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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF SAN FRANCISCO

20
21 REBECCA CHAMORRO and
PHYSICIANS FOR REPRODUCTIVE
22 HEALTH

23 Plaintiffs,

24 v.

25 DIGNITY HEALTH; DIGNITY HEALTH
d/b/a MERCY MEDICAL CENTER
26 REDDING

27 Defendant.

Case No. 15-549626

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF
AND NOMINAL DAMAGES**

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
02/29/2016
Clerk of the Court
BY: ALISON AGBAY
Deputy Clerk

INTRODUCTION

1
2 1. Plaintiffs in this action—a woman who was denied a postpartum tubal ligation and a
3 nonprofit organization with member physicians who have patients around the State of California,
4 including at Defendant Dignity Health hospitals—challenge the policy and practice of Defendant to
5 apply Catholic religious directives to prevent physicians from performing immediate postpartum tubal
6 ligation on their patients in Dignity Health hospitals. Tubal ligation, known familiarly as “getting one’s
7 tubes tied,” is extremely safe, very effective, and one of the most common forms of birth control: it is
8 the contraceptive method of choice for more than 30 percent of U.S. married women of reproductive
9 age, and the most common form of permanent contraception. The standard of care for the procedure is
10 to perform it postpartum, or immediately after a woman gives birth. Because of the timing of the
11 procedure and because it prevents future pregnancy, immediate postpartum tubal ligation is also
12 pregnancy-related care.

13 2. The individual plaintiff in this action, Rebecca Chamorro, lives in Redding, California.
14 Ms. Chamorro and her husband do not want more children, so Ms. Chamorro decided in consultation
15 with her obstetrician that she wanted to undergo tubal ligation immediately following the Cesarean
16 Section (“C-section”) delivery of her third child. Ms. Chamorro was scheduled to deliver at Mercy
17 Medical Center Redding (“MMCR”), the only hospital in Redding with a labor and delivery ward. Her
18 obstetrician sought authorization from MMCR to perform the postpartum tubal ligation, which would
19 take him only a few minutes and require no additional resources from MMCR. MMCR, however,
20 refused to allow the doctor to perform the postpartum tubal ligation, citing its “sterilization policy and
21 the Ethical and Religious Directives for Catholic Health Care Services” (ERDs). As a result,
22 Ms. Chamorro delivered her child via C-section on January 20, 2016, but her obstetrician was prevented
23 by Dignity Health from performing a tubal ligation immediately following the C-section.

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

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

13 5. The application of the ERDs to Ms. Chamorro and to patients of Physicians for
14 Reproductive Health members unlawfully disrupts the patient-doctor relationship and denies patients the
15 standard of care and pregnancy-related care. Under California law, entities like Dignity Health that are
16 open to the general public and that receive state funds are prohibited from discriminating on the basis of
17 sex, which includes discriminating based on “pregnancy, childbirth, or medical conditions related to
18 pregnancy or childbirth.” Cal. Civ. Code § 51(e)(5); Cal. Gov’t Code §§ 11135(a) & (e). Moreover,
19 California law prohibits the corporate practice of medicine, wherein corporate entities usurp the role of
20 doctors by making medical decisions based on nonmedical criteria. Cal. Bus. & Prof. Code §§ 2032,
21 2052, 2400. By preventing doctors from performing some immediate postpartum tubal ligations based
22 on the ERDs and/or sterilization policies that reflect the ERDs, Dignity Health violates California law.

23 6. Despite applying the ERDs to many patients and thereby denying them tubal ligations,
24 Dignity Health has permitted doctors to perform some immediate postpartum tubal ligations in its
25 hospitals. Dignity Health has provided only limited—and inconsistent—explanation as to the criteria it
26 uses in determining whether to permit doctors to perform postpartum tubal ligation, but it appears to
27 grant permission, at least at MMCR, based on a purported assessment of the health risk to the patient of
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1 a future pregnancy. Because it is allowing some tubal ligations, which are only ever performed for
2 contraceptive purposes, Dignity Health is additionally violating California law when it prohibits other
3 tubal ligations based on the ERDs and/or sterilization policies that reflect the ERDs. California law
4 requires that if a hospital permits any sterilization operations for contraceptive purposes, then it may not
5 require the individual seeking the sterilization to meet nonmedical qualifications. Cal. Health & Safety
6 Code § 1258.

