852 Franklin Ave., Suite 511
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May 9, 2024

VIA USPS AND EMAIL

Re: The Minor Consent to STD Vaccines Bills A276B and S762A Are Unconstitutional, Violate State and Federal Law And Endanger New York Children

Dear Majority Leader Andrea Stewart-Cousins, Speaker Carl Heastie, Sen. Gustavo Rivera, Assemblymember Amy Paulin, Assemblymember Liz Krueger, New York Senate Co-Sponsors, New York Assembly Co-Sponsors, Members of New York Assembly Rules Committee, and Members of New York Senate Health Committee:

It was recently brought to the attention of Children's Health Defense (CHD) that both the New York State Assembly and Senate Health Committees are considering identical bills, A276B and S762A, which remove parental notification of, and consent for, vaccines related to sexually transmitted diseases (STDs). Legislating a minor's consent to vaccination without parental notification and consent contravenes both state and federal law, and violates the U.S. Constitution. Moreover, for more than fifteen years, scientists and researchers have adduced evidence that the STD vaccines at issue are neither safe nor effective, thereby posing a grave risk to children's health. Rather than protecting the health of minors, these bills actually put minors' health at risk by cutting out parents — those who know their children's and family's medical history best — from medical decision-making for their children.

Respectfully, as set forth herein, these bills should be rejected and withdrawn.

A276B and S762A Deceptively Define "Medical Care" for Sexually Transmitted Diseases To Include Vaccinations And Put Children's Health at Grave Risk by Cutting out Parents' Participation in Medical Decision Making.

The stated aim of both A276B and S762A to provide *"'medical care'* to minors for sexually transmitted diseases without parent's or guardian's consent" is misleading and disingenuous (emphasis added). Public Health Law Section 2304 *already* permits minor consent for the diagnosis and treatment of STDs. Instead, these bills specifically expand minor consent to immunizations and, as stated in the Senate version, specifically the human papillomavirus (HPV) vaccine.[1]

[1] Currently, Merck's Gardasil 9 is the only available FDA-licensed HPV vaccine in the United States. Importantly, however, there is nothing in these bills to prevent a minor from consenting to the monkeypox vaccine, which is

To achieve this end, the bills expand the common interpretation of "medical care," *i.e.*, diagnosis and treatment of infection,[2] to encompass "the *prevention* of a sexually transmissible disease" through vaccinations. Moreover, the Memo section of the Senate bill deceptively claims to be a codification of an existing regulation, 10 NYCRR 23.4.[3] However, 10 NYCRR 23.4 does not permit preventive care for STDs without parental consent. Likewise, the laws pursuant to which 10 NYCRR 23.4, was adopted *in no way* permit STD vaccinations or other preventative STD care without parental consent.[4]

It seems apparent, therefore, that the main purposes of A276B and S762A are to both (1) legislate minor consent for HPV and other allegedly STD-related vaccines, and (2) to provide legislative cover for a regulation (or an interpretation of that regulation) that also clearly violates state and federal law.

Unbelievably, these bills expressly reject any age restrictions; in fact, minors may acquiesce to vaccinations so long as "the person has capacity to consent, without regard to the person's age, and the person consents." Rejecting a minimum age at which consent is presumed not possible allows an assessor to claim that very young children have given "consent." It is alarmingly easy to envision circumstances where a person assessing a minor's competency has a financial, ideological, or professional motive, resulting in a conflict of interest. Indeed, the bills provide absolutely no guidance as to **who** may assess a minor's comprehension and competence, what information must be provided to a minor, or **upon what criteria** an assessor bases his or her decision that a child has "consented." Indeed, these bills give predatory adults the means to take advantage of children. For example, it would allow an assessor to obtain "consent" from a child who was below the recommended age at which an HPV vaccine may be administered, thus endangering the child.

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unlicensed and has only received Emergency Use Authorization (EUA) from the FDA. We do not know the safety and efficacy of this vaccine. Given HPV vaccines' risks and lack of efficacy, discussed below, the potential for children to acquiesce to EUA or products that are *both* poorly tested and unlicensed creates an even greater risk of harm.

