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## ETHICS CASE

### Conscientious Refusal or Discrimination against Gay Parents?

Commentary by Judith Palfrey, MD

Dr. Smith had been one of four members of a pediatric family practice for 19 years. Over the years, she had greatly enjoyed seeing her patients and getting to know their families, and she took pleasure in the routines of her practice, the cycles of back-to-school checkups and vaccination schedules, the Christmas cards from patients that accumulated on a bulletin board every December. She felt she'd long since found her rhythm as a pediatrician.

So it was with some surprise that she confronted a new situation when her 2 p.m. Wednesday appointment—expectant parents preparing for the birth of their first child—turned out to be not a mother and father but two women. What raced through her mind in the following second or two was the relationship that she formed with her patients' parents—often they shared other aspects of their lives with her and sought counsel on all sorts of matters. Dr. Smith knew she could not pretend to have that degree of comfort with and interest in this couple.

Dr. Smith regained her composure and shook their hands, hoping she was disguising her discomfort. She took notes, mustered up enough normalcy to give terse answers to the parents' questions, and saw them out the door with a tight smile. When they'd left, she looked back over her notes and thought, "I don't want to treat a patient with lesbian parents. Children should be raised by a mother and a father. And I don't think I should have to do this. Shouldn't this family be assigned to one of my partners?"

### Commentary

The birth of a baby is one of the most beautiful moments in the life of any parent. It is also the sacred establishment of a family. With a child's entrance into the world, the parents take on the awesome responsibility of providing nurturance, nourishment, protection, love, education, and a future for the little new being entrusted to them. The transformation of a couple into a family is supported by the parents' own families, the community around them, and the larger society. A key member of the community in this transformation is the health care professional who delivers anticipatory guidance and preventive health care and is a backstop in case of illness and other emergencies.

In this case, a physician is considering "[turfing](#)" the expected newborn patient because her parents are [lesbians](#). From the case description, we do not know whether the

parents have experienced other rejections or discriminatory reactions from their own families, but here is a professional considering refusing to support the creation of this new family because of her personal belief and [bias](#). Since family, community, and societal support all bolster family formation, this refusal to provide professional health care needs to be examined.

This case raises a number of questions:

1. What does it mean for a physician to judge a patient or patient's family based on sexual orientation? Is this discrimination on the part of the physician? Will it have specific effects on the couple's child or children?
2. If a doctor questions the parenting abilities of individuals based on their sexual orientation and considers treating their children against her conscience, what other characteristics might a physician consider against her own conscience?
3. What would make people unfit or "wrong parents" and what actions would be appropriate for a physician to take "in good conscience"?

### **Physician Judgment as a Denial of Access to Care**

The physician in this case has made the judgment that the parents are somehow different from other parents she cares for and is not willing to provide them medical care and advice. She wants to make provision for them to see someone else, but her view of the parents is clearly discriminatory—based solely on the information that they are a gay couple. Until recently, such a decision on the part of a doctor would have been unfortunate, but the parents would have had little societal or community recourse to improve the situation. In the wake of the passage of the Affordable Care Act (ACA) [1] in 2010 and the US Supreme Court decisions in *United States v. Windsor* (2013) and *Obergefell v. Hodges* (2015) [2, 3], the parents have official support that shines a new light on their dismissal by the doctor.

Provisions of the Affordable Care Act aim to lessen the de facto discrimination that has denied care to different classes of Americans. For instance, the elimination of the preexisting condition exclusion extended health care coverage to a whole class of sick and vulnerable people. The widening of Medicaid eligibility opens the health care door to people who cannot afford private health care premiums. The ACA has as its premise that *all* means *all*. In other words, no segment of the population should be denied care that other segments receive.

Within the American population, there is wide diversity of sexual identification. In 2014, the CDC's National Health Interview Survey [4] reported that, among American adults aged 18 and over, 2,000,000 American men (1.8 percent) and 1,729,000 American women (1.5 percent) identify as gay. In addition, 481,000 US men and 1,033,000 US women report their sexual orientation as bisexual. Many consider these figures an underestimate [5].

Following the 2013 Supreme Court decision that declared the Defense of Marriage Act unconstitutional [2], there were substantial changes in more than half the states regarding the legal status of gay marriage [6]. As of June 25, 2015 (the day prior to the *Obergefell v. Hodges* decision), 37 states recognized same-sex marriage [6]. In 8 of the 13 states with same-sex marriage bans, the bans had actually been overturned but were in the process of appeal [6]. As of June 26, 2015, based on the *Obergefell v. Hodges* decision, all states are now required to recognize same-sex marriage and afford gay couples all the rights that legal marriage carries with it [3]. The Centers for Medicare and Medicaid Services (CMS) have published extensive information about the coverage that legally married same-sex couples should expect in the medical marketplace, including services that same-sex spouses were denied in the past [7].

More than 15 professional organizations have strongly supported marriage equality, gay and lesbian parenting, or both [8]. In 2013, the American Academy of Pediatrics (AAP) published an unambiguous statement in support of gay parents based on a rigorously researched technical report [9]. The AAP Committee on Psychosocial Aspects of Child and Family Health demonstrated that children thrive best in homes with married parents. The central thesis of the AAP committee argument in support of gay marriage was that, historically, systematic discrimination against gay parents has denied their children the community and societal supports that promote health and child development.

