

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.

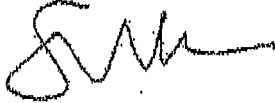
II. Other Factors Extrinsic to Medical Indications (excusing causes for material cooperation)

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: 229-6119; 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)



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

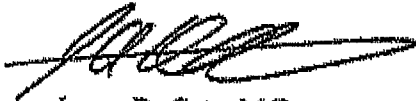
Dear Dr. Van Kirk:

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

COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES
NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Covington & Burling LLP
One Front Street
San Francisco, CA 94111-5356
T +1 415 591 6000

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.¹ Indeed, there are clear anatomical advantages to performing

¹ 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...)

COVINGTON

Page 2

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].”²

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.”³ In fact, the Ethical and Religious Directives explicitly call “direct sterilization,” or sterilization for contraceptive purposes, “intrinsically evil.”⁴

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.

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

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

³ 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>

⁴ *Id.* at 42.

COVINGTON

Page 3

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.

COVINGTON

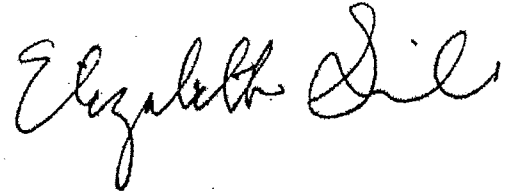
Page 4

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.

185 Berry Street, Suite 300
San Francisco, CA 94107
phone 415.438.5500
fax 415.438.5724
dignityhealth.org

December 9, 2015

Via Facsimile Transmission
Original To Follow By Mail

CONFIDENTIAL

Christine Haskett, Esq.
Covington & Burling LLP
One Front Street
San Francisco, California 94111

Elizabeth Gill, Esq.
Senior Staff Attorney
ACLU of Northern California
39 Drumm Street
San Francisco, California 94111

Re: Mercy Medical Center Redding (MMCR)

Dear Ms. Haskett and Ms. Gill:

This letter responds to your correspondence, dated December 2, 2015, concerning Lysie Brushett, Rebecca Chamorro and Physicians for Reproductive Health.

The care and safety of all of our patients is the top priority of Dignity Health and MMCR. As a result, in accordance with our policies, as well as applicable federal and state laws, we respect our patients' privacy by not publicly discussing the specifics of their care. However, based on the content (including the attachments) of your December 2 letter and your release of it to the press, we assume that your clients consented in advance to the public disclosure of their protected health information. We respond in this letter consistent with that assumption.

As discussed below, the claims stated in your correspondence are entirely without merit and the unprecedented relief you seek would abridge MMCR's First Amendment right to freedom of religion.

Since its founding, MMCR has been a Catholic hospital. It is listed in the Official Catholic Directory. As such, MMCR has always operated, and will continue to operate, wholly consistent and in compliance with the Ethical and Religious Directives for Catholic Health Care Services (ERDs), as promulgated by the United States Conference of Catholic Bishops (USCCB). Directive 5 of the ERDs is clear that the ERDs are not

Christine Haskett, Esq
Elizabeth Gill, Esq.
December 9, 2015
Page 2

CONFIDENTIAL

optional for Catholic hospitals. In fact, Directive 5 states that "Catholic health care services must adopt these Directives as policy, require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff and other personnel." Directive 53 provides that, although direct sterilization is not permitted in a Catholic health care institution, medically necessary 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."

Not only must MMCR comply with the ERDs, the governing documents of the independent Medical Staff of Mercy Medical Center Redding (the "MMCR Medical Staff"), of which Dr. Van Kirk is an active member, provide that the Medical Staff and its members must comply with the ERDs. The Medical Staff Bylaws, which were adopted and approved by the members of the MMCR Medical Staff, state that MMCR "is a Catholic Health Facility organized as a nonprofit corporation under the Laws of the State of California. As a Catholic Health Institution it is recognized that these Bylaws must conform to the Ethical and Religious Directive for Catholic Health Facilities, as approved by the National Conference of Catholic Bishops." Medical Staff Bylaws (Preamble). Similarly, the Rules & Regulations of the Medical Staff ("Rules and Regulations"), which are also binding on the MMCR Medical Staff and its members, state that "any procedure that results in sterilization must be performed according to Hospital policies and procedures" and that because the hospital "operates as an extension of the religious works of the Sponsoring Congregations of Dignity Health" the "actions of the medical staff and its members, within the facilities, departments and programs of the hospital, shall conform to the" ERDs. Rules & Regulations, §§ 5, 16. Every California hospital, secular and religious, is required to comply with its medical staff bylaws. MMCR's Medical Staff Bylaws, which have been unchanged on the subject of mandated compliance with the ERDs since their inception, have been reviewed and approved by federal and state survey agencies and accreditation bodies.

