

# Exhibit 402

CA AG's Office + other states participating Oregon & CA AG offices, CA Dept of Healthcare Services

- Josh and Brenda from OMB, Matt Grove
- Major Themes:
  - Rule interferes with state policy making discretion
  - Rule authorizes discrimination
  - Will impeded access to health care or health care information
  - Not supported by the statutes
  - Threatens billions of dollars in CA-
    - Any appropriated funds under Weldon
    - Costs of implementation and admin burdens
  - Has a lot of money at stake without due process
- Rule expands definitions and scope of statutes, even if not directly or primarily involved in the provision of health care, e.g. Definition of health care entity is not grounded in statute; definitions of individual and workforce, and assist in the performance of (undefined in the Church Amendments and regulatory definition not supported in Church)
  - Large universe of individuals can interfere with the provision of healthcare
  - The rule is vague because of the various definitions
- Federalism concerns – direct effect on CA laws that protect patient access to healthcare and civil rights, but the rule says there is no substantial impact
  - Problematic when the basis of the rule is things that California is doing – this will interfere with the state/Fed relationship
  - CA has in place several laws that balance the rights and needs of patients while ensuring employees are accommodated
  - Fair Employment and Housing Act requires accommodation of religious beliefs – CA laws require dialoguing communication while ensure others receive the care they need and are entitled to under the law
  - CA statutes that state health care plans cannot discriminate in contracting
  - CA statute regarding the provision of emergency contraceptive if sexual assault survivor
- 2008 preamble – adverse impact regarding unintended discrimination – CA believes this will result
- The rule targets CA, includes several references thereto, cites investigations into Department of Managed Healthcare
  - FACT Act violation letter recently sent
  - CA will almost certainly be found in violation, where they were previously not found in violation of Weldon
  - HHS reversal of Weldon application to CA violates the law w no justification
  - To lose all of your LHHS Act appropriated funds is too broad
- Harms access to reproductive health care and stigmatizes access to that care
- They think it will extend to LGBT population
- CA will have abortion and contraceptive “desserts” in the state
- Costs to the women—costs associated with lower-income women finding care once it has been denied, denial of medically necessary care to emotional/psychological health

- Does not account for costs of healthcare denials, costs of unintended pregnancy, etc., which are many costs that the State of CA covers
- Rule conflicts with other federal laws
  - Section 1554 – creates unreasonable barriers to healthcare, impedes options, creates barriers to treatment.
  - Employees don't have to tell anyone if they refuse care
- Violations of 1557, Title X (upon request must offer pregnant women the opportunity for counseling about their options, Emergency Medical Treatment and Labor Act, Title VII)
- Filed a FOIA, followed up on 6 separate occasions, received zero documents
- Roger question – notice of violation finding under Weldon – is it the State's position that the violation finding was in error, and do you think the regulation as drafted would support a finding of violation or not?
  - Letter was not clear that you were seeking a response.
  - We are not prepared to comment on whether the violation finding was in error – they have not enforced the FACT Act, the cases were not ripe, and the cases were settled via NIFLA (no longer ripe because SCOTUS said it was likely unconstitutional)
  - It seems OCR would be bolstered to bring the same action under the new regulation
- Carly used to work at HHS and for Senator Murray. There is an awareness of statutory conscience protections. Some agencies have processes for dealing with OCR. There is no lack of awareness regarding the conscience protections
- With the increased number of complaints, we have to believe that's true, but I don't see it. The violations Mr. Severino was speaking about are very dated – 2014, 2015, etc. OCR is dusting off previous complaints the previous administration determined were unenforceable.
  - FACT Act cases – law had never been enforced because one of the cases had an injunction; demand of regulation is disingenuous
  - DMHC and FACT Act complaints are stale and both resulted in litigation that has moved forward. DMHC litigation has been successful for the state, as action was grounded in what state law says. The subject of complaints are being resolved in court.
- What about the argument that there needs to be additional mechanism for relief because of a private right of action under many of the authorities
  - We haven't seen that because the people complaining have also used civil statutes on the books to seek relief in the courts. I don't see that there is a private right of action that needs to be filled because they are already litigating all the way to SCOTUS.
  - You can't create a private right of action in a regulation.
  - Gabriel – there were only 2 parties that complained against DMHC and both were parties in litigation.
  - Dept of insurance said they are getting an increase of calls due to this rule and Title X who are concerned about not getting the care they need.
- It's a solution in search of a problem
- We had no idea that OCR wanted us to respond to the notice of violation letter, which highlights the problem that there is no due process. There was not communication in terms of next steps.
- We have been in touch with hospitals and hospital associations that have said the regulation is unworkable for the hospitals. CA runs state hospitals and it will be unworkable and costly to post notices, etc.

