

# **Abridging the freedom to protect patients: Threats to healthcare professionals' conscience rights**

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## Introduction

The following real-life examples demonstrate the often subtle, sometimes flagrant and increasingly pervasive discrimination faced by pro-life, faith-based and conscience-driven individuals in the healthcare professions.

These examples illustrate the need for regulation, legislation and education regarding conscience protections in healthcare—which serve to protect both the patient and the professional. Some cases also point to a critical need to counter a partisan ideology festering within the medical community. That ideology is fomenting a climate of intolerance for pro-life and faith-based positions and is triggering new mandates for performing or referring for abortions and other ethically controversial procedures and prescriptions.

An informal survey of Christian Medical Association members found that over 41 percent of respondents had been "pressured to compromise Biblical or ethical convictions." Anecdotal accounts suggest that few persecuted healthcare professionals actually know their conscience rights<sup>i</sup> and that they typically simply submit to pressure by resigning. Students who experience discrimination and pressure to violate conscience simply give in and attempt to find a more tolerant institution or a less controversial field of medicine than obstetrics and gynecology. Unless pro-life professionals are equipped to know and apply their conscience rights, they actually stand at risk of being weeded out from the profession altogether.

The sampling of real-life cases that follows illustrates an urgent need to: (a) strengthen statutory<sup>ii</sup> and regulatory<sup>iii</sup> protections for conscience rights in healthcare; (b) survey healthcare professionals nationwide to quantify the depth of discrimination and awareness of conscience protections; and (c) conduct an awareness campaign to educate healthcare professionals of their conscience rights. An awareness campaign would also help counter the growing mindset in medicine that abortion and other controversial procedures are sovereign patient rights that trump all other considerations, thus binding healthcare professionals to oblige such demands regardless of the professional's oaths, ethics and faith-based convictions.

**Disclaimer:** Following are excerpted examples of communications from healthcare professionals regarding conscience rights in healthcare. These communications represent the personal views of the individuals. Affiliations are listed for informational purposes only and do not imply an institutional endorsement of the views expressed.

## Discriminating against Physicians

Ob-Gyn physicians face loss of certification over abortion stance

American College of Obstetricians and Gynecologists (ACOG): In November 2007, ACOG issued Committee Opinion Number 385, "The Limits of Conscientious Refusal in Reproductive Medicine." The new ACOG policy states, "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. 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." Even under pressure by members of

Congress and the U.S. Secretary of Health and Human Services, ACOG has not retracted its policy.

American Board of Obstetrics and Gynecology (ABOG): In December 2007, ABOG issued new bulletin of requirements for board certification. ABOG's "Bulletin for 2008 Maintenance of Certification," under section 5. Revoked Certificate, stated certification may be denied if "(a.) An individual has had their Diplomate status revoked by the American Board of Obstetrics and Gynecology for cause. (b.) Cause in this case may be due to, but is not limited to, licensure revocation by any State Board of Medical Examiners, violation of ABOG or ACOG rules and/or ethics principles or felony convictions." Even under pressure by members of Congress and the U.S. Secretary of Health and Human Services, ABOG has not clarified in writing that the new ACOG policy will not be applied to decertify pro-life Ob-Gyn physicians.

#### Family medicine physician forced out over contraceptives for unmarried patients

**Dr. Shelley Phillips**, a family medicine physician practicing in San Antonio, Tex. under a not-for-profit university hospital group, University Health System reported in May 2008 that the corporation that runs her practice was insisting that she provide contraception in all cases. Dr. Phillips restricts contraception prescriptions to married patients. After several patients allegedly complained, her medical director informed Dr. Phillips that the hospital administration demanded that all the physicians in the clinic prescribe contraception for any and all reasons. Dr. Phillips resigned.<sup>iv</sup>

#### Military physician forced to refer for abortions

**Donald F. Thompson, MD, MPH&TM:** I entered the practice of medicine from a deep commitment to serve my fellow man, and have been discouraged recently as I have been required to participate in activities that violate my personal convictions.

As a physician with over a quarter century of service in the U.S. military, I take my vows very seriously. Twenty-six years ago I swore an oath to protect and defend the Constitution of the United States, not realizing then that my commitment would include extensive life-threatening service in Afghanistan and Iraq in recent months.

