

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 ADDITIONAL 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

**NOTICE OF ADDITIONAL 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 Additional Errata regarding its *Amicus* Brief that was filed with the Court on May 10, 2005.

Since CMA’s brief was filed, CMA has been contacted by counsel for Real Party in Interest Guadalupe T. Benitez, Jennifer Pizer of Lambda Legal Defense and Education Fund, Inc. and Margaret Carroll of O’Melveny & Meyers. Ms. Pizer and Ms. Carroll complained about the content of CMA’s brief and its previous Notice of Errata. Specifically, they complained of CMA’s statement that “Marital status is not a protected classification” on page 6 of CMA’s brief and on in paragraph 3 of CMA’s previous Notice of Errata.

CMA understood that the Unruh Civil Rights Act was at issue in this case, and there were no allegations of any other statutory violations against Petitioners. CMA only intended this statement to relate to marital status in relation to the Unruh Civil Rights Act, not to other areas of the law which may treat marital status differently, such as Business & Professions Code section 125.6 or Government Code section 12940 (Fair Employment & Housing Act, hereinafter “FEHA”).

CMA’s counsel, however, did not cite Business and Professions Code section 125.6 or FEHA in the *Amicus* Brief. CMA’s counsel

also did not explain that any references to marriage as an unprotected classification only applied in the context of the Unruh Act.

CMA's counsel takes full responsibility for any ambiguity or confusion these omissions have caused.

CMA seeks to clarify that marriage is in fact a protected class for the purposes of applying some statutes. Accordingly, CMA hereby gives notice of the following additional errata:

1. The last sentence in the first paragraph on page 6, "Marital status is not a protected classification," should be changed to "Marital status is not a protected classification under the Unruh Act.¹"

2. The following footnote should be added immediately following the revised sentence above: "This discussion is expressly limited to the Unruh Act. Marital status is a protected classification under other statutory schemes. See, for example, Business & Professions Code section 125.6 and Government Code section 12940 (Fair Employment & Housing Act, hereinafter "FEHA")."

3. The paragraph added to page 11 by paragraph 3 of CMA's previous Notice of Errata should be changed as follows: the words "under the Unruh Act" should be added after the words "not a protected class" in the first sentence; the words "or unethical" should be deleted from the paragraph; the words "under the Unruh Act²" should be added after the word "illegal" in the third sentence. A second footnote should be added immediately after that sentence as follows: "This discussion is expressly limited to the Unruh Act. Marital status is a protected classification under other statutory

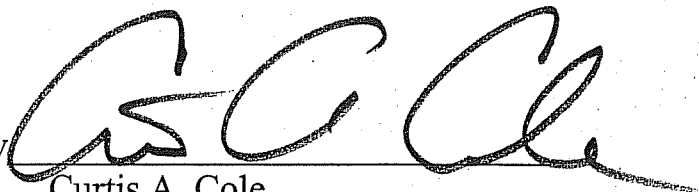
schemes. (See, e.g. Bus. & Prof. Code § 125.6; Gov't Code § 12940 (FEHA).)”

Respectfully submitted,

Dated: June 6, 2005

THELEN REID & PRIEST LLP

By

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

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 drafting the original version of CMA’s *Amicus* Brief, and the previous Notice of Errata thereto, I intended any statements suggesting that marriage is “not a protected classification” to apply only to the context of an action under the Unruh Act.

3. I take full responsibility for omitting any specific reference to Business and Professions Code section 125.6 from the *Amicus* Brief. I also take full responsibility for not clarifying that the statements in the brief suggesting that marriage is not a protected classification only apply to the context of the Unruh Act, which is at issue in this case.

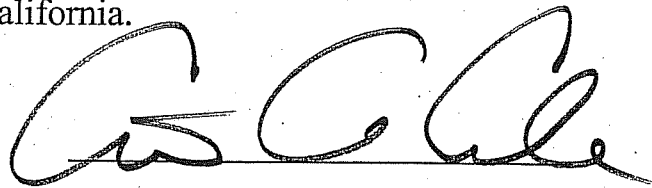
4. After my office filed CMA’s *Amicus* Brief and previous Notice of Errata, CMA was contacted by Jennifer Pizer and Margaret Carroll, counsel for Real Party in interest Guadalupe T. Benitez, regarding the contents of the brief.

5. On Friday, June 3, 2005, I spoke by telephone with Ms. Carroll. I advised Ms. Carroll that we intended to clarify CMA’s *Amicus* Brief by adding a specific reference to Business and Professions Code section 125.6 and explaining that marriage is a protected classification under statutory schemes other than the Unruh Act. That conversation explains the fact that the Real Party in Interest’s Answer Brief, which was submitted on the same day,

contains a footnote referencing Business and Professions Code section 125.6.

6. CMA wishes to correct any ambiguity in its brief by clarifying that marriage is in fact a protected classification under some other statutes not at issue in this case, and is only an unprotected class under the Unruh Act.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 7th day of June, 2005 at Los Angeles, California.

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

Curtis A. Cole

PROOF OF SERVICE BY MAIL

**In Re: NOTICE OF ADDITIONAL ERRATA REGARDING
AMICUS BRIEF OF CALIFORNIA MEDICAL ASSOCIATION;
DECLARATION OF CURTIS A. COLE; 4th Civil No. D045438**

Caption: North Coast Women’s Care Medical Group, Inc., et al. vs.
Superior Court of California For the County of San Diego
Filed: IN THE COURT OF APPEAL, Fourth Appellate District,
Division One
(Dispatched by overnight courier for filing on this date)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

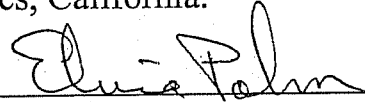
I am over the age of 18 and not a party to the within action. I am employed in the County of Los Angeles, State of California by Thelen Reid & Priest LLP. My business address is 333 South Hope Street, Suite 2900, Los Angeles, California 90071-3048. On this date, I served the persons interested in said action by placing one copy of the above-entitled document in a sealed envelope with first-class postage fully prepaid in the United States post office mailbox at Los Angeles, California, addressed as follows:

CARLO COPPO, ESQ. GABRIELE M. PRATER, ESQ. DiCaro, Coppo & Popcke 1959 Palomar Oaks Way, Suite 300 Carlsbad, CA 92009 (Attorneys for Petitioners)	Clerk – Superior Court of California County of San Diego Honorable Ronald S. Prager, Dept. 71 330 West Broadway San Diego, CA 92101
ROBERT H. TYLER, ESQ. DOUGLAS L. EDGAR, ESQ. TIMOTHY D. CHANDLER, ESQ. Alliance Defense Fund 38760 Sky Canyon Drive, Suite B Murietta, California 92563 (Attorneys for Petitioners)	Clerk – California Supreme Court Second Floor, Room 2752 300 S. Spring Street Los Angeles, California 90013 (4 copies)

<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 1100 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 June 7, 2005, at Los Angeles, California.



Elvia Palm

LA #361760 v2

