September 27, 2022

Mr. Peter VanLaan
Associate General Counsel
University of Michigan Health – West
5900 Byron Center Ave., SW
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Mr. Timothy G. Lynch
Vice President and General Counsel
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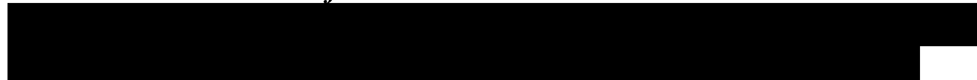
Sent via email and Certified Mail



Re: Unlawful Religious Discrimination in Employment

Dear Mr. VanLaan and Mr. Lynch:

First Liberty is the nation's largest law firm dedicated exclusively to defending and restoring religious liberty for all Americans. We represent Ms. Valerie Kloosterman in this matter. Please direct all further communications to us.

We write to request that University of Michigan Health – West and University of Michigan Health (collectively, "Michigan Health") reinstate Ms. Kloosterman to her position as a physician assistant and assure her that, going forward, it will fulfill its legal obligations to respect its employees' religious consciences. Before firing Ms. Kloosterman, Michigan Health blatantly denigrated her religious beliefs, attempted to compel her to speak against her conscience and make referrals for medical services that violate her conscience, discriminated against her for her religious beliefs, and refused to reasonably accommodate her religious beliefs. Therefore, Michigan Health violated the First Amendment to the United States Constitution; Article I, §§ 4–5 of the Michigan Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000a; and the Elliott-Larsen Civil Rights Act of 1976, Mich. Comp. Laws § 37.2202. We respectfully request that Michigan Health reinstate Ms. Kloosterman to her position with an acceptable accommodation and assurance as soon as possible, that it make known to its employees the reason for Ms. Kloosterman's unlawful termination, and that it assure its employees of its commitment to respect their religious consciences and offer them accommodations regarding the use of gender-identity-based pronouns and participation in—or referrals for—gender-dysphoria-related surgeries and drugs. Failure to do so will continue to violate federal and state law and will result in legal action against all responsible parties.

I.

A.

During Ms. Kloosterman's 17-year employment as a physician assistant for Michigan Health, she consistently received exemplary performance reviews and was never once subject to discipline. In one typical performance review, her supervisor commented: "Valerie goes way beyond the call of duty when dealing with patients, follow up and professional responsibility. She is *very* ethical [and] responsible and treats all with respect." Another typical performance review described Ms. Kloosterman as "[a] pleasure to work with[,] excellent knowledge, ethics, respect, communication, and skills." Attachment A (performance reviews).

As her stellar performance reviews suggest, Ms. Kloosterman gladly served people of all beliefs and backgrounds and was committed to giving the best possible care to all of her patients, including those who identified as lesbian, gay, or experiencing gender dysphoria. For instance, she provided ongoing care for approximately a dozen patients who she knew to identify as lesbian. She also treated two patients who may have used preferred pronouns other than those that correspond to the patients' biological sex. They came to Ms. Kloosterman for a potential brain tumor and a respiratory issue, and she cared for both of them to the best of her ability. Neither patient requested a different provider or otherwise expressed dissatisfaction with the care she provided. For both patients, in both her medical notes and in the examination room, Ms. Kloosterman used the patient's name (without pronouns) without any disruption to the patient's care. Indeed, she conducted at least one follow-up phone call and one follow-up visit with one of the patients, while the other did not need a follow-up visit. In medical charts, Ms. Kloosterman never changed or edited the pre-filled gender field, nor did she ever have the ability to change that information as that could only be done by the office staff. She never used pronouns that went against a patient's wishes. Moreover, during the entire duration of her employment, no patient ever asked her for a referral to another provider for gender dysphoria-related medical services. Throughout Ms. Kloosterman's employment, she never discussed with any patient her views—religious or otherwise—on human gender or sexuality.

B.

