

SEPTEMBER 16, 2021

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NOTICE TO CEASE AND DESIST

ALL MANDATORY COVID-19 MITIGATION POLICIES, MANDATED TESTING/SCREENING AND MANDATED COVID VACCINATIONS FOR ALL EMPLOYEES

CEO LLOYD DEAN, KEVIN LOFTON, LINDA HUNT and VP/ HR MAUREEN STERBACH~

This letter serves as formal notice to immediately *cease and desist* all actions related to mandating Covid Vaccinations, Covid-19 Mitigation, Self-Screening and Reporting Policies and Procedures as conditions of employment with DIGNITY/COMMONSPIRIT HEALTH. As detailed below, many of the requirements contained in your policies are in direct violation of State and Federal Law. You are on notice that if the dispute escalates or results in a constructive or retaliatory firing, a lawsuit may be brought against you.

This letter is designed to inform you of the law regarding, among other things, the constitutional privacy rights implications of mandating measures that treat employees differently according to their vaccination status.

I. MASKS, TERMINATIONS, AND OTHER "MITIGATION" REQUIREMENTS MUST NOT BE TIED TO COVID-19 VACCINATION STATUS

The United States Constitution, as well as the State of Arizona's Constitution, protect the fundamental rights of we the people. These rights are inherent, guaranteed by the mere fact that we were born human. According to the US and Arizona Constitution, all persons are born equally free, and have certain natural, inherent, and inalienable rights, among which are the rights of enjoying and defending life and liberty, of equal protection under the law, equal privileges, and immunities to all citizens, of acquiring, possessing, and protecting property, and of seeking and obtaining safety and happiness. U.S. Const. Bill of Rights; AZ. Const. art. II, § 13

The discharge or disciplining of an employee for refusing to either wear a mask, be required to endure a meaningless "covid-19" test in the form of PCR nasal swabs, or to take the COVID-19 Vaccine—all of which are approved for emergency use only and therefore *may not be mandated*, is a violation of that employee's due process right to life and liberty under the Fourteenth Amendment, his/her right to equal protection under that amendment, and an invasion of the zone of privacy and right to bodily integrity which have been held to emanate from various Bill of Rights amendments, including the first, fourth, fifth and ninth. The constitutionally protected zone of privacy and right to bodily integrity have been articulated in many Supreme Court cases, including *Mapp v. Ohio*, 367 U.S. 643 (1961), *Griswold v. State of Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); and *Roe v. Wade*, 410 US 113 (1973).

Most relevant for the purpose of this letter, in *Whalen v. Roe*, 429 U.S. 589, 599-600, 97 S.Ct. 869, 876-77, 51 L.Ed.2d 64 (1977), the U.S. Supreme Court clarified that the constitutional right of privacy extends to two types of interests:

"One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions." *Whalen*, 429 U.S. at 599-600 (footnotes omitted).

Further, the constitutional right to informational privacy has been recognized in the Ninth Circuit (and implicitly upheld by the Supreme Court). See, *Nelson v. Nat'l Aeronautics and Space Admin.*, 530 F.3d 865 (9th Cir. 2008), *petition for rehearing en banc denied*, 568 F.3d 1028 (9th Cir. 2009), *rev'd on other grounds*, 562 U.S. 134, 131 S.Ct. 746, 178 L.Ed.2d 667 (2011).

Additionally, as a State Employer, DIGNITY/COMMONSPIRIT HEALTH is subject to the unconstitutional conditions doctrine. Under this doctrine, where a constitutional right "functions to preserve

spheres of autonomy . . . the [u]nconstitutional conditions doctrine protects that sphere by preventing governmental end-runs around the barriers to direct commands." *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2005) quoting, Kathleen M. Sullivan, *Unconstitutional Conditions*, 450 F.3d 867 102 Harv. L.Rev. 1413, 1492 (1989). "[T]he government may not condition public employment upon compliance with

unconstitutional conditions." (emphasis added) *Shuman v. City of Philadelphia*, 470 F.Supp. 449, 457 (D. PA. 1979). "The unconstitutional conditions doctrine vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up." *Id.*

You are hereby notified that DIGNITY/COMMONSPIRIT HEALTH Covid policies and information violate the privacy interests articulated above, and present unconstitutional conditions, including, but not limited to the following statements made by DIGNITY/COMMONSPIRIT HEALTH to all employees:

- As provided in Point #26 of CommonSpirit ehhr.service-now.com: "Do I need to wear a mask if I am approved for an exemption for either vaccine (flu or Covid)?" STATEMENT: "Yes. At this time we are still requiring masking..." Also provided in Point #6 subset: "All facilities", "unvaccinated or incompletely vaccinated workers must observe all other infection control requirements, including masking are not exempted from testing requirements..." By forcing unvaccinated employees to wear masks (on pain of discipline or dismissal), DIGNITY/COMMONSPIRIT HEALTH is essentially making visible that specific employees unvaccinated status. This violates the interest in "avoiding disclosure of personal matters" set forth in *Whalen vs. Roe*, and the right to informational privacy articulated in *Nelson*, where the Ninth Circuit held that a workplace could not require employees to submit to an in-depth background check, because certain questions therein violated the employee's rights to informational privacy.
- As provided in point #34 of CommonSpirit ehhr.service-now.com; "Will CommonSpirit complete and sign an Employer acceptance of financial responsibility/legal liability waiver in connection with the Covid-19 vaccine requirement?" Subset: "NO. CommonSpirit Health, throughout the pandemic, has relied on CDC guidance and complied with applicable Federal and State laws, with respect to Covid-19 vaccine administration, distribution, reporting and tracking." With the Covid-19 vaccine in EUA status, any employee has a right to Informed Consent and personal choice in regard to taking any vaccine, it is an ethical and illegal violation of personal rights and full lack of responsibility on DIGNITY/COMMONSPIRIT HEALTH's part to not provide financial responsibility for mandating an experimental product as a condition of employment, without due acceptance of responsibility.
- As listed in the updated 9/8/2021 CommonSpirit Covid19- Vaccine FAQs, General Questions: #1 "Which vaccines are available?" CS Statement: "The FDA has approved the Covid-19 vaccine manufactured by Pfizer for ages 16 and over.'...'. CommonSpirit Health Employees, physicians, Advanced Practice Providers, and volunteers must be fully vaccinated by Nov.1, 2021 with any available Covid-19 vaccine recognized by the CDC." Also Question #41 states "The FDA has approved the Covid-19 vaccine manufactured by Pfizer for ages 16 and over..." The FDA has not approved the Pfizer vaccine and the FDA states that the two vaccines are "legally distinct". Comirnaty is not available in distribution in the United States. This deceptive statement is a complete falsehood, since the EUA has been reissued for the Pfizer vaccine.
- As listed in the updated 9/8/2021 CommonSpirit Covid19- Vaccine FAQs, General Questions: #3 "Is the Covid-19 vaccine safe?" CS Statement: "According to the CDC and FDA, Covid-19 vaccines are safe and effective. The vaccines have been tested thoroughly through expansive clinical trials and are authorized or fully approved by the FDA..." This statement is a blatant lie on every level. Not only has the FDA not approved any of the currently available "vaccines", but they have also not gone through the years of normal clinical trials that are needed for full transparency to the public, in fact, there are now significant, factual reports of deaths from all the current EUA vaccines, as well as hundreds of thousands of adverse reactions.
- As listed in the updated 9/8/2021 CommonSpirit Covid19- Vaccine FAQs, General Questions: #30 "Are Covid-19 vaccines required for CommonSpirit employees?" CS Statement: "CommonSpirit Health will make the Covid-19 vaccine a condition of employment for all employees, including employees who work at non-care site, those who do not provide direct patient care and those who work remotely....verification of full vaccination is required by November 1, 2021". This mandated vaccination policy that DIGNITY/COMMONSPIRIT HEALTH now requires an employee to provide proof of vaccinated status as a condition of employment. An EUA "vaccine" or any vaccine, or medical

procedure cannot be mandated against a person's will. Where there is risk, there must be a choice. While DIGNITY/COMMONSPIRIT HEALTH may state these conditions as a "business necessity," the fact remains that mandating a vaccine violates the privacy right in *Nelson*. It also implicates the unconstitutional conditions doctrine set forth in *United States v. Scott*, 450 F.3d 863, 866, among others, because it is essentially an end-run around the employees' constitutional right to privacy.

