

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
COMMITTEE ON CODES, REGULATIONS AND LEGISLATION

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TRANSCRIPT

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Tom Holt Good morning. I'm Tom Holt. I'm the Chair of the Committee on Codes, Regulations and Legislation. I have the privilege to call to order the Code committee meeting and welcome members and participants and observers. A couple of reminders. For council members and staff in the audience that this meeting is subject to the open meeting law and is broadcast over the internet. The webcasts are accessed at the Department of Health website. The on demand webcast will be available no later than 7 days after the meeting for a minimum of 30 days. Then a copy will be retained in the department for 4 months. There are some suggestions on ground rules to follow to make this meeting more successful. Because there is synchronized captioning, it is important that people do not talk over each other. Captioning can not be done correctly with two people speaking at the same time. First time you speak, please state your name and briefly identify yourself as a council member or DOH staff. This will be of assistance to the broadcast company to record this meeting. Please note that the microphones are hot mics, meaning they pick up every sound. Therefore, I ask that you avoid rustling papers next to the microphones and also be sensitive about personal conversations or sidebars as the microphones can pick up this chatter. As a reminder for our audience, there is a form that needs to be filled out before you enter the meeting room, which record your attendance at these meetings. It's required by the Joint Commission on Public Ethics in accordance with the Executive Law Section 166. The form is also posted on the Department Health's website under Certificate of Need. In the future, you can fill this form out prior to the council meetings. Thank you for your cooperation in fulfilling our duties as prescribed by the law. We do have a number of speakers that have signed up to speak today. Just a couple of reminders you need to limit your comments to 3 minutes or less. Presenters are limited to one member per organization and be prepared to deliver your comments promptly after your name has been called. As your name is called, move closer to the microphone. I think we've got some folks that have been here before, so you know the process. We'll try to have 3 or 4 of you come up at the same time so that we can move you through a little bit more quickly. We've also asked that if you have just general comments speaking to these codes in total, that you address those during the first code that will be presented this morning. There are 6 regulation proposals on the agenda for today for emergency adoption. The first is the investigation of communicable disease, isolation and quarantine.

Tom Holt Can I have a motion for recommendation of the adoption of this emergency regulation to the full Public Health and Health Planning Council?

Tom Holt Howard.

Tom Holt And a second?

Tom Holt Dr. Berliner, I'm sorry it needs to be just the members of the Code committee.

Dr. Watkins I'll second it.

Tom Holt Lito and Dr. Watkins, thank you very much.

Tom Holt Mr. Jason Riegert and Dr. Ursula Bauer of the department are available and will provide us with information on this proposal.

Jason Riegert Good morning. My name is Jason Riegert. I'm an attorney with the Department of Health. I'm here this morning to ask the council members to vote on the renewal of this emergency regulation pertaining to communicable diseases and isolation and quarantine. To briefly summarize, this emergency regulation amends Part 2 of the state sanitary code to update and clarify the department's authority, as well as that of the local health departments, to take actions to control the spread of communicable disease, including the use of isolation and quarantine. The emergency regulation also amend part 405 of Title 10 to require hospitals to report syndromic and disease surveillance data during an outbreak of a highly contagious communicable disease. Language is also included to permit the Commissioner to direct hospitals to take patients during such an outbreak. Lastly, the emergency regulation add Section 58 Dash 1.4 to Title 10 to clarify clinical laboratory reporting requirements for certain communicable diseases. Two changes have been made to this emergency regulation since it was last presented to the council on February 10th. First, language has been added to clarify that hospitals must report disease surveillance data in addition to syndromic surveillance data. Second, the definition of congregate quarantine has been removed from the emergency regulation as that term was not used in the regulation or in practice, and there were a number of public comments concerning the definition. Again, that has been removed. We're asking the council today to vote on renewal of this emergency regulation, as New York is still in the midst of a COVID-19 pandemic and renewing this emergency regulation will enable the department to continue its public health prevention measures to limit the spread of COVID, as well as other highly contagious communicable diseases. Of note, the current emergency regulation is set to expire on April 22nd. With the council's approval, the department will file this emergency regulation on or about that date, April 22nd to prevent the regulation from lapsing while we work to make it permanent.

Jason Riegert Thank you.

Tom Holt Thank you.

Tom Holt Are there questions from the members of the committee?

Tom Holt Are there questions from the members of the council?

Tom Holt Hearing none, we do have a number of folks who have signed up to speak. I'd like to first call Assemblywoman who will be speaking first, and she will be followed by Margaret, Cynthia and Virginia. We will give you a warning when there's about a minute left to speak. I also do just want to make note that the department received in excess of 300 communications from the public on these topics, and those have all been shared with the members of the committee and council.

Tom Holt Thank you.