Numerous statements in your correspondence regarding Directive 53 and MMCR's review process are incorrect. You incorrectly suggest that MMCR applied a "prohibition on direct sterilization" to Dr. Van Kirk's request for consent to perform tubal ligations for his two patients. In fact, MMCR has a longstanding policy and process in place to consider requests (including supporting clinical documentation) by a patient's treating physician to perform tubal ligations under Directive 53 and the hospital's Sterilization Policy. MMCR's Sterilization Policy prohibits a tubal ligation "for the purpose of contraception" but permits such procedures when the clinical standards of Directive 53 are met (i.e., because the procedures are medically necessary to cure or alleviate a present and serious pathology). Dr. Van Kirk's requests were evaluated through this process and MMCR determined that Dr. Van Kirk did not submit sufficient clinical documentation to establish that the proposed tubal ligations satisfy the standards of Directive 53 and the hospital's Sterilization Policy. Nor does your letter state that MMCR's decision on that

Christine Haskett, Esq
Elizabeth Gill, Esq.
December 9, 2015
Page 3

CONFIDENTIAL

issue was incorrect or purport to establish that the proposed procedures are anything but elective procedures for purposes of contraception.

Directive 53 is universal in that it applies to sterilization of both men and women. In our August 22, 2015 letter to Ms. Gill, we pointed out that the ACLU cited no authority for the proposition that it constitutes sex or any other form of discrimination for MMCR to comply with Directive 53. Your December 2, 2015 correspondence also provides no such authority. Nor does your letter cite any authority that a Court may order MMCR to violate the ERDs and repudiate MMCR's Catholic identity. MMCR did not promulgate the ERDs nor did it play any role in drafting them; rather, the ERDs were promulgated by USCCB and, by their terms, are interpreted and enforced by the Catholic bishop of each diocese across the country. MMCR is required to abide by the ERDs in *all* cases and for *all* patients, regardless of the sex of the patient, or whether the patient is pregnant or possesses any other characteristic or medical condition. Not only is MMCR's application of Directive 53 non-discriminatory, requiring MMCR to perform sterilizations that are prohibited by the core Catholic doctrine embodied in the ERDs would violate MMCR's constitutional right to the free exercise of religion.

Your claim that MMCR is engaged in the "corporate practice of medicine" is flatly wrong. Just as a hospital does not engage in the corporate practice of medicine when it decides whether it will or will not provide certain clinical services based on community, economic or operational needs or capabilities, neither does it do so when, as here, a Catholic hospital follows a mandatory ERD. MMCR denied the requests for tubal ligations by the patients' physician because the procedure is prohibited by the ERDs and MMCR's Sterilization Policy, not because MMCR disagrees with his medical judgment. Not providing a service based on MMCR's adherence to religious doctrine does not remotely constitute the practice of medicine.

Further, your corporate practice of medicine argument overlooks the fact that, as noted above, the MMCR Medical Staff and its members agreed to be bound by the ERDs and, more specifically, MMCR's Sterilization Policy. In particular, the MMCR Medical Staff – which is an independent self-governing body under California law comprised entirely of physicians – approved MMCR's Medical Staff Bylaws along with the Rules and Regulations. These governance documents specifically provide that the Medical Staff, and each member physician (including Dr. Van Kirk), agree to abide by the ERDs and MMCR's Sterilization Policy. We would be happy to furnish you with copies of those documents. Also, the MMCR Medical Staff approved the Sterilization Policy.

