NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

DIAGNOSING DISCRIMINATION

Barriers Facing Health Care Providers Who Support and Perform Abortion

THE NATIONAL WOMEN'S LAW CENTER (NWLC) is a non-profit organization working to expand the possibilities for women and their families by removing barriers, opening opportunities, and helping women and their families lead economically secure, healthy, and fulfilled lives – with a special focus on the needs of low-income women and their families, and those who face multiple, intersecting forms of discrimination.

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Author: Noel León
Design and Production: Beth Stover

Requests for hard copies of the report can be made by emailing nleon@nwlc.org.

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Health care professionals across the country are fired, threatened, and otherwise punished for providing abortion services, seeking abortion training, or engaging in advocacy around abortion. The discrimination and barriers facing these health care professionals occur in all kinds of health care settings, including public and private hospitals, small and large institutions, religiously affiliated institutions, and secular institutions.

Medical professional authorities consistently reaffirm that abortion is an essential part of health care, but marginalization and stigma continue. Indeed, the same abortion stigma that pervades our national consciousness also undermines the medical professions. Health care institutions place restrictions on their employees out of fear that they might lose support from the state or from anti-abortion community members. In other cases, discrimination against clinicians based on their support for abortion is motivated by institutions' outright hostility to abortion. Whatever the underlying cause, health care professionals face a multitude of barriers and discrimination when they try to engage with abortion care or advocacy.

- Health care professionals have job offers rescinded because hospitals discover they have provided abortions.
- Doctors are forced out of their careers because an employer is purchased by a health system that dislikes the fact that a doctor moonlights at a local abortion clinic.
- Medical students and residents are blocked or punished by their schools when they try to obtain abortion training.
- Employees of religious hospitals are required to sign contracts stating that they will practice according to Catholic religious restrictions on health care.
- Health care professionals are threatened or fired when they speak publicly about the importance of abortion access.
- Clinicians are prohibited from treating patients seeking abortion or giving them information by hospital employers that object to abortion, even in life threatening situations.
- Clinicians across the country are afraid to get involved with abortion care or advocacy, even when they are deeply committed to abortion access, because they fear retaliation that could derail their careers.

Responding to the discrimination and barriers faced by health care professionals will require strategies that address the problem from multiple angles. This report aims to assist health care professionals and advocates seeking to mobilize against the many barriers that undermine abortion access and undermine providers' ability to treat patients. It is also intended to demonstrate to policymakers that addressing these issues is a crucial part of both protecting health care professionals from employment discrimination and ensuring that people have meaningful access to abortion.

Educating health care providers, advocates, and policymakers about discrimination against health care providers who support abortion will help reduce stigma and stoke efforts to develop and implement solutions.

Health Care Professionals Who Want to Provide Abortion Face Discrimination

The National Women's Law Center has heard from dozens of health care professionals in 15 states and the District of Columbia about their experiences being fired, threatened, or otherwise punished for participating in abortion services, training, or advocacy. These first-hand reports are supplemented by journalism and research that helps to demonstrate the full range of discrimination faced by clinicians who want to provide abortion care. Many more health care professionals – including physicians, nurses, midwives, students, and others who work in the health care fields – report that they are afraid of getting involved in abortion care or advocacy because of stories circulating about employer discrimination.

> "Employment discrimination against abortion providers is real . . . I've worked incredibly hard to become a competent obstetrician-gynecologist; I shouldn't have to worry that I'll be denied job opportunities because of my commitment to providing full-scope women's health care."

The threat of employer retaliation, and the lack of legal or institutional support for health care professionals who want to provide abortion or advocate for abortion, silences health care professionals and keeps many from even attempting to provide the care they want to provide. No health care professional should fear that their ability to find a job will be hurt by their participation in abortion care, training, or advocacy at some point in their careers.

