

4th Civil No.
D045438

IN THE COURT OF APPEAL
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE



NORTH COAST WOMEN'S CARE MEDICAL GROUP, INC., a
California corporation; DR. CHRISTINE Z. BRODY, an individual;
and DR. DOUGLAS K. FENTON, an individual,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO,

Respondent.

GUADALUPE T. BENITEZ,
Real Party in Interest.

San Diego Superior Court Case No. GIC 770165
Honorable Ronald S. Prager, Judge

NOTICE OF ERRATA REGARDING *AMICUS* BRIEF OF
CALIFORNIA MEDICAL ASSOCIATION; DECLARATION OF
CURTIS A. COLE

THELEN REID & PRIEST LLP
Curtis A. Cole, State Bar No. 052288*
Kenneth R. Pedroza, State Bar No. 184906
E. Todd Chayet, State Bar No. 217694
333 South Hope Street, Suite 2900
Los Angeles, California 90071-3048
(213) 576-8000

Attorneys for Amicus Curiae,
CALIFORNIA MEDICAL ASSOCIATION

*Certified Specialist, Appellate Law, State Bar of California, Board of Legal Specialization

RECEIVED ON US BY MAIL
POSTMARKED 5-20-05

PROOF OF SERVICE
DATED 5-20-05

NOTICE OF ERRATA REGARDING *AMICUS* BRIEF OF CALIFORNIA MEDICAL ASSOCIATION

TO ALL PARTIES AND THEIR ATTORNEYS OF
RECORD:

PLEASE TAKE NOTICE that *Amicus* California Medical Association (“CMA”) hereby submits this Notice of Errata regarding its *Amicus* brief that was filed with the Court on May 10, 2005. CMA’s counsel had input changes to the brief that were suggested by CMA, but those changes were inadvertently saved in the wrong document. As a consequence, some of the CMA’s changes did not appear in the version of the brief that was filed with the Court. Each of the changes to the version of the brief filed concurrently herewith were suggested *before* the previous version was filed, and it was only through CMA’s counsel’s inadvertence that the changes were not properly incorporated.

The substance of the errata is as follows:

1. On pages 4-5, the following sentence should be deleted:
“AMA Policy H-65.976 provides: ‘Our AMA encourages physician practices, medical schools, hospitals, and clinics to broaden any nondiscriminatory statement made to patients, health care workers, or employees to include ‘sexual orientation, sex, or perceived gender’ in any nondiscrimination statement.’”
2. The second sentence in the last paragraph on page 5, “In its California Physician’s Legal Handbook, CMA relies upon the

AMA's Council on Judicial and Ethical Affairs Opinion 9.12 for the proposition that physicians 'may not decline to accept patients because of . . . sexual orientation, or any other basis that would constitute invidious discrimination.' (*California Physician's Legal Handbook*, California Medical Association, 2003, p. 1:83.)" should be deleted and replaced with the following: "CMA's Bylaws require that its members subscribe to the Principles of Medical Ethics of the AMA, including those discussed above. (CMA Bylaws, § 5.03021.) Further, CMA itself will not hold or financially support educational meetings, business meetings or social gatherings (or dues or expenses incurred) at any facilities controlled or sponsored by organizations or institutions that have exclusionary policies based on gender, race, color religion, national origin or sexual orientation. (CMA Policy HOD 605a-90.)"

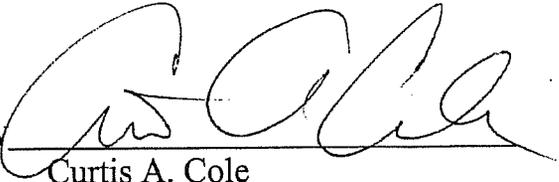
3. The first sentence of the last paragraph on page 11, "CMA further acknowledges that physicians may, from time to time, find themselves in an ethical conundrum, with competing legal and ethical obligations" should be deleted and replaced with the following paragraph: "CMA would never support the claim that a physician's religious freedom authorizes discrimination based on race, nationality or sexual orientation. This case is distinguishable, however. The physicians claim that their religion requires different treatment based on a patient characteristic that is not a protected classification: marital status. The physicians also claim that their religious belief requires that they apply this belief equally to all unmarried women, whether heterosexual or homosexual. Assuming that is true, CMA does not believe the physicians' exercise of their religious beliefs to refuse to

perform a specific treatment is illegal or unethical. CMA does believe that a jury is well qualified to determine if the physicians' claim is true."

Respectfully submitted,

Dated: May 20, 2005

THELEN REID & PRIEST LLP

By 

Curtis A. Cole

Kenneth R. Pedroza

E. Todd Chayet

Attorneys for *Amicus Curiae*

California Medical Association

DECLARATION OF CURTIS A. COLE

1. I, Curtis A. Cole, declare that I am a member of Thelen Reid & Priest, counsel for *Amicus* California Medical Association (“CMA”). In my capacity as such, I have obtained first-hand, personal knowledge of the facts set forth herein and, if called upon, I could and would competently testify thereto.

2. In early April of 2005, I submitted a draft of a proposed *Amicus* brief in this case to CMA for its review.

3. Continuing through the month of April, 2005, CMA returned comments to me, which I incorporated into the brief.

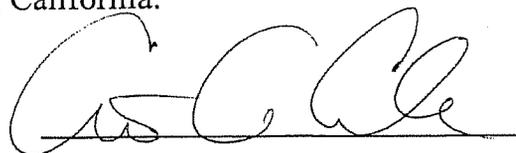
4. After various changes had been made to the brief, my office saved the brief under a new document number.

5. Unfortunately, several of the CMA’s changes were incorporated into the superceded version of the brief instead of the current version.

6. In early May of 2005, the more recently created version of the brief was finalized, and the changes that had been input into the earlier version were not incorporated into the final version that was filed with the Court on May 10, 2005.

7. This discrepancy was completely due to the inadvertence of counsel, and CMA itself was in no way responsible for the error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of May, 2005 at Los Angeles, California.

A handwritten signature in black ink, appearing to read 'Curtis A. Cole', written over a horizontal line.

Curtis A. Cole

<p>ROBERT C. WELSH, ESQ. MARGARET C. CARROLL, ESQ. LEE K. FINK, ESQ. MICHAEL CLIFTON-HARTER, ESQ. O'Melveny & Meyers LLP 1999 Avenue of the Stars, 7th Floor Los Angeles, California 90067</p> <p>(Attorneys for Real-Party-In-Interest)</p>	<p>Attorney General's Office California Department of Justice 110 West "A" Street, Suite 700 San Diego, CA 92101</p>
<p>ALBERT GROSS, ESQ. Law Offices of Albert Gross 503 N. Highway 101, Suite A Solana Beach, CA 92075</p> <p>(Attorneys for Real-Party-In Interest)</p>	<p>JENNIFER C. PIZER, ESQ. Lambda Legal Defense and Education Fund, Inc. 3325 Wilshire Boulevard, Suite 1300 Los Angeles, CA 90010</p> <p>(Attorneys for Real-Party-In-Interest)</p>

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

Executed on May 20, 2005, at Los Angeles, California.

Elvia Palm