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County of San Francisco
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

REBECCA CHAMORRO and PHYSICIANS FOR REPRODUCTIVE HEALTH,

Petitioners,

v.

DIGNITY HEALTH and DIGNITY HEALTH d/b/a MERCY MEDICAL CENTER REDDING,

Respondents.

Case No. CGC 15-549626

VERIFIED AMENDED PETITION FOR WRIT OF MANDATE

Judge: Harold E. Kahn
Department: 302
Hearing date:
Hearing time:

INTRODUCTION

1. By this petition and pursuant to Code of Civil Procedure §§ 1085, *et. seq*., Petitioners Rebecca Chamorro and Physicians for Reproductive Health seek a writ of mandate to enforce Health & Safety Code § 1258.

2. This case is about Respondents Dignity Health and Dignity Health d/b/a Mercy Medical Center Redding (collectively, "Respondents" or "Dignity Health"), which operate Catholic-affiliated hospitals around California, refusing to allow doctors to perform postpartum tubal ligations for some patients on the basis of nonmedical qualifications, including its Ethical and Religious Directives for Catholic Healthcare Services (ERDs), while permitting doctors to perform the procedure for other patients in the same hospitals. In violation of California law and policy, Dignity Health's practice of denying tubal ligations based on inconsistent and nonmedical criteria jeopardizes the health of its patients and prevents doctors from applying the standard of care.

3. Tubal ligation, known familiarly as "getting one's tubes tied," is extremely safe, very effective, and one of the most common forms of birth control; it is the contraceptive method of choice for more than 30 percent of U.S. married women of reproductive age and the most common form of permanent contraception. The standard of care for the procedure is to perform it postpartum, or immediately after a woman gives birth.

4. The individual Petitioner in this action, Rebecca Chamorro, lives in Redding, California. Ms. Chamorro and her husband do not want more children, so Ms. Chamorro decided in consultation with her obstetrician that she wanted to undergo tubal ligation immediately following the Cesarean Section ("C-section") delivery of her third child. Ms. Chamorro was scheduled to deliver at Mercy Medical Center Redding ("MMCR"), the only hospital in Redding with a labor and delivery ward. Her obstetrician sought authorization from MMCR to perform the postpartum tubal ligation, which would have taken him only a few minutes and would have required no additional resources from MMCR. MMCR, however, refused to allow the doctor to perform the postpartum tubal ligation, citing its "sterilization policy and the Ethical and Religious Directives for Catholic Health Care Services"

(ERDs). As a result, Ms. Chamorro delivered her child via C-section on January 20, 2016, but her obstetrician was prevented by Dignity Health from performing a tubal ligation immediately following the C-section.

5. The organizational Petitioner in this case, Physicians for Reproductive Health, is a nationwide nonprofit with member physicians who have had and will continue to have patients at Dignity Health hospitals in California who want immediate postpartum tubal ligations. Like Ms. Chamorro, these member physicians' patients have doctors who are able and willing to perform postpartum tubal ligations, and, indeed, the member physicians consider it to be their responsibility to provide their patients with the standard of care. Also like Ms. Chamorro, these member physicians' patients have been and will continue to be denied immediate postpartum tubal ligations by Dignity Health's adherence to the nonmedical qualifications and/or sterilization policies that reflect the ERDs.

6. Dignity Health, claiming to be the fifth largest healthcare provider in the United States and the largest hospital provider in California, receives millions of dollars in funding each year from the State. Yet Dignity Health requires that all of its Catholic hospitals, including MMCR, conform to the ERDs. Under the ERDs, which are promulgated by the United States Conference of Catholic Bishops and which impose nonmedical, religious directives on healthcare institutions that choose to identify as Catholic, "direct sterilization" is prohibited. "Direct sterilization" is defined as sterilization for the purpose of sterilization—or sterilization for the purpose of preventing future pregnancy. Indeed, the ERDs characterize "direct sterilization" as "intrinsically evil."

7. Despite applying the ERDs to many patients and thereby denying them tubal ligations, Dignity Health has permitted doctors to perform some immediate postpartum tubal ligations in its hospitals. Dignity Health has provided only limited—and inconsistent—explanations as to the criteria it uses in determining whether to permit doctors to perform postpartum tubal ligations, but it appears to grant permission, at least at MMCR, based on a purported assessment of the patient's risk based on age and the number of previous births.

8. In 1974, the California legislature passed California Health & Safety Code § 1258 ("Section 1258" or "the Act") expressly disallowing hospitals from denying sterilization procedures,

such as postpartum tubal ligations, based on nonmedical criteria such as age and number of previous births. Section 1258 provides:

> No health facility which permits sterilization operations for contraceptive purposes to be performed therein, nor the medical staff of such health facility, shall require the individual upon whom such a sterilization operation is to be performed to meet any special nonmedical qualifications, which are not imposed on individuals seeking other types of operations in the health facility. Such prohibited nonmedical qualifications shall include, but not be limited to, age, marital status, and number of natural children.

9. The central theme of the bill that became Section 1258 was that the decision to have a vasectomy or tubal ligation should be between an individual and a doctor, unhindered by non-medical institutional policies. On the precise subject of sterilization, the legislature established California's public policy of letting professionals, not the owners of facilities, provide care that they determine best for the patient. Throughout the legislative process, the "central issue" was defined as "whether sterilization is a matter between an individual and his physician or whether a hospital or clinic has a right to impose an arbitrary standard of its own." (Exhibit 1.)

