

March 27, 2025

VIA EMAIL

Office of General Counsel
Children's Hospital of Michigan
Detroit Medical Center
c/o Mr. Archie Drake
Chief Executive Officer
Children's Hospital of Michigan
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c/o Dr. Mallory O'Niel, MD
Pediatric Otolaryngology
Children's Hospital of Michigan
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Re: [REDACTED] – *CONFIDENTIAL REQUEST FOR EXEMPTION*

We write on behalf of our clients, [REDACTED], and their minor child, [REDACTED] (collectively, “**the [REDACTED]**”), to request a religious accommodation to the vaccine requirement for [REDACTED]’s cochlear implant surgery. Through this letter, Mr. and Mrs. [REDACTED] submit their request for religious accommodation to the vaccination policy (“**the Policy**”).¹ For the reasons stated herein, the [REDACTED] qualify for religious accommodation. Children’s Hospital of Michigan (“**CHM**”) is a public hospital and must respect the family’s Constitutional rights. Further CHM must accommodate the family and, yet, CHM has failed to do so.

I. INTRODUCTION

[REDACTED] is currently eight months old. At birth, he failed all his newborn hearing screenings and on [REDACTED], at just five weeks old, was diagnosed with profound sensorineural hearing loss in both ears. After countless discussions with specialists in the field, as well as prayer and consultation with their spiritual leaders, the [REDACTED] decided to proceed with having [REDACTED] undergo cochlear implant surgery (“**the Procedure**”).

Specialist physicians informed the [REDACTED] that, as long as [REDACTED] receives the Procedure before his first birthday, he will most likely be able to catch up with other children in speech and language development. At present, [REDACTED] is already showing signs of impairment in both areas due to his profound hearing loss. Because his hearing loss is so severe, hearing aids would be ineffective and cochlear implants are his only option. Without the Procedure, [REDACTED] will never be able to hear sound and will be forced to rely solely on sign language. Thus, the consequences of not receiving the Procedure would be devastating. However, both the [REDACTED] and [REDACTED]’s speech pathologist are confident that, with the Procedure, [REDACTED] will catch up to his peers by the age of three or four.

The [REDACTED] spent months searching for the right physician and ultimately chose Dr.

¹ Attachment A.

Mallory O’Niel (“**Dr. O’Niel**”) at CHM. Dr. O’Niel initially informed the [REDACTED] that they could sign a waiver for CHM’s vaccination policy, which required [REDACTED] to be up to date on the pneumococcal vaccine (either PCV15 or PCV20) prior to the Procedure. Due to their sincerely held religious beliefs against vaccination, Mr. and Mrs. [REDACTED] opted to do so. Inexplicably, however, on February 27, 2025, Mrs. [REDACTED] received an email from Dr. O’Niel stating that the waiver was no longer an option and that [REDACTED] would need to receive the pneumococcal vaccine unless he had a documented medical exemption. The email further asserted that Mr. and Mrs. [REDACTED] could not consent for their son to “not receive vaccines” and, therefore, the hospital would not proceed with the surgery. As [REDACTED]’s parents and legal guardians, Mr. and Mrs. [REDACTED] have the right to consent to his surgery and are entitled to a religious accommodation from the hospital’s vaccination policy, as outlined herein.

II. THE [REDACTED] ARE ENTITLED TO A RELIGIOUS ACCOMODATION PURSUANT TO THE U.S. CONSTITUTION

As a public hospital, CHM is beholden to the First Amendment of the U.S. Constitution, which provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”² The Supreme Court recently reaffirmed that the Free Exercise Clause “does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’”³ Governmental infringement on religion that lacks general applicability or neutrality is subject to strict scrutiny review⁴ and, here, the Policy lacks both.

