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10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 OAKLAND DIVISION

14 **MARCIANO PLATA, et al.,**

15 Plaintiffs,

16 v.

18 **EDMUND G. BROWN, et al.,**

19 Defendants.

01-cv-01351-JST

**DEFENDANTS' RESPONSE TO  
 AUGUST 20, 2021 ORDER (ECF NO.  
 3653)**

Date: September 24, 2021  
 Time: 9:30 a.m.  
 Courtroom: 6, 2nd Floor  
 Judge: The Honorable Jon S. Tigar  
 Action Filed: April 5, 2001

21 **To the Court and Plaintiffs:**

22 On August 20, 2021, the Court ordered Defendants to file a statement by August 25, 2021  
 23 that describes how the California Department of Corrections and Rehabilitation (CDCR) will  
 24 implement the California Department of Public Health's (CDPH) August 19, 2021 public health  
 25 order. ECF No. 3653 at 2; Cal. Dep't. Pub. Health, *State and Local Correctional Facilities and*  
 26 *Detention Centers Health Care Worker Vaccination Requirement* (Aug. 19, 2021),  
 27 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public->  
 28

[Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-Order.aspx](#).

CDCR and the Receiver issued a memorandum on August 23, 2021 explaining how the August 19, 2021 CDPH order will be implemented in CDCR's institutions. Declaration of Diana Toche, DDS (Decl. Toche) at ¶ 5, Ex. A. The August 19, 2021 CDPH order will apply to every CDCR institution to some degree. Decl. Toche at ¶ 7.

The order applies to every worker at the California Health Care Facility, the California Medical Facility, and the Skilled Nursing Facility at the Central California Women's Facility. *Id.* The order also applies to all Division of Juvenile Justice (DJJ) workers assigned to the Mental Health Residential Units, Intensive Behavioral Treatment Program Units, and Sexual Behavior Treatment Program Units; all workers assigned to the Medical Wings within DJJ facilities; and all workers assigned to the Program Center at N.A. Chaderjian Youth Correctional Facility. *Id.*

Additionally, the order applies to all regularly assigned paid and unpaid workers, including all five-day-a-week posts and regular-day-off posts as defined in the August 23, 2021 memorandum, who work in the following areas:

1. All Correctional Treatment Centers and similar locations, including:
  - a. Medical CTC beds,
  - b. Licensed and Unlicensed Psychiatric In-Patient Program housing,
  - c. Licensed and Unlicensed Mental Health Crisis housing;
2. All Out-Patient Housing Units;
3. Medical, Specialty, Mental Health, and Dental clinic treatment areas;
4. Hospice beds;
5. Dialysis units;
6. Triage and Treatment Areas; and
7. Workers identified on the Master Assignment Roster as assigned to transportation or medical guarding in the community.

*Id.* at ¶ 7, Ex. A at 1-2.

1 Local hiring authorities are responsible for identifying workers who are regularly assigned  
 2 to the areas subject to the CDPH order and August 23, 2021 memorandum. *Id.* at ¶ 7. The  
 3 August 19, 2021 CDPH order does not apply to workers responding to emergencies. *Id.* at 8.

4 Finally, all workers not subject to the August 19, 2021 CDPH order must still comply with  
 5 the July 26, 2021 CDPH public health order, which requires workers who are not vaccinated, only  
 6 partially vaccinated, or cannot prove their vaccination status, to undergo regular COVID-19  
 7 testing. *Id.* at ¶ 9. In CDCR's correctional settings, such workers must undergo twice-weekly  
 8 testing with at least 72 hours between each test. *Id.*

9 Defendants submit the attached declaration of Dr. Toche, DDS, CDCR's Undersecretary of  
 10 Healthcare, which explains in greater detail CDCR's implementation of the recent CDPH orders.