10. The legislative history continues to show that "[t]he primary issue is whether an individual having attained the age of majority has a right to obtain sterilization if he so desires without encountering obstacles from the hospital or clinic which performs such operations. The bill recognizes the physician's right and responsibility to counsel his patient on the implications of such an operation, but would prohibit arbitrary criteria established by hospitals and clinics." (Exhibit 1.) The legislature passed, and the governor signed, a clear mandate to health facilities that perform sterilizations for contraceptive purposes that they *shall not* require nonmedical criteria to perform such procedures.

11. By preventing doctors from performing some immediate postpartum tubal ligations based on nonmedical qualifications and/or sterilization policies that reflect the ERDs, Dignity Health violates its clear and present duty under Section 1258.

PARTIES

<u>Petitioner Rebecca Chamorro</u>

12. Petitioner Rebecca Chamorro is a 34-year-old woman living in Redding, California. When this case was originally filed, Ms. Chamorro was approximately eight months pregnant. Ms. Chamorro was scheduled to deliver by C-section at MMCR on January 28, 2016.

13. Ms. Chamorro is married and has three children. Prior to her most recent delivery, Ms. Chamorro and her husband decided that they did not want any more children after the birth of their third child.

14. After consulting with her obstetrician, Dr. Samuel Van Kirk, Ms. Chamorro decided she wanted to undergo tubal ligation immediately following her C-section. With Ms. Chamorro's informed consent, Dr. Van Kirk sought authorization from MMCR on September 15, 2015 to perform the postpartum tubal ligation. (Exhibit 2.) On September 18, 2015, Dr. Van Kirk received a letter from MMCR denying the request for authorization on the ground that it did "not meet the requirement of Mercy's current sterilization policy or the Ethical and Religious Directives for Catholic Health Services." (Exhibit 3.)

15. Counsel for Petitioners sent Dignity Health a letter on Ms. Chamorro's behalf in early December 2015 (Exhibit 4.), but Dignity Health refused to authorize Dr. Van Kirk to perform the postpartum tubal ligation. Given her due date at the time of filing, Ms. Chamorro sought preliminary injunctive relief from this Court, which was denied on January 14, 2016. Ms. Chamorro subsequently delivered her third child by C-section when she went into labor on January 20, 2016, but Dr. Van Kirk was prevented from performing a postpartum tubal ligation.

16. Because Ms. Chamorro was unable to undergo a postpartum tubal ligation, she and her husband will now have to incur additional costs to prevent future pregnancy. Any reliable contraception method they use will cause them to incur costs that they would not have incurred had Ms. Chamorro's obstetrician been able to perform the postpartum tubal ligation.

17. Petitioner Rebecca Chamorro has a clear, present, and substantial right to the relief sought and is beneficially interested in the outcome of the proceedings, and this Court has held that Petitioner does not have a plain and adequate remedy at law. Order Granting Defendant's Motion for Judgment on the Pleadings, *Rebecca Chamorro, et al. v. Dignity Health, et al.*, No. CGC-15-549626 (Cal. Sup. Ct. Feb. 9, 2017).

Petitioner Physicians for Reproductive Health

18. Petitioner Physicians for Reproductive Health is a national nonprofit 501(c)(3) membership organization comprised of physicians who seek to ensure meaningful access to comprehensive reproductive health services as part of mainstream medical care. Founded in 1992 by a small group of concerned physicians, Physicians for Reproductive Health has grown into a national organization that represents medical professionals who practice in a range of fields: obstetrics and gynecology, pediatrics, family medicine, cardiology, neurology, radiology, and more.

19. Physicians for Reproductive Health has approximately 1,200 physician members who practice in the state of California, some of whom have or will have patients who have delivered or plan to deliver their children at Dignity Health Hospitals.

20. Physicians for Reproductive Health members have had patients who wanted and were denied immediate postpartum tubal ligations at Dignity Health hospitals in California based on nonmedical criteria and/or sterilization policies reflecting the ERDs.

21. Because Physicians for Reproductive Health members regularly discuss postpartum tubal ligation with their patients and consider it to be their duty as physicians to provide their patients with the standard of care, they will have patients in the future who wish to undergo immediate postpartum tubal ligation at Dignity Health hospitals in California. Based on the application by Dignity Health of nonmedical qualifications and/or sterilization policies reflecting the ERDs, patients of Physicians for Reproductive Health members will be prevented from receiving postpartum tubal ligations by Dignity Health.

22. Petitioner Physicians for Reproductive Health has a clear, present, and substantial right to the relief sought and is beneficially interested in the outcome of the proceedings, and this Court has held that Petitioner does not have a plain and adequate remedy at law. Order Granting Defendant's Motion for Judgment on the Pleadings, *Rebecca Chamorro, et al. v. Dignity Health, et al.*, No. CGC-15-549626 (Cal. Sup. Ct. Feb. 9, 2017).

