

Achieving Health Care Fairness:

Medical Providers' Obligation to Follow Anti-Discrimination Laws

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Anti-discrimination laws are important tools for protecting non-discriminatory access to health care for the lesbian, gay, bisexual and transgender (LGBT) community. Studies demonstrate that anti-gay and anti-trans bias permeates the medical profession, with adverse effects on the health and well-being of LGBT people. Bias in health care delivery leads many people to avoid preventive and other needed care, often resulting in health problems that are more acute because they have been left undiagnosed and untreated.

These dynamics, coupled with the stress caused by prejudice based on one's sexual orientation and/or gender identity, lead to poorer health outcomes for LGBT people as a whole. Anti-discrimination laws reinforce national medical ethics rules prohibiting anti-LGBT bias and provide much needed protection against the serious health effects of widespread anti-LGBT bias in medicine.

Some health care providers mistakenly believe that their religious or other personal beliefs alter the duty of licensed health professionals to provide medically appropriate care for all patients irrespective of sexual orientation and gender identity. Some providers have argued that their religious beliefs allow them to disobey state anti-discrimination laws, and refuse to treat LGBT patients at the same standard of care as other patients, or to refuse to treat them at all. This argument is incorrect – health care providers must follow anti-discrimination laws.

Here are two examples of how state anti-discrimination laws protect LGBT health care patients:

- Lambda Legal's client Lupita Benitez found herself abandoned by her treating physicians after nearly a year of preparatory treatment for infertility care because she is a lesbian. Lupita had been referred to the one in-network provider of such care in

her medical plan, but the clinic's doctors object to treating lesbian patients as they treat others, and claimed a right to ignore California's civil rights law based on their fundamentalist religious views. In a unanimous decision, the California Supreme Court ruled that medical providers must comply with the anti-discrimination laws regardless of their religious views and may not withhold medically appropriate care based on a patient's sexual orientation. *North Coast Women's Care Medical Group, Inc. v. Superior Court*, 44 Cal. 4th 1145 (2008). While North Coast governs medical providers in California, the answer should be the same in every state with a similar anti-discrimination law.

- Lambda Legal also represented Jonathan Shuffield, a resident of Eastern Washington, who had been seeing his doctor for more than a year when a complication of his diabetes and high blood pressure medications prompted him to have a conversation with his doctor in which he revealed that he is gay. Upon learning of Mr. Shuffield's sexual orientation, the physician refused on religious grounds to provide Mr. Shuffield with the prescription he needed. In negotiating a successful settlement for Mr. Shuffield, Lambda Legal educated both the physician and the medical institution where he practiced that Washington's anti-discrimination law and medical ethical rules prohibit discriminatory refusals to treat LGBT patients, regardless of a physician's personal or religious views about those patients.

Thirteen states and the District of Columbia currently prohibit sexual orientation and gender identity discrimination in public accommodations, and an additional eight states prohibit discrimination based solely on sexual orientation.

If you live in one of these states, you are protected by state law when seeking health care free from discrimination:

Prohibit Discrimination Based On Sexual Orientation and Gender Identity

California	New Jersey
Colorado	New Mexico
Hawaii	Oregon
Illinois	Rhode Island
Iowa	Vermont
Maine	Washington
Minnesota	Washington, D.C. ¹

Prohibit Discrimination Based on Sexual Orientation Only

Connecticut	New Hampshire
Delaware	Nevada
Maryland	New York
Massachusetts	Wisconsin ²

The legislative findings of many of these state laws confirm that eradicating discrimination is an important state policy to protect the health and well-being of a state's residents. This policy is particularly important in the health care arena, where discrimination can lead some LGBT people to defer care with potentially life-threatening consequences.

State law prohibitions against sexual orientation and gender identity discrimination are fully consistent with the ethical rules by which physicians govern themselves. The American Medical Association (“AMA”) has at least two dozen rules and policy statements prohibiting sexual orientation discrimination and calling for culturally appropriate care for lesbian and gay patients. Two important examples are:

- AMA ethical rule E-9.12, “Patient-Physician Relationship: Respect for Law and Human Rights” (“Physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity or any other basis that would constitute invidious discrimination”).
- AMA ethical rule H-295.878 (encouraging the elimination of health disparities for lesbians, gay men, bisexuals and transgender people through the inclusion of a “cultural competency curriculum for medical education”).³

