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Mark Laret
President/CEO
UCSF Health
Medical Center Administration,
Box 0296 550 16th St., Floor 4
San Francisco, CA 94143
Mark.Laret@ucsf.edu

Sam Hawgood
Chancellor
University of California, San Francisco
Office of the Chancellor, Box 0402
550 16th Street, 7th Floor
San Francisco, CA 94143
chancellor@ucsf.edu

Via email and U.S. Mail

Re: UCSF partnership with Dignity Health

Dear Mr. Laret and Chancellor Hawgood:

We are writing on behalf of the ACLU of Northern California, the National Center for Lesbian Rights, and the National Health Law Program to express our very serious concerns about UCSF partnering with Dignity Health. In 2017, UCSF Health announced a formal affiliation with several Dignity Health hospitals in the Bay Area, and we understand from information presented by UCSF at the University of California Regents Health Services Committee (the "Committee") meeting on December 11, 2018, that plans are underway to expand this partnership beyond the Bay Area, perhaps throughout the University of California system.

UCSF has publicized this partnership as a strategic alliance of two distinguished and long-serving Bay Area providers recognized for clinical excellence and missions to provide affordable care to all.¹ However, Dignity Health, along with other Catholic health care entities, imposes significant religious restrictions on the care it permits in its facilities. These restrictions lead to discriminatory

¹ Kristen Bole, UCSF News Center, *Dignity Health, UCSF Health Announce Bay Area Collaboration, Plans Build on Shared Mission to Provide Quality Care for All*, <https://www.ucsf.edu/news/2017/08/407996/dignity-health-ucsf-health-announce-bay-area-collaboration> (last visited Jan. 29, 2019).

treatment of transgender patients and women and to denials of care that have put patients' health and lives at risk. We are seriously concerned that, by partnering with an inherently discriminatory institution, UCSF is failing to meet both its legal obligations as a public entity in California and its professed values of evidence-based, inclusive, and comprehensive patient-centered care.

I. Catholic Health Care Restrictions and their Impact on Patients and Providers

All Catholic health care, including Dignity Health's Catholic hospitals, must adhere to policy proscriptions issued by the United States Conference of Catholic Bishops (the "Conference of Catholic Bishops"), some of which are spelled out in the Ethical and Religious Directives for Catholic Health Care Services (the "ERDs").² Catholic health care entities are explicitly prohibited from providing a range of reproductive health services, including contraception, sterilization, and abortion; the ERDs go so far as to characterize these procedures as "intrinsically evil."³ Further, the Conference of Catholic Bishops mandates that religion take precedence over patient decision-making and autonomy by expressly stating in the ERDs that "the free and informed health care decision of the person . . . is to be followed so long as it does not contradict Catholic principles."⁴ Thus, the ultimate authority over Catholic health care is not medical, but religious.

Gender-Affirming Care for Transgender Patients Is Prohibited in Catholic Hospitals

The Conference of Catholic Bishops has been very clear that as a religious matter it does not recognize transgender people or the propriety of gender-affirming care. In comments submitted to the U.S. Department of Health and Human Services in 2015, the Conference of Catholic Bishops explained as follows:

[W]e believe . . . that medical and surgical interventions that attempt to alter one's sex are, in fact, detrimental to patients. Such interventions are not properly viewed as health care because they do not cure or prevent disease or illness. Rather they reject a person's nature at birth as male or female.⁵

In the same set of comments, the Conference of Catholic Bishops also stated the following:

"Sex change" is biologically impossible. People who undergo sex reassignment surgery do not change from men to women or vice versa. . . . Claiming that this is a civil-rights matter and encouraging surgical intervention is in reality to collaborate with and promote a mental disorder.⁶

² U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (6th ed. 2018), available at <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf> [hereinafter ERDs].

³ ERD No. 70, note 48 at 30.

⁴ ERD No. 28 at 14.

