

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

TOGETHER EMPLOYEES, by Individual
Representatives, ROBERTA LANCIONE,
JOYCE MILLER, MARIA DIFRONZO,
MICHAEL SACCOCCIO, ELIZABETH
BIGGER, NATASHA DICICCO, NICHOLAS
ARNO, and RUBEN ALMEIDA

Plaintiffs,

v.

MASS GENERAL BRIGHAM
INCORPORATED,

Defendant.

Civil Action No. 1:21-cv-11686

DECLARATION OF DR. MICHAEL KLOMPAS

I, Dr. Michael Klompas, am above the age of 18 and competent to testify. All the information in this declaration is based on my personal knowledge.

1. My name is Dr. Michael Klompas, and I am currently Hospital Epidemiologist at Brigham and Women’s Hospital, a member hospital of Massachusetts General Brigham (“MGB”).

2. I am an infectious disease physician, hospital epidemiologist, and professor of population medicine. I have published widely on surveillance, diagnosis, prevention, and treatment of hospital-acquired pneumonia, ventilator-associated events, sepsis, and SARS-CoV-2 transmission in healthcare settings.

3. I attended medical school at the University of Toronto, completed my residency at Brigham & Women’s Hospital, and my fellowship at Massachusetts General Hospital and Brigham and Women’s Hospital. I am board certified in Internal Medicine and Infectious Disease.

4. I was one of the team of senior leaders at MGB who decided to implement MGB's COVID-19 Vaccination Policy (the "Vaccination Policy"). The background for the decision and timeline for the roll-out is set forth below based upon my own personal knowledge of that process and knowledge of those with whom I work at MGB.

A. MGB'S Mission

5. MGB is comprised of 16 entities across the health care continuum with 6,500 physicians, 9,100 nurses, and another 78,000 individuals who collectively provide safe, quality care in hospitals, labs, physicians' offices, outpatient centers, rehab facilities, urgent care clinics, and homes.

6. MGB's workforce cares for 1.5 million patients annually. We provide medical care to some of the most complicated and vulnerable patients in the world.

7. MGB is also the largest academic health system and private employer in Massachusetts, and it is incredibly important that we are, and are perceived to be, the safest place for acutely ill patients in the Commonwealth of Massachusetts.

8. Since the onset of the pandemic, MGB has cared for many thousands of COVID-19 patients.

B. MGB's Announcement of a COVID-19 Vaccination Policy

9. On or about June 24, 2021, MGB's Chief Executive Officer (CEO) announced to all staff that it would soon be requiring staff to receive the COVID-19 Vaccination as a condition of employment, absent an approved medical or religious exemption. A true and accurate copy of that announcement is Exhibit 1.

10. On or about August 10, 2021, MGB's President and CEO sent a notice to staff members explaining its COVID-19 Vaccination Policy (the "Vaccination Policy"). A true and accurate copy of the President's communication is at Exhibit 2.

11. The Vaccination Policy was broadly disseminated, including via the MGB's internal broadcast system, to managers, and to the various unions. A true and accurate copy of an example of such communications is Exhibit 3.

12. The August 10, 2021 announcement included links to forms that employees could use to request a disability or religious exemptions from the vaccine requirement. *See* Exhibit 2. The links to the request forms was also available on MGB's employee intranet site. Managers were also empowered to help direct employees to the forms.

13. The Policy initially indicated that employees should be fully vaccinated by October 15, 2021, unless they were granted a religious or disability exemption. (Later MGB revised the Vaccination Policy to require a first dose of a two-dose series by October 15, 2021, followed by a later second dose.) A true and accurate copy of an announcement explaining the change is Exhibit 3.

14. The deadline for employees to request an exemption was September 3, 2021.

15. The Vaccination Policy stated: "The COVID-19 vaccines are safe and effective and recommended for all of the healthcare workforce. Requiring vaccination as a condition of employment has been demonstrated to be necessary to achieve the highest levels of workforce vaccination and increase safety for all employees, patients and visitors to the health care settings. All Mass General Brigham workforce are required to receive vaccination for COVID-19 unless

exempted by this policy, in order to achieve a fully vaccinated workforce.” A true and accurate copy of the Vaccination Policy as updated September 8, 2021 is Exhibit 4.

16. As we approached the pending deadlines set for requests for exemptions to be submitted, and for employees to receive a first vaccine dose, there were near-daily notifications to all staff about those deadlines and later targeted notices to those not in compliance about the consequences of being out of compliance with the COVID-19 Vaccination Policy.

