

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOSEPH J. HEALY, Plaintiff,
106 Wyndcrest Avenue
Catonsville, MD 21228

v.

UNITED STATES COAST GUARD;
DEPARTMENT OF HOMELAND
SECURITY; MICHAEL CHERTOFF, in his
official capacity as Secretary of the Department
of Homeland Security; THAD W. ALLEN, in
his official capacity as Commandant of the
United States Coast Guard; CLIFFORD
PEARSON, in his official capacity as Director
of Human Resources of the U.S.C.G.; CURTIS
ODOM, in his official capacity as Acting
Director of Personnel Management of the
U.S.C.G.; MARK J. TEDESCO, in his official
capacity as Director of Health and Safety of the
U.S.C.G.; MICHAEL COSENZA, in his
official capacity as Chief of the Office of
Military Personnel of the U.S.C.G.; MICHAEL
BOQUARD, in his official capacity as Chief of
the Office of Health Services of the U.S.C.G.;
BRENT PENNINGTON, in his official
capacity as Chief of the Operational and
Clinical Medicine Division of the U.S.C.G.;
MARSHALL LYTLE, in his official capacity
as Commanding Officer of
Telecommunications and Information Systems
Command of the U.S.C.G.; and ROBERT
BEVINS, in his official capacity as Executive
Officer of Telecommunications and
Information Systems Command of the
U.S.C.G.;

Defendants.

CIV. NO. _____

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND ATTORNEYS' FEES**

VERIFIED COMPLAINT

Comes now Plaintiff, Lieutenant Commander Joseph J. Healy, by and through his attorneys the Alliance Defense Fund, and for his Verified Complaint states as follows:

NATURE OF ACTION

1. Lt. Cdr. Healy seeks a preliminary and permanent injunction ordering Defendants to grant him a religious exemption (as provided in written Coast Guard policy) for his objection to the Hepatitis A vaccination, which exemption Defendants have thus far denied Lt. Cdr. Healy based on their discrimination against his Catholic religious beliefs.

2. In this suit Lt. Cdr. Healy brings an as-applied challenge to Defendants' actions, by which they established a governmental definition of Roman Catholic theology and, based on that definition, deprived Lt. Cdr. Healy of religious conscience rights that the United States Coast Guard otherwise grants to personnel who possess other religious beliefs.

3. Lt. Cdr. Healy seeks a declaration that Defendants' refusal to grant him a religious exemption to vaccination, and their threat to compel him to receive that vaccination, violates his rights under the Free Exercise Clause of the United States Constitution, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et seq.* Lt. Cdr. Healy also seeks attorneys' fees and costs pursuant to the Equal Access to Justice Act.

PARTIES

4. Plaintiff JOSEPH J. HEALY is a Lieutenant Commander in the United States Coast Guard, serving in Telecommunication and Information Systems Command of the United States Coast Guard, in Alexandria, Virginia.

5. Defendant UNITED STATES COAST GUARD (hereinafter "U.S.C.G." or "Coast Guard") is a federal agency within the Department of Homeland Security.

6. Defendant DEPARTMENT OF HOMELAND SECURITY is a federal agency that includes the U.S.C.G.

7. Defendant MICHAEL CHERTOFF is the Secretary of Homeland Security, and is ultimately responsible for decisions of the U.S.C.G. He is sued in his official capacity only.

8. Defendant Admiral THAD W. ALLEN is Commandant of the U.S.C.G., and is responsible for decisions of the U.S.C.G. He is sued in his official capacity only. He reports to Secretary Chertoff.

9. Defendant Rear Admiral CLIFFORD PEARSON is Director of Human Resources of the U.S.C.G., which directorate is responsible for decisions applied to Lt. Cdr. Healy as discussed below. He is sued in his official capacity only. He reports to Admiral Allen.

10. Defendant Mr. CURTIS ODOM is Acting Director of Personnel Management of the U.S.C.G., which directorate is responsible for decisions applied to Lt. Cdr. Healy as discussed below. He is sued in his official capacity only. Mr. Odom reports to Rear Admiral Pearson.

