

August 4, 2021

To the Nevada State Board of Health,

As concerned students at the University of Nevada, Las Vegas William S. Boyd School of Law, we are writing to express our concerns regarding the safety measures currently in place for the Fall 2021 semester. As COVID-19 cases continue to rise in Clark County,¹ Boyd's Student Chapter of the National Lawyers Guild calls on the State Board of Health advisors to consider implementing a mandatory vaccine policy for students, faculty, and staff who wish to return to campus.

Per NAC 441A.755, UNLV currently requires all students who attend the university to be vaccinated against Measles, Mumps, and Rubella (MMR), Tetanus/Diphtheria (TD), and Meningitis (MCV4).² We recognize that current state policy requires state employees to provide proof of vaccination or to undergo weekly virus tests to return to campus³ and we encourage the State Board of Health to extend this requirement to university students by instituting a policy that mirrors the vaccination requirements for state employees.

The Nevada State of Higher Education (NSHE) issued a statement on August 2, 2021 stating that the Nevada Board of Regents "cannot mandate a vaccine and would be obligated by law to implement and enforce a vaccine if required by the State Board of Health."⁴ As the fall semester begins on August 23, 2021, we are asking that the State Board of Health add an agenda item addressing our concerns to the organization's August 10, 2021 emergency meeting.

The state of the pandemic changes every day, but we now know the Delta variant is highly transmissible and causes worse infections, leading to a higher likelihood of hospitalization for those who are infected.⁵ Although vaccinated individuals may spread variants of the virus "just as readily" as the unvaccinated,⁶ vaccinations are highly effective at preventing infections and hospitalizations, even against the delta variant.⁷ We have now reached infection levels in Clark County surpassing last year's numbers⁸ and

¹ Las Vegas AP, *Nevada Hospitalization Rates Surpass Last Summer's Surge*, KTNV LV Vegas (Aug. 3, 2021, 04:37 PM), <https://www.ktnv.com/news/coronavirus/nevada-hospitalization-rates-surpass-last-summer-surge>.

² *Immunizations*, University of Nevada, Las Vegas, <https://www.unlv.edu/registrar/immunizations> (last visited July 28, 2021).

³ Brian Sandoval, *State employee COVID-19 testing policy*, Nevada Today (August 3, 2021), <https://www.unr.edu/nevada-today/news/2021-08-03-state-employee-covid-19-testing-policy>.

⁴ *Legal Analysis: State Board of Health Has Authority Over Student Vaccines*, Nevada State of Higher Education (Aug. 2, 2021), <https://nshe.nevada.edu/2021/08/state-board-of-health-has-authority-over-student-vaccines>.

⁵ Apoorva Mandavilli, *C.D.C. Internal Report Calls Delta Variant as Contagious as Chickenpox*, N.Y. Times (July 30, 2021), <https://www.nytimes.com/2021/07/30/health/covid-cdc-delta-masks.html>.

⁶ *Id.*

⁷ Jamie Lopez Bernal et al., *Effectiveness of Covid-19 Vaccines Against the B.1.617.2 (Delta) Variant*, New England Journal of Medicine (July 21, 2021), available at <https://www.nejm.org/doi/full/10.1056/NEJMoa2108891>; see also *About Variants of the Virus that Causes COVID-19*, Center for Disease Control (last visited Aug. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html>.

⁸ Las Vegas AP, *supra* note 1

hospitals are filling up with unvaccinated COVID-19 patients⁹. It is time to “flatten the curve” again.¹⁰ We implore the State Board of Health to help Clark County reach herd immunity, not by spread of the infection, but by inoculation. This distinction is important, as the World Health Organization has noted that achieving COVID-19 herd immunity “by allowing a disease to spread through any segment of the population...would result in unnecessary cases and deaths.”¹¹ Subjecting students and staff to preventable, severe infections and hospitalizations is a gamble that we ask the State Board of Health not to take. Mandated vaccinations at Nevada universities are a step in the right direction to mitigate the pandemic in Clark County and prevent immunocompromised people and children under 12 from serious infection and death.

We also reject the argument that mandated vaccination for in-person attendance at state universities raises constitutional claims. As affirmed by this week’s Seventh Circuit opinion discussing Indiana University’s recent implementation of a COVID-19 vaccination policy, under *Jacobson v. Massachusetts (1905)*, “there can’t be a constitutional problem with vaccination against SARS-CoV-2,” because there is no fundamental right to refuse necessary public health measures such as vaccines.¹²

We formally request that the State Board of Health adopt a COVID-19 vaccine mandate for faculty, staff, and students frequenting Nevada university campuses for the Fall 2021 semester. This pressing issue requires urgent attention as the semester quickly approaches. We hope to discuss satisfactory solutions at the State Board of Health’s upcoming August 10, 2021 meeting.

Sincerely,



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⁹ Las Vegas AP, *'We're Reliving 2020 in 2021; Las Vegas Hospital Workers Discuss Surge in COVID-19 Hospitalizations*, KTNV Las Vegas (July 21, 2021, 10:19 PM), <https://www.ktnv.com/news/coronavirus/were-reliving-2020-in-2021-las-vegas-hospital-workers-discuss-surge-in-covid-19-hospitalizations>.

¹⁰ Siobhan Roberts, *Flattening the Coronavirus Curve*, N.Y. Times (Mar. 27, 2020) <https://www.nytimes.com/article/flatten-curve-coronavirus.html>.

¹¹ *Coronavirus Disease (COVID-19): Herd Immunity, Lockdowns and COVID-19*, World Health Organization, https://www.who.int/news-room/q-a-detail/herd-immunity-lockdowns-and-covid-19?gclid=CjwKCAjw0qOIBhBhEiwAyvVcf8FrvRqdofRJwseWiaptCUOpMty3HIDliPPXOHqY1vCnP-1TWx1E1xoCplwQAvD_BwE# (last visited Aug. 3, 2021) (WHO opines that attempts to reach herd immunity through spread of the virus “are scientifically problematic and unethical”).

¹² *Klaassen v. Trustees of Indiana U.*, No. 21-2326, 2021 WL 3281209 at *2 (7th Cir. Aug. 2, 2021).