As a physician in Washington, D.C., described, "Employment discrimination against abortion providers is real. I have colleagues whose contracts prohibit them from providing abortion care, even in their free time. I've had to tip-toe around my interest in providing abortions when exploring job opportunities. I've worked incredibly hard to become a competent obstetrician-gynecologist; I shouldn't have to worry that I'll be denied job opportunities because of my commitment to providing full-scope women's health care."[1]

ABORTION PROVIDERS ARE FIRED OR REFUSED JOBS.

Health care professionals often fear losing their medical careers because they participated in abortion care. Some abortion providers report having job offers suddenly rescinded after a prospective employer learns of their past employment with an abortion clinic or participation in a campus organization like Medical Students for Choice.

- One physician was directly threatened by a senior partner of a private OB/GYN practice during a job interview: "If I ever find out you did elective abortion any time in your professional life, you'll never practice medicine in [this state] again. Do you understand that?"[2]

- A health care educator in the Midwest was turned down for 15 jobs in a month because of her high profile activism around abortion access.[3]

Practicing clinicians, medical and nursing students, residents, and even administrative staff report fearing that they will not be able to find a job again in the communities they call home after working at an abortion clinic.

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HEALTH CARE PROFESSIONALS ARE PREVENTED FROM MOONLIGHTING AS ABORTION PROVIDERS.

It is very common for health care providers to "moonlight," or to take on secondary jobs. In 2013, a national survey found that approximately one third of physicians earn income outside their primary employment.[4] Physicians report that they engage in moonlighting for many reasons, including to supplement their incomes in order to pay off student loans, to gain experience, and to do public service.[5] But when physicians seek secondary jobs as abortion providers, they may face discrimination and barriers from their primary employer.

- A physician in the West was forced to choose between providing abortion care and keeping their primary job at a Catholic health care system. "For years I worked for a small private practice and provided abortions once a week at a clinic nearby. Then a Catholic hospital system bought the practice and told me that if I wanted to keep my job I would have to stop providing abortions at the local clinic. I quit [the primary job at the private practice] rather than give up helping patients get the abortions they need, but other providers might not be able to make the same choice."[6]

Some health care institutions have policies – written or unwritten – against allowing clinicians to moonlight in abortion clinics. Other institutions write these prohibitions into employees' contracts. Many health care employers include so-called "restrictive covenants" in employment contracts that limit an employee's ability to work elsewhere, either during or after the term of their employment. These clauses may be written explicitly to prohibit employees from moonlighting as abortion providers. In other cases, a hospital might claim that since an employee did not explicitly request a clause allowing them to moonlight in an abortion clinic, that employee cannot now do so. Hospitals also sometimes claim that "non-compete clauses" in contracts prohibit employees from moonlighting in abortion care, even when there is no business competition at stake because the hospital does not itself provide abortions.

Religious hospital systems often ask employees to sign "morality clauses" as a condition of employment. These clauses are frequently vague, but religious employers use them as a blanket tool to prohibit employees from engaging in any kind of activity to which the employer objects – including moonlighting in abortion services.

Health care employers sometimes prohibit their employees from moonlighting in abortion clinics even when they are willing to do so entirely outside their employment capacity, on their own vacation time, and under the clinic's malpractice insurance. Prohibitions like these restrict providers' ability to pursue the careers of their choice.

> "For years I worked for a small private practice and provided abortions once a week at a clinic nearby. Then a Catholic hospital system bought the practice and told me that if I wanted to keep my job I would have to stop providing abortions at the local clinic."

ABORTION PROVIDERS ARE DENIED HOSPITAL ADMITTING PRIVILEGES.

Abortion providers also face discrimination with respect to the granting – or revoking – of hospital privileges. For example, physicians who work as OB/GYNs need admitting privileges at local hospitals in order to care for pregnant patients. But if doctors have secondary employment as abortion providers, hostile hospital administration policy can put those doctors' admitting privileges at risk.

