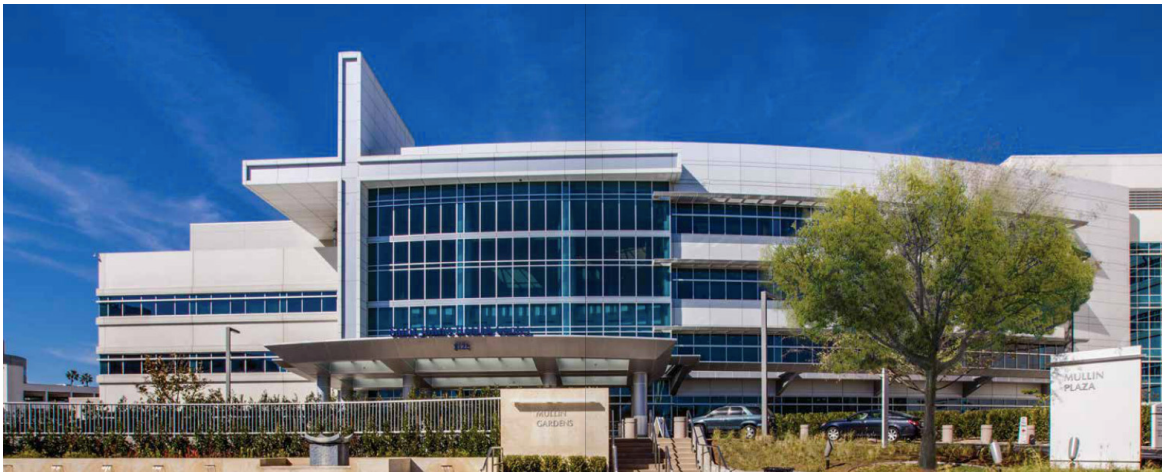


# *Religious Exemptions, Hospitals, and YOU*

*Created by Monica Ramsy, Fran Kandel Public Interest Fellow  
Women Lawyers Association of Los Angeles (WLALA)*



*Pictured above: Providence St. John's Health Center, Santa Monica*

# What are religiously affiliated hospitals?

*Healthcare systems across the country have religiously affiliated hospitals.<sup>1</sup>*

*The largest contingent of religiously affiliated hospitals consists of Catholic hospitals.<sup>2</sup> Catholic hospitals include:*

- Hospitals owned by a Catholic health system or diocese*
- Hospitals affiliated with Catholic hospital or system through a business partnership*
- Historically Catholic hospitals that continue to follow ERDs despite now being owned by a secular health care system.*

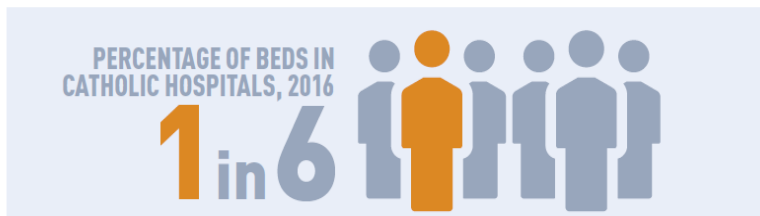
*Catholic hospitals follow the Ethical and Religious Directives for Catholic Health Care ("ERDs"), a set of policy prescriptions issued by the United States Conference of Catholic Bishops (USCCB)<sup>3</sup>*

## How many religious hospitals are there in the U.S.?

Ownership	Religion	2001		2016		Growth of Catholic Hospitals 2001–16
		Number of Hospitals	Percentage of All Hospitals	Number of Hospitals	Percentage of All Hospitals	
Non-Profit Church	Catholic	329	8.2%	355	9.4%	7.9%
	All Other	248	6.2%	153	4.0%	
Non-Profit Other	Catholic	97	2.4%	148	3.9%	52.6%
	All Other	1,840	45.8%	1,575	41.7%	
Public	Catholic	19	0.5%	10	0.3%	-47.4%
	All Other	824	20.5%	546	14.4%	
For-Profit	Catholic	4	0.1%	35	0.9%	775.0%
	All Other	656	16.3%	957	25.3%	
Total Catholic		449	11.2%	548	14.5%	22.0%
Total Hospitals		4,017		3,779		

