



June 15, 2009

**Via Facsimile and Federal Express**

Board of Trustees  
c/o Juanita Hernandez, Corporate Governance Officer  
Community Medical Centers  
2823 Fresno Street  
Fresno, CA 93721  
Fax: 559-459-2450

Dear Board Members,

We write to alert you to an incident that took place in one of your hospitals on May 30, 2009, and that is cause for great concern. It is our understanding that staff at the Community Regional Medical Center in Fresno, California unlawfully discriminated against a patient, Kristin Orbin, by preventing Kristin's same-sex partner, Teresa Rowe, from visiting Kristin in the hospital, despite repeated requests by Kristin and Teresa that Teresa be permitted to do so and despite Teresa's status as Kristin's health care agent. Such discrimination is in violation of numerous California statutes, and we urge you to take immediate steps to ensure that all your hospitals are welcoming environments for all patients.

**Factual Background**

On Saturday, May 30, 2009, Kristin Orbin and her partner of four years, Teresa Rowe, attended a marriage equality rally in Fresno, California, "Meet in the Middle." Prior to the rally, the couple participated in a 14-mile march from Selma, California to Fresno. From the length of the march and the over 90 degree heat, Kristin collapsed soon after she arrived at the rally in a seizure.

As Kristin is epileptic, she has experienced similar seizures in the past, and she and Teresa have been to a number of hospitals together. A doctor at the rally called an ambulance, and Teresa rode with Kristin in the ambulance. When they reached the Community Regional Medical Center, however, Teresa was told that she could not accompany Kristin into the emergency room due to "hospital policy"—even though Kristin had been falling in and out of consciousness in the ambulance. Instead, and contrary to her experience at other hospitals in California, Teresa was required to enter the hospital through the front entrance.

At the admitting desk, hospital staff repeatedly told Teresa that they could not help her, despite her protestation that she had necessary medical information for Kristin and was concerned that Kristin would not be able to convey this information to her doctor herself. In particular, Teresa informed the staff that Kristin should not be given the medication Ativan. Teresa explained her relationship to Kristin multiple times, and also offered to produce Kristin's advance health care directive, which designates Teresa as Kristin's health care agent. The hospital staff not only ignored Teresa's requests, but they also refused to accept any information from her, including Kristin's insurance information. Throughout the experience, they also pointedly referred to Teresa as Kristin's "friend."

The staff gave Teresa several reasons why she was not permitted to be with Kristin: at first they cited "hospital policy," then they told Teresa that Kristin was in an area where visitors were not permitted, and in response to Teresa's request to talk to the doctor directly, the staff told Teresa that the doctor was "busy." Eventually, a staff member agreed to check in on Kristin and report back to Teresa. When the staff member returned, she told Teresa that she had spoken with Kristin, and that Kristin was doing fine. Teresa continued to wait without direct contact with Kristin another hour, at which time a friend thought to give the hospital staff his cell phone to send back to Kristin.

During the time Teresa and Kristin were separated—a period of several hours—Kristin was by herself in the hospital and groggy from the seizures and medication. Confused and desperate to see Teresa, she asked various hospital staff why Teresa was not with her. These hospital staff told Kristin that she was in an area where no visitors were allowed. When Kristin pointed out that other patients in the same area had visitors, she was told that "those people are different." Contrary to the representation of the admitting desk staff member, Kristin did not speak to anyone directly who had spoken with Teresa—until she was handed the friend's cell phone. Hospital staff had also failed to communicate the important medical information that Teresa had provided about Kristin, and Kristin in fact had been given Ativan—while she was sleeping.

Once Kristin had the cell phone, she immediately called Teresa saying "where are you," and she also told the doctor treating her that Teresa had not been allowed back to see her. The doctor seemed surprised that Teresa had not been allowed back earlier, and he did not know anything about Kristin being in a "no visitor" zone. Soon after that, Teresa was finally allowed into the hospital to see her partner. With Teresa at her side, Kristin was placed in a room that hospital staff had repeatedly told her was a "no visitor zone," yet every other patient in the room had visitors.

### **Legal Analysis**

It appears that Kristin was treated "differently" as a patient at the Community Regional Medical Center because she is a lesbian. Both she and Teresa informed all relevant hospital personnel of their relationship, and both were wearing marriage

equality t-shirts. Yet Teresa was not even allowed to provide Kristin's doctor with necessary medical information.

