

# COVINGTON

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## Via Overnight Mail and Fax

December 2, 2015

Rick Grossman, Executive Vice President and General Counsel  
Lloyd H. Dean, President and CEO  
Dignity Health  
185 Berry Street, Suite 300  
San Francisco, CA 94107  
Fax: (415) 438-5724

Sr. Brenda O'Keefe  
Dr. James De Soto  
Mercy Medical Center  
2175 Rosalind Avenue  
Redding, CA 96049  
Fax: (530) 242-5453

Dear Mr. Grossman,

We are writing on behalf of our clients Lysie Brushett, Rebecca Chamorro, and Physicians for Reproductive Health in connection with your hospitals' refusal to allow doctors to perform postpartum tubal ligations based on the religious doctrine articulated in the Ethical and Religious Directives for Catholic Health Services that prohibits "direct sterilization." California law, however, does not permit hospitals open to the general public and supported by public funds to deny patients medically indicated pregnancy-related care, as doing so constitutes sex discrimination. Nor does it permit corporate entities to elevate their theological tenets over patient health.

Ms. Brushett and Ms. Chamorro both plan to have Cesarean Sections at Mercy Medical Center Redding (MMCR) early next year; Ms. Chamorro's due date is February 4, 2016, and Ms. Brushett's due date is March 26, 2016. Based on their separate consultations with their doctor, Samuel Van Kirk, both women together with Dr. Van Kirk have made the decision that tubal ligation immediately following their Cesarean Sections is in their best medical interest. Sterilization in the immediate postpartum period – both after vaginal delivery and after Cesarean Section – is the proper standard of care for patients who desire permanent contraception.<sup>1</sup> Indeed, there are clear anatomical advantages to performing

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<sup>1</sup> Health Care Refusals: Undermining Quality Care for Women, National Health Law Program and Standards of Care Project, 39 (2010). ("The prohibition against sterilization imposes (continued...)

tubal ligations immediately following either a Cesarean Section or vaginal birth, and, for that reason, the American Congress of Obstetricians and Gynecologists (ACOG) recognizes postpartum tubal ligations as “urgent surgical procedure[s].”<sup>2</sup>

Dr. Van Kirk filled out the necessary paperwork to seek authorization of the tubal ligations for both Ms. Brushett and Ms. Chamorro, indicating their informed consent for the procedure. In response to his requests for authorization, however, Dr. Van Kirk received letters (attached) stating that, for each request, “the request did not meet the requirement of Mercy’s sterilization policy or the Ethical and Religious Directives for Catholic Health Services” and was therefore denied. The Ethical and Religious Directives set forth theological doctrine on sterilization procedures: “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.”<sup>3</sup> In fact, the Ethical and Religious Directives explicitly call “direct sterilization,” or sterilization for contraceptive purposes, “intrinsically evil.”<sup>4</sup>

Physicians for Reproductive Health (“Physicians”) is a national membership organization comprised of physicians who seek to improve access to comprehensive reproductive health care, including contraception and abortion, especially to meet the health care needs of economically disadvantaged patients. Members of Physicians have admitting privileges in Dignity Health hospitals in California, and have been denied authorization to perform postpartum tubal ligations based on the Ethical and Religious Directives.

The prohibition on “direct sterilization” in the Ethical and Religious Directives, which Dignity Health hospitals applied to Ms. Brushett, Ms. Chamorro, and patients of members of Physicians, violates their rights under California law in a number of ways.

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significant obstacles to meeting the standard of care for women who need permanent contraceptive services.”)

<sup>2</sup> American Congress of Obstetricians and Gynecologists. *Committee Opinion No. 530: Access to postpartum sterilization*. 120 **OBSTET. GYNECOL.** 212, 214 (2012).

<sup>3</sup> United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Healthcare Services*, fifth ed., No. 53 (2009) available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>

<sup>4</sup> *Id.* at 42.

