

September 13, 2021

To: Provost Carol Parker
From: Professor David K. Clements

Delivered via Email to parker55@nmsu.edu

Re: Response to Preliminary Findings and Allegations

Dear Provost Parker:

I am in receipt of NMSU letters dated August 20th, 27th, and September 8th, 2021. None of the allegations referred to in these letters demonstrate the undersigned's conduct to be inconsistent with state or federal law.

Rather, the allegations presented indicate that the undersigned has violated NMSU administrative rules and regulations. To the extent that NMSU COVID-19 rules and regulations are incongruent with the U.S. and New Mexico State Constitution, or laws governing the practice of medicine under federal and state statutory law, they are unconstitutional, illegal, and therefore unenforceable. As explained below, NMSU's COVID-19 rules and regulations are clearly illegal. As a result, NMSU and its administrators are subject to civil and criminal liability. I will respond to each "finding" provided in your correspondence in turn.

I. Violation of University Health Directives – Refusal to Take, Endorse, or Promote Experimental Drug Vaccines to Students or Faculty members

First, NMSU's health directives concerning experimental drug vaccines are illegal. Covid-19 vaccines are not approved by the FDA. These drugs have limited approval under an Emergency Use Authorization, and that is for investigational use only. The FDA's guidance on emergency use authorization of medical products requires the FDA to "ensure that recipients are informed to the extent practicable given the applicable circumstances ... That they have the option to accept or refuse the EUA product" The present university health directives do not provide undersigned a choice to refuse the EUA product, but rather uses a form of duress.

Title 21, Section 360 of the Federal Food, Drug, and Cosmetic Act vests the Secretary of Health and Human Services with the permissive authority to grant Emergency Use Authorizations ("EUAs") provided that appropriate conditions are designed to ensure that individuals to whom the product is administered are informed:

1. that the Secretary has authorized the emergency use of the product;
2. of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and

3. **of the option to accept or refuse administration of the product**, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.¹

The right to avoid the imposition of human experimentation is fundamental, rooted in the Nuremberg Code of 1947, has been ratified by the 1964 Declaration of Helsinki, and further codified in the United States Code of Federal Regulations. In addition to the United States regarding itself as bound by these provisions, these principles were adopted by the FDA in its regulations requiring the informed consent of human subjects for medical research. It is unlawful to conduct medical research, even in the case of an emergency, unless steps are taken to secure **informed consent** of all participants.

NMSU has not provided informed consent through fact sheets provided by any of the three experimental drug vaccine providers. Namely, Moderna, Pfizer/BioNTECH, and Johnson & Johnson (Jansen). NMSU, therefore not only has failed to provide informed consent, but failed to secure informed consent from its students and faculty.

For example, the Janssen EUA fact sheet contains the following notice:

“INFORMATION TO PROVIDE TO VACCINE

RECIPIENTS/CAREGIVERS” As the vaccination provider, you must communicate to the recipient or their caregiver, information consistent with the “Fact Sheet for Recipients and Caregivers” (and provide a copy or direct the individual to the website to obtain the Fact Sheet) prior to the individual receiving the Janssen Covid-19 Vaccine, including:

- FDA has authorized the emergency use of the Janssen Covid-19 Vaccine, which is not an FDA approved vaccine.
- ***The recipient or their caregiver has the option to accept or refuse the Janssen COVID-19 Vaccine.***
- The significant known and potential risks and benefits of the Janssen Covid-19 Vaccine, and the extent to which such risks and benefits are unknown.”

Clearly, any attempt to force anyone to take an experimental Covid-19 vaccine is a violation of federal law, and the conditions under which the Covid-19 vaccine has been authorized for use. The law is clear, experimental medical treatment cannot be mandated.

Second, NMSU can be held liable. Under the 2005 PREP Act enacted by Congress, pharmaceutical companies that manufacture EUA vaccines are shielded from liability related to injuries and damages caused by their experimental agents. However, any employer, public school, or any other *entity or person* who mandates experimental vaccines on any human being is not protected from liability for any resulting harm. While vaccine manufacturers may be shielded from liability, your institution is not protected, and neither are you.

I urge NMSU to comply with the FD&C Act and the terms of the EUA and the accompanying pharmaceutical fact sheets, and to advise all employees of their right to accept *or refuse* any Covid-19 vaccine. Any other course of action is contrary to federal law.

