

Dear Mr. Meyer:

BE ADVISED, your contemplated course of action—requiring current employees to take the COVID-19 vaccination against their will as a condition of continued employment after October 1, 2021 (hereinafter the “Mandate”)—is illegal. To the extent you have been counseled otherwise, you have been misguided. Indeed, your legal advice relative to the roll out of this Mandate has been so incompetent, that PCH would be perfectly justified in filing a malpractice claim against its attorneys for any damages that have already arisen due to PCH’s attempted adoption of the Mandate (you have likely already exposed yourself to multiple subrogation claims). What is clear, is that your attorneys failed to do any research before advising you of the implications of your contemplated action. This is incompetence, especially given the significant likelihood that this would lead to litigation.

BE ADVISED, given the clear illegality of the Mandate, if it goes into effect, I will file an ethics complaint against every attorney involved in advising the hospital towards its implementation—and I will not stop until each attorney involved in the decision-making process is disbarred.

BE ADVISED, this letter has been sent to local media outlets. If you do not reverse course, the world will know that you recklessly exposed PCH to an untenable level of unnecessary liability. Furthermore, adopting this policy, despite its clear illegality, amounts to a reckless breach of your fiduciary duty as CEO to act in the hospital’s best interests. Implementation of this Mandate will not only amount to the probable end of your career, but it will also leave you personally liable to the organization for damages. The same can be said for each member of PCH’s Board involved in adopting the Mandate.

Like the majority of PCH’s employees, I love my job. Nothing brings me more joy than providing exceptional medical treatment to children in need. I would like nothing more than to keep my job after October 1, 2021, but I refuse to be bullied.

I am emotionally exhausted by PCH’s paternalistic attempts to abdicate my bodily autonomy. Nothing is more profound than one’s right to choose what substances or objects go into one’s body—especially when the choice has potentially permanent implications. As a human being and—more specifically, *as a woman*—I decide what specific objects penetrate my body, and I decide what substances I ingest. It’s my body, and it’s my choice.

In effect, your Mandate forces individuals to choose between two outrageous options: (1) have their bodies penetrated and permanently changed against their will; or (2) face certain economic turmoil. In essence, PCH seeks to rape its employees as a condition of continued employment. This is outrageous.

BE ADVISED, I plan to continue my employment with PCH after October 1, 2021, pursuant to the terms of my existing employment contract, and I refuse to answer any further questions related to this matter. Unless the communication is to inform me of the policies termination, I shall consider any further communications from PCH or its agents concerning this policy to

constitute harassment and discrimination. You have no legal basis to ask me—or *any of your employees*—to submit a request for an exemption for an illegal policy.

LET ME BE CLEAR, I will not comply with your Mandate. If you choose to terminate me because of this, I will sue PCH, you personally, and every member of your board.

Given that your attorneys have not adequately advised you on the consequences of your contemplated actions, allow me to briefly explain the extent of your likely exposure should you refuse to concede.

As an initial matter, it is important for you to grasp what “at-will” employment means in Arizona.

As I have already explained to your team in prior correspondence, PCH’s actions prove that—the very nature of the Mandate—is a backhanded attempt to modify the terms of PCH’s current employees’ contracts. As a part of its adoption of the mandate, a \$100 payment (less applicable taxes) is offered to compliant employees “[i]n order to reasonably compensate non-exempt/hourly employees *for the time spent in connection with getting the COVID vaccine(s).*”¹

PCH offers me a mere \$100 in exchange for my travel-time. This is insulting and demonstrates that PCH does not care about the well-being of its employees. I am not being offered any consideration for making a permanent change to my body from which the long-term effects are impossible of knowing, given that the technology used in these vaccinations has only existed for a very limited time.

Moreover, PCH claims the vaccinations are “safe” based on “evidence” even though the mechanisms used to collect that evidence are observably inadequate and the data itself has been repeatedly manipulated for political purposes by numerous Agencies of the Executive Branch of the United States Government. In exchange for all the unknown risks, PCH offers its employees nothing more than continued employment after October 1, 2021, and \$100 for travel time. This is abhorrent.

PCH seeks to force all employees who do not wish to become vaccinated for non-medical reasons to sign a Religious Exemption Request Form (the “Form”). If the Form means what it says, then it is a purported contract. Facially, the Form amounts to: (1) an acknowledgement by the applicant that, as an unvaccinated healthcare professional, he or she may place patients, his or her family, and co-workers at heightened risk of severe illness by working while infected with the COVID-19 virus; (2) a promise by the signee to release PCH (and its affiliates) from all claims arising from the spread of COVID-19 at PCH related to the signee’s exemption (assuming it is granted); and (3) an acknowledgement that some masking requirements for unvaccinated

¹ See Important Update from Bob Meyer, President and CEO – Phoenix Children’s COVID-19 Vaccine Mandate, sent via email to all employees on Friday, July 30, 2021.

employees will be necessary to support the objective of infection prevention.² In effect, the Form purports to provide PCH with certain contractual benefits and protections at the detriment of implied-in-fact contractual terms of its employees' existing employment contracts—this is true despite at-will employment status.

