

LIBERTY COUNSEL



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REPLY TO FLORIDA

March 1, 2022

VIA EMAIL ONLY

XXX

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RE: Transplant Candidate [NAME] "On Hold" Status Due to COVID-19 Vaccination Requirement

Dear Ms. XXX, Ms. XXX and Dr. XXX:

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).

I. Background

We are writing on behalf of our client, [NAME], who was notified by the Transplant Team at the University of Michigan Health System (UMHS), that he was accepted as a Kidney Transplant candidate and his name was placed on the United Network for Organ Sharing (UNOS) national transplant waitlist. Following this notification, [NAME] has continued to make himself available for the labs, tests, and other requests made by UMHS.

In a letter dated February 1, 2022, UMHS advised [NAME]:

Effective 2/1/2022 you have been placed ON HOLD on the kidney transplant waiting list. You will continue to accrue wait time while listed on hold.

A recent change in transplant center policy requires all listed transplant patients to complete the vaccination series for COVID-19.

And further stated:

“You have 3 months to complete the COVID vaccination series or you will be removed from the transplant list.”

In a previous letter dated December 7, 2021 sent to all patients on the waiting list for transplant at the University of Michigan Transplant Center, [NAME] was advised of the COVID vaccination requirement “to be active on the waitlist at our Center, and to undergo transplant surgery.” This letter also included the Michigan Medicine Transplant Center COVID-19 Vaccination Requirement for Transplant Candidates on the Waitlist statement and Frequently Asked Questions (FAQs).

This FAQs portion specified,

Patients currently on our waiting list who are not vaccinated against COVID-19 have until February 1, 2022 to complete vaccination. As of February 1, 2022, patients who decline COVID-19 vaccination will be made inactive on the waiting list (“placed on hold”) until they complete the COVID vaccine sequence. In other words, unvaccinated individuals will not be eligible for organ offers and transplant surgery as of February 1, 2022.

The FAQs also addressed the issue of whether a transplant patient who had a prior Covid-19 infection would still be required to receive a COVID-19 vaccination providing, in part,

In general, COVID-19 infection provides lower rates of protection from future infection with COVID-19 than vaccination. To best protect our patients, we require vaccination regardless of previous COVID-19 infection.

Please consider this letter as [NAME]'s request for religious and medical exemptions to the COVID-19 vaccination requirement. 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 is no longer controvertible. There can be no reasonable debate regarding the accuracy of this statement. Consider the following sources:

- 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 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 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

There is irrefutable evidence that the COVID vaccines are associated with fetal tissue cell lines. [NAME] is a Christian who believes God is the creator of life and cannot accept a COVID vaccination. If you need a personal statement from [NAME] about his religious beliefs, please let us know.

A. UMHS, Alone, Determines Whether [NAME] Will Be *On Hold* or *Deactivated* Due To The COVID Vaccination Requirement.

During the evaluation process, UMHS provided [NAME] with information on two organizations which assist hospitals and patients with the organ transplantation and procurement

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).

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 (bold added).

process: (i) *the Organ Procurement and Transplantation Network (OPTN)* and (ii) *the United Network for Organ Sharing (UNOS)*. Generally, the relationship between OPTN and UNOS is described as follows:

The nation's transplant system, the OPTN, is *managed* under federal contract by the United Network for Organ Sharing (UNOS), which is a non-profit charitable organization. The OPTN helps create and define organ sharing policies that make the best use of donated organs. ... All transplant programs and organ procurement organizations throughout the country are OPTN members and are obligated to follow the policies the OPTN creates for allocating organs.

Based upon the UMHS's communications with [NAME] and the OPTN and UNOS policies, it is clear that UMHS, alone, made the decision to change [NAME] from active to "*On Hold*" on the Kidney Transplant Waiting List.

UMHS's role in this decision is confirmed on the UNOS's *Transplant Living* website which advises patients that *hospitals* (not OPTN or UNOS) determine whether organ transplant recipients have to receive a COVID vaccine:

Is a COVID-19 vaccination required in order to receive an organ transplant?

Each transplant hospital makes its own decisions about listing candidates according to the hospital best clinical judgments, including whether or not any specific vaccination is part of their eligibility criteria. If you have any questions about listing criteria at your transplant hospital, we encourage you to contact the hospital directly. (emphasis added).