II. Violation of University Health Directives – Refusal to endorse and promote NMSU’s mask policy --- or wear one.

The science on mask efficacy is astonishingly clear. Standard cloth and surgical masks offer next to no protection against virus-sized particles or small aerosols. The size of a virus particle is much too small to be stopped by a surgical mask, cloth or bandana. A single virion of SARS-CoV-2 is about 60-140 nanometers or 0.1 microns. The pore size in a surgical mask is 200-1000x that size.

Consider that the CDC website states, “surgical masks do not catch all harmful particles in smoke.” And that the size of smoke particles in a wildfire are ~0.5 microns which is 5x the size of the SARS-CoV-2 virus. Wearing a mask to prevent catching SARS-CoV-2, or similarly sized influenza, is like throwing sand at a chain-link fence: it doesn’t work. There has been one large randomized controlled trial that specifically examined whether masks protect their wearers from the coronavirus. This study found mask wearing “did not reduce, at conventional levels of statistical significance, the incidence of Sars-Cov-2-infection.” See <https://www.acpjournals.org/doi/10.7326/M20-6817>.

Consider also, that the existence of more particles does not mean more virus. Research shows less virus does not mean less illness. Dr. Kevin Fennelly, a pulmonologist at the National Heart, Lung and Blood institute debunked the view that larger droplets are responsible for viral transmission. See [https://www.thelancet.com/journals.lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals.lanres/article/PIIS2213-2600(20)30323-4/fulltext). Fennelly referenced a 1953 paper on anthrax that showed a single bacterial spore of about one micron was significantly more lethal than larger clumps of spores. See [https://www.thelancet.com/journals.lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals.lanres/article/PIIS2213-2600(20)30323-4/fulltext). Exposure to one virus particle is theoretically enough to cause infection and subsequent disease. This is not an alarming thought - it simply means what it has always meant, that our immune system protects us continually all our life. See <https://www.sciencedaily.com/releases/2009/03/090313150254.htm>. There have been hundreds of mask studies related to influenza transmission done over several decades. It is a well-established fact that masks do not stop viruses. “Part of that evidence shows that cloth facemasks actually increase influenza-linked illness.” See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/> Bacteria are 50x larger than virus particles. See <https://www.merriam-webster.com/words-at-play/virus-vs-bacteria-difference>.

As such, virus particles can enter through the mask pores, yet bacteria remain trapped inside of the mask, resulting in the mask-wearer continually exposed to the bacteria. Related to the 1918-1919 influenza pandemic, there was almost universal agreement among experts, that deaths were virtually never caused by the influenza virus itself but resulted directly from severe secondary pneumonia caused by well-known bacterial “pneumopathogens” that colonized the upper respiratory tract.

Dr. Fauci and his National Institute of Health studied pandemics and epidemics and concluded, “the vast majority of influenza deaths resulted from secondary bacterial pneumonia.” See <https://academic.oup.com/jid/article/198/7/962/2192118>. All parties mandating the use of facemasks are not only willfully ignoring established science but are engaging in what amounts to a

clinical experimental trial. This conclusion is reached by the fact that facemask use, and Covid-19 incidence are being reported in scientific opinion pieces promoted by the CDC and others. *See* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>.

The fact is after reviewing ALL of the studies worldwide, the CDC found “no reduction in viral transmission with the use of face masks.” *See* “Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal Protective and Environmental Measures, Jingyi Xiao¹, Eunice Y. C. Shiu¹, Huizhi Gao, Jessica Y. Wong, Min W. Fong, Sukhyun Ryu, and Benjamin J. Cowling (Volume 26, Number 5, May of 2020).

Regardless of the lack of safety and efficacy behind the decision to require NMSU employees to wear a mask, it is illegal to mandate EUA approved investigational medical therapies without informed consent. Mask use for viral transmission prevention is authorized for Emergency Use only. *See* <https://www.fda.gov/media/137121/download>.

The statute granting the FDA the power to authorize a medical product of emergency use requires that the person being administered the unapproved product be advised of his or her right to refuse administration of the product. *See* 21 U.S.C. § 360bbb-3 (The FD&C Act). This statute further recognizes the well settled doctrine that medical experiments, or “clinical research,” may not be performed on human subjects without the express, informed consent of the individual receiving treatment.

