NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

Below the Radar:
Religious Refusals to Treat Pregnancy Complications Put Women in Danger

A serious but little known problem is putting women's health and lives at risk: because of their religious beliefs, certain health care providers do not give appropriate treatment to women experiencing serious pregnancy complications. A recent study by Ibis Reproductive Health entitled "Assessing hospital polices & practices regarding ectopic pregnancy & miscarriage management" [i] adds to the growing evidence that the *Ethical and Religious Directives for Catholic Health Care Services* have been applied to deny women experiencing both ectopic pregnancies and miscarriages the treatment and information to which they are legally entitled. The *Directives* govern Catholic-affiliated hospitals and provide guidance on a range of reproductive health services including surgical sterilization, family planning, infertility treatment and abortion.[ii] These are cases in which doctors have determined that there is no medical intervention possible that would allow the patient to continue her pregnancy, and delaying care would only endanger the patient's health or life.[iii]

This Study focuses on Catholic hospitals as the largest religiously-affiliated provider in the United States,[iv] and uncovers disturbing examples of treatment practices that increase the odds of medical complications that place women's lives and health at risk. Catholic-affiliated hospitals are governed by the *Directives*, which provide guidance Most individuals and even many health providers presume that the *Directives'* prohibition on the provision of a range of abortion services applies only to non-emergency pregnancy terminations of otherwise viable pregnancies. But the Study is consistent with anecdotal accounts that provide strong evidence that some hospitals and health care providers have interpreted the *Directives* to prohibit prompt, medically-indicated treatment of miscarriage and ectopic pregnancy, placing women's lives and health at additional and unnecessary risk, and violating the laws intended to protect patients from such serious lapses in care.[v]

Hospitals are Required by Law to provide the Standard of Care,[vi] Yet Hospitals Fail to do so Because of their Adherence to the *Directives*.

- In some of the miscarriage cases described in the Ibis Study, the standard of care requires immediate treatment. Yet doctors practicing at Catholic-affiliated hospitals were forced to delay treatment while performing medically unnecessary tests. Even though these miscarriages were inevitable and no medical treatment was available to save the fetus, some patients were transferred because doctors could still detect a fetal heartbeat or required to wait until there was no longer a fetal heartbeat to provide the needed medical care.

- Methotrexate, a drug used to treat ectopic pregnancies, is the standard of care for some of the cases described in the Ibis Study. Yet several doctors reported that their hospitals have a blanket prohibition on the drug. This means that women for whom methotrexate would be the best treatment option are instead being subjected to unnecessary and invasive surgical treatment.

Hospitals are Required by Law to provide Emergency Care,[vii] Yet Hospitals Fail to do so Because of their Adherence to the *Directives*.

- An article in the *American Journal of Public Health* (*AJPH*) reports numerous instances of women who suffered delays in receiving stabilizing care for miscarriages at Catholic hospitals.[viii]

For example, a Catholic hospital refused to provide the uterine evacuation necessary to stabilize a patient having a miscarriage, saying that it would only give her blood transfusions as long as there was still a fetal heartbeat. A doctor at a non-sectarian hospital finally agreed to accept the transfer of the patient, despite the doctor's concern that the patient was unstable.

- One doctor in the Ibis Study reported "several instances" of potentially fatal tubal ruptures in patients with ectopic pregnancies.[ix] This doctor reported that her Catholic hospital subjected patients with ectopic pregnancies to unnecessary delays in treatment, despite patients' exhibiting serious symptoms indicating that a tubal rupture was possible.

Hospitals are Required by Law to Obtain Patients Informed Consent,[x] Yet Hospitals Fail to do so Because of their Adherence to the *Directives*.

- A doctor interviewed in the Ibis Study said she often takes patients aside and reviews all of their treatment options, including those forbidden by the hospital, even though this level of disclosure is not allowed. She reported that other physicians at the hospital offer referrals and information "under the radar" as well.

- The *Directives* have even been applied to forbid the treatment of a woman who had suffered a miscarriage, even thought the fetus no longer had a heartbeat. This case provides an additional example of a patient with a pregnancy complication being denied essential information about her condition due to a doctor's restrictive and in this case, blatantly wrong,[xi] interpretation of the *Directives*. In the course of this refusal, the patient was denied adequate information about her condition, which hindered her ability to seek care at another facility.[xii]

Women Deserve Better: What Can Be Done?

The Study suggests a failure on the part of the hospitals investigated to ensure that patients experiencing pregnancy complications received the standard of care, informed consent, and prompt treatment of emergency medical conditions. Doctors are reluctant to report hospital practices that harm patients or violate the law, especially when they have played a direct role. Patients may never know why their treatment was delayed, why they were transferred, or that additional treatment options were automatically disregarded due to religious restrictions. Patients, unaware that they were denied necessary, let alone legally required care or medical information, are not able to bring violations to the attention of enforcement authorities or pursue other legal claims.

State and federal authorities must be vigilant to ensure that patients who experience pregnancy complications receive the care to which they are legally entitled. It is incumbent upon state and federal governments to enforce existing laws intended to protect patients, as well as take other proactive measures. Furthermore, all hospitals, including those operating under the *Directives* have a duty to comply with the law, and to ensure that their medical staff understands that the *Directives* or other any other institutional or individual religious beliefs do not excuse hospitals from their legal obligations.

