

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
SPECIAL COMMITTEE ON CODES, REGULATIONS AND LEGISLATION
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ESP, CONCOURSE LEVEL, MEETING ROOM 6, ALBANY

Tom Holt Good morning. I'm Tom Holt, Chair of the Codes, Regulations and Legislation Committee. I have the privilege to call to order the Codes committee meeting and welcome members, participants and observers. I'd like to remind the council members, staff and 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's website www.NewYorkHealthCare.Gov. The on demand webcast will be available no later than 7 days after the meeting for a minimum of 30 days, and then a copy will be retained by the department for 4 months. There are some suggestions or ground rules to follow to make this meeting successful. Because there is synchronized captioning, it's important that people do not talk over each other. Captioning can not be done correctly with two people speaking at the same time. The 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 broadcasting company whose recording this meeting. Please note that the microphones are hot mics, meaning they pick up every sound, and I therefore ask that you avoid rustling papers next to the microphone and also be sensitive about personal conversations or sidebars as the microphones will 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 records your attendance at meetings as required by the Joint Commission on Public Ethics in accordance with Executive Law Section 166. The form is also posted on the Department of Health's website under the Certificate of Need. In the future, you can fill out this form prior to council meetings. Thank you for your cooperation and fulfilling our duties as prescribed by the law.

Tom Holt And with that, I'd like to call the meeting of the Codes, Regulations and Legislation Committee to order. We are going to be discussing today the adoption of one emergency regulation has to do with the mandatory vaccination of health care workers. The only change noted to that regulation relates to the removal of the booster mandate and replacing the language to follow the CDC guidelines for fully vaccinated. For members of the public, I'd like to remind you that you'll be given the opportunity to speak for three minutes or less. You'll be limited to one person per organization. Please be prepared to deliver your comments promptly after your name is called. To that effect, your name will be called in order and please move close to the position in front to deliver your remarks. As we've done in the past, we'll call several of the speakers up together so that we can move through those who wish to speak rather efficiently. As I said, there's one regulation proposal on the agenda for today for emergency adoption. The adoption prevention of COVID-19 transmission covered entities. Dr. Jonathan Karmel and Dr. Emily Lutterloh of the department are available and will provide us with information on this proposal.

Jonathan Karmel Hello. This is Jonathan Karmel. I'm an attorney, not a doctor, but happy to present this to you all. This is the fourth time the department is asking you to approve an emergency regulation with health care worker vaccine requirements. This emergency

regulation continues to require that personnel of hospitals, nursing homes, diagnostic and treatment centers, hospices, home care services agencies and adult care facilities be fully vaccinated against COVID-19. The rule is applicable to personnel who could potentially expose patients, residents or other personnel to COVID-19. On January 11th, you approved the third emergency regulation, which required booster shots. The third emergency regulation went into effect on January 21st, and is in effect now, but will expire on March 21st. On January 25th, the department updated the FAQ document on our website to communicate that facilities did not have to document compliance until February 21st. And then on February 18th, the department posted on the Health Commerce system a letter to all facility types to communicate that the department would not enforce the booster requirement beginning February 21st, and would instead reassess in three months whether additional steps need to be taken to increase booster rates among the health care workforce. Consistent with what we communicated on February 18th, this fourth emergency regulation no longer requires personnel to have received any booster or supplemental dose, as recommended by the CDC. It also adds some language to make clear that if personnel are permitted to begin working without having completed the primary series, the facilities have an obligation to document that personnel do complete the primary series as recommended by the CDC. The requirement in this fourth regulation, this fourth emergency regulation is to be fully vaccinated. That is to complete the primary series as recommended by the CDC. The definition of fully vaccinated is in the department's FAQ document on our website. We'd like to make clear that even though this emergency regulation drops the booster requirement, the department continues to strongly recommend that all New Yorkers, including health care workers, are up to date with all recommended COVID-19 vaccine doses, including any booster or supplemental dose, as recommended by the CDC. Thank you for convening on such short notice. We'd be happy to take your questions now.

Tom Holt Thank you, Mr. Karmel.

Tom Holt Are there any questions of the department from the members of the committee or the council?

Jeffrey Kraut Howard has his hand up.

Tom Holt Dr. Berliner.

Jeffrey Kraut Could we just get the motion to be moved?

Tom Holt Thank you.