C. The Decision to Implement the COVID-19 Vaccination Policy

17. Prior to issuing the COVID-19 Vaccination Policy, we recognized the immense burden that COVID-19 had placed on MGB, its patients and employees. Because of patients’ uniquely vulnerable status, COVID-19 is particularly deadly. Even with all of our careful controls, there was still spread in hospitals, and there was a necessity for more measures to protect patients and staff including a staff vaccination requirement.

18. The decision to enact the COVID-19 Vaccination Policy was not one MGB took lightly. Some of the most senior leaders at MGB, including world renowned experts in infectious disease and infection control, were involved in making this important decision, as were MGB leaders in Human Resources, Occupational Health, Operations, Legal, and Diversity, Equity and Inclusion.

19. MGB determined that the COVID-19 Vaccination Policy was necessary given the unique emergency created by the COVID-19 pandemic; the unique threat of severe illness and death associated with COVID-19 especially in hospitalized patients, the additional stresses on our already overburdened system created by the highly contagious Delta variant; our responsibility to maintain the highest possible level of patient care; our need to protect patients, staff and visitors;

our need to keep staffing levels adequate to provide patient care; and our need as a major hospital to inspire trust with the public so that the public would feel safe accessing medical care; and our concern that the fall of 2021 and winter of 2022 would see a rise in COVID-19 cases.

20. In the global COVID-19 pandemic, MGB recognized that it had a heightened responsibility (i) for the health and safety of its health care staff and patients, (ii) to continue to provide essential services to patients the world over who have no other options, and (iii) as a role model to other healthcare organizations throughout the country.

21. There is an extra onus on health care workers to protect themselves from COVID-19 in order to protect patients. Every day, MGB treats medically vulnerable people at higher risk for serious disease and death from COVID-19 than the general public, including—to name just a few examples—elderly patients; cancer patients and others with weakened immune systems; patients with severe heart and lung disease; infants in the neonatal intensive care unit; pregnant patients; and pediatric patients who are not yet eligible to be vaccinated.

22. The decision to mandate a vaccine for health and safety reasons is not new to MGB. Prior to the COVID-19 Vaccination Policy, MGB had already been requiring flu vaccination annually (since 2018) and MMR vaccination.

23. Clinical data and trends clearly demonstrate that: (i) COVID-19 vaccines have high efficacy to prevent symptomatic COVID-19 and even higher efficacy to prevent hospitalizations and deaths; (ii) COVID vaccines have similar or better safety profiles than other vaccines currently fully FDA approved; (iii) full vaccination offers advantages regarding patient and healthcare personnel safety; (iv) morbidity and mortality of COVID-19 far exceeds that of influenza; (v) COVID-19 has been uniquely disruptive to hospital operations and workforce continuity, far more

so than influenza; (vi) health care workers and other essential workers have higher rates of infection than people in other fields; (vii) masking diminishes risk of nosocomial transmission but they are not perfect; vaccines provide additional and constant protection without requiring reminders, persuasion, mask-fitting aids, or other behavioral changes.

24. I personally co-wrote an article citing many of these reasons for the mandate for the *Annals of Internal Medicine* entitled “The Case for Mandating the Covid-19 Vaccine for Health Care Workers,” published July 13, 2021. A true and accurate copy of the article is Exhibit 5.

25. When we made the decision to implement the Vaccination Policy, we found additional support in the prioritization set by the federal and state government that included all hospital workers in the first wave of vaccinations in Dec. 2020-March 2021, regardless of whether they were front-line workers. This government prioritization was consistent with the need to preserve the integrity of the healthcare workforce during this pandemic.

26. One important consideration for our decision to implement the COVID-19 Vaccination Policy is public and patient trust in the safety of MGB. A major stressor on the health system in Massachusetts, then and now, is the extremely high census (number of patients) and acuity (severity of health issues) in hospitals, which we believe is attributable at least in part to deferral of care during the pandemic. Many patients or members of the public were afraid to come to the hospital or doctor’s office because they feared contracting COVID-19. This caused them to be sicker and to need more acute care when they did reach their provider at MGB. This is a crucial reason why it is imperative to assure both safety and the perception of safety at MGB.

27. The Vaccination Policy also helps MGB to ensure that it is a safe place for visitors to the hospital. Indeed, visitors like patients have an expectation of safety. Many medically

vulnerable people visit MGB offices every day to provide support to hospitalized family members. For example, a patient may need a ride home after receiving anesthesia; pediatric patients require an adult parent or guardian to accompany them to appointments; elderly or disabled patients may require a companion to access health care; many patients need emotional support from a family member or friend during their time at MGB.

