

Case No. S142892

IN THE SUPREME COURT OF CALIFORNIA

**NORTH COAST WOMEN'S CARE
MEDICAL GROUP, *et al.*,**

Petitioners,

v.

THE SUPERIOR COURT OF SAN DIEGO COUNTY,

Respondent,

GUADALUPE T. BENITEZ,

Real Party in Interest.

After the Decision by the Court of Appeal
Fourth Appellate District No. D045438
Superior Court No. GIC 770-165

**APPLICATION FOR LEAVE TO FILE AND BRIEF OF *AMICI
CURIAE* GAY AND LESBIAN MEDICAL ASSOCIATION,
AMERICAN MEDICAL STUDENT ASSOCIATION, AMERICAN
ACADEMY OF HIV MEDICINE, AND INTERNATIONAL
ASSOCIATION OF PHYSICIANS IN AIDS CARE IN SUPPORT OF
REAL PARTY IN INTEREST**

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APPLICATION FOR LEAVE TO FILE *AMICUS* BRIEF

Pursuant to rule 8.520(f) of the California Rules of Court, the Gay and Lesbian Medical Association, the American Medical Student Association, the American Academy of HIV Medicine, and the International Association of Physicians in AIDS Care (“*amici*”) respectfully request leave to file the attached brief to be considered in the above-captioned case.

A. Interests of *Amici*.

Amicus the American Association of Physicians for Human Rights, Inc., dba the Gay and Lesbian Medical Association (“GLMA”), was organized in the State of California in 1982 and is the world’s largest and oldest association of lesbian, gay, bisexual, and transgender (“LGBT”) health care professionals. GLMA’s primary goal is to ensure equality of health care of lesbian, gay, bisexual, and transgender individuals and health professionals. GLMA seeks to reduce the health disparities that LGBT people frequently experience, by educating health care providers about how to provide nonjudgmental, culturally competent care. GLMA also promotes LGBT health research and works to eliminate bias in the health care setting. Accordingly, this litigation directly implicates subjects within GLMA’s areas of expertise and concern.

Amicus the American Medical Student Association (“AMSA”) is the nation’s largest independent organization of physicians-in-training. Founded in 1950, AMSA is a non-profit organization that represents more

than two-thirds of all medical students and a total of 60,000 physicians-in-training. AMSA has chapters in every allopathic and osteopathic medical school in the country and, indeed, represents the future of medicine in the United States. AMSA's goal is to improve medical training and the nation's health, and AMSA therefore has a keen interest in this case because of its potential effect on the quality of medical care.

Amicus the American Academy of HIV Medicine ("AAHIVM") is an independent organization of specialists in HIV/AIDS care and other health care professionals dedicated to promoting excellence in HIV/AIDS care. Through advocacy and education, AAHIVM is committed both to supporting health care providers in this area of medicine and also to ensuring better care for those living with AIDS and HIV disease. With 2,000 members, AAHIVM is the largest independent organization of HIV frontline providers in the nation, and those health care professionals give direct care to more than 340,000 HIV patients. AAHIVM believes that its expertise and interest in ensuring optimal health care, particularly for often stigmatized populations, can benefit the Court in the consideration of the issue before it.

Amicus the International Association of Physicians in AIDS Care ("IAPAC") represents a professional membership of more than 12,000 physicians and other health care professionals in over 100 countries. IAPAC's mission is to craft and implement global educational and

advocacy strategies to improve the quality of care provided to all people living with HIV/AIDS. IAPAC envisions a world in which people living with HIV/AIDS may obtain the best health care available provided by physicians and allied health professionals armed with cutting-edge clinical expertise. IAPAC has particular interest in this litigation because of its goal of ensuring that people receive optimal health care, without regard to their medically irrelevant personal characteristics.

B. Assistance Afforded by the Proposed *Amicus* Brief.

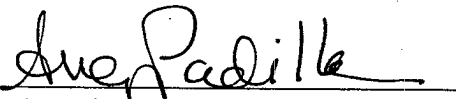
The proposed *amicus curiae* brief focuses exclusively on the prevailing medical ethics standards and their universal stance against invidious discrimination, a topic about which *amici* physicians, health care professionals, and medical students have extensive knowledge. Other briefs mention medical ethics standards, but no brief submitted thus far has comprehensively surveyed them. *Amici* believe that their brief would be of assistance to the Court in that it does provide a comprehensive survey of medical ethics standards, explaining how, under these standards, physicians are already prohibited from discriminating against patients on the basis of sexual orientation. *Amici* further believe that the Court will find this brief useful in analyzing the issue presented, as it demonstrates the minimal, actual impact of applying the Unruh Civil Rights Act to physicians engaged in ethical medical practice.