11  
 12 Dated: August 25, 2021

HANSON BRIDGETT LLP

13  
 14 By: /s/ Samantha Wolff

15 PAUL B. MELLO  
 16 SAMANTHA D. WOLFF  
 17 LAUREL O'CONNOR  
 18 DAVID C. CASARRUBIAS  
 19 Attorneys for Defendants

20  
 21 Dated: August 25, 2021

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24 By: /s/ Iram Hasan

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IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

**MARCIANO PLATA, et al.,**

Plaintiffs,

v.

**EDMUND G. BROWN, et al.,**

Defendants.

01-cv-01351-JST

**DECLARATION OF DIANA TOCHE,  
 DDS IN SUPPORT OF DEFENDANTS'  
 RESPONSE TO AUGUST 20, 2021  
 ORDER (ECF NO. 3653)**

Date: September 24, 2021  
 Time: 9:30 a.m.  
 Courtroom: 6, 2nd Floor  
 Judge: The Honorable Jon S. Tigar  
 Action Filed: April 5, 2001

I, Diana Toche, DDS, declare:

1. I am the Undersecretary of Health Care Services for the California Department of Corrections and Rehabilitation (CDCR). I have served in this role since 2014. I advise the Secretary of CDCR on major policy, program, and organizational issues related to the administration and delivery of healthcare to CDCR's incarcerated population. I determine and execute healthcare priorities, plans, policies, and programs consistent with the direction of CDCR, and develop and direct the implementation of initiatives that will be sustainable and

1 improve the efficacy of CDCR's healthcare system. I formulate and oversee the implementation  
2 of priority initiatives that cut across division and program areas including healthcare,  
3 rehabilitative programs, and re-entry. In my current role, I work closely with the court-appointed  
4 Receiver who oversees the delivery of medical care to CDCR's incarcerated population. By way  
5 of distinction, my role includes oversight of other forms of healthcare, including mental and  
6 dental healthcare. I have been employed by CDCR since 2009, and previously served as Acting  
7 Undersecretary of Administration and Offender Services, Acting Director of the Division of  
8 Health Care Services, and Statewide Dental Director. I worked in private practice from 1989 to  
9 2008 before joining CDCR.

10 2. I have personal knowledge regarding the matters stated in this declaration, except for  
11 those statements made on information and belief. I am competent to testify to the matters set  
12 forth in this declaration, and would do so if called upon to testify. I submit this declaration in  
13 support of Defendants' Response to the August 20, 2021 Order (ECF No. 3653).

14 3. On August 19, 2021, the California Department of Public Health (CDPH) issued a  
15 public health order, "State and Local Correctional Facilities and Detention Centers Health Care  
16 worker Vaccination Requirement[.]" requiring certain CDCR workers to be vaccinated against  
17 COVID-19. This order is available at  
18 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-Order.aspx)  
19 [Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-Order.aspx)  
20 [Order.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-Order.aspx).

21 4. I understand the Court issued an order on August 20, 2021, requiring Defendants to  
22 file a statement that describes how the CDPH order will be implemented, in which institutions it  
23 will be implemented in, and in which areas of institutions it will be implemented.

24 5. On August 23, 2021, CDCR and the Receiver issued a memorandum explaining how  
25 the August 19, 2021 CDPH order will be implemented. A true and correct copy of the  
26 memorandum is attached to this declaration as **Exhibit A**.

27 6. Workers subject to the August 19, 2021 CDPH order must be fully vaccinated by  
28 October 14, 2021. Ex. A at 1. Absent an approved religious or medical exemption, workers



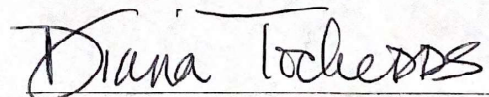
1 subject to the August 19, 2021 CDPH order cannot opt out of vaccination or routinely test in lieu  
2 of vaccination. *Id.* The process for obtaining an exemption is set forth in the memorandum. *See*  
3 *id.* at 2-3.

