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NCLA Backs RI Oral Surgeon with Natural Immunity in Suit Against Officials Who Shut His Practice

Dr. Stephen Skoly, Jr. v. Daniel McKee, Gov. of Rhode Island, and James McDonald, Interim Dir. of RIDOH

Washington, DC (February 4, 2022) - Arbitrary and irrational government mandates responding to the COVID-19 pandemic have deprived millions of patients across the country of much-needed medical care. The State of Rhode Island provides a particularly acute example of such devastating unintended consequences. The Rhode Island Department of Health (RIDOH) shut down an oral surgery practice that was taking care of over 800 patients per month, plus state psychiatric hospital patients and state prison inmates. By excluding health care providers with natural immunity from practicing, the State created an artificial hospital staffing shortage. To cope with that problem of its own making, RIDOH has allowed health care providers with active Covid infections to treat patients instead.

Today, the New Civil Liberties Alliance filed a [Complaint](#) and a [Motion for Temporary Restraining Order and Preliminary Injunction](#) in the U.S. District Court for the District of Rhode Island against Governor Daniel McKee and Dr. James McDonald, the Interim Director of RIDOH, in their official capacities. The suit, filed on behalf of Dr. Stephen Skoly, Jr., the oral and maxillofacial surgeon whose practice the State shut down, challenges the State's arbitrary and irrational policies as violations of the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Specifically, the suit seeks declaratory and injunctive relief against enforcement of the [Compliance Order](#) shutting down Dr. Skoly's practice.

There are few practicing oral and maxillofacial surgeons in Rhode Island with the skills and experience of Dr. Skoly. In fact, there is a critical shortage of dental surgeons for the State's 1.1 million people. Nonetheless, the State has arbitrarily and unlawfully ended Dr. Skoly's distinguished surgical practice, shuttered his medical facility, and left Dr. Skoly's staff of ten unemployed.

On August 17, 2021, Governor Daniel McKee, through RIDOH, promulgated a [regulation](#) that "all health care workers and health care providers be vaccinated against COVID-19 by October 1, 2021." Dr. Skoly, who has a history of Bell's Palsy paralysis, made the medical decision not to receive a COVID-19 vaccination due to the uncertainty regarding the risk of onset, or duration, of a palsy recurrence. In addition, as confirmed by a recent blood test, Dr. Skoly retains antibodies after recovering from a previous COVID-19 infection. Because of his naturally acquired immunity, any risk his presence poses to a vulnerable patient is, at worst, identical to the risk posed by a vaccinated physician.

Dr. Skoly is simply asking the State to treat him the same as other health care workers being granted medical or religious exemptions. Those exempted are permitted to continue to practice their profession, including attending to vulnerable patients, provided they adhere to certain safety precautions such as masking. Dr. Skoly agreed to be bound by those mandated precautions—primarily, N95 masking during employment—as he has always worn masks when performing surgery.

NCLA released the following statements:

“For four months, contrary to reason and science, Rhode Island has shuttered Dr. Skoly’s medical practice, depriving hundreds of Rhode Islanders, including its most vulnerable, of necessary dental surgeries. Dr. Skoly and his staff are eager to return to service. Should the federal district court restrain Rhode Island from continuing its unlawful closure, Dr. Skoly has said he and his staff will be able to resume surgeries within 48 hours and that priority in treatment will be given to those whose need is most critical.”

— **Brian Rosner, Senior Litigation Counsel, NCLA**

“The Rhode Island Department of Health has mysteriously refused to follow the science when it comes to natural immunity. Governor McKee has no valid basis to bar Dr. Skoly from performing oral surgery, as it would be perfectly safe. Prohibiting the unvaccinated but naturally immune Dr. Skoly from seeing patients while at the same time encouraging vaccinated health care providers with active Covid infections to treat patients makes no sense. For sheer insanity, that counterproductive policy takes the cake!”

— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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