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January 11, 2011

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Re: URGENT COMPLAINT of Vanderbilt University's Violation of 42 U.S.C. § 300a-7 by Forcing Nurse Residency Applicants to Promise to Assist Abortions, *Action Is Needed Before Application Deadline of January 28, 2011*

Dear Mr. Freeman:

I am an attorney representing [REDACTED] of Mississippi, and I write on her behalf to file, by means of this letter, this formal COMPLAINT¹ against Vanderbilt University in Nashville, Tennessee, based on Vanderbilt's blatant violation of Miss [REDACTED]'s federal rights of conscience under 42 U.S.C. § 300a-7.

Attached is Vanderbilt University's application for its nurse residency program. The application compels all qualified applicants for the field of labor and delivery, obstetrical and gynecological care, newborn nursery, and postpartum care, including Miss [REDACTED], to promise in writing that they may and are expected to assist abortions during their employment in the residency, or else their application for the program will be rejected. Since Vanderbilt receives over \$300 million in federal health tax dollars each year, this requirement blatantly violates the university's duties under 42 U.S.C. § 300a-7, as explained below. I ask that your department promptly investigate and compel Vanderbilt to cease its illegal discrimination and/or to halt its receipt of relevant tax dollars and cause it to repay wrongfully appropriated funds.²

Because the deadline for Vanderbilt's nurse residency applications is January 28, 2011, it is imperative that HHS *immediately* act to prohibit Vanderbilt from rejecting or discriminating against nurse residency applicants, including Miss [REDACTED], who do not wish to

¹ Complaint forms for Miss [REDACTED] are attached.

² In another recent complaint about a violation of 42 U.S.C. § 300a-7, HHS OCR Region II stated on June 7, 2010 that HHS OCR has jurisdiction to investigate such complaints pursuant to its authority under both § 300a-7 itself and also 45 C.F.R. Part 88. See investigation on behalf of Catherina Cenzone-DeCarlo, Ref. # 10-109676.

promise that they will assist abortions. Miss ██████'s rights under § 300a-7 and being and will continue to be violated if Vanderbilt is not made to repeal its illegal application-requirement **by January 26, 2011**, in time for Miss ██████'s and others' applications to be mailed to and received by Vanderbilt as required by the deadline.

Attached is Vanderbilt's 16-page "Nurse Residency Program Summer 2011 Application Packet." (hereinafter "Application") The packet indicates that the nurse residency program "is for new nurse graduates who are seeking to work at Vanderbilt," and that accepted residents are "hired into the program as a full-time (36-40 hr/week) staff member," first for a year as a residency employee and then for an additional year of employment. Application at 4, 6. Candidates for the program choose an area of focus, one of which is "Women's Health." Application at 3.

The "Women's Health" track includes labor and delivery, obstetrical and gynecological clinic, newborn nursery, and postpartum care. Application at 8. But for a nurse to apply to practice in these areas of medicine, she must sign the letter on page 15 of the Application. This letter blatantly violates the Church Amendment by excluding all applicants who object to assisting abortions. The letter specifies:

If you are chosen for the Nurse Residency Program in the Women's Health track, **you will be expected to care for women undergoing termination of pregnancy.** Procedures performed in the Labor and Delivery unit include vaginal deliveries, cesarean deliveries, bilateral tubal ligations, dilatation and curettage, cerclages, inductions of labor, amniocentesis, chorionic villi sampling, terminations of pregnancy and fetal surgery procedures.

It is important that you are aware of this aspect of care and give careful consideration to your ability to provide compassionate care to women in these situations. **If you feel you cannot provide care to women during this type of event, we encourage you to apply to a different track** of the Nurse Residency Program to explore opportunities that may best fit your skills and career goals.

...

By signing this letter, I acknowledge that I am aware that I may be providing nursing care for women who are having the procedures listed above that may be performed in the Center for Women's Health.

Application at 15 (emphasis added).

Forcing nurse residency candidates to promise to assist abortions is apparently a high priority for Vanderbilt, because the Application Packet repeatedly emphasizes in highlighted text

that applicants for the Women's Health track *must* sign the above letter or their applications will be discriminated against and not even considered:

"For the Women's Health candidate: The Women's Health attached letter must be signed and returned with the application packet." Application at 6.

"*For Women's Health applicants please see the attached letter." Application at 8 (emphasis in original).

"Checklist . . . If applying to Women's Health, the WH Signed Acknowledgement." Application at 9 (emphasis in original).

". . . needs to be signed by candidates seeking admission into the Women's Health track." Application at 15 (emphasis in original).

"Incomplete or late packets will not be considered." Application at 2 (emphasis in original).

"Incomplete or late packets will not be considered." Application at 3 (emphasis in original).

Miss [REDACTED] is a fourth year student in the nursing program at [REDACTED]. She wishes to pursue a career providing excellent care to pregnant women and their preborn children. She is not only eligible to apply to Vanderbilt's nurse residency program,³ she is a stellar applicant with excellent grades. As required by Vanderbilt, Miss [REDACTED] submitted a pre-qualifying application through Vanderbilt's jobs website, and as a result she received the attached full Application via email.⁴ Miss [REDACTED] can and is prepared to submit all that the application requires and to fulfill all of the program's requirements,⁵ except only that she has a religious objection to participating in abortions and to promising to do so by signing the Application's letter. She wishes to apply to the program by the January 28 deadline, but faces denial of admission and discrimination against her application if she does not agree to assist abortions as stated in the letter.

