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July 14, 2021

David Barton  
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St. Luke's Health System  
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Phone: (208) 493-0560

Re: MANDATING MEDICAL TREATMENT AS A CONDITION OF  
CONTINUED EMPLOYMENT AND VIOLATING INFORMED CONSENT

Dear David Barton:

Our firm serves as Idaho panel counsel for America's Frontline Doctors and we have recently been informed that St. Luke's Health System (you) are now unilaterally amending employment contracts and unlawfully attempting to require all employees, providers, volunteers, and contractors to receive a "COVID-19 vaccine" in contravention of, *inter alia*, patients' informed consent<sup>1</sup>, fundamental constitutional rights to bodily autonomy, and federal law and regulations.<sup>2</sup>

Recent correspondence transmitted to us leads us to believe that you are making misleading statements regarding the efficacy of medical treatments that are likely to result in massive liability. For instance, in a recent communication to your staff, you stated that "COVID-19 vaccines have proven to be extremely safe and effective," and that religious exemptions are and should be "rare."

As will be shown below, your specious use of the term of art *extremely safe and effective* is misleading and incorrect. Furthermore, we suspect that you, as a non-medical professional, are potentially violating a host of criminal and civil laws, rules and regulations, and medical ethics, by making such a preposterous and unqualified statement.

We are most concerned by your disparagement of persons seeking religious exemptions. Religious liberty is guaranteed under Article 1, section 4 of the Idaho Constitution. In Idaho, "the exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions...."

<sup>1</sup> [https://resistthemainstream.org/nurse-blows-the-whistle-on-the-medical-industry/?utm\\_source=rtmt&utm\\_medium=rtmt&utm\\_campaign=rtmt](https://resistthemainstream.org/nurse-blows-the-whistle-on-the-medical-industry/?utm_source=rtmt&utm_medium=rtmt&utm_campaign=rtmt) (last accessed July 14, 2021).

<sup>2</sup> <https://trueidahonews.com/deception-regarding-mandatory-vaccines-in-idaho-whos-profitig/> (last accessed July 13, 2021).

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This firm has successfully sought and enforced religious exemptions to vaccine mandates. The right to decline the “COVID-19” vaccine is available to all your employees who exert a sincerely held religious belief that prohibits them from receiving the experimental treatment. Any employee aggrieved by your misguided (if not nefarious) mandate may also file a complaint with the Idaho Human Rights Commission. Certain other causes of action may be immediately brought in state or federal court and do not require the exhaustion of administrative remedies.

You are well advised to consider that all “COVID -19 vaccines” are under an emergency use authorization (EAU) and may not be mandated in Idaho, by either a public or private entity.<sup>3</sup>

Currently, all “COVID-19 vaccines” are merely authorized, not approved or licensed, by the federal government; they are being issued under an invalid EAU only. The EAU guidance and regulations state that they “may be effective.”

Furthermore, America’s Frontline Doctors is currently challenging the emergency use authorization in federal court.<sup>4</sup> The suit seeks to have a federal court deem the FDA’s EAU and all subsequent governmental acts *void ab initio*.<sup>5</sup>

Federal law mandates certain other requirements that you appear to be flouting. These include:

“healthcare professionals administering the product are informed...of the significant known and potential benefits and risks of the emergency use of the product, and of the extent to which such benefits and risks are unknown; and of the alternatives to the product that are available, and of their benefits and risks.”

21 U.S.C. § 360bbb-3(e)(1)(A)(i).

Not only are you required to make certain disclosures to healthcare professionals, you must “ensure that individuals to whom the product is administered are informed”:

- (I) that the Secretary has authorized the emergency use of the product;
- (II) 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
- (III) 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.

21 U.S.C. § 360bbb-3(e)(1)(A)(ii).

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<sup>3</sup> <https://childrenshealthdefense.org/defender/resources-federal-law-prohibits-mandates-emergency-use-covid-vaccines-tests-masks/> (last accessed July 13, 2021).