**Catholic hospitals are now present in all 50 states. <sup>4</sup>**

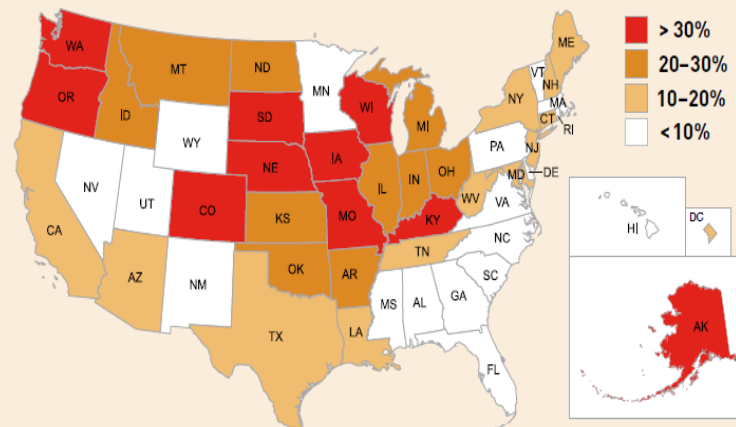
One in six hospital beds in this country is now in a facility that abides by Catholic restrictions on care.<sup>41</sup>



Figures taken from: ACLU & MERGERWATCH, *Health Care Denied: Patients and Physicians Speak Out About Catholic Hospitals and the Threat to Women's Health and Lives* 22, 24 (May 2016).

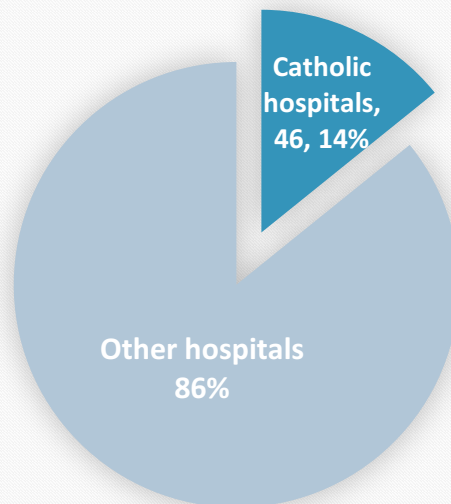
**As of March 2016, there are 548 U.S. hospitals—14.5% of all acute care hospitals nationwide—adhering to ERDs<sup>5</sup>**

Percentage of Hospital Beds in Catholic Hospitals, 2016

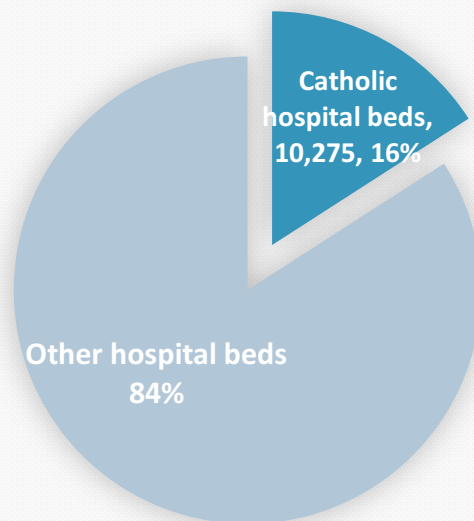


## How many religious hospitals are there in California?

### Short-Term Acute Care Hospitals in California



### Hospital Beds in California



Data taken from ACLU & MergerWatch, *Health Care Denied: Patients and Physicians Speak Out About Catholic Hospitals and the Threat to Women's Health and Lives* 26 (May 2016).

