

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS
HEADQUARTERS**

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**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE FOR CIVIL RIGHTS
MIDWEST REGION**

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ADMINISTRATIVE COMPLAINT

COMPLAINANTS

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PRELIMINARY STATEMENT

1. This complaint is filed by the American Civil Liberties Union of Michigan (“ACLU”) on behalf of itself and its members, including Jessica Mann and all similarly situated women. The ACLU and Mrs. Mann (collectively, “Complainants”) bring this complaint against Ascension Health (“Ascension”), the largest nonprofit health system in the United States and the world’s largest Catholic health care system,¹ and its subsidiary, Genesys Health System (“Genesys”). Complainants challenge Ascension and Genesys’s discriminatory policies and practices denying women tubal sterilizations (also called “tubal ligations”) at the time of childbirth, in violation of Section 1557 of the Patient Protection and Affordable Care Act, codified at 42 U.S.C. § 18116 (2012) (“Section 1557”).
2. Jessica Mann was a Genesys patient for sixteen years and delivered her first two children at Genesys Regional Medical Center in Grand Blanc, Michigan. When she became pregnant a third time in early 2015, she and her OB-GYN again planned for her to deliver at Genesys. Because Mrs. Mann had a pre-existing brain tumor that could be life-threatening when strained by pregnancy, her doctors strongly recommended that she undergo a tubal ligation at the time of her scheduled cesarean delivery, when the sterilization procedure is safest and most effective. Mrs. Mann agreed and requested that her doctor perform the procedure during the course of her delivery. But Genesys refused to allow Mrs. Mann’s OB-GYN to provide this medically necessary care—even though her doctors had strongly advised it—because of a religious ban on sterilization imposed by Ascension and implemented by Genesys. As a result of Genesys’s refusal to allow her doctor to provide the medical care she needed, Mrs. Mann was forced to search for

¹ Ascension, www.ascension.org (last visited Oct. 21, 2016).

another hospital and another physician to provide the procedure she needed to protect her life, just weeks before her baby was due.

3. Ascension, which receives billions of dollars each year in federal funding, requires that all of its facilities abide by the Ethical and Religious Directives for Catholic Health Care Services (“the Directives”), a set of policy prescriptions written and promulgated by the United States Conference of Catholic Bishops. The Directives demand that all Catholic health care facilities adopt the Directives as policy and require that their employees adhere to them as a condition of medical privileges and employment. Among numerous other restrictions on health care, the Directives prohibit “direct sterilization”—i.e., sterilization for the purpose of preventing pregnancy—under all circumstances. Indeed, the Directives characterize “direct sterilization” as “intrinsically evil.”²
4. Accordingly, Genesys has a policy prohibiting physicians who practice at its facility from providing sterilization services, including to pregnant women who request this procedure at the time of delivery (i.e., immediately postpartum). This runs directly contrary to the medical standard of care for a pregnant woman seeking a tubal sterilization: the procedure is safest and most effective at the time of delivery, and forcing a woman to later undergo a second, unnecessary surgery under general anesthesia exposes her to serious health risks. For these reasons, tubal ligations are performed in one in ten hospital deliveries and are considered a standard component of perinatal care.³
5. Ascension and Genesys’s policies and practices banning postpartum tubal ligations violate Section 1557’s prohibition on discrimination on the basis of sex by (1) denying women a fundamental component of pregnancy- and childbirth-related care, and (2) denying women, but not men, the medical standard of care, and subjecting women to a heightened risk of unintended pregnancy.
6. Complainants request that the Department of Health and Human Services Office of Civil Rights (“OCR”) investigate Ascension and Genesys’s policies and practices relating to the treatment of patients seeking postpartum tubal ligations to ensure that their policies and practices comport with the requirements of Section 1557. To the extent OCR finds that Ascension and/or Genesys has discriminatory policies and/or practices, complainants request that OCR take all steps necessary to bring them into compliance with the law.

² U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* 42 (5th ed. 2009), *available at* <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> [hereinafter *Directive* or *Directives*].

³ *See* Am. Coll. of Obstet. & Gynec., *Committee Opinion No. 530: Access to Postpartum Sterilization* 1 (reaffirmed 2016), <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co530.pdf?dmc=1&ts=20161021T1815311220> [hereinafter *ACOG Committee Opinion No. 530*].

JURISDICTION

7. OCR is responsible for ensuring compliance with Section 1557, including receiving information about, investigating, and remedying violations. The Midwest Region OCR is responsible for investigating and remedying violations of Section 1557 in Missouri, where Ascension is headquartered, and in Michigan, where Genesys is located.

FACTUAL ALLEGATIONS

A. The Parties

8. Complainant Jessica Mann is a 34-year-old social worker who lives in Flushing, Michigan with her husband and three children. Mrs. Mann suffers from pilocystic astrocytoma brain tumors. In 2005, Mrs. Mann successfully underwent surgery to remove a tumor that was causing debilitating symptoms, including difficulty walking, but her doctors have since identified a second tumor. These tumors can induce seizures and can be life-threatening.
9. Complainant American Civil Liberties Union of Michigan is a nonprofit organization that engages in litigation, public education and lobbying about civil rights and civil liberties in the state of Michigan, including women's health and reproductive rights. Members of the ACLU support its mission to ensure that all individuals are equally protected by the nation's Constitution and laws. The ACLU is extensively involved in a variety of projects and coalitions related to promoting gender equality and access to reproductive rights, and to ensuring that religious exemptions to generally applicable laws are not used to harm third parties. The ACLU has over 14,000 members, including women who are currently pregnant and desire a postpartum tubal ligation, women—like Mrs. Mann—who have sought postpartum tubal ligations at Ascension hospitals in the past, and women who will seek postpartum tubal ligations at Ascension hospitals in the future. The ACLU is headquartered in Detroit, Michigan.
10. Respondent Ascension Health is the largest nonprofit in the country and the largest Catholic-sponsored health care system in the world.⁴ With 141 hospitals and 22,990 beds,⁵ it is also the fourth-largest health care system in the United States.⁶ More than

⁴ Ascension, www.ascension.org (last visited Oct. 21, 2016); *see also* Lois Uttley & Christine Khaikin, MergerWatch, Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report 8 (May 2016), *available at* www.mergerwatch.org.

⁵ Ascension, *Facts and Stats*, <http://ascension.org/about/facts-and-stats> (last visited Oct. 21, 2016).

⁶ Uttley & Khaikin, *supra* note 4, at 8.

