advice on.

76. Nor can the other generalized powers to investigate or license

hospitals overcome the principle that the specific governs the general. Nothing in those sections mentions the power to issue vaccines, and nothing in the rest of the law suggests it was meant to.

77. Respondents assert that they've mandated other vaccines, so it should be presumed that they properly mandated the Covid-19 vaccine. But the only other vaccines that the Department has mandated are those that are already required under the PBH in §§ 2164-2165. Indeed, what the regulation requires is that employees show proof that they were vaccinated as babies for measles and rubella, as set forth in PBH § 2164. N.Y. Comp. Codes R. & Regs. tit. 10, § 405.3. Thus, the measles and rubella requirement, unlike the Covid-19 vaccine requirement, do not necessarily conflict with PBH § 206(1)(l) and § 613 because those limitations prohibit vaccine mandates "except as provided in sections [2164] and [2165] of this chapter."

78. The Covid-19 vaccine requirement on the other hand, does conflict, since § 2164 does not contain any provision for a Covid-19 vaccine mandate.

79. Even if the Mandate did not conflict with the PBH, which it does, it would still violate the separation of powers doctrine protected by

the New York State Constitution because it attempts to resolve broad policy issues, like how best to balance important religious and civil rights against public health goals. The New York State legislature already has a statute that sets forth the procedure for balancing public health against religious rights and disability rights, codified in the New York State Human Rights Law (“NYSHRL”).

80. Nowhere in the NYSHRL does the legislature exclude healthcare workers from the protections afforded to religious practices and disabilities. Under this statute, employers and licensing agencies (like the Department) bear the responsibility of proving, through individualized and non-speculative evidence, that the employee cannot be accommodated without creating significant expense or difficulty or that the employee would pose a “direct threat”, that cannot be accommodated with less intrusive measures, such as weekly testing.

81. The safety analysis, like the financial hardship analysis, require the employer or department to provide concrete evidence based on enumerated factors, which the Department did not consider, and individualized analysis using the most current science.

82. And yet, the Mandate impermissibly overrides the



individualized standard of the NYSHRL and fails to attempt to even establish that the statutory criteria cannot be met for any unvaccinated employee with a religious objection other than 100% remote employees who do not interact in person with any colleagues or other persons. This is simply not true, as acknowledged by the Department itself in the regulatory impact statement, and by the Department's offer of an exception for those with an approved medical exemption. It is arbitrary and capricious, for example, to determine that Petitioner Dr. Hernandez-Schipplick can safely work in person around colleagues and patients because she is a participant in a medical study, but not because of her religious beliefs. [R. 44].

83. The sheer number of people severely impacted here also resolves any doubt that the Mandate is an attempt at policymaking not-rule making. In *New York Statewide Coal. of Hisp. Chambers of Com. v. New York City Dep't of Health & Mental Hygiene*, 23 N.Y. 3d 681 (2014), the Court of Appeals held: "An agency that adopts a regulation...that interferes with commonplace daily activities preferred by large numbers of people must necessarily wrestle with complex value judgments concerning personal autonomy and economics. That is policy making, not

rule-making." *Id.* at 699.

84. In this instance, over thirty four thousand healthcare workers were forced to leave their jobs because of the Mandate, causing devastating harm to themselves, their families, their communities and the entire healthcare infrastructure of the state. In short, this was policymaking over issues of vast economic and political significance.

85. The United States Supreme Court held that “[w]e expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance.” *See, Alabama Assn. of Realtors v. Department of Health and Human Servs.*, 594 U.S. \_\_\_, (2021) (per curiam) (slip op., at 6) (internal quotation marks omitted). New York’s highest Court imposes the same requirement on state agency action. *Statewide Coalition*, 23 N.Y.3d at 699.

### **This Case is Not Moot**

86. Respondents’ eleventh-hour attempt to moot the case does not change the likelihood of success.

87. As the factual affidavits and information in this motion clarify, this case is not moot.

88. As a threshold matter, this is voluntary cessation by a party

in the case. It is well-settled law that voluntary cessation of challenged conduct *by a party* does not moot a case and does not allow the decision below to be vacated. *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994). Moreover, Respondents' voluntary repeal recommendation does not moot the case in any event.

89. First, the Mandate has not actually been repealed at all. At most, Respondents have indicated that they are *considering* whether to repeal the Mandate and pausing prospective enforcement while they do, though they still threaten that facilities licensed by them should continue to enforce the Mandate themselves. Because of this confusing direction, none of the Petitioners have actually been allowed to return to work. To the extent that the Department does decide to actually repeal the Mandate, it will take months of notice and comment before that repeal is finalized.

90. Second, the declaratory relief secures important rights that Petitioners need to have intact to be able to bring individual New York State Human Rights Law claims against their employers. The Department made clear, and the individual employees concur, that any relief will be *prospective*. However, the lower court's decision is

necessarily retroactive, since it held that the Mandate was never validly issued. If this holding is vacated, then employers can use the Mandate as a shield to try to get around having failed to meet their individualized requirements in the New York State Human Rights Law. In other words, the issues in this case are very much still relevant and the outcome preserves important rights and interests that each of the Petitioner's needs to secure further relief.

91. Indeed, vacating the lower court's decision would be particularly unjust here. When the Onondaga Supreme Court struck down the Mandate on January 13, 2023, Respondents refused to honor this decision, even before the stay was granted, and continued to openly and brazenly enforce the Mandate and advise healthcare facilities that they must do the same.

92. One of the reasons that they cited for this was that there is another decision that was issued by the Supreme Court in Albany County that upheld the Mandate. *Matter of McGlynn v. NYS Dept. of Health*, Index No. 904317-22 (Sup. Ct., Albany County, Jan. 10, 2023).

93. If this Court vacates the Onondaga Supreme Court's decision, than *McGlynn* can be used as a sword, as it would remain in effect, and

be the only precedent on the issue of whether the Mandate was valid. Thus, Respondents would be able to win this appeal without any consideration on the merits, even though they are the ones who strategically decided to “repeal” the unlawful Mandate to avoid judicial review of the adverse decision. Such an outcome is patently unjust.

94. Third, some members of Petitioner MPIC face imminent risk of termination if the Mandate is not repealed. Others face imminent risk of having to pay back their unemployment compensation if the stay of the declaratory relief is not lifted. Others, like Petitioner Storelli, are still liable for penalties and fines for “noncompliance” before the Mandate was repealed. For these Petitioners, not only is the appeal not moot, but the stay places them at imminent risk of irreparable harm.

**WHEREFORE** Petitioners respectfully request that this honorable Court grant their motion to vacate the stay of the Supreme Court Onondaga County’s decision pending appeal, and to consider this matter on the merits, or, in the alternative, grant Respondents’ request to discontinue the appeal, but with prejudice and without impact on the declaratory relief below.

Dated: June 8, 2023,  
Ithaca, NY

Respectfully submitted,

*Sujata S. Gibson*

Sujata S. Gibson

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# EXHIBIT 1

SUPREME COURT THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

-----  
MEDICAL PROFESSIONALS FOR INFORMED  
CONSENT, INC., individually and on behalf of its  
Members, KRISTEN ROBILLARD, M.D.,  
ZARINA HERNANDEZ-SCHIPPLICK, M.D.,  
MARGARET FLORINI, A.S.C.P., OLYESYA  
GIRICH, RT(R), and ELIZABETH STORELLI, R.N.  
Individually and on behalf of others similarly situated,

**NOTICE OF APPEAL**

Index No.: 008575/2022

Petitioners-Plaintiffs,

-against-

MARY T. BASSETT, in her official capacity as  
Commissioner of Health for the State of New York,  
KATHLEEN C. HOCHUL, in her official capacity as  
Governor of the State of New York, and the  
NEW YORK STATE DEPARTMENT OF HEALTH,

Respondent – Defendants.

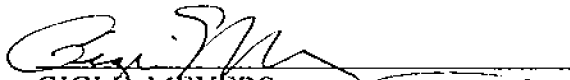
-----  
PLEASE TAKE NOTICE that Respondents, MARY T. BASSETT, in her official  
capacity as the Commissioner of Health of the State of New York, KATHLEEN C. HOCHUL, in  
her official capacity as Governor of the State of New York, and the NEW YORK STATE  
DEPARTMENT OF HEALTH, hereby appeal to the Appellate Division of the Supreme Court  
for the Fourth Judicial Department from the Decision and Order dated January 13, 2023, by  
Supreme Court, Onondaga County (Neri, J.S.C.), and filed via New York State Court Electronic  
Filing System (“NYSCEF”) on January 13, 2023.

This appeal is taken from each and every part of said Decision and Order as well as the  
whole thereof.



Dated: Syracuse, New York  
January 24, 2023

LETITIA JAMES  
Attorney General  
State of New York  
Attorney for State Defendant



GIGI D. MEYERS  
Assistant Attorney General  
New York State Office of the Attorney General  
300 South State Street, Suite 300  
Syracuse, New York 13202  
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TO: Gibson Law Firm, PLLC  
Sujata Sidhu Gibson  
832 Hanshaw Rd., Suite A  
Ithaca, New York 14850



# **NYSCEF Confirmation Notice**

## **Onondaga County Supreme Court**

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The NYSCEF website has received an electronic filing on 01/24/2023 04:41 PM. Please keep this notice as a confirmation of this filing.

**008575/2022**

**Medical Professionals for Informed Consent et al v. Mary T. Bassett M.D. et al**

**Assigned Judge: Gerard J Neri**

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<b>Doc #</b>	<b>Document Type</b>
92	NOTICE OF APPEAL

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300 S. State Street, Suite 300, Syracuse, NY 13212

### **E-mail Notifications**

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**SUJATA SIDHU GIBSON - [sujata@gibsonfirm.law](mailto:sujata@gibsonfirm.law)**

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**Lisa Dell, Onondaga County Clerk**

Phone: 315-435-2227 Website: <http://www.ongov.net/clerk/index.html>

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**NYSCEF Resource Center, [nyscef@nycourts.gov](mailto:nyscef@nycourts.gov)**

Phone: (646) 386-3033 | Fax: (212) 401-9146 | Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

At a Special Term of the Supreme Court of the State of New York, held in and for the County of Onondaga, at 401 Montgomery Street, Syracuse, New York, on January 5, 2023.

Present: Hon. Gerard J. Neri, J.S.C.

STATE OF NEW YORK  
SUPREME COURT ONONDAGA COUNTY

**MEDICAL PROFESSIONALS FOR INFORMED CONSENT, individually and on behalf of its members, KRISTEN ROBILLARD, M.D., ZARINA HERNANDEZ-SCHIPPLICK, M.D., MARGARET FLORINI, A.S.C.P., OLESYA GIRICH, RT(R), and ELIZABETH STORELLI, RN., individually and on behalf of others similarly situated,**

**DECISION and ORDER  
Motion #1  
Motion #2**

Index No: 008575/2022

Petitioners-Plaintiffs,

-against-

**MARY T. BASSETT, in her official capacity as Commissioner of Health for the State of New York, KATHLEEN C. HOCHUL, in her official capacity as Governor of the State of New York, and the NEW YORK STATE DEPARTMENT OF HEALTH,**

Respondents-Defendants.

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On October 20, 2022, Petitioners-Plaintiffs Medical Professionals for Informed Consent, Kristen Robillard, M.D., Zarina Hernandez-Schipplick, M.D., Margaret Florini, A.S.C.P., Olesya Girich, RT(R), and Elizabeth Storelli, RN (collectively as the “Petitioners”) filed a verified petition commencing this hybrid Article 78 and Declaratory Judgment action (*see* Petition). The Petition seeks an order of the Court enjoining and permanently restraining Defendants-Respondents Commissioner of Health Mary T. Bassett (the “Commissioner”), Governor Kathleen C. Hochul (the “Governor”), and the New York State Department of Health (“DOH”, and collectively as the (Respondents”) and any of their agents, officers, and employees from implementing or enforcing 10 NYCRR §2.61, Declaring that 10 NYCRR §2.61 is ultra vires,

preempted by state law, null and void and/or unenforceable, and awarding Petitioners reasonable attorney's fees, costs, and disbursements pursuant to CPLR §8101, and any other applicable statutory, common law or equitable provision because any defense to the validity of the mandate is without merit (*see* Petition, prayer for relief, Doc. No. 1). The matter was set down for December 8, 2022 (*see* Amended Notice of Petition, Doc. No. 30). On November 18, 2022, Respondents requested an adjournment of the return date (Doc. No. 36). The Court held a conference on November 22, 2022 and set forth a briefing schedule and moved the return date to January 5, 2023. On December 22, 2022, Respondents answered and opposed the relief sought (Doc. No. 37). Respondents further moved to dismiss the petition (*see* Notice of Motion, Doc. No. 38).

Petitioners seek, *inter alia*, an order of this Court declaring that the COVID-19 vaccine mandate for medical providers pursuant to 10 NYCRR §2.61 (the "Mandate") be declared an ultra vires act by the DOH. The Mandate has its origin in the beginning stages of the COVID-19 Pandemic. The New York State Legislature ceded powers to the then Governor Andrew Cuomo on an emergency basis. On June 24, 2021, Governor Cuomo rescinded his previous emergency orders related to the COVID-19 Pandemic under certain Executive Orders (*see* Executive Order 210, Doc. No. 15). Despite the end of the emergency, on June 22, 2022, the Commissioner adopted the Mandate as a permanent regulation (*see* Petition, Doc. No. 1, ¶9). The Mandate provides:

"Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, absent receipt of an exemption as allowed below. Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section" (10 NYCRR §2.61(c)).

Petitioners assert the Mandate is preempted by State Law, specifically Public Health Law §§206, 613, 2164, and 2165. Public Health Law §206(1)(l) provides:

“establish and operate such adult and child immunization programs as are necessary to prevent or minimize the spread of disease and to protect the public health. Such programs may include the purchase and distribution of vaccines to providers and municipalities, the operation of public immunization programs, quality assurance for immunization related activities and other immunization related activities. The commissioner may promulgate such regulations as are necessary for the implementation of this paragraph. ***Nothing in this paragraph shall authorize mandatory immunization of adults or children, except as provided in sections twenty-one hundred sixty-four and twenty-one hundred sixty-five of this chapter***” (Public Health Law § 206(1)(l), *emphasis added*).

Public Health Law §613 has a similar prohibition on mandatory immunization: “Nothing in this subdivision shall authorize mandatory immunization of adults or children, except as provided in sections twenty-one hundred sixty-four and twenty-one hundred sixty-five of this chapter”

(Public Health Law § 613(1)(c)). Public Health Law §2164 covers children attending day care through high school (*see* Public Health Law §2164(1)(a) and requires immunization for “poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, and hepatitis B” (Public Health Law § 2164(2)(a). Boosters are detailed in subparagraph b of said paragraph (*ibid*, sub. b).

Subparagraph c covers Meningococcal Disease (*ibid*, sub. c). Public Health Law §2165 covers college students and requires immunization for “measles, mumps and rubella” (Public Health Law §2165). COVID-19 or coronaviruses generally are not covered by any of the aforementioned sections. “[T]he legislature intended to grant NYSDOH authority to oversee voluntary adult immunization programs, while ensuring that its grant of authority would not be construed as extending to the adoption of mandatory adult immunizations” (Garcia v. N.Y. City Dept. of Health & Mental Hygiene, 31 N.Y.3d 601, 620 [2018], *citing* Letter from Richard N.

Gottfried, Chair, Assembly Comm on Health, to Richard Platkin, Counsel to Governor, July 16, 2004, Bill Jacket, L. 2004, ch. 207 at 5, 2004 N.Y. Legis. Ann. at 179).

Petitioners further argue that the Mandate violates the separation of power doctrine.

“The concept of the separation of powers is the bedrock of the system of government adopted by this State in establishing three coordinate and coequal branches of government, each charged with performing particular functions... This principle, implied by the separate grants of power to each of the coordinate branches of government, requires that the Legislature make the critical policy decisions, while the executive branch's responsibility is to implement those policies” (Garcia at 608, *citations omitted*).

“If a rule exceeds the parameters of the power granted by the legislature to the enacting agency—that is, ‘if an agency was not delegated the authority to [establish the] rule[ ], then it would usurp the authority of the legislative branch by enacting th[at] [regulation]’” (Matter of NYC C.L.A.S.H., Inc. v. N.Y. State Off. of Parks, Recreation & Historic Preserv., 27 N.Y.3d 174, 178 [2016], *citing* Greater NY Taxi Assn. v. NY City Taxi & Limousine Commn., 25 N.Y.3d 600, 608 [2015]).

In New York, the Boreali test is used to determine whether an agency has exceeded its authority.

“To determine whether an administrative agency has usurped the power of the Legislature, courts must consider whether the agency: (1) ‘operat[ed] outside of its proper sphere of authority’ by balancing competing social concerns in reliance ‘solely on [its] own ideas of sound public policy’; (2) engaged in typical, ‘interstitial’ rulemaking or ‘wrote on a clean slate, creating its own comprehensive set of rules without benefit of legislative guidance’; (3) ‘acted in an area in which the Legislature has repeatedly tried—and failed—to reach agreement in the face of substantial public debate and vigorous lobbying by a variety of interested factions’; and (4) applied its ‘special expertise or technical competence’ to develop the challenged regulations” (Matter of Acevedo v. N.Y. State Dept. of Motor Vehs., 132 A.D.3d 112, 119 [3d Dept 2015], *citing* Boreali v. Axelrod, 71 N.Y.2d 1, 12-14 [1987]).

Petitioners assert that the Mandate fails all four considerations.

Petitioners further assert that for the reasons proffered in support of their declaratory judgment, Petitioners are also entitled to relief under Article 78 of the CPLR. Further, Petitioners argue the Mandate must be struck down as arbitrary and capricious. “The challenger must establish that a regulation is so lacking in reason for its promulgation that it is essentially arbitrary” (N.Y. State Assn. of Counties v. Axelrod, 78 N.Y.2d 158, 166 [1991], *internal citations omitted*). Petitioners note that the original vaccine mandate had a religious exception, but the final Mandate did not. Petitioners note that on September 15, 2021, in response to a question about why the religious exception was not included, Respondent Governor stated:

“We left off that in our regulations intentionally, and we believe that there, this is my personal opinion, because I'm going to, you know, we'll be defending this in court. To the extent that there's leadership of different religious organizations that have spoken, and they have, I'm not aware of a, sanctioned religious exemption from any organized religion. In fact, they're encouraging the opposite. They're encouraging their members, everybody from the Pope on down is encouraging people to get vaccinated” (*see* Transcript of Governor's Comments, September 15, 2021, Doc. No. 17).

Petitioners argue that the State may not target religious minorities solely on the basis of their view regardless of how well-intentioned the subject regulation may be (*see* Trump v. Hawaii, 138 S. Ct. 2392, 2423 [2018]). **Petitioners argue that there is no rational basis for the Mandate when Respondent DOH acknowledges the mandated vaccine fails to accomplish its stated goal, i.e., prevent the spread of COVID-19** (*see* DOH Response to Comments, Doc. No. 7, p. 25). Petitioners submitted news articles highlighting vaccine proponents, who publicly stated they received a COVID-19 vaccine and in some instances multiple boosters, nonetheless were still infected by COVID-19 one or multiple times (Doc. Nos. 23-27). Petitioners pray the Court grant the requested relief.

Respondents oppose the relief sought and simultaneously move to dismiss the Petition. Respondents open their memorandum of law by stating:

“Petitioners have filed the instant action in the misguided hope that this Court will rule against a growing body of precedent and belatedly upend the state-wide requirement—as well as the settled status quo since at least October 29, 2021, if not earlier—under 10 N.Y.C.R.R. § 2.61 which mandates that Petitioners are vaccinated against COVID-19. In the State of New York alone, COVID-19 has infected more than 5 million New Yorkers and has caused more than 73,000 deaths” (*see* Memorandum of Law, Doc. No. 39, p. 1).

Respondents argue the Mandate has a rational basis and its enactment was not arbitrary or capricious.

“Where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld” (Kurcsics v. Merchants Mut. Ins. Co., 49 N.Y.2d 451, 459 [1980]).

Respondents argue DOH may promulgate regulations that “deal with any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York” (*see* Public Health Law §225(4) and (5)(a)). Respondents further note that the Second Circuit in disposing of a case challenging the Mandate’s lack of a religious exception under Federal Law declared that the Mandate “was a reasonable exercise of the State’s power to enact rules to protect the public health” (We the Patriots USA, Inc. v. Hochul, 17 F.4th 266, 290 [2d Cir 2021]). Respondents assert that the Petitioners failed to meet their burden to demonstrate outright irrationality, arbitrariness, or capriciousness concerning the Mandate.

Respondents argue they are not required to include a religious exception for vaccine requirements. “The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death” (Prince v. Massachusetts, 321 U.S. 158, 166-167 [1944]; *see also* Phillips v. City of N.Y., 775 F.3d 538, 543 [2d Cir. 2015]). Respondents note the Federal Courts have previously concluded that the Mandate does not run afoul of religious freedom guaranteed to New York citizens.



Respondents argue that the Mandate does not violate the State Administrative Procedure Act. Respondents argue that the basis for the Mandate comes from Public Health Law §§225(5), 2800, 2803(2), 3612, and 4010(4). Respondents do not explain the basis of the cited sections. Public Health Law §225 sets forth the general powers and duties of the public health and health planning council to implement the sanitary code, and paragraph 5 provides for what the sanitary code may do (Public Health §225). Public Health Law §2800 is entitled “Declaration of policy and statement of purpose” for Public Health Law Article 28 – Hospitals (Public Health Law §2800). Public Health Law §2803(2) provides for the powers and duties of the DOH commissioner and council to set rules and regulations for hospitals (Public Health Law §2803). Public Health Law §3612 entitled “Powers and duties of commissioner and state hospital review and planning council” and provides for general oversight of certified home health agencies, long term home health care programs, and certain AIDS home care programs (Public Health Law §3612). Public Health Law §4010(4) provides for the oversight powers concerning hospice (Public Health Law §4010). Respondents argue that they have complied with the State Administrative Procedure Act and the Mandate is a valid exercise of power.

Respondents argue that the Boreali factors favor Respondents. The focus of the first factor “must be on whether the challenged regulation attempts to resolve difficult social problems in this manner” (Natl. Rest. Assn. v. N.Y. City Dept. of Health & Mental Hygiene, 148 A.D.3d 169, 174 [First Dept. 2017]). Respondents argue the Mandate does not weigh considerations but is simply an across the board requirement mandating COVID-19 vaccinations. Respondents argue the second factor is similarly in Respondents’ favor as they did not write on a “clean slate”. Respondents argue they have broad authority under the Public Health Law to implement the Mandate. Respondents assert that Petitioners failed to meet their burden by

demonstrating any failed legislative attempts to regulate COVID-19 vaccinations of medical personnel. Respondents sum up Petitioners' argument on this point by stating that there has been no legislative action. The fourth factor lies in Respondents' favor as it "turns on agency knowledge, and specifically whether the agency used special expertise or competence in the field to develop the challenged regulation" (Matter of NYC C.L.A.S.H., Inc. v. N.Y. State Off. of Parks, Recreation & Historic Preserv., 27 N.Y.3d 174, 184 [2016]). Respondents assert the Boreali factors lie in their favor. Respondents pray the Court deny the relief sought in the Petition.

Petitioners replied and reiterated their arguments. The Court held oral arguments on January 5, 2023.

Discussion:

At the outset, the Court must address the Respondents' motion to dismiss. The Notice of Motion simply states that Respondents seek an order of the Court "dismissing all portions of the Petition and Complaint seeking relief pursuant to CPLR §3001 and/or Article 78 relief" (*see* Notice of Motion, Doc. No. 38). While the Answer lists "objections in point of law" without any explanation (*see* Answer, Doc. No. 37, ¶¶7-14), the supporting Memorandum of Law solely addresses the merits of the Petition (*see* Memorandum of Law, Doc. No. 39). The Court deems the motion to dismiss abandoned, denies to the extent necessary, and shall address the merits of the Petition. The Court further notes that for reasons detailed below, the Respondents acted outside of their legislative grant of authority and the 120-day statute of limitations is inapplicable (*see* NYPERB v. Bd. of Ed. Of the City of Buffalo, 39 N.Y.25 86, 93 [1976]; *see also* Foy v. Schechter, 1 N.Y.2d 604 [1956]).

Petitioners seek a declaration that 10 NYCRR §2.61, entitled “Prevention of COVID-19 transmission by covered entities”, mandating that certain medical professionals be “fully vaccinated”, as that term is defined, against COVID-19, is null, void, and of no effect as it is an *ultra vires* act of the New York State Department of Health. Petitioners assert that the Mandate is preempted by certain sections of the Public Health Law. Respondents oppose and assert that general grants of power contained within the Public Health Law permit Respondents to impose the subject Mandate. “[I]t is a commonplace of statutory construction that the specific governs the general” (Morales v. TWA, 504 U.S. 374, 384 [1992]; *see also* Strategic Risk Mgt., Inc. v. Fed. Express Corp., 253 A.D.2d 167, 172 [First Dept. 1999]). The Commissioner is specifically prohibited from implementing a mandatory immunization program for adults and children, “except as provided in section twenty-one hundred sixty-four and twenty-one hundred sixty five” of the Public Health Law (Public Health Law §206(1)(1)). An identical prohibition on mandatory immunization programs is found in Public Health Law §613. Public Health Law §2164 covers children attending day care through high school (*see* Public Health Law §2164(1)(a) and requires immunization for “poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, and hepatitis B” (Public Health Law § 2164(2)(a). Boosters are detailed in subparagraph b of said paragraph (*ibid*, sub. b). Subparagraph c covers Meningococcal Disease (*ibid*, sub. c). Public Health Law §2165 covers college students and requires immunization for “measles, mumps and rubella” (Public Health Law §2165). COVID-19 or coronaviruses generally are not covered by any of the aforementioned sections. Respondents are clearly prohibited from mandating any vaccination outside of those specifically authorized by the Legislature. The sections cited by Respondents provide nothing more than general grants of power. Reading those sections in the manner urged

by Respondents would render Public Health Law §§206, 613, 2164, and 2165 meaningless. “It is well settled that in the interpretation of a statute we must assume that the Legislature did not deliberately place a phrase in the statute which was intended to serve no purpose” (In re Smathers' Will, 309 N.Y. 487, 495 [1956]). Public Health Law §§206, 613, 2164, and 2165 thus create a ceiling, limiting what Respondents may do, not a floor demarking the base from which to start. Even without this analysis, the Court of Appeals has already defined the limitations of Respondents’ authority regarding vaccine mandates. “[T]he legislature intended to grant NYSDOH authority to oversee voluntary adult immunization programs, while ensuring that its grant of authority would not be construed as extending to the adoption of mandatory adult immunizations” (Garcia at 620). The Mandate, 10 NYCRR §2.61, is beyond the scope of Respondents’ authority and is therefore null, void, and of no effect, and Respondents, their agents, officers, and employees are prohibited from implementing or enforcing the Mandate.