7 7. Plaintiffs seek a declaratory judgment that Dignity Health violates state law when it
8 prohibits doctors from performing immediate postpartum tubal ligation based on the ERDs and/or
9 sterilization policies that reflect the ERDs. In addition, Physicians for Reproductive Health seeks an
10 injunction prohibiting Dignity Health from preventing doctors from performing immediate postpartum
11 tubal ligations on their patients in Dignity Health hospitals, and Ms. Chamorro seeks nominal damages
12 from Dignity Health for preventing her doctor from performing a tubal ligation immediately following
13 her C-section.

14 JURISDICTION AND VENUE

15 8. This Court has jurisdiction under article VI, section 10, of the California Constitution and
16 California Code of Civil Procedure section 410.10.

17 9. Venue in this Court is proper because this is an action against a nonprofit corporation,
18 Dignity Health, the principal place of business of which is in the City and County of San Francisco, at
19 185 Berry Street, Suite 300, San Francisco, CA 94107.¹ Cal. Civ. Code § 395.5.

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25 ¹ Dignity Health describes itself as “a California nonprofit public benefit corporation headquartered in
26 San Francisco,” 2012 Form 990, Part III, Line 4a, and lists a San Francisco address for the company.
27 Dignity Health’s most recent Statement of Information, filed with the California Secretary of State
28 October 9, 2014, lists the corporation’s “Principle Office Address” as 185 Berry Street, Suite 300, San
Francisco, CA 94017.

1 THE PARTIES

2 Plaintiff Rebecca Chamorro

3 10. Plaintiff Rebecca Chamorro is a 33-year-old woman living in Redding, California. When
4 this case was originally filed, Ms. Chamorro was approximately eight months pregnant. Ms. Chamorro
5 was scheduled to deliver by C-section at MMCR on January 28, 2016.

6 11. Ms. Chamorro is married and has three children, one 7 years old, one 3 years old, and a
7 newborn. Prior to her most recent delivery, Ms. Chamorro and her husband decided that they do not
8 want any more children after the birth of their third child.

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

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

21 14. Because Ms. Chamorro was unable to undergo a postpartum tubal ligation, she and her
22 husband will now have to incur additional costs to prevent future pregnancy. Although they have yet to
23 decide what method of contraception they will pursue, any reliable method will cause them to incur
24 costs that they would not have incurred had Ms. Chamorro's obstetrician been able to perform the
25 postpartum tubal ligation.

1 **Plaintiff Physicians for Reproductive Health**

2 15. Physicians for Reproductive Health is a national nonprofit 501(c)(3) membership
3 organization, comprised of physicians who seek to ensure meaningful access to comprehensive
4 reproductive health services as part of mainstream medical care. Founded in 1992 by a small group of
5 concerned physicians, Physicians for Reproductive Health has grown into a national organization that
6 represents medical professionals who practice in a range of fields: obstetrics and gynecology, pediatrics,
7 family medicine, cardiology, neurology, radiology, and more. Physicians for Reproductive Health has
8 approximately 1,200 physician members who practice in the state of California, some of whom have or
9 will have patients who have delivered or plan to deliver their children at Dignity Health hospitals.

10 16. Physicians for Reproductive Health members have had patients who wanted and were
11 denied immediate postpartum tubal ligations at Dignity Health hospitals in California based on the
12 ERDs and/or sterilization policies reflecting the ERDs. Because Physicians for Reproductive Health
13 members regularly discuss postpartum tubal ligation with their patients and consider it to be their duty as
14 physicians to provide their patients with the standard of care, they will have patients in the future who
15 wish to undergo immediate postpartum tubal ligation at Dignity Health hospitals in California. Based on
16 the application by Dignity Health of the ERDs and/or sterilization policies reflecting the ERDs, patients
17 of Physicians for Reproductive Health members will be prevented from receiving postpartum tubal
18 ligations by Dignity Health based on the ERDs and/or sterilization policies reflecting the ERDs.