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Refusing to allow doctors to perform postpartum tubal ligations denies patients pregnancy-related care, and, as such, constitutes sex discrimination. For example, California's Unruh Civil Rights Act, which applies broadly to any business open to the public, prohibits discrimination based on sex, and defines "sex" to include "pregnancy, childbirth, or medical conditions related to pregnancy or childbirth." Cal. Civ. Code § 51(e)(5). Government Code Section 11135, which applies to any entity receiving state funds, also prohibits discrimination based on sex and defines sex in the same way. Gov't Code §§ 11135(a) & (e), 12926.

The California Business & Professions Code also prohibits corporations from practicing medicine. *See* Cal. Business & Professions Code §§ 2032 ("only natural persons shall be licensed [to practice medicine] under this chapter"); 2400 ("corporations and other artificial legal entities shall have no professional rights, privileges, or powers"). By asserting your corporate entity's religious beliefs as a basis for preventing doctors from performing medically indicated care, Dignity Health hospitals are illegally engaged in the corporate practice of medicine.

Finally, under the Health & Safety Code, if a health facility permits sterilization operations for contraceptive purposes, then the facility may not require the individual seeking the sterilization to meet nonmedical qualifications. Cal. Health & Safety Code § 1258. Because Dignity Health hospitals, and MMCR in particular, have permitted postpartum tubal ligations for contraceptive purposes, it is unlawful for them to refuse to allow doctors to perform other postpartum tubal ligations on the basis of nonmedical, religious doctrine.

To comply with California law, we ask that you (1) immediately authorize Dr. Van Kirk to perform tubal ligations following Ms. Brushett's and Ms. Chamorro's Cesarean Sections, and (2) recognize that the Ethical and Religious Directives are not a legal basis for prohibiting a doctor from performing a postpartum tubal ligation.

Please contact us no later than **5:00 p.m. on December 9, 2015**, with notification of your intent to authorize Dr. Van Kirk to perform tubal ligations following Ms. Brushett's and Ms. Chamorro's Cesarean Sections and of your general intent with respect to application of the Ethical and Religious Directives in the context of postpartum tubal ligation. Because of our clients' impending deliveries, we view this deadline as urgent, and we plan to file a lawsuit, seeking appropriate remedies and an award of attorneys' fees and costs, if this matter is not resolved soon. Though we hope litigation will be unnecessary, we are prepared to take whatever legal action is necessary to ensure that Ms. Brushett, Ms.

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Chamorro, and patients of members of Physicians are able to get the medically indicated care to which they are entitled under California law.

Very truly yours,



Christine Haskett  
Covington & Burling LLP  
One Front Street  
San Francisco, CA 94111  
Tel: (415) 591-7087  
Fax: (415) 955-6587



Elizabeth Gill  
Senior Staff Attorney  
ACLU of Northern California  
39 Drumm Street  
San Francisco, CA 94111  
Tel: (415) 591-6587  
Fax: (415) 255-1478

cc: Lysie Brushett (via e-mail)  
Rebecca Chamorro (via e-mail)  
Dr. Samuel Van Kirk (via e-mail)



**Dignity Health**  
Mercy Medical Center  
Redding

2173 Rosalind Avenue  
P.O. Box 106009  
Redding, CA 96049-6009  
direct 530.225.6000  
redding.mercy.org

October 15, 2015

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

**REQUEST DENIED**

RE: Sterilization Request for Lysie Brushett

Dear Dr. Van Kirk:

The Mercy Medical Center Redding facility review committee has evaluated your request for sterilization for Lysie Brushette. We are unable to admit your request to perform a tubal ligation at the time of Ms. Brushett'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 questions regarding the committee's decision please contact me at 225-6102 or Sr. Brenda O'Keeffe at 225-6119.

Sincerely,

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

C: Health Information Management



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,

A handwritten signature in black ink, appearing to read "James De Soto".

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

C: Health Information Management