The right to avoid the imposition of human experimentation is fundamental, rooted in the Nuremberg Code of 1947, has been ratified by the 1964 Declaration of Helsinki, and further codified in the United States Code of Federal Regulations. In addition to the United States regarding itself as bound by these provisions, these principles were adopted by the FDA in its regulations requiring the informed consent of human subjects for medical research.

The law is very clear; it is unlawful to conduct medical research (even in the case of emergency), unless steps taken to ... secure informed consent of all participants. Furthermore, by requiring employees to wear a mask, you are promoting the idea that the mask can prevent or treat a disease, which is an illegal deceptive practice. It is unlawful to advertise that a product or service can prevent...disease unless you possess competent and reliable scientific evidence... substantiating that the claims are true. *See* FTC Act, 15 U.S. Code § 4.

The FDA EUA for surgical and/or cloth masks explicitly states, “the labeling must not state or imply... that the [mask] is intended for antimicrobial or antiviral protection or related, or for use such as infection prevention or reduction.” Masks do not claim to keep out viruses, yet NMSU continues to incorrectly advocate that that they do.

There are proven microbial challenges as well as breathing difficulties that are created and exacerbated by extended mask-wearing. Requiring NMSU employees to wear a mask sets the stage for contracting any infection, including COVID-19, and making the consequences of that infection much graver. In essence, a mask may very well put us at an increased risk of infection, and if so, having a far worse outcome.

The fact that mask wearing presents a severe risk of harm to the wearer should – standing alone – not be required for employees, particularly given that we are not ill and have done nothing wrong that would warrant an infringement of our constitutional rights and bodily autonomy. Promoting use of a non-FDA approved, Emergency Use Authorized mask, is unwarranted and illegal. This mandate is in direct conflict with Section 360bbb-3€(1)(A)(ii)(I-III), which requires the wearer to be informed of the option to refuse the wearing of such “device.”

Misrepresenting the use of a mask as being intended for antimicrobial or antiviral protection, and/or misrepresenting masks for use as infection prevention or reduction is a deceptive practice under the FTC. It is clear, there is no waiver of liability under deceptive practices, even under a state of emergency. As such, forcing NMSU employees to wear masks, or similarly forcing use any other non-FDA approved medical product without the wearer’s consent, is illegal and immoral.

This response letter serves as official notice that I do not consent to being forced to wear a mask. I will not fail to take the maximum action permissible under the law against NMSU, and against you personally. Accordingly, I urge you to comply with Federal and State law, and advise NMSU employees they have a right to refuse or wear a mask as a measure to prevent or reduce infection from Covid-19. Any other course of action is contrary to the law. Please confirm no further pressure will be exerted upon me to follow this illegal mask mandate, and that I will not face any retaliatory disciplinary action.

III. Misinformation

While I have been accused of spreading misinformation, nothing could be further from the truth. NMSU has consistently misinformed students and faculty, while trying to avoid all responsibility for the risks imposed. The “Pfizer-BioNTech COVID-19 Vaccine” and the “Moderna COVID-19 Vaccine” are not “vaccines” within the common, lay understanding of the public. Since vaccines were first discovered in 1796 the public has had an entrenched understanding that a vaccine is a microorganism, either alive but weakened, or dead, that is introduced into the human body in order to trigger the production of antibodies that confer immunity and prevents transmission. Students and faculty have been systematically uninformed about the gene therapy technology behind the Pfizer and Moderna vaccines. No dead or attenuated virus is used.

Rather, instructions, via a piece of genetic code (“mRNA”) are injected into your body that tell your body how to make a certain “spike protein” that is purportedly useful in attacking the SARS-CoV-2 virus. The “vaccines” are more akin to genetic modification or gene therapy than they are to a traditional vaccine. The typical vaccine development process takes between 10 and 15 years and consists of many stages, including pre-clinical animal studies (1 to 5 years) and clinical human trials in four phases (typically 5 years). This 10–15-year testing process has been abandoned for purposes of the current vaccines. The first human-to-human transmission of the SARS-CoV-2 virus was not confirmed until January 20, 2020, and less than a year later for the first time in history this novel mRNA technology was being injected into millions of people worldwide.

