



Center for Law & Religious Freedom

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Via E-mail: proposedrescission@hhs.gov.

Office of Public Health and Science
Department of Health and Human Services
Attention: RESCISSION PROPOSAL COMMENTS
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 716E
Washington, DC 20201

Subject: Docket No. HHS-OPHS-2009-0001 - Proposed HHS Rescission of its Regulation entitled "ENSURING THAT DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS DO NOT SUPPORT COERCIVE OR DISCRIMINATORY POLICIES OR PRACTICES IN VIOLATION OF FEDERAL LAW". 74 FED REG.10207 *ET SEQ.*

Dear Acting Secretary Johnson:

On behalf of itself, the Christian Medical Association, Christian Pharmacists Fellowship International, the Fellowship of Christian Physician Assistants, Carenet, Heartbeat International and Advocates International (collectively "Medical & Legal Professionals Protecting Conscience in Healthcare") whose interests are more fully-described below, the Christian Legal Society offers the following comments on the Department's proposal to rescind a final regulation it promulgated last year to implement existing federal laws protecting the exercise of conscience in healthcare. 74 Fed.Reg.10207 (March 10, 2009) (the "Rescission Proposal"). The Department issued the regulation to enforce three Acts of Congress that protect the conscience rights of health care professionals and institutions. 73 Fed. Reg.78072 (December 19, 2008) (the "Conscience Regulation"). The Department says it now seeks "to review" the Regulation "to ensure its consistency with current Administration policy and to reevaluate the necessity for regulations implementing the Church Amendments [42 U.S.C.§§ 300a-7(b)-(e)], Section 245 of the Public Health Service Act [42 U.S.C.§238n], and the Hyde-Weldon Amendment." (collectively "Federal Healthcare Conscience Protection Laws").74 Fed. Reg.10207.

In sum, the following comments urge the Department, as authorized by Section 301 of the Administrative Procedures Act, to retain the Conscience Regulation to ensure through the Department's certification process that Department funds do not support morally coercive or discriminatory practices or policies in violation of the existing Healthcare Conscience Protection Laws. In doing so, the Department will necessarily ensure the achievement of the Administration's most important constitutionally-mandated policy objective of "taking Care that the Laws be faithfully executed." U.S. CONST., ART. II, §3, CLS.4. Such retention is not just legal authorized, but prudentially mandated by the other four other social benefits the Conscience Regulation clearly protects and, if enforced, will surely advance: (1) patient access to health care, particularly in rural areas or among medically underserved populations where faith-based health care providers and entities are now free in good conscience to serve; (2) the preservation

of the patient-physician relationship that can only be preserved where both parties to that relationship maintain their freedom of choice in good conscience to seek or provide the requisite health care; (3) protecting the Hippocratic and faith-based healthcare professionals and entities from the widespread unlawful discrimination against them well-documented in the Department's rulemaking record and thereby better ensuring the continuing services of these essential healthcare professionals and entities; and (4) heeding the overwhelming bi-partisan public support for the Conscience Regulation and opposing its rescission as demonstrated in the most recent polling information.

Interests of Medical & Legal Professionals Protecting Conscience in Healthcare

The CHRISTIAN MEDICAL ASSOCIATION (CMA) is a nonprofit national organization of Christian physicians and allied healthcare professionals with over 15,000 members. In addition to CMA's physician members, CMA has associate members from a number of allied healthcare professions, including nurses and physician assistants. CMA is opposed to the practice of abortion as contrary to Scripture, a respect for the sanctity of human life, and traditional, historical and Judeo-Christian medical ethics. Many CMA members are employed by, licensed by, or hold credentials with governments or other agencies, institutions, and organizations who receive federal funding from the Department of Health and Human Services. As such, these employers and bodies are prohibited by federal law, including the Church Amendments, the Public Health Service Act, and the Weldon Amendment from discriminating against CMA's members because they refuse to provide or refer for abortions, and would be required by 45 CFR Part 88 to certify compliance with these statutes. CMA has strongly advocated for conscience protections for pro-life medical professionals, intervening in lawsuits to defend these laws against challenges, and presently are proposed intervenors seeking to defend 45 CFR Part 88 in the three lawsuits challenging the regulations filed in Connecticut. CMA also filed comments supporting the promulgation of the regulation.

CHRISTIAN PHARMACISTS FELLOWSHIP INTERNATIONAL (CPFI) is a non-profit organization of Christian pharmacists with more than 1,000 members practicing in all 50 states. Its members include who are employed by, licensed by, or hold credentials with government or other agencies that receive federal funding covered by the Conscience Regulation. CPFI's members oppose abortion for religious, moral, and ethical reasons, and are committed to the sanctity of human life. CPFI describes its mission to include "[c]halleng[ing] and promot[ing] spiritual growth" and "[e]ncourag[ing] the advancement of knowledge and ethics in the practice of pharmacy"). Consistent with these views, on June 14, 2005 CPFI's board of directors approved a position clause concerning pharmacist's rights of conscience. In it, the organization made clear that it "supports the right of all pharmacists to refuse to dispense a prescription that goes against their moral conscience." *Id.* "No regulatory authority should be allowed to force a pharmacist to dispense a prescription against his/her best judgment or refer a patient to another healthcare provider. Likewise, a pharmacist should not engage in any activity that impairs a patient from seeking care from another provider." *Id.* CPFI has worked to advance pharmacists' rights of conscience, including its previous submission of comments supporting the promulgation of the Regulation.

THE FELLOWSHIP OF CHRISTIAN PHYSICIAN ASSISTANTS (“FCPA”) is a national fellowship of Christian physician assistants with over 600 members, and is a recognized caucus of the American Academy of Physician Assistants. FCPA is opposed to the practice of abortion. FCPA’s members practice medicine under the supervision of licensed physicians, and depend upon federal conscience protection statutes and the regulation implementing them to prohibit government and their institutional employers who receive federal grants from discriminating against them because they refuse to provide abortions or abortion referrals. FCPA has strongly advocated for conscience protections for pro-life medical professionals like themselves, intervening in lawsuits to defend these laws against challenge by California and NFPRHA and through their filing of comments supporting the promulgation of the Regulation.