Assembly Woman Jodi Giglio Good Morning, Chairman and members of the Public Health and Health Planning Council. I am Jodi Giglio and I proudly represent Assembly District 2 in the New York State Assembly. I'm unclear why myself and members of the public have to be here in person, and some do not. On January 31st, 2022, more than 10,000 New Yorkers signed a petition which I brought with me today and would like to submit for the record, seeking a public hearing on proposed DOH emergency regulations published in the New York State Register on December 15th, 2021. After they were ignored on February 17, 2022, I hand-delivered a letter to Governor Hochul in which I was joined by 31 of my colleagues in the minority conference. We called on the Governor to direct DOH to comply with the New York State Administrative Procedures Act and to schedule a public hearing immediately. Unfortunately, a public hearing was not scheduled despite the fact that DOH through this council has discretion to hold public hearings. It is unclear why a state agency would not want to hear from thousands of concerned New Yorkers. New Yorkers have been blatantly ignored. I come boldly before you today to express my profound frustration and how broken this process is and how New Yorkers wishing to be heard continue to be unduly burdened. Recent legislation signed into law by the Governor increased the number of subscribers a petition must have from 125 to 750 signatures before a public hearing can occur and increased the time to submit a request for a public hearing prior to the comment public hearing period ending. While the mission should be to make it easier for New Yorkers to request the public hearing, now, the Governor created an even greater burden for all New Yorkers wishing to be heard on the issues that matter most to them. New Yorkers have faced a lot in the last few years; a ruthless global pandemic, ineffective leadership from the executive board, devastatingly unnecessary nursing home deaths, endless draconian regulations, the circumvention of their Legislature and an overall lack of leadership and transparency at all levels of government. Although the Legislature previously granted emergency powers to the Governor, it was never intended to be an abdication of the role of the Legislature. Replacing the legislator with unelected and unaccountable state agency bureaucrats is wrong, violates the New York state constitution and is contrary to the spirit of our Democratic Republic and goes against the will of the people of the Great State of New York. These emergency regulations, especially 2006, relating to forced isolation and quarantine orders, mandatory mask and visitation in nursing homes and adult care facilities are all uniquely overreaching, liberty restricting, procedurally deficient, violate separation of powers and continue to leave New Yorkers from all across the state with the following unanswered questions. What is a quarantine isolation location? Is it a camp? Are you going to give doctors and the DOH Commissioner the power to quarantine or isolate people that they suspect to have a communicable disease? Empowering hospital residents is near and dear to me and my constituents. I sponsored a Bill Assembly Bill 6939.

Tom Holt Assemblywoman.

Assembly Woman Jodi Giglio Which allows patients with the ability to designate an essential visitor so that they are not alone. One size does not fit all. The state should not be painted with a broad brush. It is my honor to serve and to be here before you today. I strongly recommend and request that you consider my statements. Here are the 10,000 signatures for the record.

Tom Holt Thank you.

Tom Holt Next up, and if these three folks could come up and be ready to speak in order; Margaret, Cynthia, Virginia and then Susan.

Tom Holt Again, if you would state your name.

Margaret Margaret.

Tom Holt Thank you.

Margaret Good morning, everybody. My name is Margaret. I am a sitting board member in Locust Valley School District. I've been on the board from the inception of this pandemic. I am here today to request that this committee does their due diligence legally in the matter of all regulations that are falling under 10 NYCRR 2.60. I respectfully request that the committee reject, not extend, not readapt, not revise any and all regulations that violate 19 million New York State residents US Constitutional Rights, New York Constitutional Rights, Human Rights, Civil Rights. The Governor does not possess executive emergency powers. She is using this agency to circumvent and as an arm to go around the legislative branch. By her own admission in August, she said, and directly, I quote to the DOH. Find a way to keep the kids in masks. I don't have the power. This was all on television. The second time she admitted this was when she came and masked the entire state in December and then said she actually didn't have the power to force the county executives, but she was really hoping that the businesses would do that for her. And then lastly, on January 21st, after Massapequa voted to release the children from masking, she stated that it would expire on February 21st, so why bother? This before us is the quarantining, but it falls under the 2.60. Supreme Court judge's decision on January 24th in Nassau County stated that the regulatory process of using regulations as law that are not based on law or based on the Constitution is illegal, unlawful and unconstitutional. What this commission does by continuing to extend any emergency procedures or emergency regulations, is violate over and over the rights of 19 million residents. When given this information. You now have this. This is your knowledge. These regs are illegal and the process duplicitous circumvents our republic. It takes the legislative branch out of the process. You are not elected officials. You are not the legislative branch. You are all knowingly and willfully breaking the law. You are violating my rights every single day and the rights of the entire state. Make no mistake, the Supreme Court decision is still standing and the appeal has not been won. You are in very treacherous waters. Thank you very much for having me here today. Thank you.

Tom Holt Thank you.

Tom Holt Cynthia, followed by Virginia and then Susan.

Cynthia Hi. I'm Cynthia. I've never done this before, so please bear with me. What has been happening for going on three years with mask mandates, vaccine mandates, quarantines, lockdowns, passports, emergency powers are all completely unlawful. As one of the people of New York State, I want to remind you, we have a Constitution with a Bill of Rights for a reason. Those rights, life, liberty and pursuit of happiness cannot be limited or forfeited by government, corporations, agencies or a Governor who completely ignored the authority granted to the Legislature and the people. The Governor using the DOH gave herself authority to create a committee. Unlawful regulations that could not be passed were then used in a workaround which violates our fundamental natural rights and constitutional rights, ignoring separation of power. These actions are unlawful and are a attack against the people. Maxims of law universally accepted understanding of law 51 case states the law is not to be violated by those in government. I recognize that the lawful authority was granted by the consent and will of the people to the Legislature. I also recognize that these actions taken against the people are acts of maladministration. All

political power is inherent in the people by decree of God. Thus, none can exist, except it derived from them. Is not observed, a nullity of the act is inferred as follows. Where the law prescribes a form. You have to follow a form. The non observance of it is fatal to the proceedings and whole becomes a nullity. This is all null and void. Section 1 of the Bill of Rights states, No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by law of the land or the judgment of his or her peers. Article 5, Section 5, bail should not be required, nor cruel and unusual punishment be inflicted, nor shall witnesses unreasonably be detained. Article 1, Section 12, the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. The people of this state have been disenfranchised. The people of this state said no to the authority and regulations you tried to pass on us. Trying to pass them permanently is one more attempt to control the people, not protect them. These regulations are null and void and are forbidden by the law of the land.

Tom Holt Your time has expired.

