**TO**: Department of Health and Human Services, Office for Civil Rights RIN 0945-ZA03

**FROM**: Jonathan Imbody, VP for Govt. Relations for the Christian Medical Association and Director for Freedom2Care

**RE**: RIN 0945-ZA03 or Docket HHS-OCR-2018-0002

**DATE**: March 26, 2018

### Protecting Statutory Conscience Rights in Health Care; Delegations of Authority

The following narrative offers answers to specific requests for comments (marked below with numbers and quotations) outlined in the text of the proposed rule.

#### "Comment on all issues raised by the proposed regulation."

The Christian Medical Association and Freedom2Care, representing combined constituencies of nearly 50,000 individuals who are committed to the moral practice of medicine, heartily applaud this proposed rule. We laud the Department for producing an outstanding tool to enforce and educate regarding our most cherished principles of freedom.

The proposed rule clearly and thoroughly lays down the legal and rational foundation for the Department's enforcement of and education about existing federal law that protects the exercise of conscience and religious convictions in healthcare, both for patients and for professionals. Given the priority of conscience and religious freedom in our nation's founding, in our Constitution and in our legal tradition, the case could not be clearer for restoring the rightful place of these freedoms among other civil rights laws and principles.

Only willful political corruption and ideologically driven assaults on these core founding principles can explain why in 2018 the universal integration of conscience and religious freedom in healthcare remains incomplete. Therefore the proposed rule offers a welcome, if long overdue, course correction to get the nation back on track on the principles on which this democratic republic depends.

While the proposed rule offers hope of a renaissance of a political, cultural and professional commitment to freedom of conscience and religious exercise, ideological forces within government, academia and the healthcare community continue to subvert these freedoms. As a survey of medical and academic publications will indicate, abortion advocacy and a strong undercurrent of intolerance for faith-based and pro-life commitments would sweep out of medicine any and all health professionals who hold to such ideals. A radical and authoritarian ideology that marches under the false flag of "patient autonomy" would force all professionals to participate in any legal procedure or prescription, regardless of professional judgment, medical ethics or moral convictions.

The result of such intolerance and coercion, left unchecked by federal law, court action and regulatory enforcement, would be a catastrophic loss of healthcare for millions of American patients. Hardest hit by the loss of pro-life and faith-based professionals and institutions would be the poor, the marginalized and the medically underserved.

By enforcing the freedom of pro-life and faith-based health professionals to continue to practice medicine, the proposed rule protects patient access to a diverse pool of health professionals and institutions. In the process, the rule also upholds and advances core American values of freedom.

#### "Comment on information, including any facts, surveys, audits, or reports, about the occurrence or nature of coercion, discriminatory conduct, or other violations of the Federal health care conscience and associated anti-discrimination laws."

A survey conducted for CMA's Freedom2Care[[1]](#endnote-1) by The Polling Company, Inc. revealed that **92 percent of faith-based physicians said they would be forced to leave medicine** if coerced into violating the faith tenets and medical ethics principles that guide their practice of medicine. Faith-based health professionals do not, and cannot, separate the faith principles that motivate them to serve the needy from the faith principles that uphold the sanctity of human life.

The survey also found that **39 percent have “experienced pressure from or discrimination** by faculty or administrators based on [their] moral, ethical, or religious beliefs.”

Conscience rights impact not only health professionals but also the patients they serve. In Freedom2Care's nationwide polling of **American adults,** **88%** said it is important to them that they **share a similar set of morals as their doctors**, nurses, and other healthcare providers.

#### "Comment on information, including any facts, surveys, audits, or reports, with regard to the general knowledge, or lack thereof, of the protections established by the Federal health care conscience and associated anti-discrimination provisions among the general public, as well as within the health care field, health care insurance industry, and employment law field."