CARE NET, a non-profit corporation, is the largest affiliation organization of Christian prolife pregnancy centers in North America, with 1,155 affiliated centers located in 49 states and the District of Columbia. All of the pregnancy centers affiliated with Care Net agree to its STANDARDS OF AFFILIATION, including a standard that the pregnancy center will not recommend, provide, or refer for abortions or abortifacients. This standard follows from the belief of Care Net and its affiliates that abortion is “contrary to the teaching and tradition of the Christian Church, to respect for the sanctity of human life, to traditional Judeo-Christian medical ethics, and to the good of clients.” Care Net is also “committed to defending the right of conscience of doctors, including those serving Care Net affiliate pregnancy centers, not to perform, refer for or otherwise assist in the practice of abortion.” It has actively supported conscience protections for its members who might otherwise be forced by state or local laws or by their employers to provide or refer for abortions. For example, it provided public comments to HHS supporting the promulgation of the Regulation, including comments recounting discrimination against one of its members because of her religiously motivated refusal to participate in abortions.¹ Because 43% of its pregnancy centers (that is, 477 of its affiliates) operate as medical pregnancy centers, the physicians at those medical centers operate under state licensing requirements. Moreover, approximately 15% of Care Net affiliate pregnancy centers (that is, 170 centers) receive state or federal funding. Care Net affiliates, therefore, have an interest in preserving the Regulation and its protections for health care providers who are employed by organizations that receive federal funding and who are licensed by or hold credentials with government or other agencies that receive federal funding. Additionally, if confronted with the choice of violating their rights of conscience, on the one hand, or of ceasing to provide medical care, on the other, Care Net pregnancy centers would likely shut down, with the physicians operating them leaving the medical profession or relocating to a different jurisdiction. The closing of Care Net pregnancy centers would especially harm rural or remote areas by leaving those areas unserved or underserved.

HEARTBEAT INTERNATIONAL is a non-profit, international network of pro-life pregnancy centers located in 43 counties, in 48 of the 50 states, the District of Columbia, including each of

¹ See also Comment on FR Doc # E8-19744, HHS-OS-2008-0011-4254.1, <http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=0900006480721b7f> (attaching comments made by Dr. Sandy Christiansen of Care Net before the PRESIDENT’S COUNCIL ON BIOETHICS) (hereinafter Care Net Comments).

the States (Connecticut, California, Illinois, Rhode Island, Oregon, New Jersey and New York) who on January 15, 2009 indicated their opposition to federal protection of conscience in healthcare by commencing or thereafter intervening, in an action in the United States District Court challenging the constitutionality of the Conscience Regulation. Heartbeat International's 893 U.S. affiliate pregnancy centers include adoption agencies, pregnancy support organizations, maternity homes, a hotline, post-abortion recovery organizations, pregnancy resource centers, medical pregnancy centers, and social service organizations. Its 409 medical pregnancy centers offer a variety of medical services, such as pregnancy confirmations, pre-natal care, testing for sexually transmitted diseases, and ultrasounds. Heartbeat International and its members oppose the practice of abortion for a variety of reasons, including religious beliefs based on the teachings and tradition of the Christian Church, morals beliefs about the sanctity of human life, and medical ethics. Accordingly, each Heartbeat affiliate pregnancy center agrees to abide by its Commitment of Care, which provides that the pregnancy center will not recommend, provide, or refer for abortions or abortifacients. Heartbeat International is also "committed to defending the right of conscience for doctors, including those serving Heartbeat International affiliate pregnancy centers, not to perform, refer for, or to otherwise assist in the practice of abortion" and has actively sought conscience protections for its members. Heartbeat's members have specific interests in upholding their rights of conscience under the Regulation because 49% of its pregnancy centers (that is, 409 centers) operate as medical pregnancy centers, and the physicians at those medical centers operate under state licensing requirements. Moreover, approximately 14% of its centers (that is, 122 centers) receive state or federal funding. Some of its member centers and the health care providers operating them will therefore be directly impacted by the outcome of this litigation, as they are employed by organizations that receive federal funding and are licensed by or hold credentials with government or other agencies that receive federal funding. If the Regulation were rescinded, Heartbeat pregnancy centers would likely close, as the physicians operating them would likely relocate or leave the medical profession rather than being forced to perform or assist in abortions. Because many members work in rural or remote areas, their withdrawal from practice would decrease the availability of medical care in those areas.

ADVOCATES INTERNATIONAL (AI) is an international organization of attorneys in over 150 nations, including hundreds of attorneys in the United States, who seek to do justice with compassion, including through its Global Task Forces on the Law of Life and Religious Freedom protecting the right of health care professionals and entities not to perform or refer for elective abortions as protected in international conventions and national or state laws and regulations. AI believes that healthcare professionals and entities have both a constitutional and statutorily protected right to enjoy at least the same rights of conscientious objection that attorneys in the United States enjoy in the selection of the clients they represent.

CHRISTIAN LEGAL SOCIETY (CLS) is a nonprofit, interdenominational association of approximately 3000 Christian attorneys, law students, judges, and law professors with members in every state and at over 140 accredited law schools. CLS' legal advocacy and information division, the Center for Law & Religious Freedom (the "Center"), works for the protection of religious belief and practice, as well as for the autonomy of religion and religious organizations from the government. The Center strives to preserve religious freedom in order that men and women might be free to follow their conscience, and because the founding instrument of this

Nation acknowledges as a “self-evident truth” that all persons are divinely endowed with rights that no government may abridge nor any citizen waive. Among such inalienable rights is the right of religious liberty. CLS also defends the sanctity of human life. The Center has thus represented medical professionals defending their rights of conscience in numerous lawsuits in both state and federal courts.

