Protecting reproductive health care means protecting physicians

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The harm to patients and our nation’s public health triggered by last year’s U.S. Supreme Court decision in Dobbs v. Jackson Women’s Health Organization continues to expand and worsen. That’s because lawmakers, state officials and other third parties are seeking to exert their influence into the patient-physician relationship, impede access to evidence-based reproductive health services, and criminalize care based on political ideology instead of science.

One example of this interference, in a case that became a political flashpoint in the wake of the Dobbs ruling last summer, has continued to play out. The case involves Caitlin Bernard, MD, MS, an Indianapolis-based ob-gyn who was targeted by Indiana Attorney General Todd Rokita last summer after she provided abortion care to a 10-year-old Ohio girl whose pregnancy was the result of rape. At the time, an Ohio law banning abortion was in effect, which resulted in the girl’s referral to Dr. Bernard in Indiana by an Ohio physician. The Ohio ban has since been put on hold.

Rokita suggested on TV that Bernard had made the whole thing up and that there was no 10-year-old Ohio rape victim. When subsequent facts proved otherwise, he then claimed that Dr. Bernard had divulged confidential patient information and had failed to follow state reporting laws. Rokita subsequently filed an administrative complaint against Dr. Bernard with the Indiana Medical Licensing Board—even though records show that Dr. Bernard complied with reporting requirements set by both the Indiana Department of Health and the Indiana Department of Child Services.

More recently, a judge ruled that Rokita caused irreparable harm to Dr. Bernard’s reputation and professional standing by publicly discussing his office’s investigation of her actions. Doing so violated Indiana law, according to a Marion County (Indiana) judge, in light of Rokita’s legal obligation to maintain the confidentiality of an ongoing probe.

At a daylong state licensing board hearing yesterday, AMA Council on Ethical and Judicial Affairs Chair Peter A. Schwartz, MD testified on Dr. Bernard’s behalf. He affirmed that Dr. Bernard did not
share any unique identifiers or protected health information about her patient and said that she met all of her ethical obligations “extremely well.”

Dr. Schwartz further noted that given her special expertise, Dr. Bernard had “an affirmative obligation to speak out” on abortion and reproductive health issues at this pivotal time. The state licensing board found that Dr. Bernard complied with all reporting requirements, but unfortunately ruled that she violated patient-privacy laws, despite a lack of evidence that she shared any identifiable information.

Our AMA responds

AMA policy emphasizes the importance of broad and equitable access to all aspects of reproductive health services, including abortion and contraception. Policies adopted by the AMA House of Delegates (HOD) oppose criminal and civil penalties or any retaliatory efforts against patients, patient advocates, physicians, or other healthcare workers for receiving, assisting in referring patients to, or providing these services.

The HOD, representing a broad and diverse group of physicians from every state and specialty, also confirmed guidance found in the AMA Code of Medical Ethics that physicians should have latitude to act in accordance with their best professional judgment when the letter of the law would foreclose urgently needed medical care. In the context of abortion, this guidance was clarified to expressly permit physicians to perform abortions in keeping with sound medical practice.

This position follows long-established AMA policies opposing the intrusion of government or any other third party into the patient-physician relationship because of the conflict posed to the physician’s primary and fiduciary obligation to protect the health and well-being of patients.

The HOD has also directed the AMA to develop new strategies and resources to help physicians find the correct course and make the right decisions when navigating between their ethical obligations to place patient health and well-being above all other considerations and newly adopted legal requirements that recklessly criminalize evidence-based care. This support will also include legal assistance when appropriate.

Our ethical obligation is to help patients choose the optimal course of treatment for them, through shared decision-making that is fully informed by evidence-based science and shaped by patient autonomy. Anything less puts patients at risk and undermines both the practice of medicine and our nation’s health.