To download the full report, please visit: www.nwlc.org/belowtheradar
For more information on barriers to reproductive care, please visit: http://www.nwlc.org/our-issues/health-care-%2526-reproductive-rights/barriers-to-reproductive-care

[i] This study was initiated by the National Women's Law Center and conducted by Ibis Reproductive Health, a clinical and social science research organization. Angel M. Foster, Amanda Dennis & Fiona Smith, *Assessing Hospital Policies & Practices Regarding Ectopic Pregnancy & Miscarriage Management: Results of a National Qualitative Study* (Ibis Reproductive Health, 2009) (hereinafter Study), *available at* http://www.ibisreproductivehealth.org/news/documents/Summaryofqualitativestudy.pdf. Ibis selected a sampling of geographically diverse Catholic, non-Catholic and recently-merged hospitals. Researchers conducted in-depth phone interviews with doctors, asking about their knowledge of hospital policies and practices regarding the treatment of ectopic pregnancies and miscarriages, as well as their perceptions of how these policies affected their treatment decisions and the quality of patient care. The study team conducted twenty-five interviews with physicians, physician-administrators, and non-physician administrators at sixteen hospitals in ten states. Eight of the sixteen hospitals in the sample operate under the *Directives*. A manuscript reporting the findings of the ectopic pregnancy study is currently under review. Angel M. Foster, Amanda Dennis & Fiona Smith, *Do Religious Restrictions Influence Ectopic Pregnancy Management? Results From a National Qualitative Study*, 20 Women's Health Issues -- (Jacob's Institute of Women's Health, forthcoming).

[ii] United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (2001), *available at* www.usccb.org/bishops/directives.shtml. The *Directives* set forth principles that govern the delivery of health care services at Catholic-affiliated health care institutions. Each hospital's administration, the local diocese and the Bishop presiding over the hospital interpret these guidelines and establish their specific policies and practices.

[iii] Refusals to treat in these circumstances are therefore not protected by the Church Amendment, 42 U.S.C. § 300a-7, which protects individuals and institutions that refuse to participate in abortion or sterilization services.

[iv] Of the top ten largest healthcare systems by number of hospitals, Catholic-affiliated systems rank fourth, fifth and ninth. Only one other religiously-affiliated system makes the top ten, and it comes in tenth. The top ten Catholic health care systems comprise a total of 372 hospitals. The top ten non-Catholic religiously-affiliated systems have a total of 133 hospitals. Joe Carlson and Vince Galloro, *Special Feature, Big Dividends*, Mod. Healthcare, June 7, 2010, at 18, 24 (annual survey of hospital systems).

[v] See Chris LaFortune, *Hospital Rules Prompt Pregnancy Transfers*, Oak Leaves (Oak Park, Ill.), Oct. 13, 2004, at 5 (reporting on the transfer of one patient with premature rupture of the membranes and another with an ectopic pregnancy due to application of the Directives at a newly Catholic-affiliated hospital).

[vi] The Medicare Conditions of Participation state that participating hospitals "must meet the emergency needs of patients in accordance with acceptable standards of practice." Condition of participation, Emergency services, 42 C.F.R. § 482.55 (2010). This same condition also applies to Condition of participation: Surgical services, 42 C.F.R. § 482.51 (2010), and Condition of participation: Outpatient services, 42 C.F.R. § 482.54 (2010).

[vii] EMTALA requires hospitals to provide stabilizing treatment to patients with emergency medical conditions who seek care at emergency rooms. An "emergency medical condition," is defined as:

> A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part.

42 U.S.C. § 1395dd(e)(1).

Furthermore, EMTALA prohibits hospitals from transferring patients when they are unstable. An unstable patient is one who "within reasonable medical certainty" is likely to experience a "material deterioration" of her condition during a transfer to another hospital. 42 U.S.C. § 1395dd(e)(3)(B).

[viii] Lori R. Freedman, et al., *When There's a Heartbeat: Miscarriage Management in Catholic-Owned Hospitals*, 98 Am. J. of Pub. Health 1774 (Oct. 2008).

[ix] Angel M. Foster, Amanda Dennis & Fiona Smith, *Assessing Hospital Policies & Practices Regarding Ectopic Pregnancy & Miscarriage Management: Results of a National Qualitative Study,* Ibis Reproductive Health (2009) (hereinafter "Ibis Study"), *available at* http://www.ibisreproductivehealth.org/news/documents/Summaryofqualitativestudy.pdf.

[x] All hospitals receiving Medicare funds must obtain informed consent from all patients prior to treatment:

> 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.

Hospital Conditions of Participation: Patients' Rights, 42 C.F.R. § 482.13(b)(2) (2010).

[xi] There is nothing in the *Directives* that prohibits a Catholic institution from performing a D&C, which is a procedure commonly used in both the diagnosis and treatment of various gynecological conditions. A review of materials interpreting *Directive* 45 regarding abortion did not identify any interpretations that considered the performance of a D&C an abortion in cases where the fetus is no longer alive.

[xii] This patient was not informed that her fetus had died at ten weeks gestation. When trying to find a provider to perform a D&C, she was requesting a D&C at thirteen weeks gestation, which some providers did not do, thus delaying her ability to find care.