



SILENT MAJORITY FOUNDATION

5238 Outlet Dr.
Pasco, WA 99301

www.silentmajorityfoundation.org

December 4, 2023

Mr. Piechota, Mr. Karinen, and Members of the Washington Medical Commission:

Attn: Washington State Medical Commission
Re: WMC Case Number 2023-8859

As counsel for Dr. Renata Moon, we are writing in response to Washington Medical Commission (“WMC”) the Letter of Cooperation (“LOC”) issued in Case Number 2023-8859 on October 1, 2023. We note that an extension was granted to Dr. Moon via email, extending the response date to December 4, 2023.

This Letter serves as notice to the WMC that Dr. Moon’s response to the LOC will occur through her undersigned attorneys. The LOC was issued upon a letter from Jeff Haney, MD, Chair of the Department of Education and Clinical Sciences at the Elson S. Floyd College of Medicine at Washington State University to the WMC. All responses to the LOC are subject to the objections raised in this letter. Objections not raised at this time do not constitute waiver of the same.

Dr. Moon is an exceptionally well-trained pediatrician with over 25 years of clinical experience. She trained at a top U.S. medical school, earning board certification in both general pediatrics and pediatric hospital medicine. With an unblemished career record of patient care, Dr. Moon practiced in the State of Washington for over 17 years primarily as a pediatric hospitalist at Sacred Heart Children’s Hospital in Spokane. Despite caring for the region’s sickest children – patient care with one of the highest risks of malpractice claims – she has had no malpractice claims or actions against her license in Washington State or elsewhere. This current investigation by the Washington Medical Commission is frivolous and based on unsound policy.

Dr. Haney’s letter was not in the form of a complaint, nor did it include a complaint form,¹ and it made no allegations regarding unprofessional conduct based on Dr. Moon’s practice of medicine. According to the WMC’s own admission, the WMC’s COVID-19 misinformation position statement (adopted September 22, 2021)^{(b)(7)(D)} upon which Dr. Haney’s notice was based is not a rule and, therefore, is not a basis for any kind of complaint. Nor is the position statement a basis for the opening of any kind of investigation. *See* Def’s. Mem. in Opp’n to Pls.’ Mot. for Decl’y and Inj. Relief at 4-5, *Turner v. WMC*, Benton County, Case No. 23-2-01316-03. Instead, it is merely an impermissible attempt to regulate constitutionally protected conduct.

This investigation is an attempt by the Washington Medical Commission to regulate Dr. Moon’s rights of petition, assembly, and speech, and to chill these first amendment rights and those of other medical professionals. A medical professional is not required to agree with any government agency, including the Washington Medical Commission. A medical professional has the obligation to put the well-being of his or her patients before any government-imposed orthodoxy or narrative. A medical professional has the right to gather with other medical professionals and petition the government regarding issues of public interest. In addition, medical ethics dictates that a medical professional has the obligation to speak out when there is a concern that a medical product, which is being used widely and indiscriminately, poses potential risks or where questions arise about its safety. Such debate

¹ Available at: https://wmc.wa.gov/sites/default/files/public/documents/ComplaintformandWBW_Printable.pdf.



SILENT MAJORITY FOUNDATION

5238 Outlet Dr.
Pasco, WA 99301

www.silentmajorityfoundation.org

provides a healthy check and balance on the practice of medicine and promote the primary responsibility to first do no harm.

To threaten a medical professional for stating disagreements and for gathering with other professionals invited to testify to a United States Senator is an infringement on the individual's rights protected by the First Amendment of the United States Constitution and the Washington Constitution. Any action brought by the Washington Medical Commission will raise a claim of retaliation for Dr. Moon's exercise of her constitutionally protected rights. Also, Dr. Moon is immune from any kind of discipline based on her testimony in front of Senator Johnson based on *Noerr Pennington Immunity*. See *White v. Lee*, 227 F.3d 1214, 1231-32 (9th Cir. 2000) (holding that "The Noerr-Pennington doctrine ensures that those who petition the government for redress of grievances remain immune from liability for statutory violations, notwithstanding the fact that their activity might otherwise be proscribed by the statute involved."). Therefore, any charges brought based upon this notice will be actionable. This attempt by the Washington Medical Commission to regulate Dr. Moon's first amendment rights is a violation of her civil liberties, and it is not part the WMC's duty or jurisdiction. The Commissioners and staff involved in opening and pursuing this investigation have no authority or jurisdiction to do so, creating personal liability for all commissioners and employees attempting to deprive Dr. Moon of her rights under Title 42 of the U.S. Code, section 1983.