4 7. The August 19, 2021 CDPH order will be implemented at each CDCR institution to  
5 some degree. It applies to every worker at the California Health Care Facility and the California  
6 Medical Facility, and to every worker at the Skilled Nursing Facility at the Central California  
7 Women's Facility. *Id.* at 1-2. Additionally, it applies to all regularly assigned paid and unpaid  
8 workers, as defined in the August 23, 2021 memorandum, who work in the areas listed in the  
9 memorandum. *Id.* Local hiring authorities are responsible for identifying workers who are  
10 regularly assigned to the areas subject to the CDPH order. *Id.* at 2.

11 8. Currently, the August 19, 2021 CDPH order does not apply to non-regularly assigned  
12 workers or workers responding to emergencies. *Id.*

13 9. Workers not subject to the August 19, 2021 CDPH order who are not vaccinated, are  
14 only partially vaccinated, or cannot prove their vaccination status must undergo regular COVID-  
15 19 testing pursuant to the July 26, 2021 CDPH public health order. *Id.* at 3. In CDCR's  
16 correctional settings, such workers must undergo twice-weekly testing with at least 72 hours  
17 between each test. *Id.* A refusal to test may result in discipline. *Id.*

18 I declare under penalty of perjury that I have read this document, and its contents are true  
19 and correct to the best of my knowledge. Executed on August 25, 2021, in Sacramento,  
20 California.

21  
22 

23 Diana Toche, DDS  
24 Undersecretary of Health Care Services  
25 California Department of Corrections and  
26 Rehabilitation  
27  
28

# **EXHIBIT A**



# MEMORANDUM

**Date** : August 23, 2021

**To** : Wardens  
Chief Executive Officers  
Superintendents

**From** :

DocuSigned by:  
*Diana Toche*  
D7A487A8AEC64C4...  
KATHLEEN ALLISON  
Secretary, CDCR

DocuSigned by:  
*Clark Kelso*  
2E3708FD02AF4DC...  
CLARK KELSO  
Receiver

**Subject** : MANDATORY COVID-19 VACCINES AND TESTING FOR INSTITUTION STAFF

The purpose of this memorandum is to address two Public Health Orders issued by the California Department of Public Health (CDPH):

- [State and Local Correctional Facilities and Detention Centers Health Care Worker Vaccination Order](#), issued August 19, 2021, and
- [Health Care Worker Protections in High-Risk Settings](#), issued July 26, 2021.

In this memorandum, direction will be provided to all California Department of Corrections and Rehabilitation (CDCR), California Correctional Health Care Services (CCHCS), and Division of Juvenile Justice (DJJ) staff statewide regarding the requirements and expectations pursuant to these Orders.

## AUGUST 19, 2021, PUBLIC HEALTH ORDER: FULL VACCINATION REQUIREMENT FOR STAFF

The August 19, 2021, CDPH Public Health Order requires workers in specified correctional health care facilities to show evidence of full vaccination for COVID-19 by October 14, 2021, or to obtain approval for a reasonable medical or religious accommodation precluding them from the mandatory full vaccination. Staff for whom this requirement applies cannot opt out of vaccination or routinely test in lieu of vaccination.

The Order's requirement for full vaccination applies to all staff at California Health Care Facility (CHCF), California Medical Facility (CMF), and the Skilled Nursing Facility at Central California Women's Facility (CCWF). In addition, it applies to those workers regularly assigned to work in the following health care areas or posts within institutions system-wide.

1. All Correctional Treatment Centers (CTC) and similar locations, including:
  - a. Medical CTC beds
  - b. Licensed and Unlicensed Psychiatric In-Patient Program housing
  - c. Licensed and Unlicensed Mental Health Crisis housing
2. All Out-Patient Housing Units (OHUs)
3. Medical, Specialty, Mental Health, and Dental clinic treatment areas
4. Hospice beds
5. Dialysis units



6. Triage and Treatment Areas (TTAs)
7. Staff identified on the Master Assignment Roster as assigned to transportation or medical guarding in the community
8. All DJJ staff assigned to the Mental Health Residential Units, Intensive Behavioral Treatment Program Units, and Sexual Behavior Treatment Program Units
9. All staff assigned to the Medical Wings within DJJ facilities
10. All staff assigned to the Program Center at N.A. Chaderjian Youth Correctional Facility

