



Colorado Cross-Disability Coalition
Civil Rights Legal Program
1385 S. Colorado Blvd. Bldg. A, Ste. 610
Denver, Colorado 80222
303.839.1775
www.ccdconline.org



RELMAN COLFAX PLLC
1225 19th Street, N.W., Suite 600
Washington, D.C. 20036
202.728.1888
www.relmanlaw.com

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CONTACT:

Kevin W. Williams

720.336.3584

kwilliams@ccdconline.org

Sasha Samberg-Champion

202.728.1888

ssamberg-champion@relmanlaw.com

CSL PLASMA SUED FOR BLATANT DISABILITY DISCRIMINATION: IN THE MIDDLE OF THE PANDEMIC, IT REFUSES TO ALLOW PEOPLE WITH DISABILITIES TO DONATE PLASMA

CSL Claims Plasma Donations Needed Now More Than Ever, but Its Policies and Practices Exclude Disabled Who Are Capable of Donating and Want to Help

Today, in the United States District Court for the District of Colorado, [Relman Colfax PLLC](#), the [Colorado Cross-Disability Coalition Civil Rights Legal Program](#), and [LaBarre Law Offices P.C.](#) filed a disability discrimination lawsuit against [CSL Plasma, Inc.](#) (“CSL”) on behalf of the Colorado Cross-Disability Coalition (“CCDC”) and four of its members. The four members have different disabilities, but CSL denied each of them the opportunity to donate plasma at CSL’s plasma donation centers throughout Colorado based on their disabilities or for reasons directly related to their disabilities. The lawsuit alleges that CSL’s policies and practices of systemically discriminating against people with disabilities are unlawful under Title III of the Americans with Disabilities Act and its implementing regulations (“[ADA](#)”) and Parts 3-8 of the Colorado Anti-Discrimination Act (“[CADA](#)”).

“In over 25 years as an advocate for social justice for people with disabilities, I have never seen such blatant discriminatory policies and practices against people with disabilities,” said Julie Reiskin, the Executive Director of the CCDC. “They seriously said people with psychiatric disabilities can’t donate because they ‘might see aliens’ and do harm to themselves or others. They won’t let many trained service dogs into their premises. And they won’t take the most basic steps to make their services accessible to people with mobility impairments. The ADA was created to prevent this kind of stereotyping and exclusion of people with disabilities.

It is unimaginable that 30 years after the passage of the ADA CSL Plasma still holds these attitudes! The time has come to put an end to such ridiculous and harmful misconceptions.”

The Case

CSL employs policies and practices that deny individuals with disabilities and groups of people with disabilities the opportunity to donate plasma for reasons unrelated to their actual ability to donate. The experiences of four CCDC members demonstrate this:

First, CSL denied an individual with schizophrenia—which has been controlled by medication for many years—the opportunity to donate plasma. To justify this exclusion, CSL stated in writing that it fears he (and others with psychiatric disabilities) might think the needle “was an alien” and would tear it out. CSL has no basis for this belief except for its own stereotypes and unfounded fears regarding people with psychiatric disabilities. CSL did not perform any individualized inquiry to find out if the individual had controlled his schizophrenia through medications or other means. It simply denied him the right to donate plasma based on a diagnosis.

Second, CSL denied an individual who is a paraplegic the ability to donate plasma because he cannot “stand” on CSL’s scale to be weighed. It has never explained why it does not provide a wheelchair-accessible scale or other well-established method of weighing individuals who cannot stand on a standard scale. CSL is a multinational corporation and could easily provide such a method of weighing individuals who cannot stand. By employing this policy, CSL excludes anyone who has paralysis that prevents the individual from standing.

Third, CSL denied an individual with cerebral palsy the ability to donate simply because he needed a small amount of assistance to transfer onto the donor bed CSL uses. This individual, who uses arm crutches, needed only to be provided a stepstool to get onto the donor bed. But CSL refuses to provide any assistance to any individual getting on the donor beds. Again, CSL provides no explanation why providing assistance, even minimal assistance, would create any burden on CSL or cause any threat to donors or anyone else.

Fourth, CSL denied an individual who uses a service animal the ability to donate plasma because the service animal was not a guide dog. CSL did not explain why it permits guide dogs (who assist people with visual impairments) in its facilities but no other service animals. As explained below, service animals perform and are trained to perform many different tasks

for people with many different types of disabilities. Restricting the type of service animal that is permitted in a CSL donation center to guide dogs has no basis under the ADA or the CADA.