# Exhibit 403

## 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)
<b>77%</b>	Total <b>important</b> (net)	68%	85%
52%	Very important	42%	64%
25%	Somewhat important	26%	21%
<b>16%</b>	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)
<b>50%</b>	Total <b>support</b> (net)	45%	58%
29%	Strongly support	20%	40%
21%	Somewhat support	25%	18%
<b>35%</b>	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

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

(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."

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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 404

TO: Interested Parties

FROM: Kellyanne Conway, President & CEO  
the polling company™, inc./WomanTrend

DATE: April 8, 2009

RE: Key Findings on Conscience Rights Polling

*On behalf of the Christian Medical & Dental Association (CMDA), the polling company™, inc./WomanTrend conducted a nationwide survey of 800 American adults and an online survey of members of faith-based medical organizations. Full statements of methodology can be found at the conclusion of this document.*

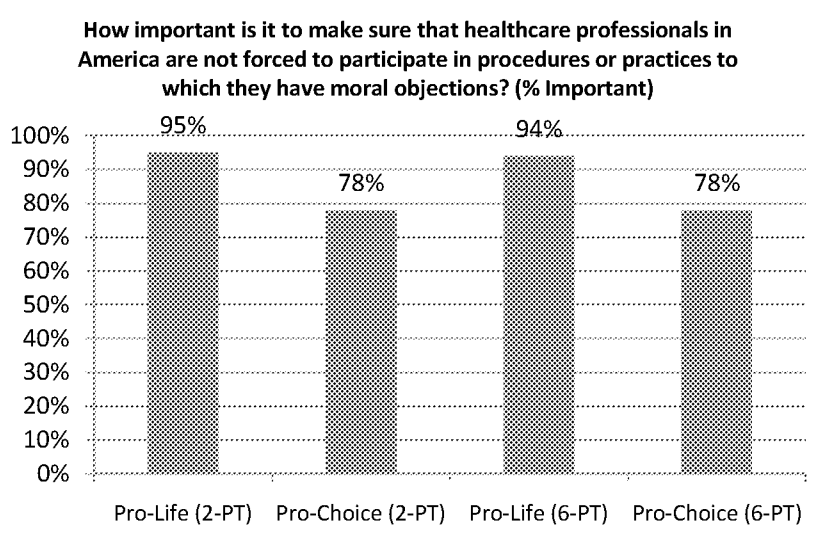
### **Americans of All Demographic Characteristics and Political Stripes Seek a Shared a Set of Values with their Healthcare Providers.**

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.

### **Healthcare Providers’ Conscience Protections 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.” Support for this

protection garnered considerable intensity as well, with 65% of respondents considering it very essential. Majorities of men, women, and adults of all ages, races, regions, and political affiliations considered it critical to defend the rights of healthcare providers to refuse to perform certain procedures on moral grounds. 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 The Principle of 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. The potency of opposition was twice that of the supporters: 40% strongly objected to the laws while just 19% strongly backed them. Politically, 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, respondents were provided with a short description of the new conscience protection law and its recent inception: **“Just two months ago, a federal law known as ‘conscience protection’ went into effect after reports of doctors being discriminated against for declining to perform abortions. It protects doctors and other medical professionals who work at institutions that receive federal money from performing medical procedures to which they object on moral or religious grounds.”**