For these reasons, *amici* physicians, health care professionals, and medical students have a substantial interest in the present case, and believe their proposed *amicus curiae* brief will be of assistance to the Court in deciding the issue presented.

Dated: April 2, 2007

Respectfully submitted,

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BRIEF OF *AMICUS CURIAE*

SUMMARY OF ARGUMENT

At issue before the Court is a single 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?

Petitioner physicians, as well as *amici* in support of the physicians, argue "yes"; according to their briefs, the demand of plaintiff and real party in interest Benitez that the Unruh Civil Rights Act be applied to petitioner physicians, without exception, is extreme and would impose new, substantial burdens on physicians. Petitioner physicians and their *amici* then purport to offer "reasonable" compromises between a physician's interest in acting on his or her religious values and a patient's interest (as well as the state's interest) in avoiding discrimination.

Yet the application of the Unruh Act to physicians—without exception—would *not* change the status quo: under medical ethics standards promulgated by every major medical association, we in the medical profession have directed ourselves not to discriminate against our patients on the basis of sexual orientation—without exception. As set out below, and contrary to the representations of some *amici*, the medical profession has *already* weighed a physician's interest in acting on his or her religious values against a patient's and the state's interest in avoiding discrimination, and the consensus of our profession is that discrimination

against a patient based on the patient's sexual orientation is unequivocally disallowed.

Because the conduct at issue in this case is already deemed to be unethical and thus prohibited by our profession's own ethics standards, the answer to the question posed by this Court is, in the view of *amici* physicians, health care professionals, and medical students, an easy one: it would be inappropriate and harmful to create a special exception to the Unruh Act for physicians which allowed unethical discrimination against patients on the basis of sexual orientation. *Amici* physicians, health care professionals, and medical students therefore urge this Court to reverse the decision of the Court of Appeal.

ARGUMENT

I. MEDICAL ETHICS STANDARDS PROHIBIT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION WITHOUT EXCEPTION.

A. Medical Ethics Standards Promulgated by the American Medical Association.

The American Medical Association is the nation's largest association of physicians. Through a democratic process, it promulgates policies on issues in medicine and public health, and it describes its own "Code of Medical Ethics" as being "the most comprehensive ethics guide for physicians on a wide range of patient-physician issues" for more than

160 years.¹ The AMA's medical ethics standards unequivocally prohibit "invidious discrimination," including discrimination on the basis of sexual orientation.

The AMA Code of Medical Ethics consists of two components:

(1) the "AMA Principles of Medical Ethics," "which establish the core ethical principles of the medical profession"; and (2) opinions of the AMA's Council on Ethical and Judicial Affairs ("CEJA"), which apply the Principles of Medical Ethics to specific ethical issues.² CEJA opinions are the official ethics policies of the AMA.³

There are nine "Principles of Medical Ethics," and the first one provides: "A physician shall be dedicated to providing competent medical care, *with compassion and respect for human dignity and rights.*"⁴ Also of relevance is the third principle, which provides: "A physician shall respect

¹ (AMA, *Code of Medical Ethics* <<http://www.ama-assn.org/ama/pub/category/2416.html>> [as of March 30, 2007].)

² The CEJA "Current Opinions reflect the application of the Principles of Medical Ethics to specific ethical issues in medicine. Much as courts of law elaborate on constitutional principles in their opinions, the [CEJA] develops the meaning of the Principles of Medical Ethics in its opinions." (AMA, *The AMA Policy System* <<http://www.ama-assn.org/ama1/pub/upload/mm/450/amapolicysystem0306.pdf>> [as of March 30, 2007].)

³ (AMA, *Ethics Group* <<http://www.ama-assn.org/ama/pub/category/7685.html>> [as of March 30, 2007].)

⁴ (AMA, *Principles of Medical Ethics* <<http://www.ama-assn.org/ama/pub/category/2512.html>> [as of March 30, 2007] (emphasis added).)

the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.”⁵ And the sixth principle provides: “A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.”⁶

The particular intersection of these three principles, as pertaining to the very issue before this Court, is set out in CEJA opinion E-9.12, entitled “Patient-Physician Relationship: Respect for Law and Human Rights.”