Finally, your argument that MMCR's application of its Sterilization Policy somehow violates Health & Safety Code § 1258 makes no sense. As you note, that statute applies if a health facility permits sterilization for "contraceptive purposes". MMCR and the ERDs do not permit sterilizations for "contraceptive purposes". Your purported claims are grounded in the opposite notion that MMCR refuses to perform elective procedures

Christine Haskett, Esq
Elizabeth Gill, Esq.
December 9, 2015
Page 4

CONFIDENTIAL

for contraceptive purposes. Therefore, Health & Safety Code § 1258 is wholly inapplicable.

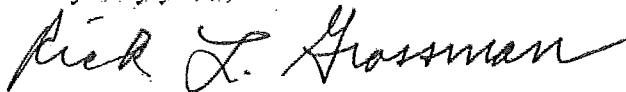
In light of MMCR's determination that the factual circumstances presented by Dr. Van Kirk's requests do not meet the standards set forth in MMCR's Sterilization Policy and Directive 53, MMCR is prohibited by the ERDs from authorizing those procedures. Moreover, for the reasons discussed above, the ERDs are a fully appropriate legal basis for declining to permit elective contraceptive procedures at MMCR and no regulatory body or court anywhere has declared otherwise.¹

Rather than proceed with baseless litigation against a Catholic hospital for adhering to its longstanding religious faith and commitments, the better course would be to have a direct, productive and complete dialogue about the medical needs of these patients with Dr. Van Kirk. In that regard, we invite the physician to submit additional medical information to support the procedures requested consistent with MMCR's Sterilization Policy. In fact, we believe that he did not provide MMCR with complete clinical information on either patient. An earlier version of the request for one of his patients contained clinical information that conflicts with the last version of the request. Further, the physician provided little clinical information relating to his other patient's prior pregnancy and delivery at another hospital. As well, no one has requested MMCR to assist with identifying suitable alternative facilities that permit the performance of tubal ligation procedures.

If you do intend to proceed with litigation, please direct future communications concerning the litigation to our outside counsel, Barry Landsberg, with Manatt, Phelps & Phillips, and John Sullivan Kenny, with Kenny, Snowden & Noreen. Mr. Landsberg can be reached at (310)-312-4259 and blandsberg@manatt.com. Mr. Kenny can be reached at (530)-225-8990 and jskenny@lawksn.com.

All rights are reserved.

Very truly yours,



Rick L. Grossman
Executive Vice President and General Counsel

¹ ACLU is well aware, from several of its published articles and letters to federal regulators, that no law, regulation or policy prohibits Catholic hospitals from observing the ERDs. To the contrary, ACLU has urged *changes* in current law and policy to support the sort of claims it has threatened here. No such change has been forthcoming.

Christine Haskett, Esq
Elizabeth Gill, Esq.
December 9, 2015
Page 5

CONFIDENTIAL

cc: Lloyd Dean
Sr. Brenda O'Keeffe
James DeSoto, M.D.
Mark Korth
Barry S. Landsberg, Esq.
John Sullivan Kenny, Esq.

**SAMUEL D. VAN KIRK, M.D.***Obstetrics & Gynecology Board Certified*

2139 Airpark Drive • Redding, California 96001 • Tel: (530) 247-0270 • Fax: (530) 247-0271

12/10/2015

Dear Dr. DeSoto and Mr. Grossman,

I am writing in response to Mr. Grossman's letter to the ACLU dated 12/9/2015. Specifically, Mr. Grossman suggests that we have a productive and complete dialogue about the medical needs of my patients. I have been and continue to be receptive to any discussion about how to provide efficient and high quality women's reproductive care.

As I have stated previously, I remain unaware of any defined medical rationale for performing a tubal ligation except for the patient's desire to have a tubal ligation performed. If you are in possession of a list or set of criteria under which tubal ligations are permissible, I would be happy to review it. In fact, each and every sterilization request that I send to our Institution includes the statement, "If you will not grant permission for my patient to have the indicated procedure that she desires, and she 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."

I have yet to have any of my repetitive requests for a dialogue be met, until now. Please let me know when it would be convenient for you to meet, and I will be happy to discuss these issues.

Furthermore, in regards to Mr. Grossman's statement concerning a lack of a request for MMCR to assist in identifying a suitable alternative facility, please let me know what other facility in the north state that I can take my patients to in order to perform a tubal ligation at the time of a Cesarean section. I am unaware of any such facility that Dignity Health does not own within 70 miles.

Sincerely,

Sam Van Kirk, MD



Dignity Health.