11. Defendant Rear Admiral MARK J. TEDESCO is Director of Health and Safety of the U.S.C.G. which directorate is responsible for decisions applied to Lt. Cdr. Healy as discussed below. He is sued in his official capacity only. Rear Admiral Tedesco reports to Rear Admiral Pearson.

12. Defendant Captain MICHAEL COSENZA serves in the Office of Military Personnel of the U.S.C.G., which office is responsible for decisions applied to Lt. Cdr. Healy as discussed below. He is sued in his official capacity only. Captain Cosenza reports to Mr. Odom.

13. Defendant Captain MICHAEL BOQUARD is Chief of the Office of Health Services of the U.S.C.G., which office is responsible for decisions applied to Lt. Cdr. Healy as

discussed below. He is sued in his official capacity only. Captain Boquard reports to Rear Admiral Tedesco.

14. Defendant Captain BRENT PENNINGTON serves in the Operational and Clinical Medicine Division of the U.S.C.G., and is responsible for decisions applied to Lt. Cdr. Healy as discussed below. He is sued in his official capacity only. Captain Pennington reports to Captain Boquard.

15. Defendant Captain MARSHALL LYTLE is commanding officer of Telecommunications and Information Systems Command of the U.S.C.G., and is responsible for enforcement of decisions applied to Lt. Cdr. Healy as discussed below. Captain Lytle is Lt. Cdr. Healy's Unit Commander. He is sued in his official capacity only.

16. Defendant Commander ROBERT BEVINS is executive officer of Telecommunications and Information Systems Command of the U.S.C.G., is Lt. Cdr. Healy's supervisor, and is responsible for enforcement of decisions applied to Lt. Cdr. Healy as discussed below. He is sued in his official capacity only. Commander Bevins reports to Captain Lytle.

JURISDICTION AND VENUE

17. This action raises federal questions under the United States Constitution, particularly violations of the Free Exercise Clause of the First Amendment and federal questions under the Religious Freedom Restoration Act, 42 U.S.C. § 2000(bb) *et. seq.* These claims are properly challenged pursuant to federal law, particularly 28 U.S.C. §§ 1331; 1346; 2201–02; and 5 U.S.C. § 702–04.

18. This Court has authority to grant the requested injunctive and declaratory relief under 28 U.S.C. §§ 2201–02, and attorney's fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412 and 5 U.S.C. § 504. Lt. Cdr. Healy does not seek damages.

19. Venue lies in this district pursuant to 28 U.S.C. § 1391. U.S.C.G. Headquarters, the Department of Homeland Security, and the offices of all Defendants except Captain Lytle and Commander Bevins are located in this district.

BACKGROUND

Lt. Cdr. Healy's distinguished career in the Coast Guard

20. Lt. Cdr. Healy has served with distinction in the Coast Guard since 1993. He graduated from the Coast Guard Academy and was commissioned as an ensign on the ship U.S.C.G. Cutter Reliance from 1993 to July 1995, where he served as a deck watch officer and boarding officer. During that time he was promoted to Lieutenant, Junior Grade.

21. Lt. Cdr. Healy served from July 1995 through March 1998 in the Marine Safety Office in Philadelphia, Pennsylvania, as chief of the Information Resource Management Department. In 1997 he was promoted to Lieutenant, and he was awarded the Coast Guard Achievement Medal in March 1998.

22. After earning a Masters in Computer Science and Business Management at the University of Rhode Island, in January 2000 Lt. Cdr. Healy was assigned to Coast Guard Headquarters in Washington D.C., where he served on the technical evaluation team of the Deepwater Major Acquisition Projects office. He was awarded the Coast Guard Commendation Medal in May 2002.

23. Lt. Cdr. Healy served for one year as operations officer on U.S.C.G. Cutter Vigorous, and in May 2003 was assigned to the Office of Command and Control Capabilities of the United States Coast Guard at Coast Guard Headquarters. He was promoted to Lieutenant Commander in March 2004, and was awarded the Meritorious Service Medal in June 2007.