19 17. Physicians for Reproductive Health has expended resources that it would otherwise have
20 expended elsewhere in investigating and advocating against Dignity Health’s unlawful policy and
21 practice of applying the ERDs and/or related sterilization policies to prevent doctors from performing
22 immediate postpartum tubal ligations.

23 **Defendant Dignity Health**

24 18. Dignity Health is registered as a 510(c)(3) tax-exempt nonprofit corporation. According
25 to its website, Dignity Health is the fifth largest health system in the country, owning and operating a
26 large network of hospitals.² Also according to its website, Dignity Health is the largest hospital

27 ² <http://www.dignityhealth.org/cm/content/pages/about-us.asp>

1 provider in California, with 29 hospitals in the state.³ In 2012, Dignity Health’s federal tax form 990
2 listed revenue of \$8.7 billion and employment of 51,991 people. In Shasta County, Dignity Health does
3 business as Mercy Medical Center Redding.

4 19. Dignity Health receives significant funding from the State of California. In 2012,
5 Dignity Health’s 2012 federal tax form 990 listed over \$23 million in “government grants,” over \$3.3
6 billion in Medicare and Medicaid payments, and over \$47.7 million in meaningful use incentives. That
7 same form also describes the following revenue from “government programs”: \$575.3 million in
8 revenue and \$233.7 million in net income in 2012; \$684.5 million in revenue and \$230.2 million in net
9 income in 2013. In particular, MMCR received \$51,615 from the Office of Statewide Health Planning
10 and Development (OSHPD) in 2006 and again in 2012 for its family practice residency training
11 program, which provides funds for training in MMCR’s labor and delivery wards.

12 STATEMENT OF FACTS

13 Immediate Postpartum Tubal Ligation Is the Standard of Care and Pregnancy-Related 14 Care

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

17 21. Tubal ligation, also known as tubal sterilization or female sterilization, is extremely safe,
18 very effective, and one of the most common methods of birth control. Tubal ligation is the family
19 planning method of choice for 30.2% of U.S. married women of reproductive age.⁴

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

25 _____
26 ³ <http://www.dignityhealth.org/cm/content/pages/about-us.asp>.

27 ⁴ Am. Coll. of Obstetricians and Gynecologists (ACOG Practice Bulletin), *Practice Bulletin No. 133,*
28 *Benefits and Risks of Sterilization 1* (2013).

1 23. All tubal ligation is done for contraceptive purposes. Even if a woman chooses to have a
2 tubal ligation because another pregnancy would risk her health, the performance of the tubal ligation is
3 still contraceptive in that it operates solely to prevent future pregnancy. Tubal ligation is never
4 performed to treat an underlying health condition, nor is it ever performed to reduce any complications
5 or medical risks associated with a patient’s labor and delivery.⁵

6 24. A tubal ligation immediately after delivery has many advantages for patients, and is an
7 easier and more convenient procedure for doctors. According to the leading professional society of
8 obstetricians and gynecologists, the American College of Obstetricians and Gynecologists (ACOG),
9 “[t]he immediate postpartum period following vaginal delivery or at the time of cesarean delivery is the
10 ideal time to perform sterilization [tubal ligation] because of technical ease and convenience for the
11 woman and physician.”⁶ Performing the procedure immediately postpartum is also the most effective
12 method, according to the landmark U.S. Collaborative Review of Sterilization (CREST) study, which
13 followed 10,685 women for up to 14 years following their surgical tubal sterilization procedure.⁷ In the
14 United States, tubal ligation is performed in the immediate postpartum period for 10% of all hospital
15 deliveries.⁸

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

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22 ⁵ Plaintiffs’ use of the term “tubal ligation” does not encompass salpingectomy, which is the complete
23 removal of one or both fallopian tubes.

