



Written by [Alex Newman](#) on October 20, 2009

NY Judge Temporarily Stops Mandatory Shots

A justice for the New York Supreme Court in Albany issued a temporary reprieve late last week from mandatory H1N1 and seasonal flu vaccinations for healthcare workers, pending the result of a follow up hearing on October 30.

A lawsuit challenging the emergency state regulation issued in August, claiming that the regulation violates civil rights, was filed by a group of nurses. Two labor unions are also involved in the struggle: New York State Public Employees Federation and New York State United Teachers. Both groups and a lawyer for the nurses praised the judge's order and vowed to continue pushing back.



"They basically were being administratively ambushed," the nurses' attorney Terence Kindlon told the [New York Times](#). "These are not libertarians, they are not lefties, they are not right-wing lunatics. They are healthcare professionals, and they think the vaccination is not going to be good for them. They have no confidence that either the seasonal flu vaccine or H1N1 vaccine is going to do any good for them."

The unions distanced themselves from criticism of the vaccines and focused instead on the rule-making process and the legality of forced inoculations. "This suit does not weigh in on the safety of the H1N1 vaccination or the potential seriousness of an H1N1 outbreak," explained United Teachers President Richard Iannuzzi. "It does, however, seek to protect the rights of workers to make informed choices as individuals in deciding whether or not to be vaccinated."

The Public Employees Federation, which has about 5,000 members who could be subject to fines and losing their job if they refuse the vaccines, said it was about freedom. "This is about our right to make a choice," said the chair of the union's nurse committee Doris Dodson. "Why do certain health care workers have fewer rights than everyone else?" Several other unions have voiced concern about the regulation as well.

The state Department of Health immediately issued a statement about the restraining order. "In two weeks the Department is scheduled to be in court, where we will vigorously defend this lawsuit on its merits. We are confident that the regulation will be upheld," noted the release, citing a 1990 New York ruling that failed to strike down compulsory rubella vaccinations for healthcare workers.

The regulation purporting to require the flu shots was issued by State Health Commissioner Richard Daines under the guise of an emergency. Noting in a statement that only between 40 percent and 50 percent of healthcare workers normally get vaccinated under voluntary programs, Daines claimed it was in the best interest of patients and that the vaccines were safe. His decree could ultimately force more than half of a million workers to be vaccinated.

The rule has met stiff resistance so far. In late September as the word spread, it [sparked large protests](#)



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at the Capitol and across the state, with some opponents vowing to leave New York if the requirements were not dropped. The judge who put a temporary hold on the program did not explain his reasoning in the decision, but demonstrators rallied about everything from the legality and constitutionality of the rule to the [safety and efficacy](#) of the flu vaccines.

Nurse Sue Field — a strong critic of the rule and the vaccines — helped organize the protests in Albany and has now filed a lawsuit of her own at the State Supreme Court in Manhattan. So far, that Court has not issued a similar restraining order. But Field's lawyer celebrated the Albany Court's decision. "We're absolutely thrilled about it," said attorney Patricia Finn. "I'm very pleased that the whole process has been slowed down."

The temporary order does not eliminate the risk of forced vaccines, but it is certainly encouraging to people affected by the regulation. The state has no proper authority to violate the rights of individuals and businesses by forcing private healthcare workers to submit to medical procedures. It would also set a dangerous precedent.

Hopefully the court will understand this and strike down the rule, but even if it does not, the battle is not over. Daines and the state have clearly overstepped their authority. They should be held accountable by voters at the next election, and before that they should be stopped in their tracks by the state's judiciary.



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