<sup>4</sup> *America’s Frontline Doctors et. al. v. Xavier Becerra et. al.*, Case No. 2:21-cv-00702-CLM, U.S. Dist. Court, N.D. Alabama. Filed June 10, 2021.

<sup>5</sup> *The Retrospectivity of Judicial Decisions and the Legality of Governmental Acts*, Enid Campbell, *Monash University Law Review*, p. 50 (Vol 29, No 1 ’03) (“When a court pronounces a governmental act or decision to be invalid, the act or decision is generally treated as *void ab initio*.”).

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You are also required to develop “appropriate conditions for the monitoring and reporting of adverse events associated with the emergency use of the product.” 21 U.S.C. § 360bbb-3(e)(1)(A)(iii).

Although the Food and Drug Administration (FDA) has stated in guidance that an EAU may preempt certain state laws, including but not limited to “laws governing the administration of medical products, such as informed consent laws and laws requiring Institutional Review Board approval, and laws governing the prescribing or dispensing of medical products, such as laws limiting who may prescribe or dispense medical products and under what circumstances,”<sup>6</sup> the current COVID-19 EAU does not conflict with Idaho informed consent laws which still apply.

In addition to the emergency use authorization and religious liberty prohibitions applicable to your illegal mandate, the Idaho Medical Consent and Natural Death Act allows any person within the state of Idaho to choose which medical treatments to receive or refuse. I.C. § 39-4501 *et seq.*

The statute wholly occupies the field concerning “consent for the furnishing of hospital, medical, dental, surgical or other health care, treatment or procedures...” *Id.* Consent to care includes refusal to consent to care and/or withdrawal of care. I.C. § 39-4502(7).

Each employee giving or refusing the consent must be made aware of pertinent facts respecting:

the need for, the nature of, and the significant risks ordinarily attendant upon such a person receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the health care provider to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like health care provider of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

I.C. § 39-4506.

The obligation to obtain sufficient consent “is the duty of the attending health care provider upon whose order or at whose direction the contemplated health care, treatment or procedure is rendered....” I.C. § 39-4508. Is it your position that you as a representative of the hospital are providing the pertinent facts to each employee or are you mandating the “COVID-19 vaccine” despite the employee’s refusal after consultation with a licensed provider? One fact is clear, you *are* directing “the contemplated health care, treatment or procedure.” These statutory provisions, and all Idaho constitutional provisions, are incorporated into *every* Idaho contract without regard

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<sup>6</sup> *Emergency Use Authorization of Medical Products and Related Authorities – Guidance for Industry and Other Stakeholders*, January 2017, OMB Control No. 0910-0595; available at: <https://www.fda.gov/media/97321/download> (last accessed July 14, 2021).