24 ⁶ ACOG Comm. on Health Care for Underserved Women, (ACOG Committee Opinion), *Comm. Op.*
25 *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/Access-to-Postpartum-Sterilization>.

26 ⁷ Herbert B. Peterson, et al., *The Risk of Pregnancy After Tubal Sterilization: Findings from the U.S.*
27 *Collaborative Review of Sterilization*, 174 Am. J. Obstet. Gynecol. 1161, 1163 (1995).

28 ⁸ ACOG Committee Opinion, *supra* note 6, at 1.

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

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

9 28. According to ACOG: “Given the consequences of a missed procedure and the limited
10 time frame in which it may be performed, postpartum sterilization should be considered an urgent
11 surgical procedure.”⁹

12 29. If a doctor is able and willing to perform a postpartum tubal ligation on a patient, then the
13 only action the hospital need take is to allow the doctor to perform the procedure.

14 30. For example, if Ms. Chamorro’s obstetrician, Dr. Van Kirk, had been authorized to
15 perform an immediate postpartum tubal ligation on Ms. Chamorro, he would not have needed to
16 administer any additional anesthesia to perform a postpartum tubal ligation; he would not have required,
17 and MMCR would not have had to furnish, any additional support staff in the delivery room to perform
18 the tubal ligation; he would not have needed any additional materials or equipment in the delivery room
19 to perform the tubal ligation other than two pieces of suture; and, based on his past experience,
20 performing the tubal ligation at the time of delivery would have taken him approximately one to two
21 minutes.

22 31. In addition to being the standard of care, immediate postpartum tubal ligation is
23 pregnancy-related care. Immediate postpartum tubal ligation is pregnancy-related care because it is
24 performed immediately following delivery, which has the significant medical and other advantages
25 described above. It is also pregnancy-related care because it is the standard of care for obstetricians to

27 ⁹ *Id.* at 2.

1 discuss contraception, including postpartum tubal ligation, with their patients as part of the overall
2 perinatal care plan, in part because close spacing of subsequent pregnancies can affect the woman and
3 the baby's health. Tubal ligation is also pregnancy-related care because it prevents future pregnancies.

4 32. Obstetrician-Gynecologists who practice in religiously affiliated hospitals commonly
5 have conflicts over policies based on religious doctrine that restrict their ability to practice medicine.¹⁰
6 Although doctors often sign contracts that require them to abide by the ERDs and/or policies that reflect
7 the ERDs in order to practice medicine at hospitals that choose to identify as Catholic, many of them do
8 not agree with the application of the ERDs and/or policies that reflect the ERDs: A 2012 national survey
9 found that 52% of Obstetrician-Gynecologists who work in Catholic-affiliated hospitals experienced
10 conflict with their institution regarding religiously-based policies for patient care.¹¹ A 2014 national
11 study of Obstetrician-Gynecologists also found that physicians disagreed with hospital prohibitions on
12 sterilization, which sometimes posed harm to their patients, and particularly "disliked when patients had
13 to undergo surgeries separate from the cesarean sections they were already having just to have tubal
14 ligations done outside of the Catholic hospital."¹² In a 2011 national survey of Obstetrician-
15 Gynecologists, nearly all (98%) stated they would help a patient obtain a tubal ligation if she decided to
16 have the procedure.¹³

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

23 ¹⁰ Debra B. Stulberg, et al., *Obstetrician-Gynecologists, Religious Institutions, and Conflicts Regarding*
24 *Patient Care Policies*, 207 *Am. J. Obstet. Gynecol.* 73.e1, 73.e5 (2012).

25 ¹¹ *Id.* at 73.e4.

26 ¹² Debra B. Stulberg, et al., *Tubal Ligation in Catholic Hospitals: A Qualitative Study of Ob-Gyns'*
Experiences, 90 *Contraception* 422, 425 (2014).