⁵ U.S. Conference of Catholic Bishops et al., Comment Letter on Department of Health and Human Services Proposed Rule on Nondiscrimination in Health Programs and Activities 9 (Nov. 6, 2015), <http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-Nondiscrimination-Federally-Funded-Health.pdf>.

⁶ *Id.*

Similar anti-transgender material is posted on the Conference of Catholic Bishops website,⁷ as well as collected on the website for the National Catholic Bioethics Center.⁸

These principles are borne out in the practices of Catholic hospitals—including Dignity Health hospitals—which deny transgender people gender-affirming care. The ACLU’s representation of Evan Minton,⁹ a transgender man, illustrates this problem. Mr. Minton sought a hysterectomy to increase alignment between his body and male gender identity at Dignity Health’s Mercy San Juan Medical Center (“Mercy San Juan”). Though Mr. Minton’s physician and other Mercy San Juan physicians regularly perform hysterectomies for cisgender female patients, Mr. Minton’s procedure was abruptly canceled the day before the procedure was set to take place once the hospital learned the procedure was part of his gender-affirming care.¹⁰

Patients Are Denied Proper Miscarriage Management at Catholic Hospitals

Catholic health care has an absolute prohibition on abortion, even when a pregnant person’s health is jeopardized by the pregnancy.¹¹ Additionally, the ERDs’ broad definition of abortion¹² leads Catholic hospitals to ban the safest method for terminating an ectopic pregnancy and to consider the evacuation of a uterus during a miscarriage to be an abortion if there is still a fetal heartbeat. Emergency situations are ostensibly addressed by ERD 47, which states that medical treatments that terminate a pregnancy are permitted when their direct purpose is the “cure of a proportionately serious pathological condition of a pregnant woman” and when the treatments “cannot be safely postponed until the unborn child is viable.”¹³ However, beyond the inescapable core issue that, at a moment of emotional and physical trauma for the pregnant person, decisions about medical care are being made based on religious principles rather than by the patient in consultation with a medical provider, there are two serious problems with this supposed safeguard.

First, patients must be exhibiting a “proportionately serious” medical condition in order to demonstrate that the completion of a miscarriage is justified under the ERDs. In other words, for a Catholic hospital to allow a physician to provide care that will end the pregnancy, a patient must already be experiencing medical problems such as infection that put their life at risk, even if it is clear that the pregnancy is non-viable and that earlier action could prevent the infection from occurring in the first place. A qualitative study of obstetricians and gynecologists practicing at Catholic hospitals quotes Dr. R, who explained that he and colleagues “often tell patients that we can’t do anything in the hospital but watch you get infected.” He goes on to say, “it’s just very difficult for them, they’re

⁷ See, e.g., U.S. Conference of Catholic Bishops, *Created Male and Female: An Open Letter from Religious Leaders* (Dec. 15, 2017), <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/promotion-and-defense-of-marriage/created-male-and-female.cfm>.

⁸ See National Catholic Bioethics Center, *Bioethics Topics – Transgender*, <https://www.ncbcenter.org/resources/information-topic/gender-identity/> (last visited Mar. 6, 2019).

⁹ ACLU of Northern California, *Minton v. Dignity Health (Sex Discrimination)*, <https://www.aclunc.org/our-work/legal-docket/minton-v-dignity-health-sex-discrimination> (last visited Mar. 8, 2019).

¹⁰ It is our understanding that because as a matter of religious belief Catholic hospitals do not recognize gender affirming care, they view hysterectomies sought by transgender people as “direct sterilization” in violation of Ethical and Religious Directive No. 53.

¹¹ ERD No. 45 at 18.

¹² *Id.* (“Every procedure whose sole immediate effect is the termination of pregnancy before viability is an abortion, which, in its moral context, includes the interval between conception and implantation of the embryo.”)

¹³ ERD No. 47 at 19.

already in a hard place . . . we actually have the patients discharge themselves . . . drive themselves and then admit themselves to the next institution.”¹⁴ A policy dictating that patients experiencing miscarriage must first get infected and then be treated, rather than treating them before infection sets in, runs counter to appropriate medical practice and patient-centered care.

