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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 REBECCA CHAMORRO and
14 PHYSICIANS FOR REPRODUCTIVE
15 HEALTH,

16 Plaintiffs,

17 v.

18 DIGNITY HEALTH; DIGNITY HEALTH
19 d/b/a MERCY MEDICAL CENTER
20 REDDING,

21 Defendants,

22 CALIFORNIA MEDICAL
23 ASSOCIATION,

24 Plaintiff-Intervenor.

Case No. 15-549626

**[PROPOSED] COMPLAINT IN
INTERVENTION**

Date: May 25, 2016
Time: 9:30 am
Dep't: 302
Judge: Hon. Harold Kahn

Hearing Reservation no. 04260525-06

1 By leave of court, the California Medical Association (“CMA”) hereby intervenes
2 as a plaintiff in the above-captioned action with the filing of this Complaint in
3 Intervention. CMA joins Plaintiffs Rebecca Chamorro (“Chamorro”) and Physicians for
4 Reproductive Health (“PRH”) in opposing the actions of Defendant Dignity Health
5 (including doing business as Mercy Medical Center Redding (“Mercy Hospital”) as set
6 forth herein. CMA alleges as follows:

7 INTRODUCTION

8 1. Like most medical decisions made within the doctor-patient relationship, a
9 woman’s decision to undergo permanent sterilization is a very personal and sensitive
10 matter. This is especially true for an immediate postpartum tubal ligation (“tubal”), a
11 sterilization procedure that is performed immediately after a woman has given a vaginal
12 birth or after delivery in a Cesarean section. Before recommending such a tubal, a
13 physician must consider the patient’s reasons for seeking permanent sterilization, medical
14 history, health status, and lifestyle and risk factors. The physician’s recommendation is
15 evidence-based and formed out of his or her sound medical judgment. The physician
16 must also obtain informed written consent from the patient. For her part, the patient needs
17 to understand her physician’s advice and explanations of the consequences and risks of a
18 tubal. The patient may consult with her family and/or friends and ultimately needs to
19 come to terms with the purpose and consequences of undergoing permanent sterilization.

20 2. A woman’s decision for a tubal made with her physician falls within the
21 ambit of the practice of medicine and is accordingly given all the respect, privileges, and
22 protections of the profession, stemming fundamentally from the physician’s Hippocratic
23 Oath. California law also extends to that decision a host of legal protections designed to
24 prevent undue interference in the practice of medicine due to improper motives, including
25 discrimination, profit or cost control motives, business or competitive motives, or any
26 other non-medical motives. In the hospital context, California law also requires that
27 decisions and policies affecting patient care must involve the hospital’s medical staff,
28 which by law must be independent and self-governing.

1 3. The above-captioned case involves interference by hospital and church
2 administrators carrying out non-medical, religious directives to impede or block a
3 physician and patient’s medical decision for a tubal at Mercy Hospital and other Dignity
4 Health hospitals in California that follow the Ethical and Religious Directives for Catholic
5 Health Care (“ERDs”). On behalf of CMA medical staff and physician members, along
6 with their patients, CMA must intervene to ensure fidelity with the laws and principles
7 that protect the practice of medicine and the ability of physicians to provide the best
8 quality of care to their patients. To be sure, the enforcement of ERDs to deny tubals at
9 Dignity Health hospitals constitutes improper and unlawful lay interference with
10 physician medical judgment and the doctor–patient relationship as well as threats to the
11 quality and accessibility of needed reproductive care for women.

12 **FACTUAL AND PROCEDURAL BACKGROUND**

13 4. Dignity Health claims to be the fifth largest health system in the country and
14 the largest in California, with 29 hospitals in this state. Including Mercy Hospital, Dignity
15 Health owns or operates all hospitals with a labor and delivery ward within a 70 mile
16 radius of Redding, California.

17 5. Dignity Health receives significant funding from California and the federal
18 government to operate its hospitals and provide health care services, including funding
19 under the Medicare and Medicaid programs. Mercy Hospital is the recipient of some of
20 this state funding.

21 6. Sam Van Kirk, MD (“Dr. Van Kirk”) is a CMA member. He also is a
22 board-certified obstetrician-gynecologist with a private practice in Redding, California,
23 where he has privileges to practice medicine at Mercy Hospital. Dr. Van Kirk is a
24 member of the medical executive committee of the medical staff of Mercy Hospital,
25 serving in the position of Surgical Division Chief-Elect. Plaintiff Chamorro is his patient.

