Religious Exemptions, Hospitals, and YOU

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Women Lawyers Association of Los Angeles (WLALA)

Pictured above: Providence St. John’s Health Center, Santa Monica
What are religiously affiliated hospitals?

Healthcare systems across the country have religiously affiliated hospitals.¹

The largest contingent of religiously affiliated hospitals consists of Catholic hospitals.² Catholic hospitals include:

- Hospitals owned by a Catholic health system or diocese

- Hospitals affiliated with Catholic hospital or system through a business partnership

- Historically Catholic hospitals that continue to follow ERDs despite now being owned by a secular health care system.

Catholic hospitals follow the Ethical and Religious Directives for Catholic Health Care ("ERDs"), a set of policy prescriptions issued by the United States Conference of Catholic Bishops (USCCB)³
How many religious hospitals are there in the U.S.?

<table>
<thead>
<tr>
<th>Ownership</th>
<th>Religion</th>
<th>2001</th>
<th>2016</th>
<th>Percentage of All Hospitals</th>
<th>2016</th>
<th>Percentage of All Hospitals</th>
<th>Growth of Catholic Hospitals 2001–16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Profit Church Catholic</td>
<td>329</td>
<td>8.2%</td>
<td>395</td>
<td>9.4%</td>
<td>7.9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Other</td>
<td>248</td>
<td>6.2%</td>
<td>153</td>
<td>4.0%</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Non-Profit Other Catholic</td>
<td>97</td>
<td>2.4%</td>
<td>140</td>
<td>3.9%</td>
<td>52.6%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Other</td>
<td>1,840</td>
<td>45.1%</td>
<td>1,575</td>
<td>41.7%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Catholic</td>
<td>19</td>
<td>0.5%</td>
<td>10</td>
<td>0.3%</td>
<td>-47.4%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Other</td>
<td>824</td>
<td>20.5%</td>
<td>566</td>
<td>14.4%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Far-Profit Catholic</td>
<td>4</td>
<td>0.1%</td>
<td>35</td>
<td>0.9%</td>
<td>775.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Other</td>
<td>656</td>
<td>16.3%</td>
<td>957</td>
<td>25.3%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Catholic</td>
<td>449</td>
<td>11.2%</td>
<td>548</td>
<td>14.5%</td>
<td>22.0%</td>
<td></td>
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</tr>
<tr>
<td>Total Hospitals</td>
<td>4,017</td>
<td></td>
<td>3,779</td>
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</table>

One in six hospital beds in this country is now in a facility that abides by Catholic restrictions on care.1

As of March 2016, there are 548 U.S. hospitals—14.5% of all acute care hospitals nationwide—adhering to ERDs.5

Catholic hospitals are now present in all 50 states.4

How many religious hospitals are there in California?

Short-Term Acute Care Hospitals in California

- Catholic hospitals, 46, 14%
- Other hospitals 86%

Hospital Beds in California

- Catholic hospital beds, 10,275, 16%
- Other hospital beds 84%

Religious hospitals in California:
Dignity Health

With 29 hospitals throughout California, the Catholic medical conglomerate Dignity Health is:

- The 5\textsuperscript{th} largest healthcare provider in the U.S.\textsuperscript{6}
- The largest hospital provider in California\textsuperscript{7}

![Map of Dignity Health hospitals in California](http://www.himss.org/connected-health-case-study-dignity-health-increasing-timely-access-high-quality-care-leveraging)
How religious hospitals operate: The financials

Religious hospitals are hybrid entities!

Catholic hospitals receive billions of dollars of taxpayer funding every year. In 2011, Catholic-sponsored hospitals received $27.1 billion in net government revenue. In 2011, 45.7% of total Catholic-affiliated hospital revenue came from federal funding. This percentage is similar to that of other types of hospitals. Despite receiving massive tax credits and serving the public, religious hospitals operate under religious directives like ERDs that deny healthcare.