Respondents Dignity Health and Dignity Health d/b/a Mercy Medical Center Redding (collectively, "Respondents" or "Dignity Health")

23. Dignity Health is registered as a 501(c)(3) tax-exempt nonprofit corporation. According to its website, Dignity Health is the fifth-largest health system in the country, owning and operating a large network of hospitals. Also according to its website, Dignity Health is the largest hospital provider in California, with 29 hospitals in the state. In 2012, Dignity Health's federal tax form 990 listed revenue of $8.7 billion and employment of 51,991 people. In Shasta County, Dignity Health does business as Mercy Medical Center Redding ("MMCR"). Dignity Health receives significant funding from the State of California. In 2012, Dignity Health's 2012 federal tax form 990 listed over $23 million in "government grants," over $3.3 billion in Medicare and Medicaid payments, and over $47.7 million in meaningful use incentives. That same form also describes the following revenue from "government programs": $575.3 million in revenue and $233.7 million in net income in 2012; and $684.5 million in revenue and $230.2 million in net income in 2013. In particular, MMCR received $51,615 from the Office of Statewide Health Planning and Development (OSHPD) in 2006 and again in 2012 for its family practice residency training program, which provides funds for training in MMCR's labor and delivery wards.

JURISDICTION AND VENUE

24. This Court has jurisdiction under article VI, section 10 of the California Constitution and California Code of Civil Procedure §§ 410.10, 525-526, 1060 and 1085.

25. Venue is proper in this Court because this is an action against a nonprofit corporation, Dignity Health, the principal place of business of which is in the City and County of San Francisco, at 185 Berry Street, Suite 300, San Francisco, CA 94107.[1]

[1] Dignity Health describes itself as "a California nonprofit public benefit corporation headquartered in San Francisco," 2012 Form 990, Part III, Line 4a, and lists a San Francisco address for the company. Dignity Health's most recent Statement of Information, filed with the California Secretary of State on October 7, 2014, lists the corporation's "Principal Office Address" as 185 Berry Street, Suite 300, San Francisco, CA 94017.

BRIEF STATEMENT OF FACTS

Immediate Postpartum Tubal Ligation Is the Standard of Care

26. If a pregnant woman decides to have a tubal ligation, it is the standard of care to provide that tubal ligation immediately after the woman delivers the baby (in other words, postpartum).

27. Tubal ligation, also known as tubal sterilization or female sterilization, is extremely safe, very effective, and one of the most common methods of birth control. Tubal ligation is the family planning method of choice for 30.2% of U.S. married women of reproductive age.[2]

28. Postpartum tubal ligation is a permanent form of birth control, in which the fallopian tubes are tied and cut. By closing off the fallopian tubes, tubal ligation works to prevent fertilization by preventing eggs from moving from the ovaries and uniting with sperm in the fallopian tubes. When eggs cannot move down the fallopian tubes into the uterus, sperm will not be able to reach the eggs, preventing fertilization and thus preventing pregnancy.

29. All tubal ligation is done for contraceptive purposes. Even if a woman chooses to have a tubal ligation because another pregnancy would risk her health, the performance of the tubal ligation is still contraceptive in that it operates solely to prevent future pregnancy. Tubal ligation is never performed to treat an underlying health condition, nor is it ever performed to reduce any complications or medical risks associated with a patient's labor and delivery.[3]

30. A tubal ligation immediately after delivery has many advantages for patients and is an easier and more convenient procedure for doctors. According to the leading professional society of obstetricians and gynecologists, the American College of Obstetricians and Gynecologists (ACOG), "[t]he immediate postpartum period following vaginal delivery or at the time of cesarean delivery is the ideal time to perform sterilization [tubal ligation] because of technical ease and convenience for the

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[2] Am. Coll. of Obstetricians and Gynecologists (ACOG Practice Bulletin), *Practice Bulletin No. 133, Benefits and Risks of Sterilization* 1 (2013).

[3] Petitioners' use of the term "tubal ligation" does not encompass salpingectomy, which is the complete removal of one or both fallopian tubes.

woman and physician."[4] Performing the procedure immediately postpartum is also the most effective method, according to the landmark U.S. Collaborative Review of Sterilization (CREST) study, which followed 10,685 women for up to 14 years following their surgical tubal sterilization procedure.[5] In the United States, tubal ligation is performed in the immediate postpartum period for 10% of all hospital deliveries.[6]

31. The primary advantage of immediate postpartum tubal ligation is that it affords the surgeon easier access to the fallopian tubes due to the enlarged state and position of the uterus directly after birth. Given the ease of access to the fallopian tubes postpartum, doctors can complete postpartum tubal ligation in just a few minutes. The method of closing the fallopian tubes at that time also results in the most effective form of female sterilization.

32. Another advantage of immediate postpartum tubal ligation is that the woman often already has anesthesia. During a C-section, the patient is already receiving anesthesia, and the same abdominal incision that was created to deliver the baby can be used to access the fallopian tubes. During a vaginal delivery, an epidural catheter placed during labor can often be left in for the anesthesia for the tubal ligation, and only one small incision in the abdomen (usually the navel) is needed to access the fallopian tubes.

33. Immediate postpartum tubal ligation is an instantly effective form of contraception. It also does not add time in the hospital or recovery time for the patient.