AMA ethical rule E-10.05, “Potential Patients,” is especially pertinent. It makes clear that a doctor’s right of religious refusal is limited and applies, if at all, to particular *procedures or treatments*, not particular groups of *people*, and is subordinated to the primary duty not to discriminate against patients.⁴ The same is true of public accommodations anti-discrimination laws: A doctor can no more choose to treat heterosexual patients and not gay patients based on sexual orientation, than he or she

¹ See CAL. CIV. CODE § 51; COLO. REV. STAT. § 24-34-601; HAW. REV. STAT. §§ 489-2, 489-3; 775 ILL. COMP. STAT. 5/1-103, 5-101, 5-102; IOWA CODE §§ 216.2(13), 216.7; ME. REV. STAT. ANN. tit. 5, §§ 4553(8)(F), 4553(9)(C), 4592; MINN. STAT. ANN. §§ 363A.11, 363A.03; N.J. STAT. ANN. §§ 10:5-4, 10:5-5; N.M. STAT. §§ 28-1-7, 28-1-2; OR. REV. STAT. §§ 659A.403, 174.100; R.I. GEN. LAWS § 11-24-2; VT. STAT. ANN. tit. 9, § 4502; WASH. REV. CODE §§ 49.60.215, 49.60.040; and, D.C. CODE §§ 2-1401.02, 2-1402.31.

² See CONN. GEN. STAT. § 46a-81d; 6 DEL. C. §§ 4501 - 4504; MD. CODE ANN. art. 49B, § 5; MASS. GEN. LAWS ch. 272, §§ 98, 92A; N.H. REV. STAT. ANN. §§ 354-A:2, 354-A:17; NEV. REV. STAT. ANN. § 233.010; N.Y. EXEC. Law §§ 292(9), 296(2)(a); WIS. STAT. ANN. § 106.52.

³ American Medical Association, *AMA Policy Regarding Sexual Orientation*, available at <<http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-advocacy-committee/ama-policy-regarding-sexual-orientation.shtml>> (“AMA Policy”).

⁴ AMA ethical rule E-10.05 provides that “[p]hysicians cannot refuse to care for patients based on race, gender, sexual orientation, gender identity or any other criteria that would constitute invidious discrimination,” although “it may be ethically permissible for physicians to decline a potential patient when ... [a] specific treatment sought by an individual is incompatible with the physician’s personal, religious or moral beliefs.” *AMA Policy* (emphasis added).

can choose to terminate some pregnancies and not others based on the race of the patient or the patient's spouse (as in the case of a physician with a religious objection to interracial couples and biracial children).

In some instances, this does not require physicians who object to a particular treatment to offer that treatment to the public. It does mean that physicians who offer a treatment to *some*, must offer the treatment to *all* – withholding medical treatment only on the basis of legitimate medical or business concerns, and not unlawful, discriminatory distinctions.

Proactive implementation of measures by medical providers to comply with their professional ethical rules and state law is a vital part of ensuring quality patient care, and limits potential liability. Lambda Legal has worked with medical institutions to enhance individual provider's compliance with the law. Medical providers should take at least the following steps to increase likelihood that all patients, including LGBT patients, are treated with respect and care, and to reduce the risk of liability for unlawful and unethical discrimination:

- Medical institutions should update their anti-discrimination policies to state expressly that discrimination based upon sexual orientation and gender identity is prohibited.
- Medical institutions should obligate their staff physicians contractually to comply with the AMA Code of Ethics and any applicable anti-discrimination laws.

- Medical institutions should provide yearly training for their physicians about anti-discrimination rules and the duty to provide culturally competent care for LGBT patients. Each physician should be required to participate in these annual trainings and to attest in writing to having done so.
- Medical institutions should provide training about anti-discrimination rules and the duty to provide culturally competent care for LGBT patients to all non-physician employees, and should include similar training in the orientation provided to all new employees.

If you have questions or are experiencing discriminatory treatment from a medical provider, contact Lambda Legal's Help Desk toll free at (866) 542-8336 or use the online help form available at www.lambdalegal.org/help.

Lambda Legal is the oldest and largest nonprofit legal organization advocating nationally for full recognition of the civil rights of lesbian, gay, bisexual and transgender ("LGBT") people and those with HIV through groundbreaking litigation, education and public policy work. Since 1973, Lambda Legal has appeared as counsel or friend-of-the-court in hundreds of cases in state and federal courts on behalf of LGBT people who have suffered discrimination because of their sexual orientation or gender identity, including many cases involving discrimination in public accommodations generally and health care settings specifically.