Tom Holt Thank you.

Tom Holt Oh, I'm sorry. Your time is expired.

Tom Holt Thank you.

Cynthia Thank you.

Virginia Good morning. My name is Virginia. I come here with fewer signatures, but still there are 500 concerned citizens. I submitted the documents to you at 11:30am on Friday, April 1st, so they can be found amongst the documents that you received from citizens. The petition that we created outlined several considerations found in the documents that were left online 137 page PDF. Specifically, they are in opposition to the addition to Section 2.60, which is Section 213 as it relates to isolation and quarantine procedures that is found on Pages 7 through 11 of the PDF left online. This is in violation, of course, of our First, Fourth, Fifth and Ninth Amendment Rights, as Ninth Amendment rights infer rights that aren't explicitly stated in the Constitution. Section 2.60, Which of course, has already been found unconstitutional. Subpart 66-4.2. The requirements for adult care facilities. Part B requiring residents and staff to submit private information on vaccine status in violation of HIPAA laws and the Fourth Amendment. Specifically, Section 66-4.2 requires the facilities to document vaccination status during the hiring process of personnel as part of the pre-employment screening process. It is a violation of privacy and pressuring applicants to divulge private health data in opposition to HIPAA laws. There is also a section in penalties that omits the word consenting that would be 66-4.3. The word consenting most certainly should be inserted when talking about which people within the facility should be vaccinated. Some other considerations that we made while making this document---

Tom Holt One minute remaining.

Virginia Of course, were some of the case laws. For example, Case Law Miranda versus Arizona 384 U.S., 46 from 1966 as a Supreme Court decision where it was stated, where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them. Code 42 of the 1983 Civil Action for the Deprivation of Rights, every person who under color of statute, ordinance, regulation, custom or usage of any

state or territory or person within the United States or other person within the jurisdiction thereof in the deprivation of rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in action at law suit inequity or other proper proceeding for redress and grievance. Norton vs. Shelby County 118 U.S. 425 from 1886 Supreme Court, an unconstitutional act is not law. It confers no rights. It imposes no duties, affords no protection. It is in legal contention as inoperative as though it had never been passed.

Tom Holt Your time is expired.

Tom Holt Thank you.

Tom Holt I'd like to remind the members of the public to please refrain from responding and reacting. We're trying to keep this in order.

Suzanne Good morning. My name is Suzanne. This is my third time here. Hi, everybody again. I wasn't really sure what to say this time, because I can certainly say I haven't felt like I've been heard. I learned something very fascinating last night and I thought a little history lesson. If we're not going to learn from history, we're going to repeat it. During the bubonic plague, way back when it hit one of the islands of Hawaii and people were terrified, rightly so. The Black Plague was horrible and the head of their Health Department there on that island, he knew we had to do something because people were getting sick and they were dying, and they didn't know how this plague was spread. They knew it had something to do with hygiene, so they got all the people together and they cleaned up the streets. Didn't work. People continued to get sick. They continued to die. So he said, Well, let's burn down the buildings in the town that we know people got sick in. Maybe that'll take care of it. The people said, Well, yeah, we're going to do that, even though this is crazy because we're terrified of the plague. They got their fire departments together and they proceeded to do a controlled burn on these buildings. Unfortunately, the wind shifted. The entire town pretty much burned to the ground. Over 4,000 houses were decimated. Now, nobody got the plague again. You lost everything, but you didn't die from the plague. But they were pleased that the plague was gone. Now, it wasn't long after that that scientists and doctors figured out what was spreading the plague. You guys are medical. You probably know. It was rats. When they burned the town down, they killed all the rats. But obviously, world over, they didn't go around burning down their towns to get rid of the rats. They figured out ways to get rid of the rats. What you people are doing is taking the science that was in the beginning and you just want to burn down our lives again. You want to burn down the houses. You're not taking care of the rats, not taking care of the actual problem of this. You have these outdated. You want to follow the science, let's get rid of the rats. Take care of the rats. We're not going to comply anymore. We're done with this. I may be just an ordinary citizen, but I can tell you that most people that I know, we just want to live our lives. We're not going to let you burn our lives down again.

Suzanne Thank you.

Rich Thank you for this opportunity.

Rich My name is Rich. I've been a proud resident of the State of New York my whole life. Was educated through the SUNY system, had the opportunity to work with the DEC and are now a fisheries biologist contracted by the United States Geological Survey working with native species fish species restoration for Lake Ontario. I find these regulations being considered for emergency adoption shocking and how they give the totalitarian power to

state Commissioner of Health Mary Bassett, who makes decisions for residents, businesses, hospitals, health care facilities and nursing homes that take away our rights, entitled to laws by the Constitution. The emergency is over. The actual negative impact of COVID is small at this time and according to the section entitled Needs and Benefits clearly states COVID-19 has a disproportionate risk of severe illness for older adults and those who have serious underlying medical health conditions. Therefore, why not focus on the most vulnerable? Mandates did nothing to prevent the spread of COVID. They hurt our society, our economy and especially our children on many levels. You're wanting the power to remove someone from their home and put them in a quarantine facility in the name of public health reminds me of how a communistic government treats its people. I didn't even vote for you. Regulations based on vaccination status cause segregation and discrimination. The vaccination is now ineffective since it only targeted the Wuhan strain. Being unvaccinated, I'm required to test twice a week or lose my job. I am restricted from traveling for work. It's hard to keep your private medical preferences private when I'm the only one required to wear a mask. Nobody should experience this in a free country. What a waste of tests to make people do this when they have no symptoms when they could be used for someone who really needs it. I'm sure the test manufacturers are extremely happy about this, though.

