

## IS YOUR DOCTOR PLAYING JUDGE?

*New laws give physicians and hospitals the right to refuse women's requests for the best care, even in emergencies. Why your health could be at risk.*

SELF

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**Lori Boyer couldn't stop trembling** as she sat on the examining table, hugging her hospital gown around her. Her mind was reeling. She'd been raped hours earlier by a man she knew—a man who had assured Boyer, 35, that he only wanted to hang out at his place and talk. Instead, he had thrown her onto his bed and assaulted her. "I'm done with you," he'd tonelessly told her afterward. Boyer had grabbed her clothes and dashed for her car in the freezing predawn darkness. Yet she'd had the clarity to drive straight to the nearest emergency room—Good Samaritan Hospital in Lebanon, Pennsylvania—to ask for a rape kit and talk to a sexual assault counselor. Bruised and in pain, she grimaced through the pelvic exam. Now, as Boyer watched Martin Gish, M.D., jot some final notes into her chart, she thought of something the rape counselor had mentioned earlier. "I'll need the morning-after pill," she told him.

Dr. Gish looked up. He was a trim, middle-aged man with graying hair and, Boyer thought, an aloof manner. "No," Boyer says he replied abruptly. "I can't do that." He turned back to his writing. Boyer stared in disbelief. *No?* She tried vainly to hold back tears as she reasoned with the doctor: She was midcycle, putting her in danger of getting pregnant. Emergency contraception is most effective within a short time frame, ideally 72 hours. If he wasn't willing to write an EC prescription, she'd be glad to see a different doctor. Dr. Gish simply shook his head. "It's against my religion," he said, according to Boyer. (When contacted, the doctor declined to comment for this article.) Boyer left the emergency room empty-handed. "I was so vulnerable," she says. "I felt victimized all over again. First the rape, and then the doctor making me feel powerless." Later that day, her rape counselor found Boyer a physician who would prescribe her EC. But Boyer remained haunted by the ER doctor's refusal — so profoundly, she hasn't been to see a gynecologist in the two and a half years since. "I haven't gotten the nerve up to go, for fear of being judged again," she says.

Even under less dire circumstances than Boyer's, it's not always easy talking to your doctor about sex. Whether you're asking about birth control, STDs or infertility, these discussions can be tinged with self-consciousness, even embarrassment. Now imagine those same conversations, but supercharged by the anxiety that your doctor might respond with moral condemnation — and actually refuse your requests.

That's exactly what's happening in medical offices and hospitals around the country: Catholic and conservative Christian health care providers are denying women a range of standard, legal medical care. Planned Parenthood M.D.s report patients coming to them because other gynecologists would not dole out birth control prescriptions or abortion referrals. Infertility clinics have turned away lesbians and unmarried women; anesthesiologists and obstetricians are refusing to do sterilizations; Catholic hospitals have delayed ending doomed pregnancies because abortions are only allowed to save the life of the mother. In a survey published this year in *The New England Journal of Medicine*, 63 percent of doctors said it is acceptable to tell patients they have moral objections to treatments, and 18 percent felt no obligation to refer patients elsewhere. And in a recent Self.com poll,

nearly 1 in 20 respondents said their doctors had refused to treat them for moral, ethical or religious reasons. "It's obscene," says Jamie D. Brooks, a former staff attorney for the National Health Law Program who continues to work on projects with the Los Angeles advocacy group. "Doctors swear an oath to serve their patients. But instead, they are allowing their religious beliefs to compromise patient care. And too often, the victims of this practice are women."

**Compared with the highly publicized** issue of pharmacists who refuse to dispense birth control and emergency contraception, physician refusals are a little-discussed topic. Patients denied treatment rarely complain—the situation tends to feel so humiliatingly personal. And when patients do make noise, the case is usually resolved quietly. "The whole situation was traumatizing and embarrassing, and I just wanted to put it behind me," Boyer says. She came forward only after a local newspaper reported an almost identical story: In July 2006, retail clerk Tara Harnish visited the same ER after being sexually assaulted by a stranger, was examined by the same Dr. Gish—and when her mother called Dr. Gish's office the next day to get EC for Harnish, she was refused. "Then I knew it wasn't just me, that this was a larger problem and it could happen to anybody," Boyer says.

