

**IN THE CIRCUIT COURT OF THE TWENTY-FIRST CIRCUIT
KANKAKEE COUNTY, ILLINOIS**

NEELIE PANOZZO, VALERIE KIETZMAN, JUDY BUSATO,
KATHRYN HAMBLLEN, CARMEN WYMORE, AND AMY
MEMENGA,

Plaintiffs,

v.

RIVERSIDE HEALTHCARE; an Illinois not-for-profit
corporation; and PHILIP M. KAMBIC, in his capacity as
President of Riverside Healthcare,

Defendants.

Case No. 2021L108

Damages
Injunction

Init Case Mgmt Conf
9:00 AM IN ROOM: 204
DATE: 12-13-2021

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Neelie Panozzo, Valerie Kietzman, Judy Busato, Kathryn Hamblen, Carmen Wymore, and Amy Memenga, by and through their undersigned attorneys, sue Defendants, Riverside Healthcare and Philip Kambic, in his capacity as President of Riverside Healthcare, and state:

1. This is an action for declaratory and injunctive relief arising from Defendants' mandate that Plaintiffs be vaccinated against COVID-19, in violation of Plaintiffs' sincerely held moral convictions arising from belief in and relation to God, and thus in derogation of Illinois' Heath Care Right of Conscience Act, 745 ILCS § 70/1, *et seq.* (the "HCRCA").

Parties

2. Plaintiff Neelie Panozzo is an employee of Riverside Healthcare where she serves as a nurse practitioner. She has been in the medical profession for 24 years, and she has been employed by Riverside Healthcare for 2 years and 4 months. She is a devout Christian. She is a resident of Kankakee County.

3. Plaintiff Valerie Kietzman is an employee of Riverside Healthcare where she serves as a registered nurse administrative director. Her role is primarily administrative. She has been in the medical profession for 9 years, and she has been employed by Riverside Healthcare for 4 years and 6 months. She is a devout Christian and attends Eastridge Nazarene Church. She is a resident of Kankakee County.

4. Plaintiff Judy Busato is an employee of Riverside Healthcare where she serves as a registered nurse. She has been in the medical profession for 10 years, and she has been employed by Riverside Healthcare for 7 months. She is a devout Catholic and attends St. John Paul II Parish. She is a resident of Kankakee County.

5. Plaintiff Kathryn Hamblen is an employee of Riverside Healthcare where she serves as a nurse practitioner. She has been in the medical profession for 8 years, and she has been employed by Riverside Healthcare for 4 years. She is a devout Christian and attends both a non-denominational and a Nazarene Church. She is a resident of Kankakee County.

6. Plaintiff Carmen Wymore is an employee of Riverside Healthcare where she serves as a registered nurse. She has been in the medical profession for 10 years, and she has been employed by Riverside Healthcare for 5 years. She is a devout Christian and attends Grace Baptist Church. She is a resident of Kankakee County.

7. Plaintiff Amy Memenga was an employee of Riverside Healthcare where she served as a nurse manager. She has been in the medical profession for 26 years, and she was employed by Riverside Healthcare for 26 years. She is a devout Christian and attends Living Stones Church. She is a resident of Kankakee County.

8. Defendant Riverside Healthcare (“Riverside”) is a not-for-profit corporation existing under the laws of the State of Illinois, with its principal place of business located at 350 N. Wall St., Kankakee, IL.

9. Defendant Phillip Kambic is the President of Riverside Healthcare, and as such is responsible for day-to-day management of Riverside, including enforcement of policies such as the vaccination mandate addressed herein.

Jurisdiction

10. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2-701 because Plaintiffs seek a declaratory judgment that Defendants violated the HCRCA.

11. This Court has personal jurisdiction over the Defendants because this lawsuit arises from Defendants’ actions in the State of Illinois.

12. Venue is proper in Kankakee County because Defendants are located in Kankakee County, Illinois, Plaintiffs are employed by Defendants in Kankakee County, and the relevant facts took place in Kankakee County.