See <https://www.transplantliving.org/covid/>.

By requiring that [NAME] take a COVID-19 vaccination, UMHS made a life-or-death decision for [NAME] – without his consent.

B. UMHS's Requirement That [NAME] Receive A COVID Vaccine Violates the American Society of Transplantation's Ethics Statement.

Hospitals and transplant centers have reached no consensus on whether COVID vaccines must be taken by transplant recipients. In fact, many simply test for COVID. "Transplant providers and centers serve as *gatekeepers* to transplant waiting lists." *The Limits of Refusal: An Ethical Review of Solid Organ Transplantation and Vaccine Hesitancy*, Olivia Kates et al, Am J Transplant 2021; 21:2637-2645 (12/23/20) (emphasis added).⁵ Any hospital removing/deactivating recipients or donors for not taking a COVID vaccine runs afoul of the "Ethics Statement" espoused by the American Society of Transplantation (AST) expressly acknowledges the significance of the religious beliefs of candidates/recipients, as set forth below:

⁵ AJT is the official journal of the American Society of Transplantation and the American Society of Transplant Surgeons.

AUTONOMY

- *All participants in solid organ transplantation (donors, recipients, providers, investigators) should be respected as autonomous individuals *whose interests may not always coincide*.
- *Healthcare providers, *recipients (or candidates)* and living donors bring personal, philosophical, and religious beliefs that should be respected.
- *All participants must be fully informed of the risks and benefits of all procedures.

Ethics Statement - Revised and Approved by the AST Board of Directors on December 6, 2012 (emphasis added).

In fact, “[t]he Department of Health and Human Services acknowledges that “it and the Organ Procurement and Transplant Network have not ‘set any specific guidance on vaccination status for organ recipients nor living organ donors.’” *Id.* In sum, *the federal government has not imposed a COVID mandate on organ transplant recipients, but UMHS has.*

Hospitals forcing organ recipients and donors to violate sincerely held religious beliefs to receive/donate an organ vitiates the respect owed to the participants in the transplantation process. Certainly, for a hospital to impose such an outcome, the patient would be entitled to, at a minimum, ample objective data demonstrating the inevitable benefit to him. Because “[v]accine refusal differs by racial, ethnic, socioeconomic, or *religious groups*... and ... is, so far, uncommon, *the difference in transplant outcomes between vaccinated and non-vaccinated recipients would have to be substantial to justify excluding vaccine-refusing patients on the basis of overall utility.*” *The Limits of Refusal: An Ethical Review of Solid Organ Transplantation and Vaccine Hesitancy*, Olivia Kates et al, *Am J Transplant* 2021; 21:2637, 2641 (emphasis added). *Despite his religious objections to the COVID vaccines and the novelty of the COVID vaccines and the unforeseeable impact on [NAME] because of his health conditions, UMHS failed to provide [NAME] with data showing that the anticipated outcome for unvaccinated recipients is vastly inferior to vaccinated ones.* Yet, UMHS wanted him to concede to receive the COVID vaccine with no objective proof it would benefit him. Notably, in *The Limits of Refusal*, chief among the reasons for *not* mandating COVID vaccines for organ recipients is their novelty:

For new vaccines, such as those currently in development for SARS-CoV-2, a *demonstrated track record of safety and efficacy must be established* before these vaccines will be included in ACIP [Advisory Committee on Immunization Practices] recommendations. In addition, as with other new agents, safety and efficacy should be demonstrated for patients with end-stage organ dysfunction or organ transplants, and any theoretical risk for immunostimulation must be considered prior to updating vaccine requirements specific to transplant candidates.

Id. at 2641 (emphasis added). UMHS failed to provide [NAME] with links to COVID data involving transplant candidates, so he has no information with which to make an informed decision.

Given these pressing ethical and moral issues, it is not surprising that “[a]s of late April, [2021] *fewer than 7 percent of transplant programs nationwide reported inactivating patients who were unvaccinated or partially vaccinated against COVID-19*, according to research by Dr. Krista Lentine, a nephrologist at the Saint Louis University School of Medicine.”

www.bangordailynews.com/2021/10/11/news/nation/organ-centers-tell-transplant-patients-to-get-a-covid-shot-or-move-down-on-waitlist (last viewed on 12/24/21) (emphasis added). Yet, UHMS has chosen a punitive road for some of its sickest patients.

