No. S142892

IN THE
SUPREME COURT OF CALIFORNIA

NORTH COAST WOMEN'S CARE MEDICAL GROUP, INC., DR. CHRISTINE Z. BRODY and DR. DOUGLAS K. FENTON, Petitioners	)	Court of Appeal No. DO 45438 Hon. Terry B O'Rourke, (Hon. Richard D Huffman, Hon. Gilbert Nares, Judges Presiding)
v.	)	
SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent	)	Superior Court No. GIC 770165 (Hon. Ronald S. Prager, Judge Presiding)
BENITEZ, GUADALUPE T. Real Party in Interest	)	

BRIEF OF *AMICI CURIAE* KAISER FOUNDATION HEALTH PLAN, INC., THE PERMANENTE MEDICAL GROUP, INC., AND THE SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP SUPPORTING REAL PARTY IN INTEREST

Steven R. Zatkin (SBN 63288)
Stanley B. Watson (SBN 56207)
Mark S. Zemelman (SBN 111029)
Kaiser Foundation Health Plan, Inc.,
The Permanente Medical Group, Inc.,
The Southern California Permanente Medical Group
One Kaiser Plaza, Oakland, CA 94612
Telephone: 510-271-5910

ATTORNEYS FOR *AMICI CURIAE*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

COURT RULES

STATUTES

OTHER AUTHORITIES

APPLICATION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

Kaiser Foundation Health Plan, Inc., The Permanente Medical Group, Inc., and the Southern California Permanente Medical Group (collectively, "Kaiser Permanente") hereby apply for leave to file the accompanying brief as *amici curiae* pursuant to Rule 8.200(c), Cal. R. Ct. [formerly 13(c), Cal. R. Ct.].

A. The Interest of *Amici Curiae*

Kaiser Foundation Health Plan, Inc. is a not-for-profit, public benefit corporation which operates as a health plan in the states of California and Hawaii. The Permanente Medical Group, Inc. and the Southern California Permanente Medical Groups are the two largest medical groups in the nation, each consisting of more than 4,500 physicians. Each is a multi-specialty, prepaid group practice primarily serving the members of Kaiser Foundation Health Plan, Inc. These entities are part of the Kaiser Permanente Medical Care Program ("Kaiser Permanente"), which provides health care to over 6 million Californians.

B. The Assistance Afforded by the Proposed Amicus Brief

The *amici* submit this brief in light of the attention this case has drawn, both among health care professionals and the public at large. The case has been characterized as involving a conflict between the

right of patients to receive medical services free from invidious discrimination, and the right of health care professionals to provide (or not to provide) such services to some, but not all, individuals in a manner consistent with their own religious and ethical values. The *amici curiae* seek the approval of this Court to submit the enclosed amicus brief in order to provide the Court with a framework by which to address such situations.

In granting the petition in this matter, the Court has posed the following question:

> Does a physician have a constitutional right to refuse on religious grounds to perform a medical procedure for a patient because of the patient's sexual orientation, or do the provisions of the Unruh Act (Cal. Civ. Code Sections 51 through 51.3) preclude such discrimination in the provision of services notwithstanding the physician's religious beliefs?

With respect to this question, *amici* have special experience, expertise and a unique point of view. As health plan and physician organizations that operate cooperatively in the arrangement and provision of health care services to millions of Californians, *amici* necessarily address situations involving reconciliation of physicians' ethical concerns and the rights of patients. Based on this experience, *amici* offer a framework that both respects the right of patients to be free

from invidious discrimination and the legitimate ethical and moral concerns of medical professionals. This framework has not been fully elaborated to this Court, and we believe the Court will find it useful.

Respectfully submitted,

Steven R. Zatkin (SBN 63288)
Stanley B. Watson (SBN 56207)
Mark S. Zemelman (SBN 111029)

By: _____
Steven R. Zatkin
Attorneys for *Amici Curiae*
KAISER FOUNDATION HEALTH PLAN, INC.,
THE PERMANENTE MEDICAL GROUP, INC.,
SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP

Dated: March 16, 2007

INTRODUCTION

This Brief is submitted by Kaiser Foundation Health Plan, Inc., The Permanente Medical Group, Inc., and the Southern California Permanente Medical Group (collectively, "Kaiser Permanente"). These entities are described below.