Tom Holt One minute remaining

Rich No children should have to wear a mask. Parents protect their children. It is not the burden to protect their elders. That goes against the universal human nature. We will all witness, as we already have, the damages caused by our young ones for years to come. Research shows that masks didn't work. The CDC has even stated years ago that surgical masks are not intended for protection against any virus. They only provide a false sense of security. The CDC has announced that over 90 percent of Americans have COVID antibodies from either vaccination or natural immunity. It is clear that these restrictions and regulations haven't helped for two years. How can you call health care telling someone you have COVID? Go home and wait to see if you get better or until you're so sick you need a hospital. Sounds like neglect, not care. The use of safe and effective, repurposed drugs for early treatment has been researched and proven to keep most people from ever needing to go to a hospital or die.

Tom Holt Thank you.

Tom Holt Your time has expired.

Rich May I have one more minute, please?

Tom Holt You need to wrap it up.

Rich Okay, I'm almost done.

Rich Why not inform people how to help themselves maintain a healthy immune system before they get sick with cheap, available vitamins? Why aren't effective protocols for early treatment that are proven to help tens of thousands of people recover being shared with all the health care providers? My wife had COVID. Nobody from the doctors that she went to helped her. I had to reach out to a doctor in another state to have ivermectin shipped to our home so she could finally get well and go back to work.

Tom Holt Your time has expired. I extended you by 30 seconds.

Tom Holt Thank you.

Rich Thank you for your time.

Tom Holt Thank you.

Tom Holt Next up, we have Emma, followed by Jim and then followed by Judy.

Emma My name is Emma. We didn't come here today expecting you to listen to us. We came knowing you or most of you won't. We came knowing you see us as stupid, backwards country hicks, even who can't put two and two together, much less see through your facade of science. Your half baked pretense of caring about human lives. The fact we came in spite of this speaks volumes because it means our hope isn't in you and you do not hold the power. We have a greater hope, and it brings the counsels of men to nothing. Do you know we actually have common sense. If we're sick, we don't go out. We know not to spit in food, cough on people and cover our mouths when we sneeze. Put some faith back in our ability to handle illness in a responsible way. We learned this since we were children. We don't need you to be our moral compass. Do you know how many lives you shut down with forced quarantine? How many people have been hurt and lives have ended through the isolation that you imposed? In this day and age where we all talk about how everyone's life matters, can I ask you, why does the life cut short through mental illness turned suicide through forced isolation matter less than that of someone who may possibly catch COVID and will more than likely live? Why don't a lonely Grandmother's wishes to spend time with her family in her last years matter less than someone else's fears of catching a disease, which the vast majority survive? What about children cut off from their friends, children now trapped in abusive homes? People made for fellowship cut off from society. People who have lost their livelihoods. People with cancer unable to get lifesaving treatment. Do they matter less? Why do you get to choose? Why do I, 24 years old with all my hopes and dreams ahead of me, have to look at this world you've handed me and know that to you I and my loved ones matter less. You're responsible for the damage here. The children in school who all will bear these scars you've inflicted on them for all their lives. Families and individuals hurt, destroy and even dead. It's not possible to believe you actually have our best interests in mind. I don't know if in your mind you think you're some sort of heroes, but most villains think that after all. You're not special. How does it feel to be tyrants on the wrong side of history? You look at us and you may think you won. We're small in number, yes, but we're here fighting for a livelihoods and some of us indeed for our very lives in the lives of those we love. We're not walking away from this meeting with our heads down, our mouths closed, tails between our legs. I, for one, I've learned the greatest fight of all in life is the fight for hope. Maybe I'm young and dumb. Yes, it could be so, but I know I'm also brave, a seeker of truth, a lover of life and justice, and all that is good. There are so, so many more just like me behind me in this room and throughout this whole state. If we keep our hope, we keep our courage. If we keep our courage, we keep our strength. No matter what you may think, whatever way this goes, you haven't beaten us here today. We're not lying down to die. We're standing up right now. We're only going to get louder in the struggle against your tyranny. In the words of Samuel Adams, it does not take a majority to prevail, but rather an irate, tireless minority setting brush fires. We're backwoods country hicks, after all. We know a thing or two about brushfires.

Tom Holt Thank you.

Tom Holt Followed by Judy and Emmanuel.

Jamar Yes, Jamar, representing self from Central New York. Glad to be here again. We're hearing a lot of impassioned statements by those and I think we need to ask ourselves the why of that. We're two years into this situation and it's not like we expect anyone here to have all the answers for what we're going through together. But I thought I'd just give a little reference to on your website, your council and what your role is in this. Your council, according to Department of Health documents, directs you to operate on the principles of excellence, integrity and teamwork, which are to reflect the Department of Health's own stated mission, vision and values. Here we are today right now, Section 225, which states regarding your council, the Public Health Council shall at the request of the Commissioner, consider any matter relating to the preservation and improvement of public health. Now, we're here today to consider this motion to adopt an emergency adoption. It was stated earlier that we're in the midst of a pandemic, I don't know if that's what a lot of us think we're in the midst of right now. This emergency adoption you're proposing is to amend and add additions to regulations that would impact New Yorkers as it relates to your power to investigate communicable disease, impose isolation and quarantine, imposed the wearing of face masks and direct further reporting and testing. Wwe ask ourselves, where is the emergency? What have we learned these last two years? What should your recommendations to the Commissioner be? I just want to state my conviction that as you as a council are able to---

Tom Holt One minute remaining.

Jamar Thank you.