# Religious hospitals in California: Dignity Health

With 29 hospitals throughout California, the Catholic medical conglomerate Dignity Health is:

- The 5<sup>th</sup> largest healthcare provider in the U.S.<sup>6</sup>
- The largest hospital provider in California<sup>7</sup>



- |                                         |                                                |
|-----------------------------------------|------------------------------------------------|
| 1 Mercy General Hospital                | 21 French Hospital Medical Center              |
| 2 Mercy San Juan Medical Center         | 22 Marian Regional Medical Center              |
| 3 Mercy Hospital of Folsom              | 23 Mark Twain Medical Center Clinic            |
| 4 Sierra Nevada Memorial Hospital       | 24 Mercy Medical Center—Mt. Shasta             |
| 5 Bakersfield Memorial Hospital         | 25 Oak Valley Hospital                         |
| 6 NorthBay Medical Center               | 26 Sequoia Hospital                            |
| 7 NorthBay VacaValley Hospital          | 27 St. Elizabeth Community Hospital            |
| 8 Woodland Healthcare                   | 28 St. Joseph Hospital Eureka                  |
| 9 Methodist Hospital of Sacramento      | 29 Redding Medical Group Clinic                |
| 10 St. Joseph's Medical Center          | 30 St. John's Regional Medical Center          |
| 11 Mercy Medical Center Redding         | 31 Tehachapi Valley HealthCare District        |
| 12 Mark Twain Medical Center            | 32 St. Mary Medical Center                     |
| 13 Sierra Nevada Medical Group Clinic   | 33 Mercy Downtown Hospital                     |
| 14 Mercy Medical Center Merced          | 34 Oroville Hospital                           |
| 15 California Hospital Medical Center   | 35 Madera Community Hospital                   |
| 16 Community Hospital of San Bernardino | 36 Kona Community Hospital and Kohala Hospital |
| 17 Kern Valley Healthcare District      | 37 HCR Manor Care, Citrus Heights              |
| 18 St. Bernardine Medical Center        | 38 Rosewood Post Acute Rehab, Carmichael       |
| 19 St. John's Pleasant Valley Hospital  | 39 Asbury Park, Sacramento                     |
| 20 Arroyo Grande Community Hospital     |                                                |



Figure taken from *Connected Health Case Study: Dignity Health: Increasing Timely Access to High Quality Care Leveraging Telemedicine*, Healthcare Information and Management Systems Society (HIMSS) (February 15, 2016), <http://www.himss.org/connected-health-case-study-dignity-health-increasing-timely-access-high-quality-care-leveraging>.

# How religious hospitals operate: The financials

Religious hospitals are hybrid entities!



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Catholic hospitals receive billions of dollars of taxpayer funding every year.<sup>8</sup> In 2011, Catholic-sponsored hospitals received \$27.1 billion in net government revenue.<sup>9</sup> In 2011, 45.7% of total Catholic-affiliated hospital revenue came from federal funding.<sup>10</sup> This percentage is similar to that of other types of hospitals.<sup>11</sup> *Despite receiving massive tax credits and serving the public, religious hospitals operate under religious directives like ERDs that deny healthcare.*

## Mergers

When Catholic entities merge with non-religious hospitals, Catholic facilities often bring confusing and hidden restrictions to the way a secular hospital operates. Without a good understanding of these restrictions, a secular hospital might not understand the serious limitations that ERDs place on reproductive health services.

### *The logistics*

*Bishops must examine and approve the terms of mergers.<sup>12</sup> Merger deals are often kept in secret.<sup>13</sup> However, in California there is a process whereby hospitals have to apply with the California Attorney General to have mergers approved. This process provides a public notice and comment period for impending merger deals*

### *Financial implications of mergers*

*Multi-hospital partnership has been associated with significantly increased prices.<sup>14</sup>*

# How religious hospitals operate: ERDs

- By following medical guidelines set by popes, bishops, and Vatican councils rather than medical professionals, religious hospitals often fail to provide healthcare at accepted (and acceptable) medical standards.<sup>15</sup>
- Not only do ERDs create substandard medical care – they discriminate against patients on the basis of sex.
- Freedom of religion is an important constitutional right. But religious liberty means the right to exercise your beliefs, but not to impose those beliefs on others—especially in ways that cause harm.

