

CONSCIENTIOUS OBJECTION IN THE HEALING PROFESSIONS: A READERS' GUIDE TO THE ETHICAL AND SOCIAL ISSUES

A Short Overview

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What is conscientious objection?

Conscientious objection refers to a person's refusal to engage a service that violates his or her deeply held beliefs about right and wrong. Although conscientious objection has a long history in the context of military service, this short overview focuses on conscience-based refusals in the medical professions. Specifically, this guide examines how conflicts between professional obligations and individual conscience are addressed by ethicists and other scholars.

How did conscientious objection become an ethical and legal issue in the health professions?

Conscientious objection in the health professions became a subject of public debate immediately following the *Roe v. Wade* U.S. Supreme Court decision in 1973.¹ The first federal legislation protecting conscientious objection in health care, the Church Amendment (1973),² was written in direct response to *Roe v. Wade*. Following the Church Amendment, most States enacted "conscience clauses" to protect the conscience-based refusals of health care professionals.³ Since then, health care professionals have appealed to conscience when objecting to a variety of treatments and procedures. Among other topics, common occasions for objections include: organ donation after cardiac death, palliative sedation, withdrawing medically provided nutrition and hydration, human embryonic stem cell research, and the use of animals in medical education.

How do ethicists define conscientious objection in medicine?

Ethicists and policy makers develop approaches to identifying and resolving conflicts with explicit or implicit standards for what is, and what is not, an objection based on "conscience." Benjamin has identified three ways in which "conscience" is often understood:

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(1) conscience as an inner sense that distinguishes right acts from wrong; (2) conscience as the internalization of parental and social norms; and (3) conscience as the exercise and expression of a reflective sense of integrity.⁴

A Short Timeline of Conscience Legislation, Policies and Guidelines

1973 - Church Amendment:² Sponsored by Senator Frank Church of Idaho, the Amendment was codified as 42 U.S.C § 300a-7. Those who receive federal funding may not be required to perform abortion or sterilization procedures if the individual or organization holds that to do so would be “contrary to religious beliefs or moral convictions.”

1978 – State Laws: By 1978 most States adopt legislation which protects conscience in some form.⁵ For a table of State policies allowing refusals to provide abortion, contraception and sterilization, see: Guttmacher Institute. Refusing to provide health services. *State Policies in Brief*. June 1, 2012. Available from: http://www.guttmacher.org/statecenter/spibs/spib_RPHS.pdf.

1996 – Coats Amendment, Public Health Service Act § 245:⁶ Enacted in 42 U.S.C. § 238(n) "Abortion-related discrimination in governmental activities regarding training and licensing of physicians" prohibits discrimination in the federal funding of entities which refuse to provide abortion related training and services.

2005 – Weldon Amendment to the Appropriations Act:⁷ Included in every appropriations bill since 2005, the Weldon Amendment prohibits federal funding to organizations that discriminate against entities that do not participate in abortion services. The Weldon Amendment also broadly defines a "health care entity" as "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan."

2009 – Final Rule: Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law:⁸ Proposed at the end of the Bush administration, this HHS conscience regulation was intended to enforce the Church, Coats and Weldon Amendments.

2010 – Patient Protection and Affordable Care Act:⁹ Section 1303(b)(4) of the Act signed by President Obama in March 2010, includes protections against discrimination in health insurance coverage. Namely, that health plans may not "discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions." The Act, however, does not pre-empt state law, nor does it change other federal laws. Thus, "a conscientiously objecting provider might still be obligated to provide abortion-related services."¹⁰

2011 – Final Rule: Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws:¹¹ Although rescinding many of the enforcement provisions of the 2009 Rule (above), this regulation retained the requirement of the HHS Office for Civil Rights to hear and investigate complaints. The Rule also insists that federal conscience statutes, including the Church, Coats and Weldon Amendments, would remain unchanged.

