

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON HEALTHCARE
WORKERS FOR MEDICAL
FREEDOM, and MANDATE FREE
OREGON,

Petitioners,

v.

OREGON HEALTH AUTHORITY,

Respondent.

Case No. A176900

**MOTION-OTHER
MOTION TO STAY ENFORCEMENT
PENDING JUDICIAL REVIEW**

**EMERGENCY MOTION UNDER
ORAP 7.35**

ORAL ARGUMENT REQUESTED

Judicial Review of Oregon Health
Authority Temporary Administrative Order PH 42-2021
And OAR 333-019-1010

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ORAP 7.35 STATEMENT

Petitioners request that the Court grant an immediate temporary stay, pending a response from the State, and a reply from Petitioners. This motion is brought on an emergency basis. Unless the Court acts to immediately stay enforcement of Oregon Health Authority Temporary Administrative Order PH 42-2021 and OAR 333-019-1010 (the “Healthcare Vaccine Mandate”), members of Oregon Healthcare Workers for Medical Freedom, members of Mandate Free Oregon, and numerous Oregon healthcare workers, firefighters, first responders, and emergency service providers (collectively referred to as “healthcare workers”) will suffer severe and irreparable harm long before the rule can be subjected to full judicial review pursuant to ORS 183.400. Petitioners anticipate that unless stayed pending judicial review, the Healthcare Vaccine Mandate will force unvaccinated healthcare workers to lose their jobs on or before October 18, 2021.

Petitioners have notified opposing counsel and provided a courtesy copy of this motion via email, with service to follow by U.S. Mail. A call was placed to 503-947-4700 to notify Respondent of this motion and it was confirmed no attorney had yet been assigned to this matter.

MOTION

The Healthcare Vaccine Mandate was adopted by the Oregon Health Authority (OHA) on August 25, 2021, and was filed with the Secretary of State on

September 1, 2021. In conjunction with their ORS 183.400 petition, and pursuant to the Court's inherent authority, Petitioners move the Court for an emergency stay of the Healthcare Vaccine Mandate pending judicial review, on the grounds that Petitioners will suffer irreparable harm absent a stay and can demonstrate (at the very least) colorable error with the rule.

This motion is supported by the accompanying Memorandum in Support, the Declaration of Amanda Poore, president of Oregon Healthcare Workers for Medical Freedom, the Declaration of Kierstin Gaskin, the Declaration of Maria Prouflis, and the Declaration of Chief Earl Dean Smith.

BACKGROUND

Effective October 18, 2021, any "healthcare worker" as defined by OAR 333-019-1010(2)(d) must show proof of vaccination or documentation of a religious or medical exemption to their employer on or before October 18, 2021, or they may not "work, learn, study, assist, observe, or volunteer in a healthcare setting". OAR 333-019-1010(3)(a).

Petitioner, Oregon Healthcare Workers for Medical Freedom, is a non-profit member benefit corporation with over 1200 Oregon healthcare worker members. All members face termination on October 18, 2021, if they are not fully vaccinated. Many members of Oregon Healthcare Workers for Medical Freedom work 100% remotely, with no patient contact. However, under the definitions of the Healthcare

Vaccine Mandate, they are subject to the same potential for termination if they do not comply.

Petitioner, Mandate Free Oregon, is also an Oregon non-profit member benefit corporation. Its members face the same grim fate on October 18, 2021, if they are not fully vaccinated. Many members of Mandate Free Oregon are firefighters, first responders, healthcare workers, and emergency services personnel, without whom Oregon would be unable to help those who need it the most in emergency situations.

The Healthcare Vaccine Mandate specifically violates Petitioners' freedom of expression and religion. Regarding religious exceptions, the Healthcare Vaccine Mandate does not define "sincerely held religious belief" and allows employers to individually evaluate an employee's religion and the sincerity of an employee's religious beliefs. Petitioners, depending on their place of employment, are experiencing unequal application of the granting of exemptions and exceptions, or are being provided with unreasonable and demeaning accommodations.

The Healthcare Vaccine Mandate is not narrowly tailored to any compelling government interest and thus forces Oregon healthcare workers to choose between their health, their religion, their personal autonomy, and their careers. Any less intrusive alternatives that would serve a compelling government interest are not allowed, and the public will suffer exponentially because of this.

On September 7, 2021, Coos County became the first of many Oregon counties to declare a state of emergency due to the foreseeable lack of adequate resources to respond to basic needs for public health and safety. *See* Exhibit 1. The Order noted the pandemic has “exhausted many providers of core public services, including first responders, healthcare providers, emergency services, public health, and public safety, among many others.” *Id.* It mentioned the Healthcare Vaccine Mandate, and how “those efforts now appear to be backfiring by causing some of the exhausted workforce in those critical public health and safety systems to leave employment.” *Id.* On September 15, 2021, Jefferson County declared a similar a state of emergency. The Board of Commissioners, in Resolution No. R-013-21, requested the State of Oregon immediately withdraw the Healthcare Vaccine Mandate to prevent further exhaustion and departure of providers of core public services, including healthcare providers. *See* Exhibit 2. On September 16, 2021, Yamhill County followed suit and passed Resolution 21-09-16-1 and Board Order 21-385 seeking the same emergency protections. *See* Exhibit 3. Crook County also passed a similar resolution on September 14, 2021, more specifically related to loss of corrections staff. *See* Exhibit 4. At the time of this filing, Baker County anticipated the passing of a similar resolution in the near future.

Enforcement and enactment of the Healthcare Vaccine Mandate is an affront to the constitutional and administrative protections afforded to citizens of the State of Oregon. Counties are already forecasting the grim future that would face the State

if the stay were not granted. For these reasons, as explained in greater detail below, the Court should temporarily preliminarily stay enforcement of the Healthcare Vaccine Mandate.

ARGUMENT

I. The Court may stay enforcement of a challenged rule.

The Court of Appeals has the “inherent authority” to stay enforcement of an administrative rule pending judicial review of that rule’s validity. *NW Title Loans, LLC v. Div. of Fin. and Corp. Secs.*, 180 Or App 1, 12, 42 P3d 313 (2002);¹ see also *Blair v. Blair*, 199 Or 273, 287, 247 P2d 883 (1953); *Helms Groover & Dubber Co. v. Copenhagen*, 93 Or 410, 416, 177 P 935 (1919); *Armatta v. Kitzhaber*, 149 Or App. 498, 501, 943 P2d 634 (1997).

A showing of irreparable harm is required for a stay. *Nw. Title Loans*, 180 Or App at 13. The Court of Appeals also has suggested (albeit in *dicta*) that a petitioner may need to establish a colorable claim of error as well. *Id.* at 13 n.7 (discussing the criteria for a stay but declining to decide the elements because there was no showing of irreparable harm.) A “colorable claim” is “something less than a showing that the petitioner is reasonably likely to prevail on appeal.” *Evans v. OSP*, 87 Or App 514, 525–26, 743 P2d 168 (1987); see also *State ex rel Juv. Dept. v. Balderas*, 172 Or

¹ The Court of Appeals later withdrew its *Northwestern Title Loans* decision by unpublished order because the underlying controversy was ultimately found to be moot. See *Lovelace v. Board of Parole*, 183 Or App 283, 288 n.3, 51 P3d 1269 (2002). The Court, however, has continued to cite the portions of the *Northwestern Title Loans* opinion “that remain persuasive.” *Id.*

App 223, 229, 18 P3d 434 (2001) (describing “seemingly valid, genuine, or plausible [claim] of error or substantial and nonfrivolous [claim] of error.”).

Whether a stay requires a showing of irreparable harm alone, or irreparable harm along with a colorable claim of error, the result is the same: Petitioners can clear both hurdles with room to spare.

II. Petitioners will suffer irreparable harm absent a stay.

The devastating harm that petitioners – and Oregon healthcare workers generally – will suffer is plain from the face of the Healthcare Vaccine Mandate. For Oregon’s healthcare system, emergency medical services, and trauma system, the Healthcare Vaccine Mandate is an extinction-level event that cannot be repaired *ex post*. See *Alum. Cooking Utensil Co. v. City of No. Bend*, 210 Or 412, 421, 311 P2d 464 (1957) (enjoining enforcement of anti-soliciting ordinance to prevent plaintiffs from going out of business). The requirement to be vaccinated or have an *accepted* religious or medical exception will cause thousands of healthcare workers across the state to lose their jobs. Each day the rule remains in place will see greater effects on the general public’s abilities to receive lifesaving healthcare, as already short-staffed hospitals and medical providers could potentially lose 15-20% of their staff, if not more. Hospitals will have to turn away patients, and private practices may close or shorten their hours due to lack of staffing. Rural communities will be unable to provide emergency services to the community, as the Healthcare Vaccine Mandate will result in a loss of firefighters and firefighter volunteers, many of whom provide

all emergency services for communities. *See* Declaration of Earl Dean Smith. Additionally, this will destroy an entire industry, and the livelihoods of those employed by it. The loss of employment constitutes irreparable harm. *See Winslow v. Fleischner*, 110 Or 554, 563, 223 P 922 (1924) (noting that an injury “is irreparable when it cannot be adequately compensated in damages, or when there exists no certain pecuniary standard for the measurement of damages due to the nature of the injury itself”).

For individual healthcare workers, the unexpected loss of their employment will yield financial crisis. For OHSU HCC Coder 2 Maria Prouflis, who lives in New Jersey and has worked 100% of her employment remotely, it means the loss of not only her income, but her family’s health insurance. *See* Declaration of Maria Prouflis. For AllCare registered nurse Kierstin Gaskin, who has been told her “voluntary resignation” will be effective September 30, 2021, despite having never submitted notice of resignation, her family will lose her income. *See* Declaration of Kierstin Gaskin. Ms. Gaskin previously had and recovered from COVID-19, and has tested positive for antibodies. For Amanda Poore, president of Oregon Healthcare Workers for Medical Freedom, the anticipated loss of her employment with Sky Lakes Medical Center as an emergency department registered nurse will create an immediate hardship for her family. *See* Declaration of Amanda Poore. For Vernonia Rural Fire Protection District Chief Earl Dean Smith, the initial estimate is that the

District will lose 55% of its volunteers if the Healthcare Vaccine Mandate is enforced. *See* Declaration of Earl Dean Smith.

Swift judicial action is needed to prevent irreparable harm to Petitioners, along with healthcare workers across Oregon, and the general public who relies upon their services in their times of greatest need.

III. Petitioners can readily establish a colorable claim of error.

The showing of irreparable harm should be sufficient to obtain a stay. But even if the Court were to consider whether petitioners have raised a colorable claim of error within the Healthcare Vaccine Mandate, that is no impediment to relief. The Healthcare Vaccine Mandate is invalid because, among other things, it exceeds OHA's statutory authority. *See* ORS 183.400(4) (exceeding statutory authority is a ground for facial challenge to a rule).² This infirmity is dispositive – to say nothing of a “colorable” claim of error sufficient for a stay. *Von Weidlein Intern., Inc. v. Young*, 16 Or App 81 at 88-89 (Oct. 22, 1973) (granting stay).

Perhaps unnecessary to say, but an agency only can exercise the power granted to it; and any rule the agency adopts cannot exceed that authority. *See Oregon Ass'n of Acupuncture and Oriental Medicine v. Board of Chiropractors*, 260

² There are additional defects in the Healthcare Vaccine Mandate, although they are not the subject of this motion. For example, the Mandate is arbitrary and capricious, because it was enacted without due regard to relevant facts and circumstances, and because it is over-inclusive in light of its stated purpose.

Or App 676, 678, 320 P3d 575 (2014). The authority an agency has must be either “expressed or implied in the particular law being administered.” *Id.* (quoting *Planned Parenthood Assn. v. Dept. of Human Res.*, 297 Or 562, 565, 687 P2d 785 (1984)); *see also SAIF v. Shipley*, 326 Or 557, 561, 955 P2d 244 (1998) (holding “an agency has only those powers that the legislature grants and cannot exercise authority that it does not have”).

OHA has identified four statutes as its authority to enact the Healthcare Vaccine Mandate: ORS 413.042, ORS 431A.010, ORS 431.101, and ORS 433.004. *See* OAR 333-019-1010 (listing under “Statutory/Other Authority”). *None* grant OHA the power to enact the Healthcare Vaccine Mandate.

