

**CONSCIENTIOUS OBJECTION IN THE HEALING PROFESSIONS:
A READER’S GUIDE TO THE ETHICAL AND SOCIAL ISSUES**

Introduction

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(June 14, 2014)

Members of the health professions in the United States increasingly reflect the diversity of the society at large. These individuals bring a variety of deeply held beliefs and values to the professions. In some cases, these individuals may find that their professional duties conflict with their moral values. Thus, a doctor or pharmacist might refuse to provide care which violates his or her conscience. Although often associated with participation in abortion care, health professionals make conscience-based refusals in providing contraception, sterilization, end of life care, and other services. This reader's guide provides an introduction to the subject of conscientious objection in health care, an overview of the ethical issues and social controversies surrounding refusals of conscience, and an annotated bibliography of key readings and information sources.

II. Defining Conscientious Objection

What is the history of conscientious objection?

Conscientious objection refers to a person’s refusal to engage a public, civic or professional service that violates his or her deeply held beliefs about right and wrong. Although this guide to the topic focuses on the health professions, conscientious objection in North America has a long history expressed as the refusal, in part or in full, to participate in military service. Christians from pacifist traditions (Quakers, Mennonites, and the Brethren) as well as members from other religious communities have opposed the purposeful ending of human life and often violence itself.¹ These religious values predated the U.S. Constitution, but, nonetheless, it was the free exercise of religion as expressed in the First Amendment which provided justification for some accommodations, including alternative means of service, for these objectors.² These objections were first recognized solely on religious grounds; however, following the Supreme Court cases of *U.S. v. Seeger* (1965)³ and *Welsh v. U.S.* (1970),⁴ conscientious objection in the Selective Service Act (50 U.S.C. App. 451 et seq.)⁵ was extended to those with deeply held, but not necessarily religious, objections to military service. Currently, the U.S. Department of Defense defines conscientious objection as: “A firm, fixed, and sincere objection to participation in war in any form or the bearing of arms, by reason of religious training and/or belief.”⁶

Jere Odell, Rahul Abhyankar, Amber Malcolm, Avril Rua. Introduction. *Conscientious objection in the healing professions a readers’ guide to the ethical and social issues*. June 14, 2014. (Complete guide available from: <http://hdl.handle.net/1805/3844>.)

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What is the conscience?

One's understanding of the concept of the conscience or, more narrowly, of conscientious objection provides a foundation for making decisions about when to accommodate refusals to comply with professional expectations. Likewise, 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 identified three ways of thinking about the term: "(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."⁷

The following definitions of "conscience" and "conscientious objection" reflect a range of ideas about the scope of the term.

Commitments: "[A] commitment to uphold one's deepest self-identifying moral beliefs; a commitment to discern the moral features of particular cases as best one can, and to reason morally to the best of one's ability; a commitment to emotional balance in one's moral decision making, to being neither too hard nor too soft; a commitment to make decisions according to the best of one's moral ability and to act upon what one discerns to be the morally right course of action."⁸

Values: "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."⁹

Personal standards of judgment: "a person's consciousness of and reflection on his own acts in relation to his standards of judgment."¹⁰

A mode of consciousness: "[C]onscience indicates a particular way of seeing moral and other demands, a mode of consciousness in which prospective actions are viewed in relation to one's self and character."¹¹

Core moral beliefs: "An agent's refusal to provide a good or service is a conscience-based refusal if and only if: (1) the agent has a core set of moral (i.e. ethical or religious) beliefs; (2) providing the good or service is incompatible with the agent's core moral beliefs; and (3) the agent's refusal is based on her core moral beliefs."¹²

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 1973.¹³ Health care providers, patients and parents have a long history of refusing to provide or receive medical treatment for a variety of non-medical reasons; however, conscience-based refusals to abortion and reproductive medical care initiated and continue to drive the debate. In fact, the first federal legislation protecting conscientious objection in health care, the Church Amendment (1973)¹⁴ was written in direct response to *Roe v. Wade*. Within a few years following the Church Amendment, most

States enacted "conscience clauses" to protect the conscience-based refusals of health care professionals and, in many States, of health care organizations which refuse to provide certain services for moral reasons. Since then, health care professionals have appealed to conscience when objecting to a variety of treatments and procedures. These 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.