Second, the interpretation of ERD 47 varies widely among hospitals and leads to confusion among health care providers as to when it is theologically justified to provide emergency care that terminates a pregnancy.¹⁵ The Catholic policy’s lack of clarity, as well as its requirement that providers deviate from the standard practice of medicine, can lead to horrible patient outcomes. For example, Tamesha Means,¹⁶ a Michigan woman, was denied medically appropriate care by a Catholic hospital after her water broke when she was 18 weeks pregnant, pre-viability. Despite increasing signs of infection, the hospital did not inform Ms. Means that there was almost no chance that she could give birth to a healthy baby and did not present her with the option of ending the pregnancy, even though that would have been the safest course of action. Instead, the hospital twice sent her home with Tylenol and would have done so a third time if Ms. Means had not gone into labor while at the hospital. The baby died within hours of delivery.

Contraception and Assisted Reproductive Technologies Are Prohibited in Catholic Health Care Facilities

Policies established by the Conference of Catholic Bishops explicitly prohibit Catholic health care entities from providing contraception to patients.¹⁷ This negatively affects patients who are unable to obtain a postpartum tubal ligation after giving birth at a Catholic hospital. Tubal ligations are the family planning method of choice for 30.2% of U.S. married women of reproductive age,¹⁸ and the American Congress of Obstetricians and Gynecologists (ACOG) has said: “Given the consequences of a missed procedure and the limited time frame in which it may be performed, postpartum sterilization should be considered an urgent surgical procedure.”¹⁹

Patients who give birth in Dignity Health’s Catholic hospitals, such as ACLU client Rebecca Chamorro,²⁰ are denied access to tubal ligation. Ms. Chamorro sought and was denied a tubal ligation immediately following her C-section delivery at Dignity Health’s Mercy Medical Center Redding (MMCR), the only hospital within a 70-mile radius that has a labor and delivery ward. While Dignity Health’s Catholic hospitals do provide postpartum tubal ligations to some patients, the ultimate decision of whether to approve a doctor’s application to perform a tubal ligation on a

¹⁴ Lori R. Freedman & Debra B. Stulberg, *Conflicts in Care for Obstetric Complications in Catholic Hospitals*, 4 AJOB Primary Research 1-10 (2013).

¹⁵ *Id.* at 4.

¹⁶ *Means v. United States Conference of Catholic Bishops*, 836 F.3d 643 (6th Cir. 2016).

¹⁷ “Catholic health institutions may not promote or condone contraceptive practices but should provide, for married couples and the medical staff who counsel them, instruction both about the Church’s teaching on responsible parenthood and in methods of natural family planning.” ERD No. 52 at 19.

¹⁸ Jo Jones, William Mosher, & Kimberly Daniels, *Current Contraceptive Use in the United States, 2006 – 2010, and Changes in Patterns of Use Since 1995*, 60 National Health Statistics Report 17, 1-25 (2012).

¹⁹ American College of Obstetricians and Gynecologists, *Access to Postpartum Sterilization*, 120 *Obstet. Gynecol.* 212, 213 (2012).

²⁰ ACLU of Northern California, *Chamorro v. Dignity Health (Religious Refusals)*, <https://www.aclunc.org/our-work/legal-docket/chamorro-v-dignity-health-religious-refusals> (last visited Mar. 8, 2019).

patient is made by a staff member charged with enforcement of the ERDs, rather than by a medical professional.

Catholic healthcare's ban on contraception also harms patients who might need emergency contraception due to a missed or failed method, since Catholic health care permits emergency contraception only in cases of rape and, even then, only under certain circumstances.²¹ The ban additionally disrupts the contraceptive method of inpatients at a Catholic hospital who are not able to access contraception during that period.