As detailed in Appendix A (a memo previously submitted to the Department), a scientific, objective poll of American adults conducted by The Polling Company, Inc., found that **only** **38 percent of Americans realize that physicians may not legally be coerced** into violating standards of medical ethics and their own conscientiously held moral convictions by requiring them to perform abortions or refer patients for abortions.

From several decades of communicating with health professionals on conscience issues, my sense is that those **opposed** to conscience protections are more aware of such protections than the pro-life and faith-based professionals who currently need them most. Many abortion activists and advocates, including those in the medical community, have focused on an agenda of mandated abortion participation and have accurately identified conscience protections as a primary roadblock to achieving their goal.

Meanwhile, medical school curricula often are so tightly packed with technical instruction that little room remains for information and discussions about conscience protections. Given the current pressure from some within medical academia to do away with conscience protections, medical school instructors may not even be a reliable source of accurate and unbiased information on this topic.

In communications over the years with physicians who have experienced job loss and other forms of discrimination over conscience issues, it is clear that some are not only unaware of legal protections but also not necessarily inclined to fight for their rights. Medical training can involve a fair amount of pressure to conform to institutional requirements. Medical education also tends to focus on training about how to follow procedures and protocols rather than about how to challenge the system.

In light of the threats to conscience protections, a general lack of awareness of legal protections and recourse and a disinclination to "challenge the system" makes the education of the medical community an urgent priority. Such education should include not only an outline of specific legal protections but also an education about why conscience protections are an important part of medicine and American values.

#### Comment on information, including any facts, surveys, audits, or reports, about whether individuals did not enter a health care field or a certain specialty because of concerns that their conscientious objections would not be accommodated.

The Polling Company, Inc. conducted a survey of 2,865 members of faith-based medical organizations. The survey found that when faith-based health professionals (primarily physicians) were asked to assess their educational experiences:

* **39%** said they have “**experienced 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.”[[2]](#endnote-2)

#### Comment on information, including any facts, surveys, audits, or reports, about whether certain populations in the health care field, such as students or nurses, face or are vulnerable to discrimination in violation of the Federal health care conscience and associated anti-discrimination laws, and how outreach and enforcement might be tailored to respond to those needs.

Experiences related by individuals[[3]](#endnote-3) help translate the statistics cited above into personal impact:

* 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. So I guess my question is, Can an institution take action against a resident for taking this type of a stand against abortion? And are there any institutions in particular that would be understanding of my beliefs and not ask me to compromise them?"

* J. Wesley Earley: "I am a third-year medical student. In my second semester, we take a Medical Ethics course. On numerous occasions, I was repudiated by the professor for my unwillingness to profess as acceptable her position that all physicians MUST refer a patient wishing an abortion to an abortion provider (since I obviously was unwilling to perform one myself). The professor's point was that the woman desiring the abortion was my patient and I was ethically bound to refer her in order to meet my ethical obligation of 'non-abandonment' once I had accepted her as a patient. My response to her was that I was ethically and morally beholden to defend the life of the unborn child, and that my vow of placing my patient's well-being before all else took precedent in preserving the child's life over terminating the pregnancy for the woman's convenience."

A study reported in the *Journal of Graduate Medical Education* found that "**Ninety percent** of the 63 [medical residency program applicant] respondents in the study remember being **asked at least one potentially discriminatory question**. Among these, students were asked about their marital status (86%), about children (31%), about plans for pregnancy (10%), where they were born (54%) and/or about their national origin (15%), and about **religious and ethical beliefs (24%)"** (emphasis added).**[[4]](#endnote-4)**

One study of the medical school interview process detailed case studies of discrimination and found that "Applicants who appeared to be opposed in any way to abortion had their views characterized as 'preformed,' 'downright naive,' 'vague,' 'displaying ... considerable rigidity,' or 'narrow or rigid.' The adjectives chosen are more like **judgments on the applicants' views** than attempts to characterize their ability to express themselves or evaluate a capacity to identify relevant issues. No extant records contain a case in which an applicant who favored abortion was described in negative terms" (emphasis added).[[5]](#endnote-5)

Medical academic institutions do not appear to be reliable to self-police for violations of conscience laws, or to educate students on conscience laws, since these institutions all too often are the *violators* of conscience laws. Therefore, the Department should consider developing mandated educational outreach materials and information designed for use by health care educational institutions.