27 ¹³ R. E. Lawrence, et al., *Factors Influencing Physicians' Advice about Female Sterilization in the USA:*
28 *A National Survey*, 26 *Human Reproduction* 106, 106 (2011).

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

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

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

10 36. If a woman is not able to obtain a postpartum tubal ligation and chooses not to undergo
11 surgery to obtain a comparable tubal sterilization, she and/or her partner will have to use another method
12 of contraception to prevent future pregnancy. For a woman, other methods of contraception are likely to
13 include regular doctor and pharmacy visits, procedure(s), and out-of-pocket costs. For example, a
14 woman may decide to use a long-term but reversible method, such as an intrauterine device (IUD) or
15 hormonal implant: these must be inserted or implanted in the woman's body and the woman must
16 undergo periodic doctor visits to replace the IUD or implant. Implants and some types of IUDs release a
17 hormone to prevent pregnancy. A woman may instead decide to use another type of hormonal method
18 of contraception, such as birth control pills or the Depo-Provera shot, that requires daily, monthly, or
19 quarterly doses depending on type.

20 37. A woman's male partner may also take steps to prevent future pregnancy. A man may
21 use a barrier method of contraception, such as condoms. Barrier methods of contraception are less
22 effective in preventing pregnancy than an immediate postpartum surgical tubal ligation. Or a man may
23 undergo a vasectomy, which requires a surgical procedure. Vasectomy is almost always performed as
24 an outpatient procedure, and it very rarely takes place in a hospital setting in conjunction with the
25 performance of another surgical procedure. According to data from the 2006–2010 National Survey of
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1 Family Growth, of the 47.3% of married couples who choose sterilization to prevent future pregnancy,
2 17.1% choose vasectomy and 30.2% choose tubal ligation.¹⁴

3 38. For these reasons, when women request and are denied postpartum tubal ligation, they
4 are at a greater risk of unintended pregnancy. “Failure to provide the desired sterilization creates a
5 significant increase in cost for the woman and the health care system,” according to ACOG, which cites
6 a study where “nearly one half of women with unfulfilled postpartum sterilization requests became
7 pregnant within one year, twice the rate of women [in the study] who did not request sterilization.”¹⁵
8 Unintended pregnancy is associated with poorer maternal/fetal outcomes than planned pregnancies,
9 including low birth weight, infant mortality, and maternal mortality. Approximately half of all
10 unintended pregnancies end in abortion.

11 39. Women also bear a disproportionate share of the economic and personal burdens
12 associated with unintended pregnancy. Women of childbearing age spend significantly more in out-of-
13 pocket healthcare costs than men, due in significant part to the costs associated with unintended
14 pregnancies, including premature deliveries, health risks, and increased neonatal care. Unintended
15 pregnancy and childbearing leads to lower levels of educational attainment and labor-force participation
16 for women. And women who experience unintended pregnancy are more likely than other women to
17 experience postpartum depression and long-term mental health issues.

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

21 41. Patients are often unaware that they will not receive comprehensive care at a Catholic
22 hospital. Studies have found that reproductive-age women surveyed were largely unaware that going to
23 a Catholic hospital meant they would be prohibited from receiving health care that is contrary to
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25 ¹⁴ ACOG Practice Bulletin, *supra* note 4, at 1.

26 ¹⁵ ACOG Committee Opinion, *supra* note 6, at 1, referencing AR Thurman et al., *One-Year Follow-up*
27 *of Women with Unfulfilled Postpartum Sterilization Requests*; 116 Am. J. Obstet. Gynecol. 1071-7
28 (2010).

1 Catholic teaching.¹⁶

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

12 43. Because MMCR prevented Dr. Van Kirk from performing a postpartum sterilization at
13 the time of her C-section, Ms. Chamorro was unable to obtain a postpartum tubal ligation. Whatever
14 contraceptive method Ms. Chamorro and her husband decide to use to prevent future pregnancy, they
15 will be required to take steps and incur costs they would not have had to take or incur had Ms. Chamorro
16 been permitted to undergo a postpartum tubal ligation.

