## **PETITION**

We, the undersigned residents of the City and State of New York, formally petition the Commissioner of Health for New York State, Dr. Howard A. Zucker, to exercise his legal authority and supervisory responsibility to require that New York City (NYC) Mayor Bill de Blasio immediately return all authority for SARS-CoV-2 virus surveillance and contact tracing to the Department of Health and Mental Hygiene (DOHMH) as the legal public health entity for New York City.

WHEREAS, relevant sections of New York Consolidated Laws, Public Health Law – PBH § 206, part 1, setting out the general powers and duties of the New York State Commissioner of Health, states that the Commissioner shall:

- (a) take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law;
- (b) exercise general supervision over the work of all local boards of health and health officers, unless otherwise provided by law; and
- (d) investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.

And

WHEREAS, New York Consolidated Laws, Public Health Law – Article 6: State Aid to Cities and Counties, which provides aid to the State's local health departments for the provision of essential public health services, specifies in §602(1)(b), that to be eligible for state aid, a municipality must provide certain "core public health services" including:

Communicable disease control, which shall include activities to control and mitigate the extent of infectious diseases. Such activities shall include, but not be limited to, surveillance and epidemiological programs, programs to detect diseases in their early stages, immunizations against infectious diseases, investigation of diseases and prevention of transmission, prevention and treatment of sexually transmissible diseases, and arthropod vector-borne disease prevention.

And

WHEREAS, New York Consolidated Laws, Public Health Law – Article 6, §603(1), regarding implementation of core public health services, requires that:

In order to be eligible for state aid under this title, each municipality shall administer its core public health services in accordance with the standards of performance established by the commissioner through rules and regulations pursuant to section six hundred nineteen of this article. Each municipality shall, in particular, ensure that public health services are provided in an efficient and effective manner to all persons in the municipality.

And

WHEREAS, New York Consolidated Laws, Public Health Law – Article 6, §604, regarding supervision of public health programs, requires that in order to be eligible for Article 6 state aid, "each municipality shall employ a full-time local commissioner of health or public health director" who will supervise the provision of public health services for the municipality.

## And

WHEREAS, the New York State Sanitary Code, 10 NYCRR §2.6 and §2.13, applicable to NYC, specifies that communicable disease epidemiological investigations, including the identification of unreported cases, and the location and evaluation of contacts, are to be conducted by the local health authority, which in NYC is DOHMH, states that these investigations shall "take any other steps necessary to reduce morbidity and mortality that the local health authority determines to be appropriate," and vests the authority and duty to issue isolation or quarantine orders, including at home or other residential or temporary housing location, with the local public health authority.

## And

WHEREAS, section 556(c)(2) of the Charter of the City of New York, specifically authorizes DOHMH to supervise the reporting and control of communicable disease.

## And

WHEREAS, New York City Health Code, Article 11, relating to Reportable Diseases and Conditions, explicitly vests the NYC Health Commissioner and DOHMH with the sole authority to require reporting of infectious diseases, investigate and act upon information gathered, and, where necessary, issue and enforce isolation or quarantine orders to protect individual and public health; and the Code establishes clear and detailed structures, procedures, confidentiality requirements, and standards for DOHMH conduct of contact tracing required to protect public health, including measures to ensure confidentiality of health information disclosed to DOHMH, as well as standards to protect individual rights, and ensure DOHMH accountability and sound public health practice.

### And

WHEREAS, Executive Order No. 202.19, signed by Governor Andrew Cuomo on April 17, 2020, relating to the continuing COVID-19 Disaster Emergency, includes the following directive:

 No local government or local department of health shall take any actions that could affect public health without consulting with the state department of health. No local government official shall take any action that could impede or conflict with any other local government actions, or state actions, with respect to managing the COVID-19 public health emergency.

## And

WHEREAS, on May 8, 2020, NYC Mayor Bill de Blasio announced that the "City's comprehensive plan to test, trace, and treat every case of COVID-19" would be conducted through "a partnership with NYC Health + Hospitals" (H+H) rather than by the City's legal public health agency, DOHMH, to "isolate and care for those who test positive for the virus, and then rapidly track, assess, and quarantine anyone they came into contact with who they may have infected," and ordering DOHMH to immediately "transfer nearly 40 of its experienced contact tracers" to H+H, to "lead and supervise incoming contact tracers (see:

https://www1.nyc.gov/office-of-the-mayor/news/333-20/test-trace-mayor-de-blasio-new-york-city-test-trace-corps.

#### And

WHEREAS, robust surveillance, case investigation, contact tracing and isolation of COVID-19 cases or quarantine of close contacts can slow and stop the transmission of SARS-CoV-2, making a large-scale, strong, coordinated, professionally-led effort to identify, trace, and supportively quarantine persons exposed critically needed in NYC to continue to drive down new COVID-19 cases and restore our City's economy, and DOHMH, a recognized national leader in public health for which contact tracing has been a core function for over a century, comprise staff whose training, experience and expertise is in engaging communities to identify, diagnose, prevent, and control infectious disease, and is able to do expedited hiring for such programs by working through a nonprofit intermediary, the Fund for Public Health in New York City.

