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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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13 CITY AND COUNTY OF SAN FRANCISCO,
 14 Plaintiff,
 15 vs.
 16 ALEX M. AZAR II, et al.,
 17 Defendants.

No. C 19-02405 WHA
 No. C 19-02769 WHA
 No. C 19-02916 WHA

**DECLARATION OF DENISE
 PINES IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT AND IN
 SUPPORT OF THEIR OPPOSITION
 TO DEFENDANTS' MOTION TO
 DISMISS OR, IN THE
 ALTERNATIVE, FOR SUMMARY
 JUDGMENT**

18 STATE OF CALIFORNIA, by and through
 ATTORNEY GENERAL XAVIER BECERRA,
 19 Plaintiff,
 20 vs.

21 ALEX M. AZAR, et al.,
 22 Defendants.

Date: October 30, 2019
 Time: 8:00 AM
 Courtroom: 12
 Judge: Hon. William H. Alsup
 Action Filed: 5/2/2019

23 COUNTY OF SANTA CLARA et al,
 24 Plaintiffs,
 25 vs.
 26 U.S. DEPARTMENT OF HEALTH AND
 HUMAN SERVICES, et al.,
 27 Defendants.

1 I, DENISE PINES, declare:

2 1. I am the President of the Medical Board of California (Board). I was appointed as
3 a public member to the Board by Governor Edmund Gerald Brown, Jr., on August 29, 2012, and
4 was elected President of the Board on July 26, 2018. I make this declaration in my official
5 capacity as President of the Board and make this declaration of my own personal knowledge.

6 2. The Board is a state governmental agency established to protect the public by
7 regulating the practice of physicians and surgeons and certain allied health care professionals,
8 including licensed midwives; it is a component of the California Department of Consumer
9 Affairs. Cal. Bus. & Prof. Code §§ 101, 2004. The Board is responsible for the implementation
10 and enforcement of the Medical Practice Act, the state laws related to medical education,
11 licensure, practice, and discipline. Cal. Bus. & Prof. Code § 2000 *et seq.* The Board's
12 authorizing statutes designate its highest priority as the protection of the public. Cal. Bus. & Prof.
13 Code § 2001.1.

14 3. The Board's enforcement statute, California Business and Professions Code
15 section 2234, directs that the Board shall take action against any licensee who is charged with
16 unprofessional conduct. Unprofessional conduct under California Business and Professions
17 Code section 2234 is conduct which breaches the rules or ethical code of the medical profession,
18 or conduct which is unbecoming a member in good standing of the medical profession, and which
19 demonstrates an unfitness to practice medicine. *Shea v. Board of Medical Examiners* (1978) 81
20 Cal.App.3d 564, 575.

21 4. To carry out its mission of protecting the public, the Board performs a number of
22 functions, including but not limited to:

- 23 a. Evaluating licensure applications to determine whether the applicant meets
24 the criteria for licensure;
- 25 b. Enforcing state law by taking appropriate disciplinary action against
26 physicians and surgeons and other allied health care professionals who violate
27 the Medical Practice Act; and
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1 c. Adopting regulations and guidance to clarify the performance, practice, and
2 disciplinary standards for its licensees.

3 5. The Board is mandated to protect consumers from licensees who practice in a
4 manner that may be unsafe or unprofessional. The Board has authority to revoke, suspend, or
5 place on probation any license if the licensee has violated a provision of the law governing the
6 profession. Cal. Bus. & Prof. Code § 2220.

7 6. Physicians and surgeons and licensed midwives have a duty to obtain informed
8 consent of patients before performing or ordering a procedure or treatment for which informed
9 consent is required. See, e.g., 22 Cal. Code of Regs. § 72528.

10 7. The Board has a statutory responsibility to discipline a licensee if, because of a
11 characteristic protected by California's Unruh Civil Rights Act, the licensee refuses to perform
12 the licensed activity, if the licensee incites another licensee to refuse to perform the licensed
13 activity, or if the licensee makes any discrimination or restriction in performing the licensed
14 activity. Cal. Bus. & Prof. Code § 125.6(a)(1). Characteristics protected under the Unruh Civil
15 Rights Act are sex, race, color, religion, ancestry, national origin, disability, medical condition,
16 genetic information, marital status, sexual orientation, citizenship, primary language, and
17 immigration status. Cal. Civ. Code § 51(b). "Sex" is defined to include, but not be limited to,
18 gender, gender identity, gender expression, pregnancy, childbirth, and medical conditions related
19 to pregnancy or childbirth. Cal Civ. Code § 51(e)(5).

20 8. I am familiar with the final rule Protecting Statutory Conscience Rights in Health
21 Care; Delegations of Authority, RIN 0945-AA10, issued by the U.S. Department of Health and
22 Human Services and published in the Federal Register on May 21, 2019 (the Rule).

23 9. The Rule creates a broad exemption for medical professionals and personnel to opt
24 out of any healthcare service based on a moral or religious ground. Specific scenarios are
25 included in the Rule, including abortion, sterilization, euthanasia, certain vaccinations if there is
26 an "aborted fetal tissue" connection (rubella, polio, Hep A, chickenpox, small pox),
27 contraception, gender transition/gender dysphoria (counseling, administering hormone
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1 prescriptions, etc.), tubal ligations, hysterectomies, assisted suicide, and referrals for advanced
2 directives.

3 10. Under the Rule, there is not any exception provided for emergency situations.
4 This is notable because even in the exercise of a physician's conscience, "[p]hysicians are
5 expected to provide care in emergencies, honor patients' informed decisions to refuse life-
6 sustaining treatment, and respect basic civil liberties and not discriminate against individuals in
7 deciding whether to enter into a professional relationship with a new patient." American Medical
8 Association, Policy E-1.1.7, "Physician Exercise of Conscience." Code of Medical Ethics.
9 Adopted 2016. *See also* Cal. Health & Saf. Code § 123420(d) (stating that California's abortion
10 conscience refusal law does not apply to medical emergency situations and spontaneous
11 abortions); Cal. Health & Saf. Code § 1317 (a) & (e) (requiring that any health facility that
12 operates an emergency department provide emergency services to patients for any condition in
13 which the person is in danger of loss of life, or serious injury or illness); *see also* 42 U.S.C. §
14 1395dd(a).

15 11. Under the Rule, physicians and surgeons can refuse medical care without any
16 information about the patient's medical condition or treatment options, not just on the basis of
17 federally protected conscience protections, but also on the basis of "ethical or other reasons." A
18 provider can do this without any supporting evidence, without notifying a supervisor of the denial
19 of service, even in emergency situations, and without providing notice or alternative options
20 and/or referrals to patients in need.

21 12. The Rule if implemented may thus impact the work and mission of the Board.

22 13. If, as a result of the Rule's requirements, patients file complaints against
23 physicians and surgeons who deny care or fail to provide them with timely, accurate, and
24 complete information, or if there is a complaint of denial of care due to an allegation of
25 discrimination, then the Board will have to investigate such complaints.

26 14. Furthermore, the Board is responsible for enforcing California law through
27 disciplinary proceedings. Thus, the Board may face an increase in disciplinary matters for
28 physicians and surgeons if these complaints are substantiated.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on August 10, 2019, in Los Angeles



Denise Pines
President
Medical Board of California