Harnish, 21, was shocked by the way the doctor treated her. "He seemed more concerned with saving the [potential] pregnancy than he was with my health," she says. "He turned me away when I needed medical help. That's not what a doctor is supposed to do." Harnish was too shaken by her rape to pursue the matter; her mother called Harnish's gynecologist for a prescription. Then she called the newspaper. Despite the attention the story attracted, Dr. Gish continues to work at Good Samaritan Hospital. Spokesman Bill Carpenter will only say that "the issue has been resolved internally, and we're going to move forward."

In many cases, women don't even know a doctor is withholding treatment. Boyer and Harnish, for example, wouldn't have realized they'd been denied care if they'd been among the estimated one in three women who don't know about EC. In *The New England Journal of Medicine* survey, 8 percent of physicians said they felt no obligation to present all options to their patients. "When you see a doctor, you presume you're getting all the information you need to make a decision," notes Jill Morrison, senior counsel for health and reproductive rights at the National Women's Law Center in Washington, D.C. "Especially in a crisis situation, like a rape, you often don't think to question your care. But unfortunately, now we can't even trust doctors to tell us what we need to know."

To many doctors, however, the issue represents a genuine ethical dilemma. "The physician's number-one creed is First, do no harm," says Sandy Christiansen, M.D., an ob/gyn in Frederick, Maryland, who is active in the Christian Medical and Dental Associations, a 16,000-member group for health care professionals based in Bristol, Tennessee. "I know that life begins at conception, and that each person has inherent value. That includes the life of the unborn." Dr. Christiansen says she will not give abortion referrals, opposes EC and, while she has prescribed birth control, is reconsidering the morality of that position. "Doctors are people, too," she adds. "We have to be able to leave the hospital and live with ourselves. If you feel in your heart an action would cause harm to somebody—born or unborn—it's legitimate to decline to participate."

The American Medical Association in Chicago, the nation's largest physician group, effectively agrees with her; its policy allows a doctor to decline a procedure if it conflicts with her moral ideology. The law also favors medical professionals. In 1973, following *Roe v. Wade*, Congress passed the so-called Church Amendment, allowing federally funded health care providers to refuse to do abortions. In the years since, 46 states have adopted their own abortion refusal clauses—or, as

proponents call them, conscience clauses—allowing doctors to opt out. Now many states have gone further. Sixteen legislatures have given doctors the right to refuse to perform sterilizations; eight states say doctors don't have to prescribe contraception. "This is about the rights of the individual, about our constitutional right to freedom of religion," says Frank Manion, an attorney with the American Center for Law and Justice, a legal group in Washington, D.C. Founded by minister Pat Robertson, the organization has represented health care providers and lobbied for laws that protect them. "We're not trying to deny anybody access to treatment," Manion adds. "We're saying, 'Don't make your choice my choice.'"

**When Elizabeth Dotts walked** into her new doctor's office for a gynecologic exam and checkup, she didn't realize she was treading into the front lines of a culture war. "I was just going for my annual visit, nothing out of the ordinary," says the 26-year-old YWCA grant coordinator. Dotts, who was single, had recently moved to Birmingham, Alabama, and was seeing an M.D. recommended by a coworker. The visit was unremarkable until she asked for a refill of her birth control prescription. That's when the doctor informed her that he was Catholic and the pills were against his religion. "The look he gave me actually made me feel ashamed," Dotts says. "Like I had this wild and crazy sex life. Like he was trying to protect me from myself." Her bewilderment quickly turned to anger — "I thought, Wait, what in the world? Where am I?"—especially when she remembered that her insurance covered only one annual gynecology checkup. Dotts, who'd majored in religion in college, got tough with the doctor.

