

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

Allegheny County

<i>For Prothonotary Use Only:</i>	TIME STAMP
Docket No:	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:	
<input checked="" type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons
<input type="checkbox"/> Transfer from Another Jurisdiction	<input type="checkbox"/> Declaration of Taking
<input type="checkbox"/> Petition	
Lead Plaintiff's Name: James Lyons-Weiler	Lead Defendant's Name: Allegheny County Board of Health
Are money damages requested? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Dollar Amount Requested: <input checked="" type="checkbox"/> within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: Joshua D. Bonn	
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

SECTION B

Nature of the Case: Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

<p>TORT (do not include Mass Tort)</p> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____ _____	<p>CONTRACT (do not include Judgments)</p> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ <input type="checkbox"/> Other: _____ _____	<p>CIVIL APPEALS</p> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input type="checkbox"/> Statutory Appeal: Other _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____ _____
<p>MASS TORT</p> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____ _____	<p>REAL PROPERTY</p> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____ _____	<p>MISCELLANEOUS</p> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input checked="" type="checkbox"/> Other: Sunshine Act _____ _____
<p>PROFESSIONAL LIABILITY</p> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____ _____		

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

COVER SHEET

Plaintiff(s) James Lyons-Weiler	Case Number : <input type="text"/> - <input type="text"/> - <input type="text"/>
	Type of pleading : Complaint
	Code and Classification : 020
	Filed on behalf of James Lyons-Weiler (Name of the filing party)
	<input checked="" type="checkbox"/> Counsel of Record <input type="checkbox"/> Individual, If Pro Se
Defendant(s) Vs Allegheny County Board of Health	Name, Address and Telephone Number : Joshua D. Bonn 200 North 3rd Street, 18th Fl P.O. Box 840 Harrisburg, PA 17108-0840
	Attorney's State ID : 93967
	Attorney's Firm ID : _____

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY PENNSYLVANIA**

JAMES LYONS-WEILER,	:	CIVIL DIVISION
Plaintiff	:	
	:	NO.
v.	:	
	:	
ALLEGHENY COUNTY BOARD	:	COMPLAINT IN EQUITY
OF HEALTH	:	UNDER THE SUNSHINE
Defendant	:	ACT

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following papers, you must take action within TWENTY (20) days after the Complaint and Notice are served by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. IF YOU CANNOT AFFORD TO HIRE A LAWYER, this office may be able to provide you with information about agencies that may offer legal service to eligible persons at a reduced fee or no fee.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
11th Floor Koppers Bldg.
436 Seventh Avenue, Pittsburgh, PA 15219
TELEPHONE 412-261-5555

AVISO

USTED HA SIDO DEMANDADO EN LA CORTE. Si usted desea defenderse de las quejas expuestas en las paginas siguientes, debe tomar accion dentro de veinte (20) dias a partir de la fecha en que recibio la demanda y el aviso. Usted debe presentar comparecencia esrita en persona o por abogado y presentar en la Corte por escrito sus defenas o sus objeciones a las demandas en su contra.

Se le avisa que si no se defiende, el caso puede proceder sin usted y la Corte puede decidir en su contra sin mas aviso o notificacion por cualquier dinero reclanda en la demanda o por cualquier otra queja o compensacion reclamado por el Demandante. USTED PUEDE PERDER DINERO, O PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI USTED NO TIENNE O NO CONOCE UN ABOGADO, VAYA O LLAME A LA OFICINA EN LA DIRECCION ESCRITA AGAJO PARA AVERIGUAR DONDE PUEDE OBTENER ASISTENCIA LEGAL.

