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Op-Ed

The Growing Abuse of Conscientious Objection

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Physicians' rights to refuse to participate in medical procedures that offend their conscience may be incompatible with patients' rights to receive lawful, medically indicated treatment. Historically, the goal of medicine has been to provide care to the sick. The World Medical Association's modern variant of the Hippocratic Oath, The Declaration of Geneva, inspires the graduating physician to pledge that, "The health of my patient will be my first consideration" [1]. For many who enter medicine, the commitment to assist their fellow human beings and pursue a path of personal salvation through this professional calling is religiously inspired. A conflict of interest can arise if the physician's religious or other conscientious convictions are in tension with medically indicated procedures. The obvious case is therapeutic abortion, but analogous cases include contraceptive sterilization and withdrawal of life support from otherwise viable patients. Physicians who give priority to their own moral and spiritual convictions over their patients' need and desire for medically indicated care face a conflict that needs resolution [2].

The ethical conflict can be avoided through mutual accommodation; physicians have the right to decide whom to treat, and patients have the right to decide from whom they will receive care. Physicians do not have the same ethical duties to nonpatients as to patients except in emergency circumstances [3]. In all other circumstances, physicians are at liberty to choose those for whom they will accept the responsibility of care. If there are services they will not perform, physicians should make that fact known to patients for whom they have accepted responsibility. Doing so not only saves patients the distress of seeking those services and being turned down, it also saves physicians from the dilemma of unfulfilled responsibilities to those whose care they have agreed to undertake. This arrangement is well understood in medicine; physicians who notify prospective patients that they are, for instance, pediatricians, will not be asked to treat those requiring geriatric care, and geriatricians do not have to accept patients seeking pediatric services. More explicit disclosure is required, of course, when prospective patients may reasonably expect that care will be available from the specialists they approach. Obstetrician-gynecologists who will not participate in abortion procedures must make that fact clear before forming patient-physician relationships.

Clinicians who have already established professional relationships with their patients have an obligation to refer them to alternative sources of care if they do not intend to offer particular services [4]. Referrals of this sort do not constitute participation in any

procedures agreed upon between the referred patient and the physician to whom the patient is referred. If, for instance, the second physician were to counsel or treat the referred patient negligently or unlawfully, the referring physician would not be a participant in the negligence or illegality. Similarly, the referring physician does not participate in the treating physicians' fee. The ethical duty of referral, which reflects legal duties that arise in the patient-physician relationship, is made clear in the World Medical Association's 1970 Declaration on Therapeutic Abortion, which provides in article 6 that:

If the physician considers that his convictions do not allow him to advise or perform an abortion, he may withdraw while ensuring the continuity of medical care by a qualified colleague [5].

Fulfilling duties owed to others is also a central religious value. In his 1991 Message for the 24th World Day of Peace, entitled "If You Want Peace, Respect the Conscience of Every Person," Pope John Paul II stated:

Freedom of conscience does not confer a right to indiscriminate recourse to conscientious objection. When an asserted freedom turns into license or becomes an excuse for limiting the rights of others, the State is obliged to protect, also by legal means, the inalienable rights of its citizens against such abuses [6].

In the same address the Pope warned against political, religious, or other forms of extremism that deliberately deny or violate human rights. He warned against authoritarian intolerance of conscientious convictions and "the recurring temptation to fundamentalism, which easily leads to serious abuses" [6].

The late Pope's primary experience was of *political* fundamentalism's or totalitarianism's intolerance of religion, but *religious* sectarianism can itself be the cause of intolerance.

Conscience Clauses in Legislation

Legislation currently being passed in some states and considered in others protects the right of conscientious objectors not only to practice their own religious faith but also to impose their objections on those of different conscience [7]. The effect of conscientious objection when exercised by physicians is to frustrate or negate patients' legal rights of access to abortions and other services including emergency (or postcoital) contraception. Medication-induced emergency contraception and termination of pregnancy have (like the prevention of pregnancy) become possible through use of prescription drugs. Opposition has therefore come from physicians' objection to writing prescriptions for either medication-induced abortion or emergency contraception and also from pharmacists' objections to filling them. Medical evidence suggests that once an embryo has become implanted in utero emergency contraceptives will not affect gestation. The conscience-based objection is predicated on the possibility of delayed or impaired implantation of an embryo, in which case, the emergency contraception drug could act as an abortifacient. On this reasoning, use of emergency contraception conflicts with the religious and moral beliefs of some physicians and pharmacists.

Legislation, typified by a law enacted in Mississippi in 2004, protects a wide range of health care and health-related professionals and institutions against criminal law and civil (ie, non-criminal law) liability for withholding their services on grounds of “the religious, moral or ethical principles held by a health care provider, the health care institution or health care payer” [7]. This law grants immunity to a physician for refusing to undertake a life-saving procedure on a patient and to refer her to a nonobjecting colleague; to a nurse for refusing to undertake hygienic care of an abortion patient; to a hospital staff member for refusing to prepare or serve meals for such a patient; and, for example, to an ambulance driver or paraprofessional for refusing to carry a patient believed to be suffering incomplete induced abortion. Paradoxically, a physician’s or pharmacist’s refusal to supply emergency contraception to a rape victim could lead to her resorting to abortion.

In short, such legislation, enacted or proposed in several states, entitles physicians and many other health care professionals to violate the most basic ethic of medicine by disregarding patient care. It also allows hospitals and other health facilities to neglect the medical needs of their patients, prospective patients, and dependent communities. Religiously affiliated hospitals, the first established facilities for administering health needs, are now absorbing nondenominational hospitals, thereby reducing lawful health service levels in those communities [8]. The American Medical Association, American Bar Association, and many other professional associations have condemned the violations of professional standards and ethics exemplified by such legislation [9, 10]. Religious initiatives to propose, legislate, and enforce laws that protect denial of care or assistance to patients, (almost invariably women in need), and bar their right of access to lawful health services, are abuses of conscientious objection clauses that aggravate public divisiveness and bring unjustified criticism toward more mainstream religious beliefs. Physicians who abuse the right to conscientious objection and fail to refer patients to nonobjecting colleagues are not fulfilling their profession’s covenant with society [11].

Notes and References

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