With this notice, we are including the Public Records Request for the identification of all commissioners involved in deciding to open this investigation. We are also attaching a memorandum regarding free speech and the right of petition.

We ask the Washington Medical Commission to **Cease and Desist** this investigation of Dr. Moon for her speech, right of petition, and right of assembly, causing a chill of her exercise of these rights. She has already relinquished her Washington Medical License under duress, based on her observations of the Washington Medical Commission's overreach and violation of civil rights of other doctors, and the knowledge that her exercise of rights in this and other contexts would likely lead to negative consequences as is now being demonstrated by the WMC. Additionally, she has not treated a patient in Washington State since September 2021 due to the vaccine mandate instituted in Washington. Thus, she has already suffered great losses based on Washington policy. The WMC's pursuit of this investigation will leave Dr. Moon no choice but to take further action against the Washington Medical Commission and individuals involved.

Thank you for your prompt attention to this issue. We look forward to your response.

Karen Osborne
Attorney at Law
360-975-3813

Simon Peter Serrano
Attorney at Law
509-567-7083

Emily Ling
Attorney at Law



SILENT MAJORITY FOUNDATION

5238 Outlet Dr.
Pasco, WA 99301

www.silentmajorityfoundation.org

1. Please address the allegations in the complaint.

- a. As stated above, this is simply a notice to the WMC regarding issues it has no jurisdiction over. Therefore, there are no allegations to address.

2. On or about December 7, 2022, in Washington, D.C., at an event titled “Covid-19 Vaccines: What They Are, How They Work, and Possible Causes of Injuries,” you testified that:

- a. **in your clinical experience there has been a massive increase in patients developing myocarditis or other adverse reactions after COVID-19 vaccinations. Please provide the data or evidence from your own practice to support this assertion...**

ANSWER: This question relates to a testimony that encompassed my right to petition my government. As such, I am under no obligation to respond or answer any questions regarding this testimony because it does not constitute the practice of medicine, is the exercise of free speech, freedom of association, and the petitioning of the government regarding an issue of grave public concern. Additionally, I am under no obligation to provide data or evidence regarding my claims to the Washington Medical Commission.

Without waiving any objections, I contend that it is now common knowledge that myocarditis is an adverse event that can occur after vaccination, particularly among young men. I have seen only a few such cases in my career before the vaccine roll out. Since the vaccine roll out, I have direct knowledge of many more cases of myocarditis than the normal pre-2021 baseline and I have the obligation to state my concerns regarding the risks of administering this medical product. The WMC may conduct its own research on this issue and cannot hold me accountable for its lack of information or expertise.

b. “other countries have banned this product because it’s too dangerous for young people.”

ANSWER: This question relates to a testimony that encompassed my right to petition my government. As such I am under no obligation to respond or answer any questions regarding this testimony because it does not constitute the practice of medicine, is the exercise of free speech, freedom of association, and the petitioning of the government regarding an issue of grave public concern. As such, I have no obligation to give any data or evidence regarding my claims to the Washington Medical Commission. The WMC may conduct its own research on this issue and cannot hold me accountable to its lack of information or expertise.

Without waiving any objections, I contend that other reputable nations do not recommend using the Covid-19 vaccination for younger patients having stated that the risks outweigh any theoretical benefits. Holding a scientific discussion about this situation in the United States is a legitimate responsibility of doctors: censoring experienced and concerned physicians who wish to engage in reporting concerns to their government and silencing their voices is not a legitimate power of the WMC.

3. Please provide data or evidence to support your assertion that children have essentially a zero



SILENT MAJORITY FOUNDATION

5238 Outlet Dr.
Pasco, WA 99301

www.silentmajorityfoundation.org

percent risk of harm from contracting a COVID-19 infection.

