

## **CALIFORNIA SUPREME COURT LIMITS RELIGIOUS LIBERTY OF PHYSICIANS**

**San Francisco** – In a 7-0 decision, the California Supreme Court restricted the religious liberty of physicians' constitutional rights to respect his or her conscience when deciding whether to perform a particular medical procedure.

San Diego physicians Christine Brody, M.D., and Douglas Fenton, M.D., asserted a Constitutional defense, based on their religious liberty, to a lawsuit that was brought by an unmarried female patient over six years ago. The patient, Guadalupe Benitez, claimed the two Ob/GYNs discriminated against her based on her sexual orientation by referring her to another physician for the performance of an IUI (intrauterine insemination) in the course of fertility treatment.

The court's ruling holds that the First Amendment right to free speech and the free exercise of religion cannot be used as a defense to a claim of unlawful discrimination that is based on sexual orientation. However, the Court's ruling allows the physician's to present their religious justification for declining to inseminate an "unmarried" lesbian woman because, at the time, it was not a violation of California's Unruh Act to discriminate based on marital status. Since the filing of this lawsuit, the California legislature amended the law to prohibit marital status discrimination.

Dr. Brody began treating Ms. Benitez in August 1999 for infertility and informed the patient at the outset that the only procedure during the course of the extended fertility treatment as to which she had a religious issue was an IUI. An IUI is an elective, invasive procedure wherein the physician introduces donated sperm with the aim of achieving insemination and creating life. Ms. Benitez intended to use the sperm from a married donor who was also the employee of Ms. Benitez' partner, thereby complicating the ethical concerns. The defendants contend that Ms. Benitez and her partner understood and agreed in advance to a future referral to another physician, at no expense to Ms. Benitez, should the IUI become necessary. After other fertility protocols were unsuccessful, Ms. Benitez objected to the IUI referral contending that she was being discriminated against because she was a lesbian.

The procedure Dr. Brody followed was the same procedure adopted by the California Legislature in a statute protecting pharmacists from being forced by their employers to dispense the morning-after pill due to their religious beliefs. Dr. Fenton was not directly involved in the patient's fertility treatment.

Robert Tyler, General Counsel for Advocates for Faith and Freedom said, "This decision cannot stand and we will evaluate our options to seek review from the U.S. Supreme Court." He continued, "This decision may have a big impact on California's Proposition 8, the initiative to protect traditional marriage, as voters begin to recognize the radical agenda of our opposition."

Kenny Pedroza, partner of Cole Pedroza, LLP, stated, "The doctors are disheartened by the decision, and what it will mean for physicians in the future. However, the California Supreme Court made it clear that the doctors will have their day in court to tell their story to a jury of their peers. Despite plaintiff's argument, the doctors will not be silenced."

Trial attorney Carlo Coppo stated, "Our clients will have the right to defend against the plaintiff's claims by testifying to the ethical and religious reasons for Dr. Brody's decision." He further commented, "Dr. Brody was very clear that she would not perform the IUI on any unmarried women."

A copy of the briefs and the Court's opinion may be viewed [here](#).

The lawsuit, *Guadalupe T. Benitez v. North Coast Women's Care Medical Group, Inc., et al.*, was originally filed in the Superior Court of California for the County of San Diego on Dec. 7, 2001. [Advocates for Faith and Freedom](#) and [Alliance Defense Fund](#) joined the law firms of [DiCaro, Coppo & Popcke](#) and [Cole Pedroza](#), LLP, in defense of the litigation.

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