After hearing this short description, support for this new law outpaced opposition by a margin of more than 2-to-1 (63% vs. 28%). Intensity favored the law, 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 Laws.**

Next, respondents were asked to react to the proposed rescission of the conscience protection law: *“Earlier this month, officials from the U.S. Department of Health and Human Services introduced a rule change that would effectively eliminate the two-month-old conscience protection. This could mean that doctors and other medical professionals could be coerced to participate in medical procedures to which they object on moral or religious grounds.”*

Opposition to revocation of the conscience protection law outpaced support by a margin of more than 2-to-1 (62% vs. 30%). As was the case in the previous question, intensity favored retention of the law (44% strongly opposing rescission versus 17% strongly supporting it). Again, there was consistent demographic alignment, as a majority of men, women, and adults of all ages, races, incomes, regions, and geographic types stood together to reject removal of the law. And, there was 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 (7%) were ambivalent or undecided, saying they did not know or lacked the information to render an opinion one way or the other.

### **Rescission of Conscience Protection Viewed by a Majority as Government Insinuating Itself into the Patient-Physician Relationship.**

When asked whether rescission of the rule and a resulting forced participation of doctors in abortions is a sign of more, less, or the right amount of government involvement in medicine, the majority (58%) said it exemplified excessive participation. Just 18% thought it reflected the ideal role and 11% believed it was still too minimal.

### **The Political Currency Calculus: Voters Will Punish Politicians Who Fail to Defend Healthcare Providers’ Rights to Refuse to Violate Their Conscience in the Name of Medicine.**

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.

### **Rescission of Conscience Protections May be a Priority for Obama Administration, but not for his Constituents.**

When presented with a list of 13 areas for the sitting Congress and current President to address and allowed to select multiple answers, only 10% of American adults preferred that Washington devote its time and energy to abortion policy. In fact, the issue of abortion was ranked 9<sup>th</sup> out of 13 among the issues offered to survey respondents. Moreover, adults desirous of action on abortion policy were six times more likely to be “pro-life” than “pro-choice” (19% vs. 3%). In contrast, no less than 68% of any demographic or political cohort studied said that President Obama and Congressional leaders should focus on the economy and jobs.

### **Real Effects Likely to Be Felt in Medical Community If Doctors 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.”

When asked how rescission of the conscience rule would affect them personally, fully 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 mainly in rural areas and 86% who work full-time in serving poor and medically-underserved populations.

### **Conscience Protection Rule Fundamental and Necessary in the Medical Profession, According to Members of the Christian Medical & Dental Association, the Catholic Medical Association, and the Christian Pharmacists Fellowship International**

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.

The Department of Health and Human Services has asked whether the objectives of the conscience protection law 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.” Many respondents held this opinion due in part to their own personal experience. When asked to assess their educational experiences:

- 39% have “experience 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.”

And, when 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 you had moral, ethical, or religious objections.”

### **STATEMENT OF METHODOLOGY**

#### ***Nationwide Survey of Adults:***

On behalf of the **Christian Medical & Dental Association**, the polling company™, inc./ WomanTrend conducted a nationwide survey of 800 American Adults (18+). The survey contained one screener question, 10 substantive questions, and 13 demographic inquiries. All substantive questions were closed-ended in nature.

The survey was fielded March 23-25, 2009 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn utilizing Random Digit Dial, a computer dialing technique that ensures that every household in the nation with a landline telephone has an equal chance of being called. Each respondent was screened to ensure he or she was 18 years of age.

Sampling controls were used to ensure that a proportional and representative number of people were interviewed from such demographic groups as age, race and ethnicity, and region according to the most recent figures available from the U.S. Census Bureau and voter registration and turnout figures. After data collection, weighting was used to ensure that the sample reflected the current population. This is a common and industry-accepted practice. Age, race, and gender were allowed four points of flexibility in pre-set quotas while three points of flexibility was permitted on region.

The overall margin of error for the survey is  $\pm 3.5\%$  at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 3.5 percentage points in either direction if the survey were repeated multiple times employing this methodology and sampling method. Margins of error for subgroups are higher.