84,000 women gave birth in Ascension facilities in fiscal year 2016 alone.⁷ In a recent annual cost report filed with the Centers for Medicare and Medicaid Services, Ascension reported over \$53 billion in patient charges, including more than \$6 billion in patient charges to Medicaid and more than \$17 billion in patient charges to Medicare.⁸ Together, Medicare and Medicaid accounted for 43.5 percent of Ascension’s patient charges that year.⁹ Ascension is headquartered in St. Louis, Missouri.¹⁰

11. Respondent Genesys Health System is a regionally integrated health care delivery system primarily servicing Genesee, Shiawassee, Lapeer, Oakland, Livingston and Tuscola counties in Michigan.¹¹ It is anchored by Genesys Regional Medical Center in Grand Blanc, Michigan, a 410-bed treatment center that includes a Level II emergency trauma center and a Family Birthing Center.¹² Genesys advertises itself as “[t]he region’s leading health care provider.”¹³

12. Ascension is the parent corporation of Genesys.¹⁴

13. Like Ascension, Genesys receives federal financial assistance through its acceptance of Medicaid and Medicare funding.¹⁵

B. Ascension and Genesys’s Imposition of Religious Health Care Restrictions

14. The Directives are written and promulgated by the United States Conference of Catholic Bishops.¹⁶

⁷ Ascension, *Facts and Stats*, <http://ascension.org/about/facts-and-stats> (last visited Oct. 21, 2016).

⁸ Uttley & Khaikin, *supra* note 4, at 10.

⁹ *Id.*

¹⁰ Ascension, *Contact Information*, <http://ascension.org/about/contact-information> (last visited Oct. 21, 2016).

¹¹ Genesys, *About Genesys*, <http://www.genesys.org/about-genesys> (last visited Oct. 21, 2016).

¹² *Id.*

¹³ *Id.*; *see also* Ascension, *Ascension Michigan*, <http://ascension.org/our-work/ascension-health/ascension-michigan> (last visited Oct. 21, 2016).

¹⁴ *See, e.g.*, Genesys, *About Genesys*, <http://www.genesys.org/about-genesys> (last visited Oct. 21, 2016) (describing itself as “a part of Ascension”); Ascension, *Ascension Michigan*, <http://ascension.org/our-work/ascension-health/ascension-michigan> (last visited Oct. 21, 2016).

¹⁵ *See, e.g.*, Genesys, *Genesys PACE of Genesee County*, <https://www.genesys.org/pace> (last visited Oct. 21, 2016) (“Genesys PACE of Genesee County receives monthly payments from Medicare and Medicaid to cover services for participants.”).

15. Directive 5 states: “Catholic health care services must adopt these Directives as policy, require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel.”¹⁷
16. Directive 9 states: “Employees of a Catholic health care institution must respect and uphold the religious mission of the institution and adhere to these Directives. . . .”¹⁸
17. Together, Directives 5 and 9 require Ascension and Genesys to implement the Directives internally and impose them on all practitioners at their facilities.
18. Directive 53 states: “Direct sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic health care institution. Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available.”¹⁹
19. Ascension requires all of its subsidiary health systems and hospitals, including Genesys, to adhere to the Directives.²⁰
20. While Ascension’s Catholic identity is highlighted as a central component of its mission,²¹ its website nowhere states that Ascension and its subsidiary facilities adhere to the Directives, or that, as a result, Ascension and its subsidiary facilities do not provide certain kinds of medically necessary reproductive health care.
21. Genesys adheres to the Directives.²² Based on the Directives, Genesys bans all sterilization for contraceptive purposes, including postpartum tubal ligations.

¹⁶ U.S. Conference of Catholic Bishops, *supra* note 2.

¹⁷ *Directive 5*, *supra* note 2.

¹⁸ *Directive 9*, *supra* note 2.

¹⁹ *Directive 53*, *supra* note 2.

²⁰ See Ascension, *Administrative Policy #116: Ascension Health Standards of Conduct*, <https://secure.ethicspoint.com/domain/media/en/gui/29334/code.pdf> (last visited Oct. 21, 2016).

²¹ See Ascension, *Mission, Vision and Values*, <http://ascension.org/living-the-mission/mission-vision-values> (last visited Oct. 21, 2016).

²² See, e.g., Letter from Andrew Kruse, Genesys Health, to Brooke A. Tucker, ACLU (Sept. 21, 2015), attached as Ex. C [hereinafter First Kruse Denial Letter] (“As you are aware, as a Catholic facility, Genesys follows the Ethical and Religious Directives for Catholic Health Care Facilities . . .”).

22. While Genesys’s Catholic identity is also highlighted as a central component of its mission,²³ like Ascension’s, its website nowhere states that it adheres to the Directives, or that it does not provide certain medically necessary reproductive health care as a result of the Directives. To the contrary, on the webpage for its Family Birthing Center, it says: “If you’re pregnant or planning a family, Genesys Family Birthing Center will take care of you and your baby every step of the way.”²⁴
23. The ACLU has received complaints from multiple women affected by Genesys’s policy banning tubal ligations under all circumstances. On December 4, 2014, the ACLU wrote a letter to the Michigan Department of Licensing and Regulatory Affairs (“Michigan LARA”) requesting an investigation into the ban’s serious implications for women’s health.²⁵ To Complainants’ knowledge, no formal investigation was undertaken.
24. In response to media attention surrounding this letter, Genesys’s Vice President of Mission Integration, Andrew Kruse—a non-medical administrator—informed a news outlet in January 2015 that Genesys’s policy contains a medical exception consistent with the Directives. He explained that, “[u]nder 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 they] are not directly contraceptive in their purpose”²⁶

C. Postpartum Tubal Ligations

25. Tubal ligation is an extremely safe and highly effective form of birth control, and is the contraceptive method of choice for approximately 30 percent of married women of reproductive age in the United States.²⁷ By closing off (or “occluding”) a woman’s

²³ See Genesys, *Our Mission and Values*, <http://www.genesys.org/mission-and-values> (last visited Oct. 21, 2016).

²⁴ Genesys, *Family Birthing Center*, <http://www.genesys.org/family-birthing-center> (last visited Oct. 21, 2016).

²⁵ Letter from Brooke A. Tucker and Michael J. Steinberg, ACLU, to Mich. Dep’t of Licensing & Reg. Affairs (Dec. 4, 2014), attached as Ex. A [hereinafter First Complaint to Michigan LARA].

²⁶ *ACLU urges state to investigate Genesys ban on tubal ligation*, Grand Blanc View (Jan. 8, 2015), http://grandblancview.mihomepaper.com/news/2015-01-08/News/ACLU_urges_state_to_investigate_Genesys_ban_on_tub.html [hereinafter Grand Blanc View].