26 7. Dr. Van Kirk exercised sound medical judgment in recommending a tubal
27 for Chamorro, to be done during her Cesarean section after the birth of her third child at
28 Mercy Hospital. On her behalf, Dr. Van Kirk requested authorization for the tubal from

1 his hospital's administrators. Mercy Hospital refused to authorize the tubal, citing its
2 adherence to the ERDs and a hospital sterilization policy that incorporated the ERDs.

3 8. The U.S. Conference of Catholic Bishops promulgated the ERDs.¹ The
4 ERDs state that "[d]irect sterilization of either men or women, whether permanent or
5 temporary, is not permitted in a Catholic health care institution." They further designate
6 direct sterilization as "intrinsically evil" and of "the most pressing concerns." The ERDs
7 do not, however, rely on evidence-based, sound medical judgment to reject any
8 sterilization procedures, including tubals.

9 9. Over the past eight years, Dr. Van Kirk has had dozens of requests for tubals
10 for his patients denied. The denials varied in circumstances, and Dignity Health gave
11 different reasons why a particular patient did not satisfy the criteria for a tubal. In all
12 instances, however, Dignity Health asserted the denial pursuant to the ERDs and/or a
13 sterilization policy adopted to carry out the ERDs. Dr. Van Kirk also currently has
14 patients who are pregnant or will become pregnant and may wish to have a tubal done
15 with their delivery at Mercy Hospital. Many other physicians and their patients at Mercy
16 Hospital and other Dignity Health hospitals have encountered this same problem of
17 denials of tubals pursuant to the ERDs.

18 10. Dignity Health hospitals require physicians who have recommended tubals
19 for their patients to submit written authorization for the procedure. The request is handled
20 by an administrative committee that includes hospital and Catholic Church officials from
21 the office of the local bishop or archbishop. Although a Dignity Health hospital official
22 serving on this committee may have a medical degree, he or she is an employee of Dignity
23 Health and is acting in such capacity representing Dignity Health, not as the requesting
24 patient's physician.

25 ¹ U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for*
26 *Catholic Health Care Services* (Fifth ed., Nov. 17, 2009), online at
27 [http://www.usccb.org/issues-and-action/human-life-and-dignity/health-](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)
28 [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).

1 11. The crafting and implementation of the ERDs and sterilization procedures
2 that incorporate the ERDs at Dignity Health hospitals do not include meaningful input or
3 involvement of the hospital's medical staff. Medical staffs also have no meaningful
4 involvement in the decisions on particular cases to consider authorizing a request for a
5 tubal.

6 12. Plaintiffs Chamorro and PRH initiated the instant action on December 28,
7 2015, to challenge Dignity Health's enforcement of the ERDs to deny requests for a tubal.
8 After the Court denied a motion for preliminary injunction on January 14, 2016, the
9 parties stipulated to the filing of a first amended complaint. Plaintiffs' First Amended
10 Complaint ("FAC") was filed on February 29, 2016.

11 13. According to Plaintiffs, Dignity Health's actions constitute sex
12 discrimination in violation of the Unruh Act and Government Code section 11135.
13 Plaintiffs also allege violation of California's bar on the corporate practice of medicine,
14 violation of Health and Safety Code section 1258 (prohibiting imposition of nonmedical
15 criteria as a condition of sterilization procedures), and violation of the Unfair Competition
16 Law. They seek a declaratory judgment confirming the alleged statutory violations and
17 injunctive relief to enjoin Dignity Health from prohibiting doctors from performing tubals
18 in its hospitals based on nonmedical religious directives.

19 **CMA'S RIGHT TO INTERVENE**

20 14. CMA is a non-profit, incorporated professional association for physicians
21 and medical students with approximately 41,000 individual members, with a mission to
22 promote the science and art of medicine, the care and well-being of patients, the
23 protection of public health, and the betterment of the medical profession. CMA's
24 membership is comprised of California physicians engaged in the practice of medicine in
25 all specialties and settings.

26 15. CMA also has a specialty section, the Organized Medical Staff Section
27 ("OMSS"), composed of organized medical staffs in hospitals throughout California. All
28 medical staffs in California are eligible to join CMA's OMSS as official members with

1 access to the benefits and services provided by CMA. The purpose of OMSS is to provide
2 resources and information for medical staffs of hospitals, other health facilities and
3 emerging delivery systems. CMA also advocates on behalf of medical staffs to protect
4 and preserve their independence and self-governance rights established under law. There
5 are approximately 80 medical staffs that are active members of OMSS.