I continue to fulfill this commitment gladly and without hesitation. Twenty-two years ago, I took the Hippocratic Oath when I graduated from medical school, but regrettably was required by military regulations to violate it within my first few years of practice by participating in referring women for abortions.<sup>v</sup>

#### Ob-Gyn physician's malpractice insurer insists on lesbian insemination

Vicki L. Duncan, MD FACOG: "I recall receiving a call to see if I would perform intrauterine insemination for a lesbian couple in the late 90's. I contacted my malpractice carrier for legal advice, and was told that if I refused for them, but did so for a married, heterosexual couple, I would likely be sued, and they would not provide coverage. It also extended to a non-married couple. That was when I decided to no longer perform intrauterine inseminations. This occurred in Sonoma County, California. The insurance carrier was Norcal."<sup>vi</sup>

## In-vitro physician faced ethics charges for embryo-saving stance

Dr. Jeffrey A. Keenan: "Earlier in my career, I was basically brought up on ethics violation charges because I refused to work with patients who would destroy embryos. Even though there were other MD's in the community and even in our department who did destroy embryos, I was forced to basically be confronted with these charges in public and endure the 'hearing'. I won out in the end of course, but it was still very disturbing."<sup>vii</sup>

## Psychiatrist fired for critiquing patient care at hospital

News report: "When they visited The William W. Backus Hospital in late 1999, state investigators uncovered more than a dozen cases in which they said psychiatric patients were transferred, refused admission or discharged without proper medical treatment. Two of those patients, identified in state Department of Public Health records only as Patient #25 and Patient #28, had killed themselves within days of being discharged. Altogether, in examining the cases of 17 psychiatric patients, investigators found nearly three-dozen violations of health codes, ranging from failure to assess patients' mental conditions before transferring them to failure to administer toxicology tests before medicating them.

"The state's investigation began in October 1999, three years after an employee brought her concerns about the hospital's treatment of psychiatric patients to the attention of Pipicelli and other hospital administrators. That employee, Dr. Safaa Hakim, is a psychiatrist who worked at the hospital for five years. According to court documents, she told Pipicelli on Nov. 12, 1996, that she was concerned that the hospital was endangering the lives of uninsured psychiatric patients by refusing to give them proper care. Four months after she took her concerns to Pipicelli, in March 1997, Hakim was fired."<sup>viii</sup>

**Saafa Hakim**<sup>ix</sup>: "The case of discrimination I filed was dismissed with prejudice by the Federal Judge in June of this year. I decided to let go and let God at that point as I have battling a statewide corrupt system for almost 10 years. As it stands, the Hospital has a lien on my condo and all my savings and I was reported to the National Practitioner data Bank as an impaired physician who is unable to practice medicine with skill and safety. I did what was right according to an oath I have taken one day to God first and to the medical profession second.

"As a result, I was subjected to 10 years of discrimination, retaliation, harassment and abuse by both the medical and judicial systems of the State of Connecticut."

## Physician license loss linked to birth control only for married patients

News report: "A Barrie doctor could lose his license to practice medicine because of his religious beliefs. Dr. Stephen Dawson faces a discipline committee at the College of Physicians and Surgeons of Ontario in April because he refused to prescribe birth control pills to unmarried women.

"If a Christian physician must forsake his religious beliefs to maintain his medical license, we cannot delude ourselves to believe we live in a free country,' said Dawson. Last summer, four female patients made formal complaints to the college, citing Dawson's refusal to prescribe birth control to the 'unmarried' women as the reason, he said. Dawson believes that when a doctor

prescribes birth control pills to an unmarried woman, he unwittingly promotes sex outside of marriage, because he removes the fear of pregnancy."<sup>x</sup>

### Ob/Gyn resident "blackballed" for Catholic views

[source prefers anonymity but may allow his name to be used upon request] "In July 1992, I entered Ob/Gyn residency at a university hospital, matching at my first choice of a residency. Within one month, I left due to pressure from faculty and upper residents, solely due to conscientious objection. I chose not to participate in tubal ligation and contraceptive prescription. I offered to refer all those interested to other residents and staff but was blackballed from education.

"I would show up at surgery, and the attending and upper resident would refuse to talk to me or show me procedures. A great amount of pressure was placed on me by upper residents. One was physically intimidating (no contact). The program director basically stated that I could do these procedures, or leave. I have a letter from him, stating that my decision to leave was based solely upon my conscientious objection. Today, in the U.S., only a handful of Ob/Gyn residencies will respect the conscience of those who adhere to Roman Catholic doctrine."<sup>xi</sup>

### Family medicine physician deemed "too Catholic" for medical license

News report: "Dr. Leslie Chorun is one of six health care professionals who have formed Fertility Care Center of Kansas City, a medical practice focusing on the Creighton Model of natural family planning. 'I was told at one point that by not referring women for abortions or contraception, that was below the standard of care for physicians,' Chorun said.