That opinion provides:

The creation of the patient-physician relationship is contractual in nature. Generally, both the physician and the patient are free to enter into or decline the relationship. A physician may decline to undertake the care of a patient whose medical condition is not within the physician’s current competence. *However, physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, or any other basis that would constitute invidious discrimination.* . . . (I, III, V, VI) Issued July 1986; Updated June 1994.⁷

⁵ (*Id.*)

⁶ (*Id.*)

⁷ (AMA, *Current Opinions* <<http://www.ama-assn.org/ama/pub/category/2498.html>> [as of March 30, 2007] (emphasis added).)

Thus, after weighing the interests of physicians (Principle VI) against the interests of patients (Principle I) and the interest of the state (Principle III), it is the official ethics position of the AMA that “physicians *may not* decline to accept patients because of . . . sexual orientation.”⁸

The AMA applies this same analysis to potential patients. CEJA opinion E-10.05, which is entitled “Potential Patients,” provides:

(1) “Physicians must keep their professional obligations to provide care to patients in accord with their prerogative to choose whether to enter into a patient-physician relationship. (2) The following instances identify the limits on physicians’ prerogative: . . . (b) Physicians cannot refuse to care for patients based on race, gender, sexual orientation, or any other criteria that would constitute invidious discrimination.”⁹

In addition to the Code of Medical Ethics, the AMA House of Delegates issues “Health and Ethics Policies,” a number of which address, and condemn, discrimination on the basis of sexual orientation:

⁸ (*Id.*) Principle V, which is not discussed here, provides as follows: “A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.” (*Id.*)

⁹ (*Id.* at E-10.05.)

- **H-65.976 Nondiscriminatory Policy for the Health Care Needs of the Homosexual Population:** “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.”
- **H-65.983 Non-Discrimination Policy:** “The AMA affirms that it has not been its policy now or in the past to discriminate with regard to sexual orientation.”
- **H-65.990 Civil Rights Restoration:** “The AMA reaffirms its long-standing policy that there is no basis for the denial to any human being of equal rights, privileges, and responsibilities . . . because of an individual’s sex, sexual orientation, gender, gender identity, or transgender status”
- **H-65.992 Continued Support of Human Rights and Freedom:** “Our AMA continues (1) to support the dignity of the individual, human rights and the sanctity of human life, and (2) to oppose any discrimination based on an individual’s sex, sexual orientation . . . and any other such reprehensible policies.”¹⁰

The AMA describes the House of Delegates’ policies as “one of the cornerstones of the AMA in the sense that they define what the Association stands for as an organization.”¹¹

The AMA House of Delegates has also issued a directive on discrimination to the AMA Board, which provides as follows:

- **D-65.996 Nondiscriminatory Policy for the Health Care Needs of the Homosexual Population:** “Our AMA will encourage and work with state medical societies to provide a sample printed nondiscrimination policy suitable for framing, and encourage individual physicians to display for patient and staff awareness-as one example: ‘This office appreciates the diversity of human beings and does not discriminate based on

¹⁰ (AMA, *Health Policies of the HOD* <http://www.ama-assn.org/apps/pf_new/pf_online> [as of March 30, 2007].)

¹¹ (AMA, *About AMA Policy* <<http://www.ama-assn.org/ama/pub/category/8151.html>> [as of March 30, 2007].)

race, age, religion, ability, marital status, sexual orientation, sex, or perceived gender.”¹²

At every level of its policy apparatus, and in all its official policies, the AMA has, without exception, explicitly rejected physicians’ discrimination against patients based on sexual orientation.

B. Medical Ethics Standards Promulgated by Other Medical Associations.

Other, major physician associations also explicitly forbid “invidious” discrimination against patients, including discrimination on the basis of sexual orientation, without exception.

