

# Exhibit 116



March 27, 2018

**VIA ELECTRONIC SUBMISSION**

U.S. Department of Health and Human Services

**Attn:** Office for Civil Rights

**Re:** Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 83 Fed. Reg. 3880 (Jan. 26, 2018); RIN 0945-ZA03

The Institute for Policy Integrity (“Policy Integrity”) at New York University School of Law<sup>1</sup> respectfully submits the following comments to the Department of Health and Human Services (“HHS” or “the Department”) regarding its proposed rule on statutory conscience protections in health care (“Proposed Rule”).<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

Our comments focus, first, on HHS’s failure to provide a reasoned explanation for disregarding relevant prior findings and, second, on serious errors and oversights in the Department’s Regulatory Impact Analysis for the Proposed Rule. Specifically, we note the following:

- HHS disregards, without explanation, concerns that it raised in its 2011 rulemaking on conscience protections (“2011 Rule”), such as the possibility that an overly broad conscience protections rule would interfere with patients’ ability to offer informed consent and the possibility that an overly broad rule would lead providers to believe—mistakenly—that statutory conscience protections allow them to discriminate against certain types of patients.
- HHS’s Regulatory Impact Analysis ignores the Proposed Rule’s potentially substantial indirect costs, such as reduced access to health care for patients and increased personnel expenses for providers.
- The Regulatory Impact Analysis fails to assess the distributional impacts of the Proposed Rule.
- The Regulatory Impact Analysis underestimates the number of entities covered by the Proposed Rule’s assurance and certification requirement and, as a result, understates the Proposed Rule’s direct compliance costs.

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<sup>1</sup> This document does not purport to present New York University School of Law’s views, if any.

<sup>2</sup> Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 83 Fed. Reg. 3880 (Jan. 26, 2018) (to be codified at 45 C.F.R. pt. 88) (hereinafter “Proposed Rule”).

**I. HHS Fails to Provide a Reasoned Explanation for Disregarding Findings It Made in the 2011 Rule.**

This is not HHS's first rulemaking on conscience protections. In 2008, the Department finalized a regulation ("2008 Rule") that, among other things, purported to clarify the scope of conscience protections under the Church Amendments, Section 245 of the Public Health Service Act, and the Weldon Amendment by expansively defining certain statutory terms.<sup>3</sup> HHS subsequently rescinded all of the 2008 Rule's definitions in the 2011 Rule, citing concerns about their potential to (1) compromise patients' ability to offer informed consent, (2) cause confusion about the scope of statutory protections, and (3) inadvertently encourage providers to discriminate against certain categories of patients.<sup>4</sup>

When an agency amends, suspends, or repeals a rule, the agency must provide "a reasoned explanation . . . for disregarding facts or circumstances that underlay or were engendered by the prior policy."<sup>5</sup> Underlying the 2011 Rule was a conclusion by HHS that expansive definitions of statutory terms would compromise patients' ability to offer informed consent and foster confusion and discrimination. Accordingly, before it can adopt the Proposed Rule, which defines statutory terms even more broadly than the 2008 Rule did, the Department must acknowledge its prior concerns about expansive definitions and explain either why those concerns are not implicated by the definitions proposed here or why the Proposed Rule is justified despite those concerns. In the absence of such an explanation, the Proposed Rule is arbitrary and capricious.

*HHS Disregards Its Prior Findings on the Potential for Expansive Definitions to Compromise Patients' Ability to Provide Informed Consent*

When it rescinded the majority of the 2008 Rule in 2011, HHS did so, in part, to "clarify any mistaken belief that [the 2008 Rule] altered the scope of information that must be provided to a patient by their provider in order to fulfill informed consent requirements."<sup>6</sup> The 2011

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<sup>3</sup> Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law, 73 Fed. Reg. 78,072, 78,073 (Dec. 19, 2008) (hereinafter "2008 Rule").

<sup>4</sup> Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 76 Fed. Reg. 9968, 9973-74 (Feb. 23, 2011) (hereinafter "2011 Rule").

<sup>5</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009).

<sup>6</sup> 2011 Rule, 76 Fed. Reg. at 9973.

Rule emphasized that making a patient aware of all available health care options is “crucial to the provision of quality health care services.”<sup>7</sup>

The Proposed Rule is likely to limit patients’ awareness of their health care options to an even greater extent than the 2008 Rule would have.<sup>8</sup> For example, the Proposed Rule suggests that a provider has no obligation to offer patients a disclaimer regarding health care procedures to which the provider has a religious or moral objection.<sup>9</sup> In other words, providers need not warn patients that they are not being informed of all available treatment options. And yet HHS fails even to acknowledge its 2011 finding that a conscience protections rule could not properly “alter[ ] the scope of information that must be provided to a patient,”<sup>10</sup> much less explain why the Department no longer holds that view.

*HHS Disregards Its Prior Findings on the Potential for Expansive Definitions to Cause Confusion About the Scope of Statutory Protections*

The 2011 Rule highlighted commenters’ concern that the definitions in the 2008 Rule “were far broader than scope of the federal provider conscience statutes.”<sup>11</sup> In rescinding those definitions, the Department noted its agreement that the definitions “may have caused confusion regarding the scope” of statutory protections.<sup>12</sup>

Definitions included in the Proposed Rule are even broader than those adopted in 2008. For example, whereas the 2008 Rule interpreted statutory protections against “assist[ing] in in the performance” of an objectionable procedure to encompass any action with a “reasonable” connection to that procedure,<sup>13</sup> the Proposed Rule requires only an “articulable” connection to the procedure.<sup>14</sup> But the Proposed Rule nevertheless fails to acknowledge HHS’s prior finding as to the potential for broad definitions to cause confusion. Nor does the Department explain why the Proposed Rule is justified in spite of this potential for confusion.

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<sup>7</sup> *Id.*

<sup>8</sup> Proposed Rule, 83 Fed. Reg. at 3924.

<sup>9</sup> *See id.* at 3894-95 (defining “referral or refer for” to include “disclaimers,” and noting that referral was not defined in the 2008 Rule).

<sup>10</sup> 2011 Rule, 76 Fed. Reg. at 9973.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 2008 Rule, 73 Fed. Reg. at 78,097.

<sup>14</sup> Proposed Rule, 83 Fed. Reg. at 78,090-91.

*HHS Disregards Its Prior Findings on the Potential for Expansive Definitions to Encourage Discrimination Against Categories of Patients*

HHS's 2011 decision to rescind the definitions in the 2008 Rule was also motivated by concern that the definitions would lead providers to believe, incorrectly, that statutory protections extended not just to refusals to perform particular procedures, but also to refusals to care for particular types of patients. As the Department explained in the 2011 Rule, statutory conscience protections "were never intended to allow providers to refuse to provide medical care to an individual because the individual engaged in behavior the health care provider found objectionable."<sup>15</sup> But the Department agreed with commenters that the 2008 Rule could nevertheless give the impression that "Federal statutory conscience protections allow providers to refuse to treat entire groups of people based on religious or moral beliefs."<sup>16</sup> As a result, HHS feared that the 2008 Rule could reduce access to "a wide range of medical services, including care for sexual assault victims, provision of HIV/AIDS treatment, and emergency services."<sup>17</sup>

Again, the definitions in the Proposed Rule are even broader than those that caused the Department concern in 2011 and are thus likely to give rise to the same harmful misimpressions about the scope of statutory conscience protections. But the Department neither acknowledges its prior concerns regarding the inadvertent encouragement of discrimination nor explains why proceeding with the Proposed Rule is reasonable despite those concerns.

## **II. HHS Fails to Consider the Proposed Rule's Indirect Costs**

A rational cost-benefit analysis considers both the direct *and* indirect effects of a proposed rule. To that end, Executive Order 12,866 requires agencies to consider not just "direct cost . . . to businesses and others in complying with the regulation," but also "any adverse effects" the rule might have on "the efficient functioning of the economy, private markets . . . health, safety, and the natural environment."<sup>18</sup> Longstanding guidance on regulatory impact analysis from the White House Office of Management and Budget similarly instructs agencies to "look beyond the direct benefits and direct costs of [their] rulemaking and consider any important

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<sup>15</sup> 2011 Rule, 76 Fed. Reg. at 9973-74.

<sup>16</sup> *Id.* at 9973.

<sup>17</sup> *Id.* at 9974.

<sup>18</sup> E.O. 12,866 § 6(a)(3)(C)(ii).

ancillary benefits and countervailing risks.”<sup>19</sup> The Supreme Court, too, has made clear that “‘cost’ includes more than the expense of complying with regulations” and that “any disadvantage could be termed a cost.”<sup>20</sup>

Despite HHS’s clear obligation to consider indirect consequences, the Regulatory Impact Analysis for the Proposed Rule assesses only direct compliance costs and ignores the ways in which the Proposed Rule is likely to reduce patients’ access to health care and increase providers’ personnel expenses.

*HHS Fails to Consider Costs to Patients from the Express Denial of Medical Services*

For a variety of reasons, the Proposed Rule is likely to reduce the availability and consumption of medical services, negatively affecting patient health and wellbeing. As discussed in Section I of these comments, the Proposed Rule’s expansive definitions of statutory terms are likely to lead some providers to adopt a much broader interpretation of statutory conscience protections than Congress intended. This, in turn, will increase the frequency with which patients are denied care due to a provider’s religious or moral objections. Such denials can impose a variety of costs—financial, physical, and psychological—on patients.

At minimum, a patient denied care must incur the cost of seeking out an alternative provider. Assuming patients typically choose the most convenient healthcare provider available, a second-choice provider may be farther away than the first. Traveling farther away, the patient loses time and money spent on transportation, and may be required to request time off from work or pay for childcare services. For some patients, these costs may be insurmountable.

Furthermore, some patients who are denied care may be too discouraged to seek out alternative sources of healthcare services. These patients may eschew treatment altogether, leading to negative health consequences.

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<sup>19</sup> Office of Mgmt. & Budget, Circular A-4 (2003), [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/).

<sup>20</sup> *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015); see also *Competitive Enter. Inst. v. Nat’l Highway Traffic Safety Admin.*, 956 F.2d 321, 326-27 (D.C. Cir. 1992) (striking down fuel-efficiency rule for failure to consider indirect safety costs); *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1225 (5th Cir. 1991) (holding that EPA was required to consider the indirect safety effects of substitute options for car brakes when banning asbestos-based brakes under the Toxic Substances Control Act).

Finally, the Proposed Rule may discourage some patients from seeking medical services in the first place, simply because they *fear* being rejected by a provider. This assumption is reciprocal to the Department's assumption that some potential healthcare providers are currently (absent the Proposed Rule) discouraged from entering the profession because they fear they will be discriminated against for their religious and moral convictions.<sup>21</sup>

*HHS Fails to Consider Costs to Patients from the Undisclosed Denial of Medical Services*

The Proposed Rule's likely health costs extend beyond patients who are (or who fear that they will be) expressly denied care. As explained in Section I of these comments, the Proposed Rule encourages providers not merely to refuse to provide referrals for procedures or services to which they object, but also to refuse to warn patients that the provider is declining to recommend such treatments. A patient who does not realize she is being denied information about a particular health care option might choose an alternative that is less beneficial to her health or wellbeing.<sup>22</sup>

*HHS Fails to Consider Indirect Personnel Costs for Providers*

In addition to imposing health costs on patients, the Proposed Rule may indirectly increase personnel costs for some health care entities. For example, if the Proposed Rule causes support staff at a given health care facility to decline to perform services that they previously performed (or to decline to treat patients whom they previously treated), the facility will need to pay for additional labor to meet the same level of demand.

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<sup>21</sup> Proposed Rule, 83 Fed. Reg. at 3916.

<sup>22</sup> The Department solicits comment on methodologies that can be used to quantify ancillary health costs. There are a number of ways to assess such impacts, including: retrospective cohort studies (e.g., studying the conditions of women's health in the 1960's and 1970's when information on abortion was limited); cohort studies in other countries or states where abortion counseling and referral is restricted; prospective cohort studies (i.e., a pilot program testing the regulation on a subset of the population); self-report surveys administered to a sample population of women (assessing, for example, their awareness of the existence of and details of abortions procedures); estimations of the potential effects by using statistics in the current environment as indicators; or any other of a number of epidemiological and other studies that are routinely performed by public health professionals when evaluating policies that affect public health.

### III. HHS Fails to Consider the Proposed Rule's Distributional Impacts

Executive Order 12,866 requires agencies to “consider . . . distributive impacts” that will result from a proposed regulatory action.<sup>23</sup> In addition to failing to take the aforementioned ancillary costs into consideration, the Department has failed to consider how these costs will burden certain groups disproportionately. The Department's failure to consider such distributional impacts is particularly egregious given that it lists the promotion of “a society free from discrimination” as one of the chief benefits of the Proposed Rule.<sup>24</sup> HHS cannot rationally tout the Proposed Rule's potential to reduce discrimination against religious health care providers while ignoring its potential to increase discrimination against other groups.<sup>25</sup>

Specifically, the Department should consider whether and to what extent the Proposed Rule will disproportionately burden the following subpopulations:

- **Immigrant Women:** Recent immigrants may be less well informed on the availability of reproductive health care in the U.S., and therefore in greater need of the counselling and referral services that the Proposed Rule covers.
- **Rural Women:** Increasing the incidence of health care providers refusing to provide counseling or referrals may create a greater problem for women who live in rural areas than for women at large, due to the increased search and travel costs associated with finding an alternative provider in rural areas.
- **Low-Income Women:** Women with lower incomes have fewer resources available to allocate to transportation and child care. If refused counseling or referral services, these women may suffer greater costs when seeking alternative health care providers. The refusal may even result in an insurmountable obstacle to obtaining the health service sought.
- **Women of Color:** Women of color disproportionately earn lower incomes and live in underserved areas. If refused counseling or referrals, these women may experience greater burdens to seek alternative health care providers.

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<sup>23</sup> E.O. 12,866 § 6(b)(5).

<sup>24</sup> Proposed Rule, 83 Fed. Reg. at 3903.

<sup>25</sup> *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (noting that “reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions”); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (an agency “cannot tip the scales . . . by promoting [an action's] possible benefits while ignoring [its] costs.”).



- **LGBTQ Individuals:** As discussed in Section I, the Proposed Rule, like the 2008 Rule, may lead health care workers to believe they can permissibly refuse to provide any type of medical service to gay or transgender individuals (or their families) based on moral or religious objections. Such refusals would decrease the quantity and quality of health care available to that population.
- **Individuals with HIV/AIDS:** Similarly, the Proposed Rule may lead health care workers to believe that they can permissibly refuse to provide any type of medical service to individuals with HIV/AIDS. Again, such refusals would decrease the quantity and quality of health care available to that population.
- **Interracial/Interfaith Families:** Finally, the Proposed Rule may lead health care workers to believe that they can permissibly refuse to provide any type of medical services to interracial or interfaith families because they morally object to such relationships. As with LGBTQ patients and HIV-positive patients, this misimpression could result in reduced access to health care for interracial and interfaith families.

#### **IV. HHS Underestimates the Number of Entities Affected by the Proposed Rule and, as a Result, Underestimates the Proposed Rule's Compliance Costs**

In addition to overlooking the Proposed Rule's indirect costs, HHS also underestimates the Proposed Rule's *direct* costs. Section 88.4 of the Proposed Rule requires certain recipients of HHS funding "to submit written assurances and certifications of compliance" with statutory conscience protections.<sup>26</sup> In calculating compliance costs for this assurance and certification requirement, the Department estimates that the requirement would apply to between 94,279 and 152,519 individuals and entities.<sup>27</sup> But that estimate excludes a large number of individuals and entities that, under a plain reading of the Proposed Rule, would in fact be required to submit assurances and certifications.<sup>28</sup>

HHS assumes that "all physicians" will be exempt from complying with the assurance and certification requirement, either because they do not accept HHS funds or because they "meet the proposed criteria for exemption . . . in proposed § 88.4(c)(1)."<sup>29</sup> But § 88.4(c)(1) exempts physicians and physician offices only if they (1) participate in Medicare Part B and

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<sup>26</sup> Proposed Rule, 83 Fed. Reg. at 3896.

<sup>27</sup> *Id.* at 3910.

<sup>28</sup> *Id.* at 3910, 3915.

<sup>29</sup> *Id.* at 3909-10.

(2) “are not recipients of Federal financial assistance or other Federal funds from the Department through another instrument, program, or mechanism.”<sup>30</sup> It is patently unreasonable for the Department to assume that this exemption encompasses every physician who receives HHS funds. Some physicians, for example, accept both Medicare *and* Medicaid funding.

HHS makes a similar error in estimating the number of individuals and entities that would be exempt from the assurance and certification requirement due to § 88.4(c)(2), which exempts recipients of funding under certain grant programs administered by the Administration for Children and Families that have a purpose unrelated to health care provision or medical research. The Department assumes that “all persons and entities that provide child and youth services . . . [and] all entities providing services for the elderly and persons with disabilities . . . would fall within this exemption.”<sup>31</sup> As with the exemption for physicians, however, the § 88.4(c)(2) exemption is unavailable if HHS money is accepted from any other source. It seems unlikely that *no* entities that provide services for children, the elderly, or the disabled receive HHS funding from *any* source other than non-healthcare-related grant programs administered by the Administration for Children and Families.

Because it underestimates the number of entities that will be obligated to comply with the Proposed Rule’s assurance and certification requirement, HHS also underestimates the Proposed Rule’s total compliance costs.

Respectfully,

Michael Domanico  
Theodore Gifford  
Jack Lienke  
Jason A. Schwartz

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<sup>30</sup> *Id.* at 3929.

<sup>31</sup> *Id.* at 3910.

# Exhibit 117



March 27, 2018

VIA ELECTRONIC SUBMISSION

U.S. Department of Health and Human Services  
Office for Civil Rights  
Attention: Conscience NPRM, RIN 0945-ZA03  
Hubert H. Humphrey Building  
Room 509F  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**RE: Public Comment in Response to the Proposed Rule, Protecting Statutory Conscience Rights in Health Care RIN 0945-ZA03**

To Whom It May Concern:

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) appreciates the opportunity provided by the Department of Health and Human Services (“HHS” or the “Department”) to offer comments in response to the Proposed Rule, Protecting Statutory Conscience Rights in Health Care RIN 0945-ZA03 (“Proposed Rule” or “Rule”), published in the Federal Register on January 26, 2018.<sup>1</sup> As described herein, the Proposed Rule both exceeds its statutory authority and contravenes this Department’s mission, the legal rights of patients, the ethical obligations of health professionals, and the legal rights and responsibilities of institutional health care providers. It should be withdrawn.

Lambda Legal is the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and everyone living with HIV through impact litigation, policy advocacy, and public education. For decades, Lambda Legal has been a leader in the fight to ensure access to quality health care for our vulnerable communities. In recent years, Lambda Legal has submitted a series of comments to HHS regarding the importance of reducing discrimination against LGBT people in health care services, the fact that current law already protects health worker conscience rights appropriately, and the ways that conscience-based exemptions to health standards endanger LGBT people and others.<sup>2</sup> Recently, Lambda Legal also has opposed an HHS proposal to expand

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<sup>1</sup> 83 Fed. Reg. 3880 *et seq.* (proposed Jan. 26, 2018) (to be codified at 45 C.F.R. pt. 88).

<sup>2</sup> *Lambda Legal Comments on Proposed Rule 1557 Re: Nondiscrimination in Health Programs and Activities, 1557 NPRM (RIN 0945-AA02)* (submitted Nov. 9, 2015) (“Lambda Legal 1557 Comments”), [https://www.lambdalegal.org/in-court/legal-docs/hhs\\_dc\\_20151117\\_letter-re-1557](https://www.lambdalegal.org/in-court/legal-docs/hhs_dc_20151117_letter-re-1557); *Lambda Legal Comments on Request for Information Regarding Nondiscrimination in Certain Health Programs or Activities (RIN 0945-AA02 & 0945-ZA01)* (submitted Sept. 30, 2013) (“Lambda Legal Nondiscrimination Comments”), [https://www.lambdalegal.org/in-court/legal-docs/ltr\\_hhs\\_20130930\\_discrimination-in-health-services](https://www.lambdalegal.org/in-court/legal-docs/ltr_hhs_20130930_discrimination-in-health-services). See also Brief of Amici Curiae Lambda Legal et al., *Zubik v. Burwell*, 136 S. Ct. 1557



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the ability of religiously-affiliated health care institutions and individuals to impose their religious beliefs on workers and on patients, cautioning in detail about the likely harmful consequences of any such expansions for LGBT people and people living with HIV.<sup>3</sup>

As to the Proposed Rule now under consideration, Lambda Legal emphatically recommends its withdrawal because:

- (1) It improperly expands statutory religious exemptions in multiple ways, including by:
  - (a) permitting workers to refuse job duties that cannot reasonably be understood as “assisting” with an objected-to procedure,<sup>4</sup> and instead have merely an “articulable” connection to the procedure<sup>5</sup>;
  - (b) expanding who may assert religious objections from employees performing or assisting in specified procedures to any member of the workforce<sup>6</sup>;
  - (c) using an improperly expanded definition of “referral”<sup>7</sup> that includes providing any information or directions that could assist a patient in pursuing care; and
  - (d) defining “discrimination” to focus on protecting the interests of health care providers in continuing to receive favorable financial, licensing or other treatment, rather than on patients’ interest in receiving medically appropriate care<sup>8</sup>; and
  - (e) defining health care entity to include health insurance plans, plan sponsors, and third-party administrators.<sup>9</sup>

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(2016) (Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, 15-191), [http://www.lambdalegal.org/in-court/legal-docs/zubik\\_us\\_20160217\\_amicus](http://www.lambdalegal.org/in-court/legal-docs/zubik_us_20160217_amicus).

<sup>3</sup> See, e.g., *Lambda Legal Comments on Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act (RIN 0938-AT46)* (submitted Dec. 5, 2017), [https://www.lambdalegal.org/in-court/legal-docs/dc\\_20171205\\_aca-moral-exemptions-and-accommodations](https://www.lambdalegal.org/in-court/legal-docs/dc_20171205_aca-moral-exemptions-and-accommodations); *Lambda Legal Comments on Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act (RIN 0938-AT20)* (submitted Dec. 5, 2017), [https://www.lambdalegal.org/in-court/legal-docs/dc\\_20171205\\_aca-religious-exemptions-and-accommodations](https://www.lambdalegal.org/in-court/legal-docs/dc_20171205_aca-religious-exemptions-and-accommodations).

<sup>4</sup> 42 U.S.C.A. § 300a-7(b) and (d).

<sup>5</sup> Section 88.2, 83 Fed. Reg. at 3923.

<sup>6</sup> Section 88.2, 83 Fed. Reg. at 3924.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*



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- (2) It encourages workers and institutions to refuse care and does not acknowledge the rights of patients, such as the right against sex discrimination provided by Section 1557 of the Affordable Care Act.<sup>10</sup>
- (3) It encourages workers and institutions to refuse care and does not acknowledge the legal rights and duties of health care providers, such as those under Title VII of the Civil Rights Act of 1964,<sup>11</sup> or health professionals' ethical obligations to patients.
- (4) Using broad, vague language, it addresses a purported "problem" of health workers being pressed to violate their conscience, suggesting that workers should have broad religious rights to decline care and refuse other work of any sort in any context, going far beyond the narrow contexts specified in the authorizing statutes.
- (5) Its proposed enforcement mechanisms are draconian, threatening the loss of federal funding and even the potential of funding "claw backs," with limited if any due process protections, all of which would skew health systems improperly in favor of religious refusals and against patient care.
- (6) The heavy-handed enforcement mechanisms inevitably would invite discrimination and aggravate existing health disparities and barriers to health care faced by LGBT people and others, contrary to the mission of HHS and, in particular, its Office for Civil Rights.
- (7) It is the result of a rushed, truncated process inconsistent with procedural requirements including the Administrative Procedure Act.<sup>12</sup>

In sum, the role of the HHS Office for Civil Rights ("OCR") described in the Proposed Rule is not to promote access to health care and to safeguard patients against discrimination, but instead to impose vague, overbroad *restraints* on health care provision, as a practical matter elevating "conscience" objections of workers over the needs of patients. In so doing, the Proposed Rule turns the mission of HHS/OCR on its head. Freedom of religion is a core American value, which is why it is already protected by the First Amendment of the Constitution. But, that freedom does not and must not allow anyone to impose their beliefs on others or to discriminate. This basic principle is nowhere more important than in medical contexts where religion-based refusals can cost patients their health and even worse.

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<sup>10</sup> 42 U.S.C.A. § 18116.

<sup>11</sup> Civil Rights Act of 1964 § 7, 42 U.S.C.A. § 2000e *et seq.* (1964).

<sup>12</sup> 5 U.S.C.A. § 500 *et seq.*



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**I. The Proposed Rule Improperly Expands Statutory Religious Exemptions.**

The Proposed Rule improperly expands statutory religious exemptions beyond their narrow, specific parameters in numerous ways. It includes definitions that would broaden the exemptions in the Church Amendments, which currently allow health workers to decline to assist in an abortion or sterilization procedure if doing so “would be contrary to [their] religious beliefs or moral convictions.”<sup>13</sup> The Proposed Rule reinterprets what it means to “assist in the performance” of a procedure from participating in “any activity with a *reasonable* connection” to a procedure<sup>14</sup> to “any ... activity with an *articulable* connection” to an objected-to procedure.<sup>15</sup> In other words, any connection that can be described, no matter how tenuous, potentially could suffice. Confirming the potentially indefinite expansion of *what* can be deemed “assistance” is a broad definition of *who* may object. From the prior common language understanding of who might be involved in a medical procedure, the new definition appears to authorize any member of the workforce to object to performing their job duties.<sup>16</sup>

The Proposed Rule also includes an aggressive expansion of the concept of “referral” from the common understanding of actively connecting a patient with an alternate source of a particular service to the provision of any information or directions that could possibly assist a patient who might be pursuing a form of care to which the employee objects.<sup>17</sup> This goes far beyond a reasonable understanding of what the underlying statute justifies.

Similarly, where the statute authorizes “health care entities” to assert religious objections, the Proposed Rule grossly expands the entities covered by that term to include health insurance plans, plan sponsors, and third-party administrators.<sup>18</sup> It also adds a definition of “discrimination” that focuses not on patients’ interest in receiving equal, medically appropriate services, but rather on protecting health care providers’ interests in continuing to receive favorable financial, licensing or other treatment while refusing on religious or moral objections to provide care despite medical standards, nondiscrimination rules, or other requirements.<sup>19</sup>

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<sup>13</sup> 42 U.S.C.A. § 300a-7.

<sup>14</sup> 45 C.F.R. § 88.2 (2008) (emphasis added).

<sup>15</sup> Proposed Rule, 83 Fed. Reg. at 3923 (emphasis added).

<sup>16</sup> Section 88.2, 83 Fed. Reg. at 3924.

<sup>17</sup> Section 88.2, 83 Fed. Reg. at 3924.

<sup>18</sup> Section 88.2, 83 Fed. Reg. at 3924.

<sup>19</sup> Section 88.2, 83 Fed. Reg. at 3924.



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In numerous places, the Proposed Rule seems to indicate that HHS is adopting interpretations that would extend the Amendments' reach beyond current understanding that the exemptions only concern abortion and sterilization and follow the common medical understanding of those terms.<sup>20</sup> As one example, it seems likely that the "sterilization" references within the Proposed Rule could be applied to deny health care to transgender patients because the Rule itself, at footnote 36, cites *Minton v. Dignity Health* approvingly.<sup>21</sup> *Minton* addresses whether a Catholic hospital was legally justified when it blocked a surgeon from performing a hysterectomy for a transgender man as part of the prescribed treatment for gender dysphoria. The hospital defended on religious freedom grounds, arguing that it was bound "to follow well-known rules laid down by the United States Conference of Catholic Bishops," including rules prohibiting "direct sterilization."<sup>22</sup>

But, to equate hysterectomy to treat gender dysphoria with direct sterilization is medically inaccurate. Sterilization procedures undertaken for the *purpose* of sterilization are fundamentally different from procedures undertaken for other medical purposes that incidentally affect reproductive functions. Regardless of whether the United States Conference of Catholic Bishops considers gender transition-related care to be sterilization as a religious matter, were the federal government to approve a religious rationale as grounds for stretching a federal statute and permitting denial of medically necessary care would be problematic for both statutory interpretation and Establishment Clause reasons.

