

# Conscientious Objection in Health Care:

Deciding When to  
Accommodate Health  
Professionals

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# A (very) Brief History of CO in Health Care

- Until early in the last half of the 20th century, conscientious objection was largely a phenomenon associated with military service.
- Major factors that contributed to expanding its scope into health care.
  - Two court decisions
    - A preliminary injunction issued by a U.S. District Court in Billings, Montana enjoining a Catholic hospital from denying permission to perform a sterilization procedure within the hospital (1972)
    - The U.S. Supreme Court *Roe v. Wade* abortion decision (1973)
  - A substantial increase in medical means to prolong the lives of patients (e.g., dialysis, CPR, mechanical ventilation, and medically provided nutrition and hydration).

# Conscientious Objection and Conscience-based Refusals

- Refusing to provide a medical service is an instance of **conscientious objection** only if the refusal is **conscience-based**.
- A refusal is **conscience-based** only if it is based on a health professional's **moral** (i.e., ethical and/or religious) convictions.
- To avoid moral complicity, clinicians sometimes object to *any participation*, including providing information or referrals.

# Examples of Conscience-based Refusals (CBRs)

- CBRs related to reproduction
  - Abortion, sterilization, contraception, and assisted reproduction
- CBRs related to death
  - Forgoing life-sustaining treatment—especially medically provided nutrition and hydration (MPNH)
  - Organ donation after circulatory determination of death (DCDD)
  - Palliative sedation to unconsciousness

# Other Reasons for Refusing

- Clinical considerations
  - Refusing to perform surgery on an “inoperable” brain tumor
  - Refusing to provide antibiotics for a viral infection
- To avoid harm or risk of harm to the physician
  - Refusing to treat patients who have Ebola or SARS to avoid a risk of infection
  - Refusing to perform abortions due to safety concerns
- Financial considerations
  - Low reimbursement rates (e.g., for Medicaid patients)

# Other Reasons for Refusing

- Providing a requested medical service would violate the profession's code of ethics.
- Providing a requested medical service is prohibited by law.
- A requested medical service is not within the scope of the practitioner's clinical competence.
- Generally, CBRs are limited to situations in which health professionals refuse to provide or assist in providing a legal, professionally accepted, and clinically appropriate medical service within the scope of their competence because doing so is contrary to their moral beliefs.

# Two Cases

- **Case 1:** Dr. A, an ED physician, has a conscience-based objection (CBO) to emergency contraception (EC) and refuses to offer it to rape victims brought to the hospital by EMS. Dispensing EC is consistent with hospital policy and general ED practice. Dr. A requests an accommodation.
- **Case 2:** Nurse B, an obstetrics/gynecology nurse, has a CBO to participating in abortion. Her objection includes caring for patients pre- and post-abortion. Nurse B requests an accommodation.

# Accommodate or Don't Accommodate?

## Two Extreme Approaches and Simple/Simplistic Answers

- Don't accommodate

- Incompatibilism: CBRs to provide or assist in providing a legal, professionally accepted, and clinically appropriate medical service within the scope of a health professional's competence are contrary to the practitioner's professional obligations.

- Accommodate

- Conscience absolutism: Health professionals should be exempted from performing any action that is contrary to their conscience.

# Incompatibilism

- “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.”
  - Julian Savulescu, "Conscientious Objection in Medicine," *British Medical Journal* 332 (2006): 294-297
- “Any pharmacist who cannot dispense medicines lawfully prescribed by a doctor should find another line of work.”
  - “Moralists at the Pharmacy” (editorial), *New York Times*, April 3, 2005: 12

# Conscience Absolutism

- Christian Medical & Dental Association (CMDA) Healthcare Right of Conscience Ethics Statement
  - Respect for conscientiously held beliefs of individuals...is an essential part of our free society. Issues of conscience arise when some aspect of medical care is in conflict with the personal beliefs and values of the...healthcare professional. CMDA believes that in such circumstances the Rights of Conscience have priority... All healthcare professionals have the right to refuse to participate in situations or procedures that they believe to be morally wrong and/or harmful to the patient or others.

# Problems with Conscience Absolutism

- Health professionals are **professionals** and have special obligations.
  - Core professional obligations include:
    - An obligation to respect patient dignity and refrain from discrimination
    - An obligation to promote patient health and well being
    - An obligation to respect patient autonomy
- CBRs can impose excessive burdens on other health professionals, supervisors, administrators, and organizations.

# A Problem with Incompatibilism

- Health professionals are **moral agents** as well as professionals.
- Failing to accommodate health professionals' conscience-based refusals can compromise their **moral integrity**.

# Compromising Moral Integrity

- To provide or assist in providing a medical service compromises a health professional's moral integrity if:
  - She has core moral values.
  - These core moral values are part of her understanding of who she is. That is, they are integral to her self-conception or identity.
  - It would be incompatible with those core moral values to provide or assist in providing the medical service.

# Why Protect Moral Integrity?

- Maintaining moral integrity can be an essential feature of a person's conception of a good or meaningful life.
- To prevent feelings of guilt, remorse, and shame as well as a loss of self respect
- To prevent a decline in moral character
- Respect for persons requires respect for moral integrity.
- Moral integrity has intrinsic value.

# Additional Reasons for Accommodating CBRs

- Respect for autonomy
- Epistemic modesty
- Moral progress
- Some practices continue to be controversial (e.g., abortion, organ donation after circulatory determination of death, and palliative sedation to unconsciousness).
- Tolerance and promotion of moral/cultural diversity
- Diversity in the medical profession
- To avoid discouraging ethically sensitive persons from becoming physicians

# Between the two Extremes: Reasonable Accommodation

- General aim
  - To accommodate health professionals' claims of conscience without unduly compromising other values and interests
- Guidelines
  - Whenever feasible, health professionals should provide advance notification to patients/surrogates, administrators, supervisors, employers, etc.
  - Accommodation should not impede a patient's/surrogate's timely access to information, counseling, and referral.
  - Accommodation should not impede a patient's timely access to health care services.
  - Accommodation should not impose excessive burdens on other health professionals, supervisors, administrators, or organizations.
  - Accommodation should not enable invidious discrimination.

# An Objection and a Response

- **Objection**

- Reasonable accommodation may require health professionals to compromise their moral integrity.

- **Response**

- Individuals acquire special obligations when they enter a health profession.
- Individuals can choose whether or not to enter a particular profession, specialty, or sub-specialty; and health professionals often have a choice of practice environments.

# Assessing Reasons

- Respect for moral integrity generally rules out evaluating a health professional's conscience-based reason for refusing to provide or assist in providing a service.
- Two exceptions:
  - The refusal is based on a belief that is clearly contrary to recognized goals of the profession.
  - The refusal is based on a demonstrably mistaken clinical belief.

# Conclusion

- Two extreme positions with respect to conscience-based refusals should be rejected.
  - **Conscience absolutism**: There is an absolute, unqualified right to refuse to provide or assist in providing goods and services that violate a health professional's conscience.
  - **Incompatibilism**: There is no right to refuse to provide or assist in providing goods and services that violate a health professional's conscience.
- Whenever feasible, health professionals' conscience-based refusals should be reasonably accommodated.

A reasonable accommodation precludes:

  - 1) impeding patients'/surrogates' timely access to pertinent information and health care services
  - 2) placing excessive burdens on other health professionals, supervisors, administrators, or organizations
  - 3) enabling invidious discrimination