[2] *See, e.g.,* Oxfordreference.com, Medical Care defined as "care of sickness or injury under the direction of a physician or, more loosely, care provided by any qualified professional person in a health-related institution, clinic, or comparable setting."

[3] Section 23.4 states: "When a health care provider diagnoses, treats or prescribes for a minor, without the consent or knowledge of a parent or guardian as permitted by section 2305 of the Public Health Law, neither medical nor billing records shall be released or in any manner be made available to the parent or guardian of such minor without the minor patient's permission. In addition to being authorized in accordance with section 2305 of the Public Health Law to diagnose, treat or prescribe for a person under the age of eighteen years without the consent or knowledge of the parent or guardian of such person where the individual is infected with a sexually transmitted disease, or has been exposed to infection with a sexually transmitted disease, **health care practitioners may (as authorized by their scope of practice) render medical care related to other sexually transmitted diseases without the consent or knowledge of the parent or guardian."** (emphasis added)**.**

[4] Specifically, 10 NYCRR 23.4 claims to be authorized by Public Health Law Section 2311 which gives the Commissioner a right to make a list of sexually transmitted diseases; Section 2312 which permits treatment of chlamydia and other sexually transmitted diseases with antibiotics for those infected, as well as "expedited partner therapy," or treatment of partners suspected of infection without confirmation of disease; Section 2304 which provides public funding for testing and treatment of those infected and suspected of infection; and Section 225(4) which permits the public council to amend or repeal sanitary regulations and create a sanitary code.

To make matters worse, these bills not only cut parents out of the decision-making process, but they also block their access to information about the immunizations to which the child purportedly "consented." This poses a grave danger to the child and the child's parents. Indeed, when a child is harmed by a vaccine and the parent is in the dark about the child having received the vaccine (let alone consented), the parent is unlikely to recognize a vaccine-induced injury. Therefore, even if the parent seeks medical attention for the symptoms, she cannot provide a treating medical professional with a complete and accurate medical history, thereby also hampering the medical professional in effectively treating the child. Moreover, a parent may not be aware of the government-funded Vaccine Injury Compensation Program, which has a very circumscribed period to make a claim (at most, three years). Thus, a family also may be foreclosed from funds to assist in the tremendously expensive care for their vaccine-injured child if the parents are in the dark.

A276B and S762A are Clearly Unconstitutional Under the Supremacy Clause Because they Directly Violate the National Childhood Vaccine Injury Act of 1986

A276B and S762A (and any interpretation of 10 NYCRR 23.4 that permits a minor's consent to vaccination without parental notification) are clearly unconstitutional under the Constitution's Supremacy Clause because they directly conflict with, and indeed violate, the National Childhood Vaccine Injury Act of 1986 (NCVIA). *See U.S. Const., art VI, cl.2;* 42 U.S.C. §§300aa-25 and 300aa-26. Federal law mandates that a person administering vaccines to a child provide to the parent or court-appointed legal guardian a vaccine information statement (VIS) for each vaccine **prior** to its administration. 42 U.S.C.§300aa-33(2). VISs contain certain information about, among other things, vaccine risks, contraindications, and the availability of the Vaccine Injury Compensation Program to those who may be injured or die as a result of vaccination. Recognizing that vaccines can cause significant harm, including serious allergic reactions, deafness, long-term seizures, coma, lowered consciousness, anaphylaxis, permanent brain damage, and death, the NCVIA requires these dangers to be disclosed in the VISs and provided specifically to a parent or legal guardian. The federal statute does not permit a vaccine administrator to circumvent this requirement.

In fact, Children's Health Defense represented a group of parents challenging a similar law, the District of Columbia Minor Consent For Vaccination Act, in *Booth v. Bowser*, 597 F. Supp. 3d 1 (2022). In that case, the Federal District Court issued a preliminary injunction prohibiting enforcement of that law, which forced its repeal. As Judge Trevor N. McFadden stated in his opinion: *"*States and the District are free to encourage individuals – including children – to get vaccines. But they cannot transgress on the program Congress created. And they cannot trample the Constitution." *Id.*[5] In sum, A276B and S762A violate federal law and should be withdrawn.

