6/1/16
~~4/6/16~~

FAX

To: EPA Office of Civil Rights
Attn: Laura Bachle

202 - ~~564-7272~~ 566-2468
202 - ~~501-7836~~ 565-0196 Fax

From: (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

I originally faxed this complaint to DOJ in August 2015. I have gotten no response. On 3/24/16 I called the ADA Information Line at 800-514-0301 and was told that my complaint had been referred to the EPA Office of Civil Rights in December 2015 and I should call 202-564-7272 to inquire about the status of my complaint. I did this and eventually spoke with Jonathan Stein who said the Office had no record of my complaint. He suggested I fax my complaint directly to your office. See attached.

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

[illegible]
9 pgs

FOR INTERNAL USE ONLY
DO NOT DISTRIBUTE
CONFIDENTIAL

8 total pgs

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy
Environmental Health Consultant
(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy Santa Fe NM 87508

August 9, 2015

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 205030
(202) 307-1197 Fax

Re: ADA Complaint

I recently requested a disability accommodation under the Americans With Disabilities Act (ADA) from Santa Clara County in California. Specifically I requested the County not spray pesticides on to my mother's property. She has (b) (6) - Privacy disease and I am her agent for health care and have authority to make personal care decisions for her.

The County rejected my request for accommodation stating that the ADA only applies to employment. I told the head of Vector Control Department that Title II of the ADA applies to counties and their activities and projects, but she did not believe me. Neither did the head of Equal Opportunity Department, or the County attorney.

Thus, I am filing an ADA complaint in hopes that the Dept. of Justice will educate the County about its ADA obligations and if there is future pesticide spraying in my mother's neighborhood, the County will honor my request for accommodation and skip her house during the fogging.

Sincerely,

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

Attachments: Letter to Denise Bonilla, Santa Clara Vector Control, and Sabahete Kraja, Equal Opportunity Department, requesting disability accommodation

Email correspondence with Denise Bonilla

Email correspondence with Sabahete Kraja

Carolyn Barry Advanced Health Directive

July 13, 2015

Denise Bonilla, District Manager
Santa Clara County Vector Control District
1580 Berger Dr.
San Jose, CA 95112
(408) 918-3317
(408) 298-6356 fax
vectorinfo@deh.sccgov.org

and

Sabahete Kraja, Director
Equal Opportunity Department
2310 North First Street, Suite 101
San Jose, CA 95131
(408) 299-5195
Sabahete.Kraja@esa.sccgov.org

Re: Request for Disability Accommodation

Ms. Bonilla and Ms. Kraja:

I am writing to request a reasonable accommodation for my mother in regards to the planned spraying of pesticide in her neighborhood on July 13, 2015.

My mother, (b) (6) - Privacy is 91 years old and has impairments in the major life functions of (b) (6) - Privacy As such she is a person with a disability as defined in The Americans with Disabilities Act (ADA) and therefore covered under the Act. Santa Fe County is required to comply with the ADA.

I am named as my mother's agent for health care in her California Advance Health Care Directive (available on request). I have the authority to make decisions regarding my mother's health.

My mother has (b) (6) - Privacy, a neurodegenerative condition, and must not be exposed to neurotoxic chemicals such as etofenprox, the pesticide that will be used to spray her neighborhood.

On her behalf I am requesting that spraying not be done within 50 feet of her property at (b) (6) - Privacy I recognize that some pesticide will likely drift on her property, but the amount will be less than if spraying occurs right in front of her house.

I believe this to be a reasonable accommodation, because it is not difficult to skip my mother's house during the fogging, and since it would be such a tiny fraction of the overall fogging operation, I do not believe it would alter the overall objectives.

Please let me know ASAP whether this accommodation has been granted.

Thank you.

Sincerely,

From: (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy
To: denise.bonilla <denise.bonilla@deh.sccgov.org>
Cc: sabahete.kraja <sabahete.kraja@esa sccgov.org>
Subject: Re: fogging tonight-your fax
Date: Mon, Jul 13, 2015 5:25 pm

> A request for reasonable accommodation under the Americans with Disabilities Act applies to employers' relationships with their employees.

Title I of the ADA deals with Employment. The County services and programs are protected against discrimination under Title II.

State and Local Governments (Title II)

Title II applies to State and local government entities, and, in subtitle A, protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. Title II extends the prohibition on discrimination established by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, to all activities of State and local governments regardless of whether these entities receive Federal financial assistance.