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**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY PENNSYLVANIA**

JAMES LYONS-WEILER,	:	CIVIL DIVISION
Plaintiff	:	
	:	NO.
v.	:	
	:	
ALLEGHENY COUNTY BOARD	:	COMPLAINT IN EQUITY
OF HEALTH	:	UNDER THE SUNSHINE
Defendant	:	ACT

COMPLAINT

AND NOW, comes Plaintiff, James Lyons-Weiler, by and through his attorneys, Nauman, Smith, Shissler & Hall, LLP, and files the within Complaint, averring as follows,

1. Plaintiff, James Lyons-Weiler, is an adult individual who is a resident and taxpayer of Allegheny County, Pennsylvania.
2. Defendant, Allegheny County Board of Health (Board), is the governing board of the Allegheny County Health Department with an address at 542 Fourth Avenue, Pittsburgh, PA 15219.
3. The Board is an “agency” as that term is defined and used under the Sunshine Act of the Commonwealth of Pennsylvania, P.L. 729, No. 93, §1 et seq., 65 Pa. C.S.A. § 701, 703.
4. This Honorable Court has original jurisdiction over this matter pursuant to 65 Pa. C.S.A. § 715.
5. In adopting the Sunshine Act, the General Assembly stated that:

The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.

65 Pa. C.S.A. § 702.

6. The Sunshine Act requires that “[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public ...” 65 Pa. C.S.A. § 704.

7. The Sunshine Act requires the Board to “provide a reasonable opportunity at each advertised regular meeting” for residents or taxpayers of Allegheny County “to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.” 65 Pa. C.S.A. § 710.1.

8. At an advertised regular meeting on November 7, 2018, the Board enacted a resolution recommending that every child in Allegheny County, unless otherwise counseled by a physician, receive the HPV vaccine (HPV Vaccine Resolution). A true and correct copy of the HPV Vaccine Resolution is attached hereto as Exhibit “A.”

9. The Board’s enactment of the HPV Vaccine Resolution was an official action under the Sunshine Act.

10. The Board did not deliberate in public as required by Section 704 of the Sunshine Act before enacting the HPV Vaccine Resolution.

11. A video of the Board’s vote to enact the HPV Vaccine Resolution is available at <https://jameslyonsweiler.com/2018/11/07/after-threatening-forcible-removal-of-the-public-from-the-allegheny-county-courthouse-a-deaf-blind-and-dumb-allegheny-county-board-of-health-votes-for-a-non-binding-hpv-vaccine-recommendation/> (second video from 14:56-17:45).

12. Immediately prior to the Board’s vote to enact the HPV Vaccine Resolution, Board Chair Lee Harrison informed the Board that they had a resolution in their packet and entertained a motion to approve it.

13. The Board Chair did not read the text of the HPV Vaccine Resolution but instead stated that the resolution would recommend that every child in Allegheny County, unless otherwise counseled by a physician, receive the HPV vaccine.

14. A motion to approve the HPV Vaccine Resolution was made and seconded.

15. At that time, Lyons-Weiler requested a point-of-order, pursuant to 65 Pa. C.S.A. § 710.1(c), asking for the Board to provide the public with a reasonable opportunity to comment on the HPV Vaccine Resolution before the Board voted to enact it.

16. Board members would not let Lyons-Weiler speak, motioned to security in an intimidating manner and threatened to have him removed from the premises.

17. The motion to approve the HPV Vaccine Resolution was approved by a unanimous vote of the Board without any discussion.

18. It is believed and therefore averred that the Board members would not have had time to read the entire text of the HPV Vaccine Resolution in less than three minutes that elapsed from when they were presented with the resolution until they voted to approve the resolution.

19. It is believed and therefore averred that Board members would not have voted on the HPV Vaccine Resolution without discussion unless they had viewed and deliberated the resolution in private prior to the meeting.

20. The public, including Lyons-Weiler, did not have reasonable opportunity to make public comment on the Resolution as required by Section 710.1(c) of the Sunshine Act.

21. Prior to the advertised regular meeting on November 7, 2018, the Board posted an agenda listing certain items for vote. A true and correct copy of the agenda is attached hereto as Exhibit "B."

22. Upon information and belief, it is the regular practice of the Board to post items for vote on the agenda for advertised regular meetings.

