

OAH Docket No. 8-0900-30570
(Revisor No. RD4101)

BEFORE
MINNESOTA ADMINISTRATIVE LAW JUDGE ERIC LIPPMAN
PUBLIC HEARING ON RULEMAKING
MINNESOTA DEPARTMENT OF HEALTH

COMMENTS OF
NATIONAL HEALTH FREEDOM ACTION

**ON THE MDH PROPOSED AMENDMENTS TO RULES GOVERNING CHILD
CARE AND SCHOOL IMMUNIZATIONS**

Entitled:

*“Proposed Permanent Rules Relating to Immunization of School Age Children and
Children in Child Care and School-Based Early Childhood Programs”*

Comments Submitted June 27, 2013

I. NHFA – Who we are.

National Health Freedom Action (NHFA) is a 501(c)4 non-profit corporation working to protect maximum health care options for consumers.¹ NHFA works to protect the right of all people to access the health care practitioners, health care products, and the broad range of healing arts that resonate with his or her own decisions regarding health and wellness.

NHFA responds to calls year-round from individuals and groups throughout the country that wish to promote legal reform in occupational laws and regulations having to do with health care on the state level, and with federal and international product laws and regulations having to do with access to desired products. NHFA works with citizens to empower them to take action to address these concerns. NHFA educates and trains citizens on health freedom principles and on how to develop and pass proactive health freedom legislation that will ensure the rights of consumers to have access to products, practitioners, and information of their choice, as well as the rights of health care practitioners to offer their services.

NHFA staff members draft model legislation, testify at legislative hearings and public policy meetings, and provide strategic support and lobbying assistance to groups in over 30 states and seven countries.

NHFA is a member of the 2012 and 2013 U.S. Health Freedom Congress. A list of member organizations of the Congress is provided in Attachment A and a copy is provided of the Congress's Resolution 14A on Informed Consent and Resolution 7A on Right to Refuse Vaccination in Attachment B and C respectively. NHFA is also a founding member of the World Health Freedom Assembly, the drafting assembly for the International Declaration of Health Freedom. A copy of the Declaration is provided in Attachment D.

Americans Are Aware and Concerned: There is a growing awareness among Americans that personal choice in health care directly impacts how, and whether, a person will gain a full sense of health and wellness. And Americans are doing their own research and becoming more empowered about their wellness decisions. In addition Americans have become deeply concerned about infringements on their personal liberties, autonomy, and sovereignty, and their ability to make choices caused by regulatory systems that do not adequately protect a person's ability to protect their own health.

¹ National Health Freedom Action, www.nationalhealthfreedom.org.

NHFA's Basis for Responding to MDH Immunization Rule Revisions proposal document entitled "Proposed Permanent Rules Relating to Immunization of School Age Children and Children in Child Care and School-Based Early Childhood Programs"[hereinafter MDH Rule Revisions] presented for Comment

NHFA became aware of the MDH Immunization Rule Revisions proposal document entitled "*Proposed Permanent Rules Relating to Immunization of School Age Children and Children in Child Care and School-Based Early Childhood Programs*" through multiple correspondences sent to NHFA from practitioners, consumers, and health freedom activists and leaders in Minnesota requesting an explanation of the document. The correspondences that NHFA has received reflect mass opposition amongst readers of the MDH Rule Revisions.

NHFA responded by researching and reviewing the MDH Rule Revision, the MDH Statement of Need and Reasonableness report [hereinafter SONAR], and drafting a short action alert for our Minnesota database of contacts encouraging individuals to provide comments to the department by submitting them electronically or in person at the public hearing.

Given NHFA's work to empower citizens to actively participate in their health care decision-making and maximize access to citizen health care options, and because NHFA's members have an interest in the right to be free from unnecessary and unreasonable government mandates impacting their personal sovereignty as it applies to their health care decisions, NHFA is prepared to provide the Court with a detailed brief of its legal concerns and reasons for opposition to the adoption of the proposed rules before this Court within the given time frame indicated by this Court.

NHFA's Requests and Recommendations to the MDH

NHFA opposes the adoption of the MN Department of Health's proposed rule revisions governing Child Care and School Immunizations for the following reasons:

- (1) Current vaccine policy does not accurately reflect the developments in Supreme Court jurisprudence on liberty interest deprivations. This current jurisprudence suggests that a higher scrutiny standard be applied to modern vaccination mandates than the rational basis review.**

The reason for this is that the seminal state on state immunization regulations, *Jacobson*, was set in 1905, and fairly quickly the state case law impacting vaccines and public policy was shaped in a fashion and responsibility shifted to the federal government to essentially allow

regulations to be dictated by federal agencies and Advisory Councils, with prohibitions of bringing cases forward on the state level in tort against manufacturer and doctors. In the meantime, non-vaccine related cases progressed and Supreme Court jurisprudence came out strong in protection of liberty interests of the human body and health choice. These personal liberty interests and constitutional protection concepts now need to be applied to the conversation of vaccine public policy in Minnesota on behalf of the personal sovereignty of individuals. We support the jurisprudence analysis articulated in the 2012 Yale Journal of Health Policy, Law, and Ethics (Volume XII; I 2012 Pg. 41-85, Holland). A copy of the Journal article is provided in Attachment E for your review.