A Family Medicine physician who provides obstetric care at a Federally Qualified Health Center in the Midwest lives in constant worry of professional retaliation for her work as an abortion provider. "As hospital privileges are required for obstetrics work, I have privileges at a few hospitals in the area, including Catholic hospitals. I also work twice a month at an abortion clinic. Although I don't hide it, I don't know if the hospitals know I provide abortion. I fear every day that if these hospitals discover that I provide abortions they will revoke my privileges. This threatens not just my job as an obstetrician, but the health of my pregnant patients."[7]

Denial of admitting privileges can pose a particular problem in places where privileges are required for abortion care. Abortion providers do not need hospital admitting privileges in order to provide high-quality abortion care. In the rare event that a patient has emergency complications, the patient will always be able to access emergency care at a local hospital, regardless of whether the abortion provider has privileges.[8] Yet, some state legislators who are hostile to abortion have passed laws requiring doctors to obtain hospital admitting privileges or other such arrangements that they do not need, in an attempt to force them out of business. Even though the U.S. Supreme Court in 2016 struck down a Texas admitting privileges law as an unconstitutional undue burden on women's ability to obtain an abortion,[9] two states still require abortion providers to have admitting privileges at a local hospital, and eight states require providers to have either admitting privileges or an alternative agreement with a hospital.[10] Legislators in some states, like Georgia,[11] are continuing to introduce new legislation requiring admitting privileges in spite of the Supreme Court's 2016 decision. When hospitals in states that require admitting privileges or hospital agreements refuse to enter agreements with physicians or clinics specifically because they are abortion providers, clinics cannot provide patients with the abortions they need.[12]

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EMPLOYER HOSTILITY TO ABORTION OFTEN EXISTS ALONGSIDE ISOLATION, HARASSMENT, AND VIOLENCE.

Employer hostility to abortion is often compounded by harassment and violence.

- Dr. Cheryl Chastine, a Chicago-based abortion provider, said "I travel to communities whose providers have retired and not been replaced, or have been forced out of doing the work, or have been murdered."[13]
- Dr. Mara Gordon, a family medicine practitioner in Philadelphia, articulated the profundity of the problem for both health care professionals and patients: "One of the reasons I went to medical school was to become an abortion provider—and... to use my medical training to increase abortion access in the U.S. I always assumed that my ability to do so was simply a matter of my willingness to perform the procedure.... but as I learn more about the personal and professional sacrifices [that clinicians who provide abortion in underserved communities] make, I am not sure I can do the same, relocating to a place where I would be both more needed and less welcomed."[14]

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MEDICAL STUDENTS AND RESIDENTS FACE STIGMA AND ROADBLOCKS WHEN THEY TRY TO OBTAIN ABORTION TRAINING.

Institutional hostility towards abortion and abortion providers has seeped into medical training settings, resulting in fewer clinicians receiving the training they need to handle abortion care, miscarriage management, and other pregnancy complications. Despite the tremendous need for providers who are trained in abortion procedures, medical students and residents face enormous obstacles in obtaining the training they need to treat patients seeking abortion or care for pregnancy complications.

Medical and nursing schools and residency programs often fail to include abortion training in their curricula, including for those students studying to provide specifically obstetric and gynecological care. This happens despite clear directives from leading medical associations that abortion training is a crucial component of women's health care and should be included in training programs. Furthermore, these institutions also often prohibit students

and residents from obtaining training at clinics or other sites, even when the students or residents shoulder the full logistical burden of locating and facilitating that training themselves.

Only about half of medical schools offer a fourth-year elective on family planning and abortion, and 70% of medical students report "that their abortion training was inadequate during their third-year rotation."[15] Residency programs are similarly inconsistent in whether they provide adequate abortion training. Although the national independent physician-led organization that sets and monitors compliance with standards for professional medical education requires OB/GYN residency programs to integrate abortion training or access to abortion training into their curricula in order to be accredited,[16] a 2014 survey found that only 54% of OB/GYN residents were receiving that training.[17] Among those programs that do give residents access to abortion training, some still make it difficult for residents to actually obtain that training by forcing them to set it up on their own time[18] or pressuring them into opting out of the training entirely.[19]

Medical and nursing schools and residency programs often fail to include abortion training in their curricula, including for those students studying to provide specifically obstetric and gynecological care.