"I'm glad for you that you're faithful," she told him. "But don't push it on me. I'm here for my treatment, and I expect you to give it to me." Five minutes of verbal sparring later, the doctor relented with a six-month prescription—but only after Dotts told him she had been put on the Pill to relieve menstrual cramping, not to prevent pregnancy. Dotts grabbed the prescription and left, resolving to find herself a new gynecologist. "Before, walking into a doctor's office, I assumed we were on the same side," she says. "I don't make that assumption now. I ask a million questions and advocate for myself."

This tug-of-war between physicians and patients is playing out in state legislatures, where a handful of bills aim to protect women. A Pennsylvania proposal, for example, would compel ER doctors to provide rape victims with information about emergency contraception and to dispense it on request—a law already on the books in California, Massachusetts, New Jersey, New Mexico, New York, Ohio and Washington. A federal version of the bill is under consideration by a House subcommittee. But such efforts have been more than matched by those of conscience-clause activists. Since 2005, 27 states introduced bills to widen refusal clauses. Four states are considering granting *carte blanche* refusal rights—much like the law adopted by Mississippi in 2004, which allows any health care provider to refuse practically anything on moral grounds. "It's written so broadly, there's virtually no protection for patients," says Adam Sonfield, senior public policy associate for the Washington, D.C., office of the Guttmacher Institute, a reproductive-health research group. Sonfield notes that many refusal clauses do not require providers to warn women about restrictions on services or to refer them elsewhere. "You have to balance doctors' rights with their responsibilities to patients, employers and communities," he adds. "Doctors shouldn't be forced to provide services, but they can't just abandon patients."

In theory, the laws aren't aimed solely at women's health—a bill in New Jersey lists eye doctors and prosthetics technicians as examples of providers who'd be allowed to refuse care based on their beliefs. But Morrison warns women not to be fooled. "I ask you, what belief would keep someone

from fitting a patient with a prosthetic limb?" she asks. "What they're really after is limiting access to women's health care. Reproductive health is seen as something other than regular health care"—not a straightforward matter of treating and healing, but something laden with morality—"and if you treat it that way, it becomes something providers can say yes or no to." Men, for the most part, escape such scrutiny: It's pretty hard to imagine someone being made to feel he's going straight to hell for choosing to take Viagra or get a vasectomy. And if women come to fear their doctors' judgments, a new set of problems can develop. "Then you have women who don't communicate with their doctors or avoid getting care," Morrison warns. "Any way you look at it, it's dangerous for women."

**The stakes were high for realtor** Cheryl Bray when she visited a physician in Encinitas, California, two and a half years ago. Though she was there for a routine physical, the reason for the exam was anything but routine: Then a single 41-year-old, Bray had decided to adopt a baby in Mexico and needed to prove to authorities there that she was healthy. "I was under a tight deadline," Bray remembers; she had been matched with a birth mother who was less than two months from delivering. Bray had already passed a daunting number of tests—having her taxes certified, multiple background checks, home inspections by a social worker, psychological evaluations. When she showed up at the office of Fred Salley, M.D., a new doctor a friend had recommended, she was looking forward to crossing another task off her list. Instead, 10 minutes into the appointment, Dr. Salley asked, "So, your husband is in agreement with your decision to adopt?"

"I'm not married," Bray told him.

"You're not?" He calmly put down his pen. "Then I'm not comfortable continuing this exam." Bray says she tried to reason with Dr. Salley but received only an offer for a referral at some future date. Dr. Salley disputes this, telling SELF that he offered to send Bray to another doctor in his group that day. "My decision to refer Ms. Bray was not because she was unmarried; rather, it was based on my moral belief that a child should have two parental units," he adds. "Such religious beliefs are a fundamental right guaranteed by the Constitution of the United States."

Bray sobbed in her parked car for another 45 minutes before she could collect herself for the drive home. "I had a lot of pent-up emotions," she remembers. "When you are going through an adoption, you have to prove that you are a fit parent at every stage. I really felt put through the ringer, and the doctor compounded that feeling."