Mergers

When Catholic entities merge with non-religious hospitals, Catholic facilities often bring confusing and hidden restrictions to the way a secular hospital operates. Without a good understanding of these restrictions, a secular hospital might not understand the serious limitations that ERDs place on reproductive health services.

The logistics

Bishops must examine and approve the terms of mergers. Merger deals are often kept in secret. However, in California there is a process whereby hospitals have to apply with the California Attorney General to have mergers approved. This process provides a public notice and comment period for impending merger deals.

Financial implications of mergers

Multi-hospital partnership has been associated with significantly increased prices.
How religious hospitals operate: ERDs

- By following medical guidelines set by popes, bishops, and Vatican councils rather than medical professionals, religious hospitals often fail to provide healthcare at accepted (and acceptable) medical standards.\(^\text{15}\)

- Not only do ERDs create substandard medical care – they discriminate against patients on the basis of sex.

- Freedom of religion is an important constitutional right. But religious liberty means the right to exercise your beliefs, but not to impose those beliefs on others—especially in ways that cause harm.

What ERDs Do

- Forbid healthcare facilities from providing a range of reproductive health services
  - Contraception, sterilization, many infertility treatments, and abortion
  - Even when a woman’s health or life is jeopardized by a pregnancy.\(^\text{16}\)

- Authorize hospitals to ignore patients’ advanced medical directives\(^\text{17}\)

- Fall disproportionately on women of color, low-income women, immigrant women, women living in rural areas, transgender individuals, and gender nonconforming people.\(^\text{18, 19}\)

ERDs: The Double Effect Principle

> "Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child." (Directive 47)

Applied in this context, the “double effect” principle means that healthcare providers can provide crucial reproductive health services when needed to treat serious non-reproductive medical conditions, but not when the primary function of the same treatments would be to provide reproductive healthcare.\(^\text{26}\)
<table>
<thead>
<tr>
<th>CLEARLY PROHIBITED</th>
<th>POSSIBLE EXCEPTIONS</th>
<th>IN ACTUALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Directive 45</strong></td>
<td><strong>The “double effect” exception:</strong></td>
<td><strong>The “direct purpose” language creates a significant barrier to medical treatment.</strong></td>
</tr>
<tr>
<td>“Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted”— even in cases of rape or incest.”</td>
<td>Can provide abortion care if its “direct purpose [is] the cure of a proportionately serious pathological condition of a pregnant woman...when [it] cannot be safely postponed until the unborn child is viable.” (Directive 47)</td>
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<tr>
<td>“Catholic health care institutions need to be concerned about the danger of scandal in any association with abortion providers.”</td>
<td><strong>The Emergency Medical Treatment and Active Labor Act (EMTALA)</strong></td>
<td>There is repeated and systematic failure in providing women suffering pregnancy complications with medically indicated emergency abortions.</td>
</tr>
<tr>
<td>Any hospital receiving Medicare funds and operating an emergency department must stabilize an individual who arrives with an emergency medical condition. If stabilizing the patient means terminating a pregnancy, the hospital must do so.”</td>
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</table>
ERDs: Miscarriage (Mis)Management

A patient who was 14 weeks pregnant came into a Catholic-owned hospital in the Midwest with ruptured membranes. It was clear to her physician that the patient needed an abortion because miscarriage was inevitable and her health was in danger. But because the fetus still had a heartbeat, the hospital ethics committee refused to approve the procedure. The patient had to be sent by ambulance 90 miles away to the closest institution that would treat her.24

A 2012 study found that most physicians surveyed at Catholic hospitals recommend a “watch and wait” strategy if a fetal heartbeat could be detected. One physician stated that he often tells pregnant women in distress that “we can’t do anything but watch you get infected.”25

Another study detailed the story of a physician who was prevented by an ethics committee in a Catholic-affiliated hospital from providing appropriate care to a woman who was in septic shock. The patient had a 106-degree fever but there was still a fetal heartbeat. The doctor said, “[The patient] was so sick in the [ICU] for about 10 days and very nearly died.”26
### ERDs: Sterilization