**Commentary of Medical & Legal Professionals
in Support of the Conscience Regulation and Opposition to its Rescission**

In light of our above-described interests, we offer the following comments on each of the questions propounded by the Department in its rescission proposal (questions to be reworded to argue our conclusions):

- I. THE REGULATION PROPERLY ACKNOWLEDGES AND SEEKS TO PROVIDE LAWFUL REMEDIES TO THE WELL-DOCUMENTED DETERMINED REFUSALS BY CERTAIN FEDERAL GRANTEEES SEEKING TO AVOID COMPLIANCE WITH FEDERAL LAW PROTECTING DISCRIMINATION AGAINST HEALTHCARE PROFESSIONALS AND ENTITIES WHO CONSCIENTIOUSLY OBJECT TO PROVIDING AND REFERRING FOR ABORTION AND OTHER SERVICES.

The Department has requested “[i]nformation, including specific examples where feasible, addressing the scope and nature of the problems giving rise to the need for federal rulemaking and how the current rule would resolve those problems.” The fundamental need that the regulations address is the lack of knowledge among medical professionals, the Department’s grantees, and the public of the statutory conscience protections. This is easily demonstrated through arguments advanced by an array of states, Planned Parenthood, and the National Family Planning and Reproductive Health Association challenging first the constitutionality of the Weldon Amendment, *National Family Planning and Reproductive Health Association (NFPRHA) v. Gonzales*, 468 F.3d 826 (2006) and *California v. United States*, 2008 WL 744840 (N.D. Cal. 2008), and having failed in that goal of now challenging the HHS regulations. The Christian Legal Society’s Center for Law & Religious Freedom (“The Center”) represented organizations of pro-life medical professionals, including CMA and FCPA, as intervenors successfully defending the Weldon Amendment in both cases challenging that law. The Center now represents CMA and other organizations of medical professionals as proposed intervenors seeking to defend the subject regulation in three lawsuits filed in Connecticut, *State of Connecticut, et. al. v. United States of America, et al.*, 09-cv-54 (D. Conn.); *National Family Planning & Reproductive Health Ass’n v. Leavitt*, 09-cv-55 (D.Conn.); and *Planned Parenthood, et. al. v. Leavitt*, 09-cv-57 (D.Conn.). The arguments of NFPRHA, Planned Parenthood, and the states in these cases demonstrate a basic lack of understanding of the existing federal conscience protections applicable to them as federal grantees. As recipients of substantial HHS funding, their lack of knowledge of the existing protections for medical professionals’ rights of conscience — and their own obligations under those laws — illustrates the necessity of the conscience regulations.

National Family Planning and Reproductive Health Ass'n v. Gonzales:

On December 13, 2004, just five days after the Weldon Amendment was signed into law, the National Family Planning and Reproductive Health Association filed a lawsuit against then Secretary Thompson and others seeking to enjoin its enforcement. “NFPRHA’s membership comprises virtually all of the domestic family planning field including clinicians, administrators, researchers, educators, advocates and consumers.” NFPRHA Complaint, (3 App. A, ¶5). These NFPRHA members include “approximately 4000 entities that receive Title X funds and are located throughout the United States. They are comprised of State health and social service departments, family planning councils, hospital-based clinics, and independent clinics and providers.” (4-5 App. A, ¶ 18). In addition to funding under Title X, NFPRHA’s members also receive funding from, *inter alia*, “public insurance (e.g. Medicaid), and from other federal and state grant programs.” (5 App. A).

NFPRHA argued that the five-day-old Weldon Amendment threatened, for the first time, to prevent its members from forcing medical professionals to provide abortion referrals in violation of their consciences. NFPRHA candidly admitted in its court filings that “health care professionals on [its members’] staff[s] who will not refer will almost certainly be discriminated against.” NFPRHA’s Motion for TRO, 15, (13 App. A). NFPRHA even argued that its members’ doctors have a First Amendment right to compel their staff members to give abortion referrals in violation of their consciences. NFPRHA’s Appeal Brief, 19 n.7, (22 App. A); NFPRHA’s Motion for TRO, 18 (16 App. A) (arguing that it is “inconceivable” that in enacting the Weldon Amendment Congress “intended to prevent health care entities such as clinics and doctors’ offices from having control over their staffs”); NFPRHA’s Complaint, ¶ 39 (8 App. A).

This argument demonstrates NFPRHA’s lack of understanding of the Church and Coats-Snowe Amendments (much less Title VII of the Civil Rights Act, and the First Amendment to the U.S. Constitution) and the restrictions these place on its members’ ability to exert “control over their staffs” by “discriminat[ing] against” healthcare workers who object to providing abortion referrals. (15 App. A). The plain text of the Coats-Snowe Amendment, applicable to NFPRHA’s members as Title X grantees, has prohibited since 1996 discrimination against medical professionals that will not provide abortion referrals. 42 U.S.C. § 238n. Thus, as to individual medical professionals’ rights of conscience it is virtually identical to the Weldon Amendment.

Moreover, for over three decades the Church Amendment has expressly prohibited grantees under any HHS program from requiring anyone to participate, in conjunction with the program, in any activity “contrary to his religious beliefs or moral convictions.” 42 U.S.C. 300a-7(d). In 2000, Secretary Shalala confirmed that the Church Amendment forbids recipients of Title X funds, like NFPRHA’s members, from compelling their staff to provide abortion referrals or counseling. 65 Fed. Reg. 41274-75 (July 3, 2000). Yet, NFPRHA has never challenged these laws. The D.C. Circuit thus rejected NFPRHA’s Weldon Amendment challenge, noting its pre-existing obligations under Church and Coats-Snowe and holding that, as to individual medical professionals’ conscience rights, the Weldon Amendment produced no “material change ... in terms of [NFPRHA] members’ obligations to respect individual views on abortion.” *NFPRHA v. Gonzales*, 468 F.3d 826, 830 (D.C. Cir. 2006).