The *amici* submit this brief in light of the attention this case has drawn, both among health care professionals and the public at large. The case has been characterized as involving a conflict between the right of patients to receive medical services free from invidious discrimination, and the right of health care professionals to provide (or not to provide) such services to some, but not all, individuals in a manner consistent with their own religious and ethical values.

The *amici* believe in the ethical imperative to provide quality care in a manner which understands and values cultural diversity, and they are committed to the legal obligation to refrain from discrimination based upon personal characteristics, such as race, religion, ethnic origin, and sexual orientation. They further believe that when patients experience this type of discrimination in health care, there is material damage to both the patient and to society.

The Court has posed the following question in this proceeding:

> Does a physician have a constitutional right to refuse on religious grounds to perform a medical procedure for a patient

because of the patient's sexual orientation, or do the provisions of the Unruh Act (Cal. Civ. Code Sections 51 through 51.3) preclude such discrimination in the provision of services notwithstanding the physician's religious beliefs?

The *amici's* position with regard to the answer to this question rests, as a threshold matter, on whether the basis for the refusal is a medically relevant personal characteristic of the patient. Determining that threshold issue depends upon the context of each situation.

The *amici* submit this brief in the hope that this Court will find the framework proposed helpful in resolving the case[1]. Medical care is an immensely complex and rapidly evolving area, especially in the area of fertility services. While health professional services have been legally recognized as public accommodations, it also should be recognized that the provision of such services is often a very personal act on the part of a medical practitioner. In view of the importance of context and the fact that the rapidly evolving nature of the field makes it impossible to predict the various scenarios that practitioners and courts may face, the *amici* urge the court to limit its decision to the context presented by the instant case.

[1] The *amici* have no personal knowledge of the facts of the instant case.

THE *AMICI*

Kaiser Foundation Health Plan, Inc. is a not-for-profit, public benefit corporation which operates as a health plan in the states of California and Hawaii. The Permanente Medical Group, Inc. and the Southern California Permanente Medical Group are the two largest medical groups in the nation, each consisting of more than 4,500 physicians. Each is a multi-specialty, prepaid group practice primarily serving the members of Kaiser Foundation Health Plan, Inc. These entities are part of the Kaiser Permanente Medical Care Program ("Kaiser Permanente"), which provides health care to over six million Californians.

LEGAL ANALYSIS

I. Discrimination Results In Material Harm Both To Patients and Society.

Kaiser Permanente does not condone invidious discrimination by physicians, including discrimination of patients based upon sexual orientation; and Kaiser Permanente does not support a religious exemption to statutes prohibiting invidious discrimination. In recognition of the growing diversity of its membership and the U.S. population in general, Kaiser Permanente has developed programs and a series of handbooks for the use by its health care professionals in becoming more sensitive and knowledgeable about characteristics of communities of which members are a part. One of these handbooks is entitled, *A Provider's Handbook on Culturally Competent Care for the Lesbian, Gay, Bisexual and Transgender Population*. The handbook includes a discussion of the effects of homophobia and heterosexism on health care. Annotated by an extensive bibliography, the handbook notes "a lack of understanding and sensitivity by health care providers toward lesbians and gay men that often results in the delivery of substandard care. When faced with an uncomfortable interaction with a provider, an LGBT [Lesbian, Gay, Bisexual or Transgender] patient may feel powerless to change the health care provider's conduct, to resolve an uncomfortable situation, or to speak

to the provider about their discomfort." *Handbook*, page 13. Difficulties with health care professionals who permit their own value judgments about personal characteristics such as sexual orientation to intrude into the patient-physician relationship are associated with lesbian, gay, bisexual, or transgender patients feeling unable to discuss health care issues within the context of their full life experience and with delays in seeking health care and denial of needed care. The same could be said for those who experience discrimination based upon marital status.

Discrimination also harms society in general. *See Regents of University of California v. Bakke* (1978) 438 U.S. 265, 295n.35, 307 ("The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society." (Internal quotations omitted.) "The State certainly has a legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of identified discrimination. The line of school desegregation cases, commencing with *Brown* [*Brown v. Board of Education* (1954) 347 U.S. 483], attests to the importance of this state goal and the commitment of the judiciary to affirm all lawful means to its attainment.")