ANSWER: This question relates to a testimony that encompassed my right to petition my government. As such I am under no obligation to respond or answer any questions regarding this testimony because it does not constitute the practice of medicine, is the exercise of free speech, freedom of association, and the petitioning of the government regarding an issue of grave public concern. Additionally, I am under no obligation to give any data or evidence regarding my claims to the Washington Medical Commission.

Without waiving any objections, I contend that it is common knowledge that death from COVID among healthy children is very low and is supported by CDC data. As of January 2021, after 1.8 million deaths were reported from COVID worldwide, only 3,788 were reported among children. Kitano T, Kitano M, Krueger C, Jamal H, Al Rawahi H, Lee-Krueger R, Sun RD, Isabel S, García-Ascaso MT, Hibino H, Camara B, Isabel M, Cho L, Groves HE, Piché-Renaud PP, Kossov M, Kou I, Jon I, Blanchard AC, Matsuda N, Mahood Q, Wadhwa A, Bitnun A, Morris SK. The differential impact of pediatric COVID-19 between high-income countries and low- and middle-income countries: A systematic review of fatality and ICU admission in children worldwide. PLoS One. 2021 Jan 29;16(1):e0246326. doi: 10.1371/journal.pone.0246326. PMID: 33513204; PMCID: PMC7845974. This statistic alone shows that the risk of fatality to children is extremely low. The WMC may conduct its own research on this issue and cannot hold me accountable for its lack of information or expertise.

4. Please explain your understanding of the purpose of the Vaccine Adverse Event Reporting System and how it works.

ANSWER: This question relates to a testimony that encompassed my right to petition my government. As such I am under no obligation to respond or answer any questions regarding this testimony because it does not constitute the practice of medicine, is the exercise of free speech, freedom of association, and the petitioning of the government regarding an issue of grave public concern. As such, I have no obligation to give any data or evidence regarding my claims to the Washington Medical Commission.

5. How many COVID-19 vaccines were you responsible for giving or ordering for patients?

ANSWER: I have never knowingly ordered a COVID-19 vaccine for any pediatric patient. I say 'knowingly' because some health care systems may use protocols to assign a physician's name to a medical order without the prior knowledge or awareness of the physician.

6. Do you follow pediatric patients to determine if they have complications from the COVID19 vaccine and if so, for how long?

ANSWER: I no longer have a license in Washington State and have not treated patients in Washington State since September 2021. Therefore, I do not follow patients that have complications from COVID 19 vaccination in Washington, nor was I following patients in Washington State at the time of my testimony.

7. Produce a copy of the vaccine package insert mentioned during your testimony on December 7, 2022.



SILENT MAJORITY FOUNDATION

5238 Outlet Dr.
Pasco, WA 99301

www.silentmajorityfoundation.org

ANSWER: This question relates to a testimony that encompassed my right to petition my government. As such I have no obligation to respond or answer any questions regarding this testimony because it does not constitute the practice of medicine, is the exercise of free speech, freedom of association, and the petitioning of the government regarding an issue of grave public concern. As such, I have no obligation to give any data or evidence regarding my claims to the Washington Medical Commission.

Without waiving any objections I answer as follows: The Washington Medical Commission can verify that this is the package insert that was present in packages of COVID-19 mRNA vaccine product in the Fall of 2022. I did not create such an insert in order to deceive, if that is the intended implication of your question. I have a witness to the removal of the package insert from a sealed box of mRNA product in the Fall of 2022. I will not send the original insert as this is my only copy and intend to retain it for use in the future as needed.

8. Please confirm if you advised patients not to receive the COVID-19 vaccine, to include why you informed them not to get the vaccine.

ANSWER: I was not involved in ordering the administration of COVID-19 mRNA vaccine for children in Washington State.

9. Have you advised patients to disregard public health guidelines? If so, please explain your rationale for providing this advice and any risk/benefits discussed with patients.

ANSWER: This question is outside of the scope of the “complaint.” Without waiving any objections, I did not advise patients I was treating to disregard public health guidelines.