NFPRHA also argued that the Weldon Amendment's prohibition on discrimination against healthcare workers who refused to perform or refer for abortions was too ambiguous to give their members notice of what was required of them. Professing ignorance as to whether "NFPRHA members that insist on their personnel providing a referral for an abortion at a patient's request violate Weldon," (19 App. A), NFPRHA blamed the department for a lack of regulations answering this question. (18 App. A). The regulations should help answer that question, removing any doubt for NFPRHA and its members that they may not compel their staff to provide abortion referrals in violation of their conscience. However, NFPRHA's argument further demonstrates that its members were unaware of their obligations under the 1996 Coats-Snowe Amendment to the Public Health Services Act, 42 U.S.C. §238n, which used language identical to the Weldon Amendment in protecting medical professionals' rights of conscience, as well as the similar protections of the Church Amendment.

The unmistakable lesson from NFPRHA's unsuccessful lawsuit against the Weldon Amendment was that the organization lacked knowledge of its obligations under pre-existing federal law. This lack of knowledge led NFPRHA to see the Weldon Amendment as a sea change when many if not all of the actions it claimed the Weldon Amendment would prohibit it from taking had already been prohibited for years — even decades. That NFPRHA, a major recipient of Title X funding — and whose members include state and local government entities — was so unaware of its pre-Weldon legal obligations to protect the conscience rights of its employees demonstrates the need for the conscience protection regulations.

California v. United States:

In January 2005, just a little over a month after the Weldon Amendment was signed into law, the State of California also sued the federal government seeking to block its enforcement. In 2005 California received over twenty-eight billion dollars from the Department of Health and Human Services. Dec. of Tim Muscat, ¶ 3, Ex. A (26-34 App. A) (Supplemental Response of Defendant Michael Leavitt to Interrogatory 13). California receives more funding from the Department than any other state. Thus, one should expect California, of any state, to investigate and understand its obligations.

In *California v. U.S.*, the state argued that the Weldon Amendment interfered with California's "sovereign right" to enforce a California law requiring medical professionals to perform or refer for some abortions. 2008 WL 744840, 1 (N.D. Cal. 2008). See also, California's Memorandum in Support of MSJ, p. 9-10, (36-37 App. A); Dec. of Bill Lockyer (then California Attorney General), ¶¶ 8-9 (44 App. A) (stating that the Attorney General could not understand California's obligations under the Weldon Amendment and that Weldon would force California to forego enforcement of its laws requiring medical professionals to perform or refer for some abortions). The California law at issue, Cal. Health & Safety Code § 1317, would have authorized the state to criminally prosecute medical professionals who did not perform or refer for an abortion against their conscience in virtually any circumstance — so long as the state believed (even in retrospect) that the abortion was needed to protect a woman's emotional or familial "health." See California Complaint, ¶¶ 23, 26, (46 App. A) (affirming that California

law authorizes its state agencies to take disciplinary action against medical professionals who will not provide abortion related services in some ill-defined circumstances).

In challenging the Weldon Amendment, California demonstrated its lack of understanding of the Church and Coats-Snowe Amendments, arguing, like NFPRHA, that the Weldon Amendment alone prevented it from mandating abortions and abortion referrals. California claimed, “[w]ere it not for the Weldon Amendment,” the state could enforce its state law and require medical professionals to perform or refer for any abortion it deemed medically necessary. California’s Memorandum in Support of MSJ, 24, (41 App. A). The state claimed that the newly enacted Weldon Amendment would force it to choose between enforcing this state law to compel doctors to perform and refer for abortions or forego some federal funding, including that from the Department of Health and Human Services. (44 App. A) (Attorney General Lockyer testifying Weldon Amendment would leave California with “no choice but to refrain from enforcing” the state law mandating abortions be provided in some cases.) This argument ignored that for over three decades prior to the Weldon Amendment federal law already forbade California from requiring medical professionals to perform or refer for abortions. California neither challenged nor even acknowledged the existence of the Church and Coats-Snowe Amendments in *California v. United States*.

As with NFPRHA, both Coats-Snowe and Church would have also prohibited California from discriminating against medical professionals who would not perform or refer for abortions. Although the Weldon Amendment provides additional protections for healthcare institutions and insurance providers, its prohibition on discrimination against individual medical professionals who will not perform or refer for abortions is identical to that in the 1996 Coats-Snowe Amendment. 42 U.S.C. 238n. The Church Amendment also has prohibited such compelled participation in an act in violation of one’s conscience for over thirty years. 42 U.S.C. 300a-7(d); 65 Fed. Reg. 41275 (July 3, 2000). Yet, the State of California argued that the Weldon Amendment had changed the law and, for the first time, prevented it from criminally punishing a doctor that would not perform an abortion. (46 App. A).

Nor can California’s failure to address the Church and Coats-Snowe Amendments be dismissed as simple litigation strategy. These amendments would have continued to prevent the state, as an HHS grantee, from mandating that medical professionals perform or assist in abortions even had the Court enjoined enforcement of the Weldon Amendment. Thus, California’s alleged injury from the Weldon Amendment was not redressible by the Court since California would have remained subject to these other federal laws even if it had prevailed. California’s failure to address the Church and Coats-Snowe Amendments must be understood then not as a tactical plan but as a mistake borne of a lack of knowledge. As California was unaware of the requirements of the Church and Coats-Snowe Amendments, it cannot be presumed that other smaller federal grantees are aware of these laws and understand that as recipients of HHS funding they may not discriminate against medical professionals who do not perform or refer for abortions.

