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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL
ASSOCIATION, FIVE VALLEYS
UROLOGY, PLLC, PROVIDENCE
HEALTH & SERVICES – MT,
WESTERN MONTANA CLINIC, PC,
PAT APPLEBY, MARK
CARPENTER, LOIS FITZPATRICK,
JOEL PEDEN, DIANA JO PAGE,
WALLACE L. PAGE, and
CHEYENNE SMITH,

Plaintiffs,

v.

AUSTEN KNUDSEN, Montana
Attorney General, and LAURIE ESAU,
Montana Commissioner of Labor and
Industry,

Defendants.

Case No. CV 21-00108-DWM

DECLARATION OF
KIRK BODLOVIC

I, Kirk Bodlovic, declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct:

1. I am the Chief Operating Officer for Providence Health & Services – MT (“PH&S”). The facts set forth in this Declaration are known to me due to my position with the PH&S.

2. PH&S is a nonprofit corporation located in Montana. PH&S operates Providence St. Patrick Hospital, an acute care hospital in Missoula, as well as St. Joseph Medical Center, a critical access hospital in Polson, as well as various medical clinics in Montana.

3. Providence St. Patrick Hospital is enrolled and participates in the Medicare and Medicaid Programs as a Hospital, and as such is subject to the Centers for Medicare and Medicaid Services (“CMS”) Conditions of Participation applicable to Hospitals. PH&S operates other facilities in Montana also falling under the CMS Conditions of Participation. The Conditions of Participation are regulations setting forth detailed requirements and health and safety standards that health care facilities must meet in order to participate in Medicare and Medicaid. Compliance with the Conditions of Participation is required to participate in the Medicare and Medicaid programs and bill for services rendered to Medicare and Medicaid beneficiaries. PH&S receives periodic compliance audits and surveys reviewing PH&S’s continued compliance with the requirements of the Conditions

of Participation. Failure to comply with the Conditions of Participation may lead to monetary penalties, denial of payment for new admissions or other services, or termination of participation in Medicare and Medicaid.

4. PH&S is subject to the CMS Omnibus Covid-19 Health Care Staff Vaccination Interim Final Rule, issued on November 5, 2021 (“CMS Omnibus Rule”).


5. Following a temporary delay due to legal action in the courts, compliance deadlines under the CMS Omnibus Rule for Montana facilities began on February 14, 2022.

6. PH&S has engaged in efforts to comply with the CMS Omnibus Rule.

7. PH&S recognizes that the CMS Omnibus Rule conflicts with Montana law related to discrimination against individuals based upon vaccination status or the possession of an immunity passport. To sustain operations and continue with its mission to provide care to its patients, PH&S has no choice but to comply with the CMS Omnibus Rule to ensure its continued participation in the Medicare and Medicaid programs. Providence receives a majority of its reimbursement through CMS. Continued participation with CMS is essential to PH&S’s continued operations and ability to continue to deliver its current level and volume of patient care. PH&S would not be in a position to sustain its current operations if it was not an enrolled facility participating in Medicare and Medicaid.

8. PH&S has had claims filed against it before the Montana Human Rights Bureau based on MCA 49-2-312 and allegations of discrimination based on vaccination status. These claims are related to PH&S's attempts to come into compliance with the CMS Omnibus Rule. PH&S currently has five claims pending before the Montana Human Rights Bureau.

DATED this 15th day of February, 2022.



Kirk Bodlovic