Jeffrey Kraut And then we could discuss it.

Jeffrey Kraut Dr. Gutierrez makes a motion.

Tom Holt Dr. Gutierrez.

Dr. Yang I'll second.

Jeffrey Kraut Dr. Yang seconded it.

Tom Holt Thank you.

Jeffrey Kraut Go ahead.

Tom Holt Thank you.

Tom Holt Any questions of the members of the committee or council?

Tom Holt Dr. Berliner.

Dr. Berliner What's the rationale for not requiring a booster, a booster shot?

Jonathan Karmel As we stated in a press release and also in our dear administrator letter on February 18th, that explains why we are not requiring a booster shot at this time. As we said, we're continuing to assess the situation and a booster requirement may ultimately be required. But for now, given the Twin State disaster emergency use of both COVID-19 and also the health care worker labor shortage, this is the decision that we've made at this time to balance out those two things.

Tom Holt Thank you.

Tom Holt Are there other questions?

Tom Holt Thank you.

Tom Holt We do have some members of the public who have asked to speak. I'll call them up in a moment. I also wanted to acknowledge that the department did receive in excess of 350 comments from the public. Those comments were distributed to the members of the council for their review and consideration. Additionally, we did receive one letter from the State Association Leading Age New York. We have five members who have asked to speak here today. I'm going to read each of you off in order and ask the first three to come up. As one speaker leaves, if the next one could just come up and be prepared to speak. The order that will go in will be Judy, Suzanne, Emma, Jim and Johnny. Would remind the speakers, and again, if the next two or three speakers could then come up so that we could move through you efficiently, that would be great. I would remind you, you'll be timed. You'll be given three minutes to speak and would expect that you speak specifically to the regulation that's in front of us today. I'll give you warnings at two minutes and one minute.

Judy Thank you so much.

Tom Holt Thank you so much.

Tom Holt And if you would, identify yourself.

Judy Sure.

Judy My name is Judy. I'm a Capitol District lead for the People's Coalition for New York, which has over a half million members strong and growing. At the risk of sounding like a broken record, yet again, you provide no data for your emergency justification, and in fact, that is a copy and paste job from the last emergency justification you provided, which was also a copy and paste job from the last emergency justification you provided for this emergency regulation. Again, that's a slap in the face to New Yorkers who are bound by your emergency regulations for which you are providing no data. For that reason, the

public cannot trust you. Is this an emergency? How would we know? You provide no data for that. Again, the public cannot trust you. Is this an emergency? One could also ask, Is this just you bridging a time gap from your last emergency regulation to a permanent regulation? I would not consider a time gap a justification for an emergency. You state in your needs and benefits section that the vaccine mandate has decreased and will continue to decrease COVID cases, hospitalizations and deaths, but you provide no data. Just because you say it does not make it. I remind you just because you say it, does not make it so. It would behoove you, as Mr. Lawrence said at the last meeting that having no data causes that to be weaponized against you, and it drives down the trust that the public has for you to make decisions in their best interest. It's also stated that the vaccines are safe and effective. Well, I don't know if you guys have seen the Pfizer data recently, but maybe you should take a look at that. Maybe you should take a look at the mortality rate associated with the vaccine.

Tom Holt One minute remaining.

Judy The adverse events related to the vaccines. I would submit to you that the vaccines are not safe and effective. Additionally, if you need to be booster on top of that, for them to be effective, they're not effective and you are actually causing a greater mortality and greater illness because you are pushing vaccinations on the public. They just cannot trust you. You also mentioned staff shortages and driving the vaccine requirement because of staff shortages, but you are causing staff shortages by requiring an experimental vaccine on health care workers. Shame on you. Finally, I'd like to say your vaccine, your immunization registry is data mining. I'm not confident that you all have the capability to keep that safe in an era of cybersecurity threats. I'm also not sure that that's not being used in a way---

Tom Holt Thank you.

Tom Holt Next speaker is Suzanne, followed by Emma, Jim and Johnny.