III. Professional and Moral Values in the Health Professions

Who are the conscientious objectors in the health professions?

Most conscience-based objections to provide care are made by physicians, nurses, and pharmacists; however, others (including assistants, medical students, and organizations) have appealed to conscience when refusing to provide care. Conscientious objection is often associated with law and policy protecting freedom of religion—objections based on such are frequently accommodated at local, state, federal and international levels. At the organizational level, Catholic hospitals and other religious institutions have been vocal about their unwillingness to offer services (such as abortion, contraception and some forms of end of life care) when these appear to conflict with core religious and moral values.

What is at stake for professionals and patients?

Professionals work to protect and respect the decisions of patients. At the same time, patients expect to be cared for as autonomous, moral individuals. However, professionals also have personal integrity and moral values which guide decision making. What are professionals to do when their moral values conflict with the decisions or needs of their patients? When do the health care providers' interests override those of the patient and vice versa? Many suggest that health care providers should be allowed to object, but only if that objection will not cause harm to the patient. Nonetheless, these attempts at compromise often fail to satisfy an objector. The controversy surrounding both the practice of conscientious objection and attempts to find ways to meet the needs of patients is reflected in debates in legislatures, courts, media and the scholarly literature. But these debates are of little solace to a nurse facing the distress of supporting a controversial procedure or to a patient struggling to find legal, medically urgent care.

How is conscientious objection addressed or thought about differently across professional roles?

Although the attitudes and behaviors of health care providers may differ according to their profession and although the experiences of moral distress may vary, little difference may be found in how ethicists and policy makers discuss the issues. In part, this may reflect the fact that medical treatment often involves many interrelated points of professional care. For example, a physician may instruct a nurse to monitor the post-abortion care of a patient, a pharmacist may refuse to fill in a prescription by a physician or nurse for contraception, or an infertility clinic may refuse to provide in vitro fertilization for a same sex couple because the involved physicians are opposed to same sex relationships. Just as there is an overlap in their roles in providing health care, there is also an overlap in literature on the limits of conscientious objection relating to

either a specific profession or issue. For instance, conscientious objections by physicians and physician assistants are discussed under similar titles and refer to the same literature. The same trend can be seen in the literature addressing reproductive care such as abortion and contraception. Thus, although the reading lists in this guide addresses the topic from various professional roles and circumstances, in most cases the arguments follow similar trajectories and rely on common solutions.

IV. A Short History of Conscientious Objection: Major Legislation, Rulings and Policies

Year	Title	Citation	Description
1973	Church Amendment ¹⁴	42 U.S.C. §300(a)-7	The first conscience clause enacted into law. Stipulates that public officials may not require individuals or entities who receive certain federal funding to perform or make facilities available to perform abortion or sterilization procedures if performance would be “contrary to religious beliefs or moral convictions.”
1974	National Research Act ¹⁴	42 U.S.C. § 300a-7c(2)	Amends the Church Amendment to extend protections to those who receive federal funds or research.
1978	State Laws ¹⁵	See States Laws	By 1978, most states had adopted legislation which protects conscience in some capacity.
1979	Church Amendment and Education ¹⁴	42 U.S.C. § 300a-7(e)	The Church Amendment was broadened prohibiting discrimination against students with conscientious objections.
1988	Danforth Amendment to the Civil Rights Restoration Act ¹⁶	20 U.S.C. § 1688	An amendment to Title IX, that clarified that Title IX, may not be used to influence the provision of abortion-related-service by individuals or institutions. Furthermore, institutions may not discriminate or impose a penalty on any person who has sought or received abortion related services.
1996	Public Health Service Act ¹⁷	42 U.S.C. §238(n)	Federal funding decisions cannot be biased against entities which refuse to provide abortion related training and services.

