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November 13, 2013

SENT VIA ELECTRONIC MAIL

D. Randy Kuykendall, Interim Division Director
Colorado Department of Public Health and Environment
Health Facilities and Emergency Medical Services Division
4300 Cherry Creek Drive South
Denver CO 80246-1530
hfdintake@cdphe.state.co.us

Re: Complaint against Mercy Regional Medical Center

Dear Dr. Kuykendall:

I am writing to request that you intervene to stop Mercy Regional Medical Center (“Mercy Regional”) in Durango, Colorado – a Catholic facility and the sole community hospital in the area – from enforcing a policy that prevents physicians from fulfilling their ethical obligations to provide standard medical care and interferes with patients’ rights to make informed decisions regarding their medical care. Dr. Michael A. Demos, a physician employed by Mercy Regional, was instructed by the Chief Medical Officer that, pursuant to the Ethical and Religious Directives (“ERDs”) for Catholic Health Care Services, Dr. Demos is prohibited from discussing with patients the option of pregnancy termination, even when the patient has a serious illness which could lead to her death if the pregnancy were continued to term.

Mercy Regional’s directive violates both state and federal law and raises serious concerns about the health care provided at the hospital. Not only does the directive violate the Colorado statute that specifically prohibits hospitals from exercising control over a doctor’s professional judgment, C.R.S. 25-3-103.7 (3), it also interferes with physicians’ ethical and moral responsibility to their patients. Moreover, the directive undermines the rights of patients in Durango to be fully informed about their medical care, as required by a federal regulation, the Conditions of Participation of Medicare and Medicaid (“COP”), 42 C.F.R. § 482.13. The ACLU of Colorado asks that the Colorado Department of Public Health and Environment (“CDPHE”) investigate Mercy Regional’s policy and take necessary and appropriate measures: 1) to ensure that Mercy Regional medical providers are not forced to choose between employer directives and their own professional, ethical and moral obligations, and 2) to ensure that patients in Durango are not denied full and complete access to medical information because of the religious-based dictates of the hospital.

Dr. Demos has practiced cardiology for 36 years and has been working as a staff cardiologist at Mercy Regional since 2005. In early 2012, an eight week pregnant patient was referred by her OB/GYN to Dr. Demos for a cardiac evaluation because of a family history of presumed Marfan syndrome. Marfan syndrome is a genetic disorder of the connective tissue that has been called “the most feared cardiovascular complications associated with pregnancy” because it “can cause spontaneous aortic dissection or rupture,” leading to death.¹ Because of the extremely high mortality rate for pregnant women with Marfan syndrome – upwards of 90% if the aorta is dilated – the Guidelines of the American College of Cardiology/American Heart Association recommend pregnancy termination if a woman’s aortic root enlargement is greater than 4.0 cm.²

According to Dr. Demos’s initial assessment of the patient, suggestive criteria of Marfan syndrome were present and, therefore, further evaluation was indicated. Dr. Demos recommended that the patient return for an echocardiogram in order to determine the size of the aorta. Dr. Demos informed the patient that if a diagnosis of Marfan syndrome were substantiated, and if the aorta was greater than 4.0 cm, according to the standard of care, pregnancy termination would be recommended. As it turned out, the echocardiogram did not suggest the presence of Marfan syndrome and the aorta was of normal size. The patient continued the pregnancy successfully to term.

In the spring of 2013, John Boyd, MD, Mercy Regional’s Chief Medical Officer, contacted Dr. Demos about his earlier consultation with the pregnant patient. The patient had complained that medical staff at Mercy Regional, including Dr. Demos, had recommended that she terminate her pregnancy based upon a presumptive diagnosis of Marfan syndrome. Dr. Demos immediately met with Dr. Boyd and provided him with the written consultation outlining Dr. Demos’s treatment and recommendations to the patient. During that meeting, Dr. Boyd issued a verbal admonishment to Dr. Demos, instructing Dr. Demos that he is not permitted to recommend an abortion, nor is he permitted to even discuss the possibility of terminating a pregnancy with a Mercy Regional patient, regardless of the circumstances.

Dr. Boyd later responded to the patient’s complaints in two letters, one dated April 23, 2013, and another on June 17, 2013. In the first letter, Dr. Boyd reassured the patient that the hospital would “provide education to all our employed providers, reminding them that they should not recommend abortion – even to patients who may have serious illnesses.” In the second letter, Dr. Boyd reaffirmed to the patient that pursuant to hospital policy and the Catholic Ethical and Religious Directives, Mercy Regional medical staff are “precluded . . . from providing or recommending abortion”

¹ Bonow RO, Carabello BA, Chatterjee K, et al., 2008 Focused update incorporated into the ACC/AHA 2006 guidelines for the management of patients with valvular heart disease: a report of the American College of Cardiology/American Heart Association Task Force on Practice Guidelines, Journal American College of Cardiology, 2008 Sept. 23; 52:13; e1–142, at e81. Available for download here: <http://content.onlinejacc.org/>.