The Proposed Rule's apparent embrace of the Bishops' view poses an overtly discriminatory and unacceptable threat to transgender patients. This concern is not speculative. The Proposed Rule's footnote referencing *Minton* supports the following statement: "Many religious health care personnel and faith-based medical entities have further alleged that health care personnel are being targeted for their religious beliefs."<sup>23</sup> For the Proposed Rule to equate a transgender patient expecting to receive medically necessary care from health care personnel with those personnel "being targeted for their religious beliefs" is a chilling indicator of the direction the Proposed Rule would take health care in this country. Not only would health providers be invited to turn away transgender patients, but those that abide by their obligation to

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<sup>20</sup> Compare cases describing statute's applicability to provision or refusal provide abortions or sterilization, e.g., *Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695 (2d Cir. 2010), and *Chrisman v. Sisters of St. Joseph of Peace*, 506 F.2d 308 (9th Cir. 1974), with *Geneva Coll. v. Sebelius*, 929 F. Supp. 2d 402 (W.D. Pa. 2013), on reconsideration in part (May 8, 2013) (statute does not apply to provision of emergency contraception, which is not abortion or sterilization).

<sup>21</sup> No. 17-558259 (Calif. Super. Ct. Apr. 19, 2017).

<sup>22</sup> Defendant Dignity Health's Reply Brief in Support of Demurrer to Verified Complaint, *Minton v. Dignity Health*, No. 17-558259, at 2 (Calif. Super. Ct. Apr. 19, 2017) (filed Aug. 8, 2017), [https://www.aclusocal.org/sites/default/files/brf.sup\\_080817\\_defendant\\_dignity\\_healths\\_reply\\_in\\_support\\_of\\_demurrer\\_to\\_verified\\_complaint.pdf](https://www.aclusocal.org/sites/default/files/brf.sup_080817_defendant_dignity_healths_reply_in_support_of_demurrer_to_verified_complaint.pdf).

<sup>23</sup> Proposed Rule, 83 Fed. Reg. at 3888 n. 36.





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provide nondiscriminatory care and require their employees to act accordingly could be stripped of federal funding if equal treatment of those patients offended any workers' personal beliefs.

The overbroad definitions and suggestive language all contribute to the alarming overall theme of the Proposed Rule—that it addresses a purported problem of health workers ostensibly being pressed wrongfully to act against their rights of conscience. The Proposed Rule's suggested cure appears to be that workers should have broad religious rights to decline care of any sort in any context. This theme starts with the broad language stating the Proposed Rule's purpose and runs throughout the rule.<sup>24</sup> It creates at least a serious concern that, for example, language long understood to be bounded by its statutory context only to concern abortion and sterilization could be misconstrued as authorizing health care providers to refuse to participate in *any* part of *any* health service program or research activity “contrary to [their] religious beliefs or moral convictions.”<sup>25</sup> While such an interpretation obviously could be challenged legally, many patients have neither the knowledge nor the means to resist such improper care refusals and would simply suffer the delay or complete denial of medically needed treatments.

## **II. The Proposed Rule Invites Workers And Institutions To Refuse Care And Does Not Acknowledge The Rights Of Patients.**

By issuing the Proposed Rule, HHS invites health workers and institutions to refuse to provide medical care for religious reasons, without acknowledging that patients often have countervailing rights. Yet, all federal agencies, including HHS, must comply with the federal statutes that protect LGBT people and others from discrimination, such as Section 1557 of the Affordable Care Act, which bars discrimination based on sex in federally funded health services and programs.<sup>26</sup> Properly understood, Section 1557 protects transgender patients from discriminatory denials of care based on their gender identity or transgender status.<sup>27</sup> It also protects lesbian, gay, and bisexual patients.<sup>28</sup> Even if it were not contrary to the mission of OCR

<sup>24</sup> See, e.g., Section 88.1 (Purpose); Appendix A (required notice to employees) to 45 C.F.R., 83 Fed. Reg. at 3931 (declaring broad right to accommodation for any religious or moral belief); 83 Fed. Reg. at 3881, 3887-89, 3903 (addressing “problem” of workers being required to meet patient needs despite their personal beliefs).

<sup>25</sup> 42 U.S.C.A. § 300a-7(d). See cases cited *supra* note 20.

<sup>26</sup> 42 U.S.C.A. § 18116.

<sup>27</sup> *Rumble v. Fairview Health Services*, 2015 WL 1197415 (D. Minn. March 16, 2015) (Affordable Care Act, Section 1557). See also *Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 858 F.3d 1034 (7th Cir. 2017) (analogous protection against sex discrimination in Title IX protects transgender students); *EEOC v. R.G. v. G.R. Harris Funeral Homes, Inc.*, \_\_\_ F.3d \_\_\_, 2018 WL 1177669 (6th Cir. March 7, 2018) (analogous protection against sex discrimination in Title VII protects transgender workers).

<sup>28</sup> Cf. *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (sexual orientation discrimination is sex discrimination under Title VII); *Hively v. Ivy Tech Comm'ity College*, 853 F.3d 339 (7th Cir. 2017) (same).



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to undermine patient protections against discrimination, the agency lacks the authority to reduce the protections provided to patients by separate statutes.

The ACA also includes patient protections to ensure access to essential health services, including reproductive health services. Yet, the Proposed Rule's aggressive approach to advancing conscience rights offers nothing to explain how those refusal rights are to coexist with patients' rights under the ACA. As to these conflicts, Lambda Legal joins the comments submitted by the National Health Law Program.

Moreover, the Proposed Rule also is inconsistent with several core constitutional guarantees: (1) each of us is entitled to equal protection under law; (2) the Establishment Clause forbids our government from elevating the religious wishes of some above the needs of others to be protected from harm, including the harms of discrimination; and (3) congressional spending powers have limits. On the latter point, the Proposed Rule references the spending powers of Congress as grounds for the new enforcement powers created for HHS to condition federal funding upon health care providers' acquiescence in religious refusal demands of their workers.<sup>29</sup> However, as well-established by *South Dakota v. Dole*<sup>30</sup> and its progeny, Congress's spending powers are limited. Any exertion of power must be in pursuit of the general welfare; must not infringe upon states' abilities "to exercise their choice knowingly, cognizant of the consequences of their participation"; must be related "to the federal interest in particular national projects or programs;" and must be otherwise constitutionally permissible.<sup>31</sup>

Multiple Equal Protection and Establishment Clause concerns implicate the final prong of the *South Dakota v. Dole* test for unconstitutional conditions on federal funds. But the first prong deserves immediate focus because it obviously does not serve the general welfare to use severe de-funding threats to intimidate medical facilities into deviating from medical practice standards in favor of religious interests in secular settings, to the detriment of individual and public health.

In addition, with its explicit intention to enforce federal "conscience" rights despite contrary state and local protections for patients, the Proposed Rule further implicates federalism concerns. It states: "Congress has exercised the broad authority afforded to it under the Spending Clause to attach conditions on Federal funds for respect of conscience, and such conscience conditions supersede conflicting provisions of State law[.]"<sup>32</sup> It then asserts that it "does not impose substantial direct effects on States," "does not alter or have any substantial direct effects on the relationship between the Federal government and the States," and "does not implicate" federalism concerns under Executive Order 13132.<sup>33</sup> Yet, by inviting health professionals and

<sup>29</sup> Proposed Rule, 83 Fed. Reg. at 3889.

<sup>30</sup> 483 U.S. 203 (1987).

<sup>31</sup> *Id.* at 207-08.

<sup>32</sup> Proposed Rule, 83 Fed. Reg. at 3889.

<sup>33</sup> *Id.* at 3918-19.



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other workers to turn away patients and refuse job duties in such a sweeping way, the Proposed Rule directly conflicts with state and local nondiscrimination laws and other patient protections. Its assertions to the contrary are patently inaccurate.

**III. The Proposed Rule Invites Workers To Refuse Care And Does Not Acknowledge The Legal Rights And Duties, And Ethical Obligations, Of Health Care Providers.**

The Proposed Rule aims improperly to empower workers to object to job duties without addressing the impacts on employers and coworkers left somehow to try to ensure that patient needs are met by others, with whatever increased costs, workload, and other burdens it may entail. The proposed approach fails to acknowledge that the federal employment nondiscrimination law, Title VII of the Civil Rights Act of 1964, limits the extent to which employers are to be burdened by employee demands for religious accommodation.<sup>34</sup> Undue burdens on employers could include objections by coworkers to unfair additional job duties or to coworker proselytizing. Likewise, it certainly would impose unjustifiable burdens to require employers to hire duplicate staff simply to ensure patient needs are met by employees willing to perform basic job functions. Indeed, courts have confirmed that when denial of a requested accommodation is “reasonably necessary to the normal operation of the particular business or enterprise,”<sup>35</sup> employers, including health care employers,<sup>36</sup> need only show that they “offered a reasonable accommodation *or* that a reasonable accommodation would be an undue burden.”<sup>37</sup>

Such limitations on employee religious rights are essential to ensure that health care employers can hire those who will perform the essential functions of their jobs, and will comply with all statutory obligations including prohibitions against discrimination. If instead, employees who claim “conscience” objections to providing the health care services to LGBT people or people living with HIV are empowered by the Proposed Rule to threaten their employees with loss of federal funding if they do not allow such discrimination, employers will face logistical

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<sup>34</sup> 42 U.S.C.A. § 2000e *et seq.* See, e.g., *See, e.g., Bruff v. North Miss. Health Servs., Inc.*, 244 F.3d 495, 497-98 (5th Cir. 2001) (Title VII duty to accommodate employees’ religious concerns did not require employer to accommodate employee’s requests to be excused from counseling patients about non-marital relationships, which meant “she would not perform some aspects of the position itself”); *Berry v. Dep’t of Social Servs.*, 447 F.3d 642 (9th Cir. 2006) (employer entitled to prohibit employee from discussing religion with clients).

<sup>35</sup> 42 U.S.C.A. § 2000e-2(e).

<sup>36</sup> See, e.g., *Grant v. Fairview Hosp. & Healthcare Servs.*, No. Civ. 02-4232JNEJGL, 2004 WL 326694 (D. Minn. Feb. 18, 2004) (hospital wasn’t required to accommodate employee’s request to be able to proselytize or provide pastoral counseling to patients to try to persuade them not to have abortions); *Robinson v. Children’s Hosp. Boston*, Civil Action No. 14-10263-DJC, 2016 WL 1337255 (D. Mass. Apr. 5, 2016) (granting hospital employee’s request to forgo flu shot would have been an undue hardship for hospital).

<sup>37</sup> See, e.g., *Sánchez-Rodríguez v. AT & T Mobility P. R., Inc.*, 673 F.3d 1, 8 (1st Cir. 2012).



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nightmares and the employees without such beliefs will be unfairly subjected to increased workloads.

This seems like an inevitable repercussion particularly in light of the Proposed Rule's explanation in its definition of prohibited "discrimination" that "religious individuals or institutions [must] be allowed a level playing field, and that their beliefs not be held to disqualify them from participation in a program or benefit."<sup>38</sup> This definition lacks any qualifying language confirming that employers may condition employment on willingness to perform essential parts of a job. The likely effects would include increased burnout among those staff who have additional work delegated to them when religious exemptions are claimed. The Proposed Rule also would drain institutional resources as employers must respond (with management time and legal fees) to complaints filed by overburdened workers and by those who file implausible "conscience" objections upon receiving negative work evaluations. The waste of essential health care resources in service of improper denials of medical care cannot be justified.

Moreover, the Proposed Rule similarly ignores that health professionals are bound by ethical standards to do no harm and to put patient needs first. Concerning the application of this point to ensuring patients' reproductive health needs are not improperly subordinated to others' religious concerns, Lambda Legal endorses the comments submitted by the National Health Law Program. Concerning patients' needs to be treated equally regardless of gender identity, sexual orientation, and other irrelevant personal characteristics, the Joint Commission's accreditation standards and the ethical rules of the American Medical Association and other leading medical associations all impose a duty of nondiscrimination. For example, AMA Ethical Rule E-9.12 prohibits discrimination against patients and Ethical Rule E-10.05 provides that health professionals' rights of conscience must not be exercised in a discriminatory manner.<sup>39</sup> But that is precisely what results when, for example, a medically necessary hysterectomy is denied to a patient because it is needed as treatment for gender dysphoria, and is provided to other patients as treatment for fibroids, endometriosis, or cancer.<sup>40</sup>

The Tennessee Counseling Association has expressed the bottom line cogently. Like many medical associations across the country, the TCA has codified the "do no harm" mandate and issued a formal statement opposing legislation proposing to allow denials of medical care through religious exemptions in that state: "When we choose health care as a profession, we

<sup>38</sup> Proposed Rule, 83 Fed. Reg. at 3892.

<sup>39</sup> AMA ethical rule E-9.12, "Patient-Physician Relationship: Respect for Law and Human Rights," E-10.05, "Potential Patients."

<sup>40</sup> See discussion of Proposed Rule reference to *Minton v. Dignity Health*, No. 17-558259 (Calif. Super. Ct. Apr. 19, 2017), at page 5, footnote 22. See also *Conforti v. St. Joseph's Healthcare Sys.* (D. N.J. filed Jan. 5, 2017), case documents at <https://www.lambdalegal.org/in-court/cases/nj-conforti-v-st-josephs>; Amy Littlefield, *Catholic Hospital Denies Transgender Man a Hysterectomy on Religious Grounds*, Rewire.News, Aug. 31, 2016, <https://rewire.news/article/2016/08/31/catholic-hospital-denies-transgender-man-hysterectomy-on-religious-grounds/>.



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choose to treat all people who need help, not just the ones who have goals and values that mirror our own.”<sup>41</sup>

**IV. The Proposed Rule’s Enforcement Mechanisms Are Draconian And Would Skew Health Systems In Favor Of Religious Refusals And Against Patient Care.**

The Proposed Rule’s enforcement mechanisms include aggressive investigation, require medical facilities to subject themselves to an extensive scheme of regulatory surveillance by HHS, and allocate authority to OCR “to handle complaints, perform compliance reviews, investigate, and seek appropriate action.”<sup>42</sup> The Proposed Rule even “make[s] explicit the Department’s authority to investigate and handle violations and conduct compliance reviews *whether or not a formal complaint has been filed.*”<sup>43</sup> In addition to conditioning federal funding on prospective pledges to comply with broad, vague requirements, penalties can include not just the loss of future federal funding but even the potential of funding “claw backs,”<sup>44</sup> all with limited if any due process protections.

For many major medical providers, the threat of loss of federal funding is a threat to the facilities’ very existence. It is nearly unfathomable that the government intends to force medical facilities either to forego their ethical obligations not to harm their patients or to close their doors. But, that easily could be the effect of the Proposed Rule in many instances. More often, the likely result would be simply to skew health systems dangerously in favor of religious refusals and against patient care. Doing so would both invite discrimination and aggravate existing health disparities and barriers to health care faced by LGBT people and others, contrary to the mission of HHS and, in particular, its Office for Civil Rights.

**V. The Proposed Rule Inevitably Would Invite Discrimination And Worsen Health Disparities Affecting LGBT People And Others.**

Discrimination and related health disparities already are widespread problems for LGBT people and people living with HIV.<sup>45</sup> In 2010, Lambda Legal conducted the first-ever national

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<sup>41</sup> See Emma Green, *When Doctors Refuse to Treat LGBT Patients*, The Atlantic, April 19, 2016, <https://www.theatlantic.com/health/archive/2016/04/medical-religious-exemptions-doctors-therapists-mississippi-tennessee/478797/>, citing Tenn. Counseling Assoc., *TCA Opposes HB 1840* (2016), <http://www.tncounselors.org/wp-content/uploads/2016/03/TCA-Opposes-HB-1840-3.9.16.pdf>.

<sup>42</sup> Proposed Rule, 83 Fed. Reg. at 3898.

<sup>43</sup> *Id.* (emphasis added).

<sup>44</sup> *Id.*

<sup>45</sup> See, e.g., Inst. of Med., *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011) (“IOM Report”) (undertaken at the request of the National Institutes of Health, and providing an overview of the public health research concerning health disparities for LGBT people and the adverse health consequences of anti-LGBT attitudes),



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survey to examine the refusals of care and other barriers to health care confronting LGBT people and people living with HIV, *When Health Care Isn't Caring: Survey on Discrimination Against LGBT People and People Living with HIV*.<sup>46</sup> Of the nearly 5,000 respondents, more than half reported that they had experienced at least one of the following types of discrimination in care:

- Health care providers refusing to touch them or using excessive precautions;
- Health care providers using harsh or abusive language;
- Health care providers being physically rough or abusive;
- Health care providers blaming them for their health status.<sup>47</sup>

Almost 56 percent of lesbian, gay, or bisexual (LGB) respondents had at least one of these experiences; 70 percent of transgender and gender-nonconforming respondents had one or more of these experiences; and almost 63 percent of respondents living with HIV experienced one or more of these types of discrimination in health care.<sup>48</sup> Almost 8 percent of LGB respondents reported having been denied needed care because of their sexual orientation,<sup>49</sup> and 19 percent of respondents living with HIV reported being denied care because of their HIV status.<sup>50</sup> The picture was even more disturbing for transgender and gender-nonconforming respondents, who reported the highest rates of being refused care (nearly 27 percent), being subjected to harsh language (nearly 21 percent), and even being abused physically (nearly 8 percent).<sup>51</sup>

Respondents of color and low-income respondents reported much higher rates of hostile treatment and denials of care. Nearly half of low-income respondents living with HIV reported that medical personnel refused to touch them, while the overall rate among those with HIV was

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<https://www.ncbi.nlm.nih.gov/books/NBK64806>; Sandy E. James et al., Nat'l Ctr. For Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 93-129 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; Lambda Legal, Health Care; Shabab Ahmed Mirza & Caitlin Rooney, Ctr. For Am. Progress, *Discrimination Prevents LGBTQ People from Accessing Health Care* (Jan. 18, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care>.

<sup>46</sup> Lambda Legal, *When Health Care Isn't Caring: Lambda Legal's Survey on Discrimination Against LGBT People and People Living with HIV* (2010) ("Lambda Legal, Health Care"), <http://www.lambdalegal.org/publications/when-health-care-isnt-caring>.

<sup>47</sup> *Id.* at 5, 9-10.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 5, 10.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 10-11.



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nearly 36 percent.<sup>52</sup> And while transgender respondents as a whole reported a care-refusal rate of almost 27 percent, low-income transgender respondents reported a rate of nearly 33 percent.<sup>53</sup> People of color living with HIV and LGB people of color were at least twice as likely as whites to report experiencing physically rough or abusive treatment by medical professionals.<sup>54</sup>

Also detailed in the report are particular types of discrimination in health care based on gender identity, sex discrimination against LGB people, and discrimination against people living with HIV. Such discrimination can take many forms, from verbal abuse and humiliation to refusals of care;<sup>55</sup> to refusal to recognize same-sex family relationships in health care settings to the point of keeping LGBT people from going to the bedsides of their dying partners;<sup>56</sup> to lack of understanding and respect for LGBT people.<sup>57</sup> The resulting harms are manifold, from transgender patients denied care postponing, delaying, or being afraid to seek medical treatment, sometimes with severe health consequences, or resorting out of desperation to harmful self-treatment;<sup>58</sup> to the mental and physical harms of stigma;<sup>59</sup> to other immediate physical harms from being denied medical care.

As described, the discriminatory treatment of LGBT people too often occurs in the name of religion. When it does, that religious reinforcement of anti-LGBT bias often increases the mental health impacts of discrimination.<sup>60</sup>

Since the 2010 Lambda Legal survey, other studies have similarly documented the disparities faced by LGBT people seeking health care. For example, *The Report of the 2015 U.S. Transgender Survey*, a survey of nearly 28,000 transgender adults nationwide, found that 33 percent “of respondents who had seen a health care provider in the past year reported having at least one negative experience related to being transgender, such as verbal harassment, refusal of treatment, or having to teach the health care provider about transgender people to receive

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<sup>52</sup> *Id.* at 11.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 12.

<sup>55</sup> *Id.* at 5-6.

<sup>56</sup> *Id.* at 15-16.

<sup>57</sup> *Id.* at 12-13.

<sup>58</sup> *Id.* at 6, 8, 12-13.

<sup>59</sup> *Id.* at 2.

<sup>60</sup> Ilan H. Meyer et al., *The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians, Gay Men, and Bisexuals*, *Suicide & Life Threatening Behavior*, 8 (2014), <http://www.columbia.edu/~im15/papers/meyer-2014-suicide-and-life.pdf> (“[A]lthough religion and spirituality can be helpful to LGB people, negative attitudes toward homosexuality in religious settings can lead to adverse health effects”) (internal citations omitted).



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appropriate care” and that “23% of respondents did not see a doctor when they needed to because of fear of being mistreated as a transgender person[.]”<sup>61</sup>

The Center for American Progress in 2017 conducted another nationally representative survey with similar results about LGBT health disparities, including findings that:

Among lesbian, gay, bisexual, and queer (LGBQ) respondents who had visited a doctor or health care provider in the year before the survey:

8 percent said that a doctor or other health care provider refused to see them because of their actual or perceived sexual orientation.

6 percent said that a doctor or other health care provider refused to give them health care related to their actual or perceived sexual orientation.

7 percent said that a doctor or other health care provider refused to recognize their family, including a child or a same-sex spouse or partner.

9 percent said that a doctor or other health care provider used harsh or abusive language when treating them.

7 percent said that they experienced unwanted physical contact from a doctor or other health care provider (such as fondling, sexual assault, or rape).<sup>62</sup>

Among transgender people who had visited a doctor or health care providers' office in the past year:

29 percent said a doctor or other health care provider refused to see them because of their actual or perceived gender identity.

12 percent said a doctor or other health care provider refused to give them health care related to gender transition.

23 percent said a doctor or other health care provider intentionally misgendered them or used the wrong name.

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<sup>61</sup> James et al., *supra* n. 45, at 93.

<sup>62</sup> Mirza & Rooney, *supra* n. 45.





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21 percent said a doctor or other health care provider used harsh or abusive language when treating them.

29 percent said that they experienced unwanted physical contact from a doctor or other health care provider (such as fondling, sexual assault, or rape).<sup>63</sup>

Independently of our own and others' research studies, Lambda Legal has become distressingly aware of the nature and scope of the discrimination problem from our legal work and requests for assistance received by our Legal Help Desks. We have repeatedly submitted information about the pattern of religion-based refusals of medical care to LGBT people in response to HHS requests. For example, in our 2013 response to the Request For Information for Section 1557 of the ACA, we documented numerous cases in which health professionals had denied medical care or otherwise discriminated against LGBT people and/or people living with HIV, based on the professionals' personal religious views, including:

- Guadalupe “Lupita” Benitez was referred for infertility care to North Coast Women’s Care Medical Group, a for-profit clinic that had an exclusive contract with Benitez’s insurance plan. After eleven months of preparatory treatments, including medication and unwarranted surgery, Lupita’s doctors finally admitted they would not perform donor insemination for her because she is a lesbian. The doctors claimed a right not to comply with California’s public accommodations law due to their fundamentalist Christian views against treating lesbian patients as they treat others. In a unanimous decision, the California Supreme Court held that religious liberty protections do not authorize doctors to violate the civil rights of lesbian patients. *North Coast Women’s Care Med. Grp., Inc. v. San Diego Cnty. Superior Court (Benitez)*, 189 P.3d 959 (Cal. 2008)
- Counseling student’s objections to providing relationship counseling to same-sex couples. *Keeton v. Anderson-Wiley*, 664 F.3d 865 (11th Cir. 2011) (finding student unlikely to prevail on free speech and religious liberty claims challenging her expulsion from counseling program due to her religiously based refusal to counsel same-sex couples, contrary to professional standards requiring nonjudgmental, nondiscriminatory treatment of all patients).
- Physician’s objection to working with an LGB person. *Hyman v. City of Louisville*, 132 F. Supp. 2d 528, 539-540 (W.D. Ky. 2001) (physician’s religious beliefs did not exempt him from law prohibiting employment discrimination based on sexual orientation or gender identity), *vacated on other grounds by* 53 Fed. Appx. 740 (6th Cir. 2002).

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<sup>63</sup> *Id.*



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- Proselytizing to patients concerning religious condemnation of homosexuality. *Knight v. Connecticut Dep't of Pub. Health*, 275 F.3d 156 (2d Cir. 2001) (rejecting free exercise wrongful termination claim of visiting nurse fired for antigay proselytizing to home-bound AIDS patient).
- Refusal to process lab specimens from persons with HIV. *Stepp v. Review Bd. of Indiana Emp. Sec. Div.*, 521 N.E.2d 350, 352 (Ind. 1988) (rejecting religious discrimination claim of lab technician fired for refusing to do tests on specimens labeled with HIV warning because he believed “AIDS is God’s plague on man and performing the tests would go against God’s will”).<sup>64</sup>

In addition, testimonies received in Lambda Legal’s health survey describe similar encounters with health professionals who felt free to express their religiously grounded bias toward LGBT patients:

- Kara in Philadelphia, PA: “Since coming out, I have avoided seeing my primary physician because when she asked me my sexual history, I responded that I slept with women and that I was a lesbian. Her response was, ‘Do you know that’s against the Bible, against God?’”<sup>65</sup>
- Joe in Minneapolis, MN: “I was 36 years old at the time of this story, an out gay man, and was depressed after the breakup of an eight-year relationship. The doctor I went to see told me that it was not medicine I needed but to leave my ‘dirty lifestyle.’ He recalled having put other patients in touch with ministers who could help gay men repent and heal from sin, and he even suggested that I simply needed to ‘date the right woman’ to get over my depression. The doctor even went so far as to suggest that his daughter might be a good fit for me.”<sup>66</sup>

Lambda Legal documented additional recent examples of health care denials or discriminatory treatment in its amicus brief to the Supreme Court in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*,<sup>67</sup> including the following two Lambda Legal cases:

- Lambda Legal client Naya Taylor, a transgender woman in Mattoon, Illinois, who sought hormone replacement therapy (HRT), a treatment for gender dysphoria, from the health clinic where she had received care for more than a decade. When her primary care physician refused her this standard treatment, clinic staff told her that, because of

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<sup>64</sup> Lambda Legal Nondiscrimination Comments (citations partially omitted).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See Brief of Amici Curiae Lambda Legal et al., *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Comm’n*, No. 16-111, at 11-14, 17-18, 26, 30 (filed Oct. 30, 2017), <https://www.lambdalegal.org/in-court/cases/masterpiece-cakes-v-co-civil-rights-commission>.



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the religious beliefs of the clinic's doctors, they do not have to treat "people like you."<sup>68</sup>

- Lambda Legal client Jionni Conforti, who was refused a medically necessary hysterectomy despite his treating physician's desire to perform the surgery. The hospital where the surgeon had admitting privileges was religiously affiliated and withholds permission for all gender transition-related care.<sup>69</sup>

These examples are just a tip of the iceberg, a few of many incidents across the country in which religion has been used to justify denial of health care or other discrimination against LGBT people and people living with HIV. Although courts consistently have rejected such reliance on religion to excuse discrimination, examples of religion-based discrimination in health care continue to occur with regularity.<sup>70</sup> This mistreatment contributes to persistent health disparities, including elevated rates of stress-related conditions.<sup>71</sup>

Given this landscape, Lambda Legal is deeply concerned that this Proposed Rule, designed to protect and even encourage religious refusals of health care, inevitably will facilitate further discrimination by health professionals in contexts involving sexual orientation, gender identity, or HIV status. As a result, the health of patients across the country, as well as others, would be at risk, and "conscience" claims could too easily become a way for providers to turn away LGBT patients. The past examples of religiously-based discrimination indicate there is significant likelihood that too-many individual and institutional care providers will demand exemptions from rules and standards designed to ensure that patients receive proper treatment regarding the following needs:

- Treatment of patients who need counseling, hormone replacement therapy, gender confirmation surgeries, or other treatments for gender dysphoria.
- For patients with a same-sex spouse or who are in a same-sex relationship, bereavement counseling after the loss of a same-sex partner or other mental health care that requires

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<sup>68</sup> In April 2014, Lambda Legal filed a claim of sex discrimination on Ms. Taylor's behalf under Section 1557 of the ACA; however, Ms. Taylor subsequently passed away and her case was voluntarily dismissed. See Complaint, *Taylor v. Lystila*, 2:14-cv-02072-CSB-DGB (C.D. Ill., Apr. 15, 2014), available at [https://www.lambdalegal.org/in-court/legal-docs/taylor\\_il\\_20140416\\_complaint](https://www.lambdalegal.org/in-court/legal-docs/taylor_il_20140416_complaint).