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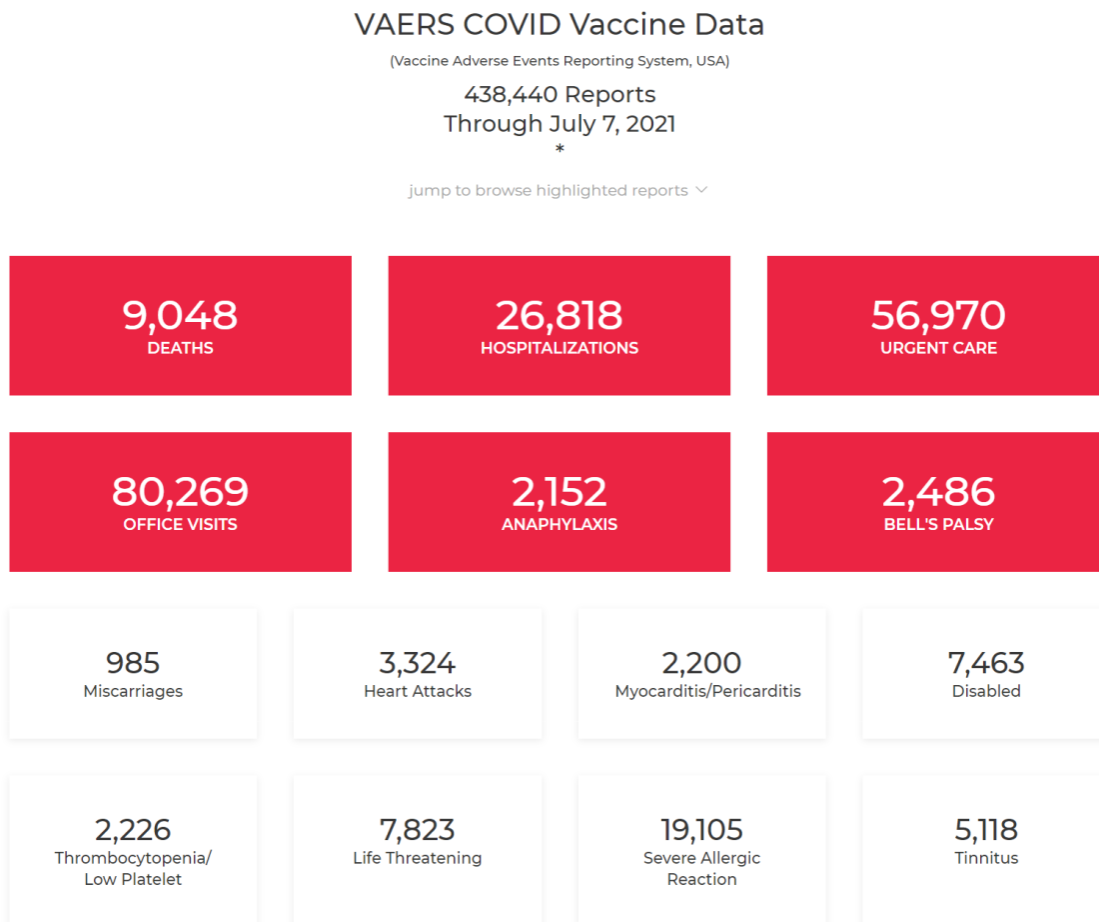
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to your ignorance of their existence or applicability. *Taylor v. Taylor*, 163 Idaho 910, 916 (2018) (“This rule applies on the grounds of public policy to every contract which is founded on a transaction prohibited by statute. [W]here a statute intends to prohibit an act, it must be held that its violation is illegal, without regard to the reason of the inhibition or to the ignorance of the parties as to the prohibiting statute.”).

You are well advised to refrain from unilaterally amending employment contracts, either orally or in writing, so as to require additional conditions which are against public policy. We believe any attempt to do so would constitute bad faith breach of contract. You would also likely be barred from asserting certain defenses due to unclean hands.

New Vaccine Adverse Events Reporting System (VAERS) data is available. We wonder if this information has been discussed with your employees.<sup>7</sup>



\* VAERS HHS releases COVID Data weekly, but they release LAST WEEK'S data. So an update will always lag a week behind.

[7https://www.openvaers.com/covid-data](https://www.openvaers.com/covid-data) (last accessed July 9, 2021).

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It is shocking to the conscience that you would mandate an emergency treatment when doctors around the country are asserting that alternative remedies can successfully treat SARS-CoV-2.<sup>8</sup>

In fact, clear guidance exists on how to “treat COVID-19 at home to prevent hospitalizations and death.”<sup>9</sup> We request that you immediately review, and immediately direct all your doctors, residents, and nursing staff to review an article titled *Pathophysiological Basis and Rationale for Early Outpatient Treatment of SARS-CoV-2 (COVID-19) infection*.<sup>10</sup> This article discusses several alternative therapies including antiviral therapy, zinc lozenges and zinc sulfate, antimalarials, azithromycin, doxycycline, favipiravir, immunomodulators, colchicine, antiplatelet agents and antithrombotics, and delivery of oxygen and monitoring.

