



December 22, 2010

By Fax and First Class Mail

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Re: Denial of Reproductive Health Care at Religious Hospitals

Dear Dr. Berwick and Ms. Tavenner:

We write to follow up on our letter of July 1, 2010, informing you about potential violations of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, and the Conditions of Participation of Medicare and Medicaid (COP), 42 C.F.R. § 482.13, by religious hospitals that refuse to provide emergency reproductive health care. On July 26, 2010, we received a letter explaining that you needed to review the issues discussed in our letter before providing a response. We have not heard from you since that time. However, the problem continues nationwide, affecting pregnant women across the country who need emergency care.

In fact, just last week it was revealed that the Bishop of Phoenix threatened to remove his endorsement of St. Joseph's Hospital and Medical Center – where, as discussed in our previous letter, doctors provided a life-saving abortion to a young mother of four in November 2009 – unless the hospital signed a written pledge that it would never again provide emergency abortion care, even where necessary to save a woman's life. However, yesterday, the hospital refused to give in to the Bishop's unlawful demands and to endanger the lives of its pregnant patients. As a result, the Bishop yesterday stripped St. Joseph's of its Catholic status.

We continue to applaud St. Joseph's for doing what is right by standing up for women's health and complying with federal law. But this confrontation never should have happened in the first place because no hospital – religious or otherwise – should be prohibited from saving women's lives and from following

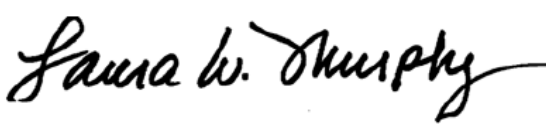
federal law. Indeed, the Bishop's drastic and heavy-handed actions send a chilling message to Catholic hospitals throughout the country, as well as their employees: If hospitals comply with federal law and provide emergency abortion care there will be consequences. This will have a profound affect on care, and will particularly impact hospitals and medical centers that may rely heavily on their local diocese for financing and other resources. The dioceses cannot be permitted to dictate who lives and who dies in Catholic-owned hospitals.

As we stated in our previous letter, religiously affiliated hospitals are not exempt from complying with EMTALA and the COP, and cannot invoke their religious status to jeopardize the health and lives of pregnant women seeking medical care. To the contrary, these federal laws protect patients' right to receive emergency reproductive health care. As your July 26, 2010 letter acknowledges, the government unquestionably has a significant interest in ensuring that these laws are enforced in order to protect women's lives and their health.

Please let us know what steps you have taken to investigate these matters, and whether you plan to take appropriate action under the above-mentioned laws. Further, we urge you once more to clarify in the appropriate CMS program manual, and issue a transmittal, that denying emergency reproductive health care violates federal law.

Thank you for your time and attention to this matter.

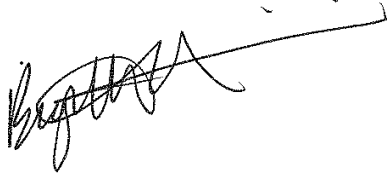
Sincerely,



Laura W. Murphy  
Director  
Washington Legislative Office



Vania Leveille  
Legislative Counsel  
Washington Legislative Office



Brigitte Amiri  
Senior Staff Attorney  
Reproductive Freedom Project  
ACLU Foundation



Alexa Kolbi-Molinas  
Staff Attorney  
Reproductive Freedom Project  
ACLU Foundation

A handwritten signature in black ink, appearing to read "Dan Pochoda". The signature is fluid and cursive, with the first name "Dan" being more prominent than the last name "Pochoda".

Daniel Pochoda  
Legal Director  
ACLU of Arizona