Reproductive healthcare in immigration detention: The imperative of informed consent

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Introduction

Health care providers are trained to inform, counsel, and provide optimal care to patients, regardless of their setting or immigration status. A key element of this approach is providers' obligation to ensure patients have sufficient information to safely make decisions in their own best interest and when treatment is selected, provide informed consent. In practice, particularly in constrained settings such as immigration detention facilities, safeguards for these critical patients' rights are not always implemented. Contemporary U.S. abuses follow a long global history of racially motivated violations of marginalized women's reproductive health.

Violations of patients' reproductive rights in the U.S

Recent reports have highlighted the ongoing challenge of ensuring the protection of detained patients' health rights in the U.S. Most recently, on September 14th 2020, Dawn Wooten, a nurse at Irwin County Detention Center (ICDC) in Ocilla, Georgia, filed a report alleging numerous human rights abuses, including high rates of hysterectomy, performed on women in detention without their informed consent.[1]

Wooten's whistleblower complaint was directed at LaSalle Corrections, a for-profit private contractor at ICDC. LaSalle Corrections has a documented history of abuse at its facilities and has settled at least two prior cases. Wooten's complaint provides clear evidence of egregious violations of international legal principles, including the obligation to secure patients' informed consent and governing the duty of care owed by the government and its contractors to *all* persons in their custody.[2] An independent medical review team conducted as a follow-up to Wooten's complaint reviewed the records of 19 women and presented their findings to U.S. senators in October 2020. It reported "a disturbing pattern...many women either underwent abdominal surgery or were pressured to have a surgery that was not medically indicated and to which they did not consent."[3] In December 2020, a temporary restraining order was filed to prevent retaliation (including deportation) against the women petitioners,[4] and a class action lawsuit on their behalf was filed against ICE directors and individual officers at ICDC.[5] Testimonies, statements, interviews, and reviews of medical records have now been gathered from more than 80 women.[6] In May 2021, while awaiting the results of federal investigations into the allegations of abuse at ICDC, the Biden administration terminated LaSalle Corrections contract at the detention center.[7]

Human rights organizations have long documented medical abuse in U.S. immigration detention facilities,[8] including ICDC. Independent medical reviews of patient records substantiate these reports. Required oversight inspections by ICE at the facility have documented repeated and persistent deficiencies in medical care. This conduct confirms the critical observation that some women's reproduction is worthy of celebration and care while others is deemed problematic or undeserving - a long-standing global phenomenon called '*stratified reproduction*' which disproportionately affects indigenous, poor, immigrant, undocumented, and incarcerated women.[9]

Conclusion and way forward

Coercive conduct against marginalized women, including forcible sterilization and pressure to secure consent to medical intervention or the administration of medication affecting reproduction, has a long history. In the U.S., this conduct has particularly targeted marginalized Black, Puerto Rican, Latin American, and Native American women. Rooted in the ideology of white supremacy and the racist pseudoscience of eugenics, these attempts to achieve 'racial purity' have been enacted in a majority of American states. In 1973, a federal court found an estimated 100,000–150,000 impoverished women, half of them Black, were sterilized annually in the U.S. under federally funded programs.[10]

