



November 14, 2016

**VIA U.S. MAIL & ELECTRONIC MAIL**

Mr. Michael Brannick  
President and Chief Executive Officer  
Prometric  
1501 South Clinton Street  
Baltimore, MD 21224  
michael.brannick@prometric.com

Dear Mr. Brannick:

It has come to our attention that Prometric does not consistently provide appropriate accommodations to candidates who are pregnant or breastfeeding at the time they are taking exams at Prometric facilities. These accommodations are medically necessary, and denying them can lead to adverse medical consequences for test takers. Denying these accommodations also violates California law, which strictly prohibits business establishments like Prometric from discriminating on the basis of sex. As defined in the law, discriminating on the basis of “sex” includes discrimination on the basis of pregnancy and pregnancy-related medical conditions, such as breastfeeding.

As a legal organization and as medical organizations with members whose licensing exams are administered by Prometric, we write to urge you to modify your policies and practices to ensure that all your facilities in California appropriately accommodate pregnant and breastfeeding test takers in compliance with California law.

**A. Accommodations Are Medically Necessary and Legally Required for Pregnant and Breastfeeding Candidates.**

Pregnancy-related medical conditions are common and, without accommodations, may result in severe pain and discomfort for test takers. Common physiological changes associated with pregnancy include back pain and hypertension, nausea, functional bowel disorders, anemia, carpal tunnel syndrome, swelling of joints, and fatigue.<sup>1</sup> Pregnant individuals must often eat and drink

---

<sup>1</sup> See, e.g., AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Frequently Asked Questions: Back Pain During Pregnancy* (2016), <http://www.acog.org/Patients/FAQs/Back-Pain-During-Pregnancy>; AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Frequently Asked Questions: Morning Sickness: Nausea and Vomiting of Pregnancy* (2015), <http://www.acog.org/Patients/FAQs/Morning-Sickness-Nausea-and-Vomiting-of-Pregnancy>; AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Bowel Problems Very Common in Pregnancy* (2013), <http://www.acog.org/About-ACOG/News-Room/News-Releases/2013/Bowel-Problems-Very-Common-In-Pregnancy>; MAYO CLINIC, *Anemia*

water more frequently. People who are pregnant also require additional bathroom breaks and may need to stand up and stretch more frequently to alleviate pain. Failure to accommodate these conditions may lead to infection or complications that threaten the health of the mother or her pregnancy.

Lactation, as a pregnancy-related medical condition, requires accommodations to avoid painful complications associated with delays in expressing milk. People who are breastfeeding and are away from their babies need to extract milk from their breasts on roughly the same schedule as the baby's feeding schedule.<sup>2</sup> The process of expressing breast milk with an electric breast pump typically takes around half an hour, including time to set up and clean the necessary equipment. Without the opportunity to express breast milk, many breastfeeding test takers will likely experience extreme pain and discomfort, causing serious distraction that could negatively impact their test results, and posing a risk to their health. Failure to express breast milk on schedule, or to completely empty the breasts, can lead to painful engorgement, fever, and even infection, as well as a reduction in the amount of breast milk produced.<sup>3</sup> Accommodations are therefore required in order to ensure that these new parents do not suffer medical consequences.

Numerous professional organizations<sup>4</sup> and the California legislature<sup>5</sup> have established specific guidelines for ensuring appropriate accommodations for pregnancy and breastfeeding. California has enacted strong legal protections that require reasonable accommodations for people who are pregnant or experiencing pregnancy-related medical conditions. Under the Unruh Civil Rights Act, all Californians are protected against discrimination on the basis of sex and "entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."<sup>6</sup> "Sex" is defined to "include[], but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth."<sup>7</sup>

Prometric rightly appears to already provide accommodations for candidates with disabilities. Therefore, extending accommodations to candidates who are pregnant or breastfeeding should be a

---

during pregnancy: What you need to know (2014), <http://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/anemia-during-pregnancy/art-20114455>.

<sup>2</sup> This schedule varies depending on numerous factors including the age of the child, the amount of solid food the baby is eating, and the physiological needs of the parent. See U.S. DEP'T OF LABOR, WAGE AND HOUR DIVISION, *Request for Information, Reasonable Break Time for Nursing Mothers*, at <http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=24540>.

