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July 26, 2021

Christine Kocot McCoy
Executive Vice President and General Counsel

Timothy Glover
Executive Vice President and Chief Mission Integration Officer

Ascension Health
4600 Edmundson Rd
St. Louis, MO 63134

Via e-mail: Christine.McCoy@ascensionhealth.org

Re: Medical Exception to Ban on Tubal Ligation Procedure for Patient

Dear Ms. McCoy and Mr. Glover;

We write to you on behalf of Ms. M, a pregnant woman expected to deliver via cesarian section (C-section) at Ascension Providence Hospital in Southfield, Michigan in late October, 2021, asking for an exception to Ascension Providence's ban on a tubal ligation procedure for Ms. M. During Ms. M's last delivery, her OB/GYN discovered that scarring from a prior C-section had caused her bladder to fuse to her uterus. As she was recovering, Ms. M's OB/GYN advised her of these conditions and told her that having more than one additional child may put her health at risk. Under current medical standards of care for women seeking surgical sterilization, having a tubal ligation immediately after a C-section delivery is the safest time to undergo the procedure, as the patient is already open and under anesthesia. Because the tubal ligation procedure would cure or alleviate a known pathology and there is no simpler treatment available, Ms. M requests an exception under the Ethical and Religious Directives for Catholic Services to have a tubal ligation during her C-section at the time of her delivery in October 2021.

Ms. M's OB/GYN recently informed her that she cannot have a tubal ligation while delivering at Ascension Providence. In order to undergo this procedure at the same time as her C-section – the safest time to do so – Ms. M would have to find a different doctor to perform the two procedures at a different hospital, undergo the tubal ligation as a second surgery at a later date, or forego the procedure altogether. Ms. M's doctors have informed her that Ascension Providence has refused to allow this routine and safe medical procedure solely because of its adherence to the Ethical

Religious Directives for Catholic Health Care Services – a set of health care policies promulgated by the U.S. Conference of Catholic Bishops that prohibits all forms of contraception, temporary or permanent, including tubal ligations at Catholic hospitals.

Ms. M was advised by her physician that doctors with admitting privileges at Ascension Providence were permitted to perform tubal ligations on women seeking surgical sterilizations until late 2020, when Ascension Providence leadership prohibited these procedures. We are unaware of any medical reason for such a policy. In light of Ascension Providence’s duty to abide by medical standards of care in the treatment of its patients, and given the serious nature of Ms. M’s condition, we urge you to immediately consider an exemption from your policy, giving Ms. M the ability to undergo a tubal ligation during the time when it is safest for her to do so. Refusing to consider an exemption will result in unnecessary health risks for Ms. M.

Background

Ms. M is a 38-year-old woman who has been under the care of the same OB/GYN practice since approximately 2013. The practice safely delivered her two prior children via C-section. Ms. M’s most recent C-section was in May of 2017. That is when her OB/GYN discovered that she had a significant amount of scarring from her prior C-section, which had caused her bladder to fuse to her uterus. Her OB/GYN advised Ms. M that, due to these conditions, it was not safe for Ms. M to become pregnant in the following year, and only once more following that year.

When Ms. M learned that she was pregnant earlier this year, she knew that this would have to be her last pregnancy because of her physician’s advice in 2017. As such, she inquired with her OB/GYN about having a tubal ligation following the C-section she is anticipating having in October of this year. She was shocked and dismayed when her doctor informed her that this option is not available to her if she delivers at Ascension Providence, which will revoke the admitting privileges of physicians who perform tubal ligations.¹ Ms. M’s OB/GYN advised her that Ascension Providence had banned tubal sterilizations beginning January 1, 2021, and that prior to that, tubal ligations would have been the recommended procedure for someone with Ms. M’s conditions. If Ms. M wants to remain under the care of the same physicians, she would have to deliver at Ascension Providence via C-section, wait to heal from that surgery, and then schedule a *second* surgery with different physicians at a different hospital. A second surgery (and ensuing recovery time) will cause unnecessary disruption to her life and needlessly put her health at risk.