A276B and S762A Conflict with Public Policy as well as State and Federal Law

In addition to violating the Supremacy Clause, these bills also violate New York State law which has long recognized the fundamental right of parents to give or withhold consent for their

[5] *See also,* T. C. A. §63-1-165, the Mature Minor Doctrine Clarification Act signed into law in Tennessee in May 2023, which recognizes the applicability of 42 U.S.C. §300aa-26 (the VIS requirement) of the National Childhood Vaccine Injury Act of 1986.

children's health services. Indeed, PHL §2504 currently reflects this right, **requiring parental consent for all medical services**.[6] While there is a limited exception, set forth in Section 2304 for the diagnosis and treatment of sexually transmitted diseases, this exception reflects public health concerns rather than the legislature's belief or acknowledgment that minors possess the capacity to make these decisions.[7]

"The general incapacity of minors to consent to health services derives from the common-law rule that treated a minor's 'normal condition [as] that of incompetency.'" *Alfonso v. Fernandez*, 606 N.Y.S.2d 259, 262 (1993). "As legal incompetents, minors could no more consent to medical treatment than they could enter into binding contracts." *Id.* at 262. Indeed, children under eighteen are too young to compare and appreciate the risks and benefits of medical services, both generally and in the applied context of their personal and family history.[8]

Moreover, these bills violate parents' constitutional rights under the 14th Amendment to the U.S. Constitution to the care, custody, and control of their children. This right specifically includes a parent's right to make fundamental medical decisions. In *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000), the Supreme Court acknowledged the long line of cases going back almost a century establishing a parent's constitutionally protected right in the upbringing of his or her children. This fundamental right is infringed when the state intervenes and substitutes its decision-making for that of the parent. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-640 (1974) "([F]reedom of personal choice in matters of...family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."). As the court stated in *Parham v. J.R.*, 442 U.S. 584, 602 (1979), "our constitutional system long ago rejected any notion that a child is 'the mere creature of the State and, on the contrary, asserted that parents generally 'have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.'" This right certainly includes a "high duty" to recognize the need for medical attention and to seek and follow medical advice.

HPV Vaccines Put Children's Health at Risk Because They are Associated With Debilitating Injuries.

In addition to violations of state and federal law, A276B and S762A put children's health at grave risk, as exemplified by the significant reports of injury from HPV vaccines. Indeed, the signatories to this letter, Mary Holland, Esq. and Kim Mack Rosenberg, Esq., Chief Executive

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[6] In addition to A267B and S762A, the New York State Assembly and Senate Health Committees are considering A6761 and S8352, which permit minor consent to all medical services and procedures. Like A267B and S762A, these bills should be rejected because they put minors' health at risk and similarly violate state and federal law, including but not limited to the National Childhood Vaccine Injury Act of 1986.

[7] *See*, Diekema DS. Adolescent Brain Development and Medical Decision-Making. *Pediatrics*. 2020;146 (suppl 1):S18-S24. doi:10.1542/peds.2020-0818F (last viewed 10/21/2023).

[8] *Id.*, ("[A]dolescents, to varying degrees, experience what might be called prefrontal cortex deficit disorder, a developmental condition marked by those characteristics commonly associated with adolescence: impulsiveness; inflexibility; aggressiveness; recklessness; emotional volatility; risk-taking with less sensitivity to risks than to possible short-term rewards, excitement, and arousal; reactivity to stress; vulnerability to peer pressure; tendency to underestimate long-term consequences; and tendency to overlook alternatives."). For this reason, in addition to medical services, New York State prohibits most or all minors from making many decisions, such as using the services of tanning salons, ear piercing, tattoos, ATV operation, jury service, voting, marriage, military enlistment and even buying an alcoholic beverage.

Officer and General Counsel of CHD, respectively, co-authored (with Eileen Iorio) a book on this topic. *HPV Vaccine on Trial: Seeking Justice for a Generation Betrayed* (Skyhorse Publishing 2018) chronicles both the dangers and lack of efficacy regarding HPV vaccines. Additionally, Ms. Mack Rosenberg is part of the legal team representing plaintiffs in a multi-district litigation currently pending against Merck, the manufacturer of Gardasil and Gardasil 9 HPV vaccines. Regardless of the safety and efficacy claims made about these vaccines, the post-approval data exposes such contentions to be misleading and false.