The Church Amendment plainly prohibits Vanderbilt from this compulsion of its nurse residency applicants to promise to assist abortions. The Church Amendment provides:

³ The "Eligibility" requirements for applying are simply that one will be a graduate nurse in July 2011 with less than six months post graduate experience. Application at 3.

⁴ Email from Vanderbilt to Miss [REDACTED] is attached. See Application at 5 ("An initial on-line application/ resume via the on-line job site at www.vanderbilt.jobs must be completed prior to receiving the e-mailed application packet.").

⁵ The Application and Program requirements are found on pages 5 and 6 of the Application.

(e) Prohibition on entities receiving Federal grant, etc., from discriminating against applicants for training or study because of refusal of applicant to participate on religious or moral grounds. No entity which receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 may deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

42 U.S.C. § 300a-7(e). The same statute prohibits recipients of an equally wide swath federal health funds from discriminating against any health care personnel (as explained above from the Application, nursing residents at Vanderbilt are entry-level employees, and therefore health care personnel) on the basis of their religious or moral objections to assisting abortions. 42 U.S.C. § 300a-7(c).

Vanderbilt is the 15th largest recipient of HHS discretionary funding in the country, receiving well over \$300 million in federal health tax dollars every year.⁶ A cursory review of grants in fiscal year 2010 shows multiple grants to Vanderbilt implicating federal conscience laws under 42 U.S.C. § 300a-7.⁷ Therefore Vanderbilt must comply with 42 U.S.C. § 300a-7.

Federal law prohibits Vanderbilt from discriminating in any way against applicants because they refuse to “counsel, suggest, recommend, assist, or in any way participate” in abortions. When Vanderbilt's Application requires that nurses “will be expected to care for women undergoing” abortions, that an applicant must acknowledge “I may be providing nursing care for women who are having” abortions, that if they “cannot provide care to women during this type of event, we encourage you to apply to a different track” and choose a different career, that this letter “must be signed” and “needs to be signed” by all women's health applicants, and

⁶ TAGGS FY2008 Annual Report, “The Fifty Recipients Receiving the Greatest Discretionary Funding Levels,” available at http://taggs.hhs.gov/annualreport/FY2008/discretionary/top50_grants.cfm.

⁷ A non-exhaustive search on taggs.hhs.gov for fiscal year 2010 shows tens of millions of dollars awarded to Vanderbilt University from programs of the Public Health Service (Chapter 6A, Title 42 of the United States Code) or the Developmental Disabilities Assistance and Bill of Rights Act of 2000, including: the Administration on Developmental Disabilities, the Agency for Healthcare Research and Quality, and institutes of the NIH (which is an agency of the Public Health Service) such as the Fogarty International Center Advancing Science for Global Health, the National Cancer Institute, the National Center for Research Resources, the National Human Genome Research Institute, the National Heart, Lung and Blood Institute, the National Institute of Allergy and Infectious Diseases, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute of Diabetes and Digestive and Kidney Diseases, the National Institute of Environmental Health Sciences, the National Institute of General Medical Services, the National Institute of Mental Health, and the National Library of Medicine. Other Public Health Service Act funding exists outside the scope of the TAGGS database.

that if they don't sign the letter their Application is "incomplete" and "will not be considered," Vanderbilt is *by definition* acting to "deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance . . . to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions . . . contrary to . . . the applicant's religious beliefs or moral convictions" as provided in § 300a-7(e). Likewise, because nurse residents are employees and therefore "health care personnel" under 42 U.S.C. § 300a-7(c), Vanderbilt may not discriminate against them in any way due to their refusal to assist the performance of abortions.

Vanderbilt University assumed a public trust when it received what now amounts to billions of federal health tax dollars. Its blatant discrimination against nurses who wish to practice in labor and delivery or obstetrical and gynecological care is exactly the kind of invidious behavior that the Church Amendment was written to prohibit over 30 years ago. If the Church Amendment is not enforced, pregnant women patients who value their babies will be deprived of access to nurses who share their value for life, because no such nurses will be able to graduate, be hired and licensed, and pursue careers. Federal conscience laws must be enforced to protect the right of women patients to access health care providers who share their value for human life.

It is therefore imperative that your agency act swiftly to prohibit Vanderbilt from violating Miss [REDACTED]'s rights by refusing to consider her application, discriminating against her application, and denying admission to her on the basis of her unwillingness to assist abortions or to promise to do so by means of the Application letter. Vanderbilt has set a January 28, 2011 deadline to *receive* applications *by mail only*, and therefore Miss [REDACTED]'s practical deadline for posting her application by overnight mail is on January 26. **Therefore I respectfully ask that you respond to me by January 20, 2011**, to let me know what your office is doing to halt Vanderbilt's blatantly illegal discrimination in this application process, so that Miss [REDACTED]'s and others' applications can be deemed complete without submitting an illegally coerced promise to assist abortions.

Yours truly,



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Alliance Defense Fund
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cc: David French, Senior Counsel, Alliance Defense Fund, Columbia, TN
Nicholas Zeppos, Chancellor, Vanderbilt University