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Via email

Dixie Tooke-Rawlins
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Mark Sanders
Interim Dean, Louisiana Campus
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4408 Bon Aire Drive
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Re: Covid-19 Vaccination

Dear President Tooke-Rawlins & Interim Dean Sanders:

I have received multiple complaints regarding the policies and conduct of the Edward Via College of Osteopathic Medicine (“VCOM”) regarding COVID-19 vaccines. These complaints have included recordings of conversations with VCOM staff engaging in harassing and coercive conduct targeting students who have exercised their right to opt-out of receiving a COVID-19 vaccine. As the Chief Legal Officer of the State of Louisiana, I write to advise that mandating the COVID-19 Vaccine violate Louisiana and federal law and may jeopardize your “collaborative” relationship with the State of Louisiana. I will pursue any legal means available to ensure that the rights of Louisiana residents attending VCOM are protected from both overt and covert coercion, harassment, and retaliation by VCOM for asserting their legal rights.

I. Emergency Use Authorization Vaccines Cannot Be Mandated.

Mandating COVID-19 vaccines is inconsistent with state and federal law in addition to being premature. None of the COVID-19 vaccines currently available have full Biologics License Application (BLA) approval of the Food, Drug, and Administration (“FDA”). Instead of BLA approval, the vaccines only have Emergency Use Authorization (“EUA”).

EUA products are always optional.¹ This is because the EUA approval process is far shorter and less rigorous than the full FDA approval process, which typically takes at least three years. A sponsor for EUA need only show that the benefits of the product are much greater than the known risks.² EUA is expedited in light of an emergency and long-term risks are unknown.³ Congress understood these risks when it codified EUA's into the Food, Drug, and Cosmetic Act of 2004 ("the Act"). The Act increased the government's ability to swiftly respond to biologic threats in the event of an emergency but put in place safeguards protecting individual freedom.

Under the law, individuals receiving a product approved under EUA must be informed of "the option to accept or refuse administration of the product." In addition, the individual must be informed any "benefits and risks" associated with taking the product.⁴ By codifying every individual's "*option* to accept or refuse" the product or treatment, Congressional demonstrated its intent to protect individual choice and to prevent policies that might coerce individuals to take a new drug that lacks long-term safety data.

Even if the vaccines are effectively combating COVID-19, no amount of efficacy overrides the express language of the law which makes the product optional. Unless and until the FDA approves COVID-19 vaccines for BLA, VCOM cannot mandate students at the College to be vaccinated against COVID-19.

Fully aware of the differences between BLA and EUA vaccines, VCOM has misleadingly stated that "[t]his is the same as other immunizations a student must receive to enter medical school." But in reality, the COVID-19 vaccine is the only non-BLA vaccine that the school currently requires.

II. VCOM's Policy is Subject to Louisiana and Law, which also protects the right to opt-out without being subjected to harassment, retaliation, and coercion.

When VCOM elected to open a campus in Louisiana – and even more specifically, to partner in a cooperative endeavor with a State University, VCOM specifically subjected itself to Louisiana law. This is an unambiguous part of its collaborative agreements with ULM, so it is perplexing that students and their parents reported VCOM officials stating that *Virginia* law applies. I would therefore remind you that in the Student Services Agreement, VCOM unequivocally agrees: "This Agreement has been executed and shall be governed by and construed in accordance with the laws of the *State of Louisiana* without regard conflict of laws principles that would require the application of any other law."⁵ Moreover, in an addendum to that Student Services Agreement, VCOM again agrees that it "shall comply with all laws, orders, rules, fire codes, and regulations of federal, state, city, county, and municipal authorities, including without limitation, rules and policies of University of Louisiana at Monroe and its officials."⁶ In the same Addendum, VCOM reiterates that their Agreement with the University "shall be governed by and construed and enforced in accordance with the laws of the State of Louisiana, without regard to conflicts of law principles."⁷ Thus, to the extent

¹ 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III).

² See the FDA's article entitled "Emergency Use Authorization Vaccines Explained" <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained>

³ See the hyperlinked chart on the differences between licensed and unlicensed vaccines.

<https://vaccine.unchealthcare.org/science/vaccine-approval/whats-the-difference-between-fda-emergency-use-authorization-and-fda-approval/>

⁴ 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III).