Individual students and residents can seek abortion training on their own through programs offered by organizations like Medical Students for Choice,[20] Nurses for Sexual and Reproductive Health,[21] and the Midwest Access Project,[22] among others. But the problem remains that if abortion is not adequately integrated into standard medical training, many clinicians will never receive that training and those who go out of their way to seek training may continue to face obstacles within their educational institutions.

Sometimes, restrictions on abortion training come from institutions that oppose abortion for religious or moral reasons.[23] At other times, those restrictions come not from an institutional opposition to abortion but rather the institution's fear of retaliation from the state based on the state's opposition to abortion.

- Medical students at the University of Arkansas for Medical Sciences report that faculty members want students to receive abortion training, but because the Arkansas legislature has consistently taken an extreme anti-abortion stance and the university answers to the state, the university is simply too nervous to increase abortion training options for its students and residents.[24]
- NWLC has heard from other medical students and residents who similarly report that their institutions feel bound by the threat of losing state funding or otherwise being penalized by the state for providing their students with abortion training. In these cases, students and residents cannot even effectively appeal to their administration to allow them to receive training, because the institutions themselves feel their hands are tied.

These concerns are not unfounded; some states have begun specifically targeting abortion training. For example, a bill was introduced in Wisconsin in 2017 that would force the University of Wisconsin School of Medicine to dismantle its abortion training program for OB/GYN residents.[25] Laws like this threaten clinicians' ability to receive the crucial training they need to practice their professions.

HEALTH CARE PROVIDERS ARE PREVENTED FROM SPEAKING OUT ABOUT ABORTION, PERPETUATING THE STIGMA AND DISCRIMINATION THAT PROVIDERS FACE.

> In Mississippi, the Program Director for a Catholic mental health facility was fired when her employer found out that she'd advocated against an anti-abortion "personhood" bill in the state legislature.

Health care professionals are also punished for speaking out in support of abortion access and prohibited from doing so in the first place. This kind of prohibition and retaliation stands out against the backdrop of a professional field that, in general, greatly values its members' civic engagement. It is exceedingly common for health care providers to speak publicly about issues they believe are important. One survey found that over 90% of physicians believe that health care professionals' "community participation, political involvement, and collective advocacy" is important and that 65% of physicians had taken part in such public advocacy in the previous three years.[26]

> An employer told a doctor that if she showed up before the legislature to testify against an abortion restriction she would likely be fired.

Yet, when health care professionals want to focus their advocacy on abortion, they are often punished. Many clinicians across the country are silenced by their employers when they want to publicly advocate for abortion, or punished when they do speak publicly, even when they speak in an individual capacity and not as a representative of the employer.

- In 2016, Dr. Diane Horvath-Cosper was providing abortions at a private secular nonprofit hospital in Washington, D.C. The hospital threatened her with termination for publishing articles and speaking with media about the importance of abortion access.[27]
- A physician in the Midwest reported that her employer threatened her shortly before she was scheduled to testify in opposition to a bill restricting abortions before the state legislature. The employer told her that if she showed up before the legislature, she would likely be fired.[28]
- In Mississippi, the Program Director for a Catholic mental health facility was fired when her employer found out that she'd advocated against an anti-abortion "personhood" bill in the state legislature. Her employer had previously reprimanded her for abortion access advocacy and their threats caused her to stop speaking publicly about abortion and volunteering as an abortion clinic escort for some time.[29]

Clinicians who speak publicly about the importance of abortion access should not be treated differently from clinicians whose advocacy focuses on other health or justice issues. Clinicians should never fear that they will be punished for their public advocacy simply because that advocacy is in support of abortion services.

HOSPITAL POLICIES PREVENT HEALTH CARE PERSONNEL FROM GIVING PATIENTS THE STANDARD OF CARE, EVEN IN LIFE THREATENING SITUATIONS.