<sup>69</sup> See *Conforti v. St. Joseph's Healthcare Sys.* (D. N.J. filed Jan. 5, 2017) case documents at <https://www.lambdalegal.org/in-court/cases/nj-conforti-v-st-josephs>. See also Amy Littlefield, *Catholic Hospital Denies Transgender Man a Hysterectomy on Religious Grounds*, Rewire.News, Aug. 31, 2016, <https://rewire.news/article/2016/08/31/catholic-hospital-denies-transgender-man-hysterectomy-on-religious-grounds/>.

<sup>70</sup> See Lambda Legal 1557 Comments; Brief of Amici Curiae Lambda Legal et al., *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

<sup>71</sup> See Mark Hatzenbuehler, *Structural Stigma: Research Evidence and Implications for Psychological Science*, 71 AM. PSYCHOLOGIST, 742, 742–51 (2016), <http://dx.doi.org/10.1037/amp0000068>; IOM Report, *supra* n. 45.



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respectful acknowledgment of a person's sexual orientation or gender identity.

- Care for patients living with HIV, including the option of pre-exposure prophylaxis (PrEP), a highly effective medication that dramatically reduces the risk of HIV infection among those who are otherwise at high risk, including people who are in a sexual relationship with a partner who is living with HIV.
- Treatment of patients who are unmarried or in a same-sex relationship and require infertility treatment or other medical services related to pregnancy, childbirth or pediatric needs.

In addition, the Proposed Rule threatens to undermine the community's trust in health care providers. Although there may be health care facilities that remain safer places for patients who face increased risk of discrimination in health care facilities, those facilities that are more welcoming of LGBT patients and patients seeking HIV care and willing to provide them with full health care access will become overburdened and increasingly unable to meet the needs of all who come through their doors.

If the number of health care facilities that LGBT people can feel comfortable going to, knowing they won't be turned away is reduced as the inevitable result of this Proposed Rule, access to health care will become harder, and nearly impossible for some, who, for example, are low income<sup>72</sup> or who live in remote areas and cannot travel long distances for medical care. Patients seeking more specialized care such as infertility treatments or HIV treatment or prevention are already often hours away from the closest facility. The Proposed Rule threatens to build even greater barriers between those who are most vulnerable and the health care they need.

For the Proposed Rule to transform the role of HHS from an agency focused on ensuring nondiscriminatory provision of health care to one that facilitates refusals of care is a disturbing about-face contrary to the Department's mission and authorizing statutes. Its failure to explain how the enhanced powers of health care providers to refuse patient care in the name of "conscience" should be reconciled with the protections for patients under the ACA and other statutes, and for employers under Title VII, make clear that this proposal is legally untenable as well as unjustifiably dangerous as a matter of federal health policy.

**VI. The Proposed Rule Is The Result Of A Rushed, Truncated Process Contrary To The Department's Mission And Inconsistent With Procedural Requirements.**

Considering the well-recognized health disparities and difficulty obtaining nondiscriminatory care that already confront the LGBT community, the Proposed Rule's apparent goal of inviting more discrimination and care denials to LGBT people and is peculiar

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<sup>72</sup> Contrary to some misperceptions, LGBT people and people living with HIV are disproportionately economically disadvantaged. See, e.g., M.V. Lee Badgett et al., *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community*, WILLIAMS INST. (June 2013), <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-poverty-update-june-2013>.



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and alarming. Indeed, the lack of concern for the Proposed Rule's inevitable impacts is especially shocking because this Department itself has conducted studies revealing disparities in LGBT health outcomes. As reported in the 2014 National Health Statistics Reports:

[R]ecent studies have examined the health and health care of lesbian, gay, and bisexual (LGB) populations and have found clear disparities among sexual minority groups (i.e., gay or lesbian and bisexual) and between sexual minorities and straight populations. These disparities appear to be broad-ranging, with differences identified for various health conditions (e.g., asthma, diabetes, cardiovascular disease, or disability) ... health behaviors such as smoking and heavy drinking ... and health care access and service utilization .... Across most of these outcomes, sexual minorities tend to fare worse than their nonminority counterparts.<sup>73</sup>

Thus, in addition to the legal and ethical conflicts it would generate, the Proposed Rule also would undermine HHS's national and local efforts to reduce LGBT health disparities. For example, this Department's "Healthy People 2020 initiative" and the Institute of Medicine have called for steps to be taken to address LGBT health disparities<sup>74</sup>; medical associations including the American Medical Association, the Association of American Medical Colleges, the American College of Physicians, the American Psychiatric Association, and others are committed to improving medical care for LGBT people through education and cultural competency training; and legislation is increasingly being considered and passed to improve LGBT health access and reduce health disparities.<sup>75</sup> The Proposed Rule endangers the important progress made on this front.

With this Department's past focus on addressing LGBT health disparities, it would be a bizarre and disturbing reversal of course for HHS now to become an active participant in the very denials of health care and discriminatory treatment that cause these disparities. Years of careful study and deliberation went into framing the protections against discrimination implemented pursuant to Section 1557 of the ACA, including the explicit protections against gender identity discrimination and other forms of sex discrimination and the accompanying

<sup>73</sup> Brian W. Ward et al., *Sexual Orientation and Health Among U.S. Adults: National Health Interview Survey, 2013*, Nat'l Health Statistics Report No. 77, 1, (July 15, 2014), <https://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

<sup>74</sup> Dep't of Health & Human Servs., *Healthy People 2020: LGBT Health Topic Area* (2015), <http://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>; IOM Report.

<sup>75</sup> See Timothy Wang et al., The Fenway Inst., *The Current Wave of Anti-LGBT Legislation: Historic Context and Implications for LGBT Health* at 6, 8-9 (June 2016), <http://fenwayhealth.org/wp-content/uploads/The-Fenway-Institute-Religious-Exemption-Brief-June-2016.pdf>.



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value statement that “HHS supports prohibiting sexual orientation discrimination as a matter of policy[.]”<sup>76</sup>

In addition, the Proposed Rule has been issued without adequate time spent considering the thousands of comments submitted on related proposals. It lacks acknowledgment of countervailing interests of patients and many health provider institutions, let alone any explanation of how those interests are to be reconciled with the proposed aggressive enforcement of inconsistent religious interests. All in all, the Department’s process has been arbitrary, capricious, and dangerous.<sup>77</sup> Consequently, along with its numerous other legal infirmities, it also violates the Administrative Procedure Act.<sup>78</sup>

## VII. Conclusion

The Proposed Rule would have a chilling effect on the full and unbiased provision of health care, including to members of the LGBT community and everyone living with HIV, in a manner that conflicts with ethical, legal, and constitutional standards. While freedom of religion is a fundamental right protected by our Constitution and federal laws, it does not give anyone the right to use religious or moral beliefs as grounds for violating the rights of others. Instead, the Constitution commands that any religious or moral accommodation must be “measured so that it does not override other significant interests” or “impose unjustified burdens on other[s].”<sup>79</sup> Indeed, when the Supreme Court addressed the related question in *Burwell v. Hobby Lobby Stores, Inc.*, it explained that a religious accommodation should be provided in that case because the impact on third parties would be “precisely zero.”<sup>80</sup>

Here, the Proposed Rule conflicts with statutory rights of health care providers to operate with reasonable efficiency and cost, and within their ethical obligations to care for patients according to professional standards. Most importantly, it also conflicts with legal and ethical protections for patients, potentially putting their health and even lives at risk. It is ill conceived and has no place in federal health policy.

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<sup>76</sup> Press Release, U.S. Dep’t of Health & Human Servs., HHS Finalizes Rule to Improve Health Equity Under the Affordable Care Act (May 13, 2016), <https://wayback.archive-it.org/3926/20170127191750/https://www.hhs.gov/about/news/2016/05/13/hhs-finalizes-rule-to-improve-health-equity-under-affordable-care-act.html>.

<sup>77</sup> 5 U.S.C.A. § 706(2)(a).

<sup>78</sup> 5 U.S.C.A. § 500 *et seq.*

<sup>79</sup> *Cutter v. Wilkinson*, 544 U.S. 709, 722, 726 (2005).

<sup>80</sup> 134 S. Ct. 2751, 2760 (2014). Indeed, every member of the Court, whether in the majority or in dissent, reaffirmed that the burdens on third parties must be considered. *See id.* at 2781 n. 37; *id.* at 2786–87 (Kennedy, J., concurring); *id.* at 2790, 2790 n. 8 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ., dissenting).



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For the foregoing reasons, we emphatically recommend that the Department set aside this Proposed Rule.

Most respectfully,

**LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.**

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# Exhibit 118



## May 2011: National poll shows majority support healthcare conscience rights, conscience law

### Highlights of *the polling company, inc.* Phone Survey of the American Public

On May 3, 2011, the Christian Medical Association and the Freedom2Care coalition released the results of a nationwide, scientific poll conducted April 29-May 1, 2011 by the polling company™, inc./ WomanTrend. Survey of 1000 American Adults, Field Dates: April 29-May 1, 2011, Margin of Error=±3.1.

1. **77%** of American adults surveyed said it is either "very" or "somewhat" important to them that "that healthcare professionals in the U.S. are **not forced to participate** in procedures or practices to which they have **moral objections**." **16%** said it is not important.

ALL		PRO-CHOICE (n=465)	PRO-LIFE (n=461)
77%	Total <b>important</b> (net)	68%	85%
52%	Very important	42%	64%
25%	Somewhat important	26%	21%
16%	Total <b>not important</b> (net)	24%	8%
8%	Not too important	11%	5%
8%	Not at all important	13%	3%
8%	Do not know/depends	8%	6%
1%	Refused	*	

2. **50%** of American adults surveyed "strongly" or "somewhat" support "a **law** under which federal agencies and other government bodies that receive federal funds could **not discriminate** against hospitals and health care professionals who **decline to participate in abortions**." **35%** opposed.

ALL		PRO-CHOICE (n=465)	PRO-LIFE (n=461)
50%	Total <b>support</b> (net)	45%	58%
29%	Strongly support	20%	40%
21%	Somewhat support	25%	18%
35%	Total <b>oppose</b> (net)	43%	32%
14%	Somewhat oppose	20%	10%
21%	Strongly oppose	23%	22%
7%	It depends/need more info.	7%	5%
7%	Do not know	6%	5%
1%	Refused	1%	1%

Freedom2Care [www.Freedom2Care.org](http://www.Freedom2Care.org) and The Christian Medical Association [www.cmda.org](http://www.cmda.org)

## April, 2009: Two National Polls<sup>1</sup> Reveal Broad Support for Conscience Rights in Health Care

### Highlights of *the polling company, inc.* Phone Survey of the American Public

39% Democrat • 33% Republican • 22% Independent

1. **88%** of American adults surveyed said it is either “very” or “somewhat” **important to them that they share a similar set of morals as their doctors**, nurses, and other healthcare providers.
2. **87%** of American adults surveyed believed it is important to “make sure that healthcare professionals in America are **not forced to participate** in procedures and practices to which they have moral objections.”
3. Support for the conscience protection regulation (rule finalized Dec. 2008):
  - **63% support conscience protection regulation**
  - 28% oppose conscience protection regulation
4. Support for Obama administration proposal to eliminate the new conscience protection regulation:
  - 30% support Obama administration proposal
  - **62% oppose Obama administration proposal**
5. Likelihood of voting for current Member of Congress who supported eliminating the conscience rule:
  - 25% more likely to vote for Member who supported eliminating rule
  - **54% less likely to vote for Member who supported eliminating rule**
6. "In 2004 the Hyde-Weldon Amendment was passed. It ruled that taxpayer funds must not be used by governments and government-funded programs to discriminate against hospitals, health insurance plans, and healthcare professionals who decline to participate in abortions. Do you support or oppose this law?"
  - **58% support Hyde-Weldon Amendment**
  - 31% oppose Hyde-Weldon Amendment

### Highlights of Online Survey of Faith-Based Professionals

2,865 faith-based healthcare professionals

1. **Over nine of ten (91%)** faith-based physicians agreed, "I would **rather stop practicing medicine** altogether than be forced to violate my conscience."
2. **32%** of faith-based healthcare professionals report having "been **pressured to refer a patient** for a procedure to which [they] had moral, ethical, or religious objections."
3. **39%** of faith-based healthcare professionals have “experienced pressure from or **discrimination by faculty** or administrators based on [their] moral, ethical, or religious beliefs”
4. **20%** of faith-based medical students say they are "**not pursuing a career in Obstetrics or Gynecology**" because of perceived discrimination and coercion in that field.

<sup>1</sup> Results of both 2009 surveys released April 8. On behalf of the Christian Medical Association, the polling companyTM, inc./ WomanTrend conducted a nationwide survey of 800 American adults. Field Dates: March 23 -25, 2009. The overall margin of error for the survey is ± 3.5% at a 95% confidence interval. The polling companyTM, inc./ WomanTrend also conducted an online survey of members of faith-based organizations, fielded March 31, 2009 to April 3, 2009. It was completed by 2,298 members of the Christian Medical Association, 400 members of the Catholic Medical Association, 69 members of the Fellowship of Christian Physicians Assistants, 206 members of the Christian Pharmacists Fellowship International, and 8 members of Nurses Christian Fellowship. <http://www.freedom2care.org/learn/page/surveys>

**Freedom2Care [www.Freedom2Care.org](http://www.Freedom2Care.org) and The Christian Medical Association [www.cmda.org](http://www.cmda.org)**

## **April 2009 Phone Survey of the American Public**

**Americans of all characteristics and politics seek shared values with healthcare professionals.**

Fully 88% of American adults surveyed said it is either “very” or “somewhat” important to them that they enjoy a similar set of morals as their doctors, nurses, and other healthcare providers. Intensity was strong, as 63% described this as “very” important while at the other end of the spectrum, just 6% said it is “not at all important,” a ratio of more than 10-to-1.

**Voters will punish politicians who fail to defend healthcare providers’ conscience rights.**

Finally, when asked how they would view their Member of Congress if he or she voted against conscience protection rights, 54% indicated they would be less likely to back their United States Representative. In fact, 36% said they would be much less likely, a figure three times greater than the 11 % who said they would be much more likely. Furthermore, 43% of respondents who said they voted for President Obama indicated that they would be less inclined to back a Member of Congress if he or she opposed conscience protection rights.

**Healthcare providers’ conscience protections are viewed as an inalienable right.**

A sizable 87% of American adults surveyed believed it is important to “make sure that healthcare professionals in America are not forced to participate in procedures and practices to which they have moral objections.” 65% of respondents considered it very essential. Also joining with these majorities were 95% of respondents who self-identified as “pro-life,” 78% who considered themselves “pro-choice,” 94% who voted for Senator McCain in November 2008 and 80% who cast a ballot for (now) President Obama.

**Americans oppose forcing healthcare providers to act against their consciences...**

A majority (57%) of American adults opposed regulations “that require medical professionals to perform or provide procedures to which they have moral or ethical objections.” In contrast, 38% favored such rules. A full 40% strongly objected to the rules while just 19% strongly backed them. A majority of conservative Republicans (69%), moderate Republicans (69%), and conservative Democrats (59%), as well as the plurality of liberal/moderate Democrats (49%), joining together to reject policies to that require doctors and nurses to act against their personal moral code or value set.

**...Support laws that protect them from doing so...**

Without any names or political parties being mentioned, support for the new conscience protection rule outpaced opposition by a margin of more than 2-to-1 (63% vs. 28%). Intensity favored the rule, with 42% strongly backing it and 19% strongly rejecting it. Endorsements for the rule spanned demographic and political spectra, with majorities in all cohorts offering their support. In fact, even 56% of adults who said they voted for President Obama last fall and 60% of respondents who self-identified as “pro-choice” said they favor this two-month old conscience protection rule.

**... And oppose any efforts to remove such rules.**

Opposition to revocation of the conscience protection rule outpaced support by a margin of more than 2- to-1 (62% vs. 30%). Intensity favored retention of the rule (44% strongly opposing rescission versus 17% strongly supporting it). There was consistent demographic alignment and cohesiveness across political lines, as 52% of self-identified Democrats, 67% of self-identified Independents, and 73% of self- identified Republicans, as well as 50% of liberals, 65% of moderates, and 69% of conservatives also opposed nullification. A narrow majority (53%) of people who considered themselves to be “pro-choice” opposed rescission. Notably, a small number

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(7%) were ambivalent or undecided, saying they did not know or lacked the information to render an opinion one way or the other.

## Online Survey of Faith-Based Medical Professionals

### 1. Medical access will suffer if doctors are forced to act against their moral and ethical codes.

In the survey of 2,865 members of faith-based organizations, doctors and other medical professionals voiced their concerns that serious consequences could occur if doctors are forced to participate in or perform practices to which they have moral or ethical objections. Nearly three-quarters (74%) believed that elimination of the conscience protection could result in “fewer doctors practicing medicine,” 66% predicted “decreased access to healthcare providers, services, and/or facilities for patients in low-income areas,” 64% surmised “decreased access to healthcare providers, services, and/or facilities for patients in rural areas,” and 58% hypothesized “fewer hospitals providing services.”

Asked how rescission of the rule would affect them personally, 82% said it was either “very” or “somewhat” likely that they personally would limit the scope of their practice of medicine. This was true of 81% of medical professionals who practice in rural areas and 86% who work full-time serving poor and medically-underserved populations.

The conscience protection rule is fundamental and necessary in the medical profession.

Fully 97% of members who participated in the survey supported the two-month-old conscience protection clause and 96% objected to rescission of the rule. 91% of physicians agreed, "I would rather stop practicing medicine altogether than be forced to violate my conscience." The Department of Health and Human Services has asked whether the objectives of the conscience protection rule can be achieved “through non-regulatory means, such as outreach and education.” Nearly nine-in-ten (87%) members surveyed – those who are on the ground, in hospitals and clinics across the country – felt “outreach and education” alone were insufficient to accomplish the goal. Ninety-two percent declared the codification of conscience protection to be necessary (83% “very” and 9% “somewhat”) based on their knowledge of “discrimination in healthcare on the basis of conscience, religious, and moral values.”

Discrimination is widespread in education and professional practice.

Asked to assess their educational experiences:

- 39% have “experienced pressure from or discrimination by faculty or administrators based on [their] moral, ethical, or religious beliefs”
- 33% have “considered not pursuing a career in a particular medical specialty because of attitudes prevalent in that specialty that is not considered tolerant of [their] moral, ethical or religious beliefs.”
- 23% have “experienced discrimination during the medical school or residency application and interview process because of [their] moral, ethical or religious beliefs.”

Asked to assess their professional experiences:

- 32% have "been pressured to refer a patient for a procedure to which [they] had moral, ethical, or religious objections."
- 26% have "been pressured to write a prescription for a medication to which [they] had moral, ethical, or religious objections."
- 17% have "been pressured to participate in training for a procedure to which [they] had moral, ethical, or religious objections."
- 12% have "been pressured to perform a procedure to which [they] had moral, ethical, or religious objections."

**Freedom2Care [www.Freedom2Care.org](http://www.Freedom2Care.org) and The Christian Medical Association [www.cmda.org](http://www.cmda.org)**

Discrimination is forcing faith-based medical students to shun careers in Obstetrics and Gynecology.

- 20% of students surveyed agreed with the statement, "I am **not pursuing a career in Obstetrics or Gynecology** mainly because I do not want to be forced to compromise my moral, ethical, or religious beliefs by being required to perform or participate in certain procedures or provide certain medications."
- **96%** of medical students support (90% "Strongly Support") the conscience protection regulation.
- 32% of medical students say they "have experienced pressure from or **discrimination by faculty** or administrators based on your moral, ethical, or religious beliefs."

Freedom2Care [www.Freedom2Care.org](http://www.Freedom2Care.org) and The Christian Medical Association [www.cmda.org](http://www.cmda.org)

# Exhibit 119



DEPARTMENT OF HEALTH & HUMAN SERVICES

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<http://www.hhs.gov/ocr/>

OFFICE OF THE SECRETARY

Office for Civil Rights, Region IV  
61 Forsyth Street, Suite 3B70  
Atlanta, Georgia 30303

January 26, 2011

Matthew Bowman, Esq  
Alliance Defense Fund  
801 G Street N.W., Suite 509  
Washington, D.C. 20001

Julia Caldwell Morris, Deputy General Counsel  
Sheree Wright, Sr. Associate General Counsel  
Vanderbilt University  
Office of General Counsel  
2100 West End Ave., Suite 750  
Nashville, TN 37203

Re: Transaction - 11-122388  
Ann Marie Dust v Vanderbilt University

Dear Mr. Bowman, Ms. Morris, and Ms. Wright:

The Office for Civil Rights (OCR) has completed its investigation of the complaint filed against Vanderbilt University. The OCR has jurisdiction over programs and entities that receive Federal financial assistance from HHS in cases involving discrimination based on race, color, national origin, age, disability and, under certain circumstances, sex and religion. OCR also has been designated to receive complaints of discrimination and coercion that violate the Church Amendments, 42 U.S.C. §300a-7, and its implementing regulation, 45 C.F.R. Part 88. As a recipient of Federal financial assistance Vanderbilt University is obligated to comply with 42 U.S.C. § 300a-7 and its implementing regulation.

**Issue Presented**

The Alliance Defense Fund (Complainant) filed a complaint on behalf of [REDACTED] (Affected Party) against Vanderbilt University (Covered Entity) on January 11, 2011. The complaint alleged a violation of the Alleged Party's federal rights of conscience under 42 U.S.C. § 300a-7 and was filed with this office pursuant to 45 C.F.R. Part 88. Specifically, the complaint alleges that as a condition to admission to Vanderbilt University's Nurse Residency Program, applicants must in writing, promise that they will assist in termination of pregnancy procedures during their employment in the residency program, or their application for the program will be denied.

**Discussion**

On January 19, 2011, OCR notified the Covered Entity of the complaint filed against it by telephone. The Covered Entity provided OCR with assurances that it does not require nurses or

11-122388

Page 2

others to perform or participate in the performance of termination of pregnancy procedures if it is inconsistent with their religious or moral beliefs. The Covered Entity explained that if an employee raises an objection to participating in the performance of a termination of pregnancy, the employee may request an accommodation.

In order to resolve this matter, the Covered Entity has provided OCR with documentation that it has voluntarily taken the following corrective actions:

1. The Covered Entity emailed a clarification to all active nurse residency candidates [candidates who already submitted an online application and who met the basic qualifications for the position] concerning its policies regarding participation in termination of pregnancy and accommodations for religious beliefs or moral convictions.
2. The Covered Entity has eliminated the previous acknowledgment form from its Nurse Residency Program Application Packet and replaced it with a notice form that clarifies its policies regarding participation in termination of pregnancy and accommodations for religious beliefs or moral convictions.
3. Revised information packets and the clarification were sent to new candidates, including the Affected Party, on January 13, 2011.

On January 25<sup>th</sup>, OCR contacted the Complainant. The Complainant, who had expressed satisfaction with the measures taken by the Covered Entity in the [REDACTED] edition of *The Tennessean*, informed OCR that the Complainant had withdrawn the complaint based on those steps. The Complainant faxed to OCR a copy of the withdrawal letter dated January 12<sup>th</sup>, which OCR had not previously received.

Based on the foregoing voluntary corrective action, OCR is closing this matter. The closure of this case is not intended and should not be construed to cover any other issues regarding compliance with 45 C.F.R. Part 88 that may exist but were not specifically addressed during our investigation.

OCR shall place no restriction on the publication of the contents of this letter and may release this document and related materials consistent with the Freedom of Information Act, 5 U.S.C Section 522, and its implementing regulation 45 C.F.R. Part 5.

Thank you for your cooperation. If you have any questions, please do not hesitate to contact [REDACTED]

Sincerely,



Roosevelt Freeman  
Regional Manager



# Exhibit 120



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

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Office for Civil Rights  
Midwest Region  
Website: <http://www.hhs.gov/ocr>  
Voice - (800) 368-1019  
TDD - (800) 537-7697

April 18, 2017



OCR Transaction Number: 17-259696

Dear 

Thank you for your letter received on January 19, 2017 by the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR). In your complaint, you state that CVS Caremark discriminated against you when it continuously sent you literature describing contraceptives after you advised CVS Caremark that your sincerely held religious beliefs and practices don't allow for the funding of, or association with, contraceptives.

Among other things, OCR enforces Federal civil rights laws that prohibit discrimination in the delivery of health and human services because of race, color, national origin, age, disability, and, under certain circumstances, sex and religion. OCR has also been designated to receive complaints brought pursuant to the Federal health care provider conscience protection statutes, which prohibit recipients of certain HHS FFA from discriminating against health care providers and health care personnel because of their refusal or willingness to participate in certain health care services they find religiously or morally objectionable.

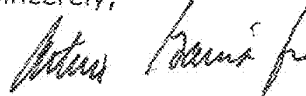
We have carefully reviewed your complaint and we are closing this case without further investigation because you have not raised facts sufficient to support a claim of discrimination on the basis of your religious beliefs or moral convictions under the laws OCR enforces.

Page 2

OCR's determination as stated in this letter applies only to the allegations in this complaint that were reviewed by OCR. Under the Freedom of Information Act, we may be required to release this letter and other information about this case upon request by the public. In the event OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

We regret we are unable to assist you further. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Mitchell". The signature is written in a cursive style with a horizontal line at the end.

Steven M. Mitchell  
Acting Regional Manager

6/28/2019

PIMS

[Home](#) | [Intake](#) | [Assignments](#) | [Unassigned Cases](#) | [Quick Stats](#) | [User Stats](#) | [Dashboard](#) | [Admin](#)

[Contact PIMS Support](#) | Font Size: [A](#) | [A](#) | [A](#)

**Case:** ██████████ vs CVS Caremark    **Receipt Date:** 01/19/2017    **Case Age:** 89  
**Case Status:** Closed

**Case Processes**

- Validation
- Strategy
- Investigation
- Monitoring
- Core Data
- Approval Area
- Closure
- Anytime Processes

**Legend**

- Section complete
- Information missing
- Error in section
- Section locked
- Section unlocked

**Case Proc.** | Summary | Case Folder | Staff Assign | Letter Gen. | Case Notes | Case References | Contact | Collaborate | ROC | Timeline

**Closure:**

**Administrative Closure**

- Closure Type:**  - No Selection -
- Civil Rights violation alleged - Technical Assistance Provided
  - Closed Due to a Court Order Decision About this Subject matter
  - Complainant has elected EEOC to investigate
  - Complaint Not Complete
  - Complaint Not Timely
  - Complaint Withdrawn
  - Consolidated into Existing complaint or Compliance Review or a new Compliance Review started
  - Delete Case
  - FMCS - resolved case after mediation
  - No CRF violation alleged by facts presented
  - No Jurisdiction - No Civil Rights violation alleged by facts presented
  - No Jurisdiction - No Covered Entity (Civil Rights)
  - Referral to other Agency

[Send For Admin Closure](#)

**Investigated Closure**

There is no Authority, Issue and Basis in this case at the time.  
View required authorities for program areas.

[Send for Closure Approval](#)

**Closure Information**

Closure Comments: Art,  
Based on Case notes, OCR will not investigate this complaint.

**Closure Tracking:**

Approver	Status	Review Date	Comments
██████████	Approve	04/18/2017	
██████████	Decline	03/09/2017	Okay ██████████ let's reach out to CVS Caremark and ask if it is a recipient or sub-recipient of the...

[Update](#) | [Reset](#)

[Home](#) | [Intake](#) | [Assignments](#) | [Unassigned Cases](#) | [Quick Stats](#) | [User Stats](#) | [Dashboard](#) | [Admin](#)

Department of Health and Human Services Office for Civil Rights  
 200 Independence Avenue, S.W. - Washington, D.C. 20261  
[Contact PIMS Support](#)

PIMS2 CS10.8 Production Server. Build Date: 06/07/2019 21:51

# Exhibit 121



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]	ZIP [REDACTED]	E-MAIL ADDRESS (if available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME [REDACTED]	LAST NAME [REDACTED]
--------------------------	-------------------------

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

Department of Health and Human Services

STREET ADDRESS 200 Independence Avenue, S.W.		CITY Washington
STATE District Of Columbia	ZIP 20201	PHONE (Please include area code) (877) 696-6775

When do you believe that the discrimination occurred?

LIST DATE(S)

01/19/2018

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible. (Attach additional pages as needed)

I just was made aware of the following -

A new federal unit that is being created under the ruse of freedom of conscience will jeopardize health care. The Conscience and Religious Freedom Division in the Office for Civil Rights at the Department of Health and Human Services will help and encourage health care providers who refuse "to perform, accommodate, or assist with certain health care services on religious or moral grounds."