The Court does not believe Boreali is applicable to the instant matter as this is not a case where DOH acted in some gray area, but will nonetheless address them. DOH blatantly violated the boundaries of its authority as set forth by the Legislature. Even so, the Boreali factors do not lay in favor of Respondents. The first factor, whether Respondents “operated outside of its proper sphere of authority” (Boreali at 12) clearly weighs against Respondents as they violated Public Health Law §§206, 613, 2164, and 2165. Similarly, the second factor, whether Respondents engaged in “interstitial” rule-making (*ibid* at 13) weighs against Respondents as they violated Public Health Law §§206, 613, 2164, and 2165. Clearly Respondents did not “fill in” some missing area, but acted contrary to statute. Concerning the third factor, whether the Legislature has failed to act (*ibid*), this record is replete with COVID-19 Legislative proposals. The fourth Boreali factor, special expertise in the field (*ibid* at 13-14) is implicated as this is a

health-related proposal, but for reasons set forth below, it is clear such expertise was not utilized as the COVID-19 shots do not prevent transmission.

Respondents fare no better under the “arbitrary and capricious” standard of Article 78. “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (Pell v. Bd. of Ed. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Cnty., 34 N.Y.2d 222, 231 [1974]). The Mandate is entitled “Prevention of COVID-19 transmission by covered entities” (10 NYCRR §2.61). In true Orwellian fashion, the Respondents acknowledge then-current COVID-19 shots do not prevent transmission (*see* Summary of Assessment of Public Comment, NYSCEF Doc. No. 7, p. 25). The Mandate defines, in the loosest meaning of the word, “fully vaccinated” as “determined by the Department in accordance with applicable federal guidelines and recommendations” (*ibid*). “[I]t is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning” (Gawron v. Town of Cheektowaga, 117 A.D.3d 1410, 1412 [Fourth Dept. 2014], *citing* Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583 [1998]). A term which is defined at the whim of an entity, subject to change without a moment’s notice contains all the hallmarks of “absurdity”<sup>1</sup> and is no definition at all. In the alternative, the Court finds the Mandate is arbitrary and capricious.

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<sup>1</sup> Absurdity – 1) the quality or state of being absurd; 2) something that is absurd - <https://www.merriam-webster.com/dictionary/absurdity>

Absurd – 1) ridiculously unreasonable, unsound, or incongruous; 2) having no rational or orderly relationship to human life; 3) dealing with the absurd (the state or condition in which human beings exist in an irrational and meaningless universe and in which human life has no ultimate meaning) - <https://www.merriam-webster.com/dictionary/absurd>

Petitioners further seek attorneys' fees, costs, and disbursements of the action pursuant to CPLR §8101 and any other applicable statutory, common law or equitable provision. The Court shall permit the Parties to submit a concise memorandum of law concerning the award of attorneys' fees pursuant to Article 86 of the CPLR and any other relevant provision of law. Petitioners' counsel shall include with her submission an affirmation of fees supporting her request. Petitioners' submission shall be due on or before January 27, 2023, the Respondents shall file their submission on or before February 3, 2023.

**NOW, THEREFORE**, upon reading and filing the papers with respect to the Petition and the Motion, the arguments, and due deliberation having been had thereon, it is hereby


**ORDERED**, that the motion to dismiss brought by Respondents is DENIED; and it is further

**ORDERED**, that the relief sought by the Petition seeking a declaration that the Mandate, 10 NYCRR §2.61, as being beyond the scope of Respondents' authority and is therefore null, void, and of no effect, so that the Respondents, their agents, officers, and employees are prohibited from implementing or enforcing the Mandate is GRANTED; and it is further

**ORDERED**, that the Court reserves on Petitioners' request for attorneys' fees, costs, and disbursements and shall make a determination on said request upon the filing of papers as set forth hereinabove.

Dated: January 13, 2023

ENTER.

  
HON. GERARD J. NERI, J.S.C.

# EXHIBIT 2

**Appellate Division, Fourth Judicial Department**

**CA 23-00161**

PRESENT: WHALEN, P.J., SMITH, PERADOTTO, LINDLEY, AND CURRAN, JJ.

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MEDICAL PROFESSIONALS FOR INFORMED CONSENT, INC., KRISTEN ROBILLARD, M.D., ZARINA HERNANDEZ-SCHIPPLICK, M.D., MARGARET FLORINI, A.S.C.P., OLYESYA GIRICH, RT (R) AND ELIZABETH STORELLI, R.N., PETITIONERS-PLAINTIFFS-RESPONDENTS,

V

MARY T. BASSETT, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF HEALTH FOR STATE OF NEW YORK, KATHLEEN C. HOCHUL, IN HER OFFICIAL CAPACITY AS GOVERNOR OF STATE OF NEW YORK AND NEW YORK STATE DEPARTMENT OF HEALTH, RESPONDENTS-DEFENDANTS-APPELLANTS.

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Respondents-defendants-appellants having moved pursuant to CPLR 5519 [c] for a stay of enforcement in the appeal from an order of Supreme Court, Onondaga County, dated January 13, 2023,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is hereby ORDERED that the motion is granted, to the extent that Supreme Court's directive declaring 10 NYCRR § 2.61 (the Mandate), as being beyond the scope of Respondents' authority and therefore null, void, and of no effect, so that the Respondents, their agents, officers, and employees are prohibited from implementing or enforcing the Mandate, is hereby stayed pursuant to CPLR 5519 [c], on the condition that the appeal is perfected on or before March 20, 2023, and

It is further ORDERED that if so perfected by March 20, 2023, then the appeal shall be added to the term of this Court commencing May 15, 2023.

Entered: February 27, 2023

Ann Dillon Flynn  
Clerk of the Court



**Supreme Court**  
**APPELLATE DIVISION**  
**Fourth Judicial Department**  
**Clerk's Office, Rochester, N.Y.**



*I, ANN DILLON FLYNN, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original document, now on file in this office.*



***IN WITNESS HEREOF**, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this      **FEB 28 2023***

*Ann Dillon Flynn*  
\_\_\_\_\_  
*Clerk*

# EXHIBIT 3

Title: Medical Professionals for Informed Consent v. Mary T. Bassett et al, No. CA 23-00161

Speakers: Hon. Nancy E. Smith, Jonathan D. Hitsous, Hon. Stephen K. Lindley, Hon. John M. Curran, Sujata Gibson

Hon. Nancy E. Smith: Good morning. Can you unmute? It's very good. Go ahead.

Jonathan D. Hitsous: Good morning, Your Honors. This is Jonathan Hitsous for the Appellants.

I would like to advise the court that the Department of Health has just informed me that they intend to repeal the regulation that's being challenged here.

And so, the repeal is going to be done through the notice and common process, but what I can confirm is that the department no longer intends to enforce this rule and will be sending out guidance to hospital and other healthcare facility administrators [crosstalk 38:14] effect within the upcoming week.

Because there's no longer a regulation to enforce, we argue that this case has now gone moot, for the reasons this court has addressed in past related cases, including *Hensley, Pharaoh—Pharaohs* and *Sportsmen's Tavern*. We would say that this case is no lon—it's not subject to the mootness exception, because it's something, if it were it to ever arise again, it would be rather extraordinary and any regulation or other kind of [crosstalk 38:52] would be the product of changing circumstances.

And we would also ask that, consistent with the decisions that I just announced, that this court vacate the lower court's decision in this matter, particularly with reasoning in Supreme Court's decision about statutory conflict, as we noted in our briefs, doesn't just call doubt on this regulation; it coun—it casts doubt on immunization requirements that have been in effect for multiple years. This is a paradigmatic case of a situation where an unreviewable decision could spawn adverse consequences [as precedent 39:33]

Hon. Stephen K. Lindley: Counsel, Counsel, can I ask you this?

Mr. Hitsous: Of course.

Title: Medical Professionals for Informed Consent v. Mary T. Bassett et al, No. CA 23-00161

Speakers: Hon. Nancy E. Smith, Jonathan D. Hitsous, Hon. Stephen K. Lindley, Hon. John M. Curran, Sujata Gibson

Judge Lindley: The department made the decision to rescind this rule this morning?

Mr. Hitsous: This morning, Your Honor. I-I—

Judge Lindley: And—

Mr. Hitsous: —understand the court's frustration.

Judge Lindley: —there are no plans to reinstitute it a-uh-eh—in another form?

Mr. Hitsous: No, Your Honor. And it-it plans to advise administrators that, in the interim—and-and that's why I wanted to be precise, here; because the actual repealer is going to come in the upcoming weeks and months. They're going to be doing it through the SAPA process.

But in the interim, the regulation as it exists, is not going to be enforced.

Hon. John M. Curran: Mr. Hitsous. Good morning, Sir. Can you hear me okay?

Mr. Hitsous: Yes, I can. Thank you.

Judge Curran: Great. You're saying this appeal is moot; is that correct?

Mr. Hitsous: That's correct, Your Honor.

Judge Curran: Okay. So, effectively, what you're also telling us is that you're withdrawing this appeal; correct?

Mr. Hitsous: That's correct, Your Honor.

Judge Curran: Alright.

Mr. Hitsous: —that this appeal is being dismissed. There's no longer—well, let me also be clear about that. It's-it's not as simple as withdrawing the appeal, because we're also asking this court to vacate the lower court's decision, as well.

Judge Curran: If it's moot, how do we do anything, Sir?

Title: Medical Professionals for Informed Consent v. Mary T. Bassett et al, No. CA 23-00161

Speakers: Hon. Nancy E. Smith, Jonathan D. Hitsous, Hon. Stephen K. Lindley, Hon. John M. Curran, Sujata Gibson

Mr. Hitsous: Consistent with your past cases, you have adopted a reasoning where you reserve the power to vacate a decision that is unreviewable for mootness, from spawning adverse consequences for precedent.

You've found that recently, in *Hensley*, that's 206 A.D.3d 1655; in *Pharaohs*, that's 197 A.D.3d 1010, in circumstances similar to this, also involving challenges to executive action in response to COVID.

Judge Curran: Mr. Hitsous, that's all well and good, Sir, but if you're telling this court that you're withdrawing this appeal and if the Respondents so stipulate, this appeal is over; correct?

Mr. Hitsous: Your Honor, so, that's why I-I backed up for a second, because we are still asking this court to vacate the Supreme Court's decision.

Judge Lindley: We'll-we'll check into that and see if we can do that; okay?

Judge Lindley: Counsel, I just want to make it—I just want to make sure that we're clear. You're saying that, as of right now, as we speak, healthcare workers, there is no vaccine requirement for healthcare workers in the State of New York, as we speak right now?

Mr. Hitsous: As we speak right now, the department is planning on announcing that, but I think your statement is accurate, Your Honor. The department will no longer be enforcing the requirement [inaudible 42:17].

Judge Smith: Is that-is that a yes?

Mr. Hitsous: I think we could say yes. Fair enough, Your Honor, yes.

Judge Smith: Thank you.

Mr. Hitsous: And so, if there are any other questions with regard to this, we would ask that this court vacate Supreme Court's decision, because it's now unreviewable for mootness.

Title: Medical Professionals for Informed Consent v. Mary T. Bassett et al, No. CA 23-00161

Speakers: Hon. Nancy E. Smith, Jonathan D. Hitsous, Hon. Stephen K. Lindley, Hon. John M. Curran, Sujata Gibson

Judge Smith: Thank you.

Mr. Hitsous: Thank you.

Judge Smith: I know, this has-this has been a kind of threw you for a loop, right?

Judge Lindley: We're breaking news live and in an adult division.

Judge Curran: Apparently so.

Good morning, Counselor.

Sujata Gibson: Good morning, Your Honors. May it please the court, Sujata—

Judge Curran: Will you accept the State's offer to with—stipulation to the withdrawal of the appeal?

Ms. Gibson: Not if this court is then going to rule on their new argument that the lower court's decision should be vacated. I would stipulate to a complete withdrawal and this court passes no judgment, but not on the terms proposed by Counsel.

I will say that the case law concerning mootness does not—does not countenance these late actions by the party that is—arguing their case, when they voluntarily cease an activity that's been challenged and struck down as beyond their authority and arbitrary and capricious, which has impacted so many people.

Thirty-four thousand healthcare workers have been unable to work for the last two years.

Judge Lindley: With—how's that going to change if, um, if this is moot, you're asking us to strike down a regulation that's no longer in effect. It's not going to affect what has happened to the healthcare workers in the past. We generally don't strike down laws that are no longer in existence.

Ms. Gibson: Well, Your Honor, it's already been struck down. So, the question before the court—and—and none of this is in the briefs—all of this

Title: Medical Professionals for Informed Consent v. Mary T. Bassett et al, No. CA 23-00161

Speakers: Hon. Nancy E. Smith, Jonathan D. Hitsous, Hon. Stephen K. Lindley, Hon. John M. Curran, Sujata Gibson

new information. The question before the court is whether to affirm the lower court's decision or not.

Um, and I think that there are important points of law, there, that will protect against this happening in the future. And it is incorrect to say that all of these other regulations will be impacted. This is the regulation that will be impacted.

The Department of Health didn't have the authority to pass a vaccine mandate; it's clearly stated in the public health law, but it also significantly interferes with the activities of tens of thousands of people and millions of people impacted by the crisis that it's caused to our staffing in the hospitals. And that is a separation of powers issue.

But it also, then violates the spirit and letter of the New York State Human Rights Law. There is nothing in the Human Rights Law that says healthcare workers are exempted from religious accommodation protection.

And yet, the Department of Health waded into this area with, uh, with no consideration for their religious rights, with comments in the record that they removed the religious exemption, because they don't think that these religious beliefs are valid. That's what Governor Hochul said the reason was.

And there's nothing in the record to support a decision to the contrary. Not only that, but the department, when they enacted this as a permanent regulation, then, admitted even in their own regulatory impact statement, that this is an arbitrary and capricious—that—that it's the—the vaccine does not stop transmission.

And yet, the purpose of the regulation was to stop transmission to vulnerable populations and that was the stated purpose, in the title. And so, the lower court properly held that that was arbitrary and capricious.

Because the State Administrative Procedures Act requires that, if the department is going to rely on any kind of science—this is not a question of whose science is better. They didn't put any science

Title: Medical Professionals for Informed Consent v. Mary T. Bassett et al, No. CA 23-00161

Speakers: Hon. Nancy E. Smith, Jonathan D. Hitsous, Hon. Stephen K. Lindley, Hon. John M. Curran, Sujata Gibson

in their regulatory impact statement. They have to put that in the needs and benefits section.

Judge Lindley: Right. This is-this is, um, this goes to the merits of it. But on another issue, Judge Nery awarded you attorney's fees; correct?

Ms. Gibson: Uh, that w-has been reserved.

Judge Lindley: He's reserved on the fees?

Ms. Gibson: Yes, Your Honor. But it's briefed, but the judge reserved until this court made its decision.

Judge Lindley: Okay.

Judge Smith: Thank you.

Ms. Gibson: Uh, ther-uh, and Your Honors, if I may, there's, um, there is another point about mootness that I think is important. This is not the first time that the Department of Health has done this, where they suddenly repeal, at the-the last hour and then say, "Let's vacate this problematic lower court decision."

And-and in this case, they haven't even repealed. You know, that the assurances of the counsel, I-I think, uh, must be tempered by what he originally said, which is, "This still has to go through the rule-making process of—

Judge Curran: Counselor, wh-but I'm really stuck on this. Let's assume the Department of Health had rescinded this rule right the moment you commenced your proceeding, your action. Your action proceeding would have been mooted. The court could not take action, you know, just disable controversy; correct?

Ms. Gibson: Respectfully, Your Honor, I disagree. Under the Doctrine of Mootness, voluntary cessation is not a grounds for mootness, for precisely that reason, because otherwise—

Judge Curran: [Which is the 47:08] argument for us acting on this appeal, nevertheless?



Title: Medical Professionals for Informed Consent v. Mary T. Bassett et al, No. CA 23-00161

Speakers: Hon. Nancy E. Smith, Jonathan D. Hitsous, Hon. Stephen K. Lindley, Hon. John M. Curran, Sujata Gibson

Ms. Gibson: I don't know that it's necessarily moot. I think we would stipulate to withdraw it, if this court were to take no further action to upset the lower court's ruling.

But it's-it is voluntary cessation and it is capable of repetition. Uh, the Department of Health has, you know, enacted these—through these emergency powers over and over again and then a-a permanent regulation. And we're only now able to review this in court.

It's taken years of litigation to get here and if they can keep doing this every time there's a new, you know, flu vaccine mandate they want to pass or COVID. You know, if they want to put in another COVID vaccine mandate or if they want to do the next pandemic, you know, the next, uh, uh, vaccine.

This will happen again and these people have already—their lives have been ruined. They have lost everything and we just want to prevent that from happening, again.

So, to the extent that the lower court's decision can stand, and the State wants to withdraw their appeal, we have no issue with that. But, to the extent that new rulings are going to upset the protection that was afforded by the lower court's ruling, uh, we would object. We do not believe that this is a moot case.

Judge Smith: Thank you.

Ms. Gibson: Thank you, Your Honors.

# EXHIBIT 4



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETTIA JAMES  
ATTORNEY GENERAL

BARBARA D. UNDERWOOD  
SOLICITOR GENERAL  
DIVISION OF APPEALS & OPINIONS

May 25, 2023

Hon. Ann Dillon Flynn  
Clerk of the Court  
New York Supreme Court  
Appellate Division – Fourth Department  
M. Dolores Denman Courthouse  
50 East Avenue, Suite 200  
Rochester, New York 14604

Re: *Med. Prof'ls for Informed Consent v. Bassett*  
A.D. No. CA 23-00161

Dear Ms. Dillon Flynn,

I represent the appellants in the above-referenced matter, which was argued on May 24, 2023. In accordance with 22 N.Y.C.R.R. § 1000.15(e), appellants respectfully seek leave to offer the attached post-argument submission. During argument, I stated that I expected that in the near future, the New York State Department of Health (“DOH”) would advise healthcare facility administrators by letter that it will cease enforcing 10 N.Y.C.R.R. § 2.61. As confirmation of my statement, I am attaching a letter from DOH to healthcare facility administrators, dated May 24, 2023, advising that “[e]ffective immediately,” DOH would no longer enforce § 2.61 prospectively.

Respectfully submitted,

  
JONATHAN D. HITSOUS  
*Assistant Solicitor General*

Via NYSCEF:

Sujata Sidhu Gibson, Esq.,  
GIBSON LAW FIRM, PLLC  
*Counsel for Respondents*  
120 E. Buffalo Street  
Suite 2  
Ithaca, New York 14850



## Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

May 24, 2023

DHDTC DAL  
NH: DAL 23-09  
DHCBS: DAL #23-02  
DACF: DAL # 23-22

Dear Chief Executive Officers, Nursing Home Operators and Administrators, Adult Care Facility Administrators, Home Care and Hospice Administrators, and Local Health Department Commissioners/Directors:

On April 18 and 19, 2023, the Food and Drug Administration ("FDA") and the Centers for Disease Control and Prevention ("CDC"), respectively, updated and simplified their COVID-19 vaccine guidance and amended authorizations and recommendations to allow the current bivalent mRNA COVID-19 vaccine to be used in place of the original monovalent mRNA COVID-19 vaccine primary series. In addition, on May 1, 2023, the Federal Government announced that the United States Department of Health and Human Services will start the process to end their vaccination requirements for healthcare facilities certified by the Centers for Medicare and Medicaid Services.

At this time, the New York State regulatory requirement 10 NYCRR Section 2.61 (Prevention of COVID-19 Transmission by Covered Entities - 10 NYCRR Section 2.61) that personnel in covered entities be fully vaccinated against COVID-19 is being recommended for repeal by the New York State Department of Health ("the Department") subject to consideration by the Public Health and Health Planning Council ("PHHPC"). Effective immediately, the Department will cease citing providers for failing to comply with the requirements of 10 NYCRR Section 2.61 while the repeal is under consideration by PHHPC. The Department may, however, continue to seek sanctions against providers based on previously cited violations that allegedly occurred.

Healthcare facilities licensed under Article 28 and programs licensed under Article 36 and under Article 40 of the Public Health Law (PHL) and adult care facilities licensed under Article 7 of the Social Services Law (SSL) and regulated by the Department of Health, should individually consider how to implement their own internal policies regarding COVID-19 vaccination while remaining in compliance with applicable state and federal laws.

Questions or concerns concerning this DAL can be addressed to [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov), [covidnursinghomeinfo@health.ny.gov](mailto:covidnursinghomeinfo@health.ny.gov), [covidadultcareinfo@health.ny.gov](mailto:covidadultcareinfo@health.ny.gov), or [covidhomecareinfo@health.ny.gov](mailto:covidhomecareinfo@health.ny.gov) based on the specific covered entity.

Sincerely,

Eugene P. Heslin, MD, FAAFP  
First Deputy Commissioner and Chief Medical Officer

# EXHIBIT 5

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

-----X

MEDICAL PROFESSIONALS FOR  
INFORMED CONSENT, et al.

*Petitioners-  
ndents*

**Index No. CA 23-00161**

-against-

MARY T. BASSETT, et al,

*Respondents-  
Petitioners*

----- X

STATE OF NEW YORK    )  
                                  ) SS.  
COUNTY OF NASSAU    )

JAMIE SCHER, Esq., being duly sworn, deposes and says:

1. I make this affidavit in support of Petitioner-Respondents' motion to vacate the stay of the Decision and Order below pending this court's final disposition of this appeal, and in support of Petitioners'



opposition to Respondents' new arguments to permanently vacate the lower court decision.

2. I am an attorney duly licensed in the State of New York. I am part of a team of attorneys who represent hundreds of healthcare workers in the State of New York, some of whom are members of Medical Professionals for Informed Consent ("MPIC"), lead Petitioner-Appellee in this action.

3. One issue that my team and I have been assisting MPIC members with is addressing the unlawful religious accommodation policies adopted by various healthcare facilities to implement the restrictive vaccine mandate adopted by the New York State Department of Health (the "Department").

4. Outrageous stories began pouring in. For example, at Stony Brook Hospital, New York State's flagship public hospital system, employees were being called in for religious interrogations, in which their faith was insulted, and then they were summarily fired.

5. Next up were the futile unemployment hearings. At the direction of Governor Hochul, healthcare workers terminated for failing to take the vaccine, even those who had had approved religious



accommodations before the vaccine mandate removed the possibility of religious accommodation, were categorically denied unemployment compensation. The Department of Labor's ("DOL's") guidance was even updated to reflect this position, stating in their FAQ:

**If a worker refuses to get vaccinated, will they be eligible for UI benefits?**

Like all UI claims, eligibility will depend on the circumstances as each claim is unique and reviewed on a case-by-case basis. Workers in a healthcare facility, nursing home, or school who voluntarily quit or are terminated for refusing an employer-mandated vaccination will be ineligible for UI absent a valid request for accommodation because these are workplaces where an employer has a compelling interest in such a mandate, especially if they already require other immunizations. Similarly, a public employee who works in a public setting and is subject to a local government mandate to submit proof of vaccination or negative testing may be disqualified from the receipt of UI if they refuse to get vaccinated or tested. In contrast, a worker who refuses an employer's directive to get vaccinated may be eligible for UI in some cases, if that person's work has no public exposure and the worker has a compelling reason for refusing to comply with the directive.

*Unemployment Insurance Top Frequently Asked Questions*, N.Y. State Dept of Labor, <https://dol.ny.gov/unemployment-insurance-top-frequently-asked-questions> (Last visited June 6, 2023).

6. The DOL takes the position that denial of accommodation based on "undue hardship" because of the Mandate's requirement that no unvaccinated employee can work in person or around colleagues or patients is a valid reason to deny benefits, even if an employee had a sincerely held religious opposition to the vaccine.

7. Some unvaccinated healthcare workers (including MPIC members) did receive unemployment benefits initially, but recently, the DOL has started to go after them to repay what they received, on the ground that the payments were made in error since they are healthcare workers and should not be allowed to receive compensation pursuant to the DOL's categorical rules.

8. If this Court lifts the stay, these employees should be able to challenge the DOL's demand for repayment, since they would not have been terminated based on a lawful regulation. This is time-sensitive, and many of these clients, some of them MPIC members, may lose their chance to effectively challenge the demand for repayment if the stay is not lifted soon.

9. I have also been assisting healthcare workers to achieve settlements to at least get monies owed, for example, pensions, paid time off and bonuses that were improperly withheld when they were terminated for noncompliance with the Mandate.

10. A sticking point in settlement discussions was the Mandate – employers take the position that the employees violated a valid state regulation by not being vaccinated against Covid-19. Even those

employees who were *already working remotely* were denied accommodation and payment of monies owed, on the ground that “they may have to come into the hospital sometime...” so they could not be accommodated under the Mandate. This is incorrect, many of these employees worked from different states, and have never once had to come in person to the facility in the last ten years.

11. After the May 24, 2023 Court date, at which Appellants announced the Mandate was being repealed, and promised that there was no longer a Mandate governing healthcare workers, I reached out to counsel at Northwell Health.

12. I respectfully submit as **Exhibit 1** a true and accurate copy of an email response from the attorney for Northwell Health, a person I have been in touch with for more than a year, in the hopes of settling claims for my clients (many of whom are also members of MPIC) who were improperly terminated or suspended from positions at Northwell because of the Mandate. The four-sentence email I received back is the most telling in that it comes from the attorney who represents the biggest hospital conglomerate in the State of New York. It states: “We are of course aware of these developments. But neither the federal nor New

York State recent repeals invalidate the respective rules *nunc pro tunc*. Accordingly, our settlement position remains the same.”

13. Thus, as Northwell’s attorney points out, if the lower court’s decision is vacated, then these employees rights to settle improper terminations is eviscerated as well, since the state’s voluntary repeal is only prospective, not retroactive, whereas the lower court’s decision held that the Department never had the authority to issue the Mandate in the first place.