C. COVID Patients Have Received Transplants Since 2020.

In the transplantation community, it is generally understood that “[t]he goal is to treat the most medically urgent cases first.” See *Covid Spawns ‘Completely New Category’ of Organ Transplants*. <https://khn.org/news/article/covid-spawns-new-category-of-organ-transplants> (last accessed on 12/10/21). Some experts believe that COVID positive transplant patients will “be a completely new category of transplant patients.” *Id.* (quoting Dr. Tae Song, surgical director of the lung transplant program at the University of Chicago Medical Center.) “The rules don’t necessarily bump Covid patients to the front of the line, experts said, but many become sick enough to require immediate care.” *Id.* *It is curious that recent COVID survivors (whose need for transplants resulted from COVID infection) received donated organs, yet candidates who refuse COVID vaccines, but have no active COVID infections, cannot.* For example, “Mark Buchanan of Roopville, [Georgia] received a double-lung transplant in October, nearly three months after Covid left him hospitalized and sedated, first on a ventilator and then on the last-resort treatment known as ECMO.” *Id.* “While Emory University Hospital in Atlanta, ... advised [his wife] to withdraw treatment and allow him to die peacefully,” Buchanan eventually received a double-lung transplant at University of Florida Shands Hospital on October 28, 2020. *Id.*⁶ In a similar fashion, Al Brown, contracted COVID in May 2020 following which he was diagnosed with congestive heart failure. *Id.* After he continued to deteriorate, in October 2020, he received a heart transplant. *Id.*

D. Studies at Johns Hopkins University Demonstrate That Organ Transplant Recipients Benefit Less from COVID Vaccines.

Johns Hopkins has published two studies in the March and May issues of JAMA in 2021, acknowledging that organ transplant recipients receive fewer benefits from COVID vaccines than others. See <https://www.hopkinsmedicine.org/news/newsroom/news-releases/organ-transplant-recipients-remain-vulnerable-to-covid-19-even-after-second-vaccine-dose>. “[T]he number of transplant recipients in our second study whose antibody levels reached high enough levels to ward off a SARS-CoV-2 infection was still well below what’s typically seen in people with healthy immune systems,” says study lead author Brian Boyarsky, M.D, a surgery resident at the Johns Hopkins University School of Medicine. *Id.* (emphasis added). https://www.hopkinsmedicine.org/surgery/education/residency/general-surgery/meet_our_residents/pgy-3.html

In a recent article entitled, *Doctors ‘Push the Limit’ with Organ Transplants as Covid-19 Extends Waitlists*, <https://www.mlive.com/public-interest/2021/06/doctors-push-the-limit-with-organ-transplants-as-covid-19-extends-wait-lists.html> (updated September 29, 2021)(last visited 12/10/21), Dr. Marwan Aboujioud, chair of Henry Ford Health System’s Transplant Institute was interviewed about how, in the face of COVID, “[the] transplant community start[ed] pushing the limit.” *Id.* The article explained Dr. Aboujioud’s meaning of the use of the phrase “push the limits”:

By ‘pushing the limit,’ he means using organs from donors who are labeled “increased risk” because of one of a number of factors, including they were old,

⁶ In fact, Shands performed the most lung transplants “of any hospital in the country” in 2021. *Id.*

obese, had diabetes, a history of drug use or were previously incarcerated, among other factors. Instead of simply ruling them out, Aboujioud said there's value in pairing those increased-risk donors with patients who have higher risk of dying on the wait list.

He used the example of a 70-year-old on dialysis with liver or kidney disease and a 25% chance of dying on the waiting list. If there's a 3-5% chance of an 'increased risk' organ not working, and a 1% chance of the patient developing treatable Hepatitis C, is it worth the risk to try the transplant instead of waiting for a healthier donor to come along?

'At 70 years old on dialysis, your risk of dying is really high,' he said. 'Now if I give you a kidney with increased risk, it might not last you 15 years but the statistics say you won't live 15 years ... When I say I can give you five years off dialysis, would you take it? I surely would.'