²⁷ Jo Jones *et al.*, U.S. Dep’t of Health & Human Servs., Ctrs. for Disease Control & Prevention, Nat’l Ctr. for Health Statistics, *Current Contraceptive Use in the United States, 2006–2010, and Changes in Patterns of Use Since 1995*, 60 Nat’l Health Statistics Reports 1, 7 (2012), <http://www.cdc.gov/nchs/data/nhsr/nhsr060.pdf>.

fallopian tubes, the procedure prevents an egg from moving down the fallopian tube into her uterus, which means that sperm will not be able to reach the egg.²⁸

26. Performing the tubal ligation immediately postpartum has many advantages because of a woman's anatomy immediately after giving birth. At that point, her uterus is enlarged and located just under the abdominal wall, which makes it technically easier for the doctor to access her fallopian tubes.²⁹ Moreover, she is already in the hospital and often already under anesthesia.
27. If the woman has had a cesarean delivery, the fallopian tubes can be easily identified and accessed by her physician through the same abdominal incision that was created to deliver the baby.³⁰ The tubal ligation adds only about 30 minutes to the time the patient spends in the operating room, does not add to the patient's hospital stay, and does not require any additional anesthesia.³¹
28. There are similar benefits to receiving a tubal ligation after a vaginal delivery. Only one small incision in the abdomen is needed (called a "minilaparotomy").³² In most cases, an epidural catheter placed during labor can be left in for the anesthesia for the tubal ligation.³³ The tubal ligation can be performed within a few hours or days following delivery, and generally does not lengthen the patient's hospital stay.³⁴
29. In both situations—whether during a cesarean or vaginal delivery—the enhanced access to the fallopian tubes allows the physician to perform the most effective method of occlusion: cutting the tube, removing a section, and then stitching it closed (called "salpingectomy"). The alternative methods of occlusion—burning (or "coagulating") the tubes, or closing the tubes with a silicone rubber band, a spring-loaded clip, or a staple—are not as effective, in part because the fallopian can reopen (called "recannulation").³⁵

²⁸ Am. Coll. of Obstet. & Gynec., FAQ052: Postpartum Sterilization (2016), <http://www.acog.org/Patients/FAQs/Postpartum-Sterilization> [hereinafter ACOG FAQ052].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Am. Coll. of Obstet. & Gynec., *Practice Bulletin No. 133: Benefits and Risks of Sterilization*, 121 *Obstet. & Gynec.* 392, 392 (2013) [hereinafter *ACOG Practice Bulletin No. 133*].

³⁴ ACOG FAQ052, *supra* note 28.

³⁵ See *ACOG Practice Bulletin No. 133*, *supra* note 33, at 396.

30. Postpartum sterilization is a standard component of perinatal care. Indeed, tubal ligations are performed after 10 percent of all hospital deliveries.³⁶ It is the standard of care for obstetricians to discuss contraceptive options, including sterilization, with their patients as a routine part of the overall perinatal care plan, and to assist their patients in effectuating their decision.
31. A postpartum tubal ligation also has the practical advantage of ensuring that a woman receives her desired form of contraception before she leaves the hospital. Some women find it difficult to overcome the logistical hurdles to obtain a tubal ligation weeks or months after discharge from the hospital when they are caring for a newborn baby and often other children as well.
32. Women who are unable to receive a desired tubal ligation are at a higher risk for unintended pregnancy.³⁷ Unintended pregnancy is associated with poorer maternal and fetal outcomes than planned pregnancies, including low birth weight, infant mortality, and maternal mortality, and nearly half of all unintended pregnancies end in abortion.³⁸ Pregnancies spaced too closely together can also have adverse effects on the woman and the baby.³⁹
33. The American College of Obstetricians and Gynecologists, the nation's leading group of women's health care providers, recommends that postpartum tubal ligations be considered an "urgent surgical procedure" because of "the consequences of a missed procedure and limited time frame in which [they] may be performed."⁴⁰
34. If a woman does not receive a tubal ligation at the time of delivery, she must wait until her uterus has returned to its normal size (called "uterine involution") before obtaining a tubal ligation. This usually takes about six weeks. When a tubal ligation is performed separately from pregnancy, it is considered an "interval" procedure, and generally must be performed with laparoscopy (i.e., using an instrument called a laparoscope).⁴¹

³⁶ ACOG Committee Opinion No. 530, *supra* note 3, at 1.

³⁷ *Id.*

³⁸ Megan L. Kavanaugh & Ragnar M. Anderson, Guttmacher Institute, Contraception and Beyond: The Health Benefits of Services Provided at Family Planning Centers 6, 8, 10 (July 2013), https://www.guttmacher.org/sites/default/files/report_pdf/health-benefits.pdf.

³⁹ *Id.* at 8, 10.

⁴⁰ ACOG Committee Opinion No. 530, *supra* note 3, at 3.

⁴¹ ACOG Practice Bulletin No. 133, *supra* note 33, at 394.

35. An interval laparoscopic tubal ligation typically requires several incisions in the abdomen and is performed under general anesthesia.⁴² The general anesthesia alone enhances the risks associated with interval procedures compared to postpartum tubal ligations. Laparoscopic procedures also carry risks of injury to the bowel, bladder, or major blood vessel.⁴³
36. During an interval laparoscopic procedure, because the fallopian tubes typically are not as easily accessible as they are immediately after childbirth, a physician is more likely to occlude the tubes through coagulation or the use of a band, clip, or staple. These methods are less effective than salpingectomy, which is the method employed in postpartum tubal ligations.⁴⁴

D. Genesys's Denial of Health Care to Jessica Mann

37. When Mrs. Mann became pregnant with her third child, she had been a patient of Genesys for many years. Indeed, her eldest child had been delivered at Genesys Regional Medical Center fifteen years earlier, her second child had been delivered there two years earlier, and Mrs. Mann had her first brain tumor removed at that hospital. Genesys Regional Medical Center is also the only hospital at which Mrs. Mann's primary OB-GYN, Dr. Bonita Wang—who delivered Mrs. Mann's second child—has admitting privileges. Mrs. Mann's due date was October 24, 2015, and she intended to deliver again at Genesys.
38. Mrs. Mann's brain tumor necessitated that she have a cesarean delivery; she was unable to deliver vaginally due to the risk of seizing while pushing. Moreover, because of the tumor, her delivery had to take place under full anesthesia that rendered her completely unconscious.
39. Due to the risks involved in this type of delivery and the morbidity and mortality risks associated with another pregnancy, Mrs. Mann's maternal fetal medicine specialist, Dr. Ivana Vettraino, recommended that Mrs. Mann not become pregnant again. Based on this recommendation, Dr. Vettraino and Dr. Wang advised Mrs. Mann to have a tubal ligation—the most effective method of birth control—at the time of her delivery. If Mrs.

⁴² Am. Coll. of Obstet. & Gynec., FAQ035: Sterilization by Laparoscopy 1–2 (2016), <https://www.acog.org/-/media/For-Patients/faq035.pdf?dmc=1&ts=20161021T1819291537>.

⁴³ *Id.* at 2.

⁴⁴ ACOG Practice Bulletin No. 133, *supra* note 33, at 396–97.