All paid and unpaid regularly assigned workers/volunteers subject to the Order's vaccination requirement include but are not limited to the following: clinicians, nurses/nursing assistants, technicians, therapists, phlebotomists, pharmacists, dietary staff, janitorial and laundry staff, administrative staff, registry staff, contract staff, volunteers, custody staff, health facility maintenance workers, and inmate workers. The Order's vaccination requirement shall apply to all five-day-a-week posts and regular-day-off posts. Currently, this requirement will not apply to non-regularly assigned staff, such as relief staff, voluntary overtime, mandatory overtime, swaps, or those who do not work in the area regularly, such as staff making pick-ups or deliveries, conducting maintenance repairs, conducting tours, etc. Additionally, this will not apply to any staff responding to emergencies.

*Local Hiring Authority Responsibilities:* Each local hiring authority shall be responsible for identifying staff who are regularly assigned to the listed areas and notifying the employees that they are covered by and must comply with the August 19, 2021, order. The [Staff Vaccine Registry](#) shall be utilized to determine staff who are vaccinated, partially vaccinated, and unvaccinated. Staff who have not already done so may submit vaccination records. For complete instructions, refer to the May 19, 2021 memorandum, "[Submission of COVID-19 Vaccination Record Cards](#)."

#### **Qualifying Accommodations to Vaccination Requirement**

1. *Medical Reasonable Accommodation*

Staff unable to be fully vaccinated due to a qualifying medical reason shall notify their supervisor and Return-to-Work Coordinator of their request for a reasonable accommodation. Reasonable accommodation requests shall be submitted on the CDCR Form 855, Request for Reasonable Accommodation, and require a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the accommodation (but the statement should not describe the underlying medical condition or disability) and the probable duration of an individual's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).

2. *Religious Accommodation*

Staff unable to be fully vaccinated due to a sincerely held religious belief shall notify their supervisor and local Equal Employment Opportunity Coordinator of their request for religious accommodation. Religious accommodation requests shall require a statement indicating that the individual has a sincerely held religious belief that precludes them from obtaining any COVID-19 vaccine.

3. Requests for medical/religious reasonable accommodation shall be submitted by September 14, 2021. The Department shall engage in the interactive process with staff to ensure that the appropriate determination is made. Staff who have submitted a request for reasonable medical or religious accommodation may request permission to remain off work, using leave credits or an unpaid leave of absence pending a determination on the request. Staff who are approved for a reasonable medical or religious accommodation shall be subjected to mandatory twice-weekly testing as required by the [August 5, 2021 California Department of Public Health Public Health](#)

[Order](#) and the [All Facilities Letter \(AFL\) 21-28](#) until such Order and AFL are rescinded or otherwise no longer in effect.

Further direction will be forthcoming regarding staff regularly assigned to the identified institutions or health care areas who are not vaccinated or do not have an approved reasonable medical or religious reasonable accommodation secured by October 14, 2021.

CDCR and CCHCS Labor Relations will be working with labor organizations to inform them of this Order.

**JULY 26, 2021, PUBLIC HEALTH ORDER: HEALTH CARE WORKER PROTECTIONS IN HIGH-RISK SETTINGS**

The August 19, 2021 order **supplements and does not supplant** the CDPH's Public Health Order issued on July 26, 2021. The CDPH's July 26, 2021, Public Health Order requires all unvaccinated and partially vaccinated workers in High-Risk Congregate Settings, including state and local correctional facilities, to undergo screening and testing for COVID-19. In other words, staff to whom the August 19, 2021, requirement does not apply remain subject to the requirements of the July 26, 2021, Order.

Therefore, pursuant to this Order and effective August 23, 2021, all staff who work in correctional settings who are unvaccinated, partially vaccinated, or have not provided a record of full vaccination shall undergo **twice-weekly COVID testing** with at least 72 hours between each test.

If you are testing outside of the CDCR testing program, you will need to submit proof of testing. See attachment for instructions on how to submit this information.

