

# *Providing Legal Support to Abortion Providers, Patients, and Supporters*

**Legal Network for  
2025**

**1 May**

**Gender Equity Webinar**



# Today's Agenda

## Part I

Employment law supports for clinicians

## Part II

First Amendment protections & reproductive rights

## Part III

Overview of denials of care

## Part IV

Challenges for clients in “denial of care” cases and how attorneys can support them

## Part V

Abortion Access Legal Defense Fund & Abortion Defense Network

## Part VI

Q&A and Announcements



## **Part I**

# **Employment law supports for clinicians**

# Employment Law Supports for Clinicians

Presentation will discuss:

- Employment contract questions abortion providers may have
- Examples of discrimination clinicians have faced

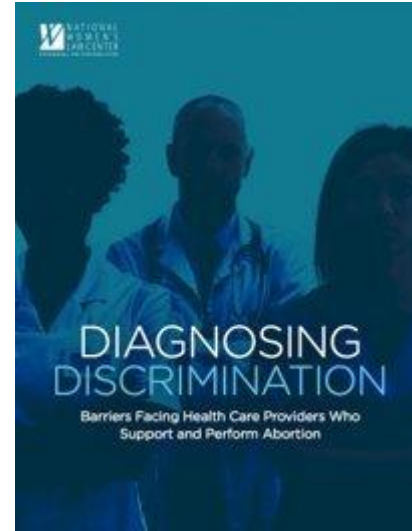
# Employment Contract Topics

Clinicians often request help understanding:

- Employer moonlighting policy
- Termination of contract terms
- Insurance coverage
- Non-Compete Clauses
  - Full Time Devotion to Duty
  - Outside Employment Clause
- Morality Statements or Clauses

## Health Care Professionals Face a Range of Discrimination in Employment and Training Settings

From denying admitting privileges to rescinding job offers to prohibiting health care professionals from speaking out publicly about abortion, employers and institutions are unfairly penalizing those who provide or support abortion.



## Examples of Discrimination in Employment and Training Settings

- Doctors and nurses have had their job offers rescinded because they provide abortions.
- They have been
  - prohibited from helping patients obtain reproductive health care;
  - threatened with demotion or loss of jobs if they speak out about the importance of abortion and other reproductive health care;
  - prohibited from providing abortion care on their own time at separate clinics; and
  - retaliated against with adverse employment actions for public speaking about abortion access.

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## Free Speech Protections for Providers

- Protections apply against the government, like working for a public university or state hospital
  - Pickering and Garcetti - is public employee speaking as a citizen on a matter of public concern? (First Amendment does not apply to “government speech”)
    - If yes, balancing test/intermediate scrutiny
  - Rust v. Sullivan, 500 U.S. 173 (1991).
  - “Informed consent” laws
- Or government attempts to punish providers
  - Compare Conant v. Walters, 309 F.3d 629, 632 (9th Cir. 2002).
  - Planned Parenthood Great Northwest, Hawai’i, Indiana, Kentucky v. Labrador, 122 F.4th 825, 832 (9th Cir. 2024) - upholding preliminary injunction of Idaho AG letter.

# Free Speech Protections for Patients and Supporters

- Types of restrictions on speech
  - Content-based discrimination - strict scrutiny
    - Reed v. Town of Gilbert, 576 US 155 (2015).
    - Viewpoint discrimination - presumptively (or per se) unconstitutional
  - Prior restraints - presumptively unconstitutional
  - Time/place/manner restrictions (*i.e.* sound ordinances, permit requirements for protest), must be narrowly tailored, serve a significant government interest, and leave open alternative avenues for communication.
- First amendment challenges generally have a lower bar than other types of challenges
  - “Chilling effect”
  - Facial challenges

# Free Speech Protections for Patients and Supporters

Recent cases:

- Moody v. NetChoice, 603 U.S. 707 (2024)
- Yellowhammer Fund v. Marshall, No. 2:23CV450-MHT, 2025 WL 959948 (M.D. Ala. Mar. 31, 2025) - AL abortion fund can provide “information and counseling” about obtaining “legal abortion out of state.”
  - “Yellowhammer Fund's provision of financial assistance to or on behalf of its clients . . . must be viewed as expressive conduct when taken in context.”
- Idaho Federation of Teachers v. Labrador, No. 1:23-CV-00353-DCN, 2024 WL 3276835 (D. Idaho July 2, 2024).
  - Case dismissed after AG asserted that “*academic* speech regarding abortion—even speech that is favorable to abortion—does not fall under the NPFAA and will not be prosecuted.”
  - But, “the Court has concerns about the statute . . . [and] is also not entirely convinced that the Idaho Attorney General's interpretation of the statute is accurate.”

## Establishment Clause

- Harris v. McRae, 448 U.S. 297 (1980)
  - Webster v. Reprod. Health Servs., 492 U.S. 490 (1989)
- Shifting standard:
  - “Abandoned” Lemon test - secular purpose, primary effect, excessive entanglement
    - Circumstances of passage
  - Kennedy v. Bremerton, 597 U.S. 507 (2022) - “historical practices and understandings”
- Blackmon v. MO - trial court adopted Bremerton standard

## Free Exercise / RFRA

- Employment Division v. Smith, 494 U.S. 872 (1990) - enforcing neutral, generally applicable law does not violate the free exercise clause
  - Fulton v. City of Philadelphia, 593 U.S. 592 (2021), Tandon v. Newsom, 593 U.S. 61 (2021)
  - Speech cases: (303 Creative LLC v. Elenis, 600 U.S. 570 (2022); Chiles v. Salazar)
  - CA v. Providence
- At the federal level and in many states, RFRAs require strict scrutiny if there is an undue burden
  - Some new cases in abortion context

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# Federal Refusal of Care Laws

- ❖ **Church Amendments-** 42 U.S.C. § 300a-7, enacted after the Roe decision in 1973

*The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not authorize any court or any public official or other public authority to require such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions.*

- ❖ **Coats Amendment-** 42 U.S.C. § 238(n) enacted in 1996

*The Federal Government, and any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that the entity refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions.*

- ❖ **Weldon Amendment-** HHS appropriations rider included since 2005

*None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.*

# State Refusal Laws

Beyond the Church, Coats, and Weldon Amendments, many states have their own laws that may also permit refusals of reproductive care.