Mercy Medical Center
Redding

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

December 15, 2015

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

SENT VIA E-MAIL ONLY

Dear Dr. Van Kirk:

I have reviewed your letter to Mr. Grossman and me of December 10, 2015. It is inaccurate in several respects, and you apparently have declined to provide us with any additional clinical information about the two patients that might support the tubal ligation procedures under Mercy Medical Center-Redding's (MMCR's) Sterilization Policy.

We appreciate your frank acknowledgement that the "patient's desire to have a tubal ligation performed" is the basis for the requested tubal ligations for your two patients. As you well know, however, MMCR is a Catholic Hospital that does not, and cannot, perform elective sterilizations for contraceptive purposes. Rather, as you have also known for some time, MMCR's Sterilization Policy conforms to the Ethical and Religious Directives for Catholic Health Care Services, which provide that "[p]rocedures that induce sterility are morally acceptable when their effect is the cure or alleviation of a present and serious pathology and as simpler treatment is not available". MMCR Sterilization Policy, quoting ERD 53.

You stated that you are unaware of any "medical rationale" that would be consistent with the Sterilization Policy, and complain that there has been no "dialogue" with you on this subject. Actually, I personally have communicated with you several times precisely on this subject. Attached is my email to you, dated October 6, 2015, in which I identified some of the clinical indicators sufficient to authorize a tubal ligation under MMCR's policy. I have also discussed this with you directly on multiple occasions. In those discussions I told you that there is no "algorithm" or one-size-fits-all approach. Recognizing that each patient is unique, I also told you that it is the treating physician's obligation to bring forward all pertinent information about the patient for particular risk factors. In that way the Sterilization Policy can be applied consistent with the patient's medical presentation.

Sincerely,

James De Soto, M.D.
Vice President Medical Affairs
Mercy Medical Center Redding

Cc: Rick Grossman, Esq.

Attachment

From: Desoto, James - MMCR
Sent: Tuesday, October 06, 2015 2:57 PM
To: 'Sam Van Kirk'
Subject: RE: This is Jim De Soto...

ATTACHMENT

Thanks for our recent chat regarding sterilizations, etc. In follow-up of our conversation, I have hunted for any models that take into account risk factors for uterine rupture and can accurately predict patient-specific risk for uterine rupture, either with or without TOLAC. None seem to exist: In an article in Medscape by Gerard G Nahum, MD, FACOG, et al, the authors wrote: Congenital uterine anomalies, multiparity, previous uterine myomectomy, the number and type of previous cesarean deliveries, fetal macrosomia, labor induction, uterine instrumentation, and uterine trauma all increase the risk of uterine rupture, whereas previous successful vaginal delivery and a prolonged interpregnancy interval after a previous cesarean delivery may confer relative protection. In contrast to the availability of models to predict the success of a vaginal delivery after a TOLAC, accurate models to predict the person-specific risk of uterine rupture in individual cases are not available. The risk factors other than those listed above (examples include: previous scar rupture/dehiscence, some malpresentations, uterine over-distention (multiple fetuses, polyhydramnios, eg.), advanced maternal age, grand multiparity ($P \geq 5$), some abnormal placentation, medication controlled diabetes mellitus, previous hx of uterine infection, unknown scar-type, to name some of the most common) are probably well-known to you. Certainly there will be other risk factors that might arise in an individual patient which, in your judgment, might have some bearing on maternal risk. It is the totality of risk factors, including any findings at the time of surgery, that is important.

The more information you can include in your sterilization requests' medical necessity piece that might bear on risk to the mother in future pregnancies, the better. It would give us a complete picture to review and therefore appropriately decide whether to grant permission to do the procedure based on your judgment of your particular patient considering all the risk factors.

Hope this helps, and thanks for your work on this, best,

James A. De Soto, M.D.
Vice-President Medical Affairs
Administration

Dignity Health
North State Service Area
2175 Rosaline Avenue
Redding, CA 96001
530-225-6102 (O)
530-225-6118 (F)

James.DeSoto@DignityHealth.org

Caution: This email is both proprietary and confidential, and not intended for transmission to or receipt by any unauthorized persons. If you believe that it has been received by you in error, do not read any attachments. Instead, kindly reply to the sender stating that you have received the message in error. Then destroy it and any attachments. Thank you.