2013 - Little Sisters of the Poor v. Sebelius:¹² Responding to one of the many religious liberty cases against the Patient Protection and Affordable Care Act, Supreme Court Justice Sonia Sotomayor issued a temporary injunction on the enforcement of fines against the Little Sisters of the Poor Home for the Aged, Denver, Colorado. The Sisters objected to the requirement to provide contraceptive coverage. Although the Obama administration argued that the organization could “opt out” of the coverage, the Sisters insisted that participation in any form would violate their religious beliefs. This legal action was supported by the Becket Fund (<http://www.becketfund.org/>), which maintains a list of other legal cases that it is pursuing, including: *Sebelius v. Hobby Lobby Stores, Inc.*

2014 - *Sebelius v. Hobby Lobby Stores, Inc.*:¹³ Argued before the U.S. Supreme Court on March 25, 2014, this case addresses the issue of whether or not the Affordable Care Act compels for-profit corporations to provide health coverage for contraception and other care that the corporation owners might consider objectionable.

Selected Readings

The following items provide a broad overview of the subject of conscientious objection in health care or exemplify key positions or moments in the debate on the topic.

Basic Sources and Books:

Martin Benjamin. Conscience. In: Post SG, ed. *The Encyclopedia of Bioethics*, 3rd ed. New York: Macmillan Reference; 2004:513-6. | <http://www.worldcat.org/oclc/52622160>

After a brief discussion of the history and scope of the word "conscience," Benjamin provides an overview of the types of conscience-related topics in medicine and the factors that contribute to conflicts. Observing that "respect for conscience" is similar to the ethical principle of "respect for persons," Benjamin discusses the problems and limits of appeals to conscience. Two of these include: the difficulty of distinguishing conscientious objection from false motivations, such as cowardice or distaste, and the possibility that some acts of conscience could possibly be morally wrong.

Holly Fernandez Lynch. *Conflicts of conscience in health care: an institutional compromise*. Cambridge: MIT Press, 2008. | <http://www.worldcat.org/oclc/728960400>

In this book, Lynch proposes a compromise solution to provide patients with professional medical care while also allowing some physicians to make conscience-based objections. The book opens with a brief history of conscience clauses and a discussion of differing models of medical professionalism. Placing the burden to provide care on the profession as a whole and not on individual physicians, Lynch proposes that state licensing boards could serve to guarantee a diversity of physician views within a reasonable geographic area. The book includes an appendix of related statutes, regulations and case laws--many of which are referenced throughout the text.

Mark R. Wicclair. *Conscientious Objection in Health Care: An Ethical Analysis*. Cambridge: Cambridge UP; 2011. | <http://www.worldcat.org/oclc/671710118>

In an introductory chapter, Wicclair describes the historical use of conscientious objection and accounts for its development in the health professions. By Wicclair's definition, conscientious objections are based on commitments to one's core moral principles or beliefs. In contrast, conscientious refusals should not be based on self-interest, a sense of justice or a state of moral distress. According to the author, when professionals confront conscience-based conflicts, they take one of three basic positions: 1) conscience absolutism, 2) professional incompatibility, and 3) compromise. "Conscience absolutism" argues that conscientious objections should receive preference over the demands and needs patients--in other words, a medical professional should not be required to do something which would violate their conscience. In contrast, those who hold to the "incompatibility" thesis insist that professional standards and patient rights should require health care professionals to provide appropriate medical services. Arguing that conscience is worth defending, but within limits, Wicclair advocates for a compromise approach.

Free guides to the topic of conscientious objection in health care:

Nancy Berlinger. Conscience clauses, health care providers, and parents. In Crowley M, ed. *From Birth to Death and Bench to Clinic: The Hastings Center Bioethics Briefing Book for Journalists, Policymakers, and Campaigns*. Garrison, NY: The Hastings Center, 2008. Available from:

<http://www.thehastingscenter.org/Publications/BriefingBook/Detail.aspx?id=2266>

William A. Galston and Melissa Rogers. *Health Care Provider's Consciences and Patients' Needs: The Quest for Balance*. Governance Studies at Brookings. The Brookings Institution. February 23, 2012.