Ms. Kloosterman is a Christian and longtime member of a United Reformed Church. She believes that God created humankind male and female, that one's sex is ordained by God, that one should love and care for the body that God gave him or her, and that one should not attempt to erase or alter his or her sex, especially through drugs or surgical means. She believes that she must not speak against these truths by using pronouns that contradict a person's biological sex. As a Christian, she also believes that God has ordained the sexual function for procreation, that children are a gift from God, and that—absent compelling reasons—one should not sterilize oneself. Moreover, as a Christian medical professional, she believes that it would be sinful to assist a patient in procuring sterilizing drugs or surgical procedures designed to erase or alter his or her sex.

Separately, Ms. Kloosterman's faith—as well as her Hippocratic oath and her employment contract with Michigan Health—forbids her from assisting patients in procuring experimental drugs and surgical procedures that, in her independent medical judgment, pose greater harm than benefit for a patient. Indeed, during the duration of her employment, her employment contract required her to "exercise [her] independent medical judgment consistent with the clinical needs and consent of each patient," and it stated that "the Hospital shall not have the right to direct [her] to take or omit any act which conflicts with such medical judgment in the care of patients." Attachment B (employment contract).

Ms. Kloosterman's independent medical judgment is that "hormone therapy" and "gender reassignment surgery" are experimental, lack validation in methodologically rigorous long-term studies, and often lead to negative clinical outcomes such as bone density loss, infection, nerve damage, chronic pain, loss of sexual and urinary functions, psychological trauma, and other serious complications. Her medical judgment also counsels against entering in documentation pronouns that obscure or misrepresent a person's sex, as doing so can cause patients to miss potentially life-saving screenings and procedures like pregnancy tests, mammograms, and testicular exams.

C.

Between May and June 2021, Michigan Health required Ms. Kloosterman to complete a training module that contained statements concerning sexual orientation and gender identity that her Christian faith prohibited her from affirming. She could not complete the training unless she checked boxes that affirmed the statements. There was no option within the training for her to explain her position or request a religious accommodation. She therefore decided to complete the training module and explain her position to Michigan Health separately. Ms. Kloosterman arranged a meeting with the head of the Department of Diversity, Equity, and Inclusion (DEI) to inform Michigan Health that her faith precluded her from agreeing with the statements. Her faith compelled her to seek a reasonable accommodation for her religious beliefs.

On or about July l, 2021, Ms. Kloosterman met with Dr. Rhea Booker, the vice president for DEI. During the meeting, she explained why her faith precluded her from affirming the statements in the training module. When Dr. Booker indicated that Ms. Kloosterman was "uncomfortable" seeing gay and lesbian patients, Ms. Kloosterman corrected her and explained that she has seen several such patients during her 17 years of employment, and she would gladly continue seeing such patients. Dr. Booker indicated that she would speak with HR.

On or about July 29, 202l, Ms. Kloosterman met with representatives of both HR and DEI: Marla Cole, HR Director; Thomas Pierce, DEI Program Director; Catherine Smith, the Advanced Practice Providers' Liaison; and Amy Degood, Caledonia Office Manager (other attendees indicated she was listening over the phone during the meeting). The meeting focused on whether Ms. Kloosterman would use gender identity-based pronouns and be willing to refer patients for gender reassignment surgery. When she respectfully indicated that she could not do so because of her religious beliefs and because of her independent medical judgment, but that she would use patients' names in place of pronouns to respect their wishes, Thomas Pierce grew hostile, visibly angry with tight fists and a flushed demeanor, and attacked her religious beliefs. Among other

things, he told Ms. Kloosterman that she could not take the Bible or her religious beliefs to work with her, either literally or figuratively; that given her religious beliefs against gender identity-based pronouns and "gender reassignment surgery," she was to blame for transgender suicides; and that she was "evil" and abusing her power as a health care provider. When the representatives asked Ms. Kloosterman what she would do about pronouns on patient charts, she explained that pronouns are not always given for charting and if there were any pre-formulated pronouns, they could be given as the patient's first name. She did not even have the ability to change a patient's pre-populated gender because only the office staff had that ability.