#### ***Online Survey of Members of Faith-Based Medical Organizations:***

On behalf of the **Christian Medical & Dental Association**, the polling company™, inc./ WomanTrend conducted an online survey of members of faith-based organizations. The Catholic Medical Association and Christian Pharmacists Fellowship International also invited their members to participate.

The survey was fielded March 31, 2009 to April 3, 2009 and was completed by 2,865 members of the Christian Medical and Dental Association (CMDA), 400 members of the Catholic Medical Association (CMA), 69 members of the Fellowship of Christian Physicians Assistants, 206 members of the Christian Pharmacists Fellowship International, and 8 members of Nurses Christian Fellowship. Respondents were allowed to select membership in multiple organizations.

Each respondent was provided with a unique hyperlink to take the survey, allowing no member to take the survey more than once and prohibiting respondents from passing the link to another individual after completing the survey.

This survey is intended to demonstrate the views and opinions of members surveyed. It is not intended to be representative of the entire medical profession nor of the entire membership rosters of these organizations. Respondents who participated in the survey were self-selecting.

# Exhibit 405





## FACT SHEET

### Health Care Refusals Harm Patients: The Threat to LGBT People and Individuals Living with HIV/AIDS

May 2014

*Lesbian, gay, bisexual, and transgender (LGBT) individuals and individuals living with HIV/AIDS have long faced barriers to obtaining necessary health care. LGBT individuals have higher rates of uninsurance than their heterosexual counterparts, experience worse health outcomes, and often face discrimination in health care settings.<sup>1</sup> Additionally, LGBT individuals are at a higher risk for mental illness, cancer, and other diseases.<sup>2</sup> These disparities are only exacerbated when health care providers refuse to provide needed care because of personal or religious beliefs. Refusals to provide medically appropriate care can have serious emotional, physical, and financial consequences for patients.*

*Some proponents of refusals argue that patients can find an alternative provider, hospital, or clinic. However, this is often not the case – especially in emergency situations, rural areas, or long-term care facilities, where a refusal can simply leave a patient without access to necessary care. Moreover, this perspective obscures the ways refusals exacerbate stigma and discrimination already faced by LGBT people and individuals living with HIV/AIDS.*

#### **LGBT people and individuals living with HIV/AIDS report being denied care altogether or treated in a discriminatory manner.**

- Studies have found LGBT individuals and people living with HIV/AIDS may be refused care or treated in a discriminatory manner because of their sexual orientation, gender identity, or HIV status. Approximately 8% of LGB individuals, nearly 27% of transgender and gender-nonconforming individuals, and almost 20% of HIV-positive individuals report being denied needed health care outright.<sup>3</sup>
- LGBT people and individuals living with HIV/AIDS report that health care professionals have used harsh language towards them, refused to touch them or used excessive precaution, or blamed the individuals for their health status.<sup>4</sup> The numbers are especially high for transgender and gender-nonconforming individuals, with over 20% reporting that they were subjected to harsh or abusive language by a health care professional and were blamed for their health problems.<sup>5</sup>
- Some LGBT individuals also report being excessively questioned about their sexuality or unnecessarily examined by health care providers even when their sexual orientation or gender identity was completely unrelated to the reason for their visit. For example, a participant in a recent study on LGBT health reported, “I went in for a broken hand and was grilled about my sexuality for ten minutes by the emergency room doctor. It was very frustrating and embarrassing because I felt like there must be something wrong, I’m not giving a good enough answer.”<sup>6</sup> A transgender patient reported seeking treatment for a sore throat, and being “forced to have a pelvic exam.” According to the patient, “The doctor invited others to look at me while he examined me and talked to them about my genitals.”<sup>7</sup> Such unnecessary questioning and examination is discriminatory and harms patient care.