10. Discuss your departure from Washington State University (WSU) and if it was related to this complaint.

ANSWER: This question is immaterial to the issue at hand. The “complaint” does not state that I in any way committed unprofessional conduct during my tenure there. I therefore object and refuse to answer this question as it is based on information that is outside of the scope of the “complaint” and the jurisdiction of the Washington Medical Commission. I therefore am not obligated to answer.

11. Please provide any documentation from WSU regarding your departure.

ANSWER: This question is immaterial to the issue at hand. The “complaint” does not state that I in any way committed unprofessional conduct during my tenure there. I therefore object and refuse to answer this question as it is based on information that is outside of the scope of the “complaint” and the jurisdiction of the Washington Medical Commission. I therefore am not obligated to answer.

12. The states in which you are currently licensed to practice medicine.

ANSWER: Because this “complaint” has nothing to do with the practice of medicine and because I no longer have a license in Washington, I have no obligation to provide this information to the Washington Medical Commission.

13. The names of all health care facilities where you currently hold active or courtesy staff



privileges.

ANSWER: Because this “complaint” has nothing to do with the practice of medicine and because I no longer have a license in Washington, I have no obligation to provide this information to the Washington Medical Commission.

14. The names of all health care facilities where you formerly held active or courtesy staff

privileges.

ANSWER: In Washington State, I held privileges at Sacred Heart Children's Hospital from 2004-2022; I briefly held privileges at St. Lukes Rehabilitation Institute in Spokane. I practiced at Kaiser Permanente Spokane from 2019-2021.

15. Please provide a copy of your current curriculum vitae.

ANSWER: This question is immaterial to the issue at hand. Because this “complaint” has nothing to do with the practice of medicine and because I no longer have a license in Washington, I have no obligation to provide this information to the Washington Medical Commission. Notwithstanding this objection, I will supply a current CV in a follow up email later in the week.

16. Copies of the last three-(3) years of CME credits.

ANSWER: See Attached

17. Where are you currently practicing and/or what are your practice plans?

ANSWER: Because this “complaint” has nothing to do with the practice of medicine and because I no longer have a license in Washington, I have no obligation to provide this information to the Washington Medical Commission.

18. Describe your current practice.

ANSWER: Because this “complaint” has nothing to do with the practice of medicine and because I no longer have a license in Washington, I have no obligation to provide this information to the Washington Medical Commission.

19. Are you being investigated by any other local/state/federal government agency?

ANSWER: No

20. Are you being investigated by any other licensing board or privileging body?

ANSWER: No

21. Has any other licensing board or privileging body acted against your license?

ANSWER: No

22. Anything else that you would like to add to address this complaint.

As stated earlier, any action brought by the Washington Medical Commission based on this “complaint” is actionable. This “complaint” is wholly outside of the responsibilities and jurisdiction of the Washington Medical Commission, its commissioners and employees.



SILENT MAJORITY FOUNDATION

5238 Outlet Dr.
Pasco, WA 99301

www.silentmajorityfoundation.org

Initiating this investigation appears intended to intimidate & harass a physician acting in support of her Hippocratic Oath to “do no harm” and her obligation to speak about valid safety concerns. These Covid-19 mRNA products are novel, synthetic genetic products never previously administered on such a large global scale. There is insufficient data regarding their long-term safety and extremely concerning short term safety data. Given that children have lengthy lives ahead of them, and a statistically negligible risk of fatality from Covid-19 infection, it is imperative that we discuss the risks of using these products. Instead, concerned medical professionals have been censored, silenced, and threatened.

Recent actions by the WMC targeting the free speech of licensed physicians have made it increasingly difficult for physicians to ethically care for patients in the State of Washington.

I spoke to my government in Washington, D.C. about my legitimate concerns regarding the administration of these Covid-19 mRNA genetic shots to our nation’s children. This WMC investigation of my free speech is a direct violation of my civil liberties and Constitutional rights.

World history has demonstrated the extreme dangers that occur when free speech is silenced, and one narrative is forced on a population. Scientific discourse is the very foundation of a healthy medical community. Public policy debates and free discussions about data and patient outcomes are the bedrock of our ability to practice the art of medicine.