14. Not only is Northwell unwilling to settle claims, they are still unwilling to rehire unvaccinated workers, claiming that the Mandate is still in effect.

15. They are not alone.

16. Some employers began immediately rehiring the sorely needed workers.

17. But many refuse to do so until the Mandate is actually repealed.

18. Even the state-run facilities, which are under the control of the executive branch, are unwilling to rehire unvaccinated people at this point. Just yesterday, Stony Brook University Hospital responded to a

request for reinstatement by stating: "...we are still reviewing and assessing those reports and are awaiting official guidance on how to proceed..." Stony Brook is New York State's flagship university and is under the control of the Appellant-Respondents. Clearly, Appellants are not taking the position that their attorney did in Court since their own hospitals are still enforcing the Mandate.

19. Some private healthcare facilities are also unwilling to reinstate unvaccinated employees, or to consider religious accommodations as required by the New York State and New York City Human Rights laws.

20. The Department's guidance may be to blame for this. The May 24, 2023, letter [NYSCEF No. 14], states that the Mandate is being "recommended" for repeal (but is not repealed). Though the Department mentions that it will not be seeking penalties for noncompliance while the Council considers the Department's recommendation to begin the repeal process, it also warns facilities that are licensed by the Department that they are still individually required to follow state law, which presumably includes the Mandate itself since that hasn't been

repealed. Moreover, the announcement confirms that the Department will continue to seek penalties and sanctions for alleged past violations.

21. Human Resources from the New York Blood Center similarly sent an email out yesterday stating: "...vaccination against Covid-19 remains a lawful condition of employment with NYBC...."

22. A current employee of Rochester Regional Healthcare emailed me today alerting me that she was on a zoom call where they were told it would be 'months' before they would be able to welcome back unvaccinated co-workers, since the Mandate will not be officially repealed for some time.

23. A text from one of the top union representatives from the New York State Correctional Officers and Police Benevolent Association, Inc. similarly alerted one of my client's this week that they need an official announcement that the Mandate is repealed before they will rehire unvaccinated health care personnel.

24. These are just a few examples of the many healthcare facilities that do not believe they are empowered to rehire unvaccinated people until the Mandate is officially repealed, which may take months, if it occurs at all.

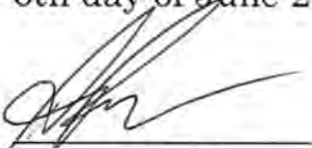


25. We urge the court to vacate the stay of the Decision and Order below, and respectfully request that the court expeditiously decide or dismiss this appeal without disturbing the lower court's Decision and Order. The case is not moot, and the rights and interests of thousands of healthcare workers, including many MPIC members, is directly at stake.

Dated: June 6, 2023

  
\_\_\_\_\_  
Jamie Scher, Esq.

Sworn to before me this  
6th day of June 2023.

  
\_\_\_\_\_  
Notary Public



# EXHIBIT 1



From: Rose, Joshua JRose@northwell.edu  
Subject: RE: Mandates are over  
Date: Jun 5, 2023 at 7:58:55 AM  
To: Jamie Scher jamie@myerandscher.com  
Cc: Sweeney, Helen hsweeney2@northwell.edu

External (jrose@northwell.edu)

[Report This Email](#) [FAQ](#) [GoDaddy Advanced Email Security](#). Powered by [INKY](#)

Good morning Jamie,

Hope you had a nice weekend. We are of course aware of these developments. But neither the federal nor New York State recent repeals invalidate the respective rules *nunc pro tunc*. Accordingly our settlement position remains the same.

Thanks and have a nice day.

Josh

**Joshua D. Rose** | Vice President  
Office of Legal Affairs  
Northwell Health

2000 Marcus Avenue, New Hyde Park, New York 11042  
T 516.321.6625 | F 516.491.2313 | \* [jrose@northwell.edu](mailto:jrose@northwell.edu)

**Northwell Health**  
Visit us at [Northwell.edu](http://Northwell.edu)

# EXHIBIT 6

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

-----X

MEDICAL PROFESSIONALS FOR  
INFORMED CONSENT, et al.

*Appellees-Plaintiffs.*

**Index No. CA 23-00161**

-against-

MARY T. BASSETT, et al,

*Appellants-  
Defendants.*

----- X

STATE OF NEW YORK    )  
                                  ) SS.  
COUNTY OF TOMPKINS )

OLESYA GIRICH, RT (R) being duly sworn, deposes and says:

1. I am a named Plaintiff (Appellee) in this case.
2. I make this affidavit in support of our motion to vacate the stay of the Decision and Order below pending this court's final disposition of this appeal, and to clarify that this case is not moot, because if this

Court vacates the lower court's decision, my rights and interests will be actively harmed.

3. I worked at Upstate Medical University for twelve years before the Mandate took effect, both as a Radiologic Technologist and CT Technologist in the emergency room of the state-run teaching hospital.

4. I applied for religious accommodation from the Mandate due to my sincerely held religious beliefs but was denied because the Mandate does not allow for any in-person work.

5. Because I could not take the vaccine without violating my sincerely held religious beliefs, I was suspended without pay, but able to retain my health insurance benefits.

6. On or about December 7, 2022, while the lower court case was pending a decision, I was terminated by my state employer.

7. My understanding is that if this Court upholds the lower court decision, I may be able to reopen that termination and be eligible for back-pay and the paid time off that my employer withheld from me.

8. I am also pursuing a New York State Human Rights Law claims against Upstate Medical, which is a state-run hospital, for failure to accommodate me.

9. However, if the lower court's declaratory relief is vacated, my claims are significantly undermined, as the State can just argue that they had no choice given the law, even if I could be safely accommodated under the statutory criteria required by the New York State Human Rights Law. My rights and interests are thus actively impacted by this proceeding, and this case is not moot.

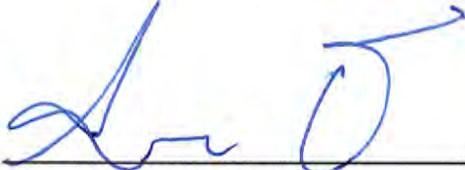
10. Another issue is that even though the Appellants claimed that the Mandate is "no longer being enforced", Upstate Medical, which is operated by and controlled by the Appellants themselves, refuses to rehire unvaccinated employees. Upon information and belief, their position is that the Mandate is not actually repealed, so they cannot.

11. I have now been unable to receive any pay or compensation for over a year and a half. I even lost my health insurance.

12. I need to return to work. My family is depending on me and we can't hold out much longer.

13. I respectfully pray that this Court lifts the Mandate so that I can return to work. I further pray that the Court can decide the appeal swiftly, or, at least leave the lower court's declaratory relief in place so that I can effectively pursue my claim for back pay.

Dated: June 6, 2023



Olesya Girich

Sworn to before me this  
6th day of June 2023.



Notary Public

**Sujata S. Gibson**  
**Notary Public, State of New York**  
**No. 02GI6291641**  
**Qualified in Tompkins County**  
**Term Expires October 15, 2023**

# EXHIBIT 7

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

----- X

MEDICAL PROFESSIONALS FOR INFORMED  
CONSENT, et al.

*Petitioners-Respondents*

**Index No. CA 23-00161**

-against-

MARY T. BASSETT, et al,

*Respondents-Petitioners*

----- X

STATE OF NEW YORK     )  
                                          ) SS.  
COUNTY OF ALBANY     )

EDWARD J. GREENE JR., ESQ., being duly sworn, deposes and says:

1. I make this affidavit in support of Petitioner-Respondents’ motion to vacate this court’s order in the above proceeding, staying the Decision and Order below pending this court’s final disposition of this appeal.

2. I am General Counsel for the New York State Public Employees Federation, AFL-CIO (“PEF”). PEF is a labor union representing approximately 50,000 professional, scientific, and technical employees in the State of New York, including thousands of nurses employed in State hospitals and facilities, and more than thirty of whom remain suspended without pay.

3. These same PEF members continue to face possible termination for alleged violation of the at-issue DOH vaccine mandate which, ironically, DOH has represented it need not and will not enforce.



4. In light of the representations of the Respondents-Petitioners' Counsel at oral argument, that the vaccine mandate is no longer needed and will no longer be enforced, there is no longer any need for the stay, and no risk of harm to Respondent-Petitioners or the public in its absence.

5. Conversely, as discussed in greater detail below, there is significant and irreparable harm to dozens of PEF's members who remain suspended without pay and face termination of their employment for alleged past violation of the vaccination mandate, many with no means of recovering backpay, regardless of the outcome of this appeal. To be clear, every day that the Stay remains in place, dozens of PEF members are unable to work and are losing a day of pay that they cannot recover.

6. Further, thousands of PEF members are currently working in hospitals and facilities that are dangerously understaffed, in part, as a direct result of the at-issue vaccine mandate. These facilities employing PEF members either believe they are unable, or are simply unwilling, to hire or rehire unvaccinated staff due to the uncertainty of the outcome of this litigation. As a result, PEF's members are working longer hours, unable to get time off, and are working in dangerously understaffed workplaces.

7. Based on conversations that I have had with agencies employing PEF members, and conversations that my staff and colleagues have had with agency human resources and labor relations personnel, the State University of New York, their hospitals, and Roswell Park Cancer Institute remain unable or unwilling to take a position on whether unvaccinated staff will be rehired or allowed to return to work in those facilities.

8. While the State took the position at oral argument before this court that the litigation has been rendered moot by their decision to no longer enforce the regulation, that is clearly not the case.

9. Dozens of PEF members have pending disciplinary actions and remain suspended without pay based on their failure to be vaccinated in violation of the DOH vaccine mandate. Their careers and livelihoods are very much dependent upon the outcome of this litigation and the legality of the at-issue DOH regulation and, it appears, the agencies and facilities employing these members similarly need an answer to this question.

10. It is also unclear, based on the position expressed by the State at oral argument and communications subsequently issued from DOH, whether the DOH mandate will be rescinded retroactively or prospectively. *See* NYSCEF Doc. No. 14 (noting that DOH will “cease citing providers for failing to comply” moving forward but will “continue to seek sanctions against providers based on previously cited violations that allegedly occurred”). This is not an academic or hypothetical question, but a question that will directly and immediately impact on dozens of PEF members, but will also likely impact on thousands of healthcare workers around the State.

11. For all of the reasons discussed herein below, we urge this court to vacate its Stay of the Decision and Order below, as that Stay allows a number of State hospitals to continue to suspend unvaccinated PEF members, without pay, and to continue disciplinary arbitrations against these same members, seeking to terminate their employment in State hospitals.

12. PEF and the State of New York are parties to a collective bargaining agreement (“CBA”) that governs any disciplinary action brought against PEF members, including thousands of healthcare workers employed in state-run hospitals. Hundreds of those PEF members have been threatened with termination, terminated, or are still at risk of imminent termination, due to the New York State Department of Health (“NYSDOH”) mandate.

13. Article 33 of PEF’s CBA with the State provides a grievance process to resolve disputes regarding the proposed discipline of PEF members. This contractual disciplinary process culminates in binding arbitration, if a case cannot be resolved by settlement.

14. Subsection 33.4(a) of the CBA also allows the employing agencies and facilities to suspend members without pay when the “employee’s continued presence on the job represents a potential danger to persons or property or would severely interfere with operations,” pending resolution of the disciplinary grievance.

15. During the more than twelve months preceding the Decision and Order below, hundreds of PEF members were suspended without pay and issued notices of discipline, seeking their termination from employment, all for allegedly failing to be vaccinated as required by the DOH vaccine mandate at-issue in this litigation, under the aforementioned contractual process.

16. Subsequently, on January 13, 2023, the Supreme Court, Onondaga County, concluded that New York State Department of Health Regulation 2.61 (10 NYCRR Section 2.61) (“Supreme Court Order”), which mandated that certain healthcare workers be vaccinated, is unlawful as “beyond the scope of Respondents’ authority . . .”

17. The court expressly ordered “that the relief sought by the Petition seeking a declaration that the Mandate, 10 NYCRR section 2.61, as being beyond the scope of Respondents’ authority and is therefore null, void, and of no effect, so that the Respondents, their agents, officers and employees are prohibited from implementing or enforcing the Mandate is GRANTED . . .”

18. At the time that the case below was decided, on January 13, 2023, thirty-one PEF members remained suspended without pay, and each of those members was either awaiting their arbitration hearing or awaiting their arbitration awards, each based on charges of violating the DOH vaccine mandate. Twenty-four of those members were awaiting arbitration hearings, and seven more had completed arbitration hearings but were awaiting the arbitrators’ issuance of awards,

19. As discussed in greater detail below, in complete disregard and disobedience to the January 13, 2023 Supreme Court Order, most of the State’s agencies employing PEF members facing discipline for allegedly violating the DOH vaccine mandate, continued to knowingly and willfully

disregard the clear and unambiguous mandate of the court below, by continuing to enforce the invalid and unlawful regulatory vaccine mandate upon unvaccinated PEF members by continuing suspensions without pay and by continuing disciplinary proceedings seeking their termination from employment.

20. In light of the Decision and Order below, PEF sought, with some success, agreements to put most of the pending arbitrations involving the DOH vaccine mandate on hold, at least until the application for a stay was decided by this court.

21. In two of these cases however, including one in Onondaga County and another in Erie County, the State insisted on obtaining arbitration awards and, over the objections of PEF and before any stay of the Decision and Order below was issued by this court, the arbitrator upheld the unpaid suspension of the members and found just cause to terminate the members by awards dated January 27, 2023 for violation of the DOH Vaccine Mandate. Both members were terminated as a result of these awards, despite the clear prohibition in the Decision and Order below against implementation or enforcement of the DOH Vaccine Mandate.

22. Once this court granted the State's application for a stay of the Decision and Order below on February 28, 2023, rather than maintain the *status quo ante*, all of the State hospitals resumed their efforts to move forward with the remaining arbitrations, and conditioned any postponements on our members' agreement to toll back pay liability during the time between any adjournment and the decision of this court on appeal. Most of our members agreed to tolling agreements to await full and final resolution of the legality of the DOH mandate. These tolling agreements, extracted by the State agencies, presented our members with a Hobson's choice, and resulted in a number of agreements that prejudice members' rights to back pay, even if the State's regulation is ultimately determined to be unlawful and the members prevail at arbitration.

23. Further, while most of those matters have been paused, pending this court's decision on the pending State application for a stay of the Supreme Court Order, or until further notice, one case remains scheduled for arbitration on June 16, 2023. Absent vacatur of this court's stay, that case will be tried and decided without any certainty as to the status of the DOH vaccine mandate.

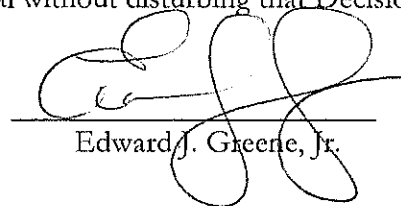
24. Accordingly, PEF's members continue to be prejudiced by the Stay, as the State's agencies continue the suspension of approximately twenty-nine unvaccinated staff without pay, all of whom continue to face potential termination for alleged violation of the same DOH Regulation 2.61 vaccine mandate that has already been found to be unlawful below, and which the State has announced it has no further need to enforce, as per its representations to this court at oral argument in this appeal.

25. Continuing the stay of the Supreme Court Order will not serve the public interest. As noted, thousands of PEF members continue to work in dangerously understaffed healthcare facilities. These shortages jeopardize patient care, and jeopardize the safety of both patients and staff. Long hours, lack of time off, and crushing workloads lead to staff burnout which, in turn, leads to more staff exiting the workplace and the profession.

26. Moreover, hundreds of PEF members who have already been terminated or left State service as a result of the State's vaccine mandate are suffering irreparable harm each day they continue to be barred from seeking any job in their field within covered facilities because of the uncertainty regarding the status of this vaccine mandate.

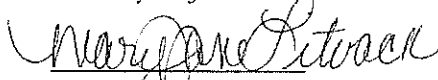
27. We urge the court to vacate the stay of the Decision and Order below, and respectfully request that the court expeditiously dismiss this appeal without disturbing that Decision and Order.

Dated: June 5, 2023



Edward J. Greene, Jr.

Sworn to before me this  
5<sup>th</sup> day of June 2023.



Maryjane Litvack  
Notary Public

**MARYJANE LITVACK**  
Notary Public, State of New York  
No. 01L16421964  
Qualified in Saratoga County  
Commission Expires September 13, 2025

# EXHIBIT 8



6. I worked through the pandemic for a year and a half before the vaccine was licensed, and never once called out sick.

7. When the Mandate was announced, I applied for religious and medical accommodation. I was denied reasonable accommodation, even though I qualify, because the Department of Health's Mandate does not allow religious accommodation and is inflexible and narrow in the conditions it will allow under the medical accommodation (I'm told basically just severe anaphylaxis will count).

8. I developed severe anxiety because of the mandate after my friend and coworker died from an adverse reaction to his second Covid-19 vaccine shot the day he took it. Even if I wanted to violate my sincerely held religious beliefs, I physically cannot.

9. I have been unable to return to my job at NYU Langone since late 2021. This has been a nightmare for my family. I have three kids in high school who depend on me.

10. I cannot begin to describe what it is like to be a father and to be shut out of work so senselessly while my family and I suffer. We have gone hungry; we have lost so much. We are anxious and desperate for relief.

11. In January, when the Supreme Court issued its ruling, I immediately applied for reinstatement.

12. But even though NYU Langone was critically short staffed and conducting interviews, they did not call me back.



13. I am clearly well qualified, having just won “security officer of the year” before the Mandate was imposed, and with no blemishes on my employment record, other than being unable to take the vaccine.

14. My union told me that my employer would not hire any of the unvaccinated employees back because there was a pending appeal, and it was unclear whether a stay would be issued. They assured me that I will be reinstated with full seniority when the legal status is clarified.

15. When the Department of Health announced last week that they were repealing the Mandate, I immediately called my union again, to talk about being reinstated.

16. My union told me that the status of the Mandate is still too uncertain. I shared the communications with them showing that the Department of Health was seeking to repeal it, but I’m told this is not sufficient, still technically, the Mandate is still in place, and so is this Court’s stay of the lower court decision.

17. I desperately need to return to work, and I cannot hold out until September or October, or whenever it is that the Mandate is actually repealed. I respectfully pray that this Court will lift the stay so that my employer will be comfortable hiring me back.

18. I ask this Court to please help me and all the others that are going through what I’ve been through, if not for me, for my family and their families too.

19. I just want to work and to support my family.

June 1, 2023  
Dated: May 30, 2023 (JKG)

Deal Hodge  
Deal Hodge

Sworn to before me this  
1 day of ~~May~~ 2023.  
June

Jacqueline K Goodwin  
Notary Public



# EXHIBIT 9

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

-----X

MEDICAL PROFESSIONALS FOR  
INFORMED CONSENT, et al.

*Appellees-Plaintiffs.*

**Index No. CA 23-00161**

-against-

MARY T. BASSETT, et al,

*Appellants-  
Defendants.*

----- X

STATE OF NEW YORK     )  
                                  ) SS.  
COUNTY OF BROOME    )

MARGARET FLORINI, MLS, ASCP, being duly sworn, deposes and says:

1. I am a one of the named Appellee-Petitioners and also President of Medical Professionals for Informed Consent ("MPIC"), the lead Appellee-Petitioner in this case.

2. I make this affidavit in support of Appellee's motion to vacate the stay of the Decision and Order below pending this court's final disposition of this appeal, and to clarify that this case is not moot, because if this Court vacates the lower court's decision, my rights and interests will be actively harmed, and the rights and interests of many of our members will be actively harmed.

3. I was a lab scientist at Ascension-Lourdes ("Lourdes") Hospital until I was suspended and then terminated for failure to violate my sincerely held religious beliefs by taking a Covid-19 vaccine.

4. I have been informed that despite the Department of Health's representations in Court, Lourdes will not rehire unvaccinated workers because they take the position that the Mandate is still in effect, as it has not actually been repealed yet.

5. As President of Medical Professionals for Informed Consent, I am also in touch with thousands of healthcare workers across the state.

6. Many hospitals are taking the same position as Lourdes, and refuse to rehire unvaccinated people until the Mandate is officially repealed

(which I am told will not be for months if it occurs at all) or until this Court lifts the stay.

7. On behalf of myself and the members of MPIC, we respectfully pray that this Court lifts the stay so that we can go back to work.

8. These frontline workers have suffered enormously, and patient care has been decimated by the loss of over 34,000 healthcare workers which was directly caused by the Mandate.

9. Attached hereto as Exhibit A and incorporated by reference is my affidavit that I submitted in opposition to the stay in January 2023.

10. I have received dozens of additional communications in the last few days from members across the state describing the escalation of their harms, which for many, are now at a crisis point.

11. For example, one member of MPIC called me in a panic. Her hospital will not reinstate her until the stay is lifted, and she was just served with an eviction notice because she has depleted every resource at her disposal after she was forced out of her field by the Mandate.

12. All of our members are desperate at this point. They were even been denied unemployment insurance, because Governor Hochul instructed the Department of Labor to deny claims to any healthcare workers who were laid off due to the Mandate.

13. Some, who were receiving unemployment, are now told they have to repay it. Upon information and belief, these determinations could be timely challenged if the stay is vacated.

14. Other members were suspended without pay for failure to comply with the Mandate, rather than terminated outright. They now face imminent disciplinary hearings to review whether the suspensions were appropriate. Upon information and belief, they could be reinstated with back pay, and their suspensions reversed if the stay is lifted in time for their hearings.

15. In addition to seeking an order lifting the stay, we respectfully want to let the Court know that our claims are not moot. Our rights and interests are directly affected by the outcome of this appeal, and by the lower court's ruling.

16. Even if the Department does eventually officially repeal the Mandate, which is not a certainty at this point, the named Appellees and our members still have claims for back pay and other relief due as well as defenses against disciplinary hearings and penalties imposed by the state that depend on whether the declaratory relief we won is upheld.

17. The Department's promise to prospectively stop enforcing the Mandate does not help us with claims and defenses against past alleged violations of the Mandate.

18. For the foregoing reasons, and the reasons set forth in the rest of these moving papers, Appellees respectfully ask this Court to vacate or lift the stay, and to decide this appeal as swiftly as possible, or in the alternative, grant Appellants' request to withdraw the appeal, but with prejudice and without vacating the lower court's ruling.

Dated: June 7, 2023

  
Margaret Florini

Sworn to before me this  
7th day of June 2023.

  
Notary Public

LAUREN E. CONRAD  
Notary Public, State of New York  
No. 01CO644467  
Qualified in Broome County  
Commission Expires Nov. 28, 2026



# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

----- X

MEDICAL PROFESSIONALS FOR INFORMED  
CONSENT, et al.

*Petitioners-Appellees,*

**Index No. CA 23-00161**

-against-

MARY T. BASSETT, et al,

*Respondents-Appellants.*

----- X

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF BROOME    )

MARGARET FLORINI, MLS, ASCP, being duly sworn, deposes and says:

1. I make this affidavit in support of Petitioners-Respondents' opposition to the motion for stay.
2. I am the President of Medical Professionals for Informed Consent (MPIC) and have received numerous letters of hardship from our organization's members.

3. Attached hereto as Exhibits 1 through 30 are true and accurate copies of just some of the letters that I received from members of MPIC to include with our submissions in opposition to the anticipated motion to stay.

4. As the letters describe, members of MPIC, both vaccinated and unvaccinated, will suffer irreparable harm if this Court stays the Supreme Court's decision.

5. In addition, if a stay is granted, New York state residents will experience a drastic escalation of what is now an undeniable critical health care staffing crisis. In the attached letters, some of our members have described the enormous impact of the vaccination mandate on the basic functioning of hospitals in our state, as well as the impact on their personal lives.

6. As President of MPIC, I am closely in touch with thousands of healthcare workers, some of whom still work in healthcare facilities around the state, and I have direct knowledge of the conditions at many covered facilities.

7. In the Binghamton area where I live, since September 2021 we have seen a dramatic increase in hospital readmissions and extended stays. Nursing homes are full and not admitting new community patients, leaving the equivalent of an entire unit's worth of patients waiting in the hospital for a nursing home placement. Our home health care agencies are not taking new referrals, even in serious cases, resulting in re-hospitalizations of previously discharged patients. (See, e.g., Exhibit 1).

8. At another Broome County hospital, we are seeing terrible delays in patient care, due to a lack of nursing, radiologic, transportation and laboratory staff, resulting in postponed procedures or procedures handled by inexperienced and often untrained staff. (See, e.g., Exhibit 3). These conditions will only worsen if a stay is granted. (Id).

9. At Buffalo General Hospital, members report that staff are overwhelmed, and few new staff can be hired. (See, e.g., Exhibit 27.) Another worker there reported that, within two weeks



of his termination, half the staff – all of whom were vaccinated – were sick with Covid. (See, e.g., Exhibit 15.)

10. Massive understaffing will become even more dire if a stay is granted. One vaccinated doctor, who also opposes the vaccination mandate, attests to the enormous impact of staff shortages caused by the mandate and the impact on patient care, as well as on the personal struggles of former hospital workers and their families to survive. (See e.g., Exhibit 2.)

11. Another MPIC member, a physical therapist, reports facilities paying 45 percent higher than the prevailing wage, in an attempt to address staffing shortages, while she cannot get a job if a stay is granted. (See, e.g., Exhibit 12.) Meanwhile, hospitals and healthcare facilities across the state are reporting a severe financial crisis, possibly from having to pay two or three times the rate for travel nurses and doctors to fill positions that we are ready, able, and willing to return to fill.

12. Terminated staff are dealing with almost unimaginable personal difficulties, which will worsen if a stay is granted. Some have disabilities (see, e.g., Exhibit 14), or have children with disabilities (see, e.g., Exhibit 9 and Exhibit 5) and are barely surviving without adequate health insurance. One of our members writes about her young child, who had a heart transplant, and now cannot receive vital and urgent follow-up care because her mother lost her health insurance due to the Mandate. (See, e.g., Exhibit 5.)

13. Too many of our members had to liquidate their retirement accounts to try to feed their families while barred from practicing their profession. (See, e.g., Exhibit 6.) Too many of our members have lost or are at imminent risk of losing their homes. (See, e.g., Exhibit 5, 17.)