At the December 2018 Committee meeting, UCSF representatives offered Committee members reassurance that lack of access to contraception would not be a problem in the Dignity Health hospitals partnering with UCSF. Dr. Dana Gossett, division director of obstetrics and gynecology at UCSF and Vice Chair of UCSF Health Regional Women's Health Strategy, mentioned a "work-around" in which many patients at St. Mary's have "menstrual disorders," for which Catholic health care permits contraception to be prescribed.²² This begs the question of why UCSF, a leading medical institution, would sanction this type of misdiagnosis. Beyond that, pharmacies in Catholic hospitals do not typically stock contraception,²³ causing us to wonder whether access to contraception at St. Mary's would actually be possible in the way described by Dr. Gossett.

If St. Mary's or other Catholic Dignity Health hospitals did knowingly provide birth control to patients for contraceptive purposes, this would violate the Conference of Catholic Bishop's policies governing Catholic health care. Dignity Health has stated clearly that it intends to adhere to these directives. According to Dignity Health's counsel, "a Catholic hospital risks the Bishop's revocation of its Catholic status under Canon Law if it does not comply with the ERDs."²⁴

Finally, Catholic health care prohibits in vitro fertilization and other assisted reproductive technologies (ART). The ERDs state that "[r]eproductive technologies that substitute for the marriage act are not consistent with human dignity."²⁵ This position, while harmful for all couples experiencing infertility, has an especially problematic impact on same-sex couples who, as a group, rely on ART to conceive.

"Transparency" Does Not Mitigate Harm to Patients

At the Committee meeting, UCSF representatives acknowledged that patients would be denied care at Dignity Health hospitals. They asserted that the "transparency" of telling patients about these denials is of primary importance, suggesting that this would alleviate the problem of referring UCSF patients to Dignity Health hospitals. However, patients like Evan Minton have a right to care that is free of discrimination. By informing these patients that they will be denied care at Dignity Health hospitals, UCSF does not reduce the discrimination the patients are facing. Instead, UCSF supports the continuation of a discriminatory practice and the demeaning treatment

²¹ ERD No. 36 at 15.

²² Video, University of California Board of Regents Health Services Committee Meeting (Dec. 11, 2018), *available at* <https://youtu.be/4hzdnJT2zII?t=6156> (accessed Mar. 6, 2019).

²³ Debra B. Stulberg, Rebecca A. Jackson, & Lori R. Freedman, *Referrals for Services Prohibited in Catholic Health Care Facilities*, 48 *Perspectives on Sexual and Reproductive Health* 111-117 (2013).

²⁴ Defs. Opp'n to Ex Parte Appl. for TRO at 4, 20-21, *Chamorro v. Dignity Health*, Cal. Super. Ct. (2016) (No. 15-549626).

²⁵ ERDs at 16.

of patients who are seeking care, resulting in a “stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1727 (2018). Indeed, UCSF’s position is akin to saying that it is acceptable for a Dignity Health hospital to discriminate as long as it has a sign out front saying, “No transgender people allowed.”

Similarly, the transfer or referral of denied patients to a different hospital creates a work-around that allows discrimination to flourish. Indeed, during a hearing in Mr. Minton’s case, the judge compared the fact that Dignity Health ultimately allowed Mr. Minton to receive care in one of its secular hospitals to *Plessy v. Ferguson*, stating, “It has a smell of ‘separate but equal,’ which as we know was abandoned in 1954.”²⁶

Providers at Catholic Hospital Experience Ethical Conflicts

Though the ERDs bar the promotion of contraceptive practices and warn about the “danger of scandal” in mere association with abortion providers, UCSF representatives expressed at the Committee meeting that there is “no gag rule” that would prohibit or limit UCSF or Dignity Health providers from discussing abortion or other barred services.²⁷ Yet in 2013, Michael A. Demos, a cardiologist practicing at a Catholic hospital in Colorado, was reprimanded for discussing abortion as an option with a pregnant patient who exhibited signs of a disorder that can be highly life-threatening for pregnant people. The hospital’s chief medical officer told Dr. Demos that, pursuant to the ERDs, he was not allowed to recommend or discuss the possibility of pregnancy termination with patients, regardless of the circumstances.²⁸

