

TOWARDS JUSTICE

DEFENDING THE DIGNITY OF WORK

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Via Email

November 23, 2020

Scott Moss, Director
Division of Labor Standards and Statistics
Colorado Department of Labor and Employment
633 17th St., Suite 600, Denver, CO 80202
Via email: scott.moss@state.co.us

RE: PHEW Whistleblower Complaint against Denver Health

Respondent: Denver Health and Hospital Authority, 777 Bannock Street, Denver, CO 80204

Dear Scott,

This letter constitutes a formal complaint under the recently enacted Colorado Public Health Emergency Whistleblower (“PHEW”) Act to the Division of Labor Standards and Statistics (“DLSS”) on behalf of Denver Health Workers United (“DHWU”). DHWU seeks to proceed in this matter as a “whistleblower,” on behalf of the State of Colorado, pursuant to the PHEW Act’s *qui tam* enforcement mechanism. C.R.S. § 8-14.4-107.

Denver Health and Hospital Authority (“Denver Health”) is a political subdivision of the State of Colorado, C.R.S. § 25-29-103(1), which owns and operates Denver Health Medical Center. Denver Health Medical Center employs thousands of healthcare professionals and administrative staff, including physicians, nurses, and emergency medical technicians. Since the beginning of the COVID-19 pandemic, these workers have fought under extraordinary strain and in the face of dangerous and even life-threatening workplace safety and health conditions to protect the health of their patients. These workers have also fought for policies and practices that reflect that our community must also confront the long-standing public health emergency of systemic racism, whose flames have been further fanned by the ongoing pandemic—which as Denver Health workers see every day, disproportionately affects people of color. These intertwined public health crises affect Denver Health workers every day as they struggle with systemic racism within the workplace and in the treatment of patients and as they struggle to keep themselves and their families safe from COVID-19.

Denver Health workers have sought to speak out to each other, their employers, and the public generally about these intertwined public health emergencies and what more Denver Health could do to address them for the benefit of their workers and the public generally. Pursuant to the PHEW Act, Colorado’s workers have a statutory right to speak out about those matters. While Denver Health does not have a written policy prohibiting employee speech in this manner, its conduct reveals an unwritten policy that prohibits employees from speaking out about these matters. Representing its members, DHWU here seeks to proceed on behalf of the State of Colorado as a

“whistleblower” to seek remedies that the State could itself order, including an injunction against Denver Health’s unwritten policy and an order to provide corrective notice to Denver Health employees about their rights under the PHEW Act.

A. Denver Health Workers United Files This Complaint to Proceed as a “Whistleblower” on Behalf of the State of Colorado.

Pursuant to C.R.S. § 8-14.4-107(1), a “whistleblower” is a worker with knowledge of an alleged violation of the PHEW Act “or the worker’s representative.” *Id.* Dr. Katie Bakes, Peter DellaVecchia, Paul Paratore, and Christine Russell have knowledge of the violations alleged in this Complaint. Those workers have signed the designation forms attached here as Exhibit A, which designate DHWU as their representative for the purpose of pursuing a *qui tam* action under the PHEW Act. Although those workers may also have private claims under the PHEW Act—including private claims for damages—neither they nor DHWU are asserting those claims as part of this Complaint. Here, DHWU merely seeks remedies available to the State, including prospective relief to enjoin Denver Health’s continuing violation of the PHEW Act.

B. Denver Health Has an Unwritten Policy of Retaliating against Workers Who Publicly Raise Concerns about Public Health Emergencies, Including Systemic Racism and COVID-19.

The PHEW Act not only prohibits employers from retaliating against workers for speaking out about public health emergencies. It also prohibits “principals” like Denver Health from maintaining or enforcing “workplace polic[ies] that would limit or prevent the worker from disclosing . . . hazards related to a public health emergency.” C.R.S. § 8-14.4-102(2)(a).¹ A “public health emergency” is “a public health order issued by a state or local public health agency,” C.R.S. § 8-14.4-101(4)(a), or “a disaster emergency declared by the governor based on a public health concern,” C.R.S. § 8-14.4-101(4)(b). COVID-19 and systemic racism have both been recognized as public health emergencies or crises by the State of Colorado and the City of Denver.²

¹ As defined by the Act, “principal” includes “the State of Colorado, local governments, and political subdivisions of the state.” C.R.S. § 8-14.4-101.

