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October 29, 2022

M. Katherine Banks, President
Texas A&M University
1246 TAMU
College Station, Texas 77843

John Mogford, PhD, COO and Sr. Vice President
Texas A&M University Health Science Center
8441 Riverside Pkwy
Bryan, TX 77807

RE: Burden on nursing student [REDACTED]'s religious freedom

Dear President Banks and COO Mogford:

I write on behalf of my client, nursing program student [REDACTED]. I have already been in communication over the past ten days with the Texas A&M University's general counsel's office regarding this matter, but no resolution has thus far been finalized.

[REDACTED] is a nursing student who should complete her course and clinical requirements and graduate in May 2023. However, she's been refused the opportunity to complete her long-term care facility clinical at [REDACTED] at College Station this semester because she is not vaccinated. Ms. [REDACTED] has a sincerely held religious objection to the vaccines. I understand that the University itself does not *directly* mandate the vaccine, but your position has been that your clinical "partner," [REDACTED] here, does, and the University has disclaimed any formal responsibility to accommodate the nonvaccinated students in terms of ensuring a way to complete their clinicals on time. Even if TAMU or TAMU HSC cannot formally compel a particular partner to do something, that doesn't help the University avoid its own obligations to find other partners or other ways to complete the clinical.

Mr. Brown has represented that the nursing school has identified an alternate facility for the nonvaccinated students to complete their long-term care clinical hours this semester, but despite my requests this past week, the details have not been finalized and my client still has not been able to schedule those hours or received any assurance that it will be possible to do so this semester.

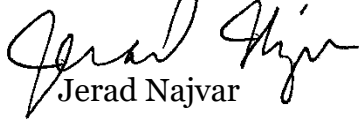
I am enclosing copies of the last substantive communications between myself and the general counsel's office. My client should be able to complete her clinical hours *this semester*, without tossing aside her religious convictions to get vaccinated, and your

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institution has an obligation under the Texas Religious Freedom Restoration Act, Tex. Civ. Prac. & Rem. Code 110.003 *et seq.*, to make the necessary accommodation. Given the urgency here and the lack of concrete plans thus far, I will be forced to file suit imminently if the University does not guarantee a way for my client to complete these clinical hours this semester.

Thank you in advance for your consideration. I am happy to address any additional questions that you may have.

Very respectfully,


Jerad Najvar

Enclosures

cc:

Ray Bonilla & Jerry M. Brown, Office of General Counsel

Re: Status update

Jerad Najvar <jerad@najvarlaw.com>

Thu 10/27/2022 2:54 PM

To: Brown, Jerry <JMBrown@tamus.edu>

📎 1 attachments (316 KB)

Thoms v Maricopa County Community College District.pdf;

Mr. Brown:

The court has the power to issue mandatory injunctions requiring the university to take action to remedy the constitutional violation. That wouldn't necessarily require the school to find a particular partner, although that might be an option. The TRFRA and First Amendment require TAMU to make an appropriate accommodation for students who assert a sincerely held religious objection to the vaccine. That remains true even though TAMU itself is not directly imposing a vaccine requirement. A federal court in Arizona actually issued exactly this type of injunction for nursing students in 2021, and that case is very analogous to our situation. The students won on both the Arizona RFRA claim (which is based on a uniform statute that is materially the same as Texas's statute), and on the First Amendment claim. The fact that the TAMU nursing school has routinely made alternative accommodations in various situations when students could not complete in-person clinical hours means it must also do so when students have a religious objection to the vaccine that prevents them from working with TAMU's clinical partners.

█ already confirmed for me three different instances in which professors in the nursing program have allowed students to complete clinical requirements in various situations where it was not possible to do otherwise required work in-person. One was the Spring 2022 mental health course, where a group of students were able to make up clinical hours through in-class work after Promises College Station refused to allow the group to work on the last Saturday in that semester. Another example occurred before COVID, in Leslie's first semester. I'm sure more such instances would be revealed in any hearing on a temporary injunction request.

█ explained to me that for the long term care clinical, the requirement is only for two shifts of approximately nine hours each at the facility. I don't see why that can't be made available this semester still, and if TAMU refuses to get this arranged and confirmed so that she can go ahead and schedule those hours, I will be filing the lawsuit and setting a hearing on a temporary injunction. I'll subpoena witnesses and documents for that hearing, including TAMU administrators, as necessary to understand what they have been doing and what they need to do to get this resolved for this semester.

Please update me as to the status of the efforts to get the alternate location up and running so that █ can schedule her shifts there. Please update me on it by tomorrow (Friday). Once I have your update, I'll visit with my client to determine whether it's sufficiently concrete and confirmed so as to avoid the necessity of litigation. I'm happy to talk further in the meantime.

Very respectfully,
JN

Jerad Najvar
(281) 404-4696

From: Brown, Jerry <JMBrown@tamus.edu>
Sent: Wednesday, October 26, 2022 9:02 AM
To: Jerad Najvar <jerad@najvarlaw.com>
Subject: RE: Status update

Let me check with my client on timing. We are in Week 10 and if it is going to happen this semester they need to get moving.

I am interested in your theory on how litigation would solve your problem this semester. Pre-litigation injunctions preserve the status quo. Would a judge order the university to find a willing partner? Doubtful.

Jerry M. Brown, J.D.
979-458-6126 (office)
[REDACTED] (cell)
jmbrown@tamus.edu

From: Jerad Najvar <jerad@najvarlaw.com>
Sent: Tuesday, October 25, 2022 10:54 AM
To: Brown, Jerry <JMBrown@tamus.edu>
Subject: Status update

Mr. Brown:

Good morning. I didn't hear back from you after our conversation Friday, but I did get word of Dr. [REDACTED]'s email from yesterday morning to my client (and other students) regarding this plan in the works for an alternate facility for unvaccinated students. I wasn't sure if you were still planning to provide me with further details or if you were just anticipating me following up if I had further questions.

The email itself doesn't provide sufficient details to avoid litigation of this matter, particularly because it's still contingent whether it will be available this semester. That remains my goal for Ms. [REDACTED], and after speaking further with her last night about how the clinical hours are satisfied, it seems it wouldn't be that difficult for students to meet their two-shift requirement still this semester provided TAMU finalizes the arrangement so the shifts can be scheduled.

Please let me know the status. I'm at the SDTX bench-bar conference today, so I won't have a substantive update today (at least not during the day). But I'll be reviewing emails later.

JN

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