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[4] ACOG Comm. on Health Care for Underserved Women, (ACOG Committee Opinion), *Comm. Op. No. 530: Access to Postpartum Sterilization*; 120 Am. J. Obstet. Gynecol. 212, 212 (2012), http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Acess-to-Postpartum-Sterilization.

[5] Herbert B. Peterson, et al., *The Risk of Pregnancy After Tubal Sterilization: Findings from the US. Collaborative Review of Sterilization*, 174 Am. J. Obstet. Gynecol. 1161, 1163 (1995).

[6] ACOG Committee Opinion, *supra* note 4, at 1.

34. According to ACOG: "Given the consequences of a missed procedure and the limited time frame in which it may be performed, postpartum sterilization should be considered an urgent surgical procedure."[7]

35. If a doctor is able and willing to perform a postpartum tubal ligation on a patient, then the only action the hospital need take is to allow the doctor to perform the procedure. For example, if Ms. Chamorro's obstetrician, Dr. Van Kirk, had been authorized to perform an immediate postpartum tubal ligation on Ms. Chamorro, he would not have needed to administer any additional anesthesia to perform a postpartum tubal ligation; he would not have required, and MMCR would not have had to furnish, any additional support staff in the delivery room to perform the tubal ligation; he would not have needed any additional materials or equipment in the delivery room to perform the tubal ligation other than two pieces of suture; and, based on his past experience, performing the tubal ligation at the time of delivery would have taken him approximately one to two minutes.

36. Obstetrician-Gynecologists who practice in religiously affiliated hospitals commonly have conflicts over policies based on religious doctrine that restrict their ability to practice medicine.[8] Although doctors often sign contracts that require them to abide by the ERDs and/or policies that reflect the ERDs in order to practice medicine at hospitals that choose to identify as Catholic, many of them do not agree with the application of the ERDs and/or policies that reflect the ERDs: a 2012 national survey found that 52% of Obstetrician-Gynecologists who work in Catholic-affiliated hospitals experienced conflict with their institution regarding religiously-based policies for patient care.[9] A 2014 national study of Obstetrician-Gynecologists also found that physicians disagreed with hospital prohibitions on sterilization, which sometimes posed harm to their patients, and particularly "disliked when patients had to undergo surgeries separate from the cesarean sections they were already having just to have tubal

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[7] *Id.* at 2.

[8] Debra B. Stulberg, et al., *Obstetrician-Gynecologists, Religious Institutions, and Conflicts Regarding Patient Care Policies*, 207 Am. J. Obstet. Gynecol. 73.e1, 73.e5 (2012).

[9] *Id.* at 73.e4.

ligations done outside of the Catholic hospital."[10] In a 2011 national survey of Obstetrician-Gynecologists, nearly all (98%) stated they would help a patient obtain a tubal ligation if she decided to have the procedure.[11]

37. Indeed, doctors, like patients, often have limited choice in terms of the hospitals to which they have access. For example, any Obstetrician-Gynecologist who wants to deliver babies in Redding, California, would have to obtain admitting privileges at MMCR, which has the only labor and delivery ward in a 70-mile radius.

Patients Are Harmed When Their Doctors Are Prevented from Performing Postpartum Tubal Ligation

38. Hospital policies that prohibit immediate postpartum tubal ligation prevent physicians from providing their female patients with the standard of care.

39. If a woman is unable to obtain a tubal ligation in the immediate postpartum period, she will have to undergo an otherwise unnecessary surgery to obtain a comparable tubal ligation. To do this, she will need to wait 6 weeks after delivering her baby; she will be required to have general anesthesia; and the surgery will involve multiple incisions. The general anesthesia alone adds some level of risk to the woman compared to an immediate postpartum tubal ligation.

40. If a woman is not able to obtain a postpartum tubal ligation and chooses not to undergo surgery to obtain a comparable tubal sterilization, she and/or her partner will have to use another method of contraception to prevent future pregnancy. For a woman, other methods of contraception are likely to include regular doctor and pharmacy visits, procedure(s), and out-of-pocket costs. For example, a woman may decide to use a long-term but reversible method, such as an intrauterine device (IUD) or hormonal implant; these must be inserted or implanted in the woman's body, and the woman must undergo periodic doctor visits to replace the IUD or implant. Implants and some types of IUDs release a

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[10] Debra B. Stulberg, et al., *Tubal Ligation in Catholic Hospitals: A Qualitative Study ofOb-Gyns' Experiences*, 90 Contraception 422, 425 (2014).

[11] R. E. Lawrence, et al., *Factors Influencing Physicians' Advice about Female Sterilization in the USA: A National Survey*, 26 Human Reproduction 106, 106 (2011).

hormone to prevent pregnancy. A woman may instead decide to use another type of hormonal method of contraception, such as birth control pills or the Depo-Provera shot, which requires daily, monthly, or quarterly doses depending on type. A woman's male partner may also take steps to prevent future pregnancy. A man may use a barrier method of contraception, such as condoms. Barrier methods of contraception are less effective in preventing pregnancy than an immediate postpartum surgical tubal ligation. Or a man may undergo a vasectomy, which requires a surgical procedure. Vasectomy is almost always performed as an outpatient procedure, and it very rarely takes place in a hospital setting in conjunction with the performance of another surgical procedure. According to data from the 2006-2010 National Survey of Family Growth, of the 47.3% of married couples who choose sterilization to prevent future pregnancy, 17.1% choose vasectomy and 30.2% choose tubal ligation.[12]

41. For these reasons, when women request and are denied postpartum tubal ligation, they are at a greater risk of unintended pregnancy. "Failure to provide the desired sterilization creates a significant increase in cost for the woman and the health care system," according to ACOG, which cites a study in which "nearly one half of women with unfulfilled postpartum sterilization requests became pregnant within one year, twice the rate of women [in the study] who did not request sterilization."[13] Unintended pregnancy is associated with poorer maternal/fetal outcomes than planned pregnancies, including low birth weight, infant mortality, and maternal mortality. Approximately half of all unintended pregnancies end in abortion.

