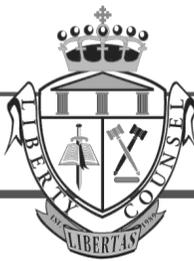


LIBERTY COUNSEL



DISTRICT OF COLUMBIA

109 Second Street NE
Pennsylvania, DC 20002
Tel 202-289-1776
Fax 407-875-0770
LC.org

FLORIDA

PO Box 540774
Orlando, FL 32854
Tel 407-875-1776
Fax 407-875-0770

VIRGINIA

PO Box 11108
Lynchburg, VA 24506
Tel 407-875-1776
Fax 407-875-0770
Liberty@LC.org

REPLY TO FLORIDA

September 14, 2021

VIA EMAIL ONLY

Glenn Guanowsky, Esquire
*Deputy General Counsel for
Litigation and Risk Management*
Lehigh Valley Health Network
Department of Legal Services
234 North 17th Street
Allentown, PA 18104
Glenn.Guanowsky@lvhn.org

RE: Lehigh Valley Health Network COVID vaccine mandates – denial of religious exemption requests

Dear Mr. Guanowsky:

Liberty Counsel is a national non-profit litigation, education and public policy organization with an emphasis on First Amendment liberties, and a particular focus on religious freedom and the sanctity of human life. Liberty Counsel has engaged in extensive litigation in the last year regarding civil rights violations ostensibly justified by “COVID-19,” and have had great success holding both government entities and private actors accountable. *See, e.g., Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021) (permanent injunction granted and \$1,350,000 in attorney’s fees awarded in *Harvest Rock Church, Inc. v. Newsom*, No. 2:20-cv-06414, C.D. Cal., May 17, 2021); *Harvest Rock Church, Inc. v. Newsom*, 141 S.Ct. 889 (2020); *Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341 (7th Cir. 2020); *Maryville Baptist Church, Inc. v. Beshear*, 957 F.3d 610 (6th Cir. 2020).

We are writing on behalf of student [REDACTED], and undoubtedly many others similarly situated who have received denials of their religious exemption requests from your office. [REDACTED] is pursuing a nursing degree and completing her clinicals with Lehigh Valley Health Network (“Lehigh”). I understand she is both a student and an employee. On September 1, 2021, [REDACTED] submitted a religious exemption request to Lehigh, but it was denied. [REDACTED] was encouraged by Lehigh “to reach out to Employee Health Services to learn more about the components in the offered vaccines,” and given a deadline of today (September 14, 2021), to receive the COVID shot and upload proof, or face removal from the program.

Liberty Counsel is reaching out on [REDACTED]’s behalf to correct Lehigh’s misunderstanding, and to give Lehigh the opportunity to reconsider its denial of [REDACTED]’s religious exemption request.

Simply put, the COVID-19 pandemic does not justify violations of fundamental individual, economic and religious liberties. These include the rights of personal autonomy and bodily integrity, and the right to accept or reject the various COVID vaccines based on religious belief. Lehigh may not condition participation in degree programs, employment, clinicals or continued enrollment on taking a COVID vaccine.

In addition to ██████, undoubtedly a number of staff and students within Lehigh community hold sincere religious or conscience-based personal beliefs against taking any vaccines, or taking those derived from aborted fetal cell lines, or taking those sold by companies that profit from the sale of vaccines and other products derived from abortion. Others are concerned regarding the potential long-term health effects of all of the current COVID vaccines.

██████'s religious exemption request from Lehigh's COVID shot directives sets forth some of her religious beliefs that preclude her from getting the shot, in applicable part:

My beliefs are that I may decline any medical intervention (this includes vaccinations) if my conscience and the Holy Spirit directs me to that choice. I am morally and ethically obligated to obey my conscience according to those teachings and what the Holy Spirit calls me to do.

...

My religious beliefs also teach and strictly uphold that I have the responsibility to refuse any medical product that is produced using aborted human cell lines. Which is correlated with all available Covid-19 vaccines. Each of the Covid 19 vaccinations were manufactured from or tested with fetal cell lines. These fetal cell lines originated from elective abortions. I have a sincere belief that condemns any practice or product that supports, benefits, defends, or is related to abortion.

...

So, it is my sincerely held religious belief that being vaccinated with any of the available Covid-19 vaccines, would be cooperating with abortion – the ending of an innocent human life – as well as taint the image of God created in me, go against the Holy Spirit speaking to me, and put my body, the vessel and temple of God, in danger. All this would constitute a sin against God which I would be held morally accountable for by God Himself.