Available from:

http://www.brookings.edu/~media/research/files/papers/2012/2/23%20health%20care%20galston%20rogers/0223_health_care_galston_rogers

Key Positions

Professionalism

Julian Savulescu. Conscientious objection in medicine. *BMJ* 2006;332:294-7. Available from:

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1360408/>

In a short and provocative commentary, Savulescu makes the case that professional obligations leave little room for objections based on conscience or "religious values." He writes: "If people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors" (294). In his arguments against refusals, Savulescu observes that the practice leads to inefficient, inconsistent and inequitable care. Even so, he gives room for some conscientious objections if these can be accommodated without compromising a patient's medical services. Savulescu's short commentary is the subject of a robust online forum (currently at 61 responses) in the *BMJ* Rapid Responses section (Available August 6, 2012 from:

<http://www.bmj.com/content/332/7536/294?tab=responses>).

Conscience

Edmund D. Pellegrino. The physician's conscience, conscience clauses, and religious belief: a Catholic perspective. *Fordham Urban Law Journal* 2002 Nov;30(1):221-44. Available from:

<http://ir.lawnet.fordham.edu/ulj/vol30/iss1/13>

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Writing for a conference on Catholic social teaching and the practice of law in America, Pellegrino describes how those with religious beliefs can find themselves at odds with the values of a secular, pluralistic society. Catholic physicians may discover that their religious convictions about right and wrong are in conflict with professional expectations. In the Catholic tradition, the judgments of conscience (informed by reason and the Church) are morally binding. To act against conscience is to sin against God. Because physicians and organizations are morally compelled to act in accordance with their consciences, there may be times in which they must object. Conscience clauses give legal status to moral claims based on conscience. Pellegrino argues that these clauses should protect conscientious objectors in conflicts between 1) patients and physicians; 2) students and educators; and 3) Catholic institutions and society. Although Pellegrino asserts that Catholic physicians and institutions have a moral claim to the exercise of conscience, he also stresses that they have a duty to make their positions public; informing patients of one's moral obligations before conflicts occur respects the patient, reduces the hardship and does not make the physician complicit in the patient's choices to find healthcare elsewhere.

Compromise

Dan W. Brock. Conscientious refusal by physicians and pharmacists: who is obligated to do what, and why? *Theor Med Bioeth.* 2008;29(3):187-200. – Available from: <http://www.aafcp.org/cplm/files/16.pdf>

Brock defends a “conventional compromise.” Accordingly, a health professional with a “serious moral objection” would be permitted to refuse to provide a service, if they satisfied three conditions: 1) inform – the professional should provide information about medically relevant services; 2) refer – the professional should refer the patient to a willing provider; 3) protect – “the referral does not impose an unreasonable burden on the patient.” Brock suggests that an appropriate response to an individual who would refuse to meet these conditions, would be:

This is your patient/customer, and so you are obligated to discharge your profession’s obligation to him or her. You can do that by providing the service/product that you deem immoral, or instead by meeting the conditions of the conventional compromise, which balances your professional obligations with respecting your moral integrity. If you are unwilling to do either, then you should leave the professional role that has these obligations. You freely entered and/or remained in a profession with that duty, and if you are unprepared to discharge it then you should leave the profession, or at least find a position within the profession whose duties do not conflict in this way with your moral commitments. (p. 198)

Free articles about ethical approaches to conscientious objection:

Rebecca Dresser. Professionals, Conformity, and Conscience. *Hastings Center Report.* 2005;35(6):9-10. – Available from: [http://www.law2.byu.edu/page/categories/marriage_family/past_conferences/feb2010/drafts/05hast\(2\).pdf](http://www.law2.byu.edu/page/categories/marriage_family/past_conferences/feb2010/drafts/05hast(2).pdf)

McLeod C. Referral in the wake of conscientious objection to abortion. *Hypatia.* 2008;23(4):30-47. – Available from: <http://noveltechethics.ca/files/pdf/155.pdf>

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