

ANALYSIS & COMMENTARY

# Why we must make a stronger commitment to lesbian family health

📌 “Equitable treatment” recommended by ACOG does not eliminate health-care disparities between families headed by heterosexual parents and those headed by same-sex parents

**CASE 1**

**Refusal to treat—is it legal?**

Two lesbians in South Carolina, together for 7 years, seek insemination services from their HMO gynecology service. The doctors at that service decline to inseminate them—saying that they do not offer this service to lesbians because they believe that only heterosexual, married women should have children—and refer them to another physician outside the HMO. The couple pays \$8,000 out of pocket to conceive their son. Because it is legal to discriminate against homosexuals in South Carolina, the doctors cannot be sued, and ACOG cannot discipline the doctors.

Currently, 25% to 45% of clinics in the United States report that they refuse to inseminate lesbians.<sup>1,2</sup> What can we do to end such discrimination?

“Physicians and other health care professionals have the duty to refer patients in a timely manner to other providers if they do not feel that they can in conscience provide the standard reproductive services that their patients request.” So says Committee Opinion #385 of the American College of Obstetricians and Gynecologists (ACOG).<sup>3</sup> This formal opinion implies that a physician who objects to same-sex couples may refer a lesbian patient to another physician for insemination, thereby communicating his or her discrimination to the patient.

In addition, ACOG’s Committee on Underserved Women released Committee Opinion #428, endorsing “equitable treatment for lesbians and their families, not only for direct health care needs but also for indirect health care issues; this should include the same legal protections

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Do you think the ACOG Code of Professional Ethics should be amended to include sexual orientation and gender identity explicitly?

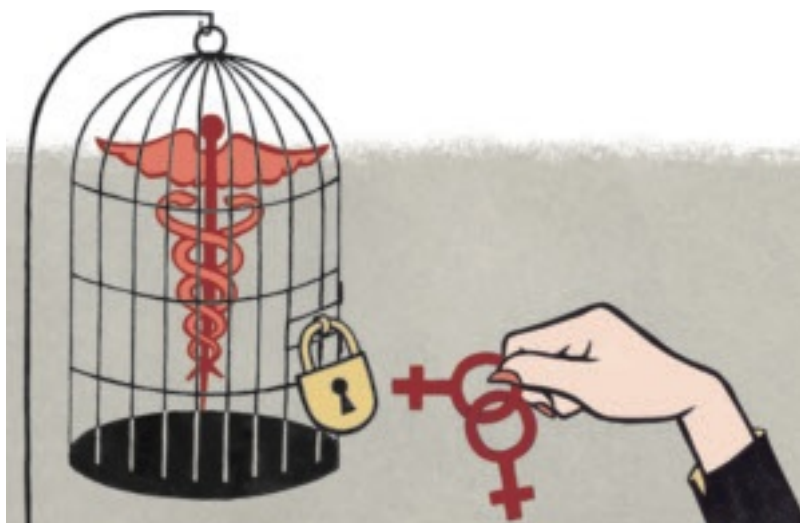
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afforded married couples.”<sup>4</sup> The opinion does not endorse access to civil marriage, *per se*.

And although ACOG includes a nondiscrimination clause in its Code of Professional Ethics stating that the “principle of justice requires strict avoidance of discrimination on the basis of race, color, religion, national origin, or any other basis that would constitute illegal discrimination,” sexual orientation and gender identity are not specified.

To remain consistent with its mission of “advancing women’s health,” ACOG must include sexual orientation and gender identity in its nondiscrimination statement and endorse access for same-sex couples to civil marriage—not just “equitable treatment.”

In 44 states, laws mandating so-called equitable treatment deny the families of lesbian couples the legal and financial protections of civil marriage that are deemed essential to the health of families headed by heterosexual couples.

In 30 states, ACOG’s nondiscrimination policy, as written, could be interpreted to permit gynecologists to discriminate on the basis of sexual orientation in their practices.