23. The agenda for the November 7, 2018 meeting did not list a vote on the HPV Vaccine Resolution. Id.

24. Pursuant to Board policy posted on the Board's website, the Board requires that individuals who desire to make public comment to make a request to do so at least 24 hours in advance of the meeting. A true and correct copy of said policy is attached hereto as Exhibit "C" and is also available online at <http://www.alleghenycounty.us/Health-Department/Resources/About/Board-of-Health/Public-Meeting-Schedule.aspx> (last visited 12/5/18).

25. The Board did not disclose a copy the HPV Vaccine Resolution to members of the public prior to the meeting or voting to approve it.

26. Since the Board did not list HPV Vaccine Resolution on the agenda nor disclose a copy of the resolution to the public prior to the meeting, it would not have been possible for a member of the public to comply with the Board's policy to request to make public comment on the resolution at least 24 hours in advance of the meeting.

27. As a result of the aforementioned violations of the Sunshine Act, the HPV Vaccine Resolution is invalid, null, and void *ab initio*.

28. The public is harmed by a denial of the opportunity to make public comment and witness the deliberations before official action is taken by the Board because the Board's actions are highly influential to parents and School Districts in Allegheny County and the HPV Vaccine Resolution will be mistaken as a mandate that compels parents to vaccinate their children as a prerequisite to enroll in Allegheny County schools or will otherwise persuade parents to

vaccinate their children without informed consent or knowledge that vaccination may result in serious injury or death.

29. Such harm cannot be compensated by damages.

30. Immediate and irreparable harm will result if the HPV Vaccine Resolution is permitted to remain in effect absent public comment and deliberation.

31. Plaintiff is entitled to an award of reasonable costs and attorneys' fees incurred to bring this action pursuant to Section 714.1 of the Sunshine Act, which provides, "[i]f a court determines that an agency willfully or with wanton disregard violated a provision of this chapter, in whole or in part, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of fees and costs."

32. The Board's actions of not placing the vote for the HPV Vaccine Resolution on the agenda, refusing to allow public comment prior to the voting to enact the resolution, and failing to deliberate in public before enacting the resolution demonstrate that the Board willfully or with wanton disregard violated Sections 704 and 710.1 of the Sunshine Act.

33. The Sunshine Act vests this Honorable Court with the power to enforce the provisions of the Act by injunction or other remedy deemed appropriate by the Court. 65 Pa. C.S.A. § 715.

34. As set forth above, the Plaintiff's right to relief is clear.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to:

- a. declare and order that the Allegheny County Board of Health comply with the Sunshine Act by permitting public comment and by conducting deliberations in public before taking official action and by refraining from deliberating official actions in private;

- b. enjoin the HPV Vaccine Resolution and the vote taken on November 7, 2018 to approve the resolution until a judicial determination of the legality of the meeting on November 7, 2018 or any other meeting(s) at which the resolution was deliberated is reached;
- c. declare that HPV Vaccine Resolution and the vote taken on November 7, 2018 to approve it are invalid, null and void *ab initio*; and
- d. Plaintiff further requests that this Honorable Court award Plaintiff reasonable attorney's fees and costs of litigation, as permitted by 65 Pa. C.S.A. § 714.1, along with any other relief this Court deems just and proper.

Respectfully submitted,

NAUMAN, SMITH, SHISSLER & HALL, LLP

By: /s/ Joshua D. Bonn

Craig J. Staudenmaier, Esquire
Attorney I.D. #34996

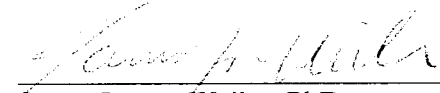
Joshua D. Bonn, Esquire
Attorney I.D. #93967

200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, Pennsylvania 17108-0840
Telephone: (717) 236-3010
Counsel for James Lyons-Weiler

Date: December 6, 2018

VERIFICATION

I, James Lyons-Weiler, verify that the facts set forth in the foregoing Motion for Preliminary Injunction are true and correct to the best of my knowledge, information and belief. I understand that my statements are made subject to 18 Pa. C.S. § 4904 providing for criminal penalties for unsworn falsification to authorities.