Dr. Demos is not the only medical provider whose professional obligations toward patients have been disrupted by Catholic health care’s proscriptions on care. Indeed, research has shown that providers at Catholic facilities are torn between the religious ethics of their employers and the patient centered-obligation of their profession.²⁹ In a national survey of obstetricians and gynecologists (OB-GYNs) in the U.S., 52% of those working in Catholic institutions reported a conflict with the institution over religiously-based policies.³⁰

In California, the California Medical Association (CMA) has expressed concern that Dignity Health is imposing non-medical criteria that countermand physicians’ medical judgment and prevent them from providing the standard of care for their patients.³¹ Citing the American Medical Association’s Code of Medical Ethics Opinion regarding the patient-physician relationship, CMA

²⁶ Transcript of Record at 5, 12-14, *Minton v. Dignity Health*, Cal. Super. Ct. (2017) (No. 17-558259).

²⁷ Video, University of California Board of Regents Health Services Committee Meeting (Dec. 11, 2018), available at <https://youtu.be/4hzdnJT2zII?t=6156> (accessed Mar. 6, 2019).

²⁸ Complaint Against Mercy Medical Center, ACLU of Colorado (Nov. 13, 2013), available at <http://aclu-co.org/wp-content/uploads/files/2013-11-13%20CDPHE-Rich.pdf>.

²⁹ UCSF Bixby Center for Global Reproductive Health, *How Do Catholic Hospitals Handle Reproductive Health Referrals?*, <https://bixbycenter.ucsf.edu/news/how-do-catholic-hospitals-handle-reproductive-health-referrals> (last visited Feb. 12, 2019).

³⁰ Debra B. Stulberg, Annie M. Dude, & Irma Dahlquist et al. *Obstetrician-Gynecologists, Religious Institutions, and Conflicts Regarding Patient-Care Policies*. 207 AM. J. OBSTET. GYNECOL. 73.E1 - 73.E5 (2012).

³¹ Mem. of P. & A. in Supp. of Pl. Mot. for Leave to File Compl. at 9, 20-21, *Chamorro v. Dignity Health*, Cal. Super. Ct. (2016) (No. 15-549626).

has also expressed that enforcement of the ERDs can impede physicians' ethical obligations to place patients' welfare above their own and other groups' interests.³²

Dignity Health Follows the Proscriptions of Catholic Health Care

As was discussed at the Committee meeting, Dignity Health currently comprises Catholic hospitals that adhere to the ERDs and other hospitals that adhere to the Statement of Common Values³³; hospitals in the latter group prohibit abortion but permit contraception. Of those that are part of the existing UCSF partnership, the Catholic hospitals are St. Mary's and Dominican, while the Statement of Common Values hospitals are St. Francis and Sequoia. During the meeting, Dr. Gossett emphasized the lesser restrictions at the non-Catholic hospitals, stating that St. Francis has no restrictions on tubal ligations and has a transgender health center.

However, in 2018, the Conference of Catholic Bishops issued an update to the ERDs that changes the landscape of Catholic health care systems. The new ERDs state that hospitals coming under a Catholic institution through acquisition, governance or management "must be operated in full accord with the moral teaching of the Catholic Church, including these Directives."³⁴ In its approval of the recent merger between Dignity Health and Catholic Health Initiatives, the California Attorney General set a condition that existing reproductive health services must be maintained throughout the merged entity in California for five years; we are concerned, however, that after that time, Dignity Health will bring all of its hospitals under the ERDs, as prescribed by the Conference of Catholic Bishops, thus abolishing the lower level of restriction touted by UCSF administrators at the Committee meeting.

The new ERDs similarly address partnerships with secular hospitals:

Before affiliating with a health care entity that permits immoral procedures, a Catholic institution must ensure that neither its administrators nor its employees will manage, carry out, assist in carrying out, make its facilities available for, make referrals for, or benefit from the revenue generated by immoral procedures.³⁵

This statement stands in contrast to comments made at the Committee meeting that, due to the partnership with UCSF, patients at Dignity Health hospitals would not be denied reproductive health information or referrals.