Additionally, the California Medical Association and Planned Parenthood of California jointly filed an amicus brief in *California v. United States* advocating for the state’s right to criminally prosecute medical professionals that would not perform or refer for some abortions.

The Weldon Amendment, they argued, would unconstitutionally force California to choose between enforcing this law and its federal funding. Brief of Amici Curiae California Medical Association and Planned Parenthood Affiliates of California, 7-8 (48-49 App. A). But, as explained above, the Church and Coats-Snowe Amendments already prohibited California from requiring individual medical professionals to perform or refer for abortions against their conscience. Like that of California itself, the *amici*'s glaring omission of any acknowledgement that the Church and Coats-Snowe Amendments, prior to and in addition to the Weldon Amendment, also protect medical professionals from being discriminated against because of their refusal to perform or assist in abortions illustrates their lack of understanding of these laws.

Connecticut v. United States (and consolidated cases):

On January 15, 2009, seven states, Connecticut, Illinois, California, New Jersey, Massachusetts, Rhode Island, and Oregon, filed a lawsuit in Connecticut challenging 45 CFR Part 88. *State of Connecticut, et. al. v. United States of America, et al.*, 09-cv-54 (D. Conn.). Two other lawsuits, *National Family Planning & Reproductive Health Ass'n v. Leavitt*, 09-cv-55 (D.Conn.) and *Planned Parenthood, et. al. v. Leavitt*, 09-cv-57 (D.Conn.) were filed the same day and consolidated under the *State of Connecticut* case. The pleadings in these cases further demonstrate the continuing lack of knowledge of the existing statutory protections among these large and prominent HHS grantees.

In its Complaint, NFPRHA asserts that the regulations “directly conflicts with federal laws requiring Title X projects to provide pregnant women with non-directive options counseling.” 51 App. A. NFPRHA further complains that the regulations forbid Title X grantees from discriminating against persons that “refuse to provide information about abortion,” and that permitting conscientious refusals would jeopardize their funding under Title X. (51 App. A).² Once more, HHS has already solved this problem for NFPRHA when Secretary Shalala explained that the Church Amendment, 42 U.S.C. 300a-7(d), requires Title X grantees to accommodate their employees’ objections to providing abortion counseling and referrals. Fed. Reg. 41274 (July 3, 2000). The grantee itself must provide the counseling, but the grantee must also respect their employees’ conscience rights, arranging for willing employees to provide abortion counseling and referrals and not demanding that every employee do so despite their conscientious objections. Even nine years after Secretary Shalala’s explanation of the law and after the D.C. Circuit’s rejection of NFPRHA’s identical argument in *NFPRHA v. Gonzales*, 468 F.3d 346, 350 (D.C. Cir. 2006), NFPRHA continues to insist that its members, including governmental institutions like county health clinics, are required by Title X to compel employees to provide abortion counseling and referrals in violation of their conscience. NFPRHA’s

² Planned Parenthood similarly claims, despite the explanation from Secretary Shalala to the contrary, that protecting conscience rights of individual employees conflicts with Title X’s requirement that a clinic provide abortion counseling. (53 App. A). The implication here, as with the claim by NFPRHA, is that despite the Church Amendment’s protections, Planned Parenthood has been resolving this supposed conflict by disrespecting the conscience rights of its employees in violation of the clear requirements of 42 U.S.C. 300a-7(d).

continued lack of understanding of its obligations under the law demonstrates the need for regulations requiring its members to bring their policies into compliance with the law.

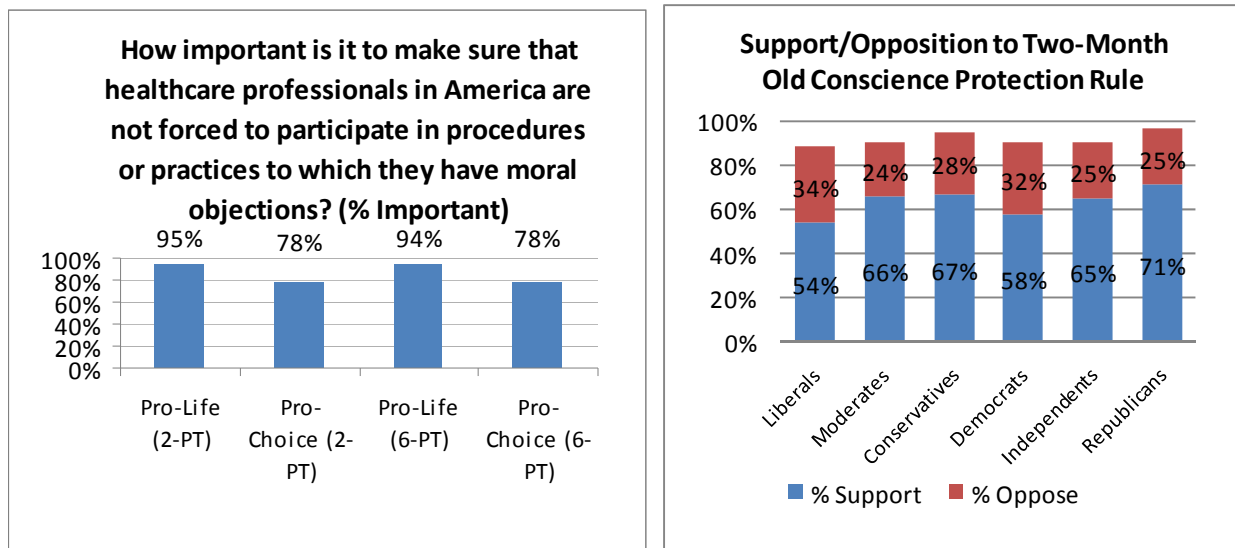
In the States' Complaint, they assert that "[N]othing in the language of the Church Amendments, the PHS Act or the Weldon Amendment or the legislative history authorizes HHS to withdraw or withhold HHS funds from States because they mandate the availability of contraception, including emergency contraception." (55 App. A). Yet, the Church Amendments specifically prohibit certain HHS grantees from discriminating against any medical professional on the basis that they "refused to perform or assist in the performance of any [lawful health service]," and generally prohibit HHS grantees from requiring any individual to perform or assist in the performance of any part of a health service program or research activity if it would violate their religious beliefs or moral convictions. 42 U.S.C. 300a-7(C)(2) and 42 U.S.C. 300a-7(d). The States' claim that they and other federal grantees have *no* obligation to avoid discrimination against those medical professionals that object to proscribing and dispensing Plan B (or for that matter participation in assisted suicide) simply ignores their obligations under the broader provisions of the Church Amendments.