¹ Although we understand that Ascension Providence cites the Ethical and Religious Directives for Catholic Health Care Services as its rationale for disallowing tubal sterilizations, we believe that it still permits its physicians to perform vasectomies. If this is true, banning tubal sterilizations is an arbitrary, discriminatory policy.

Relevant Law

Failure to allow Ms. M to obtain a tubal ligation immediately after her C-section not only unnecessarily places Ms. M's health at risk, it also subjects the hospital to investigation and discipline by state licensing authorities. Ms. M is also entitled to an exception to Ascension Providence's ban on tubal ligations pursuant to the Ethical and Religious Directives for Catholic Services.

Under Michigan law, the department of licensing may revoke the license of a medical doctor if they fail to exercise due care, are negligent, or if evidence of abuse regarding their health exists. 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, all Michigan patients, regardless of where they are being treated, are entitled "to receive adequate and appropriate care...unless medically contraindicated as documented in the medical record by the attending physician." M.C.L. § 333.20201(2)(e). Further, "[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(2)(o). Finally, "[a] patient...shall not be denied appropriate care on the basis of...sex." M.C.L. § 333.20201(2)(a).

If a patient has a serious medical condition that would increase the risk of carrying a future pregnancy, it is an accepted medical practice for her doctor to explain this risk to her. The doctor may also recommend that the patient avoid future pregnancy. It is then accepted medical practice for the doctor to describe various methods of contraception, including tubal ligation. While that is the case here, if a patient seeks a tubal ligation for *any* reason, and there is no medical reason that a tubal ligation cannot be performed, then it is an accepted medical practice for the doctor to deem the tubal ligation medically indicated.

Even the Ethical and Religious Directives for Catholic Services themselves provide an exception to the ban on sterilization methods. They provide that "[p]rocedures 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.”² Providing exceptions to the sterilization ban is not unprecedented. In 2015, a hospital in San Francisco that also adheres to the Ethical and Religious Directives granted a medical exception to one of its pregnant patients after initially refusing. It did so out of recognition of the risk to the patient’s health, including the risk of a second surgery.³

Here, to prevent future pregnancies that could put her life at risk, the Michigan standards of medical care dictate that Ms. M receive a tubal ligation following her C-section. Her physicians have stated that it is unsafe for her to become pregnant after delivering her child in October of 2021, and the Ethical and Religious Directives recognize that this creates an exception to the general ban on tubal ligations. Prohibiting Ms. M from obtaining the procedure and forcing her to either risk becoming pregnant again, which will place her life at risk, or have a subsequent procedure to obtain a tubal ligation, falls well below the standard of care. Finally, if it is true that Ascension Providence allows physicians to perform vasectomies, then Ms. M is only being denied appropriate care because she is a woman.

Request

We are aware of no medical reason to prevent Ms. M from obtaining a tubal ligation at Ascension Providence. Medical standards of care indicate that a tubal ligation procedure should be allowed for Ms. M. The only basis on which Ms. M is being denied appropriate care is Ascension Providence’s adherence to religious directives, but even those directives create an exception in cases like Ms. M’s. Further, at this stage in Ms. M’s pregnancy, she should not have to endure the stress of pleading with Ascension Providence administrators to obtain a routine medical procedure that she needs to protect her life. We hope that you will review Ascension Providence’s policy and allow Ms. M’s physicians to perform this procedure, which is in the best interests of the patient and comports with the medical standard of care.

Finally, due to the time-sensitive nature of the request, we are filing a complaint with the Bureau of Community and Health Systems for the Michigan Department of Licensing and Regulatory Affairs (LARA) simultaneously with this letter. Should you reconsider the decision regarding Ms. M’s procedure and grant her an exception, we will withdraw the complaint. To that end, we hope that you issue a response to Ms. M’s request no later than August 6, 2021. Please do not hesitate to contact us if you should have any questions.

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

³ Bob Egelko, Catholic Hospital Backs Down on Tubal Ligation Refusal, SFGATE (Aug. 24, 2015), <https://www.sfgate.com/health/article/Catholic-hospital-backs-down-on-tubal-ligation-6463205.php>.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Bonsitu Kitaba', with a long horizontal flourish extending to the right.A handwritten signature in blue ink, appearing to be 'Syeda F. Davidson', with a large, circular flourish above the name.

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