

Conscientious Provision and Refusal of Abortion Care

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Overview

1. Definitions and terms
2. A legal tool
3. Conscientious refusals
 - Disentangling four underlying bases
 - Impact on abortion care services
4. Conscientious provision

Definitions and Terms

Defining “Conscience”



A person’s sense of
RIGHT and WRONG

Guided by:

- Inner voice
- Deeply held beliefs
- Moral and ethical principles that a person endorses

Conscience Terminology in Health Care

Conscience rights

Conscience clauses

Conscientious objection

Conscience-based refusals/denials of care

Conscientious commitment

Conscientious provision

A Legal Tool

Negative Rights vs. Positive Rights

U.S. Context of Roe v. Wade, legalizing abortion in 1973:

“The recognition of a constitutional right against unduly burdensome state interference in a woman’s personal decision about whether to carry her pregnancy to term ***sparked a fear among those opposed to abortion that this negative right would soon be transformed into a positive one***, by which physicians and other health-care workers could be forced to provide these services against their moral objection.”

Related U.S. Laws

Federal law

- Church Amendment 1973
 - Individuals AND institutions have the right to refuse care without legal, financial, or professional consequences
 - Those receiving federal funds not forced to provide anything against religious beliefs

Related U.S. Laws

State laws

- 46 states have passed additional conscience clause legislation allowing more negative protections
- Extended clauses to cover
 - different types of health professionals
 - additional realms of health care
 - those with any funding sources

Conscience Creep Critique

“A slow but systematic effort to use religious conscience claims to sidestep laws that should apply to everyone.”

“Federal laws may make room for the rights of conscience, but health care providers—and all those whose jobs affect patient care—should cast off the cloak of conscience when patients' needs demand it.”

International Laws

- Varying approaches to conscience rights
- Conscientious objector registries
- Low resource vs. high resource
 - public health impact more concerning in restrictive and low resource countries
- Centralized medicine vs. free market
 - professional obligation to ensure abortion rights vs. to each their own

Professional Duty to Refer vs. Complicity

Given fiduciary relationship in health care, what duty do providers have toward their patients regarding:
abortion provision?
referral?
timely and safe referral?

Given the moral objections of deeply religious healthcare providers, does referral make them complicit in abortion?

FIGO Professional Guidelines

International Federation of Gynecology and Obstetrics (FIGO) affirms that to behave ethically, practitioners shall:

- ***Provide public notice*** of professional services they decline to undertake on grounds of conscience;
- ***Refer patients who request such services*** or for whose cares such services are medical options to other practitioners who do not object to the provision of such services;
- ***Provide timely care*** to their patients when referral to other practitioners is not possible and delay would jeopardize patients' health and well-being; and
- ***In emergency situations, provide care*** regardless of practitioners' personal objections.

Conscientious Refusal

Four Underlying Bases for Refusals

Disentangling:

1. Deeply held belief
2. Stigma avoidance
3. Political allegiance
4. Financial



Impact of Refusals

- Country contexts differ
- Difficult to compare studies
 - Examples: Uruguay, Colombia, Brazil, Italy, UK, Senegal, Ghana, South Africa
- Concerns for women facing refusals and their care:
 - Compounds stigma
 - Can cause delays or threaten access
 - Can lead to unsafe abortion

Institutional Refusals

Religious Hospitals

- Religious directives override individual beliefs
- Health care providers' "hands are tied" in some emergencies



Institutional Refusals

In the U.S. Catholic-affiliated hospitals make up:

- 10 out of the 25 largest hospital systems
- 1 in 6 hospital admissions, 1 in 9 acute care admissions
- Over 20% of admissions in 22 states and the District of Columbia
- About 70% of all religious hospitals

Ethical and Religious Directives for Catholic Health Care Services

Abortion directive warns against making meaningful referrals:

45. Abortion (that is, the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus) is never permitted.... Catholic health care institutions are not to provide abortion services, even based upon the principle of material cooperation. In this context, Catholic health care institutions need to be concerned about the **danger of scandal in any association with abortion providers.**

Institutional Refusals

Catholic hospitals prohibit abortion and contraception and more:

When there's a heartbeat:

Miscarriage management in Catholic-owned hospitals

Freedman, et al. American Journal of Public Health, 2008.

Conflicts in Care for Obstetric Complications in Catholic Hospitals

Freedman, et al. American Journal of Bioethics Primary Research, 2013

Conscientious Provision

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DOCTORS
CONSCIENCE
.....
The *Struggle*
to Provide
Abortion
before
and
after
Roe
.....
CAROLE
JOFFE Wade

In the face of women's suffering and deaths from illegal abortion, the physicians that sociologist Carole Joffe interviewed provided abortion "for reasons of conscience."

Conscientious Provision

“Conscientiously committed practitioners often need courage to act against prevailing legal, religious, and even medical orthodoxy, following the honourable medical ethic of *placing patients’ interests above their own.*”

Conscientious Provision

“Recognizing only negative claims of conscience with respect to abortion—or any care—is a kind of *hemineglect*. Health care workers with conflicting views about contested medical procedures might all be ‘conscientious,’ even though their core beliefs vary. Failure to recognize that *conscience compels abortion provision*, just as it compels refusals to offer abortion care, renders “conscience” an empty concept and leaves us all with no moral ground (high or low) on which to stand.”

In Conclusion

- Conscience laws predominately support refusals (negative rights)
- Difficult to measure global impact consistently—especially given unclear or messy bases for refusals
- Need better support for conscientious provision (positive rights)