**Refusals to provide health services to LGBT people and individuals living with HIV/AIDS endanger patients' lives and health and can have irreversible consequences.<sup>8</sup>**

- In one case, a 39-year old teacher allegedly died after not getting appropriate medical care due to her sexual orientation.<sup>9</sup> According to a lawsuit filed by her brother, the teacher's medical condition was not taken seriously by the EMTs who responded to her 911 call after they "became immediately aware" she was a lesbian. She was abandoned for over an hour after being admitted to the hospital – in violation of protocol – and while unattended, she fell into a coma.<sup>10</sup> She died several days later.<sup>11</sup>
- In another case, a 53-year old man in need of a kidney transplant was denied coverage by his insurance company because of his HIV-positive status, putting his life at risk.<sup>12</sup>
- An HIV-positive patient filed a lawsuit against his primary care physician, alleging that the doctor treated him "like an outcast" because of his HIV status and failed to provide the kind of care individuals without HIV received.<sup>13</sup> After the doctor refused to authorize emergency room treatment, the patient was brought to the ER by police and admitted to the hospital with internal bleeding; he was ultimately diagnosed with an infection, pneumonia, and AIDS.<sup>14</sup>
- A transgender woman was refused her prescription hormone medication while at state juvenile detention facilities. This denial led to "severe health consequences and emotional distress" due to withdrawal symptoms.<sup>15</sup>
- A patient with HIV who was admitted to a hospital reported that after he disclosed that he had sex with men, the hospital staff ignored him, refused to allow his family to visit, and did not honor his requests for his HIV medication.<sup>16</sup> The doctor at the hospital told the patient's personal doctor, "This is what he gets for going against God's will" and "You must be gay, too, if you're his doctor."<sup>17</sup> Despite explaining to the nurses the importance of taking his HIV medication, the patient missed five doses.<sup>18</sup> Because some HIV medications are highly time-sensitive, a missed or delayed dose can make the medicine less effective or even completely ineffective.

**Refusals to provide health care to LGBT people and those living with HIV/AIDS can further traumatize patients who are already in physical and emotional distress.**

- According to one transgender woman, a hospital refused to allow her doctor to perform breast-augmentation surgery at its facilities.<sup>19</sup> The outpatient surgery manager reportedly told the patient that the facilities could not be used for her surgery because "God made you a man."<sup>20</sup> The patient stated that this caused her to feel "shock, embarrassment, intimidation, physical distress and injury, humiliation, fear, [and] stress. . . ."<sup>21</sup>
- After two years of treatment for severe back pain, an orthopedic surgeon recommended spinal fusion surgery to his patient. Yet upon learning one week prior to surgery that the patient was HIV-positive, the surgeon canceled surgery and refused to perform it.<sup>22</sup> It took several months for the patient to find another surgeon and schedule the surgery. During that time, the patient suffered from severe physical pain and emotional distress.<sup>23</sup>
- A transgender man reported "living with excruciating pain in my ovaries because I can't find a doctor who will examine my reproductive organs."<sup>24</sup>
- Because of her objections to same-sex relationships, a counseling student refused to provide any counseling about relationship issues to a gay client suffering from depression.<sup>25</sup>

**Refusals to provide health care to LGBT people and those living with HIV/AIDS add expenses and burdens to health care for those who can least afford it.**

- LGBT and HIV-positive individuals in rural areas or who have inflexible jobs or low-incomes are especially harmed by refusals. The additional time and expense of finding an alternative provider after a refusal falls most heavily on them.<sup>26</sup> One provider who compassionately treats LGBT individuals reported that some of his patients travel more than 500 miles to receive routine care from him.<sup>27</sup>
- As those who are LGBT or living with HIV/AIDS age, they encounter discrimination and refusals in the long-term care setting.<sup>28</sup> LGBT elders and those living with HIV too often report being denied medical treatment at, abruptly discharged from, or denied admission to long-term care facilities.<sup>29</sup> In one case, six nursing homes refused to care for an HIV-positive man. The man's family was forced to place him in a facility 80 miles away from their home.<sup>30</sup>
- An infertility practice group accepted Guadalupe Benitez as a patient, and subjected her to a year of invasive tests and treatments.<sup>31</sup> When it became clear that she needed in vitro fertilization to become pregnant, every doctor in the practice refused, claiming that their religious beliefs prevented them from performing the procedure for a lesbian. This clinic was the only one covered by her health insurance plan, so Ms. Benitez had to pay for treatment at another clinic, despite having insurance coverage for infertility treatment.