"The pressure on Chorun was increasing from the supervisors of her residency program. Eventually, Chorun was forced to resign from the residency program months before completion. Though she was able to obtain licenses to practice in both Kansas and Missouri, her insistence on building her practice based solely on natural methods continued to cause her problems. When she applied for her Missouri license, a friend attempted to intervene with one of her residency supervisors to help Chorun get a good reference. The supervisor told her friend, 'She's too Catholic,' Chorun said."<sup>xii</sup>

### Resident physician fired for teaching on abortion complications

(Anonymity requested): "I have been discriminated against during my Ob/Gyn residency. I gave a grand rounds (case presentation) on abortion complications and was fired for it. It was in San Diego, and I was a chief resident in Ob/Gyn at Mercy Hospital. I gave the talk at the Grand Rounds at the UCSD hospital. I was fired for "creating morale problems and insubordination." That was in 1980, but it is still happening. I was suspended by Kaiser in the 1980s twice for assisting teen clients who were being forced by their families to undergo abortions. I have been discriminated in my career advancement. Being pro-life is not politically correct, Directorship of Departments, fellowships etc are out of the question."<sup>xiii</sup>

## Ob-Gyn residents in NYC required to take abortion training or risk opt-out reprisal

News report: "Beginning in July, obstetrics and gynecology residents in the city's public hospitals will be routinely trained to perform abortions under a program backed by Mayor Michael Bloomberg. The city's program was initiated by the National Abortion and Reproductive Rights Action League, which met last year with Bloomberg and the other New York City mayoral candidates. However, students will be able to 'opt out' of the training module if they have moral objections to abortion. The city Health and Hospitals Corp. currently graduates about 100 obstetrics and gynecology residents each year, but because individual institutions may choose not to offer abortion training, many of these graduates are not trained in abortion either by choice or due to omission of the subject from the curriculum."<sup>xiv</sup>

## Ob-Gyn physician reamed out over refusal to perform abortion

Sandy Christiansen, MD: "I was the chief of the obstetrical service and was thus responsible for the care and management of all of the obstetrical patients on the clinic service. We had a patient, at the time, whose baby was diagnosed with Down's syndrome and the mother had decided to abort. Since she was so far along, she was to have labor induced and was to be managed on the obstetrical floor. I spoke with my attending physician and told her that I did not feel comfortable being involved with this patient's abortion because of my Christian beliefs and I had spoken with another resident who was willing to oversee this patient's care in my stead.

"The attending proceeded to reprimand me loudly in front of my team of residents, interns and medical students. She accused me of abandoning my patient, of shirking my responsibilities and being insensitive to my patient. Not once did she acknowledge that I had a legitimate reason to take such a stand. During private practice, I have not experienced such blatant examples of religious discrimination, but have certainly felt 'snubbed' or dismissed for my beliefs. In general, there has not been a collegiate atmosphere of mutual respect for differing stances."<sup>xv</sup>

## Medical professor threatened with job loss over abortifacients

Dr. Rebecca Lavy: "I was employed in a teaching position at the University of Texas Southwestern in Dallas, TX from 1999 – 2001. While I was there, the faculty was required to take in house night call. This included performing the sexual assault examinations – all of which for Dallas County were referred to our ER. It was not uncommon to be called to perform 2-3 of them in a night. One of the things the department said was required was that we prescribe for these women the post-coital use of oral contraceptives (Erroneously, in my opinion, called the 'post-coital contraceptive') I refused to prescribe it and was told, 'This may be an employment issue.' The obvious, not-so-subtle implication was that I would be fired if I refused. We went round and round. Since I didn't agree with simply calling someone else in (one of the residents) to prescribe the medication (if prescribing them is ethically wrong, asking someone else to do it for me is equally wrong)."<sup>xvi</sup>

## Ob-Gyn intern loses privileges for refusing to perform abortions

Sandy Christiansen, MD: "As an intern, the opportunity to get into the OR was a great privilege, as most of our time was spent in L&D or the clinic. I was the only intern who declined to perform elective abortions, and I made it clear that it was because of my Christian beliefs. One of

my fellow interns was frequently given the privilege of scrubbing in on Gyn cases. I questioned my chief resident as to why I wasn't being given that opportunity and she replied that Susie was working hard doing the abortions and had earned this privilege whereas I had 'refused' to do this work and hence did not get the 'perk.'<sup>xvii</sup>