24. In June 2007, Lt. Cdr. Healy was assigned to the Telecommunications and Information Systems Command of the U.S.C.G. in Alexandria, Virginia, where he presently serves.

The Coast Guard's provisions for religious exemption from vaccination

25. On May 4, 2006, the acting Director of Health and Safety of the Coast Guard issued a memorandum in which he announced the requirement that all active-duty Coast Guard personnel receive vaccination for Hepatitis A unless they show proof of immunity. A true copy of this memorandum is attached to this Complaint as Exhibit A.

26. Proof of immunity to Hepatitis A can be shown by laboratory results indicating the presence of the antibody against Hepatitis A. Ex. A, ¶ 7(C). Lt. Cdr. Healy sought to show proof of immunity by an antibody test, but he tested negative for the antibodies.

27. As set forth in the Director's memorandum, the Coast Guard requires that commanding officers ensure that those under their command comply with the vaccination requirements. Ex. A, ¶ 10(A). Lt. Cdr. Healy's commanding officers include Defendants Lytle and Bevins.

28. The memorandum also presents the Director's requirement that the Coast Guard's health care personnel ensure that active-duty personnel comply with the vaccination requirements. Ex. A, ¶ 10(B, C). In Lt. Cdr. Healy's case, such healthcare personnel include Defendants Tedesco, Boquard, and Pennington.

29. On September 29, 2006, the Coast Guard approved Comdt. Instruction M6230.4F, which allows for individual Coast Guard personnel to be granted religious exemptions from immunization. Excerpts of Comdt. Instruction M6230.4F are attached to this complaint as Exhibit B.

30. At Chapter 2-6, Comdt. Instruction M6230.4F states in relevant part:

2–6. Exemptions. There are 2 types of exemptions from immunization: medical and administrative. . . . Granting administrative exemptions is a non–medical function, usually controlled by the individual’s unit commander.

b. Administrative exemptions. . . .

(3) Religious.

(a) For Service personnel, immunization exemptions for religious reasons may be granted according to Service-specific policies to accommodate doctrinal religious beliefs. This is a command decision made with medical and chaplain advice.

1. Requests for religious exemption must include name, rank, social security number (SSN), occupational specialty code or branch, and a description of the religious tenet or belief contrary to immunization. . . . Coast Guard: CG–122 is the designated approval and revocation authority for temporary immunization exemptions.

. . .

3. The commander must counsel the individual and recommend approval or denial of the exemption request, by endorsement. . . . The commander, in making his or her recommendation, should consider the potential impact on the individual, the unit, and the mission.

4. Forward exemption requests through command channels to the respective Service approval authority for decision. Individuals with active requests for religious exemption are temporarily deferred from immunizations pending outcome of their request. For USCG, forward through appropriate chain to G–WPM, via CG–1121.

31. CG-122, as referenced in M6230.4F, 2-6, is the Coast Guard’s Office of Military Personnel. The Chief of that office is Defendant Cosenza.

32. In instructing that exemption requests be sent “through appropriate chain to G-WPM, via CG-1121,” the referenced “CG-1121” is the Coast Guard’s Operational and Clinical Medicine Division, in which Defendant Pennington serves.

33. Lt. Cdr. Healy does not, to his knowledge, qualify for any of the other non-religious exemptions to receiving the Hepatitis A vaccination, such as medical exemptions or imminent retirement.

34. The United States Military Vaccine Agency reports the following facts about Hepatitis A:

Hepatitis A virus is spread from person to person by putting something in the mouth that has been contaminated with the stool of a person with hepatitis A. This type of transmission is called "fecal-oral." For this reason, the virus is more easily spread in areas where there are poor sanitary conditions or where good personal hygiene is not observed.

Most infections result from contact with a household member or sex partner who has hepatitis A. Casual contact, as in the usual office, factory, or school setting, does not spread the virus.

The Military Vaccine Agency report on Hepatitis A is attached to this Complaint as Exhibit C.