ORS 413.042: Although this statute delegates rule-making authority to OHA,³ the delegation does not provide it with authority to enact *any* administrative rules it so chooses. Rather, OHA’s rule-making power is limited to “rules necessary for the administration of the laws that the Oregon Health Authority is charged with administering.” ORS 412.042. Thus, this statute alone does not provide the requisite delegation for OHA to enact the Healthcare Vaccine Mandate. Instead, OHA would have to also identify the specific law(s) that it is charged with administering, for which the Healthcare Vaccine Mandate is necessary. *See, e.g., Adamson v. Oregon*

³ ORS 413.042 provides: “In accordance with applicable provisions of ORS chapter 183, the Director of the Oregon Health Authority may adopt rules necessary for the administration of the laws that the Oregon Health Authority is charged with administering.”

Health Authority, 289 Or App 501, 502–05, 412 P3d 1193 (2017) (recognizing that ORS 413.042 provides rulemaking authority “to carry out the statutes it is charged with administering” and reviewing the specific legislative grants governing coordinated care organizations to assess challenged rule). The remaining statutes cited by OHA do not satisfy that requirement.

ORS 431A.010: This statute permits OHA to “enforce public health laws.” It therefore is not a delegation to *create* new public-health rules generally, or the Healthcare Vaccine Mandate specifically. Instead, it provides enforcement powers with respect to other statutes governing public health.

ORS 431.101: This statute delineates the “general powers and duties of [the] Oregon Health Authority.”⁴ Most of the express powers have no relation to the Temporary Rule:

- Ensuring the statewide and local application of the foundational capabilities established under ORS 431.131;
- administering the foundational programs established under ORS 431.141;
- overseeing and providing support for the implementation of the foundational programs established under ORS 431.141;

⁴ A companion statute ORS 431.115 provides additional instruction as to how OHA is to “fulfill[] its duties under ORS 431.110.” The Oregon Legislature provides a lengthy list of the particular steps OHA must take to fulfill its duties, but notably none include plenary rule-making authority.

- conducting sanitary surveys about and investigations on the causes and prevent of diseases;
- investigating in connection with annexations proposed by cities;
- having the authority to send a representative of the authority to any part of the state;
- having full power in the control of all communicable diseases; and
- publishing and distributing to the public information related to the functions and duties of the authority.

See ORS 431.110(2)-(9).

One provision, ORS 431.110(1), provides that OHA shall “[h]ave direct supervision of all matters relating to the preservation of life and health of the people of the state.” “Supervision,” of course, does not mean “power to enact regulations.” If the Legislature intended that OHA have the power to enact regulations relating to “of all matters relating to the preservation of life and health of the people of the state,” the Legislature would have said so. Instead, the Legislature provided a more constrained rule-making authority in ORS 413.042—limited to promulgating rules “necessary for the administration of the laws that the Oregon Health Authority is charged with administering.” *See generally Oregon Newspaper Publishers Ass’n v. Peterson*, 244 Or 116, 123, 415 P2d 21, 24 (1966) (“In the absence of a statute which grants a presumption of validity to administrative regulations, an administrative agency must, when its rule-making power is challenged, show that its regulation falls

within a *clearly defined* statutory grant of authority. The reason behind this rule is that the people, by adopting the state constitution, conferred upon the Legislative Assembly the power to legislate. Therefore, this power is not by implication to be delegated to nonelective officers.” (citations omitted) (emphasis added)).

Were ORS 431.110(1) a valid statutory basis for the Healthcare Vaccine Mandate, it would mean the Legislature completely (and impermissibly) delegated away its own legislative power—and did so *sub silentio*. So too would it mean that OHA, under the standard of enacting rules related to the “health of the people of the state,” could force citizens to give up control to decide what goes into their bodies. The right to choose, and the right to refuse, are set aside. And it would permit OHA to make those judgments through temporary administrative rules where the safeguards are limited. Nothing in ORS 431.110 (or any of the statutes OHA has cited) contemplates that broad grant of executive policymaking.

The Supreme Court of Oregon concurs. In *Crane v. School District No. 14 of Tillamook County*, 95 Or 644, 188 P. 712 (1920) (en banc), the Court considered whether the Oregon public-health department had the power to close schools to battle an influenza epidemic, given its “general supervision of the interests of the health and life of citizens” and its power to enact quarantine regulations. *Id.* at 653 (internal quotation marks omitted). The Court said no, and its reasoning is worth quoting some at length:

Although the state board is given ‘general supervision of the interests of the health and life of the citizens of the

state,' that provision should not be construed to mean that it alone has power to close the public schools of the state. Such authority would be very broad and farreaching, and would have to be read into the statute by construction. If it had been the intent of the Legislature to confer such a vast power upon the state board of health, it should have used language far more specific and certain than that appearing in the sections quoted. In every school district in the state there are three or more directors, of more or less prominence, elected by the people, who are in close and active touch with conditions in their respective district, and who have general charge and supervision of the schools.

Id. at 644.

ORS 433.004: This statute allows the OHA to specify reportable diseases, investigate the sources, and control who reports and using what method. In no place does this statute allow the OHA to force Oregon citizens to become vaccinated against those reportable diseases. In short, again, this statute does not authorize the *enactment* of rules.

IV. The Healthcare Vaccine Mandate is a violation of the separation of powers doctrine provided for in the Oregon Constitution.

In its crudest form, the separation of powers doctrine provides that each branch of government is confined to exercising those powers within its particular sphere, and any attempt by one branch to exercise a power properly belonging to another branch violates the separation of powers.

Article III, § 1 of the Oregon Constitution provides that “[t]he powers of the Government shall be divided into three separate branches, the Legislative, the

Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these branches, shall exercise any of the functions of another, except as in this Constitution expressly provided.” As a result, the constitutional separation of powers in Oregon mandates that the Legislative branch be entrusted with policy decisions, while the Executive branch’s responsibility is in implementing the policies enacted.

In Oregon, there are “two inquiries to determine whether there is a separation of powers violation.” *Rooney v. Kulongoski (Elections Division # 13)*, 322 Or 15, 28(1995). The first is whether one branch of government has unduly burdened the action of another “in an area of responsibility or authority committed to that other department.” *Rooney*, 322 Or 15, 28; *State ex rel. Dewberry v. Kitzhaber*, 259 Or App 389, 408 (2015). The second is whether one branch is “performing the functions committed to” another branch. *Rooney*, 322 Or 15, 28.

In conducting those inquiries, courts must bear in mind that the “roles that governmental actors are asked to play not infrequently interact in material ways” and that “the separation of powers does not require or intend an absolute separation” between the branches of government. *Id.* Yet, as here, the Executive Branch and, by extension the OHA, are acting outside their power and engaging in a clear legislative act. This is improper and specifically prohibited by the Constitution. *See State v. Davilla*, 234 Or App 637, 645 (2010) (“Three provisions

of the Oregon Constitution, taken together, prohibit the delegation of legislative power to make laws.”).

First, Article I, § 21, provides, among other things, that no law shall “be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.” Second, Article III, § 1, provides that the “powers of the Government shall be divided into three separate branches, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these branches, shall exercise any of the functions of another, except as in this Constitution expressly provided.” Third, Article IV, § 1(1), provides that the “legislative power of the state, except for the initiative and referendum powers reserved to the people, is vested in a Legislative Assembly, consisting of a Senate and a House of Representatives.” *See generally, City of Damascus v. Brown*, 266 Or App 416, 440 (2014).

The Executive branch does not possess the authority to legislate policy decisions. A rule adopted outside an agency’s authority is invalid. *Oregon Newspaper Publishers Assn. v. Peterson*, 244 Or 116, 123–124 (1966). This is because the citizens of Oregon, by adopting the state Constitution, granted the Legislative branch the power to legislate; therefore, the power to enact legislation “is not by implication to be delegated to nonelective officers.” *Peterson*, 244 Or 116, 124. Moreover, the tendency of administrative action to expand beyond the scope of any delegable authority is “perhaps as natural as nature's well-known abhorrence

of a vacuum.” *Peterson*, 244 Or 116, 124. If such an undelegated expansion is determined, the result is, of course, a violation of the delegation of powers articulated in the Constitution.

Further, the Legislative branch, and not the Executive, is in the best position to weigh the concerns of affected businesses and the general public, and an Executive, and by extension an administrative agency may not, without any legislative guidance, reach its own conclusions about the proper accommodation among those competing interests.

Branches of government can only act within the parameters specifically granted to them by the Constitution. *Board of Com'rs of Clackamas County v. Department of Land Conservation and Development*, 35 Or App 725 (1978) (holding that Agencies are creatures of the government; their authority goes only as far as their enabling acts provide). To that end, the Healthcare Vaccine Mandate amounts to a policy that can be, and should be, only enacted via the legislative process.

The Healthcare Vaccine Mandate further invades on the Legislature’s powers as it attempts to overrule the Legislature. ORS 433.416 prohibits a “worker” from being required as a condition of work to be immunized unless authorized by federal or state law, rule or regulation. The Oregon Legislature has enacted no law authorizing vaccinations of workers. ORS 433.407 defines “worker” as “a person who is licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or 685 or ORS 682.216 (Issuance of licenses), an employee of a health care

facility, of a licensed health care provider or of a clinical laboratory as defined in ORS 438.010 (Definitions for ORS 438.010 to 438.510), a firefighter, a law enforcement officer as defined in ORS 414.805 (Liability of individual for medical services received while in custody of law enforcement officer), a corrections officer or a parole and probation officer. All individuals subject to the Healthcare Vaccine Mandate also fall under the definition of “worker” under ORS 433.407.

Of note, in the 2011 76th Oregon Legislative Assembly, Senate Bill 199 was presented, which attempted to amend ORS 433.416 to allow an employer of a healthcare provider to condition employment on providing proof of vaccination. There is no legislative history on the bill, which indicates it was swiftly rejected and never even made it to committee.

ORS 401.192(1) states in relevant part, “All existing laws, ordinances, rules and orders inconsistent with ORS 401.165 (Declaration of state of emergency) to 401.236 (Rules) shall be inoperative during the period of time and to the extent such inconsistencies exist.” The Governor’s August 19, 2021, direction to the Oregon Health Authority was not an executive order pursuant to ORS 401.168 or ORS 401.175. OAR 333-019-1010 cites as its authority the following statutes: ORS 413.042, ORS 431A.010, ORS 431.110, ORS 433.004, ORS 433A.010, ORS 431.110, and ORS 433.004, discussed more fully above. Neither OAR 333-019-1010 nor PH 42-2021 cite as authority any statutes between ORS 401.165 to 401.236—meaning OHA did not enact the Healthcare Vaccine Mandate under any

of the statutes granting emergency powers to the executive branch.

As the Healthcare Vaccine Mandate was not based on authority from ORS 401.165 to 401.236, a plain reading of the statutes requires ORS 433.416 to be given its full effect, including its prohibition of conditioning employment on vaccination for workers as defined by ORS 433.407.

The Healthcare Vaccine Mandate directly contradicts prior legislative intent where the legislature has specifically reserved the decision on whether employment of workers under ORS 433.416 could be conditioned upon requiring vaccinations. As such, the Healthcare Vaccine Mandate is unenforceable as it conflicts with ORS 433.416. It is a gross overstep of constitutional principles for the Executive to enact the Healthcare Vaccine Mandate and it should be struck down as a violation of Article III, § 1 of the Oregon Constitution.

V. OHA Failed to Follow the Temporary Rule Making Process.

OHA is required to follow the procedural rules for rulemaking set out in OAR 943.001-005 and ORS 183.335. ORS 183.335 (5) allows “an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares: (a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice.” ORS 183.335 (11)(a), “[A] rule is not valid unless adopted in substantial compliance with the provisions of this section...”

“Thus, by requiring an agency both to find that its failure to act promptly will result in serious prejudice and to provide the details supporting that finding, the statute ensures that courts may review those findings and prevent agencies from needlessly excluding the public from the rulemaking process.” *Friends of the Columbia Gorge v. Energy Facility Siting Council*, 366 Or. 78, 90, 456 P.3d 635, 642–43 (2020). In that case, the Oregon Supreme Court noted the statement of serious prejudice in the case was seven pages long. 366 Or. 78, 83 (2020).