The easiest way to accomplish this may be through written and online materials provided to institutions for their students and prospective students. Ideally consideration of conscience freedoms would become part of institutions' academic curricula, although many important topics currently compete for a place within curricula. The availability and promotion of Department-produced online materials—including videos and downloadable materials—will help increase student access and understanding.

Incidents of discrimination can take place before an individual even enters a health profession, such as during interviews at medical and other schools. The Department might consider mandating a **post-interview online survey of medical school and other health school candidates**, with responses submitted either to a government office or to an office at the institution that could be reasonably expected to process responses objectively and to investigate and potentially report allegations of abuse and discrimination.

#### Comment on information, including any facts, surveys, audits, or reports, about whether the existence or expansion of rights to exercise religious beliefs or moral convictions in health care improves or worsens patient outcomes and access to health care.

Patients clearly want the freedom to choose physicians who share their values, and such choice obviously impacts their access to health care. A scientific national survey found that "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."[[6]](#endnote-6)

One study found that "Trust in one's own personal physician is associated with utilization of preventive health services. Blacks' relatively high distrust of their physicians likely contributes to health disparities by causing reduced utilization of preventive services."[[7]](#endnote-7)

A survey of physicians found, "Almost all physicians (91%) say it is appropriate to discuss R/S [religion spirituality] issues if the patient brings them up, and 73% say that when R/S issues comes up they often or always encourage patients’ own R/S beliefs and practices.[[8]](#endnote-8) The Christian Medical Association provides educational programs[[9]](#endnote-9) to help physicians ethically and effectively work with patients' religious convictions and interests.

The links between faith and health have been reasonably well documented,[[10]](#endnote-10) leading to whole institutions that research the subject, such as Duke University's Center for Spirituality, Theology and Health[[11]](#endnote-11) and the National Institute of Health's National Center for Complementary and Integrative Health (NCCIH) (NCCIH was formerly known as the National Center for Complementary and Alternative Medicine).

Examples of such research include a study of "the impact of an educational/training program on the attitudes/practices of physicians (MDs) and midlevel practitioners (MLPs)" regarding "a screening spiritual history"—assessing patients' spiritual beliefs and preferences. The study found that taking a spiritual history "was sustained over time, as did the sense that patients accepted/appreciated this practice."[[12]](#endnote-12)

A number of studies have addressed the impact of the integration of health and religion on outcomes related to specific conditions. One of many such examples is a study of advanced cancer patients that found that "a substantial minority of patients did not receive the spiritual care they desired while hospitalized. When spiritual needs are not met, patients are at risk of depression and reduced sense of spiritual meaning and peace. Spiritual care should be matched to cancer patients' needs."[[13]](#endnote-13)

Another study "compared the effectiveness of religiously integrated cognitive behavioral therapy (RCBT) versus standard CBT (SCBT) on increasing optimism in persons with major depressive disorder (MDD) and chronic medical illness." The study found comparable results between the two and noted that "religiosity predicts increases in optimism over time independent of treatment group."[[14]](#endnote-14)

Another study focused on "Religiously Integrated Cognitive Behavioral Therapy (RCBT), a manualized therapeutic approach designed to assist depressed individuals to develop depression-reducing thoughts and behaviors informed by their own religious beliefs, practices, and resources." Authors noted that "This treatment approach has been developed for 5 major world religions (Christianity, Judaism, Islam, Buddhism, and Hinduism), increasing its potential to aid the depressed medically ill from a variety of religious backgrounds."[[15]](#endnote-15)

#### Comment on whether the voicing of health care conscience and associated anti-discrimination objections protected by Federal law is chilled by State laws, State agency action, lack of perceived remedies, threat of litigation, or threat of losing legal status, such as a medical license.