42. Women also bear a disproportionate share of the economic and personal burdens associated with unintended pregnancy. Women of childbearing age spend significantly more in out-of-pocket healthcare costs than men, due in significant part to the costs associated with unintended pregnancies, including premature deliveries, health risks, and increased neonatal care. Unintended pregnancy and childbearing leads to lower levels of educational attainment and labor-force participation

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[12] ACOG Practice Bulletin, *supra* note 2, at 1.

[13] ACOG Committee Opinion, *supra* note 4, at 1, referencing AR Thurman et al., *One-Year Follow-up of Women with Unfulfilled Postpartum Sterilization Requests*; 116 Am. J. Obstet. Gynecol. 1071-7 (2010).

for women. And women who experience unintended pregnancy are more likely than other women to experience postpartum depression and long-term mental health issues.

43. Patients often have limited choices in terms of where they are able to deliver their children, and therefore where they are able to undergo postpartum tubal ligation. For example, MMCR is the only hospital within a 70-mile radius that has a labor and delivery ward.

44. Patients are often unaware that they will not receive comprehensive care at a Catholic hospital. Studies have found that reproductive-age women surveyed were largely unaware that going to a Catholic hospital meant they would be prohibited from receiving health care that is contrary to Catholic teaching.[14]

45. In the case of Ms. Chamorro, delivering at MMCR was her only option. The closest hospitals covered by Ms. Chamorro's insurance that would authorize her doctor's request for an immediate postpartum tubal ligation were in the Sacramento area, approximately 160 miles from Redding, or in the Chico area, over 70 miles from Redding. Given the distance, the alternatives to MMCR offered by Ms. Chamorro's insurance imposed unacceptable burdens: among other things, Ms. Chamorro would have had to find a new obstetrician and establish care as that physician's obstetrical patient in the Sacramento or Chico area; in order to ensure access to the appropriate hospital for her delivery, she would practically have had to live in the area during the last month of her pregnancy; and because her insurance would have covered only her hospital stay, she would potentially have had to be separated from her husband and children or pay for them to join her near Sacramento or Chico.

46. Because MMCR prevented Dr. Van Kirk from performing a postpartum sterilization at the time of her C-section, Ms. Chamorro was unable to obtain a postpartum tubal ligation. Any reliable contraception method Ms. Chamorro and her husband use will cause them to incur costs that they would not have incurred had Ms. Chamorro's obstetrician been able to perform the postpartum tubal ligation.

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[14] Belden Russonello & Stewart, *Religion, Reproductive Health and Access to Services: A National Survey of Women* 1 (2000), http://www.catholicsforchoice.org/topics/healthcare/documents/2000religionreproductivehealthandaccesstoservices.pdf.

Dignity Health Prevents Doctors from Performing Postpartum Tubal Ligations Based on Nonmedical Qualifications Motivated by Religious Directives

47. MMCR prevented Ms. Chamorro's obstetrician from performing an immediate postpartum tubal ligation after her C-section based on nonmedical qualifications reflecting the ERDs and a sterilization policy reflecting the ERDs.

48. Dr. Van Kirk submitted a "sterilization request for Rebecca Chamorro" on September 15, 2015. (Exhibit 2.) In the letter that Dr. Van Kirk submitted, he noted under "medical indications" that the "patient desires to have a tubal ligation" and "the obstetrician requests permission to perform a tubal ligation if the uterine scar is found to pathologically thin at the time of repeat Cesarean section, thus placing the patient at risk of a future pregnancy." He also noted that there would be risks to Ms. Chamorro of "second anesthesia in another surgery," that she was limited to MMCR, and that he had previously been granted authorization to perform tubal ligation for several patients at MMCR. At the end of the letter, Dr. Van Kirk requested that "if you will not grant permission for my patient to have the indicated procedure that she desires, and has given her informed consent, I would request an explanation as to why. If you deem that the current medical necessity has not been met to warrant sterilization, please provide me and my patient with sufficient specific information as to how we can meet your definition of medical necessity."

49. On September 18, 2015, MMCR denied Dr. Van Kirk's request to provide Ms. Chamorro with an immediate postpartum tubal ligation. (Exhibit 3.) The denial letter states: "The Mercy Medical Center Redding facility review committee has evaluated your request for sterilization for Rebecca Chamorro. We are unable to admit your request to perform a tubal ligation at the time of Ms. Chamorro's Caesarean Section. In reviewing your request and based on the current information submitted, it was noted that it does not meet the requirement of Mercy's current sterilization policy or the Ethical and Religious Directives for Catholic Health Services. Therefore, we cannot admit material cooperation to perform a tubal ligation at Mercy Medical Center Redding."