Mann did not have a tubal ligation at the time of her delivery, she would be forced to have a subsequent surgery under full anesthesia. Mrs. Mann agreed with her doctors' recommendations and gave her informed consent to the procedure.

40. Mrs. Mann and her doctors requested an exception to Genesys's sterilization ban, and submitted a formal request to the hospital. In support of Mrs. Mann's request, Dr. Vettraiño explained:

Pregnancy places this patient at significant risk of morbidity and even mortality. She should not become pregnant again. 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.

Dr. Wang provided Dr. Vettraiño's letter to Genesys and also expressed her medical opinion that Mrs. Mann should have a tubal ligation at the time of her delivery to protect her health and life.

41. Genesys waited over three months, until September 1, 2015, to inform Dr. Wang that the request was denied and that Mrs. Mann was subject to the tubal sterilization ban despite the life-threatening risks posed by her brain tumor. In refusing the request, the hospital administrator recommended that Mrs. Mann deliver her child at Genesys and have the tubal ligation at a later time in a different hospital. This option was highly disfavored by Mrs. Mann's physicians because it would require Mrs. Mann to undergo a second surgery under general anesthesia.
42. On September 11, 2015, the ACLU sent a letter to Mr. Kruse explaining that the denial was a violation of both federal and state law and asking that the hospital reconsider its decision.
43. On September 21, 2015, Mr. Kruse responded to the ACLU in a five-sentence letter, stating: "As you are aware, as a Catholic facility, Genesys follows the Ethical and Religious Directives for Catholic Health Care Facilities and based on the information we have received, Genesys will not be able to perform the procedure requested."⁴⁵

⁴⁵ First Kruse Denial Letter, *supra* note 22.

44. On September 23, 2015, the ACLU of Michigan sent a second letter to Mr. Kruse asking Genesys to reconsider its decision. On September 25, 2015, Mr. Kruse responded that “Genesys stands by its decision regarding Mrs. Mann.”⁴⁶
45. Genesys’s refusal to provide Mrs. Mann with necessary treatment forced her—at 36 weeks of pregnancy—to search for a different doctor and hospital to assist her. The sole reason ever cited by Mr. Kruse for the hospital’s denial is Genesys’s adherence to the Directives.
46. On October 14, 2015, the ACLU submitted a complaint to the Michigan LARA under Michigan state law and the Medicare and Medicaid Conditions of Participation. The agency responded, stated that it is authorized to investigate complaints against accredited hospitals only if the complaint alleges a Condition-level deficiency warranting removal from the Medicare program, and closed the complaint.
47. Fortunately, Mrs. Mann was able to deliver her baby girl at a non-Catholic hospital and have the tubal sterilization performed at the same time. Nevertheless, Genesys’s denial caused her significant harm. She could not receive care from Dr. Wang, who delivered her second child and had years of familiarity with Mrs. Mann’s health condition and its interaction with pregnancy. She also could not undergo the surgery at the hospital where she had her first tumor removed. Instead, Mrs. Mann had to find and try to build a rapport with a new doctor in a new hospital, and familiarize that doctor with her health condition. Mrs. Mann was terrified about undergoing general anesthesia and a potentially life-threatening surgery in an unfamiliar hospital with an unfamiliar doctor. She also felt stigmatized by the release form the new hospital required her to sign indicating that she had not received care from this doctor until very late in her pregnancy. Moreover, the eleventh-hour switch was a logistical nightmare, requiring additional referrals and numerous calls with her insurance company, her primary care provider, and her new OB-GYN. Indeed, the day before her surgery, Mrs. Mann’s new doctor’s office threatened to cancel the procedure if they did not receive additional paperwork from her primary care provider.
48. Similarly situated women are likely to experience similar harm, or far worse. If such women cannot find a new doctor at a new hospital to perform a tubal ligation at the time of delivery, they must either undergo a second, less safe and less effective, surgery under general anesthesia, or forgo the tubal sterilization they need and face a heightened risk of unintended pregnancy.

⁴⁶ Letter from Andrew Kruse, Genesys Health, to Brooke A. Tucker, ACLU (Sept. 25, 2015), attached as Ex. E.

49. Ascension and Genesys were, and continue to be, deliberately indifferent to the harmful effects their policies and practices have on women. These entities have long had knowledge that their policy is discriminatory. For instance, the ACLU’s December 4, 2014 complaint to the Michigan LARA—to which Mr. Kruse responded publicly⁴⁷—explained that the sterilization ban denies women the appropriate standard of care, will subject pregnant women to the risks of an additional surgery under general anesthesia, and was forcing women to use less-effective contraceptive methods, thus increasing the risk of unintended pregnancy.⁴⁸ The ACLU’s September 11, 2015 letter to Mr. Kruse emphasized that “[h]aving a tubal ligation immediately after a C-section delivery is the safest time to undergo the procedure and is the standard of care for women who seek surgical sterilization.”⁴⁹ The ACLU’s September 23, 2015 letter reiterated: “Genesys has transformed from being a hospital that pregnant women could rely on to obtain safe treatment to one that intentionally places such women in harm’s way,” and stated further that “th[e] discrimination by your hospital is not only unlawful, it is intentional and callous.”⁵⁰ Moreover, the American Civil Liberties Union and MergerWatch jointly released a report in 2013 decrying the harmful impact of policies prohibiting sterilization at the time of childbirth, which dedicated an entire section to Ascension.⁵¹ Yet Ascension and Genesys unreasonably failed to take action to correct the discrimination, including by delaying the denial of Mrs. Mann’s tubal ligation request for three months—thus forcing her to seek alternative care very late in her pregnancy.

LEGAL ALLEGATIONS

50. Section 1557 of the ACA prohibits discrimination on the basis of sex in any health care program or activity receiving federal funds.⁵² Specifically, it states that:

[A]n individual shall not, on the ground prohibited under . . . Title IX of the Education Amendments of 1972 . . . be excluded from

⁴⁷ Grand Blanc View, *supra* note 26.

⁴⁸ First Complaint to Michigan LARA, *supra* note 25.

⁴⁹ Letter from Brooke A. Tucker, ACLU, to Andrew Kruse, Genesys Health System (Sept. 11, 2015), attached as Ex. B.

⁵⁰ Letter from Brooke A. Tucker, ACLU, to Andrew Kruse, Genesys Health System (Sept. 23, 2015), attached as Ex. D.

⁵¹ MergerWatch & Am. Civil Liberties Union, *Miscarriage of Medicine: The Growth of Catholic Hospitals and the Threat to Women’s Health and Lives* 3, 7–8, 19 (Dec. 2013), *available at* <https://www.aclu.org/files/assets/growth-of-catholic-hospitals-2013.pdf>.