The example below, a media report of a psychiatrist fired for critiquing patient care at hospital, shows how those who conscientiously raise objections can be treated by the offending institution:

"When they visited The William W. Backus Hospital in late 1999, state investigators uncovered more than a dozen cases in which they said psychiatric patients were transferred, refused admission or discharged without proper medical treatment. Two of those patients, identified in state Department of Public Health records only as Patient #25 and Patient #28, had killed themselves within days of being discharged. Altogether, in examining the cases of 17 psychiatric patients, investigators found nearly three-dozen violations of health codes, ranging from failure to assess patients' mental conditions before transferring them to failure to administer toxicology tests before medicating them.

"The state's investigation began in October 1999, three years after an employee brought her concerns about the hospital's treatment of psychiatric patients to the attention of Pipicelli and other hospital administrators. That employee, Dr. Safaa Hakim, is a psychiatrist who worked at the hospital for five years. According to court documents, she told Pipicelli on Nov. 12, 1996, that she was concerned that the hospital was endangering the lives of uninsured psychiatric patients by refusing to give them proper care. Four months **after she took her concerns to Pipicelli, in March 1997, Hakim was fired**."[[16]](#endnote-16)

Dr. Hakim wrote of her ordeal in an email:

"The case of discrimination I filed was dismissed with prejudice by the Federal Judge in June of this year. I decided to let go and let God at that point as I have battling a statewide corrupt system for almost 10 years. As it stands, the Hospital has a lien on my condo and all my savings and I was reported to the National Practitioner data Bank as an impaired physician who is unable to practice medicine with skill and safety. **I did what was right according to an oath I have taken one day to God first and to the medical profession second.** As a result, I was subjected to 10 years of discrimination, retaliation, harassment and abuse by both the medical and judicial systems of the State of Connecticut." [[17]](#endnote-17)

Another reported example, of a conscientiously objecting physician in Missouri, illustrates both how insidious discrimination can occur and how difficult it may be to nail down sufficient evidence to prosecute:

"Dr. Leslie Chorun is one of six health care professionals who have formed Fertility Care Center of Kansas City, a medical practice focusing on the Creighton Model of natural family planning. 'I was told at one point that by not referring women for abortions or contraception, that was below the standard of care for physicians,' Chorun said.

"The pressure on Chorun was increasing from the supervisors of her residency program.

Eventually, Chorun was forced to resign from the residency program months before completion. Though she was able to obtain licenses to practice in both Kansas and Missouri, her insistence on building her practice based solely on natural methods continued to cause her problems. When she applied for her Missouri license, a friend attempted to intervene with one of her residency supervisors to help Chorun get a good reference. The supervisor told her friend, **'She's too Catholic,'** Chorun said."[[18]](#endnote-18)

#### Comment on what constitutes the most effective method of educating recipients of Department funds and their employees about the protections of the Federal health care conscience and associated anti-discrimination laws.

The fact that the 2008 conscience rule did not last long enough to conduct an educational campaign before being gutted by the next administration underscores the wisdom of the current administration in promulgating this rule early in the administration. Without education of the medical community, reports of discrimination will continue to increase, and the culture of medicine—currently heavily influenced by voices opposing conscience freedoms--will continue to move away from rather than closer to an understanding of and appreciation for conscience freedoms.

The importance of restoring understanding of and commitment to our first freedom (so designated by our founders in the Bill of Rights) and the protection of conscience requires a **substantial, innovative, sweeping and penetrating educational campaign**. Consider the financial and marketing resources, which went well beyond bulletin boards, that the Department and other branches of government put into educating Americans about the Affordable Care Act—a partisan piece of legislation that did not even involve fundamental constitutional principles.