First, the Policy lacks general applicability because it permits a discretionary and individualized medical exemption scheme but, according to the email sent by Dr. O’Niel, it prohibits a similar mechanism for religious exemptions. Governmental infringement on religion lacks general applicability if it prohibits religious conduct while permitting the same conduct for secular reasons, thereby undermining the government’s asserted interests in a similar way.⁵ For instance, in *Church of Lukumi Babalu Aye v. City of Hialeah*, a city in Florida adopted several ordinances prohibiting animal sacrifice, a practice of the Santeria faith.⁶ The city claimed the ordinances were necessary in part to protect public health, which was “threatened by the disposal of animal carcasses in open public places.”⁷ However, the ordinances did not regulate hunters’ disposal of their kills or improper garbage disposal by restaurants, both of which posed a similar hazard to the asserted government interest.⁸ The Supreme Court concluded that this and other

² U.S. Const. amend. I.

³ *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (quoting *Employment Div. v. Smith*, 494 U.S. 872, 877 (1990)).

⁴ See *Employment Div. v. Smith*, 494 U. S. 872, 877 (1990).

⁵ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542-46 (1993).

⁶ *Id.* at 524-28.

⁷ *Id.* at 544.

⁸ *Id.* at 544-45.

forms of under-inclusiveness meant that the ordinances were not generally applicable.⁹ The *Lukumi* Court was clear that “Free Exercise Clause protect[s] religious observers against unequal treatment.”¹⁰ “The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause.”¹¹ In addition, the Supreme Court recently unanimously held in *Fulton v. City of Philadelphia* that, where the government provides discretionary secular exemptions to a policy, the First Amendment **demands that it also offer a process to pursue a religious exemption**.¹²

Here, CHM offers a medical exemption procedure as detailed in the email from Dr. O’Niel on January 20, 2025. The email states, “[W]e do need [REDACTED] to have the pneumococcal vaccination prior to surgery unless there is a medical reason he is unable to.”¹³ Through this statement made by Dr. O’Niel in her official capacity, CHM categorically prohibits religious conduct while permitting secular conduct of the same nature. Ultimately, the Policy is rendered unconstitutional under *Church of Lukumi* and *Fulton* as it falls apart under its own contradictory terms. The Policy is intended to protect [REDACTED]’s safety and right to consent, yet it would allow unvaccinated individuals with secular medical exemptions to undergo the same treatment with the same risk of infection. Under *Fulton*, the lack of a religious exemption option for the [REDACTED] is not generally applicable and therefore unconstitutional.¹⁴

Second, the Policy fails the neutrality test under *Tandon v. Newsom*. In *Tandon v. Newsom*, the Supreme Court held that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise.”¹⁵ Whether “two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue.”¹⁶ Under Title VII of the Civil Rights Act, the hospital is required to provide a religious exemption to vaccination for employees who object for religious reasons to receiving certain vaccines, if the hospital can do so without undue hardship. In a recent U.S. Supreme Court ruling clarifying the undue hardship standard under Title VII, the court held that “it is enough to say that what an employer must show is that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its

⁹ *Id.* at 545-46.

¹⁰ *Id.* at 546.

¹¹ *Id.*

¹² *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021).

¹³ Attachment B.

¹⁴ *Fulton*, 141 S. Ct. 1868 (2021); *see also Dahl v. Bd. of Trs. of Western Mich. Univ.*, 15 F.4th 728 (6th Cir. 2021) (holding the provision and allowance of medical exemptions requires religious exemptions to be permitted).

¹⁵ *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (emphasis in original).

¹⁶ *Id.*

particular business.”¹⁷ Thus, in some circumstances, CHM is required to provide religious vaccine exemptions to its employees even though medical professionals have a duty of care to their patients and, often are caring for immunocompromised or otherwise sick individuals. The practical and inequitable consequence is that the medical providers who operate on cochlear implant patients may be unvaccinated but the patients being operated on by those providers cannot be unvaccinated. This blatant double standard fails the neutrality test, is discriminatory, and significantly undermines the integrity and purpose of the Policy.

In fact, CHM permits the following “comparable secular activities” under *Tandon*: (1) permitting unvaccinated individuals to receive elective surgeries under medical exemptions; (2) permitting unvaccinated staff to take part in elective surgeries under the ADA and Title VII; (3) welcoming countless people (i.e., the general public, vendors, visitors, patients, staff, doctors, etc.) to access the hospital without enforcing vaccination requirements; and (4) providing lifesaving medical care to individuals, including surgical procedures, without enforcing vaccination requirements. These secular activities are significantly and exponentially more risky from an infectious disease prevention perspective than permitting ██████ to receive a life-altering medical procedure without being vaccinated. If medically exempt patients can undergo the surgery proscribed by ██████’s physician, then denying the ██████ a religious exemption is baseless.