50. Dr. Van Kirk estimates that he has had over 60 patients in the last nine years for whom he has sought but been denied authorization to perform immediate postpartum tubal ligation based on "Mercy's current sterilization policy or the Ethical and Religious Directives for Catholic Health

Services." (Exhibit 3.) He also estimates that he has had 20 patients over that same time period who were approved for postpartum tubal ligations.

51. Dignity Health identifies some of its hospitals as affiliated with the Catholic Church. For the hospitals that it identifies as Catholic, Dignity Health's website states that these hospitals must conform to "the Ethical and Religious Directives for Catholic Health Care Services."[15]

52. The ERDs are promulgated by the United States Conference of Catholic Bishops.[16] The ERDs explicitly apply to sterilization: "Direct sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic health care institution. Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available."[17] The ERDs further state that "[w]hile there are many acts of varying moral gravity that can be identified as intrinsically evil, in the context of contemporary health care the most pressing concerns are currently abortion, euthanasia, assisted suicide, and direct sterilization."[18]

53. Catholic hospitals generally rely on the ERDs to prohibit postpartum tubal ligation.[19]

54. Dignity Health identifies MMCR as a Catholic hospital and has stated that MMCR must follow the ERDs.

55. In addition, MMCR has its own sterilization policy, which provides that "[p]rocedures whose sole, immediate effect is to render the generative faculty incapable of procreation are contrary to

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[15] http://www.dignityhealth.org/cm/content/pages/ethics.asp.

[16] U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Healthcare Services*, fifth ed., No. 53 (Nov. 17, 2009), http://www.ucsb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf.

[17] *Id.* at 27 ¶ 53.

[18] *Id.* at 42, n. 44.

[19] Joseph Card Ratzinger, Prefect, Congregation for the Doctrine of the Faith, Roman Catholic Church, Responses to Questions Proposed Concerning "Uterine Isolation" and Related Matters (July 31, 1993), http://www.vatican.va/roman_curia/congregations/cfaith/documents/re_con_cfaith_doc_31071994_uterine-isolation_en.html.

Catholic moral teaching. Therefore, tubal ligation or other procedures that induce sterility for the purpose of contraception are not acceptable in Catholic moral teaching even when performed with the intent of avoiding further medical problems associated with a future pregnancy."[20]

Dignity Health Permits Some Immediate Postpartum Tubal Ligations

56. Despite preventing many doctors from performing immediate postpartum tubal ligations based on nonmedical qualifications reflecting the ERDs and/or sterilization policies reflecting the ERDs, Dignity Health does permit doctors to perform some immediate postpartum tubal ligations.

57. For example, Dr. Van Kirk has performed postpartum tubal ligations at MMCR. On April 10, 2015, Dr. Van Kirk submitted a request to MMCR to perform a postpartum tubal ligation on a patient due to deliver her second child by C-section in September 2015, Rachel Miller. The request was denied that same day, in the form of a letter from MMCR citing the ERDs and its sterilization policy. Ms. Miller subsequently reached out to the ACLU of Northern California Foundation, Inc., and the ACLU sent a letter to Dignity Health on her behalf on August 17, 2015, demanding that MMCR allow Dr. Van Kirk to perform postpartum tubal ligation.

58. Soon after the ACLU sent its August 17, 2015 letter, Dr. Van Kirk received a call from Dr. De Soto of MMCR. Dr. De Soto asked Dr. Van Kirk to resubmit his request for authorization to perform postpartum tubal ligation on Ms. Miller, emphasizing information that Dr. De Soto had seen in Ms. Miller's file that she had acute grade 1 Chorioamnionitis in her first pregnancy.

59. Acute grade 1 Chorioamnionitis is a maternal inflammatory response, usually caused by bacterial infection. It is very common in women who experience prolonged labor, as Ms. Miller did with her first child. Having acute grade 1 Chorioamnionitis once does not indicate that women will have it again in subsequent deliveries, and it does not cause any risk to women in subsequent deliveries. Because it does not create additional risk to women in subsequent deliveries, Dr. Van Kirk had not included the information in his original submission. Prompted by Dr. De Soto's call, Dr. Van Kirk

[20] Dignity Health's Appendix of Evidence (Part 1 of 3 - Exhibits 1-7) in Opposition to Plaintiff Rebecca Chamorro's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Exhibit 7.

resubmitted his request to perform postpartum tubal ligation on Ms. Miller to MMCR on August 20, 2015. Dr. Van Kirk received a call that day informing him that MMCR would allow him to perform the postpartum tubal ligation. Dignity Health also sent a response to the ACLU's August 17, 2015 letter on August 22, 2015, confirming that it had authorized Dr. Van Kirk to perform a postpartum tubal ligation on Ms. Miller.

60. Dr. Van Kirk performed a postpartum tubal ligation on Ms. Miller in MMCR's labor and delivery ward, immediately after she delivered her second child by C-section on September 29, 2015.

