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Legal Protection for Conscientious Objection by Health Professionals

by Allison Grady

The emerging popularity of medical “conscience clauses” has been attracting attention most notably in the pharmaceutical field. Conscience clauses are laws that explicitly allow for health care workers to opt out of certain procedures, usually reproductive and end-of-life therapies, on moral, ethical, or religious grounds. Within medical circles, a doctor’s right to refuse to offer specific treatments in a nonemergency setting, so long as alternative treatment options are provided, is well known and reinforced by state and federal laws and the American Medical Association’s *Code of Medical Ethics* [1]. But for other health care workers, including pharmacists, there is neither legislative support nor a rich professional tradition that allows for conscientious objection. Nevertheless, in recent years larger numbers of pharmacists have been independently choosing not to participate in patient drug therapies on the grounds of moral objection. These actions have given rise to legislation that grants health care workers the same options that physicians have long had. The laws require various degrees of duties from workers, and most strive to accommodate both the conscientious objector and the vulnerable patient.

Some critics however, believe that these new laws have granted pharmacists and other workers too much latitude and that this threatens patient health. One example of this type of controversial legislation can be found in Michigan where lawmakers are attempting to pass a bill to protect conscientiously objecting health care workers from “civil liability, criminal action, administrative or licensure action” and “termination of employment or refusal of staff privileges at a health facility” [2].

The Michigan Example

The case that seemed to ignite this sudden interest in objector legislation occurred in Wisconsin when a married woman with 4 children sought the morning-after pill at a local pharmacy. Not only did the pharmacist refuse to fill the prescription, he refused to transfer it to another pharmacist or to return the original prescription to the patient [3]. After this incident others like it began gaining attention in several states. Realizing the potential for more widespread problems—for example, many people did not know until they needed it, that Wal-Mart, a pharmacy chain with more than 3600 stores, does not stock the morning-after pill—many states have decided to consider and enact laws setting the bounds of pharmacists’ and other health care workers’ professional obligations. The Michigan proposal, considered most aggressively in 2004 and currently working its way through a Senate committee, is a part of this nationwide movement. Much of the pharmaceutical debate focuses on whether a pharmacist should be required

to dispense the morning-after pill (also known as “Plan B”), contraception, the “abortion pill” RU-486, and end-of-life therapies including morphine and the drug combination approved for physician-assisted-suicide.

Under the proposed Michigan law, licensed professionals, students at a health facility, and others in health care services at more than 15 specified locations where health-related activities take place would be allowed to conscientiously object [2]. Those who choose to opt out of a particular action or procedure that may be requested of them must inform their supervisors, in writing, of the specific service or action they oppose. This notice can be filed upon offer of employment, when an ethical, moral, or religious system is adopted that would conflict with employer request, or within 24 hours of being requested to participate in a specific act [2]. This written objection is valid for the duration of employment unless the objector informs a supervisor that he or she no longer objects to these requests [2]. If an objection is filed less than 24 hours before a scheduled procedure, a supervisor must make a reasonable effort to find a replacement; if none can be found, the supervisor may require the objector to participate [2]. The right to conscientiously object does not apply in emergency situations, during a public health emergency, or if the objection is based upon civil rights-protected characteristics or a specific disease or medical condition [2]. Under this proposed law, employers may not discriminate against conscientious objectors and may not terminate employment because of a stated objection without at least 60 days notice and evidence that the refusal to perform certain actions interferes with at least “10% or more of the health care provider’s daily or weekly hours of duty” [4].

Absent in Michigan’s proposed Conscientious Objector Policy Act is the responsibility of a conscientious objector to accommodate patients or colleagues whom their moral choices have affected. Unlike traditional physician policies, there is no responsibility to transfer care, and no contingency plans need to be made to ensure that patients receive their medically indicated, lawful therapies. Indeed, it seems that adjustments made for the benefit of a patient are at the discretion of the employer and his or her employees.

The Debate

Most people seem to agree that pharmacists and other health care workers should have the right to refuse to participate in certain acts; the main disagreement centers around just how far this objection should be allowed to go.

