

1 A. Marisa Chun (SBN 160351)  
mchun@crowell.com  
2 Kristin J. Madigan (SBN 233436)  
kmadigan@crowell.com  
3 Suzanne E. Rode (SBN 253830)  
srode@crowell.com  
4 CROWELL & MORING LLP  
3 Embarcadero Center, 26th Floor  
5 San Francisco, California 94111  
Telephone: 415.986.2800  
6 Facsimile: 415.986.2827

7 Norman J. Hamill (SBN 154272)  
norman.hamill@ucop.edu  
8 Katharine Essick (SBN 219426)  
katharine.essick@ucop.edu  
9 UNIVERSITY OF CALIFORNIA  
Office of General Counsel  
10 1111 Franklin Street, 8th Floor  
Oakland, CA 94607-5200  
11 Telephone: 510.987.9800  
Facsimile: 510.987.9757

12 *Attorneys for Defendants*  
13 The Regents of the University of California and  
Michael V. Drake  
14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF ALAMEDA

17 CINDY KIEL, J.D., an Executive Associate  
Vice Chancellor at UC Davis, MCKENNA  
18 HENDRICKS, a UC Santa Barbara student,  
EDGAR DE GRACIA, a UCLA student, and  
19 LELAND VANDERPOEL, an employee at the  
Fresno satellite extension of the UCSF Medical  
20 Education Program, and FRANCES OLSEN,  
Professor of Law at UCLA,

21 Plaintiff,

22 v.

23 THE REGENTS OF THE UNIVERSITY OF  
24 CALIFORNIA, a Corporation, and MICHAEL  
V. DRAKE, in his official capacity as President  
25 of the UNIVERSITY OF CALIFORNIA,

26 Defendants.  
27  
28

Case No. HG20072843

Unlimited Civil Jurisdiction

ASSIGNED FOR ALL PURPOSES TO:  
Hon. Richard L. Seabolt  
Department 521

**DECLARATION OF JANET  
NAPOLITANO IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Date: October 14, 2020

Time: 01:30 p.m.

Dept.: 521

Reservation No.: 2206283

Complaint filed: August 27, 2020

Trial: None set

1 I, Janet Napolitano, declare:

2 1. I provide this declaration in support of Defendants The Regents of the University  
3 of California and Michael V. Drake's ("Defendants") Opposition to Plaintiffs' Motion for  
4 Preliminary Injunction. I base this declaration on facts within my personal knowledge to which I  
5 could and would testify competently if called upon to do so.

6 2. In 2013, the University of California Board of Regents appointed me to serve as  
7 the twentieth President of the University of California and the first woman to hold the position.  
8 As UC President, I led a university system of 10 campuses, five medical centers, three affiliated  
9 national laboratories, and a statewide agriculture and natural resources program. The UC system  
10 has more than 273,000 students, 223,000 faculty and staff, an operating budget of \$36.5 billion,  
11 and two million living alumni. I stepped down from this role on July 31, 2020, and was succeeded  
12 by Dr. Michael V. Drake. Prior to serving as the President of the University of California, I  
13 served as Secretary of the U.S. Department of Homeland Security from 2009 to 2013; Governor  
14 of Arizona from 2003 to 2009; as Attorney General of Arizona from 1998 to 2003; and as U.S.  
15 Attorney for the District of Arizona from 1993 to 1997.

16 3. The UC Office of the President (UCOP) supports campuses and students through  
17 systemwide funding and programs. It manages UC's multi-billion-dollar operations and  
18 investments and provides centralized labor relations and legal services. UCOP also supports the  
19 well-being of the entire UC workforce. In all respects, UCOP aims to further UC's public interest,  
20 academic, and research missions. To that end, UCOP oversees and manages programs that serve  
21 the entire university system, allowing campuses to benefit from the efficiencies that come from  
22 centralized, coordinated operations and decision-making.

23 4. In early 2020, at the outset of the COVID-19 pandemic, I directed the mobilization  
24 of resources to handle UC's emergency response to protect the welfare and safety of UC students,  
25 faculty, and staff, while ensuring the continuation of UC's academic and research mission. I was  
26 directly involved with COVID-19-related advisory groups and task forces, including the UC  
27 Health Coordinating Committee (UC-HCC), which was convened in response to the threat of  
28 spread of COVID-19. UC-HCC members included subject matter experts from the entire UC

1 System who provided subject matter expertise in domains including clinical research, education,  
2 public health, infectious disease, laboratory medicine, critical care medicine, telehealth,  
3 pharmacy, and other disciplines, as well as ethical, legal, and social issues related to UC Health's  
4 response to the pandemic.