17 **Dignity Health Prevents Doctors from Performing Postpartum Tubal Ligations Based on**
18 **Religious Directives**

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

22 45. Dr. Van Kirk submitted a "sterilization request for Rebecca Chamorro" on September 15,
23 2015. In the letter that Dr. Van Kirk submitted, he noted under "medical indications" that the "patient
24 desires to have a tubal ligation performed" and "the obstetrician requests permission to perform a tubal

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26 ¹⁶ Belden Russonello & Stewart, *Religion, Reproductive Health and Access to Services: A National*
27 *Survey of Women 1* (2000),
<http://www.catholicsforchoice.org/topics/healthcare/documents/2000religionreproductivehealthandaccesstoservices.pdf>

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

10 46. On September 18, 2015, MMCR denied Dr. Van Kirk’s request to provide Ms. Chamorro
11 with an immediate postpartum tubal ligation. The denial letter states: “The Mercy Medical Center
12 Redding facility review committee has evaluated your request for sterilization for Rebecca Chamorro.
13 We are unable to admit your request to perform a tubal ligation at the time of Ms. Chamorro’s
14 Ceasarean Section. In reviewing your request and based on the current information submitted, it noted
15 that it does not meet the requirement of Mercy’s current sterilization policy or the Ethical and Religious
16 Directives for Catholic Health Services. Therefore, we cannot admit material cooperation to perform a
17 tubal ligation at Mercy Medical Center Redding.”

18 47. Dr. Van Kirk estimates that he has had at least 50 patients in the last eight years for
19 whom he has sought but been denied authorization to perform immediate postpartum tubal ligation
20 based on “Mercy’s current sterilization policy or the Ethical and Religious Directives for Catholic
21 Health Services.”

22 48. Dignity Health identifies some of its hospitals as affiliated with the Catholic Church. For
23 the hospitals that it identifies as Catholic, Dignity Health’s website states that these hospitals must
24 conform to “the Ethical and Religious Directives for Catholic Health Care Services.”¹⁷

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26
27 ¹⁷ <http://www.dignityhealth.org/cm/content/pages/ethics.asp>

1 49. The ERDs are promulgated by the United States Conference of Catholic Bishops.¹⁸ The
2 ERDs explicitly apply to sterilization: “Direct sterilization of either men or women, whether permanent
3 or temporary, is not permitted in a Catholic health care institution. Procedures that induce sterility are
4 permitted when their direct effect is the cure or alleviation of a present and serious pathology and a
5 simpler treatment is not available.”¹⁹ The ERDs further state that “[w]hile there are many acts of
6 varying moral gravity that can be identified as intrinsically evil, in the context of contemporary health
7 care the most pressing concerns are currently abortion, euthanasia, assisted suicide, and direct
8 sterilization.”²⁰

9 50. Catholic hospitals generally rely on the ERDs to prohibit postpartum tubal ligation.²¹

10 51. Dignity Health identifies MMCR as a Catholic hospital, and has stated that MMCR must
11 follow the ERDs.

12 52. In addition, MMCR has its own sterilization policy, which provides that “[p]rocedures
13 whose sole, immediate effect is to render the generative faculty incapable of procreation are contrary to
14 Catholic moral teaching. Therefore, tubal ligation or other procedures that induce sterility for the
15 purpose of contraception are not acceptable in Catholic moral teaching even when performed with the
16 intent of avoiding further medical problems associated with a future pregnancy.”²²

19 ¹⁸ U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Healthcare*
20 *Services*, fifth ed., No. 53 (Nov. 17, 2009), [http://www.usccb.org/issues-and-action/human-life-and-](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)
21 [dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-](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)
[2009.pdf](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)

22 ¹⁹ *Id.* at 27 ¶ 53.

23 ²⁰ *Id.* at 42, n. 44.

24 ²¹ Joseph Card Ratzinger, Prefect, Congregation for the Doctrine of the Faith, Roman Catholic Church,
25 Responses to Questions Proposed Concerning “Uterine Isolation” and Related Matters (July 31, 1993),
http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_31071994_uteri
[ne-isolation_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_31071994_uteri).