World Medical Association (“WMA”): The WMA, an international medical association composed of 88 national medical associations, including the AMA, issues an “International Code of Medical Ethics.” “Duties of physicians in general” includes the following: “A physician shall not allow his/her judgment to be influenced by personal profit or unfair discrimination.”¹³ Under the “Declaration of Geneva” that accompanies the International Code of Medical Ethics, physician members of the WMA further pledge that they “will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political

¹² (*Id.*)

¹³ (WMA, *International Code of Medical Ethics* <<http://www.wma.net/e/policy/c8.htm>> [as of March 30, 2007].)

affiliation, race, sexual orientation, social standing or any other factor to intervene between [their] duty and [their] patient.”¹⁴

California Medical Association (“CMA”): The CMA, the largest California medical association and an affiliate of the AMA, issues a “California Physician’s Legal Handbook,” which, consistent with the policies of the AMA and WMA, provides that physicians “may not refuse to care for patients based on race, gender, sexual orientation, or any other criteria that would constitute invidious discrimination.”¹⁵

American Academy of Family Physicians (“AAFP”). The AAFP, with approximately 94,000 members nationwide, issues “Policies on Health Issues,” that includes the following: “The AAFP opposes all discrimination in any form, including but not limited to, that on the basis of actual or perceived race, color, religion, gender, sexual orientation, gender identity, ethnic affiliation, health, age, disability, economic status, body habitus or national origin.”¹⁶

American College of Obstetricians and Gynecologists (“ACOG”): ACOG, with approximately 49,000 members nationwide, issues a “Code of Professional Ethics,” which provides with respect to the

¹⁴ (*Id.*)

¹⁵ (CMA, California Physician’s Legal Handbook (2002) at 1:68.)

¹⁶ (AAFP, *Policies on Health Issues* <<http://www.aafp.org/online/en/home/policy/policies/d/discrimination.html>> [as of March 30, 2007].)

“physician-patient” relationship: “The principle of justice requires strict avoidance of discrimination on the basis of race, color, religion, national origin, or any other basis that would constitute illegal discrimination.”¹⁷ It is also the position of ACOG that “[s]exual orientation should not be a barrier to receiving fertility services to achieve a pregnancy.”¹⁸

The American Psychiatric Association (“APA”): The APA, which represents over 36,000 mental health physicians and publishes the Diagnostic and Statistical Manual of Mental Disorders (DSM IV), the primary diagnostic reference of mental health professionals in the United States, issues ethics guidelines that provide as follows: “A psychiatrist should not be a party to any type of policy that excludes, segregates, or demeans the dignity of any patient because of ethnic origin, race, sex, creed, age, socioeconomic status, or sexual orientation.”¹⁹

C. Medical Ethics Standards Promulgated by Other Medical Organizations.

The ethical standards promulgated by the AMA and other physician associations are buttressed by numerous standards and policies issued

¹⁷ (ACOG, *Code of Professional Ethics*, <http://www.acog.org/from_home/publications/ethics/> [as of March 30, 2007].)

¹⁸ (ACOG, *Special Issues in Women’s Health* (2004) at p.67.)

¹⁹ (America Psychiatric Association, *Annotation to AMA Principles of Medical Ethics, Section I, Annotation #2* <http://www.psych.org/psych_pract/ethics/ppaethics.cfm> [as of March 30, 2007].)

throughout the medical community. The following are but a sampling of the nondiscrimination policies promulgated by various medical organizations:

- **The American Psychological Association:** “In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.”²⁰
- **California Healthcare Association** (representing hospitals and health care providers in California): Including in a list of “Patient Rights,” the right to “[e]xercise these rights without regard to sex, economic status, educational background, race, color, religion, ancestry, national origin, sexual orientation, or marital status or source of payment.”²¹
- **Centers for Medicare and Medicaid Services** (the largest provider of health care coverage in the United States, with almost 83 million beneficiaries receiving coverage): To be deemed Medicare-compliant, an organization must implement “procedures to ensure that enrollees are not discriminated against in the delivery of health care services consistent with the benefits covered in their policy based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, sexual orientation, genetic information, or source of payment.”²²

²⁰ (American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct* § 3.01 “Unfair Discrimination” <<http://www.apa.org/ethics/code2002.pdf>> [as of March 30, 2007].)

²¹ (California Healthcare Association, *Patient Rights*, No. 21 <<http://www.calhealth.org/Download/2004PatRights.pdf>> [as of March 30, 2007].)

²² (HHS, *Centers for Medicare and Medicaid Services Deeming Application Requirement* <<http://www.cms.hhs.gov/Transmittals/Downloads/R61MCM.pdf>> [as of March 30, 2007].)