Stories have been surfacing for years about providers who are prevented from treating patients because of a hospital's objections to providing certain reproductive health care services, including abortion.[30] These stories frequently come to light after health care professionals speak out about how

they have been explicitly prohibited from caring for their patients – even when those patients are at risk of serious medical harm.

- Dr. Jessika Ralph, while an OB/GYN resident at a Catholic institution in Milwaukee, was directed by her attending physician to send home a patient whose water had broken at 18 or 19 weeks and who was at risk of serious infection if she did not receive an abortion. Dr. Ralph did provide her patient with information about a nearby hospital where should could receive the abortion care she needed, but she was careful not to record that information in the patient's chart for fear of retaliation from her employer.[31]

Hospital systems have written and unwritten policies forbidding their employees from providing treatment or referrals for abortion care when a patient's health is in danger. Catholic health care systems, for example, are governed by a set of rules, or Directives, written by the U.S. Conference of Catholic Bishops, which prohibit employees from providing patients a broad range of services, including abortion and medical care for a miscarriage when that care involves termination of pregnancy.[32]

"It was clear to her physician that the patient needed an abortion because miscarriage was inevitable and her health was in danger. But because the fetus still had a heartbeat, the hospital ethics committee refused to approve the procedure. The physician was forced to send the patient by ambulance 90 miles away to the closest institution that would treat her."

- In one case, a patient who was 14 weeks pregnant came into a Catholic-owned hospital in the Midwest with ruptured uterine membranes. It was clear to her physician that the patient needed an abortion because miscarriage was inevitable and her health was in danger. But because the fetus still had a heartbeat, the hospital ethics committee refused to approve the procedure. The physician was forced to send the patient by ambulance 90 miles away to the closest institution that would treat her.[33]

Although Catholic health care institutions vary in the way they interpret these directives, many prohibit abortion care, referrals, and information even when a patient's life is in danger. Medical researchers, advocates, and the media have reported numerous instances in which Catholic institutions in particular have forced clinicians to send home extremely sick patients.[34] Indeed, researchers have found that a majority of OB/GYNs who practice at Catholic institutions report conflicts with their employers over policies on managing miscarriages.[35]

What's more, prohibitions on clinicians providing or discussing abortion reach far beyond the OB/GYN context.

- In Colorado, Dr. Michael Demos had been a practicing cardiologist at a Catholic hospital center after his private practice was purchased by a Catholic health care system. Dr. Demos had a pregnant patient who presented factors showing she might have Marfan syndrome, a disease that makes pregnancy very dangerous, so he discussed with his patient the option of having an abortion if tests showed that she had the disease. Although it turned out that the patient did not have Marfan syndrome, the hospital reprimanded Dr. Demos for mentioning abortion as an option and forbade him from discussing it with patients in the future.[36]

Health care professionals should never be prohibited from – or punished for – providing their patients with the standard of care or with complete and medically accurate information.

Patients are Harmed by Discrimination Against Abortion Providers

The discrimination, restrictions, and stigma facing health care providers have direct and indirect effects on all patients who need pregnancy services, including those specifically seeking abortion services.

Abortion services and management of pregnancy complications are essential parts of women's health care. One in four women have an abortion by age 45.[37] Yet abortion providers have grown increasingly scarce over the last decade: In 2014, 87% of counties in the U.S. had no abortion provider, and 34% of women aged 15-44 lived in those counties.[38] When hospitals and other health care employers prohibit or deter their employees from taking secondary employment as abortion providers or otherwise threaten or punish health care professionals who provide abortion, patients lose access to the care they need. In fact, one study found that hostile work environments were a greater deterrent to OB/GYNs becoming abortion providers than the threat of clinic violence.[39]

Restrictions on clinicians practicing and training in abortion also affect patients who need care for pregnancy complications. Nearly one in four women will experience at least one diagnosed miscarriage in their lifetime.[40] Miscarriage occurs in 10-20% of known pregnancies[41] and at much higher rates among women aged 35 and older.[42] Ectopic pregnancy is also common, occurring in 2% of all pregnancies.[43]

Because treatment for a miscarriage often involves procedures identical to abortion procedures, when clinicians are prohibited from obtaining training in abortion care or punished for seeking that training, pregnant patients suffer.

