

Nurses to sue New York over vaccination mandate

By [Mark O'Brien](#)

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ALBANY — Count four Albany County nurses among those scared of H1N1.

Not the virus itself, but of the vaccine for it that New York is requiring all health care workers to receive by the end of November.

“Receiving the vaccine doesn’t mean you’re not going to get the flu,” says Lorna Patterson, an emergency room nurse at Albany Medical Center. She is one of the four nurses who are planning to file a lawsuit this week against New York in order to stop the state from enforcing its mandatory vaccinations. In addition to H1N1—or swine flu—nurses, doctors, and others who care for the health of others in New York will have to receive a seasonal flu shot. It’s the first time the state has mandated such a vaccination.

“I have had more staff that have become ill after the flu vaccines this year than coworkers that have actually come down with the illness,” Patterson says. She’s been a nurse for 28 years, but during that time has only been vaccinated once, for influenza in the early 1990’s. Instead she prefers proper hygiene, such as washing hands and covering her mouth and nose when coughing and sneezing, over a vaccine.

Same goes for her coworker, nurse Katheryn Dupuis. Like Patterson, she has only been vaccinated once—also for influenza—during her decade as an emergency room nurse.

“We’re going to lose our jobs if we do not get this vaccine,” Dupuis says. “There are hundreds of coworkers of ours that feel just as strongly against the vaccine.”

Indeed the state is telling health care workers that the consequences of not being vaccinated for either flu is termination of employment. Patterson and Dupuis say if they fail to get vaccinated by Oct. 27, they’ve been told they will face a week of suspension without pay, followed by termination if they don’t get the vaccines. The state deadline for health care groups to comply with the mandate is Nov. 30, but the nurses say some hospitals have such large staffs that ensuring everyone is in compliance is forcing them to establish their own deadlines. Nevertheless, the nurses say they don’t blame their employer, rather the State of New York for violating their civil rights.

Among the concerns the nurses have is the safety of the H1N1 vaccine. They claim it was “rushed” through testing and subsequent production without the year of testing and data collection many vaccines typically face.

“This mandate is one that we’ve never faced before has health care providers,” Patterson says.

This certainly wouldn't be the first time a mandatory vaccination case would be heard in court. In 1905, the Supreme Court ruled that the states had the authority to pass mandatory vaccination laws under the idea that an individual's freedom sometimes must give way to the welfare of the community (*Jacobson v. Massachusetts*). The case involved a compulsory vaccination law requiring citizens to receive a free small pox vaccine or pay a \$5 fine.

The nurses' lawyer, Terry Kindlon, however, says his clients' case is different. Whereas the Massachusetts case involved a nominal fee, these nurses' careers are on the line.

"Right now this is an emergency situation," Kindlon says. "People are being forced to do something by the government acting blindly for reasons that are not clear, but about which cynicism might not be an inappropriate attitude to take." As for the 1905 ruling, which was upheld in 1922, Kindlon says he's willing to take on a 110-year-old decision.

The suit is expected to be filed in New York Supreme Court by the end of the week. Patterson says a group of eight nurses, including her and Dupuis, finally came together to do something near the end of last week. They met with Kindlon during the weekend, and the final details of the lawsuit are still being hammered out.

In the meantime, the nurses are circulating petitions to various area hospitals and health care providers. To date, they count 466 signatures, though the nurses say that is only one of several petitions floating through the community. They're also planning a rally on the East steps of the Capitol Wednesday afternoon at 1 p.m. to collect more signatures and get the attention of lawmakers.

Patterson says above all, a person should be able to choose whether to get a vaccine, not have their job put on the line to enforce compliance. Patterson and Dupuis vow to retire or find nursing jobs out of state if New York does not back down from its mandate.

"I don't think anybody wants to achieve that kind of a result," Kindlon says. "I think it's reminiscent of the bank bailout of last year. These health care workers are being stampeded into this, and we're supposed to be a thoughtful, rational society that deals with things through due process and careful reflection. That's not what [New York] want(s) them to do here. They're saying, 'Look you guys, get the shots or in two weeks, you're on the street.' That's criminal. That's ridiculous. That's insane."

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