'It's an area the transplant community has battled with for some time. When I say increased risk, it's for us to manage the risk. We won't give you a bad organ but we'll match a donor with a recipient and redefine expectations.'

Id. (emphasis supplied).

Consistent with the pragmatism espoused by Dr. Aboujioud, a moral and ethical approach to organ transplantation in the COVID era would be to allow organ recipients to determine, with medical advice, the level of risk he/she is willing to take to remain on the active waitlist while remaining free from coerced, novel vaccinations. By compelling the COVID-19 vaccine, UMHS denies its transplant patients *the right to make an informed decision about medical care.*

II. LEGAL ANALYSIS

A. **The Federal Emergency Use Authorization Statute Prohibits Mandating That [NAME] Take the Currently Available COVID-19 Vaccines.**

As noted above, UMHS did *not* expressly require that [NAME] receive one of the COVID vaccines to be approved and placed on the active Kidney Transplant Waiting List despite the fact that the COVID vaccines were available. It was not until the December 7, 2021 letter that [NAME] was instructed to be vaccinated to remain active on the waiting list. However, the Emergency Use Authorization statute prohibits mandating COVID vaccines. In fact, the United States Code provides,

[S]ubject to the provisions of this section, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an "emergency use"). 21 U.S.C. § 360bbb-3(a)(1) (emphasis added) [hereinafter EUA Statute].

As an essential part of the explicit statutory conditions for emergency use authorization (EUA), the EUA Statute mandates that all individuals to whom the EUA product may be administered be given the option to accept or refuse administration of the product. *See* 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (requiring that "individual to whom the product is administered are

informed . . . *of the option to accept or refuse administration of the product*” (emphasis added)). The currently available COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer-BioNTech) are authorized for use under the EUA Statute, alone; they have no general approval under federal law. Thus, the administration of such vaccines *cannot be mandatory* under the plain text of the EUA Statute.

The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines acknowledge that individuals *cannot be compelled* to accept or receive the vaccine. See Moderna, *Fact Sheet for Recipients and Caregivers* (June 24, 2021)⁷ (“*It is your choice to receive or not to receive the Moderna COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.*” (emphasis added)); Pfizer-BioNTech, *Fact Sheet for Recipients and Caregivers* (June 25, 2021)⁸ (“*It is your choice to receive or not to receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.*” (emphasis added)); Janssen, *Fact Sheet for Recipients and Caregivers* (July 8, 2021)⁹ (“*It is your choice to receive or not to receive the Janssen COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.*” (emphasis added)).

The recent FDA biologics license application (BLA) approval of the product COMIRNATY, COVID-19 Vaccine, mRNA, manufactured by BioNTech Manufacturing GmbH,¹⁰ *does not change the EUA status* of the Pfizer-BioNTech COVID-19 Vaccine that has been available under EUA since December 23, 2020. According to the EUA extension letter issued by the FDA to Pfizer on August 23, 2021,¹¹ the Pfizer-BioNTech COVID-19 Vaccine and BioNTech’s COMIRNATY, COVID-19 Vaccine, mRNA “are legally distinct” products.¹² Moreover, the now “approved” COMIRNATY vaccine cannot be distributed for use until BioNTech submits “final container samples of the product in final containers together with protocols showing results of all applicable tests” and BioNTech receives “a notification of release from the Director, Center for Biologics Evaluation and Research (CBER).”¹³

B. UM’s Policies Prohibit Religious Discrimination.

(1) UM’s Nondiscrimination Policy Protects Religious Beliefs.

UM’s *general* nondiscrimination policy forbids discrimination “and harassment on the basis of race, color, national origin, age, marital status, disability, *religion*, height, weight or veteran’s status . . .”. <https://spg.umich.edu/policy/201.89-1> (last accessed on 2/9/2022) (emphasis added).¹⁴ Thus, students, faculty, and staff are protected from religious discrimination.