In PH 42-201, OHA provided the following Justification of Temporary Rulemaking: “The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and healthcare personnel and patients seeking and relying on health care. This rule needs to be adopted promptly so that the state can continue to prevent and slow the spread of COVID-19, for the reasons specified above. Requiring vaccination for healthcare personnel in healthcare settings is crucial to the effort in controlling COVID-19.”

OHA’s statement of serious prejudice is superficial at best and fails to list “the specific reasons for its findings of prejudice.” The Healthcare Vaccine Mandate does not indicate any documented cases of COVID-19 transmission between healthcare personnel subject to the rule, and their patients. *See also* Exhibit 4, Crook County Resolution (“Since the beginning of the pandemic 18 months ago, there has not been an outbreak at the County jail facility, and all of the exposures of Sheriff’s Office staff members have been traced to sources outside of the jail”).

The inability of OHA to cite to transmission data between healthcare personnel subject to this rule and patients demonstrates the efficacy of PPE and other precautions that are being taken to prevent the spread, even during the year prior to vaccines being available. The Healthcare Vaccine Mandate specifically admits “that people infected with the Delta variant have similar viral loads regardless of vaccination status suggesting that even vaccine breakthrough cases may transmit this variant effectively.” OHA does not provide any further explanation as to why being vaccinated is critical to prevent the spread of Delta or why it is necessary to enact a temporary rule that circumvents the public rulemaking process. OHA fails to provide specific reasons for the overly broad rule which impacts anyone who could provide direct or in-direct care, individuals who do not provide in-person care, volunteers not licensed as EMSP, persons with natural immunity, and persons with philosophical or conscientious objections, but not specifically religious.

Finally, the current Healthcare Vaccine Mandate is silent as to why OHA enacted a temporary rule to remove a testing alternative. PH-34-2021 allowed for weekly testing of unvaccinated first responders, emergency service providers and healthcare workers, yet the current rule, and OHA’s superficial justification, fails to address why it removed the testing alternative.

OHA’s stated grounds for justifying temporary rulemaking are inadequate, therefore making Temp Rule PH 42-2021 and the Healthcare Vaccine Mandate

invalid. Because the Temporary Rule PH 42-2021 does not substantially comply with 183.335 (5)(a), it is therefore invalid.

VI. The Healthcare Vaccine Mandate is an affront to the privileges and immunities afforded to Petitioners.

The Healthcare Vaccine Mandate violates the privileges and immunities granted to Petitioners under the Oregon Constitution. *See*, Or. Const. Art 1, § 20; *see also*, *State ex rel. Luckey v. James*, 189 Or 268 (1950). The Privileges and Immunities Clause in the Oregon Constitution provides that “[n]o law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.” Or. Const. Art 1, § 20. The classes here are those who are defined by the OHA as healthcare workers, and those who are not. The Healthcare Vaccine Mandate amounts to a restriction on the privileges and immunities guaranteed by the Constitution; it treats those who do not work in healthcare, but who may engage in equally if not more dangerous public occupations, differently than those who do.

VII. The Healthcare Vaccine Mandate Violates Healthcare Workers’ Freedom of Religion.

Article I, Section 2 of the Oregon Constitution states: “Freedom of worship. All men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences.” Article I, Section 3 of the Oregon

Constitution states: “Freedom of religious opinion. No law shall in any case whatever control the free exercise, and enjoyment of religious [sic] opinions, or interfere with the rights of conscience.” Article I, Section 4 of the Oregon Constitution states: “No religious qualification for office. No religious test shall be required as a qualification for any office of trust or profit.”

Regarding religious exceptions, the Healthcare Vaccine Mandate does not define “sincerely held religious belief” and allows employers to individually evaluate an employee’s religion and the sincerity of an employee’s religious beliefs. The Oregon Constitution does not protect only “sincerely held religious beliefs” but more broadly protects “the free exercise, and enjoyment of religious [sic] opinions,” and prohibits interfering with “the rights of conscience.” ORS 40.260 provides that a member of the clergy “may not be examined as to any confidential communication made to the member of the clergy in the member’s professional character unless consent to the disclosure of the confidential communication is given by the person who made the communication.”

Under OAR 333-019-1010(7)(b), the Healthcare Vaccine Mandate allows employers to have more restrictive or additional requirements, including regarding the religious exceptions. Allowing employers to have more restrictions regarding religious exceptions violates healthcare workers’ free exercise of religion and religious opinions. The result of OAR 333-019-1010(7)(b) is that employers are allowed to require invasive religious questionnaires, which improperly inquire into

the private affairs of an individual's religious sentiment, belief, and worship. For example, based on OAR 33-019(7)(b), employers are requesting healthcare employees disclose a "recognized professional, (i.e., religious affiliate), who is familiar with your needs and can substantiate your request," who may need to be contacted. Employers are further requiring this person to disclose how long the employee has had a relationship with the "recognized religious professional". See Exhibit 5.

Under the authority of OAR 333-019-1010(7)(b), employers are requiring employees to authorize the employer to "discuss my circumstances, religious practices, observances and beliefs with the professional religious affiliate named above, and ... authorize that religious affiliate to discuss ... need for reasonable accommodation with [employer]."

OHA has granted authority to employers to force healthcare workers to consent to disclosing confidential communications with a religious affiliate in order to seek a religious exception, which impermissibly allows OHA and employers to control the free exercise and enjoyment of religious opinions, beliefs, and practices. Forcing healthcare workers to explain and justify their religious beliefs and consent to disclosure of private communications violates healthcare workers' freedom of religion, freedom of expression and impermissibly invades their right to privacy.

The legislature has reserved to itself the decision on whether mandatory vaccines would be needed. When needed, the legislature has exercised that power in

the case of school children (ORS 433.267) and it has affirmatively not exercised that power for adults, nor has it delegated that specific power to either the state or local boards of health. ORS 433.267 sets out the legislative intent for immunizations for school children. That statute allows parents to decline immunizations because of “a religious *or philosophical belief.*” *Emphasis added.* The legislative history of the bill reflects the legislature specifically intended to encompass more than just a philosophical belief. The first version⁵ of SB132-2013 did not include reference to “philosophical belief”. However, from the available legislative materials, the bill was amended through committee to include the phrase “philosophical belief”.⁶

The testimony submitted also is informative as to why the legislature chose to include more than just religious beliefs. The statement submitted by Oregonians for Healthy Children explained, “SB 132 also clarifies current language under ORS 433. It replaces the current language referencing this type of exemption as “religious” to “non-medical.” This change is to more accurately describe the various reasons a parent may choose this exemption, which may be wider than religious, rather any personal belief. This language change in no way limits a parent’s ability to exempt or take away religious freedoms.” Exhibit 6.

It was the intent of the Oregon legislature to allow a parent’s right to decline vaccinations not only for religious beliefs, but also for “philosophical beliefs,” which

⁵ <https://olis.oregonlegislature.gov/liz/2013R1/Measures/ProposedAmendments/SB132>

⁶ <https://olis.oregonlegislature.gov/liz/2013R1/Committees/SHH/2013-04-18-15-00/SB132/Details>

corresponds with the broader freedom of religion and rights of conscience under the Oregon Constitution. The Healthcare Vaccine Mandate narrowly only allows for exceptions based on “sincerely held religious beliefs” which conflicts with the Oregon Constitution and Oregon statutes.

Other Oregon statutes also provide broader ranges to allow for exceptions to receiving treatment. Although the Healthcare Vaccine Mandate was not enacted under this provision, the Public Health Director has authority under ORS 431A.015(d) to “Require a person to obtain treatment and use appropriate prophylactic measures to prevent the introduction or spread of a communicable disease or reportable disease, unless: (A) The person has a medical diagnosis for which a vaccination is contraindicated; or (B) The person has a religious *or conscientious objection* to the required treatments or prophylactic measures.” *Emphasis added.* The Healthcare Vaccine Mandate does not cite ORS 431A.015 as authority for the temporary rule. Under ORS 431A.015, a person cannot be required to obtain treatment if the person has a religious or conscientious objection, which is broader than a “sincerely held religious belief.” It was the intent of the Oregon legislature to allow a person to refuse mandated treatment for either a religious or conscientious objection and the Healthcare Vaccine Mandate violates the intent of the legislature under ORS 431A.015.

The Healthcare Vaccine Mandate and OHA guidelines only narrowly allow for religious exceptions to those with “sincerely held religious beliefs”. Such a

definition and the Healthcare Vaccine Mandate allowing employers the right to conduct investigations into an employee's religious beliefs, violates Petitioners' members' constitutionally protected rights under the Oregon Constitution. Respondent's actions control the free exercise, and enjoyment of religious opinions, and interfere with the rights of conscience.

The Healthcare Vaccine Mandate allowing employers to have more restrictive requirements, by design, intent, and by consequences results in both a religious qualification being required for employment and transgresses the Oregon's Constitution's guarantee of absolute freedom of conscious in all matters of religious sentiment, belief and worship, and results in an unauthorized molestation or disturbance of the Petitioners' members' persons.

VIII. The Healthcare Vaccine Mandate amounts to a violation of Petitioners' freedom of expression

Article I, § 8, of the Oregon Constitution states: “[n]o law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever...”

The Oregon constitutional standard provides that all expression is equal and equally protected. *Bank of Oregon v. Indep. News, Inc.*, 298 Or 434, 439–40 (1985), meaning that, with very few and limited exceptions, all speech and expressive conduct are constitutionally protected. *Moser v. Frohnmayer*, 112 Or App 226 (1992); *City of Eugene v. Powlowski*, 116 Or App 186 (1992). Such

protections are guaranteed whether the speech or expression be written, spoken, verbal, or nonverbal. *See, e.g., State v. Stoneman*, 323 Or 536 (1996).

Indeed, “the sweeping protection of [the] clause extends to all forms of speech, regardless of the social acceptability or offensiveness of the content, *State v. Robertson*, 293 Or. 402, 416 (1982), and regardless of the context of the communication.” *Merrick v. Board of Higher Education*, 116 Or App 258, 265 (1992).

Oregon’s constitutional provisions uniquely protective of expression of all kinds. With very few exceptions, none of which apply here, all speech and expressive conduct are constitutionally protected. Plaintiffs’ right to control their own medical destinies is both expressive speech in the form of opposition to the COVID-19 vaccine, and expressive conduct in opposition to the Healthcare Vaccine Mandate.

IX. The Healthcare Vaccine Mandate Is Not Narrowly Tailored and Is Not the Least Restrictive Means

Requiring first responders, emergency service providers, public safety providers and healthcare workers to receive a vaccine for a virus implicates fundamental rights, constitutionally protected liberty interests in refusing unwanted medical treatment, freedom of religion and expression, and privacy interests. When a state policy implicates a fundamental right, the strict scrutiny standard applies, and law will not be upheld unless the government demonstrates that the law “suitably

tailored to serve a compelling state interest.” *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985).

Even if the Court of Appeals finds the Healthcare Vaccine Mandate only incidentally interferes with religious freedom, the mandate must still be essential to accomplish an overriding governmental interest. “When, as in this case, the enforcement of a law does not always burden religious freedom, but may in some cases, the interference with religious freedom is incidental, rather than direct. The standard we apply to evaluate such laws is clear: “The state may justify [an incidental] limitation on religion by showing that it is essential to accomplish an overriding governmental interest.”” *Meltebeke v. Bureau of Lab. & Indus.*, 120 Or. App. 273, 278–79, 852 P.2d 859, 863 (1993), *aff’d*, 322 Or. 132, 903 P.2d 351 (1995) (citing *Employment Div. v. Rogue Valley Youth for Christ, supra*, 307 Or. 490, 498, 770 P.2d 588). A law that burdens the free exercise of religion is not essential, unless it represents the least restrictive means available to advance the overriding governmental interest. *State ex rel. Juv. Dept. v. Tucker*, 83 Or.App. 330, 333, 731 P.2d 1051 (1987). Under either the strict scrutiny standard for implicating fundamental rights or for the indirect interference with religious freedom, such government actions must be narrowly tailored and the least restrictive means available.