35. Lt. Cdr. Healy is not at risk of the Hepatitis A disease, either based on his medical history, his personal hygiene, the sanitary conditions where he lives and works, or his assignment and mission in the Coast Guard.

Lt. Cdr. Healy's religious beliefs and tenets

36. Lt. Cdr. Healy's opposition to receiving the available Hepatitis A vaccines is due to the fact that he is a practicing member of the Catholic Church and he strongly opposes abortion.

37. Lt. Cdr. Healy firmly and sincerely holds a religious belief which counsels against participating in abortion in any way, even remotely or indirectly. This prohibition extends not only to participation in particular abortions, but also to cooperation in or advancing societal structures that facilitate abortion.

38. Catholic moral doctrines prohibit direct or proximate cooperation in abortion, and generally prohibit indirect or remote cooperation in abortion. Those tenets guide a Catholic in forming his conscience and beliefs and applying the tenets to decide whether or not a particular indirect and remote participation in abortion is acceptable in his circumstance.

39. The Hepatitis A vaccines that are available in the United States, and that Defendants propose to administer to Lt. Cdr. Healy, were developed from cells taken from the lung tissue of a child of 14 weeks gestation who was dissected upon his elective abortion. Those vaccines are known as the Twinrix Hepatitis A/B vaccine and the Havrix/Vaqta Hepatitis A vaccine.

40. A Hepatitis A vaccine that is not derived from cells obtained from an aborted child is not available in the United States. One such alternative vaccine is, however, available in Europe and Japan.

41. Catholic doctrines and tenets teach that receiving a vaccine derived from cells obtained from an aborted child constitutes at least indirect cooperation in abortion, and though it can be hypothetically licit in some circumstances for individuals to receive such vaccines, an individual often should decide that it is morally unacceptable for him to receive such a vaccine.

42. Lt. Cdr. Healy has a sincerely held religious belief, based on the aforementioned Catholic doctrines and tenets, that if he receives either of the available Hepatitis A vaccines he would be impermissibly participating in the evil of abortion, and in societal structures that facilitate abortion, in violation of his conscience.

Lt. Cdr. Healy's request for an exemption and Defendants' discriminatory denial

43. Because of his doctrinally-informed sincere religious beliefs, Lt. Cdr. Healy sent a memorandum on May 17, 2007, to the Office of Military Personnel (CG-122) through the

Operational and Clinical Medicine Division (CG-1121), requesting a religious exemption pursuant to M6230.4F, 2-6. A true copy of Lt. Cdr. Healy's memo is attached to this complaint at Exhibit D.

44. In Lt. Cdr. Healy's memorandum he cited and explained the Catholic doctrines and tenets that form his religious beliefs that require his opposition to the receipt of the available Hepatitis A vaccine.

45. Lt. Cdr. Healy cited the Catechism of the Catholic Church which teaches respect for life and prohibits achieving a good end by an evil means. Lt. Cdr. Healy also quoted a letter from the Vatican's Pontifical Academy for Life, which calls Catholics to conscientiously object to passive cooperation in abortion by means of using vaccines derived from cells obtained from an aborted child. *Id.*

46. Lt. Cdr. Healy in his memorandum presented "doctrinal religious beliefs," and "a description of the religious tenet or belief contrary to immunization," that qualify him for an exemption from vaccination under M6230.4F, 2-6.

47. Lt. Cdr. Healy's exemption request complied with all other requirements of M6230.4F, 2-6.

48. On May 25, 2007, Defendant Captain Brent Pennington (of CG-1121) responded to Lt. Cdr. Healy's request in a memo that Captain Pennington sent through CG-122. A true copy of that memo is attached to this complaint as Exhibit E.

49. Captain Pennington denied Lt. Cdr. Healy's exemption request by means of his own interpretation of Catholic theology that differs from Lt. Cdr. Healy's interpretation.

