

Date

Hospital Name

ATTN:

Recipient Address

VIA FEDERAL EXPRESS and EMAIL

Re: Transplant

Dear:

It has come to the attention of our legal team that your hospital is refusing to allow _____ to be placed on the transplant list due to vaccination status. Aggressively pushing vaccination on this vulnerable, immunocompromised patient is egregious, potentially sentencing this patient to death.

Your hospital's policy failure to accommodate medical and religious exemptions is illegal and would not stand in a court of law. By way of this letter, we strongly urge your hospital and physicians to reconsider this decision or legal action may ensue.

The AMA's Code of Medical Ethics states that physicians should ensure "organs for transplantation are allocated to recipients on the basis of ethically sound criteria, including but not limited to likelihood of benefit, urgency of need, change in quality of life, duration of benefit, and, in certain cases, amount of resources required for successful treatment."¹ Although ethical principles and regulatory requirements may overlap, access to the waiting list for an organ transplant is the fundamental prerequisite to all organ allocation.

Nevertheless, the regulatory environment within which all organ transplant programs must operate plays a crucial role. In fact, Dr. David W. Bearl's October 2019 review article, *Ethical Issues in Access, Listing and Regulation of Pediatric Heart Transplantation*, states: "[a]side from revocation of a member's designation as a transplant program, the biggest threat is often financial with potential for ending Medicaid reimbursement for the transplant program or for the entirety of the hospital system."² In other words, the decision of whether to include a child on the organ

¹ "Code of Medical Ethics: Organ Procurement and Transplantation," Ethics, American Medical Association, accessed March 25, 2019, <https://www.ama-assn.org/delivering-care/ethics/code-medical-ethics-organ-procurement-transplantation>.

² David W. Bearl, *Ethical Issues in Access, Listing and Regulation of Pediatric Heart Transplantation*, *Translational Pediatrics* Vol. 8, No. 4 (October 2019); doi:10.21037/tp.2019.08.01; [Ethical issues in access, listing and regulation of pediatric heart transplantation - Bearl - Translational Pediatrics \(amegroups.com\)](https://www.amegroups.com/journal/tp/2019/08/01/ethical-issues-in-access-listing-and-regulation-of-pediatric-heart-transplantation)

transplant list often comes with financial strings and disincentives whereby physician decision making is based on “CMS³ certification rather than patient-centered care”⁴ Although the review board that dictates the outcome of the organ transplant process is not currently designed to be fair, Dr. Bearl admits that, “a program’s true survival should really be preventing death from the time of listing.”⁵

In May 2020, the American Academy of Pediatrics (AAP) Committee on Bioethics and Council on Children with Disabilities issued a new policy, “denying transplantation to children with disabilities on the basis of their disability may constitute illegal and unjustified discrimination.”⁶ Specifically, the AAP policy establishes that the same minimum thresholds must hold for all patients regardless of intellectual or developmental disability when considering the health outcomes of a patient in need of an organ transplant. Although medical advances in pediatric heart transplantation have made great strides forward by allowing sick infants and children the ability to not only survive, but to grow up into productive adults, there is also a dark flip side. Certain physicians have undoubtedly developed a God-complex when determining who qualifies to be placed on the organ transplant list. These rogue physicians who swore to ‘first do no harm’ must be reined in and held accountable for their actions or lack thereof, such as refusing to allow an innocent child the opportunity to be placed on an organ transplant list due to vaccination status.

The Americans with Disabilities Act (ADA) prohibits discrimination. Title II of the ADA prohibits disability-based discrimination “in all programs, activities, and services of public entities” by physicians, state-run hospitals, and recipients of federal funding, including health care providers who are paid through Medicaid or Medicare as well as organizations founded through federal contracts such as the United Network for Organ Sharing (UNOS).⁷ Discrimination under the ADA includes both the refusal to provide services to qualified individuals with disabilities and the refusal to make reasonable modifications in policies and practices as they apply specifically to organ transplant centers and medical professionals in the organ transplantation process. Any decisions concerning organ allocation cannot be based on blanket assumptions regarding a person’s disability nor can any decisions include unfounded assumptions that the pediatric patient is less likely to comply with any postoperative requirements, including requirements based upon vaccination status.⁸ Thus, when an organ transplant is likely to provide significant health benefits to a patient, denying such a service is not only unethical, but may be illegal.⁹

³ The Centers for Medicare and Medicaid Services (CMS)

⁴ David W. Bearl, *Ethical Issues in Access, Listing and Regulation of Pediatric Heart Transplantation*, Translational Pediatrics Vol. 8, No. 4 (October 2019); doi:10.21037/tp.2019.08.01; [Ethical issues in access, listing and regulation of pediatric heart transplantation - Bearl - Translational Pediatrics \(amegroups.com\)](#)

⁵ David W. Bearl, *Ethical Issues in Access, Listing and Regulation of Pediatric Heart Transplantation*, Translational Pediatrics Vol. 8, No. 4 (October 2019); doi:10.21037/tp.2019.08.01; [Ethical issues in access, listing and regulation of pediatric heart transplantation - Bearl - Translational Pediatrics \(amegroups.com\)](#)

⁶ *Pediatrics* (2020) 145 (5): e20200625; <https://doi.org/10.1542/peds.2020-0625>.

⁷ Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat 328 (1990), amended Pub. L. No. 110-325 (2008).

⁸ [Organ Transplant Discrimination Against People with Disabilities: Part of the Bioethics and Disability Series \(ncd.gov\)](#)

⁹ Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat 328 (1990), amended Pub. L. No. 110-325 (2008).

Mandating Experimental Vaccines for an Immuno-compromised Patient is a Direct Violation of the Nuremberg Code. At this point, if the hospital and supervising physicians continue to require vaccination for their vulnerable patients, they will be in clear violation of the Nuremberg Code. Specifically, the Nuremberg Code, on which the Common Rule is based [45 CFR, Part 46, Subpart A]¹⁰ categorically requires the voluntary informed consent of all patients or parental guardians “without the intervention of any element of force, fraud, deceit, or duress.”¹¹ This means that every individual or parent has the right under the Nuremberg Code to refuse Emergency Use Authorization Vaccines without coercion, especially when doing so can cause an elevated risk of serious illness or death.¹² Any violation of the Nuremberg Code constitutes a “crime against humanity.” Therefore, if your hospital and physicians continue to use coercive pressure to force patients into taking experimental medical interventions, we will strive to bring those actions to light and justice.

History will judge those individuals in charge of “policy” either harshly or benevolently. If the “individual in charge” continues to coerce xxx vaccines, including a COVID shot, on this immunocompromised patient in desperate need of an organ transplant, [and further denies the parents individualized, voluntary informed consent or refusal], a basic and fundamental human right, we shudder to imagine the consequences. In time, your decisions may be viewed very differently than you perceive them today, so choose wisely. We ask that you carefully consider all this information and do right by this patient who deserves the right to participate unequivocally in the organ transplantation process.

Sincerely yours,

¹⁰ [eCFR :: 45 CFR Part 46 Subpart A -- Basic HHS Policy for Protection of Human Research Subjects](#)

¹¹ [Nuremberg Code - history - Office of NIH History and Stetten Museum](#)

¹² [Nuremberg Code - history - Office of NIH History and Stetten Museum](#)