Ms. Kloosterman's next meeting concerning the issue occurred on August 24, 2021, when Marla Cole and Catherine Smith handed her a termination notice and informed her that because she would not use preferred pronouns or refer for gender-transition procedures, she no longer worked at Michigan Health and was no longer permitted on Michigan Health's property. Attachment C (termination notice). She had no prior notice that she would be terminated at the meeting, and she was not allowed to return to her office and complete patient charts. In a later letter memorializing the reasons for her termination, Michigan Health listed her unwillingness to refer patients for certain gender dysphoria-related drugs and procedures, her unwillingness to use pronouns that do not correspond to a patient's biological sex, and her alleged alteration of medical records to change patients' pronouns (a false charge that Ms. Kloosterman continues to deny). Attachment D (termination letter).

II.

Michigan Health violated the Free Exercise Clause of the First Amendment and Article I, § 4 of the Michigan Constitution,[1] when its decisionmakers openly mocked and condemned her religious beliefs. It also violated these constitutional guarantees when it granted secular accommodations to other employees regarding common medical procedures while failing to grant religious accommodations to Ms. Kloosterman regarding much more rare medical procedures.

A.

The Supreme Court has repeatedly held that government decisionmakers violate the Free Exercise Clause of the First Amendment when they express animus toward religion. When "'official expressions of hostility' to religion accompany laws or policies burdening religious exercise . . . the Court has "set aside such policies without further inquiry." *Kennedy v. Bremerton Sch. Dist*. 142 S. Ct. 2407, 2422 n.1 (2022) (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1732 (2018)); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 541 (1993) (councilmember's accusation that worshippers were "violat[ing] . . . everything this country stands for" revealed unconstitutional targeting of religious beliefs); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) ("Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because

[1] Article I, § 4 of the Michigan Constitution provides that "[e]very person shall be at liberty to worship God according to the dictates of his own conscience." This "guarantee of religious freedom" "is at least as protective of religious liberty as the United States Constitution." *Winkler by Winkler v. Marist Fathers of Detroit, Inc.,* 500 Mich. 327, 338 (2017) (quoting *People v. DeJonge (After Remand)*, 442 Mich. 266, 273 n. 9, 501 N.W.2d 127 (1993)).

of their religious nature."). In *Masterpiece Cakeshop*, the Court held that the state commission violated the Free Exercise Clause because a commissioner called the cake shop owner's faith "despicable" and "merely rhetorical"; this demonstrated "a clear and impermissible hostility toward [his] sincere religious beliefs." 138 S. Ct. at 1729, 1732.

Michigan Health's decisionmakers expressed even more blatantly unconstitutional religious animus against Ms. Kloosterman than the religious animus that the Court sharply condemned in *Masterpiece Cakeshop*. Its DEI representative called her beliefs "evil," mocked her religion by stating that she cannot (literally or figuratively) take the Bible with her to work, and blamed her for gender-dysphoria-related suicides. And its vice president for DEI baselessly assumed that she wouldn't serve LGBT patients. The other representatives did not disavow any of these statements. In the termination letter, Michigan Health also falsely accused Ms. Kloosterman of altering templated pronouns on patients' medical records, *see* Attachment D, even though she had explained that she was unable to do so because only office staff could make such changes. This baseless accusation is further evidence of animus toward Ms. Klosterman's religious beliefs. In sum, Ms. Kloosterman's termination violated state and federal constitutional protections for the free exercise of religion.

B.

Michigan Health separately violated the Free Exercise Clause and Article I, § 4 of the Michigan Constitution when it accommodated the independent medical judgment of other providers but not the religious beliefs and medical judgment of Ms. Kloosterman.

Under the First Amendment, government policies and practices that substantially burden the free exercise of religion are subject to strict scrutiny unless they are neutral and generally applicable. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). A government policy or practice is not neutral and generally applicable when it provides exemptions or when it otherwise treats secular conduct more favorably than religious exercise. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) ("A law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions"); *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (regulations "trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise").