50. Captain Pennington declared in his response:

1. Your request for an immunization waiver is denied.

2. The information cited in the request for an immunization waiver does not meet the criteria for an exemption based on religious views. The excerpts cited in [your request] from the Catechism of the Catholic Church, does [sic] not state that these immunizations are against the religious tenets of the Catholic Church. The letter enclosed [] from The Pontifical Academy for Life (PAL) does not state that receiving such a vaccine is against the teachings of the Catholic Church and neither does the paper which was included by the PAL.

3. The National Catholic Bioethics Center states that by receiving such a vaccine, one is not cooperating in abortion and there are no Catholic teachings that state that the use of these vaccines is sinful.

4. Please note that the refusal to be vaccinated, or failure to comply with a lawful order to be vaccinated, is a violation of Coast Guard regulations, COMDTINST M500.3 (series), Chap 8, section 8-2-1-A (21) and Article 92 of the Uniform Code of Military Justice (UCMJ). Any member who refuses to be vaccinated, or fails to comply with a lawful order to be vaccinated, is subject to military proceedings under UCMJ or other appropriate administrative proceedings at the unit commander's discretion.

51. Captain Pennington did not deny Lt. Cdr. Healy's request for an exemption based upon an exigent need to immunize him from Hepatitis A, upon "the potential impact on the individual, the unit, and the mission," or upon any other non-religious reason authorized by M6230.4F, 2-6. Captain Pennington denied the exemption solely based upon his own interpretation of Catholic theology.

52. Captain Pennington ostensibly defined what constitutes the orthodox Catholic theological position on the permissibility of immunization using vaccines derived from cells obtained from an aborted child, and denied Lt. Cdr. Healy's religious exemption request because his interpretation differed from Pennington's.

53. Captain Pennington based his declaration of Catholic theology upon alleged statements of a non-authoritative lay Catholic organization, the National Catholic Bioethics Center, which Lt. Cdr. Healy did not cite and which does not bind Lt. Cdr. Healy's conscience, in the face of authoritative Catholic Church sources cited by Lt. Cdr. Healy.

54. Captain Pennington's denial unjustifiably discriminates against Lt. Cdr. Healy as a member of the Catholic Church, a church that teaches general principles that in their specific application may properly inform the individual conscience to oppose vaccines, even if there is no promulgated requirement that all church members must oppose all vaccines or particular vaccines in all circumstances.

55. Captain Pennington's denial violated Comdt. Instruction M6230.4F, 2-6, because that instruction does not authorize denial of an exemption for the religious reasons cited by Captain Pennington.

56. If Comdt. Instruction M6230.4F, 2-6 is interpreted as authorizing the denial of an exemption for the reasons cited by Captain Pennington, then the rule itself as applied to Lt. Cdr. Healy violates the constitution and laws of the United States.

57. As a result of the denial of Lt. Cdr. Healy's exemption request, Defendants will at any moment order him to receive one of the Hepatitis A vaccines.

58. As a result of the denial of Lt. Cdr. Healy's exemption request, he faces the prospect that Defendants or their officers or agents will compel him to undergo the Hepatitis A inoculation against his conscience, or will impose penalties against him should he choose not to violate his conscience.

59. Without a preliminary and permanent injunction issued by this Court, Lt. Cdr. Healy will suffer irreparable injury due to Defendants' actions and imminent compulsion.

60. All of Defendants' actions alleged herein were undertaken under color of federal law as official actions of the U.S.C.G. and the Department of Homeland Security.

COUNT I
Violation of the United States Constitution
Free Exercise of Religion

61. The above paragraphs are incorporated herein by reference as if set forth fully.

62. Defendants' denial of Lt. Cdr. Healy's religious exemption request, and their imminent compulsion of Lt. Cdr. Healy to receive the Hepatitis A vaccine in violation of his conscience, are not religiously neutral or generally applicable.

63. Defendants' actions substantially burden Lt. Cdr. Healy's free exercise of religion.

64. Defendants' actions are not justified by a compelling or rational government interest to which the Court should defer.

65. Defendants' actions violate Lt. Cdr. Healy's rights under the Free Exercise Clause of the First Amendment to the United States Constitution.