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<tr>
<td><strong>Directive 53</strong></td>
<td><strong>The “double effect” exception:</strong></td>
<td><strong>Strong institutional opposition to sterilization</strong></td>
</tr>
<tr>
<td>“Direct sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic health care institution”</td>
<td>“Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available.” (Directive 53)</td>
<td><strong>The “present and serious pathology” language creates severe obstacles to access with devastating impacts</strong></td>
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<td><strong>Directive 28</strong></td>
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<td>“The free and informed health care decision of the person . . . is to be followed so long as it does not contradict Catholic principles.”</td>
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<td><strong>• One study showed that, within one year of being denied a requested sterilization, nearly half (47%) of the women participating in the study experienced a repeat pregnancy—twice the rate of women in the study who did not request sterilization.”</strong></td>
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Many women experience extreme anxiety of a future unintended pregnancy after facing insurance and institutional barriers to getting requested sterilizations.
## ERDs: Contraception

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<tr>
<td><strong>Directive 52</strong></td>
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</table>
| “Catholic health institutions may not promote or condone contraceptive practices” | Directive 52  
  “Catholic health institutions may not promote or condone contraceptive practices but should provide, for married couples and the medical staff who counsel them, instruction both about the Church’s teaching on responsible parenthood and in methods of natural family planning.” | NFP is an ineffective form of contraception  
  • Overall failure rate= 24% in the first year.  
  In 2011, only 2% of U.S. Catholic women relied on NFP. |
| No oral contraceptives, IUDs, etc. |  
  • NFP: a contraceptive method involving tracking a woman’s cycle and using periodic abstinence to prevent pregnancy. |  |
| **The “double effect” exception:** |  |  |
| Doctors may provide birth control to treat a serious medical condition, but not if the primary intent is to prevent pregnancy. |  |  |
ERDs: Emergency Contraception

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<tr>
<td><strong>Directive 36</strong></td>
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| No access to emergency contraception for individuals whose birth control failed or who didn’t use contraception during consensual sex.  

\[35\] | **Directive 36** | | The eligibility test creates an unnecessary restriction |
| A survivor of sexual assault may receive emergency contraception, but only after proving herself “eligible”—meaning that, after “appropriate testing there is no indication she is pregnant.”  

\[36\] | | - EC does not interrupt an established pregnancy (does not interfere with the implantation of a fertilized egg)  

\[37\] | | - Creates an additional foothold for religious hospitals to refuse care  

\[38\] | | **Even if a person has been proven “eligible,” many Catholic hospitals will still not dispense EC.**  
| | A 2005 survey showed that 55% of emergency rooms in Catholic hospitals refused to provide EC to sexual assault survivors.  

\[39\]
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<tbody>
<tr>
<td><strong>Directive 48</strong></td>
<td><strong>The Emergency Medical Treatment and Active Labor Act (EMTALA)</strong></td>
<td><strong>Access is fraught</strong></td>
</tr>
<tr>
<td>“In case of extrauterine pregnancy, no intervention is morally licit which constitutes a direct abortion.”</td>
<td>• Requires any hospital that receives Medicare funds and operates an emergency department to stabilize an individual determined to have an emergency medical condition. Prohibits a covered hospital from transferring an individual with an emergency medical condition who has not been stabilized.</td>
<td>• Physicians working at Catholic hospitals have reported that their hospitals prohibit them from offering methotrexate for women with ectopic pregnancies. Women do not receive prompt and/or appropriate medical care.</td>
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42, 43
# ERDs: Prenatal Diagnosis