Respondents do not have a compelling governmental interest in forcing healthcare workers to receive a COVID-19 vaccine as a condition to continued

employment if those workers have natural immunity. *See* Declaration of Earl Dean Smith. Respondents have no compelling interest in treating employees with natural immunity any differently from employees who obtained immunity from a vaccine. Any interest Oregon may have in promoting immunity for first responders, emergency service providers or healthcare workers does not extend to those employees who already have natural immunity.

Further, the language in the Healthcare Vaccine Mandate itself brings into question whether the government has a compelling interest for requiring vaccinations of healthcare workers. The Healthcare Vaccine Mandate specifically states there is emerging evidence that people infected with the Delta variant have similar viral loads regardless of vaccination status, suggesting that even vaccine breakthrough cases may transmit this variant effectively. Thus, the State has not demonstrated a compelling government interest for requiring healthcare workers to obtain a vaccine as viral loads and the ability to transmit COVID-19 are similar regardless of vaccination status.

The State does have a compelling government interest in maintaining its public health systems and maintaining the public's access to care, which is even more critical during a pandemic. That compelling government interest will be placed in jeopardy if the Healthcare Vaccine Mandate is enforced. The legislature enumerated OHA is responsible for developing a comprehensive emergency medical services and trauma system (ORS 431A.050) and the Emergency Medical Services

and Trauma Systems Program was created to administer and regulate ambulance, and establish and maintain emergency medical systems, including trauma systems (ORS 431A.085).

The Healthcare Vaccine Mandate will result in a decrease of first responders, emergency service providers and healthcare workers, as the Healthcare Vaccine Mandate conditions their continued employment on receiving the vaccine. Many areas of Oregon, including rural areas, rely on firefighters to provide emergency services. Decreasing the available firefighters and emergency personnel across the State will have detrimental effects on the general public's safety, well-being, ability to receive emergency services and potentially lifesaving measures. Respondents do not have a compelling interest in forcing first responders, emergency service providers or healthcare workers to receive the COVID-19 vaccine, when doing so contradicts OHA's enumerated responsibilities and duties to the general public in maintaining emergency personnel and the public health systems.

The Healthcare Vaccine Mandate does not serve a compelling state interest, but rather erodes the State's compelling and fundamental interests in protecting its citizens and maintaining emergency services and the public health system. Even if the Healthcare Vaccine Mandate serves a compelling government interest, it is not an appropriate least-restrictive means for the State to achieve any compelling interest. The Healthcare Vaccine Mandate is "intentionally very broad" and is applicable to individuals who do not have direct in person patient care, such as office

workers. *See* Exhibit 7. Neither the FAQs nor the Healthcare Vaccine Mandate provide any justification for why the definition is “intentionally broad”.

OHA’s FAQs create ambiguities in the enforcement of the Healthcare Vaccine Mandate as the FAQs reference in-person patient care, yet the language of OAR 333-019-1010 allows a broader application for individuals who do not have in-person patient care.

The Healthcare Vaccine Mandate lacks in specificity because the FAQs state that firefighters are included if a fundamental part of their job is responding to medical emergencies but does not allow the same inquiry into individuals who have no in-person patient care, such as administrative, clerical or janitorial workers. The Healthcare Vaccine Mandate does not provide clear alternative paths of compliance. While medical and religious exceptions are allowed, there is a lack of guidance and equal approval of such exceptions or reasonable accommodations.

Many healthcare workers have pending exceptions that have not been decided by their employers. If employers do grant exceptions, the Healthcare Vaccine Mandate lacks guidance and is not narrowly tailored regarding what reasonable steps an employer can take to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19. Although the Healthcare Vaccine Mandate claims it is intended to also protect patients, the rule’s language only requires an employer to take reasonable steps to protect healthcare providers and healthcare staff from contracting and spreading COVID-19

and contravenes the rule's alleged purpose as employers are not required to take reasonable steps to protect patients or take reasonable steps to prevent patients from transmitting to employees.

OHA's FAQs do not address what reasonable accommodations an employer may require or if an employer has any restrictions on requiring unreasonable accommodations, including mandatory unpaid leave. OHA should have narrowly tailored the Healthcare Vaccine Mandate. Having not done so, the rule is overly broad and facially invalid. By failing to narrowly tailor its vaccine mandates to any compelling government interest, the Healthcare Vaccine Mandate forces employees, such as Petitioners, to choose between their health, their personal autonomy, and their careers.

CONCLUSION

Petitioners understand the ramifications of this request. However, when circumstances so warrant, stay of a temporary administrative rule is necessary. If the Court grants this stay, the Court will prevent thousands of Oregon healthcare workers from losing their jobs and will protect the public from experiencing the lack of emergency and healthcare services. There are very legitimate public health concerns when it comes to the loss of such an important sector of the workforce.

“The tendency of administrators to expand the scope of their operations is perhaps as natural as nature's well-known abhorrence of a vacuum. But no matter how highly motivated it may be, the tendency to make law without a clear direction

CERTIFICATE OF SERVICE

I certify that on September 21, 2021, I served a true copy of this **MOTION TO STAY ENFORCEMENT PENDING JUDICIAL REVIEW** on the following parties:

Ellen F. Rosenblum, OSB No. 753239
Attorney General of the State of Oregon
Office of the Solicitor General
400 Justice Building
1162 Court Street, N.E.
Salem, OR 97301-4096
503-378-6002
ellen.f.rosenblum@doj.state.or.us

Oregon Health Authority
500 Summer Street, NE, E-20
Salem, OR 97301-1097

via the U.S. Postal Service, certified or registered mail, return receipt requested

Dated: September 21, 2021

THENELL LAW GROUP, P.C.

By: /s/ Daniel E. Thenell
Daniel E. Thenell, OSB No. 971655
Kirsten L. Curtis, OSB No. 113638
Chelsea P. Pyasetsky, OSB No. 136450
Of Attorneys for Petitioner

CERTIFICATE OF FILING

I hereby certify that on September 21, 2021, I electronically filed the foregoing via Appellate Courts' eFiling system.

Dated: September 21, 2021

THENELL LAW GROUP, P.C.

By: /s/ Daniel E. Thenell
Daniel E. Thenell, OSB No. 971655
Kirsten L. Curtis, OSB No. 113638
Chelsea P. Pyasetsky, OSB No. 136450
Of Attorneys for Petitioner

EXHIBIT 1

1 BOARD OF COMMISSIONERS

2 COUNTY OF COOS

3 STATE OF OREGON

4
5 In the Matter of Declaring a County State of Emergency Due) ORDER
6 to the Foreseeable Lack of Adequate Resources to Respond to)
Basic Needs for Public Health and Safety Services) 21-09-056L

7 WHEREAS the ongoing COVID-19 pandemic has exhausted many providers of core
8 public services, including first responders, healthcare providers, emergency services, public
health, and public safety, among many others; and

9 WHEREAS the recent surge of COVID-19 cases due to the Delta variant has further
10 strained those crucial services, filling our hospitals with COVID-19 patients; and

11 WHEREAS, in an effort to address this new surge, the State of Oregon has attempted to
12 further increase the percentage of Oregonians who are vaccinated by imposing vaccine mandates
on certain sectors, including those who work within elements of the healthcare, emergency
services, and public safety systems; and

13 WHEREAS those efforts may have incentivized additional Oregonians to obtain
14 vaccinations; and

15 WHEREAS those efforts now appear to be backfiring by causing some of the exhausted
workforce in those critical public health and safety systems to leave employment; and

16 WHEREAS concerns are now arising that there will be insufficient remaining resources
17 to provide basic public health and safety services, such as the operation of jails, pre-hospital
emergency services (for example, traffic crashes, hunting accidents) and more; now, therefore, in
accordance with ORS 401.309,

18 NOW, THEREFORE, BE IT RESOLVED THAT:

- 19
- 20 1. A state of emergency is declared within Coos County due to the immediately foreseeable
21 lack of adequate resources to respond to basic needs for public health and safety services;
and
 - 22 2. This state of emergency is limited to the period of time during which the conditions
23 described above remain in existence, and may be terminated at any time by the Board
upon a finding that the emergency conditions no longer exist; and
 - 24 3. It is requested that the State of Oregon immediately withdraw its vaccine mandates to
25 prevent further erosion of the vital public health and safety workforce.

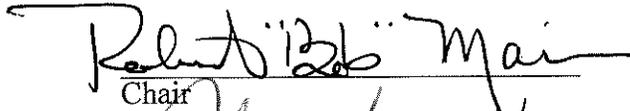
26 [signature page follows]

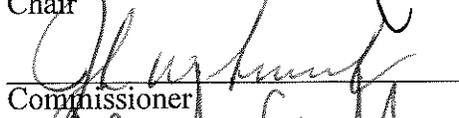
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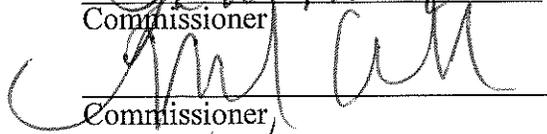
BOARD OF COMMISSIONERS

Approved as to form:

Office of Legal Counsel


Chair


Commissioner


Commissioner

9/7/21

EXHIBIT 2

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF JEFFERSON

IN THE MATTER OF DECLARING A COUNTY)
STATE OF EMERGENCY DUE TO FORESEEABLE) RESOLUTION NO.
LACK OF ADEQUATE RESOURCES TO RESPOND) **R-013-21**
TO BASIC NEEDS FOR HEALTH, SAFETY AND)
EMERGENCY SERVICES)

WHEREAS, the ongoing COVID-19 pandemic has exhausted many providers of core public services, including first responders, healthcare providers, educators and related staff, emergency service providers, and public safety providers; and

WHEREAS, the recent surge of COVID-19 cases, due to the Delta variant, has further strained the delivery of those public services and has filled regional hospitals with COVID-19 patients; and

WHEREAS, in an effort to address this new surge, the State of Oregon has attempted to further increase the percentage of Oregonians who are vaccinated against COVID-19 by imposing vaccine mandates for certain sectors, including education, healthcare, emergency services and state workers; and

WHEREAS, while some Oregonians have received the COVID-19 vaccine as a result of the state mandate, other workers subject to the state mandate have left or are expected to leave employment rather than receive the COVID-19 vaccine; and

WHEREAS, the Board of County Commissioners anticipates that Executive Order 21-29 mandating vaccinations for state executive branch employees, OAR 333-019-1010 mandating vaccinations for healthcare providers and staff, and OAR 333-019-1030 mandating vaccinations for teachers and school staff will have a detrimental impact on the delivery of healthcare, education, public safety and emergency services within Jefferson County; and

WHEREAS ORS 401.309 authorizes the governing body of a county to declare that an emergency exists within the county and to prepare for and carry out any activity to prevent, minimize, respond to or recover from such emergency;

NOW THEREFORE, be it RESOLVED that:

1. A state of emergency is declared within Jefferson County due to the immediately foreseeable lack of adequate resources to deliver basic health, safety and emergency services; and
2. This state of emergency is limited to the period of time during which the conditions described above remain in existence and may be terminated at any time

by the Board of Commissioners upon a finding that the emergency conditions no longer exist; and

3. The Board of Commissioners requests that the State of Oregon immediately withdraw its vaccine mandates to prevent further exhaustion and departure of providers of core public services, including first responders, healthcare providers, educators and related staff, emergency service providers, and public safety providers, that are essential for the safety and well-being of Oregonians living in, visiting and traveling through Jefferson County.

DATED this 15th September, 2021.