From: Sam Van Kirk [<mailto:samuelvankirk@yahoo.com>]
Sent: Friday, September 04, 2015 12:50 PM
To: Desoto, James - MMCR
Subject: Re: This is Jim De Soto...

Yahoo is valid. The other is when I worked with Dr Mooney.

Sent from my iPhone

On Sep 4, 2015, at 12:41 PM, Desoto, James - MMCR <James.DeSoto@DignityHealth.org> wrote:

Sam, are either or both of the '.com' email addresses valid? Which one (or both) may I use to communicate with you? Thanks...

James A. De Soto, M.D.
Vice-President Medical Affairs
Administration

Dignity Health
North State Service Area
2175 Rosaline Avenue
Redding, CA 96001
530-225-6102 (O)
530-225-6118 (F)

James.DeSoto@DignityHealth.org

Caution: This email is both proprietary and confidential, and not intended for transmission to or receipt by any unauthorized persons. If you believe that it has been received by you in error, do not read any attachments. Instead, kindly reply to the sender stating that you have received the message in error. Then destroy it and any attachments. Thank you.

COVINGTON

BEIJING BRUSSELS LONDON LOS ANGELES
NEW YORK SAN FRANCISCO SEOUL
SHANGHAI SILICON VALLEY WASHINGTON

Covington & Burling LLP
One Front Street
San Francisco, CA 94111-5356
T +1 415 591 6000

Via Fax, E-Mail, and Overnight Mail

December 16, 2015

Barry Landsberg
Manatt, Phelps & Phillips
11355 W. Olympic Blvd.
Los Angeles, CA 90064
Fax: (310) 312-4224
Email: blandsberg@manatt.com

John Sullivan Kenny
Kenny, Snowden & Noreen
2701 Park Marina Dr.
Redding, CA 96001
Fax: (530) 225-8944
Email: jskenny@lawksn.com

Dear Messrs. Landsberg and Kenny,

We write to follow up on Rick Grossman's letter to us of Dec. 9, 2015, on which you were both copied. On December 2, 2015, we sent Mr. Grossman a letter in part seeking authorization for a doctor with admitting privileges at Mercy Medical Center Redding (MMCR), Dr. Samuel Van Kirk, to perform postpartum tubal ligations on two of his patients, Rebecca Chamorro and Lysie Brushett. Although Mr. Grossman's response letter of December 9, 2015 generally states that MMCR does not perform sterilization for contraceptive purposes, he also invited Dr. Van Kirk "to submit additional medical information to support the procedures requested consistent with MMCR's Sterilization Policy." Mr. Grossman does not in the letter describe what clinical information he believes would assist MMCR in determining whether Dr. Van Kirk may now be authorized to perform postpartum tubal ligations for Ms. Chamorro and Ms. Brushett. As tubal ligations are only ever performed for contraceptive purposes, a detailed explanation of what MMCR is looking for will be necessary in order to submit the information requested.

On December 10, 2015, Dr. Van Kirk sent a letter to Dr. De Soto and Mr. Grossman seeking guidance as to what additional medical information he could submit to MMCR to support his request to perform postpartum tubal ligations for Ms. Chamorro and Ms. Brushett (attached hereto). As Dr. Van Kirk notes in his letter, and contrary to the representations in Mr. Grossman's December 9 letter, Dr. Van Kirk has previously and repeatedly sought guidance from MMCR on behalf of a number of patients about what

COVINGTON

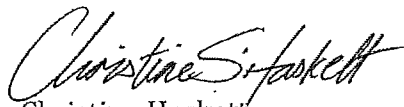
Page 2

clinical criteria MMCR takes into account in assessing whether physicians may perform postpartum tubal ligations at MMCR. Also attached to this letter are the sterilization requests Dr. Van Kirk submitted months ago for both Ms. Chamorro and Ms. Brushett. In both forms, Dr. Van Kirk seeks an explanation as to what medical information MMCR needs in order to authorize the performance of tubal ligations. Yet in both instances, MMCR simply denied the requested authorizations by generically citing MMCR's "current sterilization policy and the Ethical and Religious Directives for Catholic Health Services."