- (2) **Strict scrutiny, or at least intermediate scrutiny analysis, should be applied to government's setting of public policy mandates that involve the direct invasion of the human body by puncture of the skin and injection into the body of foreign substances; and now analysis of liberty interests in Due Process and Liberty interests in Equal Protection on behalf of Minnesota children is sorely needed.**

There is no rational reason why injections of dangerous vaccines should not be held to the same scrutiny as other policies regarding administration of drugs or treatments, or issues of personal privacy or sovereignty. We support the jurisprudence analysis articulated in the 2012 Yale Journal of Health Policy, Law, and Ethics (Volume XII; I 2012 Pg. 41-85, Holland). A copy of the Journal article is provided in Attachment E for your review.

- (3) **Current Minnesota vaccine policy does not pass muster under the reasonableness standard in Jacobson.**

NHFA is prepared to provide rebuttal comments on why the MDH rule revisions do not meet the thresholds for public health necessity, reasonable means, proportionality, harm avoidance, and non-discrimination.

- (4) **The existence of Minnesota's current vaccine policy exemptions should not be used to shelter or justify the setting of unnecessary and unreasonable vaccine policy in Minnesota. Minnesota citizens deserve to know the truth, and to be honored in their health care choices.**

It is well documented that the informed consent information is inadequate regarding vaccines. There may be fear that increasing the amount of information that parents receive about the dangers of vaccines will lower rates of vaccine injections. However, minimizing the truth and using the police power of the government to coerce parents is not the solution.

Rather the state should acknowledging the vast suffering of thousands of MN parents with damaged children, do an assessment of what it will cost to provide medical care to the rising numbers of damaged children in the future, and use the precautionary principle to refrain from adding more required injections for children until research is produced on whether the number of total vaccines is the cause of the lowered immunity of the population and the reason why unvaccinated children are documented as healthier than the vaccinated children.

(5) The goal of the 1967 Minnesota Legislature’s enactment of the Minnesota School Immunization law (Minnesota Statutes, section 121A.15), to not only prevent epidemics but to ensure that school children are “protected against vaccine-preventable diseases” is unconstitutional and unwarranted.

A state goal to use police power to mandate vaccines because they can protect against vaccine-preventable diseases, is irrational at best. There are “nutrition-preventable diseases”, “life-style preventable diseases”, “homeopathic remedy preventable pandemics” which are well documented in the literature. And the state does not consider using the police power to mandate people’s nutrition intake, life style behavior modifications, and forced homeopathic remedies. So why a state should be allowed to favor one approach in its policy for preventable diseases. Under the favored approach and under the unlimited numbers of government mandated vaccines, could be administered simply based on the fact that they have been produced to prevent a disease. This gives an industry that has no tort liability of its products a great incentive to develop an endless number of vaccines for disease prevention and request the state’s police power to mandate their use without any evidence of the impact of multiple vaccines on the health and safety of the population. There are many ways to shape public policy on preventable diseases. The state should consider other available options, and shift the focus from this industry driven and high risk policy to a more holistic understanding of the total health concerns at issue.

In summary, we appreciate the opportunity to provide NHFA testimony with attachments today. NHFA opposes the adoption of the MN Department of Health’s proposed rule revisions governing Child Care and School Immunizations and looks forward to providing any necessary rebuttal comments regarding NHFA’s opposition to the proposed rule revision.

Thank you for your consideration.

Respectfully Submitted:

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And

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Attachments:

Attachment A:

List of 2012 and 2013 Voting Members of United States Health Freedom Congress

Attachment B: Resolution 14A Informed Consent – online

http://www.nationalhealthfreedom.org/conferences/2012Conference/CongressResolutions/14ADRAFTresolutiononinformedconsent%5B1%5Dfinal_amended%20with%20support.pdf

Attachment C: Resolution 7A Right to Refuse Vaccination – online

http://www.nationalhealthfreedom.org/conferences/2012Conference/CongressResolutions/7A%20Sherri%20J.%20Tenpenny%20re%20Vaccines%20final_amended%20with%20support.pdf

Attachment D: International Declaration of Health Freedom

Attachment E: 2012 Yale Journal of Health Policy, Law, and Ethics (Volume XII; I 2012 Pg. 41-85, Holland): *Compulsory Vaccination, the Constitution, and the Hepatitis B Mandate for Infants and Young Children.*