

New Jersey nurses charge religious discrimination over hospital abortion policy

By [Rob Stein](#), Published: November 27, 2011

A dozen nurses in New Jersey have rekindled the contentious debate over when health-care workers can refuse to play a role in caring for women getting abortions.

In a [lawsuit](#) filed in federal court Oct. 31, 12 nurses charge that the [University of Medicine & Dentistry of New Jersey](#) violated state and federal laws by abruptly announcing in September that nurses would have to help with abortion patients before and after the procedure, reversing a long-standing policy exempting employees who refuse based on religious or moral objections.

“I’m a nurse so I can help people, not help kill, and it just doesn’t seem right to me,” said Beryl Otieno-Negoje, one of the nurses. “No health professional should be forced to choose between assisting abortion or being penalized at work.”

The [University Hospital](#) issued a statement that “no nurse is compelled to have direct involvement in, and/or attendance in the room at the time of, a procedure to which she or he objects based on his/her cultural values, ethics and/or religious beliefs.”

“The university is in full compliance with all applicable state and federal laws and is confident its position will be vindicated when the court gives this matter a full hearing,” according to the statement.

For decades, most states, including New Jersey, have had laws protecting nurses and other health-care workers who have moral objections to participating in abortions. In addition, federal laws, such as the Church Amendment, require health-care facilities that receive taxpayer money to permit workers to refuse on ethical grounds.

On Nov. 3, [U.S. District Judge Jose L. Linares granted](#) a request for a temporary restraining order barring the hospital from requiring the nurses to undergo training to care for abortion patients, pending a Dec. 5 hearing on the case, which involves 12 of the 16 nurses who work in the hospital’s same-day surgery unit.

Matt Bowman, an attorney representing the nurses, said he had received an e-mail from a lawyer for the hospital arguing that no laws had been broken, because the nurses are required to care for abortion patients



only before and after the procedure.

“The pre- and post-operative care provided to these patients is the same nature as that provided to patients who have undergone other surgical procedures,” Edward B. Deutsch of McElry, Deutsch, Mulvaney & Carpenter of Morristown, N.J., wrote in the e-mail.

Bowman argued that requiring the nurses to get involved before and after an abortion violated their right to refuse based on their conscientious objections.

“Federal and state law explicitly prohibits requiring nurses to assist in abortion against their moral and religious convictions,” Bowman said. “All these nurses are asking is that they not have to assist in any part of an abortion case.”

One of the nurses, Fe Esperanza R. Vinoya, said a manager told her: ““You just have to catch the baby’s head. Don’t worry, it’s already dead.””

“Nursing is a healing profession, and the law protects our right not to provide any services related to abortion,” Vinoya said at a news conference this month.

[Rep. Christopher H. Smith \(R-N.J.\)](#) joined the nurses at their news conference, charging that the university was jeopardizing nearly \$60 million in federal funding by forcing the nurses to play a role in abortions.

“Because the nurses have deep religious and moral convictions and believe women deserve better than abortion, they are punished,” he said. “Because the nurses are compassionate, are healers and care deeply for every human life regardless of age and condition of dependency, they are punished.”

Several advocates for women’s health said the nurses are protected from having to directly participate in abortion but have an obligation to care for women otherwise.

“These are health-care professionals who work at a publicly funded hospital saying that they do not want to do the job they were hired to do, including caring for a woman before or after surgery,” said Jennifer Dalven of the [American Civil Liberties Union Reproductive Freedom Project](#). “People have a right to their beliefs, but that shouldn’t give them the right to discriminate against patients who need medical care.”

Susan Berke Fogel of the [National Health Law Program](#), a Washington-based legal advocacy group, agreed.

“If it’s directly participating in an abortion, then the law says they should be able to refuse without being penalized,” Fogel said. “It can’t be just, ‘She’s there to have an abortion’ therefore the person can refuse to even talk to her, refuse to look at her chart or, say, let visitors come up to see her. A hospital has to be able to operate in an orderly fashion. We can’t be having individuals deciding for themselves where the boundary is around what it means to ‘assist.’”

In a brief filed last week, the hospital said it would add about \$280,000 to the facility’s annual budget if the changes in the nurses’ duties were not permitted. The hospital also charged that the nurses were putting patients undergoing abortions at risk by refusing to care for them even in emergency situations.

The hospital argued that “the routine, peripheral care that plaintiffs are now expected to provide . . . cannot reasonably be construed as assisting in the performance of abortions” and that state and federal laws do not apply. The hospital also denied having threatened to dismiss any of the nurses. Officials had offered to accommodate the nurses’ objections by transferring them elsewhere, according to the brief.

In February, [President Obama rescinded most of a controversial federal regulation](#) put in place by President George W. Bush to protect health-care workers who refuse to provide care they find objectionable on moral or religious grounds. The rule was widely interpreted as shielding workers who object to a range of medical services, such as playing any role whatsoever in abortions, providing birth control pills or even performing in vitro fertilization for lesbians or single women.

Obama's new rule, however, left intact long-standing "conscience" protections for doctors and nurses who do not want to perform abortion or sterilization procedures. It also retained the process for health workers whose rights are violated to file complaints with the Department of Health and Human Services.

Bowman would not say whether he planned to file a complaint, but he said the original Bush regulation might have helped protect the nurses.

"The more regulations that exist to enforce federal law protecting conscience rights, the better," Bowman said.

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