⁵² *See* 42 U.S.C. § 18116(a).

participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments).⁵³

51. Because both Ascension and Genesys are recipients of Medicaid and Medicare funding, they are subject to the obligations of Section 1557.⁵⁴

52. Ascension’s policy requiring its subsidiary facilities to abide by religious rules that prohibit postpartum tubal ligations, and Genesys’s policy implementing that prohibition, discriminate against women on the basis of their sex in violation of Section 1557.

A. Pregnancy and Childbirth Discrimination

53. Ascension and Genesys’s policies are discriminatory bans on pregnancy- and childbirth-related care. OCR has explained that the sex discrimination prohibited by Section 1557 encompasses “discrimination on the basis of pregnancy . . . [and] childbirth or related medical conditions.”⁵⁵ This definition mirrors the definition of sex discrimination under the Pregnancy Discrimination Act, which is incorporated into Title VII,⁵⁶ as well as the definition applied under Title IX.⁵⁷

54. Postpartum tubal ligations are a standard part of pregnancy and childbirth care for women who, for health reasons or otherwise, want to avoid future pregnancies. For a cesarean delivery, the procedure is performed at the same time as the delivery, through the same

⁵³ *Id.*

⁵⁴ *Id.*; *see also* 81 Fed. Reg. 31376, 31383 (May 18, 2016) (codified at 45 C.F.R. pt. 92) (explaining that “there are numerous ways in which health services providers are recipients in their own right,” including through “Medicare payments [or] Medicaid payments”).

⁵⁵ Nondiscrimination on the Basis of Race, Color, National Origin, Sex, Age, or Disability in Health Programs or Activities Receiving Federal Financial Assistance and Health Programs or Activities Administered by the Department of Health and Human Services or Entities Established Under Title I of the Patient Protection and Affordable Care Act, 45 C.F.R. § 92.4 (2016).

⁵⁶ 42 U.S.C. § 2000e(k) (“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions . . .”).

⁵⁷ Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. § 86.40 (“Pregnancy and related conditions: A recipient shall not discriminate against any student, or exclude any student from its education program or activity . . . on the basis of . . . pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom. . .”).

abdominal incision that was created to deliver the baby, while the patient is under the same anesthesia used for delivery. For a vaginal delivery, the procedure is performed during the same hospital stay, and anesthesia is typically delivered using the same epidural catheter placed during labor. Critically, in both cases, the unique anatomical changes effected by pregnancy—including the enlargement and placement of the uterus—directly impact how the procedure is performed, rendering it safer and more effective than tubal sterilizations performed outside of the childbirth context. Because postpartum tubal ligation relies on aspects of female physiology that are affected by pregnancy and childbirth and is routinely discussed and performed as part of the perinatal care plan, it is pregnancy- and childbirth-related care.⁵⁸ Ascension and Genesys’s systematic denial of this pregnancy- and childbirth-related care is disparate treatment sex discrimination violative of Section 1557.

55. Additionally, because contraception is a means by which a woman can control her capacity to become pregnant, Ascension and Genesys’s policy banning the most effective method of contraception, at the moment when the procedure is safest and most effective, amounts to a denial of pregnancy-related care. Indeed, only postpartum tubal ligations that are intended to prevent future pregnancy—i.e., only postpartum tubal ligations that are related to pregnancy—are banned; Ascension and Genesys’s policy allows some postpartum tubal ligations “performed for medical purposes [that] . . . are not directly contraceptive in their purpose.”⁵⁹ This systematic denial of pregnancy-related care is disparate treatment sex discrimination violative of Section 1557.

B. Disparate Impact Discrimination

56. Ascension and Genesys’s policies and practices prohibiting postpartum tubal ligations have a disparate impact on women in violation of Section 1557,⁶⁰ because they deny women—but not men—the medical standard of care. When a woman like Mrs. Mann is denied a postpartum tubal ligation, she is left with three difficult options: (1) try to find a new doctor and a new hospital covered by her insurance; (2) undergo a second surgery

⁵⁸ Cf., e.g., *E.E.O.C. v. Houston Funding II, Ltd.*, 717 F.3d 425, 429–30 (5th Cir. 2013) (“[A]s both menstruation and lactation are aspects of female physiology that are affected by pregnancy, each seems readily to fit into a reasonable definition of ‘pregnancy, childbirth, or related medical conditions.’”); *Hall v. Nalco Co.*, 534 F.3d 644, 65 (7th Cir. 2008) (“Although infertility affects both men and women, Hall claims she was terminated for undergoing a medical procedure—a particular form of surgical impregnation—performed only on women on account of their childbearing capacity. Because adverse employment actions taken on account of childbearing capacity affect only women, Hall has stated a cognizable sex-discrimination claim under the language of the PDA.”).

⁵⁹ Grand Blanc View, *supra* note 26.

⁶⁰ See 45 C.F.R. § 92.101(b)(3)(ii).

requiring general anesthesia, involving a less safe and less effective sterilization procedure; or (3) forgo the tubal ligation she needs. By contrast, a ban on vasectomies does not deny men the standard of care, because vasectomies generally are not performed concurrently with another procedure that would make the vasectomy safer and more effective. Ascension and Genesys's policies systematically and disproportionately harm women and are therefore disparate impact sex discrimination under Section 1557.

57. Ascension and Genesys's sterilization ban also has a disparate impact on women because it subjects women to a heightened risk of unintended pregnancy. While all bans on contraception disproportionately harm women, the risk of unintended pregnancy is particularly high for women whose requests for postpartum tubal sterilization are denied. Indeed, in one study, nearly one half of women with unfulfilled postpartum sterilization requests became pregnant within one year—twice the rate of women who did not request sterilization.⁶¹ In addition to the physical burdens of pregnancy and childbirth, “the adverse economic and social consequences of unintended pregnancies fall most harshly on women and interfere with their choice to participate fully and equally in the marketplace and the world of ideas.”⁶²

RELIEF REQUESTED

58. Mrs. Mann and the ACLU request that:

- a. OCR investigate Ascension and Genesys's policies and practices prohibiting physicians from performing postpartum tubal ligations in their facilities, including in cases in which pregnancy poses a serious risk to the woman's life or health.
- b. OCR take all necessary steps to remedy Ascension and Genesys's unlawful conduct and obtain Ascension and Genesys's assurance that they will comply with the non-discrimination requirements of Section 1557.

Respectfully Submitted,

/s/ Julia Kaye
Julia Kaye

Date: October 25, 2016

⁶¹ *ACOG Committee Opinion No. 530*, *supra* note 3 (citing Andrea R. Thurman & Torri Janecek, *One-Year Follow-Up of Women with Unfulfilled Postpartum Sterilization Requests*, 116 *Obstet. & Gynec.* 1071 (2010)).

⁶² *Erickson v. Bartell Drug Co.*, 141 F. Supp. 2d 1266, 1273 (W.D. Wash. 2001) (internal quotation marks and citation omitted).