The general applicability and neutrality tests of *Tandon* were recently presented in *Bosarge v. Edney*,¹⁸ the holding of which is directly applicable here. In *Bosarge*, the court found Mississippi state’s compulsory vaccination law unconstitutional when the government provided a secular exemption but no religious exemption, stating: “Because the evidence shows that there was a method by which Mississippi officials could consider secular exemptions, particularly medical exemptions, their interpretation of the Compulsory Vaccination Law would not be neutral or generally applicable.”¹⁹ Here, CHM’s Policy fails for the same reasons.

Finally, in terms of any disease prevention interest, courts cannot rely on “broadly formulated” governmental interests to determine neutrality but must “scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.”²⁰ Accordingly, the question here is not whether CHM has a compelling interest in denying a religious exemption generally but whether it has such an interest in denying the ██████ specifically an exemption from the requirement.²¹ Of course, CHM has not, and cannot, articulate such a compelling interest here because there is none. In light of the above, the Policy is substantially underinclusive and fails the neutrality test under *Tandon* and the *Church of Lukumi*. Under these holdings, the ██████’ lack of a religious accommodation option renders the Policy not generally applicable.²²

In summary, the Policy violates the ██████’ right to free exercise of religion. Government

¹⁷ *Groff v. Dejoy*, 35 F. 4th 162 (3rd Ct. App., 2022).

¹⁸ *Bosarge v. Edney*, 669 F. Supp. 3d 598 (5th Ct. App., 2023).

¹⁹ *Id.* at 602.

²⁰ *Gonzales v. O Centro Espirita*, 546 U.S. 418, 431 (2006).

²¹ *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021).

²² *See Church of Lukumi*, 508 U. S. at 542-46; *Tandon*, 141 S. Ct. at 1296.

action can “survive strict scrutiny only if it advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests.”²³ The Supreme Court has made clear that, just because a law or policy is intended to target infectious disease, strict scrutiny “is not watered down.”²⁴ For example, the Constitution is not suspended even during an international pandemic.²⁵ Because the [REDACTED] have no religious exemption option, the Policy cannot withstand strict scrutiny (or even rational basis review), and the [REDACTED] will assuredly prevail on the merits of their First Amendment claim.

III. CHM’S JUSTIFICATION FOR CONDITIONING SURGERY ON VACCINATION IS ARBITRARY AND UNLAWFUL

In the email dated January 20, 2025, Dr. Mallory O’Niel explained the risks of cochlear implant surgery absent vaccination and informed the [REDACTED] that she would still perform the Procedure so long as the [REDACTED] understood the risks. On January 23, 2025, Mrs. [REDACTED] responded stating, “We understand the risks you have outlined for us and still would like to proceed without the pneumococcal vaccine.”²⁶ Over a month later, on February 27, 2025, Dr. O’Niel, acting in her official capacity, emailed the [REDACTED] the following:

I’m sorry to tell you I spoke too soon about the vaccination waiver. Initially I was told it would be OK but now just got word back from the hospital that due to the possible risk of death from meningitis we do need [REDACTED] to have the pneumococcal vaccination prior to surgery unless there is a medical reason he is unable to.

The risk is high in the first 5 years of life and can have serious complications. The cochlear implant surgery is in theory elective and given the significant decrease in rate of meningitis and invasive pneumococcal disease with the vaccination and [REDACTED]’s inability to provide his own consent, medicolegally we require the vaccination.

For [REDACTED] at currently 7 months old that would mean getting the PCV15 or PCV20. Typically it is a 4 dose series through the first 15 months of life but the catch up schedule looks like he would only need 2 doses – one dose soon, at least 1 month prior to surgery, and one dose after his first birthday (has to be at least 8 weeks after the first one and when over 1 year old). If he did the PCV20 then that may be all he needs.