## What ERDs Do

- Forbid healthcare facilities from providing a range of reproductive health services
  - Contraception, sterilization, many infertility treatments, and abortion
  - Even when a woman's health or life is jeopardized by a pregnancy.<sup>16</sup>
- Authorize hospitals to ignore patients' advanced medical directives<sup>17</sup>
- Fall disproportionately on women of color, low-income women, immigrant women, women living in rural areas, transgender individuals, and gender nonconforming people.<sup>18, 19</sup>

## ERDs: The Double Effect Principle

*"Operations, treatments, and medications that have as their direct purpose the cure of a proportionately serious pathological condition of a pregnant woman are permitted when they cannot be safely postponed until the unborn child is viable, even if they will result in the death of the unborn child." (Directive 47)*

Applied in this context, the "double effect" principle means that healthcare providers can provide crucial reproductive health services when needed to treat serious non-reproductive medical conditions, but not when the primary function of the same treatments would be to provide reproductive healthcare.<sup>26</sup>

# ERDs: Abortion

CLEARLY PROHIBITED	POSSIBLE EXCEPTIONS	IN ACTUALITY
<p><b><u>Directive 45</u></b></p> <p><i>“Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted”—even in cases of rape or incest.<sup>20</sup></i></p> <p><i>“Catholic health care institutions need to be concerned about the danger of scandal in any association with abortion providers.”</i></p>	<p><b><u>The “double effect” exception:</u></b></p> <p>Can provide abortion care if its “direct purpose [is] the cure of a proportionately serious pathological condition of a pregnant woman...when [it] cannot be safely postponed until the unborn child is viable.” (Directive 47)</p> <p><b><u>The Emergency Medical Treatment and Active Labor Act (EMTALA)</u></b></p> <p>Any hospital receiving Medicare funds and operating an emergency department must stabilize an individual who arrives with an emergency medical condition.</p> <p>If stabilizing the patient means terminating a pregnancy, the hospital must do so.<sup>21</sup></p>	<p>The “direct purpose” language creates a significant barrier to medical treatment.<sup>22</sup></p> <p>There is repeated and systematic failure in providing women suffering pregnancy complications with medically indicated emergency abortions.<sup>23</sup></p>



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## ERDs: Miscarriage (Mis)Management

A patient who was 14 weeks pregnant came into a Catholic-owned hospital in the Midwest with ruptured membranes. It was clear to her physician that the patient needed an abortion because miscarriage was inevitable and her health was in danger. But because the fetus still had a heartbeat, the hospital ethics committee refused to approve the procedure. **The patient had to be sent by ambulance 90 miles away to the closest institution that would treat her.**<sup>24</sup>

A 2012 study found that most physicians surveyed at Catholic hospitals recommend a **“watch and wait” strategy** if a fetal heartbeat could be detected. One physician stated that he often tells pregnant women in distress that **“we can’t do anything but watch you get infected.”**<sup>25</sup>

Another study detailed the story of a physician who was prevented by an ethics committee in a Catholic-affiliated hospital from providing appropriate care to a woman who was in septic shock. **The patient had a 106-degree fever but there was still a fetal heartbeat. The doctor said, “[The patient] was so sick in the [ICU] for about 10 days and very nearly died.”**<sup>26</sup>