⁷ <https://www.fda.gov/media/144638/download>

⁸ <https://www.fda.gov/media/144414/download>

⁹ <https://www.fda.gov/media/146305/download>

¹⁰ BLA Approval Letter for COMIRNATY, COVID-19 Vaccine, mRNA (Aug. 23, 2021), <https://www.fda.gov/media/151710/download>

¹¹ EUA Extension Letter for Pfizer-BioNTech COVID 19 Vaccine (Jan. 3, 2022); <https://www.fda.gov/media/150386/download>.

¹² See EUA Extension Letter, *supra* note 2, at 2 n.8.

¹³ See BLA Approval Letter, *supra* note 1, at 2.

¹⁴ “Sex, sexual orientation, gender identity, and gender expression” are protected under a separate policy. <https://spg.umich.edu/policy/201.89-1>.

Michigan Medicine complies with applicable federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability or sex.

Michigan Medicine does not exclude people or treat them differently because of race, color, national origin, age, disability or sex.

<https://www.michigananswers.com/nondiscrimination-notice/> (last accessed on 2/9/2022).

(2) UM’s COVID -19 Vaccination Policy Permits Exemptions to the Vaccine.

We understand that, in 2021, UM’s COVID-19 Vaccination Policy requested “students, faculty, and staff on the three U-M campuses, including Michigan Medicine” to advise UM of their vaccination or exemption status no later than Aug. 30, 2021. <https://mmheadlines.org/2021/07/required-covid-19-vaccine-faqs/>. Thus, UM permits students, faculty, and staff to take the vaccine or seek an exemption. Yet, UHMS violates UM’s general policies.

[NAME] would like to know why UM students, faculty, and staff are afforded religious freedoms whereas UMHS’s patients are not?

C. Michigan Law Prohibits Religious Discrimination.¹⁵

(1) Religious Discrimination Is Illegal in Michigan.

Michigan’s Elliott-Larsen Civil Rights Act (“the Elliott-Larsen Act”) prohibits discrimination by places of public accommodation, which include a healthcare facility (M.C.L.A. §37.2301). Healthcare facilities cannot discriminate in the provision of services, goods, or access based on religion and other enumerated grounds. (M.C.L.A. §37.2302(a)). A claim under the Elliot-Larsen Act requires proof of four element: “(1) discrimination based on a protected characteristic (2) by a person, (3) resulting in the denial of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations (4) of a place of public accommodation.” See *Haynes v. Neshewat*, 477 Mich. 29, 35, 729 N.W.2d 488, 492 (Mich. 2007). A plaintiff suing under the Elliott-Larsen Act may seek damages and injunctive relief and an award attorney’s fees if the court deems it appropriate. M.C.L.A. §§37.2801(1) and 37.2802.¹⁶

¹⁵ The January 13, 2022, Supreme Court ruling in the CMS mandate case, *Xavier Becerra, Sec. of Health and Human Services vs. Louisiana*, 595 US – (January 13, 2022), does not undermine [NAME]’s legal position. In the *CMS* case, the Court highlighted that “[t]he [HHS] rule requires providers to offer medical and religious exemptions”. *Id.* at p. 3. Thus, the *CMS* case cannot be used to posit that all healthcare workers must be vaccinated. The ruling specifically refers to religious and medical exemptions. Additionally, the HHS interim rule at issue specifically references that the religious and medical exemptions available to employees under Title VII of the Civil Rights Act, the Americans With Disabilities Act, the Pregnancy Discrimination Act, and other federal and state laws under which exemptions to the COVID-19 vaccinations could be sought.

¹⁶ M.C.L.A. §37.2302 states: “Except where prohibited by law, a person shall not (a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation because of **religion**, race, color, national origin, age, sex, or marital status.” (Emphasis added). M.C.L.A. §37.2301 defines “[p]lace of public accommodation” includes a “**health**, or transportation facility, or institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.” (Emphasis added).

In *Haynes*, a black physician sued the hospital at which he had privileges and its chief of staff for alleged discriminatory treatment. In remanding the case to the trial court to allow the plaintiff to pursue his claim, the Michigan Supreme Court affirmed that *defendant hospital* was, in fact, a place of public accommodation which would be sued under the Elliott-Larsen Act. *Id.* at 37.

(2) UMHS's Decision To Require [NAME] to Receive the COVID Vaccination Fails to Consider His Religious Objection.