It is also hard to fathom, as a mere layperson, your position in light of the many studies showing how natural immunity is just as effective as immunity engendered from the “COVID-19 vaccine.”<sup>11</sup>

Simply stated, your mandate is likely a death sentence for some of your employees, as shown by the table above. Note that over 9,000 deaths have been reported to and compiled into the VAERS system.<sup>12</sup>

Did you review the VAERS database and consult with a licensed Idaho healthcare provider before you determined the fate of thousands of Idaho citizens? Did you receive HR guidance from out of state when formulating policy for Idaho hospitals? Were you lobbied by your group purchasing organizations when formulating the new “COVID-19 vaccine” requirement? Have you confirmed which employees have already contracted “the virus” and are now immune?

If you were previously unaware of this information and these statistics, we implore you now to research the adverse events that have been reported across the nation, consult with licensed Idaho healthcare professionals, and reassess and rescind your mandate. If you were already aware of these statistics and alternative treatments when you formulated your mandate, we predict that you will have much more serious political and legal consequences to deal with in the coming weeks, months, and years.

We are shocked that you, as a representative and leader of Idaho’s medical community, would engage in conduct that even approaches having an appearance of violating the Nuremberg Code or the Hippocratic Oath. This type of draconian mandate creates bad press and destroys the public’s confidence in our medical system.

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<sup>8</sup><https://americasfrontlinedoctors.org/> (last accessed July 10, 2021).

<sup>9</sup><https://thetexan.news/cardiologist-offers-guidance-on-early-treatment-of-covid-19/> (last accessed July 10, 2021).

<sup>10</sup> <https://www.ncbi.nlm.nih.gov/research/coronavirus/publication/32771461> (last accessed July 10, 2021).

<sup>11</sup> <https://www.nih.gov/news-events/nih-research-matters/lasting-immunity-found-after-recovery-covid-19> (last accessed July 10, 2021).

<https://wjla.com/news/nation-world/natural-covid-infection-provides-similar-protection-to-vaccines-israeli-study-shows> (last accessed July 10, 2021).

<sup>12</sup> <https://www.openvaers.com/covid-data> (last accessed July 9, 2021).

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Your categorical requirement that all employees and contractors follow your order without an examination or diagnosis and receive an emergency-use “COVID-19 vaccine” without informed consent is an illegal contract and cannot be enforced. *Yoo v. Jho*, 147 Cal.App4th 1249, 1251 (2007); and *Fellom v. Adams*, 274 Cal.App.2d 855, 863 (1969). It clearly violates Idaho’s public policy which requires informed consent for *every* medical treatment or procedure. This illegal conduct simply cannot be enforced in the courts and will result in substantial liability.

It is also interesting to consider as an academic matter whether, without the consent of the employee, any unwanted and forced treatment could be prosecuted as a criminal act. *See e.g.* I.C.

§ 18-903. Furthermore, any cooperation to do the same may constitute felony conspiracy to deprive rights under color of law. *See e.g.* 18 U.S.C. §§ 241-242. As far as we can tell, you are not a licensed healthcare provider or a provider under the statute. *See e.g.* I.C. § 54-1804 (felony to practice medicine without a license).

Furthermore, immunization is simply not mandatory in Idaho. I.C. § 39-4804. Medical, philosophical, and religious exemptions are still potentially available to your employees and contractors. Employees against whom you have discriminated may file a complaint with the Idaho Human Rights Commission or Equal Employment Opportunity Commission for any violation of the Idaho Human Rights Act. I.C. § 67-5909 or its federal analog.<sup>13</sup>

We will steadfastly oppose your attack upon our right to bodily autonomy. We will continue to support doctors who oppose medical tyranny.

Therefore, we respectfully request that you rescind the recent “COVID-19 vaccine” mandate and respect every person’s right to make their own, fully-informed medical decisions.

BOYLES LAW, PLLC



D. Colton Boyles, Esq

<sup>13</sup><https://humanrights.idaho.gov/Idaho-Law/Contexts/File-a-Complaint>