

HB193 Proponent Testimony June 6, 2017

Chairman Young, Vice Chair DeVitis and Ranking Member Lepore-Hagan and members of the Economic Development, Commerce and Labor Committee. I thank you for allowing me to provide testimony on House Bill 193.

My name is Anthony DiBiase. I am a retired Professional Engineer. I have studied vaccines for many years before the employer-mandatory influenza vaccination policies were implemented. On behalf of the Ohio Advocates for Medical Freedom and myself we are an advocate for HB193 because I have family and friends who have been very negatively impacted by the influenza vaccine and these influenza vaccination policies.

HB193 legislation is needed because of a gross violation in Ohio of one of the most important and basic tenet of the medical profession: **“The autonomy of the individual and the right of informed medical consent”** This tenet is being violated by employers mandating a yearly influenza vaccination for an employee to keep a job. In essence, the employee becomes a patient under coercion to accept an invasive medical procedure which is: 1) a violation of the autonomy of the individual, 2) a violation of the right of informed medical consent basically derived from the Nuremberg Code 1947 and 3) a violation of the rights covered in the Universal Declaration on Bioethics and Human Rights (UNESCO Constitution) which has been unanimously adopted by 193 countries including the USA.

In a civil society, the medical consent, without coercion, has been the result of the historical and developmental teachings and of lessons learned by medical science and by the medical profession.

Beginning over 30 years ago a group called Healthy People, which is a group of enmeshed governmental agencies, public organizations and individuals, set primary objectives to promote educational and informational issues on health. However, on December 2, 2010 the U.S Department of Health and Human Services (HHS) deliberately expanded its overreach and announced a new internal agenda to advance the Healthy people 2020 group’s own goal of $\geq 90\%$ influenza vaccination coverage by the year 2020, a goal not substantiated from unquestionable and comprehensive medical documentation. In other words it was a top down agenda propelled from a group in Washington, DC and not the U.S. Congress. It was then received by many as a federal imperative.

Then, the HHS Assistant Director for Health simply directed the National Vaccine Advisory Committee (NVAC) to develop recommendations and strategies for the specific purpose to achieve that arbitrarily chosen coverage goal. That directive was then delegated to the Adult Immunization Working Group (AIWG), which in turn established the Health Care Personnel Influenza Vaccination Subgroup (HCPiVS) to address the charge. That 27 member HCPiVS subgroup addressed many issues and recommendations but there was one recommendation that was the most disconcerting and devastating to an individual’s autonomy and human and civil rights: **Recommendation #4** whereby the committee recommended that Health Care Employers (HCE) strongly consider an employer mandatory requirement for influenza immunization of the employees in spite of the fact of the lack of unanimity of the its members and also of the many professional organizations and individuals associated with the development of the NVAC report of February 2012. The NVAC report were then rapidly and progressively implemented as if it were a federal law with no mentioned or emphasis of the violation of other Federal laws and of the right of informed medical consent.

In order to help sell the proposed need for the influenza vaccination mandate, the framework and concept of “patient safety” was “encouraged and persuaded” in the NVAC report even though many health care entities have no documented, medical necessity records of patients acquiring influenza while in the health care facility. The “patient safety” measure concept was then parroted as fact by advocates of the medical industrial complex (the federal government, the pharmaceuticals and the influential political members of the medical industry), to require all employees, except employees with very, very limited medical contraindications and exceptions, to receive the yearly influenza vaccine throughout all hospital facilities, including contractors and employees on-site and off-site where there are no patient contacts. HHS then further incentivized the employer to report the yearly vaccination coverage by a 2% withholding of Medicare and Medicaid funds for only “**failure to report**” the vaccination rate by the Health Care Entity. To further task and burden the Health Care Entity, the percentage vaccination coverage was then cleverly and expeditiously included as part of the accreditation of the medical facility going forward.

The NVAC report did acknowledge that mandatory approaches are coercive and infringe on an individual’s autonomy. However, the NVAC report failed to mention the violation of the ethics of medical coercion and of the violation of the basic medical tenet of informed medical consent derived from the Nuremberg Code and affirmed in the Universal Declaration on Bioethics and Human Rights. While ignoring those code of ethics, the NVAC report then attempted to push for the “ethics” whereby the health care provider and its employees have a duty to accept influenza vaccination to prevent transmission of the flu virus, even though the well-recognized and independent Cochrane Collaborative concluded that the flu shot in essence provides “NO” decrease in influenza transmission^{1,2,3,4} .

