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Oral Surgeon Renews Suit Against Rhode Island Covid-19 Vaccine Mandate, as CDC Eases Guidelines

Dr. Stephen Skoly, Jr. v. Daniel McKee, Gov. of Rhode Island, et al.

Washington, DC (August 19, 2022) – The Centers for Disease Control and Prevention (CDC) finally [admitted](#) that it makes no sense to distinguish between vaccine immunity and natural immunity. Even so, the State of Rhode Island has put in place an irrational Covid-19 vaccine mandate on medical professionals, including those who have natural immunity to the virus. The New Civil Liberties Alliance filed an [amended complaint](#) challenging the mandate in the U.S. District Court for the District of Rhode Island on behalf of local oral and maxillofacial surgeon Dr. Stephen Skoly in the lawsuit, *Skoly v. Daniel McKee*.

Rhode Island’s [order](#), updated in June, adds a new, not-publicly-discussed section to an existing temporary emergency regulation issued by the Rhode Island Department of Health (RIDOH) in 2021. The new rule requires all Medicare and Medicaid certified providers, suppliers, and healthcare workers to get the Covid-19 vaccine. The mandate discriminates between different types of unvaccinated healthcare workers. The preferred unvaccinated (those with accepted medical exemptions) are allowed to wear N95 masks and work, while the unpreferred unvaccinated (those with a not accepted medical condition, or natural immunity, or a religious belief) are compelled to suffer loss of livelihood despite being willing to be N95 masked.

Dr. Skoly has a history of Bell’s Palsy paralysis and, due to the uncertainties regarding the risk of onset, or duration, of a palsy recurrence, he made the medical decision not to receive a Covid-19 vaccination. In addition, as confirmed by blood tests, Dr. Skoly recovered from a previous Covid-19 infection and now retains a positive level of Covid-19 antibodies; therefore, any risk his presence poses to a vulnerable patient is, at worst, identical to the risk posed by a physician whose Covid-19 immunity is achieved through vaccination. However, the new rule allows for limited medical exemptions, not including Bell’s Palsy.

Dr. Skoly was able to get back to serving his community earlier this year after NCLA sued the government over its discriminatory emergency order. He is now challenging the new mandate, asking the State simply to treat him in the same manner as other healthcare workers being granted medical exemptions. The exempted are permitted to continue to practice their profession, including by seeing vulnerable patients, provided they adhere to safety precautions, primarily N95 masking during employment, with which Dr. Skoly already complies.

Additionally, the government has wrongfully identified Dr. Skoly as a practitioner who has been subject to professional discipline on RIDOH’s website. This false posting has caused, and continues to cause, financial and reputational harm to Dr. Skoly. Despite being requested to do so, Defendants have thus far refused to correct the RIDOH website. Dr. Skoly is asking for compensatory damages for the business he lost.

NCLA released the following statements:

“It is ignorant obscurantism—on the order of claiming the earth is flat, or the sun revolves around the earth—to claim that the Covid-recovered Dr. Skoly presents any greater risk of infection to vulnerable patients than a

vaccinated health care worker. With this lawsuit, it is hoped that Rhode Island can be pushed, kicking and screaming if necessary, to accept the science of naturally acquired immunity to Covid.”

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

“The Centers for Disease Control and Prevention have finally come around to admit the scientific fact that recovery from Covid-19 embues people with naturally acquired immunity to the virus. Rhode Island’s leaders are apparently slower learners. By continuing to treat Dr. Skoly like he poses a threat to vulnerable patients, even though he has antibodies to the Covid-19 virus, the state’s irrational order cannot withstand a court’s scrutiny.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page [here](#) and watch the case video [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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