The American Society for Reproductive Medicine issued a statement affirming that there is no justification for denying same-sex couples assisted reproductive technologies.<sup>5</sup>

Both the American Academy of Pediatrics (AAP) and the American Psychiatric

Association (APA) prohibit discrimination on the basis of sexual orientation and endorse civil marriage for same-sex couples in richly evidence-based policy statements. Both organizations affirm that:

- homosexuality is natural, immutable, and noncontagious
- the children of homosexual parents develop with outcomes equal to those of heterosexual parents
- the families of same-sex couples need the same protections that their heterosexual counterparts enjoy.

The American Medical Association (AMA) issued policy statements prohibiting discrimination based on sexual orientation and gender identity because of documented health disparities that arise from discrimination.

In this article, I present evidence to support these positions; provide examples of how the current ACOG statement contributes to disparities; and challenge ACOG to clarify the wording of its opinions.

There is no scientific rationale for any discrimination against same-sex families. There is abundant scientific evidence that these families are harmed by discriminatory laws and treatment.

### Civil unions, domestic partnerships do not equal civil marriage

ACOG Committee Opinion #428 makes it clear that “equitable treatment” does not affect religious rules about marriage ceremonies: Marriage licenses must be solemnized either in a religious ceremony performed by a clergy member, or in a civil ceremony performed by a judge, justice of the peace, or elected official.<sup>4</sup> The Committee Opinion recognizes that domestic partnerships and civil unions do not provide the same rights as a state civil marriage license, and notes that neither is portable to all other states or recognized by the United States government.<sup>4</sup>

The opinion further acknowledges that marriage has a uniquely universal dignity and recognition in our society and grants the couple access to more than 1,000 federal rights deemed important for the health of its partners and their families.<sup>4</sup>

## FAST TRACK

**Sexual orientation and gender identity are not specifically mentioned in the nondiscrimination clause of ACOG’s Code of Professional Ethics**

ACOG Committee Opinion #385 concedes that to refer a homosexual patient seeking insemination or surrogacy services does indeed communicate the physician's discriminatory attitude to the patient and may cause harm.<sup>3</sup> The AMA prohibits such discrimination by requiring that physicians only offer those services that they can provide to all patients without discrimination. This would allow a physician to refuse to do any procedure that is deemed unconscionable—but any service provided to some must be provided to all.

### How the first trimester may influence sexual orientation

Fetal brain circuitry is permanently organized during the first trimester of pregnancy under the influence of various hormones and hormonelike substances, conferring an innate sexual orientation and gender identity, which children gradually come to recognize.<sup>6</sup> Any subtle or not-so-subtle exposure to androgenic substances during early gestation of a 46 XX fetus can influence neural patterns in the phenotypic female child. These patterns may manifest as more aggressive play activity and masculinized somatic skeletal structure, neural structure, behavioral and biophysiologic skills, or gynephilic sexual orientation, and possibly confer a male gender identity.<sup>7-11</sup>

Congenital adrenal hyperplasia (CAH) demonstrates the biological effects of prenatal hormones on sexual orientation and gender identity. CAH is a condition in which an enzyme (21-hydroxylase) in the cortisone synthesis pathway is missing or dysfunctional, resulting in buildup of precursor androgens in the fetal blood. Female infants with CAH can be born with virilization of their external genitals or ambiguous genitalia.

Since 1968, 13 published studies have revealed that 20% to 50% of females who have CAH will identify as lesbian or bisexual in adulthood.<sup>10</sup> A smaller percentage will come to recognize a male gender identity, particularly when their CAH is the more severe salt-wasting type.<sup>11</sup>

Homosexual orientation is also more frequent among women who had prenatal exposure to the complex steroid diethylstilbestrol,<sup>12</sup> and among those who have polycystic ovarian syndrome (PCOS).<sup>13</sup> Further evidence of the influence of prenatal androgen exposure on female sexual orientation is seen among females who gestated with a fraternal male co-twin.<sup>14</sup> These girls are reported to have more aggressive play patterns during childhood and are more likely to identify as lesbian later in life.