A patient who was experiencing a miscarriage in an urban northeastern Catholic hospital nearly died because the hospital refused to treat her. The patient's physician recalled that the "woman [wa]s dying before our eyes," but the hospital's religious directives forbade the physician from providing appropriate treatment.[44]

In cases like this, prohibitions on clinicians providing abortion care and information translates directly into patient harm.

The patient's physician recalled that the "woman [wa]s dying before our eyes," but the hospital's religious directives forbade the physician from providing appropriate treatment.

When hospitals restrict clinicians' ability to moonlight in abortion care or refuse to grant admitting privileges to qualified physicians who provide abortion, patients even outside the hospital setting lose access to providers. Hospitals that prevent employees from moonlighting, whether through contract or policy, affect local abortion clinics' ability to treat patients. Standalone abortion clinics, which provide 95% of abortion care in the U.S.,[45] rely on moonlighting physicians because of the shortage of providers. In some places, it is so difficult for clinics to find providers that they fly physicians in from other states to provide care to their patients.[46] A clinic in West Virginia had to close in January 2017 because its physician provider stopped traveling from California, and no local physician was able to take his place.[47]

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Discrimination and prohibitions against health care professionals who speak publicly about abortion also detrimentally affect patients. Clinicians are important influencers of policymaking at all levels. Health care providers are especially important advocates in the realm of abortion care. Abortion is so stigmatized that individuals are often reluctant to disclose to even their closest family and friends that they have had an abortion, much less share their stories with politicians who routinely denigrate people who decide to have an abortion. When hospitals silence their clinician employees, patients lose critical voices in the halls of power.

No one who needs an abortion should have to fear that their provider may not be allowed to treat them or provide them with all of the information about the care they need. Furthermore, patients should not lose vital experts and champions in policymaking spaces because of employer threats and stigma against providers who would speak up on behalf of patients seeking abortion.

Health Care Professionals Should be Protected for their Decisions to Provide or Support Abortion

Discrimination against health care professionals who provide or support abortion has sweeping effects on both the health care workforce and patients, and it must end. The kinds of discrimination health care providers face require administrative, legal, and policy solutions, including:

- Measures that explicitly protect health care professionals from discrimination based on their participation in or support for abortion services. Although some protections already exist in federal law and in some states,[48] the current patchwork of laws is not enough. Measures that protect abortion providers from discrimination are not only common sense solutions, but are also supported by the public. A nationwide survey conducted by the National Women's Law Center showed that 60% of voters favor proposals that stop hospitals from firing, demoting, or otherwise retaliating against doctors or nurses because they treated a woman seeking an abortion or gave her information or referrals for abortion.[49]
- Policies that protect health care professionals' ability to moonlight in abortion clinics.
- Measures that ensure hospitals do not block a health care provider's ability to provide medically appropriate care and medically accurate information to a patient about their health status and medical options.
- Research documenting the experiences of non-physician clinicians and hospital employees and the prevalence of employer retaliation.
- More statements from medical professional, educational, and ethical associations in support of abortion providers, training, non-discrimination, and services.
- Public education and awareness of the problem of abortion provider discrimination.

NWLC invites health care professionals, health care institutions, advocates, and policymakers to join us in working towards a world that is safer and more just for health care providers and patients alike.

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NWLC Resources:

The National Women's Law Center is working on promoting solutions, including:

- Advancing legislation that would protect health care professionals and patients;
- Providing educational materials and Know Your Rights presentations for health care professionals and students;
- Providing individual support for clinicians interpreting and negotiating employment contracts, and;
- Providing legal support for individuals who want to take action against an employer.

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NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

11 Dupont Circle, Suite 800
Washington, DC 20036
202.588.5180 | fax 202.588.5185
www.nwlc.org