#### Anesthesiologist must anesthetize for abortion as employment condition

Frank Block, Jr., MD: "One place that I interviewed for a job told me in no uncertain terms that while they would try to keep me away from the abortions but that I would, in fact, have to provide anesthesia for abortions if I went there. (I didn't go there.) My whole career path has been focused upon finding places where I would have minimal hassles over my beliefs. I am happy to defend them, but I am not happy to have an ongoing issue over them."<sup>xviii</sup>

#### Charitable care physicians denied access to Planned Parenthood patients

Charles Bruerd, D.O. "In the past I worked with a group of Christian physicians in Berrien Springs, Michigan. We provided a lot of free care within the county: the TB clinic, the prenatal clinic, pediatric clinics, migrant health care coverage, and in the early days (1970s and early 1980s) helped staff the planned parenthood clinics. However, there came a time when Planned Parenthood refused to allow our physicians to see patients in their program because we would not counsel patients to have abortions."<sup>xix</sup>

#### Physicians stress loving communication when not accommodating patient requests

Gregg R. Albers MD: "We see gay men and women, we see those who ask for abortion or the morning after pill. We encourage those people to come to our practice. But when we have an issue that we cannot comply with, we take the opportunity to lovingly say, here is why we believe so strongly that "this" is wrong. We offer to refer them to a colleague that would prescribe or complete a procedure that they are asking for. And we remind them that we will be praying for them. We see this as God's opportunity to give them a more complete knowledge base before they get a medication or ask for a procedure they may regret in the future. There is a lot of difference in refusing care "because" and being rude about it, or lovingly trying to give them a fuller picture, where they still have the freedom to choose, and we have not compromised our position, our ethics or our conscience."<sup>xx</sup>

#### Physicians in WI would be required under bill to refer for assisted suicide

Senate Bill 151 & Assembly Bill 298 (Introduced April, 2007): "(9) If the attending physician refuses to fulfill the requester's request for medication under this chapter, the attending physician shall make a good faith attempt to transfer the requester's care and treatment to another physician who will act as the attending physician under this chapter and will fulfill the requester's request for medication. If a transfer is made, the attending physician to whom the requester's care and treatment is transferred shall comply with the requirements of this section."

## Discriminating against medical students

Journal article: Medical schools discriminating against pro-life, religious applicants

Journal article: "In the late 1970's concern arose in the Congress over whether candidates were being denied admission to medical school because they were opposed to abortion. The federal government canvassed medical schools regarding their policies and practices. The answers led the Federal authorities to conclude from the responses that there was essentially no problem.

"Dr. George Zenner and I looked at what actually happened in interview reports at an American medical school and at subsequent admission committee meetings where these reports and the applicants were discussed. We found that, contrary to the impression given the Congress, religious questions, including ones related to abortion, were being asked of the applicants and discussed before the Admission Committee. The answers to these questions, although the interviewers denied it in the questionnaire, were affecting judgments regarding whether the candidates were appropriate for medical school admission. Our published study, by its nature anecdotal and not statistical, showed that the bias cut one way: against the so-called religious applicant."<sup>xxi</sup>

Medical student afraid to pursue Ob-Gyn career due to abortion pressure

**Trevor K. Kitchens:** "I am a first year medical student in the beginning stages of deciding which specialty I would like to pursue. I am currently very interested in OB/GYN, but I am afraid of the relationship between this field and abortion. By the way, I am 100% against abortion, and there is no way I would perform one. Moreover, there is no way I would tell a patient that abortion is an option under any circumstance, because I do not believe it is an option. My concern is that I will start a residence and would subsequently be required at some point to give a patient the option of abortion, which I would refuse. My fear is that taking this stand would cost me my residence position.

