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October 14, 2015

Shelly Edgerton
Chief Deputy Director
Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems
Health Facilities Division
P.O. Box 30664
Lansing, MI 48909

Re: Hospital's Refusal to Allow Medically Necessary Tubal Ligation for Pregnant Brain Tumor Patient

Dear Ms. Edgerton:

The ACLU of Michigan submits this complaint on behalf of Jessica Mann, a pregnant, 33-year old woman with a pilocystic astrocytoma brain tumor. We request that you take immediate action to prevent Genesys Regional Medical Center and Ascension Health System from continuing to prevent their physicians from providing appropriate medical care to Mrs. Mann and others.

Introduction

Jessica Mann's doctors have recommended that she should avoid future pregnancies because of the substantial risks posed by the interaction of her brain tumor with her pregnancy. Mrs. Mann's primary OB/GYN, Dr. Bonita Wang, advised that she could have a tubal ligation at the time of her scheduled Cesarean section. Providing a tubal ligation at the time of delivery is the appropriate standard of care if a woman seeks a tubal ligation while pregnant. Dr. Wang is trained and willing to provide the procedure and Mrs. Mann has decided that in order to protect her health and life, she wants to pursue that course of treatment. However, Genesys is prohibiting Dr. Wang from performing the procedure. Genesys is a Catholic hospital, and is part of Ascension, a Catholic health system that requires all of its hospitals, including Genesys, to adhere to a religious policy promulgated by the U.S. Conference of Catholic Bishops entitled the Ethical and Religious Directives for Catholic Health Care Services ("Directives"). Based on these Directives, Genesys implemented a ban on almost all tubal sterilizations.

Because Dr. Wang has admitting privileges only at Genesys, she is unable to provide Mrs. Mann with the care that she needs in another hospital. Thus, because of Genesys' refusal, grounded

solely in religious policy and devoid of any medical basis, Mrs. Mann was forced to search, at 36 weeks of pregnancy, for another hospital and another physician to provide the procedure that she needs to protect her life. With only two days left until her delivery date, Mrs. Mann is still scrambling to gather the necessary paperwork and referral documents that she needs to obtain treatment from another physician. This is unnecessary and contrary to medical standards, as well as state and federal law. Accordingly, Mrs. Mann requests that you immediately investigate Genesys and Ascension, and ensure that she, as well as all other patients, are not further subject to this egregious conduct.

Factual Background

Because of her brain tumor, Mrs. Mann is unable to deliver her child vaginally due to the risk of seizing while pushing and therefore must deliver via Cesarean section (“C-section”). The tumor also prevents Mrs. Mann from receiving an epidural or spinal anesthesia during a C-section. As a result, Mrs. Mann must undergo full anesthesia during her delivery that will render her completely unconscious. Mrs. Mann’s maternal fetal medicine specialist recommends that due to the risks involved in this type of delivery, as well as the morbidity and mortality risks involved in another pregnancy, Mrs. Mann should not become pregnant again. Based on this recommendation, Mrs. Mann’s specialist as well as her primary OB/GYN also recommended that she have a tubal ligation at the time of her C-section because that is the most effective method of birth control and having the procedure at the time of C-section is the safest course of action. If Mrs. Mann does not have the tubal ligation at the time of her C-section, she will be forced to have a subsequent surgery, again under full anesthesia, that will pose the same risks as a subsequent pregnancy and the precise risks her doctors are trying to avoid.

At the time that Mrs. Mann’s doctor’s request to provide a tubal ligation was denied, Mrs. Mann had been a patient at Genesys Regional Medical Center in Grand Blanc, Michigan, for several years and was already near 20 weeks of pregnancy. In late 2014, Genesys informed its physicians that they would thereafter be forbidden from performing tubal sterilizations in almost all circumstances. After receiving complaints from multiple women affected by this ban, we wrote a letter to your agency, dated December 4, 2014, requesting an investigation of the serious implications this ban would have on women’s health. In response to media attention surrounding this letter, Genesys’ Vice President of Mission Integration, Andrew Kruse, informed a news outlet that Genesys’ policy would have a medical exception. Specifically, Mr. Kruse stated:

Under church teaching, procedures that induce sterility are permitted when their direct effect and immediate purpose is the cure or alleviation of a present and serious pathology, and a simpler treatment is not available. Accordingly, tubal ligations performed for medical purposes, such as prophylactic salpingectomies for reducing the risk of cancer, are not directly contraceptive in their purpose, and could be permissible, depending on prudent medical judgment and the informed consent of the patient.¹

Because of this statement, and the fact that Genesys has previously granted such exceptions, both Jessica Mann and her physician strongly believed that she would qualify for this medical exception. As a result, Dr. Wang submitted a request for a medical exception to the ban in May,

¹ See Ex. 1.

2015 that would allow Mrs. Mann to have the tubal ligation at the time of her scheduled C-section at Genesys on October 24, 2015. As part of her letter in support of that request, Dr. Ivana Vettrano, Mrs. Mann's maternal fetal medicine specialist, wrote the following:

Pregnancy places this patient at significant risk of morbidity and even mortality. She should not become pregnant. Anesthesia is also a risk for this patient. To undergo a separate procedure requiring an additional episode of anesthesia when the tubal ligation can be performed with the anesthesia required for the cesarean delivery does not appear to make any sense in regard to patient safety.²

Dr. Wang provided Dr. Vettrano's letter to Genesys, and also expressed her medical opinion that Jessica Mann should have a tubal ligation at the time of her C-section to protect her health and life.