² Governor Jared Polis declared a disaster emergency due to the presence of COVID-19 in March 2020, Co. Exec. Order No. D 2020-003 (March 11, 2020), which remains in effect. *See* Co. Exec. Order No. D 2020-003 (March 11, 2020); Co. Exec. Order No. D 2020 032 (April 8, 2020); Co. Exec. Order No. D. 2020-058 (May 7, 2020); Co. Exec. Order No. D 2020-076 (May 22, 2020); Co. Exec. Order No. D 2020-109 (June 20, 2020); Co. Exec. Order No. D. 2020-125; Co. Exec. Order No. D. 2020-152; Co. Exec. Order No. D. 2020-176 (Sept. 2, 2020); Co. Exec. Order No. D. 2020-205 (Oct. 1, 2020); Co. Exec. Order No. D. 2020-234 (Oct. 20, 2020); Co. Exec. Order No. D. 2020-258 (Nov. 19, 2020).

Similarly, Denver has declared that “racism and other structural inequities are an ongoing public health crisis. *See*, “The Denver Department of Public Health & Environment (DDPHE) Recognizes Racism as a Public Health Crisis, Acts to Improve Pandemic Response,” <https://www.denvergov.org/content/denvergov/en/covid-19/coronavirus-news/november-2020/racism-public-health-crisis.html>; *accord* <https://www.apha.org/topics-and-issues/health->

As detailed below, Denver Health has maintained and applied a policy of prohibiting workers from raising workplace concerns related to public health emergencies affecting the workplace and has retaliated against or threatened workers who speak out on those issues. That policy is evident in the ongoing experience of the workers who have designated DHWU as their representative in this *qui tam* action. Those workers report that Denver Health has hired labor consultants and have attempted to defeat workers efforts to organize and to speak to each other or the public generally about public health emergencies affecting the workplace. Workers who speak out are asked to have closed door meetings with management and are threatened against continuing to communicate publicly about these matters.

The following specific instances further evince Denver Health's unwritten policy that violates the PHEW Act.

Retaliation against Dr. Katie Bakes for Speaking Out about Systemic Racism

Dr. Katie Bakes, an Emergency Room physician who has worked at Denver Health for twenty years, has long been active in addressing racial disparities in health care. In 2012, she founded Denver Health's At Risk Intervention and Mentoring (AIM) program, which provides resources and support to young victims of violence, many of whom are people of color. The program also provides support and training for medical professionals, who experience workplace-related trauma because of their work in serving disadvantaged communities and witnessing firsthand the effects of systemic racism. Through her work with AIM and broader health care equity work, Dr. Bakes has become a leader in anti-racism initiatives not only at Denver Health but nationwide. When Dr. Bakes speaks out on these issues, she is careful to highlight how racism outside of Denver Health affects the workplace. For example, she has expressed that people of color working for Denver Health are subject to a range of indignities, including being denied access to facilities even when they have their identification. Additionally, the disparate provision of health care services to people of color causes distinct, ongoing trauma to Denver Health employees of color.

In June 2020, while Dr. Bakes attended a White Coats for Black Lives event, she was informed that the AIM program's funding was being cut immediately. In response, supporters of the program sent letters to Denver Health leadership about the program's pivotal role in combating institutional racism within Denver Health, and imploring them to restore the AIM program's funding. In direct response to Dr. Bakes advocacy for the future of the AIM program, Denver Health disciplined Dr. Bakes with verbal and written warnings for not getting along with leadership.

October 14 Open Letter to Providers and Resulting Retaliation

On October 14, 2020, eight Denver Health workers, including Paul Paratore and Christine Russell, wrote an "open letter" to their co-workers that addressed the intersecting public health emergencies of COVID-19 and systemic racism and how those emergencies were affecting Denver Health workers within the workplace. For example, the letter noted that during the pandemic, Denver Health workers have confronted "the constant fear that we might contaminate or fail to

equity/racism-and-health/racism-declarations (listing local declarations); *see also* Racism Is A Public Health Crisis, <https://www.denverhealth.org/news/2020/10/racism-is-a-public-health-crisis>.

adequately protect ourselves, our family, or our patients.” The letter also spoke to the role that workers at Denver Health could play in calling-out for more forceful action to address “deep racial and class inequities of public health in the U.S.” Although the letter recounted how Denver Health had actively discouraged workers from organizing or speaking out about issues related to workplace treatment and safety, it also observed that “society has been awakened to the health disparities caused by systemic racism and classism, as well as the negligent and unfair treatment of frontline workers” and that while the “[w]e are tired and our commitment to patient care often leaves us vulnerable to neglecting our own health and workplace protections, [] we are still here.”