*This field may be truncated due to size limit. See the "Allegation Description" file in the case folder.*

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [REDACTED]	DATE (mm/dd/yyyy) 01/19/2018
-------------------------	---------------------------------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_     
  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)  
 PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_  
 PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search     
  Family/Friend/Associate     
  Religious/Community Org     
  Lawyer/Legal Org     
  Phone Directory     
  Employer  
 Fed/State/Local Gov     
  Healthcare Provider/Health Plan     
  Conference/OCR Brochure     
  Other (specify): FFRF

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

**U.S. Department of Health and Human  
 Services**  
**Office for Civil Rights**  
**Centralized Case Management Operations**  
**200 Independence Ave., S.W.**  
**Suite 515F, HHH Building**  
**Washington, D.C. 20201**  
**Customer Response Center: (800) 368-1019**  
**Fax: (202) 619-3818**  
**TDD: (800) 537-7697**  
**Email: ocrmail@hhs.gov**

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address.



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.





- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

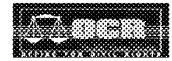
**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: \_\_\_\_\_ Date: 01/19/2018  
\*Please sign and date \_\_\_\_\_ mitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion, and conscience under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§ 295m and 296g), Section 1553 of the Affordable Care Act (42 U.S.C. § 18113), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. § 238n) and the Weldon Amendment (*e.g.*, Consolidated Appropriations Act of 2017, Pub. L. 115-31, Div. H, Tit. V, § 507);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

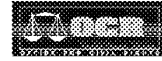
Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

**Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

**Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.



### **CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

### **DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

I just was made aware of the following -

A new federal unit that is being created under the ruse of freedom of conscience will jeopardize health care. The Conscience and Religious Freedom Division in the Office for Civil Rights at the Department of Health and Human Services will help and encourage health care providers who refuse “to perform, accommodate, or assist with certain health care services on religious or moral grounds.” Under the new policy, medical professionals — nurses, doctors, pharmacists — may deny treatment to transgender or other individual patients, refuse to take part in abortions, decline to give women birth control or provide any other health care they claim a religious or “moral” objection to.

This is an appalling, unethical abuse of “religious freedom” to impose archaic religious ideals on citizens in order to deny them civil liberties and health care.

# Exhibit 122



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME CELL PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]		E-MAIL ADDRESS (if available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME [REDACTED]	LAST NAME [REDACTED]
--------------------------	-------------------------

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

United States Government

STREET ADDRESS 1600 Pennsylvania Ave		CITY Washington
STATE District Of Columbia	ZIP 20003-3228	PHONE (Please include area code)

When do you believe that the discrimination occurred?

LIST DATE(S)

01/20/2017

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible. (Attach additional pages as needed)

The Current Administration has allowed religious Zealots to run health information agencies to the point that important information about the importance of Women's Health (including Reproductive Choice), Vaccination importance and the ability to refuse treatment to as well as the lack of important information about the need for scientific, evidence based treatments is felt to be not recognized.

*This field may be truncated due to size limit. See the "Allegation Description" file in the case folder.*

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [REDACTED]	DATE (mm/dd/yyyy) 01/20/2018
-------------------------	---------------------------------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).



The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)  
 PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_  
 PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search     
  Family/Friend/Associate     
  Religious/Community Org     
  Lawyer/Legal Org     
  Phone Directory     
  Employer  
 Fed/State/Local Gov     
  Healthcare Provider/Health Plan     
  Conference/OCR Brochure     
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

U.S. Department of Health and Human  
 Services  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: ocrmail@hhs.gov

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address.



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.



- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: \_\_\_\_\_ Date: 01/20/2018  
\*Please sign and date \_\_\_\_\_ ed to sign if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion, and conscience under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§ 295m and 296g), Section 1553 of the Affordable Care Act (42 U.S.C. § 18113), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. § 238n) and the Weldon Amendment (*e.g.*, Consolidated Appropriations Act of 2017, Pub. L. 115-31, Div. H, Tit. V, § 507);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

**Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

**Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.



### **CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

### **DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

The Current Administration has allowed religious Zealots to run health information agencies to the point that important information about the importance of Women's Health (including Reproductive Choice), Vaccination importance and the ability to refuse treatment to as well as the lack of important information about the need for scientific, evidence based treatments is felt to be not recognized.

This goes against every belief that I, as a trained healthcare provider have.

This current administration would rather that Sharia law type restrictions will keep Americans healthy, this is a fallacy

We MUST be able to challenge stupidity and ignorance. I am offended and clearly discriminated against if I am not allowed to provide patients with evidence based information and DEMAND that the government change all of the policies that continue to challenge my civil rights as a citizen of the United States of America.



# Exhibit 123



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]		E-MAIL ADDRESS (if available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME [REDACTED]	LAST NAME [REDACTED]
--------------------------	-------------------------

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin     Age     Religion / Conscience     Sex  
 Disability     Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

STREET ADDRESS NIH NCCIH, 9000 Rockville Pike, Bethesda, Maryland 20892		CITY Bethesda
STATE Maryland	ZIP 20892	PHONE (Please include area code)

When do you believe that the discrimination occurred?

LIST DATE(S)

09/21/2017

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible.  
 (Attach additional pages as needed)

I made a cure for cancer last year,  
 I had a website an app, twitter, and facebook page.  
 I submitted a health claim petition that was denied w/o review

*This field may be truncated due to size limit. See the "Allegation Description" file in the case folder.*

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [REDACTED]	DATE (mm/dd/yyyy) 01/23/2018
-------------------------	---------------------------------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)  
 PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_  
 PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search   
  Family/Friend/Associate   
  Religious/Community Org   
  Lawyer/Legal Org   
  Phone Directory   
  Employer  
 Fed/State/Local Gov   
  Healthcare Provider/Health Plan   
  Conference/OCR Brochure   
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

**U.S. Department of Health and Human  
 Services**  
**Office for Civil Rights**  
**Centralized Case Management Operations**  
**200 Independence Ave., S.W.**  
**Suite 515F, HHH Building**  
**Washington, D.C. 20201**  
**Customer Response Center: (800) 368-1019**  
**Fax: (202) 619-3818**  
**TDD: (800) 537-7697**  
**Email: ocrmail@hhs.gov**

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address.



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Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

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- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.



- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

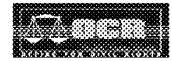
**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: \_\_\_\_\_ Date: 01/23/2018  
\*Please sign and date \_\_\_\_\_ ed to sign if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



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OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

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*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

I made a cure for cancer last year,

I had a website an app, twitter, and facebook page.

I submitted a health claim petition that was denied w/o review

I submitted the structure function claims

and even had a pre-IND meeting, but then the FDA coerced me and threatened with a malicious libel of fraud, and forced me to delete my site [www.mightyhoney.org](http://www.mightyhoney.org) my app, my twitter and facebook.

So one aspect is religious discrimination,

i had advertised "a divine cure for cancer" as honey and certain herbs and spices (which are GRAS and permitted) by the CFR are in my tradition,

I had provided cutting edge research to them as well.

I believe this is a violation of my free speech rights whether commercial or religious.

In this case it quite egregious and causing deaths of many people.

so I would like compensation from FDA for coercion, violating my religious freedom, conscience, behaving like mafia (RICO)

and for the NIH for violating my civil rights, and not providing me a grant, that is necessary for their own onerous and corrupt rules.

Many NIH employees were negligent, actually ALL that I met but specifically [REDACTED].



Online Advisory Letter Reference # [REDACTED]

December 6, 2017

[REDACTED]

RE: MightyHoney

Dear [REDACTED]:

This letter is to advise you that the U.S. Food and Drug Administration (FDA) reviewed your website at [REDACTED] in November 2017 and has found that you take orders there for MightyHoney. Various claims and statements made on your website and/or in other labeling establish that this product is a drug as defined in 21 U.S.C. § 321(g)(1)(B) because it is intended for the treatment, cure, mitigation, or prevention of disease. For example, your website recommends or suggests the use of MightyHoney to treat or cure cancer, rheumatoid arthritis, diabetes, asthma, infectious disease, Parkinson's disease, epilepsy, dementia, and depression. As explained further below, the introduction of this product into interstate commerce for such uses violates the Federal Food, Drug, and Cosmetic Act.

This product is also a new drug as defined under 21 U.S.C. § 321(p) because it is not generally recognized as safe and effective for the uses recommended or suggested in its labeling. Before a new drug may be marketed or otherwise introduced into interstate commerce, it must be approved by FDA on the basis of scientific data demonstrating that the drug is safe and effective under the conditions of use in its labeling. See 21 U.S.C. §§ 355(a) and 331(d). Your drug product does not have a FDA-approved application as required by 21 U.S.C. § 355.

We advise you to review all materials through which you communicate to consumers the intended uses of your products, and to either submit a new drug application (NDA) for products intended for use in treating, curing, mitigating, diagnosing, or preventing a disease or, alternatively, remove all statements indicating that your products are intended for such uses. This would include reviewing your websites, product labels, catalogs, brochures, flyers, package inserts, audio and video, e-commerce and social media accounts you operate (e.g., Amazon, eBay, Facebook and Twitter accounts), as well as any other promotional materials, and removing product claims, consumer testimonials, metatags, and anything else that states or implies that your products are useful in treating, curing, mitigating, diagnosing, or preventing diseases.

For more information on the types of claims that can be used for conventional foods and dietary supplements, please see:

- [21 CFR 101.93](#)
- <https://www.fda.gov/Food/IngredientsPackagingLabeling/LabelingNutrition/ucm2006881.htm>

Nubius Technologies LLC  
Page 2

- <https://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm111447.htm>

**Within 30 calendar days** of the date of this letter, please correct the violations described in this letter and **notify FDA**, via electronic mail at [FDAadvisory@fda.hhs.gov](mailto:FDAadvisory@fda.hhs.gov) or via mail to ORA Health Fraud, 12420 Parklawn Drive, #4041, Rockville, MD 20857, that the violations have been corrected. Include the Online Advisory Letter Reference number (located in the upper right portion of this letter) in all your communications to FDA regarding this matter.

After 30 days from the date of this letter, if your website or other labeling continue to demonstrate that your products are intended to treat, cure, mitigate, or prevent diseases, the name of your firm and this letter will be posted on the FDA webpage for unapproved new drugs illegally marketed for serious diseases.

This letter is not intended to be an all-inclusive review of your website(s) or a list of all violations of law that exist in connection with your products, your website(s) and other product labeling, or at your facilities. FDA expects you to take the necessary steps to ensure that all your products comply with the laws and regulations enforced by FDA.

Sincerely,

Health Fraud Team  
Office of Enforcement and Import Operations  
Office of Regulatory Affairs  
U.S. Food and Drug Administration

#### STEPS TO CORRECT CITED VIOLATIONS

- 1) Within 30 calendar days of the date of this letter,
  - a) Correct all violations described in the letter, and
  - b) Notify FDA in writing of the corrections completed in response to this letter.
    - Email this information to [FDAadvisory@fda.hhs.gov](mailto:FDAadvisory@fda.hhs.gov) (preferred) or you may mail your written response to ORA Health Fraud, 12420 Parklawn Drive, #4041, Rockville, MD 20857.
    - Include the Online Advisory Letter Reference number (located in the upper right portion of this letter) in all your communications to FDA.
- 2) After 30 calendar days, **if you have not corrected the violations** described in this letter, the name of your firm and this letter will be posted on FDA's webpage, [www.fda.gov/ICECI/EnforcementActions/AdvisoryLetters/default.htm](http://www.fda.gov/ICECI/EnforcementActions/AdvisoryLetters/default.htm)

# Exhibit 124



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME / CELL PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]	ZIP [REDACTED]	E-MAIL ADDRESS (if available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME [REDACTED]	LAST NAME [REDACTED]
--------------------------	-------------------------

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION  
 [REDACTED]

STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]	ZIP [REDACTED]	PHONE (Please include area code) [REDACTED]	

When do you believe that the discrimination occurred?

LIST DATE(S)  
 [REDACTED]

05/26/2017

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible.  
 (Attach additional pages as needed)

My son was born At Northside Hospital in Atlanta Georgia on [REDACTED].

I refused the New Born Screening Test (also known as PKU) on religious grounds.

I was questioned by pediatrician [REDACTED] as to the specific reason for refusing the procedure. I clearly explained that the procedure is against my religious beliefs, and  
 This field may be truncated due to size limit. See the "Allegation Description" file in the case folder.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [REDACTED]	DATE (mm/dd/yyyy) 01/25/2018
-------------------------	---------------------------------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

Braille       Large Print       Cassette tape       Computer diskette       Electronic mail       TDD

Sign language interpreter (specify language): \_\_\_\_\_

Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)

Hispanic or Latino       American Indian or Alaska Native       Asian       Native Hawaiian or Other Pacific Islander

Not Hispanic or Latino       Black or African American       White       Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

HHS Website/Internet Search       Family/Friend/Associate       Religious/Community Org       Lawyer/Legal Org       Phone Directory       Employer

Fed/State/Local Gov       Healthcare Provider/Health Plan       Conference/OCR Brochure       Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

**U.S. Department of Health and Human Services**  
**Office for Civil Rights**  
**Centralized Case Management Operations**  
**200 Independence Ave., S.W.**  
**Suite 515F, HHH Building**  
**Washington, D.C. 20201**  
**Customer Response Center: (800) 368-1019**  
**Fax: (202) 619-3818**  
**TDD: (800) 537-7697**  
**Email: ocrmail@hhs.gov**

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address.



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.





- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

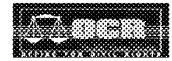
**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: \_\_\_\_\_ Date: 01/25/2018  
\*Please sign and date \_\_\_\_\_ sign if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_



## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion, and conscience under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§ 295m and 296g), Section 1553 of the Affordable Care Act (42 U.S.C. § 18113), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. § 238n) and the Weldon Amendment (*e.g.*, Consolidated Appropriations Act of 2017, Pub. L. 115-31, Div. H, Tit. V, § 507);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

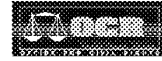
Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

**Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

**Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.



### **CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

### **DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

My son was born At Northside Hospital in Atlanta Georgia on [REDACTED].

I refused the New Born Screening Test (also known as PKU) on religious grounds.

I was questioned by pediatrician [REDACTED] as to the specific reason for refusing the procedure. I clearly explained that the procedure is against my religious beliefs, and that it was my understanding that Georgia law permits religious exemptions to the procedure.

At this point, he made it very clear that he did not respect my religious beliefs, and remarked that he believes in "Science". He also explained incorrectly, that Georgia law does not permit religious exemptions to the procedure.

He threatened that if I refused, he would call child services, and my child may be removed from my custody.

Out of fear, I was coerced into consenting to the procedure.

# Exhibit 125

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**FAX Transmission from Library Document Station  
5131**

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To: **OCR** From: [REDACTED]  
Fax: [REDACTED] Pages: **2 + Coversheet**  
Date: **2/13/2018** eMail: [REDACTED]@YAHOO.COM

---

**Comments: REQUEST FOR INVESTIGATION AND RECORDS**

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This fax was sent using Scannx Cloud Services. For more information on this service please go to: [www.scannxcloudservices.com](http://www.scannxcloudservices.com)

**RECEIVED**  
**FEB 15 2018**  
**HHS/OCR HQ**



Form Approved OMB No. 0843-0602  
Expiration Date: 04/30/2019



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS (OCR)  
Civil Rights Discrimination Complaint



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]			CITY Aurora
STATE CO	ZIP 80044	E-MAIL ADDRESS (if available) [REDACTED] @yahoo.com	
Are you filing this complaint for someone else? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
If Yes, whose civil rights do you believe were violated?			
FIRST NAME		LAST NAME	

I believe that I have been (or someone else has been) discriminated against on the basis of:

Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify): Biomedical/Telemedicine

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON / AGENCY / ORGANIZATION  
State of Colorado - Dept of Personnel & Admin (CSOT) <sup>CSPIE</sup>

STREET ADDRESS  
[REDACTED]

CITY  
Denver

STATE  
CO

ZIP  
80202

PHONE (Please include area code)  
[REDACTED]

When do you believe that the occurred?

LIST DATE(S)  
10/2008 - 2/2018

Describe briefly what happened. How and why do you believe you have been discriminated against? Please be as specific as possible.  
(Attach additional pages as needed) Identity Theft w/ St employment and false BII overactivity (ED/psych) led to health care fraud, Medicare/Medicaid fraud and terminal injuries due to Biomedical abuses.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email is acceptable.

[REDACTED SIGNATURE]

DATE 2/13/18

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for OCR to communicate with you about this complaint? (Check all that apply)

- Braille   
  Large Print   
  Cassette tape   
  Computer diskette   
  Electronic mail   
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_   
  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME	[REDACTED]	LAST NAME	[REDACTED]
HOME PHONE (Please include area code)	[REDACTED]	WORK PHONE (Please include area code)	[REDACTED]
STREET ADDRESS		CITY	
[REDACTED]		Fountain	
STATE	ZIP	E-MAIL ADDRESS (if available)	
CA	80817	[REDACTED]@yahoo.com	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)  
 PERSON / AGENCY / ORGANIZATION / COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

- ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino       American Indian or Alaska Native       Asian       Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino       Black or African American       White       Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English):

How did you learn about the Office for Civil Rights?

- HHS Website / Internet Search   
  Family / Friend / Associate   
  Religious / Community Org   
  Lawyer / Legal Org   
  Phone Directory   
  Employer  
 Fed / State / Local Gov   
  Healthcare Provider / Health Plan   
  Conference / OCR Brochure   
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

**U.S. Department of Health and Human Services**  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: [ocmail@hhs.gov](mailto:ocmail@hhs.gov)

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail this complaint form to this address.



HHS-700 (10/17) (BACK)



02/13/2018 1:50 PM FAX

2026193818

OFFICE FOR CIVIL RIGHTS

P.0001

\*\*\*\*\*  
\*\*\* Receive Results \*\*\*  
\*\*\*\*\*

Receive job successful.

Job No.	5236
Address	
Name	
Start Time	02/13 01:47 PM
Call Length	03'27
Sheets	3
Result	OK

# Exhibit 126



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME / CELL PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY Pocono Lake	
STATE Pennsylvania		E-MAIL ADDRESS (if available) [REDACTED]	
ZIP 18347			

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME	LAST NAME
[REDACTED]	[REDACTED]

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin     Age     Religion / Conscience     Sex  
 Disability     Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION  
 Humana

STREET ADDRESS Humana Florida, p.O. Box 371400		CITY Pittsburgh
STATE Pennsylvania	ZIP 15250	PHONE (Please include area code)

When do you believe that the discrimination occurred?

LIST DATE(S)

01/01/2017

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible.  
 (Attach additional pages as needed)

I signed up for Florida Humana in January 2017 I was not told that I had to take prescription coverage.

I do not use prescriptions. I have never paid more than \$8 per month for any prescriptions.

I am 80 years old and did not understand. I do not want prescription coverage now or any other time.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [REDACTED]	DATE (mm/dd/yyyy) 02/27/2018
-------------------------	---------------------------------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

Medicare DATE(S) FILED 01/19/2018	CASE NUMBER(S) (if known) [REDACTED]
-----------------------------------------	-----------------------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_  
 PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search   
  Family/Friend/Associate   
  Religious/Community Org   
  Lawyer/Legal Org   
  Phone Directory   
  Employer  
 Fed/State/Local Gov   
  Healthcare Provider/Health Plan   
  Conference/OCR Brochure   
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

U.S. Department of Health and Human  
 Services  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: ocrmail@hhs.gov

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address.



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.



- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

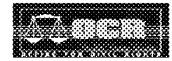
Signature: \_\_\_\_\_ Date: 02/27/2018  
\*Please sign and date \_\_\_\_\_ ed to sign if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_ Pocono Lake, Pennsylvania,

Telephone Number: \_\_\_\_\_





## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion, and conscience under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§ 295m and 296g), Section 1553 of the Affordable Care Act (42 U.S.C. § 18113), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. § 238n) and the Weldon Amendment (*e.g.*, Consolidated Appropriations Act of 2017, Pub. L. 115-31, Div. H, Tit. V, § 507);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

**Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

**Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.



**CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

**DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

I signed up for Florida Humana in January 2017 I was not told that I had to take prescription coverage.

I do not use prescriptions. I have never paid more than \$8 per month for any prescriptions.

I am 80 years old and did not understand. I do not want prescription coverage now or any other time.

I don't believe in taking prescriptions.

It is totally lubricious that I should pay \$52 a month for the rest of my life.

# Exhibit 127



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME / CELL PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]	ZIP [REDACTED]	E-MAIL ADDRESS (if available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME [REDACTED]	LAST NAME [REDACTED]
--------------------------	-------------------------

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

Washington State Department of Corrections

STREET ADDRESS 7345 Linderson Way SW		CITY Tumwater
STATE Washington	ZIP 98501	PHONE (Please include area code) (360) 725-8213

When do you believe that the discrimination occurred?

LIST DATE(S)

10/02/2017

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible.  
 (Attach additional pages as needed)

No reasonable accommodation provided for my religious objection to prescribing hormones to men wanting to transition into women. When other providers offered to prescribe hormones to these patients under my care they were told by DOC leadership that they could not see my patients and no accommodation has been provided. Attached is a more detailed account as well as emails from my Facility Medical director, Chief medical officer, and the health care authority.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE [REDACTED]	DATE (mm/dd/yyyy) 03/06/2018
-------------------------	---------------------------------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)  
 EEOC, DOC internal discrimination complaint

DATE(S) FILED 02/06/2018, 11/16/2017	CASE NUMBER(S) (if known) null, null
-----------------------------------------	-----------------------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_  
 PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search   
  Family/Friend/Associate   
  Religious/Community Org   
  Lawyer/Legal Org   
  Phone Directory   
  Employer  
 Fed/State/Local Gov   
  Healthcare Provider/Health Plan   
  Conference/OCR Brochure   
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

U.S. Department of Health and Human  
 Services  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: ocrmail@hhs.gov

**Burden Statement**

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## COMPLAINANT CONSENT FORM

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**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.



- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

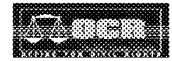
Signature: \_\_\_\_\_ Date: 03/06/2018

\*Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_



## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

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- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

**Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

**Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.



**CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

**DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

- April 2017 - Offender Approved by gender dysphoria Care Review Committee (CRC) for hormone therapy. My religious conviction will not allow me to prescribe hormones for this indication. [REDACTED] provided a reasonable accommodation at that time by taking over the management of this element of the patient's healthcare request.
- September 28th forwarded KITE from NEW offender requesting renewal of hormones for GD to [REDACTED]
- September 29th 2017 - Annual DOC health care provider meeting. Three hours of education on Gender dysphoria (GD).
- October 2nd - Noticed KITE response from [REDACTED] to offender saying "follow up with PCP." [REDACTED] volunteered to manage this issue for the patient.
- October 4th - Medical provider meeting: [REDACTED] read a series of scenarios asking the providers about religious ethics in the medical field. She gave an example of a Muslim working as a hospitalist who morally objected to hospice care because he viewed it as similar to euthanasia. She gave another example of a Jehovah's Witness working in an ER who morally objected to blood transfusions. (Both of these scenarios are extreme situations that would never happen. You would never encounter a hospitalist who wouldn't be ok with hospice and you would never find an ER provider who was not ok with blood transfusions.) In both of these scenarios she emphasized the "undue hardship" that would be placed on the conscientious objector's colleagues. These were directed at me in front of my colleagues.
- October 9th - Had in person conversation with [REDACTED] regarding treatment of GD. She stated that it would be the expectation of the provider on site to prescribe hormones and if I decided to stay working for the DOC than I would be expected to prescribe. I expressed that it is not an option for me to prescribe for this due to my conscience and religious beliefs. I expanded that other providers have already offered to do this. (See email chain started on October 9th titled "conversation with [REDACTED]")
- October 12th - Email from [REDACTED] forwarding an email to [REDACTED] and myself stating "forwarding to his primary care providers." [REDACTED] replied to the email.
- October 18th - Forwarded KITE from offender regarding GD to [REDACTED] and [REDACTED]. Phone call with [REDACTED] (CMO) (@10:44 on state phone) and [REDACTED] (@13:02pm on work phone [REDACTED]) Told them individually that this is a personal religious conviction that causes me to not be able to prescribe hormones for this indication but that I have found ways to mitigate this through other providers. Both of them stated that if I were to stay with the department I would be expected to prescribe this medication. If they were to allow this then it would be a slippery slope for anyone with religious convictions to not follow department policy.
- October 24th - Email from [REDACTED] to [REDACTED] stating "this is [REDACTED] patient and he needs to see the patient."
- October 26th around 1500 - [REDACTED] called [REDACTED] and ordered her not to prescribe any hormone therapy for inmates at IMU and to call her if I asked her to do so. Email from [REDACTED] with a KITE to the offender stating "Per [REDACTED], [REDACTED] is your provider while you are in the IMU"...
- October 31st - Received call from [REDACTED] who told me that [REDACTED] called her and told her she was "forbidden" from seeing my patients.
- December 11th - Email from [REDACTED] stating that the department cannot accommodate to my religious conviction.

-January 4<sup>th</sup> – Phone call from internal discrimination stating that there will not be an investigation as this is clearly under the rules of discrimination for Washington State.

March 6<sup>th</sup> – Received call from [REDACTED] (Program Manager - Diversity & Recruitment) and he states that [REDACTED] did not believe that my accommodation was reasonable. He did not really address my questions as to why beyond referencing policy 100.500 as their rationale. That in some way I was being discriminatory. Did not feel like they addressed the fact that they are refusing to let me refer patients based on a religious belief.

I have never been discriminatory to any patient. In fact, I saw this particular patient regarding other medical issues. I told him that his hormone management would be managed by [REDACTED] and [REDACTED]. He was fine with this. I am unable to prescribe or order laboratory tests for this indication because of my conscience and religious objections and it is getting to the point where I am feeling discriminated against for my beliefs. Telling all the other providers that they cannot see any of my patients is discriminatory because this has not been done to any other providers and the reason is because of my religious belief. I am providing access to care and there are willing prescribers to manage this low acuity issue in a small subset of inmates and clearly does not pose undue hardship on anyone. There had been reasonable accommodation for this in the past but is now being taken away. I feel like [REDACTED] and DOC health services leadership is placing undue burden on me and is being irresponsible by knowing what I have said yet continuing to pass the issue to me as if I am going to change my mind on my deeply held convictions. Attempting to force my hand is creating a hostile work environment for me.



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Monday, December 11, 2017 4:51 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Conscientious objection.

Hi [REDACTED]

My apologies. [REDACTED] and I have been playing "phone tag" due to our busy schedules.

After consultation with DOC Leadership, it will continue to be an expectation that you provide all health care to your patient panel. Passing patient care to another clinician due to personal beliefs is not something that the Department cannot support.

While I do respect your personal beliefs, this is something that we cannot accommodate.

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Friday, December 08, 2017 2:03 PM  
**To:** [REDACTED]  
**Subject:** Conscientious objection.

[REDACTED]

I wanted to hear from you what your understanding is of my consciences objection to prescribing hormone therapy for transgender individuals. I know that [REDACTED] was supposed to reach out to you but I have not heard back yet. Is it still leadership's stance that if I stay employed with the DOC I will be expected to prescribe hormones for this indication and that no reasonable accommodation will be provided?

Thanks,

[REDACTED]

*Monroe Correction Complex*

*Phone:* [REDACTED]

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, October 26, 2017 8:26 AM  
**To:** [REDACTED]; Jacob A. (DOC)  
**Cc:** [REDACTED]  
**Subject:** RE: [REDACTED]

Hello,

I want to remind us all that every medical practitioner is expected to uphold the mission of the DOC and provide care to their patients as consistent with Department policies. No one practitioner is allowed to pick and choose those conditions within appropriate scope of practice that they will and will not treat. It is the responsibility of each provider to fully manage each patient's medical needs within their capabilities, escalating or referring care to specialists as appropriate. Intentionally failing or refusing to fully manage each patient's medical needs impedes the care of the patient and may lead to corrective or disciplinary action. Please note that referrals to other providers to manage these patients creates extra work burden for one's colleagues and can create a sense that the patient is being treated differently than others.