**Fear of discrimination prevents LGBT people and individuals living with HIV/AIDS from seeking needed medical care.**

A refusal, or the fear of being refused care, can lead LGBT individuals and people living with HIV/AIDS to distrust health care workers and to feel alienated, ashamed, and vulnerable. This can discourage people from disclosing personal information that can be essential to their care or lead patients to avoid the health care system entirely or to delay necessary care.<sup>32</sup> Indeed, those most in need of services frequently report mistreatment by providers.<sup>33</sup>

- According to one transgender patient, "Finding doctors that will treat, will prescribe, and will even look at you like a human being rather than a thing has been problematic. [I have] been denied care by doctors and major hospitals so much that I now use only urgent care physician assistants, and I never reveal my gender history."<sup>34</sup>
- Nearly 30% of transgender individuals reported postponing or avoiding medical care when they were sick or injured, due to discrimination and disrespect, and over 30% delayed or did not try to get preventive care.<sup>35</sup>
- Over 1 in 5 LGBT individuals reported withholding information about their sexual practices from their doctor or another health care professional.<sup>36</sup>
- A main barrier to getting appropriately screened for breast cancer among lesbian women is poor communication with their health care providers, which one study found was due to fear of discrimination based on sexual orientation.<sup>37</sup>

**Refusals to provide medically appropriate care violate ethical standards and anti-discrimination laws.**

Proponents of refusals claim they are necessary to protect "religious freedom" or the personal beliefs of health

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care workers. But personal or religious beliefs neither exempt health care workers from complying with anti-discrimination laws, including the anti-discrimination provisions of the federal health care law,<sup>38</sup> nor allow them to interfere with any patient's right to access medically appropriate care.

- Insurance issuers selling insurance in the new health insurance exchanges are prohibited from discriminating on the bases of gender identity and sexual orientation.<sup>39</sup>
- Hospitals that receive federal money are prohibited from restricting or denying patient visitation based on sexual orientation or gender identity.<sup>40</sup>
- Health provider organizations including the American Medical Association and American Counseling Association have made clear that providers and institutions that offer services to the public cannot deny those services to patients based on sexual orientation, gender identity, HIV status, or any discriminatory ground.<sup>41</sup>

**Simply put, a health care worker should no more refuse to treat people because they are lesbian, gay, bisexual, transgender, gender non-conforming, or living with HIV/AIDS than because of their race or religion.**