Michigan Health easily accommodates other medical professionals who have non-religious objections to far more common procedures, and these accommodations often shield the objecting professionals from having to make referrals. For example, a male provider who did not wish to perform female pelvic examinations was not scheduled to see those patients. Likewise, doctors unwilling to perform toenail removals or prescribe diet pills were not scheduled to see patients requesting those services. And a provider who refused to prescribe opioids was permitted to tell patients that opioids are clinically unnecessary or that he does not prescribe them, without referring patients to another provider. Even when patients specifically requested referrals for services that providers thought medically inappropriate, such as an MRI, back surgery, tonsillectomy, antibiotics, or insertion of ear tubes, providers could refuse the referral request and instead discuss other treatment options. Thus, Michigan Health respects the secular consciences and independent

medical judgment of its other health care providers relating to common drugs and procedures—but not the religious conscience and independent medical judgment of Ms. Kloosterman, which relate to rarely performed procedures and rarely prescribed drugs.

Under *Fulton* and *Tandon*, Michigan Health's willingness to accommodate for secular reasons but not religious reasons triggers strict scrutiny, and it flunks that test. As in *Fulton*, "[t]he creation of a system of exceptions under the contract undermine[d] the City's contention that its non-discrimination policies can brook no departures." 141 S. Ct. at 1882. Here, Michigan Health's myriad secular exceptions for far more common drugs and procedures undermine any argument that it must deny similar accommodations to Ms. Kloosterman for far more rare drugs and procedures. Thus, Michigan Health's refusal to accommodate Ms. Kloosterman's religious beliefs violates the Free Exercise Clause.

III.

Michigan Health also violated the Michigan Constitution when it compelled her to make referrals for medical procedures that violate her religious conscience. Article I, § 4 of the Michigan Constitution provides that "[e]very person shall be at liberty to worship God according to the dictates of his own conscience." This "guarantee of religious freedom" ""is at least as protective of religious liberty as the United States Constitution." *Winkler by Winkler v. Marist Fathers of Detroit, Inc.,* 500 Mich. 327, 338 (2017) (quoting *People v. DeJonge (After Remand)*, 442 Mich. 266, 273 n. 9, 501 N.W.2d 127 (1993)). Indeed, it is even more protective, as Michigan courts subject burdens on religious exercise to the "compelling state interest test developed by the United States Supreme Court in *Wisconsin v. Yoder* and *Sherbert v. Verner*." *McCready v. Hoffius*, 459 Mich. 131, 143–44 (1998), *opinion vacated in part*, 459 Mich. 1235 (1999) (finding Free Exercise right under state and federal law for religious landlord to decline renting to unmarried couples). This test examines whether the party's belief is "sincerely held" and "religious in nature," whether the state has "imposed a burden" on that religious belief or exercise, whether a "compelling state interest justifies the burden," and "whether there is a less obtrusive form of regulation available to the state." *Id.* (citing *Wisconsin v. Yoder*, 406 U.S. 205, 214–30 (1972)).

Here, under the Michigan Supreme Court's compelling-interest test, there is no question that Ms. Kloosterman's beliefs are sincerely held and religious in nature. Moreover, denigrating her religion, refusing to provide an accommodation, attempting to coerce her to violate her religious convictions, and ultimately terminating her undoubtedly burdened her religious exercise. Michigan Health cannot show a compelling interest in imposing these burdens, and less intrusive solutions abound. To begin, during Ms. Kloosterman's 17 years of employment by Michigan Health, no patient ever asked her for a referral for "gender reassignment surgery" or other similar gender-dysphoria-related drugs or procedures. Nor did any patient ask her to use gender-identity-based pronouns. Michigan Health therefore cannot show that it is likely Ms. Kloosterman ever would be placed in a situation calling for such referrals or pronouns. But even if it could show that such a situation may arise, Michigan Health could have granted any of several possible accommodations, such as allowing the use of patients' names instead of pronouns, modifying Ms. Kloosterman's schedule for patient visits to obviate the need for any referrals (as it apparently does for employees with secular objections to far more common drugs and procedures), or posting notices that allow patients to call the main Ann Arbor hospital for referrals. The absence of any

past incident and the availability of these accommodations preclude Michigan Health from justifying its burdens on Ms. Kloosterman's religious exercise. Thus, her termination violated Article I, § 4 of the Michigan Constitution.