[REDACTED]

Chief Medical Officer  
Health Services Division  
Department of Corrections  
Tumwater, WA 98504-1123

---

**From:** [REDACTED]  
**Sent:** Wednesday, October 25, 2017 12:24 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
K. [REDACTED]  
**Subject:** RE: [REDACTED]

As discussed, you've received training on how to manage these patients, and it is expected of the midlevel providers to provide their direct care. It is not appropriate to wash your hands of this issue, which is what you are seeking to do by sending all these kites to me.

---

**From:** [REDACTED]  
**Sent:** Wednesday, October 25, 2017 12:21 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** [REDACTED]

[REDACTED]

**From:** [REDACTED]  
**Sent:** Tuesday, October 10, 2017 7:42 PM  
**To:** [REDACTED]  
**Subject:** [REDACTED]

I will be at MCC again this week both Wednesday 10/11 and Thursday 10/12. I will attempt to stop by and see you then.

[REDACTED] Union Representative  
Teamsters Local Union No. 117

[REDACTED]

We build unity and power for all working people to improve lives and lift up our communities. This is our Union.

Teamsters Local Union No. 117 Confidentiality Statement

This message and any attached files might contain confidential information protected by federal and state law. The information is intended only for the use of the individual(s) or entities originally named as addressees. The improper disclosure of such information may be subject to civil or criminal penalties. If this message reached you in error, please contact the sender and destroy this message. Disclosing, copying, forwarding, or distributing the information by unauthorized individuals or entities is strictly prohibited by law.

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, October 10, 2017 8:28 AM  
**To:** [REDACTED]  
**Subject:** FW: Conversation with [REDACTED]

[REDACTED]

I am not sure what your role is but I am seeking some legal counsel as I am a teamsters member. Below is a conversation that has started surrounding the gender dysphoria issue in our state. I am a medical provider at Monroe Correctional Complex. I am a blue badge employee and have been for 2 years. The issue is this: I am ethically opposed to prescribing hormone therapy to men for the purpose of "treating" their gender dysphoria but it is the DOCs mission to do this. I am essential being told that I will need to prescribe these medications or find another job. Do you have any suggestions on a route I should take

[REDACTED]

I included you because you are my union representative. Feel free to stop by the IMU to discuss further

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, October 10, 2017 8:04 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: Conversation with [REDACTED]

Hi [REDACTED]

That's not quite what I said, but if it's what you took away from that conversation, please let me clarify.

You are not being asked to leave. What I said was that as an employee acting on behalf of the state, you are expected to carry out the mission of DOC, which includes providing hormone treatment for gender dysphoria. If you are unwilling to do this, then you need to examine whether DOC is the right place for you.

But as long as you continue in your role as a medical provider for DOC, you will be expected to provide this care.

Your personal beliefs do not enter into the issue, though I do recognize that your decision will be determined by them. And no one is happy that you may choose to leave.

However, if you determine that you cannot support DOC's mission in this regard, we will support you in seeking other employment, and provide an excellent recommendation.

I hope this clarifies things.

Thanks,

[REDACTED]

Sent from my iPhone

> On Oct 9, 2017, at 9:25 PM, [REDACTED]

>

> I had a conversation with [REDACTED] today and I wanted to make sure that I am understanding what you all decided.

>

> Essentially, it is now part of the DOCs mission to treat transgender individuals with hormone therapy and this therapy will be issued by the provider onsite once approved by the gender dysphasia CRC. And if I, the prescriber, cannot align myself with this mission due to my strong conviction that this is harmful to my patients in a medical, social, biblical, and biologic way, I will be asked to find a job elsewhere.

>

> Is this accurate?

>

> Anyone feel free to answer.

>

> Sent from my iPhone

The Washington Department of Corrections is increasing the security level for email messages containing confidential or restricted data. A new Secure Email Portal is being implemented. Outbound email messages from DOC staff that contain confidential or restricted data will be routed to the portal. A notification of the secured message will be delivered to the recipient.

Click on the following web link for more information. <http://doc.wa.gov/information/secure-email.htm>

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, October 19, 2017 12:04 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Conversation with [REDACTED]

Sorry- this was stuck in my outbox from yesterday.

---

**From:** [REDACTED]  
**Sent:** Thursday, October 19, 2017 12:03 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Conversation with [REDACTED]

[REDACTED]

Good speaking with you today. I understand your position and I hope I have been able to clearly articulate the importance of DOC practitioners adhering to the Department policy in treating patients. As we discussed, the next step is for you to speak with [REDACTED]. I copy both of them as well as their assistants here.

best,  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Monday, October 16, 2017 10:40 PM  
**To:** [REDACTED]  
**Subject:** Re: Conversation with [REDACTED]

[REDACTED] I initially told you that tomorrow might work for me but I actually will not be in tomorrow. I should be in on Wednesday however if you want to talk. Let me know. We could also just do a phone call sometime

Thanks,  
[REDACTED]

Sent from my iPhone

On Oct 11, 2017, at 10:44 AM, [REDACTED] wrote:

Hi [REDACTED]  
[REDACTED] is out of the office so I will respond.  
Thank you for reaching out and sharing your understanding of the conversation you had with [REDACTED] regarding the treatment of Gender Dysphoria within the Department of Corrections. It is true that it is DOC policy to provide medically appropriate treatment to individuals with Gender Dysphoria as approved by the Gender Dysphoria Care Review Committee. This includes hormonal treatment according to guidelines consistent with community practice.  
I am happy to meet and discuss your concerns with you. I could come out to Monroe next week on a mutually agreeable date.

best,

[REDACTED]  
Chief Medical Officer  
Health Services, Department of Corrections

**From:** [REDACTED]  
**Sent:** Monday, October 09, 2017 9:25 PM  
**To:** [REDACTED]  
(DOC)  
**Subject:** Conversation with [REDACTED]

I had a conversation with [REDACTED] today and I wanted to make sure that I am understanding what you all decided.

Essentially, it is now part of the DOCs mission to treat transgender individuals with hormone therapy and this therapy will be issued by the provider onsite once approved by the gender dysphasia CRC. And if i, the prescriber, cannot align myself with this mission due to my strong conviction that this is harmful to my patients in a medical, social, biblical, and biologic way, I will be asked to find a job elsewhere.

Is this accurate?

Anyone feel free to answer.

Sent from my iPhone

I understand. I will manage these patient by continuing to refer them to either you or one of the other providers in a timely manner just like is done with the hepatitis C patients.

---

**From:** [REDACTED]  
**Sent:** Wednesday, October 25, 2017 12:03 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: [REDACTED]

[REDACTED]

As you've been told separately by me, [REDACTED] you are expected to manage patients' transgender issues while they reside on your unit, as is expected of all providers.

Thanks,

[REDACTED]  
Facility Medical Director, MCC  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Wednesday, October 25, 2017 9:50 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: [REDACTED]

I did see the patient in regard to his Ensure request and ear pain. I told him that [REDACTED] would be managing his transgender issue. He had no issue with another provider seeing him for this. He was quite frustrated that he only received 2 responses from the 12 kites he has sent. Please see this patient at your convenience.

Thanks,  
[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Wednesday, October 25, 2017 8:30 AM  
**To:** [REDACTED]  
**Subject:** FW: [REDACTED]

He [REDACTED]  
FYI  
Thanks,

██████████

---

From: ██████████  
Sent: Tuesday, October 24, 2017 4:10 PM  
To: ██████████  
Subject: RE: ██████████

This is ██████████ patient and he needs to see the patient.

---

From: ██████████  
Sent: Tuesday, October 24, 2017 3:00 PM  
To: ██████████  
Cc: ██████████  
Subject: FW: ██████████

Hi ██████████  
Would you like me to see ██████████ in the IMU or would you like to?  
Thanks,  
██████████

---

From: ██████████  
Sent: Tuesday, October 24, 2017 11:32 AM  
To: ██████████  
Subject: RE: ██████████

Not sure. I asked this morning but they don't know. Could be for a few more weeks.

---

From: ██████████  
Sent: Tuesday, October 24, 2017 11:32 AM  
To: ██████████  
Subject: RE: ██████████

Any idea on how long she will be in the IMU?

---

From: ██████████  
Sent: Tuesday, October 24, 2017 11:19 AM  
To: ██████████  
Subject: ██████████

██████████  
Is wanting some follow up regarding his hormones. He is not happy that his testosterone is so high. Ill defer to you.





No reasonable accommodation provided for my religious objection to prescribing hormones to men wanting to transition into women. When other providers offered to prescribe hormones to these patients under my care they were told by DOC leadership that they could not see my patients and no accommodation has been provided. Attached is a more detailed account as well as emails from my Facility Medical director, Chief medical officer, and the health care authority.

# Exhibit 128

On or about July 2017 the above named posted medical records and social security information regarding my person on social media (Facebook) under [REDACTED]

Clear violation of my hipa rights and ss rights



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME / CELL PHONE (Please include area code) [REDACTED]		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]	ZIP [REDACTED]	E-MAIL ADDRESS (If available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME \_\_\_\_\_ LAST NAME \_\_\_\_\_

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify): medical and social security number violation

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION  
 [REDACTED]

STREET ADDRESS [REDACTED]		CITY [REDACTED]	
STATE [REDACTED]	ZIP [REDACTED]	PHONE (Please include area code) [REDACTED]	

When do you believe that the discrimination occurred?

LIST DATE(S)  
 07/03/2017

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible.  
 (Attach additional pages as needed)

On or about July 2017 the above named posted medical records and social security information regarding my person on social media (Facebook) under Melanie Little.

Clear violation of my hippa rights and ss rights

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE  
 [REDACTED]

DATE (mm/dd/yyyy)  
 03/08/2018

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)  
 PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_  
 PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search     
  Family/Friend/Associate     
  Religious/Community Org     
  Lawyer/Legal Org     
  Phone Directory     
  Employer  
 Fed/State/Local Gov     
  Healthcare Provider/Health Plan     
  Conference/OCR Brochure     
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

U.S. Department of Health and Human  
 Services  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: ocrmail@hhs.gov

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address.



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.



- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: \_\_\_\_\_ Date: 03/08/2018

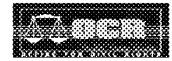
\*Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_





## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion, and conscience under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§ 295m and 296g), Section 1553 of the Affordable Care Act (42 U.S.C. § 18113), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. § 238n) and the Weldon Amendment (*e.g.*, Consolidated Appropriations Act of 2017, Pub. L. 115-31, Div. H, Tit. V, § 507);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

**Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

**Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.



### **CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

### **DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

# Exhibit 129



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS (OCR)  
**Civil Rights Discrimination Complaint**



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME N/A	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]			CITY
STATE	ZIP	E-MAIL ADDRESS (If available)	
[REDACTED]	[REDACTED]	[REDACTED]	

Are you filing this complaint for someone else?  Yes  No

If Yes, whose civil rights do you believe were violated?

FIRST NAME American Association of ProLife Ob-Gyn	LAST NAME
------------------------------------------------------	-----------

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify):

Who or what agency or organization do you believe discriminated against you?  
PERSON / AGENCY / ORGANIZATION [REDACTED]

STREET ADDRESS 409 12th Street SW		Washington
STATE D.C.	ZIP 20024	PHONE (Please include area code) (202) 638-5277

When do you believe that the occurred?

LIST DATE(S)  
Starting November 2007 to present

Describe briefly what happened. How and why do you believe you have been discriminated against? Please be as specific as possible.  
(Attach additional pages as needed)

Please see letter attached stating specifics

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE	DATE 3/23/2018
-----------	----------------

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at:

[www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for OCR to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_     
  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (If available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)  
 PERSON / AGENCY / ORGANIZATION / COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (If known)
---------------	---------------------------

To help us better serve the public; please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English):

How did you learn about the Office for Civil Rights?

- HHS Website /Internet Search     
  Family / Friend /Associate     
  Religious /Community Org     
  Lawyer /Legal Org     
  Phone Directory     
  Employer  
 Fed /State/Local Gov     
  Healthcare Provider /Health Plan     
  Conference /OCR Brochure     
  Other(specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

**U.S. Department of Health and Human Services**  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. **Please do not mail this complaint form to this address.**



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

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- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.

Complaint Consent Form

Page 1 of 2





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**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature:

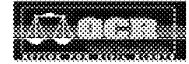
Date: 3/23/2018

*\*Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.*

Name (Pl

Address:

Telephon



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OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

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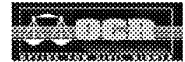
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If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

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If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

THOMAS MORE SOCIETY

*A National Public Interest Law Firm*

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March 23, 2018

*Via US Mail & email: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)*

U.S. Department of Health and Human Services  
Office of Civil Rights  
Centralized Case Management Operations  
200 Independence Ave., S.W.  
Suite 515F, HHH Building  
Washington, D.C. 20201

Re: Violations of Conscience Rights of Physicians

Dear members of the Office of Civil Rights for the Department:

We write on behalf of our client, American Association of Pro-Life Obstetricians and Gynecologists ("AAPLOG") and its Executive Director, [REDACTED] M.D., seeking the assistance of the Office of Civil Rights to investigate ongoing efforts by the American College of Obstetricians and Gynecologists ("ACOG") and its lobbying sister organization American Congress of Obstetrics and Gynecology ("The Congress") to stifle and countermand conscience rights of pro-life physicians to decline to perform, participate in, or assist in the performance of abortion practices because of their conscience and/or religious opposition to such practices.

AAPLOG is a nonprofit professional medical organization consisting of approximately 4,000 obstetrician-gynecologist members and associates practicing medicine in the United States and in several foreign countries. Its mission is to encourage the practice of medicine consistent with scientific truth and the Hippocratic oath, both of which it views as orienting medicine, as a healing art, toward the well-being and flourishing of all human life. ACOG is another membership organization of obstetricians and gynecologists. It purports to represent 58,000 physicians and partners. The Congress, ACOG's sister organization, a 501(c)(4) organization under the Internal Revenue Code, exists "to promote policy positions" of ACOG, in other words, to lobby. All members of ACOG are automatically members of The Congress regardless of the desire of the member to abstain from the Congress's pro-abortion lobbying.

In November 2007 ACOG issued Ethics Statement #385. **Exhibit One.** ACOG in this statement declares to be "unethical" any physician refusing to perform or refer for elective abortions. This statement was promptly and vigorously called into

19 S. LaSalle | Suite 603 | Chicago, IL 60603 || P: 312.782.1680 | F: 312.782.1887  
501 Scoular | 2027 Dodge | Omaha, NE 68102 || P: 402-346-5010 | F: 402 345 8853  
[www.thomasmoresociety.org](http://www.thomasmoresociety.org)

*"Injustice anywhere is a threat to justice everywhere." – Rev. Dr. Martin Luther King*

HHS, Office of Civil Rights  
 March 23, 2018  
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question by AAPLOG, other medical associations, and speakers before the President's Council on Bioethics. See, e.g., **Exhibit Two** (AAPLOG Response of Feb. 6, 2008); **Exhibit Three** (Letter from Catholic Medical Association, February 28, 2008); **Exhibit Four** (Joint Letter of Protest by various medical organizations, Dec. 7, 2007); **Exhibit Five** (Letter by 16 Members of Congress, March 14, 2008). These and other objectors requested that ACOG retract the Ethics Statement #385 as being unsupported and discriminatory. At the same time, the Department of Health and Human Services ("HHS") sent a letter to the American Board of Obstetrics and Gynecology ("ABOG"), which is the certifying body for obstetricians and gynecologists in the U.S., objecting to the ACOG policy and questioning its influence on ob-gyn certification procedures. See **Exhibit Six** (March 14, 2008 Letter to ██████████, M.D., Executive Director ABOG). ABOG responded with a letter protesting its innocence. See **Exhibit Seven** (March 19, 2008 Letter of ██████████, M.D. to ██████████, Secretary HHS). ACOG itself responded to the criticism by promising its members to revisit Ethics Statement #385, see **Exhibit Eight** (Letter to ██████████ March 26, 2008), but it never changed the policy, instead reconfirming it, most recently in 2016.<sup>1</sup>

ABOG's letter (Exhibit Seven) as a disclaimer carries no legal weight, since it is not an affirmative policy statement of ABOG itself. It thus gives no assurance to a pro-life ob-gyn against accusation of unethical conduct under Ethics Statement #385 upon a conscience-based refusal to perform or refer for abortion. What is needed is an affirmative statement from ABOG declaring that a conscience-based refusal to perform or refer for abortion does *not* constitute an ethical violation. But that has not been forthcoming. Without it an ob-gyn remains vulnerable to the possibility that his or her conscience-based refusal to participate in abortion could be considered unethical, prompting a loss of board certification, loss of employment, and other professional and personal adverse consequences. In that respect, the threat posed by Ethics Statement #385 is neither imaginary nor inflated. Under ABOG's current rules, an accusation of unethical professional behavior can lead to rescission of board certification, loss of licensure, and loss of hospital privileges.<sup>2</sup> Indeed, the very existence of Ethics Statement #385 is a

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<sup>1</sup> See <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/The-Limits-of-Conscientious-Refusal-in-Reproductive-Medicine> (last visited, March 21, 2018).

<sup>2</sup> See 2018 Bulletin for the Certifying Examination in Obstetrics and Gynecology, accessible at <https://www.abog.org/bulletins/2018%20Certifying%20Examination%20in%20Obstetrics%20and%20Gynecology.pdf> (last visited March 21, 2018). The Bulletin states, at p.7: "If a candidate is involved in an investigation by a health care organization regarding practice

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sword of Damocles hanging over Hippocratic oath physicians, and exerts a continuing chilling effect on their conscientious performance of ob-gyn services.

This ongoing state of affairs -- in which a licensed and board certified obstetrician-gynecologist can potentially be denied certification solely on the basis of refusal to perform or refer for abortions -- is also undesirable and counterproductive from the standpoint of public policy. As is well known, the United States suffers from a critical shortage of physicians, particularly in rural and other underserved areas of the country. To qualify and certify a single ob-gyn takes eight years of training, including four years of medical school and four years in an approved ob-gyn residency program. Qualified, dedicated ob-gyns provide desperately needed obstetric and gynecological services throughout the United States, including in rural and underserved areas of our country where their professional services often constitute the primary care for women of reproductive age. To deny certification to a fully trained ob-gyn solely because of ideological disagreement with a conscience-based objection to perform or refer for abortion would disserve all women who depend on such physicians, and exacerbate the already critical shortage of health care professionals in rural and other underserved communities, which desperately require such services. This makes no sense as sound public policy.

The 4,000 members of AAPLOG and countless other physicians consider ACOG Ethics Statement #385 to pose an intentional and systematic threat to the right of Hippocratic physicians in this country to follow, on the basis of conscience, time-honored Hippocratic principles of medicine. The very existence of this policy violates the conscience rights of all AAPLOG members, whom Dr. Harrison represents as Executive Director of AAPLOG, and the conscience rights of all pro-life physicians in this country.

For these reasons, AAPLOG hereby petitions the OCR for an investigation into:

1. The systematic and continued violation of conscience rights of Hippocratic physicians authorized by ACOG's adoption and continued advancement of Ethics Statement #385.

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activities or for ethical or moral issues, the individual will not be scheduled for examination, and a decision to approve or disapprove the application will be deferred until either the candidate has been cleared or until ABOG has received sufficient information to make a final decision." See also, at p. 8: "This means that each such medical license must not be restricted, suspended, on probation, revoked, nor include conditions of practice. The terms 'restricted' and 'conditions' include any and all limitations, terms or requirements imposed on a physician's license regardless of whether they deal directly with patient care."



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2. The relationship between ABOG with ACOG, an abortion advocacy organization, and the use by ABOG of ACOG Ethics Statement #385 as a criteria for board certification.

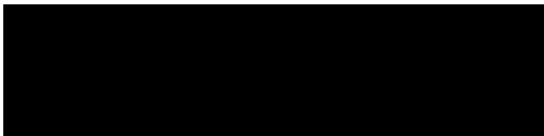
3. The unlawful use by covered entities of ABOG board certification or ACOG Ethics Statement #385 to intimidate and discriminate against individuals in violation of federal laws protecting conscience rights.

We respectfully request your office, after investigating these issues, to take appropriate action to prevent -- both now and for the future -- ACOG's political views favoring abortion, and its policy statements arising from those views, from interfering with, curtailing, or punishing the rights of conscience of pro-life physicians and service providers. In this regard, we respectfully request that HHS issue regulations that: (1) Require covered entities to provide a clear statement that covered entities cannot discriminate against individuals or healthcare entities because they refuse to perform, refer for, or train to perform, elective abortions; and (2) Require covered entities to post notices informing all healthcare providers of their conscience rights as well as that government offices individuals or healthcare entities can contact to request assistance in the event their rights are violated.

AAPLOG believes that HHS should take these and other steps necessary to prevent ABOG and ACOG from the current cat-and-mouse strategy that is being used to intimidate and harass pro-life physicians and service providers in a manner wholly inconsistent with the letter and spirit of the federal laws protecting conscience.

Thank you for considering this complaint. Please contact the undersigned in the event additional information is needed to bring your investigation to conclusion.

Respectfully,



Counsel, Thomas More Society



Enclosures

# **EXHIBIT ONE**

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## ACOG COMMITTEE OPINION

Number 385, November 2007

Reaffirmed 2016

Committee on Ethics

PDF Format

## The Limits of Conscientious Refusal in Reproductive Medicine

**ABSTRACT:** Health care providers occasionally may find that providing indicated, even standard, care would present for them a personal moral problem—a conflict of conscience—particularly in the field of reproductive medicine. Although respect for conscience is important, conscientious refusals should be limited if they constitute an imposition of religious or moral beliefs on patients, negatively affect a patient's health, are based on scientific misinformation, or create or reinforce racial or socioeconomic inequalities. Conscientious refusals that conflict with patient well-being should be accommodated only if the primary duty to the patient can be fulfilled. All health care providers must provide accurate and unbiased information so that patients can make informed decisions. Where conscience implores physicians to deviate from standard practices, they must provide potential patients with accurate and prior notice of their personal moral commitments. Physicians and other health care providers have the duty to refer patients in a timely manner to other providers if they do not feel that they can in conscience provide the standard reproductive services that patients request. In resource-poor areas, access to safe and legal reproductive services should be maintained. Providers with moral or religious objections should either practice in proximity to individuals who do not share their views or ensure that referral processes are in place. In an emergency in which referral is not possible or might negatively have an impact on a patient's physical or mental health, providers have an obligation to provide medically indicated and requested care.

Physicians and other providers may not always agree with the decisions patients make about their own health and health care. Such differences are expected—and, indeed, underlie the American model of informed consent and respect for patient autonomy. Occasionally, however, providers anticipate that providing indicated, even standard, care would present for them a personal moral problem—a conflict of conscience. In such cases, some providers claim a right to refuse to provide certain services, refuse to refer patients to another provider for these services, or even decline to inform patients of their existing options (1).

Conscientious refusals have been particularly widespread in the arena of reproductive medicine, in which there are deep divisions regarding the moral acceptability of pregnancy termination and contraception. In Texas, for example, a pharmacist rejected a rape victim's prescription for emergency contraception, arguing that dispensing the medication was a "violation of morals" (2). In Virginia, a 42-year-old mother of two was refused a prescription for emergency contraception, became pregnant, and ultimately underwent an abortion she tried to prevent by requesting emergency contraception (3). In California, a physician refused to perform intrauterine insemination for a lesbian couple, prompted by religious beliefs and disapproval of lesbians having children (4). In Nebraska, a 19-year-old woman with a life-threatening pulmonary embolism at 10 weeks of gestation was refused a first-trimester pregnancy termination when admitted to a religiously affiliated hospital and was ultimately transferred by ambulance to another facility to undergo the procedure (5). At the heart of each of these examples of refusal is a claim of conscience—a claim that to provide certain services would compromise the moral integrity of a provider or institution.

In this opinion, the American College of Obstetricians and Gynecologists (ACOG) Committee on Ethics considers the issues raised by conscientious refusals in reproductive medicine and outlines a framework for defining the ethically appropriate limits of conscientious refusal in reproductive health contexts. The committee begins by offering a definition of conscience and describing what might constitute an authentic claim of conscience. Next, it discusses the limits of conscientious refusals, describing how claims of conscience should be weighed in the context of other values critical to the ethical provision of health care. It then outlines options for public policy regarding conscientious refusals in reproductive medicine. Finally, the committee proposes a series of recommendations that maximize accommodation of an individual's religious or moral belief while avoiding imposition of these beliefs on others or interfering with the safe, timely, and financially feasible access to reproductive health care that all women deserve.

## Defining Conscience

In this effort to reconcile the sometimes competing demands of religious or moral freedom and reproductive rights, it is important to characterize what is meant by conscience. Conscience has been defined as the private, constant, ethically

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attuned part of the human character. It operates as an internal sanction that comes into play through critical reflection about a certain action or inaction (6). An appeal to conscience would express a sentiment such as "if I were to do *x*," I could not live with myself/I would hate myself/I wouldn't be able to sleep at night." According to this definition, not to act in accordance with one's conscience is to betray oneself—to risk personal wholeness or identity. Thus, what is taken seriously and is the specific focus of this document is not simply a broad claim to provider autonomy (7), but rather the particular claim to a provider's right to protect his or her moral integrity—to uphold the "soundness, reliability, wholeness and integration of [one's] moral character" (8).

Personal conscience, so conceived, is not merely a source of potential conflict. Rather, it has a critical and useful place in the practice of medicine. In many cases, it can foster thoughtful, effective, and humane care. Ethical decision making in medicine often touches on individuals' deepest identity-conferring beliefs about the nature and meaning of creating and sustaining life (9). Yet, conscience also may conflict with professional and ethical standards and result in inefficiency, adverse outcomes, violation of patients' rights, and erosion of trust if, for example, one's conscience limits the information or care provided to a patient. Finding a balance between respect for conscience and other important values is critical to the ethical practice of medicine.

In some circumstances, respect for conscience must be weighed against respect for particular social values. Challenges to a health care professional's integrity may occur when a practitioner feels that actions required by an external authority violate the goals of medicine and his or her fiduciary obligations to the patient. Established clinical norms may come into conflict with guidelines imposed by law, regulation, or public policy. For example, policies that mandate physician reporting of undocumented patients to immigration authorities conflict with norms such as privacy and confidentiality and the primary principle of nonmaleficence that governs the provider-patient relationship (10). Such challenges to integrity can result in considerable moral distress for providers and are best met through organized advocacy on the part of professional organizations (11, 12). When threats to patient well-being and the health care professional's integrity are at issue, some individual providers find a conscience-based refusal to comply with policies and acceptance of any associated professional and personal consequences to be the only morally tenable course of action (10).

Claims of conscience are not always genuine. They may mask distaste for certain procedures, discriminatory attitudes, or other self-interested motives (13). Providers who decide not to perform abortions primarily because they find the procedure unpleasant or because they fear criticism from those in society who advocate against it do not have a genuine claim of conscience. Nor do providers who refuse to provide care for individuals because of fear of disease transmission to themselves or other patients. Positions that are merely self-protective do not constitute the basis for a genuine claim of conscience. Furthermore, the logic of conscience, as a form of self-reflection on and judgment about whether one's own acts are obligatory or prohibited, means that it would be odd or absurd to say "I would have a guilty conscience if she did *x*." Although some have raised concerns about complicity in the context of referral to another provider for requested medical care, the logic of conscience entails that to act in accordance with conscience, the provider need not rebuke other providers or obstruct them from performing an act (8). Finally, referral to another provider need not be conceptualized as a repudiation or compromise of one's own values, but instead can be seen as an acknowledgment of both the widespread and thoughtful disagreement among physicians and society at large and the moral sincerity of others with whom one disagrees (14).

The authenticity of conscience can be assessed through inquiry into 1) the extent to which the underlying values asserted constitute a core component of a provider's identity, 2) the depth of the provider's reflection on the issue at hand, and 3) the likelihood that the provider will experience guilt, shame, or loss of self-respect by performing the act in question (9). It is the genuine claim of conscience that is considered next, in the context of the values that guide ethical health care.

## Defining Limits for Conscientious Refusal

Even when appeals to conscience are genuine, when a provider's moral integrity is truly at stake, there are clearly limits to the degree to which appeals to conscience may justifiably guide decision making. Although respect for conscience is a value, it is only a *prima facie* value, which means it can and should be overridden in the interest of other moral obligations that outweigh it in a given circumstance. Professional ethics requires that health be delivered in a way that is respectful of patient autonomy, timely and effective, evidence based, and nondiscriminatory. By virtue of entering the profession of medicine, physicians accept a set of moral values—and duties—that are central to medical practice (15). Thus, with professional privileges come professional responsibilities to patients, which must precede a provider's personal interests (16). When conscientious refusals conflict with moral obligations that are central to the ethical practice of medicine, ethical care requires either that the physician provide care despite reservations or that there be resources in place to allow the patient to gain access to care in the presence of conscientious refusal. In the following sections, four criteria are highlighted as important in determining appropriate limits for conscientious refusal in reproductive health contexts.