APPENDIX

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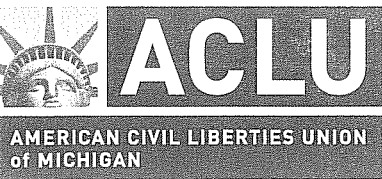
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EXHIBIT A



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December 4, 2014

Department of Licensing and Regulatory Affairs
Bureau of Health Care Services
Health Facilities Division
PO Box 30664
Lansing, MI 48909

Re: Ban on Tubal Sterilizations at Genesys Health System

To Whom It May Concern:

The American Civil Liberties Union of Michigan has received multiple complaints about a new policy at Genesys Health System (“Genesys”) in Grand Blanc that is severely compromising women’s health care. Genesys is a Catholic hospital that adheres to the Ethical and Religious Directives for Catholic Health Care Services (“Directives”) promulgated by the United States Conference of Catholic Bishops (“USCCB”). Following these Directives, Genesys recently declared that its physicians will be forbidden from performing tubal sterilizations beginning November 1, 2014. As a result, a patient who was nine months pregnant and, in accordance with the appropriate standard of care, had planned with her physician several months ago to obtain a tubal sterilization immediately following her Cesarean section, was informed twelve days before her scheduled delivery that she could not obtain a tubal sterilization at Genesys. Rather, she was told that she would be forced to obtain a tubal sterilization at a later time, in a different facility, and unnecessarily endure the uncertainty and peril of another surgery. Because this policy is contrary to the appropriate standard of care, as well as Michigan and federal regulations, and has needlessly exposed this patient and others to increased risk of harm, we urge you to require Genesys to stop further implementation of the tubal sterilization ban.

According to the American College of Obstetricians and Gynecologists, tubal sterilization is the most common form of permanent birth control in the world.¹ A pregnant woman who delivers her child through a C-section can undergo a tubal sterilization immediately afterward without receiving more anesthesia or having additional surgery. Obtaining a tubal sterilization at the time of delivery generally adds less than thirty minutes to the C-section procedure and is overwhelmingly a safe and effective form of contraception.

Since Genesys’ policy has taken effect, women who now deliver their children via C-section will no longer be able to avail themselves of this quick and safe procedure. Instead, women who desire tubal sterilization, and who have to undergo a C-section surgery at Genesys, will have to wait six weeks for their uterus to heal before undergoing another surgery at a different location that will require further healing time.

¹ See <http://www.acog.org/-/media/For-Patients/faq035.pdf?dmc=1&ts=20141030T1541281722>.

The only other alternative for these women is to attempt to convince Genesys' Vice President of Mission Integration, a non-medical administrator named Andrew Kruse, that their individual circumstance warrants an exception to this policy. However, the situation faced by one pregnant woman who contacted the ACLU of Michigan highlights the impracticability of this option. This woman, who for privacy concerns will be referred to as Mrs. B, was recently scheduled to have a C-section at Genesys in November, 2014, and had planned to have a tubal sterilization performed at that time. Only twelve days before her C-section, this woman was informed by her physician -- who has admitting privileges only at Genesys, and therefore could not deliver the baby at another hospital -- that she would be unable to have a tubal sterilization because of Genesys' new policy.

With her baby due in less than two weeks, Mrs. B should not have been forced to plead with Mr. Kruse about whether she could have this procedure simply because the hospital decided to make health care decisions based on religious directives rather than the appropriate standard of medical care. But before Mrs. B could even contact Mr. Kruse, her water broke and she delivered a week early. Because she did not have the requisite permission from Mr. Kruse, Mrs. B was unable to have the tubal sterilization despite the fact that her doctor was able and willing to perform the procedure.

Mrs. B has had the same OB/GYN for several years. Until the implementation of Genesys' policy, Mrs. B was unaware that the only hospital where her doctor had admitting privileges would require her to receive substandard medical care because of the hospital's adherence to religious directives. In the same vein, Mrs. B.'s physician, who has long held admitting privileges at Genesys, did not know that the hospital's religious beliefs could trump his medical obligation to provide quality patient care.

Frustrated over the inability to properly treat their patients, two Genesys physicians have informed the ACLU of Michigan that they will now counsel C-section patients desiring tubal sterilization to obtain a non-surgical form of sterilization called Essure² at their respective offices rather than risk the danger that will accompany a subsequent surgery. There is serious ongoing debate in the medical community about whether Essure sterilization is as effective as a traditional surgical tubal sterilization.³ However, even assuming Essure sterilization has the same effectiveness as the traditional procedure, patients who undergo C-sections must wait at least six weeks after that surgery to undergo Essure sterilization. In addition, the Essure protocol cautions that the sterilization process can take twelve weeks or longer to become effective. This 18-week process is in marked contrast to a post-Cesarean tubal sterilization which is effective

² The U.S. Food and Drug Administration describes the Essure sterilization process as "placing soft, flexible inserts into the fallopian tubes . . . Over a period of about three months, tissue forms around the inserts. The build-up of tissue creates a barrier that keeps sperm from reaching the eggs, thus preventing conception."
<http://www.fda.gov/medicaldevices/productsandmedicalprocedures/implantsandprosthetics/ucm371014.htm>

³ See, e.g.,
<http://www.contraceptionjournal.org/pb/assets/raw/Health%20Advance/journals/contra/CON-8309-FINAL.pdf>.

immediately. The risk of unintended pregnancy during this four-and-a-half month period not only significantly interferes with a woman's ability to control the size of their family, but in the case of women for whom pregnancy poses severe health risks, also unnecessarily subjects them to harm.⁴

Under Michigan law, patients are "entitled to receive adequate and appropriate care . . . unless medically contraindicated as documented in the medical record by the attending physician or a physician's assistant to whom the physician has delegated the performance of medical care services." M.C.L. § 333.20201(e). Additionally, as a hospital that receives Medicaid and Medicare funds, Genesys is required to comply with the Conditions of Participation for these programs which provides 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). In violation of these regulations, Genesys has taken away the ability of its patients to request and obtain tubal sterilization at the hospital, even when performance of the procedure elsewhere increases the risk of harm to the patient.

