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Testimony of Anne Davis, MD, MPH

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Physicians for Reproductive Choice and Health

Before the President's Council on Bioethics

September 12, 2008

My name is Dr. Anne Davis, and I am an Associate Professor of Obstetrics and Gynecology at Columbia Presbyterian Medical Center in New York City. I submit this testimony as an experienced healthcare provider and as the medical director of Physicians for Reproductive Choice and Health.

Physicians for Reproductive Choice and Health is a national nonprofit organization comprised of doctors who support evidence-based reproductive healthcare for every American. We work with governmental entities, the media, the public, and our colleagues to ensure that all patients have access to quality services as well as the knowledge and freedom to make their own decisions about their reproductive health.

Thank you to members of the President's Council on Bioethics for holding this meeting about the exercise of conscience in the practice of the health professions. My remarks address the specific issue of conscientious refusal in the provision of reproductive healthcare.

I am an academic obstetrician/gynecologist and specialist in family planning. In my practice, I provide the full range of contraceptive services: birth control pills, patches, rings, injections, emergency contraception, IUDs, and surgical sterilization. I also provide medical and surgical abortions. I work with women who have commercial insurance

and Medicaid, as well as uninsured women. When patients come for consultations, I provide complete and factual information about their options. Some talk to me about reproductive health issues as they relate to the practice of their religion—my practice includes Catholic, Jewish, and Muslim women. Others discuss their moral or ethical concerns. In every case, we decide together on the care that best meets their medical, religious, and moral needs. If they need a service I cannot or will not provide, I refer them to doctors who can. The principles I follow—helping my patients make informed decisions about their health and ensuring they get what they need in a timely, sensitive manner even when I am unable to provide it—keep people safe. These principles are not unique to me, nor are they radical. They are the underpinnings of the medical profession.

Yet recently, the Department of Health and Human Services (HHS) has threatened to cast these principles aside. Secretary Mike Leavitt has proposed regulations that could allow hospitals, doctors, and other healthcare workers to deny women access to effective birth control, regardless of the consequences for their health. These regulations would protect clinicians who refuse to provide patients with factual information about or referrals for basic healthcare services like sterilization and abortion. The regulations would even protect workers who are not directly involved in patient care. For instance, a receptionist could refuse to schedule appointments, health insurance agents could refuse to process payments, and operating room staff could refuse to clean equipment based on their conscientious objection to certain medical procedures or services.

The HHS regulations would even allow healthcare professionals to stonewall my patients whose chronic illnesses make pregnancy potentially lethal by withholding information about contraception to keep them from getting pregnant or abortion if they do get pregnant. I am reminded of my patient Sara,¹ an orthodox Jewish woman who has seven children and a diagnosis of breast cancer. In consultation with her husband and her rabbi, we chose an IUD as the appropriate contraceptive method to maintain her health and accommodate her religious beliefs. If the regulations go into effect, women like Sara could be left unprotected and at risk of worsening illness and even death.

¹ “Sara” is not her real name.

Physicians for Reproductive Choice and Health and I believe that individual physicians may refuse to perform medical procedures that conflict with their religious or moral beliefs. Existing law amply protects this right, allowing individuals to abstain from providing abortion and sterilization services while simultaneously honoring patients' rights to reproductive healthcare. The proposed regulations, however, would sacrifice the patient's well-being in favor of the provider's conscience.

Physicians have a professional duty and obligation to tell their patients if their religious or moral beliefs might compromise the patient's access to comprehensive and timely reproductive healthcare—and yet, the HHS regulations make no mention of this obligation. If a physician refuses to prescribe birth control pills, perform a tubal ligation, provide medical or surgical abortions, or discuss emergency contraception, women have a right to know this prior to accepting treatment by the physician. If doctors fail to disclose that they do not provide the range of family planning services, patients might face misinformation, additional costs, dangerous delays in care, unintended pregnancies, and less safe abortions. I have had patients whose medical problems are accompanied by enormous emotional turmoil and pain—I want to help them as quickly as possible, and I wish the same for women across the country. But the HHS regulations would only make these situations worse, adding to patients' confusion, frustration, and desperation.

