

*Enter
Forthwith ✓*

SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

THE NEW YORK STATE NURSES ASSOCIATION,
1199 SEIU UNITED HEALTHCARE WORKERS EAST,
CONCERNED PHYSICIANS OF LICH, LLC AND CARL
BIERS,

Index No. 5814/2013

Plaintiffs-Petitioners,

ORDER

-against-

NEW YORK STATE DEPARTMENT OF HEALTH,
NIRAV R. SHAH, MD, in his capacity as Commissioner of
the Department of Health, STATE UNIVERSITY OF NEW
YORK TRUSTEES OF STATE UNIVERSITY OF NEW
YORK, STATE UNIVERSITY OF NEW YORK
DOWNSTATE MEDICAL CENTER, STATE
UNIVERSITY OF NEW YORK DOWNSTATE
MEDICAL CENTER COUNCIL AND JOHN F.
WILLIAMS, MD, in his capacity as President of the State
University of New York Downstate Medical Center,

Defendants-Respondents.

RK
2013 OCT 15 AM 10:28
KINGS COUNTY CLERK
FILED

WHEREAS, Plaintiffs-Petitioners New York State Nurses Association
("NYSNA"), 1199SEIU United Healthcare Workers East ("1199"), Concerned Physicians of
LICH, LLC ("Concerned Physicians"), and Carl Biers filed a First Amended Verified Complaint
and Petition, dated August 2, 2013 (the "Complaint"); and

WHEREAS, Plaintiffs-Petitioners submitted in support of the Complaint and this
Court has considered in ruling thereon: the initial and supplemental affirmations of Richard M.
Seltzer and the exhibits annexed thereto, dated March 31, 2013 and July 23, 2013, respectively;
the affirmation of Sita Krishnaswamy, M.D., the spouse of a former LICH patient, dated March
28, 2013; the affirmations of John Romanelli, M.D., dated March 29, 2013 and July 22, 2013;
the affirmation of Toomas Sorra, M.D., dated July 21, 2013; the affirmation of Leonard Novarro,

M.D., dated July 22, 2013; the affirmation of Raffaele Borriello, M.D., dated July 22, 2013; the affidavit of Carl Biers, sworn to on March 28, 2013; the memorandum of law in support of the order to show cause for declaratory and injunctive relief, dated April 1, 2013; the memorandum in opposition to the New York State Department of Health ("DOH")'s cross-motion to dismiss, and the State University of New York ("SUNY")'s motion to dismiss and in further support of judgment for Plaintiffs-Petitioners, dated July 23, 2013; the memorandum of law in support of judgment based on the unconstitutional vagueness of certain DOH regulations, dated August 6, 2013; and the Stipulation Granting Leave to File First Amended Verified Complaint and Petition, dated August 5, 2013; and

WHEREAS, SUNY moved, and DOH separately cross-moved, to dismiss the Complaint, and submitted in support of the motion and cross-motion and the Court has considered: the initial, supplemental, and reply affirmations of Frank V. Carone and the exhibits annexed thereto, dated June 19, 2013; June 24, 2013; and August 6, 2013, respectively; the affidavit of George Caralis, dated June 19, 2013; the initial and supplemental affidavits of Elizabeth Bringsjord, sworn to on June 19, 2013 and June 24, 2013; respectively, the affidavit of Stacey Negsterman, sworn to on June 24, 2013; the affidavit of John Byrne, sworn to on May 3, 2013; the affidavit of Lora Lefebvre, sworn to on May 3, 2013; the affidavit of Ruth W. Leslie, sworn to on May 2, 2013; the affidavit of Richard Miller, sworn to on May 3, 2013; the affidavit of Karen S. Westervelt, sworn to on June 25, 2013; the DOH memorandum of law; the memoranda in support of the motion to dismiss the Complaint and Petition, dated June 21, 2013 and June 27, 2013, respectively; the joint reply memorandum in further support of the motions to dismiss the Complaint, dated August 6, 2013; and the memorandum of law in further support of DOH's cross-motion to dismiss, dated August 2, 2013; and

