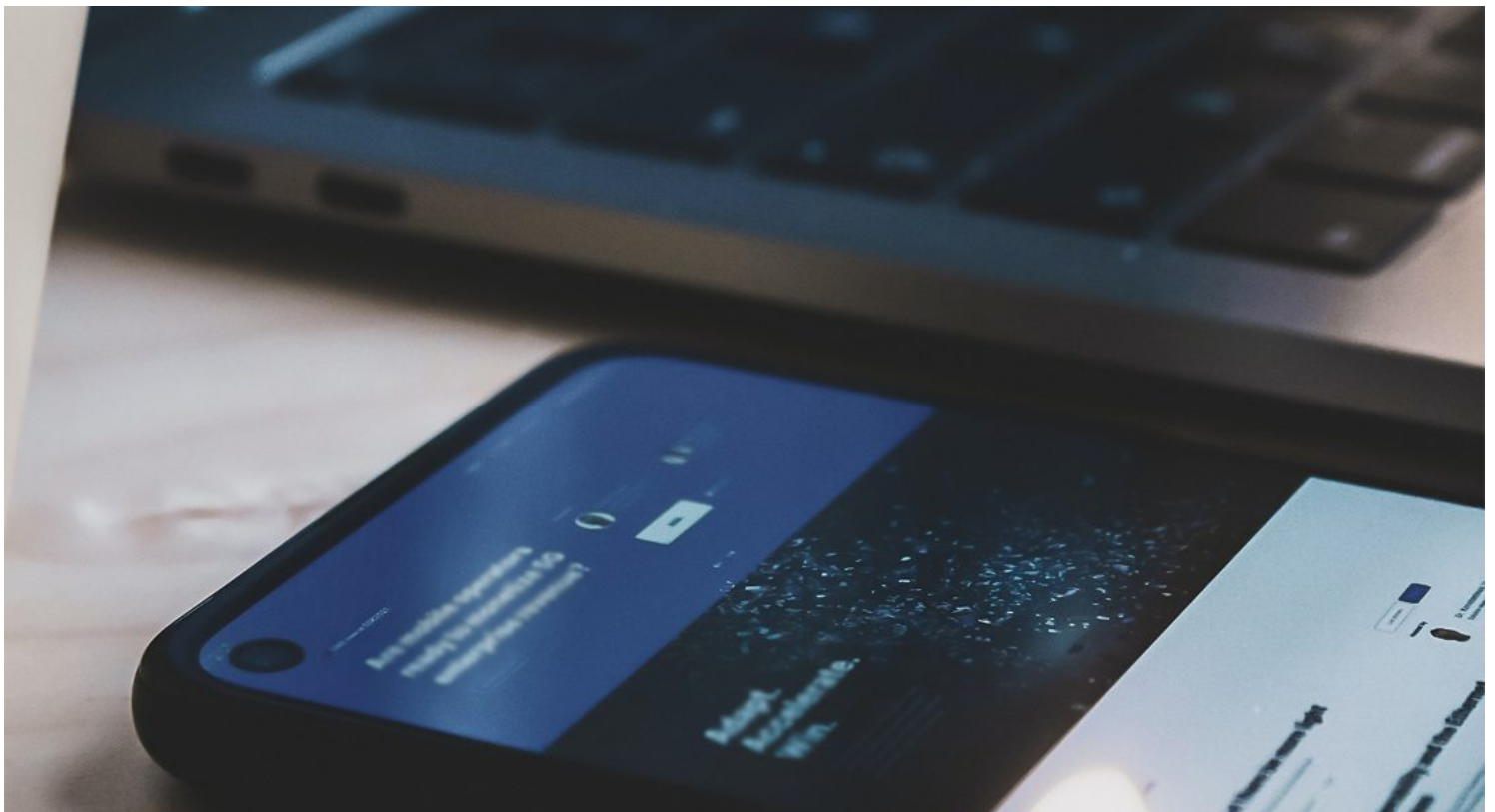


NEWS & INSIGHTS

Federal Agency Files Notice of Violation Against Medical Center that Forced Nurse to Assist in Abortion Procedure

INSIGHTSLEGAL UPDATE

SEPTEMBER 10, 2019



The Department of Health and Human Services (HHS) recently found the University of Vermont Medical Center (UVMHC) to be in violation of federal law by forcing a nurse to participate in an abortion procedure which infringed upon the nurse's religious beliefs. [The Notice of Violation](#) follows a 216-page proposed rule published earlier this year restating HHS's position that hospitals must ensure that health care employees with moral or religious objections have the option to refuse to participate in abortions.