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- 1 Jeff Krehely, THE CENTER FOR AMERICAN PROGRESS, HOW TO CLOSE THE LGBT HEALTH DISPARITIES GAP (Dec. 21, 2009), available at [http://www.american-progress.org/wp-content/uploads/issues/2009/12/pdf/lgbt\\_health\\_disparities.pdf](http://www.american-progress.org/wp-content/uploads/issues/2009/12/pdf/lgbt_health_disparities.pdf).
- 2 *Id.*
- 3 LAMBDA LEGAL, WHEN HEALTH CARE ISN'T CARING: LAMBDA LEGAL'S SURVEY ON DISCRIMINATION AGAINST LGBT PEOPLE AND PEOPLE LIVING WITH HIV 5 (2010), available at [www.lambdalegal.org/health-care-report](http://www.lambdalegal.org/health-care-report).
- 4 *Id.*
- 5 *Id.* at 5-6.
- 6 Kelsey E. Rounds et. al., *Perspectives on Provider Behaviors: A Qualitative Study of Sexual and Gender Minorities Regarding Quality of Care*, 44 CONTEMP. NURSE 99, 106 (2013) (internal quotations omitted).
- 7 Jaime M. Grant, et. al., NAT'L GAY AND LESBIAN TASK FORCE & NAT'L CENTER FOR TRANSGENDER EQUALITY, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 74 (2011), available at [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf) (internal quotations omitted).
- 8 Further discussion of some of the points and cases in this factsheet can be found in Brief for Nat'l Ctr. for Lesbian Rights et. al. as Amici Curae Supporting Defendants-Appellants and Intervenor-Appellants, *Stormans, Inc. v. Selecky* (Nos. 12-35221, 21-35223), 2012 WL 3911751 (9th Cir. Sept. 7, 2012).
- 9 Steven G. Vegh, *Lesbian Died After Medical Care Delayed*, Lawsuit Alleges, PORTLAND PRESS HERALD, Apr. 11, 1998.
- 10 Beckett v. Maine Medical Center, No. CIV98-93-P-C, 1999 WL 1995210, at \*1 (quoting Amended Com.plaint ¶ 25), \*2, \*3-4 n.3 (D. Me. Jan. 25, 1999); Vegh, *supra* note 9.
- 11 Vegh, *supra* note 9.
- 12 Summary, *In re John Carl*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/in-re-john-carl> (last visited Sept. 10, 2013); Press Release, Lambda Legal, Lambda Legal Appeals HMO Decision To Deny a Kidney Transplant To a Colorado Man Because He Has HIV (Sept. 22, 2003), available at [http://www.lambdalegal.org/news/co\\_20030922\\_lambda\\_appeals-hmo-decision-to-deny-kidney-transplant](http://www.lambdalegal.org/news/co_20030922_lambda_appeals-hmo-decision-to-deny-kidney-transplant).
- 13 *Woolfolk v. Duncan*, 872 F. Supp. 1381, 1387, 1390 (E.D. Pa. 1995) (internal quotations omitted).
- 14 *Id.* at 1386-1387.
- 15 Summary, *Rodriguez v. Johnson et al.*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/rodriguez-v-johnson-et-al> (last visited Sept. 10, 2013).
- 16 Complaint, *Simoes v. Trinitas Regional Medical Center*, No. UNNL-1868-12 (N.J. Super. Ct. Law Div. May 23, 2012); see also Chris Fry, *Doctors With Gay Bias Denied Meds, Man Says*, COURTHOUSE NEWS, June 1, 2012, available at <http://www.courthousenews.com/2012/06/01/47019.htm>.
- 17 Complaint, *Simoes*, No. UNNL-1868-12, at 5 (internal quotations omitted).
- 18 *Id.* at 4-5.
- 19 Complaint, *Hastings v. Seton Med. Ctr.*, No. CGC-07-470336 (Cal. Sf. Super. Ct. Dec. 19, 2007) (case settled).
- 20 *Id.* at 4 (internal quotations omitted).
- 21 *Id.* at 5.
- 22 Complaint, *Spera v. Orthopaedic Associates of Milwaukee*, Case Code 30107 (Wi. Cir. Ct. Milwaukee County October 5, 2004) (case settled), available at [http://www.lambdalegal.org/sites/default/files/legal-docs/downloads/spera\\_wi\\_20041005\\_complaint-wi-circuit-court.pdf](http://www.lambdalegal.org/sites/default/files/legal-docs/downloads/spera_wi_20041005_complaint-wi-circuit-court.pdf). See also Summary: *In re Spera*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/in-re-spera> (last visited Sept. 9, 2013).
- 23 Complaint, *Spera*, Case Code 30107, at 5-6.
- 24 Grant et. al., *supra* note 7, at 77.
- 25 *Ward v. Wilbanks*, 09-CV-11237, 2010 WL 3026428 (E.D. Mich. July 26, 2010), *rev'd and remanded sub nom.* *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012), *dismissed with prej.* by *Ward v. Wilbanks*, 09-CV-11237 (E.D. Mich. Dec. 12, 2012) (case settled).