II. Both Ethical and Legal Standards Prohibit Physicians from Engaging in Invidious Discrimination

It is well accepted in professional standards that physicians have a duty to perform their professional services in a non-discriminatory manner. This means that physicians who offer a given service to the public may not decline patients because of race, color, religion, national origin, sexual orientation, or other bases which constitute invidious discrimination. Further, physicians must provide care for individuals with whom they have a physician-patient relationship in a manner that does not discriminate on the basis of such personal characteristics.[2] These standards are applicable regardless of the religious or ethical beliefs of the physician. American Medical Association's Code of Medical Ethics, Opinions E-9.12 and E-9.123.

These professional standards are consistent with Federal and California law, which hold that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability ...." *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1161 (internal quotes omitted). *See also*

[2] Inappropriate patient behavior (e.g., abusive behavior toward health care professionals, refusal to arrange for the payment of services) may be a legitimate reason for a physician to terminate the relationship.

Washington v. Blampin (1964) 226 Cal. App.2d 604 (denial of medical services based upon race is a violation of the Unruh Act).[3]

III. Distinguishing between Patients Based on Medically Relevant Personal Characteristics Is Not Improper.

Treating individuals differently based upon medically relevant personal characteristics does not constitute prohibited or invidious discrimination. Although the Unruh Act prohibits discrimination by business establishments based upon "medical condition", this language does not mean that physicians are not permitted under the Act to consider medically relevant conditions in determining the treatment options appropriate to a given patient. California law recognizes this logically intuitive conclusion in the context of emergency medical services:

> In no event shall the provision of emergency services and care be based upon, or affected by, the person's race, ethnicity, religion, national origin, citizenship, age, sex, preexisting medical condition, physical or mental handicap, insurance status, economic status, or ability to pay for medical services, except to the extent that a circumstance such as age, sex, preexisting medical condition, or *physical or mental handicap is medically significant to the provision of appropriate medical*

[3] In *Koebke v. Bernardo Heights Country Club* (2005) 36 Cal. 4th 824, the California Supreme Court expressly declined to address the question of whether state policy favoring marriage precluded recognition of marital status as a protected category under the Unruh Act outside of the context of the Domestic Partner Act. *Amici* do not address this question. Additionally, this brief does not address the question of whether, if marital status outside of the Domestic Partner Act is protected under the Unruh Act, due process principles preclude liability in this case because of the uncertain state of the law at the time of the alleged violation.

care to the patient. Section 1317(b), Cal. Health & Safety Code (emphasis added).

For example, medically relevant criteria are routinely used in evaluating whether an individual is an appropriate candidate for an organ transplant. Such criteria may include the presence of active infections or malignancies, laboratory values, and active psychological or psychiatric conditions which would interfere with the patient's ability to comply with a complicated medical regimen. Determining the appropriateness of medical interventions based upon such medically relevant personal characteristics does not stigmatize the patient on the basis of protected personal characteristics, but rather is part of good medical practice.[4]

This distinction between actions taken on the basis of medically relevant characteristics from invidious discrimination on the basis of medically irrelevant characteristics is akin to the second prong of the test for whether a classification is protected under the Unruh Act articulated in *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142 and reaffirmed in *Koebke v. Bernardo Heights Country Club* (2005) 36 Cal. 4th 824. In the *Harris* test, the second prong of the analysis is whether a legitimate business interest justifies the distinction between individuals

[4] "Medically relevant characteristic" is a term that should be construed broadly. Given the evolving complexity of medical science, the precise parameters of what characteristics or behavior could be medically relevant depend upon the context of each case.

based upon a personal characteristic.[5] In the context of a physician practice and medical treatment, this prong might be characterized as whether there is a legitimate medical reason for distinguishing between individuals based upon a personal characteristic.

IV. The Law Recognizes the Right of a Physician To Decline To Perform a Certain Medical Procedure Based Upon the Physician's Ethical or Religious Values, Provided that the Physician Does Not Perform the Procedure for Any Patient.

The area of abortion perhaps offers the clearest example of the legal recognition that a physician is legally permitted to refrain from offering a procedure based upon the physician's religious or ethical beliefs, provided that the physician does not offer the procedure to anyone. Section 123420(a), California Health and Safety Code, provides:

> No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if the employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion.

---

[5] The first prong of the *Harris* inquiry is whether a claim of discrimination under the Act is based upon a classification that involves personal characteristics. The third prong is the potential consequence of allowing a claim of discrimination to proceed under the Unruh Act. *Harris*, at pp. 1160, 1165.