The individual plaintiffs along with CCDC seek a declaration from the court that CSL's policies and practices are in violation of the ADA and the CADA and seek an injunction from the court ordering CSL to comply with the ADA and the CADA. The individual plaintiffs also seek monetary damages, as they have been deprived of the opportunity to be paid for plasma donation.

The Law

The policies and practices employed by CSL prevent large groups of people with disabilities from participation in the donation of plasma based on unfounded stereotypes about disabilities; by requiring the performance of tasks that are unnecessary to donate plasma; and by refusing to provide extremely reasonable accommodations. These are clear violations of the ADA and the CADA.

The ADA's implementing regulations specifically state that, while a public accommodation like CSL may impose legitimate safety requirements, those "safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities." That is, they do not permit rank speculation regarding whether an individual with a well-regulated psychiatric or other disability "might" do something harmful. A chief reason why the ADA was enacted was to put an end to exclusions based on such stereotypes, generalizations, and unfounded fears. People with disabilities are often misunderstood or believed to be inferior or incapable of doing what everyone else does without any justification or determination of the actual ability of the individual.

The ADA also requires reasonable accommodations and modifications to policies, practices and procedures. Here, the plaintiffs asked for relatively minor assistance and modifications. There is no reason why a company with billions in dollars of annual revenue such as CSL can't provide a stepstool so an individual with cerebral palsy can get onto a donation bed or make available a wheelchair-accessible scale or other method of weighing someone who cannot stand on a standard scale so that wheelchair users can use its services. The accommodations necessary are well-established. For example, the U.S. Department of Justice ("DOJ") and Department of Health and Human Services published guidance in 2010, which is readily available online, regarding how to weigh individuals with mobility impairments and methods of assisting people with mobility impairments who require assistance in accessing medical

equipment or other furniture. This guidance is entitled “[Americans with Disabilities Act Access To Medical Care For Individuals With Mobility Disabilities.](#)”

Meanwhile, denying an individual with a disability the right to be accompanied by her trained service animal is completely unlawful under the ADA and the CADA. There is no basis for CSL’s policy of excluding all service animals except guide dogs for the visually impaired. Trained service animals provide a variety of services for people with all kinds of disabilities, and nothing in the ADA or the CADA restrict the type of service animal a public accommodation must permit, so long as the dog has been individually trained to do work or perform disability-related tasks for an individual with the disability. Once again, this is all spelled out in published DOJ guidance called “[Frequently Asked Questions about Service Animals and the ADA.](#)” As the DOJ states:

For example, a person with diabetes may have a dog that is trained to alert him when his blood sugar reaches high or low levels. A person with depression may have a dog that is trained to remind her to take her medication. Or, a person who has epilepsy may have a dog that is trained to detect the onset of a seizure and then help the person remain safe during the seizure.

Similarly, in additional DOJ guidance entitled “[Service Animals,](#)” the DOJ states:

Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets.

All of these are well-established services that trained service dogs provide people with disabilities. CSL’s exclusion of dogs performing such services amounts to an exclusion of people with disabilities who depend on these dogs for vital, often life-saving service. Again, CSL does not provide any explanation for why it chooses to engage in ongoing discrimination against individuals with disabilities who use service animals.

“These are obvious violations of the ADA and similar state laws like the CADA. The problem is that CSL, like much of the plasma industry, simply won’t acknowledge its obligation to comply with the disability-rights laws that every other business open to the public must

follow,” said Sasha Samberg-Champion of Relman Colfax, one of the attorneys representing the Plaintiffs. “What’s really galling is that the plasma industry has litigated this question, and it lost. Yet CSL continues to act like it won.”

In 2016, in [Levorsen v. Octapharma Plasma](#), the U.S. Court of Appeals for the Tenth Circuit—the federal appellate court governing Colorado—rejected the plasma industry’s argument that plasma donation centers are not public accommodations and don’t have to comply with the ADA. Relman Colfax handled that appeal on behalf of an individual who, just like one of the plaintiffs in this case, was denied the right to donate plasma based only on the fact that he had been diagnosed with schizophrenia—even though he had a note from his doctor saying he was perfectly fit to donate. Although that case should have made clear that CSL can’t blatantly discriminate against people with disabilities in Colorado, CSL has refused to follow it.

“It’s unbelievable that, even after *Levorsen*, we have to sue CSL to make it comply with obvious legal obligations,” Samberg-Champion said.