Female-to-male transgender individuals have been shown to have higher adult androgen levels, a higher incidence of PCOS, and a greater likelihood of a history of CAH.<sup>15,16</sup>

It is unclear whether all homosexual females or female-to-male transsexuals were influenced by some form of first-trimester androgen excess. There are many endogenous and exogenous sources of androgen-like substances. They include maternal adrenal steroids arising from a high level of stress, anabolic steroids ingested from poultry or beef, and subclinical variations of fetal 21-hydroxylase concentration or efficiency, for example.

### Homosexuality is not a disorder

The APA backs evidence that homosexuality cannot be spread by exposure or influence, nor can it be “repaired” or eradicated by disciplinary treatment. In fact, published evidence shows that the mental health and development of children are significantly harmed by parental, familial, and school peer rejection, whereas developmental parameters are much improved by their parents' celebration of the youth's diversity and the school's enforcement of its diversity policy.<sup>17</sup> Still, recognition of one's sexual orientation can be difficult because of legal and social proscriptions against homosexuality.

Although most homosexuals have experienced some form of discriminatory treatment in their lives—be it verbal or physical abuse, or different treatment at their school or job or by existing federal and state laws—most still report a full and rewarding life.<sup>18</sup> Experiences of discrimination, however, are



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potent psychic stressors for which many seek counseling and support, and which may undermine mental and physical health.<sup>19,20</sup> Such discrimination may lie at the root of the documented higher rates of obesity, smoking, and alcoholism among lesbians compared with heterosexual women reported in the Women's Health Initiative and the Nurses Health Study.<sup>21,22</sup>

Most young people, including those who will realize that they are gay, are raised with a strong appreciation for family and cultural traditions and an anticipation of adulthood with a career and marriage.<sup>23</sup> Although marriage systems may differ, marriage across world cultures is a publicly acknowledged, highly respected, singular union, designed to create kinship obligations and sharing of resources between two adults and protect any children that they may produce.

Like heterosexual women, many lesbians desire to create families secured by civil marriage laws. These families need and deserve the same protections established by law to support and protect families headed by heterosexual couples. The marriage license is a state-regulated contract between two individuals. Each couple must then separately have the license solemnized, either by a designated state official (civil marriage) or by a clergy member (religious marriage).

All of the states with laws that permit civil marriage for same-sex couples have explicitly endorsed a religious right for clergy to refuse to certify same-sex couples' licenses according to their beliefs.

### Married parents provide a greater sense of security

In comparison with mere cohabitation, marriage confers more health benefits to the couple and has been correlated with a lower rate of cardiac disease<sup>24</sup> and cancer risk factors,<sup>25</sup> and with greater longevity.<sup>26</sup> Marriage also provides greater security to any children in the family unit.<sup>27</sup> When federal and state laws treat homosexual families differently than heterosexuals, this discrimination conveys a lower societal respect to all members of the

family, but especially to the children.<sup>28</sup> When children eventually learn that their parents—unlike other children's parents—are not allowed to marry, they may lose some faith in their parents and be subject to bullying.<sup>29</sup>

The AAP reported significant, reliable evidence that lesbian and gay parents are as fit, effective, and successful as heterosexual parents.<sup>28</sup> The organization also confirmed research showing that children of same-sex couples are as emotionally healthy and socially well-adjusted and at least as educationally and socially successful as children raised by heterosexual parents.<sup>28</sup>

The APA issued a pamphlet that states:

*Both heterosexual behavior and homosexual behavior are normal aspects of human sexuality. Both have been documented in many different cultures and historical eras. Despite the persistence of stereotypes that portray lesbian, gay, and bisexual people as disturbed, several decades of research and clinical experience have led all mainstream medical and mental health organizations in this country to conclude that these orientations represent normal forms of human experience.<sup>30</sup>*

### Case studies in discrimination

In 44 states, "equitable treatment" for same-sex couples, reflected in local law, entails denial of civil marriage and the family protections it confers. In nine states, equitable treatment means prohibition of adoption by same-sex couples. In 30 states, equitable treatment includes discrimination in housing or jobs based on sexual orientation and gender identity.

Consider the following vignettes, all possible (as is Case 1 on page 40) under current laws in the geographic areas specified:

#### CASE 2

A Massachusetts lesbian married to a same-sex spouse who bore the couple's children is offered a job promotion managing the Arkansas branch of her company. She has to decline the promotion because her company cannot continue her



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family's medical insurance in Arkansas. Nor would she have legal custody of her children in that state or be able to adopt them there.