Denver Health responded to the letter by stigmatizing and threatening the workers who signed it. Denver Health officials sent an email to all Denver Health employees, admonishing the signatories for obtaining worker email addresses by “accessing our system through their normal means,” and telling all workers that dissemination of the letter violated its policies. Contrary to Denver Health’s characterization, the signatories did not obtain any email address through improper means. And while Denver Health purports to have a rule against the use of work email for non-work purposes, work email addresses at Denver Health are frequently used for non-work purposes. Thus, the stated reasons for Denver Health’s admonition were pretextual. Denver Health wrote the email to threaten the workers who sent the letter, and that is how those workers experienced the email.

Threats against EMS Professional Peter DellaVecchia for Speaking Out about COVID-19’s Impacts in the workplace

Also in October 2020, Denver Health emergency medical services professional Peter DellaVecchia provided an interview for Colorado Public Radio (“CPR”), which quoted from that interview in an article published on October 9, 2020 titled “Coronavirus Has Accelerated Health Care Worker Burnout And It’s A ‘Reckoning We All Have To Face.’”³ In the article, DellaVecchia describes how his work since the pandemic began is “multiple levels of intensity higher than the normal baseline.” He explained how the pandemic has caused an “agitation and anger level that people have that [has caused many to] fight paramedics,” and he explained that “[p]eople are just at the end of their ropes.”

In response to him speaking out about the intensity of his work during the pandemic, Denver Health immediately reprimanded DellaVecchia, claiming his interview was on behalf of Denver Health and violated its press policy. At no point, however, did DellaVecchia represent he was speaking on behalf of Denver Health. Rather, DellaVecchia spoke out publicly about the stresses and workplace health and safety dangers that he faces every day on the job. Furthermore, Denver Health’s admonishment stands in stark contrast to recent emails in which it has praised workers who speak to the press in cases where Denver Health arranged the interview. DellaVecchia was also passed over for special assignment opportunities for which he is qualified. Together, these facts suggest that Denver Health admonished DellaVecchia because speaking out publicly regarding the health of workers during COVID-19, without first seeking Denver Health’s approval, violates Denver Health’s unwritten policy. Denver Health intended to use its communication with DellaVecchia to threaten him, and that is how he interpreted the warning.

³ John Daley, *Coronavirus Has Accelerated Health Care Worker Burnout And It’s A ‘Reckoning We All Have To Face*, Oct. 9, 2020, <https://www.cpr.org/2020/10/09/colorado-coronavirus-cases-rise-effects-on-frontline-health-care-workers-mental-health/>.

C. DHWU Seeks Remedies on Behalf of the State of Colorado, Including an Order Requiring Denver Health to Terminate Its Unlawful Policy.

DHWU seek remedies available to whistleblowers proceeding on behalf of the State pursuant to C.R.S. § 8-14.4-107(2), including appropriate injunctive and equitable relief. Most importantly, because Denver Health's unwritten but widely enforced policy violates the PHEW Act, DHWU seeks an order requiring Denver Health to terminate its policy and to provide notice to employees of their right to speak out publicly or to each other about workplace concerns related to COVID-19 and systemic racism without fear of reprisal, threat, or retaliation of any kind.

If the DLSS finds that Denver Health's policies violates the PHEW Act, it may order those requested remedies pursuant to DLSS Colorado Warning Rules 3.53(C). Alternatively, DHWU requests authorization pursuant to C.R.S. § 8-14.4-105(2)(b) to proceed on behalf of the State of Colorado as a *qui tam* whistleblower in District Court.

Thank you for your review of this matter.

Sincerely,
/s/ Valerie L. Collins
Valerie L. Collins
Towards Justice

Exhibit A

Worker's Designation to Pursue *Qui Tam* Litigation as a
Whistleblower on Behalf of the
State of Colorado

I Paul Paratore designate Denver Health Workers United to serve as my representative, pursuant Colo. Rev. Stat. § 8-14.4-107(1), in bringing an action on behalf of the State of Colorado as a whistleblower alleging that Denver Health violated provisions of the Colorado Public Health Emergency Whistleblower ("PHEW") Act, Colo. Rev. Stat. § 8-14.4-101, *et seq.* Pursuant to Colo. Rev. Stat. § 8-14.4-107(1), I am a worker with knowledge of alleged violations, and Denver Health Workers United may serve as my representative in exhausting administrative remedies before the Colorado Department of Labor and Employment and in filing suit in court on behalf of the State of Colorado as a *qui tam* whistleblower. In such an action, Denver Health Workers United may seek civil penalties, injunctive and equitable relief, and attorney's fees in its role as a whistleblower asserting claims on behalf of the State.