Although it is our understanding that Dr. De Soto informed Dr. Van Kirk's office on the morning of December 15, 2015 that Dr. Van Kirk would be receiving a written response to his December 10 letter, no such response has been received. Because the pregnancy due dates for Ms. Chamorro and Ms. Brushett are very fast approaching, we need to resolve the question of whether Dr. Van Kirk is authorized to perform postpartum tubal ligations as soon as possible. We are happy to work with you—and Dr. Van Kirk is happy to work directly with MMCR medical staff—to provide whatever additional medical information MMCR requires to authorize the procedures. In order to submit this information, however, we need guidance as to what clinical criteria MMCR takes into account in authorizing postpartum tubal ligations.

If it is still MMCR's position that it needs additional information to determine whether to permit the tubal ligations, please provide us with those clinical criteria immediately. Please note that if we do not have authorization for Dr. Van Kirk to perform postpartum tubal ligation for Ms. Chamorro and Ms. Brushett by 5:00 p.m. on **Friday, December 18**, we intend to move forward with filing a lawsuit and seeking emergency relief on their behalf.

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)

December 17, 2015

Via E-Mail Transmission
Original To Follow By U.S. Mail

CONFIDENTIAL

Christine Haskett
Covington & Burling LLP
One Front Street
San Francisco, CA 94111

Elizabeth Gill
Senior Staff Attorney
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

Ms. Haskett and Ms. Gill:

This letter responds to your correspondence, December 16, 2015, to John Kenny and me. Your letter materially misstates matters.

To begin, you mischaracterize Mr. Grossman's December 9 letter to you by claiming that it only "generally states that Mercy Medical Center Redding ("MMCR") does not perform sterilization for contraceptive purposes". In fact, Mr. Grossman very clearly told you that MMCR does not, under any circumstance, perform contraceptive or direct sterilizations, because to do so would violate MMCR's Sterilization Policy and the Ethical and Religious Directive for Catholic Health Care Services ("ERDs"), upon which that Policy rests.

Second, your correspondence states that "tubal ligations are only ever performed for contraceptive purposes...." Not so. Rather, the second sentence of Directive 53 contained in the ERDs states clearly:

"[P]rocedures 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."

Mr. Grossman's December 9 letter quoted this very language to you and explained prominently that MMCR and its Medical Staff are bound by the ERDs. Yet your December 16 letter does not even mention this fact and, instead, ignores Directive 53 and the ERDs generally.

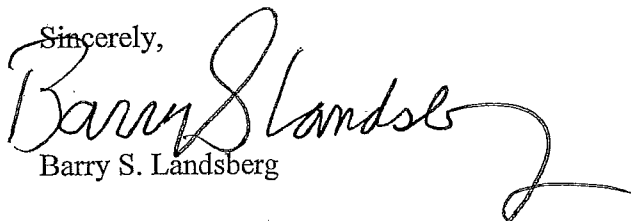
Christine Haskett
Elizabeth Gill
December 17, 2015
Page 2

Third, your letter implies that Dr. Van Kirk is lacking information about the proper clinical criteria to receive authorization to perform tubal ligations at MMCR under its existing Sterilization Policy. Unfortunately, we believe Dr. Van Kirk has misrepresented the situation. In fact, MMCR's Vice President of Medical Affairs, Dr. James De Soto, has engaged in multiple direct discussions with Dr. Van Kirk about this topic. And, on October 6, 2015, Dr. De Soto (who is an obstetrician) sent Dr. Van Kirk an email that identified numerous clinical criteria and risk factors that might support a request to permit performance of a tubal ligation under the Sterilization Policy. (See attached letter, dated December 15, 2015, from Dr. De Soto to Dr. Van Kirk and the email attached to it, responding to Dr. Van Kirk's December 10 letter). Dr. Van Kirk is an experienced clinician and capable obstetrician who has practiced for many years at MMCR, and is very cognizant of the fact that MMCR is a Catholic hospital. In addition, Dr. Van Kirk is well aware of the processes associated with MMCR's Sterilization Policy, including his professional obligation to produce all relevant clinical information concerning his patients to support any request thereunder. Mr. Grossman's December 9 letter simply invited Dr. Van Kirk to come forward with any pertinent additional clinical information about his patients that might support a different result under the Policy and Directive 53.