1997	Balanced Budget Act ¹⁸	42 U.S.C. § 1395w-22(j)(3)(B)	Allows Medicare and Medicaid to refuse reimbursement for abortion-related referrals, counseling, and care. Additionally, this act prohibits managed care plan providers from restricting health care professionals from discussing all treatment options with patients, including those options not covered under the managed care plan.
2000	AMA Code of Medical Ethics ¹⁹	Opinion 10.05: Potential Patients, part 3(c)	Specifies that physicians can ethically refuse to provide services or care when “a specific treatment sought by an individual is incompatible with the physician’s personal, religious, or moral beliefs.”
2008	Ensuring that HHS Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law ²⁰	Final Rule, Fed Regist. 2008 Dec 19;73(245):78072-78101.	In 45 CFR 88, clarifies that non-discrimination protections apply to institutional health care providers as well as to individual employees working for recipients of certain funds from HHS. Additionally, requires recipients of certain HHS funds to certify their compliance with laws protecting provider conscience rights.
2009	Weldon Amendment to the Appropriations Act ²¹	PL 112-74, 125 Stat 786	Prohibits federal funding to organizations that discriminate against health care entities that do not participate in abortion services. Defines health care entities as “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.”
2010	Patient Protection & Affordable Care Act (ACA) ²²	PL 111-148, 124 Stat 119, § 1303(b)(4)	Includes protections against discrimination in health insurance coverage. Specifies that health plans may not “discriminate against any individual health care provider or health care facility because of its unwillingness to pay for, provide coverage of, or refer for abortions.” However, the law does not pre-empt state law, nor change other federal laws, providing the caveat that a “conscientiously objecting provider may still be obligated to provide abortion-related services.”

2011	Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws ²³	Final Rule. Fed Regist. 2011 Feb 23;76(36):9968-9977.	HHS final rule which rescinds, in part, and revises the 45 CFR Part 88 (2008) ²⁰ . Specifies that neither the 2008 final rule, nor this rule alters the statutory protections for individuals and health care entities provided under the Church Amendments, Section 245 of the Public Health Service Act, and the Weldon Amendment.
2013	Open Enrollment in the ACA Health Insurance Marketplace begin on October 1, 2013 ²⁴	U.S. Department of Health & Human Services. Key Features of the Affordable Care Act By Year.	Individuals begin enrolling in the market place for insurance coverage during 2014.
2014	Sebelius v. Hobby Lobby Stores, Inc. ²⁵	134 S. Ct. 678 (2013)	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.

V. Topics:

This guide provides a reader's introduction to the literature on under separate cover on the following:

- **A short overview.** Available from: <http://hdl.handle.net/1805/3845>
- **General readings.** Available from: <http://hdl.handle.net/1805/3998>
- **Ethical analyses.** Available from: <http://hdl.handle.net/1805/3929>
- **Institutions.** Available from: <http://hdl.handle.net/1805/4198>
- **Nurses.** Available from: <http://hdl.handle.net/1805/4391>
- **Physician Assistants.** Available from: <http://hdl.handle.net/1805/4293>
- **Pharmacists.** Available from: <http://hdl.handle.net/1805/4404>
- **Students.** Available from: Available from: <http://hdl.handle.net/1805/4406>
- **Abortion and contraception.** Available from: <http://hdl.handle.net/1805/4463>
- **Same sex relationships, medical care and reproductive medicine.** Available from: <http://hdl.handle.net/1805/4418>
- **Vaccination.** Available from: <http://hdl.handle.net/1805/4419>
- **Use of animals in medical education.** Available from: <http://hdl.handle.net/1805/4466>
- **End-of-life care.** Available from: <http://hdl.handle.net/1805/4483>
- **Surveys and attitudinal research.** Available from: <http://hdl.handle.net/1805/4225>
- **Court cases and legal analyses.** Available from: <http://hdl.handle.net/1805/4511>
- **Collection scope and search strategies.** Available from: <http://hdl.handle.net/1805/4531>