5 5. During UC's COVID-19 emergency response, I worked closely with Dr. Carrie  
6 Byington—UC Health Executive Vice President, a Professor of Pediatric Infectious Diseases at  
7 the University of California, San Francisco, and Chair of the UC-HCC—who was working with  
8 the UC-HCC experts and campus representatives. Beginning in January 2020, at Council of  
9 Chancellor meetings typically attended by all ten UC campus Chancellors, Dr. Byington and  
10 other UC Health experts led discussions of how UC could best prepare for COVID-19 to protect  
11 the health and safety of the UC community. In April 2020, as we were planning for the beginning  
12 of the academic year in fall 2020, Dr. Byington and other experts in UC Health raised the idea of  
13 requiring flu vaccinations for all students, faculty, and staff this fall, as one measure UC could  
14 take to protect the UC community from the consequences of the anticipated intersection between  
15 the flu and COVID-19 during the 2020-2021 flu season.

16 6. As former Secretary of the U.S. Department of Homeland Security during the  
17 2009 H1N1 pandemic, I am familiar with issues around the administration of flu vaccinations and  
18 am interested in the science and data underlying flu vaccinations. At that time, we did not have a  
19 vaccine for H1N1 and I was involved in efforts to support developing a vaccine, and  
20 dissemination of the vaccine once it became available. I understood from my conversations with  
21 Dr. Byington and other UC Health experts that flu vaccinations are more important than ever in  
22 2020 to protect the health and safety of the UC community because, in part, of the risk of  
23 confusion of symptoms between influenza and COVID-19 and to reduce the overall burden of  
24 illness on primary care physicians and health care facilities. The whole idea is premised on  
25 protection of the entire University community.

26 7. In July 2020, on Dr. Byington's expert advice and recommendation, I decided to  
27 issue the Executive Order requiring flu vaccinations for all students, faculty, and staff living,  
28 learning, or working on premises at any UC location by November 1, 2020, subject to certain

1 exemptions and accommodations. The Executive Order was intended to provide a layer of  
2 protection for the UC community from public health risks associated with the flu in the midst of  
3 the COVID-19 pandemic.

4 8. As the President of the University, I was its executive head with authority over the  
5 administration of all affairs and operations of the University not otherwise delegated or reserved  
6 by the Regents. My responsibilities included taking such steps as necessary to protect the health  
7 and safety of the members of the UC community during an unprecedented COVID-19 pandemic.  
8 I understand the Plaintiffs in this case allege that the Academic Senate should have had some role  
9 in approving the Executive Order. As it happens, many faculty were involved in the committee  
10 that recommended the vaccine mandate to me. Further, with respect to the University  
11 community's health and safety, I also relied upon the science and advice that I received from  
12 subject matter experts in this area, such as, among others, Dr. Byington, Executive Vice President  
13 of UC Health and an expert in pediatric infectious disease. As President, I was the decision-maker  
14 on this matter and was not required to formally consult with the Academic Senate.

15 9. As President of the University, my authority was delegated to me by the Board of  
16 Regents to oversee the operation of the University, in accordance with the policies and directives  
17 adopted by the Board of Regents. On the authority vested in me by the Board of Regents Bylaw  
18 30, Bylaw 22.1, Regents Policy 1500, and Standing Order 100.4(ee), I issued the July 31, 2020  
19 Executive Order. (See "University of California Executive Order, Issued July 31, 2020") (Exhibit  
20 A).

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct to the best of my knowledge.

23 Executed in Berkeley, California, on this 29th day of September 2020.

24  
25   
26 Janet Napolitano

# EXHIBIT A



**University of California  
Executive Order  
July 31, 2020**

**Background and Findings**

As of this date, the world is facing a severe health crisis in which COVID-19, a new respiratory illness caused by a novel coronavirus, places millions of people at risk of serious illness or death. The World Health Organization has declared that the disease is a pandemic. Declarations of Emergency have been issued by the President of the United States, the Governor of California, and California counties and other local jurisdictions, including those where the University maintains campuses and other significant operations.

In California alone, notwithstanding concerted statewide efforts to mitigate the spread of the disease, nearly 400,000 people already have been diagnosed with COVID-19 and more than 7,500 have perished. As of this writing, statewide positivity rates and hospitalizations are trending upward; on any given day, over 8,000 are hospitalized and more than 2,000 are so sick that they are being treated in intensive care units.