IV.

Michigan Health also violated the Free Speech Clause of the First Amendment, as incorporated against the State through the Fourteenth Amendment, and Article I, § 5 of the Michigan Constitution, by compelling Ms. Kloosterman to speak biology-obscuring pronouns. The U.S. Court of Appeals for the Sixth Circuit has held that public colleges and universities violate the First Amendment when they coerce their employees to use sex-obscuring pronouns while performing job duties that require freedom of expression. *See Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021) (holding that a public university violated a professor's freedom of speech when it compelled him to speak against his conscience by addressing students with gender-identity-based pronouns). In that context, the general rule of *Garcetti v. Ceballos*, 547 U.S. 410 (2006) does not apply. *Meriwether*, 992 F.3d at 505–07. Instead, the Sixth Circuit heeds the First Amendment's fundamental command that "the government 'may not compel affirmance of a belief with which the speaker disagrees.'" *Meriwether*, 992 F.3d at 503 (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995)).

Just as the academic enterprise is inconsistent with a speech code for professors, *Meriwether*, 992 F.3d at 507–12, the practice of medicine is inconsistent with a speech code for medical professionals. Indeed, the stakes are much higher in medicine. When universities coerce professors to use sex-obscuring pronouns, the consequences are "ideological conformity" and a loss of the free exchange of ideas. *Id.* at 506. But when universities coerce medical professionals to use sex-obscuring pronouns, the consequences can be confusion over a patient's biological sex and missed life-saving screenings such as mammograms, testicular exams, and pregnancy tests. Therefore, it is clear under *Meriwether* that by conditioning Ms. Kloosterman's employment on the use of biology-obscuring pronouns, Michigan Health violated her freedom of speech.

V.

Michigan Health violated Title VII of the Civil Rights Act when it, *inter alia*: (1) terminated Ms. Kloosterman because of her sincerely held religious beliefs; (2) failed to provide her a reasonable religious accommodation; (3) accommodated and respected the independent medical judgment and secular objections of other providers, but not Ms. Kloosterman's independent medical judgment and religious objections; (4) maintained a rule against respecting independent medical judgment on gender-dysphoria treatments, which rule disproportionately impacts those with traditional religious beliefs concerning sex and gender; and (5) retaliated against Ms. Kloosterman for opposing religious discrimination.

Title VII provides that it is "an unlawful employment practice for an employer . . . to discharge any individual . . . because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(1). Religion is broadly defined to include "all aspects of religious observance and practice, as well as belief." *Id.* at § 2000e(j). "[R]eligious practice is one of the protected characteristics that cannot

be accorded disparate treatment and must be accommodated." *EEOC v. Abercrombie & Fitch Stores, Inc*., 575 U.S 768, 774-75 (2015) (finding Title VII violation where Muslim applicant showed that religion was one motivating factor in employer's decision). In a disparate treatment case, a Title VII plaintiff may prove liability either by establishing that discrimination was a but-for cause of the adverse employment action or that discrimination was a "motivating factor" in the employment decision, even though other factors also motivated the decision. 42 U.S.C. § 2000e-2(m); *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1739 (2020) ("So long as the plaintiff's [religion] was one but-for cause of that decision, that is enough to trigger the law."); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 343 (2013) (describing motivating factor standard under Title VII); *Abercrombie*, 575 U.S. at 773 (Title VII relaxes the but-for causation standard "to prohibit even making a protected characteristic a 'motivating factor' in an employment decision").