#### CASE 3

A married lesbian is hit by a car while crossing the street at a medical conference in Dallas. The funeral home refuses to release her body to her spouse for burial near their home in Connecticut. The decedent's brother is called because he is the closest legal relative under Texas law, but since he never approved of his sister's lesbian sexual orientation, he has her body transported to his family's plot in Virginia.

#### CASE 4

A physician who is a lesbian is recruited to a state university in Michigan in 2003. She moves there with her domestic partner and their two adopted children, one of whom has cerebral palsy, and is promoted to the rank of associate professor in 2007. The next year, the Michigan Supreme Court interprets a 2004 constitutional amendment to mean that state institutions are prohibited from providing domestic partner benefits to same-sex couples. This leaves her stay-at-home spouse and their children without health insurance.

In each case, "equitable treatment" that is legal nevertheless injures the stability, integrity, and health of families, and ACOG's Code of Professional Ethics fails to serve its mission of promoting women's and family health.

### AAP, APA endorse civil marriage

After reviewing 25 scientific articles on families parented by same-sex couples and the development of children in those families, the AAP concluded in 2006 that:

*These data have demonstrated no risk to children as a result of growing up in a family with one or more gay parents. Conscientious and nurturing adults, whether they are men or women, heterosexual or homosexual, can be excellent parents. The rights, benefits, and protections of*

*civil marriage can further strengthen these families.*<sup>28</sup>

The APA in 2004 endorsed civil marriage.<sup>31</sup> For its part, the AMA has taken historic social and political stands endorsing nondiscrimination in school education programs for youth, in youth scouting organizations, in medical education, and in insurance coverage. The AMA also issued support of legislation to allow adoption by same-sex partners and co-parents. The AMA seeks to reduce the health disparities suffered because of unequal treatment of minor children and same-sex parents by supporting equality in laws affecting the health care of members of same-sex partner households and their dependent children.<sup>32</sup> The AMA also issued a nondiscrimination clause that states:

*The AMA reaffirms its longstanding policy that there is no basis for the denial to any human being of equal rights, privileges, and responsibilities commensurate with his or her individual capabilities and ethical character because of an individual's sex, sexual orientation, gender, gender identity, or transgender status, race, religion, disability, ethnic origin, national origin, or age [emphasis mine].*<sup>32</sup>

Just as ACOG expects to be consulted for testimony in any legislation or court proceeding about gynecologic and obstetric issues, the expertise of the APA and AAP in the areas of child and family mental health are indisputable.

### We should take a principled stand on this matter

The AMA Principles of Medical Ethics stipulate that "a physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health." Our scientific ACOG community possesses access to knowledge that the lay community does not have. We have a responsibility to



The American Psychiatric Association endorsed civil marriage in 2004

reflect the evidence in our ACOG policies and share the information in our communities for the health and well-being of our patients.

When society is broadly misinformed about issues related to homosexuality and frequently votes in ways that harm lesbians and their families, ACOG—whose mission is “advancing women’s health”—should take an unequivocally principled stand, as the AAP and the APA have already done.

The endorsement of civil marriage *per se* and inclusion of sexual orientation and gender identity in the nondiscrimination clause in no way oppose any of ACOG’s values but, rather, reflect and support ACOG’s mission for America’s women.

In the past, ACOG did not at first endorse “equitable treatment” for women who had unintended pregnancy. ACOG took the

highly controversial but principled stand of endorsing women’s self-determination or “choice” to continue or abort an early gestation. ACOG endorsed what scientific evidence had proved to be healthiest for the woman and her family, and should do so now again.

ACOG could accomplish its mission for women’s health more fully if it would reconvene the Committees on Ethics and on Underserved Women and ask the committees **to unambiguously prohibit all discrimination based on sexual orientation and gender identity, and endorse equal access to civil marriage across the country for the health of lesbian couples and parents.** ACOG also should **revise the Code of Professional Ethics to include sexual orientation and gender identity in the nondiscrimination clause.** ☺

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