

For Immediate Release

July 15, 2021

Michelle Fiscus, MD FAAP Response to Tennessee Department of Health's Justification of Termination

I apologize in advance for the length of this response, but there is much to say in response to TDH's recently released letter attempting to justify my termination. I became aware of the existence of the document today when it was shared with my husband by a member of the media.

First, let me say how disappointed I am in people whom I considered friends and mentors in the Department of Health. Dr. Tim Jones, who signed this letter to Commissioner Piercey, recruited me to the position of medical director of the Tennessee Immunization Program in 2018 and has been a trusted friend and colleague. He has confided in me throughout this pandemic response, and first let me know that my employment at TDH was threatened in late June 2021. I asked him at that time, in a meeting with my direct supervisor, Dr. John Dunn, on what grounds I was to be terminated and he replied, "None, as far as I'm concerned" and told me he would continue to "fight" for me to remain at TDH. In the moment, I told Drs. Jones and Dunn that I would resign before I would allow them to terminate me.

Over the next few weeks, both Dr. Dunn and Dr. Jones voiced their continued support for me, with Dr. Dunn telling me repeatedly that I "belonged at TDH" and that he did not want me to leave. I repeatedly shared with Dr. Dunn that I would not remain at TDH, but that I hoped my departure would be on my timeline rather than that of the administration's. Dr. Dunn went to far as to text state Chief Operating Officer, Brandon Gibson, regarding the injustice he felt over the talks of my termination at the level of Governor's office. I asked Dr. Dunn if Chief Gibson responded to the text, to which he replied, "She 'hearted it'".

On Saturday, July 3rd I received an unexpected call from Dr. Jones on my personal cell phone. Dr. Jones asked if I was at home because he wanted to "drop something by the house." I assumed it was a letter ending my employment, but Dr. Jones said, rather sheepishly, that he was bring by scones that his wife, Jill, had baked for me. "...and an orchid." I asked Dr. Jones if he was also bringing a letter with him and he sounded surprised that I asked. He responded, "No. I just want you to know you're not the only one lying awake at night staring at the ceiling over this." I told him I was out of town, he said, "good" and we ended the call. On Wednesday, July 7th, when I returned to the office, the plate of scones and the orchid were on my desk (I have since given the orchid to one of my former employees rather than bring it home) as well as the Amazon envelope containing the dog muzzle. I sent Dr. Jones a text thanking him for the scones and the orchid and asked if he also sent the muzzle. He said he did not. This does not seem to be behavior consistent with that of an individual who would write this letter of justification that was dated just two days later.

On July 12th at 0617 Dr. Dunn sent me the following text: "Good morning Shelley. I think all their timelines and decision points are said he [sic] sure you have everything you need and one [sic] today." I called Dr. Dunn because his text was unclear and he stated that I should connect with Tim (Jones) sometime that day and that I should make sure "you have everything you need". Shortly after this, Tim Jones called me on my personal cell phone and said, "You will be getting an invite for a meeting today at 3:30pm. I probably won't be alone. Let me know if you would like to talk before then." "What would we talk about?", I asked. Tim replied, "Well, if you want to give me anything." I replied, "Oh, no. Thanks."

Just prior to 3:30 I went up to see the Deputy Commissioner, who has been a dear friend in the Department. I found Dr. Jones pacing in the hallway, clearly distressed. His back was to me and I said, “are you *pacing*???” but did not wait for a reply. As I have previously stated, Dr. Jones met with me and a member of the human resources department at 3:30pm, stated he was sorry to have to have the meeting, and provided me the choice of resignation or the “expiration of my executive service”. Dr. Jones appeared somewhat surprised with my choice to be terminated.

I will address the content of the letter point by point:

On multiple occasions during the 2020-2021 COVID response, Dr. Fiscus has failed to maintain satisfactory and harmonious relationships among her team. In February 2021, CEDEP leadership and TDH Human Resources received multiple complaints from program staff regarding her management style, treatment of employees, and poor program morale. Dr. Dunn met with five senior team members who expressed consistent complaints related to management of the program by Dr. Fiscus during the COVID response. He had several coaching sessions with Dr. Fiscus, with minimal improvement in the situation noted. Two of her most senior leaders have subsequently resigned.

My annual reviews from my four years at TDH refute these allegations.

