

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 19-cv-2478

CORNELIUS D. MAHONEY and BARBARA MORRIS, MD

Plaintiff,

v.

CENTURA HEALTH CORPORATION, a Colorado non-profit corporation.

Defendant.

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**NOTICE OF REMOVAL**

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TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO:

Defendant, Centura Health Corporation, through undersigned counsel, respectfully submits this Notice of Removal of this action from the District Court, Arapahoe County, Colorado, the court in which this case is presently pending as Case No. 2019CV31980, to the United States District Court for the District of Colorado. This Notice of Removal is filed under 28 U.S.C. § 1441 and 1446, as well as D.C.COLO.LCivR 81.1. As grounds for removal, Defendant states as follows:

**BACKGROUND**

1. On August 21, 2019, Plaintiffs Cornelius D. Mahoney and Barbara Morris, MD (“Plaintiffs”) commenced an action in the District Court, Arapahoe County, Colorado, entitled *Cornelius D. Mahoney and Barbara Morris, MD v. Centura Health Corporation*, Case No.

2019CV31980 (hereinafter referred to as “the State Action”). A true and correct copy of the Complaint and Summons is attached as **Exhibit A**.

2. Plaintiffs served Defendant with a copy of the Summons and Complaint on August 22, 2019. A true and correct copy of the District Court Case Cover Sheet (“Cover Sheet”) is attached as **Exhibit B**.

3. Centura Health is a religious organization organized to "Extend the Healing Ministry of Christ" to the people and communities its people and facilities serve.<sup>1</sup> Centura Health is sponsored by the Catholic and Seventh-day Adventist healthcare ministries. The religious doctrines of those churches are core principles that govern, direct and inform the activities of Defendant. When Dr. Morris signed her Physician Employment Agreement with Centura Health-St. Anthony Hospital in 2017, she expressly agreed that she would not provide any services "that are in violation of the Ethical and Religious Directives for Catholic Health Care Services." As a matter of religious doctrine, those Directives declare that suicide and euthanasia are never morally acceptable options and prohibit participation or cooperation in any intentional hastening of a person's natural death, including through "an attitude or behavior which leads another to do evil."

4. Rather than encouraging patient Cornelius Mahoney to receive care consistent with that Catholic doctrine or transferring care to other providers, Dr. Morris has, within her employment, encouraged an option that she knew was morally unacceptable to her employer. It was her employer's religious judgment that her conduct in relation to Mr. Mahoney violated the

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<sup>1</sup> See, *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (Tenth Cir. 2017), in which the Tenth Circuit Court of Appeals confirmed that Centura and its sponsors are religious organizations. (“Centura is a joint venture between CHI and Adventist Health System . . . Centura’s two sole corporate members are [CHI Colorado] . . . and PorterCare Adventist Health System . . . Both CHIC’s and PorterCare’s facilities are tax exempt and each operates in accordance with the teachings of its respective founding church.” Id. at 1229.

religious principles upon which the Hospital operates and warranted the termination of her employment.

5. Centura Health has filed a Notice of Filing Notice of Removal and entered their appearance in the State Court, see **Exhibit C**. Defendants have not filed and served an answer or responsive pleading to the Complaint in the State Court.

6. Plaintiff's Complaint for Declaratory Judgment, at page 13, seeks the following **"RELIEF REQUESTED"**:

1. Declare that Defendant may not lawfully prohibit Dr. Morris from, or sanction or penalize Dr. Morris for, providing AID [Aid In Dying] related services to Neil, including but not limited to, prescribing AID medication to Neil... .

**PLAINTIFF'S COMPLAINT PRESENTS A FEDERAL QUESTION**

7. In this case, it is undisputed that Plaintiff has asked the court to broadly declare that her employer, Centura Health- St. Anthony Hospital, cannot lawfully discipline her for conduct in her employment that violates its religious principles. That declaration could not be entered if the federal constitution, statutes and case law dictate that such discipline is lawful and that courts must not interfere with a religious organization's determinations regarding an employee's compliance with its doctrines. A request for such a declaration raises the following substantial federal issues:

- a. Whether a declaration that a religious organization cannot discipline its employee on the basis of conduct contrary to its religious doctrines would violate the free exercise clause and/or the establishment clause of the First Amendment to the United States Constitution?
- b. Whether the state statute, on which Plaintiff bases her request for the declaration, would be preempted by the federal statutory exemption of Section 702 of the Civil Rights Act of 1964, 78 Stat. 255, as amended, 42 U.S.C. 2000e-1, that explicitly exempts

religious organizations from claims that arise from discipline on religious grounds?

- c. Whether the declaration sought would violate the principles taught by the United States Supreme Court unanimously upholding "the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints, et. al., v. Amos, et. al.*, 483 U.S. 327 (107 S.Ct. 2862) (1987). The Court rejected the lower court's intrusion into the religious organization's employment decision: "It cannot be seriously contended that 702 impermissibly entangles church and state; the statute effectuates a more complete separation of the two and avoids the kind of intrusive inquiry into religious belief that the District Court engaged in in this case." *Id.* at 340. *See, also*, Concurring Opinion, 483 U.S. at 341-344: "[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.' ... Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is thus a means by which a religious community defines itself. ... Furthermore, the prospect of government intrusion raises concern that a religious organization may be chilled in its free exercise activity. While a church may regard the conduct of certain functions as integral to its mission, a court may disagree. ... A case-by-case analysis for all activities therefore would both produce excessive government entanglement with religion and create the danger of chilling religious activity." (citations omitted.)

8. Because Plaintiff's requested declaratory relief involves very significant federal issues, Plaintiff's claims fall under federal question jurisdiction and are, therefore, subject to removal to federal court under 28 U.S.C. § 1441(a). *See, Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308 (2005).

9. This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331, which provides that federal courts have original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States" ("Federal Question").

10. Accordingly, removal is appropriate under 28 U.S.C. § 1441. This removal notice is timely filed under 28 U.S.C. § 1446.

### **VENUE**

11. Venue lies in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1391(b) because the State Action was filed in this District and the State Action asserts that the alleged unlawful actions took place in this District.

12. Defendant has not filed a responsive pleading in the State Action.

13. No hearings have been set in the State Action. **Exhibit D**, State Court Docket Sheet.

### **REMOVAL**

14. Pursuant to 28 U.S.C. § 1446(d), Defendants have provided written notice of the removal to all parties in this action and will simultaneously file a copy of this Notice of Removal in the District Court, Arapahoe County.

15. There are no pending motions and no hearings currently scheduled in the State Action. Defendant understands that Plaintiffs intend to file a Motion for Temporary Restraining Order and Preliminary Injunction.

16. Defendants submit this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff or conceding that Plaintiff has pled claims upon which relief can be granted.

17. In accordance with D.C. COLO.L.CIV.R.81.1, Defendants have attached copies of all state court pleadings, motions, and other papers, including the state court's current docket sheet attached here as **Exhibits A through D**.

WHEREFORE, Defendant Centura Health Corporation respectfully request that the United States District Court for the District of Colorado accept the removal of this action from the state court and direct that the District Court for Arapahoe County have no further jurisdiction on this matter, unless and until this case is remanded.

Respectfully submitted this 30<sup>th</sup> day of August, 2019.

HALL, RENDER, KILLIAN, HEATH & LYMAN, P.C.

s/ Melvin B. Sabey

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ATTORNEY FOR DEFENDANT

### **CERTIFICATE OF SERVICE**

The undersigned certifies that on this 30<sup>th</sup> day of August, 2019, a true and correct copy of the foregoing was filed via the CM/ECF with service upon the following:

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