Indeed, nearly two hundred cases against Merck are now pending in the multi-district litigation in the United States District Court for the Western District of North Carolina, alleging serious, life-altering injuries, including many autoimmune-related injuries, to young women and men following receipt of Merck's HPV vaccines. Plaintiffs in these cases allege, among other things, that Merck's fraud led to their injuries. If parents were unaware that their children had received HPV vaccines, many of these families would not have known of their ability to seek compensation in the National Vaccine Injury Compensation Program and ultimately in court.

The Gardasil cases that finally have made the arduous journey to federal court are the tip of the iceberg. The Vaccine Adverse Events Reporting System (VAERS) is replete with reports of injuries following Gardasil and Gardasil 9 vaccination. Injuries include death and many serious health conditions such as brain inflammation, strokes, acute transverse myelitis, seizures and other uncontrolled body movements, blood clots, heart attacks and other cardiac conditions, autoimmune or related conditions (including Guillain Barré Syndrome, multiple sclerosis, premature ovarian failure, postural orthostatic tachycardia syndrome, rheumatoid arthritis, systemic lupus erythematosus, etc.). MedAlerts,[9] a VAERS search engine available through the National Vaccine Information Center,[10] currently (information last updated May 8, 2024) contains 76,415[11] reports of injury, including thousands of serious and disabling injuries, and 637 deaths.[12] The majority of reported adverse events occurred in children aged 17 and under.[13]

Gardasil 9 was licensed in 2014 and currently is the only HPV vaccine available in the United States. Clinical trials for Gardasil 9 were bootstrapped to the clinical trials for the original formulation of Gardasil, which the FDA approved for licensure in 2006. Critically, this methodology resulted in clinical trials devoid of true controlled clinical trial safety data because the safety of the original Gardasil was never compared to an inert saline placebo. Instead, Merck compared the vaccine to the vaccine's bioactive aluminum adjuvant – an ingredient specifically intended to heighten an immune system response to the vaccine and known to be neurotoxic.[14]

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[9] https://www.medalerts.org/index.php
[10] https://www.NVIC.org
[11] https://www.medalerts.org/vaersdb/findfield.php
[12] https://www.medalerts.org/vaersdb/findfield.php?TABLE=ON&GROUP1=CAT&GROUP2=AGE&EVENTS=ON&VAX%5B%5D=HPV2&VAX%5B%5D=HPV4&VAX%5B%5D=HPV9&VAX%5B%5D=HPVX&VAXTYPES%5B%5D=HPV
[13] https://medalerts.org/vaersdb/findfield.php?TABLE=ON&GROUP1=AGE&EVENTS=ON&VAX%5b%5d=HPV2&VAX%5b%5d=HPV4&VAX%5b%5d=HPV9&VAX%5b%5d=HPVX&VAXTYPES%5b%5d=HPV&SERIOUS=ON
[14] https://web.archive.org/web/20091017032020/https://www.fda.gov/downloads/BiologicsBloodVaccines/vaccines/ApprovedProducts/UCM111287.pdf No cohort received saline in the original clinical trial. While most "controls" received an aluminum adjuvant, Merck gave a small number of clinical trial participants a formulation containing all

The absence of saline placebos and other clinical trial manipulations should give you pause in allowing children to determine whether or not to get this vaccine without parental involvement in what should be a careful weighing of risks and benefits.

A276B and S762A Put Children's Health at Risk Because HPV Vaccines Have Never Been Shown to Prevent Cancer.

In addition to posing a risk of grave injury, there is no conclusive evidence that HPV vaccines have prevented a single case of cancer worldwide.[15] In examining data available from the National Cancer Institute, for young and mid-aged women in particular, there has been little change in the incidence of cervical cancer and death since the introduction of HPV vaccines in the United States. (*See*, Exhibit A for depiction of incident rates of cervical cancer and deaths caused thereby from 2000 to 2019). In fact, a greater reduction occurred between 2000 and 2006–prior to the vaccine's introduction.[16]