14. Some of our members are trying to support their families on public benefits and suffering severe depression as they continue to be banned from practicing their profession anywhere in New York State (See, e.g., Exhibit 25 and Exhibit 27). Others have taken much lower paid jobs, often in different fields, simply to survive (See, e.g., Exhibit 13.)



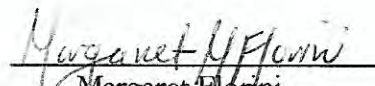
15. Many have had to take jobs out of state. If the stay is granted, many will need to permanently relocate as they are not able to wait any longer for relief.

16. Like every other unvaccinated member of MPIC, I have had Covid and now have robust and enduring protection from another bout with Covid. I do not present a direct threat to anyone.


17. Yet, our patients are being turned away at the door and sent to Pennsylvania for medical treatment. I will continue to be banned from working in a hospital if a stay is granted even though I present no risk to patients or my coworkers, and my former hospital suffers from critical understaffing. Meanwhile, my husband works three jobs to provide for us and our children.

18. The poor management of NY state has led to the deterioration of the finest healthcare system in the country. We are losing brilliant minds in medicine and academia, all of whom are finding positions in other states that uphold human rights. For the sake of the patients and communities we are no longer permitted to serve, for New York state, and for our families, no stay should be granted. We want and need to be allowed to return to our jobs.

Dated: February 2, 2023

  
Margaret Florini

Sworn to before me this  
2<sup>nd</sup> day of February 2023.

  
Notary Public  
REBECCA A. KARK  
Notary Public, State of New York  
No. 01KA6395013  
Qualified in Broome County  
Commission Expires July 22, 2023



# FLORINI EXHIBIT 1

**Elizabeth Hull, FNP-BC**

1499 Mill St  
Binghamton, NY 13903

25th January 2023

To The Appellate Division Fourth Department:

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I am writing today as a practicing family nurse practitioner who is gravely concerned with the wellbeing of our healthcare systems in NYS. I currently work for Lourdes Hospital in Binghamton, NY and the state of our units and the care provided to our patients has been severely impacted by loss of staff due to vaccine mandates. We need help.

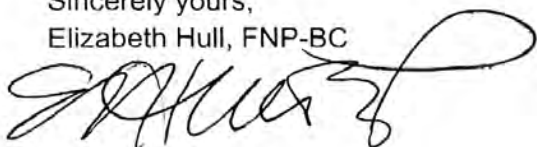
Since September of 2021, our units have been understaffed. As a result, we have had an increase in length of stay and readmissions as patients are sent home early without adequate treatment. Our home care agencies are skeletally staffed and frequently are not taking new referrals, even on critically ill cases, and this results in re-hospitalizations.

Our nursing homes locally are filled and, as a result, are not taking community admissions of patients in need of care and admissions from our 3 local hospitals are backed. This is resulting in an entire unit's worth of patients sitting in the hospital at any given time waiting for nursing home placement.

This is a never ending cycle that will not be resolved without improved staffing. We cannot afford to perpetuate these vaccine mandates at the expense of patient care. Those of us who are left are burnt out, fed up and on the verge of exiting the healthcare workforce also. You cannot afford to lose more staff in NYS!!

I have several colleagues who are waiting for the mandates to be dropped so they can return to the workforce and resume the excellent care our patients deserve. It is up to the State of New York to allow this to happen. Time is of the essence. Our patients cannot wait. Please uphold this reversal of the vaccine mandates. Thank you.

Sincerely yours,  
Elizabeth Hull, FNP-BC

A handwritten signature in black ink, appearing to read 'Elizabeth Hull', written in a cursive style.

# FLORINI EXHIBIT 2



January 26th, 2023

To: The Appellate Division Fourth Department

Dear Honorable Justices,

I am a vaccinated Physician who wholeheartedly supports the Medical Professionals for Informed Consent. I'm writing this letter to urge the court to expedite their appeal, and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13th, 2023.

I made the choice to receive a vaccine well before any mandate was ever proposed, but still I oppose any type of COVID-19 Vaccine Mandate. I took the Hippocratic Oath, and vow to respect informed consent and patient autonomy. In imposing this mandate, the state has represented healthcare workers as indentured servants with no rights to make their own healthcare decisions. But this is fundamentally wrong. These people are not just nurses, physicians, therapists, technicians, maintenance workers, etc., they are mothers, fathers, brothers and sisters. When someone comes to them with a medical treatment, such as a vaccine, they are also now patients. Patients have the right to choose; even if we disagree with their choice.

The argument that this is for the public welfare is so flawed. I believe the legal precedent originated from a mandate to limit an outbreak of smallpox in Massachusetts in 1905. That is a totally different disease, with much higher mortality and transmission. In the case of COVID-19, there is no vaccine that will effectively prevent disease or transmission. I think we all agree that the goal is to prevent a (presumably vulnerable) hospitalized patient from being exposed to a worker that has COVID. The vaccine doesn't do that. Appropriate health screening and a proper mask might.

I've seen too many people lose their career, their passion, and their ability to provide for their family for failing to accept and receive this perceived miracle of medicine. The science does not support the perception, and this isn't worth the cost to these dedicated workers.

At the hospital, we continue to struggle with staffing, and that hinders our ability to provide necessary care in a timely fashion. Patient care is actually suffering because of this unjust and unnecessary mandate. It is truly disappointing that the state decided to appeal this. It was their opportunity to let the mandate fade away. Instead, they continue to fight. It concerns me that the state, and our Department of Health, are becoming too powerful. I fear what their next mandate might be.

Respectfully,



Domenico A. Leuci, MD FACOG 1/26/23

# FLORINI EXHIBIT 3

To: The Appellate Division Fourth Department

Dear Hon. Justices

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023. I am currently a Mid-Level Provider working in Diagnostic Imaging in a hospital within Broome County, NY. Fortunately, at this current moment in time, I am able to remain employed through a medical exemption provided to me by my primary care provider. I was previously denied a religious exemption by the hospital I have privileges to practice and faced termination from my employer for my personal decision to remain unvaccinated from covid. I am one of the lucky ones. Many capable health care professionals have been unable to work due to these overreaching medical mandates.

Being able to continue to work gives me the unique experience of practicing in the "new" healthcare environment that has been the result of these overreaching medical mandates. And, I can tell you from personal observation that our hospitals are struggling. And because of this, the patients that we are treating in our communities are being put at unnecessary risk. At the hospital where I work, there are daily staffing shortages. Initially, the hospital tried to compensate for these shortages by incentivizing the remaining staff to work overtime or forgo vacation time to overcome the lack of staff. Then they looked elsewhere for traveling staff to quickly fill the need. But, overtime, these workers began to experience burnout and fatigue or the available money to compensate them dried up. What the hospital system has been left with is staff that is tired, staff that has been overworked, staff that is continuously turning over, staff that is looking out of state for better prospects. Additionally, what we are left with is patients continuously being put at increased risk, patients that aren't getting the care that they deserve, and patients that are becoming increasingly frustrated by the obvious lack of staff caring for them.

In my hospital, I have personally experienced delays in patient care due to lack of nursing staff, lack of radiologic technologist staff, lack of transportation staff, lack of laboratory staff resulting in bloodwork delays required prior to surgical procedures. I have personally had to postpone procedures until there was staff available to accommodate the patient's needs. Additionally, I have had to perform procedures with staff that are under trained, or not trained at all, assisting. This has become dangerous. Our patients deserve better.

In my opinion, this is unacceptable and also unnecessary. There are people available who are trained to provide patients with this care. There are people who wish to return to work to alleviate the staffing shortage created by these overreaching medical mandates, yet they still remain unemployed. Many of the current staff working in our hospitals, themselves, have expressed their medical choice and opted not to continue with vaccine boosters and are able to continue to remain employed. The current staff is tired and they are begging for additional resources. I see this daily. I talk to many of them about this issue and all they want is help. They want help to alleviate their own stress, and they want help to continue to provide adequate care to our patients, because in the end, that is who is really suffering due to these medical mandates. I urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

Scott MacNamee, RRA, RT (R) (ARRT)

*Scott MacNamee RRA*  
1/26/23

# FLORINI EXHIBIT 4

To Whom it May Concern,

My name is Emily. I am a registered nurse in intensive care. I had been working in a NY healthcare system since 2016 starting as a nursing aide and then becoming an RN and finding a true passion and vocation for the work that I do. I have been deeply affected by the COVID-19 pandemic and the vaccine mandates in NY. I lost my job due to the vaccine mandate and the state's deliberate attack on the religious and civil rights of its residents in December 2021. This was a strenuous time for both my husband and I in more ways than I could ever have imagined. I worked overtime every week caring for the sickest patients I have ever seen in my career during the pandemic and instead of deploying real resources and aid throughout the state the NY healthcare systems and NYSDOH decided to tear away the most valuable resource of all, its own healthcare workforce.

I was fortunate enough to be able to find work elsewhere but no matter the weekly pay I received it was not without sacrifice. I had to leave my home and family to find work in other states being away for days, weeks, even months at a time. I have since found a per diem job in Pennsylvania while still being a NYS resident, commuting to work every week and paying income tax to each state I've worked and paying for increased travel expenses on a weekly basis. I recently was looking to find another travel contract to try to buffer the increasing expenses my husband and I are facing. I attempted to get contracts in NY ever since the mandate was struck down on January 13th, 2023, but was told the hospitals are still not allowing anyone to work in the hospitals without receiving a COVID vaccine. However one healthcare system is allowing reasonable exemption such as religious exemptions in NY and that is the Mt. Sinai hospitals which is the same hospital system where thousands of nurses just went on strike in an attempt to get better pay and staffing ratio policies put into place. This is of course a hospital system closest to NYC which has been under tight control by Kathy Hochol and the NYSDOH for enforced vaccine mandates but yet all the sudden that healthcare system has no issues allowing exemptions for both medical and religious reasons; leading one to believe there have been negotiations behind closed doors to allow unvaccinated staff back to fix the root cause of the problem. But we need this for all of NY healthcare systems, not just a select few.

God bless this great country and the medical professionals suffering at the hand of anti-science tyrannical criminals.

Emily BSN, RN  
Member of Medical Professional  
for Informed Consent.

# FLORINI EXHIBIT 5



“To: The Appellate Division Fourth Department”

“Dear Hon. Justices,

I am a member of Medical Professional for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and injunction against Judge Neri’s Decision and Order dated January 13, 2023.

I am a mother of 2 boys who depend on me to provide for them. One of my sons is a heart transplant recipient who needs constant medical attention. I am now facing losing my home that I worked so hard to buy for my family and me so we can enjoy the American dream. All my life saving has depleted because I had to use it to pay my bills while I was out of work. I have concern that I need you to hear from a average family trying to make ends meet through these very heard times, and I hope you will take it into consideration when passing your ruling.

I was fired October 2021 from my job I worked at for over 15 years making a decent salary. My husband who was an electrician has been laid off since September of 2010. After he lost his job we decided he would stay home to take care of our son who was diagnosed with dilated cardiomyopathy (enlarge heart). He was in and out of the hospital regularly due to his life threatening condition. My son had a heart transplant and after his recovery my husband got another job. He was laid off again in 2020 due to the COVID-19 pandemic. Healthcare workers were called heroes for standing in line of the COVID-19 pandemic crisis, but now we are cast aside like trash. Since I got fired I applied to many different healthcare facility but only to be rejected due to my unvaccinated status.

So now, the calls started from the Mortgage Company, Gas Company, and electric company requesting that we pay for their services. I asked you- how am I supposed to pay these bills? How do you expect anyone that have been fired to pay their bills when no one is willing to hire them because they’re not vaccinated? Yes, I did received unemployment (most of us weren’t so lucky), but how long did that last? 6 months! Judge Gerard Neri ruled that the COVID-19 vaccine is ‘null, void, and of no effect’s. This ruling was on two grounds: (1) Vaccine mandates are squarely and exclusively in the competence of the NY Legislature; and (2) that the COVID-19 vaccine mandate is ‘arbitrary and capricious’ because the shots demonstrably do not stop transmission. Governor Kathy Hochul will not let us have our job back on less we are vaccinated. In the mean time there’s New York’s statewide healthcare workers staffing crisis is increasing. This will compromised the health of patients.

It is vital that I reapply for my job so I can feed my family, pay my bills, and my family and I do not end up on the street. Hon. Justices, with all that I have said... imagine you being in this dire situation.

Sincerely,



1-26-2023

# FLORINI EXHIBIT 6



To: The Appellate Division Fourth Department

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

Further, I hope to convey the hardships that my family and I have been made to endure since the time of my forced resignation from UHS Hospitals in Broome County, NY due to the State of New York's COVID-19 vaccine mandate for healthcare workers.

In December of 2021, after all other legal challenges to the unjust mandate were exhausted without positive resolution for healthcare workers, my place of employment, UHS, was compelled by the Department of Health to accept my forced letter of resignation.

My wife and I are natural savers. We don't spend money that we don't have, and we don't waste. We do not have credit card debt. We have six children under age 10 who are superfluously loved and cared for. My kids know to eat what is given to them, to be thankful for it, and to waste nothing. We do not own a television. We do not pay for cable or subscription services. While we will do take rare day-trips to very proximal destinations, we don't pay to take the modern idea of vacations. We spend copious amounts of time outdoors, enjoying nature right on our own property.

The mortgage loan I took out in 2020 to buy my current home was commensurate with my very stable income. My manager even assuaged my concern about purchasing a larger (thus more expensive) home by verbally guaranteeing my job security. In his defense, he could not have imagined such a dystopian edict occurring. Once my income was forcibly eliminated, I needed to find a way to keep my home, which shelters my wife and six children. I needed to find a way to pay for food to feed them. I needed to find a way to heat our home to keep everyone safe and warm. I was desperate to make sure that we would all be covered by some kind of health insurance, since it had previously been tied to my employment. My wife currently stays at home with our children, but we did not even have the option to send her back to work in our desperation because all of her training is medical. She was a hospital worker at UHS before becoming a homemaker.

Being highly specialized in my field, and having worked for 10 years doing the same specialized work for which I was trained, my skills did not translate to any other type of work. With the institution of the mandate, that type of work was no longer a viable option in NY. Taking minimum wage jobs 24/7/365 would not have paid for my family's costs, so I needed to buy time until I was trained in a new career that could pay me an amount commensurate with my reasonable expenses.

The only feasible option to keep us financially afloat long enough to change careers, was to withdraw my retirement account. We paid a 10% penalty for withdrawing so early, and then had income taxes taken on the remainder. My retirement was supposed to be far in the future; it's

gone now and I am only 34 years old. This early withdrawal of my retirement has helped to pay for my mortgage, food and heat for my family, as well as the expensive training program that I was compelled to undertake in order to continue providing. But that money is now all spent.

We attempted to grow food commercially to help support our finances, but the unexpected drought destroyed our main crop, and we ended up losing thousands of dollars instead. To help offset that loss, we had our trees logged for a helpful, but relatively small, monetary sum. Those proceeds are all that's left in my bank account. Enough money for perhaps one more month of mortgage payments, other expenses, and job training.

The recent decision by the State Supreme Court instilled some hope that I would be able pull my family out of near bankruptcy and start earning money doing what I used to do. My hospital has only one other employee certified in my line of work. After more than one year, UHS has still been unable to fill the position which I left open upon my forced resignation. That has left only one employee to do all of the work for over a year. I cannot imagine that patients are receiving top-quality care if one overworked individual was left to do double their ordinary amount work.

Unfortunately, even after the State Supreme Court ruled that the mandate was arbitrary, capricious, null, void, and of no effect, UHS Hospitals has decided to hold off on hiring anybody not vaccinated for COVID-19 due to legal uncertainty. My former manager spoke with me last week about UHS' desire for me to return as soon as the Department of Health allows it. But now the State wants to drag out the battle. As Judge Neri said, the vaccine mandate was Orwellian in that its purpose was to stop transmission of the virus, while we have demonstrably known for quite some time that the vaccine does nothing to prevent the spread of the virus.

Involuntarily losing my job not only caused significant financial hardship, but also emotional and psychological stress. Since the mandate, I have been to the ER. I have been seen about issues with my heart. It's the immense stress that my government has subjected me to. I lost 20 pounds just after the outset of the mandate, and it wasn't from exercise.

I had been a dedicated employee of UHS for years and had always been committed to my patients, to my work, and to the company. I worked through the pre-vaccine era of COVID-19 without complaint, on the front lines. I have never once taken a sick day. What happened to "health care heroes?" We went from "hero" to "zero" as soon as the Governor got a taste for power. There was no cogent reason for a mandate back then, and the mounting evidence in favor of eliminating the mandate since that time is incontrovertible. My forced resignation was due to the State trying to force me into a vaccination that did not and does not stop the spread of the virus. The faulty logic of our State has caused me to lose my livelihood, my health, and my sense of security.

Again, I was forced to choose between restarting a career in a different field, or to move away from New York to continue my career - like so many others have done lately. Though I would have been justified, I didn't want to abandon NY, like NY had abandoned me. I stayed. Defying reason, logic, and self-preservation, my family and I chose to stay and fight the injustice done to us against our will, while I worked simultaneously to make a serious career change.

I sincerely hope that the original ruling - declaring that the mandate was illegal and unenforceable from the outset - will stand. But in the meantime, while that matter is being decided, it would be an appreciated recognition of our dignity as humans, if we are allowed to return to serving our patients, while earning the honest wages that we once knew. The well-being of my family depends on it.

Thank you for your time and consideration. I truly hope that common sense prevails.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Bobal". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Bobal".

01/26/2023

Michael Bobal, CNIM  
Surgical Neurophysiologist

# FLORINI EXHIBIT 7

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state and any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I was terminated from my registered nurse position at a local hospital due to the vaccine mandate in November of 2021. I had worked at the facility for 15 years. My religious exemption was denied and I was also denied unemployment from New York State.

Losing my job was a huge blow to myself and to my family. I lost my profession and identity as a person and our family lost our health insurance and income that I brought in.

I live in a small community and am aware of the staffing crisis happening due to nurse shortages. I worked through the first wave of COVID at the hospital. I cared for patients sick with COVID while not vaccinated. It was safer for the hospital, for me as a non vaccinated nurse to work as I was being tested weekly for the virus and vaccinated people were not. Many people who "chose" to be vaccinated were coming in and exposing staff and patients to COVID. Staffing ratios are unsafe due to the shortage of nurses. Our local elder care facilities are combining patients to floors and limiting patients accepted due to staff shortage. This issue causes a backup of patients in acute care hospitals waiting to be placed in facilities. Another local hospital needed to close their maternity floor long term due to staff being terminated for choosing not to be vaccinated. This has to stop. Our community members need to be cared for in a safe and proper way.

I want to go back to work. I want to help with the staffing crisis. I need to provide medical insurance for my family of 8. I need to have the income monthly coming in before I was unjustly terminated.

Sincerely yours,

Sarah Martin

January 27, 2023

# FLORINI EXHIBIT 8

January 26, 2023

To: The Appellate Division Fourth Department

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

Up until January 16, 2022, I was a Curriculum Specialist at Ascension Lourdes – Our Lady of Lourdes Memorial Hospital in Binghamton, New York. My position included design, creation, and execution of online training modules for the entire hospital system of well over 10,000 employees on varying subjects, the creation of Affiliation Agreements for the Hospital system and the coordination of training for the American Heart Association BLS, ACLS, and PALS courses for the hospital and the community. I applied for a religious and medical exemption, both which were denied by Ascension, though appropriate documentation was given for both including a medical professionals agreement that I should not receive the Covid vaccination. There has not been an instance that a religious exemption was approved for this hospital.

I felt bullied into receiving the first vaccination because I would not have an income or health insurance to take care of my family (two children and husband) and living off of my husband's income alone would not allow for payment of our mortgage, medical bills, insurance, daycare expenses of \$487+ a week, among other monthly expenses. The amount of anxiety and stress that I have experienced from that vaccination has been difficult to overcome and has contributed to a lot of issues that I have had including two miscarriages within a short time period of time after. Not only do I feel that I was bullied into receiving the first vaccine, but my religious beliefs were not taken into account or the medical opinion of my doctor, also.

On December 11, 2021, I was put on leave without pay because of non-compliance with the vaccine mandate and lost insurance and income and continued addition of medical bills because of the miscarriage that I experienced in December around that time. I am still paying off the entirety of those bills more than a year later and have had difficulty catching up financially. I felt pressured into taking a job outside of my Adult Education background with an exorbitantly high insurance premium which has brought down my income significantly while paying \$352 a week for a high deductible plan that covers nothing. I can no longer contribute to our monthly family expenses which has caused debt for my family. I continue to work in a hostile work environment, knowing that if I did not keep my current position, we would be even further behind in expenses, but at least they don't force me to do something that is against my religious beliefs as well as the belief of my doctor.

It is important for me to be given the opportunity to reapply for my position for my financial stability, mental and physical health. My position within Ascension Lourdes worked in new hire

orientation and you could see how staffing was already having an effect on patient care between September and December 2021, so the increased staffing difficulties after have only continued to worsen.

I appreciate you taking the time to read this and hope this has gotten to the right person to express what the vaccine mandate in New York State has done to myself and my family.

Regards,

A handwritten signature in black ink, appearing to read 'Kelly McMurray', with a long horizontal flourish extending to the right.

Kelly McMurray



# FLORINI EXHIBIT 9

Danielle Lewis B.S. RT (R)(T)  
44 Bowen St. Montrose, PA 18801  
607-621-6040

January 26, 2023

To: The Appellate Division Fourth Department

Dear Hon. Justices,

My name is Danielle Lewis and I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I will try to be brief in explaining how terrible the past year has been for my family and I. I have been a Radiation Therapist for 14 years serving our community to treat cancer patients. Financially the burden this has placed on my family has been unexplainable. I was terminated from my job in December 2021 due to the Covid 19 vaccine mandate by Governor Hochul. Up until that point I had never received a disciplinary action or write up as an employee. From December 2021 until July 2022 I was unable to find work in my profession. In July 2022 I was able to finally find a per diem job in Sayre, PA. I interviewed and was hired immediately. While I am extremely grateful for this opportunity, I am only filling in as a per diem and my work is not steady or guaranteed. Currently what that looks like for me is that I am asked to work 1 day a week as opposed to my 4 day a week normal schedule. Some weeks they do not need me to come in at all. No scheduled work equals no paycheck. Any money that I am making is essentially just keeping our finances afloat. With the rising costs of just about everything we are barely making ends meet. We have not been able to fill our oil tank without putting it on a credit card. Not only does my new position only give me a limited income, I also have to commute over 1 hour and 15 minutes each way.

My husband and I are both in our late 30's and have not been able to contribute to our retirement accounts in over a year. We have avoided going to the doctors and dentist unless absolutely necessary to avoid getting medical bills because the insurance from my husband's company does not cover as well as my previous insurance before being terminated. I have a child with a disability as well as many medical conditions and the bills I have from his care are accumulating because I cannot afford to pay them. Creditors are calling me daily and sending me letters. I have medical bills through 8-10 different offices that I cannot pay right now. Our savings accounts are now non-existent and the amount of debt we are going into increases daily despite our efforts to cut down on every cost in our household possible. I am also still currently paying off student loan debt for a profession I cannot work in. To try and make ends

meet I have been doing odd jobs like delivering packages as an independent consultant for amazon, selling our possessions including; clothing and children's toys. All of this goes without explaining the extreme emotional stress this has put on our family, my marriage and myself individually. I have tried to shield my children from this as much as possible.

Recently with the Hon. Judge Neri's decision, I was going to be able to potentially apply for some other jobs closer to my home that would allow me to work more and travel less. If the Hon Judge Neri's decision is overturned we will be in the same position we are in currently which worses by the day. This mandate has destroyed our financial stability and wreaked havoc on our household. Thank you for taking the time to read just a snippet about my situation. Please help those of us who have served our community throughout covid and the many years prior.

Sincerely,

*Danielle Lewis B.S. RT (R)(T)*

Danielle Lewis B.S. RT(R)(T)

# FLORINI EXHIBIT 10



Scott J. Kobziewicz, MSPT

733 Glenmary Drive

Owego, NY 13827

The Appellate Division Fourth Department

Dear Honorable Justices;

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and to deny the State any discretionary stay or injunction against Judge Neri's decision and order dated January 13, 2023.

Since Governor Hochul and the DOH moved forward with the Covid vaccination mandate for health care workers, my family has been financially devastated. We have been unable to plan for our future retirement goals, nor have we been able to fill sinking funds in order to meet the need for car repairs, home repairs, a future new vehicle etc... We have been barred by Governor Hochul from collecting unemployment during this time. Therefore, even the bare minimum of needed income has been stolen from us. I use the word stolen, because we pay into the unemployment system and it was taken away from us at a time when our livelihoods were removed. Never has such a step by governing officials ever been taken that has been so grievous to overstep both Constitutional and Civil rights of its citizens. This has been nothing more than a form of fiscal coercion and government over reach knowing it would lead to significant financial hardship.

Due to the mounting financial stresses, this has resulted in significant relational difficulties within my home between my wife and I. This has resulted in increased stress and anxiety with the need for counseling. What does counseling require? Finances that we don't currently have. My children have been impacted by the relational breakdown between my wife and I, and now also carry increased stress. They know that we can no longer afford certain things and activities, and I get to see the disappointment in their faces and body language.

During this time, my wife has had medical issues that need to be addressed. Her experience within the medical system has been nothing short of malpractice. This is in light of short staffing, long waiting periods to get appointments, and the lack of even basic follow through by the medical practitioners. I had a conversation with an ER charge nurse from Buffalo during a recent JAHCO audit. She relayed to me that the short staffing across all aspects of the medical system have resulted in significant breakdown of safe, basic care. Due to short staffing in nursing homes, they are no longer accepting patients from the ER. Due to short staffing and Covid protocols, the hospital systems have dramatically limited the number of admissions of patients to the floors. As a result, ER's across the state have been forced to make space in hallways where patients get stacked up without the needed medical interventions and close follow-up they need. This is a tremendous stress to the existing medical workers. She stated to me that the JAHCO auditor "was in tears". No one enters the medical field to do

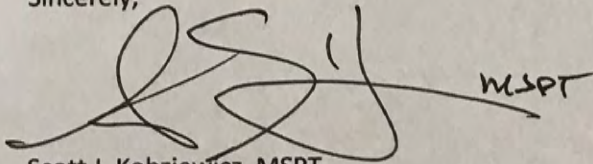


harm, but yet this is what is our current state of affairs in medicine. This is all directly related to short staffing created by vaccine mandates for healthcare workers.