Despite ██████'s legally sufficient (and factually accurate statement of belief), Lehigh denied ██████'s exemption request, in part on the stated basis that "Your objection as to what the vaccinations contain and/or its development is factually incorrect." This is improper because it is now common knowledge and incontrovertible that all three of the currently available COVID-19 vaccines are produced by, derived from, manufactured with, tested on, developed with, or otherwise connected to aborted fetal cell lines. There is no question about the accuracy of this determination.

The North Dakota Department of Health, in its literature for those considering one of the three, currently available COVID-19 vaccines, notes the following: "[t]he non-replicating viral vector vaccine produced by Johnson & Johnson **did require the use of fetal cell cultures, specifically PER.C6, in order to produce and manufacture the vaccine.**"¹

The Louisiana Department of Health likewise confirms that the Johnson & Johnson COVID-19

¹ See North Dakota Health, *COVID-19 Vaccines & Fetal Cell Lines* (Apr. 20, 2021), available at https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf (bold added).

vaccine, which used PER.C6 fetal cell line, “is a retinal cell line that was **isolated from a terminated fetus in 1985.**”²

The same is true of the Moderna and Pfizer/BioNTech mRNA vaccines. The Louisiana Department of Health’s publications again confirm that aborted fetal cells lines were used in the “proof of concept” phase of the development of their COVID-19 mRNA vaccines.³ The North Dakota Department of Health, in its handout literature on COVID-19 vaccines, notes: “[e]arly in the development of mRNA vaccine technology, **fetal cells were used for ‘proof of concept’ (to demonstrate how a cell could take up mRNA and produce the SARS-CoV-2 spike protein) or to characterize the SARS-CoV-2 spike protein.**”⁴

Thus, the currently-available COVID shots are different than any vaccines an employee has taken in the past that were NOT derived or developed using aborted fetal cells. While some people may hold sincere religious beliefs against taking ANY vaccines, many (indeed most) others only hold religious beliefs against accepting those vaccines derived from aborted fetal cell lines used in testing, development, or manufacturing. Others may have sought God’s guidance through prayer, and feel God’s conviction in their spirit that they must not get the COVID shots, regardless of whether they were tested with or developed from aborted fetal cell lines. Religious belief is very broad, and must be treated with respect by Lehigh. In addition, the denial of this religious exemption request violates the following:

I. Lehigh Policy Prohibits Discrimination On Basis of Religion

Lehigh must comply with its own applicable nondiscrimination policy (and with Pennsylvania and federal law):

Lehigh Valley Health Network is an equal opportunity employer. In accordance with, and where applicable, in addition to federal, state and local employment regulations, Lehigh Valley Health Network will provide employment opportunities to all persons without regard to race, color, **religion**, sex, ... or other such protected classes as may be defined by law. All personnel actions and programs will adhere to this policy.⁵

II. Pennsylvania Law Prohibits Religious Discrimination

A. The Pennsylvania Constitution Secures Religious Freedom and informs the Pennsylvania Human Relations Act

The Constitution of the State of Pennsylvania recognizes that “the general, great and essential principles of liberty and free government” include the following:

§ 1. Inherent rights of mankind.

² Louisiana Department of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 12, 2020), available at https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf (bold added).

³ Louisiana Department of Public Health, *You Have Questions, We Have Answers: COVID-19 Vaccine FAQ* (Dec. 12, 2020), available at https://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/immunizations/You_Have_Qs_COVID-19_Vaccine_FAQ.pdf.

⁴ See North Dakota Health, *COVID-19 Vaccines & Fetal Cell Lines* (Apr. 20, 2021), available at https://www.health.nd.gov/sites/www/files/documents/COVID%20Vaccine%20Page/COVID-19_Vaccine_Fetal_Cell_Handout.pdf (last visited Aug. 10, 2021) (emphasis added).

⁵ <https://www.lvhn.org/we-are-great-place-work>

All men are born equally free and independent, and have certain **inherent and inalienable rights**, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

...

§ 3. Religious freedom.

All men have a natural and inalienable right to worship Almighty God **according to the dictates of their own consciences**; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; **no human authority can, in any case whatever, control or interfere with the rights of conscience**, and no preference shall ever be given by law to any religious establishments or modes of worship.

B. The Pennsylvania Human Relations Act (PHRA) Prohibits Discrimination on the Basis of a Student’s (and Employees’) “Religious Creed”/Sincerely Held Religious Beliefs.

Lehigh is a “public accommodation” covered by the [Pennsylvania Human Relations Act \(PHRA\)](#)⁶ and may not engage in religious discrimination in provision of services or employment. The circumstances of a teaching hospital do not suffice to override the plain text of Pennsylvania non-discrimination law.