BOARD OF COUNTY COMMISSIONERS



Kelly Simmelink, Commission Chair



Wayne Fording, Commissioner



Mae Huston, Commissioner

EXHIBIT 3

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Declaring a County State of)
Emergency due to Foreseeable Lack of Adequate) RESOLUTION 21-09-16-1
Resources to Respond to Basic needs for Health,) BOARD ORDER 21-385
Safety and Emergency Services)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business in formal session on September 16, 2021 at 10:00a.m., via Zoom, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

WHEREAS, the ongoing COVID-19 pandemic has exhausted many providers of core public services, including first responders, healthcare providers, educators and related staff, emergency service providers, and public safety providers; and

WHEREAS, the recent surge of COVID-19 cases, due to the Delta variant, has further strained the delivery of those public services and has filled regional hospitals with COVID-19 patients; and

WHEREAS, in an effort to address this new surge, the State of Oregon has attempted to further increase the percentage of Oregonians who are vaccinated against COVID-19 by imposing vaccine mandates for certain sectors, including education, healthcare, emergency services and state workers; and

WHEREAS, while some Oregonians have received the COVID-19 vaccine as a result of the state mandate, other workers subject to the state mandate have left or are expected to leave employment rather than receive the COVID-19 vaccine; and

WHEREAS, the Board of County Commissioners anticipates that Executive Order 21-29 mandating vaccinations for state executive branch employees, OAR 333-019-1010 mandating vaccinations for healthcare providers and staff, and OAR 333-019-1030 mandating vaccinations for teachers and school staff will have a detrimental impact on the delivery of healthcare, education, public safety and emergency services within Yamhill County; and

WHEREAS, ORS 401 et. seq. and Yamhill County Ordinance 883 authorize the Board to declare that an emergency exists within the county and to prepare for and carry out any activity to prevent, minimize, respond to or recover from such emergency.

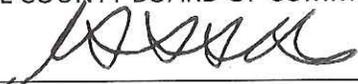
IT IS HEREBY ORDERED AND RESOLVED BY THE BOARD AS FOLLOWS:

1. The Yamhill County Board of Commissioners formally declares that, in accordance with ORS 401 et.seq. and Ordinance 883, a State of Emergency is hereby declared within Yamhill County due to the immediately foreseeable lack of adequate resources to deliver basic health, safety and emergency services; and
2. ORS 401 et. seq. and Ordinance 883 provide the bases for invoking this declaration of emergency, which shall continue until December 31, 2021 unless extended or earlier terminated by the Yamhill County Board of Commissioners upon a finding that the emergency conditions no longer exist; and
3. The Board of Commissioners requests that the State of Oregon immediately withdraw its vaccine mandates to prevent further exhaustion and departure of providers of core public services, including first responders, healthcare providers, educators and related staff, emergency service providers, and public safety providers, that are essential for the safety and well-being of Oregonians living in, visiting and traveling through Yamhill County.

DONE this 16th day of September 2021.

YAMHILL COUNTY BOARD OF COMMISSIONERS





Commissioner, Chair MARY STARRETT



Commissioner, Vice-Chair LINDSAY BERSCHAUER

Voted "No"

Commissioner, CASEY KULLA

Accepted by Yamhill County
Board of Commissioners on
9/16/21 by Board Order
21-385 Exhibit 3
2 of 2

EXHIBIT 4



I, Cheryl Seely, County Clerk for Crook County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Cheryl Seely - County Clerk



**IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK**

**IN THE MATTER OF DECLARING AN
EMERGENCY IN RESPONSE TO THE
FORESEEABLE LACK OF ADEQUATE
RESOURCES TO RESPOND TO THE
BASIC NEEDS FOR PUBLIC HEALTH
AND SAFETY SERVICES; VACCINE
MANDATE CONSEQUENCES**

**RESOLUTION AND
ORDER 2021-50**

WHEREAS, in August 2021, the Oregon Health Authority issues three successive versions of administrative rules (codified as OAR 333-019-1010), adopted on emergency bases, which require “healthcare workers” to be either fully vaccinated against the SARS-CoV-2 virus by October 18, 2021, or provide documentation for medical or religious exemption from such a requirement; and

WHEREAS, the Oregon Health Authority’s intent, as described in their Frequently Asked Questions flier dated September 1, 2021, is that “definition of healthcare provider is intentionally very broad” and, as specifically mentioned in the flier, “State owned department of corrections facilities are not subject to this rule. However, the rule does apply to non-state correctional facilities that have healthcare personnel providing healthcare. County and city jails are not exempt from this rule. If the city or county jail has control or responsibility for the activities of healthcare providers or healthcare staff at the jail facility, they are required to comply with the rule;” and

WHEREAS, Crook County maintains a jail facility to house a variety of adults-in-custody. In light of the current pandemic, Sheriff’s Office staff have undertaken a number of significant steps to reduce the possibility of an outbreak at the jail, including more frequent cleaning, limiting the number of inmates below the normal capacity, providing training opportunities for corrections staff, and directing staff which may have been exposed to COVID-19 to quarantine as a precaution against the infection of others. Since the beginning of the pandemic 18 months ago, there has not been an outbreak at the County jail facility, and all of the exposures of Sheriff’s Office staff members have been traced to sources outside the jail; and

WHEREAS, Sheriff's Office corrections staff may be required to pass medications to inmates, and it is not physically possible to segregate the administration of healthcare services to only certain parts of the facility. Further, all corrections staff must be able to pass medications or emergency health services to inmates, and it is not possible to limit the provision of medications or health services to only certain staff members. Attempting to do so would create the possibility that during certain shifts, there would be no personnel able to render these necessary services, to the detriment of the inmates and the general community; and

WHEREAS, it costs the County many thousands of dollars to train deputies, whether corrections, patrol, or civil, to the level of competence necessary to serve the local community. Crook County invests vast sums of money to meet the need for capable, conscientious public safety personnel which the general public can rely upon in dangerous, unpleasant, or emergency circumstances; and

WHEREAS, the County has been informed that as many as seventeen (17) Sheriff's Office personnel will consider voluntarily terminating their service with the County rather than submit to OHA's required emergency administrative rule. These include personnel providing corrections, patrol, and civil functions, and include exemplary officers and public servants. Their concerns are not idle petulance, but deeply held convictions that the administrative rules are wrong, unwarranted, and foolish.

NOW, THEREFORE, based upon the foregoing, it is hereby **ORDERED and RESOLVED** that:

Section One: The Crook County Court finds that, if it loses the services of seventeen public safety personnel, the immediate, foreseeable consequences will include:

- Daily gaps in the availability of law enforcement patrol coverage, perhaps totaling 28 hours per week or more, will need to be imposed. The dramatic reduction in Sheriff's Office personnel will reduce the amount of services available, and require those personnel remaining to work longer hours with fewer opportunities for holidays, vacations, or other leave, to make up for the reduction in staff to the limited degree possible.
- Future admission into the jail adults-in-custody population would be limited to only the most severe circumstances, such as felony arrests and mandatory housing only. Many individuals charged with, or serving time for, serious criminal offenses that do not quite meet this high threshold will not be incarcerated and may, in fact, need to be returned to the community before their debts to society have been paid.
- The costs of many thousands of dollars spent on training each individual employee would not be recouped by continued service in Crook County.
- The cancellation of many inmate-related programs. These programs are designed to help rehabilitate the individuals in custody and reduce the possibility of recidivism, improving both the individuals' lives and the safety of the local community.
- The cancellation or reduction of essential individual public safety programs which help promote public safety and the functioning of civil, family law, and criminal law court

proceedings, and help prevent the harassment of private citizens by disappointed counterparties.

- The County will endure vacancies in critical public safety positions for an unknowable length of time. Recruiting for qualified candidates to undertake at-times dangerous, unpleasant, and difficult public safety tasks is challenging enough under normal circumstances. Filling seventeen vacancies all at once would be unprecedented for the Crook County community, presenting yet another unneeded drain on limited time and resources.
- In addition to the immediate, critical staffing shortages which would arise due to the loss of seventeen employees, the direct financial consequences to Crook County would include hundreds of thousands of dollars worth of lost time; overtime for remaining employees who would be asked to work substantially longer hours to make up, as much as possible, for staff shortages; the additional recruiting costs discussed above; the payout to an unprecedented number of employees of their accrued leave beyond anything that could have been foreseen in the annual budget process; and other expenses the parameters of which are not yet known. The County refuses to raise fees to the public for services to offset these expenses, because, among other reasons, this circumstance is not one that the general public is responsible for creating.

These consequences will create a lack of resources to respond to basic public service needs; and therefore, an emergency is declared to exist.

Section Two: The County finds that the administrative rules promulgated by the Oregon Health Authority could be modified so as to reduce or eliminate these harms. Many important public facilities, the Crook County Sheriff's Office and Crook County jail among them, have had no outbreaks of COVID or any infection traced back to exposure therein. This is due to the increased, expensive, and diligently followed cleaning and safety procedures adopted in light of the pandemic. The administrative rules could be modified to recognize that those facilities which have successfully preserved the health of the general public, and the individuals housed within, would not need to be held to the same standards as those facilities with more unfortunate histories. On issues of this magnitude, of known public concern, adopting administrative rule mandates through an emergency process unnecessarily and unwisely deprives the general public and interested stakeholders from participating in, and informing the drafters of, the administrative rules. OHA should take the opportunity to suspend or revise these rules until the public has had a meaningful ability to participate, on a non-emergency basis. If the Oregon Health Authority refuses to do so, a special session of the Oregon Legislature could be convened to address the pandemic with appropriate legislation, as they have convened several times over the preceding months. Oregon Governor Kate Brown could exercise her authority to modify those administrative rules to reduce the impact to communities like Crook County.

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Section Three: In light of the consequences to the general public that the Oregon Health Authority's administrative rule will provoke, an emergency is declared to exist. The County Court of Crook County calls upon the Oregon Health Authority to modify the administrative rules; the Legislature of the State of Oregon to adopt sensible, bipartisan legislation to address the harms created by the pandemic; and Governor Kate Brown to restrain the adoption by executive branch agencies of counterproductive administrative rules, especially through emergency processes without regular involvement and review by the general public.

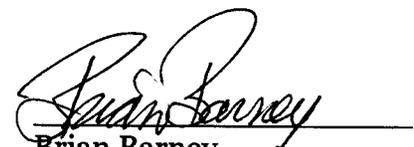
DATED this 14 day of September, 2021.



 Seth Crawford
 County Judge



 Jerry Brummer
 County Commissioner



 Brian Barney
 County Commissioner

<u>Vote:</u>	Aye	Nay	Abstain	Excused
Seth Crawford	___	___	___	___
Jerry Brummer	___	___	___	___
Brian Barney	___	___	___	___

EXHIBIT 5



OHSU Member COVID-19 Vaccine Religious Exception Request Form

OHSU Members requesting religious exceptions must personally complete Part A, B and C. All OHSU Members requesting an exception must watch the required video on Occupational Health's webpage. Completed forms should be uploaded into [Enterprise Health](#).

Part A: OHSU Member Name and Identifying Information

Name: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Preferred Pronoun(s): _____ Preferred Phone: _____

Preferred Email: _____ Preferred Method of Contact: _____

Employee/Student ID #: _____ Job Title: _____

Manager/Supervisor: _____

Department: _____

Part B: Religious Exception Request

Name of Religion: _____

_____ Receiving the COVID-19 vaccination conflicts with my religious observances, practices or beliefs as described below.

Please describe your religious observances, practices or beliefs and how it affects your ability to receive a COVID-19 vaccination

Is there any other information regarding your beliefs, observances, or practices that would help us evaluate your request? (for example, have you previously declined medical care because of your religious beliefs?)

A recognized professional, (i.e. religious affiliate), who is familiar with your needs and can substantiate your request, may need to be contacted. Please provide the following information regarding the religious affiliate:

Name of Professional:

Title:



OHSU Member COVID-19 Vaccine Religious Exception Request Form

Represented Organization:

Street Address:

City:

State:

Zip Code:

Telephone:

Email:

How long have you had a relationship with the recognized religious professional?:

AUTHORIZATION: I authorize Oregon Health & Science University (OHSU) to discuss my circumstances, religious practices, observances and beliefs with the professional religious affiliate named above, and I authorize that religious affiliate to discuss my need for reasonable accommodation with OHSU.

Signature

Part C: OHSU Member Attestation

It is OHSU's position that COVID-19 is a highly contagious respiratory virus that affects people of all ages. This virus can cause long-term medical problems and death regardless of age. This virus spreads through respiratory secretions related to speaking, singing, yelling, coughing, and sneezing. Infected individuals can spread the virus to others. Up to 50% or more of people can be infected without realizing it. The COVID-19 vaccines are very safe and highly effective at preventing death and hospitalization. When large numbers within a population are immunized, viral spread will be significantly limited and the development of viral variants can be slowed. Each individual of a community can contribute to this protective approach.