The current regulations do not impose any new substantive obligations on HHS grantees. Rather, they simply require grantees to certify that they comply with the existing protections for medical professionals' rights of conscience. But as the above illustrates, holding HHS grantees responsible for legal requirements that they have ignored for decades is no small thing. Federal law explicitly protects medical professionals from being forced to perform or refer for abortions against their conscience, and in many cases prohibits grantees from requiring medical professionals to violate their conscience even outside of the abortion context. Yet, because the statutes provide no clear means for a medical professional discriminated against because of their conscientious objections to seek redress, they are too often ignored. The current regulations are a necessary and important insurance that HHS grantees will not use federal taxpayers' money to compel persons to perform abortions or provide abortion referrals in violation of their consciences and that HHS will take seriously any violation of these laws by its grantees.

II. RECENT POLLING DATA CONFIRMS THE RULEMAKING RECORD THAT CONSCIENCE REGULATION PROMISES TO INCREASE, NOT REDUCE, ACCESS TO INFORMATION AND HEALTH CARE SERVICES, PARTICULARLY FOR LOW-INCOME WOMEN AND FOR PATIENTS IN MEDICALLY UNDER-SERVED AREAS.

On behalf of the Christian Medical Association (CMA), the polling company™, inc./WomanTrend conducted a nationwide survey of 800 American adults and an online survey of 2,865 members of faith-based medical organizations.³ Both surveys strongly support the Conscience Regulation and oppose its rescission.

A. THE NATIONWIDE SURVEY OF AMERICAN ADULTS (18+) SHOWS STRONG, BROAD-BASED SUPPORT FOR THE CONSCIENCE PROTECTIONS ENFORCED IN THE CONSCIENCE REGULATION AND OPPOSITION TO RESCISSION OF THE CONSCIENCE REGULATION



1. Americans of All Demographic Characteristics and Political Stripes Seek a Shared 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.

³ On behalf of the Christian Medical Association, the polling company™, inc./ WomanTrend conducted a nationwide survey of 800 American adults. The overall margin of error for the survey is ± 3.5% at a 95% confidence interval. Full statements of methodology can be found at: http://www.freedom2care.org/docLib/20090407_090408SurveyPressPacket.pdf. CMA will also be separately submitting its further comments on the implications of this polling data.

2. 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 “prochoice,” 94% who voted for Senator McCain in November 2008 and 80% who cast a ballot for (now) President Obama.

3. 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 regulations 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.

4. Americans Support Regulations that Protect them Acting Against Their Conscience

Without any names or political parties being mentioned, respondents were provided with a short description of the new conscience protection regulation 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 regulation outpaced opposition by a margin of more than 2-to-1 (63% vs. 28%). Intensity favored it, 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.

5. Americans Oppose any Efforts to Remove Such Regulations

Next, respondents were asked to react to the proposed rescission of the Conscience Regulation: “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 Regulation 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 regulation (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 conscience protection. 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.

6. Americans are Less Likely to Support a Member of Congress 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.

B. THE RECENT SURVEY OF 2,865 FAITH-BASED MEDICAL PROFESSIONALS REPRESENTING THE GROUP CURRENTLY SUFFERING OR MOST LIKELY TO BE THREATENED WITH THE UNLAWFUL DISCRIMINATION THE CONSCIENCE REGULATION SEEKS TO PREVENT OR MITIGATE SHOW THE CONSCIENCE REGULATION IS NECESSARY AND MEDICAL ACCESS WILL SUFFER IF DOCTORS ARE FORCES TO ACT AGAINST THEIR MORAL OR ETHICAL CODES.

Without the Conscience Regulation, health care access for hundreds of thousands of patients nationwide will be threatened and healthcare costs will rise because of lack of facilities to provide needed services. Each year, more than 1 in 5 patients is cared for in a faith-based hospital. Without the effective enforcement of federal conscience laws promised by the Conscience Regulation, many faith-based hospitals that provide services to millions may shut down rather than be forced to do or refer for abortions or other medical procedures violative of their good conscience.

Congress’ enactment of the Church Amendment, one of the federal laws being enforced by the Conscience Regulation, was, in large part, a response to a federal court decision requiring a

Catholic hospital to perform a medical procedure to which it was conscientiously opposed by virtue of its receipt of federal funds and the fact it was the only facility capable of performing the sterilization procedure in the area. *Taylor v. St. Vincent's Hospital*, 523 F.2d 75 (9th Cir. 1975). Faced with this policy debate between “access” and “conscience,” Congress weighed in favor of conscience and the Ninth Circuit affirmed the lower court’s reversal of its original opinion and its judgment in favor of the hospital in light of the Church Amendment.

