



March 31, 2020

Steven B. Abramson, MD
Executive Vice President and Vice Dean for Education, Faculty, and Academic Affairs
NYU Grossman School of Medicine
Office of Education, Faculty, and Academic Affairs
550 First Avenue
New York, New York 10016

URGENT

Sent via Electronic Mail (stevenb.abramson@nyulangone.org)

Dear Dr. Abramson:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is concerned about the threat to faculty expressive rights posed by NYU Grossman School of Medicine's directive that faculty members refrain from speaking with members of the media without prior administrative approval from the Office of Communications and Marketing of NYU Langone Health.

FIRE deeply respects the lifesaving work performed daily at NYU Langone under unimaginable pressure. It is because of the immense challenges of the current moment, however, that we object to NYU's decision to threaten faculty with disciplinary action, including termination, for speaking with the press and conveying information about COVID-19's impact that Americans may desperately need to hear.

In a March 28 email sent to the faculty and staff of NYU Grossman's Department of Population Health, Dr. Marc N. Gourevitch, Muriel and George Singer Professor of Population Health and department chair, observed that the press had been "reaching out to speak with faculty and staff – viewing them as representatives of NYU Langone Health and/or seeking

their personal experiences working in healthcare delivery or research.”¹ Dr. Gourevitch explained that he was

therefore writing to reiterate and to underscore the importance of abiding by the institution’s longstanding media policy of clearing any and all media requests with the Office of Marketing & Communications:

Anyone who is contacted by a member of the media (from any source, including media inquiries through social platforms like Facebook, Twitter, Instagram) must notify Sasha Walek immediately and, for now, copy me. Sasha works directly with our Office of Communications and Marketing to vet every request. If you need to contact the Office of Marketing & Communications directly, please email news@nyulangone.org (copying Sasha on your correspondence), or call 212-404-3500.

The institution has asked that chairs emphasize the importance of strict adherence to this policy, and that speaking with or disseminating information to the media without explicit permission from the Office of Communications and Marketing is subject to disciplinary action.²

The Wall Street Journal reports that a similar warning was sent to NYU Langone recipients via email the same day by Kathy Lewis, NYU Langone’s Executive Vice President for Communications and Marketing:

Kathy Lewis, executive vice president for communications and marketing, said in an email that NYU Langone’s longstanding policy required faculty, residents and staff to forward all media inquiries to her office.

“Anyone who does not adhere to this policy, or who speaks or disseminates information to the media without explicit permission of the Office of Communications and Marketing, will be subject to disciplinary action, including termination,” Ms. Lewis wrote.³

¹ Email from Leanne Luerassi, Department Administrator, on behalf of Marc N. Gourevitch, Muriel and George Singer Professor of Population Health and Chair, Department of Population Health, NYU Grossman School of Medicine, to “DPH-FACULTY” and “DPH-STAFF” listservs (Mar. 28, 2020, 3:18 PM) (on file with author).

² *Id.*

³ Shalini Ramachandran & Joe Palazzolo, *NYU Langone Tells ER Doctors to ‘Think More Critically’ About Who Gets Ventilators*, WALL ST. J. (Mar. 30, 2020), <https://www.wsj.com/articles/nyu-langone-tells-er-doctors-to-think-more-critically-about-who-gets-ventilators-11585618990>.

The warnings appear to anticipate media attention to decisions made by NYU Langone in providing care to COVID-19 patients. *The Wall Street Journal* reports that Dr. Robert Femia, NYU Langone’s chair of Emergency Medicine, sent a March 28 email advising emergency room doctors that “they have ‘sole discretion’ to place patients on ventilators and institutional backing to ‘withhold futile intubations.’”⁴ The article quotes unnamed NYU Langone doctors responding to the email:

Some NYU Langone doctors said they were unsettled by Dr. Femia’s email.

“Asking ED physicians to make snap judgments about how well a patient will do based on little to no information is a tremendous burden to place on them,” one doctor said.

“As a doctor, I don’t know how to make the call,” another said. The doctor said so far there was no evidence of anyone withholding care from patients. But what the email calls for “seems way too close to playing God.”⁵

FIRE understands that NYU Langone maintains “Interview & Filming Policies” that require “all members of the media engaged in the acquisition of news with the intent of disseminating it through legitimate and recognized mediums” to request prior permission from the Office of Communications and Marketing before interviewing NYU faculty.⁶

Specifically, the Policies state that “NYU Langone’s permission is required to conduct media interviews, or film, videotape, film, or photograph any NYU Langone faculty or staff, on its campus, or in any NYU Langone facility.”⁷ Intended in part “to protect the interests and reputation of NYU Langone,” the policies forbid attempts to circumvent official permission: “Requests for permission to conduct an interview, film, videotape, or photograph made directly to the subject of the interview, film, videotape, or photograph are in violation of these guidelines and will not be honored.”⁸

These policies bar NYU faculty from speaking to journalists without institutional permission and thus function as a prior restraint on faculty speech. NYU has muzzled its faculty.

