

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

14-2985

Suffolk ss

CIVIL ACTION NO: _____

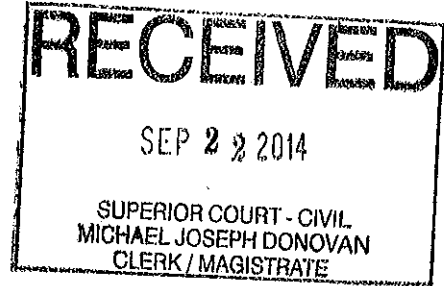
MASSACHUSETTS NURSES
ASSOCIATION,

Plaintiff,

v.

BRIGHAM & WOMEN'S
HOSPITAL,

Defendant



**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
PURSUANT TO C. 231A, § 1**

1. 105 CMR 325(B) requires that hospitals “shall ensure that all personnel are vaccinated with seasonal influenza vaccine *unless an individual declines vaccination* in accordance with 105 CMR 130.325(F).” That cited regulatory provision in turn states that “a hospital shall not require an individual to receive an influenza vaccine . . . if (a) the vaccine is medically contraindicated . . . , (b) vaccination is against the individual’s religious beliefs, or (c) *the individual declines the vaccine.*” The plaintiff Massachusetts Nurses Association (“MNA”) brings this action on behalf of those of its members who a) work for the defendant Brigham & Women’s Hospital (“BWH”), b) are under a pending order from BWH – enforceable under threat of discipline – to accept the seasonal influenza vaccination and c) wish to decline such vaccination. It

seeks a declaration of the parties' rights, obligations and responsibilities under 105 CMR 130.325 and, if appropriate, injunctive relief to enforce such declaration.

2. The MNA is a not-for-profit membership organization that has a principal place of business in Canton, Massachusetts, County of Norfolk. Among other things, it serves as the collective bargaining representative of approximately 23,000 registered nurses (RNs) and other health care professionals who work for hospitals throughout Massachusetts. The purposes of the MNA include promoting the health and safety of all nurses and acting and speaking for RNs in Massachusetts.

3. The defendant BWH is a not-for profit general medical and surgical health care facility with a principal place of business in Boston, County of Suffolk, Massachusetts. It is a "hospital" within the meaning of 105 CMR 130.020 and 130.325.

4. BWH employs approximately 3,200 RNs in positions within the MNA "bargaining Unit." The MNA is the collective bargaining representative for those RNs.

5. BWH has notified the MNA that it will soon be implementing and enforcing a policy entitled "BWH Personnel Universal Influenza Vaccination" ("the Policy"). A true and accurate copy of the Policy is attached to the Complaint as Exhibit 1 and is made a part hereof. Upon its implementation, those members of the MNA who work at BWH will be directly and specifically affected by the Policy.

6. Among other things, the Policy requires all BWH personnel, including RNs, to “receive the influenza vaccine” unless the individual has applied for and been granted by BWH “a medical or religious exemption”. It permits no other exemption. The Policy provides that those personnel who go unvaccinated pursuant to a BWH-granted religious or medical exemption nonetheless remain fully eligible to provide patient care, although they “are encouraged to wear a surgical mask when in contact with patients”.
7. Some BWH RNs who are members of the MNA would like to decline the influenza vaccination, without regard to whether they are eligible under the terms of the Policy for a medical or religious exemption. According to the Policy, should they so decline, they will be “subject to denial of access to any BWH site at which patient care services will be provided” and “subject to formal corrective action . . . up to and including termination”.
8. 105 CMR 325(B), (F)(1)(c) and (H) express the public policy of Massachusetts that hospital personnel, after considering the risks and benefits of the influenza vaccine, a) may decline to receive the influenza vaccine and b) may not be penalized by their employer for having so declined. 105 CMR 130.325(F)(c)(2) provides that “an individual who declines vaccination for any reason shall sign a statement declining vaccination and certifying that he or she has received information about the risks and benefits of influenza vaccine”. 105 CMR 130.325(H) provides, in relevant part, that “a Hospital shall require and maintain for each individual proof of current vaccination against influenza . . . or the individual’s declination statement pursuant to 105 CMR 130.325(F)”.

9. The MNA has informed the BWH that it and its objecting members believe that under 105 CMR 325(B) and (F)(1)(c), an RN may decline to accept the influenza vaccine and that BWH may not punish or retaliate against him/her for doing so. BWH has in turn informed the MNA that it does not believe that the cited regulations prevent it from requiring its personnel, including the MNA-represented RNs, to accept the vaccination as a condition of continued employment. These parties have a genuine and concrete dispute as to whether the declination privilege - set out in 105 CMR 130.325(B) and (F) - applies to BWH and its personnel.

10. G.L. c. 231A, section 1 provides in relevant part that

the Superior Court . . . may on appropriate proceedings, make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen and is specifically set forth in the pleadings and whether any consequential judgment or relief is or could be claimed at law or in equity or not; and such proceeding shall not be open to objection on the ground that a merely declaratory judgment or decree is sought thereby and such declaration, when made, shall have the force and effect of a final judgment or decree and be reviewable as such;

Section 2 provides in relevant part that “[t]he procedure under section one may be used to secure determinations of right, duty, status or other legal relations under . . . administrative regulation,”

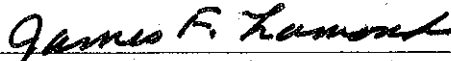
11. Neither the MNA nor its members have another vehicle to present the issue of whether BWH is evading the requirements of 105 CMR 130.325 by not permitting objecting RNs to decline the seasonal influenza vaccine.

WHEREFORE, the MNA asks that the Court a) declare whether the Policy conflicts with 105 CMR 130.325(B) and/or (F)(1)(c) and, if so, b) issue appropriate injunctive relief prohibiting its enforcement.

Respectfully submitted,

On behalf of the Massachusetts
Nurses Association,

By its attorneys,



James F. Lamond, BBO #544817
Alan J. McDonald, BBO #330960
McDonald, Lamond, Canzoneri &
Hickernell
352 Turnpike Road, Suite 310
Southborough, MA 01772-1756
(508) 485-6600

Date: September 22, 2014