Refusal to get tested on a twice-weekly basis may result in corrective or disciplinary action in accordance with Department Operations Manual, Article 22, Employee Discipline, Section 33030.8, Causes for Corrective Action, and 33030.9, Causes for Adverse Action.

**QUESTIONS/CONCERNS**

If you have any questions or concerns about the directives contained in this memorandum, inquiries should be directed as follows:

- For Wardens: Contact your mission's Associate Director, Division of Adult Institutions (DAI)
- For Chief Executive Officers: Contact your respective Regional Health Care Executive
- For DJJ: Contact either Deputy Director
- For staff with reasonable accommodation-related questions: Contact the local Return-to-Work Coordinator for medical accommodations and their local EEO Coordinator for religious accommodations.

CDCR/CCHCS is committed to providing additional information as soon as available.

Attachment

cc: CDCR\_CCHCS Extended Executive Staff  
Regional Health Care Executives  
Associate Directors, DAI

## ATTACHMENT

The Environmental Health and Safety module within the Business Information Systems (BIS) platform is used to capture testing data for all California Department of Corrections and Rehabilitation (CDCR) and California Correction Health Care Services (CCHCS) staff. Using the [DocuSign PowerForm](#) will securely submit staff's documentation of **Non-CDCR/CCHCS COVID-19 Test Result** directly to the Employee Health Program team. The [PowerForm](#) can be used only if staff has an email account where they can verify their submittal. For the best user experience, staff shall use their @CDCR.CA.GOV email account.

Staff shall submit documentation of COVID-19 test result only if they have tested outside of CDCR/CCHCS (e.g. Kaiser, Sutter, CVS, Walgreens, etc.). Tests completed within CDCR/CCHCS will automatically be recorded in BIS. Documentation of test results must include the following:

1. Name of the company that conducted the test
2. Name and date-of-birth of the employee
3. The test result

### DIRECTIONS FOR USING THE POWERFORM

1. A confirmation code will be sent to the email address provided while initiating the [PowerForm](#).
2. Once confirmed via the email account provided, the **Non-CDCR/CCHCS COVID-19 Test Result** [PowerForm](#) will launch for staff to fill out.
3. Enter all required information into the form.
4. Attach the documentation of **Non-CDCR/CCHCS COVID-19 Test Result**.
5. Click Finish once all required information are entered and the documentation of **Non-CDCR/CCHCS COVID-19 Test Result** is attached.

Name:

Date:

PERNR:

Date of Birth:

Attach documentation of **Non-CDCR/CCHCS COVID-19 Test Result** (as shown in Example).

### Example:

The image shows a LabCorp Patient Report for a COVID-19 test. The report includes patient information, specimen details, and test results. The test result for SARS-CoV-2, NAA, is 'Not Detected'.

TESTS	RESULT	FLAG	UNITS	REFERENCE	INTERVAL	LAB
SARS-CoV-2, NAA	Not Detected					01

This nucleic acid amplification test was developed and its performance characteristics determined by LabCorp Laboratories. Nucleic acid amplification tests include PCR and TMA. This test has not been FDA cleared or approved. This test has been authorized by FDA under an Emergency Use Authorization (EUA). This test is only authorized for the duration of time the declaration that circumstances exist justifying the authorization of the emergency use of in vitro diagnostic tests for detection of SARS-CoV-2 virus and/or diagnosis of COVID-19 infection under section 564(b)(1) of the Act, 21 U.S.C. 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

When diagnostic testing is negative, the possibility of a false negative result should be considered in the context of a patient's recent exposures and the presence of clinical signs and symptoms consistent with COVID-19. An individual without symptoms of COVID-19 and who is not shedding SARS-CoV-2 virus would expect to have a negative (not detected) result in this assay.

Although DocuSign is the preferred method, staff may also mail-in their documentation of test results to the following address:

California Correctional Health Care Services  
 Attn: Employee Health Program, E-1  
 PO Box 588500  
 Elk Grove, CA 95758