Despite these treatment recommendations from Mrs. Mann's physicians, Genesys waited over three months, until September 1, 2015, to inform Dr. Wang that this request was denied. My office, on behalf of Mrs. Mann, immediately followed that denial with two requests for reconsideration that detailed, again, the medical need for the tubal ligation, her specialist's statements about the extreme risks of a subsequent pregnancy and forgoing a tubal ligation at the time of delivery, and Mrs. Mann's inability to easily switch to another hospital and another doctor, given Dr. Wang's lack of admitting privileges elsewhere. Notwithstanding these requests, Mr. Kruse continued to deny Mrs. Mann treatment and forced her, at 36 weeks of pregnancy, to search for a different doctor and hospital to assist her. The sole reason cited by Mr. Kruse for his denial is the hospital's adherence to the Directives. Despite Mrs. Mann's request for clarification as to why she did not qualify for the medical exception to Genesys' ban, none was provided.

Genesys and Ascension Health are Failing to Comply with State and Federal Law by Refusing to Provide Mrs. Mann and others with Appropriate Medical Care

Under Michigan statute, M.C.L. § 333.20201, hospital patients are "entitled to receive adequate and appropriate care . . . unless medically contraindicated as documented in the medical record by the attending physician" This statute also provides that a patient "shall not be denied appropriate care on the basis of . . . sex" *Id.*

Further, because Genesys receives Medicaid and Medicare funds, it is required to adhere to the Conditions of Participation for these programs which state that a "patient . . . has the right to make informed decisions regarding his or her care [including] . . . being able to request or refuse treatment." 42 C.F.R. § 482.13(b)(2).

Here, both Mrs. Mann's specialist and primary OB/GYN determined that the "adequate and appropriate care" for Mrs. Mann was a tubal ligation at the time of her C-section delivery. Forgoing a tubal ligation at the time of delivery would force Mrs. Mann to either risk becoming pregnant again, which would place her life at risk during the pregnancy and/or at the time of

² See Ex. 2.

delivery, or endure the risks associated with a subsequent procedure to obtain a tubal ligation, which would require another episode of full anesthesia. Both options fall well below the standard of appropriate care. Following her doctors' recommendations, Mrs. Mann decided to have the tubal ligation.

However, instead of adhering to state and federal law and providing Mrs. Mann with the care that she needs and requests, Genesys has chosen to abide by a religious policy that substantially departs from accepted medical standards. As a result, Jessica Mann is now forced to abandon her hospital and longtime doctor - - one who delivered her last child and is well acquainted with her brain tumor and its effect on her pregnancy - - and find another physician to continue her care and deliver her child, with less than a month remaining on her pregnancy. Because of the stress of this situation, for the first time during her pregnancy, Mrs. Mann's blood pressure became elevated. Moreover, because her contractions have already begun, Mrs. Mann's OB/GYN has advanced her delivery date from October 24 to October 16.

There is no adequate justification for Genesys' treatment of Mrs. Mann. Not only is its decision to deny her necessary treatment contrary to the standard of care and grossly negligent, it is also discriminatory. Genesys does not have a similar policy that requires male patients with a serious medical condition, such as Mrs. Mann's, to choose a riskier treatment that falls well below the standard of care or find an alternate hospital. Only women are forced to make this choice.

Request for Relief

Under M.C.L. § 333.20165,

[Your agency] may deny, limit, suspend, or revoke the license or certification or impose an administrative fine on a licensee if 1 or more of the following exist:

(d) Negligence or failure to exercise due care

...

(f) Evidence of abuse regarding a patient's health, welfare, or safety or the denial of a patient's rights.

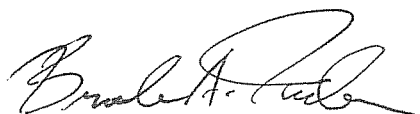
Genesys and Ascension's persistent refusal to provide Mrs. Mann with the treatment that she needs to safeguard her health and life constitutes negligence, a failure to exercise due care, evidence of abuse regarding Mrs. Mann's safety and a denial of her right to appropriate care.

The ACLU has long been a strong advocate of religious freedom. However, hospitals that receive federal funds, that are open to the public, and that are licensed by your agency³, must abide by the appropriate standard of care. Genesys and Ascension cannot invoke their religious affiliation to excuse compliance with the generally applicable laws and regulations that apply to all hospitals, **especially** when doing so subjects their patients to harm, as in the case of Jessica Mann.

³ See Ex. 3 (License and Registration Information for Genesys Regional Medical Center).

Last year, we warned that absent investigation by your agency, Genesys' tubal sterilization ban would severely compromise the healthcare of its female patients. Unfortunately, that warning was not heeded and Mrs. Mann has suffered as a result. Please do not allow Genesys to further subject other women to the same unnecessary mistreatment as Mrs. Mann. It has long been recognized that religious belief is not a sufficient basis to justify harm to others. Given that patient safety and welfare are at stake, your agency must immediately investigate Genesys and Ascension, and take appropriate action to hold them accountable for their egregious conduct with respect to Mrs. Mann and all others who have been harmed by this medically dangerous and unnecessary policy. We look forward to a prompt response by your agency, and request that you confirm receipt of this complaint by October 28, 2015, and provide notification of the steps you intend to take to investigate this issue.

Sincerely,



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