The defective nature of the vaccine trials was described as follows in a federal lawsuit filed by America's Frontline Doctors against the Dept. Of Health and Human Services:

“The vaccines were studied for only 56 days in macaques, and 28 days in mice, and then animal studies were halted. The pharmaceutical companies discarded their control groups which received placebos and in so doing squandered the opportunity to learn about the rate of long-term complications, how long protection against the disease lasts and how well the vaccines inhibit transmission. A number of studies were deemed unnecessary and not performed prior to administration in human subjects, including single dose toxicity, toxicokinetic, genotoxicity, carcinogenicity, prenatal and postnatal development, offspring, local tolerance, teratogenic and postnatal toxicity and fertility. Americans have not been properly informed of these dramatic departures from the standard testing process, and the risks they generate.”

COVID-19 Vaccine Adverse Events

The reports to the VAERS (Vaccine Adverse Events Reporting System) database alone, should alarm anyone. As of August 6, 2021, VAERS reported 571,830 adverse events, including 12,791 deaths, from the COVID-19 vaccines.¹ Some of the nonfatal adverse events are quite serious including: myocarditis, miscarriage, irregular vaginal bleeding, blood clotting disorders, strokes, vascular damage and autoimmune disease. In addition, the CDC is behind on their reporting. The actual numbers are higher than those cited. In addition, it has always been stated by VAERS that only a small percentage of adverse events from vaccines are actually reported.

In a June 2021 online interview, Dr. Peter McCullough, Vice Chief of Internal Medicine at Baylor University, who has testified before Congress on COVID-19 issues, revealed that there were whistleblowers at the CDC and the Centers for Medicare and Medicaid Services who provided information that supported an estimate of at least **50,000 deaths** so far as a result of the COVID-19 vaccines in the USA.²

Although in Europe a different COVID-19 vaccine has been used, it is not a traditional vaccine and has the MRNA technology used by Pfizer and Moderna. Many EU countries suspended vaccination due to the number of serious side effects and deaths. The figures for the E.U., which is about half of Europe are shocking. The EudraVigilance database in Europe reports that through July 3, 2021, there were 17,503 deaths and 1,687,527 injuries following COVID-19 shots.³ Half of the injuries, 837,588, were very serious injuries.

Fifty-seven top scientists and doctors primarily from Central and South America are calling for an immediate end to all vaccine COVID-19 programs.⁴ Other physician-scientist groups have made similar calls, among them: Canadian Physicians, Israeli People's Committee, Frontline COVID- 19

¹ <https://www.openvaers.com/covid-data>

² <https://www.bitchute.com/video/rKP61hruGxIt/> (@ 18:36 and thereafter).

³ <https://www.globalresearch.ca/17503-dead-1-7-million-injured-50-serious-reported-european-union-database-adverse-drug-reactions-covid-19-shots/5749719>

⁴ <https://en-volve.com/2021/05/08/57-top-scientists-and-doctors-release-shocking-study-on-covid-vaccines-and-demand-immediate-stop-to-all-vaccinations/>

Critical Care Alliance, World Doctors Alliance, Doctors 4 Covid Ethics, and America's Frontline Doctors. These are healthcare professionals in the field who are seeing the catastrophic and deadly results of the rushed vaccines, as well as reputed professors of science and medicine, including the physician with the greatest number of COVID-19 scientific citations worldwide.

Finally, there is no scientific consensus that the vaccines are effective. There are numerous cases of vaccinated individuals contracting COVID-19. In addition, the testing done by Moderna and Pfizer were only able to determine that the vaccines decreased symptoms if one contracted COVID-19, not that they prevented transmission of the virus to others. Since they do not prevent contracting the disease and there is no evidence they prevent transmission, there is no compelling need for your employees to be vaccinated. This has been confirmed by Dr. Fauci. When asked whether people who get a Covid-19 vaccine could still pass on SARS-CoV-2 to others: "That's a good question. We don't know that yet. We do not know if the vaccines that prevent clinical disease also prevent infection."

The FDA has said: "Most vaccines that protect from viral illnesses also reduce transmission of the virus that causes the disease by those who are vaccinated. While it is hoped this will be the case, the scientific community does not yet know if the Pfizer-BioNTech COVID-19 Vaccine will reduce such transmission."

Constitutional Rights to Make One's Own Choices as to Medical Treatment

The United States Constitution, as well as the State of New Mexico's Constitution, protect the fundamental rights of "we the people." These rights are inherent and are guaranteed by the mere fact that we were born human. All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness. N.M. Const. art. II, § 4

The right to life and liberty includes what courts have called the "zone of privacy" and "right to bodily integrity" and has been articulated in many Supreme Court cases, including *Griswold v. State of Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965) and *Roe v. Wade*, 410 US 113 (1973).