I could go on and on, but suffice it to say that urgent relief is needed for our healthcare workers who have been affected by this mandate. Relief to be able to reapply for their jobs and reestablish their livelihoods. To be protected from loss of insurance, home foreclosure and repossession of vehicles. To have relief of stress within their families to protect from the family breakdown and inability to provide for their children and their children's futures. More than ever, to be able to feed their families in an environment of ever escalating prices.

I would implore you to exercise the power that has been invested in you to provide relief, not only for myself/family, but for all of the healthcare workers and their families that have been so negatively impacted by this over reach.

Sincerely;

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by 'J' and 'Kobziewicz'. To the right of the signature, the letters 'MSPT' are written in a smaller, simpler font.

Scott J. Kobziewicz, MSPT

# FLORINI EXHIBIT 11

January 27, 2023

The Appellate Division Fourth Department

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I have been an RN for 17 years now. I specialize in Labor and Delivery and am a Certified Lactation Counselor. This mandate had and continues to have an enormous impact on my family's life. I was approved and granted a religious exemption due to my sincerely held religious beliefs against the COVID-19 shot, only to have that basic human right stripped away unjustly. I was removed from employment after Thanksgiving 2021. I was the primary financial provider of our household and losing my career has devastated our finances and, personally, my mental health.

My family of 5 was barely able to sustain on one income and only for about eight months. With the economy in disrepair, inflation, and interest rates rising it didn't take long until the bank accounts were drained, credit cards maxed out, and our savings completely depleted. My children were feeling the budget tightening as food, fun, and clothing were the first to be sacrificed. We had no choice but to apply for Medicaid, SNAP, and HEAP if we were going to make it through this winter. All programs which I knew nothing about prior to this, and although we are blessed to have received aid, it's a truly unnecessary strain on our state.

I have been suffering from deep depression and insomnia due to losing my career and my identity. I know nothing else, I am a nurse! And a very good one at that. After several antidepressant trials I am now stuck taking medication just to make it through the day. My children and significant other can feel my sadness and heartache as my mental health suffers immensely. Feeling like I have no purpose yet I still carry on, trying to return to my passion, life, and livelihood.

So now I, an educated, experienced, able, professional Registered Nurse with a Bachelor's degree and certification, am without employment and have no choice but to use government



assistance just to survive. Not live, survive. I would never have imagined in a million years this injustice would happen. The saying “Hero to Zero” resonates now in my soul as I feel like I lost a part of myself. I just want to return to what I was meant to do and love, care for people. If I cannot fulfill my purpose in the state of New York, relocating will be in our future, which will sadly uproot everything my children have known. I pray for a change everyday so that my family’s life may return to normal, as well as the many others who have felt this burden. Our healthcare systems are short staffed and the ones working are getting burned out. Letting those of us get back to work will bring relief to so many.

I am a nurse, I will always be a nurse. Let me go to work. Our healthcare system needs us.

Sincerely,

A handwritten signature in cursive script that reads "Sara L. Baxter". The signature is written in black ink and is positioned to the left of the date.

1/27/23

Sara L Baxter BSN, RN, CLC

# FLORINI EXHIBIT 12

To: The Appellate Division Fourth Department

January, 26, 2023

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I've been employed as a physical therapist assistant since 1981. I predominantly work through agencies covering at nursing homes and hospitals. Some assignments are longer than others.

My second to last assignment which was to be ongoing, ended September 27, 2021 when the NY vaccine mandate went into effect. I began working at another facility which accepted a religious exemption to this COVID-19 vaccine. In November 2021 when NY banned the religious exemption, that assignment ended as well.

Under **ordinary** circumstances in my field of work, opportunities to work were plentiful since there was often not enough manpower to cover the workload among the many facilities in need. Over the past year, I have received numerous unsolicited recruitment efforts by agencies from all over the U.S. for NY facilities. Furthermore, I have seen facilities with which I had long-standing relationships advertise on INDEED.com that indicated they were/are urgently hiring and at a pay rate that is 45% above the high end of what is typical for an experienced clinician.

I covered at these very same facilities during the most challenging times of the pandemic. I am proficient in following and array of infection control techniques and I could have been tested on a daily basis before entering the care units. The decision to deny patients/residents care by the unvaccinated is illogical.

**Not only has it been financially distressing since November 2021 but I could no longer move forward in fostering a child since a foster parent must be self-sufficient.** In 2020, I began the training and clearing processes to become a foster parent, which in NYC is a prerequisite to adoption. I chose a child who was on NY's "waiting the longest for a home" list. He was severely behind in reading and according to this child's blurb, he wanted to be a cardiologist. I knew I could help this child with his reading, having had such success during volunteer endeavors. I would help this youth, who is not at the best starting place, have some hope in being able to reach his dreams. I pine for this child, mostly because I want him to know that there has been someone who did everything required so he could have a home and wonderful life. TRAGIC. And unnecessary.

Page 2  
Kathleen Alice  
1/26/22

I have always loved my profession and would like to return to it. Although I applied for a license in another state, remaining in New York is my preference.

The original vaccine virus is long gone. What purpose does it serve to require a vaccine with the original pathogen now? The spike protein, a component of the vaccine, in and of itself is not a full virus so in theory could only benefit the recipient. Similar analogy to a tetanus shot - it protects the person who receives it does not prevent tetanus in another person. As such, I fail to understand how the unvaccinated pose a greater risk to the infirmed as the vaccinated do unless the unvaccinated has been harboring the original virus in his body all these months. As mentioned above, a swab test can confirm. Please consider allowing health care to New York return to some normalcy by granting the unvaccinated the ability to once again provide for the well-being of others.

Sincerely,

*Kathleen Alice 1/26/22*

Kathleen Alice  
Physical therapist assistant  
License 000303  
kthlnlc@yahoo.com  
212 865 7401

# FLORINI EXHIBIT 13



To: The Appellate Division Fourth Department

Dear Honorable Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I am a single mother of two wonderful children, with little to no help from their father. I was able to put myself through nursing school, while maintaining my home, caring for my children, and working part time (evening shift) in an Emergency Room. As you could imagine that didn't leave much time for family, but I knew that there were better things to come after graduation! I was able to work as a RN for 10 years before being terminated for not getting the shot for covid 19, making my total years of service to my employer 20 years.

I decided not to get the shot at first due to my personal health concerns. I started educating myself on the shot and its make up when I was starting to feel more pressure from management and expecting that my job may be at risk. At this point it became more than a personal reason, now I could also add a conflict to my religious beliefs after learning that aborted fetal cells were used in testing and development of the shots. Many of my co-workers held out as long as they could, hoping that the evidence that the "vaccinated" who were now becoming ill with covid would show that the shot did not stop transmission. We were told that the hospital would lose its Medicaid funding from the state, we had a choice to get the shot or get fired.

I started interviewing for other forms of employment and accepted a much lower paying job, staying on Per Diem in hopes that something would change. I loved my job and my patients and started having severe anxiety and feelings of depression. I was made to feel like I was doing something wrong, because I was doing something for myself that I had been taught to do for my patients for the last 20 years. I was being my own Advocate. During my 20 years of service I have been recognized numerous times for going above and beyond for my patients and coworkers, and now I was made to feel that I didn't matter at all to my employer and within a few months' time I received my termination letter, followed shortly thereafter by a letter explaining that I was nominated by a patient for a Daisy Award, stating " your nominator wrote about your dedication to the patients and families that you serve, and your compassionate care. It is clear that, in all of your interactions, and everything that you do, you place the patient first. Thank you for all you do to make (hospital name) a place to receive extraordinary compassionate and respectful care."

Now I find myself back where I started, a single mom struggling to make ends meet. I lost my health insurance (until the new job's insurance started), my retirement plan, my PTO and Family leave paid out at a lower rate than I earned. I have had to cut back on what I worked so hard to be able to enjoy, no more family vacations, no travel ball for my youngest child. I work more hours for much less pay (and often covering for "vaccinated" staff who are ill with covid), spending less time with my children, family, and friends. I watch my bank account get smaller and smaller hoping that I can maintain what we have until I can find something better, and now feel as if I have no other choice but to leave the state I was born and raised in in order to make a decent living with the degree that I worked so hard and sacrificed so much for. I once prided myself in being a strong woman, mother, and role model. Now I find myself constantly worried about putting food in our bellies, clothes on our backs, and keeping our roof over our head.

I miss my job and my patients! Meanwhile I hear from people about the poor care that they have received and the long wait times as patients and have even experienced myself. A few old co-workers that I have bumped into have told me about the staff shortage and being expected to work long hours because there is no one to relieve them after their shift is complete. Staff being expected to pick up time in other units to cover staff shortages and sometimes feeling like they are working outside of their scope of practice. I feel as if this could all be corrected, by having the right to make decisions about our health and standing behind our religious beliefs without being prosecuted and singled out.

Please hold fast to the decision made by Judge Neri. And know that by doing so you are not only helping the health care workers who are displaced but also health care workers that are being pushed to their limits, and the patients that suffer due to both! May God Bless you and keep you safe!

To protect my medical privacy, I will be signing with my initials.

T.H.

Should the court wish to hear my testimony, I would be happy to give it.

# FLORINI EXHIBIT 14



January 26, 2023

To: The Appellate Division Fourth Department

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state discretionary stay or injunction against Judge Neri's Decision and Order dated Jan 13, 2023.

I am a board certified family nurse practitioner that was practicing in my community for almost 10 years before the mandate in 2021 ended my position in upstate NY causing an immediate end of caring for more than 1,000 patients of mine and leaving these many patients without a Primary Care Provider. This was so upsetting to myself and equally so for my many patients.

I lost my practice, job security, steady income, my employers' yearly contribution to my retirement (thousands of dollars) as well as a piece of my soul. We have depleted what little money we had in savings and had to sell my disabled veterans' husband's vehicle and many other items in order to pay the mortgage. We were also forced to place our beloved home up for sale weeks after losing my position and being able to find a permanent Fulltime position.

I had to race to find employment in early 2022 causing me to drive long hours and fly to multiple states over a short period of time that caused a significant burden on my physical and mental health. I was hospitalized for a severe Deep Vein Thrombosis of my left leg as well as a panic attack in the Summer of 2022 due to these long hours of driving and flying. I am now paying high medical bills due to the lack of health insurance. I was previously very healthy and now have several health issues due to the undue stress and trauma that I have had to endure, all due to this mandate.

I am still without a steady income and working in a temporary Parttime Telehealth position at home without the personal satisfaction and job security of practicing and caring for people in my community, which is the biggest tragedy of all.

It is so important that the court allow urgent relief to all medical professionals that were abruptly terminated and stripped of our constitutional religious rights last year by the NYS court order. Please make it possible for all of us return to our passion of caring and helping our communities in need.

To protect my medical privacy, I am signing with my initials only. Should the court need to hear testimony, I am certainly willing to give this.

Sincerely,

MMV

# FLORINI EXHIBIT 15

To: The Appellate Division Fourth Department

Dear Honorable Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I should start by saying I have been an experienced Radiologic Technologist for nearly thirteen years. I went to school at Niagara County Community College after transferring from the University of Buffalo. I spent three years in an Urgent Care gaining the necessary experience, while waiting for a coveted spot to open up at a hospital. I spent the last eight years of my career at Kaleida Health, working at Buffalo General Medical Center. I was one of the best at what I did in general imaging. I was well seasoned, experienced, worked well under pressure, and never complained about the job, even when it was beyond stressful.

Staffing has always been terrible in the hospital setting. Any given night in the Emergency Room, its normal to see all 72 beds full, with 80 people in the waiting room. Hospital staff has always been burdened with more patients than they can handle, and patients are always the ones who suffer terrible delays in receiving care. Covid made this worse than it has ever been, and staffing levels were critical before the disease even hit our shores.

The first wave of the disease was devastating, we were short staffed, over worked, had limited or no PPE for months, were rationing cleaning supplies and disinfectants. I had a new born baby girl at home and a toddler, no one knew anything about the disease process, and I was terrified of bringing something home to my family which could potentially kill them. But I worked; I came in every day to my shift, because if I didn't there was no one else to replace me. And I'll be honest; we were told if you don't come to work, you forfeit your employment. By summer 2021, these problems were no longer a critical issue. Covid was still a problem, but it was well managed and mitigated. But our elected officials in the governorship saw the vaccine as a one size fits all tool, rather than listening to the people who spent the past year fighting COVID on the front lines.

I spent literal months, after ex-governor Cuomo issued the NYS vaccine mandate, fighting to hold on to our employment. We invoked our right to religious exemption for the COVID vaccine. This was due to our strong opposition to the fetal cell lines used in its creation and testing. Our exemptions were approved by Kaleida Health's HR department.

We were allowed to continue working because the newly created federal CMS healthcare mandate specifically stated hospital agencies had to allow for both medical and religious exemptions. However this was not enough for our new governor Hochul, she issued a new mandate denying all religious exemptions in NYS for healthcare workers.

I was right back to fighting for the life I crafted for myself, hiring lawyers, writing congressmen, senators, fighting with HR, pleading to our union, attending protests, and leading a support group for those of us in the same boat. In spite of all I had been through over the past year and a half, I was still fighting for those I loved and worked with for years. On December 5<sup>th</sup> 2021 five of my closest coworkers and myself were walked off hospital grounds and terminated over our refusal to receive an experimental, unproven

mRNA vaccine for COVID. Six months later, my spouse was terminated for the same reason upon returning from maternity leave.

I was one of the very few people I know who was offered unemployment benefits for the immediate time following our termination. Literally hundreds of other healthcare workers, were denied unemployment. Unemployment benefits were denied out of spite, direct orders from our governorship. I took the next few months to regroup, legally started a business, and began booking work for myself as a contractor by day, and recording engineer by night. Once I was finally on my feet, and off of unemployment, my spouse lost her job as an emergency room RN and we were back to square one again.

Collectively my spouse and I have over twenty-five years experience in the medical field. We are not ignorant people, we worked extremely hard to get where we were in life. Years of 3<sup>rd</sup> shift, years of 2ed shift, moving up the seniority ladder to get to a first shift job. We had remarkable benefits, healthcare, premium insurance, and collectively brought in 200K a year. I had spent the past two years building our forever home, from the ground up, for our family, with my own two hands. And now I was left starting from nothing, with no other options, and two young children to take care of. All because we would not comply we were stripped of our careers, our financial stability, our healthcare, our retirement contributions, our dignity. We knew healthcare workers were becoming sick with COVID after being “fully vaccinated” before we were even terminated. Two weeks after we were terminated half of my department was out with COVID. This should have been a red flag, but it was ignored because it did not fit the narrative. Our own union did nothing to defend us. Health care agencies did not speak up out of fear of retaliation in the form of decreased reimbursement from NYS. Medical staff were too scared to speak up, and those of us who did were labeled crazy, silenced, and terminated.

It is now over a year later and everyone knows better regarding the vaccines. The same things we were saying about the untested, unproven vaccine then, have become basic fact now. The mRNA shots weren't tested, they don't prevent infection, they don't stop transmission (the very reason healthcare workers were forced to take them), they aren't safe, they aren't effective. We tried making all these points a year ago and we were treated like insane people, forced from our jobs like criminals.

It's time to set the record straight, those who were skeptical were right in their thought process all along. We deserve an apology, we deserve our jobs back, we deserve compensation for the lives that were ruined financially, we deserve to have the stress wiped away after all we've been through. We also deserve to know our government works, isn't corrupted to the core, bribed by pharmaceutical companies, and drunk with power. In my personal opinion Hochul should be locked up for the damage she has done to countless businesses, staff-starved healthcare systems, personal liberties, and the 34,000 healthcare workers across the state who gave it all for public health, only to be cast aside and called crazy.

Thank you for taking your time to listen to our plea,

Robert J. Prawel RRT & Stephanie L. DeJohn RN  
January 26<sup>th</sup>, 2023

# FLORINI EXHIBIT 16

January 26, 2023

Appellate Division Fourth Department  
State of New York Supreme Court

Dear Honorable Justices,

I am a member of Medical Professionals for Informed Consent. I am writing this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's decision and order, dated January 13, 2023. Below is a brief account of my experience and hardships faced due to the Covid-19 Vaccine Mandate for Health Care Workers in New York State.

I have been a practicing, New York State licensed, Speech-Language Pathologist for almost 18 years. All of my years of practice were spent working in the hospital setting. I worked for nearly 15 years at the same Upstate New York hospital. My ultimate plan was to work there for the rest of my career, Lord willing, as I loved my job, my co-workers and the difference I made in people's lives. This hospital had been a great place to work. I spent 15 years working hard, forming professional relationships and building my professional reputation for providing excellent care to those suffering from speech, language, cognitive and swallowing disorders.

In 2020, the Covid-19 pandemic hit. Everyone was living in fear, many were too scared to even leave their homes. Then the lockdowns occurred. As an "**Essential Worker**", I continued to go to the hospital every day, not knowing when I would be exposed to the novel coronavirus, and like everyone else, being frightened to contract this unknown virus or bring it home to my family, but trusting in God that he would protect me. I was asked to treat patients with Covid-19 given only **ONE** N95 mask to wear for days and I did it. Risking my safety for my patients and my job. A few months later, my employer asked for people to take furlough to assist the hospital with saving money to help with their financial future. I accepted this call and did my part, losing money in the process. After returning to work, I continued to work hard throughout the pandemic under stressful working conditions and staffing shortages. We were all touted as heroes by our leadership and our community.

Then in August 2021, the tone of my employer changed. I was told that after working through the pandemic, I would not be able to work at my job unless I received the Covid-19 shots. Obviously, they no longer thought of me as an Essential Worker as I was ordered to get the shots or be terminated. I applied for a religious exemption, as these shots were not in line with my religious beliefs, and after extensive prayer and bible study, I was being led by the Holy Spirit to not accept these injections. This was through my personal relationship with Jesus Christ. I was now being asked to go against my religious beliefs to avoid being fired from my beloved job.

During this time, I was “allowed” to continue performing my duties, working directly with patients for over 5 months despite my unvaccinated status. I received weekly Covid testing. I wore an N95 mask at all times on UHS grounds. I also wore a surgical mask on top of the N95 mask, a gown and gloves during all interactions with patients. Either personal protective equipment works or it doesn't. Hospitals can't have it both ways to serve their corporate interests. I fully protected my patients at all times.

I was singled out for my personal health choices and my religious beliefs as I was forced to wear the N95 mask at all times during the work day as the mark of the “unvaccinated” person in the company and in my department. I view this as a punishment and feel it was used to create embarrassment and as an attempt to shame or coerce me into taking the shots.

I was made to work under the most stressful working conditions that I had ever experienced with poor to limited communication from HR and upper management regarding the status of my religious exemption request. After 15 years of exemplary work history, without any disciplinary action or patient complaints, I received hostile and threatening emails from HR, demanding what I needed to do and accept in order to continue to work in my position helping patients or be terminated. Wondering each day, if this would be the day I got fired or how I would be discriminated against next. I was not allowed to eat near my co-workers and friends like a leper. I was told where I could travel on my own personal time off. All of this while watching many of my vaccinated colleagues contracting and spreading Covid-19 around UHS without any consequences.

Eventually, I was fired for not complying with the new company policy that went against my sincerely held religious beliefs. There was no appeal process and no communication from HR or upper management. Not even a “thank you for your service” letter. I was just asked by my supervisor and director to turn in my badge at the end of the day. I spent my last day at UHS crying and saying goodbye to my colleagues and friends. I can never get back those 6 months of my life where my family and I suffered from the immense stress of the impending loss of my job and livelihood daily. I cannot get back the professional relationships or my acute care career that took me 15 years to build to be able to give the best care to the patients who required my services. I was embarrassed professionally, my character defamed and I will now always have to tell any prospective employer, that I was terminated from my job of 15 years through no fault of my own. I lost months of my salary and was denied New York State Unemployment Insurance.

As an employee, I had a right to a religious accommodation under the Religious Freedom Restoration Act of 1993 as well Title VII of the U.S. Civil Right Act of 1964. Even the Center for Medicare and Medicaid Services (CMS) acknowledges the need for hospitals to comply with these laws and to evaluate and grant religious exemptions when appropriate.

Believe me when I say, it would have been much easier to just comply and get the shots. I watched as my employer emotionally beat down many of my colleagues with the same

religious objections until they complied against their will. However, for me, standing up to this persecution, though it was much more difficult, was the only choice I could make which would not result in jeopardizing the most important relationship in my life, which is between me and my Savior, Jesus Christ.

Thank you for taking the time to review my statement. I know that I am just one of many healthcare workers across New York State who share similar experiences, but that should not discount each of our personal hardships and the negative impact this has had in our personal and professional lives, financially, emotionally, psychologically and more. Unless this mandate is dropped, I and many other clinicians like me, will never be able to go back to doing the job we love and are skilled in performing in any NYS hospital or nursing home, which is a detriment to the patients who need our services. I am signing this letter with my initials to protect my medical privacy, however, should the court wish to hear my testimony, I would be willing to give it.

Sincerely,

K.A. 1/26/2023  
NYS Licensed Speech-Language Pathologist



# FLORINI EXHIBIT 17

January 26, 2023

To: The Appellate Division Fourth Department:

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I am one of the 35,000 healthcare workers terminated with cause in NYS for not consenting to an experimental injection. I was a Director of Rehabilitation and physical therapist at Schuyler Hospital/Cayuga Health System from 4/4/1994-12/31/21, I directed an outpt, inpt, and Skilled nursing rehab program. Since August 2021 I have experienced intense workplace stress, psychological trauma resulting in weight loss, anxiety, panic attack and have sought medical attention due to such stressors.

I have lost wages, benefits, earned hours for paid vacation, extended illness hours, medical, dental, vision and life insurance, 401K match, including loss of other benefits associated with my position. I planned on retiring from my position and now find myself in an unsustainable financial position with a black mark on my stellar employment record.

NYS saw fit to deny us unemployment all while we worked increased hours during 2020 while most of the state received more than double unemployment benefits to stay home and do nothing. This is disgraceful and disrespectful.

The hardships I am experiencing include struggling to pay mortgage, utilities, and buy groceries. I can no longer get a loan due to no income and will most likely need to sell my home, car and move out of state to feed my family. I have depleted all savings to pay for my bills over the past year and acquired a PA and FL license to make money away from home when possible. I have lived here all my life and contributed to my community in numerous ways. No healthcare worker with as much dedication and years of selfless service should be treated in this fashion.

The patients in need of care are suffering as much or more as the workers who lost their jobs. I hear reports every day of testing and treatment being scheduled months away due to the healthcare worker shortages. This is a travesty, I urge you to provide immediate relief to the suffering we are experiencing, stop this mandate, return workers to their roles while sorting out the appeal and do what is right for the citizens of NYS.

*Dr. Michele R Myers, PT, APT, OCS*

Dr. Michele R Myers, PT, DPT, OCS

Former Director of Rehabilitation Services

# FLORINI EXHIBIT 18

How have the mandates affected me in the last year? What hardship have I faced? What we currently face?

My life is completely different than this time last year, other than the love of God, my husband, and my mother.

**I lost a lot-** savings, retirement, education/schooling for 3 years (now unable to complete), insurance, many relationships- friends and family, identity, and a career. I have completely lost faith in the medical system to practice medicine and do what is right by the patient. -the system is broken- and this is demonstrated as clearly as ever. (What can we do about this?)

**But what I found** was the strength and ability (that I thought I had when I faced, as a bleeding heart nurse, the demon Covid in early 2020). I found blessing and abundance, a new calling/ministry, a few new friends forged by the same principles, peace in the midst of chaos, new trust in His purpose and plan, and a renewed civic responsibility.

My previous employer, as a condition of employment, required for me to obtain my BSN. I already have a B.A. and an associate in science of nursing, so I didn't really care to do this, but I wanted to work there so, I became a straight A student and was taking my last class (Capstone) to finish the BSN when the mandates occurred. It is a dual program for MSN because I decided if I was to go back to school I would make it worth my while. Due to the mandates, I was forced to withdraw from my last class and am now unable to complete my degree.

My previous employer has decided that I broke the condition of agreement and is trying to stick me with a \$17K bill for my education. I just found out they never did pay for the last class I completed and now I am having to come out of pocket for it to be paid back to the school, 2K. They have retained all of the lawyers in the area, shielding me from being able to obtain legal representation. They never provided with me, as requested, a copy of our agreement. I had every ability to fulfill our contract until I was forced to stop working in September of 2021.

Unemployment denied me and literally said “You should have known better”. Before my dismissal related to the mandates, I received an award and was recognized by management, a model employee that was enrolled in a management “grooming” class. I am no longer looking at advancement.

My savings and retirement are gone.

Since they took our health insurance, I have never in my life been so underinsured and currently owe the same entity almost 10K in medical bills from the last 12 months.

Just with those 3 things alone- school, retirement and now being underinsured, I am roughly 50K in the hole, plus my wage that I was unable to earn.

I currently work under a different umbrella of NYS, OASAS and not JAHCO, and am having to work in an unsafe setting. I work nights, 12-hour shifts and am literally exhausted mentally and physically. In the meantime, the hospitals and offices are a hot mess with the wait times, inability to answer messages, see patient’s and respond to all of the needs in the communities. I can personally attest to the care my patients are not receiving in the emergency rooms, despite how long they stay there.

But God blesses me in the midst of it.

Although I literally fear for my life every time I go to work now, I am unable to work in the nursing field without this job, because of this mandate directly. I cannot afford to eat, keep a roof over my head, pay all the bills and be a productive member of society without the ability to work and I cannot imagine those who have children because I alone cannot survive.

So, the mandates, that these employers could and should have stood up against, has hurt me in a major way, but I am not as hurt as many.

By the way, I have been healthy this entire time and have not had COVID, despite still being out in the community, but I sure have heard about the nurses that were forced to go back to work too soon and still had COVID. Due to the ongoing media censorship, specifics would be hard to provide but Facebook I am certain contains that knowledge. The conditions became even worst everywhere, and healthcare organizations, especially hospitals, had no regard for the nurse’s care or well-

being, as long as they are a warm body. The governor took healthy nurses out, to enforce sick ones to remain. Who is getting sick now?

The uptick they are generating is another smoke screen. OASAS just tripled their testing efforts. It is not for the reasons they state.

Jasmine McGillick, RN

# FLORINI EXHIBIT 19

1/26/2023

To: The Appellate Division Fourth Department

“Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri’s Decision and Order dated January 13, 2023.