⁵ See the Student Services and Support Fee Services Agreement for the Public/Private collaboration between VCOM and the University, p. 7 section IX. Governing Law.

⁶ See Addendum to the Student and Support Fee Services Agreement p. 5 no. 16

⁷ *Id.* p. 6 at no. 25

VCOM is representing to students, their parents, or their lawyers that Virginia law applies, this is false and misleading.

VCOM's "waiver" process also raises red flags because it appears to have been structured to deny waivers rather than provide any meaningful mechanism for notifying the school of a student's choice to opt-out. VCOM "waivers" for students with a medical or a "valid religious conflict" are under-inclusive, but also futile and meaningless as VCOM has crafted a system that appears to be entirely constructed to *override* any objection.

Students objecting for religious reasons, for example, must convince a "Covid Officer" and the Dean that their objection is "valid." What does that interrogation look like? One student reported that VCOM advised that it would subject the student's religious objection to review by its own hired pastor. Which religions, church tenets, or religious beliefs are blessed by VCOM as "valid?" With regard to medical exemptions, additional questions arise. Is VCOM overriding the student's own doctor with its own hired advisor, who has no doctor-patient relationship at all with the student? On what grounds (besides Virginia law) does VCOM provide for superceding *either* of these objections?

More importantly, under *Louisiana* law, immunizations at colleges and universities are *never* mandatory if a student presents a written statement from a physician that a medical exemption is warranted or if a student presents a written "dissent from the student."⁸

Beyond this statutory protections, the Louisiana Preservation of Religious Freedom Act ("LPRFA")⁹ and the First Amendment to the U.S. Constitution as interpreted most recently in light of COVID-19 restrictions provide additional protections against overreaching, discriminatory enforcement of the law at the expense of conscientious objectors to the vaccine and religious believers. LPRFA states that the government, including state institutions like the University (and VCOM through its contractual agreements), "shall not burden a person's exercise of religion, even if the burden results from a facially neutral rule or a rule of general applicability, unless it demonstrates that application of the burden to the person is both: (1) in furtherance of a compelling governmental interest [and] (2) the least restrictive means of furthering that compelling governmental interest."¹⁰

Louisiana law provides a student with the right to dissent from a mandatory vaccination, ensuring students will not be coerced and also ensuring they will not be excluded, retaliated against, or other discriminated against, which would render their right to refuse meaningless. VCOM, relatedly, may not adopt policies that are so retaliatory and coercive that they amount to an end-run around these protections afforded to students under state and federal law. Recognizing and providing *meaningful* exemptions for medical and religious objections is not only the right thing to do but it is required under both federal and Louisiana law.

III. Conclusion

I am committed to defending the students' right to make informed, *individualized* choices about whether to receive a COVID-19 vaccines.

Information is still being developed regarding adverse events. For example, recently reported data revealed a much higher incidence of myocarditis in young adults after the Moderna and Pfizer vaccines were administered, particularly young adult males. This caused the CDC to quickly order

⁸ La. Rev. Stat. § 17:170(E).

⁹ La. Rev. Stat. § 13:5231 *et seq.*

¹⁰ La. Rev. Stat. § 13:5233.

Pfizer and Moderna to change their Fact Sheets, disclosing this serious condition. A “Fact Sheet” is intended to facilitate informed consent (*i.e.*, informed *decision making*). A vaccine mandate, imposed on students with a futile or meaningless process for opting out, is entirely inconsistent with informed decision-making. As VCOM’s student body is primarily young adults *and* its primarily educational mission is medical *education*, it is baffling that it would be issuing a COVID-19 vaccine mandate and taking coercive and retaliatory action against dissenters, even while the facts show both short and long-term effects may be serious and even deadly for some people. Furthermore, it is extremely unfortunate and disturbing that school administrators would dismiss and supercede students’ declared objections to the vaccines. Surely some of these medical students already have more medical training than the lawyer with whom some of them spoke? It is of concern that this is occurring in medical academia, where intellectual curiosity and scientific skepticism should be encouraged and engaged, not dismissed and rebuked.

Had VCOM immediately ceased retaliating against these students and changed its policies, last Spring it might have avoided unnecessary litigation. However, it appears to have instead chosen to stay on this misguided path. This letter is to advise that I will pursue all legal means available to ensure that the fundamental liberties of Louisiana citizens are protected from unfair, discriminatory policies.

For Louisiana,



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