"Now, if that is what it comes down to, I will be glad to take the stand for Jesus Christ and give up my position. However, I would really like to be able to avoid this situation and complete my residence so that I could go on and serve the Lord in that field. So I guess my question is, Can an institution take action against a resident for taking this type of a stand against abortion? And are there any institutions in particular that would be understanding of my beliefs and not ask me to compromise them?"<sup>xxii</sup>

Medical student charged by professor with "abandonment" for no abortion referral

**J. Wesley Earley:** "I am a third-year medical student. In my second semester, we take a Medical Ethics course. On numerous occasions, I was repudiated by the professor for my unwillingness to profess as acceptable her position that all physicians MUST refer a patient wishing an abortion to an abortion provider (since I obviously was unwilling to perform one myself). The professor's point was that the woman desiring the abortion was my patient and I was ethically bound to refer her in order to meet my ethical obligation of 'non-abandonment' once I had accepted her as a patient. My response to her was that I was ethically and morally beholden to defend the life of the unborn child, and that my vow of placing my patient's well-being before all else took

precedent in preserving the child's life over terminating the pregnancy for the woman's convenience."<sup>xxiii</sup>

### Evolution belief required for students' med school recommendation

News release: "The Justice Department today announced that it was closing its inquiry into complaints by Texas Tech students that a biology professor's medical school recommendation policy, which required affirmation of a personal belief in evolution, constituted religious discrimination. The decision was based on the professor's replacement of the affirmation requirement with a requirement that students simply be able to explain the scientific theory of evolution."<sup>xxiv</sup>

## Discriminating against other professionals

### Nurse fired for speaking out against hospital's abortion policies

News report: "Jill Stanek, an outspoken nurse who spoke out against the abortions performed at Christ Hospital in Oak Lawn where she worked, was fired Friday. Stanek reported to work at the hospital Friday night, her first day back after a two-week vacation. When she arrived, her manager and the human resources department head told her she no longer had a job, Stanek said."<sup>xxv</sup>

Jill Stanek: "Regarding my termination, after having spoken with my attorneys I can say at this point that my firing was solely related to my speaking out against Christ Hospital's abortion policies. It was a wrongful termination."<sup>xxvi</sup>

### Nurse fired from county health position for pro-life views

News report: "A Salem nurse is suing Marion County, claiming her views on abortion clashed with her supervisors and led to harassment and a wrongful termination. The lawsuit by Janice Turner, a Marion County nurse for a decade, has the backing of the Rutherford Institute, a Virginia-based civil liberties organization that defends constitutional and human rights. Turner contends that her supervisor, who supports abortion rights, harassed her, called her an incomplete nurse because she would not talk with clients at the county's clinic about emergency contraception, and targeted her position for elimination under the guise of budget cuts."<sup>xxvii</sup>

### Nurse fired over free speech testimony

Nurses' organization report<sup>xxviii</sup>: "Working in a neonatal ICU part time, Linda Carl was a vocal patient advocate. Her activities included testimony before the state legislature and before the courts as an expert witness. In 1992, her employer terminated her. Nurse Carl charged that her termination had been directly related to her testimony before a District of Columbia Council. She had made statements in that testimony on proposed tort reform. Her position statements were in conflict with the standing policy of the hospital. She also cited expert testimony she had given for plaintiffs in medical malpractice cases as contributing factors. She claimed that by firing her, the hospital had denied her basic rights to freedom of expression."

## Nurse practitioner terminated over abortion referral

Stanley Koleszar, CRNP: "I am a Family Nurse Practitioner who has been discriminated because of my beliefs on the job. I do not refer patients for abortions, and at my previous place of employment I was reprimanded for doing this, and then placed on probation. I was told I was not a good fit for the company and that I had better look for a job elsewhere because I was going to lose mine. In all of this I repeatedly asked if there was something I needed to do to improve, if I was doing something wrong and if I needed to grow in certain clinical areas. I was told that this was not the case and that we just did not work together. I believed that this was probably a violation of my contract with them, but I really don't want to work at a place where people don't want me."<sup>xxxix</sup>

## Pharmacist fired by Kmart over abortifacient prescription decision

News report: "Pharmacist Karen Brauer sued Kmart on Thursday, saying she was fired for refusing to sell an abortion-inducing birth-control pill. That violated her rights, she said, because Ohio bars disciplinary action against anyone who refuses to "participate in medical procedures which result in abortion." In December 1996, she told a Delhi Township customer that Micronor was out of stock rather than fill a prescription. The customer learned otherwise and complained. Ms. Brauer's district manager tried to save her job but he was overruled. Kmart told her to sign a pledge to fill any legal prescription or be fired. Rather than concede, she wrote, 'In order to live in accordance with the dictates of my conscience, I must refuse to dispense prescriptions with a major abortifacient mechanism of action.'<sup>xxxx</sup>