I am not authorizing Denver Health Workers United, and Denver Health Workers United is not agreeing to represent me in asserting any private rights I may have under Colorado law, including under the PHEW Act. Denver Health Workers United may bring a *qui tam* suit on behalf of the State of Colorado as my representative, but I am not waiving my right to seek private remedies, including but not limited to monetary damage for my own benefit, through a private action that I may file in my own name.

Signature: _____

Date: 11/23/2020

Worker's Designation to Pursue *Qui Tam* Litigation as a Whistleblower on Behalf of the
State of Colorado

I, Katie Bakes designate Denver Health Workers United to serve as my representative, pursuant Colo. Rev. Stat. § 8-14.4-107(1), in bringing an action on behalf of the State of Colorado as a whistleblower alleging that Denver Health violated provisions of the Colorado Public Health Emergency Whistleblower ("PHEW") Act, Colo. Rev. Stat. § 8-14.4-101, *et seq.* Pursuant to Colo. Rev. Stat. § 8-14.4-107(1), I am a worker with knowledge of alleged violations, and Denver Health Workers United may serve as my representative in exhausting administrative remedies before the Colorado Department of Labor and Employment and in filing suit in court on behalf of the State of Colorado as a *qui tam* whistleblower. In such an action, Denver Health Workers United may seek civil penalties, injunctive and equitable relief, and attorney's fees in its role as a whistleblower asserting claims on behalf of the State.

I am not authorizing Denver Health Workers United, and Denver Health Workers United is not agreeing to represent me in asserting any private rights I may have under Colorado law, including under the PHEW Act. Denver Health Workers United may bring a *qui tam* suit on behalf of the State of Colorado as my representative, but I am not waiving my right to seek private remedies, including but not limited to monetary damage for my own benefit, through a private action that I may file in my own name.

DocuSigned by:
Signature: Katie Bakes
B84227386A1C4EE...
Date: 11/23/2020

Worker's Designation to Pursue *Qui Tam* Litigation as a Whistleblower on Behalf of the
State of Colorado

I Peter DellaVecchia designate Denver Health Workers United to serve as my representative, pursuant Colo. Rev. Stat. § 8-14.4-107(1), in bringing an action on behalf of the State of Colorado as a whistleblower alleging that Denver Health violated provisions of the Colorado Public Health Emergency Whistleblower ("PHEW") Act, Colo. Rev. Stat. § 8-14.4-101, *et seq.* Pursuant to Colo. Rev. Stat. § 8-14.4-107(1), I am a worker with knowledge of alleged violations, and Denver Health Workers United may serve as my representative in exhausting administrative remedies before the Colorado Department of Labor and Employment and in filing suit in court on behalf of the State of Colorado as a *qui tam* whistleblower. In such an action, Denver Health Workers United may seek civil penalties, injunctive and equitable relief, and attorney's fees in its role as a whistleblower asserting claims on behalf of the State.

I am not authorizing Denver Health Workers United, and Denver Health Workers United is not agreeing to represent me in asserting any private rights I may have under Colorado law, including under the PHEW Act. Denver Health Workers United may bring a *qui tam* suit on behalf of the State of Colorado as my representative, but I am not waiving my right to seek private remedies, including but not limited to monetary damage for my own benefit, through a private action that I may file in my own name.

Signature: 

Date: 11/22/2020

Worker's Designation to Pursue *Qui Tam* Litigation as a Whistleblower on Behalf of the
State of Colorado

I Christine A. Russell_ designate Denver Health Workers United to serve as my representative, pursuant Colo. Rev. Stat. § 8-14.4-107(1), in bringing an action on behalf of the State of Colorado as a whistleblower alleging that Denver Health violated provisions of the Colorado Public Health Emergency Whistleblower ("PHEW") Act, Colo. Rev. Stat. § 8-14.4-101, *et seq.* Pursuant to Colo. Rev. Stat. § 8-14.4-107(1), I am a worker with knowledge of alleged violations, and Denver Health Workers United may serve as my representative in exhausting administrative remedies before the Colorado Department of Labor and Employment and in filing suit in court on behalf of the State of Colorado as a *qui tam* whistleblower. In such an action, Denver Health Workers United may seek civil penalties, injunctive and equitable relief, and attorney's fees in its role as a whistleblower asserting claims on behalf of the State.

I am not authorizing Denver Health Workers United, and Denver Health Workers United is not agreeing to represent me in asserting any private rights I may have under Colorado law, including under the PHEW Act. Denver Health Workers United may bring a *qui tam* suit on behalf of the State of Colorado as my representative, but I am not waiving my right to seek private remedies, including but not limited to monetary damage for my own benefit, through a private action that I may file in my own name.

Signature: Christine A. Russell

Date: 11/22/2020