

# Freedom to Care

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Do patients want a healthcare professional that lacks integrity? Should medical, pharmacy, and nursing schools strip students of all moral beliefs not approved by the government or professional organizations? Should patients have the right to demand a service or product a healthcare professional does not want to provide? If something is legal, does that make it right?

These and many other questions are raised by the coordinated, well-fund-

ed, and relentless attack on healthcare right of conscience by individuals and groups who disparagingly label the right of conscience as “the right to refuse.” Their overarching goal is to compel complicity or completely force out of healthcare all individuals who resist the radical agenda. That is why it is more important than ever for healthcare professionals to understand the most basic right of conscience and know how to defend it.

Healthcare right of conscience is the freedom to practice healthcare in accordance with your deeply held religious, moral, or ethical convictions. It is the freedom to behave in compliance with your beliefs of right or wrong. The word “behave” is important to understand in this debate. Opposition to this right asserts that healthcare professionals use the excuse of conscience to withhold essential services from patients with whom they disagree on beliefs or lifestyles. This assertion is not consistent with reality. All of us as healthcare professionals provide services daily to people whose actions we do not endorse. I care for people with unhealthy lifestyles who smoke, are alcoholics, don't take their medications as they should, or refuse to lose weight. I have treated rapists, thieves, murders, and, while working in relief work, those involved in genocide. We are called to be benevolent to those with medical needs, regardless of their actions.

However, the line is drawn in my conscience when patients ask me to become complicit by facilitating their unwise or immoral actions. For example, if asked I would not give a smoker a pack of cigarettes, drive the

getaway car for a bank robber, or loan my machete to a Rwandan intent on murdering his neighbor through genocide. For the same reason, I will not prescribe the morning-after pill, which can end the life of a developing human being, or refer a patient for an abortion. If I did, I would be morally complicit in taking another human being's life.

Martin Luther King said it well,

*“On some positions cowardice asks the question, ‘Is it safe?’ Expediency asks the question, ‘Is it politic?’ Vanity asks the question, ‘Is it popular?’ But conscience asks the question, ‘Is it right?’ And there comes a time when one must take a position that is neither safe, nor politic, nor popular but he must take it because conscience tells him it is right.”<sup>1</sup>*

The issue of healthcare right of conscience has received great attention in the last 15 years. Hospitals were taken to court for not providing abortion services, doctors were sued because they would not provide in-vitro fertilization services to unmarried individuals, and states passed laws requiring pharmacists to dispense the morning-after pill. In 2007, the American Congress of Obstetricians and Gynecologists (ACOG) issued Opinion #385 stating that the patient was the final arbitrator for treatment decisions and that the right of patients to demand treatment was no different than their right to refuse treatment. They asserted that right of conscience is no more than a personal opinion and health professionals have a moral obligation to take care of people that overrides their qualms of conscience. ACOG claimed that even

inconveniencing a patient by causing them to seek a service elsewhere imposes the healthcare professional's beliefs on the patient. Therefore, doctors must refer for abortions or they must provide abortions if there is any type of inconvenience to the patient. Doctors with conscience reservations should only practice in areas where other practitioners can easily provide abortions.<sup>2</sup> Within a year, the American Board of Obstetrics & Gynecology stated that its members had to be in compliance with the ACOG's ethical statements to be recertified.<sup>3</sup>

Even though it is a hot topic in today's news, right of conscience is not a new issue in medicine. Physicians both cured and killed more than 2,000 years ago. The trouble was patients didn't know which service they would receive. Would they be cured or would they be killed? If an enemy paid more than the patient, the doctor would simply choose to eliminate the patient.

In contrast, Hippocrates and his followers realized the foundation to the health professional-patient relationship was trust. The patient must know they are entrusting their life and health into the hands of a person of integrity. Over time, a commitment called the Hippocratic Oath became the key to open the door for creating that foundation. A physician had to commit before his future colleagues and the community to maintain professional integrity by keeping confidences, not performing abortions, not killing his patients, and not abusing trust in any other way. Medicine flourished under these standards as patients voted with their feet for this type of practitioner.