Bray managed to get an appointment with another physician about a month later and was approved for the adoption two weeks before her daughter, Paolina, was born. But she remained furious enough that she filed a complaint against Dr. Salley with the Medical Board of California — and then was shocked when, in April 2006, the board closed the case without taking any action. When she complained to Dr. Salley's employer, a clinic official wrote back that "based on personally held conscience and moral principles" her doctor had been within his rights to refuse her as a patient. "Apparently," she says, "it's OK to discriminate against somebody, as long as it's for religious reasons."

It's true that several lawsuits have favored health providers who refuse services based on their principles. In a 2002 wrongful-termination case in Riverside County, California, for example, a born-again Christian nurse was fired for refusing to give out emergency contraception — but she was vindicated when the jury agreed that her rights had been violated, awarding her \$19,000 in back pay and \$28,000 for emotional distress. And in a recent case in San Diego, an appeals court ruled

against 35-year-old Guadalupe Benitez. Hoping to start a family with her lesbian partner, Benitez received fertility treatments for nearly a year at North Coast Women's Care Medical Group in Encinitas. But when drugs and home inseminations failed, two doctors and a nurse all bowed out of doing an intrauterine insemination, saying their religion would not allow it.

Their reasoning is in dispute: Benitez has claimed both doctors told her they objected to her sexual orientation. Carlo Coppo, a lawyer for the doctors, says they refused because she was unmarried. Benitez, who went on to have three children with the help of another clinic, has appealed to the California Supreme Court and is awaiting its decision.

Her attorney, Jennifer C. Pizer of Lambda Legal in Los Angeles, says she's heard from numerous lesbians denied access to fertility treatments. "Reproductive medicine has given human beings choices that didn't exist in previous generations, but the rules about how we exercise those choices should be the same for all groups of people," she argues. Allowing doctors to refer a patient to someone else, she adds, is the equivalent of a restaurant telling a black person, "Go next door. We don't serve your kind here."

In the end, the women in all of the incidents above were able to get the treatment they wanted, even if they had to go elsewhere. So one could see doctor refusals as a mere inconvenience. "In 99.9 percent of these cases, the patients walk away with what they came for, and everyone's satisfied," Manion asserts. "I know there's the horror story of the lonely person in the middle of nowhere who meets one of my clients. But those cases are so rare." Access to reproductive health care, however, is already a challenge in some areas. "Out here, it's a very real issue," says Stacey Anderson of Planned Parenthood of Montana in Helena. "We have some really gigantic counties where if you're refused a service by a primary care physician or a gynecologist, you might have to drive two, three hours to find another."

Moreover, you don't need to be in a rural area to have limited access, points out attorney Brooks; all you need to be is poor. "Lower-income people who are refused health care are trapped," Brooks says. "They can't pay out of pocket for these services. And they may not have transportation to go elsewhere. So they really don't have options."

**If there's one thing** both sides can agree on, it's this: In an emergency, doctors need to put aside personal beliefs to do what's best for the patient. But in a world guided by religious directives, even this can be a slippery proposition.

Ob/gyn Wayne Goldner, M.D., learned this lesson a few years back when a patient named Kathleen Hutchins came to his office in Manchester, New Hampshire. She was only 14 weeks pregnant, but her water had broken. Dr. Goldner delivered the bad news: Because there wasn't enough amniotic fluid left and it was too early for the fetus to survive on its own, the pregnancy was hopeless. Hutchins would likely miscarry in a matter of weeks. But in the meanwhile, she stood at risk for serious infection, which could lead to infertility or death. Dr. Goldner says his devastated patient chose to get an abortion at local Elliot Hospital. But there was a problem. Elliot had recently merged with nearby Catholic Medical Center — and as a result, the hospital forbade abortions.