From my annual review for the period of 10/1/2019-9/30/2020, written by Dr. John Dunn and approved by Dr. Tim Jones:

“Dr. Fiscus has consistently exceeded expectations during this evaluation period. Her leadership in running the program activities has been exceptional. Many of the program staff have been on AWS yet they are meeting program objectives and deliverables.” End of cycle outcome rating: Outstanding

“Dr. Fiscus has selflessly focused on the needs of her team and not [sic] her own professional development plan. Her attention to team dynamics and staffing have been outstanding during this rating period. She is providing opportunities to her staff to step into leadership roles. Dr. Fiscus has consistently [sic] exceeded expectations in regards to management of HR issues and balancing the additional workload related to C19.” End of cycle outcome rating: Outstanding

From my interim evaluations from 12/01/2020 – 6/30/2021, written by Dr. John Dunn (changes in HR policy no longer required Dr. Tim Jones’ approval):

“The vaccine team and Dr. Fiscus have been under tremendous stress with attrition being noted. Dr. Fiscus is working closely with her team to provide growth and development opportunities while balancing the workload of COVID vaccine.”

The two employees referenced who have resigned have completed exit interviews with senior leaders outside of my program. Their comments were shared with Dr. Dunn and did not indicate that their resignations were due to my leadership. One of the two employees accepted an opportunity with a global health organization, which was their aspiration. Both I consider to be good friends and are still in frequent contact with me.

On March 7, 2021, Dr. Dunn and I met with Dr. Fiscus and another departmental physician to mediate complaints against Dr. Fiscus of disrespectful treatment and ineffective management. The meeting terminated with a refusal of both parties to communicate constructively, and with a refusal by the other physician to work further on the VPDIP team. Dr. Fiscus was coached on professionalism and teamwork.

This has been a pandemic of historic proportions and a COVID-19 vaccine roll-out that required that I, as well as members of my team, work extraordinary hours for months on end. It was stressful and, at times, there were disagreements. The physician referenced above reached out to Dr. Jones because she was concerned about my ability to continue to work at the pace I was working and hoped Dr. Jones might be able to assist me with delegating responsibilities. I was never “coached on professionalism” although I was coached on teamwork and the need to work on my ability to delegate responsibility to others. The physician referenced above sent a text to me on Monday, July 12, after learning of my termination. It read (shared with permission):

“What you may not know from our interactions is that I truly believe you are the greatest treasure TDH had. This is complete and utter [expletive] and I am incredibly proud of you, the work you’ve done, and your response to this situation. Stay strong and keep up the good fight!”

Dating back to December 2020, the vaccine planning team required intervention by CEDEP leadership to address inefficient use of team resources, including poor inter-program communication regarding vaccine distribution. Repeated failures by Dr. Fiscus to appropriately delegate to others resulted in repetitive, long, and inefficient meetings. These meetings took already busy colleagues away from other tasks.

Again, annual reviews refute these allegations. The statewide roll-out of multiple new vaccines using new means and methods developed by the federal government that must be adapted to a local environment is complex and extremely challenging. It did take time to determine the most efficient and effective means for accomplishing this goal, which I accomplished with excellence.

From my annual review for the period of 10/1/2019-9/30/2020, written by Dr. John Dunn and approved by Dr. Tim Jones:

“Dr. Fiscus has been a strong leader for the VPD team and has been an integral piece of the COVID pandemic response. Her leadership and efforts in multiple areas have been critical.”

“Dr. Fiscus has exceeded expectations for this work outcome [Ensure that reports of vaccine preventable diseases are responded to rapidly and thoroughly]. Her efforts to maintain programmatic [sic] activities have been notable. She has been a key contributor and leader for the C19 response. Her work in balancing the upcoming flu and C19 vaccine planning has been excellent. End of cycle outcome rating: Advanced

“Dr. Fiscus has done an outstanding job representing TDH and CEDEP. Her work has far exceeded expectations in regards to outreach [sic] to stakeholder groups and collaborators in the C19 response.... I greatly appreciate her leadership and teamwork. End of cycle outcome rating: Outstanding

Over the past three months Dr. Fiscus requested to give a new non-profit organization TDH funding to support VPDIP activities. This organization was founded and led by Dr. Fiscus, had no Executive Director or other employees, and had no other substantive source of funding. Providing funds to such an entity would be poor judgement and a substantial conflict of interest.

When I joined the Immunization Program I looked to see what the state's immunization coalition had been doing and found Tennessee was one of only two states in the southeast that did not have a statewide coalition.