Factual Allegations

13. The HCRCA declares that:

[i]t is the public policy of the State of Illinois to respect and protect the right of conscience of all persons who refuse to obtain, receive or accept . . . the delivery of . . . health care services and medical care . . . ; and to prohibit all forms of discrimination, disqualification, coercion, [or] disability . . . upon such persons . . . by reason of their refusing to act contrary to their conscience or conscientious convictions in . . . or refusing to obtain, receive, [or] accept . . . health care services and medical care.

745 ILCS § 70/2 (Findings and Policy of the General Assembly).

14. The HCRCA expressly prohibits discrimination against any individual based on that person's refusal to accept administration of health care services. Specifically, section 70/5 of the HCRCA provides:

It shall be unlawful for any . . . private institution . . . to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, transfer, staff appointment, hospital, managed care entity, or any other privileges, because of such person's *conscientious refusal* to receive, obtain, [or] accept . . . any particular form of *health care services contrary to his or her conscience*.

745 ILCS § 70/5 (emphasis added).

15. The HCRCA defines "conscience" as "a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths[.]" 745 ILCS § 70/3.

16. Riverside is a "private institution" within the meaning of § 70/5 of the HCRCA.

17. By its terms, the HCRCA "shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of [the HCRCA]." 74 ILCS 70/14.

18. On August 26, 2021, Illinois Governor J.B. Pritzker issued an executive order mandating health care workers be vaccinated against COVID-19. His order included an option for weekly testing if vaccination would require a health care worker to "violate or forgo a sincerely held religious belief, practice, or observance."

19. On August 27, 2021, Riverside circulated a memorandum and policy to all employees announcing it was implementing the Governor's order and offering a process and form by which Riverside employees could secure a religious exemption.

20. All six Plaintiffs, as part of their deeply-held religious faith, oppose abortion and the use of aborted fetal tissue.

21. Because all the currently available COVID-19 vaccines were developed with the use of aborted fetal tissue, receiving any COVID-19 vaccine would go against Plaintiffs' sincerely held religious beliefs.

22. All six plaintiffs promptly submitted a letter or form to Riverside Healthcare requesting a religious exemption from their COVID-19 vaccine mandate.

23. On September 10, 2021, after President Biden's speech to the nation, Riverside circulated another memorandum to employees, stating that "Until we receive the [Emergency Temporary Standard from the federal Occupational Safety and Health Administration (OSHA)] and can review its contents in light of the existing emergency order issued by Governor Pritzker, Riverside will be temporarily suspending the decisions on pending religious and medical exemption requests . . ."

24. Nevertheless, after pledging to suspend all decisions on pending religious exemption requests until the OSHA Rule was published (which has not happened as of the date of this filing), on September 17, 2021, Riverside denied all religious exemption requests for all patient-facing employees, including those of Plaintiffs.

25. Plaintiff Kietzman also submitted a letter to Riverside Healthcare requesting a medical exemption from their COVID-19 vaccine mandate. That request, too, was denied.

26. Plaintiff Busato submitted a second request for a religious exemption from their COVID-19 vaccine mandate. Riverside Healthcare has not yet responded to this request.

27. Plaintiff Hamblen then submitted an affidavit requesting a religious exemption from the COVID-19 vaccine mandate. Riverside Healthcare again denied this request.

28. Plaintiffs all promptly filed appeals of their exemption denials with Riverside.

29. On September 21, 2021, Plaintiff Memenga received a letter, dated September 20, 2021, terminating her employment with Riverside Healthcare effective that day for refusing to comply with Riverside's vaccination mandate after being placed on a two-week administrative leave for not meeting the original September 6, 2021 deadline for vaccination.

30. On September 24, 2021, previous counsel for Plaintiffs sent a demand letter to Riverside outlining the Plaintiffs' rights under the HCRCA and federal Title VII.

31. On September 30, 2021, Riverside sent Neelie Panozzo a letter threatening to place her on unpaid leave or terminate her if she did not become vaccinated by October 31.