I urge you to check with your legal department before dismissing my request.

(b) (6) - Privacy, (b) (7)(C) - Enforcement

-----Original Message-----
From: Bonilla, Denise <denise.bonilla@deh.sccgov.org>
To: (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy
Sent: Mon, Jul 13, 2015 4:30 pm
Subject: fogging tonight-your fax

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

A request for reasonable accommodation under the Americans with Disabilities Act applies to employers' relationships with their employees.

As I explained on the phone on Friday, we cannot opt out your parents' house from the fogging tonight. I suggest you move them out of the mile radius fogging zone for the night if you are concerned.

Denise L. Bonilla
District Manager
Santa Clara County Vector Control
1580 Berger Drive
San Jose, CA. 95112
Denise.Bonilla@deh.sccgov.org

From: Kraja, Sabahete <Sabahete.Kraja@esa.sccgov.org>
To: (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy
Cc: Bonilla, Denise <denise.bonilla@deh.sccgov.org>; Rossi_CCO, Michael <michael.rossi@cco.sccgov.org>; Clark, Nancy <Nancy.Clark@cco.sccgov.org>
Subject: RE: fogging tonight-your fax
Date: Wed, Jul 15, 2015 12:50 pm

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

I understand that you been contacted by the Department and I do not have any different direction/information for Ms. Bonilla.

From: (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy
Sent: Tuesday, July 14, 2015 7:15 AM
To: Kraja, Sabahete
Subject: Fwd: fogging tonight-your fax

Ms. Kraja,

Ms. Bonilla dismissed my request for reasonable accommodations by stating that the ADA did not apply to her program. This is not true.

Before I file an ADA complaint with the U.S. Dept of Justice, I was wondering if your office can clarify the law for Ms. Bonilla
and/or help with possible mediation of the situation. I would like to try to resolve this informally to avoid the need to file an ADA complaint with the U.S. Dept of Justice.

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy

-----Original Message-----
From: (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy
To: denise.bonilla <denise.bonilla@deh.sccgov.org>
Cc: sabahete.kraja <sabahete.kraja@esa.sccgov.org>
Sent: Mon, Jul 13, 2015 5:25 pm
Subject: Re: fogging tonight-your fax

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Title I of the ADA deals with Employment. The County services and programs are protected against discrimination under Title II.

Ann

CALIFORNIA ADVANCE HEALTH CARE DIRECTIVE

Including Power of Attorney for Health Care

IMPRINT / MRN

PART 1: APPOINTING AN AGENT TO MAKE HEALTH CARE DECISIONS

Note: You should discuss your wishes in detail with your designated agent(s).

1 A

My name is: (b) (6) - Privacy Date of birth: (b) (6) - Privacy

My address is: (b) (6) - Privacy Palo Alto, CA 94303

In this document I appoint an agent. I want this person to help make my medical decisions.

Your agent or alternate agent **cannot** be:

- Your primary physician
- Someone who works where you receive care (unless you are related to that person or you are co-workers).

1 B

- PRIMARY AGENT:

  Agent's Name: (b) (6) - Privacy

  Address: (b) (6) - Privacy Santa Fe, NM 87508

  Phone: (b) (6) - Privacy

  (Indicate home, work, pager, and cellular phone.)

- 1st ALTERNATE AGENT (If agent is not willing, able, or reasonably available to serve.)

  Name of first alternate agent: (b) (6) - Privacy

  Address: (b) (6) - Privacy Oklahoma City, OK 73118

  Phone: (b) (6) - Privacy

  (Indicate home, work, pager, and cellular phone)

- 2nd ALTERNATE AGENT (If agent and 1st alternate are unavailable or unwilling to serve.)

  Name of second alternate agent: (b) (6) - Privacy

  Address: (b) (6) - Privacy Burlingame, CA 94011 (b) (6) - Privacy

  Phone: (b) (6) - Privacy

  (Indicate home, work, pager, and cellular phone)

- 3rd Alternate Agent – (b) (6) - Privacy Palo Alto, CA 94303 (b) (6) - Privacy

WHEN WILL MY AGENT MAKE DECISIONS?:

(Put an X next to the sentence you agree with.)