² Warnes CA, Williams RG, Bashore TM, *et al.*, ACC/AHA 2008 Guidelines for management of adults with congenital heart disease: a report of the American College of Cardiology/American Heart Association Task Force on Practice Guidelines, Journal American College of Cardiology, 2008 Dec 2; 52:23; e143–263, at e214. Available for download here: <http://content.onlinejacc.org/>.

The hospital's stated policy – that Mercy Regional physicians are not to provide patients with any information about abortion under any circumstances – violates Colorado law as well as the COP. Colorado law explicitly prohibits hospitals that employ physicians from “limit[ing] or otherwise exercis[ing] control over the physician’s independent professional judgment concerning the practice of medicine or diagnosis or treatment . . .” C.R.S. 25-3-103.7 (3); *see also Estate of Harper v. Denver Health & Hosp. Auth.*, 140 P.3d 273, 277 (Colo. App. 2006) (noting the Colorado legislature’s clear intent to “preclude hospitals from interfering with the independent professional judgment of their employees”). There can be no question that adequate medical treatment requires that the patient receive sufficient medical information in order to be able to make informed decisions, and any attempt to limit the information provided to patients will result in patients losing control of their health-care decisions. In this case, Dr. Demos was required, pursuant to his ethical obligations and the doctrine of informed consent, to provide the patient with medical advice based on the well-defined standard of care, particularly given the high risk of mortality associated with a diagnosis of Marfan syndrome in pregnant women. Mercy Regional’s policy, which purports to prohibit Dr. Demos from discussing the possibility of a life-saving procedure with such an affected patient, violates the law by imposing the institution’s religious beliefs in place of the physician’s independent professional judgment and medically-accepted standards of care.

Moreover, under the hospital’s current policy, future patients with a similar diagnosis are in danger of not receiving full and adequate information about their medical care and treatment. Thus, the policy likewise violates the COP regulations, which apply to hospitals that participate in Medicare and Medicaid. The COP mandates that patients have the right to participate in the development of their plan of care; they have the right to make informed decisions regarding their care; and they have the right to request or refuse treatment. 42 C.F.R. § 482.13 (b)(1) & (2). Thus, physicians must clearly communicate all pregnancy management options to women and their families, and women must have the ability to choose a certain course of treatment.

Using the facts presented above as an example, it is clear that, had the echocardiogram indicated an enlarged aorta and Marfan syndrome, one reasonable, and even recommended, treatment plan would have been to terminate the pregnancy. Under that circumstance, providing information about abortion to the patient would be necessary for the patient to be able to make a fully informed decision about her plan of care, and would allow her the opportunity to request or refuse treatment. Certainly, the hospital would not have been obligated to provide the patient with abortion services under that circumstance, but the COP requires that the physician provide the patient with the essential information and, if necessary, refer the patient to another non-objecting institution for appropriate treatment. Accordingly, Mercy Regional’s policy violates the state statute and the COP by prohibiting physicians from providing all alternative treatment options to patients, and has the potential to cause harm and negatively affect the life, health and safety of Mercy Regional patients.

Mercy Regional’s moral objection to abortion does not exempt the hospital from complying with the laws described above, and the hospital cannot invoke its religious status to jeopardize the health and lives of pregnant women seeking medical care. Pursuant to its statutory authority, the CDPHE has the power and obligation to establish and enforce standards for the operation of hospitals such as Mercy Regional. Indeed, if the CDPHE finds that Mercy

Regional attempted to limit or control Dr. Demos's independent professional judgment concerning the practice of medicine or diagnosis or treatment, the hospital "shall be deemed to have violated standards of operation" for the hospital. C.R.S. 25-3-103.7(3). Therefore, we ask that CDPHE open an investigation into the policy at Mercy Regional and implement all appropriate enforcement activities allowable under Colorado law and the COP, including issuing a directive that the failure to meet the standard of care and the prohibition on providing full and complete medical information about pregnancy termination violates both state and federal law. We look forward to a prompt response to our request, and we request that the CDPHE confirm receipt of this complaint by November 27, 2013 and provide notification of the steps CDPHE intends to take to investigate this issue.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sara J. Rich".

Sara J. Rich
Staff Attorney, ACLU of Colorado

Cc: Centers for Medicare & Medicaid Services