WHEREAS, this Court, heard oral argument from the parties on August 7, 8 and 9, 2013, and at the conclusion of oral argument on August 9, 2013, reserved decision; and

WHEREAS, on September 12, 2013, the Court issued a decision and directed the parties to settle an Order; and

WHEREAS, the Court in its September 12, 2013 decision determined that the parties "have raised issues of law forming the basis for summary judgment," and "there are no issues of fact for trial of this matter (other than the contempt allegations raised by the plaintiffs-petitioners, which the court will address at another time)"; and

WHEREAS, the Court in its September 12, 2013 decision determined "that the plaintiffs- petitioners' are entitled to summary judgment on the injunctive and declaratory relief they seek to the extent set forth" in the September 12, 2013 decision;

NOW, THEREFORE,

IT IS HEREBY ORDERED that judgment is entered in favor of Plaintiffs-Petitioners NYSNA, 1199 and Concerned Physicians with respect to the First, Second, Fifth and Sixth Causes of Action in the Complaint;

IT IS FURTHER ORDERED that 10 NYCRR §401.3(g), is declared to be unconstitutional in violation of the United States and New York Constitutions; and

IT IS FURTHER ORDERED that Defendants-Respondents are permanently enjoined from acting on any closure plan already submitted by Defendants-Respondents State University Of New York, Trustees Of State University Of New York, State University Of New York Downstate Medical Center, State University Of New York Downstate Medical Center Council or John F. Williams, MD, President of the State University Of New York Downstate

Medical Center (the "SUNY Defendants-Respondents") to Defendants-Respondents DOH and Nirav R. Shah with respect to Long Island College Hospital; and

IT IS FURTHER ORDERED that the SUNY Defendants-Respondents are permanently enjoined from closing Long Island College Hospital in furtherance of any closure plan already submitted to the Department of Health; and

IT IS FURTHER ORDERED that the Third and Fourth Causes of Action in the Complaint are dismissed because they were abandoned by Plaintiffs-Petitioners; and

IT IS FURTHER ORDERED that judgment is entered in favor of Plaintiffs-Petitioners NYSNA, 1199 and Concerned Physicians with respect to the Seventh and Eighth Causes of Action in the Complaint; and

IT IS FURTHER ORDERED that Defendants-Respondents Department of Health and Nirav R. Shah's partial approval of the Third Closure Plan, dated July 17, 2013, for Long Island College Hospital on less than 90 days' notice violated 10 N.Y.C.R.R. 401.3(g) and is, therefore, null and void; and

IT IS FURTHER ORDERED that the SUNY Defendants-Respondents are permanently enjoined from closing Long Island College Hospital in furtherance of any closure plan submitted to the Department of Health or otherwise without a closure plan approved pursuant to regulations that satisfy the requirements of law, including article I, §§ 6, article III, § 1 and article IV, § 1 of the New York State Constitution and the Fourteenth Amendment of the United States Constitution; and

IT IS FURTHER ORDERED that the Ninth Cause of Action in the Complaint is dismissed for mootness; and

IT IS FURTHER ORDERED that the Tenth Cause of Action in the Complaint is dismissed, as it raises a non-justiciable claim involving a political question; and

IT IS FURTHER ORDERED that all claims by Carl Biers are dismissed for want of standing; and

IT IS FURTHER ORDERED that Plaintiffs-Petitioners NYSNA, 1199 and Concerned Physicians may seek an award of fees and other expenses to the extent permitted by law, including by application pursuant to the New York State Equal Access to Justice Act, CPLR 8600 *et seq.*

Dated: New York, New York

~~September~~, 2013
October 11, 2013

ENTER:

Johnny L. Baynes
Hon. Johnny L. Baynes, J.S.C.

HON. JOHNNY LEE BAYNES

Nancy T. Sander
clerk

FILED
2013 OCT 15 AM 10:36
KINGS COUNTY CLERK

2013 OCT 15 AM 10:28
KINGS COUNTY CLERK
FILED