COUNT II
Violation of the Religious Freedom Restoration Act
42 U.S.C. § 2000bb et seq.

66. The above paragraphs are incorporated herein by reference as if set forth fully.

67. Defendants' rules and decisions with respect to immunization of Lt. Cdr. Healy are subject to the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 *et seq.* ("RFRA").

68. Under RFRA, even if Defendants' rules and decisions are neutral and generally applicable, they must be in furtherance of a compelling governmental interest and be the least restrictive means of furthering that interest, to the extent they substantially burden Lt. Cdr. Healy's exercise of religion.

69. Defendants' denial of Lt. Cdr. Healy's religious exemption request, and their imminent compulsion of Lt. Cdr. Healy to receive the Hepatitis A vaccine in violation of his conscience, substantially burden Lt. Cdr. Healy's exercise of religion.

70. Defendants' actions are not justified by a compelling governmental interest to which the court should defer, and are not the least restrictive means of furthering such an interest.

71. Accordingly, Defendants' actions violate Lt. Cdr. Healy rights under RFRA.

REQUEST FOR RELIEF

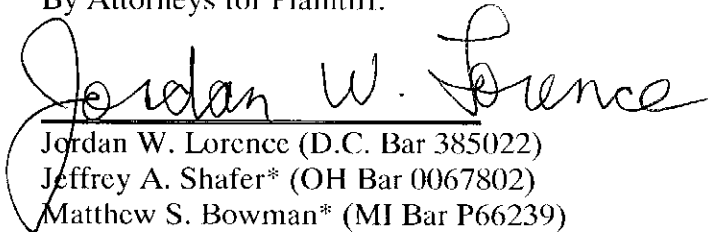
Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- A. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter in controversy in order that such declarations shall have the force and effect of final judgment and that the Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders;
- B. Declare that Defendants' interpretation and application of Comdt. Instruction M6230.4F, 2-6 to Lt. Cdr. Healy in denying his religious exemption request and imminently compelling him to receive immunization against his conscience as described in this Complaint, all violate the right to free exercise of religion which is guaranteed to Lt. Cdr. Healy under the Constitution of the United States and RFRA;
- C. Issue a preliminary and permanent injunction ordering the Defendants, their agents, officials, servants, employees, and any other persons acting in their behalf, to grant Lt. Cdr. Healy a religious exemption from Hepatitis A vaccination pursuant to Comdt. Instruction M6230.4F, 2-6.

- D. Grant to Lt. Cdr. Healy an award of attorneys fees in an amount deemed appropriate by this Court in accordance with the Equal Access to Justice Act;
- E. Grant to Lt. Cdr. Healy an award of his costs of litigation in accordance with the Equal Access to Justice Act; and
- F. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 28th day of December, 2007.

By Attorneys for Plaintiff:



Jordan W. Lorence (D.C. Bar 385022)
Jeffrey A. Shafer* (OH Bar 0067802)
Matthew S. Bowman* (MI Bar P66239)
ALLIANCE DEFENSE FUND
801 G. Street NW, Suite 509
Washington, D.C. 20001
Tel: (202) 637-4610
Fax: (202) 347-3622
jlorenc@telladf.org
jshafer@telladf.org
mbowman@telladf.org

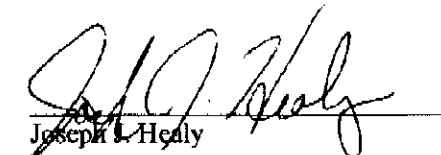
Benjamin W. Bull+
(AZ Bar No. 009940)
ALLIANCE DEFENSE FUND
15100 North 90th Street
Scottsdale, Arizona 85260
Telephone: (480) 444-0020
Facsimile (480) 444-0028
bbull@telladf.org

*Motions to permit appearances *pro hac vice* filed concurrently
+Of counsel, not admitted in this jurisdiction

VERIFICATION

I declare under the penalty of perjury that the foregoing is true to the best of my knowledge.

Executed on this 28th day of December, 2007.



Joseph L. Healy