The Department should consider immediately assembling an advisory team from a wide variety of fields related to issue messaging: advertising, education, social media, marketing and even entertainment. Task the team to quickly develop (e.g., within three months) an action plan to hire firms and individuals drawn from these fields to develop educational and marketing outreach programs to increase awareness of, understanding about and appreciation for legal conscience protections in healthcare.

Budget significant resources to accomplish the goals of these programs, which may employ a breadth of approaches including video, online resources, social media outreach, public service and paid advertising, conferences and more. Print and electronic media outreach can also advance the message and raise public awareness of conscience protections and illegal discrimination.

Since many medical professionals learn through case studies, emphasis on concrete illustrations of discrimination should be a prime feature of this educational outreach. Consideration should be given to tapping into the existing sources of medical education, such as grand rounds and continuing medical education (CME), that health professionals are used to using.

The probability of the success of this program can be enhanced through the same type of measurable outcomes and accountability requirements that characterize all Department grant programs.

#### Comment on what constitutes the most effective method for recipients of Department funds to provide notice about the requirements and prohibitions in the Federal health care conscience and associated anti-discrimination laws to employees, students, applicants, and sub-recipients.

The Department will likely receive hundreds of thousands of comments on this proposed rule, and few if any of them will have been triggered by a notice on a bulletin board. Because bulletin boards may be more effective at *burying* than highlighting messages, the Department should not allow recipients to rely on posting notices on bulletin boards alone for providing notice.

Recipients should be required to use the same communications vehicle that they **most frequently use** to communicate notice to their constituents about important issues. Bulletin board posting may be mandated for all, but at least one other option, such as email or online posting, should also be required. Institutions should be prepared to document for the Department why they chose a specific second communication method, by demonstrating that similarly important messages typically are also communicated through that method.

#### Comment on whether alternate remedies, such as lawsuits, have been sufficient to protect individuals and entities from discrimination, coercion, or other treatment prohibited by the health care conscience and associated anti-discrimination laws.

The case of nurse Cathy Cenzon DeCarlo, forced to participate in an abortion, illustrates the inadequacy of current conscience law in providing for court recourse.

The Court ruled in *Cenzon DeCarlo v. Mount Sinai Hospital,* "This case calls on us to determine whether 42 U.S.C. § 300a-7(c) implies a private right of action. As set forth below, we hold that it does not."

Congress must pass the Conscience Protection Act and similar legislation that gives victims legal standing to sue in court. Until then, lawsuits will remain an insufficient remedy for victims.

#### Comment on whether any provisions in the proposed rule would result in an unjustified limitation on access to health care or treatments.

Typically, opponents of conscience protections claim that simply allowing health professionals to follow ethical and moral codes will somehow result in rampant discrimination against whole classes of patients, inability to obtain blood transfusions and even deaths. No doubt thousands of comments have flooded the Department over this rule, alleging such tragedies.

Tellingly, little or no evidence accompanies such allegations.

With conscience laws in effect now for decades, if these alleged results of conscience protections were actually occurring, the news media would be awash with stories and widespread protests would long ago have forced changes in the law.

Imagine what would need to happen, for example, for a patient to be unable to obtain a blood transfusion at a hospital based on professional conscience claims. Every professional working in that hospital would have to be a Jehovah's Witness who, believing blood transfusions to be immoral, inexplicably had chosen a career and a healthcare institution in which his or her religious conviction is routinely violated.

Nor are huge swaths of patients discriminated against by those with religious convictions. In fact, faith-based health professionals and institutions often go out of their way to care for patients who are marginalized, underserved and subject to stigma and discrimination.

Rather than conscience rule provisions limiting access to healthcare, the **provisions actually *ensure* *access* to healthcare.** With over nine of ten faith-based physicians ready to leave medicine if denied conscience protections, the **real danger to healthcare access is failing to enforce conscience law.** The danger is even greater given that faith-based health professionals and institutions often serve patients who otherwise would have few or no options for healthcare.