Jamar Give thought to your specific role in this, you can actually be a cause for good and not frustration. I mean, putting myself in your place, it's not your job as it's sometimes almost inferred to speak to the U.S. Constitution, which I myself, as I have mentioned in these meetings, right? We have those in assembly. We heard one today. She spoke first. We have those in the Senate. It seems like this process needs is broken. It's been pointed out that our feeling is that our rights are being violated in that what's being imposed on us to the point of us taking a serum into our bodies we don't believe in is being circumvented through an executive effort to accomplish that, rather than the voice of the people having, as it was also mentioned earlier, some public debate. We come here, we make our statements, but it already seems decided what's going to happen and that's not effective council leadership. That's not operating on the principle of teamwork and the other things that I hope that you can keep in mind.

Jamar Thank you very much.

Tom Holt Thank you.

Tom Holt Judy, followed by Emanuel Voucher and then Douglas.

Judy Hi, again. My name is Judy. I am representing the People's Coalition for New York. We have well over 90 member groups now with over a half-million members as of today's date. The last time I was here, I didn't realize there was an emergency or so the Governor said the day before on March 16th in an Executive Order declaring an emergency, claiming that there are over 100 COVID hospital admissions per day. The public has absolutely no proof of this claim, and again, I would like to reiterate that just because she says it doesn't make it so. Also, I am wondering, does this include admissions to the

hospitals for reasonable suspicion of COVID? Maybe someone broke a leg in several places and has a cough, so they are now included as a COVID admission. Are some of these admissions due to continuing to wear a mask and as in the Spanish flu of 1918, they end up with pneumonia? Are these considered COVID cases? How about your emergency regulation from November, which counted dead people on the way to the hospital? Who someone had reasonable suspicion of 1 of 30 COVID symptoms. In many instances reasonable suspicion has been used to support your faulty data, and still data has not been supplied to support these emergency regulations. You must be aware that promulgating emergency regulations with insufficient data is illegal and unconstitutional. Additionally, one day after the Executive Order on March 17th and I quote from a New York State website itself quote the designation of COVID-19 as an airborne infectious disease that presents a serious risk of harm to the public health under the Hero Act ended. Private sector employees are no longer required to implement their workforce safety plans. Anyone can see how illogical this is, and it's just one example of a reason why the public cannot trust you.

Tom Holt One minute remaining.

Judy Finally, and in the same vein, the Governor has been using the executive branch agencies to do her dirty work, circumventing the Legislature. This means you, Sanitary Codes Committee and you, Public Health and Health Cleaning Council. You are committees of appointed people not elected by the people. This makes you complicit in illegal activity. Trust me, you will go down in history this way.

Judy Thank you.

Tom Holt Thank you.

Tom Holt Emmanuel.

Emmanuel Good morning. Thank you for the opportunity to speak.

Tom Holt Excuse me, someone has background. I'll restart your time.

Tom Holt If the members of the council could mute their own Zoom.

Tom Holt You can restart.

Emmanuel Thank you for the opportunity to sit in front of you all today. I have just one question for you all as a group and as individuals. Where is the emergency? We're sitting not even 6 feet apart from each other, some with masks, some without. Show me an emergency. Seriously, that's all I have to say.

Emmanuel Thank you.

Tom Holt Thank you.

Tom Holt Douglas.

Douglas Hello, everybody. My name is Doug Lloyd. I have the same question as a lot of people, a lot of New Yorkers, where is the emergency? We are, in fact, at the end of the emergency and instead of putting out new regulations, we should be looking at the past

regulations and seeing the impacts they've had on society and what we can do better next time. I'm here to remind everybody that it's your job to protect the citizens of New York. You're here to provide guidance, you're here to provide best practices to provide information for the doctors, medical providers and patients to make their own decisions. You do not and should not have the authority to mandate our medical practices. The language and power given to the Health Department, Law Enforcement agencies in these regulations is the exact same as we've seen in Bill 406. 406 outraged New Yorkers. It was withdrawn by Nick Perry, because it was a gross violation of our rights. Nick Perry said he withdrew it because it fed conspiracy theories. Yet here we are passing the same regulations, the same thing as Bill 406. The definitions are vague and subjective. I'm going to quote from what we're looking to pass today. A case shall mean a person who has been diagnosed likely to have a particular condition or disease. A diagnosis may be solely based on clinical judgment signs and symptoms combined with known exposure to the best available evidence of transmissibility or a suspected case. Continues. Suspected case where isolating people based on suspicion here.n who

Tom Holt One minute remaining.

Douglas Likely or possibly have a disease. You are giving yourself the power to use law enforcement to quarantine citizens based on a subjective diagnosis. Is this the intention? I understand you may have the best interests in mind, but the power you're giving yourself is outrageous and absurd and can easily be abused. Again, it is your duty to provide the best information to people to let them make their own decisions. It is not your duty to force them into compliance. It is your responsibility to protect the citizens of New York. There are much more important ways to protect the citizens. For example, has everybody here read the 55,000 pages released from Pfizer on March 1st? Is anybody concerned that the 1,270 adverse reactions that were known by Pfizer were not made available.

Tom Holt Your time has expired.

Douglas Emergency use authorization, nor in the FDA product approval. There's more. Did anybody read what's come out on---

Tom Holt Your time has expired.

Tom Holt Thank you.

Tom Holt We do have one more speaker signed up, Karen.

