



## **Comment on Proposed Rule “Safeguarding the Rights of Conscience as Protected by Federal Statutes” (HHS-OCR-2023-0001-0001)**

The American Association of Prolife Obstetricians and Gynecologists (AAPLOG) is a fifty-year-old professional medical organization that represents more than 7000 women’s healthcare professionals from across the country. We were founded to represent the vast majority of OB/GYN’s who do not perform elective abortions, which intend the death of our fetal patients, and who recognize based on the medical evidence that this is not healthcare.

We also uphold the principles set forth in the oath we took as physicians – the Hippocratic Oath – which set the foundation for medical ethics as it recognized, for the first time in history, that the profession of medicine should be held to a higher standard and should be completely separated from cultural practices that encourage intentionally killing or harming our patients. It also recognized that when we as physicians care for pregnant women, we are caring for TWO patients, as it [explicitly forbids abortion](#). Removing protections for those of us who hold to this oath and our commitment to not harm our patients will fundamentally change the face of medicine. Patients will no longer be able to trust that we have their best long-term health interests in mind when they come to us for advice and medical expertise. Instead they will wonder if we, like physicians prior to Hippocrates, are instead recommending what the highest bidder has told us to.

Physicians are meant to be above that as we have the very weighty responsibility of life and death on our shoulders. The trust that a patient has for their physician is unique and carries with it a tremendous burden of responsibility for the physician. Medical ethics should not, and in fact cannot, change with the changing winds of culture or society if our patients are to be able to trust us.

Congress as well as the general public have long recognized that physicians, other medical professionals and healthcare entities (such as hospitals and insurance companies) should not be forced to participate in any way in practices that violate their deeply held beliefs – whether they be religious, moral, based on their best medical judgment or all of the above.

Physicians and other medical professionals also should not be forced (or coerced) into assisting with, performing or in any way endorsing a procedure or medication that have the sole intent of ending the life of our fetal patient with no sufficiently compensatory maternal benefit. The argument has been made by the Biden administration and HHS that the EMTALA requirement that emergency services be provided to all patients who present to an emergency department would compel physicians to perform an abortion. However, not only has this false interpretation of the statute been enjoined in federal court, it fails on its merits. Intentionally ending the life of an embryonic or fetal human being (the sole intent of an abortion) is never needed to save a woman’s life and is not an emergency treatment for any medical condition.

Well-trained OB/GYNs know how to identify situations where a woman’s life is in danger due to a pregnancy complication and can immediately intervene to save her life without intending the death of her preborn child. In fact, this is what we do on a regular basis – and the more than [90%](#) of practicing OB/GYNs who don’t perform abortions attest to this fact. We provide excellent, compassionate and life-affirming care to all of our patients without intentionally harming them or

ending their lives. It is explicitly clear within the medical community that a premature delivery in order to save a mother's life is not at all the same thing as performing an abortion. This is made explicitly clear in two of the documents attached to our comment: ["What is Not an Abortion"](#) by Jeff Wright and AAPLOG's Practice Guideline #10, ["Concluding Pregnancy Ethically"](#).

It is imperative that the CRFD remain intact because as physicians, we have no private right of action if our conscience rights are violated. As such, we are completely dependent on HHS OCR to defend our federally protected rights. The current HHS leadership has given no indication that they are willing to do so. Upon taking office, Sec. Becerra sidelined OCR's Conscience and Religious Freedom Division, prohibiting the career professionals with expertise in conscience protection laws from investigating complaints under those laws or from advising on the 2023 NPRM and other conscience related matters. In July 2021, in coordination with DOJ's dismissal of an enforcement lawsuit, OCR [withdrew](#) a notice of violation against the University of Vermont Medical Center for violating the Church Amendments by forcing a nurse to participate in an abortion despite her known religious objection. OCR under Becerra also [reconsidered](#) two notices of violation against California (and then-Attorney General Becerra) for forcing nuns and others to provide insurance coverage of abortion in violation of the Weldon Amendment. These actions do not bode well for HHS's "commit[ment] to ensuring compliance."

The 2019 Rule had the following aspects (which the 2023 NPRM renders impotent):

1. The 2019 Rule covered all HHS laws protecting conscience.
2. The 2019 Rule required HHS to investigate complaints.
3. The 2019 Rule gave clear definitions

In contrast the 2023 NPRM demonstrates clear anti-religious and anti-conscience bias by:

1. Gutting the enforcement provisions that were written into the 2019 rule. If HHS doesn't enforce, then the statutory protection of our civil rights, including our right to not participate in killing or maiming our patients is null and void. It is clear from the gutting of the enforcement protections in the 2019 rule that such nullification is a desired outcome, and such nullification directly targets us as health care professionals that practice according to the Hippocratic Oath.
2. Gutting the definition of what discrimination means. This basically allows the current HHS, which is hostile to conscience and religious freedom to make subjective judgements about what might and might not apply, instead of reality based rigorous definitions of what actions concretely constitute discrimination.
3. Gutting the requirement that HHS must respond to complaints of violation of conscience. Under the current 2023 NPRM, there are no consequences for a failure to respond to a complaint.
4. Gutting the requirement for resolution of a complaint, or formal means to be taken in this resolution, such as withdrawal of funds or lawsuit. There is no binding resolution.

All the 2023 NPRM does is to talk about "informal" means which is not binding and has no guarantee of resolution. This renders the statutory conscience protections which we have as United States citizens, essentially meaningless, since there are no consequences when entities attempt to coerce us into killing or maiming our patients. Other regulations outside of this 2023 NPRM specify that violations may include termination of funds. In the 2023 NPRM there is no mention of cutting funds or any other meaningful consequences which result from violating a health care professional's

right of conscience. This clearly appears to be overt hostility on the part of the administration to both conscience rights and to religious liberty of health care professionals.

Considering that conscience and religious freedom claims make up approximately 7% of the claims submitted to OCR, we want to ensure that the review process for these claims remains rigorous and that penalties for those who violate our members' federally protected conscience rights are enforced and tracked. Without enforced penalties, our members rights will continue to be threatened.

This is not merely a hypothetical situation. For example, in July 2023, shortly after issuing a statement opposing the Supreme Court's decision in the *Dobbs v. Jackson Women's Health* case, the American Board of OB/GYN (ABOG) issued a statement to all of its diplomates, threatening the board certification of anyone caught spreading mis- or disinformation on abortion or other "essential" healthcare services. This was a significant threat and yet no explanation was given as to how this would be determined. Despite [significant attempts](#) to get an explanation, they have never responded and the chilling effect of their threat has already been noticed by our organization.

Finally, if conscience rights are not protected, we will see a significant impact on the number of medical professionals providing healthcare for women. We already have significant maternity healthcare deserts across the country and if physicians who will not perform or refer for abortions are allowed to be discriminated against, not only will many leave the practice of medicine, but we will continue to see medical students self-select out of women's healthcare specialties. This is already occurring as they fear pressure to participate in abortions and are being intimidated and discriminated against if they don't.

There is ample evidence that patients desire to see physicians who have shared values and one of the most common inquiries we get at our organization is women seeking a prolife physician. If the 2019 changes to the Conscience Rule are not upheld, not only will our profession be changed and see a mass exodus of physicians from practice, but patients, particularly the most marginalized, will suffer due to lack of access to care that they and their children truly need.

By gutting the conscience protections, and eliminating the sanctions which were in the 2019 Conscience Rule, the new NPRM, HHS is engaging in the very behavior it is supposed to prevent.