I was wrongfully terminated 10/1/2021 and have not been able to find work since in the healthcare industry due to my vaccine status. I am a single mother of 21 yo twins trying to help them pay for college as my savings dwindles down while managing daily/monthly bills.

Its urgent we get reinstated to our former positions. I am 100% remote Same Day Surgury Coder and do not see patients. I keep in touch with my former coworkers and they are being “mandated” to work OT in our absence. In addition, the RNs I know are working the jobs of 3-4 people which sounds dangerous for patient care.

Thank you all,

AnneMarie Hickey



# FLORINI EXHIBIT 20

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I lost my job in September of 2021 due to mandates with a religious exemption in Binghamton, NY at Lourdes Hospital. I am a single mom with four children and recently became a homeowner. Due to the vaccine mandates and loss of my employment due to the vaccine mandate, I become extremely delinquent on all of my bills. My credit dropped over 100 points. I also had utilities shut off and had to take loans out I'm struggling to pay just to cover expenses when I lost my job due to the mandate. I cannot pay my student loans and struggled to feed my family. I was able to acquire a job in PA where I reside and accepted my religious exemption to the covid vaccine. I also contracted the virus in February 2022 and was able work within days after testing positive. Healthcare workers are leaving the industry left and right due to the lack of healthcare workers and the treatment during the pandemic and vaccine mandates where quality care is on the back burner. I strongly urge you to reconsider forcing medical interventions for healthcare workers uncomfortable with it for whichever reason they have the right to not consent.

Kindest Regards,

Jennifer Dougherty, RVT, AAS, BSDMS, MBA

# FLORINI EXHIBIT 21

To: The Appellate Division Fourth Department

Dear Hon. Justices, I am a registered nurse whose rights are being fought for by the Medical Professionals for Informed Consent. I am writing this letter and sending through the counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I have been a registered nurse in the fields of behavioral health and addictions throughout my entire career of nearly 10 years. Throughout these last 10 years of service over 9 of these years were working as a staff nurse/ charge nurse for UHS Binghamton General Hospital. I have worked through the Covid pandemic up until I was terminated for my religious beliefs not being accepted and severely held beliefs to not take the Covid vaccination due to Gov. Hochul's mandate. This mandate has been proven to not stop the transmission of Covid 19. The vaccines we were told would help stop the transmission of Covid as time went on proved to be a lie and turned into it will lessen the individuals' symptoms. A statement from Dr. Rochelle Walensky, the director of the Centers for Disease Control and Prevention admitted on August 5<sup>th</sup>, 2021 that a fully vaccinated person can still get COVID and transmit it to others. The whole point of the mandate was stated to protect the individuals in the hospital from spreading COVID and yet this action proved to be the incorrect choice leaving the healthcare facilities even more short staffed for a theory that has already been disproven. This mandate is no longer about public health, It is about control.

My experience with Covid 19 includes, myself have had COVID 19 two times in which my symptoms were mild and on the second time I had been diagnosed with COVID my symptoms lasted about 24 hours. I have taken care of multiple patients with COVID 19 in the hospital and followed our PPE guidelines.

In December about 1 week prior to my coworkers and my termination we received word through a FAQ sheet in an email that told us December 17<sup>th</sup> would be our last day to work. The struggles I have faced from that time have included Mental, Financial, and physical declines.

Financially I have been heavily impacted due to my religious exemption not even being able to be looked at. I was denied unemployment. I have been depleting my life savings and my retirement plan has been negatively impacted unnecessarily. I have lost my dental insurance. I have been unable to repair damage done to my car due to needing to allocate these finances in order to make sure my mortgage can still be paid and other mandatory bills can be paid as well. I am unable to pay for major repairs to my home. To make matters worse this is happening while cost of living has been increasing significantly.

Mentally and physically I have been negatively impacted by this mandate. It is very difficult to have your career in which you have never received a single negative write up, attempted to be thrown in the trash until you comply and hearing that unless you have signed a resignation you would be blackballed by the local health employers. I refused to sign a resignation regardless. I have had to put my dental health care on hold due to not having the funds to pay for the cleanings/ Dentist visit. I have had many sleepless nights and days ruined by constant worry, anger, and disbelief for the wrongful injustice of not being able to even have my religious beliefs considered for my career at the position in which I have based my entire career for.

The current employees were never forced to get the boosters for Covid 19 and many are at this moment considered not fully vaccinated. There is no reason why those of us who cannot and will not get this vaccine due to either religious beliefs or sincerely held beliefs to

be discriminated against any longer. All this is doing is hurting the community with delay of care, unnecessary strain on the current staffing, unnecessary expenses to pay for travel nurses and other staff (premium, critical, and overtime pay), longer than needed wait times due to the shortages, and lastly the quality of care decrease due to these shortages.

Prior to the Covid pandemic my unit was already facing severe shortages. At one point I was the only nurse that was an evening shift nurse for my unit in the hospital. At this moment in time My job position still remains vacant and I was denied the ability to apply and was denied the ability to put in a religious exemption as well as of 1/18/2023. If given the opportunity I would be able to fill in that spot immediately and help out with the nursing shortage.

The only thing this mandate has done was hurt the healthcare system even more. I plead that we are able to stop the damage and allow the healthcare workers the same rights as just about every other career in this nation. please allow us our ability to hold our religious and sincerely held beliefs and should the court wish to hear my testimony, I am willing to give it.

Sincerely, Joshua Kovach RN 1/26/2023

# FLORINI EXHIBIT 22

To: The Appellate Division Fourth Department

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I am a single mother who relocated back to my hometown in New York in 2020, from California, to have the support of my family with raising my son. I lost my job as a Registered Nurse in the Emergency Department on December 17, 2021. I not only have a child to support single-handedly, I have a mortgage on top of other necessities (groceries, propane, gas). I was panicked, devastated, scared; worried about how I was going to keep my house and provide for my son. I cashed out a retirement fund and depleted my savings to survive while looking for something else. I ended up seeing my primary care physician for recurring chest pain, which ultimately was associated with stress.

I then started working on licensure in another state. I have been commuting 90 minutes one way to my job for months now. I am spending over \$400 in gas a month. I am sacrificing time with my child and his well-being. He is 3 years old and doesn't have a routine bedtime because I can't work in the state I reside in.

I need to be able to work in the state I chose to live in. I am in a financial situation right now where I owe for propane (which heats my house), medical bills, on top of my other obligations. I am struggling. My chest pain complaint turned into a full cardiac work-up. Thankfully, everything is OK, but my cardiologist told me I need to stress less. Sounds easy, right? Commuting 3 hours to and from work, sleeping for maybe 6 hours between 12 hours shifts, knowing you're missing out on time with your son and he's not getting the proper rest, bills piling up, considering selling your house (with nowhere else to go) – it's easy to just be stress free, right?

I have already applied to a position in NYS and was denied. I need relief, now. I am an excellent nurse with 7 years of experience. My vaccination status should not prevent me from doing what I love.

Thank you for your time,

Techa Reed

1/26/23

# FLORINI EXHIBIT 23



“Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri’s Decision and Order dated January 13, 2023. I am asking the court to expedite our appeal because the vaccine mandate has affected not only me but my family too. I moved back to the area in September of 2019 because my mother has Parkinson’s. My brother had been taking care of her although she was still generally in good shape, she was 78 and had Parkinson’s for 20 years. My father passed away in 2013, so he is not here to help. I knew the decline would be coming so I returned. mid-September 2019 I started working part time at a privately owned PET /CT with in Lourdes Hospital . In December of 2019 I also began working at the MRI dept in Lourdes hospital that is owned by Ascension Health. ( I feel I must add that I graduated from a Radiologic Technology program in 1995 and began working as an MRI tech immediately . I’ve been working in the field for almost 28 years.) I was working 36 hours a week between the two jobs and eventually ended up in the MRI Dept solely . I had moved in with my mom when I moved back to help her shower, prepare meals, and keep her company. Since my return in 2019 my mother’s condition has gradually worsened. Although she can still walk with assistance, she needs help getting dressed, bathing, toileting, and needs someone to prepare her meals for her. She is completely helpless. When I was working for Ascension during the day, my brother was working from my mothers home to help keep an eye on her. I was fired on Sept 27, 2021, due to the vaccine mandate. I applied for a religious exemption, but it was not honored. I never received unemployment because it was said that I was fired for insubordination. Luckily I did find employment as a travel MRI Tech in 2022. I have worked 2 contracts at Hershey Medical center. I am grateful to be working but my brother has been left alone again to care for my mother.

When I left to start my first contract for work on January 4<sup>th</sup>2022 my brother moved in with my mother in my absence and is still living with her. (this has caused an increase in tension within my brothers marriage). Mom’s condition has worsened so much that we have had to hire outside help to be with her while my brother is working from her house, as she cannot be left unsupervised. Some weeks the cost of care has been upwards of \$2000.00. If I was never fired from Ascension I would have been around to help care for her reducing the money paid to home health care aids. Additionally, If I was able to return to work at Ascension as an MRI tech the amount of hours we are paying someone to care for my mother would be able to be reduced- thus saving her money. I do not want my mom going to a nursing home. I promised her I would do everything in my power to keep her out of one. I was on track with this promise until the Mandate reared its ugly head.

When my father passed he did have money saved for my moms care but she is burning thru it quickly. She has been paying for care since May Of 2022 and has not been reimbursed yet for any of her costs from her long term health insurance. Although she would only be reimbursed a portion of what she has spent. Also, if I was able to work at my old job it would give my poor brother some much needed relief . He could move home with his wife and drive to my mothers daily to work from her house. And as I stated above it would cost my mother less in home health care.

Lastly, I would like to be able to work in New York again so I can live near my daughters, my friends and my family. My middle daughter got engaged this past November. I would like to be there to help her pick out a dress, throw a shower and help plan for the wedding. I am almost 53 years old , as much as I am grateful to have a job as a Travel MRI tech I am tired of living out of boxes. Medical travel jobs are more suited for the young in my opinion.

I am ready to come home. Please help me come home.

I thank you for listening to my story .

To protect my medical privacy I am signing with my initials , but should the court wish to hear testimony, I am willing to give it.

Sincerely , JM      1/26/2023 2:06pm

# FLORINI EXHIBIT 24

January 26, 2023

To: The Appellate Division Fourth Department

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the stat and discretionary stay or injunction against Judge Neri's Decision and order dated January 13, 2023.

Prior to my untimely discharge, I had worked as a Licensed Medical Technician (LMT) for ACM Medical Laboratory/RRH for 15 years. In the course of my job I ran Covid PCR tests. As early as July 2021, it had become readily apparent that "breakthrough" Covid infections were occurring with greater frequency. The 'workaround' that RRH would have been implemented to accommodate my religious convictions, would have been weekly testing. Although I would not have enjoyed it, It would've been a reasonable solution. A 100% guarantee that I would be Covid-free. However, in September, Governor Cuomo mandated that all healthcare workers must be vaccinated and this option became moot.

Since that time I have been forced to take employment with the USPS. The hours are long, averaging 60-70 hours a week, working six days a week. Which requires one to routinely walk 10 miles a day, in all kinds of weather.( Not something the average 56 year old is conditioned for.) Sadly, the few interviews I have had in the medical field end when I am asked for my reason for leaving.

I have been overlooked for many job opportunities because of the mandate. My finances have suffered; and to support my family, I had to cash out my 401K.

They say that in the United States, medical errors result in over 250,000 deaths per year. New York State can no longer afford to uphold arbitrary mandates at the expense of its residents.

Thank you for your consideration.

Thomas Kuhn

# FLORINI EXHIBIT 25

January 26, 2023

To: The Appellate Division Fourth Department

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

As of May, 2022, I marked my fortieth year as an RN. However, it was a bittersweet observance, because I was placed on Administrative leave in Nov. of 2022 due to a denied religious exemption for the COVID vaccine, and was terminated in March of 2022 for not getting the vaccine. Up until that point, my employment record had been free from any type of investigation, suspension, or termination. I did do some remote work for a little over a month in early 2022 for the hospital I had been working at before my termination in March, but since then, I have been unemployed. My husband and I have faced significant financial hardship this past year due to my unemployment. My husband is working part time, despite being past full retirement age, and having significant medical issues with his back which will likely require surgery. In addition, I have had to access my personal retirement funds several times over the past year in order to help pay basic living expenses. I have four years until I reach full retirement age, but if I have to continue using my retirement funds due to being unemployed, my funds will be drastically reduced, thus creating future hardship.

In light of the fact that the COVID vaccine does not prevent infection or transmission of COVID-19, as Judge Neri pointed out in his ruling, healthcare workers who are not vaccinated with the COVID vaccine cannot be said to pose a health risk to family members, patients, co-workers, or anyone else. By way of corroborating the fact that the COVID vaccine has failed to prevent infection and transmission of COVID-19, I would like to bring to your attention statements by two reliable sources who agree with this fact. The first is Dr. Deborah Birx, who was a member of the COVID Task Force under the previous administration. In a news interview this past year, in commenting on the COVID vaccine she stated, "I knew these vaccines were not going to protect against infection. And I think we overplayed the vaccines." Secondly, Pfizer's President of International Developed Markets, Janine Small, admitted in testimony before the European Union Parliament in Oct. of 2022 that Pfizer did not know if their COVID vaccine would prevent infection or transmission of COVID-19. This was because their vaccine, as well as all of the other COVID vaccines in use at that time, were never tested for prevention of infection and transmission, but were only tested for symptom mitigation. Clearly, the decision of how an individual manages any disease process or mitigates symptoms is a decision that rests with that individual and the health care provider of their choice. It is not within the scope of responsibility or authority of any government agency, whether local, State, or Federal to enter into this decision making process. I therefore respectfully request that Judge Neri's ruling of January 13, 2023 stand, and any discretionary stay or injunction requested by the State of New York be denied. The shortage of healthcare

workers, especially of Nurses, has been significantly exacerbated by terminations which occurred for those who did not get the COVID vaccine. Healthcare workers who have been terminated due to their decision not to receive the COVID vaccine need to be able to return to work. Finally, because the COVID vaccine mandate was issued on the false premise that it would prevent infection and transmission of COVID-19, I firmly believe that any healthcare worker who was terminated for not getting the vaccine should be offered their job back, or be hired for another job for which they are qualified. Whether or not they are able to accept either their previous job or another job, they should receive back pay from the date of their termination to the date of rehire, or, to the date of the job offer, in the event they are unable to accept, or choose not to accept the job offer. This would be a most appropriate use of COVID Relief funds received by the State.

Thank you for your kind attention to my request.

Sincerely,

Shari L Baker RN, BSN  
1/26/2023

# FLORINI EXHIBIT 26



To: The Appellate Division Fourth Department

1.26.2023

Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

The importance of being allowed to go back to work cannot be overstated. My family's savings have been depleted and the stress of trying to pay bills has affected not only my mental health but physical health as well. This in turn has created marital challenges as well as having a negative impact on my children. This mandate and subsequent illegitimate firing have absolutely adversely affected every facet of my life. At the time of this mandate, my wife and I had welcomed another baby into our family which brings about more expenses and challenges. I had worked very hard and put my heart and soul into my job for almost 14 years. The benefits/insurance, the paid time off, and retirement system are all a part of why I worked so hard and they all factor into how I am able to help support my family. The hardship of having my financial security ripped out from under me is devastating. I depended on earning my paycheck to pay my mortgage, car payment, food, diapers, clothing and all other unexpected expenses that happen in this life. Every position I held for Lourdes Hospital was one of service. Service to youth, families, pregnant woman and parents etc. My goal everyday was to make someone's life better. Then one day, I was told I couldn't be at work anymore. No compensation was offered, no reasonable accommodation was offered, even though I could have done much of my work remotely if needed. Going beyond the financial hardships that I continue to struggle with, I am still burdened with the empty feeling from being completely ignored and having my employer of almost fourteen years turn their back on me without any care. People with whom I formed deep relationships with, were essentially made to either ignore me and cut ties completely, or chastise me for not falling in line and doing something that was against my sincerely held beliefs. Then there is the shame. The feeling that has consumed me and lingers day after day. The shame is twofold. First, I was forced to make a decision which has drastically impacted my family financially and has strained each relationship with the most important people in my life. Not to mention the most vulnerable, being my 9 year old and 1 year old sons. Second, the shame of all of a sudden being unemployed as a married man in my 40's and father of two. Imagine gaining skills and experience year after year, being an employee who can always be counted on to help and go above and beyond in any capacity needed, and then one day, without any drop off in your performance or a single negative review, it's over. To be told that not only am I not welcome to return to doing my job, but I cannot even step foot on the premises of my office that I had been reporting to day after day, year after year for well over a decade. That shame and that feeling of emptiness is not one that I can ignore or will soon forget. This matter is urgent and imperative to the wellbeing of my family as well as myself as a person and fellow human being. I urge you to stand by the decision of the Honorable Judge Neri.

Sincerely,



Aaron Bennett

# FLORINI EXHIBIT 27

My name is Ebony cooley I was terminated from Buffalo General Medical Center December 6, 2021. Since then I have had three jobs. I was scared trying to figure out what I would do I got my first job in January 2022, worked there until May 17 of 2022, then worked for a company called Windsong, where I was doing more familiar work as I was working in the imaging department again, but face discrimination and bullying at their job, and ultimately was fired October 11, 2022, i've been suffered extreme depression panic attacks anxiety and could not leave the house, I am now on medication and just now found another job The pay from both of the other jobs was \$10 less than I made a Buffalo General. The job that I have now is \$12 less than the job that I had a Buffalo General, I had to spend all of my 401(k) money. That was supposed to be for my retirement fund. I've had ask family and friends for money as well as been on food stamps, just to support myself. I've talk to coworkers I Buffalo General and they talk about the strain that has been since everyone has been gone and that they can't hire anybody to work at Buffalo general because nobody trust the hospitals anymore. This has been extremely hard I have mortgages and car notes to keep up with as well as children. I worked a Buffalo General for 8 1/2 years at the time of my termination December 6, 2021. This year May 6, 2023 it would've been 10 years. I went to school graduate it worked really hard and got my dream job and got fired. For standing up for my human rights, civil rights. This is my America this is beyond sad I should've never happened to anyone. No government can tell you what you have to put in your body. In New York State had religious exemptions up until 2019. How did they take it away in 2020. This is been sad for everybody the unvaccinated and vaccinated that didn't want to be vaccinated.

Sincerely Ebony Cooley January 26, 2023

# FLORINI EXHIBIT 28

To whom it may concern,

In November 2021, I lost my job  
as a Medical Technologist at Strong Memorial  
Hospital after 23 years of service. 1/26/23

I truly loved my job there and was  
so sad to be fired for not getting a  
vaccine that is neither safe or effective,  
as is claimed.

Thankfully, I was able to find a job  
in Feb 2022 and am still working there.  
Unfortunately, I am very unhappy at this  
job and have been struggling with being  
depressed because of it. I have 2 young  
sons + have missed many of their  
events because of the schedule of this  
current job.

I would really love my old job back.  
I loved the work and I loved my coworkers.  
The salary was better and the benefits  
were also better so money is a little tighter  
now, especially with inflation.

Please let the ruling of Judge Neri  
stand. Those of use who aren't vaccinated are  
of no health threat to the vaccinated.

Thank you,  
Denise Renter  
Denise Renter

# FLORINI EXHIBIT 29

January 26, 2023

“To The Appellate Division Fourth Department”

Dear Honorable Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri’s Decision and Order dated January 13, 2023.

Aside from the obvious loss of good income, health, dental, vision and life insurance, PTO and all additions into my pension from my ex-employer Northwell Health, I was denied Workers Compensation Coverage for a reinjury of an injury sustained while on the job with Northwell. In fact I have no less than 3 documented back injuries while working for Northwell and have not been the same physically. Due to my need to work, I accepted a par time private homecare assignment at much less pay and with no benefits at all and reinjured the same injury and I was denied physical therapy by workers compensation. Had it happened at Northwell, all would have been covered including lost pay for lost work.

Additionally, I lost out on the ability to use the Family Leave Act as my father needed significant end of life care and I lost work days and pay at my new job to care for him. Had I been at Northwell, I would have been given 6 months FLMA plus significant pay and that would have been such a relief.

I had major car and home bills during this time and my new job salary paid those, but not much else. Next year will be rough as my husband will retire and my current salary will mostly pay for a healthcare plan for the two of us.

There are too many difficulties to detail. This has been an incredible financial loss and on our family and extended family aside from the emotional stress. Thank the good Lord I don’t have young children at home. Should the court wish to hear my testimony, I am more than willing to give it.

Regards,

Karen La Rosa RN, BSN, CNOR

# FLORINI EXHIBIT 30



Dear Hon. Justices,

I am a member of Medical Professionals for Informed Consent. I write this letter through counsel to urge the court to expedite our appeal and deny the state any discretionary stay or injunction against Judge Neri's Decision and Order dated January 13, 2023.

I graduated xray school in 2006 from Niagara County Community College. I started my career at Niagara Falls Memorial Hospital right after graduation as an xray tech. I was there for 3 years and then decided to find something closer because the hour long drive to work was getting old. I then found a job at Windsong Radiology, where I became a Mammographer. I found myself missing xray after 7 years of the same thing day in and day out, and longed to be back in the hospital setting. I applied at Kaleida for years, but never got passed the application. I decided to stay on part-time at Windsong, and picked up a part time job at Niagara County Community College as an Xray Clinical Instructor teaching at Buffalo General Hospital. I loved it. I loved teaching so much, especially at a hospital. The techs at the hospital talked me into applying for a per diem job which I was accepted for. I was so excited! Finally I got into the hospital and Kaleida of all places! So here I was, working 3 different places, doing 3 different things and I loved every minute of it. I was so happy in my career. A single mom with 2 girls, working to pay my mortgage, utilities, and making my girls happy. What could possibly go wrong? Well, the hospital decided to eliminate my per diem position, which put me in a layoff situation. I still had my part time job at both Windsong and the College. Still good. I was still happy. Then Covid hit. About 1 month into the pandemic, Windsong laid me off (it was an outpatient facility, and everyone was in lockdown), and so did the College. None of the students were in class. How could I teach? So here I am, jobless. The hospital called me asking if I was interested in a Full time day job. I asked if this was just temporary to help with Covid or a permanent position. I was told it was a permanent position. I was scared. Should I go risk my life to help people with some virus that is killing people? I sure did. I took that job. I went to work everyday, with a smile, doing what i love to do, to hopefully help people fight this virus. I was scared. Could I bring this home to my kids, my family? I could have, but I still did it. I wore a mask, goggles, gloves, face shield, and a gown in every Covid positive room. Every day. I never called in. Fast forward about 4 months, Windsong called me back to work. I needed to make a decision if I wanted to stay at the hospital, or go back to work for them. It was such a tough decision, but with the help of my girls I decided to stay at the hospital full time, and go back to Windsong on a per diem basis, working 2 to 3 nights a week. I also got called back to teach. Again I was so happy, even though there was a pandemic. I was doing exactly what I love. We were short staffed, and PPE was scarce. Fast forward a year later, we were told we had to get the vaccine or lose our job unless we were accepted for a Religious or medical exemption. This was also for the college. Windsong put no demands on us ( and this was because it is NOT state funded!) The hospital accepted my Religious exemption, the college did not. I was devastated about the college, but excited for the hospital. Then 2 short months later, we were told our religious exemptions were no longer valid and if we didnt get the shot by December 7th, we would lose our job. Here I am in panic mode. Could I afford to lose my job? I did not want this shot. I didnt trust something that was put together so quickly. So i followed my heart, and did not get th vaccine. Myself and 5 of my coworkers were escorted out like criminals. we cried, we fought, but Kaleida didnt care. No Union representation or anything. Just the 6 of us (from one dept at one hospital)left feeling useless and dirty. I lost the job I worked so hard for

so many years to get. I had no idea how i was gonna feed my kids or pay for my house. Unemployment was denied to me. My ex husband was fighting for my house. I was in deep trouble. I tried door dashing to earn something. I still had my per diem job at Windsong, but 2 to 3 short shifts a week would never cut it. It was a tough few months. I was lucky because in the end I was offered another full time job at Windsong, which is where I am now. I am happy that they took me back with no restrictions. The vaccine was never mandated at outpatient facilities, again because they are not state funded. I am fortunate enough to say i am working in my field today. Im not as happy as I was then, and not making nearly as much as i was, but I am getting by. We have to cut some corners at home now, but again we are getting by.

I am willing to bet that Governor Hochul got a sugar shot, and not the real Vaccine. She needs to be reeducated about the vaccine so she is aware that the vaxxed are still getting sick, and are spreading it, not just the unvaxxed. The rest of our department that was vaxxed was sick with covid when we were walked out. Covid, now, is really just a bad flu, and people have been living with the flu, without getting vaxxed, for years. Its called natural immunity. Teach governor Hochul about this.

We deserve to get our jobs back, and backpay and benefits. We were there when the pandemic struck, and we should still be there helping people, doing what we do best. Our patients deserve better and you cant get it with this healthcare shortage.

Thank you for your time,

Renee M. Eckam RT (R)(M)

1/26/2023

# EXHIBIT 10

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

-----X

MEDICAL PROFESSIONALS FOR  
INFORMED CONSENT, et al.

*Appellees-Plaintiffs.*

**Index No. CA 23-00161**

-against-

MARY T. BASSETT, et al,

*Appellants-  
Defendants.*

----- X

STATE OF NEW YORK     )  
                                  ) SS.  
COUNTY OF GENESEE    )

BETHANY FREEMAN, RN, being duly sworn, deposes and says:

1. I am a member of Medical Professionals for Informed Consent, the lead plaintiff-appellee in this case.

2. I make this affidavit in support of Appellee's motion to vacate the stay of the Decision and Order below pending this court's final disposition of this appeal, and to clarify that this case is not moot, because if this Court vacates the lower court's decision, my rights and interests will be actively harmed.

3. I am currently suspended from my position as a surgical nurse at Roswell Park Cancer Institute, a state owned and operated facility in New York.

4. Originally, when the Mandate was issued, Roswell suspended me until I obtained a medical exemption form from my primary care physician. They then granted me a medical exemption from the Covid-19 vaccine requirement after an allergist consult.

5. However, several weeks later, they rescinded it and told me I had to get confirmation that I qualify for a medical exemption from a second allergist.