James Lyons-Weiler, PhD

Date: 12/6/2018

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Joshua D. Bonn, Esquire

Signature: /s/ Joshua D. Bonn
Joshua D. Bonn, Esquire
Supreme Court I.D. No. 93967
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17018-0840
Telephone: (717) 236-3010
Facsimile: (717) 234-1925

Counsel for James Lyons-Weiler



A RESOLUTION OF THE ALLEGHENY COUNTY BOARD OF HEALTH

WHEREAS, Human papillomavirus ("HPV") can cause serious health problems, including cervical cancer and numerous other types of cancer; and

WHEREAS, vaccination is a cornerstone of public health, preventing such diseases as meningitis, pneumonia, influenza, measles, diphtheria and whooping cough, among many others; and

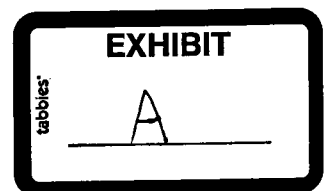
WHEREAS, Allegheny County has long been a hub of pioneering vaccine research, ranging from Jonas Salk's famous polio vaccine breakthrough in the 1950s to current cutting-edge research being done at institutions such as Children's Hospital of Pittsburgh and the University of Pittsburgh Center for Vaccine Research; and

WHEREAS, the Allegheny County Health Department ("ACHD") and the Board of Health have authority to "prevent or remove conditions which constitute a menace to public health," pursuant to the Local Health Administration Law, P.L. 1304, No. 315, §§ 10-11 (1951), as well as the authority to regulate the "prevention and control of communicable and non-communicable disease, including disease control in public and private schools," pursuant to the Disease Prevention and Control Law of 1955, P.L. 1510, No. 500, § 3 (1955); and

WHEREAS, the percentage of students with all immunizations required for school entry was 96.3% in December 2017, which is above the Center for Disease and Prevention's ("CDC") Healthy People 2020 goal of 95% coverage; and

WHEREAS, despite the fact that 96.3% of Allegheny County students have all immunizations required for school entry, the percentage of 14-17-year-old males and females in Allegheny County who have received at least one dose of HPV vaccine varies from under 30% in some areas to nearly 70% in others; and

WHEREAS, the ACHD began requiring county schools to report on HPV vaccination rates for the 2017-2018 school year; and



WHEREAS, research from leading health organizations¹ indicates that a physician's recommendation is the strongest predictor of whether an adolescent receives the HPV vaccine; and

WHEREAS, epidemiological data and clinical research considered by CDC's Advisory Committee on Immunization Practices ("ACIP") indicate that a two- or three-dose vaccine schedule for HPV is highly effective in preventing HPV infections; and

WHEREAS, the vaccine Gardasil 9, has been approved by the FDA for males and females aged 9 through 45 years to vaccinate against HPV; and

WHEREAS, ACIP recommends routine HPV vaccination at age 11 or 12 years, and vaccination for females through age 26 and males through age 21 who were not adequately vaccinated previously;

NOW, THEREFORE BE IT RESOLVED that the Board of Health hereby recommends that every child in Allegheny County, unless otherwise counseled by their physician, receive the HPV vaccine according to the following ACIP recommendations:¹

- a) For persons initiating vaccination before their 15th birthday, the recommended immunization schedule is 2 doses of HPV vaccine, with the second dose being administered 6-12 months after the first;
- b) For persons initiating vaccination on or after their 15th birthday, the recommended immunization schedule is 3 doses of HPV vaccine. The second dose should be administered 1-2 months after the first dose, and the third dose should be administered 6 months after the first dose.