28. MGB made the decision to include remote employees in the vaccine requirement laid out in the COVID-19 Vaccination Policy for numerous reasons including that (i) all MGB employees are expected to be deployable to the hospital as needed; (ii) remote employees may need to occasionally interface with personnel on the front lines in patient-facing positions; (iii) all remote employees are providing critical support to the health care community during this pandemic and thus their absence due to illness can impact critical operations; and (iv) unvaccinated remote employees are more vulnerable to COVID-19 infection, which can result in gaps in essential staffing.

29. MGB leadership, including myself, determined that the COVID-19 Vaccination Policy was critical to its health and safety priorities and that allowing any employee to decide instead just to mask, engage in periodic testing, and socially distance was not adequate to meet MGB's urgent health and safety priorities and protect its vulnerable patient population. This is for many reasons including that: (i) in many MGB positions it is not practicable to adequately socially distance from other staff, patients and visitors; (ii) testing by itself is not adequate to identify when an employee is infected and contagious because employees are at constant risk of infection; testing once per week will miss infections that might arise the other 6 days of the week; testing daily is unduly onerous on the system and impractical; testing can convey to healthcare workers a false sense of safety that may lead to lapses in other safety measures; (iii) if

an employee does test positive they may have already been contagious for two or more days; and (iv) it is now well established that even if a vaccinated individual gets infected they are at least 50% less likely to transmit infection compared to unvaccinated people.

D. Many Other Leading Health Care Systems Have Also Mandated COVID-19 Vaccines for Their Employees

30. MGB joins many other leading health care systems in the United States in making COVID-19 vaccination for its employees a requirement, ensuring that patients are being cared for in the safest clinical environment possible.

31. Similarly, the following healthcare entities issued a consensus statement on the issue: the Society for Healthcare Epidemiology of America (SHEA) and the Society for Post Acute and Long-Term Care Medicine (AMDA), the Association for Professionals in Epidemiology and Infection Control (APIC), the HIV Medicine Association (HIVMA), the Infectious Diseases Society of America (IDSA), the Pediatric Infectious Diseases Society (PIDS), and the Society of Infectious Diseases Pharmacists (SIDP) and they recommended that the COVID-19 vaccination should be a condition of employment for all healthcare personnel in facilities in the United States.

32. Also in July 2021, 58 signatories in the health care field, including the American Academy of Nursing and the American College of Physicians, signed on to a “Joint Statement in Support of Covid Vaccine Mandates for all workers in Health and Long Term Care.” A true and accurate copy of the Joint Statement is Exhibit 6.

E. Urgent Health and Safety Concerns Guided MGB’s Exemption Processes

33. MGB implemented one process for reviewing disability exemption requests, and another process for reviewing religious exemption requests. Different teams participated in each

review process. (See Declarations of Ramona Nichols and Dr. Dean Hashimoto filed simultaneously herewith).

34. Both the committee processing religious exemption requests, and the medical panels processing medical exemption requests, were advised of MGB's urgent health and safety priorities, and the necessity therefore of developing a rigorous, rapid, and efficient review process. These priorities were developed by senior leadership and health experts at MGB.

35. First, the review process needed to be prompt, given the ongoing and rapid spread of the COVID-19 Delta variant, the constant threat of nosocomial transmission of COVID-19, and the need to have employees vaccinated by the deadlines set out in MGB's Vaccination Policy. Second, the review process was to be as rigorous as possible in accordance with the law, so as to minimize the number of unvaccinated staff at MGB given the risks that unvaccinated staff presented to MGB's medically vulnerable patient population, other employees, and visitors and to ensure MGB staff remain available to respond to the ongoing public health crisis. Third, it would be an undue hardship for MGB to allow large numbers of employees to remain unvaccinated and thus a constant source of potential threat to MGB's medically vulnerable patient population, other employees and visitors.

36. Those processing medical and religious exemption requests were advised that the pandemic, and particularly the rapid spread of the Delta variant of COVID-19, was a public health emergency, and that MGB had an urgent responsibility to continue serving its large and complex patient population, as well as to protect its staff, medically vulnerable population and visitors from infection. They were also aware that as a major hospital, the perception of safety was critical for patients, visitors and the public.

37. Those processing medical and religious exemption requests were tasked with designing a process that would be consistent with those urgent health and safety priorities. They were advised that that the impending fall and winter seasons were particularly concerning for new waves of COVID-19 infection especially given the Delta variant.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed this 29th day of October, 2021.



Dr. Michael Klompas

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2021, a copy of the foregoing document was filed electronically through the Court's electronic filing system ("ECF system") and that counsel for Plaintiffs is a registered user of the ECF system. Notice of this filing will be sent by operation of the Court's ECF system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's ECF system.

/s/ Katherine A. Perrelli

Katherine A. Perrelli