⁴ *Id.*

⁵ *Id.*

⁶ NYU LANGONE HEALTH, INTERVIEW & FILMING POLICIES, <https://nyulangone.org/media-contacts/interview-filming-policies> (“Requests for permission to conduct an interview, film, videotape, or photograph must be made at least five (5) business days before proposed interview, filming, videotaping, or photographing. In the case of breaking news where a five (5) day lead time is not feasible, requests will be considered on a case-by-case basis.”).

⁷ *Id.* (error in original).

⁸ *Id.*

We recognize that NYU Grossman School of Medicine is a private institution, and is not bound to honor the rights secured by the First Amendment.⁹ But practices that require one to obtain permission before speaking are “offensive—not only to the values protected by the First Amendment, but to the very notion of a free society.” *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002). This is especially so when the requirement and accompanying threat of punishment appear intended to chill speech of intense public concern involving matters of life and death at the onset of a global pandemic. Restrictions on medical personnel speaking out may even inadvertently threaten broader public health by inhibiting or delaying the release of vital information about the virus, its effects and transmissibility, and potential treatments.¹⁰

We understand that NYU has an interest in assisting its faculty in responding to media inquiries, allowing doctors to focus their attention on responding to the unfolding crisis. However, the interests of NYU and its faculty in communicating with the public may not always be aligned, and it is important that faculty be able to criticize or raise concerns about their own institutions.

FIRE is not alone in expressing concerns about gag orders imposed upon doctors in our nation’s hospitals like the one now imposed by NYU. In an open letter to the American Hospital Association, consumer advocacy nonprofit organization Public Citizen and 53 organizations and individuals state the problem well:

It is critical that the public and local, state, and federal government officials fully comprehend the scope of shortages of personal protective equipment, mechanical ventilators, intensive care unit beds, and other medical supplies so that appropriate steps can be taken to mitigate shortages of these essential medical resources, appropriately and fairly allocate limited resources, and thus protect the safety and welfare of health care workers and patients alike.

Attempts to cover up these shortages by muzzling health care workers who are on the front lines of fighting the COVID-19

⁹ NYU’s policy would likely be unconstitutional if imposed by a public university. Courts have consistently struck down such bans as violative of the First Amendment. *See, e.g., Harman v. City of New York*, 140 F. 3d 111, 116 (2d Cir. 1998) (striking down a policy requiring that “[a]ll contacts with the media regarding any policies or activities of the Agency” be referred to Media Relations); *Barrett v. Thomas*, 649 F.2d 1193, 1199 (5th Cir. 1981) (holding unconstitutional an overbroad employee speech policy). For further discussion of government employee speech bans, see *Protecting Sources and Whistleblowers: The First Amendment and Public Employees’ Right to Speak to the Media*, BRECHNER CTR. FOR FREEDOM OF INFORMATION, Oct. 7, 2019, <http://brechner.org/wp-content/uploads/2019/10/Public-employee-gag-orders-Brechner-issue-brief-as-published-10-7-19.pdf>.

¹⁰ *See, e.g., Rhea Mahbubani, A Wuhan doctor says Chinese officials silenced her coronavirus warnings in December, costing thousands their lives*, BUSINESS INSIDER (Mar. 15, 2020), <https://www.businessinsider.com/wuhan-doctor-chinese-sounded-alarm-coronavirus-outbreak-december-2020-3>.

pandemic are reprehensible and reckless and endanger public health.

Although such actions may be commonplace in countries with authoritarian regimes, they are not acceptable in the U.S.¹¹

To meet the challenge of this terrible time, FIRE urges you to rescind the threat of punishment against your faculty to ensure that the nation gains a clear understanding of their valiant work, the daunting challenges they now face, and how all of us may best help them.

Let your faculty and the press talk to each other. The public they both serve will benefit.

Sincerely,



Will Creeley
Senior Vice President of Legal and Public Advocacy
NYU Gallatin '03, NYU Law '06

¹¹ Letter from Public Citizen and 53 other signatories to Richard J. Pollack, President and Chief Executive Officer, American Hospital Association (Mar. 28, 2020), <https://www.citizen.org/wp-content/uploads/2514.pdf?eType=EmailBlastContent&eId=ef7a27a2-1754-405b-a974-241f2e728429>.