- As listed in the updated 9/8/2021 CommonSpirit Covid19- Vaccine FAQs, General Questions: #3 "*Will there be exceptions for medical or religious reasons?*" Dignity Health Administrative Policy Clinical Policy and Procedure- 1. A. "POLICY: It is the policy of Dignity Health not to exclude, deny benefits to, or otherwise discriminate against any person, including patients and visitors, on the grounds of race, color, national origin, disability, age, sex, sexual orientation or gender identity and expression, in admission to, participation in, or receipt of the services and benefits of any of its programs or activities..." "PROCEDURE: Dignity Health is committed to providing equal access to its programs and activities to all individuals in accordance with applicable provisions of the ADA, ...etc". One key word and Act left out of the Dignity/CommonSpirit Procedure statement is Title VII of the Civil Rights Act of 1964 and the word "religion".

REFERENCES: "Title VII of the Civil Rights Act of 1964 and Civil Rights Act of 1991(stated in law): *Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.* 1991 (b) COMPENSATORY AND PUNITIVE DAMAGES. -

"(1) DETERMINATION OF PUNITIVE DAMAGES. - A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the Federally protected rights of an aggrieved individual.

- In addition, DIGNITY/COMMONSPIRIT HEALTH is directly and substantively violating its own faith-based policy, found in 'ETHICAL AND RELIGIOUS DIRECTIVES (ERD) AND STATEMENT OF COMMON VALUE' the two documents that provide ethical guidance, as well as the constitutional rights and laws set forth to protect employees in the workplace. In Covid-19 Vaccine FAQ's, #17- "*Are there any moral or ethical concerns related to the way the vaccines are developed?*" CS Statement: "The Vatican, the U.S. Conference of Catholic Bishops (USCCB), the Catholic Health Association, and other respected sources have found all Covid-19 vaccines to be morally acceptable. The Pfizer and Moderna Covid-19 vaccines do not use any cell line derived from abortions in their production process but did use them in the testing process. The Janssen/Johnson and Johnson vaccines uses cells lines in both the testing and production process. The Vatican and USCCB are clear it is morally acceptable to use all the effective, approved Covid-19 vaccines given the importance of protecting individuals and others, and how far removed the ABORTIONS are from the vaccine production. Since the J&J vaccine is more closely tied to cells lines from ABORTION, Catholics should choose an alternative vaccine if one is available to them, Unfortunately, practical considerations make this unlikely to be possible for the foreseeable future. Consistent with other Catholic health systems and the Vatican's statement that "all vaccinations recognized as clinically safe and effective can be used in good conscience, CommonSpirit Health will be utilizing all safe and effective vaccines to prevent further harm from Covid-19."
 - E.R.D states in the Fourth Directive- "***An issue in care for the Beginning of Life: Catholic health care ministry is rooted in a commitment to respect the sacredness of every human life from the moment of conception to death***". DIGNITY/COMMONSPIRIT HEALTH completely obliterates its foundational and ethical values and violates the tenets that the health system was founded on and "promotes" to this day. Using, promoting, and mandating vaccines that use aborted fetal cells in its testing and/or manufacturing is a direct assault on the sanctity of life.
- It is illegal for the president of the United States under the U.S. Constitution to mandate a "law", executive order, or any other type of directive on the people of the United States. It is outside the scope of his authority under our firmly seated Constitution.
- All of the above measures also violate the right to equal protection as granted by the Fourteenth Amendment, by treating employees differently according to their medical status.

A: COVID19 Vaccines may not be mandated as conditions of employment

The requirements set forth in the Covid Mitigation Policies may result in a hostile work environment for unvaccinated employees. In any event, they are coercive, and may act as "de facto" vaccination mandates, which are unlawful.

Any compulsory Covid-19 vaccination requirement is a violation of Federal and state law. I urge DIGNITY/Commonspirit Health to advise all employees that they have the right to either refuse or to take any COVID-19 vaccine *and that refusal will not result in any requirement to follow unnecessary and discriminatory “mitigation” measures, including and up to termination*. Any other action is contrary to law as demonstrated below.

1. Covid-19 Vaccines are experimental

COVID-19 vaccines are not approved by the Federal Food and Drug Administration (“FDA”). The COVID-19 vaccines are only approved under an Emergency Use Authorization (“EUA”), for investigational use only. COVID-19 vaccines lack requisite studies and are not approved medical treatments. The FDA’s guidance on EUA medical products requires the FDA to “ensure that recipients are informed to the extent practicable given the applicable circumstances ... That they have the option to accept or refuse the EUA product ...” 21 U.S. Code Section 360bbb-3(e)(1)(A) of the Federal Food, Drug, and Cosmetic Act (the “FD&C Act”) vests the Secretary of Health and Human Services with the permissive authority to grant EUAs providing those appropriate conditions designed to ensure that individuals to whom the product is administered are informed, and in pertinent part:

1. that the Secretary has authorized the emergency use of the product;
2. of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and
3. of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

The right to avoid the imposition of human experimentation is fundamental, rooted in the Nuremberg Code of 1947, has been ratified by the 1964 Declaration of Helsinki, and further codified in the United States Code of Federal Regulations. In addition to the United States regarding itself as bound by these provisions, these principles were adopted by the FDA in its regulations requiring the informed consent of human subjects for medical research. It is unlawful to conduct medical research, even in the case of an emergency, unless steps are taken to secure informed consent of all participants.