Karen Good morning. I'm Karen. I am a resident of Saratoga County. In regard to the emergency extension of the isolation and quarantine regulation. Extending this regulation again is unwarranted. New York State has already passed the emergency stage of COVID without the need for this regulation. It is an astonishing attempt at overreach by the executive branch through one of its agencies. This is a violation of the spirit and intention of Chapter 82 originally passed in 1975 and meant to allow agencies to develop reasonable procedures to perform their lawful duties, not to propagate draconian regulations that suspend the rights of citizens. This regulation is similar to Assembly Bill 416, since its goal was to enable New York State to isolate or quarantine citizens based on a subjective presumption of disease. After six years, it was withdrawn by its author and December 2021. Even the elected representative recognized there was no chance for this dangerous proposal to gain legislative support in passage. The Legislature is a branch of government with the power to create laws. Because legislative members are directly

elected by the citizens, they face election every two years in New York and so must be responsive to their constituents. The verbiage used in this regulation is disturbingly vague. For instance, suspected case shall mean a person determined as possibly having a particular disease or condition. Who is the arbiter to make determinations? An appointee of the Governor? What recourse does a person suspected of a disease have to protect against an unjust---

Tom Holt One minute remaining.

Karen Pronouncement by the Health Department. This does not represent the will of the people, nor does it have any place in a constitutional republic. The Public Health Council members are appointees and agents of the Governor, as is the Department of Health. However, since the council is required to consider the efficiency and cost effectiveness of the health care New York State, it may be wise to weigh into your vote the fact that these regulations will spur more lawsuits. How much more will the state spend of our taxpayer money defending itself in court? The law is not on the side of this regulation. There is case law dating back to Marbury vs. Madison in 1803, where it was determined that if a law passed is repugnant to the Constitution, it is void even when passed by Congress. Nowhere in the Constitution is there any guidance for government officials to control public health.

Karen Thank you.

Tom Holt Thank you.

Tom Holt Thank you.

Tom Holt And that concludes the speakers who had signed up from the public to speak on this specific code.

Tom Holt Are there any other questions from the members of the committee at this point?

Tom Holt From the council?

Tom Holt Hearing none, I have a motion and a second. Again, just as a reminder, this is for the members of the committee only.

Tom Holt All in favor?

Tom Holt Opposed?

Tom Holt And that motion carries. This will now go to the full council for its consideration.

Tom Holt The next regulation up for consideration is face coverings for COVID-19 prevention. Can I have a recommendation of adoption of this emergency regulation to the for Public Health and Health Planning Council?

Tom Holt Thank you.

Tom Holt --- and Dr. Ursula Bauer of the department are available or provide us with information on this proposal.

William Sacks Good morning. My name is William Sacks. I'm an attorney with the Department of Health.

Tom Holt If you could just pull that a little bit closer to please.

William Sacks Can you hear me now? Good morning. My name is William Sack. I'm an attorney with the Department of Health. I'm here to ask the council members to vote to renew the emergency regulation that added a new Section 2.60 to Part 2 of the state sanitary code regarding face coverings for prevention of COVID-19 transmission. The express terms of the proposal are substantially the same as when you voted on the Emergency Regulation on February 10th of this year, with two clarifying corrections. The reference to children over two years of age has been changed to read two years or older, and the reference to social distance has been changed to state physical distance. The emergency regulation permits the Commissioner to issue determinations requiring face coverings in specific settings based on COVID-19 incidence and prevalence, as well as any other public health or clinical risk factors related to the reported spread of COVID-19. The emergency regulation does not require any specific use of face masks, but instead leaves the specific requirements up to the discretion of the Commissioner. For your awareness, there is no longer a broad indoor masking mandate, nor is there a requirement for masking in the schools. The current Commissioner's determination issued pursuant to this emergency regulation requires masking the following settings; health care settings as regulated by the Department of Health, adult care facilities, correctional facilities, homeless shelters and public transportation conveniences and transportation hubs. We ask the council members to renew the emergency regulation to allow the Commissioner to continue to determine when and where face masks should be worn, as the department continues to closely monitor the incidence and prevalence of COVID-19 transmission. Thank you.

Tom Holt Thank you very much. Other questions from the members of the committee?

Tom Holt Are there questions from the members of the council?

Tom Holt Just clarifying one thing for you. We may have one speaker from the public.

Tom Holt Dr. Purcell. We'd like to remind you of the three minute time limit that you have.

Tom Holt Introduce yourself, please.

Dr. Purcell Hello. Good morning. I'm Dr. Michael Purcell. I'm a constitutional physician. I'm board certified in both internal medicine and pediatrics. I'd like to speak on a couple of things here. I mean, number one, I think this is kind of ridiculous that you're even discussing some of these regulations as you don't have legislation to build them upon. The Constitution is not suspended in times of crisis. Have you forgotten that? Then I ask you to remember that. Some of you may have forgotten this here. This is the United States of America. I understand public health and it is important to keep people safe, but not at the expense of our constitutional rights. The science upon which this is predicated on is flawed. It's inaccurate. I've submitted multiple times in the past the meta analyses that have been done since the end of last year and beginning of this year to show that masking is not effective, particularly in children who can't wear the mask properly. There's detriment to children as well. The development, I see this a lot. I see this in the teenagers. I see increased risk of depression and increased suicides because we're cutting each other off. We're not being human beings anymore. This is something that needs to be

decided by people for themselves and their children. I am all for people deciding what is best for them and their children. You giving good support and recommendations as the Department of Health tasks you to do. When you overreach and you tell people you have to do this and you must do that, it is way beyond your reach. It is overreach. I'm here to hold you accountable because you are here to help the people, not to hinder the people.

Tom Holt One minute remaining.

Dr. Purcell I don't have too much more to say. I mean, honestly, if any of you have questions I'm happy to speak with you. Happy to speak with you after this. You absolutely should repeal all of this. I ask you to. I task you. I challenge you with dismantling this ridiculous and unconstitutional system of regulations that you have in place. It needs to be taken down completely. This is not something that should be able to be hit the button later and reenact it when somebody decides that a communicable disease is a concern to the public. You can have your recommendations. Guidelines are wonderful. I love guidelines as a physician. I want the evidence to back it, and then I want to be able to treat my physicians the way that is best for them. Let the doctors be doctors. Let parents decide what is best for their children.