As an ob/gyn, my primary obligation remains with my patients. If I were a neurologist or a podiatrist, I would uphold the same standard: *Physicians do not have the right to impose their beliefs on patients.* Indeed, the Code of Ethics adopted by the American Medical Association on the patient-physician relationship states:

The relationship between patient and physician is based on trust and gives rise to physicians' ethical obligations to place patients' welfare above their own self-interest and above obligations to other groups, and to advocate for their patients welfare.

Within the patient-physician relationship, a physician is ethically required to use sound medical judgment, holding the best interest of the patient as paramount.²

² Council on Ethical and Judicial Affairs, Opinion 10.015, The Patient-Physician Relationship. In Code of Medical Ethics: 2000-2001. AMA Press, Chicago IL, 2000.

Accordingly, physicians who refuse to provide healthcare must, at a minimum, be required to refer their patients to a doctor who can provide them with accurate information and medical care in a timely, appropriate, and respectful manner.

The regulations proposed by HHS build on existing law and would allow physicians to withhold referrals. This is tantamount to substandard medical practice. HHS's regulations conflict with the position of major medical associations, including the American College of Obstetricians and Gynecologists (ACOG), a national organization representing more than 45,000 members. ACOG, of which I am a member, issued the following policy in its Committee Opinion entitled "The Limits of Conscientious Refusal in Reproductive Medicine," adopted in 2007:

Physicians and other health care professionals have the duty to refer patients in a timely manner to other providers if they do not feel that they can in conscience provide the standard reproductive services that their patients request.... In resource-poor areas, access to safe and legal reproductive services should be maintained. Providers with moral or religious objections should ... ensure that referral processes are in place so that patients have access to the service that the physician does not wish to provide.³

Physicians for Reproductive Choice and Health wholeheartedly supports ACOG's position, particularly its balance between physicians' conscientious objection and the needs of patients, some of whom have little or no choice in healthcare providers.

In addition to interfering with the medical profession's core values, the HHS regulations—and the laws they are meant to enforce—extend the same protections to hospitals, clinics, and other institutions that they grant to individuals. When entire entities can refuse to discuss or provide birth control, sterilization, or abortion, some women will be left with no alternatives to unintended pregnancies, creating a situation that is likely to cause more abortions than it prevents. Our current healthcare system already has too many obstacles for patients, requiring that they navigate complicated health maintenance and managed care organizations, often with few options for choosing

³ Committee on Ethics, American College of Obstetricians and Gynecologists. ACOG Committee Opinion No. 385: the limits of conscientious refusal in reproductive medicine. *Obstet Gynecol* 2007;110:1203-8.

physicians and hospitals. My patients often tell me about their Byzantine searches for authorizations and referrals, and I marvel at their ability to get to a doctor at all. In this environment, we should be removing, not creating, barriers to healthcare. Physicians for Reproductive Health and Choice opposes institution-wide restrictions on contraception, sterilization, and abortion. Such policies block women's attempts to get information and care and further reduce physician autonomy, inhibit medical education, and interfere with medical research.

HHS would be well served by looking to Portugal for another approach to the balance between conscientious refusal and patient health. Portuguese physicians who will not provide abortion on grounds of conscience must register as conscientious refusers of care. They are then prohibited from advising women who are contemplating abortion. Moreover, when individual physicians refuse to provide specific services, the Portuguese healthcare system is obligated to ensure that patients receive care within a time frame that meets their health needs. This emphasis on the duties of the healthcare system as well as the individual physician is a significant reframing of conscientious refusal and is worth further examination by this Council.

While Portugal and other countries improve their healthcare systems, HHS is attempting to move us backwards by imposing more barriers. Women in this country already face a host of legal, financial, and logistical obstacles in obtaining the full range of reproductive healthcare. As increasing numbers of Americans struggle with rising healthcare costs or are uninsured, we should make basic health services more accessible, not undermine the doctor-patient relationship and cause harmful delays in treatment. HHS would limit patients' access to medical information and basic services, and my conscience refuses to go along.