- **The President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry** (composed of 32 members from the private sector, including health care providers, professionals, insurers, and workers): Formally stated that consumers must not be discriminated against in the delivery of health care services based on sexual orientation, among other characteristics.²³
- **UN Committee on Economics, Social and Cultural Rights:** "the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health."²⁴

From the global to the local, the public to the private, the consensus among medical professionals is that it is never appropriate for doctors to engage in invidious discrimination against patients, including discrimination on the basis of sexual orientation.²⁵

²³ (President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, *Consumer Bill of Rights and Responsibilities, Chapter Five, "Respect and Nondiscrimination"* <<http://www.hcqualitycommission.gov/cborr/chap5.html>> [as of March 30, 2007].)

²⁴ (United Nations Office of the High Commissioner for Human Rights, Committee on Economics, Social and Cultural Rights, *General Comment 14*, Article 12:18 (2000) <[http://unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument)> [as of March 30, 2007].)

²⁵ This conclusion is supported by the *amici curiae* brief submitted by Kaiser Foundation Health Plan, Inc., et al. on March 16, 2007 ("Kaiser Br."). (See Kaiser Br. at p. 6 ("It is well accepted in professional standards (Footnote continues on next page.)

II. AMICI CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS MISREPRESENT THE REQUIREMENTS OF MEDICAL ETHICS STANDARDS.

Despite this overwhelming consensus among medical professionals, *amici* Christian Medical & Dental Associations, et al. (hereinafter “CMDA *amici*”) contend that “[m]edical ethics standards . . . *require* that a physician be allowed to refuse to provide medical treatment that violates his or her conscience.” (*Amicus* Brief of Christian Medical & Dental Associations, American Association of Pro Life Obstetricians & Gynecologists, and Physicians for Life in Support of Petitioners, Feb. 12, 2007, p. 5 (emphasis added) (“CMDA Br.”).) This contention is simply wrong in one essential respect, and misleading in other respects.

First, the CMDA *amici* are wrong that the AMA Code of Medical Ethics condones discrimination on the basis of sexual orientation. According to the CMDA *amici*, the Code “is replete with guidelines allowing physicians to refuse to treat certain persons.” (CMDA Br. at p. 7.) In support of this, the CMDA *amici* cite three AMA guidelines: (1) AMA Principle of Medical Ethics VI (“A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to

(Footnote continued from previous page.)

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.”.)

serve, with whom to associate, and the environment in which to provide medical care.”)²⁶; (2) CEJA opinion E-3.04 (a physician “may refer a patient . . . whenever [the physician] believes that this may benefit the patient”)²⁷; and (3) CEJA opinion E-9.06 (“[a]lthough the concept of free choice assures that an individual can generally choose a physician, likewise a physician may decline to accept that individual as a patient”).²⁸

As discussed above, the AMA’s Principles of Medical Ethics do recognize a general right of physicians to choose their patients, as they also recognize a right of patients to be treated with “compassion and respect for human dignity and rights” and a duty of physicians to follow the law.²⁹

What the CMDA *amici* neglect to mention, however, is that the AMA has promulgated opinions applying the Principles to the particular ethical issue of discrimination on the basis of personal characteristics, and the AMA has concluded that “*physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, or any other basis that would constitute invidious*

²⁶ (AMA, *Principles of Medical Ethics* <<http://www.ama-assn.org/ama/pub/category/2512.html>> [as of March 30, 2007].)

²⁷ (AMA, *Current Opinions* <<http://www.ama-assn.org/ama/pub/category/2498.html>> [as of March 30, 2007].)

²⁸ (*Id.* at E-9.06.)

²⁹ (AMA, *Principles of Medical Ethics* <<http://www.ama-assn.org/ama/pub/category/2512.html>> [as of March 30, 2007] (I, III, and VI).)

*discrimination.*³⁰ It is therefore *not* the case that the AMA's Code of Medical Ethics allows physicians to refuse to treat patients on the basis of their sexual orientation.³¹

Second, the CMDA *amici* erroneously conflate a physician's refusal to perform "medical treatments or procedures which violate his or her conscience" with a physician's refusal to treat a patient based on the patient's sexual orientation. (CMDA Br. at p. 5.) A physician's refusal to perform particular "medical treatments or procedures" is entirely different from a refusal to treat particular groups of people the same way other groups are treated. The former type of refusal is something many physicians and physician's groups support,³² and, although it remains

³⁰ (*Id.* at E-9.12 (emphasis added).) The argument of the CMDA *amici* that Principle VI somehow trumps this CEJA opinion (CMDA Br. at pp. 7-8) demonstrates a lack of understanding on the part of the CMDA *amici* of the AMA's ethical opinion-making process. In CEJA opinion E-9.12, the AMA is interpreting Principle VI in conjunction with other Principles, and it is thus the official ethics opinion of the AMA that Principle VI does not permit physicians to decline to accept patients on the basis of invidious discrimination. (See AMA, *The AMA Policy System*, <<http://www.ama-assn.org/ama1/pub/upload/mm/450/amapolicysystem0306.pdf>> [as of March 30, 2007] (describing the weight of CEJA opinions).)