6. Even the second state's recommended allergist agreed that it would not likely be safe for me to take a Covid-19 vaccine. However, he could not certify that I am entitled to an exemption. New York State's

Mandate only allows exemption for people who took a Covid-19 vaccine and suffered a severe anaphylactic shock.

7. I cannot take the chance of trying a Covid-19 vaccine. I have Bechet's Syndrome, which is a rare and serious autoimmune disorder that causes severe inflammation of blood vessels through the body. This can lead to blindness, ulcers on vital organs, debilitating joint pain, instability, and disability and other serious consequences.

8. I have had severe adverse reactions to vaccines in the past, leading to serious and lasting consequences. I cannot safely take any vaccine. Even smaller interventions, such as tuberculosis tests, can trigger a serious inflammatory event.

9. Bechet's Syndrome must be taken seriously. Most people with my condition are totally disabled. I have figured out the major triggers, and interventions that help, and it is only through rigorous effort that I am able to work at all.

10. Because of the Mandate's inflexible medical accommodation policy, the state suspended me without pay in January 2022.

11. I have not yet had my termination hearing.

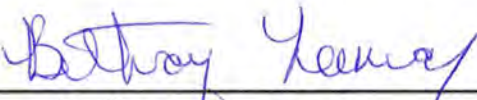
12. Upon information and belief, if this Court lifts the stay before my hearing occurs, I may be eligible for retroactive reinstatement and back

pay, since the suspension would have been made pursuant to a Mandate that has been declared unlawful.

13. Moreover, my human rights law claims will be undermined if this Court vacates the lower court's declaratory relief. That relief is an important aspect of my ability to seek relief from my employer.

14. I respectfully pray that this Court lifts the Mandate so that I can avoid imminent risk of termination and other consequences. I further pray that the Court can decide the appeal swiftly, or at least leave the lower court's declaratory relief in place so that I can effectively pursue my claim for back pay.

Dated: June 7, 2023

  
Bethany Freeman

Sworn to before me this  
7th day of June 2023.

  
Notary Public

MARY MARGARET RIPLEY  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN GENESEE CO. NO. 01R12354287  
MY COMMISSION EXPIRES JULY, 1 ~~2022~~ 2023

# EXHIBIT 11



SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT

-----X

MEDICAL PROFESSIONALS FOR  
INFORMED CONSENT, et al.

*Appellees-Plaintiffs.*

Index No. CA 23-00161

-against-

MARY T. BASSETT, et al,

*Appellants-  
Defendants.*

----- X

STATE OF NEW YORK     )  
                                  ) SS.  
COUNTY OF NASSAU)

ELIZABETH STORELLI, R.N., being duly sworn, deposes and says:



1. I am a named Plaintiff (Appellee) in this case.
2. I make this affidavit in support of our motion to vacate the stay of the Decision and Order below pending this court's final disposition of this appeal, and to clarify that this case is not moot, because if this Court vacates the lower court's decision, my rights and interests will be actively harmed.
3. When the Mandate took effect, I was employed as a nurse with Option Care Infusion Services. My employer took the position that the Mandate was unlawful as it did not allow them to grant reasonable religious accommodation, as required by law.
4. I was therefore granted religious accommodation and asked to test weekly as I continued my job.
5. On September 2, 2022, shortly before this lawsuit was commenced, my employer informed me that the New York State Department of Health (the "Department") was "cracking down" on nurses with religious exemptions, and that they were instructed by the Department that they could only provide medical but not religious exemptions. I was informed that if I did not get vaccinated by October 24, 2022, I would therefore be fired. [R. 44-45].

6. After this case was filed, under duress, I had to violate my sincerely held religious beliefs and get vaccinated, because I had no other choice. My son is currently undergoing expensive treatment, and he would be seriously harmed if I lost my health insurance.

7. However, after the lawsuit was filed, my employer began retaliating against me, upon information and belief, as a result of this lawsuit and the Department's efforts to fine them and crack down on them for having allowed me to work with a religious accommodation.

8. I had been approved for a "per diem" position prior to the filing, which I needed due to some personal and health related issues (not Covid-19 related).

9. Suddenly, my employer said that that position was "no longer available."

10. But this did not make sense. We were critically short-staffed, and they desperately needed nurses.

11. I saw an advertisement for a position with the Company doing per diem work in Staten Island and applied. I was accepted immediately, and the Director said that it was odd that they were saying they could no longer allow me to work per diem in Manhattan, since they were actively



hiring per diem positions in Manhattan too, which she was tasked with recruiting.

12. I think there was a lack of communication between Staten Island and my former branch, because when the Company learned I had been approved for the position in Staten Island, they immediately began trying to push me out.

13. They gradually started taking away my patients, froze me out of groups and access to new patients, and finally took all my patients away.

14. I think that I still technically "work" for the Company, but they refuse to provide me with any work.

15. Moreover, they have been retaliating against me, harassing me, and creating a hostile work environment. They asked me to resign.

16. The Director who I was working with was just fired.

17. I am currently on a short-term disability leave, due in part to the stress of this harassment.

18. However, when this ends, I fear that my employer will fire me in retaliation for this lawsuit, and their fines for accommodating my religious beliefs that were made public in this lawsuit.

19. I cannot pursue my human rights claims against them for this retaliation as effectively if the lower court's decision is vacated.

20. Moreover, since the Department's guidance says that it will stop prospectively enforcing the Mandate, but will continue to seek fines for prior noncompliance, both me and my employer remain vulnerable to actions by the Department for past alleged violations of the Mandate.

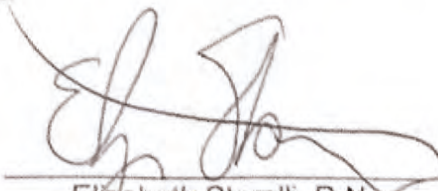
21. I am glad that I stood up for what is right, but I am bearing a heavy price for voicing these issues.

22. I have always been a dedicated, well-respected and hard-working employee. I just want to do my job and continue to care for patients.

23. I respectfully pray that this Court lifts the Mandate. Hopefully, if my employer is not being actively targeted by the Department for fines due granting me a religious accommodation, they may stop retaliating against me.

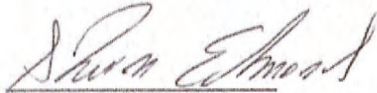
24. In any event, the issue is not moot, since I am still liable for fines and punishment due to prior "noncompliance" if the lower court's decision, declaring the requirement unconstitutional, arbitrary, and capricious in the first place, is not upheld.

Dated: June 6, 2023

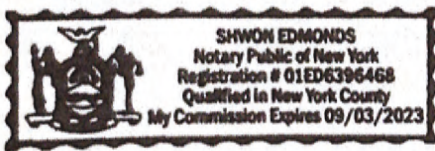


Elizabeth Storelli, R.N.

Sworn to before me this  
6th day of June 2023.



Notary Public



# EXHIBIT 12





3. I am Professor Emeritus of Epidemiology at Yale School of Public Health, a practicing academic epidemiologist with more than 40 years of experience in epidemiologic methods, both in research and teaching. My research has included both infectious and noninfectious factors.

4. Over this career, I have taught introductory, intermediate, and advanced epidemiologic research methods to public health graduate students, postdoctoral fellows, hospital residents, and junior faculty members. I have also taught coursework on pharmacoepidemiology, which is the epidemiologic study of vaccines, medications, and medical devices, and their antecedent conditions and reasons for use.

5. I have published some 400 peer-reviewed original research papers in well-regarded scientific journals and have an h-index of 105, with more than 48,000 publication citations to-date.

6. I have served as grant reviewer or chair on two dozen grant review panels, most of which were at NIH, and served as peer reviewer for 60 scientific and medical journals.

7. I have been Associate Editor of the *Journal of the National Cancer Institute* since 2000, Member of the Board of Editors of the *American Journal of Epidemiology* from 2014-2020, and Editor of the *International Journal of Cancer* since 2008.

8. I am an elected member of the Connecticut Academy of Science and Engineering and, based on my strong epidemiologic methods experience and PhD work in infectious epidemic models, was selected to be a member of the Academy committee that was organized in 2020 to formulate plans for helping the reopening of the state of Connecticut after its lockdown ended.

9. I thus began researching COVID-19 epidemiology, prevention, treatment, and vaccination with my participation in the Reopening Committee. In the subsequent 2.5 years, I extensively studied medical and epidemiologic factors related to the COVID-19 virus, the vaccines, and the disease in the US and internationally.

10. I base my understandings of vaccine immunity and safety from studies and data of the three genetic vaccines that have received emergency use authorization (EUA) from the US Food and Drug Administration (FDA): the two mRNA-technology vaccines (Pfizer-BioNTech and Moderna) and the adenovirus vector-based vaccine (Johnson & Johnson).

11. In my professional opinion, Appellants' claim that a vaccine mandate will reduce the spread of COVID-19 in any meaningful way is not supported by the great weight of evidence and does not comport with the current recommendations of the Centers for Disease Control and Prevention ("CDC").

**The Current Scientific Consensus, based on the Overwhelming Weight of Available Evidence, does not Support the Assertion that Vaccination can Meaningfully Stop the Spread of COVID-19**

12. My understanding from the papers is that Appellants assert that maintaining a vaccine mandate pending the outcome of their appeal is necessary to stop the spread of COVID-19 in hospitals and healthcare facilities and thus prevent irreparable harm.

13. This claim is not supported by the scientific evidence, nor is it supported by the consensus of public health officials and scientists as represented by official CDC statements.

14. In fact, in 2022, CDC specifically updated its guidance to state, "CDC's COVID-19 prevention recommendations no longer differentiate on a person's vaccination status."<sup>1</sup>

15. As further discussed below, there is no reasonable scientific debate about the fact that the original primary COVID-19 vaccinations have essentially completely lost effectiveness for preventing infection transmission, nor about that currently available vaccines provide only transient

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<sup>1</sup> Centers for Disease Control and Prevention. Summary of Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems — United States, August 2022. <https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm> (August 19, 2022; last visited January 31, 2023)

benefit and wane in effectiveness, nor about that unvaccinated employees pose no different risk of spreading COVID-19 over those vaccinated with the two-dose primary series.

16. Given these well-established facts, there is no scientific basis to assert that a vaccine mandate will meaningfully stop the spread of COVID-19 in healthcare facilities, or that staying the lower court's decision to strike the mandate is necessary to prevent irreparable harm.

**All Available Regular-Dose COVID-19 Vaccines Target the Original  
SARS-CoV-2 Virus, Rendering Them Largely Ineffective**

17. All currently available COVID-19 vaccines were designed to target the spike (S) glycoprotein of the original SARS-CoV-2 strain (Wuhan HU-1) identified in Wuhan, China, in late 2019.

18. Since then, however, substantial mutations have occurred to that structure—at least fifteen mutations of the Spike S receptor-binding domain (RBD) have been identified in Omicron alone. (Cao et al., 2022a).<sup>2</sup>

19. This dramatic evolution of the variant has resulted in substantial antibody escape, estimated at above 85% of all neutralizing antibodies tested by the same group of researchers, in another study evading neutralizing antibodies with a twelve- to 44-fold higher efficiency than the Delta variant (Hoffmann et al., 2022).<sup>3</sup>

20. “Antibody escape” renders antibodies elicited against the earlier virus strains ineffective against the escaped substrains.

21. The Omicron subvariants present an even higher capacity for antibody escape while also becoming more transmissible due to additional mutations in the spike protein.

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<sup>2</sup> Cao Y, Wang J, Jian F, Xiao T, Song W, Yisimayi A, Huang W, Li Q, Wang P, An R, Wang J, Wang Y, Niu X, Yang S, Liang H, Sun H, Li T, Yu Y, Cui Q, Liu S, Yang X, Du S, Zhang Z, Hao X, Shao F, Jin R, Wang X, Xiao J, Wang Y, Xie XS. Omicron escapes the majority of existing SARS-CoV-2 neutralizing antibodies. *Nature* 2022a;602(7898):657-663. <https://www.nature.com/articles/s41586-021-04385-3>

<sup>3</sup> Hoffmann M, Krüger N, Schulz S, Cossmann A, Rocha C, Kempf A, Nehlmeier I, Graichen L, Moldenhauer AS, Winkler MS, Lier M, Dopfer-Jablonka A, Jäck HM, Behrens GMN, Pöhlmann S. The Omicron variant is highly resistant against antibody-mediated neutralization: Implications for control of the COVID-19 pandemic. *Cell* 2022;185(3):447-456.e11. [https://www.cell.com/cell/fulltext/S0092-8674\(21\)01495-1](https://www.cell.com/cell/fulltext/S0092-8674(21)01495-1)

22. Specifically, more recently circulating variants like BA.4 and BA.5 are some four-fold more resistant to “sera from vaccinated and boosted individuals than BA.2,” which itself was already more resistant than the baseline Omicron variant (Wang et al., 2022).<sup>4</sup> Omicron variants in turn have been far more resistant than Delta, which was more resistant than the original virus strains to original vaccine-related immunity.

23. In other words, vaccination with the primary series, which is what this mandate requires, has little to no effect on a person’s ability to become infected and/or pass on currently circulating strains of SARS-CoV-2, and may in fact even be counterproductive.

24. The data further show that, even for currently available vaccine boosters updated to target Omicron subvariant BA.1, the recent mutations in BA.5 render such an update largely ineffective (Cao et al., 2022b).<sup>5</sup>

25. Similarly, bivalent booster vaccines targeting BA.4 and BA.5 are highly ineffective against current substrains BQ.1.1 and XBB.1 (Miller et al., 2023).<sup>6</sup>

26. These substrains together comprise the overwhelming majority of virus variants presently in circulation in the US (see CDC chart, next page, dated January 28, 2023).<sup>7</sup>

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<sup>4</sup> Wang Q, Guo Y, Iketani S, Nair MS, Li Z, Mohri H, Wang M, Yu J, Bowen AD, Chang JY, Shah JG, Nguyen N, Chen Z, Meyers K, Yin MT, Sobieszczyk ME, Sheng Z, Huang Y, Liu L, Ho DD. Antibody evasion by SARS-CoV-2 Omicron subvariants BA.2.12.1, BA.4 and BA.5. *Nature* 2022 Aug;608(7923):603-608.

<https://www.nature.com/articles/s41586-022-05053-w>

<sup>5</sup> Cao Y, Yisimayi A, Jian F, Song W, Xiao T, Wang L, Du S, Wang J, Li Q, Chen X, Yu Y, Wang P, Zhang Z, Liu P, An R, Hao X, Wang Y, Wang J, Feng R, Sun H, Zhao L, Zhang W, Zhao D, Zheng J, Yu L, Li C, Zhang N, Wang R, Niu X, Yang S, Song X, Chai Y, Hu Y, Shi Y, Zheng L, Li Z, Gu Q, Shao F, Huang W, Jin R, Shen Z, Wang Y, Wang X, Xiao J, Xie XS. BA.2.12.1, BA.4 and BA.5 escape antibodies elicited by Omicron infection. *Nature* 2022b;608(7923):593-602. <https://www.nature.com/articles/s41586-022-04980-y>

<sup>6</sup> Miller J, Hachmann NP, Collier AY, Lasrado N, Mazurek CR, Patio RC, Powers O, Surve N, Theiler J, Korber B, Barouch DH. Substantial neutralization escape by SARS-CoV-2 Omicron variants BQ.1.1 and XBB.1. *N Engl J Med*. 2023 Jan 18. <https://www.nejm.org/doi/full/10.1056/NEJMc2214314>

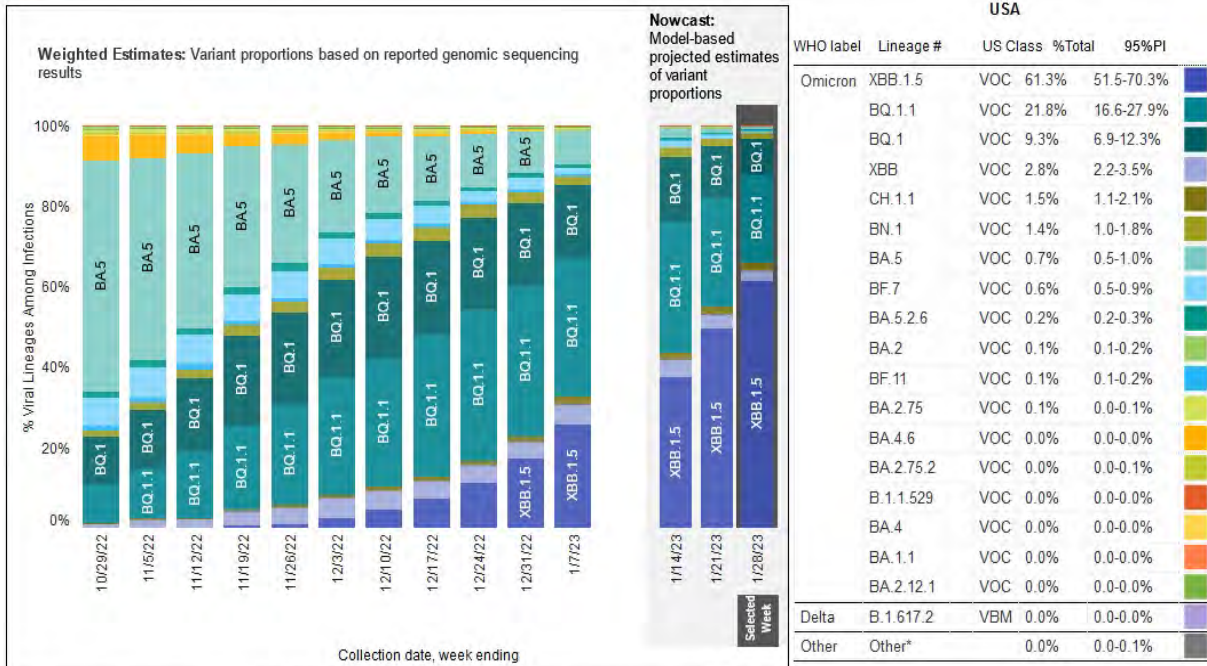
<sup>7</sup> Centers for Disease Control and Prevention. Variant Proportions. <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (2023; last visited January 28, 2023)

HHS Region: USA Data for Week Ending in: 1/28/2023 (Nowcast) View:  Nowcast and Weighted Estimates  Weighted Estimates Only

This shows weighted and Nowcast estimates for the United States. The table and map show estimates for the week ending in 1/28/2023 (Nowcast).

**Weighted and Nowcast Estimates in United States for Weeks of 10/23/2022 – 1/28/2023** **Nowcast Estimates in United States for 1/22/2023 – 1/28/2023**

Hover over (or tap in mobile) any lineage of interest to see the amount of uncertainty in that lineage's estimate.

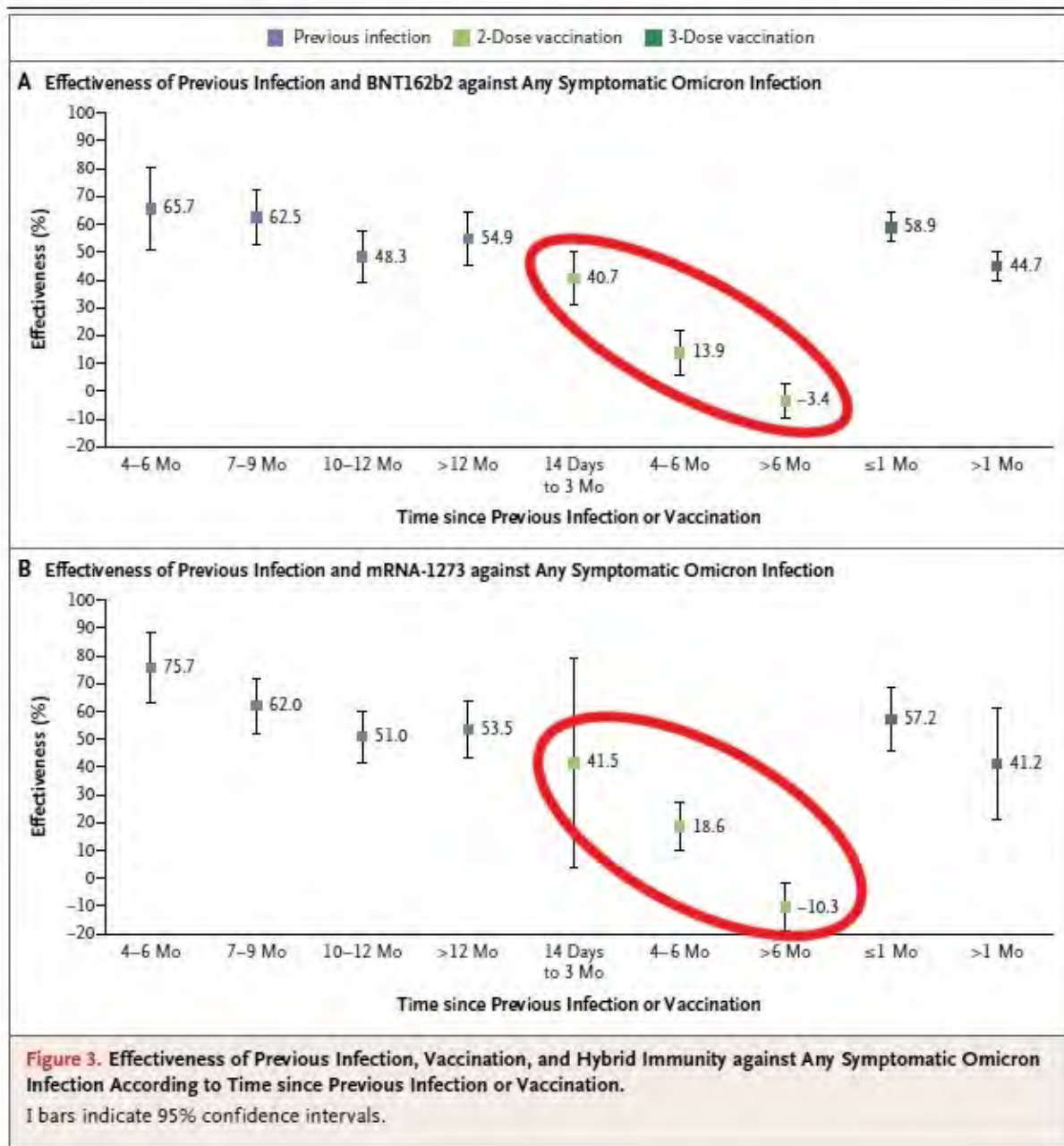


\* Enumerated lineages are US VOC and lineages circulating above 1% nationally in at least one week period. "Other" represents the aggregation of lineages which are circulating <1% national during all weeks displayed.  
 \*\* These data include Nowcast estimates, which are modeled projections that may differ from weighted estimates generated at later dates  
 # BA.1, BA.3 and their sublineages (except BA.1.1 and its sublineages) are aggregated with B.1.1.529. Except BA.2.12.1, BA.2.75, XBB and their sublineages, BA.2 sublineages are aggregated with BA.2. Except BA.2.75.2, CH.1.1 and BN.1, BA.2.75 sublineages are aggregated with BA.2.75. Except BA.4.6, sublineages of BA.4 are aggregated to BA.4. Except BF.7, BF.11, BA.5.2.6, BQ.1 and BQ.1.1, sublineages of BA.5 are aggregated to BA.5. Except XBB.1.5, sublineages of XBB are aggregated to XBB. For all the other lineages listed, their sublineages are aggregated to the listed parental lineages respectively. Previously, CH.1.1 was aggregated to BA.2.75. Lineages BA.2.75.2, XBB, XBB.1.5, BN.1, BA.4.6, BF.7, BF.11, BA.5.2.6 and BQ.1.1 contain the spike substitution R346T.

**Vaccine Protection Wanes More Rapidly than Natural Infection**

27. By four to six months after the full course of either the Pfizer or Moderna vaccines, protection against infection by the BA.1 or BA.2 subvariants is estimated to be somewhere between zero to thirty percent—in other words, almost entirely attenuated only six months after the last injection (UK Health Security Agency, 2022).<sup>8</sup>

<sup>8</sup> UK Health Security Agency. COVID-19 Vaccine Surveillance Report, Week 27, Publishing reference: GOV-12727, July 7, 2022. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1088974/Vaccine-surveillance-report-week-27.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1088974/Vaccine-surveillance-report-week-27.pdf) (last visited January 30, 2023).



28. Dozens of studies show that circulating antibodies, T-cells and B-cells reflective of SARS-CoV-2 infection last at least as long, and in most cases longer than, protection from vaccination (Alexander, 2022).<sup>9</sup>

<sup>9</sup> Alexander PE. 160 Plus Research Studies Affirm Naturally Acquired Immunity to Covid-19: Documented, Linked, and Quoted. Brownstone Institute, 2022. <https://brownstone.org/articles/research-studies-affirm-naturally-acquired-immunity/> (last accessed January 30, 2023)



29. Moreover, multiple other studies show conclusively that any protection the vaccine two-dose regimen can provide against Omicron infection wanes by six months (Kirsebom et al., 2022<sup>10</sup>; Tseng et al., 2022<sup>11</sup>; Nielsen et al., 2022<sup>12</sup>; Altarawneh et al., 2022<sup>13</sup>). The relevant Figure 3 from the Altarawneh study is shown at the top of the previous page (2-dose vaccination circled in red).

30. The Qatar study (Altarawneh et al., 2022) also shows in that figure that in contrast to vaccine effectiveness, previous infection effectiveness against reinfection remains stable for at least one year.