6 16. There are CMA individual physician members practicing with privileges in
7 all hospitals in California owned or operated by Dignity Health. Some of these physicians
8 provide obstetrics care and have patients for whom the physicians will have to seek
9 authorization for a tubal under Dignity Health's ERDs and/or related sterilization policies.

10 17. Some medical staffs that are OMSS members operate and are organized at
11 hospitals owned or operated by Dignity Health. Some medical staffs have not had
12 meaningful input or involvement in the development or implementation of ERDs at their
13 hospital, and are not involved in the decisions on particular cases whether to grant
14 authorization for a tubal.

15 18. To further its mission, CMA consistently advocates for laws and policies
16 that preserve and protect the doctor-patient relationship, the ability of physicians to
17 exercise medical judgment free from lay interference, and the enforcement of California's
18 bar on the corporate practice of medicine.

19 19. CMA policy is set each year at its annual House of Delegates ("HOD")
20 session. Hundreds of physician leaders representing all different sectors of medicine
21 convene at the HOD session to debate and pass resolutions that express CMA members'
22 interests and reflect their experiences. The adopted resolutions become CMA's official
23 position on a particular subject at hand unless and until circumstances render the position
24 or some aspect of it moot, or subsequent action by the HOD or CMA Board of Trustees is
25 taken to rescind or modify the position. CMA's HOD in 2000 adopted an official position
26 statement entitled, "Women's Access to Comprehensive Health Care" (HOD no. 617-00).
27 It provides that, "in the case of mergers and/or acquisitions of health care systems," CMA
28 supports ensuring continued patient access "to reproductive health care including, but not

1 limited to, birth control, tubal ligation and vasectomy.” CMA further supports requiring
2 “that *any hospital* providing perinatal services must permit its staff physicians to perform
3 tubal sterilization so long as they are trained and qualified to do so.” (emphasis added).
4 Finally, in furtherance of these principles, CMA opposes any interference by health care
5 systems “with patient/physician communications concerning reproductive health care.”

6 20. CMA has associational standing to assert the rights of its individual
7 physician and medical staff members who practice or operate at a Dignity Health hospital,
8 including Mercy Hospital in particular. CMA physician and medical staff members have
9 standing in their own right to sue Dignity Health over enforcement of the ERDs, which
10 results in tangible harm to their professional practice, responsibilities, and legally-
11 protected interests. The protection of these members’ interests is germane to CMA’s
12 mission. Finally, CMA’s assertion of the rights and interests of its members does not
13 require their direct participation in the lawsuit.

14 21. CMA’s associational standing extends to claims and interests that CMA
15 physician members may assert on behalf of their patients who suffer harm due to
16 enforcement of the ERDs.

17 22. CMA members at Dignity Health hospitals have direct and immediate
18 interests in the subject of this case – i.e., whether Dignity Health hospitals can impose
19 non-medical criteria, the ERDs, to prevent doctors from providing the standard of care for
20 their patients within the doctor-patient relationship. The enforcement of ERDs to deny a
21 medical decision for a tubal implicates CMA physician members’ interests in upholding
22 the doctor-patient relationship and medical judgment against unlawful discrimination and
23 the corporate practice of medicine. CMA medical staff members also have direct and
24 immediate interests that can suffer irreparably if the ERDs are upheld. The enforcement
25 of ERDs to deny authorization for tubals without meaningful input or involvement of
26 medical staffs violates medical staffs’ rights to independence and self-governance.

27 23. The interests and rights of CMA’s individual physician and medical staff
28 members are not adequately represented by Plaintiffs in the case. There are differences in

1 the interests of CMA's members and the interests of Plaintiffs. Plaintiffs – a patient and a
2 national organization focused on access to comprehensive reproductive health care – do
3 not have the same scope of CMA's interests and therefore may not assert the same claims
4 and arguments that CMA would assert on behalf of its members. For example, Plaintiffs
5 are not asserting claims arising from medical staffs' self-governance rights.

6 24. CMA involvement would not enlarge the issues in the case as no new relief
7 is being sought, and CMA challenges the same policy and practice that Plaintiffs
8 challenge.

9 25. CMA timely intervened in this action, moving for leave to intervene prior to
10 any responsive pleading or demurrer was filed by Dignity Health.

11 26. Intervention by CMA does not frustrate or adversely impact the ability of
12 existing parties to litigate the case.