Generally, an Arizona employee is considered “at-will” so long as his or her employment contract has an indefinite duration.³ In an “at-will” employment relationship, either party may—at any time and for any reason (except for a few enumerated reasons protecting certain categories of workers from discrimination)—terminate the employment contract without incurring liability. Accordingly, PCH seems to believe that it may now require employees, who were not traditionally required to become vaccinated against COVID-19, to become vaccinated or face termination.

Even where an employment contract is “at-will,” however, the Supreme Court of Arizona has found that employers and their employees are free to “create a different relationship beyond one at will and define the parameters of that relationship, based upon the totality of their statements and actions.”⁴ Such parameters can be either express (*i.e.*, written) or implied-in-fact. A contractual term is implied-in-fact where it can be “inferred from the statements or conduct of the parties and[, therefore,] becomes enforceable as an express term.”⁵

An Arizona court will find the existence of an implied-in-fact contract term only if, at the time of hiring, an employer’s representation or action “discloses a promissory intent or is one that the employee could reasonably conclude constituted a commitment by the employer.”⁶ Statements, such as those found in employee handbooks describing company policies relative to the employee’s duties are not generally considered implied-in-fact contract terms under Arizona law. However, such a written policy is considered an implied-in-fact contract term “when a reasonable person could conclude that both parties intended that the employer’s (or employee’s) right to terminate the employment relationship at will had been limited.”⁷

Traditionally, PCH’s vaccination policies have been limited. At the time of hiring, PCH provides employees with an enumerated list of vaccines that are required as a contingent precedent to securing employment. Because a reasonable employee who is presented with a list of specified vaccination requirements cannot be logically expected to assume that he or she would be required to get any other vaccination—apart from what is listed—PCH’s policies governing vaccine requirements are implied-in-fact contractual terms. PCH cannot justifiably fire me because it failed to foresee the current circumstances when drafting its employment handbook before the pandemic.

² As written, the Form’s defined parameters of masking requirements are too vague and open to change to be acceptable.

³ See *e.g.*, *Robertson v. Wal-Mart Stores, Inc.*, 44 P.3d 164, 169 (Ct. App. 2002).

⁴ *Demasse v. ITT, Corp.*, 984 P.2d 1138, 1143 (1999) (internal punctuation and citations omitted).

⁵ *Robertson*, 44 P.3d 164 at 169 (citing *Wagenseller v. Scottsdale Mem’l Hosp.*, 710 P.2d 1025, 1036 (1985)) (internal punctuation and citations omitted).

⁶ *Demasse*, 984 P.2d 1138, at 1143 (internal punctuation and citations omitted).

⁷ *Id.*

As the employer, PCH is the drafter of its employment agreements. It, therefore, has a duty to make reservations and disclosures to protect its own interests. No such provisions exist in the current version of the employment handbook. An Arizona court, therefore, must view the foregoing in a light most favorable to the non-drafting party when interpreting the meaning and scope of the contract. In other words, PCH must sleep in the bed it made with respect to the employment policies in place and the representations it made to me when I was hired. This is true for every employee.

Generally, Arizona law recognizes no legal difference between the enforceability of an implied-in-fact employment term and an express provision of an employment contract.⁸ Thus, once an implied-in-fact employment term arises—neither party may unilaterally modify it.⁹ Consequently, to legitimately modify an employment contract, whether the terms be implied-in-fact or express, there must be: “(1) an offer to modify the contract, (2) assent to or acceptance of that offer, and (3) consideration.”

In effect, PCH’s vaccination mandate legally constitutes a mere offer to change its employment relationships because the Mandate seeks to modify implied-in-fact contractual rights of its existing employees. Consequently, the offer to modify these employment contracts must be supported by assent to the offer and acceptance of the proposed consideration.

As an offer to modify its employees’ contracts, the Mandate fails for lack of consideration. By itself, continued employment does not constitute sufficient consideration to modify an employment contract. Under Arizona law, “consideration necessary to modify an existing contract requires a bargained for exchange to support the employees’ relinquishment of the protections they are entitled to under the existing contract.”¹⁰

Here, there is no consideration apart from an offer for continued employment after October 1st, 2021. As noted above, the \$100 payment (less applicable taxes) is being provided to employees who comply with the mandate “[i]n order to *reasonably compensate [them] for the time spent* in connection with getting the COVID vaccine(s)[,]” as opposed to compensating them for the act of injecting a novel vaccination into their bodies. According to its own words and actions, PCH’s current demand of its employees to get vaccinated prior to October 1, 2021, or face termination fails for lack of consideration because continued employment alone is insufficient consideration in Arizona to modify an employment contract.

In nearly this exact context, the Arizona Supreme Court has expressly rejected PCH’s planned course of action as illegal.

In the words of the Supreme Court:

⁸ *Id.*, at 1144.

⁹ *Id.*, at 1144.

¹⁰ *Id.*, at 1145.