26 ²² Defendant Dignity Health’s Appendix of Evidence (Part 1 of 3 - Exhibits 1-7) in Opposition to
27 Plaintiff Rebecca Chamorro’s Ex Parte Application for Temporary Restraining Order and Order to Show
28 Cause Exhibit 7.

1 **Dignity Health Permits Some Immediate Postpartum Tubal Ligations**

2 53. Despite preventing many doctors from performing immediate postpartum tubal ligations
3 based on the ERDs and/or sterilization policies that reflect the ERDs, Dignity Health does permit
4 doctors to perform some immediate postpartum tubal ligations.

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

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

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

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

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

3 59. Dr. Van Kirk has tried on many occasions to learn the exact clinical criteria that MMCR
4 considers in determining whether to approve postpartum tubal ligations. Although MMCR has not
5 directly provided Dr. Van Kirk with this information, Dr. James De Soto of MMCR sent Dr. Van Kirk
6 an email on October 6, 2015, in which he described MMCR's decision-making process regarding
7 sterilization as turning on "the totality of risk factors," especially the "risk to the mother in future
8 pregnancies."²³ Factors that Dr. De Soto explicitly mentioned in the email include advanced maternal
9 age and grand multiparity (having five or more previous childbirths).²⁴

10 60. Despite having previously acknowledged that MMCR permits some postpartum tubal
11 ligations to prevent future pregnancy, Dr. De Soto now claims in a declaration submitted in support of
12 Dignity Health's opposition to Plaintiff Chamorro's motion for a preliminary injunction, that he reviews
13 requests for postpartum tubal ligations to determine whether they "identify a present and serious
14 pathology under the Sterilization Policy that would be cured or alleviated by the requested procedure" or
15 is "requested due to any medical necessity related to [a patient's] anticipated C-section delivery in
16 connection with her current pregnancy."²⁵

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

21 **FIRST CAUSE OF ACTION**

22 **(Violation of The Unruh Act, Civ. Code § 51(b))**

23
24 ²³ Declaration of Christine Saunders Haskett in Support of Rebecca Chamorro's Ex Parte Application
for Temporary Restraining Order and Order to Show Cause Ex. 4.

25 ²⁴ *Id.*

26 ²⁵ Defendant Dignity Health's Appendix of Evidence (Part 1 of 3 - Exhibits 1-7) in Opposition to
27 Plaintiff Rebecca Chamorro's Ex Parte Application for Temporary Restraining Order and Order to Show
Cause Exhibit 1 ¶ 10.

1 80. Taken together, these code sections form a bar on the corporate practice of medicine.

2 81. Dignity Health prohibits doctors from performing some immediate postpartum tubal
3 ligations based on the Ethical and Religious Directives for Catholic Health Care Services and/or
4 sterilization policies that reflect the ERDs.

5 82. In prohibiting physicians from performing immediate postpartum tubal ligations, thus
6 requiring physicians to provide substandard care, and in making determinations as to which patients will
7 be permitted to undergo immediate postpartum tubal ligation based on the nonmedical qualifications set
8 forth in the ERDs and/or sterilization policies that reflect the ERDs, Dignity Health violates the statutory
9 bar on the corporate practice of medicine.

10 **FOURTH CAUSE OF ACTION**

11 **(Violation of Health & Safety Code § 1258)**

12 83. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully
13 set forth herein.

14 84. California Health & Safety Code section 1258 provides that: “No health facility which
15 permits sterilization operations for contraceptive purposes to be performed therein, nor the medical staff
16 of such health facility, shall require the individual upon whom such a sterilization operation is to be
17 performed to meet any special nonmedical qualifications, which are not imposed on individuals seeking
18 other types of operations in the health facility. Such prohibited nonmedical qualifications shall include,
19 but not be limited to, age, marital status, and number of natural children.”