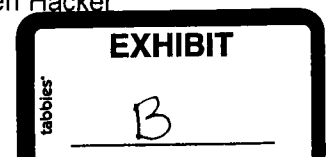
¹ See *National Association of County and City Health Officials ("NACCHO") Statement of Policy: Human Papillomavirus at 2-3* (citing research from the CDC's *Morbidity and Mortality Weekly Report*, 62(29), 591-5 (2013); Gargano, L.M., Herbert, N.L., Painter, J.E., Sales, J.M., Morfaw, C., Rask, K. et al. Impact of a physician recommendation and parental immunization attitudes on receipt or intention to receive adolescent vaccines. *Human Vaccines & Immunotherapeutics*, 9(12), 2627-33 (2013)).

AGENDA

ALLEGHENY COUNTY BOARD OF HEALTH MEETING

November 7, 2018

	<u>AGENDA ITEM</u>	<u>PURPOSE</u>	<u>PRESIDER/PRESENTER(S)</u>
	1. CALL TO ORDER		Dr. Lee Harrison
	2. APPROVAL OF MINUTES FROM SEPTEMBER 12, 2018	<u>VOTE</u>	Dr. Lee Harrison
	3. PUBLIC COMMENTS ON AGENDA ITEMS (3 MINUTE MAXIMUM PER SPEAKER)	Information	A. Kristine Sorensen, re: HPV Vaccine B. Marty Griffin, re: HPV Vaccine
	4. OLD BUSINESS		
	A. Environmental Health Programs Enforcement	Information	Mr. Jim Kelly
Update	B. Update on Live Well Allegheny and REACH Grant Award	Information	Dr. Karen Hacker
	5. NEW BUSINESS		
	A. ESPnet Grant	Information	Dr. Karen Hacker
	B. Vaccine Update	Information	Dr. Kristen Mertz
	C. Health In All Policies	Information	Ms. Hannah Hardy
	D. Environmental Health Fund Request: Portable Keyboards	<u>VOTE</u>	Mr. Jim Kelly
&	Protective Cases for Plumbing's iPads \$4,500		
	E. Environmental Health Fund Request: Hard to Recycle/Household Chemical Collections \$65,000	<u>VOTE</u>	Mr. Jim Kelly
	F. Clean Air Fund Request: Request of 5% of CAF to Support 2019 Operational	<u>VOTE</u>	Mr. Jim Kelly
Costs	G. Clean Air Fund Request: Request for Support for Internships to Aid in Air Quality Work	<u>VOTE</u>	Mr. Jim Kelly
	H. Request for Final Approval, re: Reid Vapor Pressure (RVP) for Summer Gasoline	<u>VOTE</u>	Mr. Jim Kelly
Rule	I. Request for Public Comment Period, re: New Source Review	<u>VOTE</u>	Mr. Jim Kelly
	J. 2019 Board of Health Meeting Dates	<u>VOTE</u>	Dr. Lee Harrison
	6. DIRECTOR'S REPORT	Information	Dr. Karen Hacker
	7. ANNOUNCEMENTS	Information	Dr. Karen Hacker



8. PUBLIC COMMENTS ON NON-
AGENDA ITEMS (3 MINUTE
MAXIMUM PER SPEAKER)

Information

A. Mayor Richard Lattanzi,
City of Clairton, re: Air
Quality and US Steel Coke
Works in Clairton

B. Mark Dixon, re: Air Quality
Complaints

9. ADJOURNMENT

VOTE

Dr. Lee Harrison



Board of Health Public Meetings

The next Allegheny County Board of Health meeting is scheduled for **Wednesday, January 9, 2019** at 12:30 pm in the Main Conference Room:

Allegheny County Health Department Administrative Offices
542 Fourth Ave.
Pittsburgh, PA 15219



[Google Directions](#)

All meetings are open to the public. Requests to speak at a meeting must be made 24 hours in advance of the meeting via our form or by phone at 412-687-ACHD (2243).

Speakers may address agenda and non-agenda items for a maximum of three minutes. Written copies of comments are welcome, but not required.

The Board will make every effort to accommodate all speaking requests for each meeting, but may need to defer comments to a subsequent meeting. Requests are handled in the order they are received.

Upcoming Meetings

Note: Tentative schedule, dates may change.

- January 9, 2019
- March 6, 2019