C. Pennsylvania Law Protects Every Individual’s Right to Refuse Unwanted Medical Treatment.

The State of Pennsylvania recognizes a long-established common law right to all individuals to refuse unwanted medical care:

The case law is clear that the right of a competent individual to refuse medical care or to have it withdrawn is a right under the common law doctrine of self-determination and a constitutional right of privacy. See *Union Pacific Railway Co. v. Botsford*, 141 U.S., 734 (1981) (the individual right to self-determination recognized at common law); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (right of privacy arises from the penumbras of specific guarantees in the bill of rights); *Roe v. Wade*, 410 U.S. 113 (1973) (right of privacy extended to a woman's decision to abort a pregnancy); *Foody v. Manchester Memorial Hospital*, 40 Conn.Sup. 127, 482 A.2d 713 (1981) (recognition of a semi-comatose patient's right to decide to terminate an artificial life sustaining treatment). A physician/patient relation is a consensual one and where a physician renders services in the absence of informed consent, there is an actionable tort under the theory of battery. See *Gray v. Grunnagle*, 423 Pa. 144, 223 A.2d 663 (1966).

Indeed, it has been held that there is a cause of action for battery where a physician or hospital has not honored a request of a competent individual to have support systems removed. See *Estate of Leach v. Shapiro*, 13 Ohio App.3d 393, 469 N.E.2d 1047 (1981).

See *In re Jane Doe*, 45 Pa. D. & C.3d 371 (Pa. Com. Pl. 1987).

III. Federal Law Prohibits Lehigh and any “Clinical Partners” From Engaging in Religious Discrimination

⁶ <https://www.phrc.pa.gov/Resources/Law-and-Legal/Pages/The-Pennsylvania-Human-Relations-Act.aspx>

A. Religious Exemptions Cannot be Denied Based on Disagreement or Disapproval by Other Religious Adherents or by Religious Beliefs of Lehigh Decisionmakers

While there may be some who consider COVID-19 vaccines to be acceptable as a matter of religious doctrine or belief, no employer in Pennsylvania – including the State – is permitted to determine which religious adherent has a correct understanding of religious doctrine or whether a health care worker’s sincerely held religious beliefs are shared broadly among members of her faith. As the Supreme Court has recognized, an employee’s “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981). *See also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) (same). Additionally, though membership in or adherence to the tenets of an organized religion is plainly sufficient to provide protection for an individual’s sincerely held religious beliefs, it is not a necessary precondition. *See Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 834 (1989) (“**Undoubtedly, membership in an organized religious denomination, especially one with a specific tenet forbidding members to work on Sunday, would simplify the problem of identifying sincerely held religious beliefs, but we reject the notion that to claim the protection [for sincerely held religious beliefs], one must be responding to the commands of a particular religious organization.**” (emphasis added)). *See also Office of Foreign Assets Control v. Voices in the Wilderness*, 329 F. Supp. 2d 71, 81 (D.D.C. 2004) (noting that the law provides protection for “sincerely held religious beliefs,” “not just tenets of organized religion”).

The law provides protection for sincerely held religious beliefs even when some members of the same religious organization, sect, or denomination disagree with the beliefs espoused by the individual. That some individuals may have sincerely held religious beliefs that differ from those espoused by health care providers with a sincere religious objection to the three currently available COVID-19 vaccines is irrelevant to whether those sincerely held religious beliefs are entitled to protection under Title VII. Indeed,

[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences . . . and the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.”

450 U.S. at 715-16 (emphasis added). Moreover, the denial of an employee’s request for a religious accommodation and exemption based upon the views of other individuals who do not share their sincere religious beliefs is unlawful. It is legally irrelevant what other individuals think or religiously believe. Once a student or employee has articulated her sincerely held religious objections to acceptance or receipt of the currently available COVID-19 vaccines, the proper inquiry is at its end. Because all three of the currently available COVID-19 vaccines are developed and produced from, tested with, researched on, or otherwise connected with the aborted fetal cell lines HEK-293 and PER.C6, the sincerely held religious beliefs of the employees we represent compel them to abstain from accepting or injecting any of these products into their body, regardless of the perceived benefit or rationale. Thus, while there may be some faith leaders and other adherents whose understanding of Scripture is different, and who may be willing to accept one of the three currently available COVID-19 vaccines despite their connection with aborted fetal cell lines, official recognition of a sincerely held religious objection to acceptance or receipt of a vaccine that is inextricably intertwined with aborted fetal cell lines is unnecessary to warrant protection.

B. Title VII of the Civil Rights Act Applies to employment, apprenticeships and training

programs (and to Lehigh and its “clinical agencies”).