³¹ It is also not the case that the WMA condones discrimination on the basis of sexual orientation. The CMDA *amici* include a long section in their brief on the WMA's medical ethics standards. The section correctly cites statements of the WMA, but it disregards the WMA's explicit statements against discrimination, which are set out above.

³² (See, e.g., Kaiser Br. at pp. 10-13.)

controversial,³³ it is permitted, in certain circumstances, under both California statutory and common law.³⁴

By conflating procedures with patients, the CMDA *amici* are attempting to legitimize a position—a right of a physician to refuse to treat a patient for any reason, as long as that reason is pursuant to the physician’s religious values—that is fundamentally inconsistent with the medical community’s core ethical principles. Indeed, it is not even clear that the other religiously-affiliated medical organizations the CMDA *amici* cite support their stance on invidious discrimination. From the “position statements” and “governing standards” excerpted by the CMDA *amici*, it appears that other religiously-affiliated organizations disapprove of particular procedures (such as abortion) or the provision of fertility treatments to unmarried women (an issue not before this Court), *not* the discrimination against patients based on personal characteristics. (CMDA

³³ (See, e.g., Gold & Sonfield, *Refusing to Participate in Healthcare: A Continuing Debate* (Feb. 2000), The Guttmacher Report on Public Policy <<http://www.guttmacher.org/pubs/tsr/03/1/grp30108.pdf>> [as of March 30, 2007] (discussing laws and policies permitting physicians to refuse to perform particular procedures and services).)

³⁴ (See Health & Saf. Code § 123420 subd. (a) (physician has right to refuse to perform an abortion); Prob. Code § 4734 (physician has right to refuse to comply with a health care directive or decision); *Conservatorship of Morrison* (1988) 206 Cal.App.3d 304 (same); Bus. & Prof. Code § 733 subd. (b)(3) (physician has right to refuse to fill certain pharmaceutical prescriptions in specified circumstances).)

Br. at pp. 11-12.) None of the statements or standards cited condones discrimination against patients on the basis of sexual orientation, and one of them appears to prohibit it.³⁵

Third, the complaint of the CMDA *amici* against the allegedly “demeaning” characterization of physicians as mere businesses by plaintiff and real party in interest Benitez is misplaced. (CMDA Br. at pp. 9-11). *Amici* are correct that the “history of medical practice . . . demonstrates that the practice of medicine is far more than a business transaction.” (*Id.* at p. 11.) But this history does not support the view of the CMDA *amici* on physician autonomy. Like many licensed professions, practicing medicine is certainly not the same as running a typical business. The reason why medicine is so different from ordinary commerce, however, is also the reason why the requirements of the Unruh Act should be seen as a floor of professional conduct, with the profession’s own ethical standards imposing considerably higher requirements.

In the physician-patient relationship, the physician’s expertise and the patient’s vulnerability require the patient to trust that the physician will

³⁵ On the topic “Care of the HIV/Infected/AIDS Patient,” the medical ethics standards promulgated by the Islamic Medical Association of North America (“IMANA”) provide: “[W]e do not discriminate against any patient on the basis of their lifestyle.” (IMANA, *Islamic Medical Ethics: The IMANA Perspective*, p. 9 <<http://data.memberclicks.com/site/imana/IMANAethicsPaperPart1.pdf>> [as of March 30, 2007].)

act in the patient's best interests. The dependency of the patient on the physicians in this relationship places the physician in a position of great power—with the correlatively great potential for abuse. It is for this very reason that we in the medical profession have imposed significant ethical obligations on ourselves, from the Hippocratic Oath, developed in the 4th Century B.C., to today's AMA Code of Medical Ethics. While medical ethics standards recognize and respect physicians' interests vis-à-vis patients, the standards are written not to protect medical professionals—they are written to protect our patients.³⁶

Particularly with respect to proscribing invidious discrimination, it is not hard to understand why every major medical association is in agreement. If physicians were permitted, as petitioners and their *amici* argue they should be, to refuse to treat a patient simply because a medically irrelevant personal characteristic of that patient—his or her skin color or gender or religion—conflicted with the physician's own moral and religious values in a particular case, a widespread inability of certain patients to obtain medical care would inevitably ensue.³⁷ In fact, a

³⁶ (See, e.g., AMA, *Principles of Medical Ethics, Preamble* <<http://www.ama-assn.org/ama/pub/category/2512.html>> [as of March 30, 2007] (“The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient.”).)

