

# Hospitals can't deny admitting privileges to abortion doctors, AG says

By [Akbar Ahmed](#) of the Journal Sentinel  
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Plans by three Catholic hospital systems in Wisconsin to deny admitting privileges to doctors who perform abortions would "be in active violation of federal law," Attorney General J. B. Van Hollen's Department of Justice said in a court filing last week.

Federal law "provides that hospitals accepting federal funds may not discriminate against a physician because that physician has participated in or refused to participate in abortions," the state Justice Department said in its filing in federal court.

According to experts on federal law, if doctors can prove they were not granted privileges specifically because they perform the procedure, the hospital systems — Wheaton Franciscan Healthcare, Columbia St. Mary's Health System and Hospital Sisters Health System — could lose federal dollars in the form of research and public health grants.

Doctors who perform abortions would be required to obtain privileges at hospitals within 30 miles of their clinics under a new law [that has been blocked](#) until at least November by a federal judge. [Seven doctors who provide abortions in the state lack privileges](#), and at least four are applying for them at religiously affiliated hospitals, according to their employer, Planned Parenthood of Wisconsin.

The hospitals said they would not grant privileges to abortion providers, following confusion over their stance in federal court. In the abortion providers' challenge to the law, their attorneys said the privileges requirement would be especially difficult to meet because a large proportion of Wisconsin hospitals are religiously affiliated and opposed to abortion.

But Matthew Lee, a doctor on the credentials committee at Wheaton Franciscan St. Joseph campus in Milwaukee, initially told the court [he believed religiously affiliated hospitals in the state would be open](#) to granting privileges to doctors who perform abortions.

One week later, the chief medical officer for Wheaton Franciscan said her organization would not grant privileges to abortion providers, suggesting that Lee might not have fully understood the hospital's policies. A spokeswoman for Columbia St. Mary's said her organization had the same policy and, days later, so did the president and chief executive officer of the Hospital Sisters system.

All three hospital systems cited their Catholic affiliations as the reason why they would deny privileges to abortion providers.

Responding to a Planned Parenthood attorney's attempt to have the court note a Journal Sentinel article on Lee's affidavit, attorneys with Van Hollen's Department of Justice wrote, "The 'fact' suggested by this newspaper article — namely that the Wheaton Franciscan hospital system will deny privileges to any doctor

who has participated in abortions...— is belied by federal law."

The state was referring to the [Church Amendments](#), federal statutes enacted after the Supreme Court affirmed a constitutional right to abortion in *Roe vs. Wade* in 1973. The laws are known for protecting federally funded hospitals and doctors from being required to participate in abortion or sterilization procedures. What is less widely understood, legal experts said, is that they also protect doctors who perform abortions, including in decisions about privileges.

Asked about the legal standing of the Wheaton Franciscan policy at the time when Lee's affidavit was found to be inconsistent, the hospital's assistant general counsel, Matt Moran, said in a statement, "The medical staff and hospital board have discretion in making decisions on granting privileges and can consider the mission, values and operational needs of the organization. Requiring certain professional, ethical and character qualifications is recognized by the courts as valid and related to the operation of the hospital."

A Wheaton Franciscan spokeswoman said the hospital had no further comments following the state's court filing.

A spokeswoman for Columbia St. Mary's said she believes her hospital's privileging policy is in compliance with federal and state law, while a spokesman for Hospital Sisters did not respond to repeated requests for comment.

But Gretchen Borchelt, senior counsel and director of state reproductive health policy at the National Women's Law Center, said she does not know of any case law that would support refusing privileges to a doctor who has performed an abortion when neither the hospital nor its personnel would be required to participate in the procedure.

The law's protection for abortion providers has not been widely tested, Borchelt added.

If any of the abortion providers presently seeking privileges brings a complaint against one of the three Catholic systems to the civil rights office at the U.S. Department of Health and Human Services, their cases could be strengthened by the systems' public declaration of their policies.

"They can use the statements as evidence that even if (the hospitals) say it's not about religious belief, it is," Borchelt said.

She added that in other states that have recently passed privileges requirements for abortion providers, religiously affiliated hospitals have denied the doctors' applications by citing their failure to meet other standards, such as admitting a certain number of patients per year. In Mississippi, a Baptist hospital did not provide doctors at an abortion clinic with an application for privileges because none of its staff would write letters in support of the doctors, according to a court affidavit provided by the clinic's attorneys at the Center for Reproductive Rights.

It is unclear whether Wisconsin lawmakers who enacted the new abortion law anticipated that it might place religiously affiliated hospitals in a quandary once abortion providers began seeking privileges. State Sen. Mary Lazich (R-New Berlin), the bill's author, said she was not aware of the Church Amendments of the 1970s, after initially asking whether they were part of Obamacare.

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