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LAW BULLETIN MEDIA

Title VII: Can medical care giver refuse to vaccinate a patient?

Plaintiff Sonja Petermann was a nurse for defendant Aspirus, Inc. until she was terminated in December 2021.

In a subsequent lawsuit, Petermann alleged that Aspirus violated her rights under federal law by (1) requiring her to undergo testing for COVID-19, in alleged violation of the Americans with Disabilities Act (ADA); (2) requiring her to administer booster vaccine shots for COVID-19, in violation of her religious convictions pursuant to Title VII of the Civil Rights Act; and (3) terminating her when she refused to give the shots, which was an essential function of her job. *Sonja Petermann v. Aspirus, Inc.*, 2023 WL 2662899 (U.S. Dist. Ct., W.D. Wis.).

ADA claim

Petermann's claim under the ADA is that Aspirus subjected her to testing for COVID-19, in violation of 42 U.S.C. Sec. 12112(d)(4)(A), which prohibits employers from "requiring a medical examination" unless certain criteria are met.

In August 2021, Aspirus required all employees to either receive a COVID-19 vaccine or submit to biweekly testing. Petermann was not vaccinated, and she chose to be tested.

In November 2021, Aspirus required all employees to

receive a COVID-19 vaccine or be terminated, unless the employee obtained an exemption. Petermann asked for a religious exemption.

She alleged in her complaint that her "sincerely held religious beliefs prohibited her from taking the Covid-19 vaccine. Plaintiff Petermann is a Christian who believes, as she has discerned from prayer and study of Scripture, that her body is a Temple of God. Plaintiff Petermann believes it would violate the sanctity of her conscience to take the vaccine."

Aspirus granted Petermann's exemption request. However, Aspirus also informed Petermann that she would still be required to administer vaccine booster shots for COVID-19. The plaintiff refused to perform this essential function of her job.

Petermann claimed that administering vaccinations "would also violate her religious beliefs, as set forth in Plaintiff's request for a religious exemption."

Petermann requested another exemption from giving booster shots on the same basis as her refusal to become vaccinated herself, or to take a COVID-19 test. Aspirus denied Petermann's request for an exemption and terminated her on Dec. 16, 2021.

BY CHRISTOPHER GARCIA

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While much is happening in both First Amendment and Title VII jurisprudence revolving around religious expression, our focus is Petermann's novel argument that her religious convictions should allow her to refuse to vaccinate patients who desire it. The issue is whether Petermann's belief that the vaccine qualifies as mistreatment is itself steeped in sincere religious belief.

Medical opinions cloaked in religious garb

If Petermann believed that the vaccine defiled her body because it was unhealthy or unsafe, that would be a medical objection, not a religious one. In this case, Petermann never bothered to explain how receiving the vaccine

would be inconsistent with a particular religious observance or practice. Nonetheless, Aspirus granted her an exemption from receiving the vaccine.

But Petermann never asserted a new objection to administering the vaccine; she only requested an exemption on the same basis as her objection to receiving the vaccine.

The court held that the plaintiff never asserted a "religious objection to administering the vaccine." Her objection to receiving the vaccine was its effect on the plaintiff's own body and spiritual being. The court declined her attempted legal transubstantiation from her own body to that of a patient who is seeking a vaccination. The plaintiff cannot, via Title VII, confer "Temple of God" status on hospital patients who wish to receive a vaccination.

Petermann asserted a new theory in her opposition brief, "that she 'refused to give shots that she would not receive herself' because 'as a Christian, she is called to do unto others as she would have them do unto her.'" But the plaintiff never informed Aspirus that she had adopted the Golden Rule as part of her religious beliefs. The court dismissed with prejudice Petermann's Title VII claim

for failure to accommodate her refusal to administer a COVID-19 vaccine.

At the core of her religious conviction surrounding the Golden Rule is the assumption that administering the COVID-19 vaccine is doing harm, despite physician orders, federal and state

mandates, and a patient's wish to be vaccinated — medical opinion dressed up as sacred doctrine.

Meantime, the U.S. Supreme Court is not done with its transformation of how it addresses religious accommodations in both the private and public sphere.

More radical changes are promised by Justices Neil Gorsuch, Clarence Thomas and Samuel Alito.

But for the moment, petitioners for workplace accommodations, pursuant to Title VII and the ADA, still have a duty to explain their disability as it presents itself

in the workplace, and specifics of their religious convictions which conflict with their employer's policies. Such cases depend on that foundational articulation attendant upon each request and the complex dialogue with the employer that must follow.