CONSCIENTIOUS OBJECTION IN THE HEALING PROFESSIONS:

A READER'S GUIDE TO THE ETHICAL AND SOCIAL ISSUES

Abortion and Contraception

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Conflicts around the provision of contraception, abortion services and post abortion care are the most commonly discussed topic in the literature on conscientious objection in the healing professions.[1] These objections are based on moral claims and vocabularies with high stakes. For example, some Christians consider abortion to be in direct conflict with the biblical commandment "Thou shall not kill." For such believers, if life begins at conception, abortion is equivalent to murder. The Christian Medical and Dental Association (CMDA) Ethics Statement opposes abortion "because it is contrary to the revealed, written word of God."[2] In the CMDA's view, abortion does not respect for the sanctity of human life and conflicts with traditional, historical, and Judeo-Christian medical ethics. Even forty years after *Roe v Wade*, abortion continues to raise sensitive legal and ethical issues.[3] Some nurses and physicians have refused to provide abortion services and/or post abortion care. Some refuse to provide any information about available options or alternatives or even to refer the patient to a willing provider.

Objections to providing contraception have resulted in similar controversies.[4] Pharmacists and pharmacies have refused to fill in prescriptions for contraception or to refer the patient to a different provider. In some instances, victims of sexual assault have been denied emergency contraception and referrals. Emergency contraception is most effective if administered within 24 hours of the sexual encounter and is thus time sensitive.[5] Wicclair notes that some Catholic hospitals do not provide emergency contraception (even for rape victims), nor do they refer patients. Due to the victim's shock and anxiety, referrals may lead to additional stress--in such cases, on site services may be more appropriate.[6]

Conscientious objections, however, are often protected by the law. For example, under the Coats Amendment of 1996, medical education programs that refuse to provide abortion training cannot be excluded from federal, state and local funding sources.[7] The same rule applies to any federally funded professional who refuses to participate in abortion or sterilization procedures based on their "religious beliefs or moral convictions."

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Some state laws provide similar protections. In Arkansas for example, "No private institution or physician shall be prohibited from refusing to provide contraceptive procedures, supplies, and information when the refusal is based upon religious or conscientious objection."[8]

More recently, the 2010 Patient Protection and Affordable Care Act prohibits insurance companies from discriminating against individual health care providers or health care facilities because of a "willingness or unwillingness to provide, pay for, provide coverage of, or refer for abortions."[9] On January 30, 2013, the Department of Health and Human Services proposed an amendment to previous rules mandating the provision of contraception; the amendment seeks to expand the exemptions for institutions that object to providing contraception services.[10] Thus religious non-profits, such as schools, hospitals and social service providers would be exempted from purchasing coverage for contraception. Health insurance companies would provide coverage.

Nonetheless, conscientious objection to abortion and contraception will likely continue to lead to legal disputes and public debates--as may be evidenced in the court cases initiated by Hobby Lobby and others associated with the Becket Fund.[11–15] A case from 1989, *Tramm v Porter Memorial Hospital*, demonstrates the enduring nature of the debates.[16] In this case, an aide was fired after she refused to clean surgical instruments that would be used for an abortion. Citing the Indiana Conscience Statute (Ind. Code § 16-10-3-2, repealed) that provided "No physician, and no employee or member of the staff of a hospital or other facility in which an abortion may be performed, shall be required to perform any abortion or to assist or participate in the medical procedures resulting in or intended to result in an abortion, if such person objects to such procedures on ethical, moral or religious grounds," the court held that the statute did not cover Tramms' duties.[17] According to the court, the statute only intended to protect people who might be forced to perform abortions.

The American College of Obstetricians and Gynecologists (ACOG), however, provides a counterpoint—holding that objections regarding provision of emergency contraception are premised upon and have been complicated by "misinformation and a prevalent belief that emergency contraception acts primarily by preventing implantation" even though evidence suggests that it is fertilization that is prevented.[18] Similarly, Card notes that objections against abortion are based on a false definition of pregnancy—pregnancy is not the same as fertilization.[19] Other objectors do not distinguish sexual assault from other reasons that women may seek emergency contraception; these objectors refuse to provide related care. Card finds it unreasonable to "withhold medication because of the mere possibility that this may contribute to an immoral result."[19] Wicclair also argues for circumstances in which the objections must be overruled, noting, with regard to abortion, "When withholding medically indicated emergency treatment will expose a pregnant patient to an excessive increased risk of mortality or morbidity, notwithstanding a hospital's interest in maintaining its identity and integrity, it has an obligation to offer the medically indicated emergency treatment."[20]

If the hospital does not wish to offer the emergency treatment, they are expected to at least refer the patient to a willing provider. Referrals ensure that the provider does not violate their religious and moral beliefs by directly participating, while at the same time enabling the patient to receive care. These referrals may either be direct, where the health care provider directly refers the

patient to another provider or indirect where the provider only delivers information. Although direct referrals are not ethically required they are encouraged. Direct referrals are beneficence based, and ensure that referral actually occurs. In contrast, indirect referrals (simply providing the patient with information) do not guarantee that the patient will find the information helpful.[21] Another danger of indirect referrals, according to Wicclair, is that the patient considers the healthcare professional as an expert and may assume that they have been provided with all information--which may not always be the case. The patient may not think to look into other options by themselves. Failure to offer an opportunity to receive additional information may result in additional harm.[20] For example, in *Brownfield v. Daniel Freeman Marina Hospital,* the hospital had refused to provide "pregnancy prevention treatment" to a rape victim after the information was requested. The victim was merely told to see her doctor within two days without an explanation. (In this case, the court considered the use of morning-after pills as post-coital contraception, and not an abortion.)[22]

According to McLeod, referrals provide a professional with moral distance when compared to actually performing the abortion.[23] Card, however, asserts that referrals do not remove the objector from the causal chain of events, and thus objectors may still feel like the act of referral conflicts with their moral beliefs.[19] Secondly, referrals may not benefit the patient who, for example, may not be able to afford it. Likewise, referrals are not always efficient, as in the case of emergency contraceptives where time is of the essence. Card proposes that professionals make their conscientious objections status clear to potential patients. Wicclair also supports referral solutions. Instead of hospital staff providing the referral information, counseling centers could provide the information. Alternatively the provider may provide transportation to where the patient may receive help. These solutions, however, do not solve the problem of the immediate and time-sensitive need for emergency contraception.

In "Religious Freedom and Women's Health — The Litigation on Contraception," Jost provides a review of litigation relating to conscientious objection to contraception by religious and for-profit organizations.[24] At least twenty-six states require insurance to cover contraception.[25] However, in February 2012, the Department of Health and Human Services (DHHS) excused religious employers from compliance. With regard to case law, forty federal suits have been filed on contraception. These cases are based on the Religious Freedom Restoration Act, which prevents federal government from interfering with the free exercise of religion unless the requirement "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering" that interest.[26] Where courts have already reached a decision, one court stated that the rule on the provision of contraception was already injurious to religious organizations, three courts granted temporary injunctions prohibiting employers from being mandated to provide contraception, while in two other cases the court opined that the rule does not require provision of contraceptives or approve of their use. One court has ruled that a secular for-profit organization cannot hold a religious belief, but in other cases "courts have allowed privately owned organizations to assert the religious beliefs of the individual owners."[24]

Further Reading

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