"I was told I could not admit her unless there was a risk to her life," Dr. Goldner remembers. "They said, 'Why don't you wait until she has an infection or she gets a fever?' They were asking me to do something other than the standard of care. They wanted me to put her health in jeopardy." He tried

admitting Hutchins elsewhere, only to discover that the nearest abortion provider was nearly 80 miles away in Lebanon, New Hampshire — and that she had no car. Ultimately, Dr. Goldner paid a taxi to drive her the hour and a half to the procedure. (The hospital merger has since dissolved, and Elliot is secular once again.)

“Unfortunately, her story is the tip of the iceberg,” Dr. Goldner says. Since the early 1990s, hospitals have been steadily consolidating operations to save money; so many secular community hospitals have been bought up that, today, nearly one in five hospital beds is in a religiously owned institution, according to the nonprofit group MergerWatch in New York City.

Every Catholic hospital is bound by the ethical directives of the U.S. Conference of Catholic Bishops, which forbid abortion and sterilization (unless they are lifesaving), in vitro fertilization, surrogate motherhood, some prenatal genetic testing, all artificial forms of birth control and the use of condoms for HIV prevention. Baptist and Seventh Day Adventist hospitals may also restrict abortions. Which means that if your local hospital has been taken over—or if you’re ever rushed to the nearest hospital in an emergency—you could be in for a surprise at the services you can’t get.

You wouldn’t necessarily know a hospital’s affiliation upon your arrival. “The name of the hospital may not change after a merger, even if its philosophy has,” Morrison notes. “The community is often in the dark that changes have taken place at all.” The burden to know falls entirely on the patient, who can either search the Catholic Health Association’s directory of member hospitals (at CHAUSA.org) or ask her doctor outright. Either way, says Morrison, “it requires you to be an extremely educated consumer.”

Family physician Debra Stulberg, M.D., was completing her residency in 2004 when West Suburban Medical Center in Oak Park, Illinois, was acquired by the large Catholic system Resurrection Health Care. “They assured us that patient care would be unaffected,” Dr. Stulberg says. “But then I got to see the reality.” The doctor was struck by the hoops women had to jump through to get basic care. “One of my patients was a mother of four who had wanted a tubal ligation at delivery but was turned down,” she says. “When I saw her not long afterward, she was pregnant with unwanted twins.”

And in emergency scenarios, Dr. Stulberg says, the newly merged hospital did not offer standard-of-care treatments. In one case that made the local paper, a patient came in with an ectopic pregnancy: an embryo had implanted in her fallopian tube. Such an embryo has zero chance of survival and is a serious threat to the mother, as its growth can rupture the tube. The more invasive way to treat an ectopic is to surgically remove the tube. An alternative, generally less risky way is to administer methotrexate, a drug also used for cancer. It dissolves the pregnancy but spares the tube, preserving the women’s fertility. “The doctor thought the noninvasive treatment was best,” Dr. Stulberg recounts. But Catholic directives specify that even in an ectopic pregnancy, doctors cannot perform “a direct abortion”—which, the on-call ob/gyn reasoned, would nix the drug option. (Surgery, on the other hand, could be considered a lifesaving measure that indirectly kills the embryo, and may be permitted.) The doctor didn’t wait to take it up with the hospital’s ethical committee; she told the patient to check out and head to another ER. (Citing patient confidentiality, West Suburban declined to comment, confirming only that as a Catholic hospital, it adheres to religious directives “in every instance.”)

Turns out, the definition of *emergency* depends on whom you ask. Dr. Christiansen, the pro-life

ob/gyn, says she would not object to either method of ending an ectopic pregnancy. "I do feel that the one indication for abortion is to save the mother's life—that's clear in my mind," she says. "But the reality is, the vast majority of abortions are elective. There are very, very few instances where the mother's life is truly in jeopardy." She can recall having seen only one such situation: During Dr. Christiansen's residency, a patient in the second trimester of pregnancy had a detached placenta; the attending physician performed an abortion to save the woman from bleeding to death. "That was a legitimate situation," Dr. Christiansen says. But in general, "it's a pure judgment call. A doctor would have to be in the situation and decide whether it constitutes a life-threatening emergency or not." Raise your hand if you'd like to be the test case. ■