

# The unusual way a Catholic health system is wielding an abortion protest law

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A Catholic hospital system is suing several California patients and their advocates because the patients allegedly refused to be discharged. The suits invoke a novel legal approach: accusing them of trespassing under a

California law intended to stop anti-abortion protesters from blocking access to health facilities.

Dignity Health has filed three lawsuits in Sacramento County accusing patients of "commercial blockade" for refusing to vacate [hospital](#) beds even though the [health care provider](#) had deemed them medically and legally eligible to either go home or go to another facility. Dignity alleges the patients "unreasonably and unlawfully" refused discharge, disrupting its ability to serve others at a time when health facilities were overwhelmed by COVID-19.

Relatives and advocates say the patients were exercising their right to be discharged to a facility that offered appropriate care and that they could afford, not simply sent home without the ability to take care of themselves.

The lawsuits could set important precedents for both the use of the California commercial blockade statute to go after patients and their advocates and, more broadly, the handling of cases in which the hospital and patient can't agree on a plan for discharge.

The state's hospital lobby recently highlighted discharge delays as a growing problem costing the industry \$2.9 billion a year. The California Hospital Association estimates at least 5,000 patients every day experience such delays, often in trying to identify skilled nursing facilities.

Patient advocates, who typically charge patients a fee to help them navigate the health care system, warn that a decision in favor of Dignity could chill their entire profession and give hospitals a new avenue to seek money from patients.

"It could be a watershed case if it goes in either direction," said Tony

Chicotel, senior staff attorney with the Berkeley-based California Advocates for Nursing Home Reform, who has worked on hospital discharge cases. "If it's a defense verdict, we'll know our laws are somewhat protective of patients. And if it's a plaintiff's verdict, patients around the state could be dumped and us advocates will have to figure out what we can talk about without getting sued."

San Francisco-based Dignity Health, a tax-exempt organization with \$9.5 billion in revenue, was founded by nuns to serve the sick and the poor. Spokesperson William Hodges said the health system doesn't comment on pending litigation.

A 68-year-old patient, Daphne Muehlendorf, who is blind, began suffering a series of seizures in 2021 and was in and out of the hospital. Each time she went home, her daughters say, her health declined, with slurred speech and the inability to carry a cup, despite receiving in-home physical therapy. By the time she entered the acute rehabilitation unit at Dignity's Mercy General Hospital in Sacramento, she had already applied for Medi-Cal, the state's Medicaid program, which covers the cost of nursing homes if the patient demonstrates both financial and medical need.

Dignity, which has not specified an amount it seeks in damages, contends in its lawsuit that doctors determined Muehlendorf was eligible to go home but the family refused for weeks while waiting for her Medi-Cal assisted living waiver to be approved. Once that came through, Muehlendorf was transferred to Bruceville Terrace, one of Dignity's skilled nursing facilities in Sacramento.

"I don't see what the case is and that's what's scary for me," said one of Muehlendorf's two daughters, Terra Khan, about Dignity's legal argument. She is also being sued by Dignity. "I have no idea what's going to happen. I'm terrified."

Dennis McPherson, the attorney representing Dignity, said the hospital made the decision to sue after serious deliberation. Muehlendorf "did cause a significant disruption," McPherson said. "It took a lot more manpower and our unit was full. There were patients wait-listed who couldn't get into this unit."

The family and their patient advocate, Carol Costa-Smith, who runs the company The Light for Seniors in San Diego, said it wasn't safe for Muehlendorf to return home and accused the hospital of delaying filing paperwork for Muehlendorf's Medi-Cal application. State and federal laws require hospitals to arrange care for patients who are likely to suffer adverse health consequences upon discharge, and patients have a right to appeal discharge decisions.

Likening themselves to tax advisers, independent advocates with legal, finance, and insurance backgrounds fill a cottage industry helping patients and their families navigate the health system and long-term care facilities, which often includes applying for Medi-Cal.

Costa-Smith, who charges each client \$2,000 to \$3,000 a year, said Dignity is trying to put patient advocates out of business so there is less pushback against hospital discharges and other decisions. "I'm the pit bull and I'm not going to let them do a home discharge if it's not safe," she said.

Dignity's use of the commercial blockade law appears to be new. California lawmakers passed a bill in 1994 allowing civil claims against trespassers at health facilities, authored by then-Assembly member Jackie Speier, who recently retired from Congress and is now running for the San Mateo County Board of Supervisors. The legislature's analysis of the proposed bill from that time showed it was intended to dissuade anti-abortion protesters from blocking people entering or exiting health care facilities by threatening a lawsuit.

The analysis said it could also stop other disruptive activities such as excessive phone calls to tie up phone lines, the use of stink bombs to evacuate [health facilities](#), and fake fire calls that prompt emergency evacuation. It was backed by the American College of Obstetricians and Gynecologists, California NOW, and Planned Parenthood Affiliates of California.

Anti-abortion groups opposed the bill, arguing "those who impede access in order to save babies should not be treated differently than those who might do so to save animals, or to block access to government buildings or bridges." Opponents suggested that pro-choice groups could seek to exploit the bill for profit.

Patient advocates are alarmed by the Dignity lawsuits and say they have never heard of hospitals filing such claims. Dignity is also suing Craig Smedley, who operates Estate Advisory Group in Murrieta. According to a June 30, 2021, complaint, Smedley advised a patient at Mercy Hospital of Folsom "refusal to accept safe and lawful placement and be discharged" even though the patient had been medically eligible for discharge since May 9, 2021.

Dignity contends it lost money because the patient's insurance denied payment, and it accuses Smedley of directing the hospital to send her to a skilled nursing facility when doctors said she had no need for that level of care. Dignity has not specified an amount it seeks in damages. Smedley, who is defending himself, said disagreeing with a hospital's discharge plan was hardly a commercial blockade.

"I'm not chaining myself to the front door to prevent people from passing through to the hospital like an anti-abortion protester," Smedley said. "I've never visited the hospital. I give advice by phone. My clients were the ones communicating with the hospital."

Chicotel, the attorney with the nursing home reform group, said he did not believe Dignity's claims were supported by the law. Hospitals, he said, have a duty to discharge patients to a safe facility they can afford.

"In my experience, the Catholic hospitals are focused on the bottom line," Chicotel said. "We see finances become much more important than the spiritual mission. I see that over and over again."

McPherson argued that the commercial blockade law was written broadly to include any disruption to the normal functions of a [health](#) care facility that renders it temporarily or permanently unavailable.

"The outcome of the trial will dictate to the client what we're going to do with respect to the others," he said. Dignity has filed a third lawsuit, against Costa-Smith and another client.

As a registered nurse who has worked for various hospitals, Khan believes she was doing what any person would do in advocating for a loved one. She said her mother, who once lived independently despite her disability, wouldn't have asked for help if she didn't really need it. "I know we moved through this honorably," she said.

Khan is both troubled and comforted knowing that Dignity is going after other patients and patient advocates.

"It makes me feel like, OK, it wasn't that we did something wrong—there's something else at play that we're not privy to."

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