### 1. Potential for Imposition

The first important consideration in defining limits for conscientious refusal is the degree to which a refusal constitutes an imposition on patients who do not share the objector's beliefs. One of the guiding principles in the practice of medicine is respect for patient autonomy, a principle that holds that persons should be free to choose and act without controlling constraints imposed by others. To respect a patient's autonomy is to respect her capacities and perspectives, including her right to hold certain views, make certain choices, and take certain actions based on personal values and beliefs (17). Respect involves acknowledging decision-making rights and acting in a way that enables patients to make choices for themselves. Respect for autonomy has particular importance in reproductive decision making, which involves private, personal, often pivotal decisions about sexuality and childbearing.

It is not uncommon for conscientious refusals to result in imposition of religious or moral beliefs on a patient who may not share these beliefs, which may undermine respect for patient autonomy. Women's informed requests for contraception or sterilization, for example, are an important expression of autonomous choice regarding reproductive decision making. Refusals to dispense contraception may constitute a failure to respect women's capacity to decide for themselves whether and under what circumstances to become pregnant.

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Similar issues arise when patients are unable to obtain medication that has been prescribed by a physician. Although pharmacist conduct is beyond the scope of this document, refusals by other professionals can have an important impact on a physician's efforts to provide appropriate reproductive health care. Providing complete, scientifically accurate information about options for reproductive health, including contraception, sterilization, and abortion, is fundamental to respect for patient autonomy and forms the basis of informed decision making in reproductive medicine. Providers refusing to provide such information on the grounds of moral or religious objection fail in their fundamental duty to enable patients to make decisions for themselves. When the potential for imposition and breach of autonomy is high due either to controlling constraints on medication or procedures or to the provider's withholding of information critical to reproductive decision making, conscientious refusal cannot be justified.

### 2. Effect on Patient Health

A second important consideration in evaluating conscientious refusal is the impact such a refusal might have on well-being as the patient perceives it—in particular, the potential for harm. For the purpose of this discussion, harm refers to significant bodily harm, such as pain, disability, or death or a patient's conception of well-being. Those who choose the profession of medicine (like those who choose the profession of law or who are trustees) are bound by special fiduciary duties, which oblige physicians to act in good faith to protect patients' health—particularly to the extent that patients' health interests conflict with physicians' personal or self-interest (16). Although conscientious refusals stem in part from the commitment to "first, do no harm," their result can be just the opposite. For example, religiously based refusals to perform tubal sterilization at the time of cesarean delivery can place a woman in harm's way—either by putting her at risk for an undesired or unsafe pregnancy or by necessitating an additional, separate sterilization procedure with its attendant and additional risks.

Some experts have argued that in the context of pregnancy, a moral obligation to promote fetal well-being also should justifiably guide care. But even though views about the moral status of the fetus and the obligations that status confers differ widely, support of such moral pluralism does not justify an erosion of clinicians' basic obligations to protect the safety of women who are, primarily and unarguably, their patients. Indeed, in the vast majority of cases, the interests of the pregnant woman and fetus converge. For situations in which their interests diverge, the pregnant woman's autonomous decisions should be respected (18). Furthermore, in situations "in which maternal competence for medical decision making is impaired, health care providers should act in the best interests of the woman first and her fetus second" (19).

### 3. Scientific Integrity

The third criterion for evaluating authentic conscientious refusal is the scientific integrity of the facts supporting the objector's claim. Core to the practice of medicine is a commitment to science and evidence-based practice. Patients rightly expect care guided by best evidence as well as information based on rigorous science. When conscientious refusals reflect a misunderstanding or mistrust of science, limits to conscientious refusal should be defined, in part, by the strength or weakness of the science on which refusals are based. In other words, claims of conscientious refusal should be considered invalid when the rationale for a refusal contradicts the body of scientific evidence.

The broad debate about refusals to dispense emergency contraception, for example, has been complicated by misinformation and a prevalent belief that emergency contraception acts primarily by preventing implantation (20). However, a large body of published evidence supports a different primary mechanism of action, namely the prevention of fertilization. A review of the literature indicates that Plan B can interfere with sperm migration and that preovulatory use of Plan B suppresses the luteinizing hormone surge, which prevents ovulation or leads to the release of ova that are resistant to fertilization. Studies do not support a major postfertilization mechanism of action (21). Although even a slight possibility of postfertilization events may be relevant to some women's decisions about whether to use contraception, provider refusals to dispense emergency contraception based on unsupported beliefs about its primary mechanism of action should not be justified.

In the context of the morally difficult and highly contentious debate about pregnancy termination, scientific integrity is one of several important considerations. For example, some have argued against providing access to abortion based on claims that induced abortion is associated with an increase in breast cancer risk; however, a 2003 U.S. National Cancer Institute panel concluded that there is well-established epidemiologic evidence that induced abortion and breast cancer are not associated (22). Refusals to provide abortion should not be justified on the basis of unsubstantiated health risks to women.

Scientific integrity is particularly important at the level of public policy, where unsound appeals to science may have masked an agenda based on religious beliefs. Delays in granting over-the-counter status for emergency contraception are one such example. Critics of the U.S. Food and Drug Administration's delay cited deep flaws in the science and evidence used to justify the delay, flaws these critics argued were indicative of unspoken and misplaced value judgments (23). Thus, the scientific integrity of a claim of refusal is an important metric in determining the acceptability of conscience-based practices or policies.

### 4. Potential for Discrimination

Finally, conscientious refusals should be evaluated on the basis of their potential for discrimination. Justice is a complex and important concept that requires medical professionals and policy makers to treat individuals fairly and to provide medical services in a nondiscriminatory manner. One conception of justice, sometimes referred to as the distributive paradigm, calls for fair allocation of society's benefits and burdens. Persons intending conscientious refusal should consider the degree to which they create or reinforce an unfair distribution of the benefits of reproductive technology. For instance, refusal to dispense contraception may place a disproportionate burden on disenfranchised women in resource-poor areas. Whereas a single, affluent professional might experience such a refusal as inconvenient and seek out another physician, a young mother of three depending on public transportation might find such a refusal to be an insurmountable barrier to medication because other options are not realistically available to her. She thus may experience loss of control of her reproductive fate and quality of life for herself and her children. Refusals that unduly burden the most vulnerable of society violate the core commitment to justice in the distribution of health resources.

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Another conception of justice is concerned with matters of oppression as well as distribution (24). Thus, the impact of conscientious refusals on oppression of certain groups of people should guide limits for claims of conscience as well. Consider, for instance, refusals to provide infertility services to same-sex couples. It is likely that such couples would be able to obtain infertility services from another provider and would not have their health jeopardized, *per se*. Nevertheless, allowing physicians to discriminate on the basis of sexual orientation would constitute a deeper insult, namely reinforcing the scientifically unfounded idea that fitness to parent is based on sexual orientation, and, thus, reinforcing the oppressed status of same-sex couples. The concept of oppression raises the implications of all conscientious refusals for gender justice in general. Legitimizing refusals in reproductive contexts may reinforce the tendency to value women primarily with regard to their capacity for reproduction while ignoring their interests and rights as people more generally. As the place of conscience in reproductive medicine is considered, the impact of permissive policies toward conscientious refusals on the status of women must be considered seriously as well.

Some might say that it is not the job of a physician to "fix" social inequities. However, it is the responsibility, whenever possible, of physicians as advocates for patients' needs and rights not to create or reinforce racial or socioeconomic inequalities in society. Thus, refusals that create or reinforce such inequities should raise significant caution.

### Institutional and Organizational Responsibilities

Given these limits, individual practitioners may face difficult decisions about adherence to conscience in the context of professional responsibilities. Some have offered, however, that "accepting a collective obligation does not mean that all members of the profession are forced to violate their own consciences" (1). Rather, institutions and professional organizations should work to create and maintain organizational structures that ensure nondiscriminatory access to all professional services and minimize the need for individual practitioners to act in opposition to their deeply held beliefs. This requires at the very least that systems be in place for counseling and referral, particularly in resource-poor areas where conscientious refusals have significant potential to limit patient choice, and that individuals and institutions "act affirmatively to protect patients from unexpected and disruptive denials of service" (13). Individuals and institutions should support staffing that does not place practitioners or facilities in situations in which the harms and thus conflicts from conscientious refusals are likely to arise. For example, those who feel it improper to prescribe emergency contraception should not staff sites, such as emergency rooms, in which such requests are likely to arise, and prompt disposition of emergency contraception is required and often integral to professional practice. Similarly, institutions that uphold doctrinal objections should not position themselves as primary providers of emergency care for victims of sexual assault; when such patients do present for care, they should be given prophylaxis. Institutions should work toward structures that reduce the impact on patients of professionals' refusals to provide standard reproductive services.

### Recommendations

Respect for conscience is one of many values important to the ethical practice of reproductive medicine. Given this framework for analysis, the ACOG Committee on Ethics proposes the following recommendations, which it believes maximize respect for health care professionals' consciences without compromising the health and well-being of the women they serve.

1. In the provision of reproductive services, the patient's well-being must be paramount. Any conscientious refusal that conflicts with a patient's well-being should be accommodated only if the primary duty to the patient can be fulfilled.
2. Health care providers must impart accurate and unbiased information so that patients can make informed decisions about their health care. They must disclose scientifically accurate and professionally accepted characterizations of reproductive health services.
3. Where conscience implores physicians to deviate from standard practices, including abortion, sterilization, and provision of contraceptives, they must provide potential patients with accurate and prior notice of their personal moral commitments. In the process of providing prior notice, physicians should not use their professional authority to argue or advocate these positions.
4. Physicians and other health care professionals have the duty to refer patients in a timely manner to other providers if they do not feel that they can in conscience provide the standard reproductive services that their patients request.
5. In an emergency in which referral is not possible or might negatively affect a patient's physical or mental health, providers have an obligation to provide medically indicated and requested care regardless of the provider's personal moral objections.
6. In resource-poor areas, access to safe and legal reproductive services should be maintained. Conscientious refusals that undermine access should raise significant caution. Providers with moral or religious objections should either practice in proximity to individuals who do not share their views or ensure that referral processes are in place so that patients have access to the service that the physician does not wish to provide. Rights to withdraw from caring for an individual should not be a pretext for interfering with patients' rights to health care services.
7. Lawmakers should advance policies that balance protection of providers' consciences with the critical goal of ensuring timely, effective, evidence-based, and safe access to all women seeking reproductive services.

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The limits of conscientious refusal in reproductive medicine. ACOG Committee Opinion No. 385. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2007;110:1203-8.

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# **EXHIBIT TWO**



**AAPLOG - AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS &  
GYNECOLOGISTS**  
**EXECUTIVE OFFICE: AAPLOG 339 River Ave, Holland, MI 49423 Website:**  
**[www.aaplog.org](http://www.aaplog.org)**  
**Telephone: (616) 546-2639 E-Mail: [prolifeob@aol.com](mailto:prolifeob@aol.com)**  
**February 6, 2008**

**AAPLOG RESPONSE TO THE ACOG ETHICS COMMITTEE OPINION #385,  
TITLED "THE LIMITS OF CONSCIENTIOUS REFUSAL IN REPRODUCTIVE  
MEDICINE"**

The American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), one of the largest Special Interest Groups of the American College of Obstetricians and Gynecologists (ACOG), strongly objects to the November 2007 release of ACOG Committee Opinion, Number 385, titled "The Limits of Conscientious Refusal in Reproductive Medicine."

We find it unethical and unacceptable that a small committee of ACOG members would pretend to provide the moral compass for 49,000 other members on one of the most ethically controversial issues in our society and within our medical specialty—and that without ever consulting the full membership.

ACOG Committee Opinion #385 is in opposition to 2500 years of accepted Hippocratic ethical medical tradition. Legal elective abortion made a unique arrival in the late 1960s in the United States as part of a legal-societal initiative, rather than as the culmination of a scientific process in biomedicine. The acceptance of elective abortion in American medical practice was contrary to the historic ethical position of Western medicine with regard to abortion.

Therefore it is of great concern that this committee opinion repeatedly describes elective abortion, and other controversial reproductive medical procedures and services as "standard." The term "standard," as used in the document, is never defined. Ideally, a care "standard" would involve a balanced and thorough consideration of the existing medical literature for the effect on the patient's health and well being, both in the short term and in the long term. There is scant evidence regarding the outcomes of elective abortion, other than its decided effectiveness at ending a pregnancy. In general, the long term safety of abortion, and its "benefit" for women, has been either assumed, or accepted on the basis of inadequate follow-up studies.

On the contrary, there are poor reproductive and other health outcomes associated with elective abortion in methodologically sound scientific studies. The data from nations with extensive computer based health registries, where linkage with subsequent health outcomes is a practical reality, show that elective

abortion has significant adverse association with subsequent preterm birth,<sup>1</sup> depression,<sup>2</sup> suicide,<sup>3</sup> placenta previa,<sup>4</sup> and breast cancer.<sup>5</sup> (“Although it remains uncertain whether elective abortion increases subsequent breast cancer, it is clear that a decision to abort and delay pregnancy culminates in a loss of protection with the net effect being an increased risk.”)<sup>4</sup>

While there may be conflicting data with regard to these issues, ACOG documents have summarily denied the significance of any literature demonstrating an association. We are aware of no current ACOG educational materials providing balance to this extreme position.

In this regard, we also find the Opinion statement, “Health care providers must impart accurate and unbiased information so that patients can make informed decisions about their health care,” to be at odds with the actual practice of informed consent in elective abortion. The College has allowed the development of a procedure (elective abortion) in its specialty area for which record keeping is inadequate and meaningful tracking of complications is virtually impossible. There is a relative absence of data collected on abortion and subsequent health status in the United States. ACOG has colluded in this state of affairs by not insisting on adequate record keeping and reporting for this procedure. Since accurate risk and complication rates are unavailable, it is vacuous to make reference to “accurate and unbiased information” for making “informed” decisions.

Further, in most instances, the abortion practitioner is not responsible to care for “complications” of his or her work, and often may not even be aware that a complication has occurred. Rather, the emergency room physician, or the obstetrician/gynecologist on call for the emergency department, inherits untoward fallout of abortion. Therefore the physician performing the procedure cannot even accurately reference his or her own experience with regard to complications in informed consent conversations. This is the only instance in American medicine where the operating physician is not the primary physician responsible for the initial oversight of complications of their surgical procedure. Perhaps the ACOG

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<sup>1</sup> National Academy of Science's Institute of Medicine report " Preterm Birth: Causes, Consequences, and Prevention." July 2006, Appendix, page 518-19; Calhoun, B, Rooney, B; "Induced Abortion and Risk of Later Premature Birth," Journal of American Physicians and Surgeons, Volt 8, #2, 2003.

<sup>2</sup> David M. Fergusson, et al; "Abortion In Young Women And Subsequent Mental Health," J. of Child Psychology and Psychiatry, Vol 47:1 2006.

<sup>3</sup> Gissler, M, et.al., "Pregnancy associated deaths in Finland 1987-1994, Acta Obstetrica et Gynecologica Scandinavica 76:651-657, 1997.

<sup>4</sup> Thorp, et al, "Long Term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence," OB GYN Survey, Vol 58, No. 1, 2002.

<sup>5</sup> MacMahon, et al, Bull. "Age at First Birth and Breast Cancer Risk", WHO 43:209-221, 1970; Trichopolous D, Hsieh C, MacMahon B, Lin T, et al, Age at any Birth and Breast Cancer Risk, International J Cancer, 31:701-704, 1983.

Committee on Ethics should address the strange ethics of this “prevailing standard” of reproductive health service.

Dr. Allan Sawyer, who is an AAPLOG member and current Chairman of the ACOG Committee on Coding and Nomenclature, as well as chairman of a hospital ethics committee, has stated in a prior letter to ACOG, “It is a foundational principle of ethics that autonomy must be balanced by the other principles of ethics. Any one principle of ethics cannot trump all of the others, otherwise there is distortion of truth and the dominant principle ends up skewing the analysis. The end result often is anything but ethical. ACOG’s Committee Opinion #385 is an excellent example of the collapse of ethical decision-making when patient autonomy is allowed to dominate over every other principle of ethics. This is not so much an ethics committee opinion as it is a document that promotes the right-to-abortion-on-demand stance of ACOG.”<sup>6</sup> Dr. Sawyer’s comments accurately reflect AAPLOG’s position on this issue.

The idea that physicians are obligated to provide or refer for elective abortion services simply on the basis of “patient request” is antithetical to the practice of modern medicine. It is to make patient autonomy rule over physician conscience. It is to make the physician the corner vendor. A more balanced approach would be to accept that where opinions vary, the patient is free to seek a second opinion, but not to impose her will on the attending physician.

The Ethics Committee directive that those who oppose elective abortion on conscience grounds should locate their practice in proximity to an abortionist for patient convenience is patently absurd. Quite apart from our conscience convictions, this is a completely unrealistic idea. Conformity with this recommendation would result in large swathes of the United States being without any obstetric or gynecologic care (the large majority of abortion clinics are located in the inner city).

The Committee Opinion informs us that conscience based refusals should be evaluated on the basis of their potential for discrimination. For years a glaring example of systematic discrimination has been implicitly accepted within the current provision of abortion services nationwide. Year after year, African-American women have their unborn children aborted at a per capita rate three times that of Caucasian women. There has never been a protest from ACOG against this extreme disproportion in the actual distribution of abortion services. What would the Ethics Committee advise to rectify this inequity? Should the abortion rate be increased for Caucasian women, or should the abortion rate be decreased for African-American women, in order to meet the standards of justice and equitable distribution of reproductive health services?

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<sup>6</sup> Used with Dr. Sawyer’s permission

Finally, it seems that the Ethics Committee does not understand the strength and depth of a conscience conviction against the elective, deliberate taking of an unborn human life. This is not a negotiable issue for those who hold this conviction. The United States Supreme Court allowed elective abortion to be a legal right. The U.S. Supreme Court is not an infallible moral guide for a person's conscience, as evidenced by a previous similar egregious ruling.<sup>7</sup>

For these reasons, we, the AAPLOG board of directors, find this Committee Opinion to be neither scientifically nor ethically sound. We strongly urge that Committee Opinion #385 be rescinded at the earliest opportunity.

Sincerely,

Joseph L. DeCook, MD, FACOG, Vice-President, AAPLOG, for the Executive Committee and the Board of AAPLOG

<sup>7</sup> We reference the infamous Dred Scott vs Sanford case of 1857, in which the Supreme Court of the United States found, by a 7-2 majority, that no person of African descent could claim U.S. Citizenship. (Africans, according to the Court, were "beings of an inferior order, and altogether unfit to associate with the white race,... so far inferior that they had no rights which the white man was bound to respect.") Since slaves had no claim to citizenship, they could not bring suit in court. We find the status of the unborn under Roe to be strikingly similar to the plight of the African slaves under Dred Scott: Both are human beings, but neither had/has basic human rights: neither had/has the legal right to appeal to the courts for justice or protection when they were/are victims of inhumane treatment or purposeful killing.

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# **EXHIBIT THREE**

██████████ D.

Board President  
American College of Obstetricians and Gynecologists  
409 12th St., S.W.  
Washington, D.C. 20090-6920  
February 28, 2008

Dear ██████████:

On November 7, 2007, the American College of Obstetricians and Gynecologists (ACOG) Committee on Ethics released an Opinion, “The Limits of Conscientious Refusal in Reproductive Medicine” (the “Opinion”), which attempts to resolve the issue of ethically appropriate limits of conscientious judgments in reproductive medicine. This is an issue that demands serious attention and sustained dialogue. Unfortunately, however, the Opinion not only fails to provide helpful guidance, but is so flawed that it threatens the reputation of ACOG itself. The Catholic Medical Association urges ACOG to rescind this opinion immediately.

The Committee on Ethics’ Opinion exhibits three fatal flaws: (1) it is woefully inadequate in basic ethical theory and analysis; (2) the “considerations” advanced to limit conscientious judgments are so vague and contentious that they cannot meaningfully function as ethical or professional guidelines; and (3) the solutions proposed are unjust, unworkable, and harmful to the profession of medicine. We elaborate on these points briefly below.

1. Flaws in Ethical Analysis. The Opinion contains a seriously flawed and gratuitously condescending approach to conscience. The Opinion describes conscience in limited, negative, emotional terms, emphasizing such terms as “private,” “sanction,” “sentiment,” and emotions such as self-hatred. At best, the Opinion notes, “Personal conscience, so conceived, is not merely a source of potential conflict.” In fact, however, while conscience is a personal, subjective judgment, it is not merely “private” or relativistic. Conscientious judgments provide guidance both for good actions that should be done and unethical actions that should be refused. It is true that conscientious judgments are at times accompanied by emotion, particularly in conflict cases. Still, conscience is not a matter of feeling, as the Opinion suggests, but a judgment about moral truth.

In addition to providing an inadequate description of the nature and role of conscience, the Opinion fails to do justice to the ethical issue of cooperation in evil raised by providing referrals for abortion and, indeed, dismisses concerns about complicity in gravely immoral actions.

This disregard for the harm caused by complicity in moral evil is particularly hard to understand given the painful lessons the medical profession learned from physicians' silent tolerance of, or complicity in, the crimes against humanity in Nazi Germany. Here in the United States, in the infamous Tuskegee Syphilis Study, U.S. Public Health Service physicians denied treatment to patients with syphilis so they could study the late stages of the disease. Moreover, physicians participated or acquiesced in involuntary sterilizations under color of law in more than 30 more states between 1907 and the early 1970s. All agree now that these practices were unethical and a violation of patients' rights and that physicians were wrong to cooperate, even tacitly, or to remain silent, even when they were not direct participants.

The Opinion mentions, but fails to describe, what it means by the "set of moral values – and duties – that are central to medical practice." Since the Opinion goes on to list four "criteria" that ostensibly trump physicians' ethical convictions, it appears that these are the moral values and duties the Ethics Committee has in mind. Inexplicably missing in this section of the Opinion is any mention of respect for human life, which *has* been recognized by most physicians across centuries and cultures as a fundamental value and duty that *is* central to the practice of medicine.

Finally, the Opinion attempts, in several ways, to legitimize a moral duty to provide any requested "reproductive service." The Opinion appeals to terminology such as "standard care," "standard reproductive services," and "standard practices" without ever defining who or what has established these standards. The Opinion attempts to conflate the duty to provide treatment in an emergency with a new obligation – to provide "medically indicated and requested care" where failure to do so "might" negatively affect a patient's "mental health." This so-called obligation is unnecessary and completely unfounded. Our position is that elective abortion is not healthcare, nor does it qualify as an emergency. In a true emergency, where a pregnant woman's life is in danger, physicians can and should strive to save the lives of the mother and her unborn child.

2. Considerations Limiting Conscientious Refusal. The "considerations" that the Opinion claims limit conscientious judgments are so vague and contentious that they cannot meaningfully function as ethical guidelines. For example, the Opinion cites the "degree of imposition" as a criterion for overriding the ethical and professional judgment of physicians. It is

not clear at all what kinds or degrees of “imposition” will trump ethical judgment, much less why they should. In appealing to the criterion of “effect on patient health,” the Opinion unfairly assumes that all requested reproductive interventions (including abortion or egg harvesting) are in fact good for the patient’s health. Moreover, it unfairly implies that physicians with ethical objections to such practices are not motivated precisely by concern for the patient’s short and long term health. In appealing to the category of scientific integrity, the Opinion overstates the certainty that current science can provide about the mechanism of drugs (such as those used in Plan B). And it fails to recognize that the real “possibility of postfertilization events” inherent in the use of such drugs *is* a valid matter for a professional’s clinical and ethical judgment. Finally, in appealing to “matters of oppression,” the Opinion injects a dubious political criterion into the heart of medical decision-making.

3. Solutions Proposed. The Opinion proposes solutions that are unjust, unworkable, and harmful to the profession of medicine. The Opinion unfairly dictates that only physicians who oppose a specific set of medical “services” should be required to provide patients with “prior notice of their personal moral commitments.” We think that *all* physicians should be ready to explain, whenever appropriate, their ethical convictions with regard to medical practice and care. To suggest that providers with pro-life ethical convictions “practice in proximity to individuals who do not share their views” is unworkable.

The solutions proposed in the Opinion are not only unjust and unworkable, but harmful to the profession of medicine. First, by negatively and narrowly defining conscience and by suggesting that judgments of conscience are best left to “organized advocacy” groups, the Opinion tacitly discourages physicians from thinking and acting in accordance with their judgment of what is ethical or unethical. The demand that physicians provide “professionally accepted characterizations of reproductive health services” shows distrust of professionals and of the quality of the medical profession as a whole. Second, in appealing to the vague criterion of past discrimination allegedly suffered by some people, the Opinion allows values and considerations extraneous to the practice and profession of medicine to dictate treatment modalities.

Third, the Opinion invites lawmakers to enforce compliance with these vague and contentious notions. This would run counter to AMA Code of Ethics Opinion E-10.05: “[I]t may be ethically permissible for physicians to decline a potential patient when . . . [a] specific treatment sought by an individual is incompatible with the physician’s personal, religious, or moral beliefs.” Moreover, this expressly contradicts ACOG’s own Statement of Policy on Abortion: “The intervention of legislative bodies into medical decision making is inappropriate, ill-advised and dangerous.”



Such legislation could not help but undermine the freedom and integrity of the profession of medicine and invite additional litigation and legislation that have nothing to do with promoting the health of women. Indeed, ACOG should be aware that legislation attempting to enforce this Opinion would violate constitutional and statutory protections of physicians' freedom of religion and conscience rights at federal and state levels. Finally, driving out physicians who respect the value of every human life – born and unborn – from the profession of obstetrics and gynecology would harm the profession and the health of many women and children.

There is a great deal of work to be done in assisting members of ACOG to practice medicine conscientiously, and to educate patients on what this means and why it is important. We stand ready to assist in this task. However, to be valid, any effort will have to be based on sound ethical analysis, undertaken in a spirit of dialogue, with respect for diversity in beliefs. The Committee on Ethics Opinion No. 385 falls significantly short in all these respects. Therefore, it should be rescinded immediately.

Respectfully,



President, Catholic Medical Association



Executive Director, Catholic Medical Association

cc.:

  
Chair, ACOG Committee on Ethics  
c/o ACOG Ethics Committee  
c/o ACOG Ethics Committee

# **EXHIBIT FOUR**

3/22/2018

ACOG Committee on Ethics Opinion No. 385: Christian Medical Association et al Joint Letter of Protest

 Project Logo **Protection of Conscience Project**  
[www.consciencelaws.org](http://www.consciencelaws.org)  
**Service, not Servitude**

# Joint Letter of Protest

## Christian Medical Association *et al*

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December 7, 2007

American College of Obstetricians and Gynecology  
Douglas W. Laube, MD, President  
PO Box 96920  
Washington, D.C. 20090-6920

Dear [REDACTED]:

The undersigned individuals and organizations urge the repudiation and withdrawal of the recently published position statement of The Committee on Ethics of the American College of Obstetricians and Gynecologists (ACOG), "The Limits of Conscientious Refusal in Reproductive Medicine."

The ACOG statement suggests a profound misunderstanding of the nature and exercise of conscience, an underlying bias against persons of faith and an apparent attempt to disenfranchise physicians who oppose ACOG's political activism on abortion.

The paper indicates that ACOG views the exercise of conscience and faith not so much as a cornerstone right in a democracy or as a historic hallmark of medicine, but rather as an inconvenient obstacle to abortion access.

A few excerpts from ACOG's paper illustrate these concerns:

1. "An appeal to conscience would express a sentiment such as 'If I were to do 'x,' I could not live with myself / I would hate myself, I wouldn't be able to sleep at night.'"

By caricaturing conscience as a pitifully self-centered, subjective feeling, ACOG denigrates the objective sources of conviction. Physicians of faith base decisions of conscience not on personal whims and feelings but on the objective teachings of Scripture--the same Scriptures that have provided the foundation for the laws of much of civilization. A physician's conscience may also be informed by time-honored ethical standards such as the Hippocratic Oath, which for centuries provided a foundation for medical ethics until abortion advocacy censored its teachings.