61. Dr. Van Kirk tried on many occasions to learn the exact clinical criteria that MMCR considers in determining whether to approve postpartum tubal ligations. (Exhibit 5.) Dr. De Soto of MMCR sent Dr. Van Kirk an email on October 6, 2015, in which he described MMCR's decision-making process regarding sterilization as turning on "the totality of risk factors," especially the "risk to the mother in future pregnancies." (Exhibit 6.) Factors that Dr. De Soto explicitly mentioned in the email include advanced maternal age and grand multiparity (having five or more previous childbirths).

62. Despite having previously acknowledged that MMCR permits some postpartum tubal ligations to prevent future pregnancy, Dr. De Soto subsequently claimed in a declaration submitted in support of Dignity Health's opposition to Ms. Chamorro's motion for a preliminary injunction that he reviews requests for postpartum tubal ligations to determine whether they "identify a present and serious pathology under the Sterilization Policy that would be cured or alleviated by the requested procedure" or is "requested due to any medical necessity related to [a patient's] anticipated C-section delivery in connection with her current pregnancy."[21]

63. It is the experience of Physicians for Reproductive Health member doctors that other Dignity Health hospitals in California that identify as Catholic do allow doctors to perform some postpartum tubal ligations, but they do not provide doctors with any clear set of criteria as to when tubal ligations are permitted.

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[21] Dignity Health's Appendix of Evidence (Part 1 of 3 - Exhibits 1-7) in Opposition to Plaintiff Rebecca Chamorro's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Exhibit 1 ¶ 10.

FIRST CAUSE OF ACTION

(For Writ of Mandate for Violation of Health & Safety Code § 1258)

64. Petitioners incorporate by reference the allegations of the above paragraphs as though fully set forth herein.

65. California Health & Safety Code Section § 1258 ("Section 1258" or "the Act") provides that: "No health facility which permits sterilization operations for contraceptive purposes . . . shall require the individual upon which such sterilization operation is to be performed to meet any special nonmedical qualifications . . . includ[ing], but not [] limited to, age, marital status, and number of natural children."

66. Dignity Health allows doctors to perform some sterilization operations—immediate postpartum tubal ligations—that are performed for contraceptive purposes.

67. Dignity Health prohibits doctors from performing other immediate postpartum tubal ligations based on nonmedical qualifications and/or sterilization policies reflecting the ERDs, including age and number of prior births, in violation of California Health & Safety Code § 1258.

PRAYER FOR RELIEF

Petitioners request that this Court:

A. Issue a writ of mandate and/or order to show cause ordering Respondent Dignity Health to comply with the Act, or, in the alternative, to show cause why a peremptory writ as set forth below should not issue;

B. Upon return of the alternative writ and/or hearing on the order to show cause, or alternatively in the first instance, issue a peremptory writ ordering Respondent Dignity Health to comply with the Act by adopting a compliant policy regarding granting tubal ligations to its patients;

C. Award Petitioners reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5;

D. Award Petitioners any additional relief this Court deems just, proper, and equitable.

Respectfully submitted,

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DATED: March 1, 2017

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.

By: Gizem Orbey for EOG

Elizabeth O. Gill (SBN 218311)
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
Email: egill@aclunc.org

DATED: March 1, 2017

COVINGTON & BURLING LLP

By: Gizem Orbey for CSH

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Email: pcarey@cov.com

Attorneys for Petitioners

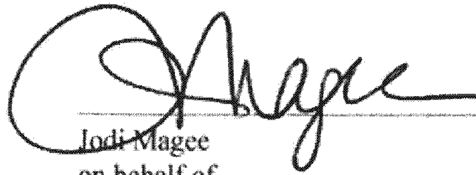
VERIFICATION

I, Jodi Magee, hereby declare:

1. I, Jodi Magee, am the President/CEO of Petitioner Physicians for Reproductive Health. I am authorized to act on behalf of Physicians for Reproductive Health. I have read the foregoing petition for writ of mandate and the exhibits filed therewith. I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. In addition, the facts within paragraphs 18, 19, 20, 21, and 63 are within my own personal knowledge and I know them to be true.

2. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 2/28/17



Jodi Magee
on behalf of
PETITIONER Physicians for Reproductive Health

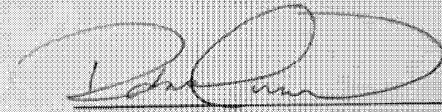
VERIFICATION

I, Rebecca Chamorro, hereby declare:

1. I am Rebecca Chamorro, a Petitioner in the above-entitled action. I have read the foregoing petition for writ of mandate, as well as the exhibits filed herewith. I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true. In addition, the facts within paragraphs 12, 13, 14, 15, 16, 45 and 46 are within my own personal knowledge and I know them to be true.

2. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: Feb 24th 2017



PETITIONER Rebecca Chamorro

Exhibit 1

Prepared by David Winston July 3, 1972

ANALYSIS

SENATE BILL NO. 1358 (BEILENSON)
(as amended)

RELATING TO STERILIZATION OPERATIONS

BACKGROUND:

Sterilization operations fall into two categories--therapeutic (required by some medical condition) and voluntary for contraceptive purposes. Recently, as a result of improved medical techniques, both vasectomies and tubal ligations have become increasingly popular as a means of birth control. The operations are legal in California and in all other states, and the number of voluntary sterilizations has increased dramatically over the past.