As evidenced by my 2019 job plan:

Last Modified By : Timothy Jones

02/05/2019 5:08PM

Work Outcome Statement 3

Work Outcome Statement :

Ensure continued operation and quality improvement of the Tennessee Immunization Program

Action Steps :

1. Ensure all CDC Cooperative Agreement applications and reports are completed and submitted according to Division policy and CDC guidelines.
2. Ensure monthly review of program expenditures/revenues. Discuss plans to remedy any budget shortfalls or reductions that arise through the performance period with Supervisor.
3. Ensure the completion and timely submission of annual influenza pre-book and monthly 317 spend plans according to CDC guidelines and deadlines.
4. Identify stakeholders and convene the first meeting of the Immunize Tennessee coalition by June 1, 2019.

- Supports Goal: Governor's Priority - Health and Welfare

End of Cycle Outcome Rating: Outstanding

Weight: 25%

Interim 1 Employee Comments: All CDC-required applications and reports are completed and submitted ahead of deadlines. Program expenditures are reviewed throughout the month. We are working with FHW's fiscal office to revise tracking of expenditures to that information is easier for program staff to interpret and act upon. We worked to use available funding to leverage an existing FHW contract with a PR agency to develop a pro-immuization media library and an RFP that was already well into the process to develop a media campaign that will launch in May 2019. The influenza pre-book was carried out seamlessly,

including FluMist again for the first time in a few years. 317 spend plans are always completed and submitted on time and with accuracy. Seeing the lack of a state immuniation coalition, I have worked with program staff and stakeholders to create one. The first meeting of the ImmunizeTN coalition is set for April 5 with more than 20 initial key stakeholders from across the state planning to attend.

The first meeting of ImmunizeTN was convened in April, with subsequent meetings in May, July, and September. Attendance has been robust. A governance structure was created, as well as committees, bylaws, mission and vision statements, a social media page, and a coalition logo. The

coalition is ready to begin recruiting community partners to share the message.

Outcome Rating Justification: Shelley is doing an outstanding job continuously improving the quality of the program. The organizational structure has been modified to streamline activities. Our Hep A response activities are a national model of effectiveness under the constraints of local epidemiology. All grants and reports are on time and without error. Funding beyond standard federal allocations has been obtained for the first time in the program's history, allowing unique outreach activities. The statewide flu vaccine campaign and projects with other programs are functioning smoothly. Shelley has taken the initiative to start a statewide coalition which has been very successful.

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Last Modified By : Timothy Jones 02/05/2019 5:09PM

As you can see, leadership at TDH was well aware of my work to convene ImmunizeTN and celebrated those efforts. I convened stakeholders who went on to incorporate as a 501(c)3 non-profit organization. I am not on the board of directors, I am not on the payroll, and I serve in only an ex-officio advisory capacity to the board. The coalition has funding from the American Academy of Pediatrics and it is true that I was going to use CDC funding to support the work of the coalition to promote immunizations and provide education to healthcare providers and to the public. ImmunizeTN also has a social media presence which is used to spread pro-vaccine messaging and refute anti-vaccine mis- and disinformation. The CDC provides funding to state immunization programs to support this work and encourages states to provide financial support to their immunization coalitions. There is no conflict of interest as I do not benefit materially from the coalition. I would argue that the refusal of TDH to allow the use of CDC funds to support the work of this coalition further obstructs our ability to combat vaccine misinformation and overcome vaccine hesitancy.

I have released my annual evaluation, in their entirety, to the media, except for the 2018-2019 document, which is not in my possession. I have requested a copy of that document from TDH Human Resources without response. I request that this document be released immediately as it, too, supports my record as an exemplary employee of TDH.

In June, 2021, Dr. Fiscus communicated directly with a state university regarding the department producing COVID-vaccine reports for the institution. She did not notify or consult with supervisors, and the situation only became evident when departmental legal counsel received formal documents directly from the university memorializing the arrangement. The requested reports were not produced by the department.

As I do not have access to my state email account, I cannot be certain of the details of this situation. As the state-appointed liaison to all levels of education in Tennessee as it pertained to the COVID-19 response, I was the point contact for all colleges and universities in the state. To my recollection, the University of Tennessee asked if TDH would be able to provide data regarding the COVID-19 immunization coverage rate of UTK students and staff using data from the immunization registry. UTK provided a draft data use agreement which I forwarded to the TDH Office of General Counsel for their review and thoughts, but I do not recall receiving a response. There was no consultation with supervisors because I did not completely understand what was being requested by UTK and my first inquiry was to OGC for the review of the document.

In May, 2021, Dr. Fiscus broadly shared a letter regarding her own interpretation of state and federal law with external partners with respect to vaccinations and other medical treatment of minors. The letter should have been reviewed by both leadership and departmental legal counsel. However, Dr. Fiscus did not share the letter nor otherwise include any of these parties in the drafting process prior to sending it out. This action resulted in confusion of both law and policy for private providers, parents, and legislators.