Michigan Health violated Title VII when it terminated Ms. Kloosterman because of her religious beliefs and exercise. Michigan Health staff made very clear to Ms. Kloosterman at the HR and DEI meetings that its reason for questioning her and terminating her was her religious beliefs, even going so far as to mock and deride her beliefs. The letter explaining her termination also made this clear, listing three reasons for firing Ms. Kloosterman, all of which directly related to her sincerely held religious beliefs about gender identity and her conscientious objection to assisting in the provision of certain gender dysphoria-related drugs and procedures. Attachment D. If not for Ms. Kloosterman's religious beliefs about gender and sexuality, she would not have been fired. Thus, religion was a but-for cause—and a substantial motivating factor—of her termination. *Bostock*, 140 S. Ct. at 1739; *Univ. of Tex. Sw. Med. Ctr.*, 570 U.S. at 343; *Abercrombie*, 575 U.S. at 773.

Michigan Health also violated Title VII when it failed to provide a reasonable religious accommodation. Title VII demands more than "mere neutrality with regard to religious practices" but requires "favored treatment, affirmatively obligating employers not 'to fail or refuse to hire or discharge any individual . . . because of such individual's 'religious observance and practice.'" *Abercrombie*, 575 U.S. at 775. Employers are affirmatively required to "reasonably accommodate" an employee's religious beliefs, observances, and practices unless the accommodation would pose an "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). An employee's "sincerely held" religious objection to a workplace policy or job duty qualifies for a religious accommodation. EEOC Religion Guidance § 12- I-A-2 (citing *United States v. Seeger*, 380 U.S. 163, 184-85 (1965)); EEOC Religion Guidelines, 29 C.F.R. § 1605.2. Employers must engage in a "flexible, interactive process" with the employee to identify workplace accommodations that do not impose an undue hardship.[2] The burden is on the employer to "demonstrate" undue hardship based on "objective information," not hypothetical concerns, to show that the burden would be more than "de minimis." EEOC Religion Guidance § 12-IV-B-1. If an employer grants accommodations for non-religious reasons but not religious reasons, this gives rise to an inference of pretextual religious discrimination. *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 71 (1986) ("unpaid leave is not a reasonable accommodation when paid leave is

[2] EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, at K.6, https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.

provided for all purposes *except* religious ones . . . . [because] [s]uch an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness").

Here, Michigan Health violated Title VII when it failed to provide—or even consider—reasonable accommodations that would respect Ms. Kloosterman's religious beliefs. Michigan Health did not engage in the interactive process that Title VII requires, but instead denigrated her religious beliefs and then summarily terminated her. Yet multiple reasonable accommodations could have permitted Michigan Health to pursue its interests while respecting Ms. Kloosterman's beliefs: using patients' names in place of pronouns, scheduling other providers to see patients when they seek gender dysphoria-related services, or posting a written notice to all patients allowing them to obtain referrals for any missed services by calling a phone number for the main Ann Arbor hospital. Even worse, in relation to far more common procedures such as pelvic exams, toenail removals, diet pill and opioid prescriptions, and medically inappropriate patient requests, Michigan Health accommodated the independent medical judgment and secular objections of other providers in Ms. Kloosterman's office but refused to accommodate her independent medical judgment and religious conscience concerning much rarer procedures. This practice of granting accommodations for non-religious reasons but not religious reasons strongly suggests religious discrimination under *Ansonia Board of Education*, 479 U.S. at 71. And Michigan Health's practice of respecting medical judgment on myriad treatment issues but not on gender-dysphoria treatments disparately impacts employees with traditional religious beliefs about the biological differences between the sexes. *See Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); 42 U.S.C. § 2000e-2(k). Furthermore, Michigan Health utterly failed to engage in the "flexible, interactive process" that Title VII requires, nor has it even tried to assert that accommodating Ms. Kloosterman's religious beliefs would pose an undue hardship on its business operations. Even if Michigan Health attempted to do so, it would fail because its concerns were merely hypothetical, and a myriad of potential accommodations existed, as shown by Michigan Health's ability to accommodate other employees' secular objections to—and independent medical judgments concerning—far more common drugs and procedures.

