Doctors battle state law that forces them to mislead patients

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Kevin B. O'Reilly
News Editor

The AMA has filed a federal lawsuit challenging the constitutionality of North Dakota legal provisions forcing physicians to violate the AMA *Code of Medical Ethics* and act as mouthpieces for politically motivated messages that are misleading and could lead to patient harm.

A provision set to take effect Aug. 1 would force North Dakota physicians to tell women “that it may be possible to reverse the effect of an abortion-inducing drug if she changes her mind, but time is of the essence, and information and assistance with reversing the effects of an abortion-inducing drug are available” in government-printed materials to be given to the patients.

The provision would “compel physicians and their agents to speak government-mandated messages that entail providing to their patients misleading or even patently false, nonmedical information with which they disagree,” says a complaint filed by the AMA and other plaintiffs.

The AMA is filing the lawsuit in partnership with the Center for Reproductive Rights in the U.S. District Court for the District of North Dakota, in Bismarck. They are filing the lawsuit on behalf of the Red River Women’s Clinic, and the clinic’s medical director, AMA member Kathryn Eggleston, MD, as co-plaintiffs.

They are asking the federal court to issue injunctions against the North Dakota law and enter a judgment declaring that it violates the U.S. Constitution’s First and Fourteenth Amendments.

“The patient-physician relationship is the cornerstone of health care, and depends upon honest, open conversations about all of a patient’s health care options,” said AMA President Patrice A. Harris, MD, MA. “North Dakota’s law undermines this relationship by requiring physicians to mislead and misinform their patients with messages that contradict reality and science. The AMA will always defend science and open conversations about all health care options available to patients.”

Doctors forced to tout untested procedure

By requiring physicians to counsel women seeking an abortion about the possible reversibility of medication abortions, the North Dakota legislature effectively endorses an experimental practice for which there is no approved Food and Drug Administration protocol.

The practice, engaged in by a few physicians, involves intervention among women who have taken mifepristone, the first drug in the two-drug medication abortion regimen, but who have not yet taken misoprostol, the second drug. The intervention is to give such patients large doses of progesterone, by injection and oral and vaginal routes, on a weekly basis until the pregnancy's end.

"The fact that there are physicians experimenting with using progesterone to counteract mifepristone does not constitute credible, medically accepted evidence that the experiment is effective or safe," the complaint says. The American Congress of Obstetricians and Gynecologists, as well as that organization's North Dakota section, oppose the practice.

"Because there is no credible, scientific evidence that a medication abortion can be reversed, physicians cannot, without misleading them, tell their patients that it may be possible" to do so, "nor can they tell their patients that information and assistance is available to reverse a medication without misleading them," the complaint says.

Referring patients for information about this experimental procedure with unknown outcomes could even place physicians at risk for medical liability, the complaint says. Doctors would be faced with an untenable choice of potential civil liability for obeying the statute, or criminal penalties for disobeying it.

What informed consent should entail

In medicine, informed consent "does not follow a rigid, governmentally proscribed protocol," the complaint says. "It is a give and take between an individual patient and an individual physician. It is based on trust and open, forthright communication, intended to further the patient's understanding. Recitation of a government-scripted message only hinders that moral, human process. The purpose of informed consent is to further the interests of the patient—not to further political objectives."