The United States Supreme Court has said: "**The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions.**" *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 278, 111 L. Ed. 2d 224, 110 S. Ct. 2841 (1990). The Court continued: "This notion of bodily integrity has been embodied in the requirement that informed consent is generally required for medical treatment. Justice Cardozo, while on the Court of Appeals of New York, aptly described this doctrine: **'Every human being of adult years and sound mind has a right to determine what shall be done with his own body The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment.'**" (emphasis added) *Cruzan*, at 269-270.

If NMSU accepts funds from the government or take directives from the government, NMSU could be held accountable where constitutional rights are involved. By acting on Governor Lujan Grisham's vaccine mandates, you are acting under "color of state law" which could make you liable for under 42 USC 1983.

NMSU employees that enforce these directives can also be held liable. Any staff that is involved in the enforcement of a mandatory vaccination policy could be held liable. 42 USC 1983 is the federal law by which persons whose constitutional rights were violated can bring an action for damages. It states in relevant part: *“Every person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law....”

Additionally, if NMSU does not provide for a medical exemption or religious exemption, a claim by the undersigned could be asserted under the New Mexico's Human Rights Act or through the EEOC if I am terminated for refusing to be vaccinated.

The undersigned also has protection under the New Mexico Whistleblower's Act which protects not only vocal whistleblowers but also employees who are fired for standing on their legal rights such as the right to make one's own medical decisions.

IV. Disruption of Educational Process Resulting in intimidation of students and disenrollment.

The undersigned affirmatively states NMSU has disrupted the educational process through its illegal mandates and relies on the aforementioned studies as evidence. NMSU has not only affected the instruction methods of the undersigned through coercion, but has declined making reasonable accommodations based on the legal arguments provided above. Requests to transition in-person classes to an online format were made in writing and over the phone to Finance Department Head Ken Martin, College of Business Associate Dean Daniel James, and former College of Business Dean Jim Hoffman in advance of the school semester. These requests were denied.

Regarding the claim of student intimidation, the recorded video that has been reviewed by the university, clearly and unequivocally shows the undersigned informing students that they will not get in trouble for leaving the classroom and reporting my choice to not wear a mask to my department head or the dean of the business college. Many took me up at my suggestion, showing no threats were made, and that some students, in fact, reported my conduct without comment. Conversely, I have received numerous messages, emails, and contacts where students, past and present, praised my conduct because they felt it liberated them from NMSU's coercive tactics, intimidation, and bullying.

The undersigned is aware of many students that failed to enroll in NMSU prior to the start of the semester because of their concerns of vaccine and mask policies. NMSU professor and alum Paula

Fuchs would testify to her daughter transferring to another school because of NMSU's dangerous mandate.

Moreover, Ken Martin would testify to having to raise student caps on the undersigned's classes virtually every semester since employment began three years ago. In fact, students were on waitlists for all three of my 2021 fall semester offerings. My classes are at capacity every semester. This fact is supported, in part, by virtue of my winning the Patricia Christmore Teaching Excellence Award this past year and being nominated for the same award last year. Upon information and belief, Ken Martin, would testify that the undersigned is one of the highest rated professors in the Business College on a consistent basis.

Provost Parker, I will supplement this response as your investigation continues. Please be advised I have every intention of seeing that this gross miscarriage of justice be rectified and that these administrative proceedings end quickly with a just resolution. Our students and faculty are at risk---not by my actions---but rather the university's. The law, facts, and history are simply not on NMSU's side. This investigation reeks of political retaliation, following months of political targeting by NMSU faculty on social media, and through faculty email, with subjection to a frivolous hearing set by NMSU lawyer Laura Castillo based on my legal right to assert I am legally entitled to be free of defamatory conduct. All of these events have led to a hostile work environment, that have gone largely unchecked by university administration. If an order is entered that is contrary to a just resolution, expect an appeal to district court. As you are aware, unlike administrative settings, subpoena power, the setting of depositions, and the requesting of discovery, are available to the litigants in district court. I believe a fair and impartial jury needs to hear this controversy. I await your response.

Sincerely,

Signed/

Professor David K. Clements