

How Religious Refusals to Provide Information About Reproductive Health Services Can Violate Patients' Right to Informed Consent

Across the nation, patients are being denied reproductive health services, information and referrals by institutions and individuals who believe that their religious or moral beliefs come before patients' needs. The refused services might include abortion, surgical sterilization, or infertility treatment. Contraceptive counseling and services are also the subject of religious refusals, including emergency contraception ("EC" or the "morning-after pill"), even in instances of rape.

Patients who are refused care cannot always just go someplace else to get it. Because some providers also claim a right to withhold information about any treatment to which they have a moral objection, patients may not even be aware of their treatment options or where such services can be obtained. Refusals can result in the denial of informed consent, which can have serious consequences for patients' health and lives.

What is informed consent?

The principle of informed consent is essential to the provider/patient relationship. It holds that patients have a right to be given the full range of treatment options for their condition and told the risks and benefits of each alternative. The right to informed consent has also enjoyed longstanding protection under federal and state law. The fundamental, constitutionally-protected right to make medical decisions is grounded in the guarantees of liberty and privacy found in the 14th Amendment to the U.S. Constitution. In addition, federal regulations require all hospitals receiving Medicare funds to provide informed consent:

(2) The patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care. The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

Centers for Medicare & Medicaid Services, 42 CFR Part 482.13, Hospital Conditions of Participation: Patients' Rights. Finally, most states include the failure of a medical professional to give informed consent in their medical malpractice laws. Patients who are not provided, or even informed of, the standard of care may also sue for malpractice.

The right to informed consent is firmly established not only in federal and state law but also in medical ethics. The American Medical Association (AMA) provides detailed guidance on what is required for full informed consent:

(1) Health care professionals should inform patients or their surrogates of their clinical impression or diagnosis; alternative treatments and consequences of treatments, including the consequence of no treatment; and recommendations for treatment. Full disclosure is appropriate in all cases, except in rare situations in which such information would, in the opinion of the health care professional, cause serious harm to the patient.

American Medical Association, Informed Consent and Decision-Making in Health Care, H-140.989. The AMA is also clear that "withholding medical information from patients without their knowledge or consent is ethically unacceptable." See AMA, E-8.082 Withholding Information from Patients. Further, the AMA, E-8.08 regarding informed consent states:

[a] patient's right of self-decision can be effectively exercised only if the patient possesses enough information to enable an informed choice . . . Informed consent is a basic policy in both ethics and law that physicians must honor, unless the patient is unconscious or otherwise incapable of consenting and harm from failure to treat is imminent.

Although the principle of informed consent is deeply enshrined in both law and medical ethics, providers continue to assert a right to refuse patients information and referrals based on their personal religious beliefs. In so doing, refusing providers run a very high risk of violating this principle and leaving patients without the critical facts they need to give full consent to and obtain appropriate medical treatment. Some examples of these refusals include:

⊙ **Refusals to provide information regarding abortion**

- A doctor may refuse to tell a patient with a chronic medical condition that continuing her pregnancy could be detrimental to her health or life, and prevent her deciding whether or not to incur those risks and the impact they would have on her and her family.
- A provider who thinks that a patient will terminate her pregnancy if given certain information regarding fetal anomalies may claim that his or her religious beliefs entitle him or her to withhold information from the patient.

⊙ **Refusals to provide information regarding emergency contraception**

- Many women do not know about emergency contraception, a medication that prevents pregnancy when taken soon after unprotected sex. If a doctor with religious objections to EC refuses to tell a rape victim about this time-sensitive medication, she faces an unnecessary risk of becoming pregnant because of denial of information about her treatment options.
- In one instance, a pharmacist convinced a patient that her prescription for Plan B, the emergency contraceptive, was actually a prescription for the abortion pill, providing her with medically inaccurate information. The patient did not want to have an abortion and decided not to fill her prescription. She got pregnant, and ultimately chose to have a surgical abortion since she decided that her family was already financially strained and could not support another child.

⊙ **Refusals to provide information regarding infertility treatment**

- A doctor who is opposed to assisted reproduction may not inform someone who needs medical treatment that reduces fertility (such as radiation to treat testicular or ovarian cancer) that sperm banking or egg-retrieval can increase the patient's chances of having biologically-related children. If the patient is not given this information before radiation treatments, that opportunity is lost forever.
- If a patient does not know that she can take steps to preserve her fertility, she might choose a less aggressive treatment that saves her fertility over a more aggressive and effective treatment.

⊙ **Refusals to provide information regarding surgical sterilization**

- Doctors agree that it is medically preferable for women who have completed childbearing and want to have a tubal ligation to do so immediately after childbirth. Women who are not told about the benefits of post-partum tubal ligation are subjected to the risks, as well as additional time and expense, of a second surgical procedure and recovery period.

Patients have a right to information about all of their treatment options, regardless of whether a given medical provider has a religious objection to those treatments. Patients rightfully expect their providers to use medical expertise and professional training to guide treatment decisions—not personal beliefs. Refusals to provide information and referrals based on providers' moral and religious beliefs violate the principles of informed consent found in law and medical ethics and undermine the trust that patients place in their providers.