2. Physicians may not exercise their right of conscience if that might "constitute an imposition of religious or moral beliefs on patients."

SHARES

3/22/2018

ACOG Committee on Ethics Opinion No. 385: Christian Medical Association et al Joint Letter of Protest

is tantamount to "imposing religious or moral beliefs on patients."

3. "Physicians have the duty to refer patients in a timely manner to other providers if they do not feel they can in conscience provide the standard reproductive service that patients request."

This assertion contradicts a basic corollary of conscience. The same life-honoring, objective principles--"Thou shalt not kill," and "first, do no harm"--that persuade many conscientious physicians not to perform abortions also persuade them not to recommend someone else to do the deed.

4. "All healthcare providers must provide accurate and unbiased information so that patients can make informed decisions."

Normally no one would question this principle, but in this case, context is everything. Since ACOG has gone to court to fight laws requiring abortion doctors to offer informed consent information to patients on the risks and alternatives to abortion,<sup>1</sup> clearly ACOG intends to selectively apply this requirement only to pro-life physicians to force them to offer abortion as an option.

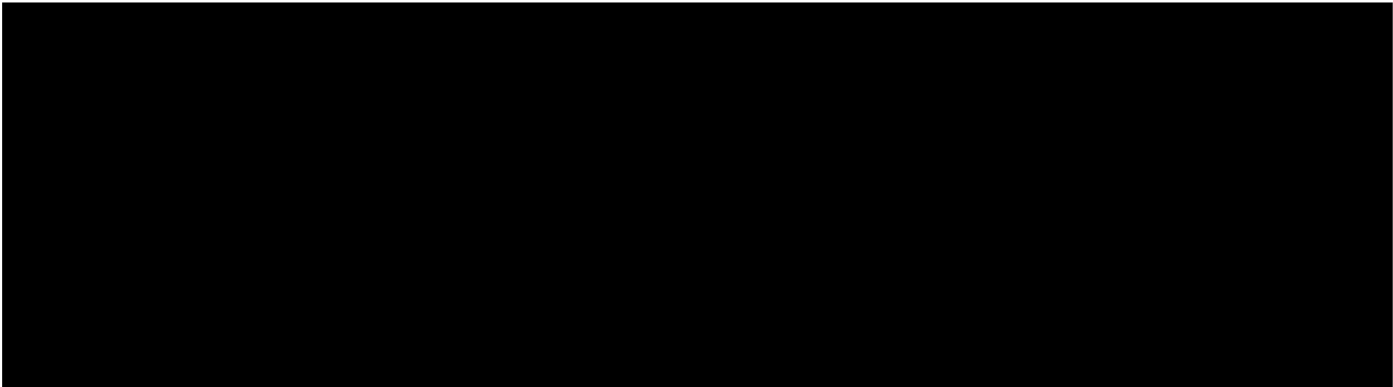
5. "Providers with moral or religious objections should not practice in proximity to individuals who do not share their views"

It is incredible that ACOG would actually require a pro-life physician to relocate his or her practice to be close to an abortion facility. Besides the fact that this drastic requirement is selectively invoked only against pro-life doctors, it would also have the negative practical impact of removing desperately needed doctors from underserved areas.

ACOG's misguided and uninformed public statement on conscience limits is bound to have the effect, whether unintended or actually intended, of discouraging persons of faith from practicing or choosing obstetrics and gynecology as a profession. At a time when many communities are already suffering the loss of obstetricians and gynecologists forced out of their practices for economic reasons, it seems especially unwise to send such a message of ideological intolerance and religious discrimination.

ACOG's aggressive political advocacy for abortion has significantly impaired its ability to speak for all physicians and to judge matters of medical ethics without bias. We urge ACOG to reconsider and withdraw this statement as a step toward remedying that lamentable loss of respectability and credibility.

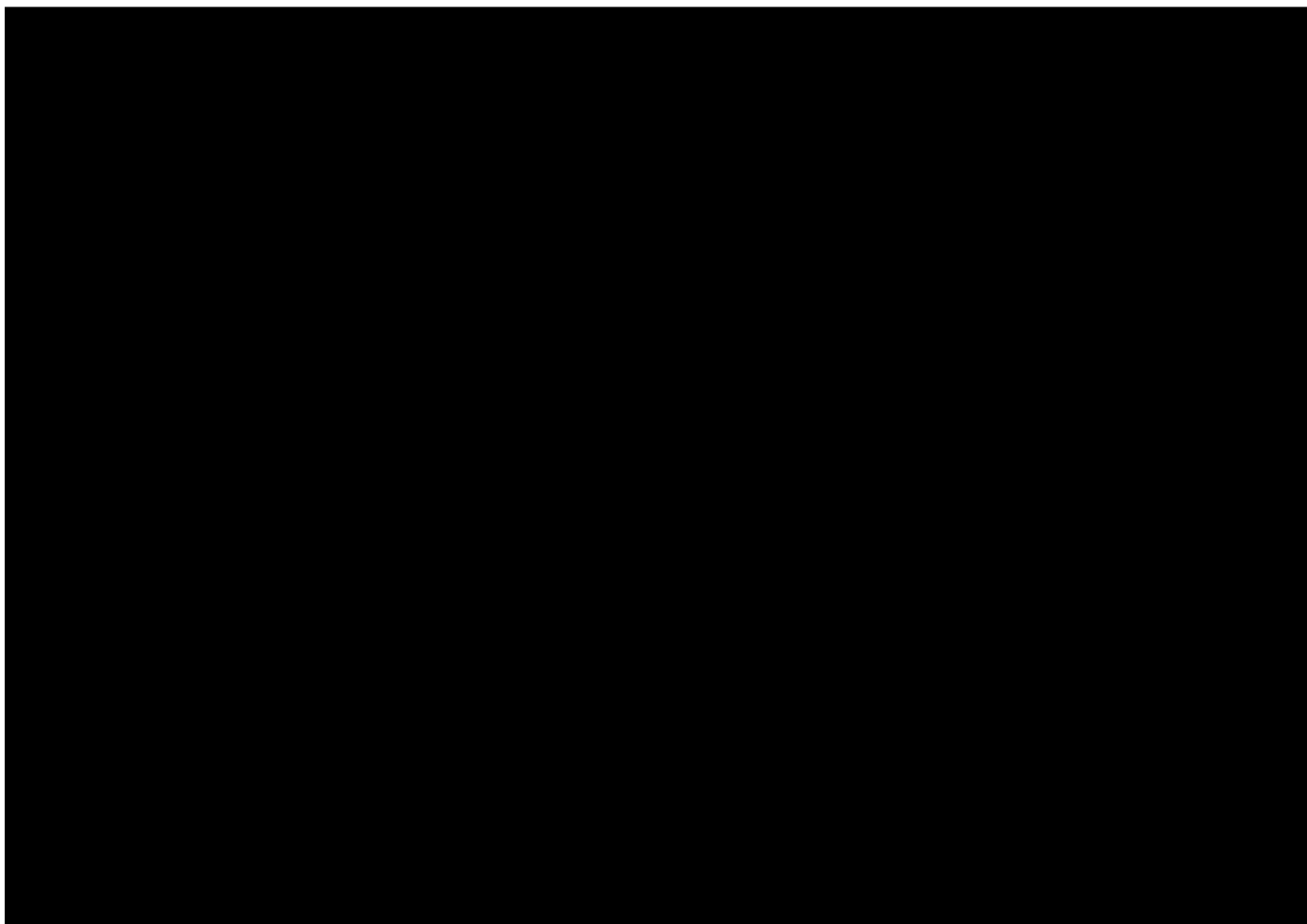
Sincerely,



SHARES

3/22/2018

ACOG Committee on Ethics Opinion No. 385: Christian Medical Association et al Joint Letter of Protest



**Notes**

1. American College of Obstetricians v. Thornburgh, 737 F.2d 283, 297-98 (3d Cir.1984).

cc: ACOG Executive Board Affairs  
ACOG Government Relations  
ACOG Clinical Practice

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SHARES

# **EXHIBIT FIVE**

**Congress of the United States**  
**Washington, DC 20515**

March 14, 2008

██████████ MD, MS, President  
The American College of Obstetricians and Gynecology  
409 12<sup>th</sup> Street, SW  
Washington, DC 20090-6920

Dear ██████████,


We are deeply concerned to learn of The American College of Obstetricians and Gynecology (ACOG) Committee Opinion #385 which could destroy the rights of conscience for pro-life obstetricians and gynecologists across our nation. Conforming to this guideline would force pro-life OB-GYNs to violate their moral and ethical beliefs regarding controversial issues like abortion. Furthermore, when paired with newly revised certification policies of the American Board of Obstetrics and Gynecology that condition board certification on compliance with ACOG ethics guidelines, we are concerned that the views represented in Opinion #385 can be used to force valuable pro-life OB-GYNs out of the practice of medicine for exercising their rights of conscience. *If used as a basis for decertifying physicians, these physicians would most likely lose hospital privileges and effectively be put out of business, denying the physician's right to practice his or her profession. Moreover, pro-life women would lose the right to choose OB-GYNs who share their moral convictions.*


As you know, Opinion #385 entitled "The Limits of Conscientious Refusal in Reproductive Medicine," contains seven recommendations that we believe jeopardize the rights of conscience of OB/GYNs. This report calls on OB-GYNs to disregard their moral, ethical or religious objections to abortion and instructs them to perform or refer for abortion. Opinion #385 also obligates the protection of the liberty interests of the pregnant women over the life and health of the unborn child, regardless of what the provider believes is in the best interests of both patients. This is a worrisome departure from professional standards set by state legislatures and other professional medical organizations such as the American Medical Association (AMA). The AMA House of Delegates policy on abortion states: "Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles." Currently, nearly all states recognize the right of physicians to refuse to provide abortions.

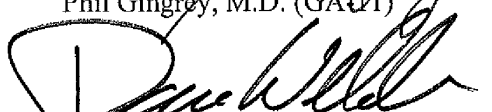
We are aware that member physicians and civil rights organizations have requested for clarification on Opinion #385. We, as Members of the House of Representative are asking the same and want assurance that OB-GYNs will not face severe consequences, including decertification, for refusing to perform or refer for an abortion on grounds of conscience. In light of these concerns, we request a clear explanation of whether Opinion #385 represents the official position of ACOG and what outcomes were intended by those who crafted Opinion #385. Furthermore, as the largest American association of OBGYNs, we ask that you provide further clarification by

explaining the general intent, import and force of ACOG Ethics Opinions as applied under ABOG's 2008 MOC Bulletin. Finally, please clarify the impact of ACOG Ethics Committee reports on board certification and ACOG membership. We request the courtesy of your response to these concerns by March 29th, 2008.


Sincerely,


  
Phil Gingrey, M.D. (GA-11)

  
Trent Franks (AZ-2)


  
Dave Weldon, M.D. (FL-15)

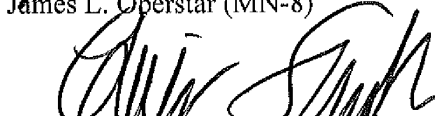
  
Ron Paul, M.D. (TX-14)


  
Paul Brown, M.D. (GA-10)

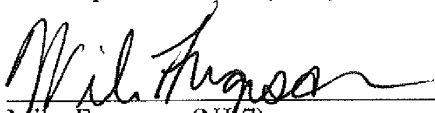
  
Tom Price, M.D. (GA-6)

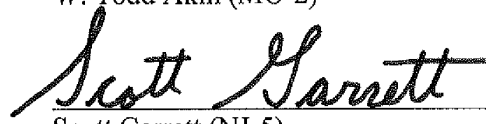
  
James L. Oberstar (MN-8)

  
Joseph R. Pitts (PA-16)

  
Christopher H. Smith (NJ-4)

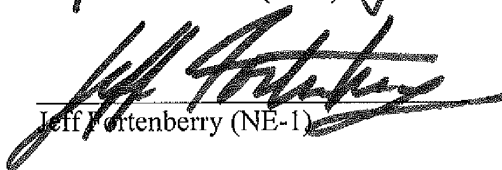
  
W. Todd Akin (MO-2)

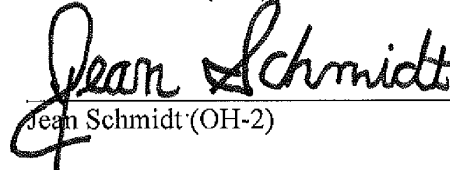
  
Mike Ferguson (NJ-7)

  
Scott Garrett (NJ-5)

  
J. Gresham Barrett (SC-3)

  
Barbara Cubin (WY)

  
Jeff Fortenberry (NE-1)

  
Jean Schmidt (OH-2)

Cc: Anne D. Lyerly, MD, Chair of Ethics Committee  
The American College of Obstetricians and Gynecology

Lucia DiVenere, Director of the Department of Government Affairs  
American College of Obstetricians and Gynecologists



# **EXHIBIT SIX**



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

MAR 14 2008

[REDACTED]  
Executive Director  
The American Board of Obstetrics and Gynecology  
2915 Vine Street  
Dallas, TX 75204

Dear [REDACTED]:

I am writing to express my strong concern over recent actions that undermine the conscience and other individual rights of health care providers. Specifically, I bring to your attention the potential interaction of the American Board of Obstetrics and Gynecology's (ABOG) Bulletin for 2008 Maintenance of Certification (Bulletin) with a recent report (Opinion Number 385) issued by the American College of Obstetricians and Gynecologists (ACOG) Ethics Committee on November 7, 2007 entitled "The Limits of Conscience Refusal in Reproductive Medicine".

The ACOG Ethics Committee report recommends that in the context of providing abortions, "Physicians and other health care professionals have the duty to refer patients in a timely manner to other providers if they do not feel that they can in conscience provide the standard reproductive service that patients request." It appears that the interaction of the ABOG Bulletin with the ACOG ethics report would force physicians to violate their conscience by referring patients for abortions or taking other objectionable actions, or risk losing their board certification.

As you know, Congress has protected the rights of physicians and other health care professionals by passing two non-discrimination laws and annually renewing an appropriations rider that protect the rights, including conscience rights, of health care professionals in programs or facilities conducted or supported by federal funds. (See 42 U.S.C. § 238n, 42 U.S.C. § 300a-7, and the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, § 508). Additionally, threats to withhold or revoke board certification can cause serious economic harm to good practitioners.

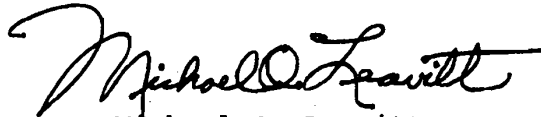
Page 2 - Norman F. Gant, M.D.

I am concerned that the actions taken by ACOG and ABOG could result in the denial or revocation of Board certification of a physician who -- but for his or her refusal, for example, to refer a patient for an abortion -- would be certified. These actions, in turn, could result in certain HHS-funded State and local governments, institutions, or other entities that require Board certification taking action against the physician based just on the Board's denial or revocation of certification. In particular, I am concerned that such actions by these entities would violate federal laws against discrimination.

In the hope that compliance of entities with the obligations that accompany certain federal funds will not be jeopardized, it would be helpful if you could clarify that ABOG will not rely on the ACOG Ethics Committee Report, "The Limits of Conscience Refusal in Reproductive Medicine" when making determinations of whether to grant or revoke board certifications.

Thank you very much for your assistance in this matter.

Sincerely,



Michael O. Leavitt

cc:

  
The American College of Obstetricians and Gynecologists

# **EXHIBIT SEVEN**



\*\*\* RECEIVED \*\*\*  
Mar 26 2008 11:04:39 VWS# 20  
OSNUM: 032620081005  
OFFICE OF THE SECRETARY  
CORRESPONDENCE  
~~American Board~~ of Obstetrics + Gynecology

Frank W. Ling, M.D.  
Germantown, TN  
*President*

Philip J. DiSaia, M.D.  
Orange CA  
*Chairman*

Larry J. Copeland, M.D.  
Columbus, OH  
*Vice President*

Nanette F. Santoro, M.D.  
Bronx, NY  
*Treasurer*

*Directors:*

Bruce R. Carr, M.D.  
Dallas, TX

Sandra A. Carson, M.D.  
Providence, RI

Mary C. Ciotti, M.D.  
Sacramento, CA

James E. Ferguson, II, M.D.  
Lexington, KY

Wesley C. Fowler, Jr., M.D.  
Chapel Hill, NC

David M. Gershenson, M.D.  
Houston, TX

Diane M. Hartmann, M.D.  
Rochester, NY

Roy T. Nakayama, M.D.  
Honolulu, HI

Valerie M. Parisi, M.D., MPH  
Detroit, MI

Susan M. Ramin, M.D.  
Houston, TX

Stephen C. Rubin, M.D.  
Philadelphia, PA

Robert S. Schenken, M.D.  
San Antonio, TX

Russell R. Snyder, M.D.  
Galveston, TX

Michael L. Socol, M.D.  
Chicago, IL

Ralph K. Tamura, M.D.  
Chicago, IL

George D. Wendel, Jr., M.D.  
Dallas, TX

*First in Women's Health*

Norman F. Gant, M.D.  
*Executive Director*

Alvin L. Brekken, M.D.  
*Assistant to the Executive Director*

Larry C. Gilstrap, III, M.D.  
*Director of Evaluation*

The Vineyard Centre  
2915 Vine Street  
Dallas, TX 75204  
Phone (214) 871-1619  
Fax (214) 871-1943

March 19, 2008

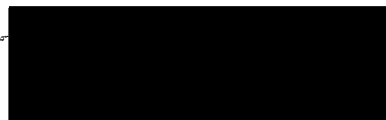
Michael O. Leavitt  
Secretary  
The US Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Leavitt:

I am responding to your letter addressed to me asking about the American Board of Obstetrics and Gynecology's stand with respect to a physician's choice "to violate their conscience by referring patients for abortions or taking other objectionable actions, or risk losing their board certification." I can only say that I do not know where you came up with any suggestion, much less documentation, that the American Board of Obstetrics and Gynecology has ever asked anyone to violate their own ethical or moral standards.

Please be assured that the American Board of Obstetrics and Gynecology has taken no stand, pro or con, against individual physicians who choose to or choose not to perform abortions or to refer patients to abortion providers. Moreover, such an issue is not a consideration in the applications or in the examinations administered by the American Board of Obstetrics and Gynecology in any of its certification or in its Maintenance of Certification requirements or examinations.

Best Wishes,



Executive Director

NFG/kd

# **EXHIBIT EIGHT**



March 26, 2008

Dear Fellows:

Thank you for your comments on Committee Opinion #385, "The Limits of Conscientious Refusal in Reproductive Medicine." The Committee on Ethics is grateful for the thoughtful and considered input of Fellows regarding this document. We received many letters reflecting the importance of this issue to Fellows, as well as a breadth of opinion regarding the role of conscience in professional life.

The Committee on Ethics met on March 17-18, 2008, and discussed the correspondence received since the Opinion's publication. The letters and a summary of the concerns raised were carefully reviewed. Also the Executive Committee of ACOG's Executive Board met and discussed the Opinion and the response to the Opinion on March 24, 2008.

We want to be clear the Opinion does not compel any Fellow to perform any procedure which he or she finds to be in conflict with his or her conscience and affirms the importance of conscience in shaping ethical professional conduct. For example, while this is not a document focused on abortion, ACOG recognizes that support for or opposition to abortion is a matter of profound moral conviction, and ACOG respects the need and responsibility of its members to determine their individual positions on this issue based on their personal values and beliefs. We want to assure members with a diversity of views on this issue that they have a place in our organization.

Ethics Committee Opinions provide guidance regarding ethical issues. This Committee Opinion is not part of the "Code of Professional Ethics of the American College of Obstetricians and Gynecologists." This Committee Opinion was not intended to be used as a rule of ethical conduct which could be used to affect an individual's initial or continuing Fellowship in ACOG. Similarly, it is not cited in the American Board of Obstetrics and Gynecology's "Bulletin for 2008" and "Bulletin for 2008 Maintenance of Certification," and an obstetrician-gynecologist's board certification is not determined or jeopardized by his or her adherence to this Opinion.

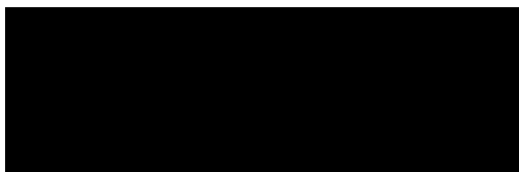
March 26, 2008

Page 2

Conscience has an important role in the ethical practice of medicine. While this Opinion attempted to provide guidance for balancing the critical role of conscience with a woman's right to access reproductive medicine, the Executive Committee has noted the uncertain and mixed interpretation of this Opinion. Thus, the Executive Committee has instructed the Committee on Ethics to hold a special meeting as soon as possible to reevaluate ACOG Committee Opinion #385.

Thank you again for your thoughtful comments.

Sincerely yours,



President



# Exhibit 130



May 9, 2018

Centralized Case Management Operations  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201

RECEIVED  
MAY 11 2018  
HHS/OCR HQ

Attn: Conscience and Religious Freedom Division

Re: Complaint for Discrimination in Violation of 42 U.S.C. § 300a-7(c)(1)  
("Church Amendment")

Contact attorney for complainant:

Complaint filed on behalf of:

Francis J. Manion, Esq.  
Geoffrey R. Surtees, Esq.  
American Center for Law and Justice  
6375 New Hope Rd.  
P.O. Box 60  
New Hope, KY 40052  
502-549-7020  
fmanion@aclj.org

[REDACTED]

Person/Agency/Organization  
committing discrimination:

The University of Vermont Medical  
Center  
111 Colchester Avenue  
Burlington, Vermont 05401  
802-847-0000

Date and nature of discriminatory acts:

In 2017, the complainant, [REDACTED] RN, was coerced by her employer, University of Vermont Medical Center, Inc. ("UVMMC") into participating in an abortion. Ms. [REDACTED] a Catholic, had previously informed her employer that she

\*  
6375 New Hope Road  
New Hope, Kentucky 40052  
(502) 549-7020  
(502) 549-5232 (fax/voice)



could not participate in such procedures as a matter of religious belief. Her employer deliberately misled [REDACTED] about the nature of the procedure, and then, after [REDACTED] confirmed that she was, in fact, being assigned to an abortion, refused her request that other equally qualified and available personnel take her place. Fearing a charge of patient abandonment which could bring with it loss of employment and revocation of her nursing license, [REDACTED] participated in the procedure under duress. She suffered immediate emotional distress, attempted to suppress the event psychologically, and has been haunted by nightmares ever since. In addition, her employer has created a hostile environment targeting [REDACTED] and other employees who conscientiously object to participating in abortion procedures.

The coerced-participation event described above appears to have been related to a change in UVMMC policy regarding the hospital's performance of abortions. Under the leadership, since 2013, of a hospital board President with decades-long experience in senior leadership of Planned Parenthood facilities in Vermont, Portland, Oregon, and New York City, UVMMC reversed a longstanding policy which limited abortions in its facilities to those considered "medically necessary." While the policy appears to have been changed *sub silentio* at some point even before 2017, hospital staff, including [REDACTED] and other nurses, were only formally informed of the change in October of 2017. Thus, it is highly possible that other staff and, perhaps, [REDACTED] herself, have been deceived into participating in other abortion procedures which were misleadingly labeled as "miscarriages" or "medically necessary" but which were, in fact, purely elective abortions.

In addition, following public controversy which arose after the formal disclosure to staff of the hospital's new policy in the Fall of 2017, UVMMC, in February 2018, adopted a revised "Conflict of Care" policy. (Copy attached hereto). This policy is sharply inconsistent with existing federal conscience laws and inappropriately continues to leave the conscience rights of hospital employees to the virtually unbridled discretion of supervisors who, as [REDACTED] and others will attest, have a history of demeaning, belittling, and failing to respect the views of conscientious objectors.

The Church Amendment protects the conscience rights of individuals and entities that object to performing or assisting in the performance of abortion or sterilization procedures if doing so would be contrary to the provider's religious beliefs or moral convictions, and prohibits discrimination in employment of "any physician or other health care personnel . . . because of his religious beliefs or moral convictions respecting sterilization procedures or abortions." 42 U.S.C. §300a-7 *et seq.*

It is clear that [REDACTED] (and perhaps others employed at UVMMC) has suffered and continues to suffer discrimination and violations of her conscience rights under federal law. We urge your office to immediately initiate an



investigation of these charges and order appropriate remedial and corrective actions as soon as possible.

Our investigation has disclosed identities and contact information of individuals in addition to our client who have information pertinent to this matter. That information, to the extent said individuals have already spoken publicly about it or authorize us to disclose it, will be provided upon request.

Respectfully submitted,



Francis J. Manion  
Senior Counsel  
American Center for Law & Justice

Date: May 9, 2018



Documents Status: **Approved**

IDENT	HR-F-09
Type of Document	Policy
Applicability Type	Corporate
Title of Owner	Dir Human Resources
Title of Approving Official	VP Human Resources
Date Effective	2/5/2018
Date of Next Review	2/5/2021

THE  
**University of Vermont**  
 MEDICAL CENTER

**TITLE:** Conflict of Care: Staff Conscientious Objection

**PURPOSE:** UVM Medical Center respects workforce diversity and the cultural values, ethics and religious beliefs of our staff. In situations where a conflict may exist between the employee's cultural values, ethics, and religious beliefs and their participation in any aspect of patient care, UVMMC supports a process by which an employee may request to be excused from performing specific duties.

Patients and their families' perspectives and choices are valued and honored in all phases of care. Accordingly, all patients are entitled to comprehensive, quality care, without regard to their diagnosis, race, color, sex, sexual orientation, gender identity or expression, ancestry, place of birth, HIV status, national origin, religion, marital status, age, language, socioeconomic status, physical or mental disability, protected veteran status.

UVMMC encourages open dialogue between the employee and their leader.

**POLICY STATEMENT:** Employees may request to be excused from participating in a type of care/treatment in situations where that care/treatment conflicts with the employee's cultural values, ethics, or religious beliefs. Procedures/treatments which may present conflict may include but are *not limited* to the following:

- Blood and blood component administration
- Elective termination of pregnancy
- Initiation and cessation of life support
- DNR/Life support issues for critically ill/terminally ill populations
- Assisting with the harvesting of human organs
- Sterilization procedures
- Reproductive technologies

Alternative staffing arrangements will be considered, and if appropriate, arranged. At no time will staff be allowed to act in a manner that negatively impacts the patient's care or treatment.

**PROCEDURE:**

- I. When the need to provide care or treatment of a patient is in conflict with an employee's cultural values, ethics or religious beliefs, the employee may request to be reassigned to other duties and not participate in the specific type of care or treatment. In the event a conflict of care arises, care of the patient will be maintained until alternate staffing arrangements can be provided.
- II. UVMMC supports open dialogue between the employee and their leader when a conflict exists for the employee. We recognize that not all conflicts can be predicted. When possible we encourage employees to proactively raise concerns about potential conflicts in order to minimize impact to patient care.
- III. During the hiring process, the hiring manager shall discuss the typical scope of practice and service within the department in which the candidate has applied to work. Employees are expected to perform all the duties of their positions as set forth in their job descriptions, given to them at the time of hire or whenever revised.
- IV. All new employees are informed about this Conflict of Care policy during new employee orientation.

Printed on: 4/12/2018 11:00 AM By: [REDACTED]

DISCLAIMER: Only the online policy is considered official. Please compare with on-line document for accuracy.



[The main body of the page contains extremely faint and illegible text, likely due to a very low quality scan or intentional redaction. The text is arranged in several paragraphs but cannot be transcribed.]

Documents Status: **Approved**

- V. The direct Supervisor/designee shall be responsible for administering and monitoring a process to accommodate an employee's cultural values, ethics, and religious beliefs regarding treatment of patients.
- a) An employee who desires to be reassigned from a specific type of care or treatment shall submit the request in writing to the Supervisor/designee. Written request may be received on the form provided in this policy OR via an email addressed to the Supervisor/designee containing the details as requested/outlined on the form.
  - b) The written request will be acknowledged by the Supervisor/designee and maintained in the appropriate unit resource binder for scheduling purposes within the unit. The Supervisor/designee will assign staff as necessary for appropriate patient coverage. The written request will be placed in the employee's electronic personnel file by the Supervisor/designee.
  - c) Any conflict which may occur in an emergent situation for which staff may not have previously submitted a written request, may be brought to the Supervisor/designee. Alternative coverage may be sought at the discretion of the Supervisor/designee. The written request shall be submitted by the employee directly following the event and the request will be placed in the employee's electronic personnel file by the Supervisor/designee.
  - d) Any employee who is excused from an aspect of care will be re-assigned to other responsibilities.
  - e) In any scenario where circumstances prevent arrangements for alternate coverage, the staff member will be expected to provide the assigned care to ensure patient care is not negatively impacted.
  - f) Refusal to perform assigned job functions will be addressed in accordance with established corrective action procedures by the supervisor, in consultation with leadership and/or Human Resources.
- VI. All employees have access to the Ethics Consultation through UVMHC's Director of Clinical Ethics and can request input on ethical issues by contacting Provider Access Services (847-2700), ask who the ethics consultant on call is and should then contact that consultant by phone or in person.
- VII. An employee experiencing ongoing conflict of care issues should seek a transfer to a department or position where conflict of care issues are less likely to occur.