On March 19 of this year, the State Public Health Officer [issued an order](#) directing all individuals living in the State to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors. This order caused virtually every government agency and private organization in the State to transition to remote operations to the greatest extent possible. Since then, the State has developed and refined a Pandemic Roadmap to guide prudent resumption of on-site or in-person operations and the University is developing and implementing plans to transition remote activities back to its campuses consistent with applicable public health orders and directives.

According to the [Centers for Disease Control & Prevention](#), flu vaccination has long been accepted as a safe and effective way to prevent millions of illnesses and thousands of related doctor and hospital visits every year. In recent years, [flu vaccines have reduced the risk of flu-associated hospitalizations among older adults on average by about 40%](#). A [2018 study](#) showed that from 2012 to 2015, flu vaccination among adults reduced the risk of being admitted to an intensive care unit (ICU) with flu by 82 percent. Flu vaccination has been associated with [lower rates of some cardiac events](#) among people with heart disease, especially among those who had had a cardiac event in the past year. It can reduce worsening and hospitalization for flu-related chronic lung disease. It has been shown in [separate studies](#) to be associated with reduced hospitalizations among people with [diabetes](#) and [chronic lung disease](#). A [2018 study](#) that included influenza seasons from 2010-2016 showed that getting a flu shot reduced a pregnant woman's risk of being hospitalized with flu by an average of 40 percent. Flu vaccination has been shown in several studies to reduce severity of illness in people who get vaccinated but still

get sick. For example, a 2017 [study](#) showed that flu vaccination reduced deaths, intensive care unit (ICU) admissions, ICU length of stay, and overall duration of hospitalization among hospitalized flu patients. A [2018 study](#) showed that among adults hospitalized with flu, vaccinated patients were 59 percent less likely to be admitted to the ICU than those who had not been vaccinated. Among adults in the ICU with flu, vaccinated patients on average spent 4 fewer days in the hospital than those who were not vaccinated. Finally, by getting vaccinated, a person can protect those around them, including those who are more vulnerable to serious flu illness.

During the SARS-CoV-2 pandemic, where COVID-19, like influenza, results in respiratory symptoms, it is even more critical than usual to assure widespread vaccination. As California progresses through its roadmap, the possibility of an outbreak or surge that overwhelms the health care system and causes hospitals to adopt [crisis standards of care](#) necessarily increases – as of July 20, 2020, thousands of new cases are being reported every day and hospitals are experiencing shortages of testing supplies and medications necessary to treat COVID-19. Population-level interventions that decrease the likelihood of disease transmission, hospitalization, and ICU utilization must therefore be considered and adopted where feasible.

As President of the University, I have concluded that critical steps must be taken to reduce the likelihood of severe disease among students, faculty and staff, particularly those on campus, and in turn to reduce the likelihood that our health systems will be overwhelmed.

### **Executive Order**

WHEREFORE AS PRESIDENT OF THE UNIVERSITY OF CALIFORNIA I DECLARE:

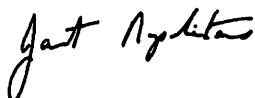
On the authority vested in me by Bylaw 30, Bylaw 22.1, Regents Policy 1500 and Standing Order 100.4(ee), and based on the foregoing circumstances, I hereby issue the following order, to be effective through the 2020-2021 flu season, and direct the following:

1. Each campus shall strongly encourage universal vaccination for all students, faculty, staff, and their families by October 31, 2020. Subject only to the exemptions and processes described below or in [Attachment A](#):
  - a. Deadline. Effective November 1, 2020, all students, faculty, and staff living, learning, or working at any UC location must receive a flu vaccine.
  - b. Students. The [Immunization Policy](#) is hereby amended to add influenza vaccine to the list of required vaccines for the duration of a statewide or any local public health emergency declared in response to the SARS-CoV-2 pandemic. Student exemption requests shall be adjudicated consistent with the [Immunization Exemption Policy](#).
  - c. Employees. Effective November 1, 2020, no person employed by the University or working on-site at any location owned, operated, or otherwise controlled by the University may report to that site for work unless they have received the 2020-2021 flu vaccine or an approved medical exemption. Requests for disability or

religious accommodations will be adjudicated through the interactive process consistent with existing location policies and procedures.

2. The University's health plans provide coverage for routine health maintenance vaccinations, including seasonal influenza vaccine, without copays to any covered students, faculty, staff, or their covered families.
3. The Vice President for Human Resources or her designee shall ensure that any applicable collective bargaining requirements are met with respect to the implementation of this order.
4. The Provost and the Executive Vice President or their designee(s) shall immediately consult with the Academic Senate on implementation of this order with respect to members of the University's faculty.
5. The Executive Vice President for UC Health or her designee shall provide technical guidance to the campuses at their request to facilitate execution of this mandate.