You waited seven days to respond to Mr. Grossman's letter, and yet you still threaten litigation, on an "emergency" basis. The lawsuit you threaten is baseless. Mr. Grossman's December 9 letter gives you some of the reasons why, and your December 16 letter does not respond to any of the points he raised. I would be more than happy to amplify upon this if you want to discuss it live.

If you do proceed with litigation without further dialogue, then we would at least like to discuss an orderly scheduling of any injunctive relief hearing on proper notice. There is no basis for mandatory "emergency" relief. As well, the patients have known for months that the requested procedures would not be allowed and their Cesarean Sections are not yet scheduled (and, as we understand it, they are not due to deliver) until late February and March 2016.

Sincerely,


Barry S. Landsberg

cc: Rick Grossman, Esq.
John Sullivan Kenny, Esq.

December 21, 2015

Via E-Mail Transmission
Original To Follow By U.S. Mail

CONFIDENTIAL

Christine Haskett
Covington & Burling LLP
One Front Street
San Francisco, CA 94111

Elizabeth Gill
Senior Staff Attorney
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

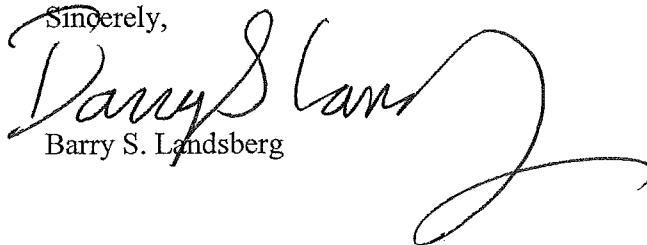
Dear Ms. Haskett and Ms. Gill:

As you know, we represent Dignity Health and Mercy Medical Center Redding (MMCR). Several weeks ago you indicated that you would initiate litigation against Dignity Health if it did not submit to your demands that MMCR authorize the performance of elective, contraceptive sterilization procedures by Dr. Samuel Van Kirk for two of his patients. Dignity Health did not accede to your demand, which was explained in some detail in my client's December 9th letter to you. Seven days later, on December 16, you replied and said for the first time that you intend to seek "emergency" relief. Accordingly, the next day (December 17), I wrote to you explaining there was no "emergency" because, among other reasons, performance of the two sterilization procedures was denied months ago. Also, since any request for provisional relief requires proper notice, I asked that we directly discuss the orderly notice and scheduling of any hearing on an injunction. We have not heard back from you.

As you are well aware, we are now in the middle of the holiday season and many are traveling to visit families or enjoy winter vacations. In fact, I have a pre-paid family vacation (out of town), starting tomorrow through January 3, 2016. If you still intend to file suit, we remain available to work with you on a mutually acceptable schedule for notice and hearing of any request for provisional relief. In this regard, I am available to appear any time after I return from vacation. I am lead counsel for Dignity Health, and my presence -- upon proper notice -- will be required for any hearing in this matter.

Christine Haskett
Elizabeth Gill
December 21, 2015
Page 2

We appreciate your anticipated cooperation.

Sincerely,

Barry S. Landsberg

cc: Rick Grossman, Esq.
John Sullivan Kenny, Esq.

From: Landsberg, Barry [<mailto:BLandsberg@manatt.com>]
Sent: Monday, December 21, 2015 11:35 AM
To: Hobbs, Felecia; Haskett, Christine
Cc: jskenny@lawksn.com; Rick.Grossman@DignityHealth.org
Subject: RE: In the Matter of Rebecca Chamorro and Lysie Brushett

Please see attached December 21 letter to Ms. Haskett and Ms. Gill. I do not have Ms. Gill's email address and trust you will forward this onto her.

Thank you.

Barry Landsberg
Partner

Manatt, Phelps & Phillips, LLP
11355 W. Olympic Blvd
Los Angeles, CA 90064
D (310) 312-4259 F (310) 914-5741

BLandsberg@manatt.com
manatt.com

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it, may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this message is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply email and destroy the original transmission and its attachments without reading them or saving them to disk. Thank you.

From: Hobbs, Felecia [<mailto:fhobbs@cov.com>]
Sent: Wednesday, December 16, 2015 3:41 PM
To: Landsberg, Barry; jskenny@lawksn.com
Cc: lynsiebrushett@gmail.com; steelblue831@gmail.com; samueltvankirk@yahoo.com; samueltvankirk@gmail.com
Subject: In the Matter of Rebecca Chamorro and Lysie Brushett

Counsel:

See attached correspondence.