³² *Id.* (quoting American Medical Association, Patient-Physician Relationships: Code of Medical Ethics Opinion 1.1.1, *AMA Principles of Medical Ethics: I, II, IV, VIII*, <https://www.ama-assn.org/delivering-care/ethics/patient-physician-relationships> (last visited Mar. 7, 2019)).

³³ Dignity Health, *Statement of Common Values*, <https://www.dignityhealth.org/north-state/-/media/cm/media/documents/PDFs/Statement-of-Common-Values.ashx> (last visited Mar. 7, 2019).

³⁴ ERD No. 74 at 26.

³⁵ ERD No. 73 at 26.

II. The UCSF/Dignity Health Partnership Raises Serious Legal Concerns under Federal and State Law

The exact scope of the proposed UCSF/Dignity Health partnership has not been made clear to the public. Nonetheless, any partnership where UCSF patients are being provided care in a Dignity Health facility that imposes religious restrictions on that care raises serious legal questions.

UCSF is a public entity. As such, it has legal obligations that go far beyond those of a private entity such as Dignity Health. It is the position of the undersigned—as evidenced by the several lawsuits the ACLU has filed against Dignity Health for its discriminatory denials of care—that even private entities cannot invoke religious belief as a justification for discrimination in businesses open to the general public. But it is certainly the case that California’s public university system cannot invoke Dignity Health’s religious beliefs as a basis for denying care to its patients.

Indeed, on its face, the UCSF/Dignity Health partnership raises a host of questions about how the government can legally partner with an entity that *explicitly restricts patient care on the basis of its religious beliefs*. Yet at the Committee meeting, the only legal analysis UCSF provided on this front pertained to religious iconography in Dignity Health facilities. While it is troubling that UCSF patients would be subjected to religious iconography in accessing care at Dignity Health facilities, this is plainly a lesser issue than those same patients being subjected to religiously restricted care. Among other laws, the UCSF/Dignity Health partnership raises concerns under the following:

Establishment Clause: Both the U.S. and California Constitutions prohibit “sponsorship, financial support, and active involvement of the [state] in religious activity.” *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971). Even where the purpose of the government action is secular, the Establishment Clauses may still be violated where the principal or primary effect of the action advances religion or where the action fosters an excessive entanglement with religion. *Id.* at 612-13. The Supreme Court has also long held that the government unconstitutionally advances religion where it favors religion to the point of forcing unwilling third parties to bear the burden, or suffer harm, as a result of this favoritism. *See, e.g., Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985). Here, UCSF’s decision to partner with Dignity Health facilities would impose on its patients the burden of Dignity Health’s religious restrictions on care.

Equal Protection: Denying transgender people gender-affirming care constitutes sex discrimination in violation of constitutional equal protection. In the recent case of *Norsworthy v. Beard*, a federal district court held that the refusal of the California Department of Corrections (“CDCR”) to provide a transgender inmate with gender-affirming care violated the federal equal protection clause. 87 F. Supp. 3d 1104 (N.D. Cal. 2015). As with Catholic health care entities, the CDCR allowed the contested procedure—vaginoplasty—for cisgender women, yet it denied the procedure for transgender women, deeming the procedure for them “medically unnecessary.” The court concluded that such discrimination was discrimination on the basis of transgender status and did not hold up to intermediate scrutiny. *Id.* at 1121. Yet UCSF patients receiving care in Dignity Health facilities would similarly be denied gender-affirming care.

There is also clear case law that under the equal protection and privacy guarantees of the California Constitution, governmental entities must treat all pregnancy options neutrally. In

Committee to Defend Reproductive Rights v. Myers, 29 Cal. 3d 252, 285 (1981), the California Supreme Court found state restrictions on Medi-Cal funding of abortion to be unconstitutional, ruling that while the government need not provide public funding for any pregnancy-related care, it could not exclude abortion coverage if it provided support for prenatal care and delivery to indigent pregnant women. Thus, patients seeking care from UCSF cannot only be offered obstetric and gynecologic care—they also must be offered abortion care.