The decision to allow religious beliefs to supersede safe and appropriate patient care is not limited to Genesys. In 2010, Mercy Health Partners, a Catholic hospital in Muskegon, Michigan that also adheres to USCCB's Directives, failed to provide appropriate information and treatment to a woman named Tamesha Means who was miscarrying because the hospital considered such care to be an improper facilitation of abortion prohibited by its religious rules. As a result, Ms. Means was turned away from the hospital on three separate occasions and incurred unnecessary bleeding, fever, and infection. After being turned away from the hospital on her third visit, Ms. Means began to deliver in the waiting room as she prepared to leave the hospital. It was only at this point that Mercy Health Partners -- the sole hospital in the county -- began to provide the necessary assistance to Ms. Means. This tragic and wholly avoidable situation is currently the subject of a lawsuit brought by the ACLU of Michigan on Ms. Means's behalf.⁵

Similarly, in 2012, the Center for Medicare and Medicaid Services determined that St. John Hospital and Medical Center in Detroit had failed to comply with federal health care certification requirements after the hospital denied a woman treatment for her miscarriage. Although the woman came to the hospital with vaginal bleeding and was diagnosed with an "inevitable abortion," the hospital refused to follow standard medical procedure and complete the termination of the pregnancy because of its adherence to USCCB's Directives. As a result, the woman had to leave the hospital in the middle of her miscarriage, while bleeding heavily, to seek out another facility for treatment.

To ensure patient safety, hospitals that are open to the public and participate in government programs must be held to the same quality medical standards regardless of their religious affiliation. Genesys' ban on tubal sterilization is contrary to the standard of care and Michigan and federal regulations, and subjects women to unnecessary health and pregnancy risk, as well as increased cost. Your department must promptly investigate this matter and take the requisite

⁴ Obtaining Essure sterilization also requires women to schedule more visits with their physician and pay additional deductibles and other out-of-pocket costs.

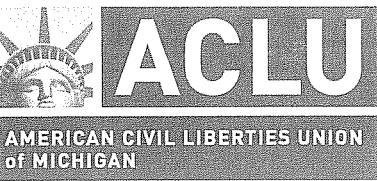
⁵ https://www.aclu.org/sites/default/files/assets/complaint_final_1.pdf

steps to ensure this policy does not further prevent doctors from providing appropriate care to their patients and does not further prevent C-section patients such as Mrs. B. from having their previously scheduled tubal sterilization procedure.

Sincerely,

Brooke A. Tucker, Staff Attorney
Michael J. Steinberg, Legal Director
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EXHIBIT B



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September 11, 2015

Andrew Kruse
 Vice President of Mission Integration
 Genesys Health System
 One Genesys Parkway
 Grand Blanc, MI 48439

Re: Medical Exception to Ban on Tubal Ligations for Brain Tumor Patient

Dear Mr. Kruse:

We are writing on behalf of Jessica Mann, a pregnant woman expected to deliver via Cesarean section (C-section) at your hospital, Genesys Regional Medical Center, on October 24, 2015. Ms. Mann has brain tumors that place her health at great risk during her current pregnancy and make a subsequent pregnancy potentially fatal. Due to these risks, Ms. Mann, after consulting with both her primary OB/GYN and a maternal fetal medicine specialist, decided to obtain a tubal ligation at the time of her C-section to prevent future pregnancy. Having a tubal ligation immediately after a C-section delivery is the safest time to undergo the procedure and is the standard of care for women who seek surgical sterilization.

However, Genesys recently informed Ms. Mann that she could not have a tubal ligation at Genesys and would instead have to either find a different hospital to deliver her baby and have a tubal ligation, or undergo the tubal ligation, a second surgery, at a later date. Genesys has refused to allow this routine medical procedure solely because of its adherence to the Ethical and Religious Directives for Catholic Health Care Services - - a set of health care policies promulgated by the U.S. Conference of Catholic Bishops that prohibit tubal ligations at Catholic hospitals in most situations.

In light of the hospital's duty to abide by medical standards of care in the treatment of its patients, rather than religious directives, and given the serious nature of Ms. Mann's condition, we urge you to immediately reconsider your denial and approve Ms. Mann's medical request to have the tubal ligation immediately following her C-section at your hospital. Not doing so will result in Ms. Mann facing unnecessary health risks and force us to take further action on her behalf.

Background

Jessica Mann is a 33-year-old woman with pilocytic astrocytoma brain tumors. Because of these tumors, Ms. Mann is unable to deliver naturally due to the risk of seizure while pushing during labor. These tumors also prevent Ms. Mann from receiving an epidural or spinal anesthetic during a C-section. Thus, when Ms. Mann delivers her child next month, she will have to

undergo full anesthesia that will render her unconscious. Because of the dangers involved in administering this type of anesthesia, and the risks that another pregnancy will pose to Ms. Mann's health, Ms. Mann's physicians strongly recommend that she not become pregnant again.

After Ms. Mann decided that a tubal ligation was the best course of action to protect her health, her OB/GYN, Dr. Bonita Wang, submitted a request on Ms. Mann's behalf in May 2015 to have the procedure at Genesys following her C-section.¹ Over three months later, in September 2015, Genesys informed Dr. Wang that the request was denied. In refusing the request, a hospital administrator recommended that Ms. Mann deliver her child at Genesys and have the tubal ligation at a later time in a different hospital. This option is highly disfavored by Ms. Mann's physicians because it would require Ms. Mann to undergo a second surgery under full anesthesia, which would pose risks to Ms. Mann's health, including the same risks that Ms. Mann would face if she were to become pregnant again.

Relevant Law

Failure to allow Ms. Mann to obtain a tubal ligation immediately following her C-section, when it is the safest for her to obtain the procedure, not only unnecessarily places Ms. Mann's life at risk, it also subjects the hospital to investigation and discipline by state licensing authorities.

Under M.C.L. § 333.20165:

[T]he department 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.

In construing a related provision, the Michigan Court of Appeals has explained that negligence is "conduct that falls below a standard of reasonable or due care" and "[a] failure to exercise due care contemplates an abdication of responsibilities or carelessness in executing one's duties." *Sillery v. Bd. of Medicine*, 145 Mich. App. 681, 686 (1985).

Additionally, a Michigan statute sets forth the rights to which hospital patients are entitled. Among the rights listed are:

- A patient is entitled to receive adequate and appropriate care . . . unless medically contraindicated as documented in the medical record by the attending physician . . .

¹ Although Ms. Mann's OB/GYN is willing and able to perform the tubal ligation, she has admitting privileges only at Genesys. As a result, she can neither deliver Ms. Mann's child nor perform the tubal ligation procedure at another hospital.

- A patient . . . is entitled to adequate and appropriate pain and symptom management as a basic and essential element of his or her medical treatment.

M.C.L. § 333.20201(e)(o).

Here, to prevent Ms. Mann's brain tumors from causing her harm, the standard of care dictates that Ms. Mann receive a tubal ligation following her C-section. Ms. Mann's own physicians have stated that a tubal ligation is essential to protect Ms. Mann's life. Prohibiting Ms. Mann from obtaining the procedure and forcing her to either risk becoming pregnant again, which will place her life at risk during the pregnancy and/or at the time of delivery, or have a subsequent procedure to obtain a tubal ligation, which will require another episode of full anesthesia, falls well below the standard of care.

