

VIA ELECTRONIC MAIL ONLY

30 November 2022

Michael Ugwueke, President and Chief Executive Officer
Loretta M. Hinton, Chief Compliance Officer
Methodist Le Bonheur Healthcare
1211 Union Avenue, Suite 700
Memphis, TN 38104

Dear Dr. Ugwueke and Ms. Hinton,

The American Civil Liberties Union of Tennessee (ACLU-TN) is deeply concerned with Methodist Le Bonheur Healthcare's (MLH) sudden and drastic change in policy regarding treatment of patients who are transgender and/or nonbinary. On November 21, 2022, Chris Evans (hereinafter "Our Client") was informed of MLH's decision to cancel all gender-affirming surgeries, less than a week before their surgery was scheduled to be performed. Such a policy is unlawful discrimination based on sex pursuant to Section 1557 of the Patient Protection and Affordable Care Act, as well as discrimination on the basis of disability under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

"Methodist Le Bonheur is Tennessee's largest provider of care to TennCare/Medicaid and uninsured patients," and "Methodist's adult hospitals serve more than 128,000 TennCare and Medicaid patients annually."¹ As such, MLH is a health program and activity subject to the nondiscrimination provisions of Section 1557 of the Patient Protection and Affordable Care Act and the protections of the Americans with Disabilities Act and the Rehabilitation Act.

Section 1557 of the Patient Protection and Affordable Care Act (Section 1557) protects the right of individuals to access the health programs and activities of recipients of federal financial assistance without facing discrimination on the basis of sex.² Categorically refusing to provide treatment to an individual because they are transgender or nonbinary is prohibited sex discrimination under Section 1557. Such an exclusion could result in denial or delay of the provision of healthcare, generating life-threatening results.

¹ <https://www.methodisthealth.org/about-us/About-Methodist/>

² Pub. L. No. 111-148, tit. I, § 1557, 124 Stat. 119, 260 (2010) (codified at 42 U.S.C. § 18116).



Transgender and nonbinary people may encounter unique challenges related to health care access. For example, the U.S. Department of Health and Human Services summarized comments it received during rulemaking in 2020 by noting that:

providers . . . used excessive precautions, avoided touching the patient, engaged in unnecessary physical roughness in pelvic examinations, made insensitive jokes, intentionally concealed information about options for different treatments, asked unnecessarily personal questions, referred to transgender patients by pronouns and terms of address based on their biological sex [assigned at birth] rather than their gender identity, and/or disclosed a patient’s medical history without authorization.³

Additionally, 23% of respondents to the 2015 U.S. Transgender Discrimination Survey—the largest survey of transgender people in the U.S. to date—reported that they did not seek needed care because they feared mistreatment.⁴ Many transgender and nonbinary patients have limited to no choice of providers and discrimination is a high barrier to healthcare for such minority populations. MLH’s policy blatantly discriminates against transgender and nonbinary patients based on sex and has resulted in serious harm to our Client.

In addition, MLH’s refusal to provide access to gender-affirming surgery to our Client, who suffers from gender dysphoria, violates the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. §§ 701 et seq. Under these laws, MLH⁵ must not discriminate against nor deny a person with a disability the benefits of a program or activity.⁶

³ Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160, at 37,191 (June 19, 2020).

⁴ SANDY E. JAMES ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 98 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-ReportDec17.pdf>.

⁵ Methodist LeBonheur Healthcare is a public accommodation within the meaning of Title III of the ADA, 42 U.S.C. § 12181(7)(F) and its implementing regulation at 28 C.F.R. § 36.104.

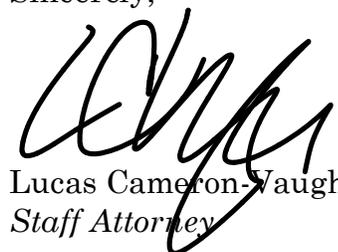
⁶ Section 302(a) of the ADA, 42 U.S.C. § 12182(a), prohibits any person that owns, operates, leases or leases to a place of public accommodation from discriminating on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. *See* 28 C.P.R. § 36.201(a).



ACLU-TN demands MLH promptly rectify its unlawful actions, and re-schedule our Client's surgery, including any other necessary support services, to be performed no later than December 31, 2022. Failure to do so will result in ACLU-TN filing a formal complaint seeking investigation and enforcement by the United States Department of Health and Human Services Office for Civil Rights (OCR). OCR is investigating and, where appropriate, enforcing Section 1557 of the Affordable Care Act in cases involving discrimination on the basis of gender identity, in accordance with all applicable law.⁷

Additionally, ACLU-TN demands that MLH respond promptly to this Letter no later than the **end of business on Friday, December 2, 2022**. MLH's response must include: (i) confirmation that our client's procedure has been scheduled to be performed before December 31, 2022; (ii) a statement regarding MLH's policy on performing gender-affirming surgeries and a copy of any written policy, as an attachment; and (iii) any other written response, policies, memorandum (informal or formal) that are responsive to this Letter.⁸

Sincerely,



Lucas Cameron-Vaughn
Staff Attorney

⁷ *HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, U.S. DEP'T OF HEALTH AND HUMAN SERVS. (Mar. 2, 2022), <https://perma.cc/LX26-59QR>.

⁸ This Letter constitutes notice of potential pending litigation. Therefore, please be advised that all responsive documents, communications (including e-mail and internal messaging), memoranda, medical records, and physical and electronically-stored information regarding the contents of this Letter, our Client, and MLH policies regarding the provision of gender-affirming healthcare should be preserved in their entirety and in their current format by MLH and any of its vendors and/or subsidiaries. Failure to preserve the above-named information will be construed as spoliation of evidence attributable to MLH.

