

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NURSES UNITED OF THE NATIONAL CAPITAL REGION,	)	
	)	
Plaintiff,	)	
	)	
and	)	Civil Action No. _____
	)	
WASHINGTON HOSPITAL CENTER CORP.,	)	
	)	
Defendant	)	
	)	

**DECLARATION OF LORI J. MARLOWE**

I, Lori J. Marlowe, do hereby depose and state as follows:

1. I am a Registered Nurse employed by Washington Hospital Center Corp. (“Washington Hospital” or “Hospital”) and have held that position since April 1999. I work on a Cardiac Unit. I was first hired by the Hospital in April 1999 as a Clinical Nurse and am now a Clinical Nurse III. I have been a nurse for 12 years.

2. I am also a member of Nurses United of the National Capital Region (“Nurses United” or “Union”), the collective bargaining representative of nurses at Washington Hospital. I have been a member of the Labor Management Committee and a Nurses United Board Member for 3 years and a Shop Steward since 2004. Currently I am on a Self Scheduling Committee, Nursing Staffing and Productivity Committee, Unit Council Committee, and 2010 Nurses United Negotiation Team. I have served on the 2007 and 2009 Negotiating Team.

3. Based on my 12 years of experience as a nurse, I believe that if the Hospital fired several nurses for failing to comply with its new flu vaccination policy, the Hospital would be left short-staffed, with significant negative consequences for the quality of patient care that we

provide. Nurse-patient ratios are crucially important to the quality of care that we provide. If, for example, Cardiac Services lost nurses, there would not be enough nurses to perform cardiovascular assessments. Patient safety would likely be jeopardized and length of stay would increase. Similarly, if the Cardiac Catheterization Lab, Operating Room, or Cardiac Surgery units lost nurses, scheduled and emergency surgeries or procedures could not proceed safely.

4. Furthermore, because agency nurses often lack the specialized credentials to fill certain jobs, I worry that if Washington Hospital Center fired nurses from 4C, 4D, 4NE, 4F, 4NW, Cardiac Catheterization Lab, Operating Room, it could not quickly replace those positions.

5. In addition to the impact on patient care, I also believe that the Hospital's unilateral termination of nurses would seriously undermine the strength of the union. Our current Collective Bargaining Agreement ("CBA") with the Hospital is set to expire on April 24, 2010. Looking toward the upcoming round of negotiations, which will begin in a matter of weeks, we have been holding meetings of nurses, soliciting concerns and input, forming a bargaining committee and working on preparations for bargaining. Our CBA already has established provisions dealing with such subjects as physical and medical requirements for nurses, causes and procedures for discipline or discharge, and safety and health issues. The Hospital's new flu vaccination policy is something that should be bargained in negotiations. If the Hospital can enact this policy outside of negotiations, and fire people for failing to comply with it, that shows that the Hospital can do whatever it wants, regardless of what we negotiate, and that the Union is not truly an equal partner with the Hospital. I know that I and other nurses will have that message in mind as the Union enters negotiations. It will be much harder for nurses to fight for the Union, having seen that whatever we win in our contract negotiations can

be disregarded or eliminated at the whim of the Hospital, just as the Hospital fired nurses who did not get their vaccine despite the protections and limitations in the CBA.

6. Moreover, I believe that the Hospital's plan to terminate nurses who do not get the seasonal flu vaccine at this time is arbitrary, illogical, and not the way that the Hospital would proceed if it were truly interested in improving patient care and safety. We are nearing the final weeks of the 2009-2010 flu season, which has been especially mild and uneventful. In fact, the Centers for Disease Control has publicly reported that during this flu season 98% of reported cases were not seasonal flu but 2009 H1N1 (for which seasonal flu vaccine offers no protection), and that the District of Columbia has experienced only sporadic flu. See <http://www.cdc.gov/flu/weekly/index.htm>. The Hospital itself has not faced any unusual outbreaks of flu, and there is no sudden crisis expected. According to information received from the Hospital, the rate of seasonal flu vaccination among nurses at the Hospital is now at or above 93%, and the reasons why the rest of the nurses have not been vaccinated are still unknown. Finding out the reasons why some nurses remain unvaccinated, and then working to overcome misinformation or other causes, would do more to achieve a sustainable high rate of seasonal flu vaccination from year to year than firing these nurses toward the end of this unusually mild flu season. When next year's seasonal flu vaccine becomes available, the Hospital would once again face the same situation as it starts over from a vaccination rate of zero, with no better information enabling more effective outreach to nurses, but with the added, self-inflicted burden of punishment and lingering resentment.

7. I and other nurses recognize that a high rate of flu vaccination at the Hospital would help to protect patients. But we also know that flu vaccination is not the only measure, or even the most important measure, in reducing flu transmission and protecting patients. For

example, improved compliance with hand washing protocol would do more to protect patients' health and safety than forcing nurses to submit to vaccination. Further, there are other effective measures which would protect both nurses and patients from flu transmission, if that were truly the Hospital's concern, but the Hospital has refused this alternative. I and other nurses also understand that a seasonal flu vaccine is not truly an immunization against disease like, for example, the MMR vaccine. Rather, the formulation of any particular annual flu vaccine is based on advance predictions about the anticipated flu strains that will be in circulation; and the effectiveness of the seasonal flu vaccine can vary widely, from below 50% in some seasons, to between 70 and 90% in well-matched years, but even at best it does not approximate 100% protection. The Hospital has not presented any studies or other reliable scientific evidence demonstrating that the firing of remaining unvaccinated nurses is necessary or effective to improve patient health and safety.

8. All these circumstances, and the timing of the Hospital's nurse terminations, give nurses the perception that the Hospital is not really acting to promote safety and health. On the other hand, this unnecessary show of force does attack, undermine and put pressure on the Union and the nurses as they are about to begin the upcoming contract negotiations.

**CERTIFICATION PURSUANT TO 28 U.S.C. §1746**

I hereby declare under penalty of perjury that the foregoing is true and correct.

January 27, 2010  
Date

  
Lori J. Marlowe