As a matter of internal administration, some hospitals and clinics have imposed certain non-medical criteria (usually as to age and number of children) as qualifications for voluntary sterilizations. The most common standard in this regard is the so-called "120 point" system under which the patient's age times the number of present children must equal 120 or more before the operation is permitted. As an example, a man of 30 must have four children before the operation would be permitted (30 times 4).

PROPOSED LEGISLATION:

SB 1358 (as amended) would prohibit the imposition of non-medical standards for sterilizations when they are not imposed for other types of operations. The bill is limited to institutions that permit sterilizations for contraceptive purposes and would not affect hospitals or clinics which do not perform such operations. The bill further specifies that it does not affect the existing law as to individuals under the age of majority. Finally, the bill specifies that the physician is

LEGISLATIVE INTENT SERVICE (800) 666-1917

in no way limited in his ability to counsel his patients, either for or against the operation.

COMMENT:

The primary issue involved is whether or not an individual having attained the age of majority has the right to obtain a sterilization if he so desires without encountering obstacles from the hospital or clinic which performs such operations. The bill recognizes the physician's right and responsibility to counsel his patient on the implications of the operation, but would prohibit arbitrary criteria established by the hospitals and clinics. The central issue is whether sterilization is a matter between the individual and his physician or whether a hospital or clinic has a right to impose an arbitrary standard of its own.

The bill has no known opposition and is supported by the Association for Voluntary Sterilization, Zero Population Growth, and Planned Parenthood.

* * *

LEGISLATIVE INTENT SERVICE (800) 666-1917

Exhibit 2

FAXED 9/15/15

Samuel D. Van Kirk, M.D.
Obstetrics & Gynecology
2139 Airpark Drive; Redding, CA 96001
Tel: (530) 247-0270; Fax: (530) 247-0271

Dignity Health
REQUEST FOR STERILIZATION

Rebecca Chamorro

Patient's Name

Mercy Medical Center, Redding
Facility

Gravida: 3 Para: 2 Age: 33

09/15/15
Date of Request

Number of Previous C-Sections: 1

EDC: 02/04/16 Date of Birth: 08/31/2015

Please provide the following information (Attach additional pages as necessary):

I. **Medical Indications:**

1. Patient with prior uterine scar is to undergo a repeat Cesarean-section. The obstetrician requests permission to perform a tubal ligation if the uterine scar is found to be pathologically thin at the time of repeat Cesarean-section, thus placing the patient at risk in a future pregnancy.

2. The patient desires to have a tubal ligation performed.

II. **Other Factors Extrinsic to Medical Indications (excusing causes for material cooperation)**

1. Risks of a second anesthesia in another surgery: YES

2. The patient's insurance limits access to specific facilities: Only OB at Dignity Health

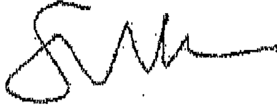
3. The physician has been granted, by your hospital the privilege of performing tubal ligations.

4. The appropriate state forms have been completed and attached demonstrating that the patient has given her informed consent for the procedure.

III. **Request for Explanation in the Event that the Request is Denied:**

If you will not grant permission for my patient to have the indicated procedure that she desires, and has given her informed consent, I would request an explanation as to why. If you deem that the current medical necessity has not been met to warrant sterilization,

please provide me and my patient with sufficient specific information as to how we can meet your definition of medical necessity.



Samuel D. Van Kirk, M.D.

Telephone: (530) 247-0270

SEND COMPLETED FORMS TO THE NAME IDENTIFIED BELOW AT THE APPROPRIATE FACILITY.
CONTACT INFORMATION IS INCLUDED IN CASE YOU HAVE QUESTIONS REGARDING YOUR REQUEST FOR PATIENT STERILIZATION:

Mercy Medical Center Redding – Sr. Brenda O'Keeffe (Phone: 225-6119; Fax: 242-5060)
St. Elizabeth Community Hospital – Sr. Pat Manoli (Phone: 529-8015; Fax: 529-8009)
Mercy Medical Center Mt. Shasta – Sr. Anne Chester (Phone: 926-9323; Fax: 926-0517)

Exhibit 3

Mercy Medical Center
2175 Rosaline Avenue
P.O. Box 496009
Redding, CA 96049-6009
direct 530.225.6000
redding.mercy.org

September 18, 2015

REQUEST DENIED

Samuel Van Kirk, M.D.
2139 Airpark Drive
Redding, CA 96001

RE: Sterilization Request for Rebecca Chamorro

Dear Dr. Van Kirk:

The Mercy Medical Center Redding facility review committee has evaluated your request for sterilization for Rebecca Chamorro. We are unable to admit your request to perform a tubal ligation at the time of Ms. Chamorro's Caesarean Section.

In reviewing your request and based on the current information submitted, it was noted that it does not meet the requirement of Mercy's current sterilization policy or the Ethical and Religious Directives for Catholic Health Services. Therefore, we cannot admit material cooperation to perform a tubal ligation at Mercy Medical Center Redding.

If you have any additional information or questions regarding the committee's decision please contact me at 225-6102 or Kim Shaw at 225-6119.

Sincerely,

James De Soto, M.D.
V.P. Medical Affairs

C: Health Information Management

Exhibit 4