I was born in the United States of America as a first generation proud American. My parents fled political persecution from behind the Iron Curtain of communism to legally immigrate to the United States. My parents and millions of other immigrants left everything behind and fled from the hell that their countries had become for one simple reason: freedom. Our Constitutional rights, which protect our freedom of speech and civil liberties, are precious beyond measure.

Renata S. Moon, MD

**Memorandum in Support of Renata S. Moon
In response to LOC No.: 2023-8859**

The Washington Medical Commission's issued Letter of Cooperation No.: 2023-8859 to Renata Moon ("Dr. Moon") on October 1, 2023. This memorandum addresses protections afforded to Dr. Moon under the United States and Washington Constitutions and through related, longstanding judicial doctrine.

Free Speech is Highly Protected by the US and Washington Constitutions

The Fourteenth Amendment of the United States incorporates the Bill of Rights to the States, making it applicable, limiting the power of the States accordingly. *Stromberg v. California*, 283 U.S. 359, 368, 51 S.Ct. 532, 75 L.Ed. 1117 (1931) ("[T]he conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech."). The right of free speech is a broad right of the people and is protected by both our Federal and State Constitutions. "Suppression of speech as an effective police measure is an old, old device, outlawed by our Constitution." *Watts v. United States*, 394 U.S. 705, 712 (1969). The Free Speech clause of the First Amendment states, "Congress shall make no law . . . abridging the freedom of speech. U.S. Const. amend. I. Article I, Section 5 of the Washington Constitution states, "Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." WA Const. art. I, § 5. Content-based regulations are a classical form of suppression. "The right to free speech bars the government from dictating what people see, read, hear, or speak." *State v. Hammerquist*, No. 75949-3-I, 2018 Wash. App. LEXIS 1039, at *7 (Ct. App. Apr. 30, 2018); *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245, 122 S. Ct. 1389, 1399, 152 L.Ed.2d 403, 418 (2002). The "right to receive information and ideas, regardless of their social worth . . . is fundamental to our free society." *Fed. Way Family Physicians v. Tacoma Stands Up for Life*, 106 Wn.2d 261, 268, 721 P.2d 946, 950 (1986).

Prior Restraints and Overly Broad Restrictions are Presumptively Unconstitutional in Washington

Prior restraints are "official restrictions imposed upon speech or other forms of expression in advance of actual publication." *State v. Noah*, 103 Wn. App. 29, 41 (2000). They are also "presumptively unconstitutional unless they deal with non-protected speech." *Id.* The Washington Supreme Court has declared that:

The Washington Constitution is less tolerant of overly broad restrictions on speech than the federal First Amendment and finds that regulations that sweep too broadly chill protected speech prior to publication, and thus may rise to the level of a prior restraint, while the United States Supreme Court considers the overbreadth doctrine strong medicine, employing it only as a last resort. A prior restraint is an administrative or judicial order forbidding communications prior to their occurrence. Simply stated, a prior restraint prohibits future speech, as opposed to punishing past speech. A court may strike down prior restraints even though the particular expression involved could validly be restricted through subsequent criminal punishment.

Soundgarden v. Eikenberry, 123 Wn.2d 750, 753, 871 P.2d 1050, 1052 (1994).

**Memorandum in Support of Renata S. Moon
In response to LOC No.: 2023-8859**

Thus, where the WMC chilled Dr. Moon’s speech, deeming it “misinformation,” it was a prior restraint and thus unconstitutional.

Content-based regulations are presumptively unconstitutional unless they meet a strict scrutiny standard.

Content-based regulations target speech based on its communicative content. From a federal standpoint, “As a general matter, such laws are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *NIFLA*, 138 S. Ct. at 2371; *Sheehan v. Gregoire*, No. C02-1112C, at *1 (W.D. Wash. May 22, 2003) (“the First Amendment precludes the government from proscribing speech because it disapproves of the ideas expressed.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992)). In Washington State, even content-neutral time, place, and manner restrictions must meet strict scrutiny and must be narrowly tailored to serve a compelling government interest. *State v. Noah*, 103 Wn. App. 29, 41 (2000). A compelling government interest is of the highest order and must be higher than a mere significant government interest. *Id.* Thus, the WMC must prove that the restraint is supported by the strict scrutiny standard by demonstrating that it serves a compelling interest and that the Policy is narrowly tailored to achieve the compelling interest).

