

# Judge says AMA is right: Title X gag rule violates medical ethics

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“This is madness,” wrote U.S. District Judge Michael McShane in Portland, Oregon, in a scathing rebuke of the Trump administration’s new Title X regulations that includes a gag rule dictating what physicians must and must not say to their patients in the Title X program about family planning.

“The gag rule prevents doctors from behaving like informed professionals,” McShane wrote. “At the heart of this rule is the arrogant assumption that government is better suited to direct the health care of women than their medical providers.”

McShane’s ruling detailed how the regulations would violate the *AMA Code of Medical Ethics*, damage public health and state economies with it, and violate provisions of the Affordable Care Act and Administrative Procedure Act without explaining what problem the new regulations seek to address.

“At best, the final rule is a solution in search of a problem,” McShane wrote. “At worst, it is a ham-fisted approach to health policy that recklessly disregards the health outcomes of women, families and communities.”

AMA President Barbara L. McAneny, MD, agreed.

“Judge McShane got it exactly right when he called the new Title X rule a ‘ham-fisted’ approach to health care,” said Dr. McAneny, an Albuquerque, New Mexico, oncologist in private practice. “The judge repeatedly asked how the new gag rule would improve health outcomes. The government was unable to answer.”

## Lawsuit has national impact

The Oregon lawsuit was led by the AMA, Planned Parenthood and its local affiliates, and the Oregon

Medical Association, but the case was consolidated with another lawsuit and the ruling covers the plaintiffs in both cases. That includes 20 states, the District of Columbia and individual health professionals.

McShane said a nationwide ban was appropriate because Planned Parenthood operates in 48 states, AMA members reside in all 50 states, AMA members provide counseling to pregnant women served by the Title X program, and that there was “ample evidence” of potential harm to public health across the nation.

## Patients’ right to free exchange of information

“Judge McShane’s ruling is a victory for patients, physicians and the open conversations that are essential to improving health outcomes,” said Dr. McAneny. “In siding with patients and doctors in this case, the judge decisively said the free exchange of medical information is an essential patient right.”

Noting that “the AMA literally wrote the book on medical ethics,” McShane quoted extensively from the July 31, 2018, comment letter AMA Executive Vice President and CEO James L. Madara, MD, wrote to Health and Human Services (HHS) Secretary Alex Azar after the rule changes were proposed.

McShane summarized Dr. Madara’s comments and citations from the *AMA Code of Medical Ethics* on the rule’s “troubling aspects.”

- | Except in emergencies when the patient is incapable of making an informed decision, “withholding information without the patient’s knowledge or consent is ethically unacceptable.”
- | Patients have a right to “expect their physician will cooperate in coordinating medically indicated care with other health care professionals.”
- | Physicians are ethically obligated to base their decision to consult or refer on the patient’s medical needs.
- | Patients must not allow differences with the patient or family about political matters to interfere with the delivery of professional care.

“Dr. Madara concludes that ‘the final rule would require doctors to violate each of these fundamental ethical and professional norms,’” McShane wrote. “HHS simply brushes aside any concerns and, in a generic and conclusory fashion, asserts the final rule violates no ethical obligations.”

The AMA views the gag rule as an unprecedented government intrusion that would violate the sanctity of the patient-physician relationship, so Dr. McAneny said McShane’s recognition of this was appreciated.

“We are pleased the judge shared the AMA’s concern about the patient-physician relationship that the rule would have jeopardized,” she said.

“The AMA will not stand by when the government interferes with the patient-doctor relationship by foisting a gag rule on physicians,” Dr. McAneny added. “Patients trusting their doctors is the foundation of good health, and there must be open communication about health care options. The new rule would have placed obstacles to health care for low-income patients.”

Find more resources on the changes to the Title X program, the AMA lawsuit and the fight to protect physicians’ freedom speech.