13 27. Accordingly, CMA has a right to intervene in this case under both
14 subsection (a) and (b) of the Code of Civil Procedure section 387.

15 **FIRST CAUSE OF ACTION**

16 **(Violation of Bus. & Prof. Code §2282.5)**

17 28. CMA incorporates by reference the allegations of the above paragraphs as
18 though fully set forth herein.

19 29. Medical staffs at Dignity Health hospitals have the right of self-governance
20 over the professional work done in the hospital, i.e. issues related to or involving patient
21 care and patient safety. *See* Bus. & Prof. Code §2282. As recognized under Business and
22 Professions Code section 2282.5, such rights include, but are not limited to:

- 23 • Establishing and enforcing criteria and standards for hospital privileges, and
24 enforcing those criteria and standards; and
25 • Establishing and implementing clinical criteria and standards to oversee and
26 manage quality of care and utilization review.

27 30. The enforcement of Ethical and Religious Directives for Catholic Health
28 Care by Dignity Health hospitals to evaluate a medical decision by a physician to perform

1 an immediate postpartum tubal ligation for his or her patient directly affects patient care at
2 the hospital and involves issues of quality of care and patient safety. Such enforcement
3 falls within the purview of the self-governance rights of medical staffs at Dignity Health
4 hospitals.

5 31. Medical staffs at Dignity Health hospitals are not given meaningful input or
6 involvement in the implementation of the ERDs or hospital sterilization policies that
7 reflect the ERDs. Medical staffs at Dignity Health hospitals also are not given meaningful
8 input or involvement in decisions on particular cases whether to allow an immediate
9 postpartum tubal ligation to be performed in the hospital.

10 32. Efforts by medical staffs at Dignity Health hospitals to resolve the problems
11 of self-governance informally with the hospital governing bodies have been unsuccessful
12 and/or would have been futile.

13 SECOND CAUSE OF ACTION

14 **(Violation of the Unruh Act, Civ. Code §51(b))**

15 33. CMA incorporates by reference the allegations of the above paragraphs as
16 though fully set forth herein.

17 34. CMA physician members have legal standing to assert the interests and
18 protect the legal rights of their patients.

19 35. The Unruh Act prohibits discrimination on the basis of sex in all business
20 establishments, including Dignity Health's hospitals.

21 36. The Unruh Act defines "sex" to include pregnancy, childbirth, or medical
22 conditions related to pregnancy or childbirth.

23 37. By prohibiting physicians at Dignity Health hospitals from performing
24 immediate postpartum tubal ligations based on the nonmedical qualifications set forth in
25 the ERDs and/or sterilization policies that reflect the ERDs, Dignity Health knowingly is
26 denying female patients access to pregnancy-related medical care.

27 38. By prohibiting physicians at Dignity Health hospitals from performing
28 immediate postpartum tubal ligations based on the nonmedical qualifications set forth in

1 the ERDs and/or sterilization policies that reflect the ERDs, Dignity Health knowingly is
2 subjecting female patients to substandard care in direct contravention of their physicians'
3 sound medical judgment.

4 39. By prohibiting physicians at Dignity Health hospitals from performing
5 immediate postpartum tubal ligations based on the nonmedical qualifications set forth in
6 the ERDs and/or sterilization policies that reflect the ERDs, Dignity Health engages in sex
7 discrimination in violation of the Unruh Act, Civil Code section 51.

8 **THIRD CAUSE OF ACTION**

9 **(Violation of Gov. Code §11135)**

10 40. CMA incorporates by reference the allegations of the above paragraphs as
11 though fully set forth herein.

12 41. Government Code section 11135 prohibits discrimination on the basis of sex
13 in state funded programs and activities.

14 42. Defendant receives state funds directly tied to state programs encouraging
15 the promotion of public health generally and reproductive care in particular.

16 43. Sex discrimination under California Government Code section 11135
17 includes discrimination based on “[p]regnancy or medical conditions related to
18 pregnancy,” and “[c]hildbirth or medical conditions related to childbirth.”

19 44. By prohibiting doctors at Dignity Health hospitals from performing
20 immediate postpartum tubal ligations based on the nonmedical qualifications set forth in
21 the ERDs and/or sterilization policies that reflect the ERDs, Defendant is knowingly
22 denying female patients access to pregnancy-related medical care.