Allowing a patient such as Ms. Mann to have a tubal ligation at Genesys is not unprecedented. Last year, Genesys granted a pregnant patient's request for a medical exception to the hospital's tubal ligation ban. This woman, who had to deliver via C-section for medical reasons, was informed by her doctor that she was at severe risk of uterine rupture if she became pregnant again. She therefore made the decision to have a tubal ligation at the time of her C-section to protect her health and life. Although Genesys initially prohibited her from having the procedure at the time of delivery, it subsequently reversed course and allowed her to have the tubal ligation.

Further, in January, 2015, you informed the Grand Blanc View newspaper that:

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.²

Your statement makes clear that Genesys allows tubal sterilizations to be performed in situations where there are grave health risks to the patient absent the procedure. This is precisely the situation here. Ms. Mann's maternal fetal medicine specialist explained in a letter to Genesys in support of Ms. Mann's request to have the tubal ligation at the time of delivery that:

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.

Recently, Mercy Medical Center in Redding, California, another Catholic hospital that adheres to the Ethical and Religious Directives for Catholic Health Care Services, granted a medical

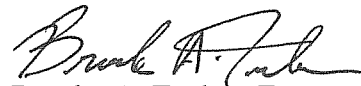
² See http://grandblancview.mihomepaper.com/news/2015-01-08/News/ACLU_urges_state_to_investigate_Genesys_ban_on_tub.html

exception to its tubal ligation ban for one of its pregnant patients after initially refusing. Mercy reversed its decision out of recognition of the risk to the patient's health if it did not provide the procedure, including because she would have to undergo further anesthesia in a second surgery.³

Request

In sum, there is simply no medical reason to prevent Ms. Mann from obtaining a tubal ligation at Genesys. To the contrary, there are multiple medical and legal reasons to allow the procedure. In fact, the only basis on which Ms. Mann is being denied appropriate care is the hospital's adherence to religious directives that forbid the necessary treatment. Religious beliefs should not impede Ms. Mann from obtaining safe medical care at your hospital. Moreover, at 33 weeks pregnant, Ms. Mann should not have to endure the stress of pleading with Genesys administrators to obtain a routine medical procedure that she needs to protect her life. We hope and expect that you will take a second look at the documents Ms. Mann and Dr. Wang submitted in support of obtaining an exemption from Genesys' tubal ligation ban, and decide to allow the procedure that is in the best interests of the patient and comports with the medical standard of care. Please do not hesitate to contact me if you have further questions. Because of the time-sensitive nature of this request, we ask that you issue a response to Ms. Mann's renewed request no later than September 18, 2015. I hope no further action is necessary to ensure Ms. Mann obtains the medical treatment that she needs.

Very truly yours,



Brooke A. Tucker, Esq.
Staff Attorney, ACLU of Michigan

³ See <http://www.sfgate.com/health/article/Catholic-hospital-backs-down-on-tubal-ligation-6463205.php>

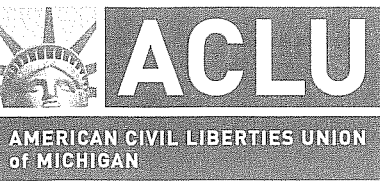
EXHIBIT C

Ms. Tucker;

Thank you for your inquiry regarding Jessica Mann. We appreciate your concern and the need to have a decision made regarding her care. Genesys Regional Medical Center has reviewed the information it has in its possession regarding her request for a tubal ligation at the time of C-Section. As you are aware, as a Catholic facility, Genesys follows the Ethical and Religious Directives for Catholic Health Care Facilities and based on the information we have received, Genesys will not be able to perform the procedure requested. It is our understanding, Ms. Mann has worked with her physician to continue her plan of care and procedures at another hospital in the community.

Thank you,
Andy Kruse

EXHIBIT D



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September 23, 2015

Andrew Kruse
Vice President of Mission Integration
Genesys Health System
One Genesys Parkway
Grand Blanc, MI 48439

Re: Refusal to Allow Medically Necessary Tubal Ligation for Brain Tumor Patient

Dear Mr. Kruse:

We are writing in response to your decision on September 21, 2015, to continue denying Jessica Mann with the physician-recommended medical care that she requires at your facility solely for religious reasons. Your decision did not explain why Mrs. Mann does not qualify for the medical exception to Genesys' tubal sterilization ban that has been granted to other patients. Accordingly, we request that you immediately provide detailed reasons about why Mrs. Mann's condition, wherein her brain tumor places her at high risk of death in the event of a subsequent pregnancy, is not sufficiently serious to warrant this exception. Mrs. Mann is expected to deliver in less than four weeks and it is important that she understand precisely why at this late stage of her pregnancy, your hospital is refusing to provide her with the treatment that she needs.

Until it implemented a policy banning tubal sterilizations on November 1, 2014, Genesys provided its pregnant patients with medically appropriate treatment. Within a time span of less than a year, Genesys has transformed from being a hospital that pregnant women could rely on to obtain safe treatment to one that intentionally places such women in harm's way. Mrs. Mann has been a patient of Genesys for several years and delivered two other children at that hospital. She did not suspect that with fewer than four weeks remaining on her pregnancy, and while she is suffering from a serious medical condition, that the hospital would deny her critical medical care. Nor did she suspect that one of the largest healthcare systems in the country, Ascension Health, would enshrine this denial in official hospital policy. This discrimination by your hospital is not only unlawful, it is intentional and callous. We seriously hope that you will reconsider your decision by this Friday, September 25, 2015. Failure to do so will result in Mrs. Mann and the ACLU of Michigan seeking full investigation of your acts of medical negligence and discrimination with the Michigan Department of Licensing and Regulatory Affairs and the Michigan Department of Civil Rights, and, possibly, court intervention.

Very truly yours,

Brooke A. Tucker, Esq.
Staff Attorney, ACLU of Michigan



EXHIBIT E

From: "Kruse, Andy" <Andy.Kruse@ascensionhealth.org>
Date: September 25, 2015 at 5:00:31 PM EDT
To: Brooke Tucker <btucker@aclumich.org>
Cc: "Gaughan, Mary (**External**)" <MGaughan@hallrender.com>
Subject: Genesys Regional Medical Center

Ms. Tucker

This letter serves as our response to your correspondence earlier this week and to advise you that Genesys stands by its decision regarding Mrs. Mann. As demonstrated by years of service to the local communities, Genesys takes its responsibility for all of our patients seriously. What is most important is for Mrs. Mann and her baby to have a safe delivery, and as you are aware, Mrs. Mann is continuing her plan of care and desired procedures at another hospital in our community.

Thank you,
Andy Kruse

Andrew D. Kruse | Regional Vice President, Mission Integration | Ascension Health Mid-Michigan
Tae Blair | Executive Assistant | Phone: 810 606-6181 | Email: tblair@genesys.org

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