V. The Law Recognizes the Right of a Physician to Decline to Perform Certain Medical Procedures Based Upon the Physician's Ethical or Religious Values, Even When the Physician Performs Such Procedures on Other Patients, Where the Distinction Does Not Involve Invidious Discrimination.

In some situations, physicians have the legal right to refuse to perform a particular procedure or intervention for certain persons, even where the physician generally provides such services.

End of life decisions are an area in which such protection is granted. In *Conservatorship of Morrison* (1988) 206 Cal. App. 3d 304, the conservator of a person in a persistent vegetative state sought to require that the hospital where the person was located, the hospital's medical director, and the attending physician remove a life-sustaining nasogastric tube from the patient. The medical director and the attending physician had personal moral objections to removing the patient's nasogastric tube. As a result, the hospital offered to transfer the patient to a facility that would follow the conservator's instruction. The hospital expressed the belief that such a facility could be located within two weeks. In response, the conservator filed a petition requesting an injunction to require the removal of the tube by the defendants.

On the conservator's appeal from a lower court's order denying the injunction, the Court of Appeals reaffirmed the prevailing law in California that a conservator can authorize the removal of a nasogastric tube in a persistent vegetative state, citing *Conservatorship of Drabick* (1988) 200

Cal App. 3d 185. As the *Morrison* court noted, the two cases differed in that the physicians in *Drabick* were willing to remove or direct the removal of the tube, whereas in *Morrison* the physicians had personal objections. The court determined that one way to accommodate both the patient's right (through her conservator) to refuse medical interventions, and the personal values of the physicians with respect to the patient's wishes, is to transfer the patient.

Citing legal authority from other states and the Committee on Biomedical Ethics of the L.A. County Medical Association & L.A. County Bar Association, the court noted, "The prevailing viewpoint among medical ethicists appears to be that a physician has the right to refuse on personal moral grounds to follow a conservator's direction to withhold life-sustaining treatment, but must be willing to transfer the patient to another physician who will follow the conservator's direction." *Morrison, supra* at p. 310. The court found that this approach was reasonable in cases of dispute over values, so long as the availability of a transfer exists. "In such cases as this no physician should be forced to act against his or her personal moral beliefs if the patient can be transferred to the care of another physician who will follow the conservator's direction." *Morrison, supra* at p. 311.[6]

---

[6] See also *Brophy v. New England Sinai Hospital, Inc.* (1986) 497 N.E. 2d 626, 639-640 where the Supreme Judicial Court of Massachusetts, while

Similarly, Section 4736 of the California Probate Code describes the duty of a health care provider who declines to comply with a health care instruction by or on behalf of the patient. The provider is to (a) promptly notify the patient or surrogate, (b) make reasonable efforts to transfer the patient to another health care provider who is willing to comply with the instruction or decision, and (c) provide continuing care until the transfer is accomplished or until it appears that no transfer is possible. Although disputes over the withholding or withdrawal of life-sustaining medical interventions appear to be the context which was foremost in the drafters' minds, the section's applicability is not limited by its terms to end of life decisions.

The precise nature of the physician's objections in *Morrison* is not clear. Perhaps the physician generally objected to withdrawing life-sustaining support under any circumstances. Perhaps the physician's ethical or religious values distinguished between patients with terminal illness and close to the end of the dying process, and patients who were not terminally ill, as was the situation with the *Morrison* patient[7]. In the latter case, while the patient is clearly entitled to have his or her wishes carried

---

upholding the right of a patient to forego life sustaining nutrition and hydration, held that the hospital where the patient was located could discharge its duty by transferring the patient to a suitable facility or to the patient's home, where the patient's wishes could be accommodated.

out (i.e., refusal of life-sustaining support), whether or not the patient is terminal is a medically relevant fact.

A similar situation arises where a patient facing an elective procedure involving the possible need for blood transfusion insists upon the procedure being performed without resort to blood transfusion, even if the lack of such infusions if needed would result in death. (In these cases, the patient usually is motivated by a religious belief or by a fear of blood borne infection.) If a surgeon felt that his or her religious or ethical values in sustaining life would be incompatible with honoring *any* patient's request for bloodless surgery, under circumstances where an absence of transfusions might jeopardize the patient's survival, the surgeon has an ethical and legal right to refuse. In such a case, transfer of the patient to another qualified surgeon is a method for accommodating the patient's right to refuse an unwanted medical intervention, pursuant to the ethical principle of patient autonomy, while respecting the surgeon's religious or ethical beliefs. This situation also fits the "medically-relevant" model, in that the patient's instruction requires the physician to vary from conventional medical practice.