23 45. By prohibiting doctors at Dignity Health hospitals from performing
24 immediate postpartum tubal ligations based on the nonmedical qualifications set forth in
25 the ERDs and/or sterilization policies that reflect the ERDs, Defendant is knowingly
26 subjecting female patients to substandard care in direct contravention of their physicians'
27 sound medical judgment.

28 46. Defendant’s application of the ERDs and/or sterilization policies that reflect

1 the ERDs to prohibit doctors from performing sterilization operations disproportionately
2 burdens female patients.

3 47. By prohibiting doctors at Dignity Health hospitals from performing
4 immediate postpartum tubal ligations based on the nonmedical qualifications set forth in
5 the ERDs and/or sterilization policies that reflect the ERDs, Defendant engages in sex
6 discrimination in violation of California Government Code section 11135 and its
7 implementing regulations.

8 **FOURTH CAUSE OF ACTION**

9 **(Violation of Bus. & Prof. Code §§2032, 2052 and 2400)**

10 48. CMA incorporates by reference the allegations of the above paragraphs as
11 though fully set forth herein.

12 49. Business and Professions Code section 2032 provides that “only natural
13 persons shall be licensed [to practice medicine] under this chapter.”

14 50. Business and Professions Code section 2052 prohibits the unlicensed
15 practice of medicine.

16 51. Business and Professions Code section 2400 provides that “corporations and
17 other artificial legal entities shall have no professional rights, privileges, or powers.”

18 52. Taken together, these code sections form a bar on the corporate practice of
19 medicine. Business and Professions section 2311 authorizes physicians to obtain an
20 injunction to block violations of the bar on the corporate practice of medicine.

21 53. Dignity Health prohibits doctors from performing some immediate
22 postpartum tubal ligations based on the Ethical and Religious Directives for Catholic
23 Health Care Services and/or sterilization policies that reflect the ERDs.

24 54. In prohibiting physicians from performing immediate postpartum tubal
25 ligations, thus requiring physicians to provide substandard care, in direct contravention of
26 their sound medical judgment, and in making determinations as to which patients will be
27 permitted to undergo immediate postpartum tubal ligation based on the nonmedical
28 qualifications set forth in the ERDs and/or sterilization policies that reflect the ERDs,

1 Defendants violate the statutory bar on the corporate practice of medicine.

2
3 **FIFTH CAUSE OF ACTION**

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

5 55. CMA incorporates by reference the allegations of the above paragraphs as
6 though fully set forth herein.

7 56. Health and Safety Code section 1258 provides: “No health facility which
8 permits sterilization operations for contraceptive purposes to be performed therein, nor the
9 medical staff of such health facility, shall require the individual upon whom such a
10 sterilization operation is to be performed to meet any special nonmedical qualifications,
11 which are not imposed on individuals seeking other types of operations in the health
12 facility. Such prohibited nonmedical qualifications shall include, but not be limited to,
13 age, marital status, and number of natural children.”

14 57. Defendant allowed physicians to perform some sterilization operations –
15 immediate postpartum tubal ligations – that are performed for contraceptive purposes.

16 58. Defendant also prohibits physicians from performing other sterilization
17 operations – immediate postpartum tubal ligations – based on the nonmedical
18 qualifications set forth in the ERDs and/or sterilization policies that reflect the ERDs in
19 violation of Health and Safety Code section 1258.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, CMA respectfully requests that the Court:

23 A. Enter a declaratory judgment stating that when Dignity Health prohibits
24 physicians from performing immediate postpartum tubal ligation in its hospitals based on
25 the Ethical and Religious Directives for Catholic Health Care and/or supporting
26 sterilization policies it violates (1) the Unruh Act, Civil Code section 51(b); (2)
27 Government Code section 11135; (3) Business and Professions Code sections 2032, 2052,
28 and 2400; (4) Health and Safety Code section 1258; and (5) Business and Professions

1 Code section 2282.5;

2 B. Enter a permanent injunction prohibiting Dignity Health from prohibiting
3 physicians from performing immediate postpartum tubal ligation in its hospitals based on
4 nonmedical religious directives;

5 C. Enter an order awarding CMA its attorneys' fees and costs under Civil Code
6 section 52.1(h), Code of Civil Procedure section 1021.5, and any other applicable statutes;
7 and

8 D. Grant CMA any further relief the Court deems just and proper.
9

10 DATED: April 27, 2016

11 Respectfully,
12 Center for Legal Affairs
13 CALIFORNIA MEDICAL ASSOCIATION

14 By: 

15 Long X. Do

16 *Attorneys for Intervenor California Medical*
17 *Association*