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VIEWPOINT

US Clinicians Face a "Dual Loyalty" Crisis over Reproductive Health Care

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As a provider, I am supposed to counsel my patients on risks and benefits, alternatives, and help them navigate through making a decision. And I can't do that ... because it's not allowable and I can go to jail.[1]

Since the 2022 US Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*, clinicians have been struggling to provide routine medical care and to manage situations where well-established standard practices for patient care are in conflict with new state laws that have expanded legal restrictions on sexual and reproductive health care. This dilemma is known as "dual loyalty."

A growing number of states have imposed restrictions on abortion care, including 14 that have introduced abortion bans with limited or no exceptions and severe civil and criminal penalties against clinicians.[2] Some states are also considering or passing laws that could restrict gender-affirming care and assisted reproductive technologies such as in vitro fertilization.[3]

Clinicians in these states are experiencing an expanding array of dual loyalty conflicts as they attempt to practice patient-centered health care.[4] Clinicians are being forced to choose between providing evidence-based care or obeying new legal prohibitions when treating pregnant patients, including those facing pregnancy-induced medical emergencies or with severe comorbidities. The resulting delays or denial of care is causing devastating harm to patients, moral distress to clinicians, and expanding health inequities.[5]

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The concept of dual loyalty encompasses situations in which clinicians and other health care workers find their medical and ethical obligations to their patients in direct conflict with their obligations to a third party, be it a state or employer.[6] Throughout history, powerful state actors have created situations that mandate clinicians to betray their professional ethics. These include participating in or supporting torture, withholding medical care from some individuals and groups, partaking in executions or research studies based on nonconsensual medical experimentation, and forcibly feeding hunger strikers, among other human rights-violating actions.[7]

The challenges faced by clinicians to provide their patients with standard and evidence-based health care also contributes to violations of human rights.[8] These include the rights to life, health, nondiscrimination and equality, freedom from torture and ill-treatment, privacy, reproductive self-determination, and the benefits of scientific progress.[9] Dual loyalty also affects medical specialists who may be forced by current bans to withhold urgently needed care: for example, an oncologist considering chemotherapy for a pregnant cancer patient, a pediatrician assessing a transgender patient for hormone treatment, or an internist treating women for autoimmune disease.[10]

International bodies focused on professional ethics overwhelmingly agree that patients' interests must be centered in the imperative to "do no harm." For example, the World Medical Association's Declaration of Geneva urges physicians to pledge that "the health of my patient shall be my first consideration" and upholds the principle that physicians provide medical services in "full technical and moral independence."[11] The World Medical Association's International Code of Medical Ethics includes the pledge not to use "medical knowledge to violate human rights and civil liberties, even under threat."[12]

To do otherwise risks violating professional and ethical obligations as well as being complicit in violations of a wide range of internationally recognized human rights standards and treaties.[13]

Physicians for Human Rights and other experts have highlighted physicians' responsibility to respect and promote human rights as part of "a social pact in which society and its institutions accord the health professional status, power and prestige in exchange for a guarantee that [physicians] will meet certain standards of practice."[14]

Clinicians have long faced dual loyalty dilemmas and conflicts in their provision of sexual and reproductive health care. Clinician participation—sometimes coerced—in state or institutionally mandated actions such as forced sterilization, forced abortion, forced contraception, forced pregnancy, denial of contraception, and mandatory reporting of pregnant people with evidence of substance use has been extensively documented around the world.[15]

Current dual loyalty challenges in the United States range from limiting, delaying, or denying medical treatment to an individual because of unclear or non-evidence-based state laws to withholding critical services or even information about evidence-based therapeutic interventions and treatments because of state laws.[16]

Clinicians—even those practicing outside restrictive states—face the fear of civil or criminal charges, fines, and loss of medical licensure, among other possible penalties. The threat of violence is also real: US sexual and reproductive health care providers faced significant physical attacks even prior to *Dobbs*. And 2022 saw a 20% increase in death threats and a 229% increase in stalking incidents compared to 2021.[17]

Criminalizing, harassing, abusing, and physically harming health workers create downstream violations of the rights of the patients being served. Such laws, however, endanger the rights of health professionals themselves, including their rights to work, to life, to health, to liberty and security, and to receive and impart information. In addition, such laws may promote moral distress or moral injury among clinicians, with adverse mental health consequences.[18]

Governments have an obligation to create an environment where clinicians can provide health

care effectively and safely. Currently, legislators and other officials in some states that respect abortion rights have adopted or are contemplating measures to protect clinicians providing sexual and reproductive health care. Examples include "shield laws" that create protections for clinicians who provide, recommend, or assist others in obtaining abortion services from civil actions of another state; the enforcement of the Freedom of Access to Clinic Entrances Act, which prohibits threats of force, obstruction, and property damage intended to interfere with reproductive health care services; efforts to monitor the impact of abortion bans on the provision of reproductive health care and on health disparities; and the implementation of legislative measures such as federal guidance on the Emergency Medical Treatment and Active Labor Act (EMTALA) that is aimed to secure access to abortion in life-threatening situations even in states where abortion is banned.[19] Yet these protections are continually under attack. For example, EMTALA's protection against prosecution under states laws will be reviewed by the Supreme Court in June 2024.

As efforts to impose restrictions on clinicians' ability to provide evidence-based sexual and reproductive health care continue to expand, it is essential to advocate for greater protections for clinicians and patients at the federal level.[20]

Additionally, and equally critical, the medical, public health, and human rights communities must work to end laws creating the current dual loyalty crisis.[21]

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