---

[7] Persistent vegetative state is a condition evidenced by a profound coma, but it is not a terminal condition. *See Conservatorship of Drabick* (1988)

VI. The Court Should Base Its Decision upon the Context of the Instant Case and Avoid Dicta That Could Alter the Existing Legal Framework of Physician-Patient Relationships.

The answer to the question posed by the Court depends crucially upon the factual context in which the question arises. As discussed above, the *amici* believe that whether or not a physician should be able to refuse to perform a medical procedure for a particular patient depends upon whether the refusal is based upon a medically relevant characteristic of the patient. In the case at hand, neither the sexual orientation of the plaintiff nor her marital status appears to be medically relevant.

Whether a characteristic is medically relevant may sometimes be obvious and in other cases require careful examination of the facts. The *amici* urge that the Court decide the instant case based upon the context of the case, in a manner which does not draw into question prevailing California law regarding the balance between patient-physician values regarding treatment decisions. As discussed above, current law permits value conflicts, in the absence of invidious discrimination, to be resolved in a manner which protects the ability of both patient and physician to maintain their respective moral and religious stances in the context of

---

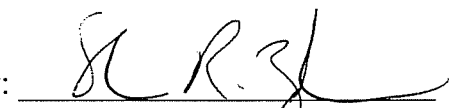
200 Cal. App. 3d 185.

proper medical care and relevant medical characteristics. The Court's decision should leave this balance intact.

Dated: March 16, 2007

Respectfully submitted,

Steven R. Zatkin (SBN 63288)
Stanley B. Watson (SBN 56207)
Mark S. Zemelman (SBN 11029)
KAISER FOUNDATION
HEALTH PLAN, INC.,
THE PERMANENTE MEDICAL
GROUP, INC.,
SOUTHERN CALIFORNIA
PERMANENTE MEDICAL
GROUP

By: 

Steven R. Zatkin
Attorneys for *Amici Curiae*
KAISER FOUNDATION
HEALTH PLAN, INC.,
THE PERMANENTE MEDICAL
GROUP, INC.,
SOUTHERN CALIFORNIA
PERMANENTE MEDICAL
GROUP

CERTIFICATE OF COMPLIANCE

I certify that this brief has been prepared using a proportionately spaced typeface, consisting of 13 points, producing approximately 296 words per page. Counsel relies on word processing software to determine the word count of this brief. As determined by that software, this brief consists of approximately 4,214 words and is therefore in compliance with California Rules of Court, rule 8.204(c)(1) [formerly 14(c)(1)].

Dated: March 16, 2007

By: _____
Steven R. Zatkin
Mark Zemelman
Stanley B. Watson
Attorneys for *Amici Curiae*
KAISER FOUNDATION
HEALTH PLAN, INC.,
THE PERMANENTE
MEDICAL GROUP, INC.,
SOUTHERN
CALIFORNIA
PERMANENTE
MEDICAL GROUP

PROOF OF SERVICE

NORTH COAST WOMEN'S CARE MEDICAL GROUP, INC. et al., v. THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (BENITEZ)
CALIFORNIA SURPREME COURT CASE NUMBER: S142892
COURT OF APPEAL CASE NUMBER: D045438
SUPERIOR COURT CASE NUMBER: GIC 770165

I, Trish Neesen, certify and declare as follows:

I am a resident of the State of California and over the age of eighteen years, not a party to the within action and employed in the county where the mailing took place. My business address is 1 Kaiser Plaza, 19th Floor, Oakland, CA 94612 in Alameda County.

On March 23, 2007, I served the within documents

BRIEF *AMICUS CURIAE* OF KAISER FOUNDATION HEALTH PLAN, INC.; THE PERMANENTE MEDICAL GROUP, INC.; AND THE SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP

by placing the document in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below:

CLERK OF THE CALIFORNIA
SUPREME CORUT
350 Mcallister Street, Room 1295
San Francisco, CA 94102
(Original and 13 Copies [Delivered by hand])

CALIFORNIA SOLICITOR GENERAL
Office of the State Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101 (1 Copy Served)

Honorable Ronald S. Prager
SAN DIEGO SUPERIOR COURT
220 West Broadway
San Diego, CA 92101 (1 Copy Served)