- 26 NAT'L WOMEN'S LAW CTR., HEALTH CARE REFUSALS HARM PATIENTS: THE THREAT TO REPRODUCTIVE HEALTH CARE 4 (Jan. 2013), available at [http://www.nwlc.org/sites/default/files/pdfs/refusals\\_harm\\_patients\\_repro\\_factsheet\\_1-24-13.pdf](http://www.nwlc.org/sites/default/files/pdfs/refusals_harm_patients_repro_factsheet_1-24-13.pdf).
- 27 Christina S. Moyer, *LGBT Patients: Reluctant and Underserved*, AMERICAN MEDICAL NEWS, Sept. 5, 2011, available at <http://www.ama-assn.org/amednews/2011/09/05/prsa0905.htm>.
- 28 See SERVICES AND ADVOCACY FOR GAY, LESBIAN, BISEXUAL & TRANSGENDER ELDERLY & MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT ELDERLY iv-v (Mar. 2010), available at <https://www.lgbtagingcenter.org/resources/pdfs/improvingtheLivesofLGBTOlderAdultsLargePrint.pdf> (stating that LGBT elders may face hostile environments, staff, or other patients in nursing homes and assisted living facilities and refusals to include families of choice in medical decision-making).
- 29 NAT'L SENIOR CITIZENS LAW CTR., ET. AL., STORIES FROM THE FIELD: LGBT OLDER ADULTS IN LONG-TERM CARE FACILITIES, 15-16 (2010), available at [http://www.lgbtlongtermcare.org/wpcontent/uploads/NSCLC\\_LGBT\\_report.pdf](http://www.lgbtlongtermcare.org/wpcontent/uploads/NSCLC_LGBT_report.pdf).
- 30 Summary: *In re Little*, LAMBDA LEGAL, <http://www.lambdalegal.org/in-court/cases/in-re-cecil-little> (last visited Sept. 13, 2013); see also Lambda Legal, Lambda Legal Files Federal Discrimination Complaint on Behalf of Stroke Victim Who Was Denied Care by Six Louisiana Nursing Homes Because He Has HIV, THE BODY (July 23, 2003), <http://www.thebody.com/content/art6951.html>.
- 31 *N. Coast Women's Care Med. Group, Inc. v. San Diego County Superior Court*, 189 P.3d 959 (Cal. 2008).
- 32 See, e.g., Grant et al., *supra* note 7, at 76.
- 33 See *id.* at 74.
- 34 *Id.* at 75.
- 35 *Id.* at 76.
- 36 Moyer, *supra* note 27 (referencing a 2004 survey by Witeck-Combs Communications/Harris Interactive).
- 37 Jessica P. Brown and J. Kathleen Tracy, *Lesbians and Cancer: An Overlooked Health Disparity*, 19 CANCER CAUSES CONTROL 1009, 1017 (2008).
- 38 Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (2012); Letter from Leon Rodriguez, Dir. of Office for Civil Rights, Dep't of Health & Human Servs. to Maya Rupert, Fed. Pol'y Dir., Nat'l Ctr. for Lesbian Rights (Jul. 12, 2012) (OCR Transaction No. 12-000800) (prohibiting discrimination based on race, color, national origin, sex, gender identity, sex stereotypes, age, and disability in programs and activities that receive federal financial assistance, are created under Title I of the Affordable Care Act, or are administered by an executive agency). Several states prohibit sexual orientation and gender identity discrimination in public accommodations, such as hospitals. See, e.g., CAL. CIV. CODE § 51 (2012). Some providers or facilities may also be covered by laws that prohibit discrimination in housing or establish patient rights. See, e.g., FLA. STAT. § 400.6095 (2012) (requiring that a hospice program make its services available to all terminally ill patients and their families without regard to sexual orientation, among other characteristics).
- 39 45 C.F.R. §§ 155.120(c)(2), 156.200(e) (2012).
- 40 42 C.F.R. §§ 483.13(h)(2), 485.635(f)(3) (2012) (requiring that all visitors, regardless of whether they are legally or biologically related to the patient, have equal visitation privileges).
- 41 See, e.g., American Medical Association, *AMA Code of Ethics*, "Opinion 9.12 - Patient-Physician Relationship: Respect for Law and Human Rights" (2008) available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion912.page>; American Counseling Association, Code of Ethics, "C.5. Nondiscrimination" (2005) available at <http://www.counseling.org/Resources/CodeOfEthics/TP/Home/CT2.aspx>.