

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO. 2084CV02924

TAMAR MASSOYAN-ARTINIAN, on behalf of  
her children, and MADISON SCHILTZ,

Plaintiffs,

v.

MONICA BHAREL, in her official capacity as  
Commissioner of the Massachusetts Department of  
Public Health and the MASSACHUSETTS  
DEPARTMENT OF PUBLIC HEALTH,

Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' EMERGENCY  
MOTION FOR PRELIMINARY INJUNCTION**

The Defendants Monica Bharel, in her official capacity as the Commissioner of the Massachusetts Department of Public Health, and the Massachusetts Department of Public Health (“DPH”) hereby oppose Plaintiffs’ Emergency Motion for Preliminary Injunction (“PI Motion”). Because DPH has recently announced that it is removing the requirement that students receive the influenza vaccine prior to attending school in the Commonwealth during the 2020-21 school year (at all levels, including at post-secondary institutions), the issues raised in Plaintiffs’ PI Motion, and the relief sought, have become moot and there is no need for the Court to entertain the PI Motion. Accordingly, the PI Motion should be denied.

Specifically, Plaintiffs are challenging a measure put in place by DPH in August 2020 relating to the 2020-21 school year that required students, including post-secondary school students under the age of 30, to receive the influenza vaccine by December 31, 2020, in order to

continue to attend school as of January 1, 2021. On December 22, 2020, DPH extended the compliance deadline for this requirement to February 28, 2021. In their PI Motion, Defendants refer to this flu vaccine requirement as the “Flu Shot Mandate.” On January 15, 2021, the Department announced that it has eliminated the requirement that students receive the flu vaccine as a condition of attending schools in the Commonwealth after February 28, 2021. *See* Affidavit of Elizabeth Scurria Morgan (“Scurria Morgan Aff.”), ¶ 2 and Ex. A, filed herewith. This decision has been communicated broadly to relevant parties throughout the Commonwealth. *Scurria Morgan Aff.*, ¶¶ 3-5. The Department has updated its current required immunization schedule (available on DPH’s website) accordingly to remove references to the influenza vaccine. *Scurria Morgan Aff.*, Ex. B.

In their PI Motion, Plaintiffs seek an emergency order that “Defendants are hereby immediately enjoined from in any way enforcing, or requiring or coercing any governmental department or agency, political subdivision, or school in the Commonwealth to abide by the Flu Shot Mandate.” *See* Plaintiffs’ Proposed Order, p. 1. As explained above, however, the so-called Flu Shot Mandate is no longer in existence, and thus the requested preliminary injunction would serve no purpose and has become moot. Put simply, “[t]here is presently nothing to enjoin.” *Utility Contractors Ass’n of New England, Inc. v. Dep’t of Public Works*, 29 Mass. App. Ct. 726, 729 (1991) (declining to consider preliminary injunction motion on mootness grounds). *See also Bay Transp. Authy. v. Local 589, Amalgamated Transit Union*, 406 Mass. 36, 41 (1989) (“[T]he union’s claim for injunctive relief is moot because the MBTA stopped implementing the [challenged] affirmative action plan . . . .”); *Morgan v. Stoughton*, 18 Mass. App. Ct. 977, 978 (1984) (no basis for preliminary injunction where board of selectmen agreed not to enforce suspension of plaintiff’s license pending completion of ongoing judicial

proceedings). Under these circumstances -- where the Plaintiffs are under no obligation to take any action and their ability to attend their respective schools is not conditioned on obtaining a flu vaccine -- the Court should summarily deny Plaintiffs' request for emergency interlocutory relief.

As for the resolution of Plaintiffs' claims going forward, Defendants propose that the parties confer further on this subject and report back to the Court on their positions.

### **CONCLUSION**

For the foregoing reasons, Defendants respectfully request that Plaintiffs' Motion for Preliminary Injunction be denied as moot.

Respectfully submitted,

MAURA HEALEY  
ATTORNEY GENERAL

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Dated: January 15, 2021

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2021, a copy of this document was served by email upon counsel for the Plaintiffs.

/s/ Richard S. Weitzel  
Richard S. Weitzel  
Assistant Attorney General