This email carries several legal and practical implications. First, this email demonstrates that CHM’s administrative policies wholly supersede and subjugate personal medical decisions

²³ *Id.* (quoting *Church of Lukumi*, 508 U.S. at 546).

²⁴ *Tandon v. Newsom*, 141 S. Ct. 1294, 1298 (2021).

²⁵ *See Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 66 (2020); *Tandon*, 141 S. Ct. at 1297.

²⁶ Attachment B.

made between patients and their physicians. The Supreme Court in *Trammel v. United States* recognized the intimate nature of the patient-physician relationship, stating, “The privileges between priest and penitent, attorney and client, and physician and patient limit protection to private communications. These privileges are rooted in the imperative need for confidence and trust.... [T]he physician must know all that a patient can articulate in order to identify and treat disease; barriers to full disclosure would impair diagnosis and treatment.”²⁷ Dr. Mallory O’Niel, in her official capacity as ██████’s physician, initially exercised her medical judgment based on all applicable facts and agreed that the Procedure, even absent vaccination, was integral to ██████’s quality of life. However, she was subsequently overruled by the hospital, which imposed its administrative policy as an absolute mandate, supplanting individualized care.

Second, it demonstrates the hospital’s fundamental misunderstanding or misapplication of informed consent principles. Dr. O’Niel asserts that, because the child cannot consent to the surgery, his parents evidently must consent to him undergoing an entirely different elective medical procedure—vaccination—which carries its own risks and benefits. However, this reasoning is flawed for several obvious reasons. First, minors cannot consent to any medical procedure—whether vaccination, surgery, or treatment. Instead, parents or legal guardians are the ones authorized to make these decisions on the child’s behalf.²⁸ CHM’s logic is applied inconsistently—██████, at only eight months old,²⁹ is equally incapable of consenting to being unvaccinated as he is to the surgery itself. If the ██████’ consent is sufficient for him to undergo one procedure (vaccination), then it is likewise sufficient for him to undergo the other (surgery). The logical extension of CHM’s policy would mean that no child under 18 could receive any medical treatment (aside from vaccination) since he or she lacks legal capacity to consent. Ironically, vaccination is one of the few medical procedures where courts have explicitly ruled, per federal law, that parental consent is required for administration.³⁰

Furthermore, since Mr. and Mrs. ██████ are ██████’s parents and legal proxies, their right to decline a medical intervention such as a vaccination is just as valid as their right to approve it.³¹ The principle of informed consent exists to protect both the acceptance, and refusal, of medical treatment—not just compliance with institutional policies. By conditioning the child’s access to surgery on vaccination, the hospital is not allowing the ██████ to make a truly informed and voluntary medical decision for their child.³² Instead, it is imposing an arbitrary administrative requirement as a forced prerequisite to treatment, undermining informed consent, which relies on freedom from undue pressure.

Third, the email fails to provide a truly rational basis for declining treatment absent vaccination. Dr. O’Niel states that for ██████, who at the time was 7 months old, either PCV15 or PCV20 are acceptable, both of which carry well-known and scientifically acknowledged risks.

²⁷ *Trammel v. United States*, 445 U.S. 40, 43 (1980).

²⁸ M.C.L.S. § 722.2.

²⁹ ██████ was seven months old at the time of the email.

³⁰ *Booth v. Bowser*, 591 F. Supp. 3d 1 (D.D.C. 2022).

³¹ See M.C.L.S. § 722.2.

³² *Wlosinski v. Cohn*, 713 N.W.2d 16 (2005).

As Dr. O’Niel conceded, the likelihood of contracting Bacterial Meningitis is extremely rare, at just 0.07% probability.³³ The likelihood of dying from bacterial meningitis ranges between 0.0035% and 0.007%, and the likelihood of experiencing complications from bacterial meningitis ranges between 0.007% and 0.014%. This only further highlights the arbitrary and irrational nature of CHM’s Policy, irrespective of the [REDACTED]’ sincere religious beliefs.