In light of *Taylor* and Congress’ enactment of the Church Amendment establishing as a matter of federal law that conscience prevails over access to procedures covered by the Church Amendment, including abortion and sterilization, it seems particularly inappropriate for the Rescission Proposal to even contemplate giving weight to public comments arguing that the Conscience Regulation would limit “access to [these] services” especially for those in rural areas or otherwise.” 74 Fed. Reg. at 10209. Since such arguments have already been specially considered and expressly rejected by Congress by passing the statutes that are simply being enforced by the Conscience Regulation, the Department lacks the statutory authorization to give any weight to such arguments in its rescission deliberations.⁴

In any event, a recent national poll shows that medical access will suffer, not be enhanced, if the Conscience Regulation is rescinded and doctors are forced to act against their moral and ethical codes.

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.⁵ 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.”

⁴ See, e.g., Cong. Rec. S9595 (March 27, 1973) (statement of Senator Church); Cong. Rec. S9596 (March 27, 1973) (statement of Sen. Stevenson; Cong. Rec. S9601 (March 27, 1973) (colloquy between Senators Nelson and Church); Cong. Rec. H17453 (May 31, 1973) (statement of Congressman Froelich).

⁵ 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.

Asked how rescission of the Conscience Regulation 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.

Given the fact that such communities are so often only served by faith-based health professionals and entities who serve such communities for charitable faith-based reasons rather than commercial advantage, it would appear that rescission of the Conscience Regulation would in fact reduce access to medical services, particularly in the areas most in need of faith-based medical professionals.

2. Conscience Protection Rule Fundamental and Necessary in the Medical Profession

This conclusion is amply supported by the fact that fully 97% of members who participated in the survey supported the two-month-old Conscience Regulation and 96% objected to its rescission. 95% of physicians surveyed agreed, “I would rather stop practicing medicine altogether than be forced to violate my conscience.”

III. **THE CONSCIENCE REGULATION PROVIDES SUFFICIENT CLARITY TO MINIMIZE THE POTENTIAL FOR HARM RESULTING FROM ANY AMBIGUITY AND CONFUSION THAT MAY EXIST BECAUSE OF THE RULE.**

Those who argue that the Conscience Regulation is ambiguous or confusing actually demonstrate how statutorily authorized, carefully worded to implement federal law, and necessary the Conscience Regulation is.

Such opponents, far from being actually confused, seem to be making two arguments each of which ought to be dismissed because it is amply addressed in the Conscience Regulations or empirically unsupported.

First, some argue that protecting conscientious objection will restrict access to health care, not just abortion and sterilization, but some fear access to contraception will be restricted. This argument may be initially dismissed insofar as it appears more speculative than based upon any empirical evidence. The recent case of *Storman, Inc. v. Selecky*, 526 F.3rd 406 (9th Cir 2008), is illustrative.

In *Stormans*, a pharmacy and two pharmacists sued Washington state officials, seeking to enjoin enforcement of regulations making it sanctionable for a pharmacy to permit pharmacists to refuse to fill lawful prescriptions for the “morning after” contraceptive because of religious or moral objections, and refer the patient to a nearby pharmacy that would dispense the drug. During the trial, neither the state officials, nor the seven individuals who intervened on the side of the state, presented any evidence of a woman being denied access to the drug. *Stormans, Inc. v. Selecky*, 526 F.3d 406, 408-09 (9th Cir. 2008). The most “burdensome” result involved a woman who was delayed no more than thirty minutes in obtaining Plan B after her original request. This minor delay should not outweigh the right of healthcare professionals and

institutions to provide care in a manner consistent with their consciences as enforced by the Conscience Regulation.⁶

In any event, as described above, the Conscience Regulation actually protects access to health care.

Finally, even if access to medical care were arguably impacted, the federal laws enforced by the Conscience Regulation protects the right of “any individual conscientiously refuse to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by [HHS] if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.” 42 U.S.C. § 300a-7(d). Substantial majorities in Congress, including members of both parties have passed the conscience protection laws and they have been signed into law by Presidents Nixon, Carter, Clinton, and Bush. The balancing of interests has been performed by the elected branches and the determination has been repeatedly made that professionals should never be forced to perform or assist in any medical procedures in violation of their conscience. There is no authority for HHS to reweigh these supposedly competing interests in light of the clear statutory language.

Second, some argue that the Conscience Regulation is unnecessary because federal law already protects conscientious objection in health care. This objection fails to acknowledge the well-documented fact that *in practice*, the federal laws have been under-enforced by the government. HHS’s Office of Civil Rights has published a list of at least 18 different nondiscrimination laws and regulations it currently enforces, but that list fails to include any of the federal conscience provisions.⁷ Thus, without the Conscience Regulation, a conscience discrimination complainant has no designated body within HHS that is responsible for handling the complaint. More importantly, without the Conscience Regulation, there is no assurance that such non-compliance by a federal grantee will be remedied and brought into compliance. It is telling that despite the well-documented record of conscience-based discrimination in health care, there appear to be no case where HHS has even counseled a grant or contract recipient on compliance with federal conscience laws, let alone terminated a contract or grant or demanded the correction of such non-compliance. This fact alone suggests the need for the Conscience

⁶ See also David Hyman & Robin Fretwell Wilson, HEALTH CARE REGULATION: THE YEAR IN REVIEW 6-7 (MAY 4, 2007)[“refusals to dispense contraceptives [for reasons of conscience] do not appear to have erected a genuine barrier to women’s access –instead it has been more of a temporary inconvenience....The relative ease with which women can find [emergency contraception] is not particularly surprising. Women can get such contraception at Planned Parenthood’s network of nearly one thousand across the country, many of which are in rural or impoverished areas. A number of online drugstores will also deliver overnight at a patient’s home.”]

⁷ See *OCR Nondiscrimination Laws, Regulations and Standards*, available at: <http://www.hhs.gov/ocr/civilrights/resources/laws/index.html>

Regulation to correct HHS' own historic "ambiguity and confusion" about its obligation in practice to enforce these federal laws requiring conscience non-discrimination in healthcare.