Any attempt to force anyone to take a COVID-19 vaccine is a violation of Federal law and the conditions under which the COVID-19 vaccine has been authorized for use. The law is clear, experimental medical treatment cannot be mandated. Thus, 21 U.S. Code § 360bbb-3, Section (e)(1)(A) does not permit DIGNITY/Commonspirit Health to *coerce* an employee to accept an unapproved vaccine on penalty of discipline or discharge, or other sanctions, including discriminatory treatment as set forth in the Policies.

Moreover, as DIGNITY/Commonspirit Health must be aware, the vaccines have only been shown to reduce symptoms of the recipient and not prevent infection or transmission. This is extremely important, because the argument for mandated vaccines is that they are necessary to protect society at large. There is no argument to be made that a competent person can be compelled to have a medical intervention “for the greater good” when such intervention has been shown to, at *most*, benefit the single recipient. However, even if society could be benefited in some way from mandated vaccination, the constitutional rights articulated in the Supreme Court cases cited above would prohibit it. These constitutional protections reaffirm basic human right to bodily autonomy, privacy, and the right to voluntary, informed consent.

Forced vaccination is not only unconstitutional and unethical, but it also violates the tenets fundamental to a free society. There is no pandemic exception to the law or the Constitution.

B: Masks may not be mandated as conditions of employment

The mandate for *any* individual to wear a mask against COVID-19 for employment violates federal law for the same reason that experimental vaccination mandates do: namely that all COVID-19 masks, whether surgical, N95 or other respirators, are authorized under EUA only. Again, EUA products are by definition experimental and thus require the right to refuse. *See, e.g. Doe #1 v. Rumsfeld*, 297 F.Supp.2d 119 (2003) (the U.S. military could not mandate EUA vaccines to soldiers).

C: PCR tests cannot be mandated as conditions of employment

The mandate for any individual to be forced to accept or adhere to a PCR test COVID-19 for employment violates Federal law for the same reason that experimental vaccination mandates do, namely that all PCR tests are authorized under EUA only. Again, EUA products are by definition experimental and thus require the right to refuse. See, e.g. Doe #1 v. Rumsfeld, 297 F.Supp.2d 119 (2003) (the U.S. military could not mandate EUA vaccines to soldiers). Subsequently, PCR tests have been proven to be ineffective and unreliable in providing true data on the existence of the Covid-19 “virus”.

II: The Arizona Whistleblower Act

As a State employer, DIGNITY/COMMONSPIRIT HEALTH is also advised that the Arizona Employment Protection Act (AEPA), Ariz. Rev. Stat. § 23-1501(3)(c)(ii) et seq., protects employees who speak up about employer acts. It prohibits retaliatory action against an employee for “refusing to commit an act that would violate State law.” Ariz. Rev. Stat. § 23-1501(3)(c)(i). Since, as set forth above, the policies set forth in DIGNITY/COMMONSPIRIT HEALTH Covid-19 policies, are unlawful, an employee’s unwillingness to follow them constitutes “refusing to participate in an unlawful act.” A successful litigant can obtain treble damages and attorney's fees in a Whistleblower action.

For all the above statements and facts, you are hereby on notice that if you illegally or irresponsibly mandate “mitigation” procedures and forced vaccinations as a condition of employment such as those set forth in the DIGNITY/COMMONSPIRIT HEALTH Covid policies, which violate constitutional protections, signatory below may have no choice but to take legal action. Legal action can and may place an additional fine of \$2,000,000 to be paid by you personally to each employee whose rights are violated by your illegal and unconstitutional mandates. We urge you to comply with the U.S. Constitution, Federal and State law and cease and desist these illegal requirements.

Sincerely,

Signature

Printed Name

COPY TO: Arizona Attorney General Mark Brnovich
2005 N Central Avenue, Phoenix, AZ 85004