Howard Brody, MD, former chair of Michigan State Medical Society’s Committee on Bioethics, feared that the Michigan House bill “would have opened the door to a whole new set of abuses such as medical students refusing to attend lectures on the grounds that they objected to their content” [5]. Others fear that a pharmacist who refuses to dispense medicine that has been prescribed by a physician is intruding upon the patient-physician relationship. According to a writer for *Slate*:

...your pharmacist has neither the tools nor the right to probe details about rape and abuse, incest and health risks. Which is why pharmacists who interpose themselves between decisions made by a doctor and her patient are overstepping moral and ethical boundaries—

and undermining another professional relationship that is fundamentally different from their own. You needn't believe that one relationship is more important than the other to recognize that neither relationship should be allowed to intrude upon the other [6].

The *New York Times* was less philosophical when it revealed its position on the subject in an April 2005 editorial, writing “Any pharmacist who cannot dispense medicine lawfully prescribed by a doctor should find another line of work” [7].

But some—many, in fact—steadfastly believe in a right to object *without* limitations. During the Canadian debate on the same topic, conscientious objector Nancy Metcalfe spoke at the Canadian Pharmacist Association Annual Meeting saying that she “will not direct people to a source of life-taking medicine. I cannot collaborate in the modern Holocaust” [8]. After hearing arguments on conscientious objection, the province of Manitoba decided that their pharmacists “do not have to dispense or refer if they object to a product” [8]. American Karen Brauer of Pharmacists for Life was equally fervent in her opposition to making those who conscientiously object refer patients to other pharmacies, likening it to saying, “I don't kill people myself but let me tell you about the guy down the street who does” [9].

Despite such polarizing positions, some are calling for compromise. In a 2004 *New England Journal of Medicine* article, Julie Cantor and Ken Baum advocated a middle ground for pharmacists who wish to conscientiously object.

Although we believe that the most ethical course is to treat patients compassionately—that is, to stock emergency contraception and fill prescriptions for it—the totality of the arguments make us stop short of advocating a legal duty to do so as a first resort....because emergency contraception is not an absolute emergency, because other options exist, and because, when possible, the moral beliefs of those delivering care should be considered [10].

Even though professional organizations' positions are not legally binding, they tend to have wide influence over their members. Given the controversy over this topic, many associations have weighed in, usually advocating for a middle-of-the-road approach. In June of 2005 the American Medical Association passed a resolution at its Annual Meeting to

support legislation that requires referral to other pharmacies if a pharmacist objects to filling a legal prescription, work with state medical societies to support legislation that would protect a patient's ability to fill a legal and valid prescription, and work with other associations to guarantee individual pharmacists' right to conscientious objection while ensuring referral to another pharmacy [11].

The American Association of Family Physicians (AAFP) passed a resolution in October of 2005 stating their belief “that a pharmacist’s right of conscientious objection should be reasonably accommodated,” but that “governmental policies must be in place to protect patients’ right to obtain legally prescribed and medically indicated treatments” [12]. And the American Pharmacists Association has taken the position that

pharmacists, like physicians and nurses, should not be required to engage in activity to which they object. But supporting a pharmacist’s ability to step away from objectionable situations does not require a confrontation with the patient....Pharmacists must not use their position to berate, belittle or lecture their patients...pharmacists must not obstruct patient access to therapy [13].

Also adding his voice to the debate, Joseph DiPiro, pharmacy educator and editor of the *American Journal of Pharmaceutical Education*, wrote that “the issue of the pharmacist’s right to refuse is multi-faceted and not amenable to a simple conclusion that encompasses the major variations of all possible scenarios. In short, it is an excellent issue for faculty members to encourage discussion in and outside of the classroom” [14].

Conclusion

Ten states have laws on the books regarding pharmacist conscientious objection; another 23 are currently considering legislation specifically allowing for a pharmacist refusal clause; 4 states are debating laws that *require* that pharmacists fill all prescriptions; and 3 states are contemplating general conscience clause legislation [15]. This is a subject that has clearly hit a nerve in the health care field as well as among the general public. One must not lose sight of the fact that neither a pharmacist nor any other health care worker is a machine—they are people who perform jobs while also holding moral and ethical value systems that sometimes conflict with their professions. But it seems most just that, when possible, the conscience and morals of a health care worker should be considered, so long as patients are being cared for and not overburdened by long drives through rural towns and not being shamed for what someone presumes to be an immoral lifestyle choice.

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