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# ERDs: Sterilization

CLEARLY PROHIBITED	POSSIBLE EXCEPTIONS	IN ACTUALITY
<p><b><u>Directive 53</u></b></p> <p>“Direct sterilization of either men or women, whether permanent or temporary, is not permitted in a Catholic health care institution”</p> <p><b><u>Directive 28</u></b></p> <p>“The free and informed health care decision of the person . . . is to be followed so long as it does not contradict Catholic principles.”</p>	<p><b><u>The “double effect” exception:</u></b></p> <p>“Procedures that induce sterility are permitted when their direct effect is the cure or alleviation of a present and serious pathology and a simpler treatment is not available.” (Directive 53)</p>	<p><b><u>Strong institutional opposition to sterilization</u></b></p> <ul style="list-style-type: none"> <li>• The USCCB classifies sterilization procedures as “intrinsically evil.”<sup>27</sup></li> <li>• In 2014, the Congregation for the Doctrine of the Faith (the Vatican’s office of doctrinal authority) deemed sterilization “absolutely forbidden” at Catholic hospitals.<sup>28</sup></li> </ul> <p><b><u>The “present and serious pathology” language creates severe obstacles to access with devastating impacts</u></b></p> <ul style="list-style-type: none"> <li>• One study showed that, within one year of being denied a requested sterilization, nearly half (47%) of the women participating in the study experienced a repeat pregnancy—twice the rate of women in the study who did not request sterilization.<sup>29</sup></li> </ul> <p>Many women experience extreme anxiety of a future unintended pregnancy after facing insurance and institutional barriers to getting requested sterilizations.<sup>30</sup></p>

# ERDs: Contraception

CLEARLY PROHIBITED	POSSIBLE EXCEPTIONS	IN ACTUALITY
<p><b><u>Directive 52</u></b></p> <p>“Catholic health institutions may not promote or condone contraceptive practices”</p> <p>No oral contraceptives, IUDs, etc.<sup>31</sup></p>	<p><b><u>Directive 52</u></b></p> <p>“Catholic health institutions may not promote or condone contraceptive practices but should provide, for married couples and the medical staff who counsel them, instruction both about the Church’s teaching on responsible parenthood and in methods of natural family planning.”</p> <ul style="list-style-type: none"> <li>NFP: a contraceptive method involving tracking a woman’s cycle and using periodic abstinence to prevent pregnancy.</li> </ul> <p><b><u>The “double effect” exception:</u></b></p> <p>Doctors may provide birth control to treat a serious medical condition, but not if the primary intent is to prevent pregnancy.<sup>32</sup></p>	<p><b><u>NFP is an ineffective form of contraception</u></b></p> <ul style="list-style-type: none"> <li>Overall failure rate= 24% in the first year.<sup>33</sup></li> </ul> <p>In 2011, only 2% of U.S. Catholic women relied on NFP.<sup>34</sup></p>

# ERDs: *Emergency Contraception*

CLEARLY PROHIBITED	POSSIBLE EXCEPTIONS	IN ACTUALITY
<p><b><u>Directive 36</u></b></p> <p>No access to emergency contraception for individuals whose birth control failed or who didn't use contraception during consensual sex.<sup>35</sup></p>	<p><b><u>Directive 36</u></b></p> <p>A survivor of sexual assault may receive emergency contraception, but only after proving herself "eligible"—meaning that, after "appropriate testing there is no indication she is pregnant."<sup>36</sup></p>	<p><b><u>The eligibility test creates an unnecessary restriction</u></b></p> <ul style="list-style-type: none"><li>• EC does not interrupt an established pregnancy (does not interfere with the implantation of a fertilized egg)<sup>37</sup></li><li>• Creates an additional foothold for religious hospitals to refuse care<sup>38</sup></li></ul> <p><b><u>Even if a person has been proven "eligible," many Catholic hospitals will still not dispense EC.</u></b></p> <p>A 2005 survey showed that 55% of emergency rooms in Catholic hospitals refused to provide EC to sexual assault survivors.<sup>39</sup></p>