Dr. Purcell Thank you.

Tom Holt Thank you.

Tom Holt That concludes the speakers that had signed up to speak in addition to this specific code.

Tom Holt I do have a motion and a second.

Tom Holt Are there are other questions or comments from the members of the committee?

Tom Holt Seeing none, I'd call for a vote.

Tom Holt All in favor?

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt And that motion carries

Tom Holt This regulation will now go to the full council for its adoption.

Tom Holt The third regulation for consideration this morning is hospital and nursing home, personal protective equipment.

Tom Holt Can I have a motion for a recommendation for this emergency adoption for the full public and Health Planning Council?

Tom Holt Dr. Gutierrez Dr. Watkins, thank you.

Tom Holt Mr. Mark Furnish and Mr. Jonathan Carmel of the Department of Health are available and will provide us with information on this proposal.

Mark Furnish Good morning. My name is Mark Furnish. I'm with the Department of Health. I'm here to talk about the PPE requirements. This would extend this regulation for an additional 90 days. States that each hospital and nursing home shall possess and maintain a supply of all necessary items of PPE to protect health personnel health care personnel for at least 60 days. It then lays out the formulas for each single gloves, gowns, surgical masks and N95 masks. The Commissioner shall have the discretion to increase the stockpile requirement from 60 to 90 days where there is a health emergency declared. Failure to do so may result in revocation limitation and suspension of a hospital or nursing home license, and a 14 day grace period is for the first violation only. The new section of this regulation that we haven't addressed before states that in order to maximize shelf life of stockpiled inventory that follow appropriate storage conditions the manufacturer's recommendations. Inventory should be rotated through regular usage and replaced to ensure a constant readiness. Expired PPE shall not be used to comply with the stockpile requirement.

Mark Furnish That's it.

Mark Furnish Thank you.

Tom Holt Thank you, Mr. Furnish.

Tom Holt I do want to make note of the fact that we did receive correspondence from Leading Age, one of the associations regarding a question they had around the calculation of the PPE. Does the Department of Response to that. Mr. Furnish.

Mark Furnish Can you repeat that?

Tom Holt Yeah, we received a question from the state association just regarding the calculation of the percentage being taken at the time of the maximum exposure rate. Just questioning whether or not that should be reconsidered at this point. I didn't know if the department had a response to that.

Mark Furnish As with all the regulations, the department is committed to an ongoing review and adjustments can be made when and if appropriate. And perhaps in the future we can reconsider the amounts. But right now it is too soon to lower the supply counts. Both the state disaster and national public emergencies do remain in effect, so we do have room to adjust at a later date.

Tom Holt Thank you.

Tom Holt Members of the committee who may have questions of the department?

Tom Holt Seeing none, members of the General Council might have questions?

Tom Holt We have no additional speakers for this.

Tom Holt I have a motion and a second.

Tom Holt I will call for the vote then.

Tom Holt All in favor?

Tom Holt Any opposed?

Tom Holt Abstentions?

Tom Holt That motion carries and will now go to the full council for its adoption.

Tom Holt The next regulation is Surge Flex coordination system.

Tom Holt Can I have a motion and a second?

Tom Holt Dr. Gutierrez Dr. Watkins, thank you.

Tom Holt Mr. Furnish, Mr Carmel of the Department are available and will provide us with information on this proposal.

Mark Furnish Hello, it's Mark Furnish again with the Department of Health. This is another 90 day extension of the Surge and Flex Emergency Regulations. We want to state that the only change to this is the change in language to clarify that this regulation applies only to general hospitals in Article 28, not primary care centers, adult care facilities, et cetera, which is to address the concerns that some members had. It requires each General Hospital to maximize the effectiveness and efficiency of the state's health care delivery system. Hospitals during this can increase up to 50 percent the number of acute care beds and or change in service categories at the Commissioner's discretion can also postpone up to 100 percent of elective surgeries at the Commissioner's discretion. It also requires that each hospital shall establish plans to meet enhanced staffing levels to ensure adequate staffing, maintain PPE for declared emergencies that could last up to 60 days. Statewide coordination plans of discharge transfer and receiving a patient's provisions for rapid discharge, transfer of or receive patients. Maintain a statewide health care data management system to monitor and coordinate during the emergency. Each hospital shall develop a General Surgeon Flex plan, which will include, at a minimum, a bed surge plan, a PPE surge plan, a mass casualty plan, a staffing plan and a capital plan that then discusses clinical lab testing relieving some of the clinical lab protocols in a place including temporary collecting stations to collect specimens and other things. Waives the minimum state standards to allow now and permitted labs, but still must follow the federal guidelines and accept specimens without an order. Allow pharmacists to collect clinical lab tests and labs curtailed at commissioner discretion to address emergency needs only. Written disaster plans for each General Hospital and emergency plans must be in effect, which include earthquake flood bomb threats, chemical spills, strikes, utility interruptions, nuclear accidents, etc. The Commissioner has the ability to suspend any regulations that could hinder the surge and flux plans so that the Surge and Flex regulation.

Mark Furnish Thank you.

Tom Holt Thank you.

Tom Holt Other questions from the members of the committee?

Tom Holt Members of the council?

Tom Holt Seeing none, I do have a motion and a second.

Tom Holt All in favor?

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt And that motion carries and will not go to the full council for its consideration and adoption.

Tom Holt The fifth regulation before us this morning as COVID-19 vaccinations of nursing home and adult care facility residents and personnel.