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Domain	Organizations and health care providers contracted with a government or publicly funded entity should:
Ethics & Professional Standards	• Be held to the highest professional standards, including board certification of contracted physicians. The American Board of Obstetrics & Gynecology[i] qualifying and certifying exams include demonstration of effective management of ethical situations, effective and professional communication, ethical and professional behavior. Other medical providers, such as physician assistants and nurse practitioners, should also be held to similar standards of certification. • Provide comprehensive vetting and oversight for medical providers and hold medical practitioners accountable for systemic violations. • Cease referrals of women to medical providers against whom allegations of medical abuse or neglect have been made. • Terminate contracts with facilities that repeatedly violate Performance-Based National Detention Standards (PBNDS). • End the use of shackles during medical visits. • Prohibit retaliation against whistleblowers and patients who make complaints. • Demonstrate that medical advice and care are provided in the language preferred by the patient. Bilingual providers should demonstrate proficiency, medical interpreters should be certified, and best practices for working with interpreters should be easily accessible. • Terminate contracts with all private, for-profit detention facilities
Incentives & Remuneration	• Be reimbursed through value-based or bundled payments and not fee-for-service models. As demonstrated by Medicare value-based or bundled payments are based on outcomes and quality rather than volume of interventions. Physicians and corporations should not be financially incentivized to perform surgeries or procedures, particularly in confined and coercive settings.
Transparency & Accountability	• Publicly demonstrate adherence to Migration-Related Detention and International Law Standard Minimum Rules for the Treatment of Prisoners.[ii] • Readily produce officially requested information, documents, records, medical protocols and policies, and health outcomes. • Allow inspections of their facilities. Have their contract terminated if they, or their medical staff, are the subject of legal action.
Truth, Reconciliation & Healing	• Attend to and document complaints by women patients alleging harms and act on related requests for reparations. • Provide apologies and financial compensation to directly impacted women. • Secure health insurance for directly impacted women and explore whether deported survivors of these medical malpractices desire a legal opportunity to re-enter the US. In the latter case, such entry should be formally authorized. • Facilitate family reunification for impacted women separated because of detention. • Participate in and fund Truth, Reconciliation & Healing Commissions on reproductive health abuses perpetrated by state actors. • Require that staff learn about the history of government-sponsored reproductive rights violations against BIPOC and incarcerated individuals in the United States.
Medical Practice[iii]	• Ensure patients have access to qualified interpreters at all times when receiving medical care. • Explain risks, benefits, and side effects of alternative treatment options to detained immigrants to make sure that informed medical decisions are made. • Provide detained immigrants with referrals to medical specialists and second opinions when health concerns require specialized care. • Provide detained immigrants with an after visit summary in their preferred language, along with documents listing treatments or prescriptions. • Improve patient access to medical records by providing detained immigrants with office contact information and copies of any requested medical records. • Refuse to provide treatment if these procedures have not been complied with or if the patient has not been adequately informed of and consented to the procedures.

***Table 1*: Recommendations for systemic change among state actors providing health care in immigration detention settings.**

[i] American Board of Obstetrics & Gynecology. Qualifying and Specialty Certifying Exam Preparation. Dallas, Texas. Available from: https://www.abog.org/specialty-certification/qualifying-exam/exam-preparation.

[ii] Global Detention Project. UN Declarations, Principles, Guidelines: Migration-Related Detention and International Law. Geneva, Switzerland. 2016 [cited 2020 Aug 8]. Available from: https://www.globaldetentionproject.org/international-law/un-declarations-principles-guidelines.

[iii] adapted from Bhatt P, Quigley K, Shahshahani A, Starfield G & Kitano A. Violence & Violation: Medical Abuse of Immigrants Detained at the Irwin County Detention Center — A Special Report. Project South, Georgia Detention Watch, Georgia Latino Alliance for Human Rights, Southern Georgia Immigrant Support Network, Harvard Immigration and Refugee Clinic, Harvard Law School Immigration Project. 2021 [cited 2021 Nov 1]. Available from: https://projectsouth.org/wp-content/uploads/2021/09/IrwinReport_14SEPT21.pdf.

To address ongoing concerns about medical care in immigration detention settings, the U.S. government should: (1) improve the ethics and professional training of health and detention center workers, including the egregious history of abuse noted; (2) institute improved employment conditions, ongoing professional education and monitoring for detention center employees; (3) establish independent review bodies to regularly oversee detention center practice and, when appropriate, institute disciplinary proceedings against abusive officials and compensation payments for abused detainees. A comprehensive list of recommendations can be found in Table 1.

Respect for reproductive autonomy, choice, and self-determination should be at the forefront of care. This includes ensuring that patients fully understand the

risks and benefits of a particular treatment. Simply securing a patient's signature is not enough. Ensuring informed consent is vital, particularly in coercive settings such as immigration detention centers. Informed consent is a long-standing ethical requirement in medicine, codified in legal doctrines. It protects patients by ensuring they comprehend their diagnosis, prognosis, and care options, including the option to decline treatment. Informed consent cannot be secured without a professional medical explanation in the patient's preferred language. Consent must be freely given without pressure or coercion, a particular concern in settings where intimidation and fear are rife. Obstetricians and gynecologists, particularly those practicing within coercive settings such as immigration detention facilities, should be familiar with this history and examine how bias affects their treatment recommendations.

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Declaration of interests

We declare that we do not have any financial or non-financial interests that could directly undermine, or be perceived to undermine the objectivity, integrity, and value of this publication.

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6 This is a conservative estimate. More than 40 women paraticipated in the class action lawsuit [Oldaker v. Giles], 16 women were interviewed by the New York Times [Dickerson et al., 2020 Sep 9], 14 women provided statements to Project South's Special Report in September 2021, medical records of 19 women were reviewed by the independent medical review team in October 2020, and an unstated number provided statements in the whistleblower complaint.

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