# And

WHEREAS, any action by Mayor de Blasio to transfer contact tracing responsibilities away from DOHMH to H+H, an agency with no experience in contact tracing, which is bound by HIPAA restrictions, and which will require guidance and expertise from DOHMH, will hamper rather than advance these efforts, and will likely violate NYC Health Code provisions protecting the confidentiality of disease reports made to DOHMH from H+H and other health providers.

## And

WHEREAS, New York City Mayor Bill de Blasio's unlawful transfer of authority for public health contract tracing from DOHMH to H+H will result in concrete and irreversible damage to individual New York City and State residents, to the public health, and to the essential duties of DOHMH and H+H, including, but not limited to:

- Permanent injury to all New Yorkers from fundamentally disrupting the public health authority and infrastructure of DOHMH to lead and coordinate contact tracing efforts, as mandated by law and backed by decades of demonstrated expertise conducting ethical contact tracing in the communities which are already suffering disproportionately from the effects of SARS-CoV-2;
- Injury to the public trust and to community relationships that DOHMH has established over many years through responsible and culturally competent contact tracing, and

- through DOHMH's demonstrated success managing threats to individual and public health such as HIV, hepatitis, tuberculosis and other infectious illnesses, undermining the key role of DOHMH in protecting the public health;
- Injury to members of the public who will not confer the same trust on H+H, which has
  no record or experience in contact tracing, undermining public confidence in the City's
  ability to manage contract tracing responsibly, as well as individuals' willingness to
  participate and cooperate if contacted;
- Injury to DOHMH staff members transferred to H+H to implement the initiative, who
  will be subject to both internal DOHMH and external H+H direction and reporting—dual
  reporting responsibilities likely to result in confusing if not conflicting instructions and
  requirements that will impair staff effectiveness and moral during a period of
  tremendous crisis and stress;
- Injury to the credibility of H+H by creating at least the appearance of, if not an actual
  conflict of interest, as H+H drives individuals to their own system for COVID-19 testing
  and care;
- Damage to H+H through the dysfunction created by tasking H+H with initiating an
  entirely new program that goes beyond its core mission of providing medical care, and
  by requiring H+H staff to engage in actions that medical providers are not normally
  required or allowed to undertake, at a time when H+H resources should be focused on
  testing and managing COVID-19 cases so that the health care system is not
  overwhelmed;
- Disruption of the sanctity of protected data, by requiring that H+H be given access to DOHMH surveillance data that comes from a number of sources, including NYS data that is shared with DOHMH pursuant to specific and limited data sharing agreements that do not allow disclosure to H+H or other entities—examples of NYS data systems that provide information for DOHMH NYC surveillance for which there is no agreement to authorize access by H+H include the Electronic Clinical Laboratory Reporting System (ECLRS), the Health Electronic Response Data System (HERDS), eVital, the Healthix Regional Health Information Organization (RHIO), the Bronx RHIO, and the Statewide Planning and Research Cooperative System (SPARCS);
- Harm from undermining other key DOHMH public health functions usually undertaken by the 100 or more epidemiologic and other staff that will in fact have to be seconded to H+H to focus solely on COVID-19—pulling them away from their other DOHMH responsibilities to monitor and respond to public health priorities such as HIV, hepatitis, tuberculosis, sexually transmitted infections, and vaccine preventable diseases such as measles;
- Harm to the residents of NYC from the potential loss of New York State Article 6 public
  health funding if it is determined that NYC expenses for COVID-19 contact tracing and
  investigation is ineligible for these funds because the "core public health function" of
  communicable disease control is not conducted by DOHMH, the local public health
  department.
- Harm from the disruption and duplication of effort that will be required due to H+H's determination that they are not capable of testing or contact tracing in congregate

- facilities, such that DOHMH will be required to continue testing and contact tracing for residents of shelters, jails, nursing homes and other congregate settings at a time when the DOHMH staff required for these functions have been cannibalized by H+H;
- Harm from the confusion and delay occasioned by the need to develop workarounds and memoranda of understanding to circumvent existing NYC and NYS public health laws that vest DOHMH with sole authority and set out established legal structures for infectious disease contact tracing and isolation/quarantine actions;
- Injury from the delays and inefficiencies, and resulting avoidable COVID-19 infections and deaths, that will be the inevitable outcome of transferring the core public health function of contact tracing in the midst of a public health crisis from the City's public health authority, DOHMH, into new hands at H+H, an agency with zero experience and no existing infrastructure to undertake these functions.

THEREFORE, the undersigned, on behalf of all New York City and State residents, who together are facing the unprecedented public health crisis posed by SARS-CoV-2, hereby formally petition the Commissioner of Health for New York State, Dr. Howard A. Zucker, to exercise his legal authority and supervisory responsibility to require that New York City Mayor Bill de Blasio immediately issue an order or otherwise reverse the actions taken to undertake COVID-19 contact tracing in partnership with H+H, and return all authority and responsibility for SARS-CoV-2 virus surveillance, case investigation, contact tracing and supported isolation of positive cases or quarantine of close contacts to the Department of Health and Mental Hygiene as the legal public health entity for New York City.

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