By signing this form, I acknowledge and affirm that:

- I am requesting a religious exception from receiving the COVID-19 vaccination.
- OHSU recommends individuals receive COVID-19 vaccination to protect themselves, their families and people they work or live with.
- I understand that COVID-19 has caused a pandemic that continues to sicken and kill many people.
- I understand if I am not vaccinated, I may become sick with COVID-19. This may put my family, coworkers, friends or people around me at risk of serious illness, disability or death.
- If I am a student, I understand not being vaccinated against COVID-19 may impact my ability to participate in external rotations that require vaccination and this may impact my academic progression.
- I have received information about how the vaccine helps protect against COVID-19.
- I have reviewed the materials available on <https://www.ohsu.edu/health/unsure-about-covid-vaccines-information-consider-and-how-learn-more> and watched the required video on vaccination.



OHSU Member COVID-19 Vaccine Religious Exception Request Form

- If I want to, I have been able to ask questions and have my questions answered.
- It is my decision to decline vaccination at this time, even though I have received information about why it is important and the risk of not getting vaccinated. I understand that I may change my mind in the future and receive a vaccination.

By signing this form, I declare and acknowledge that I have read and understand the information on this form. Notwithstanding, I am requesting a religious exception from the COVID-19 vaccine.

Signature of OHSU Member: _____

Upload this completed form to Enterprise Health at <https://webchartnow.com/ohsu/webchart.cgi>.

EXHIBIT 6



Senate Health and Human Services Committee
February 19, 2013
Re: Senate bill 132

Chair Monnes Anderson, Members of the Committee:

My name is Anne Stone. I am the Executive Director of the Oregon Pediatric Society. I am representing Oregonians for Healthy Children, a coalition of organizations and individuals concerned with the increased immunization exemption rates in conjunction with increased incidence of vaccine-preventable diseases in Oregon. Our coalition members range from school and child care professionals, the medical community and organizations representing both children and seniors. I am here in support of SB 132, providing immunization education so parents can make an informed decision when they consider exempting their child from school immunization requirements.

Current law requires children in child care and school to submit a form verifying they have received required vaccines, a form signed by a medical professional who has the authority to administer vaccines. Some children exempt out of these immunization requirements for medical reasons. For these medically fragile children, they submit a form signed by a medical professional. The third category is for those who choose to exempt out of these school and child care requirements due to their personal beliefs. Under current law, this exemption does not require a signature from a medical provider, just the signature of a parent.

SB 132 brings non-medical exemptions in line with other document requirements in this section of the statute. Under SB 132, parents who choose not to vaccinate their children will receive medically-based information about immunizations and vaccine-preventable diseases. They will submit a form stating their exemption, as they do currently, and will accompany that form with either a signed document from a health care practitioner stating the parent has received information about the risks and benefits associated with immunization or a certificate of completion of an educational module provided by OHA. Most parents seek information online about vaccines; information that is often inaccurate and incomplete. This legislation will ensure parents can get credible, medically-based information about immunizations and vaccine-preventable diseases.

SB 132 also clarifies current language under ORS 433. It replaces the current language referencing this type of exemption as "religious" to "non-medical." This change is to more accurately describe the various reasons a parent may choose this exemption, which may be wider than religious, rather any personal belief. This language change in no way limits a parent's ability to exempt or take away religious freedoms.

We offer dash 1 amendments to the introduced bill. This amendment accomplishes two things. First, it pushes the implementation date from January to March 2014. February is the month in which schools require the proof of immunization or exemption forms to be turned in. By pushing this out, it allows the agency more time for implementation and for parents to adjust to new requirements. It also changes the signatory to a health care practitioner, someone for whom within their professional education can provide medically accurate information on immunization. We believe these changes make the bill stronger.

Thank you, I welcome any questions.

ORGANIZATION SUPPORTERS

AARP

Autism Science Foundation

Bay Clinic

Behind the Smile Dentistry for Children

Child and Family Health Foundation

Childhood Health Associates of Salem

Children's Health Foundation

Every Woman's Health

Edward Jenner Society for Vaccines

FamilyCare CCO

Healthy Kids Learn Better

Hillsboro Pediatric Clinic, LLC

Immunization Action Coalition

Lane Community College Health Clinic

Metropolitan Medical Foundation of Oregon

Moms Who Vax

National Meningitis Association, Inc.

North Bend Medical Center Pediatrics

Northwest Pediatrics & Adolescent Medicine

One Voice for Child Care

Oregon AFSCME Council 75

Oregon Health & Science University

Oregon Health Care Association

Oregon Public Health Association

Oregon Medical Association

Oregon Nurses Association

Oregon School Employees Association

Pediatric Specialists of Pendleton

PKIDS

Pediatric Associates of the Northwest

Providence Health and Services

Regence Blue Cross Blue Shield of Oregon

Trillium Community Health Plan - CCO

Vaccine Education Center The Children's Hospital of Philadelphia

INDIVIDUAL SUPPORTERS

We have a sign-on list of over 80 Individuals & Medical Professionals around Oregon in support of SB132 Immunization Education.

EXHIBIT 7



Healthcare Provider and Healthcare Staff Vaccine Rule FAQs *(Updated 9-09-2021)*

Below are answers to frequently asked questions (FAQ) about Oregon Administrative Rule (OAR) [333-019-1010](#), COVID-19 Vaccination Requirement for Healthcare Providers and Healthcare Staff in Healthcare Settings. These FAQ may be intermittently updated.

Q: Does the rule apply to dentists and dental care? That is not listed in the definition of healthcare setting.

A: Yes. Dentists in dental offices are subject to this rule. Dentists are healthcare providers and healthcare staff. Dental care is considered physical health care and a dentist clinic is considered a healthcare setting. Dental staff who are working, learning, studying, assisting, observing, or volunteering in the dental clinic providing direct patient care or have the potential for direct or indirect exposure to patients or infectious materials are also subject to the rule.

Q: What does it mean to be fully vaccinated?

A: Being fully vaccinated means having received both doses of a two-dose COVID-19 vaccine or one dose of a single-dose COVID-19 vaccine and at least 14 days have passed since the individual's final dose of COVID-19 vaccine. The two-dose vaccines are Pfizer and Moderna and the one-dose vaccine is Johnson & Johnson.

Q: Does the rule apply to employees of retail stores with pharmacies like Walgreens or Bi-Mart pharmacy employees?

A: Yes, for pharmacy employees only (including administrative staff that work at the pharmacy) if they are engaged in direct patient care or have the potential for direct or indirect exposure to patients.

Q: Which disciplines count as healthcare workers?

A: The definition of healthcare provider is intentionally very broad and includes individuals, paid and unpaid, working, learning, studying, assisting, observing or volunteering in a healthcare setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials, and includes but is not limited to any individual licensed by a health regulatory board as that is defined in ORS 676.160, unlicensed caregivers, and any clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, student and volunteer personnel.

Q: Are both school based health center staff and school nurses hired by the school required to comply with the rule?

A: Yes.

Q: Are healthcare staff working in prison or jail included in this rule?

A: State owned department of corrections facilities are not subject to this rule; however, they are subject to the [Executive Order 21-29](#) that requires vaccination for executive branch employees. The rule does apply to non-state correctional facilities that have individuals working or assisting in a healthcare setting who have the potential for direct or indirect exposure to a patient or resident, or infectious materials. County and city jails are not exempt from this rule. If the city or county jail has control or responsibility for the activities of healthcare providers or healthcare staff at the jail facility, they are required to comply with the rule.

Q: Does the rule apply to healthcare providers that only provide care in private residences (i.e., Doulas, home health aides, therapists, home health care workers, in-home care workers, hospice workers, etc.)?

A: No, the rule does not apply to healthcare providers that only provide care in private residences if the health care provider only provides care in private residences, and none of those residences are licensed, registered or certified as a home or facility described in the definition of healthcare setting that is in the [rule](#). For example, an in-home care worker providing care at an apartment complex is not subject to this rule. However, an in-home care worker who provides care at a licensed adult foster home, is required to comply with the rule.

Q: If I am a licensed professional, like a licensed cosmetologist, who provides services to clients in healthcare settings like hospitals or long-term care facilities, does the healthcare provider and healthcare staff vaccination requirement apply to me?

A: Yes. Any individual working or assisting in a healthcare setting who has the potential for direct or indirect exposure to a patient or resident, or infectious materials, is subject to the healthcare provider and healthcare staff vaccination requirement.

Q: Does the rule apply to staff working 100% remotely?

A: No, though the Oregon Health Authority encourages all healthcare providers and all eligible Oregonians to get vaccinated in order to protect themselves and others. A healthcare provider who does not provide direct in-person patient care and does not have the potential for direct or indirect exposure to patients, residents, or infectious materials, is not subject to the vaccine requirement in [OAR 333-019-1010](#). However, if a healthcare provider at any time does in-person patient care or, for work purposes, is at a healthcare setting where they do have the potential for direct or indirect exposure to patients, residents, or infectious materials, that provider is required to comply with the rule.

Q: Are licensed EMS providers covered under the rule?

A: EMS providers who are licensed by the Oregon Health Authority and who work, learn, study, assist, observe or volunteer in a healthcare setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials, are subject to the healthcare provider vaccination rule requirements. A healthcare setting includes any place where healthcare is delivered, and would include where an EMS provider provides care, like an ambulance.

Q: Are fire fighters covered under the rule?

A: If a firefighter is licensed by the Oregon Health Authority as an emergency medical services provider (EMSP), at any level, and a fundamental part of their job is responding to medical emergencies and providing medical care at the scene of a medical emergency, then yes that firefighter is subject to the healthcare provider vaccination rule. Firefighters routinely respond to 911 medical emergency calls and are the first on the scene, before an ambulance, and provide medical care. Temporary sites where health care is provided is included in the definition of a healthcare setting. Therefore, licensed EMSPs are healthcare providers working in a healthcare setting and they must comply with the rule.

Q: Are police, who have some medical training, or are licensed healthcare providers covered under the rule?

A: Probably not. While a police officer may have some medical training, or may even be a licensed health care provider, it is likely not a fundamental part of their job to provide direct or indirect medical care in a healthcare setting. If a police officer has a job that by definition requires them to provide medical care to individuals, then the rule likely does apply.

Q: Does the rule apply to Developmental Disability settings?

A: Many DHS-licensed or regulated facilities are likely covered by this rule. If there are individuals providing direct patient or resident care or have the potential for direct/indirect exposure to patients or residents, and the DHS-licensed facility is a place where healthcare is delivered, then it is subject to the rule unless specifically exempted from the meaning of healthcare setting.

Q: Does the rule apply to care coordinators or case managers?

A: If the care coordinator or case manager does not provide any patient care or have the potential for direct or indirect exposure to patients or residents, then no. For example, a case manager who speaks only to patients or residents over the phone and works out of an office and does not provide direct patient care is not subject to this rule requirement. However, if a care coordinator or case manager at any time does in-person patient care or, for work purposes, is at a healthcare setting where they do have the potential for direct or indirect exposure to patients, residents, or infectious materials, that individual is required to comply with the rule. The Oregon Health Authority encourages all healthcare providers and all eligible Oregonians to get vaccinated in order to protect themselves and others.

Q: Does the rule apply to language pathologists, occupational therapists and audiologists?

A: Yes, if they work, learn, study, assist, observe, or volunteer in a healthcare setting providing direct patient care or have the potential for direct or indirect exposure to patients, unless they work in a setting that is excluded from the definition of a health care setting, like a state-operated facility, or is providing care in a person's private home and the home is not otherwise licensed, registered, or certified as a facility or home as described in the rule.

Q: Are staff that provide WIC services considered healthcare providers or healthcare staff working in a healthcare setting?

A: Yes. WIC staff providing client services do health assessments, health screening, weigh clients, provide breastfeeding education and counseling and provide other healthcare related services and have direct contact with clients. Any space where WIC services are being provided would be considered a healthcare setting – because a healthcare setting is any place where health care is provided. OHA's healthcare provider vaccination rule applies to healthcare providers and staff working in healthcare settings, so it applies to WIC staff.

Q: Are AAA (Area Agencies on Aging) staff who regularly and routinely see clients in healthcare settings like hospitals, long-term care facilities, and assisted living facilities subject to the Oregon Health Authority's healthcare provider vaccination rule?

A: Yes. AAA staff would fall within the definition of "healthcare providers and healthcare staff" because they work and assist residents who are their clients, in a healthcare setting and have direct contact with those residents.