#### Conclusion

The Department has crafted a rule consistent with decades of federal conscience law and American values of freedom.

Education about and enforcement of these laws has long been neglected, allowing a culture of intolerance and coercion to fester within the medical community. Those subject to job loss, loss of privileges, being barred from educational opportunities and other forms of discrimination include pro-life and faith-based health professionals and institutions. These individuals and institutions are often the very ones providing care for marginalized, underserved and poor populations who otherwise would have few or no options for healthcare.

Enforcing existing law and educating the healthcare community regarding conscience protections will not only protect life-affirming healthcare professionals dedicated to longstanding medical ethics principles; it will also protect the millions of patients who share their values and depend upon their continued service.

Thank you for your outstanding work on this proposed rule. We look forward to providing any help needed to ensure its effectiveness and success.

#### Appendix A: Polling data

MEMORANDUM

DATE: September 18, 2008

FROM: Jonathan Imbody

Christian Medical Association - Vice President for Government Relations

TO: HHS Secretary Mike Leavitt

RE: Provider Conscience Regulation

I write in strong support of the regulation and in specific reference to the request for *"information with regard to general knowledge or lack thereof of the protections established by these nondiscrimination provisions, including any facts, surveys, audits, reports, or any other evidence of knowledge or lack of knowledge on these matters in the general public…"*

To answer this question, The Polling Company, Inc. on September 11-14, 2008 conducted a nationwide survey, commissioned by the Christian Medical Association. Full results of this survey are included in this memorandum, below.

This scientific, objective poll found that only 38 percent of Americans realize that physicians may not legally be coerced into violating standards of medical ethics and their own conscientiously held moral convictions by requiring them to perform abortions or refer patients for abortions.

This widespread ignorance of civil rights protections helps explain why over 40 percent of our members report being pressured to violate their moral and ethical convictions in healthcare. It also underscores the urgent need for the HHS regulation and to educate the public and medical community concerning civil rights in healthcare.

Protecting the civil rights of healthcare professionals allows their adherence to time-tested ethical standards that protect patients, including the Hippocratic Oath. It's ironic and alarming that many today would actually disregard civil rights and forbid physicians from following the Hippocratic Oath and other ethical standards that respect early human life.

If physicians lose the freedom to follow conscience and ethical standards, patients lose the protections of those standards. Patients also will ultimately lose access to those physicians, who will be forced to choose other careers rather than violate ethical standards.

*Thank you* very much for your consideration of these views and the poll data, which follows.

**the polling company TM, inc./WomanTrend
*for*Christian Medical Association**

To: Jonathan Imbody, Vice President for Government Relations

From: Kellyanne Conway, President and CEO

Date: September 16, 2008

Re: Analysis of Findings: Nationwide Survey of American Adults

#### Introduction and Methodology

**the polling company TM, inc**. is pleased to present to **Christian Medical Association
(CMA)** the results of a recent nationwide telephone survey of 1,000 adults (aged 18+).

The survey was fielded September 11-14, 2008 at a Computer Assisted Telephone Interviewing (CATI) phone facility using live callers. The sample was drawn utilizing a Random Digit Dial (RDD), where phone numbers were generated by a computer to ensure that every household in the nation with a landline telephone had an equal chance to be surveyed.

Sampling controls were used to ensure that a proportional and representative number of adults were interviewed from such demographic groups as age, gender, race and ethnicity, and geographic region1 according to the latest figures available from the United States Census.

One close-ended question that probed Americans’ knowledge about federal law and the obligations of doctors when patients request abortions was added to a national omnibus survey. The addition of this question was prompted by a request from the U.S. Department of Health and Human Services for information regarding the public’s knowledge (or lack thereof) about this topic. The final question wording was approved by an authorized representative of CMA prior to fielding.

The margin of error is calculated at +/- 3.1% at the 95% confidence level, meaning that in 19 out of 20 cases, the results obtained would differ by no more than three point one percentage points in either direction if other groups of 1,000 adults were surveyed using the same random sampling plan. Margins of error for subgroups are higher.