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

22 86. Dignity Health prohibits doctors from performing other sterilization operations—
23 immediate postpartum tubal ligations—based on the nonmedical qualifications set forth in the ERDs
24 and/or sterilization policies that reflect the ERDs in violation of California Health & Safety Code
25 section 1258.

26 **FIFTH CAUSE OF ACTION**

27 **(Violation of Bus. & Prof. Code §§ 17200 et seq.)**

28

1 87. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully
2 set forth herein.

3 88. The Unfair Competition Law, Business & Profession Code section 17200 et seq.,
4 provides that “Any person who engages, has engaged, or proposes to engage in unfair competition may
5 be enjoined in any court of competent jurisdiction.” Cal. Bus. & Prof. Code § 17203.

6 89. The Unfair Competition Law further provides that “unfair competition shall mean and
7 include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or
8 misleading advertising” Cal. Bus. & Prof. Code § 17200.

9 90. Dignity Health is in violation of several provisions of California statutory law, and it is
10 therefore also in violation of California’s Unfair Competition Law.

11 91. Plaintiffs have suffered injury in fact and lost money as a result of Defendant’s violation
12 of the Unfair Competition Law. Plaintiff Chamorro will have to incur costs she would not have
13 otherwise had to incur to take measures to prevent future pregnancy. Plaintiff Physicians for
14 Reproductive Health has and will expend resources it would have expended elsewhere in investigating
15 and advocating against Defendant’s unlawful policy and practice of preventing patients from receiving
16 immediate postpartum tubal ligations in its hospitals based on the ERDs and/or sterilization policies that
17 reflect the ERDs.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully request that the Court:

- 20 A. Enter a declaratory judgment stating that when Dignity Health prohibits doctors from
21 performing immediate postpartum tubal ligation in its hospitals based on the Ethical and
22 Religious Directives for Catholic Health Services and/or sterilization policies that reflect
23 these directives it violates (1) the Unruh Act, California Civil Code section 51(b);
24 (2) California Government Code section 11135; (3) California Business and Professions
25 Code sections 2032, 2052, and 2400; (4) California Health and Safety Code section 1258;
26 and (5) the Unfair Competition Law, California Business and Professions Code section
27 17200 et seq.

- 1 B. Enter a permanent order enjoining Dignity Health from prohibiting doctors from
2 performing immediate postpartum tubal ligation in its hospitals based on nonmedical
3 religious directives.
- 4 C. Enter an order awarding Plaintiff Chamorro nominal damages under California Civil
5 Code section 3360.
- 6 D. Enter an order requiring Dignity Health to pay Plaintiffs' attorneys' fees and costs under
7 California Civil Code section 52.1(h), California Code of Civil Procedure section 1021.5
8 and any other applicable statutes.
- 9 E. Grant Plaintiffs any further relief the Court deems just and proper.

10 Dated: February 29, 2016

11 Respectfully Submitted,

12 COVINGTON & BURLING LLP

13 By: *Patricia Lopez* for CSH

14 Christine Saunders Haskett
15 Attorneys for Plaintiff

16
17
18 ACLU FOUNDATION OF NORTHERN
CALIFORNIA, INC.

19 By: *Patricia Lopez* for EG

20 Elizabeth Gill
21 Attorneys for Plaintiff

22 ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

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VERIFICATION

I, Jodi Magee, am the President/CEO of Physicians for Reproductive Health. I have read this Verified Complaint for Declaratory and Injunctive Relief in the matter of *Chamorro et al. v. Dignity Health*. 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 15, 16, 17 and 61 are within my own personal knowledge and I know them to be true.

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

DATED: 2/29/16

A handwritten signature in cursive script, appearing to read "Jodi Magee", is written over a horizontal line.

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VERIFICATION

I, Rebecca Chamorro, have read paragraphs 10, 11, 12, 13, 14, 42 and 43 of this Verified Complaint for Declaratory and Injunctive Relief in the matter of *Chamorro et al. v. Dignity Health*. The facts within these paragraphs are within my own personal knowledge and I know them to be true.

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

DATED: 2/25/16