Tom Holt Can I have a motion for a recommendation of adoption of this emergency regulation to the full council?

Tom Holt Dr. Watkins, Dr. Gutierrez, thank you.

Tom Holt Mr. Furnish and Mr Carmel from the department are available and will provide us information on this proposal.

Jonathan Karmel Good morning. This is Jonathan Carmel from the Department of Health. This emergency regulation requires nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel. Specifically, the regulation requires nursing homes to offer COVID-19 vaccines to unvaccinated residents and personnel and to post conspicuous signage throughout the facility, reminding personnel and residents that the facility offers COVID-19 vaccinations. The regulation also requires adult care facilities to arrange for unvaccinated residents and personnel to receive COVID-19 vaccinations outside of the facility. For example, at a pharmacy. Additionally, the regulation requires facilities to provide personnel and residents who declined to be vaccinated. A written affirmation for their signature, which indicates that they were offered the opportunity to receive or have arranged a COVID-19 vaccination, but they declined. There were no substantive changes compared to the previous emergency regulation. In one place where another section is referenced, a conforming change was made to this regulation.

Tom Holt Thank you.

Tom Holt Are there questions from the members of the committee?

Tom Holt Members of the council?

Tom Holt I do have a motion and a second.

Tom Holt All in favor?

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt And that motion carries. This will now go to the full council for its consideration.

Tom Holt The final regulation before us this morning is COVID-19 reporting and testing.

Tom Holt Can I have a motion and a second?

Tom Holt Dr. Gutierrez, Dr. Watkins, thank you.

Tom Holt Mr. Riegert and Dr. Ursula Bauer of the department are available and will provide us with information on this proposal.

Jason Riegert Thank you.

Jason Riegert This emergency regulation adds two sections to Part 2 of the state sanitary code sections 2.9 and 2.62. Section 2.9 requires schools to submit daily reports to the Department of Health of all COVID testing results performed by the school, as well as positive test results that are reported to the school. This applies to public and private K through 12 schools. Then Section 2.6 to permit the Commissioner to issue determinations requiring routine COVID-19 testing in certain settings based on the incidence and prevalence, as well as any other public health and or clinical risk factors related to COVID-19. This section also permits the Commissioner to take to make such testing requirements contingent upon whether an individual is fully vaccinated, and the regulation provides a list of the documentation that would be acceptable to show that. One update to the regulation that has been made since it was presented to the council on February 10th is that it now clarifies that the Commissioner's determination requiring routine COVID-19 testing may exempt individuals who have had laboratory confirmed COVID-19 infection within the previous 90 days. Currently, there is a Commissioner's determination pursuant to 2.62, which requires weekly COVID-19 testing for teachers and staff in school. We're asking the council members to approve this emergency regulation to allow the department to continue to closely monitor COVID-19 infection rates in schools. The current emergency regulation is set to expire at the end of May, so the council's approval would allow the department to continue the emergency regulation through the end of the school year.

Jason Riegert Thank you.

Tom Holt Thank you very much.

Tom Holt Are there questions from the members of the committee?

Tom Holt Members of the council?

Tom Holt Seeing none, I do have a motion and a second.

Tom Holt All in favor?

Margaret I signed up to speak.

Tom Holt My apologies.

Margaret Am I permitted to ask a yes or no question?

Tom Holt You're permitted to address the council. The council will not respond to the question.

Margaret The determination that you were just speaking of. Can you give me the date of that determination that is keeping 2.2 active? I don't know which lawyer was speaking.

Tom Holt If you have a specific presentation that speaks to this code, we'd be happy to hear that. This is not an opportunity for questions and answers.

Margaret I can't get the answer of the date of the determination that's keeping it alive.

Tom Holt That's not what this form is for.

Margaret All right. Okay, so then I'm going to go with what I know.

Tom Holt If could ask the members of the audience to please, please be quiet.

Margaret I'm going to go with what I know. I am on the school board. We are still testing our teachers and it is a discriminatory process. You are all participating in discriminating against people's medical privacy and medical rights. We have the data that proves that our vaccinated teachers are contracting COVID, yet they are not required to test. We have teachers that submit to testing and now the state has changed the regulation and that testing is going to be an out of pocket expense. Now, the battle begins who pays that bill. That is a major, major compounding factor on all boards of education state wide. I truly don't believe that any of you understand what these regulations have done to school districts over the past two years. You don't have one school district following any guidance coherently. We found that you can go from neighborhood to neighborhood district to district, who was interpreting the guidance, who was doing it this way and that way from day one. Clearly, none of this was ever based on science, because if it was, we'd all be doing the same thing the exact same way. The second thing I want to say is Commissioner that during the original first year when we were in the unknown, we submitted daily building reports to the state. We had to put them into a computer program. You had that data by building by pupil. We asked for it in order to figure out if we could go parental choice in this past August. And instead of receiving that data, we just got an illegal regulation that skipped the process because you guys all gave yourselves the power to skip the process back in August. The determination that the teachers that we are being given that we are operating under is dated December 8th. My question is do determinations live on forever and ever and ever and ever or do they actually have an expiration date? If you have a new determination that was re done after the 90 days from December 8th one, please provide it to the school districts. Otherwise, you have now placed your ability to or willingness to defy the Constitution and discriminate people. I do request that you give us that information as elected officials because we can be held accountable unlike you.

Tom Holt That completes the list of folks who had signed up to speak to this regulation.

Tom Holt Any other questions or comments from the members of the committee or council?

Tom Holt I have a motion and a second.

Tom Holt Hearing none, all in favor?

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt And the motion carries and will go to the full council for its consideration.

Tom Holt That completes this morning's meeting of the Codes and Regulations Committee.

Tom Holt Thank you.