UMHS's December 7 and February 1 communications to [NAME] demonstrate that it believes the COVID-19 vaccination requirement is for his benefit. In the face of a religious accommodation request, under the Elliott-Larsen Act, UMHS must "articulate a legitimate, nondiscriminatory reason for its action." *Allen v. Highlands Hosp. Corp.*, 545 F.3d 387, 394 (6th Cir. 2008). UMHS must discuss religious objections and seek to find an accommodation. *Ali v. Advance AM. Cash Advance Ctrs., Inc.*, 110 F. Supp. 3d 754, (E.D. Mich. 2015). Mandating that patients receive a vaccine that is directly contrary to religious beliefs when faculty, staff, and students have been exempted does not satisfy Michigan law.

D. Other Hospitals Have Granted Religious and Medical Exemptions to Organ Transplant Candidates and Donors.

Several of our clients have received religious accommodation requests at Vanderbilt for the transplant candidates, caregivers, and donors. Earlier this month, Vanderbilt notified a client that:

- (1) her "waitlist status has been reactivated;"
- (2) she would "receive a written notice from her providers to that effect in a communication dated today;" and
- (3) her "accumulated waitlist time at the time of her reactivation will include the time during which her waitlist status was inactive. As such, [her] accumulated waitlist time is wholly unaffected by the time she spent in inactive status."

Additionally, by Tennessee statute, all business (including hospitals) are forbidden from discriminating against residents due to COVID-19 vaccination status. This means that all hospitals in Tennessee must consider and grant religious and medical exemption requests.

Numerous other hospitals are performing transplant procedures without requiring the COVID-19 vaccination. For example, in *Florida, Tampa General, Jackson Health System, and Memorial Healthcare System* do not require organ recipients to receive a COVID vaccine. <https://nbciami.com/news/local/covid-19-vaccine-not-part-of-criteria-for-organ-transplant-at-jackson-health/2568131/>. Also, by Executive Order, Texas Governor Abbott has prohibited any discrimination on COVID-19 vaccination status. Thus, all facilities in Texas are barred from mandating the COVID-19 vaccination if a patient lodges a medical, religious or philosophical objection. *UT Southwestern, Houston Methodist and Baylor University Medical Center* have allowed transplant recipients to receive exemptions from the COVID-19 vaccines. We know transplant recipients and donors who have had procedures at *John C. McDonald Regional Transplant Center (Willis Knighten Hospital)* in Louisiana after receiving exemptions from the COVID-19 vaccinations. Finally, *Henry Ford Transplant Center* in Detroit, Michigan allows transplant candidates and donors to be exempt from the COVID vaccination requirement. Certainly, these renowned institutions are not

violating the standard of care required for their transplant recipients and donors. If these fine institutions can perform transplant procedures while respecting the religious beliefs and legal rights of their patients, donors, and caregivers, should UMHS offer less to [NAME]?

E. [NAME] Also Seeks A Medical Exemption To The COVID-19 Vaccination.

At his physician's request, [NAME] has lost twenty pounds. His kidney function has improved above UM's transplant cutoff. His lungs have been compromised by infantile asthma, COPD, and scarred by Microscopic Polyangitis (MPA). He cannot risk a pulmonary embolism, and there are VAERS reports on all three vaccines for blood clots. Also, [NAME] has concerns about the potential damages the vaccines could cause his kidneys. Specifically, he is concerned by a Phase IV clinical study involving men over the age of 60. <https://www.ehealthme.com/vs/moderna-covid-vaccine/acute-kidney-failure>. For the foregoing reasons, [NAME] requests a medical exemption from having to receive a COVID-19 vaccination.

CONCLUSION

In summary, we request written assurances from UMHS no later than Monday, March 15, 2022:

- (1) That UMHS grants [NAME]'s requests for religious and medical exemptions from the COVID-19 vaccination requirement;
- (2) That [NAME] receive written notification from UMHS that his active status and position on the *Kidney Transplant Waiting List* has been restored;
- (3) That UMHS will not take any adverse action, or otherwise retaliate, against [NAME] based on his sincerely held religious beliefs or request for an exemption from receiving any of the COVID vaccines.

Thank you for your consideration and prompt response.

Sincerely,

ATTORNEY NAME*