# ERDs: Ectopic Pregnancy

CLEARLY PROHIBITED	POSSIBLE EXCEPTIONS	IN ACTUALITY
<p><b><u>Directive 48</u></b></p> <p>"In case of extrauterine pregnancy, no intervention is morally licit which constitutes a direct abortion."</p>	<p><b><u>The Emergency Medical Treatment and Active Labor Act (EMTALA)</u></b></p> <ul style="list-style-type: none"> <li>Requires any hospital that receives Medicare funds and operates an emergency department to stabilize an individual determined to have an emergency medical condition.</li> </ul> <p>Prohibits a covered hospital from transferring an individual with an emergency medical condition who has not been stabilized.<sup>40</sup></p>	<p><b><u>Access is fraught</u></b></p> <ul style="list-style-type: none"> <li>Physicians working at Catholic hospitals have reported that their hospitals prohibit them from offering methotrexate for women with ectopic pregnancies.<sup>41</sup></li> </ul> <p>Women do not receive prompt and/or appropriate medical care.<sup>42, 43</sup></p>

# ERDs: *Prenatal Diagnosis*

CLEARLY PROHIBITED	POSSIBLE EXCEPTIONS	IN ACTUALITY
<p><b><u>Directive 50</u></b></p> <p>“Prenatal diagnosis is not permitted when undertaken with the intention of aborting an unborn child with a serious defect.”</p>	<p><b><u>Directive 50</u></b></p> <p>“Prenatal diagnosis is permitted when the procedure does not threaten the life or physical integrity of the unborn child or the mother and does not subject them to disproportionate risks; when the diagnosis can provide information to guide preventative care for the mother or pre- or postnatal care for the child; and when the parents, or at least the mother, give free and informed consent.”</p>	<p><b><u>Access is fraught.</u></b></p> <p>Catholic hospitals have denied prenatal diagnosis when medical staff suspect that such information will be used to obtain an abortion at another facility.</p>

# ERDs: Assisted Reproductive Technologies

CLEARLY PROHIBITED	POSSIBLE EXCEPTIONS	IN ACTUALITY
<p><b><u>Directives 39-41</u></b></p> <p>ART techniques that destroy extra embryos, use donor sperm or eggs, or employ artificial insemination are prohibited—even for married couples.</p> <ul style="list-style-type: none"><li>• EX: IVF; using donor gametes</li></ul> <p>Surrogacy is also “not permitted” because of the “uniqueness of the mother-child relationship.”<sup>44</sup></p>	<p><b><u>Directive 38</u></b></p> <p>“When the marital act of sexual intercourse is not able to attain its procreative purpose, assistance <i>that does not separate the unitive and procreative ends of the act</i>, and does not substitute for the marital act itself, may be used to help married couples conceive.”</p>	<p><b><u>Access is fraught</u></b><sup>45</sup></p>

# ERDs: *Transition-Related Care*

Technically, ERDs don't say anything about transition-related care for transgender individuals...

***But in reality, religious hospitals have taken a strong stance against providing vital healthcare services to transgender patients in their daily practice.***

Transgender people across the country suffer from discrimination in religious hospitals, getting delayed or blocked in accessing the care they need.<sup>46</sup>

***The United States Conference of Catholic Bishops (USCCB)—the body that drafts the ERDs—has stated its staunch opposition to providing for the health needs of transgender patients.***

According to its 2015 letter to the Department of Health and Human Services, the USCCB believes that gender dysphoria is invalid and transition-related care is harmful to patients. In this letter, the USCCB went so far as to argue that transition-related care “mutilates the body.”<sup>47</sup>



**The refusal of Catholic hospitals to allow doctors to provide their patients with the care they need creates a clear conflict between the best interests of patients and the directives of the Catholic hospital system.**

**Religious exemptions to reproductive healthcare are a heinous form of discrimination.**

**Hospitals that are open to the general public and receive government funding should not be able to invoke religion to discriminate or deny basic health care.**

# ENDNOTES

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