## Pharmacists told by AMA they must refer patients for abortifacients

American Medical Association (AMA): In June 2008, the AMA reaffirmed its position taken the previous year stipulating that "Our AMA reaffirms our policies supporting responsibility to the patient as paramount in all situations and the principle of access to medical care for all people; and supports legislation that requires individual pharmacists or pharmacy chains to fill legally valid prescriptions or to provide immediate referral to an appropriate alternative dispensing pharmacy without interference."<sup>xxxxi</sup>

## Pharmacist visited by police after conscientious objection to contraceptive

Neil Noesen, PharmD (candidate): "In July, 2002 I was working as an independent contracting pharmacist at a community pharmacy in Menomonie, WI. On July 6, 2002, I made a conscientious objection to participation in refilling a contraceptive order and also in transferring that same contraceptive order to another pharmacy. On July 7, 2002, two police officers accompanied the same patient to the pharmacy but did not take any action other than requesting my current mailing address. I again refused participation in aiding that patient to obtain her hormonal contraceptive.

"In a letter dated October 2, 2002, the Wisconsin Pharmacy Examining Board's Final Decision and Order detailed a reprimand, a \$250 forfeiture, \$300 in costs, and an order that 'if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.'<sup>xxxii</sup>

## Pharmacists and owners forced by Illinois to dispense abortifacients

American Center for Law and Justice web site: "The ACLJ is co-counsel for two pro-life pharmacy owners in Illinois who have sued the Governor and other state officials over a 2005 administrative regulation that coerces pro-life pharmacists into dispensing Plan B, the so-called 'morning-after pill.' The lawsuit asks that the regulation, which provides for license revocation and steep fines for religiously-based refusals to dispense, be struck down as violative of the First Amendment, the Illinois Health Care Right of Conscience Act, and the Illinois Religious Freedom Restoration Act. The trial court dismissed the lawsuit and a divided Court of Appeals affirmed that dismissal on the grounds that the lawsuit was not 'ripe' for adjudication because the pharmacists had not yet actually suffered any concrete harm from the regulation. The Illinois Supreme Court granted review of the case."<sup>xxxiii</sup>

## EMT fired over abortion transport

News report: "In a case that has attracted national attention, a lawsuit has been filed against an ambulance service that fired a worker who refused to transport a woman to an abortion center. The American Center for Law and Justice filed a federal suit against Superior Ambulance Service, an Illinois company, claiming that company officials violated Stephanie Adamson's rights by firing her for her religious beliefs. In August 2003, Adamson responded to a non-emergency call at Mt. Sinai Hospital. There, she was instructed to transport a woman to an abortion center near Cook County Hospital to have an abortion. Once Adamson confirmed the nature of the assignment, she made it clear that she could not aid a woman to have an abortion because of her pro-life religious beliefs."<sup>xxxiv</sup>

## Secretary refused employment by county because of abortion stance

Court case: "Plaintiff, a part-time secretary in DeKalb [County's] WIC program, applied for a position as a full-time secretary. During the interview process, plaintiff, who is bilingual, was asked if she would be able to translate for Family Planning, another program of DeKalb, and specifically if she would be able to translate the option of abortion as an option for an unwanted pregnancy. Plaintiff said she would find it very difficult to do this because of her moral and religious beliefs against abortion. On September 4, 2002, Zucher advised plaintiff she had not been hired for the full-time position because of her stand on abortion.

"Defendant's motion to dismiss is granted as to the claims under 42 U.S.C. § 300a-7, the Title VII claims against the individual defendants, and the official capacity claims against the individuals under Section 1983. The claims for punitive damages against DeKalb County are stricken. Otherwise, defendants' motion to dismiss is denied."<sup>xxxv</sup>

## Discriminating against institutions, employers and others

Government-funded hospital drafts guidelines to require abortion option and referral [institution name withheld pending review of draft document] College of Medicine "Faculty Professionalism Guideline" draft June 2008: "Do not abandon a patient. If you are unable or unwilling to continue care, you must assist in referring the patient to another competent

practitioner willing to care for the patient. You are not required to perform procedures (e.g., elective abortions, termination of medical treatment) that you personally believe are unethical, illegal or may be detrimental to patients. You have an obligation, however, to respectfully inform patients and their families of all available treatment options that are consistent with acceptable standards of medical care."