The median age of diagnosis with cervical cancer in the United States is fifty, and the median age of death from the disease is 59.[17,18] Thankfully, only 0.7% of U.S. women are diagnosed with cervical cancer, and many of those diagnosed have not received regular screening.[19] Moreover, the greatest decreases in cervical cancer incidence rates were seen in older women – who likely never received an HPV vaccine. The statistics show that screening works and efforts should be made to ensure that young women receive regular gynecologic care, such as PAP smears, which are inexpensive and effective. Indeed, even Merck admits that the vaccines do not substitute for screening.[20] Sadly, however, data also suggests that girls who receive the vaccine are less likely to be screened regularly.[21] As shown in Exhibit A hereto, the incidence rate of HPV actually rose for the youngest, most vaccinated women between 2011 and 2019, returning to pre-approval levels.

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the components except the HPV antigens and aluminum. That formulation included risky ingredients such as polysorbate 80 and sodium borate (aka, Borax). In the Gardasil 9 trials, it appears a very small cohort may have received saline, but only after they already had received three doses of the original Gardasil, so they also were not a true placebo control group.

[15] Moreover, there is scant need for such vaccines since the vast majority of HPV infections clear on their own. As depicted in Exhibit A, attached, only 0.18% of HPV infections, worldwide, ever become cervical cancer. *See, HPV Vaccine on Trial: Seeking Justice for a Generation Betrayed*, p. 47.

[16] *See*, SEER*Explorer: An interactive website for SEER cancer statistics [Internet]. Surveillance Research Program, National Cancer Institute; 2024 Apr 17. [cited 2024 Apr 24]. Available from: https://seer.cancer.gov/statistics-network/explorer/. Data source(s): SEER Incidence Data, November 2023 Submission (1975-2021), SEER 22 registries. Note, as well, NCI's data is available through 2020 but the NCI notes that because of the COVID-19 pandemic, 2020 incidence data is "anomalous" and may bias estimates. Thus, we have included up through 2019 incidence and death data. https://seer.cancer.gov/data/covid-impact.html

[17] *Id.*

[18] SEER*Explorer: An interactive website for SEER cancer statistics [Internet]. Surveillance Research Program, National Cancer Institute; 2024 Apr 17. [cited 2024 Apr 24]. Available from: https://seer.cancer.gov/statistics-network/explorer/. Data source(s): U.S. Mortality Data (1969-2022), National Center for Health Statistics, CDC. As indicated above, we have included up to 2019 incidence and death data.

[19] *Id.*

[20] *See*, Gardasil9.com ("Gardasil 9 does not remove the need for screening for cervical, vulvar, vaginal, anal, and certain head and neck cancers, such as throat and back of mouth cancers.")

[21] D.M. Harper and L.R. DeMars, "HPV vaccines—A review of the First Decade," Gynecologic Oncology, 146(1):196–204, July 2017, https://doi.org/10.1016/j.ygyno.2017.04.004.

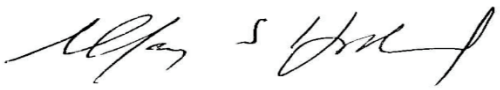
In sum, the data has proven over time that HPV vaccines are dangerous and ineffective. If children are pressured or encouraged to take them, without input from their parents, their health will be gravely endangered.

Conclusion

In closing, the changes these bills propose permit minors of any age to acquiesce to STD vaccinations though they are incapable of consent. Eradicating parental involvement and consent for serious and potentially life-threatening medical procedures places New York children in harm's way. A276B and S762A open the door to predatory medicine at the expense of children's health and well-being. Just imagine a parent receiving a call that his child had passed away or suffered a permanent injury from vaccination when he had no idea what was happening. Imagine the grief, the guilt, and the righteous anger towards the legislators who made this possible.

For the foregoing reasons, Children's Health Defense respectfully requests that you heed our warning that both A276B and S762A violate state and federal law, the Constitution, and endanger the health and well-being of New York children. Please withdraw these ill-considered bills.