California’s Constitutional No-Aid Clause: Article XVI, Section 5 of the California Constitution provides that no California state entity “shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church or sectarian denomination whatever” California courts have recognized that this clause is broader than either the federal or state establishment clauses, in that it prohibits government action that has “the direct, immediate, and substantial effect of advancing religion.” *Paulson v. Abdelnour*, 145 Cal. App. 4th 400, 435 (2007). Even for a secular purpose, “a government entity may not enter into an exclusive contract with a religious organization which will result in the organization receiving a financial benefit from the government.” *Id.*

California Non-Discrimination Law: In addition to the constitutional provisions, California statutory law is clear that government entities in California may not discriminate on the basis of sex, including gender identity, gender expression, and sexual orientation. Cal. Gov’t Code § 11135. Nor may government entities contract with entities that discriminate on these bases. Cal. Gov’t Code § 12990.

Even more generally, California’s Unruh Civil Rights Act promises that all those within the jurisdiction of the state are “free and equal” and “entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b). Thus, the Unruh Act prohibits discrimination on the basis of sex, including gender identity, gender expression, and sexual orientation in all business establishments. *Id.* § 51(e)(5).

Indeed, California *prohibits* the University of California from requiring any of its employees to travel to states that have recently enacted laws that authorize discrimination based on sexual orientation, gender identity, or gender expression, and the state further prohibits UC from approving requests for travel to those states. Cal. Gov’t Code § 11139.8(b). This law was enacted specifically in response to other states enacting broad religious exemptions to their non-discrimination laws, and the preamble to the law states: “[t]he exercise of religious freedom should not be a justification for discrimination.” *Id.* at § 11139.8(a)(4).

III. UCSF’s Leadership in Evidence-Based, Inclusive, and Comprehensive Health Care

In addition to its legal obligations, UCSF also has a stated commitment to providing comprehensive reproductive health care as well as patient-centered, non-discriminatory care. As an institution, UCSF prides itself on providing care to patients with an individualized approach, recognizing that when it comes to patient-centered care, the “whole is often greater than the

sum of its parts.”³⁶ UCSF’s Bixby Center for Global Reproductive Health is self-characterized as one of the few research institutions to “unflinchingly address abortion” by expanding and improving access, training providers, and supporting efficacy and safety through clinical trials and research.³⁷ Focusing on “evidence, empowerment and impact,” the leadership of the Bixby Center has informed reproductive and sexual health policies, treatment, and care guidelines throughout the country and the world, helping to ensure access to the full scope of reproductive health care for all.³⁸

UCSF has also been recognized as a leader in LGBTQ-inclusive care, achieving a perfect score on the LGBT Healthcare Equality Index, which evaluates providers on metrics of LGBTQ patient-centered care, several years in a row.³⁹ The innovative capacity-building, community research, and clinical programs of the Center of Excellence for Transgender Health are making strides towards achieving UCSF’s mission to increase access to comprehensive, effective, and affirming health care services for transgender and gender non-conforming people at UCSF and throughout the field.⁴⁰ In addition, UCSF’s Child and Adolescent Gender Center Clinic, with which National Center for Lesbian Rights and other community organizations have a longstanding relationship, provides comprehensive medical and psychological care, as well as advocacy and legal support, to gender non-conforming and transgender youth and adolescents.⁴¹

Thus, it is particularly troubling that UCSF would choose to partner with Dignity Health, when UCSF has long presented itself as committed to the very kind of care that Dignity Health refuses to provide—comprehensive reproductive health care and LGBTQ-inclusive care. Dignity Health’s practices blatantly contradict UCSF’s own professed Professionalism, Respect, Integrity, Diversity and Excellence (PRIDE) Values, community principles articulated in solidarity with the “integral cultural concept” within the LGBTQ community, representing solidarity, collectivity, and identity as well as resistance to discrimination and violence.⁴²

In contrast, as mentioned above, the ERDs state that “Catholic health care institutions need to be concerned about the danger of scandal in any association with abortion providers,”⁴³ and the Conference of Catholic Bishops has said:

Gender ideology harms individuals and societies by sowing confusion and self-doubt. The state itself has a compelling interest, therefore, in maintaining policies that uphold the scientific fact of human biology and supporting the social institutions and norms that

³⁶ UCSF, *Patient Care Overview*, <https://www.ucsf.edu/patient-care> (last visited Feb. 1, 2019).