Plasma Donation Today and Why Excluding People with Disabilities Makes No Sense

While the plasma industry’s blatant discrimination against people with disabilities has always been unacceptable and unlawful, it is particularly problematic during the current crisis. The nation has an urgent need for plasma, and people with disabilities, like other Americans, want to contribute to that effort.

CSL states the following on its [website](#) with regard to why people should donate plasma:

Save and Improve Lives

Your plasma donation can do just that. There are a number of diseases that are treated with plasma-derived products, and many people will benefit from your donation. In addition to helping others, donating plasma is good for you. You’ll be compensated for your time, and you’ll have the knowledge that you’re making a difference in someone else’s life.

In addition, CSL specifically advertises on its [website](#) for plasma donors who could help develop a treatment for COVID -19.

“CCDC members with disabilities who have tried to donate plasma at CSL facilities do so for exactly that reason: they want to help others because that is the way CCDC members are -- helping others is an important part of what the organization does,” said Kevin Williams, Legal Program Director of the CCDC Civil Rights Legal Program, one of the other attorneys representing the plaintiffs. “In addition, many people with disabilities fall within the lowest income bracket in the country and in the world. Just like non-disabled individuals, there are many people with disabilities who are out of work as a result of the current pandemic. Being able to receive some compensation for helping others benefits the disability community greatly given this condition.”

Currently, CSL advertises seven [Colorado Donation Centers](#). The experiences of the individuals identified in the Complaint filed today are consistent with the policies, practices and procedures of CSL donation centers everywhere as demonstrated in the numerous other lawsuits that have been filed against CSL and other plasma donation centers.

In light of the growing need for plasma donations, it simply does not make sense to employ exclusionary and discriminatory policies against people with disabilities who constitute a large segment of the population. According to a [2017 Disability Statistics Annual Report, a Publication of the Rehabilitation Research and Training Center on Disability Statistics and Demographics](#), it was estimated that the overall rate of people with disabilities in the US population in 2016 was 12.8%, and the percentage of people with disabilities slowly increased from 11.9% in 2010 to 12.8% in 2016. The study also provides information regarding the percentages of people with disabilities residing in states throughout the United States as well as different types of disabilities, age groups, income level and more. In addition, in a more recent study performed by the [Centers for Disease Control and Prevention, With respect to its analysis of Disability & Health U.S. State Profile Data for Colorado \(Adults 18+ years of age\)](#), updated September 12, 2019, 21% of Coloradans have disabilities of some type.

“Given the needs of people who need plasma and the current pandemic, it is senseless for CSL to discriminate against and exclude an enormous sector of the population of people who could be assisting CSL with what its website advertises: ‘Your plasma donations are needed more than ever!’” Williams said.

The Law Firms Involved

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[Relman Colfax PLLC](#) is a civil rights law firm based in Washington, D.C. with a national practice. It litigates a variety of cutting-edge civil rights cases consistent with its mission of ending discrimination and segregation, including in the areas of disability, housing, lending, employment, public accommodations, education, and police accountability. More about the firm and its cases can be found at its website, www.relmanlaw.com.

The CCDC Civil Rights Legal Program has been in existence for almost 23 years. It is one of many programs operated by CCDC. The focus of the Legal Program is civil rights cases for people with disabilities exclusively. The Legal Program represents its members, people with disabilities and their friends, families and allies in the organization itself as well as other disability rights organizations. The Legal Program has brought hundreds of lawsuits and resolved other cases under the ADA, the CADA, the Fair Housing Amendments Act, Section 504 of the Rehabilitation Act and other laws related to the civil rights of people with disabilities. The Legal Program began in 1997 because CCDC could not find private attorneys who would bring these kinds of cases representing clients who do not have resources to hire lawyers and most of the Legal Program's work has been against governmental entities and private places of public accommodation. Information about the cases the Legal Program has brought can be found on the CCDC website under [Active Investigations](#), [Open Cases](#) and [Completed Cases](#).

Scott LaBarre of [LaBarre Law Offices, P.C.](#) is a sole practitioner and specializes in employment law, disability rights, Randolph-Sheppard Act cases, and some international policy work particularly in the area of copyright law. Mr. LaBarre has appeared in federal and state courts throughout the United States securing many important victories for his clients such as *Enyart v. National Conference of Bar Examiners*, 630 F.3d 1153 (9th Cir. 2011)(securing the right for blind students to use assistive technology as an accommodation on the multistate bar exam) and *Cannon v. Palmer College of Chiropractic*, 850 N.W.2d 326 (Iowa 2014)(securing the right of a blind student to pursue a doctor of chiropractic degree with his requested accommodations).