The details of the Mature Minor Doctrine memo of May 10th have been shared broadly, as have the emails that led up to the release of that document. The memo is in the public record. There is no personal interpretation of the doctrine included in that memo—the language, with the exception of the introductory paragraph and the final line, “There is no federal, legal requirement for parent or caregiver consent for COVID-19, or any other, vaccine”, was taken verbatim from the document provided to me by Grant Mullins, TDH chief legal counsel. It was not customary for my communications with medical providers regarding the logistics and administration of COVID-19 vaccines to be reviewed, and several memos preceded this one without any discussion of the need for internal review. To state that I did not include legal counsel in the drafting process is clearly untrue, given Mr. Mullin’s email to me below which states, “this is forward facing so feel free to distribute to anyone.”

RE: mature minor



Grant Mullins
To: Michelle Fiscus
Cc: Paul Petersen

Reply Reply All Forward

Thu 5/6/2021 3:25 PM

You forwarded this message on 6/29/2021 11:31 AM.



Sure—Attached is the new summary of the doctrine that has just recently been posted to the website and is blessed by the Governor's office on the subject. This is forward facing so feel free to distribute to anyone.

--Grant

From: Michelle Fiscus <Michelle.Fiscus@tn.gov>
Sent: Thursday, May 6, 2021 3:15 PM
To: Grant Mullins <Grant.Mullins@tn.gov>
Cc: Paul Petersen <Paul.Petersen@tn.gov>
Subject: mature minor

Grant,

Could we get a generic statement that TN law allows children ages 14 and older to consent for vaccination? With Pfizer vaccine authorization coming next Wednesday, there will be lots of questions about this (surprised there haven't been more with the 16 and 17 year olds). We would like to make sure that a mature minor is not turned away from vaccination for lack of a guardian.

Thanks!
Shelley

Additionally, I would like to respond to statements released by the Governor's office.

Governor Lee's press secretary, Casey Black, stated the following in an email to the media on July 14, 2021:

Despite misleading reporting, the Department of Health has not halted the Vaccines for Children Program that provides information and vaccine access to Tennessee parents. This program covers immunizations including DTap, MMR, Polio, Chicken Pox and Hepatitis B and will continue to be successfully administered:

- *Tennessee ranked among the top 10 states for MMR vaccination coverage among kindergartners during the 2019-2020 school year*
- *95.3 percent of 2020-2021 kindergarten students in TN were fully immunized*
- *For more than a decade Tennessee has above 90 percent coverage of kindergarten students receiving childhood immunizations including DTap, MMR, Polio, Chicken Pox, Hepatitis B.*

The department is mindful of ensuring parents, not kids, are the intended audience for any outreach efforts regarding medical decisions for children and has simply re-evaluated some tactics like reminder postcards and follow-up communications. While childhood immunization rates temporarily dropped during the COVID-19 pandemic, we are already seeing vaccination rates rebound to pre-pandemic levels and will continue supporting parents who are working to get their families back on track.

I know a lot of misleading info is being shared, so don't hesitate to give me a call if you have any questions.

I've also copied Sarah Tanksley from the Dept. of Health here in case any follow up is needed on her end.

Thanks again,

Casey Black

Press Secretary | Office of the Governor

What is stated above is, indeed, factual; however, it is not relevant to the concern regarding TDH's moratorium on childhood vaccination events in schools, outreach to adolescents or their parents regarding COVID-19 vaccinations, or the directive to not publicize National Immunization Awareness Month in August. I have never stated that the Vaccines for Children Program had been halted. The VFC Program is an entitlement program that provides vaccines to children who are insured through TennCare or who are uninsured, and I would certainly hope that the work of that program has been unhindered. What **has** been halted is the partnerships between local health departments and outside agencies, such as schools, to provide vaccines **outside** of a local health department. What **has** been halted is any attempts to communicate to parents that their children are in need of critical routine immunizations during this back-to-school season. **That** is a significant change from the standard operations of the Department of Health and this decision creates barriers to immunization and will result in decreased vaccination coverage rates, especially among poor and minority populations. It is interesting that the talking points provided discuss the past accomplishments of the program, all of which were under the direction of myself and my immediate predecessor and have absolutely nothing to do with the current concerns regarding the actions taken by Dr. Piercey to appease a handful of outraged and uninformed legislators. The information I have shared is not "misleading", it is the response from the Governor's office that both dodges the questions posed and twists the narrative away from the subject at hand.