<sup>3</sup> See, e.g., U.S. DEP'T OF HEALTH AND HUMAN SERVICES, OFFICE OF WOMEN'S HEALTH, *Your Guide to Breastfeeding* 34 (2011), <http://www.womenshealth.gov/publications/our-publications/breastfeeding-guide/BreastfeedingGuide-General-English.pdf>.

<sup>4</sup> See AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Committee Opinion: Optimizing Support for Breastfeeding as Part of Obstetric Practice* (2016), <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Obstetric-Practice/Optimizing-Support-for-Breastfeeding-as-Part-of-Obstetric-Practice>.

<sup>5</sup> See CAL. DEP'T OF PUBLIC HEALTH, *California Laws Related to Breastfeeding*, <http://www.cdph.ca.gov/healthinfo/healthyliving/childfamily/pages/californialawsrelatedtobreastfeeding.aspx>; see also U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, *Enforcement Guidance: Pregnancy Discrimination and Related Issues* (2015), [https://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm/](https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm/)

<sup>6</sup> CAL. CIV. CODE § 51.

<sup>7</sup> *Id.*

straightforward endeavor. Accommodations should be made available to pregnant or lactating test takers on the same terms as they are offered to others with medical conditions or disabilities.

**B. Prometric Should Take Steps to Align its Policies and Practices Regarding Pregnancy and Breastfeeding Accommodations with Public Health Best Practices and California Law.**

Testing accommodations are necessary for many people who are pregnant or breastfeeding because the default conditions for administering their exams generally do not meet their needs. Rules restrict what candidates may bring into the test site, there is no access to a private location in which to express breast milk (other than the public restroom), and the existing breaks may, depending on an individual candidate's circumstances, be insufficient for dealing with conditions associated with pregnancy, including the necessary expression of breast milk.

Currently, however, Prometric does not provide consistent accommodations for either pregnancy or lactation. In August 2016, the American Civil Liberties Union (ACLU) of Northern California was contacted by Jessica Campbell, an applicant for the North American Veterinary Licensing Examination (NAVLE), which is sponsored by the National Board of Veterinary Medical Examiners (NBVME) and administered by Prometric. When Mrs. Campbell sought lactation accommodations from NBVME and Prometric, she was initially denied by both. According to information publicly available on their websites, both NBVME and Prometric make a variety of accommodations available to individuals with documented medical conditions, not limited to disabilities under the Americans with Disabilities Act (ADA). Nonetheless, Mrs. Campbell was told by an NBVME agent that she was not eligible for accommodations because breastfeeding is not considered a disability under the ADA. She was also informed by Prometric that, for this reason, they did not offer lactation accommodations for the NAVLE. The ACLU sent a letter on behalf of Mrs. Campbell to NBVME and Prometric outlining the legal authority that mandates the provision of lactation accommodations during professional licensing examinations. Mrs. Campbell was then granted additional break time, access to a private room with an electrical outlet to deal with needs associated with expressing breast milk, and authorization to bring necessary food, liquids, and medical equipment into her examination room.

Mrs. Campbell is not alone in experiencing a barrier to lactations accommodations at Prometric in California.<sup>8</sup> Earlier this year, the ACLU was contacted by a candidate who was scheduled to take Step 3 of the U.S. Medical Licensing Exam at the Prometric facility in San Bruno, California. She had sought lactation accommodations from Prometric and was denied. She was told by Prometric staff that she would only be allowed to pump breast milk during official break times. She was also informed that the only electrical outlets likely available to her were in the lobby or in a bathroom with no seating—neither of which would be sanitary or private. The ACLU spoke with Mr. Phil Manganello, a Prometric representative, who stated that when the candidate arrived to the exam site, she could request access to a private exam room during breaks to deal with any needs

---

<sup>8</sup> Nor is she alone in experiencing barriers to lactations accommodations at Prometric facilities nationwide. The ACLU Women's Freedom Project has previously reached out to Prometric on behalf of a breastfeeding test taker in Maryland and in *Currier v. National Board of Medical Examiners*, 965 N.E.2d 829 (Mass. 2012), a Massachusetts court ruled that Prometric and its testing client were required to provide lactation accommodations for test takers under the state's public accommodation law.

associated with lactation. This room would be equipped with a table, chair, and an electrical outlet. Ultimately, however, this room was not available during any of her exam days and the candidate was forced to find space in the bathroom to pump.