The Washington Medical Commission Covid-19 Position Statement is both a prior restraint and a content-based regulation, making it unconstitutional.

The Position Statement provides, “The WMC does not limit this perspective to vaccines but broadly applies this standard to all misinformation regarding COVID-19 treatments and preventive measures such as masking. Physicians and Physician Assistants, who generate and spread COVID-19 misinformation, or disinformation, erode the public trust in the medical profession and endanger patients.” *See*: Exh. 1. Clearly, the Position Statement is a prior restraint and a content based restriction. The words misinformation and disinformation target particular messages, ideas, subject matter, and content disapproved of by government officials – specifically information that is not first generated and spread by government officials, agencies, or approved scientists. The imprimatur of the Statement is not conduct based, but speech based. The Statement targets the generation and spread of “unapproved” ideas— not treatment, prescriptions, or techniques related to a particular patient — but what the doctor is saying about the same. By targeting the generation and dissemination of information, the Statement suppresses speech before it is uttered and is a textbook example of a prior restraint. Because the position statement targets a *type* of speech, it is content-based. Because that *type* of speech is not well-defined, it is presumptively unconstitutional.

Prior Restraint

As a prior restraint, the Position Statement is valid only if the speech is not protected by the federal and state constitutions. *State v. Noah*, 103 Wn. App. 29, 41 (Wash. Ct. App. 2000). Unprotected speech must fall within a few narrowly defined categories including “lewd and obscene, the profane, the libelous, and the insulting or “fighting” words -- those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” *Chaplinsky v.*

Memorandum in Support of Renata S. Moon
In response to LOC No.: 2023-8859

New Hampshire, 315 U.S. 568, 572, 62 S. Ct. 766, 769 (1942). The Position Statement does not fit into any of these categories and therefore is protected speech. While Washington has the right to regulate the medical profession, that power must be used within the framework of the Constitution. *Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002) (“If the First Amendment means anything, it means that regulating speech must be a last--not first--resort.”) (quoting *Thompson v. Western States Medical Ctr.*, 535 U.S. 357, 152 L. Ed. 2d 563, 122 S. Ct. 1497 (2002)). Thus, the WMC does not have the right to regulate its practitioners’ speech, except where the regulation of the speech is merely incidental to the regulation of conduct such as in the case of speech made during the examination of a patient that directly results in the treatment of that patient. *NIFLA*, 138 S. Ct. at 2373-74; *Tingley*, 47 F.4th at 1074; *Conant*, 309 F.3d at 635 Patient safety and the integrity of the medical profession cannot be used as an excuse to limit public debate.

“The First Amendment directs us to be especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good.” *Sorrell*, 564 U.S. at 577 (quoting *Discovery Network*, 507 U.S., 484, 426, 113 S. Ct. 1505, 123 L. Ed. 2d 711, 99 (1996)). It is not the government’s place to decide the value of speech; that is the purview of the audience, nor are divergent views on a topic to be suppressed by the government as is the WMC with the policy. *Id.*, at 578-79. The suppression of speech in this manner is absolutely proscribed by the Washington Constitution as prior restraint. *Soundgarden v. Eikenberry*, 123 Wn.2d 750, 753, 871 P.2d 1050, 1052 (1994). “Unless persons, [,], desiring to exercise their First Amendment rights are assured freedom from the harassment of lawsuits, they will tend to become self-censors. And to this extent debate on public issues and the conduct of public officials will become less uninhibited, less robust, and less wide-open, for self-censorship affecting the whole public is hardly less virulent for being privately administered.” *Mark v. Seattle Times*, 96 Wash. 2d 473, 484-85, 635 P.2d 1081, 1087 (1981) (quoting *Smith v. People of State of California*, 361 U.S. 147, 154, 80 S.Ct. 215, 219, 4 L.Ed.2d 205 (1959)).