Respectfully,



Kim Mack Rosenberg, Esq.
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Mary S. Holland, Esq.
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cc: Attached Service List

EXHIBIT A

The following data shows the delay-adjusted incidence rate of cervical cancer by age cohort (the numbers are per 100,000 women).[22]

Year Age	**15-39**	**40-64**	**50-64**	**65-74**	**75+**
2000	7.4	17.2	16.6	17.0	15.8
2006	6.8	14.2	13.2	14.3	11.5
2007	6.7	14.4	13.4	14.0	11.6
2011	6.0	13.6	12.4	12.6	10.4
2019	6.8	14.0	12.6	9.8	9.5

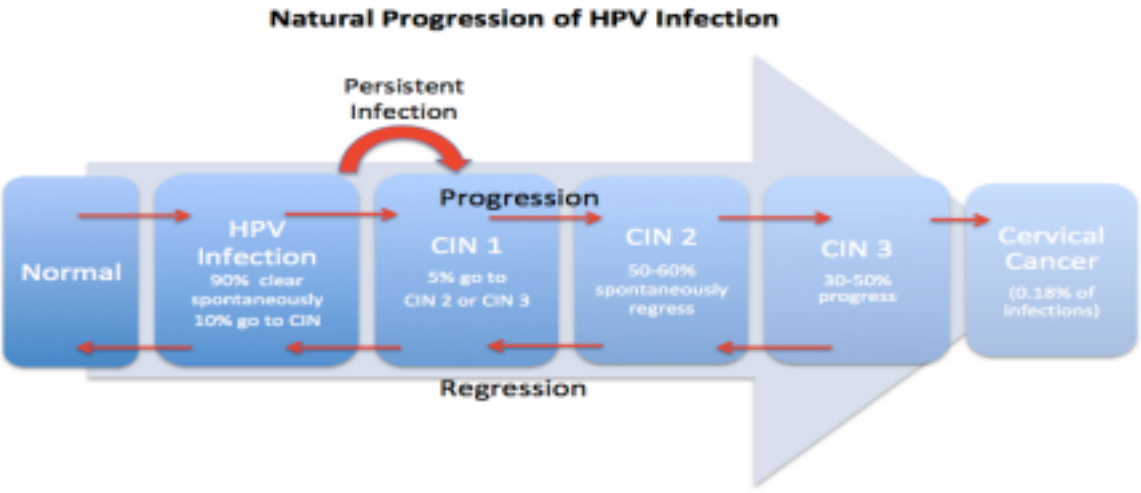
Conversely, the following data shows the death rate from cervical cancer by age cohort (the numbers are per 100,000 women):[23]

Year Age	**15-39**	**40-64**	**50-64**	**65-74**	**75+**
2000	1.1	4.7	5.6	6.8	8.5
2006	0.9	4.3	4.9	5.8	6.9
2007	1.0	4.2	5.0	5.8	6.8
2011	0.9	4.1	4.5	5.7	6.6
2019	0.8	4.0	4.5	4.9	5.4

[22] SEER*Explorer: An interactive website for SEER cancer statistics [Internet]. Surveillance Research Program, National Cancer Institute; 2024 Apr 17. [cited 2024 Apr 24]. Available from: https://seer.cancer.gov/statistics-network/explorer/. Data source(s): SEER Incidence Data, November 2023 Submission (1975-2021), SEER 22 registries. Note that NCI's data is available through 2020 but NCI notes that because of the COVID-19 pandemic, 2020 incidence data is "anomalous" and may bias estimates. Thus, we have included up through 2019 incidence and death data. https://seer.cancer.gov/data/covid-impact.html

[23] SEER*Explorer: An interactive website for SEER cancer statistics [Internet]. Surveillance Research Program, National Cancer Institute; 2024 Apr 17. [cited 2024 Apr 24]. Available from: https://seer.cancer.gov/statistics-network/explorer Data source(s): U.S. Mortality Data (1969-2022), National Center for Health Statistics, CDC. As indicated above, we have included up through 2019 incidence and death data.

Importantly, the need for vaccines – particularly in higher resource countries such as the U.S. is questionable because, in addition to effective and inexpensive screening methods, it is well understood that the vast majority of HPV infections clear on their own. As the graphic below shows, only 0.18% of HPV infections worldwide (including in lower-resource countries with less screening and more significant exposures to co-factors that contribute to cervical cancer) ever become cervical cancer.[24]



[24] *HPV Vaccine on Trial: Seeking Justice for a Generation Betrayed*, p. 47.

SERVICE LIST

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