1 Northeast includes CT, ME, MA, NH, RI, VT, NJ, NY, PA; North Central includes IL, IN, MI, OH, WI, IA, KS, MN, MO, NE, ND, SD; South includes DC, DE, FL, GA, MD, NC, SC, VA, WV, AL, KY, MS, TN, AR, LA, OK, TX; West includes AZ, CO, ID, MT, NV, NM, UT, WY, AK, CA, HI, OR, WA.

#### Most Americans Don’t Know the Law Regarding Doctors and Abortion.

*"I am now going to ask you a question about healthcare and the law.
"If a patient in the United States wants a doctor to perform an abortion or to refer her to another doctor who will perform an abortion, which of the following BEST describes what the doctor is required to do by federal law?"*

[Read entire list before recording one answer]

|  |  |
| --- | --- |
| 4% | "The doctor must perform the abortion." |
| 38% | "The doctor does not have to perform the abortion, but must refer the patient to another doctor who will." |
| 38% | "The doctor does not have to perform the abortion, nor does he or she have to refer the patient to another doctor who will." |
| 5% | "It depends" (volunteered). |
| 11% | Don’t know (volunteered). |
| 4% | Refused (volunteered). |

When read three possible descriptions regarding the legal obligations of a doctor when a patient requests an abortion, the clear majority of Americans surveyed revealed they did not have a firm grasp on the law.

As the results box demonstrates, just 38% of those surveyed selected the description that is actually in line with current federal law: that a doctor has the right to refuse to provide both the procedure and the referral.

By comparison, 42% of these adults believed the doctor did have some obligation under federal law: either to perform the abortion (a paltry 4%) or at least refer the patient to someone who would (38%). Another 11% admitted they weren’t sure and 5% allowed for situational variances, saying “it depends.”

An examination of the crosstabular data revealed the following:

* The lack of knowledge of federal law on this topic was widespread as no more than 47% of any demographic subgroup selected the correct description of the doctor’s obligations. Those more likely than most to know the doctors was not required to perform an abortion or provide a referral included 45-64 year-olds, residents of the North Central region, and those earning between $25,000 and $50,000 per year.
* Young adults (those aged 18-24) stood out as especially likely to believe the
doctor was legally required to perform an abortion (10% vs. 4% overall).
* Groups more likely than most to believe a physician in this situation was legally bound to give a referral to an abortion provider included 18-24 year-olds, residents of the North East, and Hispanics.
* Americans more apt than average to admit they simply did not know included 25- 34 year-olds, seniors (65+), and those earning less than $25,000 per year.
* There was no appreciable difference between the answers of men and women, nor was there a statistically significant pattern based on education.

#### In Conclusion...

*These data make clear that most Americans aren’t sure what the rights and obligations of doctors are regarding abortion. While very few believe doctors are compelled by federal law to perform the procedure, a substantial number think they are required to provide a referral. To fully comprehend their rights and options as patients, it is important for Americans to understand the laws governing the practice of medicine by doctors. Overall, it seems apparent that additional information is required to ensure both doctors and patients know both their rights and their obligations.*

#### TOPLINE DATA - Nationwide Telephone Survey of 1,000 Adults

Field Dates: September 11-14, 2008 Margin of Error: +/- 4.4%

I am now going to ask you a question about healthcare and the law. If a patient in the United States wants a doctor to perform an abortion or to refer her to another doctor who will perform an abortion, which of the following BEST describes what the doctor is required to do by federal law?