This Guideline violates the Hyde-Weldon Amendment, which prohibits the federal government and any state or local government receiving funding under the Act from "subject[ing] any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage for, or refer for abortions" (emphasis added).

### Catholic hospitals must provide abortifacient or face fine

Online news report: "A new Oregon law requires all state hospitals, including Catholic hospitals, to tell sexual assault victims about 'emergency contraceptives,' their option to receive them, and to provide the drugs when requested. The new law, HB 2700, was supported by state public health officials and went into effect the first day of this year. This past Monday the Oregon Department of Human Services filed the rules to enforce the new law, reports The Oregonian. The state has also produced a series of fliers and posters to inform patients about their 'right' to be informed about and to receive 'emergency contraception.' Any institution that fails to follow the law could receive a fine of up to \$1,000.

"Because the morning after pill alters the uterine wall lining to prevent the implantation of the fertilized ovum (embryo), a 2000 statement from the Pontifical Academy for Life noted that the pill 'is really nothing other than a chemically induced abortion.' Consequently, from the ethical standpoint the same absolute unlawfulness of abortifacient procedures also applies to distributing, prescribing and taking the morning-after pill. 'All who, whether sharing the intention or not, directly co-operate with this procedure are also morally responsible for it,' adds the document.<sup>xxxvi</sup>

### Employer forced to add contraceptives to health insurance plan

News report: "Bartell Drug Co. must include contraceptives for women in its employee health insurance plan, a federal judge ruled Tuesday. U.S. District Judge Robert S. Lasnik issued a summary judgment for Jennifer Erickson in her widely watched lawsuit against Bartell, the first federal challenge to employers who don't cover birth control. 'Although the plan covers almost all drugs and devices used by men, the exclusion of prescription contraceptives creates a gaping hole in the coverage offered to female employees, leaving a fundamental and immediate health care need uncovered,' Lasnik wrote."<sup>xxxvii</sup>

### Legal foundation cases show threats to conscience in healthcare

Life Legal Defense Foundation: "In *Crone v. Resurrection Health Care Corp.* (Ill.), a psychiatric nurse is suing for wrongful termination; her rights as a conscientious objector were violated for refusing to dispense "day-after" pill. *Catholic Charities v Sacramento Superior Court* challenged the 1999 Women's Contraceptive Equity Act; the Court of appeal denied Catholic Charities' petition, ruling the law didn't interfere with Catholic Charities' religious freedom. In *Kelly v.*

County of Orange (Calif.), Nurse Karen Kelly was fired for not violating her pro-life convictions.<sup>"xxxviii</sup>

### Catholic hospitals targeted by pro-abortion groups for funding cutoff

Online news report: "Catholic hospitals could face legal challenges if they do not allow abortions and contraception, according to pro-abortion advocacy groups in reports released on Tuesday. The American Civil Liberties Union (ACLU) and MergerWatch said in separate reports that if the 618 Catholic hospitals in the US don't change their policies, politicians should cut them off from public funding."<sup>xxxix</sup>

### EEOC statistics show religious discrimination cases on rise

The following chart represents the total number of charge receipts filed and resolved under Title VII alleging religion-based discrimination.<sup>xl</sup>

	<b>FY 1997</b>	<b>FY 1998</b>	<b>FY 1999</b>	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
<b>Receipts</b>	1,709	1,786	1,811	1,939	2,127	2,572	2,532	2,466	2,340	2,541	2,880

<sup>i</sup> A useful summary of existing conscience protections can be accessed online at <http://www.usccb.org/prolife/issues/abortion/crmay08.pdf>.

<sup>ii</sup> Several conscience-impacting federal statutes have been suggested as requiring clarification of ambiguous language: the Church amendment of 1973 (provisions of 42 USC §300a-7); the 1996 statute on residency training, (42 USC §238n); and the conscience exemption to the contraceptive mandate in FEHBP (1999 Treasury/Postal appropriations bill et seq.).

<sup>iii</sup> A Title X requirement for grant recipients to refer for abortion, for example, directly conflicts with the Weldon Amendment with respect to institutions. Even Clinton HHS Secretary Donna Shalala asserted that Title X recipients opposed to abortion referrals would be protected under existing Church amendment provisions (see Rules And Regulations, Department Of Health And Human Services, 42 CFR Part 59 [RIN: 0940-AA00], "Standards of Compliance for Abortion-Related Services in Family Planning Services Projects") The Secretary noted, "The corollary suggestion, that the requirement to provide options counseling should not apply to employees of a grantee who object to providing such counseling on moral or religious grounds, is likewise rejected. In addition to the foregoing considerations, such a requirement is not necessary: under 42 U.S.C. 300a-7(d), grantees may not require individual employees who have such objections to provide such counseling." Yet by refusing to state in the Title X regs that abortion referral may not be required, Secretary Shalala effectively enforced such a requirement. That same anti-conscience Title X requirement remains in practice today and should be clarified before the next administration assumes power.