The NVAC report cautioned the Health Care Entity to be in compliance with state-defined legislation that would protect a person’s fundamental civil and medical rights from such an employer mandated. In this mandating situation the employees becomes patients and are coerced into an invasive medical procedure under the threat of loss of employment and the subsequent threat of the loss of their career. Other States have this employee protection through regulation or legislation. **The State of Ohio does not provide this employee protection.**

The human and civil rights of Ohio employees are violated by the yearly mandated flu shot. These mandatory influenza vaccination policies have resulted in:

1. Employee termination and loss of career for refusing an invasive medical procedure of the influenza vaccination which has known risks (including death) and is among the most injurious as documented by the National Vaccine Injury Compensation Program.
 - a. Since the mid-1980s, vaccine manufacturers are shielded by the federal government from product injury liability, and in 2011, the U.S. Supreme Court ruled that vaccines are “unavoidably unsafe.” The federal statute indemnifies the entire vaccine industry from civil liability and violates our Ohio Constitution by dismantling each Ohioan’s guaranteed right to an open jury trial in the State of Ohio.
 - b. The recipient of the influenza vaccine assumes all injury liability without recourse from the employer. It is not addressed by workman’s compensation. Nor is injury liability covered from the medical personnel administering the vaccine because the employee is

put in a coercive position that he/she signs a form of “voluntarily accepting” the flu shot. The medically injured employee is only left with the prolonged three to sometimes 12 year time frame of the financially and time consuming procedure to receive injury compensation through the National Vaccine Injury Compensation Program which is funded by 75 cents excise tax on every vaccine sold.

- c. Why must the employee assume all risks and how can an influenza vaccination be parroted as safe while still having a vaccine injury compensation fund?
2. The healthcare provider has overridden the medical exemption of an employee’s personal physician and then fires the employees for refusing the flu shot.
- 3 Negative effects on merit pay increases and evaluations are reflected on those employees who are successful in acquiring exemptions.
- 4 Lower class of health insurance plan was instituted for those employees who were successful in acquiring exemptions.
- 5 There have been discriminating practices of the mandatory influenza vaccination policies for bargaining vs non-bargaining employees and for various employment levels and for professionals who uniquely have ways to exercise their professional codes of ethics for medical, religious and philosophical exemptions. The Ohio Nurses Association Position Statement on the influenza vaccination is that it should be voluntary.
- 6 Other employees had to expend time and financial resources in seeking accommodation via civil rights guaranteed by the US Constitution’s First Amendment and Title VII of the 1964 Civil Rights Act and the Equal Employment Opportunity Commission, but surprisingly not protected by the Ohio Civil Rights Act. This Federal religious accommodation must then also be provided by the employee each year for approval by the employer in order for the employee to keep a job.
- 7 Different external wear for employees who were successful in acquiring exemptions from the mandatory policies or who choose not to accept the invasive medical procedure. These external wears reveals the medical information of an employee and violates HIPPA.

In caption, these yearly employer influenza vaccination policies were simply the result of the goal setting of a Healthy People 2020 group who uniquely advanced their overreach under the umbrella of the U.S. Department of Health and Human Services. The State of Ohio needs HB193 employee protective legislation which other states had the foresight and preemptively provided protection for its employees. Within the last two years, thousands of petition letters to legislators have been submitted for the legislation as defined in HB193. It is time for Ohio to provide protection of its employees as well.

This is a quote from the Internal Journal of Family Medicine from the National Institute of Health: “The present paper examined each of the arguments in favor of HCW influenza vaccination and showed that they are not supported by existing literature. The evidence base supporting vaccination is unsound and

prejudiced”⁵. Also: “The decision whether to vaccinate is, at present and in most situations, not a moral issue and should remain that of the individual HCW, preferably based on real information”⁵.

I will close my testimony with the following: When we allow government or an entity the power to dictate an invasive medical procedure on an individual whereby the procedure is very thinly veiled in its effectiveness and has known, serious risks including death of that individual, we in essence allow that the government or the entity to usurp control of our informed medical consent and to own our human life. That repeatedly causes me to ask the question: WHAT IS BECOMING OF THIS NATION?

I urge you to pass HB193. I thank you for your time and will attempt to answer questions you may have regarding my testimony.

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1. 2010: Vaccines for preventing influenza in healthy adults. [Cochrane Database Syst Rev](#). 2010 Jul 7;(7).
2. 2013: Influenza vaccination for healthcare workers who care for people aged 60 or older living in long-term care institutions. [Cochrane Database Syst Rev](#). 2013 Jul 22;(7).
3. 2004: Vaccines for preventing influenza in healthy adults. [Cochrane Database Syst Rev](#). 2004;(3)
4. 2014: Vaccines for preventing influenza in healthy adults. [Cochrane Database Syst Rev](#). 2014 Mar 13;3.
5. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3502850/>