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<tr>
<td><strong>Directive 50</strong></td>
<td><strong>Directive 50</strong></td>
<td><strong>Access is fraught.</strong></td>
</tr>
<tr>
<td>“Prenatal diagnosis is not permitted when undertaken with the intention of aborting an unborn child with a serious defect.”</td>
<td>“Prenatal diagnosis is permitted when the procedure does not threaten the life or physical integrity of the unborn child or the mother and does not subject them to disproportionate risks; when the diagnosis can provide information to guide preventative care for the mother or pre- or postnatal care for the child; and when the parents, or at least the mother, give free and informed consent.”</td>
<td>Catholic hospitals have denied prenatal diagnosis when medical staff suspect that such information will be used to obtain an abortion at another facility.</td>
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**ERDs: Assisted Reproductive Technologies**

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<tbody>
<tr>
<td><strong>Directives 39-41</strong></td>
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<tr>
<td>ART techniques that destroy extra embryos, use donor sperm or eggs, or employ artificial insemination are prohibited—even for married couples.</td>
<td></td>
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<tr>
<td>• EX: IVF; using donor gametes</td>
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<tr>
<td>Surrogacy is also “not permitted” because of the “uniqueness of the mother-child relationship.”</td>
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| **Directive 38** |                     |              |
| “When the marital act of sexual intercourse is not able to attain its procreative purpose, assistance that does not separate the unitive and procreative ends of the act, and does not substitute for the marital act itself, may be used to help married couples conceive.” |

**Access is fraught**

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44, 45
## ERDs: Transition-Related Care

Technically, ERDs don’t say anything about transition-related care for transgender individuals...

<table>
<thead>
<tr>
<th>But in reality, religious hospitals have taken a strong stance against providing vital healthcare services to transgender patients in their daily practice.</th>
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</thead>
<tbody>
<tr>
<td>Transgender people across the country suffer from discrimination in religious hospitals, getting delayed or blocked in accessing the care they need.</td>
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<tr>
<td>The United States Conference of Catholic Bishops (USCCB)—the body that drafts the ERDs—has stated its staunch opposition to providing for the health needs of transgender patients.</td>
</tr>
<tr>
<td>According to its 2015 letter to the Department of Health and Human Services, the USCCB believes that gender dysphoria is invalid and transition-related care is harmful to patients. In this letter, the USCCB went so far as to argue that transition-related care “mutilates the body.”</td>
</tr>
</tbody>
</table>
The refusal of Catholic hospitals to allow doctors to provide their patients with the care they need creates a clear conflict between the best interests of patients and the directives of the Catholic hospital system.

Religious exemptions to reproductive healthcare are a heinous form of discrimination.

Hospitals that are open to the general public and receive government funding should not be able to invoke religion to discriminate or deny basic health care.
ENDNOTES


22. See, e.g., CATHOLICS FOR CHOICE, IS YOUR HEALTH CARE COMPROMISED? HOW CATHOLIC DIRECTIVES MAKE FOR UNHEALTHY CHOICES (2017); Debra B. Stulberg et al., Referrals for Services Prohibited In Catholic Health Care Facilities, 48 PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 111 (2016).


29. AR Thurman & T Janecek, One-year follow-up of women with unfulfilled postpartum sterilization requests, 116 OBSTET GYNECOL. 1071 (2010).


34. CATHOLICS FOR CHOICE, IS YOUR HEALTH CARE COMPROMISED? HOW CATHOLIC DIRECTIVES MAKE FOR UNHEALTHY CHOICES 11 (2017).


37. International Consortium for Emergency Contraception & Catholics for Choice, Emergency Contraception Catholics in Favor, Bishops Opposed, EMERGENCY CONTRACEPTION ISSUES (October 2010),


41. Debra B. Stulberg et al., Obstetrician-gynecologists, religious institutions, and conflicts regarding patient-care policies, 207 AM J OBSTET GYNECOL e1-5 (2012).


44. CATHOLICS FOR CHOICE, IS YOUR HEALTH CARE COMPROMISED? HOW CATHOLIC DIRECTIVES MAKE FOR UNHEALTHY CHOICES 13 (2017).