31. One empirical study of 11,000 UK healthcare workers demonstrates strong resistance to reinfection for at least 6 months.<sup>14</sup>

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<sup>10</sup> Kirsebom FCM, Andrews N, Stowe J, Toffa S, Sachdeva R, Gallagher E, Groves N, O'Connell A-M, Chand M, Ramsay M, Lopez Bernal J. COVID-19 vaccine effectiveness against the omicron (BA.2) variant in England. *Lancet Infect Dis* 2022; published online May 24. [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(22\)00309-7/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(22)00309-7/fulltext)

<sup>11</sup> Tseng HF, Ackerson BK, Bruxvoort KJ, Sy LS, Tubert JE, Lee GS, Ku JH, Florea A, Luo Y, Qiu S, Choi SK, Takhar HS, Aragonés M, Paila YD, Chavers S, Talarico CA, Qian L. Effectiveness of mRNA-1273 against infection and COVID-19 hospitalization with SARS-CoV-2 Omicron subvariants: BA.1, BA.2, BA.2.12.1, BA.4, and BA.5. *medRxiv preprint*, December 2, 2022. <https://www.medrxiv.org/content/10.1101/2022.09.30.22280573v2>

<sup>12</sup> Nielsen KF, Moustsen-Helms IR, Schelde AB, Gram MA, Emborg HD, Nielsen J, Hansen CH, Andersen MA, Meaidi M, Wohlfahrt J, Valentiner-Branth P. Vaccine effectiveness against SARS-CoV-2 reinfection during periods of Alpha, Delta, or Omicron dominance: A Danish nationwide study. *PLoS Med* 2022;19(11):e1004037. <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1004037>

<sup>13</sup> Altarawneh HN, Chemaitelly H, Ayoub HH, Tang P, Hasan MR, Yassine HM, Al-Khatib HA, Smatti MK, Coyle P, Al-Kanaani Z, Al-Kuwari E, Jeremijenko A, Kaleeckal AH, Latif AN, Shaik RM, Abdul-Rahim HF, Nasrallah GK, Al-Kuwari MG, Butt AA, Al-Romaihi HE, Al-Thani MH, Al-Khal A, Bertollini R, Abu-Raddad LJ. Effects of Previous Infection and Vaccination on Symptomatic Omicron Infections. *N Engl J Med* 2022;387(1):21-34. <https://www.nejm.org/doi/10.1056/NEJMoa2203965>

<sup>14</sup> Hanrath AT, Payne BAI, Duncan CJA. Prior SARS-CoV-2 infection is associated with protection against symptomatic reinfection. *J Infect* 2021;82(4):e29-e30. [https://www.journalofinfection.com/article/S0163-4453\(20\)30781-7/fulltext](https://www.journalofinfection.com/article/S0163-4453(20)30781-7/fulltext)

32. Four empirical studies demonstrate strong resistance to reinfection for at least 7 months, in Qatar,<sup>15</sup> Denmark,<sup>16</sup> UK<sup>17</sup> and Austria.<sup>18</sup>

33. One empirical study in the London, UK, metropolitan area demonstrates strong resistance to reinfection for at least 8 months.<sup>19</sup>

34. Three empirical studies demonstrate strong resistance to reinfection for at least 9 months, in England,<sup>20</sup> Israel<sup>21</sup> and the US,<sup>22</sup> and another in the US for 10 months.<sup>23</sup>

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<sup>15</sup> Abu-Raddad LJ, Chemaitelly H, Coyle P, Malek JA, Ahmed AA, Mohamoud YA, Younuskunju S, Ayoub HH, Al Kanaani Z, Al Kuwari E, Butt AA, Jeremijenko A, Kaleeckal AH, Latif AN, Shaik RM, Abdul Rahim HF, Nasrallah GK, Yassine HM, Al Kuwari MG, Al Romaihi HE, Al-Thani MH, Al Khal A, Bertollini R. SARS-CoV-2 antibody-positivity protects against reinfection for at least seven months with 95% efficacy. *EClinicalMedicine* 2021;35:100861. [https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370\(21\)00141-3/fulltext](https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370(21)00141-3/fulltext)

<sup>16</sup> Hansen CH, Michlmayr D, Gubbels SM, Mølbak K, Ethelberg S. Assessment of protection against reinfection with SARS-CoV-2 among 4 million PCR-tested individuals in Denmark in 2020: a population-level observational study. *Lancet* 2021;397(10280):1204-1212. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00575-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00575-4/fulltext)

<sup>17</sup> Lumley SF, O'Donnell D, Stoesser NE, Matthews PC, Howarth A, Hatch SB, Marsden BD, Cox S, James T, Warren F, Peck LJ, Ritter TG, de Toledo Z, Warren L, Axten D, Cornall RJ, Jones EY, Stuart DI, Screamon G, Ebner D, Hoosdally S, Chand M, Crook DW, O'Donnell AM, Conlon CP, Pouwels KB, Walker AS, Peto TEA, Hopkins S, Walker TM, Jeffery K, Eyre DW; Oxford University Hospitals Staff Testing Group. Antibody Status and Incidence of SARS-CoV-2 Infection in Health Care Workers. *N Engl J Med* 2021;384(6):533-540. <https://www.nejm.org/doi/10.1056/NEJMoa2034545>

<sup>18</sup> Pilz S, Chakeri A, Ioannidis JP, Richter L, Theiler-Schwetz V, Trummer C, Krause R, Allerberger F. SARS-CoV-2 re-infection risk in Austria. *Eur J Clin Invest* 2021;51(4):e13520. <https://onlinelibrary.wiley.com/doi/10.1111/eci.13520>

<sup>19</sup> Breathnach AS, Riley PA, Cotter MP, Houston AC, Habibi MS, Planche TD. Prior COVID-19 significantly reduces the risk of subsequent infection, but reinfections are seen after eight months. *J Infect* 2021 Apr;82(4):e11-e12. [https://www.journalofinfection.com/article/S0163-4453\(21\)00010-4/fulltext](https://www.journalofinfection.com/article/S0163-4453(21)00010-4/fulltext)

<sup>20</sup> Hall VJ, Foulkes S, Charlett A, Atti A, Monk EJM, Simmons R, Wellington E, Cole MJ, Saei A, Oguti B, Munro K, Wallace S, Kirwan PD, Shrotri M, Vusirikala A, Rokadiya S, Kall M, Zambon M, Ramsay M, Brooks T, Brown CS, Chand MA, Hopkins S; SIREN Study Group. SARS-CoV-2 infection rates of antibody-positive compared with antibody-negative health-care workers in England: a large, multicentre, prospective cohort study (SIREN). *Lancet* 2021;397(10283):1459-1469. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00675-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00675-9/fulltext)

<sup>21</sup> Gazit S, Shlezinger R, Perez G, Lotan R, Peretz A, Ben-Tov A, Herzel E, Alapi H, Cohen D, Muhsen K, Chodick G, Patalon T. The Incidence of SARS-CoV-2 Reinfection in Persons With Naturally Acquired Immunity With and Without Subsequent Receipt of a Single Dose of BNT162b2 Vaccine : A Retrospective Cohort Study. *Ann Intern Med* 2022;175(5):674-681. <https://www.acpjournals.org/doi/full/10.7326/M21-4130>

<sup>22</sup> León TM, Dorabawila V, Nelson L, Lutterloh E, Bauer UE, Backenson B, Bassett MT, Henry H, Bregman B, Midgley CM, Myers JF, Plumb ID, Reese HE, Zhao R, Briggs-Hagen M, Hoefler D, Watt JP, Silk BJ, Jain S, Rosenberg ES. COVID-19 Cases and Hospitalizations by COVID-19 Vaccination Status and Previous COVID-19 Diagnosis - California and New York, May-November 2021. *MMWR Morb Mortal Wkly Rep* 2022;71(4):125-131. <https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm>

<sup>23</sup> Spicer KB, Glick C, Cavanaugh AM, Thoroughman D. Protective Immunity after Natural Infection with Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2) - Kentucky, USA, 2020. *Int J Infect Dis* 2022;114:21-28. [https://www.ijidonline.com/article/S1201-9712\(21\)00800-6/fulltext](https://www.ijidonline.com/article/S1201-9712(21)00800-6/fulltext)



35. Finally, one empirical study in Italy demonstrates strong resistance to reinfection for at least 11 months,<sup>24</sup> and one at the Cleveland Clinic in the US, for at least 13 months.<sup>25</sup>

36. These twelve empirical studies demonstrate that natural infection with SARS-CoV-2 generates effective immunity in dramatically reducing risk of reinfection for at least 6-13 months. Such reduced risks are comparable to or more durable than the temporary reduced infection risks lasting roughly no more than 6 months provided by vaccination, as shown above.

37. Appellants' own data set also shows that natural immunity is superior to vaccine immunity. CDC analysis of the NYSDOH COVID-19 cumulative laboratory-confirmed incidence data for the period May through November 2021 showed that 1.82% of vaccinated people without previous COVID-19 diagnosis got COVID-19, vs 0.62% of unvaccinated people who had previously had COVID-19, an almost 3-fold higher rate for vaccinated individuals<sup>26</sup>. This study was co-authored by Respondent-Appellant Bassett and Appellants' Affiant Dr. Emily Lutterloh in January 2022.

38. The same CDC report found almost identical rates in California for the same period: 1.55% of vaccinated people without previous COVID-19 diagnosis got COVID-19, vs 0.50% of unvaccinated people who had previously had COVID-19, again a 3-fold rate for vaccinated vs unvaccinated persons.

39. Similarly, the primary study that Dr. Lutterloh relies on in the affidavit submitted with these motion papers also found that vaccine effectiveness wanes over months, whereas immunity from natural infection does not. "We ... found that time since last dose of a COVID-19 vaccine (as a continuous variable) was associated with increased infectiousness of SARS Co-V2-infections. ... We

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<sup>24</sup> Vitale J, Mumoli N, Clerici P, De Paschale M, Evangelista I, Cei M, Mazzone A. Assessment of SARS-CoV-2 Reinfection 1 Year After Primary Infection in a Population in Lombardy, Italy. *JAMA Intern Med* 2021;181(10):1407-1408. <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2780557>

<sup>25</sup> Kim P, Gordon SM, Sheehan MM, Rothberg MB. Duration of Severe Acute Respiratory Syndrome Coronavirus 2 Natural Immunity and Protection Against the Delta Variant: A Retrospective Cohort Study. *Clin Infect Dis* 2022;75(1):e185-e190. <https://academic.oup.com/cid/article/75/1/e185/6448857>

<sup>26</sup> See fn 22, *supra*.

did not observe a statistically significant relationship between time since last SARS-CoV-2 infection and risk of transmission.” (NYSCEF Doc. 3 at p. 225, *Lutterloh Ex. B*) (Tan et al., 2023).<sup>27</sup> This means that increasingly over months after the last vaccine dose, risk of infection significantly increased, whereas after prior infection, a significant increasing risk of reinfection was not seen.

40. I am informed that all named Petitioners and most healthcare workers seeking reinstatement as a result of the lower court’s order have natural immunity. The science does not support an inference that their return to work will pose a direct threat to public health.

41. Dr. Lutterloh states that natural immunity should not apply to COVID-19 mandates (NYSCEF Doc. 3, Ex. L - Lutterloh Aff. ¶ 12 fn 3). In particular, she notes, “Serology is appropriate for diseases people typically only contract once in their lifetime, well characterized serology is reliably commercially available, and positive serology indicates essentially complete immunity. COVID-19 does not fit this profile.”

42. Respectfully, these three criteria do not represent the purpose of documenting serological evidence of having had COVID-19. The evidence cited herein at ¶¶ 28-35 shows that prior SARS-CoV-2 infection reduces the risk of reinfection in degree comparable to and for durations longer than 2-dose vaccine-based immunity. A serological test positive for indicators of natural immunity to SARS-CoV-2 is extremely specific for having previously had COVID-19. There is no requirement to demonstrate complete immunity by serologic evidence; there is no requirement that the previous COVID-19 not have occurred more than once, nor that infection could not theoretically recur, as breakthrough infections certainly can after vaccination (see ¶ 43 *infra*); and commercial testing for natural COVID-19 serology is available.<sup>28</sup> A positive commercial serologic test demonstrates the

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<sup>27</sup> Tan ST, Kwan AT, Rodríguez-Barraquer I, Singer BJ, Park HJ, Lewnard JA, Sears D, Lo NC. Infectiousness of SARS-CoV-2 breakthrough infections and reinfections during the Omicron wave. *Nat Med* 2023 Jan 2. <https://www.nature.com/articles/s41591-022-02138-x>

<sup>28</sup> <https://www.questdiagnostics.com/patients/get-tested/conditions/infectious-disease/covid-19/antibody>

fact of past COVID-19, and that fact is sufficient to assert durable immunity to reinfection by the virus, as good as or better than receipt of the primary series of vaccination required by the NYSDOH regulation at issue.

43. As discussed herein, 2-dose COVID-19 vaccine immunity does not provide complete immunity, and it does not protect the vaccinated individual from getting or transmitting COVID-19. The criteria stated by Dr. Lutterloh at ¶ 41 are not imposed on vaccine-based immunity and are therefore not comparable between vaccine-based and natural immunity. These criteria represent an ad hoc and arbitrarily incorrect characterization of the fact of a positive result in commercial serologic testing for past COVID-19.

**Currently Available Vaccines May Actually Increase  
The Risk of Infection or Transmission of SARS-CoV-2**

44. Data from a number of more recent high-powered studies show that currently available vaccines may eventually actually increase the risk of infection and transmission of COVID-19 rather than decrease it.

45. A study performed during Qatar’s Omicron wave in December 2021 to mid-January 2022 involving more than 1.6 million persons bears out this fact by demonstrating that any previous protection afforded by full primary doses of the currently available vaccines no longer exists (Altarawneh et al., 2022).<sup>29</sup>

46. The Qatar national study showed that full vaccination with either BNT162b2 (Pfizer) or mRNA-1273 (Moderna) had “negligible” effectiveness to prevent infection, and that the vaccines were conferring null or negative efficacy—in other words, by six months after vaccination, **those vaccinated but not boosted were more likely to develop symptomatic infections than unvaccinated individuals.** (Altarawneh et al., 2022)<sup>30</sup> (see earlier figure).

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<sup>29</sup> See fn 13, *supra*.

<sup>30</sup> *Id.*

47. The same eventual negative efficacy is seen after five months post-vaccination in the large Southern California Kaiser Permanente study by Tseng et al. (Tseng et al., 2022).<sup>31</sup>

48. The same eventual negative efficacy is seen after eight months post-vaccination in the large Swedish study by Nordström et al. (Nordström et al., 2022).<sup>32</sup>

49. Public Health UK data from March 2022 similarly show that boosted adults in all age groups had approximately three times the infection risk of unvaccinated adults (UK Health Security Agency, 2022).<sup>33</sup>

50. Even if there were some average behavioral differences between the vaccinated and unvaccinated individuals in the UK data, these would be very unlikely to have accounted for the large observed increased infection risks in the vaccinated, let alone suggest that the vaccinated should have had lower risk. Whatever general health differences might have tended to have been present in vaccinated vs unvaccinated individuals at the beginning of the UK vaccine rollouts were largely dissipated by March 2022 to which these data pertain.

51. Follow-up data of some 51,000 Cleveland Clinic health-care employees shows that the cumulative risk of getting COVID-19 is positively directly related to the number of previous vaccine doses (0, 1, 2, 3, >3) received (Shrestha et al., 2022)<sup>34</sup> (figure at top of next page). These risk differences between doses were statistically significant, and again demonstrate that vaccination is not associated with decreased risk of SARS-CoV-2 infection but quite possibly with increased risk.

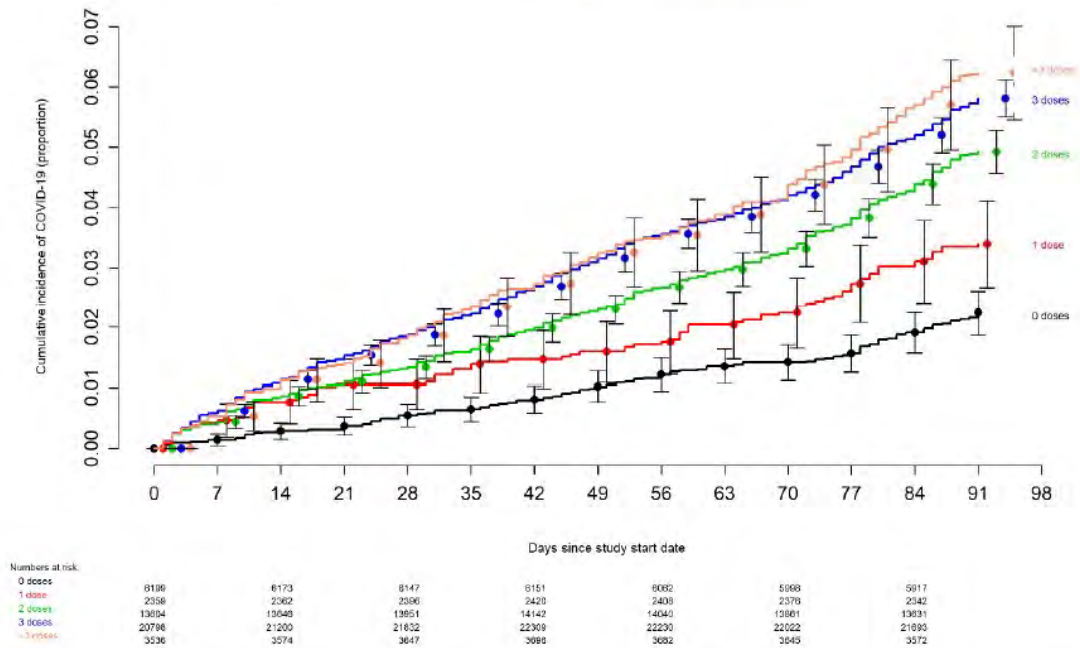
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<sup>31</sup> See fn 8, *supra*.

<sup>32</sup> Nordström P, Ballin M, Nordström A. Risk of infection, hospitalisation, and death up to 9 months after a second dose of COVID-19 vaccine: a retrospective, total population cohort study in Sweden. *Lancet* 2022 (399), February 26. [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(22\)00089-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(22)00089-7/fulltext)

<sup>33</sup> UK Health Security Agency. COVID-19 vaccine surveillance report Week 13, Publishing reference: GOV-11859, March 31, 2022. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1066759/Vaccine-surveillance-report-week-13.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1066759/Vaccine-surveillance-report-week-13.pdf) (last visited January 22, 2023).

<sup>34</sup> Shrestha NK, Burke PC, Nowacki AS, Simon JF, Hagen A, Gordon SM. Effectiveness of the Coronavirus Disease 2019 (COVID-19) Bivalent Vaccine. medRxiv preprint, December 19, 2022. <https://www.medrxiv.org/content/10.1101/2022.12.17.22283625v1>



**Figure 2.** Simon-Makuch plot comparing the cumulative incidence of COVID-19 for subjects stratified by the number of COVID-19 vaccine doses previously received. Day zero was 12 September 2022, the day the bivalent vaccine began to be offered to employees. Point estimates and 95% confidence intervals are jittered along the x-axis to improve visibility.

52. All of these data comprise definitive, large-scale evidence that the vaccines do not provide public-health benefit in reducing SARS-CoV-2 transmission, and within a few months after the last dose, may even potentially increase transmission risks.

53. Thus, as discussed *infra* starting at ¶ 54, government and public health officials have recognized that the currently available vaccines do not protect against infection transmission.<sup>35</sup>

<sup>35</sup> The raw NYSDOH COVID-19 breakthrough infection tracker data cited by Dr. Lutterloh (NYSCEF Doc. 3, Ex. L - Lutterloh Aff. ¶ 8 fn 1) on infection risk in vaccinated vs unvaccinated individuals do not bear upon the risk of COVID-19 reinfection. According to CDC NY state data in the León et al. publication (*See* fn 22, *supra*), unvaccinated New Yorkers who had had previous COVID-19 infection comprised 20.9% of all unvaccinated individuals by the time of the study analysis. The breakthrough infection tracker data thus include a very large majority who have not previously had COVID-19 and are at much higher risk of infection than those previously infected.

54. The CDC, for example, acknowledged that whatever protection against transmission or infection that the currently available vaccines might have afforded against earlier variants, transmission can occur with Omicron regardless of vaccination status. They state, “Omicron spreads more easily than earlier variants, including the Delta variant. **Anyone with Omicron infection, regardless of vaccination status or whether or not they have symptoms, can spread the virus to others.**” (Centers for Disease Control and Prevention, 2022).<sup>36</sup>

55. There are no statements on this CDC web page making any assertions that the vaccines have a benefit for preventing infection transmission.

56. On August 11, 2022, CDC conceded that the COVID-19 vaccines do not provide sustained public health infection or transmission benefit: “Receipt of a primary series alone, in the absence of being up to date with vaccination\* through receipt of all recommended booster doses, provides minimal protection against infection and transmission (3,6). Being up to date with vaccination provides a transient period of increased protection against infection and transmission after the most recent dose, although protection can wane over time.” (Masseti et al., 2022).<sup>37</sup>

57. The term “transient” means a short period of time, thus these vaccines do not serve an appreciable public health function in sustained reduction of infection or transmission risks.

58. And, while Attorney Brockner asserts that the CDC recommends that healthcare workers follow COVID-19 vaccination recommendations and requirements, he fails to mention that the CDC has updated guidance for healthcare workers to specifically caution that “[c]onventional strategies were updated to advise that, in most circumstances, asymptomatic healthcare personnel with

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<sup>36</sup> Centers for Disease Control and Prevention. Omicron Variant: What You Need to Know. <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (August 11, 2021; last visited January 22, 2023)

<sup>37</sup> Massetti GM, Jackson BR, Brooks JT, Perrine CG, Reott E, Hall AJ, Lubar D, Williams IT, Ritchey MD, Patel P, Liburd LC, Mahon BE. Summary of Guidance for Minimizing the Impact of COVID-19 on Individual Persons, Communities, and Health Care Systems - United States, August 2022. MMWR Morb Mortal Wkly Rep 2022;71(33):1057-1064. <https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm>

higher-risk exposures do not require work restrictions, regardless of their vaccination status.”<sup>38</sup> (NYSCEF Doc. 3, Ex. F at 103) as well as that “vaccination status is no longer used to inform source control, screening testing, or post-exposure recommendations.”<sup>39</sup>

59. Nor do Appellants mention CDC’s updated generalized guidance in 2022, stating that “CDC’s COVID-19 prevention recommendations no longer differentiate on a person’s vaccination status.”<sup>40</sup>

60. **Given that the vaccines do not prevent COVID-19 infection or transmission and are officially acknowledged not to do so, clearly there can be no benefit for mandating their usage.**

61. The regulation at issue mandated that the primary series be completed in 2021 and does not at this time appear to include any booster requirement.

62. Given the fact that vaccine efficacy wanes substantially in a matter of a few months, there is no rational basis to exclude unvaccinated healthcare workers but allow healthcare workers to come to work who had their last dose some two years ago.

63. Nor would the addition of a booster requirement justify the mandate from a public health perspective.

64. The booster vaccines recently released for the fall 2022/winter 2023 season are already appearing to show failure to provide appreciable public health value. This is because, just like the original vaccine doses, they have only transient benefit toward their targeted substrains BA.4 and BA.5, as well as that those substrains have already lost predominance in the US. The CDC chart provided

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<sup>38</sup> Centers for Disease Control and Prevention. Strategies to Mitigate Healthcare Personnel Staffing Shortages. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/mitigating-staff-shortages.html> (September 23, 2022; last visited January 30, 2023)

<sup>39</sup> Centers for Disease Control and Prevention. Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html> (September 23, 2022; last visited January 30, 2023)

<sup>40</sup> See fn 1, *supra*.

earlier shows that these Omicron variants are now of negligible circulation. The current substrains, BQ.1.1 and XBB.1, largely escape neutralization by antibodies resulting from the bivalent vaccine booster (Kurahde et al., 2022<sup>41</sup>; Davis-Gardner et al., 2023<sup>42</sup>; Miller et al., 2023<sup>43</sup>; Uraki et al., 2023<sup>44</sup>).

65. Because the COVID-19 vaccines, both the original formulations and the bivalent boosters, fail to provide any sustained suppression of population infection spread, they are inadequate as agents for pandemic control. This officially acknowledged lack of efficacy makes mandates for them, both for the original two-dose vaccines as well as for monovalent or bivalent boosters, unwarranted.

### **Conclusion**

66. By a large body of evidence, as well as by official statements of the CDC, there is no difference in risk of SARS-CoV-2 transmission by vaccinated vs unvaccinated individuals.

67. It is not a scientifically supportable position to state that maintenance of a vaccine mandate requiring the primary series of vaccines (effective 2021) is necessary to avoid irreparable harm.

68. On the contrary, particularly in an unprecedented staffing crisis, it would instead cause irreparable harm to patients and caregivers to continue to ban, based on their failure to receive the first two doses of the COVID-19 vaccine, ready, willing and able experienced doctors, nurses and other healthcare personnel from returning to work.

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<sup>41</sup> Kurahde C, Zou J, Xia H, Liu M, Chang HC, Ren P, Xie X, Shi PY. Low neutralization of SARS-CoV-2 Omicron BA.2.75.2, BQ.1.1 and XBB.1 by parental mRNA vaccine or a BA.5 bivalent booster. *Nat Med* 2022 Dec 6.

<https://www.nature.com/articles/s41591-022-02162-x>

<sup>42</sup> Davis-Gardner ME, Lai L, Wali B, Samaha H, Solis D, Lee M, Porter-Morrison A, Hentenaar IT, Yamamoto F, Godbole S, Liu Y, Douek DC, Lee FE, Rouphael N, Moreno A, Pinsky BA, Suthar MS. Neutralization against BA.2.75.2, BQ.1.1, and XBB from mRNA Bivalent Booster. *N Engl J Med* 2023;388(2):183-185.

<https://www.nejm.org/doi/full/10.1056/NEJMc2214293>

<sup>43</sup> See fn 6, *supra*

<sup>44</sup> Uraki R, Ito M, Furusawa Y, Yamayoshi S, Iwatsuki-Horimoto K, Adachi E, Saito M, Koga M, Tsutsumi T, Yamamoto S, Otani A, Kiso M, Sakai-Tagawa Y, Ueki H, Yotsuyanagi H, Imai M, Kawaoka Y. Humoral immune evasion of the omicron subvariants BQ.1.1 and XBB. *Lancet Infect Dis* 2023;23(1):30-32.

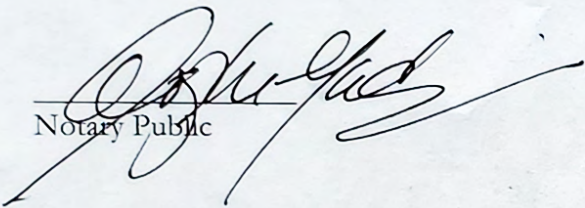
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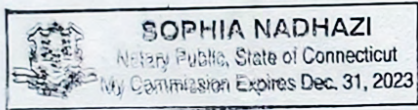


Dated: February 1, 2023

  
Harvey A. Risch

Affirmed before me this 1<sup>st</sup> day of February 2023.

  
Notary Public

  
SOPHIA NADHAZI  
Notary Public, State of Connecticut  
My Commission Expires Dec. 31, 2023