Thank you.

Felecia P. Hobbs
Secretary

Covington & Burling LLP
One Front Street, San Francisco, CA 94111-5356
T +1 415 955 6910 | fhobbs@cov.com
www.cov.com

COVINGTON

From: Haskett, Christine [<mailto:chaskett@cov.com>]

Sent: Monday, December 21, 2015 3:25 PM

To: Landsberg, Barry <BLandsberg@manatt.com>

Cc: jskenny@lawksn.com; Elizabeth Gill <egill@aclunc.org>; Carey, Patrick R <PCarey@cov.com>

Subject: RE: In the Matter of Rebecca Chamorro and Lysie Brushett

Barry,

I write in response to your letters of December 17 and December 21. As I'm sure you have anticipated, we disagree with many of the points made in those letters. Rather than engage in a debate over the merits of our respective positions in this email, however, we would prefer to focus in this exchange on the scheduling issues raised by your letter of today. We do intend to seek emergency relief on behalf of Ms. Chamorro, whose delivery is currently scheduled for late January (not February or March, as stated in your letter of December 17). Although Mr. Grossman's December 9 letter gave Ms. Chamorro some hope that the requested procedure would be approved, the subsequent communications sent to Dr. Van Kirk and to us have shown that is not the case. Therefore, we have no choice but to proceed with litigation.

As an accommodation to your upcoming vacation plans, we propose to file our papers on or about December 28 and to request a hearing on either January 4 or January 5, after you return. If you would like to tell us which of those two dates you prefer for the hearing, we will make our request accordingly.

Please don't hesitate to reach out if you would like to discuss the scheduling issues further.

Best regards,

Christine

Christine Haskett

Covington & Burling LLP
One Front Street, San Francisco, CA 94111-5356
T +1 415 591 7087 | chaskett@cov.com
www.cov.com

COVINGTON

From: Landsberg, Barry [<mailto:BLandsberg@manatt.com>]
Sent: Monday, December 21, 2015 5:09 PM
To: Haskett, Christine <chaskett@cov.com>
Cc: jskenny@lawksn.com; Elizabeth Gill <egill@aclunc.org>; Carey, Patrick R <PCarey@cov.com>;
Rochman, Harvey <HRochman@manatt.com>; Rick.Grossman@DignityHealth.org
Subject: RE: In the Matter of Rebecca Chamorro and Lysie Brushett

Christine:

Thanks for your response today.

January 5 is an acceptable hearing date. I ask that you agree to email the documents to me on December 28, as I will be overseas. Please also copy Manatt partner, Harvey Rochman, at hrochman@manatt.com. For scheduling purposes, please also tell us in what court you will file this action.

While I agree we should confine our discussion to calendaring issues, you commented that Mr. Grossman's December 9 letter provided some "hope" that MMCR would authorize the sterilization procedure requested by Ms. Chamorro, but that subsequent communications to Dr. Van Kirk and you make litigation unavoidable. To be clear, Mr. Grossman's December 9 letter "invite[d] the physician to submit additional information to support the procedures requested consistent with MMCR's Sterilization Policy". My letter to you of December 17th contained a similar reminder that it was incumbent upon Dr. Van Kirk "to produce all relevant clinical information concerning his patients" under MMCR's Sterilization Policy, and I echoed Mr. Grossman's December 9 letter inviting such a submission. To my knowledge, Dr. Van Kirk has not brought forth any additional clinical information about Ms. Chamorro since December 9.

Please advise.

Thank you.

Barry Landsberg
Partner

Manatt, Phelps & Phillips, LLP
11355 W. Olympic Blvd
Los Angeles, CA 90064
D (310) 312-4259 F (310) 914-5741

BLandsberg@manatt.com
manatt.com

CONFIDENTIALITY NOTICE: This e-mail transmission, and any documents, files or previous e-mail messages attached to it, may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this message is STRICTLY PROHIBITED. If you have received this transmission in error, please immediately notify us by reply email and destroy the original transmission and its attachments without reading them or saving them to disk. Thank you.

COVINGTON