The Church Amendments

This incident serves as a reminder that a hospital's compliance with the Church Amendments will be closely scrutinized. Federal health care provider conscience laws, collectively known as the [Church Amendments](#), were enacted in the 1970s to protect the conscience rights of individuals and entities that object to performing or assisting in the performance of abortion or sterilization procedures if doing so would contradict their religious beliefs or moral convictions. To enforce this protection, the Church Amendments prohibit federal funds authorized under the Public Health Service Act to be granted to any institution that violates the Act.

According to the Notice of Violation, UVMMC violated the Church Amendments when it required a nurse, who is Catholic, to assist with an abortion despite the nurse's religious-based objection. UVMMC had adopted policies in 2011 to allow health care providers to opt-out of procedures that they deemed morally objectionable. However, in 2018, UVMMC amended that policy to require employees to participate in assigned procedures regardless of their religious beliefs if circumstances prevented arrangements for alternative coverage.

Office of Civil Rights Investigation

According to the HHS Office for Civil Rights (OCR), UVMMC deliberately misled the nurse to believe that he/she "was scheduled to assist in a procedure that did not involve the abortion of an unborn human life, when it in fact did." The nurse "immediately objected but was coerced by UVMMC into participating in the abortion anyway" under the fear of being fired. The OCR further found that UVMMC's actions were motivated by discriminatory intent in that its nursing manager knowingly assigned the nurse to an elective abortion then refused their request to be relieved even after the nurse objected to participating. The OCR concluded that the 2018 modifications to UVMMC's policy contemplated situations where the hospital knew health care personnel objected to participating in elective abortions but would nevertheless require such staff to provide the care or face discipline.

According to the OCR, UVMMC's practice of scheduling objecting health care personnel to assist with abortions was discriminatory within the meaning of the Church Amendments. It reasoned that, once a health care provider is assigned to a medical procedure, that provider assumes responsibility for providing the indicated care. A failure to perform the assigned care may subject them to discipline by their employer as well as the professional licensing authority and could expose them to a civil lawsuit.

The OCR concluded that once assigned to a patient undergoing an abortion, health care providers who object on religious or moral grounds to assisting with abortions can be subjectively and objectively placed under substantial pressure to participate despite their objection. The OCR considered this pressure to be coercive and expressed its concern that objecting health care providers may suffer moral injury, a "crisis of conscience," and significant emotional distress, even if they succeed in declining to assist in the procedure after the assignment is made.

Impact on Pennsylvania Health Care Providers

The OCR considers health care providers' right to object to performing abortions on moral or religious grounds to be unqualified and absolute and will scrutinize policies impacting these rights. Hospitals should implement appropriate

policies and procedures that protect the religious and moral beliefs protected by the Church Amendments while ensuring patient care is not negatively impacted. This may include taking steps to avoid scheduling providers who hold such beliefs from performing certain procedures and having a thorough process in place to avoid a situation where an objecting provider may find themselves in a position of having to either perform the procedure or potentially face discipline or negatively impact patient care.

Saxton & Stump attorneys [Darlene K. King](#) and [Matthew W. Rappleye](#) are available to discuss how the findings of this investigation may impact your organization and how our [Healthcare Litigation and Mitigation Group](#) can provide a review of your policies and procedures to ensure compliance with the Church Amendments.

Related People

[Matthew W. Rappleye](#)

Related Services and Industries

[Healthcare](#)
[Healthcare Litigation](#)
[Labor and Employment](#)