³⁷ Bixby Center for Global Reproductive Health, *Abortion*, <https://bixbycenter.ucsf.edu/abortion> (last visited Feb. 1, 2019).

³⁸ Bixby Center for Global Reproductive Health, *About Us*, <https://bixbycenter.ucsf.edu/about-us> (last visited Feb 1, 2019).

³⁹ Scott Maier, UCSF Health, *UCSF Health Named "Leader in LGBTQ Healthcare Equality" Hospital Receives Perfect Score on National LGBTQ Survey* (Mar. 30, 2017), <https://www.ucsfhealth.org/news/2017/03/ucsf-health-named-leader-in-lgbtq-healthcare-equality.html> (last visited Feb. 1, 2019).

⁴⁰ UCSF Center of Excellence of Transgender Health, *About Us*, <http://transhealth.ucsf.edu/trans?page=ab-00-00> (last visited Feb. 1, 2019).

⁴¹ UCSF Benioff Children’s Hospital, *Child and Adolescent Gender Center Clinic*, <https://www.ucsfbenioffchildrens.org/clinics/child-and-adolescent-gender-center/> (last visited Mar. 7, 2019).

⁴² UCSF Office of Diversity and Outreach, *PRIDE Values*, <https://diversity.ucsf.edu/PRIDE-values> (last visited Feb. 1, 2019).

⁴³ ERDs, *supra* note 11, at 18 -19.

surround it. ... The movement today to enforce the false idea—that a man can be or become a woman or vice versa—is deeply troubling.⁴⁴

At the Committee meeting, Dignity Health was referred to as a partner with closer shared values to UCSF than many other health systems because of its commitment to population health and serving the community. However, marginalized patients, including women of color who are more likely to receive reproductive health care at a Catholic-affiliated facility, most need access to complete and accurate care of the highest professional standards.⁴⁵ Failure to provide access to this care will only exacerbate existing health disparities.

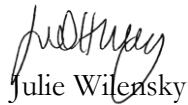
As threats to reproductive health care access continue to escalate at the national level, and more barriers are erected against LGBTQ individuals seeking care, UCSF must remain firmly committed to its history and bedrock principles of inclusive, unbiased care. A partnership with Dignity Health stands in direct contradiction to those values. We therefore strongly urge UCSF to reconsider its affiliation with Dignity Health. Should UCSF choose to proceed with this partnership, we will consider a variety of potential next steps, including litigation.

Please direct future communications to Phyllida Burlingame, Reproductive Justice and Gender Equity Director at the ACLU Foundation of Northern California, via pburlingame@aclunc.org. We look forward to your reply.

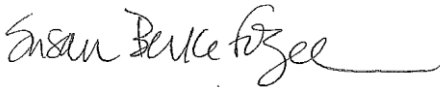
Sincerely,



Phyllida Burlingame
Reproductive Justice and Gender Equity Director
ACLU Foundation of Northern California



Julie Wilensky
Senior Staff Attorney
National Center for Lesbian Rights



Susan Berke Fogel, JD
Director of Reproductive and Sexual Health
National Health Law Program

cc: University of California Board of Regents via regentsoffice@ucop.edu and U.S. Mail
University of California Office of the President via president@ucop.edu and U.S. Mail

⁴⁴ U.S. Conference of Catholic Bishops, *supra* note 7.

⁴⁵ Kira Shepherd, Elizabeth Reiner Platt, & Katherine Franke et al., *Bearing Faith: The Limits of Catholic Health Care for Women of Color* (2017), available at <https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/PRPCP/bearingfaith.pdf>.