Q: Are AAA (Area Agencies on Aging) staff who only see clients in a AAA office subject to the Oregon Health Authority's healthcare provider vaccination rule?

A: The Oregon Health Authority (OHA) encourages everyone to get vaccinated. It is the best way to protect themselves, their clients, and the public. However, unless an AAA office is located inside a healthcare setting like a healthcare facility, AAA staff who only work at the office would not be subject to OHA's healthcare provider vaccination rule.

Q: Does this rule apply to healthcare providers and healthcare staff working or providing care in healthcare facilities on tribal lands?

A: No. This rule does not apply to healthcare settings operated on tribal lands or healthcare providers or healthcare staff operating in those healthcare settings. As sovereign nations, federally-recognized Tribes may adopt their own rules and requirements.

Q: Are security personnel that work in a healthcare facility covered by this rule?

A: Yes, if those personnel fit within the definition of healthcare provider/staff and are working in a healthcare site where care is provided, then the rule applies to those personnel. Healthcare providers and healthcare staff means individuals, paid and unpaid working, learning, studying, assisting, observing or volunteering in a healthcare setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials.

Q: If my job requires me to enter a healthcare setting on a periodic basis, like delivering mail or stocking vending machines, or I have a temporary construction job at a doctor's office or hospital, or I sometimes repair air conditioners at healthcare facilities, and because I have to walk through an area where there are patients, clients or residents, am I a healthcare provider or healthcare staff person subject to the Oregon Health Authority's vaccination rule?

A: Likely no but the Oregon Health Authority (OHA) encourages everyone to get vaccinated against COVID-19. Individuals who have a job that is not related to the provision of healthcare, but which at times takes them to healthcare settings are not intended to be included in OHA's rule. The rule is intended to apply to individuals who routinely and regularly work, learn, study, assist, observe or volunteer in a healthcare setting, who actually provide direct patient or resident care, or because of their proximity to patients or residents or infectious materials, are at risk of contracting COVID-19. If you are not sure whether the vaccination rule applies to you, you should err on the side of getting vaccinated. An individual responsible for a healthcare setting should ensure that everyone, whether they are subject to the vaccination requirement or not, takes other precautions against COVID-19 such as wearing high-quality masks, physical distancing and regular handwashing.

Q: Does the healthcare worker vaccination rule apply to temporary staff?

A: Yes. The rule applies to any individual paid and unpaid, working, learning, studying, assisting, observing or volunteering in a healthcare setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials, and includes but is not limited to any individual licensed by a health regulatory board as that is defined in ORS 676.160, unlicensed caregivers, and any clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, student and volunteer personnel.

Q: Are workers at Behavioral Rehabilitation Service (BRS) facilities for youth that are funded by DHS subject to this rule?

A: Yes.

Q: Are Traditional Healthcare Workers subject to the healthcare worker vaccination rule and required to get vaccinated?

A: Yes, if traditional healthcare workers fall within the definition of healthcare providers and staff and are working in a healthcare setting.

Q: What is a health regulatory board as defined by ORS 676.160?

A: The rule says that a health care provider includes, but is not limited to, individuals licensed by a health regulatory board as that is defined under [ORS 676.160](#). What are those boards?

A “health professional regulatory board” means the following, so any individual licensed by one of these boards is a healthcare provider under the rule:

- (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- (2) State Board of Chiropractic Examiners;
- (3) State Board of Licensed Social Workers;
- (4) Oregon Board of Licensed Professional Counselors and Therapists;
- (5) Oregon Board of Dentistry;
- (6) State Board of Massage Therapists;
- (7) State Mortuary and Cemetery Board;
- (8) Oregon Board of Naturopathic Medicine;
- (9) Oregon State Board of Nursing;
- (10) Oregon Board of Optometry;
- (11) State Board of Pharmacy;
- (12) Oregon Medical Board;
- (13) Occupational Therapy Licensing Board;
- (14) Oregon Board of Physical Therapy;
- (15) Oregon Board of Psychology;
- (16) Board of Medical Imaging;
- (17) Oregon State Veterinary Medical Examining Board; and
- (18) Oregon Health Authority, to the extent that the authority licenses emergency medical services providers.

Q: Are state employees working at state-operated facilities required to get vaccinated?

A: Yes, under the Governor’s [Executive Order 21-29](#).

Q: What if an individual can provide written proof of history of COVID-19 disease, is that sufficient to meet the vaccination requirement?

A: No. Proof of history of COVID-19 disease as a substitute for vaccination is not allowed under the rule.

Q: If a licensed provider refuses to comply, would it affect their license?

A: Possibly. The provider should check with their licensing board, as that is regulated by individual licensing boards.

Q: What reporting will be required to ensure compliance?

A: No active reporting to OHA is required. Documentation must be maintained for at least two years and must be provided to the Oregon Health Authority upon request.

Q: What types of vaccination proof are acceptable?

A: Documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date or dates given, depending on whether it is a one-dose or two-dose vaccine, and the name/location of the health care provider or site where the vaccine was administered. Documentation may include but is not limited to a COVID-19 vaccination record card or a copy or digital picture of the vaccination record card, or a print-out from the Oregon Health Authority's immunization registry.

Q: How will OHA enforce this rule?

A: OHA may issue civil penalties to employers of healthcare providers or healthcare staff, contractors or responsible parties who violate any provision of the rule, of \$500 per day per violation.

Q: Does OHA expect employers to take action if employees do not get vaccinated?

A: Yes, because after October 18, 2021, it is unlawful for an employer to employ, contract with, or accept the volunteer services of healthcare providers or healthcare staff persons who are working, learning, studying, assisting, observing or volunteering at a healthcare setting unless the healthcare providers or healthcare staff persons are fully vaccinated against COVID-19 or have a documented medical or religious exception.

Q: By when do healthcare providers and staff have to come into compliance with the rule?

A: Healthcare providers and healthcare staff have up through October 18, 2021 to come into compliance with the rule. After that date, a health care provider or healthcare staff person may not work, learn, study, assist, observe, or volunteer in a healthcare setting unless they are fully vaccinated or have provided documentation of a medical or religious exception.

Q: If my employees don't comply and I let them go, does my unemployment coverage go up?

A: This is not a question that the Oregon Health Authority can answer. You should reach out to the Oregon Employment Department for information about unemployment.

Q: If an employee is let go for not vaccinating, are they eligible for unemployment?

A: This is not a question that the Oregon Health Authority can answer. You should reach out to the Oregon Employment Department for information about unemployment.

Q: How long will this temporary rule be in effect?

A: Temporary administrative rules usually are in effect for six months from the date they are issued. They can be ended sooner. An agency can also adopt a temporary rule as a permanent rule.

Q: At a county jail, who is responsible for keeping records, the jail or the county?

A: Employers, contractors, and responsible parties must maintain proof of vaccination or a request for an exception from every vaccinated provider.

Q: Are employers liable if they don't enforce the vaccine requirement and an employee gets sick with COVID-19?

A: Employers should consult with their legal counsel on issues of legal liability. Employers are subject to civil penalties for not complying with the rule.

Q: Can an employer terminate an employee for refusing to comply with the rule?

A: Employers must follow their existing personnel processes in determining employee discipline issues, including termination decisions.

Further, while employers may generally discipline or terminate an employee who refuses to follow workplace requirements, employers must ensure that any disciplinary action or termination does not run afoul of anti-discrimination laws. Employers may be required to reasonably accommodate individuals who are unable to comply with the law for medical reasons or for sincerely held religious belief, unless the accommodation would create an undue hardship to the employer or a direct threat to the employee or others.

Similarly, an employer may not discipline or terminate an employee who complains about actions that the employee believes violate local, state, or federal laws. While an employer may be able to discipline or terminate an employee who refuses to comply with this rule, an employer may not discipline or terminate an employee for questioning the legality of the rule.

Q: Are employees required to get vaccinated during their regular work hours? If they have to get vaccinated outside of their work hours, are employers required to pay for the employee's time?

A: No, the rule does not require covered employees to obtain vaccination during regular work hours, though an employer could offer or require employees to obtain vaccination during the workday. Regarding whether the time for vaccination is compensable, the Oregon Bureau of Labor and Industries has an FAQ that covers this topic, available at <https://www.oregon.gov/boli/workers/Pages/covid-vaccine.aspx>. Finally, additional requirements may apply to employers who are subject to collective bargaining agreements or employment contracts.

Q: Can employers or staff with access to the Oregon Health Authority's (OHA's) immunization registry (ALERT IIS) verify employee or volunteer vaccination status directly in ALERT IIS?

A: No. Oregon law does not permit an employer who is an authorized user of ALERT IIS to use the system to look up COVID-19 vaccination information on employees or staff. Accessing ALERT IIS for this purpose violates the user agreement.

Q: Are workers at Behavioral Rehabilitation Service (BRS) facilities for youth that are NOT funded by DHS subject to this rule?

A: Yes.

Q: Does the healthcare provider vaccination rule apply to employees that work in stores with pharmacies but are not pharmacy employees?

A: No. The rule doesn't apply to employees (those that stock the store, work the cash register, etc.) of retail stores with pharmacies that aren't considered pharmacy employees.

Q: Does the healthcare provider vaccination rule apply to outdoor first responder volunteers, such as ski patrollers and, search and rescue volunteers?

A: Yes, if the first responders are licensed emergency medical services providers.

Q: Is the employer responsible for ensuring vaccination and exception documentation is authentic?

A: The employer is not required to take additional steps to verify that the documentation of vaccination status is authentic. An employer should consult with their legal counsel if they want to take steps to ensure documentation is authentic.

Q: What documents/proof are required for a religious or medical exception?

A: For a religious exception, an individual must fill out and sign the [COVID-19 Religious Exception Request Form](#). The exception request must be on the basis of a sincerely held religious belief and must include a statement describing the way in which the vaccination requirement conflicts with the religious observance, practice, or belief of the individual.

For a medical exception, an individual and their healthcare provider must fill out and sign the [COVID-19 Medical Exception Request Form](#). The healthcare provider must certify that the individual has a physical or mental impairment that limits the individual's ability to receive a COVID-19 vaccination based on a specified medical diagnosis, and specify whether the impairment is temporary in nature or permanent.

Similar forms may be used, instead of the OHA forms, but the forms must contain all of the same information that is required in the OHA forms. Individuals should check with their employers to determine if there is a similar form that can be used.

Q: Where can I access the form that I need to fill out to request a medical or religious exemption from the vaccine requirement?

A: Individuals can access forms at the following links:

- [COVID-19 Vaccine Medical Exception Request Form](#)
- [COVID-19 Vaccine Religious Exception Request Form](#)

Q: What medical conditions would exclude someone from vaccination?

A: Medical exemptions are at the discretion of the medical provider. See the [CDC list of contraindications to vaccination](#).

Q: If an employee refuses to complete an OHA exception form and instead just emails the employer, is the rule violated? May the employer complete the exception form with the emailed information?

A: Individuals seeking an exception from the COVID-19 vaccination requirement are required to fill out and submit to their employer a request for an exception using a prescribed Oregon health Authority (OHA) exception request form, or a similar form that contains the same information required in the OHA form. It is possible an employer will have additional steps for requesting an exception or additional measures required in connection with exceptions.

Q: Must employees use the OHA exception forms, or can they accept other types of documentation? (i.e. doctor's note, email stating a religious exemption)

A: Under [OAR 333-019-1010](#), an individual must seek an exception using a form prescribed by the Oregon health Authority, or a similar form that contains the same information required in the OHA form.

Q: What documentation is required for an exception for a sincerely held religious belief?

A: There is no specific verification documentation required to request an exception for a sincerely held religious belief. However, individuals are required to provide all of the information asked for in the form, including identifying the sincerely held religious belief that prevents them from receiving a COVID-19 vaccination and how that belief affects their ability to receive the vaccination. For a more detailed discussion about employer inquiries into the religious nature or sincerity of belief held by an employee, see 12-I-A at: https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_25500674536391610749867844.

Q: Is an interactive process by an employer or other responsible person required for individuals who request a religious exception based on a sincerely held religious belief?

A: Yes, an employer is generally obligated to engage in an interactive process to explore reasonable accommodation(s). This process is important because an accommodation is not limited to what may be requested by the employee and additional information may be needed to determine if an accommodation is an undue hardship for the employer or if the employee would pose a direct threat in the workplace (even after other safety measures have been implemented).