If doctors can refuse to care for patients and families of certain types or classes, this is a health inequity. If insurance companies were still allowed to limit payment for the children or spouses of gay enrollees (including maternity benefits), that might prevent such enrollees from affording essential care. If one parent in a family cannot benefit from the provisions of federal laws such as the Family and Medical Leave Act, he or she may suffer unduly when a child or other loved one is sick and he or she cannot assist in care. If social service agencies can limit services, some children may not have access to the nurturance and nourishment other children receive. These community and societal discriminatory practices that can impact health are the basis for the new legal standards protecting gay married couples. In cases like the one presented here, the physician's bias is the first brick in the wall of barriers gay parents have traditionally found themselves confronting in the health care system.

### **Personal Conscience and Physician "Rights"?**

In light of the health legislation, court cases, and professional statements, does a doctor have the "right" to refuse care to patients whose traits or behavior she does not approve of? All human beings have deeply held beliefs and biases [10], and physicians are no exception. The question is how does personal bias play out in professional settings? Should all Catholic internists decide that they cannot "in good conscience" take care of

ob-gyn physicians who perform terminations of pregnancy? Should all doctors who object to the taking of another human's life be allowed to refuse to care for members of the military, police, and the unfortunate individuals who must administer lethal injections? Should vegetarian physicians refuse to care for meat eaters? Should physicians who believe in divestment from fossil fuel companies refuse to care for parents who come to see them in cars? Should Democratic physicians ask all Republican patients to transfer to their Republican colleagues? And—a much-asked question—should physicians who provide immunizations refuse to care for vaccine-refusers?

While some of the examples above border on a *reductio ad absurdum*, it is critical to ask what rights physicians have regarding their beliefs. Should a Catholic physician be obligated to perform an abortion? Should a doctor ever be required to unhook a respirator or euthanize a patient? It may be fruitful to untangle attitudes from behaviors. The doctor's attitude is what is at stake in this case.

The doctor has made her decision not to care for this family because the parents have openly identified themselves to her as a lesbian couple. If one parent had come in, presenting herself as a single mother, Dr. Smith would have assumed she was straight and not considered refusing to treat her child. Is it fair to punish them for their honesty? She is not, and probably should not be, privy to the sexual practices of the vast majority of the families who come to see her. Moreover, within her practice there are doubtless parents who hold beliefs that are different from hers on a whole array of topics. She might, without her knowledge, be caring for some parents who behave in other ways she holds reprehensible—people who cheat on their spouses, evade their taxes, underpay their employees, or rob banks. Singling out this particular couple because she disapproves of their sexual orientation seems impossible to justify.

### **What Are “Wrong Parents”?**

What if Dr. Smith does not object per se to interacting with gay people, but to (indirectly participating in) their parenting, because she believes it harms the children? There is [no evidence](#) that gay parents are less good at parenting than heterosexual parents, despite the challenges of community and societal bias against them [9]. The American Academy of Pediatrics (AAP) makes a strong point that the preponderance of research shows that two parents (whether they are straight or gay) are better equipped than single parents to provide a family structure, physical supports, discipline and guidance, education, and mental health promotion [8]. If we don't condemn single parents as harmful to children and unfit to parent, it is difficult to justify condemning partnered gay parents.

In this case, the physician has no reason to have concern that these parents will behave in anything but a loving and supportive way regarding their baby. In fact, she has proof that they are doing their best to follow the most up-to-date parenting recommendations. The evidence is right in front of her: the parents chose *her* as their

child's pediatrician and made a prenatal visit. These are metrics (crude though they may be) of "good parenting." In the face of this evidence, a dismissal would not appear justified.

Child health physicians unfortunately do sometimes encounter "wrong parents." Under extreme circumstances of major mental health or substance abuse disorders or in the presence of domestic violence, physicians may have to take action to protect children from the neglect or abuse of parents who are either temporarily or permanently incapable of giving support and sustenance to their children. This is often under circumstances in which the parents are extremely ill and overwhelmed. Pediatricians in these situations are mandated to report the family to the state social service agency, which determines the degree of neglect and abuse and makes a disposition that may include taking custody of the child away from the parent. Even in these circumstances, however, clinicians still have a moral obligation to try to ensure the best care and outcomes for both the children and the family.

### **Conclusion**

As we probe the question of whether this case constitutes conscientious refusal or discrimination, we could reasonably ask if there is anyone a physician isn't obligated to care for. Or, stated another way, are all physicians personally responsible for all patients? Obviously, physicians as a group make decisions all the time about which patient is best cared for by which physician (generalist or specialist, pediatrician or geriatrician, mental health professional or surgeon). What is different in this case is that the decision to opt out of providing care is based on the doctor's disapproval of an entire social demographic group, rather than a moral objection to participating in a particular medical practice or treatment; it is a question of who the patient is, rather than what the doctor will do.

In the twenty-first century, we are in the middle of large sociopolitical shifts, including increasing rights for and acceptance of previously marginalized groups and increasing transparency about sexual orientation. We also are increasingly aware of the health outcome disparities that are associated with different socioeconomic, cultural, linguistic, and gender identities. A significant portion of our civil society is trying to eliminate discrimination in every segment of life. Medicine, too, is working to eliminate discrimination. The Accreditation Council for Graduate Medical Education (ACGME) considers "sensitivity and responsiveness to a diverse patient population" part of the core physician competency of professionalism [11]. The US Office of Disease Prevention and Health Promotion's goals for the nation, *Healthy People 2020*, specifically calls on the health care community and others to "improve the health, safety, and well-being of lesbian, gay, bi-sexual and transgender (LGBT) individuals" [12].

While physicians' rights to their own belief systems should be protected, the standards of the medical profession dictate that health care professionals not let discriminatory

views interfere with their duty to respond to the needs of their patients. Furthermore, to decide not to care for this family in this case would be sad for the doctor. She would be “turfing” her responsibility, but, more importantly, she would be losing the chance to engage personally with the valuable and enlivening diversity of the American community.

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