**MONITORING PLAN:** N/A

**DEFINITIONS:** N/A

**RELATED POLICIES:** Code of Conduct B1N; Clinical Ethics Consultations ETH15; Compliance & Privacy Plan B31

**REFERENCES:** 2017, Hospital Accreditation Standards, The Joint Commission LD.04.02

**REVIEWERS:** [REDACTED]

**OWNER:** [REDACTED], Dir Human Resources

**APPROVING OFFICIAL:** [REDACTED] Human Resources

Printed on: 4/12/2018 11:00 AM By: [REDACTED]

DISCLAIMER: Only the online policy is considered official. Please compare with on-line document for accuracy.

[The following text is extremely faint and largely illegible due to the quality of the scan. It appears to be a multi-paragraph document with several sections of text separated by line breaks or small headings. The text is mirrored across the page, suggesting a bleed-through from the reverse side.]

Documents Status: **Approved**

**Conflict of Care Disclosure Form**

To be completed by the employee making the request: *Make a copy of this form for your records and then give this form to your leader.*

Your Name: \_\_\_\_\_ (Please Print)

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Please identify the clinical circumstances where you experience personal conflict. Please provide specific details regarding which procedure/treatment you are requesting to be excused from.

Please briefly provide your reasons for requesting removal from the patient's care team.

Received by: \_\_\_\_\_ (Please Print)

Leader Signature \_\_\_\_\_ Date Received \_\_\_\_\_

Printed on: 4/12/2018 11:00 AM By: [REDACTED]  
DISCLAIMER: Only the online policy is considered official. Please compare with on-line document for accuracy.

[The main body of the page contains extremely faint and illegible text, likely representing a redacted document or a very low-quality scan. The text is mostly obscured by a vertical line on the left side.]

# Exhibit 131



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 OFFICE FOR CIVIL RIGHTS (OCR)  
**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

Form Approved: OMB No. 0990-0269.  
 See OMB Statement on Reverse.



YOUR FIRST NAME		YOUR LAST NAME	
[REDACTED]		[REDACTED]	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
[REDACTED]		[REDACTED]	
STREET ADDRESS		CITY	
[REDACTED]		[REDACTED]	
STATE	ZIP	E-MAIL ADDRESS (if available)	
[REDACTED]	[REDACTED]	[REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
 If Yes, whose civil rights do you believe were violated?

FIRST NAME	LAST NAME
[REDACTED]	[REDACTED]

I believe that I have been (or someone else has been) discriminated against on the basis of:

- Race / Color / National Origin   
  Age   
  Religion / Conscience   
  Sex  
 Disability   
  Other (specify): \_\_\_\_\_

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION

Ecumenical Ministries of Oregon

STREET ADDRESS		CITY
245 SW Bancroft Street Suite B		Portland
STATE	ZIP	PHONE (Please include area code)
Oregon	97239	(503) 221-1054 x204

When do you believe that the discrimination occurred?

LIST DATE(S)

09/12/2018

Describe briefly what happened. How and why do you believe that you have been discriminated against? Please be as specific as possible.  
 (Attach additional pages as needed)

I was suspended from EMO HIV Day Center because I contacted their board of directors. They say I am being suspended for refusing to meet with them about my two grievances. I told them that I prefer handle everything related to my grievances, in writing. Also there is no written policy stating that I am obligated to meet with them to discuss my grievance. EMO HIV Day Center is a Ryan White funded agency.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE	DATE (mm/dd/yyyy)
[REDACTED]	09/13/2018

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Sections 1553 and 1557 of the Affordable Care Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Church Amendments, the Coats-Snowe Amendment, the Weldon Amendment, and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)  
 PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

DATE(S) FILED	CASE NUMBER(S) (if known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_  
 PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search     
  Family/Friend/Associate     
  Religious/Community Org     
  Lawyer/Legal Org     
  Phone Directory     
  Employer  
 Fed/State/Local Gov     
  Healthcare Provider/Health Plan     
  Conference/OCR Brochure     
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

U.S. Department of Health and Human  
 Services  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: ocrmail@hhs.gov

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address.





## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.



- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

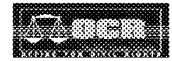
**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: \_\_\_\_\_ Date: 09/13/2018  
\*Please sign and date \_\_\_\_\_ if submitting this form by email because submission by email represents your signature.

Name (Please print): \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ (H) \_\_\_\_\_



## NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS

### Privacy Act

The Privacy Act of 1974 (5 U.S.C. § 552a) requires OCR to notify individuals whom it asks to supply information that:

— OCR is authorized to solicit information under:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, religion, and conscience under programs and activities receiving Federal financial assistance from the U.S. Department of Health and Human Services (HHS), including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), Sections 794 and 855 of the Public Health Service Act (42 U.S.C. §§ 295m and 296g), Section 1553 of the Affordable Care Act (42 U.S.C. § 18113), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. § 238n) and the Weldon Amendment (*e.g.*, Consolidated Appropriations Act of 2017, Pub. L. 115-31, Div. H, Tit. V, § 507);
- (ii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§ 291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill- Burton facilities);
- (iii) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS; and
- (iv) Title II of the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance.
- (v) The Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule) at 45 C.F.R. Part 160 and Subparts A and E of Part 164, which enforce the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d-2).

OCR will request information for the purpose of determining and securing compliance with the Federal laws listed above. Disclosure of this requested information to OCR by individuals who are not recipients of Federal financial assistance is voluntary; however, even individuals who voluntarily disclose information are subject to prosecution and penalties under 18 U.S.C. § 1001 for making false statements.

Additionally, although disclosure is voluntary for individuals who are not recipients of Federal financial assistance, failure to provide OCR with requested information may preclude OCR from making a compliance determination or enforcing the laws above.



OCR has the authority to disclose personal information collected during an investigation without the individual's consent for the following routine uses:

- (i) to make disclosures to OCR contractors who are required to maintain Privacy Act safeguards with respect to such records;
- (ii) for disclosure to a congressional office from the record of an individual in response to an inquiry made at the request of the individual;
- (iii) to make disclosures to the Department of Justice to permit effective defense of litigation; and
- (iv) to make disclosures to the appropriate agency in the event that records maintained by OCR to carry out its functions indicate a violation or potential violation of law.

Under 5 U.S.C. § 552a(k)(2) and the HHS Privacy Act regulations at 45 C.F.R. § 5b.11 OCR complaint records have been exempted as investigatory material compiled for law enforcement purposes from certain Privacy Act access, amendment, correction and notification requirements.

**Freedom of Information Act**

A complainant, the recipient or any member of the public may request release of OCR records under the Freedom of Information Act (5 U.S.C. § 552) (FOIA) and HHS regulations at 45 C.F.R. Part 5.

**Fraud and False Statements**

Federal law, at 18 U.S.C. §1001, authorizes prosecution and penalties of fine or imprisonment for conviction of "whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry".



## **PROTECTING PERSONAL INFORMATION IN COMPLAINT INVESTIGATIONS**

To investigate your complaint, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) will collect information from different sources. Depending on the type of complaint, we may need to get copies of your medical records, or other information that is personal to you. This Fact Sheet explains how OCR protects your personal information that is part of your case file.

### **HOW DOES OCR PROTECT MY PERSONAL INFORMATION?**

OCR is required by law to protect your personal information. The Privacy Act of 1974 protects Federal records about an individual containing personally identifiable information, including, but not limited to, the individual's medical history, education, financial transactions, and criminal or employment history that contains an individual's name or other identifying information.

Because of the Privacy Act, OCR will use your name or other personal information with a signed consent and only when it is necessary to complete the investigation of your complaint or to enforce civil rights laws or when it is otherwise permitted by law.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

### **CAN I SEE MY OCR FILE?**

Under the Freedom of Information Act (FOIA), you can request a copy of your case file once your case has been closed; however, OCR can withhold information from you in order to protect the identities of witnesses and other sources of information.

### **CAN OCR GIVE MY FILE TO ANY ONE ELSE?**

If a complaint indicates a violation or a potential violation of law, OCR can refer the complaint to another appropriate agency without your permission.

If you file a complaint with OCR, and we decide we cannot help you, we may refer your complaint to another agency such as the Department of Justice.



### **CAN ANYONE ELSE SEE THE INFORMATION IN MY FILE?**

Access to OCR's files and records is controlled by the Freedom of Information Act (FOIA). Under FOIA, OCR may be required to release information about this case upon public request. In the event that OCR receives such a request, we will make every effort, as permitted by law, to protect information that identifies individuals, or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

If OCR receives protected health information about you in connection with a HIPAA Privacy Rule investigation or compliance review, we will only share this information with individuals outside of HHS if necessary for our compliance efforts or if we are required to do so by another law.

### **DOES IT COST ANYTHING FOR ME (OR SOMEONE ELSE) TO OBTAIN A COPY OF MY FILE?**

In most cases, the first two hours spent searching for document(s) you request under the Freedom of Information Act and the first 100 pages are free. Additional search time or copying time may result in a cost for which you will be responsible. If you wish to limit the search time and number of pages to a maximum of two hours and 100 pages; please specify this in your request. You may also set a specific cost limit, for example, cost not to exceed \$100.00.

If you have any questions about this complaint and consent package, Please contact OCR at <http://www.hhs.gov/ocr/office/about/contactus/index.html>

*OR*

Contact the Customer Response Center at (800) 368-1019

(see contact information on page 2 of the Complaint Form)

I was suspended from EMO HIV Day Center because I contacted their board of directors. They say I am being suspended for refusing to meet with them about my two grievances. I told them that I prefer handle everything related to my grievances, in writing. Also there is no written policy stating that I am obligated to meet with them to discuss my grievance. EMO HIV Day Center is a Ryan White funded agency.

██████████,

We are suspending you from any further involvement with the HIV Day Center until we are able to meet with you to resolve your grievances. Please notify ██████████ that you are willing to meet and then work with him on a time that is convenient for each of us to meet.

Sincerely,

████████████████████  
██████████

Ecumenical Ministries of Oregon  
0245 SW Bancroft St., Suite B, Portland, OR 97239

Phone: ████████████████████  
Fax: ████████████████████

The reason, ██████████, is that your various grievances are unresolvable until we meet to discuss them. You continue to communicate with our staff and board about concerns you have. Until we can meet to resolve these, we are unable to serve you further.

I trust this explanation helps.

Sincerely,  
████████████████████



# Exhibit 132



RECEIVED  
SEP 09 2014  
HHS/Office for Civil Rights  
Region VII

August 15, 2014

██████████  
██████████  
*SENIOR STAFF ATTORNEY*  
*Reproductive Freedom Project*  
T/212.519.7897  
bamiri@aclu.org

By First Class Mail  
Office for Civil Rights, DHHS  
Region VII  
601 East 12th Street, Room 248  
Kansas City, MO 64106

██████████  
*STAFF ATTORNEY*  
*Reproductive Freedom Project*  
T/212.549.2601  
jlee@aclu.org

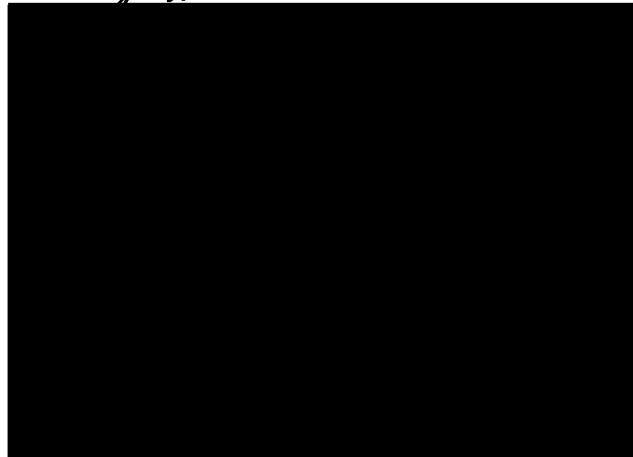
Re: Church Amendment Complaint on Behalf of Dr. Cheryl Chastine

To Whom It May Concern:

Please find the attached Civil Rights Discrimination Complaint filed on behalf of Dr. ██████████ under the Church Amendment. The attached letter dated August 16, 2013, from Wesley Medical Center's Medical Staff President, Dr. ██████████, makes clear that Wesley Medical Center denied Dr. ██████████ application for admitting privileges because she performs abortions. This is a violation of the Church Amendment, 42 U.S.C. § 300a-7(c), which prohibits hospitals that receive certain federal funds from discriminating "in the extension of staff or other privileges to any physician . . . because he performed or assisted in the performance of . . . abortion."

We hope you will fully investigate the matter, and will take appropriate action. Please do not hesitate to contact us if we can be helpful in the course of your investigation.

Sincerely,



ACLU of Kansas  
3601 Main Street  
Kansas City, MO 64111  
816-994-3311  
dbonney@aclukansas.org

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500  
WWW.ACLU.ORG

OFFICERS AND DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

RICHARD ZACKS  
TREASURER



**Wesley**  
Medical Center

**Galichia**  
Heart Hospital

**Wesley**  
West ER & WesleyCare

August 16, 2013

██████████, MD  
South Wind Women's Center  
5107 E. Kellogg  
Wichita, Kansas 67218

Dear Dr. ██████████

Your Request For Consideration for Wesley Medical Staff membership and privileges will not be processed as an application. The nature of your practice, being provision of elective abortions, may not allow the hospital to provide adequate support services for you or your patients; does not serve the medical staff plan for the care needs of Wesley's patients; and is not in keeping with the Board of Trustees' stated mission for Wesley Medical Center, as supported by Kansas law which states that hospitals and hospital employees are not required to provide care related to termination of pregnancy.

Sincerely,

██████████  
Medical Staff President

JG/JK/bf



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS (OCR)

Form Approved: OMB No. 0990-0269.  
See OMB Statement on Reverse.



**CIVIL RIGHTS DISCRIMINATION COMPLAINT**

YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code) [REDACTED]	
STREET ADDRESS [REDACTED]			CITY [REDACTED]
STATE [REDACTED]	ZIP [REDACTED]	E-MAIL ADDRESS (If available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
If Yes, whose civil rights do you believe were violated?

FIRST NAME [REDACTED]	LAST NAME [REDACTED]
--------------------------	-------------------------

I believe that I have been (or someone else has been) discriminated against on the basis of:

Race / Color / National Origin   
  Age   
  Religion   
  Sex  
 Disability   
  Other (specify): Conscience Protection/Church Amendment

Who or what agency or organization do you believe discriminated against you (or someone else)?  
PERSON/AGENCY/ORGANIZATION  
Wesley Medical Center

STREET ADDRESS 550 N. Hillside		CITY Wichita
STATE Kansas	ZIP 67214	PHONE (Please include area code) 3169262000

When do you believe that the civil right discrimination occurred?  
LIST DATE(S)  
August 16, 2013

Describe briefly what happened. How and why do you believe that you have been (or someone else has been) discriminated against? Please be as specific as possible. (Attach additional pages as needed)

Please see attached letter with attachments.

Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE: [REDACTED]      DATE (mm/dd/yyyy): 08/11/2014

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To mail a complaint see reverse page for OCR Regional addresses.

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     Large Print     Cassette tape     Computer diskette     Electronic mail     TDD
- Sign language interpreter (specify language): \_\_\_\_\_
- Foreign language interpreter (specify language): \_\_\_\_\_     Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME [REDACTED]		LAST NAME [REDACTED]	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code) 8169943311	
STREET ADDRESS ACLU Foundation of Kansas, 3601 Main Street		CITY Kansas City	
STATE MO	ZIP 64111	E-MAIL ADDRESS (If available) dbonney@aclukansas.org	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

DATE(S) FILED	CASE NUMBER(S) (If known)
---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)

Hispanic or Latino       American Indian or Alaska Native     Asian       Native Hawaiian or Other Pacific Islander

Not Hispanic or Latino       Black or African American       White       Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search     Family/Friend/Associate     Religious/Community Org     Lawyer/Legal Org     Phone Directory     Employer
- Fed/State/Local Gov     Healthcare Provider/Health Plan     Conference/OCR Brochure     Other (specify): \_\_\_\_\_

To mail a complaint, please type or print, and return completed complaint to the OCR Regional Address based on the region where the alleged violation took place. If you need assistance completing this form, contact the appropriate region listed below.

<p><b>Region I - CT, ME, MA, NH, RI, VT</b> Office for Civil Rights, DHHS JFK Federal Building - Room 1875 Boston, MA 02203 (617) 565-1340; (617) 565-1343 (TDD) (617) 565-3809 FAX</p>	<p><b>Region V - IL, IN, MI, MN, OH, WI</b> Office for Civil Rights, DHHS 233 N. Michigan Ave. - Suite 240 Chicago, IL 60601 (312) 886-2359; (312) 353-5693 (TDD) (312) 886-1807 FAX</p>	<p><b>Region IX - AZ, CA, HI, NV, AS, GU</b> <b>The U.S. Affiliated Pacific Island Jurisdictions</b> Office for Civil Rights, DHHS 90 7th Street, Suite 4-100 San Francisco, CA 94103 (415) 437-8310; (415) 437-8311 (TDD) (415) 437-8329 FAX</p>
<p><b>Region II - NJ, NY, PR, VI</b> Office for Civil Rights, DHHS 26 Federal Plaza - Suite 3312 New York, NY 10278 (212) 264-3313; (212) 264-2355 (TDD) (212) 264-3039 FAX</p>	<p><b>Region VI - AR, LA, NM, OK, TX</b> Office for Civil Rights, DHHS 1301 Young Street - Suite 1169 Dallas, TX 75202 (214) 767-4056; (214) 767-8940 (TDD) (214) 767-0432 FAX</p>	
<p><b>Region III - DE, DC, MD, PA, VA, WV</b> Office for Civil Rights, DHHS 150 S. Independence Mall West - Suite 372 Philadelphia, PA 19106-3499 (215) 861-4441; (215) 861-4440 (TDD) (215) 861-4431 FAX</p>	<p><b>Region VII - IA, KS, MO, NE</b> Office for Civil Rights, DHHS 601 East 12th Street - Room 248 Kansas City, MO 64106 (816) 426-7277; (816) 426-7065 (TDD) (816) 426-3686 FAX</p>	
<p><b>Region IV - AL, FL, GA, KY, MS, NC, SC, TN</b> Office for Civil Rights, DHHS 61 Forsyth Street, SW. - Suite 16T70 Atlanta, GA 30303-8909 (404) 562-7886; (404) 562-7884 (TDD) (404) 562-7881 FAX</p>	<p><b>Region VIII - CO, MT, ND, SD, UT, WY</b> Office for Civil Rights, DHHS 999 18th Street, Suite 417 Denver, CO 80202 (303) 844-2024; (303) 844-3439 (TDD) (303) 844-2025 FAX</p>	<p><b>Region X - AK, ID, OR, WA</b> Office for Civil Rights, DHHS 2201 Sixth Avenue - Mail Stop RX-11 Seattle, WA 98121 (206) 615-2290; (206) 615-2296 (TDD) (206) 615-2297 FAX</p>

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. **Please do not mail complaint form to this address.**

HHS-699 (7/09) (BACK)



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights and Protecting Personal Information in Complaint Investigations for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.

# Exhibit 133

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS (OCR)  
CIVIL RIGHTS DISCRIMINATION COMPLAINT



YOUR FIRST NAME [REDACTED]		YOUR LAST NAME [REDACTED]	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code) (916) 581-0180	
STREET ADDRESS 1119 K Street, Second Floor		CITY Sacramento	
STATE CA	ZIP 95814	E-MAIL ADDRESS (If available) [REDACTED]	

Are you filing this complaint for someone else?  Yes  No  
If Yes, whose civil rights do you believe were violated?

FIRST NAME: Sacramento Life Center, Inc.      LAST NAME: [REDACTED]

RECEIVED NOV 09 2015

I believe that I have been (or someone else has been) discriminated against on the basis of:

Race / Color / National Origin     Age     Religion     Sex  
 Disability     Other (specify): Weldon Amendment Conscience Protections

Who or what agency or organization do you believe discriminated against you (or someone else)?

PERSON/AGENCY/ORGANIZATION  
The State of California

STREET ADDRESS State Capitol		CITY Sacramento
STATE CA	ZIP 95814	PHONE (Please include area code)

When do you believe that the civil right discrimination occurred?

LIST DATE(S)  
January 1, 2016

Describe briefly what happened. How and why do you believe that you have been (or someone else has been) discriminated against? Please be as specific as possible. (Attach additional pages as needed)

See attached letter.

Please sign and date this form to sign if submitting this form by email because submission by email represents your signature.

SIGNATURE: [REDACTED]      DATE (mm/dd/yyyy): 4 November 2015

Filing a complaint with OCR, however, without the information requested above, OCR may be unable to proceed with your complaint. The authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at: [www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To submit a complaint using alternative methods, see reverse page (page 2 of the complaint form).



The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     
  Large Print     
  Cassette tape     
  Computer diskette     
  Electronic mail     
  TDD  
 Sign language interpreter (specify language): \_\_\_\_\_  
 Foreign language interpreter (specify language): \_\_\_\_\_  Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

FIRST NAME		LAST NAME	
HOME PHONE (Please include area code)		WORK PHONE (Please include area code)	
STREET ADDRESS		CITY	
STATE	ZIP	E-MAIL ADDRESS (if available)	

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)	DATE(S) FILED	CASE NUMBER(S) (if known)
-------------------------------------------	---------------	---------------------------

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

- ETHNICITY (select one)      RACE (select one or more)  
 Hispanic or Latino     
  American Indian or Alaska Native     
  Asian     
  Native Hawaiian or Other Pacific Islander  
 Not Hispanic or Latino     
  Black or African American     
  White     
  Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search     
  Family/Friend/Associate     
  Religious/Community Org     
  Lawyer/Legal Org     
  Phone Directory     
  Employer  
 Fed/State/Local Gov     
  Healthcare Provider/Health Plan     
  Conference/OCR Brochure     
  Other (specify): \_\_\_\_\_

To submit a complaint, please type or print, sign, and return completed complaint form package (including consent form) to the OCR Headquarters address below.

**U.S. Department of Health and Human Services**  
 Office for Civil Rights  
 Centralized Case Management Operations  
 200 Independence Ave., S.W.  
 Suite 515F, HHH Building  
 Washington, D.C. 20201  
 Customer Response Center: (800) 368-1019  
 Fax: (202) 619-3818  
 TDD: (800) 537-7697  
 Email: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave., S.W., Room 531H, Washington, D.C. 20201. Please do not mail complaint form to this address. HHS-899 (7/09) (BACK)

[REDACTED]  
ATTORNEY AT LAW  
1119 K STREET, SECOND FLOOR  
SACRAMENTO, CALIFORNIA 95814

ALSO ADMITTED IN THE  
DISTRICT OF COLUMBIA

TELEPHONE: (916) 581-0180  
EMAIL: JFS@SWEENEY.LEGAL

November 4, 2015

RECEIVED NOV 09 2015

**VIA FEDERAL EXPRESS**

Mr. [REDACTED]  
Regional Manager  
Office for Civil Rights  
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
90 7<sup>th</sup> Street, Suite 4-100  
San Francisco, CA 94103

**Re:** *Civil Rights Complaint on behalf of the Sacramento Life Center Against the State of California*

Dear Mr. [REDACTED]

I write you on behalf of my client, the Sacramento Life Center, to lodge a complaint against the State of California under the Weldon Amendment, based upon the State's recent enactment of Assembly Bill No. 775 (Chiu), which becomes effective January 1, 2016.

The mission of the Sacramento Life Center is to offer compassion, support, resources, and free medical care to women and couples facing unplanned or unsupported pregnancies, by providing them with realistic, high quality options other than abortion. In addition to being a social service agency, it is also a state-licensed medical clinic committed to ensuring all women and teen girls have access to free, or low cost, medical care. The Sacramento Life Center is a private, non-denominational, non-profit charitable organization that serves everyone regardless of financial standing, ethnic background, or religion. It is opposed to abortion and has, for the past forty years, worked tirelessly to offer women in crisis pregnancies abortion alternatives and compassionate care.

On October 9, 2015, Governor Brown signed Assembly Bill No. 775 (Chiu), the misleadingly self-styled "Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act." AB 775, which becomes effective January 1, 2016, will require a licensed health facility, such as the Sacramento Life Center, to provide a notice to all patients that refers them to no-cost abortion services.

LAW OFFICES OF [REDACTED]

Mr. [REDACTED]

Re: Civil Rights Complaint on behalf of the Sacramento Life Center

November 4, 2015

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The statute provides no exception for facilities, such as the Sacramento Life Center, that are opposed to abortion and offer women abortion alternatives. Failure to comply with the FACT Act carries a \$500 fine for the first offense and \$1,000 for each subsequent offense. In a word, AB 775 is an effort by the State of California to coerce organizations, which exist for the purpose of offering abortion alternatives to their patients, to refer for abortion.


In 2005, the federal government enacted the Weldon Amendment to ensure State neutrality on abortion by prohibiting precisely the sort of coercive, discriminatory, and divisive action the State has just taken in enacting AB 775. The Weldon Amendment provides:

None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.<sup>1</sup>

The State of California's use of its police power to coerce organizations that are conscientiously opposed to abortion, like the Sacramento Life Center, to provide information that refers their patients and clients to abortion providers is unlawful under the Weldon Amendment. The United States Congress enacted the Weldon Amendment to honor and protect our nation's long-standing, hard-won commitment to pluralism, tolerance of those who conscientiously dissent from certain public policies, and protection of minority rights. For example, government does not force physicians (or their associations) who conscientiously oppose state-sanctioned executions to participate in them, and government does not compel citizens who conscientiously oppose war to participate in combat. To force health care providers to violate their most intimate and fundamental convictions—such as a commitment to defend life, and to refrain from referring for abortion procedures—is discriminatory behavior as defined and prohibited by the Weldon Amendment. The very *raison d'être* for the Sacramento Life Center is to offer safe, high quality alternatives to abortion. The State of California, in clear violation of federal law, will soon be compelling it to violate its

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<sup>1</sup> Weldon Amendment, Consolidated Appropriations Act, 2009, Pub. L. No. 111-117, 123 Stat 3034.

LAW OFFICES OF 

Mr. 

Re: Civil Rights Complaint on behalf of the Sacramento Life Center

November 4, 2015

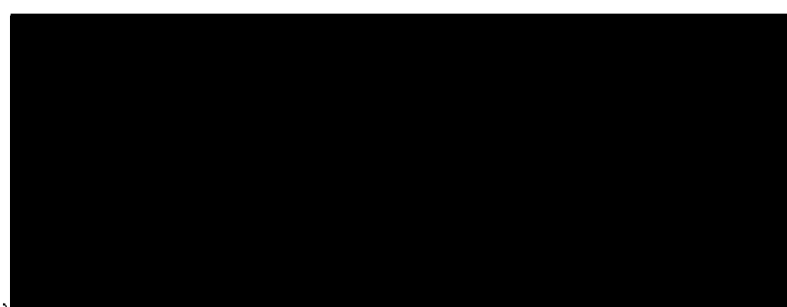
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core mission by referring its patients and clients to abortion providers.

Recognizing this, the Board of Directors of the Sacramento Life Center urges the U.S. Department of Health and Human Services' Office for Civil Rights to undertake an immediate, thorough, and impartial investigation of AB 775 (Chiu).

Please contact me if you have further questions or require clarifications.

  
cc: Hon. Sylvia Burwell  
Secretary, Department of Health and Human Services

William B. Schultz, Esquire  
General Counsel, Department of Health and Human Services

Hon. Tom Cole, M.C.  
U.S. House of Representatives

Hon. John Fleming, M.C.  
U.S. House of Representatives

Hon. Joseph Pitts, M.C.  
U.S. House of Representatives

JFS:ms