Under California's Unruh Civil Rights Act, "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or **sexual orientation** are 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) (emphasis added). Private medical groups that provide medical services to the public have been held to be business establishments for purposes of the Act. See, e.g., *North Coast Women's Care Medical Group, Inc. v. San Diego Superior Court*, 44 Cal.4th 1145, 1153 (2008).

The Unruh Act subjects to liability "[w]hoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to [the Act]." Cal. Civ. Code § 52(a). Therefore, liability under the Act "extends beyond the business establishment itself to the business establishment's employees responsible for the discriminatory conduct." *North Coast Women's Care Medical Group, Inc.*, *supra*, 44 Cal.4th at 1154.

California's Health and Safety Code also specifically prohibits discrimination on the basis of sexual orientation in the provision of emergency services and care. "In no event shall the provision of emergency services and care be based upon, or affected by . . . any [] characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, except to the extent that a circumstance such as age, sex, preexisting medical condition, or physical or mental disability is medically significant to the provision of appropriate medical care to the patient." Cal. Health and Safety Code § 1317(b).

Hospital staff further refused to recognize Teresa's authority under Kristin's advanced health care directive, which designates Teresa as Kristin's health care agent. Health providers in California, however, are required to comply with an individual's health care instruction, as well as to "promptly record its existence in the patient's health care record." Cal. Probate Code §§ 4731, 4733. Failure to meet these requirements entitles the patient to damages. *Id.* at § 4742.

Finally, hospitals in California are required to post and follow a patient's bill of rights, which in addition to requiring that each patient be provided with "considerate and respectful care" must include the following:

- ⇒ Exercise of the rights without regard to sexual orientation;
- ⇒ Have all the patients' rights apply to the person who may have legal responsibility to make decisions regarding medical care on behalf of the patient;
- ⇒ Designate visitors of his/her choosing; and

- ⇒ Have the patient's wishes considered for purposes of determining who may visit if the patient lacks decision-making capacity and to have the method of that consideration disclosed in the hospital policy on visitation. At a minimum, the hospital shall include any person living in the household.

Cal. Code of Regulations, Tit. 22, § 70707.

Along with these apparent direct violations of California statutory law, hospitals may of course be liable for negligence, intentional and negligent infliction of emotional harm, as well as medical malpractice.

### **Remedial Action**

As board members of an institution that claims in its mission statement that "everyone deserves top-quality medical care," we trust that you will be as alarmed as we are by the treatment of Kristin and Teresa at Community Regional Medical Center in Fresno. Community Medical Centers is an important source of health care facilities and services in California's Central Valley, and is affiliated with the University of California, San Francisco medical school and Department of Medicine, one of the top medical providers in the country. Community Medical Centers should have policies and procedures in place that prevent this kind of incident from happening again.

To that end, we urge you immediately to affirm your strong commitment to inclusive and sensitive medical care for lesbian, gay, bisexual, and transgender ("LGBT") patients. We further urge you to carry out this commitment to by taking the following steps:

1. Adopt a comprehensive visitation policy that:
  - ⇒ Affirms all patients' rights to have visitors, explicitly including same-sex partners and their children;
  - ⇒ Outlines a clear process for determining when visitors will be restricted and how that decision will be communicated; and
  - ⇒ Includes a grievance procedure in the case of visitation denial that can be acted on quickly in an emergency situation
2. Ensure that your hospitals' non-discrimination policy explicitly describes LGBT individuals as a protected group;
3. Ensure that that your patients' bill of rights explicitly describes the rights of LGBT patients;
4. Provide LGBT healthcare training to the Emergency Department staff at Community Regional Medical Center in Fresno; and

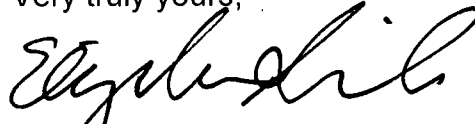
5. Participate in the 2009 Healthcare Equality Index, an annual survey of healthcare industry policies and practices related to LGBT individuals and families.

To effect these changes, we are happy to connect you to the Gay and Lesbian Medical Association ("GLMA"), a group that has significant experience in working with hospitals to improve their service with respect to LGBT patients. It is also our understanding that UCSF already offers in-person LGBT healthcare training to all its affiliated hospitals, and could easily provide such training to the Emergency Department at Community Regional Medical Center in Fresno.

Finally, our clients would greatly appreciate an apology for their treatment at Community Regional Medical Center. Indeed, a meaningful apology and a commitment to taking the steps described above could go a long way to putting this matter behind all of us.

Please let us know no later than **June 22, 2009** what steps you plan to take to address this matter.

Very truly yours,



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