[Read entire list before recording one answer]

|  |  |
| --- | --- |
| 4% | "The doctor must perform the abortion." |
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| 5% | "It depends" (volunteered). |
| 11% | Don’t know (volunteered). |
| 4% | Refused (volunteered). |

**DEMOGRAPHICS**

1. What is your age?

13% 18-24

17% 25-34

19% 35-44

19% 45-54

14% 55-64

16% 65+

2% REFUSED (VOLUNTEERED)

1. Are you Spanish, Hispanic, or Latino?

13% YES

86% NO

1% REFUSED (VOLUNTEERED)

1. Which of the following describe your race? You can select as many as apply.

75% WHITE/CAUCASIAN

11% BLACK/AFRICAN-AMERICAN

2% ASIAN/ASIAN-AMERICAN

12% SOME OTHER RACE

2% REFUSED (VOLUNTEERED)

1. What is your household’s total income before taxes?

14% UNDER $25,000

9% $25,000- $34,999

17% $35,000- $49,999

17% $50,000- $74,999

26% $75,000 OR MORE

17% DON’T KNOW/REFUSED (VOLUNTEERED)

1. Are there any children under the age of 18 living in your household?

40% YES

59% NO

1% REFUSED (VOLUNTEERED)

1. What was the last grade in school you completed?

7% LESS THAN HIGH SCHOOL

32% HIGH SCHOOL GRADUATE

28% SOME COLLEGE/ ASSOCIATES DEGREE

19% COLLEGE GRADUATE

13% POST GRADUATE

1% REFUSED (VOLUNTEERED)

1. Gender

48% MALE

52% FEMALE

1. Region1

19% NORTHEAST

22% NORTH CENTRAL

37% SOUTH

23% WEST

#### Endnotes

1. Polling details available at <https://www.freedom2care.org/polling>. [↑](#endnote-ref-1)
2. Online Survey of 2,852 Members of Faith-Based Medical Associations, by the polling companyTM, inc./WomanTrend, on behalf of the Christian Medical Association. Field Dates: March 31-April 3, 2009. Summary available at <https://docs.wixstatic.com/ugd/809e70_2f66d15b88a0476e96d3b8e3b3374808.pdf>. [↑](#endnote-ref-2)
3. "Real life stories" documenting personal experiences is available at the Freedom2Care website: <https://docs.wixstatic.com/ugd/809e70_99b340dd952e4e57a98cc59b0dd8a0c2.docx?dn=Real%20life%20stories.pdf.docx>. [↑](#endnote-ref-3)
4. Santen, Sally A., et. al. "Potentially Discriminatory Questions During Residency Interviews: Frequency and Effects on Residents' Ranking of Programs in the National Resident Matching Program," J Grad Med Educ. 2010 Sep; 2(3): 336–340. [↑](#endnote-ref-4)
5. Gunn, Albert E. and Zenner, George O.,"Religious Discrimination in the Selection of Medical Students: A Case Study," *The Linacre Quarterly*, Volume 63 | Number 3 Article 6, August 1996. [↑](#endnote-ref-5)
6. Scientific survey of 800 American adults conducted by The Polling Company, Inc. and reported in April 2009 by Freedom2Care. The overall margin of error for the survey is ± 3.5% at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 3.5 percentage points in either direction if the survey were repeated multiple times employing this methodology and sampling method. Margins of error for subgroups are higher. More polling details available at <https://www.freedom2care.org/polling>. [↑](#endnote-ref-6)
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9. A sampling of such programs is available at [www.cmda.org/graceprescriptions](http://www.cmda.org/graceprescriptions). [↑](#endnote-ref-9)
10. Some of the research has been summarized, for example, in books such as *The Healing Power of Faith: How Belief and Prayer Can Help You Triumph over Disease*, by Harold G. Koenig, MD. Simon & Schuster Trade, April 2001. [↑](#endnote-ref-10)
11. <https://spiritualityandhealth.duke.edu/> [↑](#endnote-ref-11)
12. Koenig HG, Perno K, Erkanli A, Hamilton T (2017). Effects of a 12-month educational intervention on clinicians’ attitudes/practices regarding the screening spiritual history. Southern Medical Journal 110 (6): 419-420. [↑](#endnote-ref-12)
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