Suzanne Good morning. My name is Suzanne. I am simply a concerned citizen. Fear does not stop death. It stops life. Worrying does not take away tomorrow's troubles. It takes away today's peace. I read this anonymous quote during this time of fear of COVID. The bold truth of it struck me and helped me to make it through a lot of tough days. There has been so much fear in this world. It's become palpable. I could practically smell it when I went to the store. Fear on every side. Paralyzing fear of COVID. Fear of death and fear of loss of freedom. Fear of individual right to make your own decisions about what you're going to put in your body, what medical procedures you're going to get. This epidemic has divided this nation in a way that is just horrible. It's continuing to force people to follow non-scientific mandates, and this only causes more division. As this emergency is waning and mandates are being lifted, you're continuing to push these shots. I do not understand why you feel that you must continue this overreach of the regulations. The health care field already has such a shortage. People are not able to get the medical procedures that they need. I have a friend who had a heart attack and he cannot get in to get the care that he needs because they just don't have enough staff. And that's because you people are pushing these regulations, which are causing people to just quit.

Tom Holt One minute remaining.

Suzanne People are dying because of the shortages in the health care field, and yet you continue to want to push these shots. I won't call them a vaccine, because they're not.

Their shots that are supposedly going to help, but that's not how a vaccine works. They should not be mandated at all.

Suzanne Thank you.

Tom Holt Thank you.

Tom Holt Emma.

Emma My name is Emma. It's not possible for us to believe that you have our best interests in mind anymore. I wanted to believe that for a long time, but I can't believe things that are clearly not true. You're here and you're doing your hardest to make us look like idiots, but we're not. We're on your game with these vaccines and everything else. There may only be a few of us here, but we're standing up and we're not going to lie down and die. It doesn't matter what you do. The more you try and shut us down, the louder we're going to get. You're underestimating our tenacity, our courage and our hope. In the words of Samuel Adams, it does not take a majority to prevail, but rather an irate, tireless minority keen on setting brushfires of freedom in the minds of men. God save New York.

Tom Holt Thank you.

Tom Holt John, if you're planning to speak, if you would come up as well.

Tom Holt Thank you.

Jim Thank you. I'm Jim, Central New York. Appreciate the opportunity to address you all with some input from the public. I think a lot of us have been on this long journey of trying to for yourselves and us do what we think is the right thing. I just want to share today my conviction that your consideration of the mandate, whether it be in an emergency status or permanent or what's considered fully vaccinated, will continue to struggle as long as you continue to get away from the principles upon which this nation was established. The key thing being the mandate. If an individual feels to receive a vaccination in their minds to protect themselves and those around them, that should be their right. As we're also seeing if a person for their own reasons, their own research, their own experience believes that there is something to do with the vaccine, which represents a threat to their very well-being, there should be a means by which the Department of Health can speak to that in the form of what you mentioned in your own materials from last year. Whether it be testing or otherwise, there needs to be an extra effort to reach out to these people, whether it's considering their exemptions for physical reasons, religious reasons, ethical reasons, for whatever reasons. The hospital where my wife works as an RN and she's been there over 40 years, traditionally has used the floor above them as an overflow unit for when their unit is full and now, they can't do that. That's simply because the staffing isn't there. The rooms are there, the equipment's there, but there's no staff for it.

Tom Holt One minute remaining.

Jim Thank you.

Jim She frequently gets called in to work on her days off. The other day, one text saying it was a zoo there. Why is this? Well, it's that way for a lot of reasons, and that field is challenging to begin with. I worked at a hospital until I retired. You need to really give thought. You say in your materials again, you don't want to exasperate the health care

worker shortage, but that's what the mandates are doing. There's a group of people who took them the first time around, such as my wife and others, and I can't even speak for each one that are not going to take the booster and beyond. They've either seen too much damage done to those they know. They have learned more about them online and they're just not going to do it. You're going to be hearing from health care associations that are going to state this. It almost seems like this is the intent to almost change health care fundamentally through a health care worker shortage with things like mandates. I urge you to reconsider that approach and find solutions that work for everyone.

Tom Holt Your time has expired.

Jim Thank you.

Tom Holt Thank you.

Tom Holt Thank you.

Tom Holt That concludes the folks from the public who had signed up to speak in advance. We do have a motion and a second on the floor.

Tom Holt Would ask if there are any other questions from the members of the committee?

Tom Holt Seeing none, all in favor?

Tom Holt Any opposed?

Tom Holt That motion carries.

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

Tom Holt That concludes this meeting of the Codes and Regulations Committee.

Jeffrey Kraut Thank you very much, Mr. Holt and the committee members.