

Refusal Laws and LGBT Health: Common Causes and Shared Discrimination

Health care refusals are a growing problem that affect reproductive health and LGBT equality. Since most of the current federal and state laws that allow health care professionals to refuse to provide services stem from *Roe v. Wade* and *Doe v. Bolton*, refusal laws are often viewed as a legal issue that only impacts access to abortion and contraception services.

While often overlooked as a serious LGBT equality issue, these health care refusal laws do indeed negatively impact the LGBT community. Abortion and contraception refusal laws limit access to reproductive health care services that are critically important to LGBT people and families and people living with HIV. Moreover, broad health care refusal laws and recent legislative efforts to expand health care refusals threaten to increase negative healthcare outcomes among LGBT people and people living with HIV.

Currently, several states have refusal laws drafted so broadly that they provide health care providers with statutory protections if they choose to discriminate against a patient based on their sexual orientation or gender identity. Further, between 2011 and 2013, 10 states introduced a variety of legislative measures that seek to grant broad health care refusal exceptions for health care individuals and/or institutions based on conscientious objections.

While these renewed efforts to expand refusals laws are directly related to an aggressive agenda to limit women's reproductive rights, current efforts to expand health care refusal laws also threaten to increase health care discrimination and negative healthcare outcomes among the LGBT community and people living with HIV.

Refusals of Healthcare Create Immediate Health Consequences for LGBT People and People Living with HIV When Seeking Time-Sensitive Treatment

- **Refusals of Time-Sensitive Medical Treatment Can Result in Death**
Under broad refusal laws, LGBT people and people living with HIV seeking medical treatment could be denied important time-sensitive and life-saving healthcare based on a healthcare professional's personal belief. This includes refusal to deliver life-saving medications and treatment. For example, in 1995 a transgender woman bled to death after paramedics halted emergency treatment for her serious injuries resulting from an automobile accident when they discovered she was transgender.ⁱ
- **Refusals of Time-Sensitive Medical Treatment Exacerbate Underlying Conditions**
Even when a refusal of a time-sensitive treatment is not fatal, it can lead to other severe consequences, including exacerbating the underlying condition that prompted a patient to seek treatment. This can be especially dangerous for patients living with HIV, whose survival depends on effective and timely medical treatment. Patients with HIV are particularly susceptible to sudden declines in health, and denial of or substandard treatment puts them at increased risk. For patients with HIV, missing as few as two doses of medication can have a significant impact on maintenance of proper medication levels.ⁱⁱ Their dependence on pharmacists and other healthcare professionals to provide timely treatment means that it is critically important that they be afforded timely access to medications without bias or judgment.
- **Refusals of Time-Sensitive Medical Treatment Can Prolong Painful Conditions**
Lack of treatment can also result in severe and prolonged pain for patients. In emergency situations, when time is a factor for both healthcare professionals and patients, health professionals may nevertheless delay treatment for or refuse patients with whom they are uncomfortable. For example, according to a recent report, one transgender patient was forced to wait two hours in pain in the emergency room without treatment for injuries sustained from a fall on ice after the healthcare provider discovered she was transgender.ⁱⁱⁱ

Healthcare Refusals Exacerbate the Effects of Stigma on LGBT People and People Living with HIV which can Negatively Impact Patient Health

Healthcare professionals who refuse to treat LGBT people and patients living with HIV for reasons of personal discomfort perpetuate a stigma that can itself have dangerous consequences. Refusals and discrimination by health care providers can cause victimized patients to distrust the health care system. Consequently, those who are often mistreated in the system avoid or delay medically necessary treatment. For example, a recent study revealed that 48% of transgender men avoided essential preventative reproductive health services such as pelvic exams and STI screenings because they feared discrimination by their medical provider.^{iv} The mistrust, stigma, and subsequent avoidance of seeking care caused by refusals can have pervasive emotional and physical consequences, and account for many health disparities among the LGBT community

Refusals Particularly Impact Transgender and Gender-Nonconforming Individuals

Transgender and gender non-conforming patients are disproportionately impacted by healthcare refusals in the LGBT community. While 15% of transgender individuals reported being refused medical treatment due to their gender identity, expressly disclosing their gender identity resulted in the rate of denial rising to 23%.^v Refusal of healthcare services can be especially painful in the context of sexual and reproductive health problems, which transgender patients are equally, if not more, at risk for than the general population, including HIV infection,^{vi} unplanned pregnancy,^{vii} sexual assault,^{viii} and delay of preventative reproductive healthcare due to negative experiences with medical professionals. For instance, a transgender man reported “living with excruciating pain in [his] ovaries” because he could not find a doctor who would examine his reproductive organs.^{ix}

ⁱ Anne C. DeCleene, Note, *The Reality of Gender Ambiguity: A Road Toward Transgender Health Care Inclusion*, 16 LAW & SEX. 123, 137 (2007).

ⁱⁱ See generally R.J. Smith, *Adherence to Antiretroviral HIV Drugs: How Many Doses Can You Miss Before Resistance Emerges?*, 273 PROC. ROYAL SOC’Y B 617, 621 (2006).

ⁱⁱⁱ JAMIE M. GRANT ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 73 (2011) available at http://transequality.org/PDFs/NTDS_Report.pdf.

^{iv} Centers for Disease Control and Prevention, *HIV Among Transgender People* (2011), <http://www.cdc.gov/hiv/transgender/pdf/transgender.pdf> (last visited August 13, 2012); JAMIE M. GRANT ET AL., *supra* at 76.

^v JAMIE M. GRANT ET AL., *supra* note 3, at 75.

^{vi} Transgender individuals face four times the rate of HIV infection as the general population. Centers for Disease Control and Prevention, *supra* note 4.

^{vii} S. Reisner, B. Perkovich & M.J. Mimiaga, *A Mixed Methods Study of the Sexual Health Needs of New England Transmen Who Have Sex with Nontransgender Men*, 24 AIDS PATIENT CARE & STDS 501, 510 (2010).

^{viii} Transgender individuals face up to a one in two chance of being sexually assaulted. See Rebecca L. Stotzer, *Violence Against Transgender People: A Review of United States Data*, 14 AGGRESSION & VIOLENT BEHAV. 170, 172 (2009) (citations omitted).

^{ix} See JAMIE M. GRANT ET AL., *supra* note 3, at 77.