Clearly, this policy has caused self-censorship of medical professionals and caused Dr. Moon to react to her own deficit in an attempt to protect her medical career. She relinquished her license under duress after witnessing colleagues being investigated and charged with unprofessional conduct based on the WMC position statement. She also witnessed other colleagues self-censoring because of the actions of the WMC. As a result, she chose to give up the option of practicing in Washington State and let her license lapse, relinquishing a valuable property right. The fact that this complaint was lodged against her out of sense of obligation supports these fears of all medical professionals in Washington. These facts make clear that this Position Statement is unconstitutional in Washington State as a prior restraint and any more actions of the Washington Medical Commissions based upon this policy are actionable.

Content-based regulation

This policy is also unconstitutional under the First Amendment as a content-based regulation which must meet strict scrutiny standards, which it cannot. It is neither a compelling purpose nor a narrowly tailored method.

Memorandum in Support of Renata S. Moon
In response to LOC No.: 2023-8859

Regulating debate over medical policies which have been foisted upon both medical professionals and the public is not a legitimate, let alone compelling purpose. As the Supreme Court has stated, “even in a pandemic, the Constitution cannot be put away and forgotten.” *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 68, 208 L.Ed.2d 206, 210 (2020). As *Conant* emphasizes, public health policies are government policy open for vigorous public debate and are protected by the First Amendment. *Conant*, at 634-35. Without doctors having the ability to speak about these policies, consider different options, and debate opposing viewpoints, individuals seeking medical treatment cannot be assured that the best measures are employed in their care. Nor can the people have confidence that the government is doing its most important job--protecting the rights of a free people. *See* Const. art. I, § 1. After all, open debate is the bulwark of a free society. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 587 n.3, 100 S. Ct. 2814, 2833, 65 L.Ed.2d 973, 996 (1980) (quoting *Saxbe v. Wash. Post Co.*, 417 U.S. 843, 862-63, 94 S. Ct. 2811, 2821, 41 L.Ed.2d 514, 527 (1974)). It is only through the sieve of open and public debate that truth is realized in society, and the best debate for this purpose is a debate amongst experts in the field. Thus, regulation of debate as it pertains to health policies is not a compelling government interest.

Even if the regulation of debate to protect patient safety and the integrity of the medical profession constitutes a compelling interest, which it does not, the Statement is not narrowly tailored; therefore, the policy is constitutionally impermissible. Proscribing protected speech cannot be narrowly tailored because it does not implicate any interests the state might have. Rather, the WMC can use its own speech to counteract the speech it finds offensive. Instead of proscribing speech, and thereby censoring physicians, the WMC could join the debate and countered each and every point made by individuals. By so doing the public could determine who has the better evidence. It is suspect that, rather than debating the issues openly, the WMC decided to proscribe and censor speech. Is the WMC unable to convince the public that the concerns of medical professionals are wrong or unreasonable? It would appear as though that is exactly the issue, making this policy even more egregious.

Additionally, the fact that the WMC uses other government actors does not make this less burdensome of free speech, but more. The impetus of convincing the public that government policy is protective of rights is on the government. Using bald assertions by other government actors to create a standard of care cannot overcome the requirements that a policy be narrowly tailored. Thus, the generation of information and the discussion of early treatments for COVID-19 cannot be proscribed or censored, nor can discussion of a newly formulated vaccine that lacks long term safety data. For the same reason, the discussion of mask use, whether policies are tyrannical, or the accuracy of the PCR test cannot be proscribed. Mere talk cannot be considered dangerous to either patients or the medical profession. And the generation of information is certainly not dangerous. Because proscribing the generation and dissemination of disfavored speech cannot be a narrowly tailored method of advancing public health, the policy cannot stand as it violates the United States and Washington Constitutions.

Dr. Moon’s petitioning activity is immune from WMC action.