All University policies contrary to the provisions of this Executive Order, except those adopted by the Regents, shall be suspended to the extent of any conflict, during the period of this Order. The Executive Vice President – UC Health shall have the authority to issue further guidance about the parameters and use of this mandate, in consultation with the Provost and the Interim Vice President – Systemwide Human Resources.



---

Janet A. Napolitano  
President



## **ATTACHMENT A: EMPLOYEE EXEMPTIONS**

### **Medical Exemptions**

A list of established medical contraindications to and precautions for flu vaccine can be found at the Centers for Disease Control and Prevention website, *Guide to Contraindications*, online at: <https://www.cdc.gov/vaccines/hcp/acip-recs/general-recs/contraindications.html> (scroll to IIV) and currently includes:

Contraindications: Severe allergic reaction (e.g., anaphylaxis) after previous dose of influenza vaccine or to vaccine component.

Precautions: Guillain-Barré Syndrome <6 weeks after a prior dose of influenza vaccine

Moderate or severe acute illness with or without fever

Egg allergy other than hives, e.g., angioedema, respiratory distress, lightheadedness, recurrent emesis; or required epinephrine or another emergency medical intervention (IIV may be administered in an inpatient or outpatient medical setting and under the supervision of a health care provider who is able to recognize and manage severe allergic conditions).

Any request for medical exemption must be documented on the attached Medical Exemption Request Form and submitted by an employee to the designated campus medical official (collectively an “Authorized HCP”).

### **Faculty and Staff Appeals<sup>1</sup>**

Each campus shall designate a local Immunization Exemption Appeals Officer (IEAO) for faculty and staff appeals. The IEAO shall have appropriate qualifications and training to adjudicate appeals, meaning at a minimum California licensure as a physician, physician’s assistant, or advance practice nurse, who in turn may consult with other experts as necessary (e.g., environmental health and safety, infectious disease, occupational health).

Individuals who wish to appeal denial of a medical exemption must submit a written request to the Authorized HCP, along with documentation provided by their treating medical provider on the Medical Exemption Request Form.

Appeals should be de-identified and forwarded to the IEAO. Decisions should be communicated to the Authorized HCP, who will, in turn, communicate the IEAO decision to the faculty or staff member. IEAO decisions shall be rendered within 60 days of receipt by the IEAO and an

---

<sup>1</sup> An Immunization Exemption Appeals Committee (IEAC) has been established to evaluate student appeals. The IEAC is chaired by the UC Health Chief Medical Officer of Student Health and Counseling, and is convened as needed to evaluate medical exemption requests denied at the campus level for which students have submitted an appeal.

individual will not be barred from any campus activity while an appeal is pending. If the exemption denial is upheld, the faculty or staff member will be expected to comply with the immunization requirement within 15 days.

In active infectious disease outbreak situations, individuals granted medical exemptions may not be allowed to come to campus. These situations will be determined on a case-by-case basis, and in consultation with public health officials with jurisdiction.

The UC Immunization Exemption Policy Committee (IEPC) is a system-wide committee, appointed by the Executive Vice President, UC Health. It is comprised of UC faculty, staff and students, and public health officials. Members are selected from diverse backgrounds, and include actively practicing physicians, including at least one infectious disease specialist, and may also include faculty with expertise in a variety of other fields, such as medical ethics, law, public health, and international student services. Members serve a term of no less than one year. Campuses may consult with the IEPC on significant questions of policy.

# University of California Medical Exemption Request Form

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

Name of Patient: \_\_\_\_\_

Status:  Faculty  Staff

Date of Birth: \_\_\_\_\_ MRN: \_\_\_\_\_

Name of Health Care Provider: \_\_\_\_\_

License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State of Issuance: \_\_\_\_\_

License Type:  Medical or Osteopathic Physician  Nurse Practitioner  Physician's Assistant

Practice Address: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

I hereby certify that the above-referenced patient qualifies for a medical exemption from influenza vaccine, as further provided below:

Reason for Exemption:

CDC Contraindication  CDC Precaution  Manufacturer's Insert Contraindication  Other

Provide a detailed explanation here regardless of the reason indicated immediately above:

\_\_\_\_\_

This contraindication or precaution is:  Permanent  Temporary

- If temporary, the expiration date for the exemption is: \_\_\_\_\_

Signature of Health Care Provider: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

*Faculty and Staff: Return this completed form to your campus-Authorized HCP.*

For Official Use Only:

Approved  Denied Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_

UC Location: <Choose One> \_\_\_\_\_