References

1. Brock P. "These strange criminals": an anthology of prison memoirs by conscientious objectors from the Great War to the Cold War. Toronto: University of Toronto Press; 2004.
2. Landskroener PM. Not the Smallest Grain of Incense: Free Exercise and Conscientious Objection to Draft Registration. *Val UL Rev.* 1991;25:455. Available from: <http://scholar.valpo.edu/vulr/vol25/iss3/5>
3. United States v. Seeger, 380 US 163 (1965). Available from: http://scholar.google.com/scholar_case?case=986343228359160209
4. Welsh v. United States, 398 U.S. 333 (1970). Available from: http://scholar.google.com/scholar_case?case=14424655082031578465
5. 50 U.S.C. App. 451 et seq. Military Selective Service Act. Available from: <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title50/html/USCODE-2011-title50-app-militarys.htm>
6. Department of Defense, U.S. Instruction - Subject: Conscientious objectors. No. 1300.06. 5 May 2007. Available from: http://www.fas.org/irp/doddir/dod/i1300_06.pdf
7. Benjamin M. Conscience. In: Post SG, ed. *The encyclopedia of bioethics*, 3rd ed. New York (NY): Macmillan Reference; 2004. p. 513-6.
8. Sulmasy DP. What is conscience and why is respect for it so important? *Theoretical Medicine and Bioethics.* 2008;29(3):135-49. Available from: <http://hdl.handle.net/1805/3259>
9. Savulescu J. Conscientious objection in medicine. *BMJ.* 2006;332(7536):294-7. Available from: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1360408/>
10. Childress JF. Appeals to conscience. *Ethics.* 1979;89(4):315-35.
11. Blustein JF. Doing What the Patient Orders: Maintaining Integrity in the Doctor-Patient Relationship. *Bioethics.* 1993;7(4):289-314.
12. Wicclair MR. *Conscientious objection in health care : an ethical analysis.* Cambridge: Cambridge University Press; 2011.
13. Roe v. Wade, 410 U.S. 113 (1973). Available from: http://www.law.cornell.edu/supct/html/historics/USSC_CR_0410_0113_ZS.html
14. Sterilization or abortion [Church Amendment]. 42 U.S.C. § 300a-7. Available from: <http://hdl.handle.net/1805/3298>
15. Guttmacher Institute. *State Policies in Brief: Refusing to Provide Health Services.* Available from: http://www.guttmacher.org/statecenter/spibs/spib_RPHS.pdf
16. Danforth Amendment to the Civil Rights Restoration Act, 20 USC § 1688. Neutrality with respect to abortion. 1988. Available from: <http://hdl.handle.net/1805/3299>
17. Office of Civil Rights, U.S. Department of Health & Human Services. *Federal Health Care Conscience Protection Statutes: 42 U.S.C. § 238n.* Available from: <http://hdl.handle.net/1805/3300>
18. Balanced Budget Act, 42 U.S.C. § 1395w-22(j)(3). Prohibiting interference with provider advice to enrollees. 1997. Available from: <http://hdl.handle.net/1805/3301>
19. American Medical Association. Opinion E-10.05 Potential Patients. Accessed 3 May from: <https://ssl3.ama-assn.org/apps/ecom/PolicyFinderForm.pl?site=www.ama-assn.org&uri=%2fresources%2fdoc%2fPolicyFinder%2fpolicyfiles%2fHnE%2fE-10.05.HTM>
20. Department of Health and Human Services (US). Ensuring that Department of Health and Human Services funds do not support coercive or discriminatory policies or practices in violation

of federal law. Fed Regist. 2008 Dec 19;73(245):78072-78101. Available from:
<http://hdl.handle.net/1805/3302>

21. Office of Civil Rights, U.S. Department of Health & Human Services. Federal Health Care Conscience Protection Statutes: Weldon Amendment, Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, 125 Stat 786. Available from: <http://hdl.handle.net/1805/3303>

22. PL 111-148, 124 Stat 119, § 1303(a) Special rules relating to coverage of abortion services. 23 Feb 2010. Available from: <http://hdl.handle.net/1805/3305>

23. Department of Health and Human Services (US). Regulation for the enforcement of federal health care provider conscience protection laws. Fed Regist. 2011 Feb 23;76(36):9968-9977. Available from: <http://hdl.handle.net/1805/3306>

24. U.S. Department of Health & Human Services. Key Features of the Affordable Care Act By Year [Internet]. 2013 [cited 2014 Jan 25]. Available from:
<http://www.hhs.gov/healthcare/facts/timeline/timeline-text.html>

25. Sebelius v. Hobby Lobby Stores, Inc. 134 S. Ct. 678 (2013). Available from:
http://scholar.google.com/scholar_case?case=8309633413291537500