Fast-forward to the late 18th century and James Madison, one of our coun-

try's founding fathers. He drafted the First Amendment of the Bill of Rights and submitted it to Congress on June 7, 1789. Its initial draft read:

*"The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, nor on any pretext infringed. No state shall violate the equal rights of conscience..."*<sup>4</sup>

That is about as clear as he could make it. The Congressional Record shows various congressional committees worked hard during the next three months to make the Bill of Rights more concise. On September 24, the conference committee of the House and Senate stated that the "**free exercise of religion**" included the concept of the "**the full and equal rights of conscience be in any manner, nor on any pretext infringed**" and approved the present language of the first amendment.

*"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."*<sup>5</sup>

Thomas Jefferson later stated when asked about the rights of conscience, *"The rights of conscience we never submitted, we could not submit. We are answerable for them to our God."*

*"I consider the government of the U.S. as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises..."*<sup>6</sup>

James Madison said, *"Conscience is the most sacred of all property."*

*"The Religion of every man must be left to the conviction and conscience of every*

*man; and it is the right of every man to exercise it as these may dictate..."*<sup>7</sup>

Based upon the wording of this amendment and commentary from the founding fathers, there is no doubt that right of conscience is protected by the constitution. Those opposing it attempt to ignore that troublesome truth.

It was not just our founding fathers who advocated this right. Today's major medical organizations also support right of conscience. The American Medical Association's ethics position states:

*"AMA reaffirms that neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally held moral principles. In these circumstances, good medical practice requires only that the physician or other professional withdraw from the case, so long as the withdrawal is consistent with good medical practice..."*<sup>8</sup>

Unfortunately, the AMA administration endorsed the recent gutting of regulations that put teeth into right of conscience laws.

The World Medical Association states:

*"The physician should be free to make clinical and ethical judgments without inappropriate outside interference..."*<sup>9</sup>

The European Convention on Human Rights states:

*"Everyone has the right to freedom of thought, conscience and religion; this right includes... freedom ...to manifest his religion or belief, in worship, teaching, practice and observance..."*<sup>10</sup>

Pharmacist association statements echo these same principles:

*“Pharmacists have a duty to act with conviction of conscience.”* Code of Ethics, APhA <sup>11</sup>

*“APhA recognizes the individual pharmacist’s right to exercise conscientious refusal.”* Pharmacist Conscience Clause, APhA <sup>12</sup>

*Affirm the right of pharmacists... to decline to participate in therapies they consider to be morally, religiously or ethically troubling.* American Society of Health-System Pharmacists <sup>13</sup>

Federal laws protect healthcare right of conscience, but they are limited to federally funded programs. The Church Amendment, passed in 1973 shortly after *Roe v. Wade*, gives broad protections for right of conscience in healthcare. The Public Health Services Act, first enacted in 1944, prohibits forcing participation or discriminating against individuals who have conscience objections to abortion and sterilization. Passed in 2004, the Weldon Amendment provides that no federal, state, or local government agency or program that receives federal health and human services funds may discriminate against a healthcare provider because the provider refuses to provide, pay for, provide coverage of, or refer for abortion. This protection covers any “healthcare professional,” as well as hospitals, HMOs, health insurance plans, and “any other kind of health care facility, organization, or plan.”

Unfortunately, each of these laws has to be renewed yearly with each Health and Human Services appropriation. Violation of these prohibitions can result in loss of federal

healthcare funding for Medicare services or other government funding programs. Despite blatant discriminations against healthcare professionals, no entity has ever been penalized. There also is no right of “private action” allowing individuals to bring a discrimination suit in these laws, and the laws fail to provide even token protection on a myriad of other conscience issues, such as human cloning, embryonic stem cell therapies, and physician-assisted suicide.

After ACOG’s determined attack on right of conscience, the Bush administration decided to add depth to the laws by formulating federal regulations supporting them. These went into effect just weeks before the change of administration in 2009 and stated very clearly:

*“Healthcare entities cannot discriminate in the employment, promotion, termination, or the extension of staff or other privileges to any physician or other health care personnel because he performed, assisted in the performance, refused to perform, or refused to assist in the performance of any lawful health service or research activity on the grounds that his performance or assistance in performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of the religious beliefs or moral convictions concerning such activity themselves.”* <sup>14</sup>

Within a few weeks, the new Obama administration stated the new regulation went too far. After a public comment period resulting in more than 300,000 comments opposing any change, the regulations were nevertheless gutted to the point they had no meaningful effect. The website to report infractions of right of conscience was removed.