Title VII prohibits every employer in Pennsylvania from discriminating against its employees on the basis of their sincerely held religious beliefs. *See* 42 U.S.C. §2000e-2(a) (“It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin”). *See also EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768 (2015) (same). And, **health care workers who are employed by the State of Pennsylvania are also afforded the same protection under Title VII.** *See* 42 U.S.C. §2000e(f); *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976) (noting that States are also required to abide by Title VII’s mandates in relation to their employees). Title VII defines “religion” as “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. §2000e(j). Put simply, an employer violates Title VII if it makes employment decisions related to an employee based solely upon that individual’s sincerely held religious beliefs. *Abercrombie & Fitch*, 575 U.S. at 773 (“**An employer may not make an applicant’s religious practices, confirmed or otherwise, a factor in employment decisions.**” (emphasis added)).

Indeed, Title VII of the Civil Rights Act, 42 U.S.C. §2000e-2(d), prohibits hospitals and other entities from discriminating on the basis of religion in terms of their **apprenticeships and training programs**. To deny dental, medical or nursing students a religious exemption from the mandated immunizations and to refuse to permit them to participate in the apprenticeship and clinical training programs is unlawful religious discrimination.

Lehigh is courting liability against itself in discouraging or refusing to provide religious exemptions. Indeed, hospitals and even nursing homes have been sued and lost over forced influenza vaccines. *See, e.g. EEOC v. Mission Hosp., Inc.*, No. 1:16-cv-118-MOC-DLH, 2017 WL 3392783 (W.D.N.C. Aug. 7, 2017) (resulting in permanent injunction against Mission Hospital from improperly denying religious exemptions from mandatory vaccinations and requiring the hospital to pay \$89,000 in damages); *United States v. Ozaukee Cnty.*, No 18-cv-343-pp (E.D. Wis. 2018) (resulting in a permanent injunction against the county for failure to grant religious exemptions from compulsory vaccinations and ordering county to pay \$18,000 in damages to the employee). In general, colleges and universities located in the State of Pennsylvania cannot blame any religious discrimination on its affiliated partners for the clinical programs, or on new mandates by Governor Wolf or President Biden. The law requires all such institutions to recognize and protect the students’ sincerely held religious beliefs.

Finally, the United States District Court for the Western District of Louisiana **just issued a Temporary Restraining Order** against the Edward Via College of Osteopathic Medicine in Louisiana (“VCOM”) for its burdensome religious “accommodations” to a COVID-19 vaccine mandate based upon a similar argument to that provided by the Lehigh Dentistry Department here. (A copy of the TRO issued in *Magliulo v. Edward Via College of Osteopathic Medicine*, No. 3:21-cv-2304, dkt. 19 (W.D. La. Aug. 17, 2021) is attached hereto as **EXHIBIT A** for your ready reference.) There, despite a Louisiana statute that provides students with similar protection to that provided for in the WLAD, VCOM informed the students that they would not be able to participate in or complete the experiential learning (*i.e.*, clinical components) requirements of their educational programs. (Exhibit A at 16-17.) **The Court issued a TRO against VCOM, holding that its refusal to allow students to participate in the clinical portion of their education was a violation of the statute.** The facts are similar here.

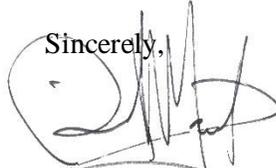
Also attached as “EXHIBIT B” is the federal TRO in favor of the student athletes attending Western Michigan University. Student athletes must be permitted to participate in athletics based on masking and testing, and cannot simply be denied. Testing and facial coverings are a less restrictive means of achieving a college’s interest than prohibiting students from participating in intercollegiate athletics.

The baseline for what constitutes a “reasonable accommodation” now (with the advent of the COVID shots) is what Lehigh considered a “reasonable accommodation” before the COVID shots. Lehigh continued operations in the “darkest days of the pandemic” by allowing self-monitoring, masking, and testing. Lehigh cannot now claim that “clinical agencies” prohibit the same reasonable accommodations.

I am therefore requesting written assurances from Lehigh that: (1) the Lehigh vaccine mandate has been withdrawn as to [REDACTED], and any other students who have made a religious or conscience objection to the COVID vaccine; and (2) Lehigh will not take any adverse enrollment action, or otherwise retaliate, against any student who objects to Lehigh’s vaccination mandate and requests an exemption.

If I do not receive these assurances by close of business on Friday, September 17, 2021, I will unfortunately conclude that only prompt litigation will prevent Lehigh from inflicting irreparable harm on the rights of students and staff, and we will take action to prevent irreparable harm.

Thank you for your consideration and prompt response.

Sincerely,

Richard L. Mast[†]

CC

Via Email

James N. Clymer^{††}

jim@clymerlaw.com

[†] Licensed in Virginia

^{††} Licensed in Pennsylvania