32. On October 4, 2021, Riverside denied all exemption appeals by Plaintiffs.

33. On October 8, 2021, Riverside's attorney replied to Plaintiffs' demand letter by defending Riverside's position.

34. On October 8, 2021, Riverside sent a letter to Plaintiff Neelie Panozzo informing her that the Medical Executive Committee would be meeting on October 25, 2021, to revoke her clinical privileges and credentials as a necessary step towards termination. The letter recommended resigning, because revocation would become a permanent part of Panozzo's personnel file that would follow her to future medical jobs. A follow-up email indicated all unvaccinated staff would have their credentials revoked that day.

35. On October 8, 2021, Riverside posted a video to YouTube for employees from president Kambic "to answer questions," and "to explain the why of why we're doing some things." In the video, Kambic says that for employees to choose to refuse to be vaccinated is to say, "I'm going to have to leave" Riverside. Kambic also explained the scope of his definition of "patient-facing," saying, "The vast, vast majority of all of our employees touch a patient somehow.

They simply do. Whether they come over to the hospital or to an outpatient setting and walk through, they are coming into contact with patients. That is why everybody has to get vaccinated. There are very few people who don't come to a hospital setting or a care setting.”

36. Now, Plaintiffs Panozzo, Kietzman, Busato, Hamblen, and Wymore must choose between honoring their religious beliefs or keeping their jobs at Riverside Healthcare. They are imminently faced with being discriminated against as a result of their refusal to accept administration of the COVID-19 vaccines, namely termination on October 31 because of their conscientious objection, and loss of clinical privileges on October 25.

37. Plaintiff Memenga has already been the victim of discrimination based on her refusal to accept administration of the COVID-19 vaccines in violation of her religious faith, which resulted in her termination from Riverside Healthcare.

COUNT I

Violation of the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1

38. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

39. Defendants' Employee Mandate violates the HCRCA's prohibition against discrimination, in that they single out Plaintiffs for disparate treatment based on their conscientious refusal to accept administration of a vaccine against COVID-19.

40. Plaintiffs have already exhausted Riverside's administrative process. They received blanket, form denials when they initially filed and blanket, form denials when they appealed. Moreover, Riverside has made clear in its public statements to the news media and employees that it will deny all such requests from patient-facing staff, which it defines to mean anyone who may come into contact with a patient.

41. Plaintiffs are suffering and will continue to suffer irreparable harm as a result of Defendants' discriminatory policies. Plaintiff Memenga has already been fired. The other Plaintiffs face revocation of their clinical credentials on October 25 and termination on October 31 unless they compromise their beliefs.

42. Plaintiffs will continue to be irreparably harmed absent the entry of an injunction barring Defendants from discriminating against them in violation of the HCRCA.

WHEREFORE, the Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment finding that Defendants' Employee Mandate, as defined hereinabove, violates 745 ILCS § 70/5;

B. Enter preliminary and permanent injunctions preventing Defendants from enforcing the Employee Mandate against Plaintiffs, in any form;

C. Award Plaintiffs actual damages of at least \$2,500 for each plaintiff, pursuant to 745 ILCS 70/12;

D. Award Plaintiff Memenga treble her actual damages from the loss of her job on September 21, 2021, to the date of the Court's order, and her immediate reinstatement, pursuant to 745 ILCS 70/12;

E. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees, pursuant to 745 ILCS 70/12; and

F. Award Plaintiffs any additional relief the Court deems just and proper.

Dated: October 13, 2021

Respectfully Submitted,

NEELIE PANOZZO, VALERIE KIETZMAN, JUDY
BUSATO, KATHRYN HAMBLÉN, CARMEN
WYMORE, AND AMY MEMENGA

By: /s/ Jeffrey M. Schwab
One of their attorneys

Jeffrey M. Schwab (#6290710)
Daniel R. Suhr (WI #1056658)
Liberty Justice Center
141 West Jackson Blvd., Suite 1065
Chicago, Illinois 60604
Phone: (312) 637-2280
Fax: (312) 263-7702
jschwab@libertyjusticecenter.org
dsuhr@libertyjusticecenter.org

Attorneys for Plaintiffs