1 C

☒ My health care agent can make health care decisions for me while I still have mental capacity to make decisio(b) (6) - Privacy[initial here]

☐ My health care agent will make health care decisions for me ONLY when I do not have the mental capacity to make my own health care decisions. ______ [initial here]

WHAT MY AGENT MAY DO

My agent will be allowed to make health care decisions for me just as I can presently make my own. For example, my agent may (1) accept or refuse treatment for me, including accepting or discontinuing artificial nutrition and fluid that is given through a tube into my stomach or into a vein. (2) Choose for me a particular physician or health care facility. (3) Receive or review my medical information and records, or permit release of my records for others' review (b) (6) - Privacy {initial here}

1 D

WHO MAY *NOT* MAKE MY MEDICAL DECISIONS

1 E

☐ No Exclusions ________ {initial here}

or ☒ The following individual(s) are to be EXCLUDED from any part of health care decision-making for me:

(b) (6) - Privacy ______________________ (b) (6) - Privacy {initial here}

AFTER MY DEATH

My agent will be able to authorize an autopsy. My agent will be able to donate all or part of my body. My agent will be able to decide what to do with my body. If I have written a will or made arrangements for what happens to my body after my death, my agent should follow those instructions.

1 F

☐ No Exceptions ________ {initial here}

or ☐ I want to make exceptions to this authority. I write them here:

____

____ {initial here}

or ☒ I want to make exceptions to this authority. See the attachment to this form.

(Sign and date the attached pages when this document is witnessed.)

See "My Health Care Choices" VII + VIII.

PART 2: HEALTH CARE INSTRUCTIONS (Cross out the sections that do not apply)

2 A

☒ I have made additional written instructions for my agent and attached them.

(Sign and date the attached pages when this document is witnessed.)

See "My Health Care Choices" attached.

PERSONAL CARE DECISIONS: I want my agent(s) to decide about personal care on my behalf. For example, I want my agent to be able to decide where I will live, choose my clothing, receive my mail, care for my personal belongings and care for my pet(s) if any. My agent may make all other decisions of a personal nature not included in the description of health care (b) (6) - Privacy {initial here}

2 B

REVOCATION OF PREVIOUS DOCUMENTS: I revoke any previously-executed Power of Attorney for Health Care, Individual Health Care Instruction, or Natural Death Act Declaration. I have the right to revoke this directive later by creating a new one. (b) (6) - Privacy {initial here}

PART 3: SIGNATURE OF PERSON WHO IS MAKING THIS DIRECTIVE

Sign the document in the presence of the witnesses or the Notary.

3 Date: 7/13/10 Signature: (b) (6) - Privacy

If the person making this directive is unable to write, have the person make a mark. Have a witness write the name of the person making this directive and sign the next page.

PART 4: THIS DOCUMENT MUST EITHER BE SIGNED BY TWO WITNESSES OR NOTARIZED ON THE NEXT PAGE.

WITNESSES: Certain individuals cannot serve as witnesses. Those rules are set forth in the following witness statements:

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF CALIFORNIA

(1) That the individual who signed or acknowledged this Advance Health Care Directive is personally known to me, or that the individual's identity was proven to me by convincing evidence,

(2) That the individual signed or acknowledged this Advance Directive in my presence,

(3) That the individual appears to be of sound mind and under no duress, fraud, or undue influence,

(4) That I am not a person appointed as agent by this Advance Directive, and

(5) That I am not the individual's health care provider, an employee of the individual's health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

ONLY ONE WITNESS CAN BE A FAMILY MEMBER.

4 A

First Witness: (b) (6) - Privacy (Name (printed)) (b) (6) - Privacy (Signature)

Date: 7/13/10 Address: (b) (6) - Privacy Palo Alto CA 94301

Second Witness: (b) (6) - Privacy (Name (printed)) (b) (6) - Privacy (Signature)

Date: 7-13-10 Address: (b) (6) - Privacy Palo Alto, Ca. 94301

ONE WITNESS MUST BE SOMEONE OTHER THAN FAMILY and must not benefit financially (get any money or be named in your will) after you die. Have that person sign again below:

I FURTHER DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF CALIFORNIA

(1) That I am not related to the individual executing this Advance Health Care Directive by blood, marriage, or adoption,

(2) To the best of my knowledge, I am not entitled to any part of the individual's estate upon his or her death under a will now existing or by operation of law.

4 B Date: 7-13-10 Signature: (b) (6) - Privacy