³⁷ As other *amici* argue, LGBT patients *are* underserved medically, despite the fact that explicit discrimination against them is officially
(Footnote continues on next page.)

diminishment of the ability of *all* patients' to access medical care is the logical consequence of petitioners' and their *amici*'s position: under the position, there is nothing to stop a physician from refusing to treat any patient that does not share the physician's precise religious views. Thus, a physician of one religious sect could refuse to treat any patient who was not also a member of that particular religious sect, on the ground that any person outside the religious sect was not in accord with the physician's religious views.

Sensibly, the medical community—in California, the nation, and the world—does not support the position taken here by petitioners and their *amici*. Instead, it is the profession's long-established consensus that even taking into account a physician's general right to choose his or her patients, medical ethics standards reject the notion that a physician may exercise that choice in an invidiously discriminatory manner.

CONCLUSION

In the promulgation of medical ethics standards, we in the medical profession have already reached a consensus regarding discrimination by physicians on the basis of patients' sexual orientation: such discrimination is prohibited without exception. If the Court concludes based on its past

(Footnote continued from previous page.)

condemned by the medical community and state law. If explicit discrimination were permitted, this situation would almost certainly worsen.

precedents that the Unruh Civil Rights Act should apply to petitioner physicians, without exception, it will be resolving the question presented in harmony with the rules we in the medical profession have already imposed on ourselves.

Dated: April 2, 2007

Respectfully submitted,

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American Academy of HIV Medicine,
and International Association of
Physicians in AIDS Care

CERTIFICATE OF COMPLIANCE

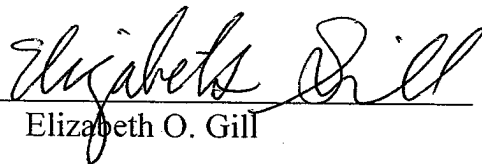
Pursuant to California Rule of Court 8.204, I hereby certify that the text, including footnotes, of the Brief of *Amici Curiae* Gay and Lesbian Medical Association, American Medical Student Association, American Academy of HIV Medicine, and International Association of Physicians in AIDS Care consists of 4,181 words.

I have relied upon the word-count feature of the Microsoft Word computer program used to prepare that brief to determine this word-count.

Dated: April 2, 2007

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American Medical Student Association,
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and International Association of
Physicians in AIDS Care

SERVICE LIST

I am over eighteen (18) years of age and reside in the County of San Francisco. I am not a party to the action entitled:

North Coast Women's Care Medical Group, et al
v. *G. Benitez*, No. S142892
Court of Appeal No. D045438
San Diego No. GIC 770-165

I am employed in the County of San Francisco and my office address is Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482.

On April 2, 2007, I served the attached documents, described as APPLICATION FOR LEAVE TO FILE AND BRIEF OF *AMICI CURIAE* GAY AND LESBIAN MEDICAL ASSOCIATION, AMERICAN MEDICAL STUDENT ASSOCIATION, AMERICAN ACADEMY OF HIV MEDICINE, AND INTERNATIONAL ASSOCIATION OF PHYSICIANS IN AIDS CARE IN SUPPORT OF REAL PARTY IN INTEREST, on the parties of record in this case by placing true and correct copies thereof enclosed in sealed envelopes, with first class postage thereon prepaid, addressed as follows:

CLERK OF THE CALIFORNIA SUPREME COURT 350 McAllister Street, Room 1295 San Francisco, CA 94102 (Original and 13 Copies [Delivered by hand])	Supreme Court
Clerk of the Court COURT OF APPEAL Fourth Appellate District, Division One 750 B Street, Suite 300 San Diego, California 92101 (1 Copy Served)	
Honorable Judge S. Prager SAN DIEGO SUPERIOR COURT 330 West Broadway San Diego, California 92101 (1 Copy Served)	

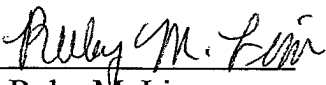
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I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

Dated: April 2, 2007


Ruby M. Lim