*Continued employment alone is not sufficient consideration to support a modification to an implied-in-fact contract. Any other result brings us to an absurdity: the employer's threat to breach its promise of job security provides consideration for its rescission of that promise. Continued employment after issuance of a new handbook [purporting to modify an implied-in-fact contractual term] does not constitute acceptance, otherwise the illusion (*and the irony*) is apparent: to preserve their right under the existing contract, plaintiffs would be forced to quit. . . . **Thus, the employee does not manifest consent to an offer by modifying an existing contract without taking affirmative steps, beyond continued performance, to accept.***

There is no doubt that the parties to a contract may by their mutual agreement accept the substitution of a new contract for an old one with the intent to extinguish the obligation of the old contract, but one party to a contract cannot by its own acts release or alter its obligations. The intention must be mutual.¹¹

PCH's mandate that its employees become vaccinated as a term of continued employment after October 1, 2021, is not only morally repugnant—and a sad attempt at paternalistic virtue-signaling—but also clearly illegal and, therefore, void as a matter of public policy.

BE ADVISED, if this Mandate goes into effect, I will organize a class action lawsuit against PCH, yourself, and every member of the Board on behalf of any willing employee. This class will not be limited to those employees that have been terminated for refusing to comply and the damages will not be limited to the contractual breach. As I have explained, this Mandate is objectively outrageous. If you do not reverse course and abandon this unconscionable mandate before October 1, I will file a claim against you and every member of your staff involved in this decision for intentional infliction of emotional distress.

BE ADVISED, whether your conduct is sufficiently outrageous is a question of fact for the jury to decide.

Consider the average citizen's likely answer to the following question: Did you find that the defendant's attempt at (illegally) forcing its employees into choosing between (1) rape—via an experimental drug of incalculable risk—or (2) economic turmoil outrageous? If so, you must find in favor of all one-hundred plaintiffs.

The fact that the Mandate, by its very nature, contradicts Arizona law has multiple implications that amplifies PCH's potential liability. Because the Mandate is illegal, any action taken in furtherance of effectuating the policy is also illegal. Accordingly, any agreements signed by employees that are related to this Mandate are legally void. This includes every signed exemption request that you have already received from your employees.

¹¹ *Id.*

Now assume, for the sake of argument, that one of your employees is injured or dies because of PCH's vaccine mandate. BE ADVISED, *your workers' compensation insurer has no duty to indemnify you from injuries resulting from your illegal actions.* Consequently, any employee injured from PCH's Mandate can freely sue PCH in Superior Court where—there are no statutory protections limiting employees' to recovering only for lost earning capacity and medical treatment. To the extent that your insurer has already paid benefits resulting from a forced vaccination in furtherance of this policy, you are already exposed.

Stated simply, the fact that the Mandate is illegal means that: (1) PCH is completely exposed to liability for any type of imaginable claim related to its adoption; (2) every employee is a potential plaintiff (and you are exposed in spite of your purported attempt to protect yourself by sneaking contractual protections into your exemption forms); (3) PCH is without any insurance for any of these claims; and (4) you, and the members of your board, are personally exposed.

As a policy, this Mandate contradicts the hospital's core institutional purpose. A hospital is nothing more than an organization made up of individuals who—because of their extensive training as medical experts—are paid by the organization for the sole purpose of advising patients sufficiently to allow them to make the best possible decisions with respect to their personal health. The message to the public from the implementation of the Mandate will be clear: Given that the “medical professionals” employed by PCH are not competent to make professional judgements related to their own healthcare, PCH staff cannot be trusted to provide competent medical advice to anyone. This policy is nonsense, as it undercuts the hospital's legitimacy as a medical institution.

In closing, I would like to state that I am not generally against vaccines. I believe that, in certain instances, the efficacy of a vaccine clearly outweighs the risks of contracting the disease against which that vaccine is designed to provide immunity. I further believe that, in some of such instances, evidence demonstrating the longitudinal safety of a given vaccine warrants the widespread use of that vaccine to inoculate those individuals who—considering their own assessment of the foregoing risks, benefits, and their personal religious ideals—freely choose to become vaccinated. Indeed, I have often used this framework and decided to receive certain vaccines. My current objections to the Mandate are limited to the fact that I, as an employee in the state of Arizona, have the absolute right to decide whether to receive a COVID-19 vaccination, and PCH may not abdicate this decision by unilaterally modifying my existing employment contract.

THIS IS AN ULTIMATUM. I ADVISE YOU TO CONSIDER YOUR OPTIONS CAREFULLY.

Sincerely,

8/29/21
Date: _____

P.S., this letter is intended to effectuate the best outcomes for all involved parties—the hospital, the board, yourself, your employees, their families, and the children of Arizona. My intent is to anonymously submit this letter to the news. I have no intention of ruining my life over this. I expect you, Mr. Meyer, and—your team—to respect my anonymity, as I am merely exercising my rights as your employee pursuant to our current employment contract. Should, for any reason, my identity become exposed, I will retaliate accordingly.