IV. CHM’S INTERNAL POLICIES PREVENT RELIGIOUS DISCRIMINATION

CHM’s own code of conduct states:

We have an ethical responsibility to make our patients feel secure while in our care. We treat patients with respect and make no distinction in the availability of services based on age, gender, disability, race, color, **religion**, sex, sexual orientation, gender or gender identity, national origin, ability to pay, or any other legally protected status.³⁴

Therefore, CHM is bound by its own policies to protect patients like the [REDACTED] from religious discrimination which would exclude them from significant medical treatment. Yet, CHM has failed to uphold this obligation by disallowing a religious exemption option and therefore allowing religious discrimination against the [REDACTED] for not submitting to the Policy, in violation of its own commitment to nondiscrimination.

Significantly, through its discriminatory conduct, CHM risks its own accreditation. The Joint Commission, responsible for CHM’s accreditation, has set forth standards to guide its accredited organizations and “help ensure that all people receive care that is free from discrimination.”³⁵ In them, the Joint Commission states:

The Joint Commission has no tolerance for bias or discrimination in its organizations. But we also know that institutional, systemic racism and bias still exist in health care. Differences in the quality of care received by patients or barriers and impediments to care can be due to:

- Access to care or lack of resources, such as internet or transportation
- Age
- Education level
- Gender identity or expression

³³ Attachment B; *see also* Jennita Reefhuis et al., *Risk of Bacterial Meningitis in Children with Cochlear Implants*, 349(5) N. England J. Med. 435 (July 31, 2003), <https://pubmed.ncbi.nlm.nih.gov/12890842/>.

³⁴ *Our Code of Conduct*, Tenet Health (2025), https://www.childrensdmc.org/docs/global/default/code-of-conduct.pdf?sfvrsn=9a67b381_3 (emphasis added).

³⁵ *Speak Up Against Discrimination*, The Joint Commission (May 2021), <https://www.jointcommission.org/-/media/tjc/documents/resources/speak-up/speak-up-against-discrimination-85-x-14.pdf> (emphasis added).

- Geographic location
- Language
- Physical or mental ability
- Race or ethnicity
- **Religion or culture**
- Sexual orientation
- Social and/or economic status.³⁶

CHM is bound by the First Amendment and its own policies to protect patients from religious discrimination and risks its accreditation by failing to uphold these policies. CHM must advocate for the [REDACTED]' First Amendment rights and provide the Procedure, ensuring the same patient care as it would to non-religious patients. Otherwise, CHM is in violation of its own non-discrimination policy and risks the loss of its accreditation.

V. LEGAL DEMAND

CHM cannot discriminate against the [REDACTED] merely because their sincere religious beliefs prohibit vaccination. We anticipate that all parties will act in accordance with federal and state law and provide the [REDACTED] with a religious exemption from the vaccination policy that permits [REDACTED] to receive cochlear implant surgery without receiving the pneumococcal vaccine. Otherwise, Mr. and Mrs. [REDACTED] reserve the right to avail themselves of all available administrative and legal remedies. Nothing stated or not stated herein shall constitute a waiver of any claims, rights, causes of action, defenses, positions, or remedies possessed by Mr. and Mrs. [REDACTED]. Each of the foregoing is expressly reserved.

In closing, we note that Siri & Glimstad LLP specializes in vaccine science and law, informed consent, religious freedom, and vaccine transparency and accountability and we look forward to your cooperation in this matter.³⁷ We request a response by **5 PM EST on Thursday, April 3, 2025.**

Very truly yours,

Samantha A. Caputo

Samantha Caputo, Esq.³⁸

Scott Haskins, Esq.

³⁶ *Id.* (emphasis added).

³⁷ See, e.g., *Bosarge v. Edney*, 669 F.Supp.3d 598 (S.D. Miss. 2023); *Let Them Choose v. San Diego Unified School District*, 85 Cal. App. 5th 693 (2022); *Ream v. Drake*, 3:24-cv-00189 (C.D. Cal. Jan. 8, 2024); and *Thrift v. Drake*, 2:24-cv-01034-SB-JPR (C.D. Cal. Feb. 6, 2024).

³⁸ Attorney Samantha Caputo is licensed in Massachusetts and will seek *Pro Hac Vice* admission if this matter proceeds to litigation.