So how bad is the problem? The Christian Medical & Dental Associations (CMDA) commissioned a survey of more than 2,000 faith-based physicians, pharmacists, and nurses that revealed:

- 40 percent reported being pressured to compromise their convictions
- 43 percent know someone who has been pressured
- 24 percent have lost a position, promotion, or compensation due to exercising their conscience
- 88 percent think the problem is getting worse

In October 2011, a group of pro-life nurses working at a large medical center in New Jersey were told they must undergo “orientation” and begin assisting with abortions. If they did not cooperate, they would lose their jobs. When reminded of the federal laws prohibiting this coercion, the medical center administration refused to back down. The Health and Human Services department has failed to take any action.

When such opposition exists, it causes many doctors to question why they shouldn’t refer for a service even if they morally object to participating in it themselves. The CMDA ethics statement on moral complicity discusses “the culpable association with or participation in wrongful acts” and states, “We must strive to never commit evil ourselves, nor should we participate in or encourage evil by others.”<sup>15</sup> It clearly defines how to know if moral complicity of evil does exist.

When physicians or other healthcare professionals refer, they endorse the competency, judgment, and ethics of the people to whom they refer pa-

tients to for treatment. They enter in a professional relationship with those individuals they believe will “do no harm” to the patient. In so doing they become morally complicity in their actions if they reasonably believe they will injure or kill.

As attacks increase and protections crumble, what options should be pursued? It is clear a permanent and comprehensive law must be passed to provide broad protections by using wording similar to the Bush-era regulations. It must provide protections for more than just abortion and sterilization. This law must provide federal remedies, but also allow a right of private action. Otherwise future administrations can easily ignore their obligation to confront offenders. A number of laws meeting these criteria have passed the House of Representatives, but have failed to be taken up in the Senate.

Why this all-out assault on conscience? Abraham Lincoln faced a similar assault over the issue of slavery. He answered the question of “why?” in his Cooper Union speech. If you just substitute the word “abortion” or another morally objectionable procedure for “slavery,” the question is answered:

*“...what will convince them? This, and this only: cease to call slavery (abortion) wrong, and join them in calling it right. And this must be done thoroughly - done in acts as well as in words. Silence will not be tolerated - we must place ourselves avowedly with them.... The whole atmosphere must be disinfected from all taint of opposition to slavery (abortion), before they will cease to believe that all their troubles proceed from us.”*<sup>16</sup>

Whether you agree with a health professional’s conscientious objection or not is irrelevant. We must all defend that personal right to object. A democracy ceases to exist when the majority steamrolls over the God-given rights of any minority.

Pro-life patients, now a majority in the U.S., have a right to choose a healthcare professional who shares their worldview just as much as a pro-choice patient has a right to have an abortion. Many women who are pro-life don’t want an obstetrician delivering their child in one room while aborting a baby in another.

In September 2008 as the right of conscience debate raged, Crispin Sartwell, a self-described “pro-choice atheist,” wrote a letter to the *Los Angeles Times* that boiled the issue down to its core. He said,

*“The extent to which an institution seeks to expunge individual conscience and moral autonomy is the extent to which it is totalitarian -- and dangerous.... The idea that I...resign my conscience to the institution or to the state is perhaps the single most pernicious notion in human history. It is at the heart of the wars and genocides of this century and the last.”*<sup>17</sup>

For all these reasons, this is a battle that cannot be lost. Ultimately, medicine and pharmacy are moral enterprises, rooted in the value of doing what is right. Healthcare professionals are not vending machines that patients put their money in to dispense whatever they desire. If we let those who demand that vision succeed, healthcare becomes dangerous for professionals and patients alike.

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# Thinking the Unthinkable: A Response to 'After-Birth' Abortion

by Dennis Sullivan and Heather Kuruvilla

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