We appreciate that Prometric's stated mission and values recognize the necessity of creating a fair and equal testing environment for its clients and their candidates. Prometric needs to do more to ensure candidates who are pregnant or breastfeeding can meaningfully access those opportunities. We therefore urge Prometric to institute the following reforms:

1. *Adopt a policy that explicitly extends eligibility for test accommodations to candidates who are pregnant or breastfeeding.*
2. *Modify information related to testing accommodations, including on Prometric's website and in informational materials, to reflect the above policy and clarify that pregnant or breastfeeding individuals are eligible to seek accommodations.*
3. *Work with testing organization clients to ensure such eligibility is reflected in their policies, procedures, and materials as well.* Prometric presents itself to clients as an expert guide to delivery of examinations in a way that is nondiscriminatory and that complies with local requirements. In order to ensure that prospective test takers receive consistent, accurate information about accommodations from both Prometric and its clients, Prometric should inform clients about California's legal requirements and work with them to ensure policies, at a minimum, meet these baseline obligations and integrate this information into their materials. Currently, many Prometric clients suggest on their websites that only ADA-disabled individuals are eligible to seek accommodations.
4. *Provide accommodations that meet the unique needs of candidates who are pregnant or breastfeeding/lactating.* Although specific accommodations will differ for each individual depending on their circumstances, there are several typical examples of accommodations that would be appropriate in many circumstances. Some of these are already made available through Prometric's existing accommodations program,<sup>9</sup> including an oversized chair and adjustable table. Additional required accommodations may include the following:
  - a. *Permission to bring necessary food, medical equipment, and supplies to the testing site and store them there.* Permission to bring supplies—including a breast pump, storage supplies, and a cooler—into the testing room itself, rather than placing them in separate storage, is critical given the limited time available to test takers both during their exams and during breaks. If a cooler is not permitted, access to a refrigerator may be required.
  - b. *A private, sanitary location with access to an electrical outlet—other than a bathroom—in which to express breast milk.* Without such a location, a parent who is lactating may be forced to resort to expressing breast milk in a public restroom. In addition to

---

<sup>9</sup> PROMETRIC, *The Right Solutions for Testing Accommodations*, <https://www.prometric.com/en-us/for-test-takers/prepare-for-test-day/documents/FINALTesting-Accommodations.pdf>.

being uncomfortable and unsanitary, pumping in public restrooms can be highly stressful: the time it takes to pump will tie up the available facilities for other test takers, leading to time pressure and disruptive requests by others to enter the facilities, and potentially impeding an individual's ability to express milk due to stress. Access to an electrical outlet is also critical to ensure test takers can express milk in the most efficient manner possible.

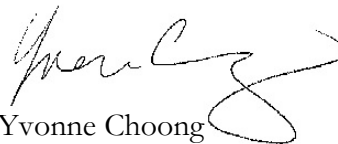
- c. *Additional "stop the clock" break time to use the restroom or express breast milk on a periodic basis depending on individual need.* For some candidates, existing test schedules will not allow sufficient time to deal with pregnancy-related medical or physiological needs. Therefore, additional break time may be necessary to ensure that candidates who are pregnant or breastfeeding can meet their medical needs, or that they have sufficient time to enjoy the same benefits of the existing break as other applicants who do not have medical needs to address.
5. *Provide training to all managers and staff responsible for fielding, processing, and rendering determinations on such requests to ensure that consistent and correct information is given to those who inquire as to eligibility.*

We would be happy to discuss these issues with you in more depth and to serve as a resource to you as you examine your policies and materials. If you have any questions, please do not hesitate to contact Jennifer Chou at [jchou@aclunc.org](mailto:jchou@aclunc.org) or (559) 554-2994.

Sincerely,



Phyllida Burlingame  
Reproductive Justice Policy Director  
ACLU of California



Yvonne Choong  
Vice President, Center for Health Policy  
California Medical Association



Norma Jo Waxman, M.D.  
Advocacy Committee Co-Chair  
American Medical Women's Association

Cc: Michael P. Sawicki (via electronic mail)  
Senior Vice President and General Counsel, Prometric