

Paula Weiner

At IAS Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York on the 1st day of April, 2013.

5/2/12

PRESENT HON. JOHNNY LEE BAYNES
SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

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

Index No. 5814-13

Plaintiffs-Petitioners,

vs.

ORDER TO SHOW CAUSE
FOR DECLARATORY ACTION
AND ARTICLE 78
PROCEEDING

NEW YORK STATE DEPARTMENT OF HEALTH,
NIRAV 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 State
University of New York Downstate Medical Center

Defendants-Respondents.

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ORDER TO SHOW CAUSE

Upon the Verified Complaint and Petition for declaratory relief and pursuant to Article 78, sworn to on March 29, 2013 and March 30, 2013, and the Affirmation of Richard Seltzer, sworn to on March 31, 2013, and exhibits thereto, the Affidavit of Carl Biers, sworn to on March 28, 2013, the Affirmation of John Romanelli, MD, sworn to on March 29, 2013, and exhibit thereto, the Affirmation of Toomas Sorra, MD, sworn to on March 30, 2013, and exhibit thereto, the Affirmation of Sita Krishnaswamy, MD, sworn to on March 28, 2013 and the

Memorandum of Law, and all prior proceedings herein, and good cause having been alleged, it is hereby

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a. ~~ORDERED that~~ ^{LET} Defendants-Respondents shall show cause before this Court in courtroom ___ at the Courthouse at 360 Adams Street, Brooklyn, New York, on the *2* day of ~~April~~ ^{May} 2013 at 9:30 a.m., or as soon thereafter as counsel may be heard, why an order should not be entered granting the relief sought by the Plaintiffs-Petitioners in the accompanying verified complaint and petition including:

(1) (a) an injunction barring the Commissioner Nirav Shah, MD (the "Commissioner") and the New York State Department of Health ("DOH") from acting on the request for authority to close Long Island College Hospital until the Commissioner promulgates lawful regulations and acts pursuant to said regulations, (b) vacating the decision of the State University of New York ("SUNY") and the Trustees of the State University of New York ("SUNY Board") approving the request of State University of New York Downstate Medical Center ("SUNY Downstate") and John F. Williams, MD for DOH's approval of the LICH Closure Plan, (c) ordering that the Defendants-Respondents SUNY, the SUNY Board, SUNY Downstate, the SUNY Downstate Council and Williams (the "SUNY Defendants-Respondents") rescind the LICH Closure Plan until such time as the SUNY Defendants-Respondents subject such Plan to adequate review as required under New York Education Law § 356 and barring any actions by Respondents-Defendants to effect the closing of LICH until such time as DOH and the Commissioner approve a closure plan submitted in accordance with New York Education Law § 356, including any communications between (i) Defendants-Respondents SUNY, SUNY Board, SUNY Downstate, SUNY Downstate Council and John F. Williams, MD, and (ii) Defendants-Respondents DOH and Nirav Shah, MD, regarding such closure plan; and

(2) an expedited briefing schedule for decision on the merits for the relief requested in the Article 78 petition and a decision on a request for a preliminary injunction combined with a decision on the merits for the relief requested in the verified complaint, namely the injunctive relief reviewed herein and a declaratory judgment that: (a) 10 NYCRR § 401.3(g) and (e) are unconstitutionally vague and an unconstitutional arrogation of legislative power and (b) (i) the SUNY Downstate Council's lack of meaningful review of, and failure to make a recommendation to the SUNY Board with regard to the LICH closing plan and proposed budget in connection with the LICH closing plan, or make an affirmative determination not to make a recommendation, (ii) the SUNY Board's failure to review any recommendation from the SUNY Downstate Council with regard to the LICH closing plan and proposed budget in connection with the LICH closing plan, and (iii) Williams' recommendation to the SUNY Board to close LICH, are arbitrary and capricious, an abuse of discretion and a violation of lawful procedure;

~~b. ORDERED that the answer, the record pursuant to CPLR 7804(e) and opposing papers, if any, shall be filed by Defendants-Respondents no later than the ___ day of April 2013 at ___ m., and reply papers shall be filed by Plaintiffs-Petitioners no later than the ___ day of April 2013 at ___ am. And, good cause having been shown therefore, it is further~~

c. ORDERED that pending a hearing ~~and determination~~ by this Court on the application for an injunction, Defendants-Respondents are hereby TEMPORARILY RESTRAINED and shall not take any action in furtherance of the closure plan for Long Island College Hospital submitted to the DOH, including any communications between (a) Defendants-Respondents SUNY, SUNY Board, SUNY Downstate, SUNY Downstate Council and John F.

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Williams, MD, and (b) Defendants-Respondents DOH and Nirav Shah, MD, regarding such closure plan.

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SUFFICIENT CAUSE BEING SHOWN, let service ~~by hand delivery~~ of a copy of this Order to Show Cause and the papers on which it is based upon counsel for Defendants-Respondents no later than the 4 day of April, 2013, be deemed good and sufficient service.



ENTER:



J.S.C.
HON. JOHNNY LEE BAYNES