Michigan Health also violated Title VII when it retaliated against Ms. Kloosterman for opposing illegal religious discrimination. Title VII makes clear that it is "an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by" Title VII. 42 U.S.C. § 2000e-3(a). If Ms. Kloosterman had remained silent about her religious beliefs instead of bringing them to her employer's attention, she would not have been terminated. Instead, Michigan Health terminated her for bringing up her religious beliefs and exposing the discriminatory impact of its refusal to respect those beliefs.

VI.

Michigan Health's actions also violated Michigan's state civil rights law, the Elliott-Larsen Civil Rights Act of 1974.

The Elliott-Larsen Civil Rights Act prohibits employers from "discharg[ing], or otherwise discriminat[ing] against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status." Mich. Comp. Laws § 37.2202. Courts find Title VII precedent

"highly persuasive when interpreting this statute," finding direct evidence of discrimination or using the *McDonnell Douglas* burden-shifting framework where the evidence is circumstantial. *Meyer v. City of Center Line*, 619 N.W.2d 182, 188 (2000); *Robinson v. JCIM, LLC*, No. 342487, 2018 WL 6185570, at *5 (Mich. Ct. App. Nov. 27, 2018). Section 37.2701(a) prohibits employers from retaliating against employees engaged in protected activity such as requesting religious accommodations, and it prohibits employers from "[c]oerc[ing], indimidat[ing], threaten[ing], or interfer[ing] with a person in the exercise or enjoyment of . . . any right granted or protected by this act," including religious rights. Mich. Comp. Laws § 37.2701(a), (f); *see also Meyer*, 619 N.W.2d at 188 (finding retaliation where employee engaged in protected activity known by employer, and employer took adverse action that was causally connected to that protected activity); *Robinson*, 2018 WL 6185570, at *7. Section 37.2102 defines "[t]he opportunity to obtain employment . . . without discrimination because of religion" as a "civil right." Mich. Comp. Laws § 37.2102.

Here, Michigan Health violated Section 37.2202 when it terminated Ms. Kloosterman because of her religious beliefs. Her termination and the conversations leading up to it constitute direct evidence of discrimination. Michigan Health also violated Section 37.2701(a) when it retaliated against Ms. Kloosterman for requesting a religious accommodation after she attended gender identity training. Because she disclosed her religious beliefs and requested an accommodation, Michigan Health held hostile meetings and set her termination process in motion. By depriving Ms. Kloosterman of her employment and future employment opportunities, Michigan Health violated Section 37.2102, subjecting her to religious discrimination that violated her civil right to access employment and employment opportunities.

* * *

Ms. Kloosterman's termination violated federal and state law. Ms. Kloosterman is confident this matter can be resolved without resort to legal action. She asks only that Michigan Health reinstate her to her prior position so that she can resume caring for her patients, and that other religious healthcare providers be spared from experiencing similar discrimination.

This is a time-sensitive matter. Not later than October 3, 2022, please provide to us your written assurances that Michigan Health will: (1) reinstate Ms. Kloosterman with a religious accommodation consistent with the facts described above, along with a written acknowledgement that her termination was not for cause but in fact violated federal and state law; (2) comply with its above-described legal obligations and fully consider religious accommodation requests from other employees; and (3) make known to its employees the reason for Ms. Kloosterman's unlawful termination, and assure its employees of its commitment to respect their religious consciences and offer them accommodations regarding the use of gender-identity-based pronouns and participation in—or referrals for—gender-dysphoria-related surgeries and drugs. If we do not hear from you and receive those assurances by that time, we will proceed as Ms. Kloosterman directs, which likely will include seeking redress in federal court against Michigan Health and any other responsible parties.

We can be reached at the phone number and e-mail addresses indicated below.

Sincerely,

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