Q: What are some examples of accommodations or safety measures employers may require for employees who are unable to be vaccinated due to medical conditions or religious beliefs.

A: Among possible safety measures, as part of granting an exception to the vaccine requirement, an unvaccinated employee, contractor or volunteer entering the workplace might be required to wear an N95 face mask, be physically distanced from others while at the workplace, work a modified shift when there are fewer individuals at the workplace, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment. Safety measures that an employer imposes will depend on the employee's position duties and work environment among factors. If feasible, employers may consider granting certain accommodations on a temporary basis and reviewing again after a specified period. For more information about accommodations see Questions K.2 and K.6 at: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#D>.

Q: Does an employer have to grant the exception and provide an accommodation or can an employer terminate the employment of someone who requests an exception?

A: Relevant workplace laws including Title VII, the ADA, and state law equivalents generally require an employer provide reasonable accommodations for employees who, because of a disability or a sincerely held religious belief, request an exception from the vaccine mandate. After engaging in an interactive process, an employer may determine an accommodation is an undue hardship or the employee poses a direct threat in the workplace that cannot be reduced to an acceptable level or eliminated by reasonable accommodation. If an accommodation cannot be provided, whether termination is appropriate is an employer decision and may be subject to provisions in collective bargaining agreements, where applicable, or employer policies.

Q: What is the process for submitting and maintaining exception forms?

A: Individuals should refer to the [Instructions for filling out the COVID-19 Medical Exception Request Form and the COVID-19 Religious Exception Request Form](#) to understand where to submit exception forms. Exception forms must be filled out and submitted to the individual's employer or other responsible person. DO NOT send these forms to the Oregon Health Authority. The individual's employer or other responsible person is required to maintain the documentation for at least two years and provide it to the Oregon Health Authority upon request.

Q: Can an employer create policies that are more restrictive than the rule, for example, require weekly testing for unvaccinated, require vaccination of remote employees, enact increased health-plan cost sharing for unvaccinated employees?

A: Yes. In connection with your exception request, you may be required by your employer or other responsible party to take additional steps to protect you and others from contracting and spreading COVID-19, which may include additional policies. Workplaces are not required to provide an exception accommodation if doing so would pose a direct threat to the excepted individual or others in the workplace or would create an undue hardship.

Q: Can any medical provider sign a form for a medical exception from the vaccine requirement in the Oregon Health Authority's rules?

A: Any *appropriate* health care or rehabilitation professional can sign a medical exception form, though the information included on the form should fall within the scope of the medical provider's license, registration or certification.

Document accessibility: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print, or braille. Contact the Health Information Center at 1-971-673-2411, 711 TTY or COVID19.LanguageAccess@dhsoha.state.or.us.

DECLARATION OF
AMANDA POORE

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON HEALTHCARE
WORKERS FOR MEDICAL
FREEDOM and MANDATE FREE
OREGON,

Petitioners,

v.

OREGON HEALTH AUTHORITY,

Respondent.

CA No.

**DECLARATION OF AMANDA
POORE IN SUPPORT OF
PETITIONERS' MOTION TO STAY
ENFORCEMENT**

DECLARATION OF AMANDA POORE

I, Amanda Poore, do hereby declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts set forth below such that I would be competent to testify as to the same if called.

2. I am an employee of Sky Lakes Medical Center and work as an emergency department registered nurse (ED RN). I have held this role for two years.

3. I am submitting this declaration in support of Plaintiffs' request for an immediate injunction against the Oregon Healthcare Vaccine Mandate.

4. I graduated from OHSU in 2019. While there I was taught how to appropriately research evidence-based data and evaluate opposing perspectives.

5. I have declined to personally receive the COVID-19 vaccination since it was initially offered to healthcare workers. I did extensive research and strongly feel that accepting this vaccine goes against my religious beliefs.

6. I personally contracted COVID-19 in May 2021 at work. I knew that was a risk given my job. Taking vitamins C, D, and zinc, resting and staying home and hydrated, I recovered in approximately one week.

7. On my first shift back to work after my recovery, I was approached by a man in my department who is a superior. He proceeded to publicly shame me in front of other staff and patients regarding my vaccination status, and referred to my absence as my "COVID vacation."

8. I have continued to care for COVID-19 patients without fear for the last 20 months, and will continue to do so until I am not allowed to any longer.

9. I have not seen an unvaccinated patient contract COVID-19 for a second time, which in my experience shows the effectiveness of natural immunity and antibodies.

10. I filed a religious accommodation request with my employer but have not yet received a response. I offered to pay for antibody testing as an accommodation.

11. At work, I have been referred to as “stupid” and “uneducated” for being unvaccinated. The pressure and fear I feel when clocking in for each long shift is exhausting.

12. I have wanted to be a nurse since I was 18 years old. I put that dream on hold to raise children, and now just two years into what I had hoped would be a long career, I am being forced to make a decision: go against my beliefs or get vaccinated.

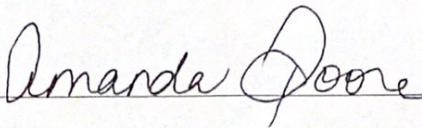
13. I, along with many others in my position, am willing to walk away. I am afraid for how this will devastate an already struggling healthcare system, but I feel I must do so to stay true to myself and my beliefs.

14. I would gladly continue my employment with reasonable accommodations or acceptance of my antibodies in lieu of vaccination.

15. Losing my job will create a hardship for myself and my family.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: September 20, 2021

A handwritten signature in cursive script that reads "Amanda Poore". The signature is written in black ink and is positioned above a horizontal line.

AMANDA POORE

DECLARATION OF
EARL SMITH

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON HEALTHCARE
WORKERS FOR MEDICAL
FREEDOM and MANDATE FREE
OREGON,

Petitioners,

v.

OREGON HEALTH AUTHORITY,

Respondent.

CA No. A176900

DECLARATION OF EARL DEAN SMITH

I, Earl Dean Smith, do hereby declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts set forth below such that I would be competent to testify as to the same if called.
2. I am submitting this declaration in support of Petitioners' request for an immediate emergency stay of the Oregon Healthcare Vaccine Mandate.

3. I am a resident of Columbia County and am the Fire Chief of Vernonia Rural Fire Protection District. I have been the Fire Chief for eight years, a firefighter for twenty years, and I am an EMT.

4. I have been informed by my employer I am subject to the Oregon Health Authority's Temporary Administrative Order, PH 42-2021, and OAR 333-019-1010 and will be terminated on October 18, 2021 if I do not comply.

5. I previously contracted COVID-19, fully recovered, and recently had a T-cell immunity test which confirmed I have immaculate immunity to COVID-19.

6. I have not yet submitted a religions exemption form and am currently determining whether I will submit one.

7. For Vernonia Rural Fire Protection District, the initial estimate was that we would lose 55% of our volunteers if the Healthcare Vaccine Mandate is enforced.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: September 21, 2021

Earl Dean Smith
Earl Dean Smith (Sep 21, 2021 13:20 PDT)

EARL DEAN SMITH

DECLARATION OF
KIERSTIN GASKIN

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON HEALTHCARE
WORKERS FOR MEDICAL
FREEDOM and MANDATE FREE
OREGON,

Petitioners,

v.

OREGON HEALTH AUTHORITY,

Respondent.

CA No.

**DECLARATION OF KIERSTIN
GASKIN IN SUPPORT OF
PETITIONERS' MOTION TO STAY
ENFORCEMENT**

DECLARATION OF KIERSTIN GASKIN

I, Kierstin Gaskin, do hereby declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts set forth below such that I would be competent to testify as to the same if called.

2. I am an employee of AllCare Health and work as a registered nurse. I have been at AllCare in this role for three months. I have been in the healthcare field for almost six years.

3. I am submitting this declaration in support of Plaintiffs' request for an immediate emergency stay of the Oregon Healthcare Vaccine Mandate.

4. Prior to starting at AllCare three months ago, I had been at Asante for five years as a CNA. While working for Asante I went to nursing school and graduated in June of 2020. After graduating nursing school, I obtained a job at Asante taking care of COVID patients.

5. While providing care to COVID positive patients, I personally contracted COVID-19. I was diagnosed on February 17, 2021. I fully recovered.

6. While recovering from COVID, I had to use my own personal time off.

7. I changed employers to have regular hours to provide for my family. I am presently in care coordination.

8. I have been told by AllCare I will be terminated on September 30, 2021, if I do not get vaccinated. On September 9, 2021, I received a positive COVID-19 antibody test. I have advised my employer of the results, but they will not accept this documentation as an accommodation.

9. Since starting at AllCare, I have been taking extra shifts and covering for other staff when they have to be out at Asante, due to the nursing crisis in my

community. I would like to continue to care for my patients, but am not willing to be vaccinated to do so.

10. Losing my job will create a hardship for myself and my family.

11. Allcare sent me an email today which advised effective September 30, 2021, due to my unvaccinated status and non-compliance regarding the Healthcare Vaccine Mandate, they are accepting my voluntary resignation. I am not voluntarily resigning – I am being terminated.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: September 21, 2021

A handwritten signature in cursive script, appearing to read "Kierstin Gaskin", written over a horizontal line.

KIERSTIN GASKIN

DECLARATION OF
MARIA PROUFLIS

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON HEALTHCARE
WORKERS FOR MEDICAL
FREEDOM and MANDATE FREE
OREGON,

Petitioners,

v.

OREGON HEALTH AUTHORITY,

Respondent.

CA No. A176900

DECLARATION OF MARIA PROUFLIS

I, Maria Prouflis, do hereby declare as follows:

1. I am over the age of 18 years and have personal knowledge of the facts set forth below such that I would be competent to testify as to the same if called.

2. I am an employee of OHSU and work as an HCC Coder 2 (medical coder). I have been in this role for almost two years.

3. I am submitting this declaration in support of Plaintiffs' request for an immediate emergency stay of the Oregon Healthcare Vaccine Mandate.

4. I live in Jackson, New Jersey. My position as a medical coder is 100% remote. I have never had to even step foot into an Oregon hospital in my present role, and I never will.

5. I submitted a religious exemption form to OHSU using both the OHA and OHSU required forms. Those forms not been accepted or declined as of the signing of this document.

6. Before being allowed to submit my form, I was required to watch a video and answer a "quiz" about OHSU's feelings on COVID-19 facts.

7. I have twice previously suffered anaphylaxis from a flu vaccination. Further, I have had allergic or adverse reactions to several medications including but not limited to Lamictal, Zyrtec, Aciphex, Timolol, Imitrex, Topamax, and eight types of birth control. I carry an Epi-pen at all times. I do not want to risk the same outcome with the COVID-19 vaccination.

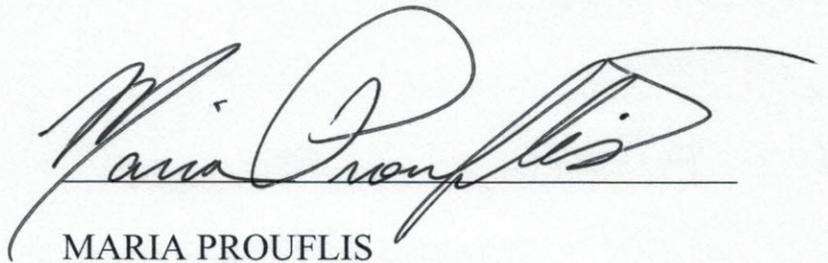
8. I have been told my position will be terminated on October 18, 2021, if I do not comply with the Healthcare Vaccine Mandate. Until then, I have been told I need to continue to give 100% to my job.

9. I recently received an email from "TJ," a steward from the AFSCME union. He advised the union believes OHSU has overstepped the OHA mandate regarding exemptions, as the OHSU forms are much more invasive than the OHA forms. Additionally, OHSU has set up a committee to approve the exemptions, which they do not do for any other exemptions. AFSCME, however, does not feel it has the ability to intercede on behalf of individual employees.

10. My family and I will lose our health insurance, and my income, on October 18, 2021. We cannot afford to do so, but I am not willing to risk my health in exchange.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: September 21, 2021



MARIA PROUFLIS