<sup>iv</sup> Personal emails and phone calls to Christian Medical Association from Dr. Shelly Phillips, April 24-May 29, 2008.

<sup>v</sup> Letter from Dr. Thompson to The Honorable Michael O. Leavitt, July 23, 2008.

<sup>vi</sup> Personal email to Christian Medical Association from Vicki L. Duncan, MD FACOG, October 7, 2006.

<sup>vii</sup> Personal email to Christian Medical Association from Jeffrey A. Keenan, October 10, 2006.

<sup>viii</sup> "Backus Psychiatric Care Criticized In State Reviews, Cited For Inadequate Evaluations And Care, Aggressive Restraint," *New London Day*, December 14, 2003.

<sup>ix</sup> Personal email to Christian Medical Association from Saafa Hakim, October 7, 2006.

<sup>x</sup> "Doctor's faith under scrutiny; Barrie physician won't offer the pill, could lose his license," *The Barrie Examiner*, February 21, 2002.

<sup>xi</sup> Personal email to Christian Medical Association from "PH," October 7, 2006.

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- xii "'Humanae Vitae' changes course of resident doctor's practice," *Catholic Key*, April 9, 2004.
- xiii Personal email to Christian Medical Association from a physician requesting anonymity, October 7, 2006.
- xiv "NYC to Require Abortion Training," AP, Apr 4, 2002.
- xv Personal email to Christian Medical Association from Sandy Christiansen, MD, October 24, 2007.
- xvi Personal email to Christian Medical Association from Dr. Rebecca Lavy, October 07, 2006.
- xvii Personal email to Christian Medical Association from Sandy Christiansen, MD, October 24, 2006.
- xviii Personal email to Christian Medical Association from Frank Block, Jr., MD, October 08, 2006.
- xix Personal email to Christian Medical Association from Charles Bruerd, DO, October 08, 2006.
- xx Personal email to Christian Medical Association from Gregg R. Albers, MD, October 8, 2006.
- xxi "Religious Discrimination in the Academy," by Albert E. Gunn, Esq., M.D. *Eutopia*, Vol. 2 No. 5: March/April 1998. This article references Gunn, A.E.; Zenner G.O. Jr.; "Religious Discrimination in the Selection of Medical Students: A Case Study" *Issues in Law and Medicine*; 11(4) Spring 1996, 363-378. Available on the Internet at <http://www.med.uth.tmc.edu/temp/issues.htm>.
- xxii Personal email to Christian Medical Association from Trevor K. Kitchens, April 22, 2008.
- xxiii Personal email to Christian Medical Association from J. Wesley Earley, April 27, 2008
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- xxvi Personal email from Nurse Jill Stanek September 4, 2001. (Jill's experience with born-alive infants led to passage of federal legislation.)
- xxvii "Nurse sues Marion County over termination; Janice Turner says her views on abortion led to her dismissal," (Oregon) *Statesman Journal*, February 12, 2002.
- xxviii "Nursing Malpractice/Liability Case of the Week: *Carl v. Children's Hosp.* - 702 A. 2d 159 - DC (1997), *Nurses Protection News*, April 26, 1998, <http://www.npg.com/npg/case0426.htm>.
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- xxx "Refusal to sell abortion pill meant firing, suit says," *The Cincinnati Enquirer*, August 13, 1999 [http://enquirer.com/editions/1999/08/13/loc\\_refusal\\_to\\_sell.html](http://enquirer.com/editions/1999/08/13/loc_refusal_to_sell.html)
- xxxi AMA Policy H-120.947 (AMA Policy Database), "Preserving Patients' Ability to Have Legally Valid Prescriptions Filled." (Sub. Res. 6, A-05; Appended: BOT Rep. 18, I-06.)
- xxxii Statement of Neil Noesen, PharmD (cand.), 20 November, 2003, accessed on the Internet 7/1/2008 at <http://www.consciencelaws.org/Repression-Conscience/Conscience-Repression-33.htm>.
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