Under the *Noerr-Pennington* doctrine, Dr. Moon is immune to any action brought against her based on her testimony at the December 7, 2022, hearing before Senator Johnson. “The

Memorandum in Support of Renata S. Moon
In response to LOC No.: 2023-8859

Noerr-Pennington doctrine ensures that those who petition the government for redress of grievances remain immune from liability for statutory violations, notwithstanding the fact that their activity might otherwise be proscribed by the statute involved.” *White v. Lee*, 227 F.3d 1214, 1231-32 (9th Cir. 2000). “Furthermore, *Noerr-Pennington* bars litigation arising from injuries received as a consequence of First Amendment petitioning activity, regardless of the underlying cause of action asserted by plaintiffs.” Therefore *Noerr-Pennington* immunity ‘bars any claim, federal or state, common law or statutory, that has as its gravamen constitutionally-protected petitioning activity.’” *Leadbetter v. Comcast Cable Communs., Inc.*, No. C05-0892RSM, 2005 U.S. Dist. LEXIS 45365, at *12 (W.D. Wash. Aug. 19, 2005) (quoting *Gen-Probe, Inc. v. Amoco Corp., Inc.*, 926 F.Supp. 948, 956 (S.D.Cal. 1996)). “While the *Noerr-Pennington* doctrine originally arose in the antitrust context, it is based on and implements the First Amendment right to petition and therefore, . . . applies equally in all contexts,” including administrative agencies. *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000).

The “complaint” received by the WMC against Dr. Moon was based solely on her petitioning activity. The “complaint” states, “We have become aware of a former faculty member that engaged in activities that could be perceived as possible spread of misinformation at a session held on December 7, 2022, entitled: Senator Ron Johnson hosts Expert Forum on Covid Vaccines.” This was clearly a forum in front of a legislator in an attempt to educate him on an issue of public concern. Thus, it was undoubtedly a form of petitioning the legislature. Senator Johnson invited experts to testify to their understanding of the science and medical application of the vaccines. Representations made to Congress, its members, or its committees, undoubtedly constitutes petitioning activity. See *McDonald v. Smith*, 472 U.S. 479, 482, 105 S. Ct. 2787, 2789 (1985).

Dr. Moon’s petitioning activity enjoys absolute immunity. In *White*, the court found that the investigation done by HUD officials violated the *Noerr-Pennington* doctrine because it was based on the Plaintiffs petitioning activity in filing a lawsuit to enjoin the building of a housing unit. *White v. Lee*, 227 F.3d 1214, 1233-34 (9th Cir. 2000). The court made clear that an investigation was merited only if the petitioning activity was actionable under the sham exception of the *Noerr-Pennington* doctrine. *Id.* Therefore, the threshold requirement of the investigation was to determine whether there the petitioning activity was a sham. *Id.* The court found that the HUD officials did not meet this threshold requirement.

Likewise, the WMC cannot meet this threshold requirement, making this investigation unlawful under the *Noerr-Pennington* doctrine. First, the sham exception applies lawsuits, but has little to no application in petitioning activity outside of lawsuits. *United States ex rel. Maranto v. Maxxam, Inc.*, No. C 06-7497 CW, 2009 U.S. Dist. LEXIS 14375, at *15-16 (N.D. Cal. Feb. 9, 2009). This is because the sham exception includes the requirement that the petitioning activity be both objectively baseless and include an improper motive. *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 934 (9th Cir. 2006). Petitioning a United States Senator must be objectively baseless in order to meet the standard. It is difficult to see how that can be possible without objective standards, which are hard to define in the political branches. Additionally, there is no improper motive to be attributed here. Dr. Moon was not seeking to harm a competitor, but instead seeking to protect children from a potentially dangerous medical intervention.

Memorandum in Support of Renata S. Moon
In response to LOC No.: 2023-8859

Additionally, the questions included in the Letter of Cooperation is not limited to determining whether her petitioning activity was objectively baseless done with an improper motive. It not only asks for information it could find for itself, but it goes on to inquire about Dr. Moon's medical practice both here in Washington and elsewhere in the country. Such questions are unlawful until the WMC determines that Dr. Moon's petitioning activity was objectively a sham. It cannot meet this threshold requirement, and therefore may not continue to make other inquiries into her statements.

In conclusion, the WMC is attempting to impermissibly chill Dr. Moon's First Amendment rights of speech, assembly, and petition through this investigation. Because of its illegality, this investigation must be closed and no other action should be taken against Dr. Moon. If other action is taken against Dr. Moon, individuals involved are liable for damages Dr. Moon sustains.