Albert C. Gross, Esq.
LAW OFFICE OF ALBERT GROSS
503 N. Highway 101, Suite A
Solana Beach, CA 92075
Attorney for Real Party in Interest Guadalupe T. Benitez
(1 Copy Served)

Jennifer C. Pizer, Esq.
LAMBDA LEGAL DEFENSE & EDUCATION FUND
3325 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90010
Attorney for Real Party in Interest Guadalupe T. Benitez
(1 Copy Served)

Robert C. Welsh, Esq.
Margaret C. Carroll, Esq.
Lee K. Fink, Esq.
O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-6035
Attorneys for Real Party in Interest Guadalupe T. Benitez
(1 Copy Served)

Jon B. Eisenberg, Esq.
ATTORNEY AT LAW
1970 Broadway, Suite 1200
Oakland, CA 94612
Attorney for Real Party in Interest Guadalupe T. Benitez
(1 Copy Served)

Robert C. Coppo, Esq.
DI CARO, COPPO AND POPCKE
1959 Palomar Oaks Way, Suite 300
Carlsbad, CA 92009
Attorney for Petitioners North Coast Women's Care,
Dr. Christine Z. Brody, Dr. Douglas K. Fenton
(1 Copy Served)

Timothy Donald Chandler
ALLIANCE DEFENSE FUND
101 Parkshore Avenue, Suite 100
Folsom, CA 95630
Attorney for Petitioners North Coast Women's Care, Dr. Christine Z. Brody, Dr. Douglas K. Fenton
(1 Copy Served)

Robert H. Tyler, Esq.
ADVOCATES FOR FAITH AND FREEDOM
32823 Highway 79 South
Temecula, CA 92592
Attorney for Petitioners North Coast Women's Care, Dr. Christine Z. Brody, Dr. Douglas K. Fenton
(1 Copy Served)

Kenneth Robert Pedroza
COLE PEDROZA LLP
200 So. Los Robles Avenue, Suite 678
Pasadena, CA 91101
Attorney for Petitioners North Coast Women's Care, Dr. Christine Z. Brody, Dr. Douglas K. Fenton
(1 Copy Served)

Andrew Todd Evans
DICARO COPPO & POPCKE
1959 Palomar Oaks Way #300
Carlsbad, CA 92009
Attorney for Petitioners North Coast Women's Care, Dr. Christine Z. Brody, Dr. Douglas K. Fenton
(1 Copy Served)

Curtis A. Cole, Esq.
THELEN REID & PRIEST
333 South Hope Street, Suite 2900
Los Angeles, CA 90071-3048
Attorney for California Medical Association, Amicus Curiae for Petitioner (1 Copy Served)

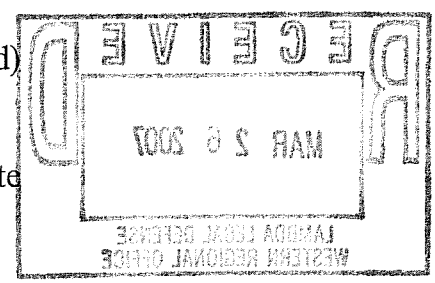
Karen D. Milam, Esq.
LAW OFFICES OF KAREN D. MILAM
P.O. Box 1613
Yucaipa, CA 92399-1437
Attorney for Christian Medical and Dental Association: Amicus Curiae for Petitioners (1 Copy Served)

Benjamin R. Martin, Esq.
WINSTON & STRAWN
333 South Grand Ave., 38th Floor
Los Angeles, CA 90071-1543
Attorney for Anti-Defamation League, et al., Amicus Curiae for Real Party in Interest (1 Copy Served)

Mitchell Lathrop, Esq.
DUANE MORRIS
101 West Broadway, Ste. 900
San Diego, CA 92101-8285
Attorney for Catholic Exchange, Inc., Amicus Curiae for Real Party in Interest, Human Life International
(1 Copy Served)

Mr. James Leslie Hirsen
SBD Group, Inc.
505 S. Villa Real Dr. #208
Anaheim Hills, CA 92867
Attorney for Foundation for Free Expression, Amicus Curiae for Real Party in Interest (1 Copy Served)

Ms. Deborah Jane Dewart
Attorney at Law
620 E. Sabiston Dr.
Swansboro, NC 28584
Attorney for Foundation for Free Expression, Amicus Curiae for Real Party in Interest (1 Copy Served)



I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 23, 2007 at Oakland, California.

Trish Neesen
Trish Neesen