IV. THE OBJECTIVES OF THE CONSCIENCE REGULATION CANNOT BE REASONABLY BE ACCOMPLISHED THROUGH NON-REGULATORY MEANS, SUCH AS OUTREACH AND EDUCATION.

The Department has asked whether the objectives of the conscience protection rule can be achieved "through non-regulatory means, such as outreach and education." As described in Part I above, despite statements from even the Clinton Administration HHS Secretary explaining the interplay between Title X's requirements and the Church Amendments' conscience protections, some of the largest Title X grantees, including NFPRHA and Planned Parenthood, continue to refuse to acknowledge their obligations to respect conscience rights. Indeed, even after losing court battles making this same contention, NFPRHA continues to insist that county health departments and other NFPRHA members are obligated by Title X regulations to discriminate against those who object to counseling or referring persons for abortions. *Supra*, p. 7. Merely informing NFPRHA and Planned Parenthood of these obligations once again, is unlikely to be persuasive. Their repeated refusal to acknowledge the law demonstrates that only the risk of actual HHS enforcement action will cause these organizations to meet their obligations.

Recent polling and the testimony of numerous health care providers summarized below also affirms the necessity of the Conscience Regulation.

A. Most Health Care Professionals Say the Conscience Regulation is Needed to Effectively Enforce Existing Federal Laws Protecting Conscience.

Nearly nine-in-ten (87%) members surveyed in the above-described poll – 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."

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.”
 - 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.”
- B. The Extensive Testimony of Health Care Professionals Demonstrates that the Conscience Regulation is Needed to Effectively Enforce Existing Federal Laws Protecting Conscience.

In addition to this polling data, the rulemaking record already before the Department supporting the Conscience Regulation contains ample evidence that outreach and education are insufficient to remedy the chronic and intentional unlawful conscience-based discrimination in healthcare.⁸

The following recitation of a few examples compiled by CMA and others only strengthens this conclusion.

1. American College of Obstetricians and Gynecologists limits conscience

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." When a December 2007 policy publication by the American Board of Obstetrics and Gynecology (ABOG) linked board certification to compliance with ACOG ethical positions, life-affirming Ob-Gyns faced the potential loss of board certification and the loss of their livelihood.

⁸ Attached as Appendix B to these comments is a more extensive compilation of “real life stories” collected by CMA demonstrating the need for the Conscience Regulation.

2. Intern loses training privileges because of abortion views

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.'"

3. 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."

4. Nurse practitioner terminated over abortion referral issue

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."

5. Registered Nurse faces job loss for not participating in abortions

"I am a Registered Nurse currently employed at an outpatient podiatry surgery center. Last week; I was told by my administrator that OB/GYN doctors had signed on to perform surgeries at our center. There is a very large Catholic Hospital across the street that specializes in OB/GYN services. So it was very strange that these doctors would come to our small podiatry center. Our administrator stated there was a possibility abortions would be performed at our surgery center. Three of the four nurses stated they wouldn't assist with abortions due to convictions/ethical beliefs. Our administrator responded with, 'If you have a problem assisting with abortions, we have NO PLACE FOR YOU here.' She stated, 'As nurses; you don't have a CHOICE!'"

6. Medical student may not choose Ob-Gyn because of abortion coercion

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."

7. Medical student: no conscience consideration in abortion assistance

"As a medical student on my OB/GYN rotation I was randomly assigned to an OR one morning to assist in a procedure. No information was given to me by the intern or resident on service. I found myself witnessing an early second trimester abortion on a women in her late thirties who was obviously distressed. No consideration for my rights of conscience was ever discussed with me; before or after this unfortunate circumstance. Medical students then; and even more so now; are expected to put up or shut up when faced with interventions and therapies they consider morally illicit. This underscores the need for the recent HHS ruling which mandates proper consideration of a health care provider's rights of conscience."

8. Physician: Rejected from medical school on sole question of abortion

"When applying for medical school in 1988; I was interviewing at [name withheld] Medical School in NYC. During the second of the two interviews; I was asked how I would treat a 16 year old woman coming in asking for an abortion. I stated that I would counsel her on the facts of what an abortion does; and that I would not be able to do this procedure for her as it would violate my conscience. I would further urge her to reconsider her choice. But; if she persisted; then I would give her the name of a trusted colleague from whom she could seek a medically safe abortion. That was the only question asked and I was dismissed without any further questions being asked. I later received a rejection letter from [name withheld] Medical School. Thankfully; my qualifications were recognized by Harvard Medical School and I was given the opportunity to attend there instead; graduating in 1992."

9. Military physician required 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-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."

10. Catholic physician "blackballed from education"

"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."

11. 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 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."

12. Medical student castigated for pro-life views, shown aborted baby

Mark J. Heulitt, MD: "When I was a medical student, I refused to care for patients who were having an abortion and had to go through many hoops to have my rights to not be involved with this procedure be accepted. While I was a student on OB rotation, one of the nurses asked if she could speak to me in private and brought me to a utility room off the OR. In there she pulled towel off of a basin which contained an aborted fetus. She looked me straight in the eye and said, 'What are you afraid of--this is just tissue,' and told me to 'grow up.' I told her I would pray for her and left the room. I will never forget the anger in her eyes over my decision not to be involved with this procedure. The bias we face is many times subtle but poignant. We must practice our faith and stand up for our beliefs."

IV. CONCLUSION

As demonstrated by the foregoing comments, despite its broad-based public support and protection under federal law, actual government enforcement of the right of conscience in health care has largely been honored in the breach. To remedy this problem and pervasive discrimination being experienced by health care providers and entities covered by federal law, the Conscience Regulation should not be rescinded. Instead it should be fully implemented, including its provisions requiring federal grantees to certify their compliance with all federal laws requiring non-discrimination on the basis of conscience in health care.

Respectfully submitted for:

Medical and Legal Professionals
Protecting Conscience in Healthcare

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