- 46 states currently have laws permitting providers to refuse to perform or assist with some non-stabilizing/non-emergency abortions
- 12 states have laws permitting refusals of some contraception services
- 18 states have laws permitting refusals to participate in some sterilization procedures



→ **Expanding refusal laws:** Six states (AL, FL, OH, MS, MT, and SC) have enacted the “Medical Ethics Defense Act” which could permit even more expansive refusals of care. The bill has been introduced in over a dozen other states since 2019 and was recently passed by the ID and TN state legislatures.

## Impact of Refusal Laws

- The harm caused by a provider's refusal to offer essential health care services is considerable, as it leaves patients, already made vulnerable by having to navigate a confusing and costly health care system, even more at risk of not being able to receive the necessary care to improve their health and overall wellbeing.
- In many states, and especially in rural areas, the harms are compounded with the reality that the only place where medical care is accessible may be a religiously affiliated hospital that prohibits essential reproductive health care.
  - Hospital mergers have multiplied the number of Catholic affiliated hospitals in the U.S. and many patients don't even know they are at an institution governed by religious directives until they are faced with a denial.
- ★ **Mitigating the harm:** Some states have made attempts to reduce the impact refusals can have on communities by requiring more transparency from hospitals that deny specific treatments based on non-medical reasons and protecting providers that perform procedures their employer may object to.

# Denials of Emergency Care

- ❖ The Emergency Medical Treatment and Active Labor Act (EMTALA), a nearly 40-year-old federal law, requires all federally funded hospital emergency rooms to screen and, if necessary, stabilize any patient that seeks emergency care. Since the *Dobbs* decision, EMTALA has been under increased attack as abortion opponents challenge the obligation ER physicians have to perform abortions if that is the treatment necessary to stabilize the patient.



- ❖ Stories of pregnant patients becoming extremely ill or even dying preventable deaths have only become more prevalent since the overturning of *Roe*, especially in states that claim their abortion bans provide exceptions for the pregnant person's life.
- ❖ EMTALA's requirement for emergency abortion care is clear. Many states also have their own emergency care laws that reaffirm EMTALA's requirements. However, given the current climate, several states are taking steps to ensure those requirements are preserved within their borders regardless of what happens at the federal level. IL was the first to codify emergency abortion protections in their state law. Several other states (CA, CO, MA, MD, NY, and WA) have introduced similar legislation this year.

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## Denials of Care Can Devastate Lives, Making Serving as a Plaintiff an Even More Difficult Task



## Emotional Care for Clients Testifying About Pregnancy Loss



the plaintiffs testified and were callously cross examined by the state's attorneys, who asked to have the case thrown out. In court, Texas' attorneys:

- › Badgered one plaintiff—Samantha Casiano—with eight questions about her history of depression and using anti-depressants.
- › In their opening remarks, a lawyer for the state of Texas claimed: “Make no mistake, the past experiences of the patient plaintiffs were indisputably tragic. But each one of them is just that: in the past.”
- › Attorneys for the state of Texas patronizingly asked each patient plaintiff, “At any time did Attorney General Paxton tell you that you couldn't receive an abortion?”
- › Plaintiff Samantha Casiano—who was forced to give birth to a baby with no chance of survival—became so upset describing the experience that she became physically ill at the witness stand, recounting how her daughter gasped for air for hours before dying. The following day, the State's medical witness—Dr. Ingrid Skop, who is the Vice President of an anti-abortion group—described such situations as “heartbreaking, but it's beautiful too.”

This is not the first time the state has tried to discredit the plaintiffs. In a recent request to dismiss the case, the state of Texas claimed that some of the women—

# Safety Issues: Media and Anti-Abortion Harassment



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# ABORTION ACCESS



Helps cover legal expenses for abortion patients, supporters, and providers with financial need facing legal issues because they sought or helped someone obtain abortion care or information about abortion.

- Attorneys must apply on behalf of clients or prospective clients
- Civil or administrative defense, civil affirmative, or criminal defense

<https://nwlc.org/abortion-access-legal-defense-fund/>



The Abortion Defense Network is a collaborative effort by nonprofit organizations and private law firms.

ADN connects abortion providers and supporters with values-aligned attorneys who can provide legal advice, civil or criminal representation, or legal defense funding.

<https://abortiondefensenetwork.org/>

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**Q&A and Announcements**

# Join the Legal Network for Gender Equity (and invite your friends)!

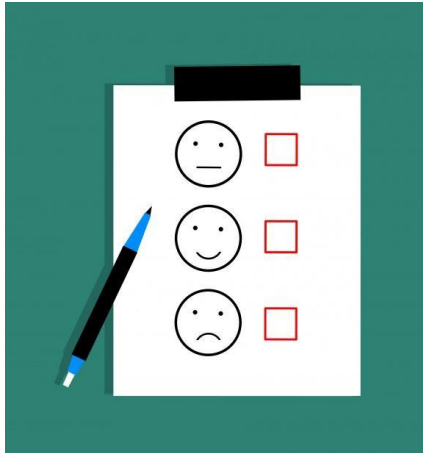
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